

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
New Orleans, Louisiana
April 13 through 16, 2004

EXECUTIVE SUMMARY

This summary presents highlights of the 20th meeting of the National Environmental Justice Advisory Council (NEJAC), held April 13 through 16, 2004 in New Orleans, Louisiana at the Sheraton New Orleans Hotel. On April 13 and 14, 2004, the NEJAC hosted public comment periods during which representatives of community organizations presented their concerns about pollution, health risks, unaddressed issues involving pollution from Federal facilities, and other issues of environmental justice. Six of the seven subcommittees of the NEJAC met for a full day on April 15, 2004. Approximately 263 persons attended the meetings and 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 of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. Ms. Veronica Eady, Tufts University, serves as the chair of the Executive Council of the NEJAC. Mr. Charles Lee, Associate Director, EPA Office of Environmental Justice (OEJ), serves as the Designated Federal Officer (DFO) for the Executive Council.

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

Remarks

At the April 2004 meeting, members of the NEJAC heard remarks from:

- " Mr. Barry Hill, Director, EPA OEJ, addressed the Executive Council and read a written statement on behalf of Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA), explaining that New Orleans was selected as the meeting venue because Louisiana and other states in EPA Region 6 face significant issues related to cumulative risks and impacts. The EPA needs to fully understand these impacts and the Agency is looking to the NEJAC for advice in this effort. The efforts of the members of the NEJAC are invaluable in assisting EPA in addressing issues related to environmental justice.
- " Mr. Larry Starfield, Deputy Regional Administrator, EPA Region 6, welcomed the members of the NEJAC to New Orleans, Louisiana. He stated that EPA Region 6 is committed to continuing efforts to ensure environmental justice for all communities. He thanked the members of the NEJAC Cumulative Risks/Impacts Work Group and acknowledged their efforts in publishing the draft report, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*.
- " Ms. Karen Gautreaux, Deputy Secretary, Louisiana Department of Environmental Quality (LDEQ), also welcomed the members of the NEJAC, and stated that the newly appointed officials of the LDEQ recognize the need to work with individual communities on a statewide basis to ensure environmental justice for all citizens in the state of Louisiana. She also added that the LDEQ is developing a strategic plan for achieving environmental justice in all communities and welcomes advice from the members of the NEJAC.

Cumulative Risks and Impacts Policy Dialogue

In its continuing efforts to provide independent advice to the EPA Administrator in areas related to environmental justice, the NEJAC focused its 20th meeting on a specific policy issue—cumulative risks of exposure to pollutants and related impacts to communities. Cumulative risk is defined as the aggregate of current or acute risk as well as long-term exposure. On Tuesday, April 13 and Wednesday, April 14, 2004, members of the NEJAC participated in a dialogue about this topic.

Discussion among members of the Executive Council and the NEJAC Cumulative Risks/Impacts Work Group

Members of the NEJAC Cumulative Risks/Impacts Work Group provided an overview of the draft report, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*. During their presentation, the members of the work group briefly summarized the process they underwent to develop the draft report and presented the preliminary findings. The members of the NEJAC then discussed the draft report and recommendations at length, providing suggestions for report revisions, including consolidating and condensing the action items and clarifying terminology (such as community based participatory research and bias for action) that could potentially be confusing or misleading. Members of the NEJAC also noted that public comments on the draft report would be ongoing for 30 days following the NEJAC meeting. They also stated that September 2004 is the anticipated date for the completion of the report.

EPA Senior Officials Perspectives on Cumulative Risks and Impacts

Mr. Lee called on senior EPA officials to provide their perspectives and understanding of issues related to cumulative risks and impacts and the draft report. Ms. Harris; Mr. William Farland, Deputy Assistant Administrator for Science, EPA Office of Research and Development (ORD); Mr. Larry Weinstock, Senior Advisor, EPA Office of Air and Radiation (OAR); Mr. Starfield; Mr. William Sanders, Acting Director, EPA Office of Children's Health Protection; and Mr. Thomas Voltaggio, Deputy Regional Administrator, EPA Region 3, shared various perspectives and comments, highlighting the importance of industry involvement, peer review of the draft report, and ongoing related initiatives that the NEJAC should be aware of, such as a 20-year prospective children's health study.

Community Panel on Multiple Impacts

On Tuesday, April 13, 2004, the members of the NEJAC participated in a discussion with a panel comprised of representatives of various community groups. The panel was chaired by Ms. Wilma Subra, Louisiana Environmental Action Network and chair of the Air and Water Subcommittee, and represented a wide range of racial and ethnic groups.

The panel consisted of the following members:

- " Ms. Helen Vinton, Four Corners Southern Mutual Help Association
- " Ms. Clementine Matthews, Four Corners Southern Mutual Help Association
- " Ms. Marylee Orr, Louisiana Environmental Action Network, Mississippi River Industrial Corridor
- " Ms. Rebecca Jim, Tar Creek, Local Environmental Action Demanded (LEAD) Agency Inc.
- " Mr. Genaro Lopez, Southwest Workers Union, Kelly Air Force Base

Panel members presented information to the Executive Council on issues of concern to communities that face multiple stressors, such as exposure to hazardous chemicals, racial discrimination, lack of healthcare, and low-income and poverty issues. Specifically, Ms. Vinton described the multiple cumulative environmental risks and impacts faced by the Vietnamese fisheries communities, consisting of more than 2,500 families, scattered along the coast of Louisiana. Ms. Matthews described a poor, predominantly African-American community in Four Corners, St. Marys Parish, Louisiana, where pollution sources included black carbon manufacturing industrial facilities, strategic petroleum reserves, applications of pesticides, herbicides, and fertilizers to sugar cane crops adjacent to residential dwellings. Ms. Orr

described the multiple, aggregate, and cumulative risks and impacts in the Mississippi River Industrial Corridor, where there is a significant African-American majority (63 percent), with Caucasian (30 percent) and Asian (3 percent) minorities. Pollution sources along the Mississippi River Industrial Corridor included petrochemical facilities, refineries, waste water treatment facilities not meeting permit limits, agricultural field runoff containing pesticides, herbicides, and fertilizers, and particulates resulting from burning sugar cane during the fall harvest season. Ms. Jim described the Tar Creek Superfund site where she noted five generations have been subjected to the ill-effects of lead poisoning and currently 32 percent of children in the community suffer from lead-poisoning. Other sources of contamination that she noted included benzene releases from chemical plants, and agricultural runoffs containing pesticides, herbicides, and fertilizers. Finally, Mr. Lopez described the struggle for revitalization of predominantly Mexican-American communities surrounding Kelly Air Force Base (AFB). Local residents in that area are subject to various ground water contaminants including chlorinated solvents such as trichloroethylene (TCE), tetrachloroethylene (PCE), vinyl chloride (VC), and soil contamination from lead and other heavy metals. He stated that multiple health problems exist among residents such as asthma, low birth weight, birth defects, and cancer.

Reports and Presentations

During the four-day meeting of the NEJAC, the members of the Executive Council heard presentations from the following individuals:

- " Mr. Hank Topper, EPA Office of Prevention, Pesticides, and Toxic Substances (OPPTS), provided an update on the Pollution Prevention Report, a draft of which had been discussed at the previous NEJAC meeting in Baltimore, Maryland in December 2002. Mr. Topper noted that following the presentation of the draft report to the NEJAC in 2002, the final report has been completed, and includes a promising collaborative problem solving model that could be adopted by other programs and offices in EPA.
- " Mr. Hill made a presentation about OEJ's response to the *Report on Environmental Justice*, prepared in March 2004 by the Office of Inspector General (OIG). Mr. Hill's presentation outlined the following issues:
 - History of environmental justice
 - Executive Order (EO) 12898 and the formation of the NEJAC
 - EPA's activities over the past few years that focus on issues related to environmental justice
 - Various opinions among academics, community organizers, and others about achieving environmental justice through legal mechanisms, such as The Civil Rights Act of 1964 and other environmental laws
- " Ms. Mildred McClain, PhD, Harambee House Inc., and Mr. James Woolford, Director, EPA Federal Facilities Restoration and Reuse Office, presented findings and recommendations of the draft report, *Environmental Justice and Federal Facilities: Recommendations for Improving Stakeholder Relations Between Federal Facilities and Environmental Justice Communities*, prepared by the Federal Facilities Work Group of the Waste and Facility Siting Subcommittee of the NEJAC.
- " Mr. Terry Williams, The Tulalip Tribes and acting chair of the Indigenous Peoples Subcommittee, and Mr. Daniel Gogal, EPA OEJ and DFO of the Indigenous Peoples Subcommittee, presented action items from the preliminary working draft report, *Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs*, prepared by the Meaningful Involvement and Fair Treatment Work Group of the Indigenous Peoples Subcommittee of the NEJAC. They also presented the schedule for the publication of the final report. Members of the NEJAC then provided their suggestions and recommendations.
- " Ms. Subra presented the draft report, *Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting*, prepared by the Air and Water Subcommittee of the NEJAC. She highlighted the recommendations included in the draft report.

SIGNIFICANT CONCERNS EXPRESSED DURING THE PUBLIC COMMENT PERIODS

Two public comment sessions were conducted during the April 2004 meeting. The first public comment session was held on Tuesday, April 13 and focused on issues related to cumulative risks and impacts. Two written and 8 oral statements were offered during the Tuesday session. The second public comment session was held on Wednesday, April 14 and provided the opportunity for the submission of general comments. One written and 21 oral comments were offered during the Wednesday session.

The predominant themes that were raised during the public comment periods are outlined below:

- " Several commenters provided feedback and recommendations related to the draft report, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* that was prepared by the Cumulative Risks/Impacts Work Group of the NEJAC. Commenters pointed out that Native and minority communities are being disproportionately affected and overburdened by a combination of environmental toxics. Several of the comments concerned the revision or addition of language to the report and the need to address specific concerns related to American Indian and Alaska Native tribes. In addition, several individuals noted the complexity of native cultures and the difficulty of incorporating social aspects into the assessment of cumulative risks and impacts.
- " A number of participants presented comments summarizing concerns about with Federal facilities. These individuals expressed concern that (1) EPA is not fulfilling its obligation to conduct oversight of cleanups at U.S. Department of Defense (DoD) installations and (2) EPA is not exerting its regulatory authority to hold DoD accountable for contamination and cleanups.
- " Several participants were representatives of Alaskan communities who are dependant on traditional subsistence lifestyles. Native Alaskans and others who depend on subsistence lifestyles to survive are threatened by disproportionate contamination resulting from activities of Federal facilities and industry. The state of Alaska contains over 600 formerly used DoD sites. Several participants requested that the next meeting of the NEJAC be held in Alaska.

AIR AND WATER SUBCOMMITTEE

The Air and Water Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Members of the Air and Water Subcommittee heard presentations and reports from:

Mr. Larry Weinstock, Office of Air and Radiation (OAR) Program Innovation Coordinator, provided a briefing on Community Actions for a Renewed Environment (CARE) which is a community-based, multi-media toxic reduction grant initiative. He highlighted the program benefits, goals, organization, activities, and grants that are available under the initiative.

Mr. Kenneth Manaster, Santa Clara University, School of Law, led an extensive discussion on improving the draft Recommended Practices Guide on Permitting document, Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting, dated April 6, 2004. He and the other members of the Air and Water Subcommittee discussed the document and made changes and improvements.

Mr. Michael Shapiro, Deputy Assistant Administrator, U.S. Environmental Protection Agency (EPA) Office of Water (OW), provided an update on permitting programs in the Office of Wastewater Management Water Permits Division. He expressed interest in conducting ongoing dialogue with the Air and Water Subcommittee in obtaining their input on the Permits Division's programs. He also presented the Small Communities Team program that provide water and wastewater services to tribal and community leaders, National Pollutant Discharge Elimination System (NPDES) programs and policies, Permitting for Environmental Results Strategy (PER), Watershed-based Permitting, and Concentrated Animal Feeding Operations (CAFOs). Mr.

Shapiro also agreed to notify the members of the Air and Water Subcommittee when the State Self Assessments and the National Statistical Profile of OW will be publicly available.

Ms. Elizabeth Cotsworth, Director, Office of Radiation and Indoor Air (ORIA), presented on indoor air quality. She focused her presentation on children from inner-city and lower-income neighborhoods, as well as tribal communities. Ms. Cotsworth agreed to provide the location of the 20 Class C Hazardous Waste landfills in the U.S. that could be considered for Low level radioactive waste disposal locations.

Mr. Bill Harnett, Director, Information Transfer and Permitting Division, Office of Air Quality Planning and Standards (OAQPS), discussed briefly the citizen's guide to providing input to EPA on air quality issues. He also discussed the air quality index.

During the one-meeting, members of the subcommittee discussed the following issue.

Members of the Air and Water Subcommittee discussed at length the content and organization of the draft version Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting. The primary focus of the discussion included identifying the audience and the goal of the document, defining flashpoint as used in the context of the document, public participation, and siting and permitting issues. The members of the subcommittee covered the Introduction, Flashpoints, Section 3a (Public Participation) and Section 3b (Permit and Terms) of the document.

The following is an action item the members adopted during the subcommittee meeting:

Beginning May 18, 2004, conduct a conference call every three weeks focusing on revising the Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting. Ms. Jody Henneke, Director of Texas Commission on Environmental Quality Office of Public Assistance, and Mr. Robert Sharpe, Illinois EPA, will work on Section 3a (Public Participation) and Section 3b (Permit and Terms), respectively. Mr. Manaster will focus on the Introduction and Flashpoint sections. The goal of the subcommittee is to produce a final document by June 29, 2004 and then decide when to seek technical advice from subject matter experts.

ENFORCEMENT SUBCOMMITTEE

The Enforcement Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Ms. Vicki Simmons, U.S. Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA) and acting Designated Federal Official (DFO) of the Enforcement Subcommittee announced that Mr. Reiniero Rivera, EPA, will be joining OECA in May 2003 and will be serving as the DFO for the subcommittee. Members of the Enforcement Subcommittee then heard presentations and reports from:

Ms. Phyllis Harris, Principal Deputy Assistant Administrator of EPA OECA, provided an update on OECA, specifically with regard to OECA's national priorities process. She explained that concerns related to environmental justice are incorporated as an integral part of each national priority.

Mr. Charles Lee, Associate Director, EPA Office of Environmental Justice (OEJ), discussed the Office of the Inspector General's Report: EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice and the ways EPA differed with their recommendations.

Ms. Tinka Hyde, Enforcement Coordinator, EPA Region 5, provided an update on the Concept Paper for Environmental Targeting: Policy and Technical Issues to be Considered. She explained that the Concept Paper has been developed to provide OECA with a consistent set of parameters that can be used to define an environmental justice community and to provide a proactive targeting tool to assist EPA regions and Headquarters in identifying the potential for disproportionate impacts in communities.

During the one-day meeting, members of the subcommittee discussed the following issues.

Members of the subcommittee reviewed each of OECA's national priorities and made recommendations on how OECA could address environmental justice in each national priority. OECA's national priorities include:

- Wet weather
- Air toxics
- New source review and prevention of significant deterioration
- Mineral processing
- Tribal compliance
- Financial responsibility

The members of the subcommittee discussed at length their reaction to the Office of the Inspector General's Report: EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice. The members of the subcommittee discussed the importance of immediate communication with the community about the Agency's response. In addition, the members recommended a communication strategy be implemented. The members agreed that the subcommittee could be used as a vehicle to implement such a strategy.

The members of the subcommittee believed that the Concept Paper for Environmental Targeting identifies a process that OECA could use to identify environmental justice communities. The members wished to ensure that the concepts of the paper are incorporated into the EJ Mapper. They also emphasized that OEJ should consider how communities can access the information and report on the findings.

Following is a list of significant action items the members adopted during the subcommittee meeting:

Recommendations about outreach to the community concerning the Office of the Inspector General's Report:

- Immediate communication with communities about EPA's response to the report
- Ongoing outreach should focus on training and resources to conduct outreach should be provided
- Use the Enforcement Subcommittee as a vehicle to review and help implement the communication strategy

Coordination with other subcommittees on OECA's national priorities:

- Coordinate with Mr. Wil Willson, Designated Federal Official (DFO), Air and Water Subcommittee, and EPA Office of Air and Radiation on recommendations related to OECA's Air Toxic National Priority
- Coordinate with Mr. Danny Gogal, DFO, Indigenous Subcommittee, and EPA OEJ on recommendations related to OECA's Tribal Compliance National Priority

Coordinate with Mr. Bill Sanders, Director of the Office of Children's Health, concerning schools being located in highly industrialized (potentially toxic) areas

Coordinate with Mr. Bill Sanders, Acting Director of the Office of Children's Health Protection concerning schools being located in highly industrialized and potentially toxic areas

INDIGENOUS PEOPLES SUBCOMMITTEE

The Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Members of the Indigenous Peoples Subcommittee heard presentations and reports from:

Ms. Hazel Apok, Maniilaq Association, suggested that the subcommittee conduct a survey of each tribe in Alaska to obtain a better understanding of the environmental justice issues facing the tribes and how those issues relate to regulations of the U.S. Environmental Protection Agency (EPA). She

recommended that EPA increase its collaboration efforts with tribal organizations, preferably in person.

Mr. Benten Davis, Native Village of Selawik, stated that tribal communities need additional training, related to applying for grants, which will enable communities to become more effective at obtaining funding from EPA. He also requested that individuals who are trained in a technical capacity also should be trained in managing grants.

Mr. Roy Matsuno, Ugashik Traditional Village, expressed concern about funding for the enforcement of environmental policies and requested additional funding for enforcement programs for tribes. He stated that there have been several fuel spills in his village and members of the tribal government have found themselves without an avenue for enforcing cleanup activities.

Mr. David Conrad, Executive Director, National Tribal Environmental Council, provided several suggestions to the subcommittee for improving the Preliminary Working Draft Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs. He urged the members of the subcommittee to adopt a Bias for Action approach that focuses on the positive progress that has been made in tribal communities related to tribal environmental programs. He stated that such an approach would provide incentive for tribal organizations to take action and provide comments to the subcommittee.

Ms. Agnes Rychnovsky, Newhelen Tribe, described a mining project that is scheduled to take place near her village in Alaska. She expressed her concern about the potentially devastating impacts mining would have on the tribe's water source. She added that the tribes have not been actively involved in the planning process and urged the members of the subcommittee to support the inclusion of tribal representatives at the beginning of any decision-making process that may have an impact on their community.

Mr. Vince Cook, Makah Tribe, provided suggestions about effectively conducting outreach in tribal communities. His approach includes meeting individuals in a tribal community face-to-face and engage them in the decision-making process.

During the one-day meeting, members of the subcommittee discussed the following issues.

Members of the Indigenous Peoples Subcommittee Meaningful Involvement and Fair Treatment Work Group presented its document to advise EPA about how to most effectively work with tribes to enhance their efforts to provide meaningful involvement and fair treatment in the development and implementation of Federally authorized tribal environmental programs. The subcommittee reviewed several comments that were submitted by various tribal organizations and discussed ways for incorporating the comments in the document. The document is a preliminary working draft and the subcommittee currently is addressing comments from the public. After the document is finalized, it will be presented to the Executive Council of the NEJAC for approval and subsequently will be submitted to the EPA Administrator for consideration.

Members of the Indigenous Peoples Subcommittee reviewed the recommendations presented in the Executive Council meeting on April 14, 2004, on the NEJAC's draft document on cumulative risk. A few participants provided background information about the development of the document followed by a discussion about how cumulative risks impact the resources of tribal communities. Members of the subcommittee recognized that contamination affecting tribal communities often takes place off tribal lands. They also identified that cumulative risks have the most significant impact on subsistence communities.

Representatives from EPA's Office of Environmental Justice (OEJ) reported that OEJ is seeking nominations for individuals who are interested in serving on the Indigenous Peoples Subcommittee. OEJ is accepting applications as soon as possible to fill positions beginning in January 2005. In addition, a position is available on the subcommittee for a representative from Alaska.

Following is a list of significant action items the members adopted during the subcommittee meeting:

Ms. Pemina Yellow Bird will develop language concerning the cultural and spiritual meaning of environmental resources for inclusion in the preliminary draft document.

Members of the subcommittee will continue to address all comments submitted by the public on the preliminary working draft in follow-up conference calls.

Members of the subcommittee will research the possibility of EPA hosting a NEJAC meeting in Alaska.

INTERNATIONAL SUBCOMMITTEE

The International Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Members of the International Subcommittee heard presentations from:

Mr. Jerry Clifford, Deputy Assistant Administrator of U.S. Environmental Protection Agency (EPA) Office of International Affairs (OIA), provided an update of activities of OIA and participated in a dialogue with members of the subcommittee on recommendations proposed by OIA to the subcommittee.

Ms. Olivia Balandran, Associate Director for Environmental Justice, EPA Region 6 presented information on the *Final Report on Border Issues Subcommittee for Environmental Justice Listening Session*. The report identifies the primary concerns, priorities and key recommendations for action by EPA, developed by participants of the Border Session.

Ms. Barbara Maco, Environmental Justice Coordinator, EPA Region 9, reported on the new bi-national clean-up pilot project at the Metales y Derivados site located in Tijuana, Mexico and informed the members of the subcommittee of an upcoming listening session on border issues.

During the one-meeting, members of the International Subcommittee discussed the following issues.

Members of the subcommittee expressed their concern about the slow progress of appointing members to the subcommittee, and the void the Subcommittee feels not having a community representative.

Acting on a previous Subcommittee recommendation, Mr. Clifford announced that OIA currently is developing several environmental justice training forums for staff of OIA. First OIA has invited the Director of the Office of Environmental Justice to lecture OIA staff at an All Hands Meeting on the importance of integrating environmental justice principles into OIA's international work. OEJ is also assisting OIA in developing an EJ training course specific to international activities. Further OIA has developed a Speaker Series inviting speakers in to lecture staff on various EJ issues. The Subcommittee offered to provide guidance in the development of training related to the review of trade agreements.

The Joint Public Advisory Committee (JPAC) is conducting a 10-year assessment of the North American Free Trade Agreement (NAFTA). Subcommittee members offered to provide comments on the assessment to EPA within the next month.

Mr. Clifford explained that EPA OIA has an interest in addressing issues related to corporate responsibility such as hazardous waste disposal and green supply chains. Subcommittee members advised Mr. Clifford to simply ask corporations about their corporate operating procedures in their U.S. facilities and if and how they differ from their international operating procedures. The members also emphasized the need to integrate corporate responsibility into trade agreement negotiations.

EPA regions 6 and 9 led a discussion on their environmental justice activities related to the U.S.-Mexico border. At a recent EJ Listening Session, several items of interest were identified by border residents including the longstanding recommendation to create a U.S.-Mexico Border Commission specifically to address issues of concern to border residents. Jerry Clifford asked Jose Bravo to

gather community views and develop a concept paper on what such a commission would entail. Mr. Bravo agreed to provide this paper to Mr. Clifford in the near future.

Members discussed comments to be provided to OIA in response to its Environmental Justice Action Plan.

Following is a list of significant action items the members adopted during the subcommittee meeting:

EPA OEJ is developing internal environmental justice training for all EPA offices. Members of the subcommittee will conduct a review of the content of the training.

Members of the subcommittee will contact Mr. Charles Lee, Associate Director, EPA OEJ; Mr. Barry Hill, Director, EPA OEJ; and Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA) about the need to include environmental justice principles into all OEJ training curriculum developed by EPA.

The members of the subcommittee agreed to provide recommendations to JPAC related to the NAFTA 10-year anniversary assessment.

WASTE AND FACILITY SITING SUBCOMMITTEE

The Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Members of the Waste and Facility Siting Subcommittee heard presentations and reports from:

- " Ms. Marjorie Buckholtz, Director, EPA Innovation, Partnerships, Communications Office, Office of Solid Waste and Emergency Response (OSWER), provided an update on the Five Priorities Work Group. She stressed that the underlying theme for the priorities is innovation, and that funding is available for testing pilot projects under any of the priorities.
- " Mr. Butch Wardlaw, WPI, provided a status update on the activities of the Unintended Impacts Work Group of the subcommittee. He stated that the Work Group developed a draft report, *Unintended Consequences of Environmental Redevelopment in Five Environmental Justice Communities: A Critical Exploration*, which analyzes five cleanups conducted at Superfund and Brownfields sites. Although EPA considered the cleanups successful, they had unintended impacts, such as displacement of residents.
- " Ms. Mildred McClain, Harambee House, Inc., provided an update on the status of the Federal Facilities Working Group. She stated that the Working Group developed a draft that provides five recommendations and three considerations to strengthen the role of community residents in the cleanup and disposition of Federal properties.
- " Members of the subcommittee heard presentations from representatives of EPA OSWER, including Ms. Pat Carey, Ms. Tammie Owen, Ms. Glynis Hill, Mr. Vemon Myers, and Mr. Kent Benjamin. They provided the following updates:
 - " Ms. Carey provided an update on the Superfund Relocation Policy. She stated that 19 relocations have occurred under the policy, while three currently are ongoing.
 - " Ms. Owen discussed the Hazardous Waste Targeting Project, which aims to provide incentives to companies for reducing the use of chemicals.
 - " Ms. Hill and Mr. Myers presented an update on the RCRA Demographics Study Findings, elaborating on the progress of the Government Performance Results Act (GPRA) at facilities permitted under RCRA.

- " Mr. Benjamin identified the accomplishments of OSWER in 2003, that included the Office of Underground Storage Tanks (UST) organizing its first roundtable discussion about environmental justice issues and OSWER awarding its first Annual Assistant Administrator's Environmental Justice Awards.
- " Mr. Andrew Sawyers, Maryland Department of the Environment and Michael Lythcott, The Lythcott Company, jointly moderated a discussion about the Subcommittee Strategic Plan. They discussed ways to improve the subcommittee processes and identified potential new projects for the subcommittee to consider.

During the one-day meeting, members of the subcommittee discussed the following issues.

- " In response to Ms. Buckholtz's update on OSWER's Five Priorities, members of the subcommittee discussed how the subcommittee can align their initiatives with those of OSWER. Specifically, they discussed the possibility of identifying pilot projects that can be funded by the Innovations Work Group under the Land Revitalization program and developing recommendations related to improving emergency response plans for chemical plants located in environmental justice communities.
- " Members of the subcommittee emphasized the need to develop outcomes that are tangible and measurable. They agreed that in order to make their initiatives more credible, they should identify metrics to measure their progress.
- " In response to Ms. McClain's presentation on the Federal Facilities Working Group's draft report, members of the subcommittee discussed the importance of inviting Federal facility representatives to participate in meetings with the Working Group. They expressed concern about the number of U.S. Department of Defense (DoD) sites that have environmental justice issues.
- " Some members of the subcommittee questioned the importance of the subcommittee's efforts and if they have been helpful to communities. Other members of the subcommittee mentioned that OSWER approves and supports the subcommittee's work, and that many of the products generated by the subcommittee are used by OSWER.

Following is a list of significant action items the members adopted during the subcommittee meeting:

Identify potential projects that can be conducted as pilot tests under the Five Priorities of OSWER and prepare proposals for the projects

Consider developing recommendations related to improving emergency response plans for chemical plants located within environmental justice communities

Review and provide comments on the draft report prepared by the Unintended Impacts Work Group

Respond to recommendations by the NEJAC Executive Council regarding the draft report prepared by the Federal Facilities Working Group

Update the Strategic Work Plan to cover up to the next 2½ years

Investigate ways for the subcommittee to interact with external associations, such as those associated with state and local governments, for the purposes of enhancing planning and product development by the subcommittee

MEETING SUMMARY

of the

EXECUTIVE COUNCIL

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 13 through 16, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Charles Lee
Designated Federal Official**

**Veronica Eady
Chair**

**Mary Nelson
Vice-Chair**

**CHAPTER ONE
MEETING OF THE EXECUTIVE COUNCIL**

1.0 INTRODUCTION

The twentieth meeting of the Executive Council of the National Environmental Justice Advisory Council (NEJAC) took place on Tuesday, April 13, Wednesday, April 14, and Friday, April 16, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Ms. Veronica Eady, Tufts University, serves as the newly appointed chair of the Executive Council. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, U.S. Environmental Protection Agency (EPA) Office of Environmental Justice (OEJ), serves as the Designated Federal Official(DFO) for the Executive Council. Exhibit 1-1 lists the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which summarizes the deliberations of the Executive Council, is organized in four sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the remarks of senior EPA and Louisiana Department of Environmental Quality (DEQ) officials. Section 3.0, *Cumulative Risk and Impact Policy Dialogue*, summarizes the following items: The discussion of the draft report titled *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risk/Impact* (the cumulative risk report), including its of key concepts, overarching recommendation themes, and action items; the testimony provided by the Cumulative Risk/Impacts Work Group of the NEJAC (referred to hereafter as the NEJAC work group); recommendations for improvement of the cumulative risk report discussed by the members of the real work group and the Executive Council; EPA senior officials perspectives on cumulative risks and impacts and their understanding of the report; and presentations made to the Executive Council by the community impacts panel. Section 4.0, *Presentations and Reports*; provides an overview of presentations and reports made to the Executive Council on various other topics.

Chapter Two of this report summarizes the public comment sessions held on April 13 and 14, 2004. Chapters Three through Eight summarize the deliberations of each of the NEJAC subcommittees that met on April 15, 2004.

2.0 REMARKS

Ms. Eady opened the meeting by welcoming the members of the Executive Council and introducing Mr. Barry Hill, Director, EPA OEJ. The remarks of Mr. Hill and other senior EPA and Louisiana DEQ personnel are summarized below.

2.1 Remarks of the Director, EPA OEJ

Mr. Hill addressed the Executive Council and welcomed everyone on behalf of Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA). Mr. Hill read a statement written by Ms. Harris, explaining that New Orleans was selected as the NEJAC meeting venue

Exhibit 1-1

EXECUTIVE COUNCIL

**Members Who Attended the Meeting
On April 13 through 16, 2004**

**Ms. Veronica Eady, Chair
Ms. Mary Nelson, Vice Chair
Mr. Charles Lee, DFO**

Mr. Charles Collette
Ms. Judith Espinosa
Mr. Walter Handy, Jr.
Mr. Robert Harris
Ms. Jodena Henneke*
Mr. Philip Hillman****
Ms. Lori Kaplan*
Ms. Pamela Kingfisher
Mr. Juan Parras
Dr. Graciela Ramirez-Toro
Dr. Andrew Sawyers
Ms. Wilma Subra
Ms. Connie Tucker*
Mr. Kenneth Warren***
Mr. Terry Williams

**Members
Who Were Unable To Attend**

Mr. Richard Gragg
Mr. Jason Grumet

* Attended on April 13 and 14, 2004, only
** Attended on April 14 and 15, 2004, only
*** Attended on April 15, 2004, only
**** Attended on April 16, 2004, only

because Louisiana and other states in EPA Region 6 face significant issues related to cumulative risks and impacts. As EPA continues to assess human health and environmental impacts, it was especially fitting for this NEJAC meeting to focus on cumulative risk. EPA's approach to understanding these impacts must be broadened to reflect a more holistic approach for assessing the vulnerability of communities to environmental hazards. EPA needs to fully understand these impacts and is looking to the NEJAC for advice in this area. The efforts of the members of the NEJAC are invaluable in assisting EPA to address issues related to environmental justice and to make informed decisions for the protection of human health and the environment.

Mr. Hill continued that the NEJAC meeting is very important because of its focus on a very difficult question, a question that is important for the future of EPA and its efforts to ensure environmental protection and environmental justice for all communities. This meeting gives EPA the opportunity to benefit from the deliberations of the NEJAC on a complex issue and to proactively develop collaborative risk analysis and risk management strategies in the context of overall community goals. The NEJAC has come a long way since its inception and is fulfilling its mission of being an effective advisory committee as defined by the NEJAC charter and the Federal Advisory Committee Act (FACA). Mr. Hill joined Ms. Harris in commending the NEJAC for its diligent work and for offering policy advice that is critical in the light of changing policies, culture, and behavior.

Mr. Hill then quoted the EPA Administrator, Mr. Mike Levitt: *While it is appropriate for the Federal Government to establish national environmental hazards, environmental plans that consider localized, ecological, economic, social, and political factors often enjoy more support and involvement and therefore, can reach national standards more efficiently and effectively.* Toward that end, Mr. Hill stressed, the agency and OEJ understand the importance of traveling throughout the country to make the NEJAC meetings more accessible to members of the public and to encourage them to provide their comments on various issues. Mr. Hill pointed out that Ms. Harris believes that environmental justice issues require many stakeholders to be part of the solution and encouraged all parties to participate in the public comment sessions at the meeting.

Finally, Mr. Hill stated that Ms. Harris's last comment was very significant. The states for their active participation in the NEJAC meeting as highlighted by the presence of representatives of Louisiana DEQ. This would not have been possible five years ago, Ms. Harris stated, and is a reflection of how far the NEJAC has come over the years and the respect that it has gained over time.

2.2 Remarks of the Deputy Regional Administrator, EPA Region 6

Mr. Larry Starfield, Deputy Regional Administrator, EPA Region 6, welcomed the members of the NEJAC to New Orleans. He stated that EPA Region 6 is committed to continuing its efforts to ensure environmental justice for all communities. He thanked the members of the NEJAC work group and acknowledged their efforts in preparing the cumulative risk report.

Mr. Starfield also noted the presence of state partners in EPA Region 6 at the meeting: Ms. Karen Gautreaux, newly appointed Deputy Secretary of Louisiana DEQ, and Ms. Jodena Henneke, Director, Texas Commission of Environmental Quality (TCEQ), and a member of the NEJAC work group and the Air and Water Subcommittee of the NEJAC. He stated that this was a significant step toward EPA and state collaboration in the development of a more cooperative and proactive environmental justice program. Mr. Starfield added that the current leadership at Louisiana DEQ has a very strong commitment to environmental protection, to communities, and to partnership and that EPA looks forward to working with Louisiana DEQ in the coming years.

Mr. Starfield pointed out that EPA Administrator Levitt is committed to two central themes: collaborative problem-solving and neighborhood solutions. The NEJAC work group, he continued, is taking the agency in that very direction. This direction is important to communities that are subjected to cumulative risks and impacted by multiple sources, communities where children and adults suffer from illnesses and disabilities, Mr. Starfield added. These communities, he continued, frequently turn to the government, whether Federal, state, or local, and ask the question "What can you do for my children?" He stated that the NEJAC work group has put together a roadmap that could provide an effective answer to this

question. Finally, Mr. Starfield stated that the NEJAC work group advocated an essential message: identify the multiple factors that affect communities, find ways to address those factors, try to achieve real-world results one step at a time on the road to a more comprehensive solution, make use of partnerships, and bring all stakeholders together for the overall benefit of each community.

2.3 Remarks of the Deputy Secretary, Louisiana DEQ

Ms. Gautreaux welcomed the members of the NEJAC to New Orleans on behalf of Louisiana Governor Kathleen Babineaux Blanco and Dr. Mike McDaniel, Secretary of Louisiana DEQ. Ms. Gautreaux stated that the newly appointed officials of Louisiana DEQ are very committed to making Louisiana DEQ an agency that undertakes its mission in a fair and equitable manner, and they encourage input from all stakeholders in this process.

Continuing, Ms. Gautreaux stated that Louisiana DEQ recognizes the need to work with individual communities on a statewide basis in order to ensure environmental justice for all the residents of Louisiana. She cited some of the efforts currently underway at Louisiana DEQ, including the introduction of environmental justice panels, renamed community justice panels, that seek to bring together community members and industry officials in a professionally facilitated, nonadversarial setting. These voluntary panels, she added, are designed to encourage residents and industry to discuss and resolve concerns with minimum government intervention. Other ongoing efforts at Louisiana DEQ, she said, include development and implementation of a standard operating procedure to promote environmental justice best practices, such as providing improved access to public documents in electronic formats. Recently, Ms. Gautreaux explained, Louisiana DEQ invited EPA Region 6 to offer environmental justice training to senior Louisiana DEQ managers and other employees. This training, she said, was found to be beneficial by both the participants and the EPA training staff.

Finally, Ms. Gautreaux stated that Louisiana DEQ's efforts have helped to build trust in communities previously subjected to environmental injustice. She added that under the leadership of Secretary McDaniel, Louisiana DEQ is developing a strategic four-year plan for achieving environmental justice in all communities and welcomes advice from the members of the NEJAC.

3.0 CUMULATIVE RISK AND IMPACT POLICY DIALOGUE

In its continuing efforts to provide independent advice to the EPA Administrator in areas related to environmental justice, the NEJAC focused its twentieth meeting on a specific policy issue: cumulative risks of exposure to pollutants and related impacts on communities. Cumulative risk is defined as the aggregate of current or acute risk and long-term exposure. On Tuesday, April 13, and Wednesday, April 14, 2004, the members of the NEJAC participated in a dialogue about this topic.

Exhibit 1-2

NEJAC WORK GROUP

Ms. Sue Briggum, Co-Chair
Ms. Judith Espinosa, Co-Chair

Dr. Tim Fields
Mr. Hector Gonzalez
Ms. Jodena Henneke
Ms. Patricia Hynes
Mr. Shankar Prasad
Ms. Wilma Subra
Ms. Connie Tucker

This section summarizes the following items: a discussion of the cumulative risk report, including key concepts, overarching recommendation themes, and action items; the testimony provided by the NEJAC work group; recommendations for improvement of the cumulative risk report discussed by the members of the NEJAC work group and the Executive Council; EPA senior officials' perspectives on cumulative risks and impacts and their understanding of the cumulative risk report and presentations made to the Executive Council by the community impacts panel.

Mr. Lee introduced the NEJAC work group, whose members are identified in Exhibit 1-2:

3.1 Introduction of the NEJAC Work Group Process

Ms. Judith Espinosa, ATR Institute and member of the Waste and Facility Siting Subcommittee of the NEJAC, introduced the NEJAC work group process and said that so far in her career, this was the most important thing that she had done in the areas of environmental justice and cumulative risk. She stated that the process had been an extraordinary experience for her, especially because the subject was one of great significance to many communities and EPA. She commended the other members of the NEJAC work group for sharing their experiences and expertise and for their commitment to providing a good work product that would be meaningful to impacted and environmentally overburdened communities and tribes.

Continuing, Ms. Espinosa said that the process had worked because it embodied the core concept in the cumulative risk report, which is a community-based problem-solving model for addressing cumulative risks and impacts. The NEJAC work group, she said, wanted to put into action what communities have been saying for many years with respect to the multiple impacts and risks that they face on a daily basis. Ms. Espinosa stated that the NEJAC work group process involved dialogue, argument, and discussion conducted with civility and respect, with the goal of sharing scientific evidence and facts and developing a mutual vision. The NEJAC work group understood that this work would go a long way toward addressing real-life public health and environmental risks and multiple stressors for environmentally overburdened people of color, low-income communities, and tribes, Ms. Espinosa said.

The product of the dialogue and reasoned argument, Ms. Espinosa continued, was the decision to adopt a bias for action approach, which is the main theme of the cumulative risk report. This approach involves early identification of and response to cumulative risks and impacts. This approach, she said, emphasizes that we should not wait for decades before taking action; instead, we should adopt a unified, place-based approach that transcends the single-medium, single-program focus of current environmental solutions. She further stated that the cumulative risk report is an affirmation of the picture portrayed for decades by environmentally overburdened people of color, low-income communities, and tribes. This picture, she said, is firstly one of vulnerability because of the environmental insults and the social and economic disparities that these communities have endured over the years. Secondly, she said, this picture shows the loss of social capital resulting from the cumulative risks that these communities have endured and the multiple stressors inflicted upon them over time.

Additionally, Ms. Espinosa stated that the cumulative risk report is a recognition and validation of the skills and expertise that communities and tribes have developed over the decades. These skills and expertise, she further explained, involve performing community need assessments, community-based research, data collection, and analysis of the risks that they are exposed to on a daily basis and are reflected in the recommendations of the cumulative risk report and the call for collaborative problem-solving and community-based participatory Research (CBPR).

Finally, Ms. Espinosa stated that the NEJAC work group would carefully address all comments and questions raised during the meeting to further refine the cumulative risk report and bring it to completion.

Ms. Sue Briggum, then continued the introduction of the NEJAC work group process by describing the process as an educational experience. To overcome years of frustration in trying to resolve the issue, Ms. Briggum explained, the work group identified the need for a better model than had been recommended before, and this gave rise to the bias for action theme and the impetus for an interagency collaborative model. The work group, she said, benefitted from having members who had worked previously with the NEJAC who were familiar with the issues being raised, and who consequently became a productive stakeholder group. Ms. Briggum stated that the work group did not focus on legalisms or what could not be done. Instead, the work group emphasized recommendations that would resolve cumulative risk and impact issues in communities and that would forge genuine partnerships between business and industry and community members, with the government acting as a facilitator.

Ms. Connie Tucker, Southeast Community Research Center and member of the Waste and Facility Siting Subcommittee of the NEJAC, commented that the cumulative risk report and the preceding *Framework for Cumulative Risk Assessment* published by EPA in May 2003 are major victories for the environmental justice movement. She noted that the issue of cumulative risks and impacts was the greatest of concerns for many environmental justice communities that were angry and frustrated after facing years of exposure to hazardous chemicals and the resulting diseases. Yet for many years, state regulatory agencies and EPA were not able to identify either the causes or the effects, she explained. Ms. Tucker further stated that the communities disagreed with the approach that EPA used with respect to using risk assessment as a tool to address their concerns. The reason for this disagreement, Ms. Tucker explained, was that risk assessment tools did not take into consideration that communities were exposed to multiple pollutants and faced synergistic impacts, which are additive effects of exposure to multiple chemicals in these communities. These communities, she added, have the right to be angry and the right to a solution. The cumulative risk report, Ms. Tucker said, provides an avenue to a solution and would help the states and regulatory agencies better understand the issue of synergistic impacts.

Mr. Hector Gonzalez, provided a public health perspective on the issue of cumulative risks and impacts and the NEJAC work group process. He stated that for 20 years, public health officials have been trying to resolve the relationship between the general health status of a population such as good health care, proper nourishment, and access to physician versus an absence of health care, malnourishment, and lack of health insurance and thus access to physicians and its susceptibility to biological and chemical agents. The same question, he noted, is being asked today, and the cumulative risk report sought to answer it to some degree. Mr. Gonzalez further indicated that the cumulative risk report is a major paradigm shift compared to a few years ago in that public health officials and environmental advocates are involved in a joint effort to study the issue of cumulative risks and impacts in communities and tribes. He emphasized the importance of local government and community participation in the effort to better understand the issue of cumulative risks and impacts. He also presented an overview of the matrix that was used to study the issue of cumulative risks and impacts, using the border community of Laredo, Texas, as an example to explain the concepts.

Ms. Henneke commended the professionalism displayed by the NEJAC work group in the process of producing the cumulative risk report. She stated that she grew up in Tar Creek, a Superfund site in the lead and zinc mine area of northeast Oklahoma, and that back then, the health department was responsible for all environmental cleanups. In response to Mr. Gonzalez's statement, she said that although it took two decades for public health officials and environmentalists to understand that they would need to work together in order to achieve a common goal, they are now beginning to cooperate in areas such as cumulative risks and impacts.

3.2 Overview of the Cumulative Risk Report

Ms. Wilma Subra, Louisiana Environmental Action Network (LEAN) and member of the NEJAC work group and the Air and Water Subcommittee of the NEJAC, presented an overview of the cumulative risk report. She quoted a statement first voiced by a civil rights activist, Ms. Fanny Lou Haimer: "I am sick and tired of being sick and tired." This sentiment is repeatedly voiced at every NEJAC meeting, Ms. Subra said, and reflects a cry for help and a plea for assistance from environmentally overburdened people of color, low-income communities, and tribes. These communities, she added, are angry, frustrated, and bewildered with state, Federal, and local officials as well as public health officials for being unresponsive and failing to alleviate their situations. Concurring with Mr. Gonzalez's remarks, Ms. Subra said that exposures to physical, chemical, biological, social, and cultural factors result in a community being more susceptible to environmental toxins, because of compromised abilities to cope with and recover from such exposures. She further pointed out that there is a rising demand from such communities that government, business, industry, and the public health sector take notice of these issues and initiate effective and immediate action to improve conditions in the communities.

In response to the community demand, Ms. Subra continued, EPA and OEJ asked the NEJAC to address the following question: In order to ensure environmental justice for all communities and tribes, what short-term and what long-term actions should the EPA take to proactively implement the concepts contained in the *Framework for Cumulative Risk Assessment*?

Ms. Subra further explained that the cumulative risk report provides a mechanism to (1) systematically focus on multiple exposures, risks, impacts, and stressors and on environmental, health, social, economic, and cultural factors; (2) set priorities for action; and (3) institutionalize a bias for action so that action can be taken immediately and not after many years.

Using the cumulative risks and impacts faced by communities along the 2,000-square-mile Mississippi River industrial corridor as an example, Ms. Subra explained the matrices that were developed to study the multifaceted, interconnected, and complex issues in such communities. These matrices, she added, illustrate the range of cumulative impacts and the factors that decrease the ability of communities to cope with or recover from environmental exposures. She listed the various pollution sources, ranging from petrochemical industries to agricultural operations, that expose the communities to toxic chemicals through pathways such as air, drinking water, food crops, and seafood. Lack of access to health care and social and cultural disparities further compound these problems, she said. Thus, Ms. Subra explained, cumulative risks and impacts are a collection of individual stressors that occur simultaneously and in combination in communities.

The starting point for assessing and responding to cumulative risks and impacts is the identification of multiple stressors, Ms. Subra stated. Furthermore, she continued, to be sensitive to community concerns, common conceptual frameworks and definitions need to be developed that deal specifically with cumulative risks and impacts and that can be agreed to by all stakeholders. This framework, Ms. Subra said, should be coherent, consistent, and transparent. She indicated that impacted communities consider the cumulative stressors to include multiple stressors that occur concurrently and geographically. Hence, she said, the concept of multiple stressors must address multiple media to attain a comprehensive approach, and this is the starting point for a bias for action.

Ms. Subra then provided a brief outline of the evolution of the concept of cumulative risks within EPA. Past risk assessments, she said, were designed to address the sources of pollution using technology-based regulations or an individual chemical-by-chemical approach. Continuing her outline, Ms. Subra stated that the 1970s saw the beginning of risk assessment with an emphasis on oral routes of exposure, the 1980s saw the development of remedial action guidelines and databases, and in the 1990s, the focus shifted to innovative approaches, mechanisms of action, and for the first time, ecological assessments. In May 2003, she said, EPA published the *Framework for Cumulative Risk Assessment* to address environmentally disadvantaged and underserved communities and tribes. Describing the framework further, Ms. Subra stated that it took a broad view of risk; called for population- and place-based analyses involving multiple stressors, both chemical and nonchemical; dealt with vulnerability based on biological as well as social factors; and involved impacted communities as well as other stakeholders. It also emphasized planning, scoping, and problem formulation, she continued, and linked risk assessment to risk management in the context of community health goals.

Ms. Subra then described the NEJAC's response to the EPA charge outlined in the cumulative risk report. The main recommendation, said Ms. Subra, is to adopt a community-based, collaborative, problem-solving model in order to address cumulative risk and impacts. She indicated that this model would address multiple stressors in impacted communities, create transparent processes that instill confidence and trust and generate social capital in the communities, institutionalize the bias for action, develop a coherent and consistent framework, address the issue of vulnerability, use screening, describe prioritization methods and tools to bring about significant risk reduction on the part of the communities, and encourage regulatory authorities to bring responsible parties to the table.

Furthermore, Ms. Subra noted, the model builds on the recommendations presented in the 2003 NEJAC report title *Advancing Environmental Justice Through Pollution Prevention* and consists of the following seven elements: (1) issue identification; (2) community vision and strategic goal setting; (3) community capacity-building; (4) consensus-building and dispute resolution; (5) multi-stakeholder partnerships, including supportive and facilitating roles for the government; (6) sound management and implementation; and (7) evaluations, lessons learned, and replication of best practices.

Use of the community-based, collaborative, problem-solving model, she concluded, with all stakeholders contributing to the community-wide effort to reduce cumulative risks, will result in healthier and less impacted environmental justice communities throughout the United States.

Ms. Eady then invited the NEJAC members to present their questions and comments on Ms. Subra's presentation and the cumulative risk report.

3.3 Discussion of the Cumulative Risk Report and Recommendations for Its Improvement

In response to Ms. Subra's presentation, Ms. Tucker pointed out that the community-based, collaborative, problem-solving model that had been displayed during the presentation lacked CBPR, a critical element that needed to be inserted between Community-Based Issue Identification and Consensus Building and Dispute Resolution. CBPR, Ms. Tucker added, provides the opportunity to have the community meet internally and then with other stakeholders, particularly those in the community, to learn about equitable partnerships. Ms. Subra responded that the change would be made to the model.

Dr. Andrew Sawyers, Maryland Department of the Environment and acting chair of the Waste and Facility Siting Subcommittee of the NEJAC, complimented the NEJAC work group on the contents of the cumulative risk report. He pointed out that the work group would need to develop a practical framework for implementing the recommendations in the report in order to effectively achieve its goal. He also commended the work group for addressing fundamental concepts such as vulnerability, loss of social capital, and bias for action. He suggested that the term bias for action be clarified.

Ms. Briggum responded to Dr. Sawyers's request for clarification, stating that bias for action stresses a proactive approach to solving problems using currently available tools to quickly address the situation in impacted communities rather than waiting for research to reveal a better solution. Dr. Tim Fields, Tetra Tech EM Inc., concurred with Ms. Briggum, stating that the approach emphasized early intervention based on the limited information available and avoiding the delay involved in trying to get the latest and best information before making a decision. This approach, he said, is critical for communities impacted by cumulative risks and impacts.

Ms. Espinosa noted that bias for action is a validation of the CBPR that communities have been carrying out for many years. CBPR involves communities performing their own research, risk assessments, and data collection; identifying multiple stressors; and assessing their vulnerability to these multiple stressors.

Ms. Patricia Hynes noted that this discussion had raised a significant issue, which is the importance of taking action with imperfect knowledge. Communities, she stated, are very conscious of what needs to be done to improve their situation and of what actions need to be taken to improve their living conditions. She then described a project that she had been involved in, the Healthy Public Housing Initiative, which was funded by the U.S. Department of Housing and Development (HUD) and EPA in Boston, Massachusetts. This project, Ms. Hynes stated, had studied the impacts of household insects and rodents and resulting allergens on the health of asthmatic children. She noted that public meetings indicated that the research with which communities most identified was that which they conducted themselves. The meetings also served as indicators, she said, of whether the research carried out by scientists and EPA corresponded with the needs of the communities. Another important lesson learned from the project, Ms. Hynes continued, was the need for concrete action items at the conclusion of a project rather than simply expressing the need for more research. For the HUD and EPA project, she

said, community health advocates learned about integrated pest management (IPM) and how to effectively apply its principles in the arena of public housing. She stated that the action item at the end of the project was to arrange for Federal job training for a cohort of residents who wished to become IPM assistants and then to create jobs, both in the private sector and the public housing authority, for the residents to work in IPM. That, Ms. Hynes noted, is a good example of bias for action.

Dr. Sawyers supported Ms. Hynes's statement about the need for bias for action, but he emphasized the importance of having a robust implementation plan, especially in situations that involve multiple agencies such as Federal, state, and local agencies.

Mr. Terry Williams, Tulalip Tribes and acting chair of the Indigenous Peoples Subcommittee of the NEJAC, commended the NEJAC work group for its approach to the issue of cumulative risks and impacts. From a tribal perspective, he suggested adding some clarifications to the cumulative risk report, including clarification of the government-to-government interaction process between tribes and local and state governments, tribal jurisdiction in terms of roles and responsibilities to protect the health and welfare of tribal members, and tribal jurisdiction on off-preservation lands where tribes would have access to environmental resources such as water and fishing resources. Furthermore, Mr. Williams requested clarification of the joint decision-making process and the role of tribes as cooperating agencies in addressing issues of cumulative risks and impacts. Another issue of great importance to tribes involves the direct, indirect, and cumulative effects to on- and off-reservation lands and the loss of resources, he stated.

To clarify his point, Mr. Williams stated the example of the Tulalip Tribes, a Federally recognized tribe in Washington, and the watersheds that they use on a regular basis. These watersheds, he said, are now very different from the original watersheds, and about 75 percent of the ecosystem functions have been altered or lost as a result of natural processes causing landscape changes or industrial development. The loss, Mr. Williams pointed out, manifests itself in a manner similar to the impacts of pollutants on tribes, leading to loss of traditional foods and medicines and increases in the rates of diabetes, cancer, and heart disease. Even when available, the resources are often polluted and cause similar impacts, he added. Hence, he noted, tribal jurisdiction or any other type of input into management of these resources would be of great value to tribal communities.

Dr. Graciela Ramirez-Toro, Inter-American University of Puerto Rico and chair of the Puerto Rico Subcommittee, indicated that she found the cumulative risk report very useful and suggested that EPA look at the issue of capacity development, which is the underlying thread of all the issues related to cumulative risks and impacts. It is very important, she noted, that there be a consensus within the agency about what constitutes capacity development. She suggested recommending that EPA evaluate capacity development carefully both within the agency and in communities.

Ms. Mary Nelson, Bethel New Life Inc., vice-chair of the Executive Council, and member of the Waste and Facility Siting Subcommittee of the NEJAC, said that she hoped that the cumulative risk report would produce substantive results. She suggested that the NEJAC work group also confront issues such as making funds for CBPR as easily accessible to community groups as they are to academic institutions. Secondly, she suggested recommending the process discussed in the cumulative risk report as a framework for EPA and other regulatory agencies for other issues, not just the issue of cumulative risks and impacts. She also suggested that EPA adopt the theme of bias for action as a way to achieve quick results.

Ms. Pamela Kingfisher, Shining Waters and vice-chair of the Health and Research Subcommittee of the NEJAC, expressed her satisfaction that the NEJAC work group had considered tribal issues in its discussions of cumulative risks and impacts. In doing so, she noted, the work group had opened a Pandora's box, and she hoped that this step would go a long way in bringing tribal issues to the forefront. Also, she said, it was important to understand that the contamination issues that tribes face usually are not

their issues to begin with. The solution to these issues, Ms. Kingfisher noted, was greater corporate accountability for contamination problems and releases of hazardous chemicals into the environment.

In response to Ms. Kingfisher, Ms. Briggum clarified that the underlying presumption in the cumulative risk report is that to operate in a community, one must be a responsible citizen. Ms. Briggum explained that as part of this presumption, the business sector is expected to go beyond compliance and understand the responsibilities of operating in the community. To achieve this goal, enforcement actions would have to be conducted, and the business sector would have to be challenged to contribute more effectively to the community, Ms. Briggum said.

Mr. Gonzalez provided a brief overview of the matrix that was used to study the issue of cumulative risks and impacts. He used the border community of Laredo, Texas, as an example to explain the concepts. He described the border community in Laredo as a mix of metropolitan and rural communities, including underdeveloped and unincorporated subdivisions known as colonias. He noted that the population of Laredo is about 200,000 but that environmental issues across the border in Mexico also need to be considered, making the total affected population in this area about 1 million. He further stated that the community has a mostly Mexican-American population with an average age of 27 years.

Mr. Gonzalez then listed the following multiple stressors affecting the Laredo community: (1) sources of contamination such as warehouses; (2) lack of health care for 65 percent of the population, mostly women and children who are uninsured or underinsured; (3) hampered access to the few existing health care facilities because of a railroad dividing the community; (4) contamination of the only source of potable drinking water (Rio Grande River) by both Laredo, Mexico, and Laredo, Texas. In addition, Mr Gonzalez noted, the lack of affordable housing in Laredo causes families to seek substandard housing in the colonias, where about 90 percent of homes lack sewer service or running water.

Finally, Mr. Gonzalez stated that the community is looking for answers to many questions, such as the relationship between diseases such as diabetes and cancer and environmental pollution. He said that local, state, Federal, and international agencies, would have to work together to provide the answers to the community.

In response to Mr. Gonzalez's description of the Laredo matrix, Mr. Lee noted that use of matrices is one of 11 methods for analysis of cumulative environmental effects described in a 1997 White House Council on Environmental Quality (CEQ) report titled *Considering Cumulative Effects Under the National Environmental Policy Act*. The CEQ report, he added, recommends use of matrices to determine the cumulative effects on resources, ecosystems, and human communities by combining individual effects resulting from different actions.

3.4 EPA Senior Officials Perspectives on Cumulative Risks and Impacts and Their Understanding of the Cumulative Risk Report

Mr. Lee called on senior EPA officials to provide their perspectives on issues related to cumulative risks and impacts and the cumulative risk report.

Mr. William Farland, Deputy Assistant Administrator for Science, EPA Office of Research and Development (ORD), said that he greatly valued the process of peer participation and review in the preparation of the cumulative risk report. He spoke about the unique role of research and development (R&D) at EPA, especially at ORD, which conducts research in advanced science in addition to focusing on problem-driven or problem-related science issues. It is this kind of work, he said, that is particularly important for environmental justice communities. He gave a number of examples to illustrate his point. He described a study of the health effects of particulate matter (PM) in air, such as soot, smog, and other particles; available research indicates that PM has disproportionate effects on children and the elderly. He said that in that particular study, ORD is focusing its research on sensitive groups such as nursing home residents and school children who might be particularly susceptible to PM.

On the public health front, Mr. Farland noted, ORD has been working with the Centers for Disease Control and Prevention (CDC) since 1996, state and local health departments, and international groups like the Pan-American Health Organization (PAHO) to address environmental health concerns and other community issues. He described some measures developed by ORD, including indicators to better reflect health impacts in border communities. Mr. Farland also stated that ORD would be starting a new national children's study. The study is to be a long-term, interagency examination of influences on children's health that will involve 100,000 children over the next 20 years.

Mr. Farland then touched briefly on the impact of environmental regulations on R&D. He stated that starting with the National Environmental Policy Act (NEPA) in the 1960s, environmental regulation has challenged science to do better. Some examples that he noted were the Safe Drinking Water Act (SDWA) amendments, and the Food Quality Protection Acts, which challenged scientists at EPA to look at cumulative risks, impacts, and multiple exposure pathways. Mr. Farland stated that cumulative risk tools have only recently been developed by EPA and cited the publication of the *Framework for Cumulative Risk Assessment* in May 2003. He also stated that the ability of ORD to develop tools such as the *Integrated Exposure Model for Lead* to predict lead impacts in communities is important in the study of issues such as cumulative risks and impacts. Mr. Farland also highlighted the science inventory, an agency-wide, searchable database of over 4,000 scientific and technical work products that he described as the agency's mechanism to communicate its science activities. He also noted that environmental justice has been incorporated into the science inventory as a common search term.

Mr. Farland then announced upcoming workshops such as the workshop on the Science of environmental justice to be held in Boston, Massachusetts, in May 2004. This workshop would be conducted by ORD in conjunction with the Boston University School of Public Health and would focus on areas such as air toxics, asthma and children's environmental health, land-based risks, and water quality. In addition, he announced a science forum meeting to be held in May 2004 in Washington, DC, that would focus on science issues within the agency, such as issues involving healthy communities and ecosystems. He stressed that ORD's focus is on pursuing scientific innovation to protect human health and the environment, delivering science-based information to decision-makers, and using science to make a difference.

Finally, Mr. Farland mentioned some promising research areas and new tools such as toxicogenomics, which can be used to improve the ability to assess individuals, their susceptibilities, and the impacts of multiple exposures. He stated that these tools would be even more effective when coupled with CBPR.

Mr. Larry Weinstock, Senior Advisor and Program Innovation Coordinator, EPA Office of Air and Radiation (OAR) described his involvement in an agency-wide effort to develop a new initiative called Community Action for Renewed Environment, or CARE. He defined CARE as a community-based, multimedia toxics reduction grant initiative that allows quick assessment of risk reduction in a community using existing tools, brings together stakeholders, and prioritizes voluntary programs to meet the specific needs of the community. Mr. Weinstock said that EPA hoped that CARE would bring communities together and provide them with additional resources, tools, and information to improve their environments. An example of such success, he said, was OEJ's grant to a community organization in Charleston, South Carolina. The grant of about \$100,000.00 was ultimately used to leverage \$5 million in additional resources. This kind of empowerment will allow communities to build capacity for their own environmental stewardship, Mr. Weinstock noted.

Mr. Weinstock expressed a need for cooperation between various offices and programs of EPA. He said that although the *Toxin Report* released by the EPA Office of Management and Budget (OMB) indicates that the health benefits of the Clean Air Act (CAA) outweigh those of all other EPA programs such as the Clean Water Act (CWA) and the Toxic Substances Control Act (TSCA), this should not hamper cooperation within the agency. He further stressed that EPA needs to bring down barriers within the agency in order to focus on the environment as a whole, go beyond pilot efforts, and focus on building

overall environmental stewardship in communities. He stated that overburdened communities continue to need help and that EPA should work to address the issues at the national level.

Ms. Eady then requested that Mr. Weinstock list at least one CARE community in each EPA region for the benefit of the NEJAC members.

Mr. Weinstock responded with the following list of 2004 CARE communities in the 10 EPA regions: Region 1 - the Mystic River watershed near Boston, Massachusetts; Region 2 - Rochester, New York; Region 3 - Elizabeth River, Virginia; Region 4 - Louisville, Kentucky; Region 5 - Detroit, Michigan; Region 6 - Albuquerque, New Mexico; Region 7 - St. Louis, Missouri; Region 8 - northeast Denver, Colorado; Region 9 - West Oakland, California; and Region 10 - the Yakima Valley.

Mr. Starfield described some of the challenges faced in implementing cleanup efforts in communities. He provided an example of a community in El Paso, Texas, that had lead-contaminated soil. Community members resisted cleanup efforts because they believed that the contamination was not a major issue and were more concerned that the cleanup efforts would negatively impact real estate prices in the area. This issue, Mr. Starfield noted, was solved by involving the community in a meaningful manner by conducting free workshops in which the community, the city, the state, and EPA participated. The workshops were conducted on various subjects such as cleanup levels, new technologies, and liability and property resale issues that were of concern to the community, he said. Another challenge to implementation of cleanup efforts, Mr. Starfield noted, was the issue of litigation involving communities that resist cleanups. He noted that EPA would need to partner with state and local governments to effectively implement its environmental justice agenda.

Mr. Starfield raised another important issue, which was the forging of cross-cultural understanding between EPA and the tribes. He stated that the environmental justice Tribal Office is working with EPA Headquarters to put together an alternative dispute resolution (ADR) procedure to be used with tribal nations; the procedure would take cultures and customs into consideration. He provided the example of New Mexico, which is conducting a series of regional listening sessions devoted solely to tribal issues.

Mr. Starfield commended the NEJAC work group for putting forth the bias for action theme. He stated that this theme encouraged all parties involved to continue the process of cleanup and development with available resources and information rather than be discouraged by scarcity of resources and the need to prioritize cleanups in communities because of lack of adequate funds. The key to making this happen, he said, is forging partnerships between agencies, communities, industries, and businesses. Also, he said, the recommendation in the cumulative risk report that EPA should target vulnerable communities was important because it would help direct the resources to communities that really need them.

Finally, Mr. Starfield indicated that EPA would appreciate specific recommendations from the NEJAC in addressing two questions: (1) How can industry be included in the environmental justice process? and (2) How can EPA build trust in communities and encourage them to participate in the process?

Mr. William Sanders, Acting Director, EPA Office of Children's Health Protection, previously with the EPA Office of Pesticides and Pollution Prevention, highlighted an important public health study on children, the National Children's Study. This 20-year prospective study, he noted, is a longitudinal cohort study on environmental effects on children's health and development and will follow 100,000 pairs of mothers and children from conception to age 21. He encouraged the NEJAC to provide comments and guidance at this early stage of the study so that it can be improved to provide valuable information on children's health.

Commenting on the cumulative risk report itself, Mr. Sanders congratulated the NEJAC work group for providing recommendations and guidance on the subject of cumulative risks and impacts, which EPA has been struggling with since the inception of the environmental justice movement. He also noted that the cumulative risk report shifts the focus of the way that the agency measures performance.

Quoting the old adage what gets measured gets done, Mr. Sanders said that for a long time all EPA programs that worked to improve community health assumed that their individual efforts would combine to benefit communities. However, he said, EPA soon realized that this fragmented approach failed to benefit the communities in the long run. Instead, he stated, EPA would make progress toward achieving its goal if it made community health in its entirety a priority. He suggested formulating a more integrated approach to measuring risk reduction. Addressing individual media such as air, water, and soil produces a fragmented picture and fails, to reduce health disparities within communities. Mr. Sanders stated that EPA would need to build on existing efforts instead of starting from scratch and to recognize the need for an integrated approach. To illustrate this point, Mr. Sanders provided the example of the Environmental Justice Collaborative Problem-Solving Grant Program in the Office of Children's Health Protection, which would address multimedia concerns with respect to children's health issues.

Mr. Sanders noted that the issues of multimedia concerns and working across programs in EPA could be addressed using an approach that has been adopted by some EPA regions over the last decade. He pointed out some regional efforts that exemplify this approach, including Region 1's urban initiative, the Chelsea Creek Comparative Risk Study; Region 7's work in St. Louis, Missouri; and Region 9's work in south Phoenix, Arizona, and west Oakland, California. The key, he said, would be to build on these initiatives and then move them up to the level of agency-wide policy and practice.

Recognizing that EPA alone would not be able to implement all these initiatives, including some of the recommendations in the cumulative risk report, Mr. Sanders stressed the need for (1) pilot projects to build the experience needed for the initiatives and (2) partnerships within all levels of government as well as with communities, which would encourage the collaborative problem-solving efforts recommended in the cumulative risk report.

Finally, Mr. Sanders stated that the cumulative risk report pulls together a host of important ideas and builds significantly on efforts to address environmental health over the past several years. The report, he said, has the potential to move the discussion forward and to catalyze the changes that will be needed to make progress. He asked the NEJAC for advice on how to effectively communicate the findings and recommendations of the report to a broader audience.

Mr. Thomas Voltaggio, Deputy Regional Administrator, EPA Region 3, described a cumulative risk study conducted in 1993 and 1994 in Chester, Pennsylvania. He noted that this was one of the first cumulative risk studies of an area where the major issue was the exposure of young children to lead. He noted that Mr. Reginald Harris, EPA Region 3, was the chief scientist for the project. Also, he said, lessons learned from this project expand our knowledge of cumulative risks and impacts. He then proceeded to briefly describe the study and some of the important findings.

The study, Mr. Voltaggio said, focused on finding the most important risk factors that affect children, and in the process EPA studied exposures via air, water, and waste. He stated that this study revealed that the most significant risk was ingestion of lead-based paint by children of ages six and under. He further stated that factors such as poverty played a role in the exposures because low-income, urban families lived in older housing with lead-based paint. On the other hand, low-income, rural families were exposed to lead emissions in air.

Another important finding of the study, Mr. Voltaggio noted, was that emissions and effluents that were affecting the health of the population were in fact in compliance with Federal regulations. This was in part due to environmental regulations developed in the 1980s and early 1990s that did not consider the issues of environmental justice and vulnerable populations, he stated. Enforcement was not the solution in this situation, Mr. Voltaggio said; instead, voluntary reductions on the part of industry and business would be needed. He emphasized the importance of a robust, voluntary reduction program as a major tool in achieving environmental justice. He concluded that a voluntary reduction program would be a significant tool for reducing risks resulting from industrial emissions and effluents.

Mr. Voltaggio stated that the Chester study also brought to light nuisance issues, such as noise pollution, dust blown from dirt piles on windy days, and idling trucks carrying hazardous materials. He stated that although these issues contribute to health problems in several communities, they are not regulated by law. He recommended that the cumulative risk report include suggestions on how these nuisance issues may be addressed, whether under a regulatory scheme or through voluntary efforts.

Finally, Mr. Voltaggio praised the cumulative risk report and noted that the recommended process included the components needed to resolve or minimize environmental impacts on environmental justice communities. He hoped that the report would benefit from the lessons learned in the Chester study.

Ms. Tucker introduced Ms. Harris to the NEJAC. Ms. Tucker stated that although she had only a distant working relationship with Ms. Harris, she had closely followed Ms. Harris's work in EPA Region 4 before she worked for OECA. Ms. Tucker stated that Ms. Harris was not guided by politics or special interests and credited Ms. Harris for bringing to light the extensive contamination in Anniston, Alabama. She applauded Ms. Harris's work in EPA Region 4 and thanked her for participating in the NEJAC meeting.

Ms. Harris thanked Ms. Tucker for the introduction and noted that many offices at EPA were involved in the environmental justice process, which indicates maturation of the process. She highlighted the work of OECA, especially that involving major settlements with utilities and refineries regarding releases of PM such as nitrogen oxides and sulfur oxides. Noting her many personal experiences with disadvantaged communities in EPA Region 4, Ms. Harris stated that the situations faced by such communities are very real. She noted some significant hot spots such as Fort Valley and Norfolk, Virginia; Louisville, Kentucky; Memphis, Tennessee; and Anniston, Alabama. She stated that OECA is in the process of drafting important principles that will continue to address the issues of environmental justice. Ms. Harris also emphasized the need for smart enforcement that focused on compliance by industries and large businesses rather than by small businesses and individuals. She further noted that integrating enforcement with compliance assistance and injunctive relief for complying parties would encourage industries and businesses to comply with environmental regulations.

Ms. Harris also stressed the importance of assessing and reviewing the effectiveness of each program within EPA. She stated that in addition to the EPA Office of the Inspector General's (OIG) review of the effectiveness of programs across the agency, it is important for each program to conduct an assessment of its own effectiveness. Ms. Harris also noted the importance of communicating environmental, public health, and compliance outcomes. She noted that in 2003 alone enforcement actions resulted in the reduction of over 600 million pounds of pollutants; these included significant actions involving utilities and refineries, and 67 percent of the actions resulted in a specific environmental or public health benefit. Over the next several years, she said, OECA would strive to increase this percentage by embarking on a new set of priorities for the Enforcement Compliance Assurance Program that would be consistent with the priorities of all the program offices within EPA. She noted that new initiatives would ensure the integration of environmental justice into the process of setting priorities.

With respect to measuring the effectiveness of the new initiatives, Ms. Harris stated that OECA convened a work group and consulted with the NEJAC Enforcement Subcommittee to develop an environmental justice *Concept Paper*. Ms. Harris explained that this concept paper would identify a consistent set of parameters for measuring the work being done in environmental justice communities and would support development of tools for identifying disproportionate impacts in communities.

Finally, Ms. Harris stated that OECA realizes that environmental justice problems and particularly those related to cumulative risks and impacts cannot be solved by EPA alone. A collaborative process would be required, with all stakeholders participating constructively in formulating solutions, she said. She asked the NEJAC to provide advice and recommendations on how EPA can move forward with regard to cumulative risks and impacts.

3.5 Presentations of the Community Impacts Panel

On Tuesday, April 13, 2004, the members of the NEJAC received a series of presentations from a panel composed of representatives of various community groups. The panel was introduced and chaired by Ms. Subra and represented a wide range of racial and ethnic groups, including African-Americans, Native Americans, Hispanics, and Vietnamese (who could not participate). The presentations were designed to provide insight into relationship of environmental justice and cumulative risks and impacts in communities that face multiple stressors such as exposure to hazardous chemicals, racial discrimination, lack of health care, and poverty. Ms. Subra explained that the 2003 CDC report on health disparities referred to these minority groups in terms of their higher susceptibility to poor health and premature death as compared to other communities. These minority communities, she said, ranged from urban to sparsely populated and rural.

The panel consisted of the following individuals:

Ms. Helen Vinton, Southern Mutual Help Association
Ms. Clementine Matthews, Four Corners Mutual Help Association
Ms. Marylee Orr, LEAN
Ms. Rebecca Jim, Tar Creek, Local Environmental Action Demanded (LEAD) Agency Inc.
Mr. Genaro Lopez, Southwest Workers Union, Kelly Air Force Base (AFB)

Ms. Vinton described the work carried out by the Southern Mutual Help Association, explaining that its mission is to find fair and innovative solutions for rural communities facing challenges such as environmental contamination, economic disparity, health problems, inadequate housing, unemployment, illiteracy, and discrimination. The Southern Mutual Help Association, she stated, recently received an award for its work from the National Community Reinvestment Coalition.

Ms. Vinton described the multiple, cumulative, environmental risks and impacts faced by the Vietnamese fishery communities, which consist of more than 2,500 families scattered along the coast of Louisiana. She explained that members of these communities rarely make appearances in public because of their fear of discrimination. Free trade policies have resulted in a catch-22 situation for these communities, she continued, because they are torn between loyalty to the American fishing industry and supporting economic progress in their native Vietnam, where the Vietnamese fishing industry profits from exporting large quantities of fish to the United States.

Ms. Vinton noted that most members of the Vietnamese communities are legal permanent residents of the United States, and that some are American citizens. She explained that they are in urgent need of technical assistance that would help them attain citizenship rights in the United States and thus integrate them into the mainstream of society.

Ms. Vinton described some of the multiple stressors in the predominantly non-English speaking Vietnamese communities, which include exposure to hazardous commercial chemicals imported from across the United States and other countries, the presence of a large number of hazardous waste dump sites in residential areas, contamination of surface and drinking water sources, improper sewage disposal and sanitary infrastructure, poverty, lack of nutrition and access to health care, and discrimination by seafood processors. These communities, she noted, were in immediate need of environmental justice.

Finally, Ms. Vinton expressed appreciation that the NEJAC would be discussing the important issue of cumulative risks and multiple impacts.

Ms. Matthews described a poor, predominantly African-American community in Four Corners, St. Mary's Parish, Louisiana. She noted that the pollution sources in this farming community include carbon black manufacturing facilities and sugar mills (three carbon black plants and four sugar mills within a 15-mile radius); strategic petroleum reserves; applications of pesticides; herbicides, and fertilizers to sugar cane crops; and burning of sugar cane adjacent to homes. She added that substandard housing with lead

pipes and inadequate sewer systems, lack of health care, and poverty further compound the cumulative risks and impacts faced by this community.

Ms. Matthews also described the actions taken to address the issues in Four Corners, which include a Self Help Housing Initiative to improve the quality of housing in the community, health fairs to bring health awareness into the community, environmental workshops, leadership development workshops, scholarship programs, and increased community involvement. Leadership training, she said, allowed community members to serve on the water and sewer board and the school board.

Finally, Ms. Matthews noted that the actions taken have resulted in less burning of the sugar cane crops, an improved water system, and better housing in the community.

Ms. Orr commended the NEJAC work group for the findings in the cumulative risk report and thanked the group for putting into words what we experience everyday, for what you wrote, we live. She also congratulated the work group for stressing bias for action and for incorporating the community into the decision-making process and into the solution.

She described the multiple, aggregate, and cumulative risks and impacts along the Mississippi River industrial corridor. She stated that the community in this region included a significant African-American majority (63 percent) with Caucasian (30 percent) and Asian (3 percent) minorities. She described some of the pollution sources along the Mississippi River industrial corridor, which included petrochemical facilities; refineries; wastewater treatment facilities not meeting permit limits; agricultural field runoff containing pesticides, herbicides, and fertilizers; and the burning of sugar cane during the fall harvest season, which generated air particulates. Ms. Orr further stated that although generations had lived off the land, they had benefitted little from the industrial development in the area. Lack of social capital, she said, is the major cause for concern in this area, whose residents have minimal education and poor community infrastructure.

Continuing, Ms. Orr noted that an important issue that the NEJAC work group had only briefly touched on was that of worker exposure. This is an important issue in the Mississippi River industrial corridor because most members of the community are employed in industries, she said. She also called for a commitment on the part of industry management to ensure the safety of employees. She added that Louisiana has 19 new fish advisories, indicating the quality of the water bodies.

Finally, Ms. Orr quoted women in Bhopal, India, a community that faced acute exposure to a deadly, poisonous gas from a Union Carbide chemical plant in the mid-1980s and that continues to suffer from ill effects even today. Ms. Orr said that she derived inspiration and encouragement from their determined fight for justice and their thoughts: We are not expendable. We are not flowers to be offered at the altar of profit and power. We are dancing flames committed to conquering darkness. We are challenging those who threaten the survival of the planet and the magic and mystery of life. Through our struggle, through our refusal to be victims, we have become survivors, on our way to becoming victors.

Ms. Jim described the Tar Creek Superfund site, where five generations have been subjected to the ill effects of lead poisoning. This 40-square-mile site in northeast Oklahoma is part of the historic Tri-State Mining District consisting of Missouri, Kansas, and Oklahoma. The site, she explained, contained five mining towns, and their drinking water sources were contaminated by acid mine drainage containing heavy metals such as lead, cadmium, and arsenic. Other sources of contamination at the site, she noted, include benzene releases from chemical plants and agricultural runoff containing pesticides, herbicides, and fertilizers.

The site, Ms. Jim stated, was initially ignored by Federal agencies, such as EPA even though community members from Love Canal, New York, had brought media attention to Tar Creek. A student who made Tar Creek the subject of his master's thesis found that 32 percent of the children in the community

suffered from lead poisoning. This student's work succeeded in bringing the community into EPA's focus, she said.

Ms. Jim noted that although sites in Kansas and Missouri have achieved significant cleanup and rehabilitation, the main pollution sources in Tar Creek, piles of mine waste, as high as 150 feet, continue to exist on roadsides where children play and teenagers ride their four-wheelers and party at night. It is the only Superfund site in the nation I challenge you that you can still play on, Ms. Jim said. Acid mine drainage from these waste piles continues to pollute the surface and drinking water sources in the community with heavy metals, she continued.

Ms. Jim described the poor Native Americans and other minority groups in the area, who are predominantly subsistence fishermen and hunters who depend heavily on the land. She further noted that lack of adequate health care, lack of testing of populations to determine the extent of human contamination, and inadequate evaluation of contamination in environmental media compound the cumulative risks and impacts in the community.

Ms. Jim described recent environmental justice efforts in the area, which include working with tribal and nontribal communities with the help of a Technical Assistance Grant (TAG). TAGs are initially worth up to \$50,000 and are available to qualified community groups so that they can hire independent technical advisors to interpret and help the community understand technical information about the site. The community is also partnering with Harvard University researchers for a birth cohort study, which is examining the lead and manganese levels in newborns in the area, and with the National Institutes of Health (NIH) to study health trends in the area and establish a Children's Health Center.

Finally, Ms. Jim stated that much more remains to be done at Tar Creek and EPA cannot do it alone. This effort, she emphasized, would require interagency collaboration.

Mr. Lopez stated that Kelly AFB has been in San Antonio since 1918. It is one of the oldest AFBs in the nation and one provided most of the logistical and aircraft maintenance support for the U.S. Air Force. In addition to Kelly AFB, San Antonio is home to eight other military installations, all of which contribute to the pollution problems in the surrounding communities, he added. Mr. Lopez stated that under the 1995 Base Realignment and Closure (BRAC) decision, Kelly AFB was officially closed and is now called Kelly USA. Companies such as Boeing, Lockheed Martin, and General Electric continue to provide logistical and aircraft maintenance support to the Air Force, continuing the impacts on neighboring communities.

The communities surrounding Kelly AFB have various groundwater contaminants, including trichloroethylene (TCE), tetrachloroethylene (PCE), and vinyl chloride (VC), and soil contaminated with lead and other heavy metals.

Mr. Lopez described the struggle to revitalize the predominantly 95 to 100 percent Mexican-American communities around Kelly AFB that are affected by multiple health problems such as asthma, central nervous system disorders, low birth weights, birth defects, and cancer. He also described socio-economic factors that compound the cumulative risks and impacts faced by these communities, such as single-parent homes, high school dropout rates, and lack of adequate health care. Mr. Lopez also noted that about 10 different agencies such as the Agency for Toxic Substances and Disease Registry (ATSDR), CDC, the Department of Defense (DoD), EPA, TCEQ, the San Antonio Metropolitan Health Department, and the City of San Antonio, have been involved in cleanup and community efforts, but lack of coordination between them presents a challenge to achieving any further progress.

Mr. Lopez questioned the cleanup decision to use monitored natural attenuation (MNA) at Kelly AFB. MNA is a passive cleanup approach that allows natural soil and groundwater microflora to degrade polluting chemicals over many years. He stressed that the decision would only mean that the communities would face several more years of exposure to the hazardous chemicals.

Finally, Mr. Lopez emphasized the importance of educating communities, mobilizing people at the grassroots level within the communities to stand up for themselves, and helping them to understand the issues as well as to make changes necessary to improve their lives. He noted some important achievements by the San Antonio communities over the last few years, such as demolition of jet fuel storage tanks in the communities, halting further construction efforts by the Air Force, and community participation in an interagency working group.

Ms. Eady then invited the members of the NEJAC to present their questions to the community impacts panel.

Ms. Tucker thanked Ms. Orr for pointing out the issue of worker safety and agreed that it would have to be addressed in the cumulative risk report. Ms. Tucker also expressed disappointment at the racial make-up of the Louisiana panel members. She noted that a large proportion of the impacts in Louisiana are seen in the African-American communities and that she expected a significant percentage of the panel members to represent that group. She stated that such communities need more representation on the panel.

Responding to Ms. Tucker, Ms. Orr said that it was a challenge for community representatives to be present at meetings to express their concerns and that it was important to be inclusive and respectful of those who do come forward with their problems and issues. It is also important not to discourage representatives from any community from talking about the issues that they feel strongly about. She noted that everyone's knowledge collectively is important.

Ms. Eady then called on Ms. Henneke and Ms. Briggum to talk about state and local government and industry perspectives and why this approach would be helpful.

Ms. Henneke stated that she felt more like a community resident because she had grown up in Tar Creek, which Ms. Jim had described earlier. Growing up, she confessed, she had not realized that she was in an environmental justice community. From the perspective of a state regulator, Ms. Henneke admitted that the community impacts panel presented issues that are very significant.

Ms. Henneke noted the difficulty in dealing with facilities that are no longer operating or that are operated by entities different from the original operators, such as at Kelly AFB. Ms. Henneke also stated that although the situations at Tar Creek and Kelly AFB are very different, the cumulative risks and impacts faced by the residents of the communities at these sites are the same. As a regulator, she said, it is important to see and hear different perspectives, referring to Ms. Tucker's earlier remark.

Providing an industrial and business perspective to the discussion, Ms. Briggum stated that industries and businesses are reluctant to take responsibility for their actions. This, however, should not deter a community from naming names and clearly stating which industry or company is polluting its neighborhood and environment. She hoped that the cumulative risk report would encourage industries to take responsibility and show accountability for their actions by providing them with incentives for contributing to community revitalization and moving beyond mere compliance with environmental regulations.

Dr. Sawyers thanked the community impacts panel members for their insights and compelling presentations. He asked them for recommendations on how the NEJAC can improve the cumulative risk report and on new policies and different approaches that may help address some of the concerns that they expressed during their presentations. He also asked the panel members to share some of their success stories.

In response, Mr. Lopez stated that the collaborative problem-solving model recommended in the cumulative risk report was perhaps the most significant change in policy for communities and agencies. This process, he noted, would encourage better flow of information to the communities, and prevent anger

and frustration within the communities. To illustrate his point, Mr. Lopez pointed out that the communities surrounding Kelly AFB had to struggle to obtain information and were being asked to go back and forth between the Air Force, TCEQ, and other agencies. He pointed out that the current process of obtaining information was extremely complex and inefficient, as it involved the filing of Freedom of Information Act (FOIA) requests. It is very important for communities to be able to obtain information so that they can actively participate in decisions that affect them, Mr. Lopez said.

Ms. Orr expressed the need for more enforcement. She also noted the importance of collaboration, citing the work of LEAN in conjunction with the Louisiana Department of Health and Hospitals (DHH) to produce an educational pesticide brochure for rural communities, using funding from EPA and the Louisiana Department of Agriculture and Forestry (LDAF). She stated that LEAN is considering publishing this brochure in Spanish as well and a new brochure on IPM. Some of the other successes of LEAN, Ms. Orr noted, included distribution of nebulizers in public schools, educating nurses and doctors in asthma management, and conducting an asthma camp for children from environmental justice communities.

Ms. Jim expressed her support for the bias for action theme in the cumulative risk report, stating that this was really important in Tar Creek. She also noted the success of remedial yard work that was being done in residential neighborhoods in Tar Creek. This work involved excavation of lead-contaminated soils, which in turn reduced lead levels in children.

Ms. Espinosa noted that the presentations made by the community impacts panel members highlighted the importance of CBPR. It was obvious, she said, that they knew much more about their own communities, having experienced first-hand the symptoms, diseases, and pain, than any outside regulator or researcher. On the issue of cooperation between multiple agencies raised by Mr. Lopez, Ms. Espinosa expressed the need for one agency to take the lead in such a matter regardless of whether that agency has regulatory control or enforcement power. She stated that regulators and agencies would have to recognize that community representatives are not paid for their efforts to get more information and that they sacrifice valuable time with their families and loved ones to bring attention to their problems.

Mr. Lopez then addressed the issue of worker impacts. He stated that among the 15,000 to 20,000 workers at Kelly AFB, over 150 cases of Lou Gehrig's Disease have been identified.

Ms. Lori Kaplan, Indiana Department of Environmental Management and member of the Health and Research Subcommittee of the NEJAC, noted that as a state regulator, she supported collaboration between communities, industry, and the government to achieve results. She noted, however, that the cumulative risk report lacked emphasis on the importance of regulatory tools. It would be important not just to possess enforcement powers but also to take cumulative risks and impacts into account while issuing permits, she added.

Mr. Weinstock agreed with Ms. Kaplan about the need for regulatory and enforcement tools. He also pointed out the role of voluntary programs at EPA, that help businesses improve their environmental performance without hampering their profits. He cited two examples of such voluntary programs: the Design for Environment Program in Cleveland, Ohio, which helped small, community-based chrome electroplating businesses to reduce emissions of chromium and to benefit financially, and the Environmental Management Systems program, which can help large businesses improve their performance and profits. This positive approach, he noted, would encourage business and industry to contribute to community revitalization.

Following up on Ms. Kaplan's comments, Mr. Starfield said that regulatory flexibility like that in the Resource Conservation and Recovery Act (RCRA) program would be very useful in dealing with environmental issues. Third-party monitoring would also be useful, Mr. Starfield noted, citing the examples of areas north of Albuquerque, New Mexico and in Ponca City, Oklahoma where the issue of air toxin levels prevented collaboration between the communities and industry. The communities believed that the cause of their problems was high levels of toxins in the air, but industry claimed that levels of

toxins in the air were low, he said. This situation was resolved, he explained, by installing state-sponsored monitors. These monitors showed that the air quality in Albuquerque was acceptable, but that was not the case in Oklahoma, he said. These examples, Mr. Starfield noted, emphasized the importance of establishing an information base that cannot be easily refuted by industry and that would force it to accept at least part of its responsibility .

Ms. Briggum wholeheartedly agreed with Mr. Starfield s remarks , saying that ultimately, clear regulatory obligations would certainly obtain results, but it would take a while to get to that point. In the meantime, she added, information can be a very powerful tool in and of itself.

Joining in the discussion, Mr. Lee noted that all this discussion was asking a single, underlying question: What is the relationship between cumulative risk and regulation? He said that there was actually another important question here: What is the relationship between the use of law and dispute resolution in terms of addressing issues that may not be directly related to regulation? He stated that some of these questions would be partially answered by a set of case studies that OEJ asked the Consensus Building Institute to put together regarding the issues of dispute resolution and environmental justice. He noted that these case studies are available for downloading on EPA s internet web site at: <http://www.epa.gov/compliance/environmentaljustice>. He also pointed out that OEJ has been developing dispute resolution training for communities and other groups that would be introduced as a pilot effort in New Mexico in fall 2004.

Adding to Mr. Lee s comments and addressing earlier comments by Mr. Starfield, Dr. Fields, stated that communities now recognize that litigation can bring things to a screeching halt and look for alternative, collaborative methods such as ADR or other tools to resolve issues. Hence, Dr. Fields said, the bias for action has real potential for being implemented because this approach has acceptability not only from industry but also from the communities themselves as well as other stakeholders in the process.

Agreeing with Dr. Fields, Mr. Starfield wondered whether EPA could deliver such a message alone and asked whether there was a way that the NEJAC could assist in that process. Acceptability and credibility for this approach would be wider if it were to be propagated not just by EPA but also by industry and the communities, he concluded.

3.6 Discussion of Key Concepts in the Cumulative Risk Report

To ensure that the NEJAC members clearly understood the key concepts discussed in the cumulative risk report (see Exhibit 1-3), Mr. Lee introduced the next series of presentations by members of the NEJAC work group on the various key concepts, such as stressors, vulnerability, CBPR, proportional response, qualitative analysis, and others.

Exhibit 1-3

KEY CONCEPTS ADDRESSED IN THE CUMULATIVE RISK REPORT
Stressors
Vulnerability
CBPR
Proportional Response
Qualitative Analysis
Efficient Screening, Targeting, and Prioritization Methods and Tools
Unifying the Fields of Public Health and Environmental Protection
Social Capital

Mr. Gonzalez began his presentation by defining stressor as any entity, not just chemical, physical, or biological, but including stress due to age, sex, economic status, social conditions, housing, or healthcare. He also offered the definition in the EPA *Framework for Cumulative Risk Assessment*:

A stressor is a physical, chemical, biological, or any other entity that can cause an adverse response in a human or other organism or ecosystem. Exposure to a chemical, biological, or physical agent (e.g. radon) can be a stressor, as can the lack of, or

destruction of, some necessity, such as a habitat. The stressor may not cause harm directly, but may make the target more vulnerable to harm by other stressors. A socioeconomic stressor, for example, might be the lack of needed health care, which could lead to adverse effects.

Notably, Mr. Gonzalez continued, the framework includes socioeconomic factor stressors, making it an important milestone that lays the basis for a dialogue about comprehensive risk in impacted communities or tribes.

Mr. Gonzalez then stated that the concept of vulnerability goes to the heart of environmental justice. Furthermore, he explained, vulnerability recognizes that disadvantaged, underserved, and overburdened communities come to the table with pre-existing deficits of both a physical and social nature. As such, he noted, the concept of vulnerability fundamentally differentiates such communities from healthy and sustainable communities. To further clarify the concept, he cited the example of pregnancy, during which both the mother and child are more susceptible and sensitive to certain impacts.

Mr. Gonzalez then explained several terms that help to better define vulnerability. He stated that differential ability to recover, takes into account the length of exposure, amount of exposure, source of exposure, preparedness of the individual in terms of physical condition, and vaccinations. Social, economic, and cultural factors can play a role with respect to differential exposures, he added, citing the example of a study conducted by Professor Manuel Pastor, University of California, and his colleagues, who found a strong correlation between the periods of greatest community demographic change and the introduction of noxious land uses. He said that they surmised that during this period, social capital in a community in terms of stable leadership, networks, and institutions is perhaps the lowest, he added. Such a phenomenon was described as ethnic churning by Professor Pastor, Mr. Gonzalez noted. Referring to the term social factors, Mr. Gonzalez explained that it referred to income, employment status, access to insurance, discrimination in the health care system, language ability, and the existence of social capital, all of which affect the ability to prevent, withstand, or recover from environmental insults. Health disparities, another important term associated with understanding vulnerability, is both an outcome of and a contributor to vulnerability, he added. As an example, he noted that children who are exposed to lead and live in communities lacking wastewater treatment often suffer from diarrhoea. The diarrhoea causes chronic anemia, which in turn worsens the effects of lead exposure and causes a decline in general health.

Explaining the concept of CBPR, Mr. Gonzalez noted that this was the most important community contribution to the environmental justice process. This kind of research, he noted, was what people in the community lived on a day-to-day basis. This process, he continued, fosters co-learning, ensures that projects are community-driven, disseminates results in ways that communities can understand and identify with, ensures that research and intervention strategies are culturally appropriate, and defines the community as a unit of identity.

Members of the NEJAC work group then supplemented Mr. Gonzalez's explanations of the key concepts.

Dr. Fields further explained the concept of stressors. He stated that stressor is any physical, biological, or chemical entity that may be adversely impacting a community. He offered the example of a chemical manufacturing plant down the street from a community; a hazardous waste facility two miles away; the warehouses in Laredo, Texas; the presence of asthma in a community; or lack of adequate clinics or health care facilities in a community.

Dr. Fields continued to explain that multiple stressors are regulated by different environmental statutes such as the CAA, the CWA, Superfund, and RCRA, which traditionally have been implemented on a statewide basis. He stated that each regulatory agency has dealt with those stressors under its own authorities in different ways and often in an uncoordinated manner. This led the NEJAC work group to recognize the urgent need for greater partnership in terms of how these stressors and their cumulative

effects are dealt with, Dr. Fields said. The work group has developed recommendations about how these stressors can be dealt with in a coordinated way to achieve public health, environmental protection, and the betterment of communities across the country, he concluded.

Elaborating on the concept of vulnerability, Ms. Hynes stated that she would use two examples to explain the social, economic, and cultural factors that contribute to ill health and compound disproportionate exposures to environmental toxins in communities.

The first example, she noted, was the rate of asthma and lead poisoning in children. It is no coincidence, she emphasized, that the highest rates of childhood asthma and childhood lead poisoning are seen among poor children and children of color, particularly African-American children. Their environment is only part of the reason, she said. Ms. Hynes noted that poor children live in poor housing and that poor, urban children live in older housing with lead paint. The parents cannot afford to de-lead the homes or maintain them, and the situation is worsened by poor nutrition, she added.

Ms. Hynes noted that the same points are true for asthma. Furthermore, she explained, the environmental exposures, particularly for poor, urban children, include poor housing and exposure to vehicular pollutants, especially near bus depots or similar facilities that are differentially located in their communities.

An additional burden in this situation is the stress of being poor, Ms. Hynes said, which increases vulnerability. In addition to poverty itself, income inequality plays a role, she said. She explained that income inequality measures the difference between the upper 10 to 30 percent income and the lowest, 10 to 30 percent income. The wider that gap, the worse the health of the poor people, because of poor distribution of resources, she added. She further noted that among industrial countries, the United States has the greatest gap in income and thus the highest rates of child poverty and homicide. Another contributing factor to vulnerability is weaker social cohesion, she continued, wherein people give up when they feel that they have reached a dead end. Citing the example of children in public housing in Boston, Massachusetts, whom she works with, Ms. Hynes explained that their parents have no jobs or survive on minimum wage jobs and that the school system is very poor, which cause the parents and children to give up. This weak social cohesion translates into poor health, she added.

Race is also a contributing factor to vulnerability, Ms. Hynes continued. She stated that many studies have indicated that in a racist society, the stress of not being the right color can increase vulnerability. She described some studies that showed that African-American children have three and a half times the rate of elevated blood lead poisoning compared to the U.S. average. In other studies of asthma in Boston, Massachusetts; Harlem, New York; and many other inner cities, minority children always have higher rates of asthma, she noted, resulting in multiple health impacts and early mortality. All the factors described earlier, Ms. Hynes said, can be described as social inequalities.

Touching on the issue of health disparities, Ms. Hynes stated that in Boston, Massachusetts, African-Americans had poorer health outcomes for 15 of the 20 health indicators studied. She described a recent report by the U.S. Department of Health and Human Services (DHHS) that examines health disparities on a nationwide level. DHHS reports severe health disparities among all minority groups compared to whites and among the poor compared to financially secure communities. Ms. Hynes then quoted from the DHHS report:

" The use of physical restraints in nursing homes is higher among Hispanics and Asian-Pacific Islanders compared to non-Hispanic Whites. Minorities are more likely to be diagnosed with late stage breast cancer and colorectal cancer compared to Whites. Blacks and poor patients have higher rates of avoidable hospital admissions.

- " Racial and ethnic minorities are less likely to report health insurance compared with Whites. Lower income persons are also less likely to report health insurance compared with higher income people.
- " Many racial and ethnic minorities and persons of lower socioeconomic position are less likely to receive childhood immunizations.

Finally, Ms. Hynes stated that these impacts demonstrate synergistic or additive health impacts. The challenge, she claimed, would be to address all these impacts simultaneously. She also noted several ways to measure vulnerability that are available at EPA, such as indices. For example, the Gini index for income and equality measures income distribution on a scale of zero to one, with zero being equity and one representing inequality, and the dissimilarity index measures racial segregation. The vulnerability data, she concluded, would be helpful in the identification of communities across the country that are most severely burdened with health impacts. These sites should be the places where immediate action takes place, she said. Concluding her remarks, Ms. Hynes addressed EPA, noting that to reduce vulnerability, cleanup of environmental contamination would be effective only when combined with reduction of inequality.

Elaborating on the concept of CBPR, Ms. Tucker noted that at present there is a great deal of dissatisfaction among communities on the issue of research. The communities feel that the research is inconclusive by design and that research agendas are flawed and lack input from community members, she added. She continued to say that it is wrong of researchers to arrogantly assume that without contributions from the community, they can come up with research questions that are relevant to the concerns of the community. And all too often, she noted, research is driven by the funding dollar or by the wish of the research institution to build its capacity.

Communities face issues such as increased incidence of learning disabilities in their children and rare diseases and conditions, and hence they express the need for research that takes social factors into consideration, Ms. Tucker said. CBPR provides an opportunity for equitable partnerships in which all the research is formed at the community level, she added. This kind of research, explained Ms. Tucker, involves dialogue sessions and discussions with community members to bring out their primary concerns and observations and with other stakeholders. She noted that this kind of research is not a threat to existing research and would contribute to the existing knowledge about a community. CBPR, she said, is a tool designed to allow communities to work with scientists and other stakeholders.

Finally, Ms. Tucker noted that if CBPR had existed 10 years ago, the understanding of cumulative risks and impacts would be far more advanced than it is today.

Ms. Briggum expanded on the concepts of qualitative analysis and proportional response. Qualitative analysis, she said, recognizes that any analysis that is solely quantitative would be inadequate to explain all aspects of cumulative risks and impacts, especially in terms of stress and vulnerability. This is the case because some stressors can be easily measured, such as the amount of a pollutant in a water body or the toxicity of a chemical, she said. However, she added, some stressors such as racial disparities and social discrimination cannot be quantified, and certain impacts such as species loss are still not very well understood. She stated that CEQ has published guidance for analysis of cumulative risks and impacts that embraces the qualitative approach.

Regarding proportional response, Ms. Briggum stressed two aspects. First, she noted, that the more severe the impact that a community is experiencing, the more immediate and serious the response has to be. Thus, she explained, prioritization is the key, and the communities that are the most burdened, the most vulnerable, and subject to the most sources of environmental pollution and other stressors need to receive the priority attention of the government and the highest attention of business and industry.

The second aspect, Ms. Briggum added, is accountability in the community, which means that the expected response of industry, business, or another source of impacts should be proportional to its contribution to the cumulative impacts in the community. She noted that the sources of pollution with the largest potential negative impacts will be expected to provide the largest and most immediate responses to the situation, and smaller sources of pollution will be expected to be accountable on some level, albeit smaller.

Mr. Gonzalez then addressed the last key concept in the cumulative risk report, unifying the fields of public health and environmental protection. This complex process would involve forging partnerships with utilities, housing owners, solid waste management facilities, and other entities to create a comprehensive approach to better community health, he noted. This process would also involve building social capital, he added, and would involve not only EPA but other agencies, Federal, state and local, and the communities themselves.

Beginning a discussion and dialogue about the key concepts presented before the NEJAC, Mr. Lee noted some of the significant points of the presentation. He noted the importance of the term vulnerability, which forms the basis of understanding cumulative risks and impacts, cumulative risk analysis, and environmental justice. Addressing the term disproportionate impact, Mr. Lee noted that although it would be discussed at length during the discussion of OIG report, it was important to understand that different types of communities with different types of backgrounds and deficits would face different impacts.

Mr. Robert Harris, Pacific Gas and Electric Company and member of the Waste and Facility Siting Subcommittee of the NEJAC, noted that in the process of bringing all stakeholders together for a healthy discussion of a sensitive situation in a community, the regulator plays a central role. This is the case because the regulator not only deals with the polluter regarding this particular issue but regarding numerous other issues, he added. So, he said, there is an incentive for the polluter to come to the table and participate if the regulator acts as the facilitator and assumes that role very forcefully. It is important for the regulator to be honest and unbiased, Mr. Harris added.

Dr. Fields, agreeing with Mr. Harris, responded by saying that it is important for the regulator to be a facilitator for effective action. He cited an example in EPA Region 4 where this approach had been successful. In Spartanburg, South Carolina, Dr. Fields said, dialogue has been ongoing for three years between the community and a company, and the one reason that the dialogue continues to this day is the involvement of EPA at every meeting and its working with the community and industry to reach a solution. A regulator's commitment, powers of persuasion, and resolve can play a constructive role not only in the overall context of pollution reduction but also in addressing cumulative risks and impacts, Dr. Fields added.

Ms. Henneke thanked Mr. Harris for raising the regulator issue. She noted that this role was not just for EPA to fill, but also for state regulators.

Ms. Harris responded to the discussion, stating that from EPA's point of view, it is critical to share knowledge and abilities with state and local governments in order to refrain from undermining the work of state governments and also to allow them to act as facilitators between communities and industry.

Joining in the discussion, Mr. Williams added that irrespective of which agency plays the lead facilitator role, the agency must have a clear idea of what that leadership role is going to entail, especially because cumulative impacts can cross broad jurisdictions. He stressed the importance of making decisions based on current knowledge instead of waiting and facing the prospect of higher costs to resolve the same issue in the future. He also noted that although the CEQ guidance referred to earlier was important to understanding the basis of cumulative risks and impacts, that guidance was based on the state of knowledge nearly 10 years ago when the guidance was published. Hence, he said, it is important to keep up with new information and studies as they are published because modeling and risk assessment methods have vastly improved the ability to project future cumulative risks and impacts.

Mr. Lee thanked Mr. Williams for his suggestion and requested that he provide the NEJAC work group with a list of any new references to be included in the cumulative risk report.

Ms. Tucker commented that the key to achieving results is a well-organized community because regulators respond better to communities that are well organized. She cited the example of Spartanburg, South Carolina, in EPA Region 4 as one such community. She also noted that the ADR method will be useful in getting the polluter to do the right thing, which will also ensure that the communities get their fair shares. To illustrate this point, she cited the example of Anniston, Alabama, where Monsanto agreed to pay nearly \$117 million, but most of this money did not reach the people impacted by Monsanto. Instead, she stated, much of this money was used to pay attorneys, while the rest was shared among the communities, leaving them with amounts that are far from fair compensation for their years of suffering and social impacts. Mr. Lee provided further details on the settlement in Anniston. He said that an article in the *Washington Post* revealed that the average settlement amount that the plaintiffs received was between \$500 and \$7,000, while the attorneys walked away with amounts ranging between \$4 million and \$34 million.

Ms. Eady added that if a polluter is not required to obtain the services of a law firm, as would be the case with ADR, the polluter would have more funds available to invest in the community.

Dr. Ramirez-Toro expressed satisfaction that the topic of fragmentation had been addressed in the cumulative risk report. Referring to Puerto Rico, she stated that the topography of the island is such that even communities that are only two miles away from each other are in fact worlds apart. But they face similar stressors and need similar attention, she added. Hence, it is not possible to choose between such communities based on their racial make-up; instead, she suggested that these communities be discussed in terms of their burden as a class. This process would allow issues of cumulative risks and impacts to be addressed on a national level and would prevent fragmentation of the issue based on superficial divisions.

Ms. Henneke said that as a state regulator, she thought that it was important that the policy or method adopted by EPA to resolve this issue be easily implemented at the state level.

Referring to earlier statements made by Mr. Harris and Dr. Fields, Ms. Briggum stressed the importance of training within the EPA and state regulator community to ensure that each regulator understands the importance of being an honest broker when facilitating discussions between the community and polluter.

Responding to Ms. Briggum, Ms. Tucker concluded the discussion by noting that the regulator must be biased toward the law and protection of the environment and public health.

3.7 Discussion of Overarching Recommendation Themes in the Cumulative Risk Report

Mr. Lee began the discussion of the overarching recommendation themes in the cumulative risk report (see Exhibit 1-4) by providing an overview of the key concepts discussed earlier. The NEJAC work group's goal was to unequivocally and unapologetically bring about a paradigm change in order to bring about a new process of thinking about risk comprehensively and cumulatively, he stated. He also noted that the foundation for the cumulative risk report was provided by EPA's May 2003 *Framework for Cumulative Risk Assessment*. Introducing the next series of discussions, Mr. Lee explained that the eight overarching recommendation themes proposed in the cumulative risk report are fundamentally interdependent and that the most important step is the translation of these themes into action items.

Ms. Espinosa and Ms. Briggum, the co-chairs of the NEJAC work group, presented an overview of the overarching recommendation themes proposed in the cumulative risk report. Ms. Espinosa began with Theme 1, To institutionalize a bias for action within EPA through widespread utilization of an Environmental Justice Collaborative Problem-Solving Model. She stated that this theme expressed a clear and urgent need to address the needs of disadvantaged and environmentally overburdened

communities and tribes. She added that many legal, scientific, and programmatic tools exist to address risk in the short term and that significant opportunities exist for partnerships with state, local, tribal, business and industry, academic, civic, and community-based organizations. The environmental justice Collaborative Problem-Solving Model makes it possible to integrate these tools and resources, she said.

Dr. Fields added to Ms. Espinosas explanation, stating that Theme 1 is the critical element in the overall agenda that has been presented to EPA. This agenda, he noted, emphasizes that although EPA has been excellent over the years at studying, investigating, and conducting research, the need to really take action for the future is critical. In order to do this, the NEJAC work group has suggested that EPA conduct pilot activities in each of the 10 regions, focusing on underserved and disadvantaged communities with urgent needs.

Ms. Briggum expanded on Theme 2, To fully utilize existing statutory authorities, which she said was necessary to institute a bias for action. The existing statutory authorities that consider multiple and cumulative impacts have been outlined by EPA's General Counsel in a memorandum titled *Implementing Environmental Justice Through the Use of Existing Statutory Authority*, she explained. A guidance is necessary to show how these authorities can be used in permitting and enforcement contexts so that community needs can be addressed under existing statutes, Ms. Briggum noted. She added that a second guidance would also be required to help communities inventory cumulative impacts, both those currently regulated and those that are insufficiently regulated. In this context, she noted that RCRA has been construed as providing an overall authority to protect human health and the environment.

Exhibit 1-4

OVERARCHING RECOMMENDATION THEMES IN THE CUMULATIVE RISK DRAFT REPORT

Theme 1: To institutionalize a bias for action within EPA through widespread utilization of an environmental justice Collaborative Problem-Solving Model

Theme 2: To fully utilize existing statutory authorities

Theme 3: To address and overcome programmatic and regulatory fragmentation within the nation's environmental protection regime

Theme 4: To fully incorporate the concept of vulnerability, especially its social and cultural aspects, into EPA's strategic plans and research agendas

Theme 5: To promote a paradigm shift to community-based approaches, particularly CBPR and intervention

Theme 6: To incorporate social, economic, cultural, and community health factors, particularly those involving vulnerability, in EPA decision-making

Theme 7: To develop and implement efficient screening, targeting, and prioritization methods and tools to identify communities needing immediate intervention

Theme 8: To address capacity and resource issues (human, organizational, technical, and financial) within EPA and the states, within impacted communities and tribes, and among all relevant stakeholders

Continuing with Theme 3, To address and overcome programmatic and regulatory fragmentation within the nation's environmental protection regime, Ms. Briggum stated that this theme assumes that Theme 2 will reveal a number of gaps and shortcomings with respect to existing statutory authorities. Although each statute has its own jurisdiction in terms of addressing different facilities and different media, environmental statutes as a whole fail to work in unison, she said. These holes and gaps, Ms. Briggum stated, should be not just acknowledged but identified and analyzed. She noted that certain solutions have been proposed in the cumulative risk report. These solutions include multimedia, community-based initiatives involving several offices and implementing a wide range of approaches, including comparative risk assessment, collaborative planning and scoping, partnerships, and interagency coordination. Adding to Ms. Briggum's presentation, Ms. Subra noted that other agencies contribute to the fragmentation within EPA. These agencies include the Department of Agriculture (DOA), which regulates the application of pesticides and fertilizers; oil and gas conservation agencies that operate at the state level and deal with waste issues on a secondary level; public health agencies that provide primary health care but frequently not environmental care; and state audit programs that reveal expired permits and lack of oversight.

Theme 4, To fully incorporate the concept of vulnerability, especially its social and cultural aspects, into EPA's strategic plans and research agendas, was addressed by Ms. Espinosa. She noted that EPA's *Cumulative Risk Assessment Framework* acknowledges the concept of social vulnerability, which is an important milestone. Vulnerability should be made an integral part of cumulative risk assessment using qualitative as well as quantitative evaluations, she added. Incorporation of vulnerability into EPA's research agendas would require a comprehensive, community-based approach, Ms. Espinosa concluded. Mr. Gonzalez added that ATSDR and NIH both have existing models that incorporate vulnerability as the foundation for environmental exposure.

Ms. Briggum expanded on Theme 5, To promote a paradigm shift to community-based approaches, particularly CBPR and intervention. The term intervention once again stresses the bias for action, she said. CBPR is a term that explains what communities have been doing already for many years, she explained. Elaborating, Ms. Tucker said that the CBPR process provides an opportunity for a community to work with researchers in order to ask questions through quantitative as well as other methods. She added that the cumulative risk report should include a diagram that outlines the CBPR process.

Ms. Espinosa explained that Themes 6 and 7, To incorporate social, economic, cultural, and community health factors, particularly those involving vulnerability, in EPA decision-making and To develop and implement efficient screening, targeting, and prioritization methods and tools to identify communities needing immediate intervention, are essentially tools that EPA can use to understand how available information can be applied to identify cumulative impacts in a community as well as to prioritize the communities that are most burdened. Ms. Hynes added that the existence of different types of knowledge, such as technical knowledge; scientifically based knowledge, including environmental knowledge; legal and social knowledge; social science knowledge; and public health knowledge, gives rise to a hierarchy. This hierarchy must be expanded to include knowledge that communities contribute, she said. Focus groups in communities are important tools for eliciting key insights, information, and data. Mr. Shankar Prasad, Air Resources Board, elaborated on Theme 7, stating that a bias for action cannot be efficiently implemented without an adequate set of tools. The most important tool, he said, is a comprehensive screening tool that goes beyond the current concept of the quantitative risk assessment based on a single pollutant and a single source.

Theme 8, To address capacity and resources (human, organizational, technical, and financial) within EPA and the states, within impacted communities and tribes, and among all relevant stakeholders, recognizes that although resources are available, capacity needs to be built, Ms. Espinosa continued. This theme accounts for the need for training, such as the environmental justice training that would train regulators to negotiate skillfully and would encourage business and industry to participate as partners in the process, she added. This theme also takes into account the research arm of EPA, which can set a long-term research agenda for vulnerability issues, she concluded.

Commenting on the overarching recommendation themes, Mr. Starfield added that it would not be practical for EPA alone to implement these themes and that the NEJAC should consider an important role for the states and other Federal agencies in the process. He suggested that members of the NEJAC along with OEJ adopt a broad outreach strategy to present these themes in forums such as the Environmental Council of the States (ECOS), to DOA, to the Department of Energy (DOE), and to others in order to generate awareness of the cumulative risk report and its expectations.

Responding to Mr. Starfield, Mr. Voltaggio stated that as a Federal regulator in a regional office, he is conscious of the constraints faced by EPA in introducing and staffing a new project and ensuring that it meets the needs of the community. Hence, he noted that Mr. Starfield's point that more responsibilities should be delegated to the states as well as local governments is an important one. In fact, he stated, local government organizations such as county and municipal governments, local planning associations, zoning associations, and zoning boards deal with many permitting and zoning issues that the state and Federal governments cannot keep track of, and their participation in the environmental justice process could prove invaluable.

Next, responding to Dr. Fields's comments, Mr. Voltaggio informed the NEJAC that EPA regional offices have been asked to put together regional strategic plans that reflect priorities in the regional offices that may be different from national priorities. These plans could include funding for environmental justice projects. Although the plans for fiscal year (FY) 2005 are almost complete and preliminary planning for FY 2006 has begun, Mr. Voltaggio said, there is still time for revisions.

At this point, Ms. Espinosa stated that the ongoing discussion underlined the need for members of the NEJAC to outline a strategy for an outreach process to highlight the issues of cumulative risks and impacts for the regulators, polluters, and the impacted communities. In response, Mr. Lee noted that the NEJAC is primarily an advisory body and can help by developing recommendations for EPA and OEJ to disseminate, communicate, and promote the strategies outlined in the cumulative risk report. Individual members of the NEJAC are encouraged to reach out to the different stakeholders on their own, he stated. Ms. Tucker added that although she agrees that EPA has to bear most of the responsibility for implementation of the recommendations, the NEJAC should consider developing a strategy for outreach to the states, including outreach at EPA regional meetings. Ms. Hynes suggested that the implementation strategy also include the risk assessment community. Continuing the discussion, Ms. Henneke pointed out that although most state plans and budgets depend on what EPA instructs the states to do, it is important that the recommendations be relatively simple to comprehend. She also suggested formulating incentives for state governments to participate in the process.

Referring to the recommendation themes in the cumulative risk report, Dr. Sawyers stated that although they are comprehensive, the action items associated with the themes would have to be prioritized and would have to include a robust implementation plan. Referring to Ms. Hynes's earlier presentation, Dr. Sawyers added that the most important concept in the report is that of social capital, and the report needs to address this concept more effectively.

Mr. Williams joined in the discussion with some remarks from a tribal perspective. He suggested that EPA (1) formally recognize tribal and customary law, which may have to take the form of statutory authority; (2) incorporate traditional knowledge while considering capacity and social science issues; (3) include tribes as co-lead or cooperating agencies in the collaborative problem-solving model; and (4) include a recovery or restoration plan for lost tribal resources, such as important species and plants in the implementation plan.

Dr. Ramirez-Toro presented her comments in writing to the NEJAC work group. Some of the highlights of her written comments are as follows. With respect to Puerto Rico, which is neither a sovereign nation (like the tribes) nor a state but is designated as a U.S. commonwealth territory, primacy agreements that define power-sharing and distribution of resources should incorporate interagency and intergovernmental approaches to address issues of cumulative impacts in impacted communities in Puerto Rico. In response, Dr. Sawyers noted that several states, including Maryland, are renegotiating their performance agreements and in some cases their environmental partnership agreements. He stated that this would be an opportunity to integrate some of the issues being discussed into these agreements.

Ms. Nelson suggested several improvements for the cumulative risk report. Referring to the concept of vulnerability, Ms. Nelson expressed concern that the matrices developed to study the cumulative risk and impact issues in communities portray the communities as vulnerable, deficient places, which could discourage communities from taking action. She suggested including positive comments on community capacity in the matrices and identifying opportunities that can be used as a basis for community development. Next, addressing the issue of contracts with universities, Ms. Nelson suggested the incorporation of environmental justice requirements into the grant fulfillment criteria. Third, regarding use of community-based research, she stated that the high volume of information makes it challenging to efficiently convey the information to communities. Hence, she pointed out that there is a need for a better graphical representation of the community as it progresses toward sustainability. Finally, referring to implementation of the recommendations, Ms. Nelson suggested that the NEJAC members make specific commitments for implementation of the recommendations within their respective frameworks.

Mr. Kenneth Warren, Wolf, Block, Schorr, and Solis-Cohen and acting chair of the Enforcement Subcommittee of the NEJAC, noted that the themes and language of the cumulative risk report set an excellent tone for marketing the ideas to the various stakeholder groups. As a lawyer, he said, he would be interested in knowing what types of regulatory changes would be required to adopt this new paradigm. Suggesting a model adopted by the Delaware River Basin Commission (DRBC), which manages the water resources of the Delaware River, he stated that multi-stakeholder processes contribute significantly to building regulatory as well as planning capacity. Providing examples to illustrate his point, Mr. Warren noted that DRBC recently formulated a Total Maximum Daily Load (TMDL) for polychlorinated biphenyls (PCB) that would indicate the sum of the allowable loads of PCBs from all contributing point and nonpoint sources established under Section 303 of the CWA. The TMDL development process, he said, involved a technical advisory committee with representatives from various stakeholder groups as well as from the various states represented on the DRBC. A similar model, he concluded, would be useful for setting up a regulatory process to implement the recommendations in the cumulative risk report. With respect to multimedia concerns, which are important in studying cumulative impacts, he suggested that work already being done in the agency on multimedia approaches, such as the use of facility-wide permits, be used as a foundation for a strategy to address multimedia concerns. Finally, addressing the bias for action, Mr. Warren stated that it was important to make a distinction between whether the administrative agency would be taking the action, which would require the establishment of rules and regulations and a public comment process, or whether the administrative agency would motivate others to participate in a voluntary process, which would then require a cultural change.

Finally, Ms. Kaplan added that from the perspective of a state regulator, it would be invaluable if EPA were to put together a better guidance document on the existing tools that may be used to implement the bias for action. Better guidance would also encourage consistency from state to state and from region to region.

3.8 Discussions and Dialogue Between the Executive Council Members on the Action Items Proposed in the Cumulative Risk Report

On April 14, 2004, the NEJAC deliberated on the development of an implementation framework for the action items under each of the eight overarching recommendation themes in the cumulative risk report. Mr. Lee suggested that during the deliberations, the NEJAC prioritize each action item with respect to implementability; available resources; urgency; and time required, such as short-term (one year, before the end of FY 2005), intermediate (two to three years, FY 2006 and FY 2007), or long-term (five years or more, FY 2008 and beyond).

Dr. Fields facilitated the discussion. He suggested that the discussion should proceed by considering action items under each theme and their implementation time frames. Dr. Ramirez-Toro suggested that a new recommendation theme be added to the existing eight themes; this new theme would involve the designation of a coordinator to ensure collaborative partnerships between the regions and EPA Headquarters.

Discussion of Action Items under Theme 1

Beginning with Theme 1, Dr. Fields discussed the first action item, that EPA initiate multimedia toxic reduction pilot projects in each of the ten EPA regions. Mr. Williams; Dr. Sawyers; and Mr. Charles Collette, Florida Department of Environmental Protection and member of the Enforcement Subcommittee of the NEJAC, all agreed that this could be a short-term initiative. Mr. Williams added that he would like to see more representation in the pilot projects from the 572 tribes in the country instead of at least one tribal community as mentioned in the cumulative risk report. Dr. Sawyers suggested translating the action items into guidance to assist other EPA programs in integrating the bias for action and other themes into their agendas. Ongoing pilot projects in the regions could be illustrative of the application of the themes, Dr. Sawyers noted. Mr. Collette also called for the development of performance measures for these pilot projects.

Dr. Fields responded to Mr. Collette that when EPA and OEJ award the new collaborative problem-solving grants, they would be developing performance measures with the grantees. These measures would document the goals and expectations for the grantees during the partnership effort.

At this point, Mr. Starfield interjected that the NEJAC recommendations should emphasize that it is a priority that EPA develop a program of community-based projects to deal with environmental justice communities with a bias for action and should allow EPA to decide the best method of implementation, and whether that would require pilot projects or not. Dr. Fields respectfully disagreed with Mr. Starfield, stating that although taking action is the priority, pilot projects are only a mechanism for facilitating action. The NEJAC work group suggested pilot projects as a way to ensure that the agency would step up and commit to a specific set of actions, he stated.

Proceeding with the next action item, the designation of at least five underserved, disadvantaged, environmentally overburdened communities in each EPA region, Ms. Subra, Mr. Sanders, and Dr. Sawyers agreed that this effort should be designated as intermediate and should immediately follow the pilot projects. Dr. Sawyers emphasized that states in conjunction with EPA should play a critical role in designating the communities. He also stated that the lessons learned in the pilot projects should be incorporated into the designated communities. Ms. Eady suggested that the first two action items be combined so that the communities chosen become the subjects of the pilot projects. Responding to Ms. Eady, Dr. Fields revealed that EPA Region 4 has in fact designated some communities that are underserved, disadvantaged, and environmentally overburdened as the subjects of the region's pilot projects.

Noting that the preceding discussion led to the next action item, development of criteria for selecting the pilot projects, Dr. Fields referred to Dr. Sawyers's earlier statement expressing the need for a guidance for choosing pilot project candidates. Dr. Fields added that the guidance should describe the general information that would be needed about a community to decide whether that community would be an appropriate candidate. Mr. Lee noted that the basic issue is one of asset building and of looking at communities not just as sets of problems and deficits but in terms of potential assets and opportunities. A similar potential, he noted, exists within EPA. Mr. Weinstock and Dr. Sawyers agreed that the action item should be a short-term initiative. Mr. Weinstock insisted that the existing tools be assessed before new ones are developed. Ms. Henneke suggested that the basic criteria be chosen first and then refined over time after selection of the pilot projects. Mr. Wallace, supported by Ms. Henneke, emphasized an iterative process involving adaptive management, noting that some basic criteria would be needed for selecting the pilot projects but that these criteria would need to be redefined based on lessons learned during the selection process.

Dr. Sawyers, Mr. Gonzalez, and Mr. Collette concurred that the next action item, that EPA should develop a toolkit for early implementable actions, should be an intermediate goal. Mr. Prasad commented that because every action item would rely on the toolkit for guidance, the toolkit should be an ongoing effort—a short-term goal to begin with and modified in conjunction with pilot projects along the way. Ms. Briggum expressed concern that if all action items are designated as short-term, the workload for EPA would be too high and the quality of the final product would not be as good. She suggested that the development of the toolkit be more of an intermediate process, building on the initial pilot projects and lessons learned from them. Ms. Henneke responded that because pilot projects already exist in most regions, an intermediate goal would be more practical. Joining in the discussion, Mr. Juan Parras, De Madres a Madres, Inc., and member of the Enforcement Subcommittee of the NEJAC, stated that although the states and EPA have greater control in selecting the pilot projects, each region should decide which of the 64 action items would be short-term, intermediate, or long-term in nature.

Ms. Subra suggested the consolidation of Theme 1 action items that refer to pilot projects in order to make the recommendations concise and easier to understand. Agreeing with Ms. Subra, Ms. Harris stated that the process should establish more of a framework or guidance on how to implement the pilot projects rather than be too specific or too prescriptive. She said that there should be flexibility to deal with

specific situations. Ms. Nelson suggested building a matrix that would define and consolidate the action items and also distinguish them in terms of change in agency action, change in agency thinking, and change in agency capacity. She also suggested that the NEJAC discuss only those action items that most of the members did not agree on with respect to the implementation time frame instead of each one in detail. Mr. Lee responded that the real value of the discussion was that it would allow each member of the NEJAC to comment on the action items, and hence it was important to go through the process of discussion.

Discussion of Action Items under Theme 2

The first action item under Theme 2 called for utilization of existing statutory authorities and for the Office of General Council to issue a memorandum identifying authority to evaluate and address cumulative risks and impacts in the statutes that it administers and delegates. Although Mr. Collette opposed such an action and asked that the NEJAC reconsider whether to include this action item for legal reasons, Mr. Wallace and Mr. Harris supported the action item, stating that it would be helpful to have such a memorandum. Mr. Wallace added that in the absence of regulatory and statutory authority to implement the recommendations in the cumulative risk report, the OGC memorandum would provide the required legal backup to states and regions; he also stated that this action item should be an intermediate goal. Mr. Harris, however, thought that this could be accomplished within a year, making it a short-term goal. Mr. Collette again cautioned against the idea but recommended that if the NEJAC did insist on going ahead with it, the NEJAC should consider also recommending that EPA provide some direction to the OGC and have a dialogue with the OGC *before* OGC issues the memorandum. Mr. Williams stated that it would also be helpful to involve tribal attorneys in the process because many tribal issues also require clarification.

Moving on to the next action item, that OGC or the EPA program offices provide an inventory that is easily accessible to communities and that describes the procedures by which cumulative risks and impacts can be evaluated based on existing authority, Mr. Parras indicated that this should be accomplished as soon as possible, making it a short-term goal. Ms. Henneke stated that although it was important that the information be available as soon as possible, in reality it could only be accomplished over two to three years, making it an intermediate goal.

The next action item would require that EPA translate the authorities articulated in the OGC memorandum into guidance for the permitting authorities that would advise on how best to incorporate cumulative risks and their reduction into facility permitting processes. Dr. Sawyers indicated that this would be an intermediate goal. Other members of the NEJAC concurred.

The next action item stated that EPA, in completing the materials discussed earlier, should identify the sources of adverse cumulative impacts that it has no or incomplete authority to control and for which state or local regulation has provided inadequate or inconsistent control. Dr. Sawyers responded that this would be a long-term effort because of the complexities involved, and other members of the NEJAC agreed with him.

The next action item would require that EPA's program offices compile a web-based inventory of case studies of communities and regulatory programs where cumulative risks and impacts have been factored into decision making to provide practical guidance on how to use existing laws and procedures. Mr. Harris and Ms. Espinosa agreed that this would be a useful effort but would be more of an intermediate goal. Ms. Kaplan disagreed, saying that this effort would be an ongoing effort that would require timely updates. Mr. Williams noted that many inadequacies come to light with respect to issues of tribal health and well-being, such as gathering resources for subsistence or ceremonial purposes or for medicines. Most of these resources, he stated, are unregulated. Dr. Sawyers concurred with Mr. Williams.

Dr. Fields suggested moving on to the next action item, that EPA create incentive programs to maximize early, voluntary efforts to go beyond compliance in order to reduce cumulative impacts. Ms. Espinosa

suggested that EPA and the NEJAC capitalize on past work in this area, including the *Pollution Prevention Report* that was discussed at the last NEJAC meeting, and not reinvent the wheel, indicating that this would be an intermediate and ongoing effort. Dr. Sawyers stated that while in principle he agreed with Ms. Espinosa but that he would like this to be a short-term effort, especially when states like Maryland are already working on incentive projects or incentive-based approaches for compliance assistance.

Mr. Parras totally opposed the action item, stating that from a community perspective he had not had very good experiences with voluntary programs. He elaborated that although numerous voluntary incentive programs exist in Texas, companies have simply chosen not to take action regardless of incentives. He also pointed out the issues associated with grandfather clauses in Texas state legislation that exempt companies from complying with better air emission standards and give them the option of not participating even if given incentives; he noted that this essentially meant that regulators are paying companies to not comply with regulations. Dr. Sawyers disagreed, stating that he has had good experiences with some voluntary programs. Mr. Parras clarified his point, stating that incentive programs should not give industries a long time (for example, 10 years) to comply, because this would only lengthen the process instead of providing a solution. He insisted that requirements be made mandatory, giving industries a limited period of time such as 30 to 90 days to comply.

In response to Mr. Parras, Mr. Harris and Ms. Briggum agreed that the incentive programs should insist that businesses go beyond compliance. Dr. Fields added that Mr. Parras's concern was well founded, and past issues have highlighted community concerns that incentive programs would cause public health to be compromised. Illustrating his point, Mr. Parras cited the example of a report recently released by the Texas Public Interest Research Group (TexPIRG), a state-wide public interest advocacy group. The report stated that not too many companies joined a voluntary program of responsible care sponsored by the American Chemistry Association. Furthermore, the report stated that even among those companies that had joined the program since 1990, over 7,000 accidental releases or accidents in plants had been reported. Mr. Williams noted a similar experience some years earlier with a national voluntary watershed program, for which strict time frames and minimum standards had to be established in order to ensure adequate resolutions of the issues.

Commenting on the previous discussions, Mr. Prasad expressed concern that the focus was only on pollution prevention, and he noted that options should also include pollution reduction. Ms. Briggum noted that pollution reduction was an important concept and had been addressed in the *Pollution Prevention Report*.

Mr. Weinstock stated that the action item could be divided into short-term and intermediate goal. In the short term, he added, better targeting of EPA's existing voluntary programs that deal with pollution prevention and other initiatives focusing on businesses, would be a starting point. The intermediate effort would involve improvising the program to make it more effective, he concluded.

Dr. Sawyers re-emphasized the need to continue the use of voluntary projects to achieve and go beyond compliance. He cited a successful project in Park Heights, Maryland, in which several hundred auto body shops that were out of compliance were granted immunity for a certain period of time with the full support of the community so that they could achieve compliance.

Referring to Mr. Parras's comments about paying to pollute, Ms. Espinosa suggested that he work with her, Ms. Briggum, and Mr. Lee to revise the language of the cumulative risk report in order to include certain recommendations that would be useful to communities and that would ensure that EPA and the states do not tolerate noncompliance by businesses. Mr. Parras agreed with this suggestion.

The last action item under Theme 2 was revised by Ms. Harris, so Dr. Fields requested that she explain it in her own words. Ms. Harris, speaking from the perspective of enforcement, stated that she modified the action item because it originally did not accurately reflect the work of the enforcement and compliance assurance program. Explaining the revisions, she stated that OECA should investigate ways to target

communities with high cumulative impacts and to employ cumulative risk reduction as a goal for and in the context of injunctive relief and supplemental environmental projects. This effort would be an intermediate one, she explained, because it would require that OECA work closely with states and EPA program offices. The NEJAC work group agreed to incorporate the changes into the cumulative risk report.

Ms. Eady then requested clarification from the NEJAC work group regarding the definition of communities of high cumulative impact. Ms. Briggum responded that the term reflects a comparison with other communities and that it would be beneficial to have a threshold that defines high. Mr. Lee also clarified that cumulative impact refers to multiple impacts. Dr. Fields agreed that Ms. Eady had raised a valid point and stated that appropriate clarifications would be included in the cumulative risk report.

Mr. Sanders requested clarification of the action item that called for EPA to identify sources of adverse cumulative impacts that it has no or incomplete authority to control and for which state and local regulation has provided inadequate or inconsistent control. He stated that including local regulation in the action item would exponentially increase the amount of work to be done. Ms. Briggum responded that although this effort may involve a significant amount of work and would have to be broken out in terms of time frame, it was important to include it in the action item, because communities are often most concerned about local ordinances rather than Federal regulations. These local ordinances are inconsistent, she continued, with respect to the amount of paperwork required to obtain a permit and other similar issues. Dr. Fields added that communities have indicated that it is important for local government and not just the state and EPA to be involved in understanding community issues.

At this point, Ms. Nelson informed the NEJAC that she and Ms. Espinosa, with the concurrence of Ms. Eady and Mr. Lee, had drafted a form for the NEJAC members to fill out. The members were to use the form to state their specific commitments to disseminate and communicate the message of the cumulative risk report.

Ms. Eady then informed the NEJAC about an article published in *The Times-Picayune* that morning about Ms. Matthews, a member of the community impacts panel whose earlier presentation on the cumulative risks and impacts in the Four Corners community was the subject of the article. The article also highlighted the public comment session scheduled for that evening and the NEJAC meeting, Ms. Eady noted.

Ms. Henneke inquired about what kind of concise briefing document on the meeting would be available that could be shared with various managers. Mr. Lee replied that an executive summary of the meeting would be available soon. Ms. Nelson emphasized the need for a graphically interesting, concise executive summary. Dr. Fields thanked Ms. Nelson for raising this matter, pointing out that a fact sheet briefly describing the cumulative risk report would also be a useful communication tool.

Discussion of Action Items under Theme 3

Theme 3 addresses methods to examine and overcome programmatic and regulatory fragmentation within the nation's environmental protection regime.

The first action item under Theme 3 recommended that EPA conduct a systematic examination of issues related to programmatic and regulatory fragmentation that contribute to cumulative impacts, identify environmental protection gaps resulting from programmatic and regulatory fragmentation, and develop strategies to address the pitfalls of such fragmentation. Dr. Sawyers stated that the requirements of the action item were difficult to comprehend and that this would be long-term effort. Dr. Fields and Mr. Williams agreed with Dr. Sawyers. Mr. Williams added that it would be helpful to have a format for Federal, state, tribal, and local authorities that would specify the rules of the road. This format is important because to have a pilot project for a pilot planning area, the participants would need to understand the applicable Federal, state, and local government rules, especially because those rules vary with each jurisdiction. Dr. Fields noted the magnitude of the task, stating that on the Federal level alone,

13 statutes would need to be considered. In addition, the state, local, and tribal laws would have to be addressed.

Ms. Subra suggested consolidating the first four action items under Theme 3 into one stepwise action item that would start off as a short-term effort (with the first half of the first action item) and then continue into a long-term effort with the development of a strategy. A similar suggestion was made by Ms. Tucker, Dr. Fields, and Dr. Sawyers for the second action item, which would require EPA to create an advisory committee to examine issues related to programmatic and regulatory fragmentation. They suggested dividing the action item into two sections, the creation of the advisory committee being a short-term effort and examination of the issues being done over time. Ms. Subra noted that the work for the advisory committee would only follow the first action item and hence it would not be a good idea to set up the committee too early. Dr. Sawyers then asked whether any other agencies, such as the National Advisory Council on Environmental Policy and Technology (NACEPT), could assist with this particular task. Dr. Fields directed the question to Ms. Subra, a member of NACEPT. Ms. Subra agreed to bring the issue before NACEPT for its consideration.

Ms. Briggum suggested that before other agencies such as NACEPT were approached, the NEJAC's role should be better defined because there is well-balanced representation of community groups within the NEJAC that may not exist within NACEPT. Ms. Tucker added that EPA could also use the expertise of the Environmental Law Institute (ELI) to put together a document on environmental justice and existing environmental statutes and to address issues of regulatory fragmentation.

The third action item included multiple tasks for EPA, such as to (1) develop, integrate, and coordinate an approach to unify resources and maximize strategies for current environmental health assessment; (2) provide recommendations or procedures to eliminate the barriers and challenges caused by fragmentation problems in program processes; (3) develop new or revised regulations and programs; and (4) establish an interagency collaborative effort to coordinate and develop an integrated approach to program services and regulatory monitoring. With the concurrence of Mr. Lee, Dr. Fields informed the NEJAC that the multitask effort would involve an interagency environmental justice work group. Ms. Nelson stated that this effort should be started immediately, given the vast amount of work that it would involve. Dr. Fields agreed with her, stating that he recognized that the effort may be a long-term one, but to get it done, it would have to be started as soon as 2005 with targeted completion in 2007 or 2008. Ms. Tucker proposed that item 1 be a short-term effort, item 2 be an intermediate effort, and items 3 and 4 be long-term efforts.

Continuing the discussion of regulatory fragmentation, Mr. Lee shared a report published in 2000 by the National Academy of Public Administrators (NAPA) that discussed fragmentation. He stated that while finalizing the cumulative risk report, the NEJAC work group should keep in mind the key questions that would be raised by communities as well as agencies with respect to issues of cumulative risks and impacts. Dr. Fields agreed that the cumulative risk report would have to be recrafted in order to better distinguish between short-term and long-term goals.

Mr. Weinstock pointed out that in theory it would be possible to start any specific task at this point in time but that it would be impractical to do so because of limited resources. Keeping this in mind, he said, the NEJAC would have to prioritize tasks. In response, Dr. Fields stated that the NEJAC work group would definitely take this point into consideration when it reconvened in May 2004 to further discuss completion of the cumulative risk report and would recommend the tasks that could be reasonably completed in FY 2005, FY 2006, and FY 2007, and beyond. He noted that before this could be done, however, the work group would have to look at the whole picture and assess some new short-term priorities that the work group believes require immediate attention. Ms. Espinosa agreed with Dr. Fields and Mr. Weinstock that the work group should focus on some real priorities to avoid resource conflicts. She encouraged the NEJAC as well as those providing public comments on the cumulative risk report to help the work group decide what the real priorities are.

Dr. Ramirez-Toro noted that different agencies are not completely fragmented in their approach to cumulative risks and impacts and stated that the recommendations should build on what currently exists in EPA in terms of interagency communications. Mr. Sanders noted that it would be useful to organize the action items, as suggested earlier by Ms. Nelson, in terms of change in agency action, change in agency thinking, and change in agency capacity, which would help in prioritizing the action items as short- and long-term efforts. Mr. Walter Handy, Cincinnati Health Department and member of the Health and Research Subcommittee of the NEJAC, wondered whether agency sponsorship and current availability should be considered as variables in the discussion. Mr. Lee stated that the efforts for better understanding of cumulative risks and impacts are being sponsored by numerous agency offices both at the Headquarters and regional levels. Ms. Harris also noted that the EPA Executive Steering Committee consisting of Deputy Regional Administrators and Deputy Assistant Administrators would lend its guidance and expertise to the NEJAC work group in terms of the various offices that would be able to participate in the process. Dr. Fields agreed that this topic could be discussed at the next Executive Steering Committee meeting.

Discussion of Action Items under Theme 4

Theme 4 concerned full incorporation of the concept of vulnerability, especially its social and cultural aspects, into EPA's strategic plans and research agendas.

The first action item stated that EPA should make it clear that although quantitative evaluation of vulnerability is precluded in almost all cases by the scarcity of scientific knowledge and understanding of the subject, this is not an excuse to ignore vulnerability. Vulnerability should be an integral part of cumulative risk assessment even if it must be analyzed using qualitative measures. Dr. Sawyers commented that in the context of the cumulative risk report, it is absolutely necessary that this action item be addressed in the short term because it is a fundamental part of the report. If this is not done, he stated, the report will lose some of its momentum.

Ms. Henneke noted that this effort would involve assessment of vulnerability from a different point of view and was different from previous efforts because it emphasized social and cultural aspects. Hence, she although while it could be started in the short term, it would have to continue for a longer period of time. In response to Dr. Fields's request for clarification, she stated that some states and even some programs in EPA) would not receive this concept very well and that it would require a great deal of outreach to ECOS and other organizations in order to clearly communicate this issue. Mr. Warren pointed out that this action item does not provide adequate guidance to the decision-maker on what to do with information when it is received, how to evaluate it, and specifically how to define vulnerability in a cumulative risk assessment. Dr. Fields agreed with Mr. Warren that there are serious implementation issues associated with this action item and stated that increasing its specificity with respect to definitions of terminology as well as widespread outreach would allow the concepts to gain acceptance.

The next action item would require EPA to direct all its offices to develop strategic environmental justice action plans for incorporating the concept of vulnerability into their operational paradigm. Dr. Fields noted that this item could also be applicable to the regional strategic plans referred to earlier by Mr. Voltaggio. Dr. Sawyers expressed full agreement with earlier comments by Ms. Henneke and Mr. Warren and noted that this action item would be a short-term exercise but would depend on further explanation of other concepts. Ms. Tucker informed the NEJAC that EPA only recently finalized its five-year strategic plan and inquired about other opportunities to incorporate the concepts beyond environmental justice action plans. Mr. Lee responded that other opportunities would include EPA's Human Health Research Strategy, which focuses on populations; a framework for cumulative risk assessment that is being developed by the Cumulative Risk Technical Review Panel; a series of workshops; issue papers; and, pilot projects. Ms. Harris noted that EPA's five-year strategic plan is being developed for FY 2005 to FY 2007 and hence could include those action items that are intermediate efforts. Also, she noted that because the action items would require a significant amount of resources, a specific budget for it should be allocated in the FY 2007 budget.

Ms. Tucker suggested revising the action item to include the other opportunities mentioned by Mr. Lee. Ms. Nelson added that the meaning of social and cultural with regard to environmental justice would have to be clearly defined and better explained using examples. Ms. Tucker further suggested revising the theme statement by not including social and cultural, and instead including these concepts in the description. Ms. Henneke supported this suggestion but added that because these concepts go to the heart of vulnerability, providing examples would be useful to clarify the terms in the context of cumulative risks and impacts. Ms. Kaplan agreed with Ms. Tucker and Ms. Henneke and stated that although she had no language suggestions at the moment, it was important to educate the states on the significance of the issues being discussed. Mr. Handy also recommended that states look beyond physical sciences and train their staff in the social sciences as well, noting that newly trained staff would provide support in the implementation of the recommendations suggested in the cumulative risk report. In response, Dr. Fields noted that a series of recommendations in the report suggest hiring of staff members that possess capability and expertise in the social sciences as part of the resource pool. Mr. Williams reiterated Ms. Tucker's sentiment that the statement of the theme could be misleading, especially from the tribal perspective.

Mr. Lee responded that Theme 4 was perhaps the most important one in the cumulative risk report, because it was a major paradigm shift and addressed a fundamental concept. He noted four main challenges in the implementation of this theme. The first challenge is to find the right language to convey the point, which would require a series of discussions, dialogue with communities and other stakeholders, scientific symposia, stakeholder forums, and advisory panels that would clarify how this concept is being understood and integrated. He further stated that at the Coalition for Environmental and Economic Balance in California, in which he participated along with Ms. Tucker, Ms. Briggum, and Mr. Prasad, social issues were discussed. The second challenge concerned the third action item, which called for EPA to incorporate the concept of vulnerability into its definition of disproportionately high human health or environmental impacts. Mr. Lee pointed out that social and cultural issues are not addressed in the existing environmental statutes and that this fact presents a challenge to the integration of the social and cultural concepts within the context of regulatory statutes. Third, he pointed out that although pilot projects are important to the understanding of fundamental concepts, it is a challenge to effectively design pilot projects that will provide lessons with respect to these concepts. Fourth, he noted that, as Ms. Hynes had pointed out, social science and public health literature is beginning to lay the foundation for a future course of action.

Dr. Fields then asked Mr. Lee when he believed that EPA could reasonably incorporate the concept of vulnerability into the definition of disproportionately high human health or environmental effects. Mr. Lee responded that EPA is on the verge of doing this conceptually and would require an intermediate effort to translate the concepts into the tools required to provide robust and predictive indicators. He stated that at the current NEJAC meeting, the Enforcement Subcommittee would be discussing targeting tools being developed by OECA that incorporate disproportionate human health and environmental effects. Ms. Harris added that the project that Mr. Lee was referring to has taken about a year, within OECA and that a hands-on tool for inspectors who handle cases was yet to be established. The next step would be to encourage other EPA offices and the regions to learn from OECA's experience and continue the effort instead of starting over.

Ms. Espinosa stated that the current list of recommendations were drafted with the thought of provoking a discussion, not only within the NEJAC but outside as well. She also pointed out that like the tribal communities, the Hispanic community faces issues with regard to the cultural aspects. Mr. Gonzalez added that the initial work on this issue was started with the publication of EPA's *Framework for Cumulative Risk Assessment*, which has to be taken into account before other tasks are initiated. Some suggestions that are new and not part of the framework, such as developing a scientific agenda taking the concepts discussed at the NEJAC meeting into consideration and developing indicators for vulnerability assessments, would have to be addressed as well, he noted.

Dr. Fields then began a discussion of the action item that would require EPA to convene and promote community dialogues, scientific symposia, expert panels, stakeholder forums, and advisory panels in order to fully discuss the concept of vulnerability and obtain input on how to incorporate vulnerability into its operational practices and research agendas. Ms. Nelson responded that this would be a good step and would require collaboration with the health community and others. Ms. Espinosa added that the action item was ongoing at EPA but that it would have to continue and advance the effort. Mr. Lee noted that EPA's *Human Health Research Strategy* had defined vulnerability and susceptibility only from the biological point of view. Hence, a great deal of education would be required to communicate the meaning of these concepts in order to continue and advance EPA's efforts, he concluded.

Ms. Tucker noted that with respect to the fifth action item, which would require EPA to integrate measures of vulnerability into existing as well as new screening tools, EPA should first develop the measures. She also suggested that indicators be used instead of measures. Dr. Fields noted that the fourth and fifth action items which required EPA to issue explicit guidance on the meaning of vulnerability, are tougher issues that would be clarified over time. Mr. Prasad pointed out that although this effort would occur over the long term, it was important to remember that the whole reason for the bias for action was not to wait too long before initiating action. Hence, he said, the effort should commence in the next two to five years and should incorporate ongoing research into the risk assessment protocol down the line.

Discussion of Action Items under Theme 5

Theme 5 called for promoting a paradigm shift to community-based approaches, particularly CBPR and intervention. The first action item recommended that EPA institutionalize a paradigm shift to community-based approaches, building upon and expanding the use of the CBPR model. Ms. Espinosa emphasized that the NEJAC work group wanted EPA to build upon and expand ongoing efforts at the agency. She suggested adding another category, ongoing, to the time frame classification of the action items. Ms. Nelson stated that many of the points under Theme 5 were in fact mind sets or ways of thinking and not action items and that the work group would have to distinguish between them. She added that the first action item was a mind set. Dr. Fields agreed with Ms. Nelson's comments, stating that the work group would have to reformulate some of these points into specific action items.

Mr. Williams noted that with respect to the community-based approaches, in areas involving multiple communities, the Federal role of EPA and the fiduciary role of tribes should not be overlooked. He said that where tribes are in a minority, they could be outnumbered by the surrounding communities in the decision-making process. To ensure that local communities do not influence the direction of a decision to suit their particular needs, Federal protection provided either by trust or by law, would be necessary, Mr. Williams said.

Ms. Kaplan then stated that it would be incorrect to refer to the community-based approach as a paradigm shift because such work is ongoing at EPA. Ms. Espinosa clarified that the paradigm shift refers to the entire agency as opposed to individual offices. Ms. Tucker pointed out that CBPR was not being done; hence, this would be a new element. Mr. Prasad noted that this issue was a challenge in his agency too, and although the agency had included the concept in its policy statements and had identified specific action items, they were found to be ineffective over the last two years. He suggested addressing the issue of community-based versus community-directed, as what an agency might think of as a research focus may not correspond with community needs. In response, Ms. Tucker remarked that one of the criteria for CBPR in the cumulative risk report is that it be community driven. Although it is not reflected in the action item, community-driven is referred to in the report, so the action item should be rephrased accordingly, she said.

Regarding the second action item, that EPA should adopt and expand the use of CBPR and intervention in its training, outreach, and education programs, Ms. Tucker noted that this would be a short-term effort and would then continue as an ongoing process. She stated that although a significant part of the training would occur at the local level, training at the community and tribal levels is also important. She suggested

that for regulatory agencies, there ought to be an ongoing training program. Ms. Nelson reiterated the need for consolidation of action items two, three (formulating and implementing a clear plan to utilize CBPR), and four (requiring use of CBPR in guidelines) into one concise action item. Clarifying her remark regarding action item three, she stated that CBPR should be part of the ten proposed multimedia and cumulative risk pilot projects that would be initiated in the short term.

Ms. Harris noted that the current discussion of CBPR should be integrated into the recommendations for the environmental justice Collaborative Problem-Solving Model. The action item, she stated, would work as a stand-alone as well as when integrated as part of an overall agenda, given the opportunity to develop training and learn from the pilot projects. Ms. Tucker stated that she had made a similar recommendation earlier; CBPR should be the first step toward the collaborative partnership process, which at the local level would allow the community to identify local partners, and local experts whom they want to be involved in the research agenda. Dr. Sawyers suggested studying complementary efforts in other agencies like the National Institute for Environmental Health Sciences (NIEHS) and CDC that engage in CBPR; the recent grant commitments at NIEHS were of special interest. Ms. Tucker responded that CDC was one of the founders of CBPR.

Mr. Weinstock expressed concern about the requirement that a community-based project should always have CBPR. He stated that this contradicted the bias for action theme. He cited an example in Cleveland, Ohio, where a successful air toxics action-oriented project was implemented in two different communities with little or no research agenda. Ms. Tucker responded that action is innate to CBPR and that research does not have to be complete in order to initiate action. Secondly, she noted that the CBPR process also identifies existing research data. It is for the community to determine whether the research data is already in place. Dr. Fields clarified that the research that Ms. Tucker referred to was not the classical research that is normal within EPA but the collection of data by the community, such as the number of people who have developed different types of cancer in a community, how many have died, and where hazardous materials may have been deposited. Ms. Tucker stated that in addition to community knowledge, CBPR included traditional and quantitative research data. She noted that if CBPR had been available ten years ago, the current understanding of cumulative risks and impacts in communities would have been far advanced.

Ms. Harris stressed the need for a common understanding of the terms and concepts in the cumulative risk report, stating that EPA offices need to be re-educated and given an opportunity to re-process terms such as CBPR and environmental justice. This approach would also be cost-effective in terms of the bias for action, because it would provide lessons learned as well as existing data, she added.

Mr. Lee joined in the discussion, stating that the situation varies for each community and that CBPR should be incorporated to the extent practicable or needed. This determination would depend on multi stakeholder processes such as planning and problem formulation selection of the methods to be used for assessment. Mr. Gonzalez commented that CBPR ensures that the community is an equal partner in the whole process. Mr. Handy suggested that the NEJAC work group expand on the definition of research.

The last action item states that EPA should provide education to state and local governments, business and industry, academia, and other institutional entities about CBPR. Dr. Sawyers stated that although he advocated CBPR, in some cases research is not necessary and communities demand only intervention and mitigation efforts. In response, Ms. Nelson emphasized that the major thrust of the action item is a community-based approach, especially with regard to community-driven research. Mr. Williams agreed with Ms. Nelson that CBPR is really about data collection. He also stated that some communities resist having research done because a great deal of information is already available on issues that the communities are not concerned about. Rather, communities are always interested in research that addresses the future of their children.

Discussion of Action Items under Theme 6

Theme 6 recommends that EPA incorporate social, economic, cultural, and community health factors, particular those involving vulnerability, in EPA decision-making.

The first action item states that EPA should develop a commitment to incorporate social, economic, cultural, and community health factors in the EPA decision-making process, including decision-making regarding risk assessments. Ms. Eady suggested clarifying that the action is to incorporate and not develop a commitment. Ms. Nelson suggested consolidating the first and second action items stating that the effort would be of an intermediate nature.

Mr. Handy suggested a change in the format of the discussion. He suggested that the NEJAC discuss the last three themes and related action items only enough to get an understanding of what they mean and not try to decipher whether they would be short-term, intermediate, or long-term. He further suggested that they all be classified as toward the end of the discussion high-, medium-, or low-priority items. Ms. Subra noted that the social and cultural issues were also raised under the topic of vulnerability and that it would help to consolidate the two action items. She also suggested putting all the action items in one list to avoid repetition. Mr. Williams suggested incorporating traditional knowledge verbiage throughout the recommendations.

The next action item stated that EPA should integrate social, economic, cultural, and community health factors into its environmental justice training program. Mr. Lee stated that this is beginning to be done at EPA in terms of examining disproportionate impacts.

The next action item would require EPA to conduct a systematic review of the research literature in order to identify and assess environmental health factors related to income, race, and ethnicity as a first step in development of usable indicators. This action item would be patterned after EPA's recent development of environmental health measures for children. Ms. Nelson and Ms. Subra reiterated the need to reduce the redundancy in the action items.

Dr. Fields added that the action items could be consolidated to state that EPA should strengthen its capacity for building bias for action by recruiting community health, environmental health, and social scientists into the workforce; supporting community-based organizations and researchers; and undertaking community-based pilot projects in all the regions. This could perhaps be achieved by changing hiring patterns in the agency, he stated.

Mr. Weinstock stated that Dr. Fields's suggestion could be broadened by specifying the skills required instead of specific credentials. Mr. Weinstock added that although EPA does need more social scientists, it also needs more people who are trained or skilled in interacting with communities. Dr. Ramirez-Toro concurred, stating that by clearly defining what capacity must be built, it will be easier to predict the resources needed. Dr. Sawyers also agreed with Mr. Weinstock, emphasizing the need for the nontechnical expertise to effectively communicate with impacted communities. Mr. Sanders requested that the NEJAC work group make a more precise recommendation to the agency regarding the workforce development initiative that is going on within the agency. Mr. Handy stated that the focus should also be on developing strategic partnerships with state and local agencies in building capacity. Ms. Tucker cautioned the work group against the use of language such as goal of action and social change, stating that if EPA and other regulatory agencies do what they are supposed to do, they would not have to bring about social change.

Mr. Williams suggested that a group of experts within EPA form a short-term think tank and focus on what the agency should do to generate further action. Dr. Fields replied that an earlier recommendation called for an external advisory committee to be set up to generate similar results. Mr. Williams further explained his point, stating that in dealing with the Pacific Sailing Commission, the tribes hired one person to focus on contacting experts and gathering information. This person's efforts were one factor in the development of a treaty between the United States and Canada.

Discussion of Action Items under Theme 7

Theme 7 concerns the development and implementation of efficient screening, targeting, and prioritization methods and tools to identify communities needing immediate attention.

The first action item recommended that EPA identify, inventory, and review existing screening, targeting, and prioritization methods and tools to ascertain the following: (1) strengths and weaknesses of existing tools; (2) ways that these tools can be improved; and (3) steps to move forward, including guidance regarding minimum criteria for selection and use of a particular tool. Dr. Sawyers observed that because most of the tools are already available, the effort should be concentrated on methods to evaluate their strengths, their weaknesses, and ways to improve them in the short term. He pointed out that some of the tools, such as the environmental justice assessment framework, were included in the meeting materials.

Mr. Prasad noted that each of the action items under Theme 7 would require an intermediate effort, as agreed by members of the NEJAC during the discussion of Theme 1. He recalled the discussion in which it was decided that to make this item a short-term goal would interfere with bias for action, and hence, to be consistent with the earlier decision, this action item should also be considered an intermediate effort. Ms. Nelson stated that Appendix H of the cumulative risk report describes indices and tools that could be used in this effort, making the use of existing tools a short-term effort. Identifying the strengths and weaknesses of the existing tools and the ways that they can be improved would involve an intermediate effort, she said.

Mr. Warren led the discussion to the next action item three, which called for EPA to incorporate indicators into screening and targeting tools in the long term. He pointed out that, as discussed previously, some indicators are already incorporated into existing tools, including indicators of health status such as mortality and morbidity data and indicators of cultural factors in the Native American communities. He suggested deleting the phrase in the long term and suggested that EPA identify the indicator factors that already exist and then consider adaptive management techniques consistent with the bias for action whereby these indicators can be re-evaluated, refined, and modified over time. Dr. Fields supported the suggestion that the action item be divided into activities that can be accomplished in the short term and those that require intermediate effort. Ms. Nelson proposed that an ongoing category be added to the three time frame categories in order to reflect the iterative process.

The next action item stated that EPA should focus on training its staff to ensure effective, widespread utilization of the screening and targeting tools as well as outreach and education for stakeholders. These efforts would ensure that this becomes a common framework among the scientific community, regulators, the regulated community and impacted communities. Ms. Nelson again noted the redundancy and emphasized that similar action items should be consolidated throughout the cumulative risk report. Dr. Ramirez-Toro pointed out that the action item clarifies the concept of capacity-building within EPA because training is a major capacity-building exercise.

The last action item under Theme 7 would require EPA to convene a series of multi stakeholder seminars, workshops, and panels, including sessions of a peer review nature, in order to address existing screening, targeting, and prioritization methods and tools in terms of cumulative risks and impacts. Mr. Weinstock expressed the need to change the title of this action item because it is not clear whether the focus is on identifying communities or on more effective work in communities.

In response, Mr. Lee noted that the action item raised a complex issue. He explained that the concept was first raised by Mr. Prasad in his capacity as a regulator and involved how to justify the picking of certain targeted communities using screening methods. The issue is further complicated, Mr. Lee said, by trying to identify what tools exist and what other tools need to be developed over time and by addressing the need for training while remaining focused on the bias for action. Mr. Lee noted that another complexity of this issue involved enlisting the participation and support of partners such as states, local governments, business and industry, and impacted communities. He cited the example of the

environmental justice geographic assessment tool, which was based on the assumptions that communities, government, and business and industry would eventually use the same set of parameters and indicators. Ms. Eady concurred with Mr. Lee but also encouraged the rewording of the action item title for clarity.

Discussion of Action Items under Theme 8

Theme 8 encouraged EPA to address capacity and resource issues within the agency, states, affected communities, tribes, stakeholders, and local governments. Dr. Fields suggested including the private sector in this effort.

The action items under Theme 8 included recommendations that EPA ensure that (1) adequate resources are available to support meaningful community-based efforts to address cumulative risks and impacts as part of a paradigm shift to community-based approaches and (2) environmental justice action plans have adequate resource commitments to fully accomplish the set of actions.

At this point, Mr. Lee summarized the previous discussions, stating that all the action items could be consolidated into ten action items spanning the eight interrelated themes. He recommended that the original action items be consolidated into the following recommendations:

1. Initiate pilot projects to implement all 8 themes
2. Develop tools and capacity, especially in terms of use of statutory authorities, assessment tools, policy tools, and others
3. Build consensus and develop a dialogue among stakeholders using stakeholder discussions, scientific symposia, advisory panels, and think tanks, to ensure that there is a common understanding of the process involved
4. Focus on the issue of vulnerability and its research and policy implications relevant literature reviews, and the relationship of vulnerability to social and cultural factors and assessment indicators
5. Training for EPA staff communities, business and industry, and other stakeholders
6. Develop capacity through personnel development; targeted recruiting; and enhancement of skills, social science capacity, expertise in dealing with communities, and understanding of traditional knowledge
7. Develop strategic partnerships, which is related to some of the other action items
8. Encourage community-based approaches and CBPR to involve residents in decisions regarding their communities
9. Develop targeting and prioritization methods and tools to identify communities that require immediate intervention
10. Develop ways to structure these action items into EPA action plans and allocate budgets for plan implementation

Dr. Fields thanked Mr. Lee for the consolidation of the action items and stated that the NEJAC work group would focus on consolidating the action items before presenting them to the EPA. Ms. Espinosa proposed that the work group put together one two-page matrix for each of the eight themes and incorporate the action items based on Mr. Lee's recommendations. She suggested cross-listing the action items with the eight themes for ready reference. She also recommended that to draw attention to the action items, the work group should consider including them in a separate chapter in the cumulative risk report. Dr. Fields supported Ms. Espinosa's suggestions and stated that having all the action items in one chapter would avoid redundancy and would lend focus to the report.

Mr. Lee then highlighted the next steps for the NEJAC work group, noting that so far the work group had completed about two-thirds of its work. He elaborated that for the next three to four months, the work group would work on finalizing the cumulative risk report by September, taking into consideration the discussions, deliberations, and public comments provided at the NEJAC meeting. The final report would

then be presented to the Executive Council of the NEJAC for deliberation and action, he added. He announced that for a period of 30 days following the NEJAC meeting, the work group would continue to accept written public comments on the report. Mr. Lee also stated that the work group would continue to discuss the issues as well as comments received during the monthly conference calls until the publication of the final report. He thanked Ms. Harris, Mr. Sanders, Mr. Weinstock, Mr. Starfield, and Mr. Voltaggio for providing a valuable EPA perspective to the discussion.

Mr. Handy expressed his appreciation for the efforts of the NEJAC work group, complimenting the group members for putting together the cumulative risk report that led to this discussion. Ms. Harris also commended the work group, noting that the discussion over the past two days had been very productive, and she encouraged the work group to organize the action items using a matrix, as suggested by Ms. Espinosa, in order to provide guidance to EPA regarding the action items of the highest priority. She stated that it would be practical to consolidate the action items into no more than five priorities that could be implemented in the 2005 time frame. Mr. Weinstock echoed Ms. Harris's comments, congratulating the work group for putting together a seminal piece of work that will hugely impact the understanding of issues related to cumulative risks and impacts. Mr. Sanders commended the work group and also thanked Mr. Lee for his consolidation of the original action items, noting that a matrix format would be very useful in promoting a clear understanding of EPA's responsibilities.

Ms. Nelson described the process of producing the cumulative risk report as a journey for the NEJAC work group that had been modified and enriched by the discussions at the meeting. She noted that the recommendations in the report are very different from prior NEJAC work because they are not just a set of recommendations to the EPA Administrator but potential changes in the way of working at EPA. Dr. Sawyers appreciated the structural work accomplished by the report, preparing the foundation for the new way of doing business. He also thanked Ms. Tucker for demonstrating continued commitment toward community participation over the years. Mr. Parras also thanked the work group for its efforts.

Mr. Lee then asked each member of the work group to reflect on the discussions of the cumulative risk report.

Ms. Henneke expressed satisfaction that the discussions over the past two days had revolved around the style of the cumulative risk report and not the substance of its recommendations. Ms. Tucker appreciated the support of other members of the NEJAC work group during the entire process. She stated that she would be happy to share the credit with all the communities across the country, especially communities of color and lower-income people who are suffering from cumulative risks and impacts. She also expressed satisfaction that the report would scientifically address the issues of cumulative risks and impacts that have been overlooked for a long time. Mr. Prasad noted that it had been a privilege and a gratifying experience to be part of the work group. Ms. Subra thanked Mr. Lee for putting together a work group that supported diverse ideas and that possessed diverse opinions and experiences. She believed that the final report would do more than improve the quality of life and the health of community members, and although it would probably not be appreciated in the short term, in the long term it would be looked upon as a turning point in dealing with environmental issues. Mr. Gonzalez praised the group members for their expertise and teamwork and for realizing the significance of the task beyond their respective professional agendas. He also thanked EPA for taking charge of the issue and for soliciting the support and partnership of other Federal, state, and local agencies.

Ms. Espinosa appreciated the opportunity to co-chair the NEJAC work group. She also thanked Ms. Briggum for her experience, her ability to involve business and industry representatives in the process, and her continued outreach efforts to bring attention to the issue at seminars and workshops. Ms. Espinosa also recognized Ms. Tucker for her experience in working with communities and their issues for many years. Finally, Ms. Espinosa thanked EPA for participating in the discussions and providing valuable feedback and suggestions.

Dr. Fields thanked the NEJAC Executive Council for providing helpful comments during the discussions and expressed confidence that the final cumulative risk report would be of very high quality in terms of content and usefulness. He thanked EPA officials for their participation in the discussions and especially Mr. Starfield and EPA Region 6 for hosting the NEJAC meeting. Dr. Fields also expressed gratitude to Mr. Lee for putting together an effective work group under the leadership of Ms. Espinosa and Ms. Briggum.

4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted before the members of the Executive Council on April 16, 2004.

4.1 Update on the *Pollution Prevention Report* by the EPA Office of Prevention, Pesticides, and Toxic Substances

Mr. Hank Topper, EPA Office of Prevention, Pesticides, and Toxic Substances (OPPTS), provided an update on the *Pollution Prevention Report*, a draft of which had been discussed at the NEJAC meeting in Baltimore, Maryland, in December 2002. Mr. Topper noted that following the presentation of the draft report to the NEJAC in 2002, the final report was completed. It includes a promising collaborative problem-solving model that could be adopted by other programs and offices in EPA, he said.

First, Mr. Topper focused on some key elements in the *Pollution Prevention Report* and the progress that has been made of EPA in response to that report. In particular, he elaborated on the four key aspects of the report, including the themes being developed based on the collaborative problem-solving model, enhancing the ability to understand risks and priorities, working in communities and using pilot projects, and using pollution prevention (P2) to reduce community risk.

Mr. Topper specified the developments regarding the collaborative problem-solving model since the publication of the *Pollution Prevention Report*. He pointed out EPA Administrator Mark Levitt's belief in the EnLibra Doctrine; EnLibra means move toward balance and the doctrine is based on the dual concepts of balance and stewardship and is built upon principles of flexibility, innovation, partnership, and collaboration. He noted the possibility of synergy and cooperation with EPA leadership on the issue of collaboration. He announced that the environmental justice Collaborative Problem-Solving Grant Program is now in operation and is making significant contributions to developing the collaborative problem-solving model emphasized in the report.

Mr. Topper stated that the collaborative model has been adopted in community projects run by EPA's Air Program throughout the country, including the Urban Air Toxic Strategy, which calls for local assessments of air quality based on the collaborative model. He elaborated on ongoing training efforts within EPA and stated that OPPTS had planned a training panel on the collaborative problem-solving model for the EPA community involvement staff at the Denver National Community Involvement Conference. He also noted that the model had been incorporated as a key component of the *Community Air Screening How-To Manual*.

Mr. Topper then focused on the need for communities to get a better understanding of risk and to have access to screening assessment tools that enable them to understand and prioritize risk in a more effective manner. He listed some screening tools that have been developed by OPPTS, such as the Rainy Model; the Risk Screening Environmental Indicators Model; a toxic release inventory (TRI)-based screening model that focuses on air quality; and the environmental justice Geographic Assessment Tool, which would help communities set clear priorities. He further mentioned that OPPTS would shortly publish the *Community Air Screening How-To Manual*, a key tool that will enable communities to understand local air quality. Mr. Topper also highlighted the comparative risk study conducted in Chelsea, Missouri, which involved CBPR in the process of prioritizing risks.

Mr. Topper said that the *Pollution Prevention Report* emphasized the importance of conducting pilot projects, working in communities, learning the use of P2 methods, and using a collaborative problem-solving P2 approach in communities. He mentioned several ongoing projects in communities in Cleveland, Ohio; St. Louis, Missouri; and West Oakland, California, that address air quality issues in particular. He also mentioned a multimedia toxic risk reduction project in south Phoenix, Arizona, and a P2 project involving auto body shops and auto refinishing business(es) in Park Heights, Baltimore, Maryland. He described the Clean Bus Program; the Diesel Retrofit Program and other EPA initiatives to address risks to communities from diesel particulates. The CARE program, he said, would put together a resource kit to bring together different initiatives within the agency and to address multimedia toxics and cumulative risk issues at the community level. These projects provide a perspective on the new initiatives under the Environmental Results Program of OECA, he said.

Next, Mr. Topper described EPA's initiatives to make P2 resources more accessible to communities. He noted that existing P2 resources focus on industry and small business, but the agency is beginning to take steps to make those resources and tools available to communities. He also stated that OAR would soon publish a series of community fact sheets on P2 for communities to enable them to identify potential polluters such as auto refinishing businesses, understand ways to reduce exposures, and obtain available P2 resources. The fact sheets would also include information for businesses to help them reduce pollution.

Finally, Mr. Topper noted that as the *Pollution Prevention Report* is released, there is tremendous enthusiasm and commitment for the new approach within the agency. Furthermore, he said that the agency has taken real steps toward bringing good science and bias for action together at the community level. However, he observed that this was only a start, and the real challenge and opportunity lie ahead.

Ms. Subra thanked Mr. Topper for the update. She explained to new Executive Council members that the *Pollution Prevention Report* had been presented at the last NEJAC meeting in 2002 and that it was important to get updates in order to better understand how NEJAC recommendations are applied within the agency.

Ms. Nelson asked Mr. Topper how the scope of the *Pollution Prevention Report* can be expanded. Mr. Topper replied that the cumulative risks report being discussed at the current meeting was an expansion of the recommendations included in the *Pollution Prevention Report*. He added that the forthcoming CARE initiative would also be an important step toward scope expansion. Ms. Henneke thanked Mr. Topper for the presentation.

4.2 OEJ's Response to the OIG Report on Environmental Justice

Mr. Hill made a presentation about OEJ's response to the *Report on Environmental Justice*, which was issued by OIG in March 2004. Mr. Hill's presentation addressed the following matters:

- The history of environmental justice
- Executive Order (EO) 12898 and the formation of the NEJAC
- EPA's activities over the past few years that focus on issues related to environmental justice
- Various opinions among academicians, community organizers, and others about achieving environmental justice through legal mechanisms such as the Civil Rights Act of 1964 and other environmental laws

Mr. Hill began by telling the audience that while talking about the OIG report, he would like to do a little bit of preaching and, hopefully, a little bit of teaching and talk about civil rights law, environmental law, executive orders (EO), and the history of environmental justice.

He stated that his theme for the day was Separate but equal has no place in American society. Separate is inherently unequal. He explained that he was referring not just to differential treatment in society but to the use of EOs with respect to environmental laws and the application of different policies depending on who lives in particular communities. Walls of discrimination have come tumbling down, he noted, in public housing and accommodations, employment, economic development, and many other aspects of American life. But these walls have not been completely eliminated, he added. Similar discrimination exists in dealing with environmental law, Mr. Hill noted.

He stated that the facts that he would be presenting could be easily researched. He began by stating that OIG was misinterpreting a 10-year-old document (EO 12898) that three people on OEJ's current staff had a hand in reviewing and discussing. These three people were Mr. Robert Knox, Mr. Lee, and himself, he stated. He then proceeded to describe the credentials of each of the three people involved. He revealed that Mr. Knox has worked for EPA for almost 40 years and was involved with EO 12898 as it was being drafted 10 years ago, which meant that at this point he has had 10 years of experience with the document. Mr. Lee, he noted, is the architect of the environmental justice movement, has been working with environmental justice issues since 1987, and was also involved in the drafting of EO 12898. Mr. Hill stated that he too has been working with this document for the past 10 years, thus leading to 30 years of combined experience among the three of them. He expressed indignation that the OIG report was published after only one year of review and that it directed OEJ in the interpretation of a document that OEJ has been working with for 10 years.

Second, he said that OIG refused to discuss its mistaken interpretation of EO 12898 with a third party or to allow EPA to obtain an independent opinion of OIG's draft report. Third, he revealed that OIG refused to get directly involved in the process in spite of a request from former EPA Assistant Administrator J.P. Suarez. Mr. Suarez felt that the vastly different interpretations of EO 12898 by OIG and OEJ served no useful purpose and that the situation would improve if OIG stepped in. Next, Mr. Hill stated that Ms. Harris suggested that OEJ meet with OIG before the exit conference to see whether there was any way they could agree on a common interpretation of EO 12898. OIG refused this meeting, he added. Mr. Hill also stated that he along with several others had been inaccurately quoted. He added that decisions on major environmental justice initiatives in the agency are made on a consensus basis by the Executive Steering Committee, composed of Deputy Regional Administrators and Deputy Assistant Administrators. This process is important because OEJ does not issue permits or advisories. The process is left to the discretion of the regions and offices, he noted, and was not followed in the publication of the OIG report.

Continuing, Mr. Hill stated that the real issue on hand is whether the agency's strategy for incorporating environmental justice considerations into decision-making process should be based on environmental laws or on an EO. Further examining this issue, he stated that just like every movement, the environmental justice movement had a chief theoretician, Professor Robert Bullard. He quoted Professor Bullard, who said "The solution to unequal protection lies in the realm of environmental justice for all Americans. No community, rich or poor, black or white, should be allowed to become a sacrifice zone.... There is a need for a Federal fair environmental protection act that would transform protection from a privilege to a right." Mr. Hill noted that if the environmental justice movement was created because there was environmental injustice in communities, it makes sense that environmental justice would ensure that these communities have clean land, air, and water. Thus, he stated, the work being done within OEJ is consistent with what the chief theoretician of the environmental justice movement had envisioned. Professor Bullard also insisted, Mr. Hill continued, that there be a law to provide greater assurance that the rights and privileges of the communities would be protected. Explaining further, Mr. Hill made a distinction between a privilege and a right, stating that "a right belongs to you as a member of this society and as a citizen of this country, in contrast to a privilege that can be taken away from someone."

Mr. Hill then described the five principles of environmental justice taken from the First National People of Color Environmental Leadership Summit held in 1991 in Washington, DC. He quoted the five principles as follows:

1. Environmental justice calls for universal protection from nuclear testing and the extraction, production, and disposal of toxic/hazardous waste and poisons that threaten the fundamental right to clean air, water, and food.
2. Environmental justice affirms a fundamental right to political, economic, cultural and environmental self-determination for all peoples.
3. Environmental justice demands the right to participate as equal partners at every level of decision-making, including needs assessment, planning, implementation, enforcement, and evaluation.
4. Environmental justice affirms the right of all workers to a safe and healthy work environment, without being forced to choose between unsafe livelihood and unemployment. It also affirms the right of those who work at home to be free from environmental hazards.
5. Environmental justice protects the right of victims of environmental injustice to receive full compensation and reparations for damages as well as quality health care.

In each of the five principles, Mr. Hill noted the use of the word *right* as opposed to *privilege*. Next, he questioned whether the rights can be protected, secured, or ensured using an EO or environmental laws. He explained that an EO is simply a policy statement made by the President for his administration and can be changed by either that President or any subsequent administration. So it would be improper to base critical environmental justice decisions on an EO, he added.

Mr. Hill noted that Section 6-609 of EO 12898 states that *This order is intended only to improve the internal management of the Executive Branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person* (emphasis added). Furthermore, he quoted Section 1-101 of EO 12898 as follows: *To the greatest extent practicable and permitted by law...each Federal Agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations....* (emphasis added).

Continuing, Mr. Hill stated that a presidential memorandum further explained the language in EO 12898 as follows: Environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities. Application of these existing statutory provisions is an important part of this administration's efforts to prevent those minority and low-income communities from being subject to disproportionately high and adverse environmental effects. He further commented that the EPA Administrator's memorandum of August 9, 2001, presented a similar view as follows: Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities. Application of these existing statutory provisions is an important part of this Agency's effort to prevent those communities from being subject to disproportionately high and adverse impacts, and environmental effects. Mr. Hill stated that he was responsible for drafting both of these statements.

OEJ has carried out a number of activities over the past few years to put the words in EO 12898 and the presidential memorandum into effect, Mr. Hill said. He listed some of OEJ's activities as follows:

In December 2000, Mr. Gary Guzy, OGC, issued a General Counsel Memorandum titled *EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting* to EPA employees in order to identify laws that could be used to address the concerns of minority and low-income communities.

In November 2001, ELI issued *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities* at the behest of OEJ.

In June 2002, OEJ asked ELI to issue *A Citizen's Guide to Using Federal Environmental Laws to Secure Environmental Justice* in order to enable communities to better understand provisions of various environmental laws related to environmental justice.

In October 2003, ELI, in partnership with the United Church of Christ and the Southwest Network for Economic and Environmental Justice, published a DVD titled *Communities and Environmental Laws*.

In April 2004, the *Environmental Justice Toolkit* was released and Appendix B of the toolkit contained all the statutory provisions that could be useful in addressing environmental justice issues.

Finally, OEJ has enlisted ELI, in partnership with the Southwest Network for Economic and Environmental Justice, the Southeast Community Research Center, and ADR Associates, to conduct training on environmental laws and ADR every year starting in September 2004 and continuing in 2005 and 2006.

Mr. Hill noted that these OEJ-directed activities were in complete contradiction to OIG's claim that OEJ lacked the strategy and determination to implement environmental justice in all communities.

Mr. Hill went on to explain the difference between the use of civil rights laws and environmental laws, also noting the overlap between Title VI of the 1964 Civil Rights Act (Title VI) and environmental law. Title VI states that Federal funds cannot be used to discriminate on the basis of race, color, or national origin, whereas environmental law protects the rights of all Americans, including minority and low-income communities, he added. Furthermore, civil rights law creates a suspect class based on race and ethnicity (not income) for whose protection that law was created, whereas environmental law does not require a suspect class because it ensures justice for all without regard to race, ethnicity, culture, income, or education, Mr. Hill continued. He concluded that trying to fit a civil rights paradigm into an environmental law paradigm is like trying to fit a round object into a square hole. He then referred to an article that he had published in June 2002 titled *Lemons into Lemonade*, which appeared in *The Environmental Forum*. The article expressed his indignation at certain parties encouraging communities to use civil rights laws to address issues of environmental justice. The article also explained why the Title VI approach would not work for impacted communities but why environmental law, with a twist, would address environmental justice concerns.

Mr. Hill then quoted Mr. Vernon E. Jordan, Jr., Lazard Freres Co., whose keynote address on February 26, 2004, was titled *The Legacy of Brown v. Board of Education: Reflections on the Last Fifty Years (1954-2004)*. Mr. Jordan said *The case presented by Thurgood Marshall and his team was legally and morally irrefutable. Brown exposed the widening gap between State and local laws and long-neglected constitutional rights....Brown is a milestone in America's continuing battle to reconcile the letter of the law with the spirit of the American dream of life, liberty and the pursuit of happiness for all.* Mr. Hill then explained that the civil rights movement taught an important lesson that separate policies, separate standards, and separate EOs cannot be used for one group of people and different laws for everyone else.

This lesson is clearly understood within OEJ, Mr. Hill noted. He summarized the five sequential steps used by OEJ to integrate environmental justice as follows: (1) advice and recommendations through the NEJAC reports; (2) analysis by NAPA; (3) training using the environmental justice 101 workshops in all the EPA regions; (4) conduct an implementation phase using the EPA Administrator's memorandum, environmental justice steering committee, and the OEJ toolkit; and (5) conduct an evaluation involving the OIG review and management accountability and responsibility.

Mr. Hill emphasized that the mission of OEJ is to assist the agency in integrating environmental justice. To accomplish this mission, he stated, OEJ is involved in myriad activities such as:

- Training - EJ basic training, EJ media-specific training for permit writers, ADR community training, and inspector training
- Stakeholder Communication - EJ regional listening sessions, Federal interagency working group (IWG) revitalization projects, the NEJAC public policy meeting, EJ communication strategies, EJ

community dialogues (conference calls), indigenous community outreach, and the OEJ web site portal

Tool Making - OGC and ELI statutory reviews, regional and Headquarters EJ action plans, the EJ toolkit, *Citizens Guide to Environmental Law*, EJ mapper, and the EJ/GIS work group

Support - the Environmental Careers Organization (ECO) Intern Program and the small grants program

Studies and Preparation of Reports - the NAPA report (Phase I: Federal; Phase II: state; and Phase III: local/municipal), industry best practices report, and NEJAC reports (advice and recommendations)

Finally, Mr. Hill read from the eulogy for Mr. Thurgood Marshall (the attorney who represented Brown in Brown v. Board of Education in 1954) delivered by Mr. Jordan in 1993:

To those of my generation growing up in the segregated south, Thurgood Marshall was more than a crusader for justice. More than a torch bearer of liberty. More than a wise and learned man of the law. He was a teacher who taught us to believe in the shield of justice and the sword of truth. A role model whose career made us dream large dreams and work to secure them. An agent of change who transformed the way an entire generation thought of itself, of its place in our society, and of the law itself. Picture, if you will, the inescapable power of the beacon light Thurgood Marshall beamed into our cramped and constricted community, a community in which the law ordained that we could only attend segregated inferior schools, a community in which the law ordained that our parents be denied the right to vote, a community in which the law ordained segregation in the courtroom and exclusion of our parents from the jury box. It was Thurgood Marshall's mission to turn these laws against themselves. To cleanse our tattered Constitution and our besmirched legal system of the filth of oppressive racism. To restore to all Americans a Constitution and a legal system newly alive to the requirements of justice. By demonstrating that the law could be an instrument of liberation, he recruited a new generation of lawyers who had been brought up to think of the law as an instrument of oppression. Those of us who grew up under the heel of Jim Crow were inspired to set our sights on the law as a career to try to follow him on his journey of justice and equality.

Mr. Hill concluded his presentation by stating that OEJ firmly believes that environmental law can be used as an instrument for change in communities that are exposed to disproportionate environmental risks. He encouraged EPA staff to continue to move forward, continue to address community concerns, and not be demoralized by the OIG report.

Mr. Collette acknowledged that as a new member of the Executive Council, he was not aware of all the history but had nonetheless been offended by the OIG report. He offered his support to Mr. Hill and noted that 60 years before Brown v. Board of Education, the U.S. Supreme Court wrote in Yick Wo v. Hopkins (1886) that the Constitution is color-blind. This, he stated, clearly suggested equal rights for all. He further noted that if the methodology of the OIG report were to be adopted, it would eviscerate the idea of effectively addressing cumulative risks and impacts. He encouraged the NEJAC to unanimously reaffirm the position of the agency and the position of OEJ in response to the OIG report.

Mr. Hill thanked Mr. Collette for his words of support and agreed that this was a watershed event with respect to environmental justice programs in the agency. Mr. Hill indicated that he refused to agree with the flawed notion expressed in the OIG report, both on the personal and professional levels.

Mr. Philip Hillman, Polaroid Corporation and acting chair of the International Subcommittee, thanked Mr. Hill for the tutorial and inquired about the availability of his presentation for distribution to a larger audience. Mr. Hill responded that it would be available both electronically and on hard copy, to anyone who wants it.

Mr. Williams stated that having been selected as a representative for the Tulalip Tribes early on allowed him to have an early involvement with the NEJAC. He wholeheartedly supported Mr. Hill and made a commitment to elicit support from tribal communities for OEJ's efforts.

Mr. Parras agreed with Mr. Hill about the misinterpretation of environmental justice in the OIG report. He expressed concern that OIG refused to discuss its mistaken interpretation with other parties or to allow anyone outside EPA to review the report. He criticized the lack of community awareness of or input in the drafting of the OIG report, which in fact touched upon several community-related issues. He suggested that the draft letter prepared by the chair of the Executive Council in response to the OIG report not be delivered to EPA Administrator just yet. He suggested that the letter be delayed to allow communities to provide input and support for OEJ's work.

Ms. Kingfisher thought that there was some truth in the OIG report because sponsoring agencies such as ORD and OPPTS still have difficulties in understanding environmental justice communities, indicators for environmental justice communities, and how to effectively resolve environmental justice issues. She said that indigenous people still look to EO 12898 in addition to the environmental laws to achieve environmental justice. She declared that she had more questions regarding the signing of the draft letter now than before the presentation.

Mr. Lee joined the discussion to present another perspective on Mr. Hill's presentation in the context of the OIG report. He noted that the issues being discussed are fundamental in nature. He added that most people agree in principle with the OIG report because superficially it would seem that the report was well motivated. However, certain issues that are not apparent in the report have to be teased out, he added. First, he noted that this is a watershed moment.

Second, Mr. Lee pointed out that environmental justice is a complex topic because it addresses issues such as race, class, equality, and justice in society not just in the present but over an extended period of time, as in the case of cumulative risk and impact issues. These issues, if not addressed and understood accurately, would end up being marginalized.

Third, Mr. Lee explained that although the issues of environmental justice have been around for hundreds of years, the concept of environmental justice in a systematic way has only existed since the 1980s. So the understanding of the environmental justice concept is still an evolving issue, and there is a learning curve for all those involved with it, he continued. He pointed to a text box on page eight of the OIG report that quoted Section 1-101 of EO 12898 with added emphasis on certain phrases of the section that OIG wished to highlight. However, the most important point is that OIG did not emphasize the phrases to the greatest extent practicable and permitted by law and disproportionately high and adverse human health or environmental effects, Mr. Lee stated. He continued that this omission indicates that OIG is imposing civil rights concepts on an environmental law paradigm. The civil rights laws afford certain rights and measures of protection to a protected class, whereas environmental law is intended to provide equal rights for everyone, he continued. This misinterpretation limits the effectiveness of the environmental justice movement by limiting the communities that can be helped, said Mr. Lee.

Mr. Lee then related a conversation with former EPA Administrator Bill Riley in 1992, when EPA was about to announce the establishment of the Office of Environmental Equity, the precursor to OEJ. Mr. Riley was asked how EPA would ensure that the Office of Environmental Equity did not become marginalized like the Civil Rights Office did. The answer to that question lies in the fact that although civil rights laws and environmental laws are both important, they each have their own place, he concluded.

Mr. Ken Manaster, Santa Clara University School of Law and acting chair of the Air and Water Subcommittee of the NEJAC, noted that the controversy with respect to the OIG report lies in definition-related problems such as the difficulty in coming up with the precise definitions of important concepts like disproportionate effects, disproportionate impact, and an environmental justice community, among others. He pointed out that it would be illegal for the agency to provide definitions for these terms based

on the EO alone. The other problem that Mr. Manaster described was the term environmental justice itself, which had two different usages. One is the general usage, as in Dr. Bullard's statement that environmental justice is for everyone, which cannot be disagreed with, he continued. The second usage refers to the focus on the problem of disproportionate, unfair, inequitable effects on certain vulnerable populations that the EO addresses, added Mr. Manaster. He suggested that the agency's response to the OIG report clear away all doubts regarding the definition of environmental justice and emphasize that the agency's commitment to environmental justice lies in addressing the concerns of the vulnerable populations that the EO refers to.

Mr. Lee agreed with Mr. Manaster's comments, stating that the letter drafted by Ms. Eady to respond to the OIG report adequately addresses the issues. He also elaborated on the two most important issues related to environmental justice: (1) the idea that low-income and tribal communities and people of color are in need of justice and equality and (2) the question of adopting an effective implementation strategy for this agenda within the agency and integrating it in the decision-making process within the agency.

Ms. Henneke thanked Mr. Hill for his presentation and suggested making the draft letter to the EPA Administrator more relevant to the earlier discussions of the OIG report, including Mr. Lee's comments on the text box on page eight of the OIG report. She also expressed concern that the OIG is concentrating on identifying minority and low-income populations geographically and spatially, which is not in accordance with the EO and should be part of the response letter. She also stated that the letter should specifically mention the cumulative risk report discussed at the current NEJAC meeting, which discusses disproportionality and the social and health sciences associated with that concept. She referred to the spatial segregation of impacted communities in the OIG report as environmental racism and not environmental justice.

Dr. Ramirez-Toro agreed with Ms. Henneke and revealed that her first reaction to the OIG report was that it reflects a backward trend. She explained that in 1952, Puerto Rico adopted a liberal constitution that included the right to a safe environment for all people regardless of race or their ethnicity. But social disparities that exist to this day were not addressed in that constitution, she said. She expressed the need for a better Federal law that would ensure environmental justice for all in Puerto Rico, especially in the dual system of governance.

Dr. Sawyers revealed that in his three and a half years as the environmental justice Coordinator for the State of Maryland, no discussion was based on using the EO; rather, communities always wanted to know which environmental law could apply. The EO is used only as a guidance, he said. He suggested that the response to the OIG report be treated as a platform and an opportunity to clearly define the controversial terms mentioned earlier by Mr. Manaster.

Ms. Nelson expressed an interest in the next steps that the NEJAC planned to take in ensuring a timely response to the OIG report. She suggested including the cumulative risk report with the letter to the EPA Administrator.

Ms. Eady responded to Ms. Nelson by saying that the NEJAC did not yet have a consensus and that the comments of Ms. Kingfisher and Mr. Parras would need to be addressed before the letter is sent to the EPA Administrator.

Mr. Handy emphasized that the letter to the EPA Administrator should highlight the theme of the discussion and should focus on the advantages of EO 12898 in addition to environmental law. He added that the EO was an early step in the process of focusing attention on the issue of environmental justice and with limited resources, it was important to have that focus.

Mr. Parras indicated that he supported the NEJAC and its agenda. However, he was concerned that communities were being excluded from the process. He recommended writing a generic letter stating all the facts from a community perspective and then obtaining the signatures of community members. This

action would provide much-needed community support for the NEJAC and for the agency's position on the issue.

Ms. Kingfisher thanked Mr. Manaster for his earlier clarification of the issue of the EO and environmental law. She added that it would be helpful to prepare a cover letter to accompany the OIG report when it goes out to the communities in order to help them better understand the background and history of the environmental justice process.

Mr. Lee noted that the NEJAC needs to be cognizant of some important process issues that need to be addressed. He continued that the first question is whether the NEJAC as an advisory committee would like to issue a quick response or a perfect response, noting that a perfect response would require a longer time frame. Second, as members of different communities, the members of the NEJAC would have to decide what other community outreach steps they would like to pursue in an individual capacity, Mr. Lee added. This task should be separate from the formal response of the advisory body, he clarified. Third, Mr. Lee addressed the matter of encouraging communities to think about the issues. This process is supported by OEJ and the NEJAC, he continued, and OEJ would be willing to help educate communities about these issues.

Ms. Espinosa stated that it is important to send the letter to the EPA Administrator after reaching a consensus and redrafting the letter based on comments from the NEJAC members. She also supported Mr. Parras's request for a letter from the communities. This would be an important method of educating the communities and obtaining their support for environmental justice work, she added. Finally, Ms. Espinosa noted that a simple fact sheet explaining the highlights of the OIG report would be useful for the communities.

Mr. Lee asked the NEJAC members to study the draft letter to the EPA Administrator providing OEJ's response to the OIG report and to submit comments and suggestions for improvement to communicate a complex message effectively. Ms. Nelson replied that the current response letter is too complicated and should be condensed to address not more than three critical issues. Ms. Espinosa agreed with Ms. Nelson about identifying the three issues of concern and asked Mr. Hill about the deadline for the submittal of the response. Mr. Hill stated that the agency has to respond to the final OIG report by June 1, 2004, and would base its response on the draft letter handed out earlier to the NEJAC members. He assured the members that the official response would not deviate from the existing format.

Mr. Collette once again emphasized that the response should stress that if the recommendations in the OIG report are implemented, environmental justice issues would be marginalized and minimized in this country forever. Finally, Mr. Lee asked the NEJAC members to provide their input on the definition of environmental justice communities and encouraged them to continue to think about this issue even after the end of the meeting.

4.3 Presentation by the Federal Facilities Work Group of the Waste and Facility Siting Subcommittee of the NEJAC

Mr. Lee introduced the draft report titled *Environmental Justice and Federal Facilities: Recommendations for Improving Stakeholder Relations between Federal Facilities and Environmental Justice Communities*, which was submitted to the Executive Council by the Federal Facilities Work Group of the Waste and Facility Siting Subcommittee of the NEJAC. He explained that this draft report was a result of an issue raised at the NEJAC meeting in 2000 regarding Federal facilities and environmental justice. The work group was chaired by Dr. Mildred McClain, Harambee House Inc., and was supported by the EPA Federal Facilities Reuse and Restoration Office (FFRRO), which is part of the Office of Solid Waste and Emergency Response (OSWER), Mr. Lee continued. He thanked Ms. Trina Martynowicz, EPA OSWER, for her service as DFO of the work group and for her commitment and dedication to the effort.

Dr. McClain and Mr. James Woolford, Director, EPA Federal Facilities Restoration and Reuse Office, presented findings and recommendations from the draft report.

Dr. McClain began by thanking Mr. Kent Benjamin, OSWER and DFO for the Waste and Facility Siting Subcommittee of the NEJAC; Ms. Martynowicz; and Dr. Sawyers for their support to the Federal Facilities Work Group. She stated that ever since the inception of the NEJAC, communities across the country that have been impacted by Federal facilities have looked to the NEJAC for guidance, support, and help in improving relations between the communities and the authorities in charge of the facilities. Dr. McClain noted that the draft report is historical in nature and is the first substantive document on Federal facilities and the complex issues existing around these facilities.

Dr. McClain then outlined the recommendations in the draft report. She explained that all the recommendations reflect the needs of five communities in close proximity to five Federal facilities: Kelly AFB, Fort Wingate Army Depot, DOE Hanford site, the Memphis Depot site (a former Department of Defense [DoD] facility), and the DOE Savannah River site. The first recommendation addresses enhanced community assessments and communication methods needed to improve cultural sensitivity for environmental justice, she said. Dr. McClain stated that the second recommendation concerns community access to adequate health services and the third recommendation reflects the need for additional resources for capacity-building. She hoped that these recommendations would enable the communities impacted by the Federal facilities to substantively participate in the decision-making processes for these sites. The fourth recommendation focuses on the need for improved and effective communication between the facilities the regulators, and in environmental justice communities, and the final recommendation expresses the need for new and consistent opportunities to help members of environmental justice communities influence decisions that impact their daily lives.

Dr. McClain added that although the recommendations are not radical in themselves, they are important to the communities because they may improve community living conditions. She then placed three considerations before the Executive Council for deliberation: (1) establishing a work group specifically tasked to review Federal facilities in Alaska, as budget constraints did not allow case studies for Alaska to be included in the draft report; (2) designating a seat for Federal facilities on the Executive Council of the NEJAC; and (3) setting up a Federal advisory committee to examine all issues related to Federal facilities.

Mr. Woolford encouraged the NEJAC to provide a critical review of comments on the draft report. He thanked Dr. McClain for her dedication in addressing critical environmental justice issues at Federal facilities. He recalled his first meeting with Dr. McClain at a session of another FACA group 10 years ago, the Federal Facilities Environmental Restoration Dialogue Committee, which made several critical recommendations about improving community involvement and public participation in Federal facilities. He pointed out that the draft report clearly indicates that there is still room for improvement. He thanked Mr. Benjamin and Ms. Martynowicz for representing EPA in the effort.

Ms. Nelson commended the Federal Facilities Work Group for its effort in bringing out the draft report. She inquired as to how the NEJAC would ensure follow-up on the recommendations and who would be authorized to establish a work group to review Federal facilities in Alaska.

Mr. Lee responded to Ms. Nelson, stating that EPA would be required to review the five recommendations in the draft report in addition to the three specific considerations with respect to their implementability. He also said that the NEJAC cannot establish work groups because it is not an independent body but a body established under a charter by the agency. Hence, he stated, the agency would have to establish a new work group. The same is true with respect to a seat dedicated to Federal facilities on the Executive Council, he added. Furthermore, Mr. Lee explained that the creation of a Federal advisory committee would require the agency to establish a charter.

Ms. Nelson further inquired whether the NEJAC would need to endorse the recommendations to the EPA Administrator. Mr. Lee explained that the process requires the Federal Facilities Work Group to formally

transmit the draft report to the Waste and Facility Siting Subcommittee, which after its review would submit it to the Executive Council for comments and deliberations. At this point, it would be the responsibility of the Executive Council to deliberate and vote on the draft report and transmit it to the EPA Administrator.

Ms. Eady inquired whether the process of incorporating comments and revisions would be ongoing during the balloting process, to which Mr. Lee replied in the affirmative.

Dr. Sawyers thanked the Federal Facilities Work Group and the DFO for their hard work during the preparation of the draft report and requested that members of the Executive Council submit additional comments in writing to members of the work group within two weeks following the NEJAC meeting. Mr. Lee agreed to delay the OEJ ballot for two weeks to allow all comments to be addressed, but he reminded the Executive Council members to be cognizant of the resource expenditures involved in extending timelines. Dr. Sawyers concurred with Mr. Lee and noted that the minor deviation from the rules would allow certain concerns about the draft report to be effectively addressed. Ms. Eady clarified that the Executive Council would communicate with the work group and give it an additional two weeks. Dr. Sawyers added that in the formal process, all members of the work group would be notified of the new deadline; comments would be accepted until May 15, 2004, and immediately addressed; and the draft report would be handed over to the Executive Council.

Ms. Nelson pointed out that the NEJAC commended the draft report, and she recommended that the ballot process occur during the two-week comment period to allow timely release of the report. Mr. Woolford indicated that he would prefer to focus the agency's resources on responding to the thrust of the draft report, which includes the five communities referred to in the report and their issues in addition to the five recommendations.

4.4 Presentation by the Meaningful Involvement and Fair Treatment Work Group of the Indigenous Peoples Subcommittee of the NEJAC

Mr. Williams, acting chair of the Indigenous Peoples Subcommittee of the NEJAC, and Mr. Daniel Gogal, EPA OEJ and DFO for the Indigenous Peoples Subcommittee, presented action items from the preliminary working draft report titled *Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs*, which had been prepared by the Meaningful Involvement and Fair Treatment Work Group of the Indigenous Peoples Subcommittee.

Mr. Gogal began the discussion by stating that the working draft report clearly reflects two fundamental concepts related to environmental justice: meaningful involvement and fair treatment. He noted that this issue has been before the Indigenous Peoples Subcommittee ever since the subcommittee was instituted in 1996. He then introduced Mr. Williams, highlighting his vast experience relative to this issue, including being the first Director of EPA's American Indian Environmental Office (AIEO) and his current role as the Commissioner for Natural Resources for the Tulalip Tribes. He asked Mr. Williams to talk about the evolution of the issue of meaningful involvement and fair treatment for indigenous peoples and his understanding of the importance of the Indigenous Peoples Subcommittee and agency focus on this issue. Mr. Gogal continued that it was important to understand that three sovereign governments exist in the United States: Federal, state, and tribal governments.

Taking over from Mr. Gogal, Mr. Williams stated that Indian country, its jurisdiction, and its sovereignty are under attack, especially over land and resource issues within the boundaries of Indian reservations. He added that Indian country was significantly challenged in the mid-1990s by a State of Washington senator on the issue of non-Indian ownership of lands within reservation boundaries, which are referred to as checkerboard lands between the United States and the tribes. This senator wanted to demonstrate that tribes could not successfully manage and lacked the appropriate jurisdiction to control these checkerboard areas and wished to impose Federal or state law because due process was unavailable to nontribal residents within reservation boundaries, Mr. Williams continued, adding that this attack was based purely

on an economic agenda involving procurement and management of water resources within the boundaries of tribal lands. The tribes countered this challenge in Congress by presenting evidence and succeeded in convincing the committee that the issue was more complex than it was being portrayed, Mr. Williams stated. He continued that the commitments made to Congress at that time, including thorough review of due process in Indian country, are still in the process of being fulfilled. The working draft report is a step in that direction, he noted, and added that it provides an avenue through EPA to demonstrate that a review has been done to address relevant issues and role of the tribes.

Mr. Williams recalled that when AIEO was first opened under EPA Administrator Carol Browner, tribal members wished to address issues of meaningful involvement and due process on Indian lands. At that point, he continued, his response was similar to that of former EPA Administrator Bill Ruckelshouse, who believed that the priority was to secure the governmental role of the tribes and establish their jurisdiction on issues of air, water, and other resources before pursuing meaningful involvement and due process issues. This priority was important, he continued, because many states, including Arizona, Utah, Montana, and Wyoming, challenged tribal jurisdiction over air and water. Eventually the agency and tribes did succeed in securing tribal rights, he added, and it is now time that the issue of meaningful involvement and due process be resolved.

Mr. Williams stated that many tribes are offended that the subject is being reviewed too late, and in his opinion, had meaningful involvement and due process been available to the tribes in 1776, the country would be different both in terms of government and land ownership. He noted that the Bureau of Indian Affairs in the Department of Interior lost billions of dollars on trust resources, leading the courts to rule that the United States has failed the tribes and to call for interment of certain authorities for withholding and destroying evidence.

Mr. Williams said that the Indigenous Peoples Subcommittee discussed the working draft report and received comments on it from tribes across the country, including four presentations from Alaskan Natives; a presentation from the Director of the National Tribal Environmental Council (NTEC), which had representatives from 115 tribes; and a presentation from the representative of the Makah Tribe in the State of Washington. The Director of NTEC told the subcommittee that many members of the tribe could not read beyond the first page of the working draft report because they were offended by the EPA charge to the issue and by its description of Indian country and Indian governance, Mr. Williams stated.

Mr. Williams pointed out that many subtle differences exist in traditional tribal ways. For example, he said, the consensus-based process for decision-making that exists in the Tualip Tribes, may be different in other tribes trying to accommodate the requirements under NEPA or the Tribal Environmental Policy Acts (TEPA). The working draft report articulates this communication process not only within tribes but also between tribes and nontribal residents on tribal lands and presents models of current tribal practices, he said. He revealed that the members of the subcommittee intended to meet with several tribal organizations to explain the contents of the working draft report.

Furthermore, discussions in the subcommittee meeting revolved around cumulative risk and impact issues and how to incorporate the discussions in the Executive Council meeting as well as the public comments offered on the working draft report, Mr. Williams reported. He outlined the action items that the subcommittee worked on, such as clearly defining cultural and spiritual tribal traditions, procuring comments on the working draft report and setting a timeline for completion of the report, and working with Alaskan Natives to nominate a representative to mediate with the NEJAC and the subcommittee. He stated that Ms. Pemina Yellow Bird, North Dakota Intertribal Retirement Committee, has offered to help refine the definitions in the working draft report.

Mr. Gogal then reported on the deadlines for obtaining comments on the working draft report and on expectations for the report. He stated that an initial letter of intent had been sent to all Federally recognized tribes and the tribal chiefs as well as the environmental directors of the tribes in November 2003. The letter indicated that the subcommittee would focus on the issue of meaningful involvement of

tribes and requested input and suggestions to be included in the working draft report. He also encouraged the NEJAC members to provide their comments to further refine the working draft report. He requested that comments be submitted by June 15, 2004, which would allow time for the subcommittee to incorporate the comments into the working draft report. The final draft report would be submitted to the Executive Council for review, and the final report would be ready in September 2004, he added.

Finally, Mr. Williams thanked Ms. Jeanette Wolfley, tribal attorney, for assisting with the preparation of the working draft report.

Ms. Nelson recommended that the work group consider including an executive summary or graphically highlighting the specific recommendations in the working draft report, and Mr. Williams concurred. Ms. Eady suggested that the recommendations be summarized in the introduction section. She also asked how much time was available for commenting on the working draft report. Mr. Gogal replied that June 15, 2004, is the deadline for comments and that a revised working draft report would be available by July 15, 2004, for submittal to the Executive Council.

Ms. Espinosa thanked Mr. Williams for the working draft report, which defined the relationship between environmental justice, EPA, and the indigenous peoples in this country. She stated that this was an attempt to clearly define environmental justice communities, in contrast to the OIG report finding that such an effort was lacking at OEJ. She also suggested using some of the discussions in the working draft report in the cumulative risks report to further strengthen the section on tribal issues. Mr. Williams agreed to work with Ms. Espinosa on expanding the section on tribes in the cumulative risk report, especially regarding use of collaborative processes in decision-making. He cited the example of the Tulalip Tribes and their collaboration with nontribal residents of the reservation. He stated that within the boundaries of the reservation, the population includes about 3,500 tribal members and over 6,000 nontribal residents. Historically these communities had a poor relationship, especially with respect to land control, Mr. Williams added. As the Tulalip Tribes became more adept at instituting regulatory controls, they invited nontribal residents to participate in the Land Use Planning Committee meeting, which reduced the conflict and won the support of the nontribal residents.

4.5 Presentation by the Air and Water Subcommittee of the NEJAC

Ms. Subra discussed the draft report titled *Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting*, which was prepared by the Air and Water Subcommittee of the NEJAC. She also presented highlights from the meeting of the subcommittee.

Beginning with the highlights of the Air and Water Subcommittee meeting, Ms. Subra stated that Mr. Weinstock described the CARE program and agreed to consider using the draft permitting guide as a resource for the CARE program. She reported that Mr. Mike Shapiro, Deputy Assistant Administrator, EPA Office of Water, focused his presentation on two ongoing efforts in the Office of Water relating to communities: (1) the establishment of national measurements to improve permitting, including monitoring the status of noncompliance and water discharge permits, and (2) the establishment of a state self-assessment process. Both these efforts are currently undergoing internal review, Ms. Subra noted. She continued by discussing another ongoing effort at the Office of Water, the establishment of a smarter permitting process that sets a goal that 95 percent of the highest-priority permits and 90 percent of all other permits be current. The State of Louisiana, she noted, had a huge backlog because of expired permits, and thousands of new permits are waiting to be reviewed and issued.

Ms. Subra then reported that Ms. Elizabeth Cotsworth, EPA Office of Radiation and Indoor Air, gave a presentation on indoor air triggers, including cockroaches, dust mites, pet dander, and second-hand smoke, for conditions such as asthma in children and other reactionary diseases. Ms. Cotsworth also gave an advance notice of rule-making that would allow 20 permitted RCRA Subtitle C hazardous waste

landfills to accept low-level radioactive waste, which at present only three facilities in the United States are allowed to accept, Ms. Subra stated.

Ms. Subra also reported that Mr. Bob Harnett, EPA Office of Air Quality Planning and Standards, gave a presentation on an air quality index that EPA would use on a national level to electronically notify interested community members and organizations of unhealthy air quality in their area. She then briefly touched on the draft permitting guide effort headed by Mr. Manaster, which would provide recommendations for integration of environmental justice into the environmental permitting process. The subcommittee had identified three main categories for the draft permitting guide, which include siting, public participation, and the permitting process itself, Ms. Subra added. She stated that public participation would be encouraged in the permitting process, including the siting, the actual permitting process, and enforcement and compliance. The draft permitting guide would be completed by June 2004 and would be available to the Executive Council for consideration, review, and comment after a technical review within the agency, Ms. Subra concluded.

MEETING SUMMARY

of the

AIR AND WATER SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 15, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Alice Walker
Co-Designated Federal Official**

**Wilma Subra
Acting Chair**

**Dr. Wil Wilson
Co-Designated Federal Official**

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

1.0 INTRODUCTION

The Air and Water Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Ms. Wilma Subra, Representative of Louisiana Environmental Action Network, continues to serve as acting chair of the subcommittee. Ms. Alice Walker, U.S. Environmental Protection Agency (EPA) Office of Water (OW), and Dr. Wil Wilson, EPA Office of Air and Radiation (OAR), continue to serve jointly as the Designated Federal Officials (DFO) for the subcommittee. Exhibit 3-1 presents a list of the members who attended the meeting and identifies the members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Air and Water Subcommittee, is organized in four sections, including this *Introduction*. Section 2.0, *Discussion of Recommended Practices Guide on Permitting*, provides a summary of the working session held by members of the subcommittee to complete, "The Guide and Recommendations for Improving the Integrating of Environmental Justice into Environmental Permitting." Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report received by the subcommittee during its meeting, as well as a summary of relevant questions and comments offered by the members of the subcommittee. Section 4.0, *Significant Action Item*, summarizes the significant action item adopted by the subcommittee.

2.0 DISCUSSION OF RECOMMENDED PRACTICES GUIDE ON PERMITTING

This section provides a summary of the working session held by the members of the subcommittee to complete, "Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting."

Mr. Kenneth Manaster, Santa Clara University School of Law, led the discussion to reorganize and improve the current draft of "The Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting." According to Mr. Manaster, the document has been a work-in-progress for two and half years. Mr. Manaster guided the members of the subcommittee through a detailed discussion on the three sections of the document that include, Introduction, Flashpoints, and Recommended Practices. He requested that the members provide comments on the document and track revisions accordingly.

Comments on the Introduction Section

During the discussion on the Introduction section of the guide, Mr. Michael Shapiro, Deputy Assistant Administrator, EPA OW, asked the members of the subcommittee who they envisioned as the primary audience of the guide. Mr. Manaster explained that, following the adoption of the document by the Executive Council of the NEJAC, the subcommittee would like to forward the guide to state and local government agencies responsible for issuing environmental permits. Mr. Shapiro, then asked for clarification, if the intended audience would be permit reviewers or permit writers. Mr. Manaster replied that the guide would be for both audiences. Ms. Jody Henneke, member of the Air and Water Subcommittee and Director, Office of Public Assistance, Texas Commission on Environmental Quality, cautioned that reviewers of permits currently have legal guidelines that must be followed; therefore, the guide may not be applicable to reviewers. Mr.

Exhibit 3-1

AIR AND WATER SUBCOMMITTEE

**Members Who Attended the Meeting
April 15, 2004**

Ms. Wilma Subra, **Acting Chair**
Ms. Alice Walker, **co-DFO**
Dr. Wil Wilson, **co-DFO**

Ms. Jody Henneke
Mr. Robert Sharpe

**Members
Who Were Unable To Attend**

Ms. Carolyn Green
Mr. Jason Grumet

Shapiro agreed and added that the presentation of the document and defining the target audience are important considerations for the subcommittee. Mr. Manaster acknowledged the comments and stated that there will be revisions to the document. In addition, he views the document as a guide to assist permit writers to consider environmental justice concerns when completing a permit.

Mr. Harvey Minnigh, REAP Solutions, Inc., commented that the document does not have a clear mission statement. He proposed the following revisions, (1) state the purpose of document and (2) define the audience. In addition, he recommended that the document not be too detailed. Mr. Robert Sharpe, member of the Air and Waste Subcommittee and Illinois Environmental Protection Agency, pointed out that if the audience is a permit writer, then the second paragraph of the Introduction section does not acknowledge the set of laws or guidelines permit reviewers use to approve or disprove permits. In addition, he questioned the extent of the NEJAC's authority to develop guidelines to write permits. Mr. Minnigh addressed Mr. Sharpe's comment by stating line 28 of the document, ".....case-by-case basis, distinguishing carefully among what the law requires, allows, or prohibits," believes addresses the concern raised. The goal of the document, Mr. Manaster reminded the members, is to provide a concise guideline for government agencies that issue permits to ensure that environmental justice concerns are addressed in permits. Mr. Minnigh added that the document should not contradict what applicable laws and regulations require, allow, or prohibit. Ms. Henneke agreed and added that the document focuses too much on the permit writers, whom in her agency do not have the authority to deviate from the law. The members of the subcommittee agreed that the Introduction section needs to be improved, specifically on defining the target audience.

Comments on the Flashpoints Section

Mr. Manaster then directed the members to the next section of the document, *Flashpoints*. Questions were raised, among the members, on what is the definition of "Flashpoints." Under siting determinations, Ms. Henneke pointed out that each state agency might have different authorities related to siting, for example Texas, does not have zoning authority. Mr. Chris Elias, Santa Clara Valley Water District, suggested including local planning boards in the document. Mr. Sharpe pointed out the need for the document to address environmental justice issues that occur when a source does not require permit review, as stated in line 91 of document, "..... are considered under applicable law to produce emissions or other environmental impairments that are too low or insightful to require permits."

Mr. Elias again questioned the definition of "Flashpoints" and the goal the Flashpoint section. The members discussed the validity of the current definition of "Flashpoints," which is "triggers for early warning where environmental justice issue might arise at certain stages in permitting processes." Mr. Elias recommended revising the name to "Early Warning," and Ms. Henneke suggested "Decision Point." Ms. Cynthia Larramore, Active Citizens Together Improving Our Neighborhoods, Inc., echoed the need for the subcommittee to define the term flashpoint clearly and the criteria it includes.

Comments on Recommended Practices

Ms. Henneke began the discussion on this section by suggesting reviewing the establishment and authority of Citizen Advisory Boards (CAB) written in the document. Mr. Minnigh explained that the CABs are for public participation and have no authority. Mr. Sharpe suggested addressing the funding source for CABs and Mr. Manaster disagreed. Mr. Shapiro questioned the definition of "authority" used in the document related to CABs. Mr. Sharpe agreed and cautioned that using the word "authority" could be interpreted by the public as having the authority to approve or deny a permit. Mr. Minnigh stated that the emphasis for public participation is to ensure meaningful public participation. Another potential issue under CABs, Ms. Henneke noted, is the site specific issues involved. She suggested emphasizing the involvement of grassroots organizations in CABs. The members concluded two important points under CABs: (1) the need to have public participation and (2) how to select members of a CAB.

Overall Comments on the Document

The document, Ms. Henneke noted, comes across as overly simplified as a “step-by-step” process. In Texas, she pointed out, the permit process is much more extensive and tedious. Mr. Minnigh clarified that the document is not intended for every permitting project. Mr. Elias suggested developing a disclaimer statement for potential users of the document. Mr. Sharpe expressed concern that environmental justice communities often do not receive information in a timely manner to be able to effectively participate in the permit process.

In conclusion, Mr. Sharpe, suggested the need to define the audience, specifically if the audience is the permit reviewer or the decision maker, the definition of Flashpoints, and the overall purpose of the document. He noted that the document currently does not include criteria for acceptance or denial of the recommended practices. Mr. Elias requested the members to consider how the recommended practices would be incorporated by the EPA. Ms. Walker reminded the members to consider having the document reviewed by technical experts.

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the members of the Air and Water Subcommittee.

3.1 Community Actions for a Renewed Environment Program

Mr. Larry Weinstock, EPA OAR, presented information on Community Actions for a Renewed Environment (CARE), a community-based toxic reduction initiative program. Exhibit 3-2 provides a description of the CARE program. He emphasized that the program is designed to provide education to communities to help them play a role in reducing toxic emissions in their local neighborhoods. CARE, Mr. Weinstock pointed out, also is a program to introduce communities to government volunteer programs. Mr. Weinstock noted that the CARE program will be successful because unlike other EPA programs, CARE does not focus on just one type of exposure and communities examine all toxic risks they face and select the voluntary solutions that they believe best fit their needs. However, Mr. Weinstock stressed that the CARE program is designed only as a supplement and is not intended to replace existing environmental programs.

Mr. Weinstock then stated that there are future plans to sponsor conferences to bring together communities involved in the program. He also stated EPA’s plan to create a central team to develop a database to track training and other related CARE initiatives. The database, he stated, would allow regional teams to interact and link related programs together, as well as provide question and answer sessions. He concluded with presenting a resource guide on the CARE program.

Exhibit 3-2

COMMUNITY ACTION FOR A RENEWED ENVIRONMENT

The new Community Action for a Renewed Environment (CARE) is a competitive grant program that offers an innovative way for communities to take action to reduce toxic pollution. Through CARE, communities can create local collaborative partnerships that implement local solutions to reduce releases of toxic pollutants and minimize exposure to toxic pollutants. CARE will empower communities to help them assess the pollution risks they face while also providing funding and access to EPA’s and other voluntary programs to address local environmental priorities. In addition, EPA offers support for communities to develop their own approach to reduce toxics. Examples of some of the EPA voluntary programs that reduce exposure to toxics and create safer communities include: reduced emissions from diesel engines, clean abandoned industrial sites, reduce emissions from small business operations while reducing costs, improve the indoor environment in schools, and use pollution prevention to protect drinking water supplies.

For further information on the CARE program, visit www.epa.gov/CARE.

3.2 Office of Water Permitting Programs

Mr. Shapiro presented information on permitting programs administered by EPA OW's Office of Wastewater Management, specifically the National Pollutant Discharge Elimination System (NPDES). The NPDES permitting program Mr. Shapiro noted, controls waster pollution by regulating point sources that discharge pollutants into waters of the U.S. Exhibit 3-3 provides a summary of NPDES permits. He added that currently, the program has focused on animal feed discharge as a result of the revised Concentrated Animal Feeding Operations (CAFO) regulation. The revised CAFO regulation, he noted, requires many CAFOs to have NPDES permit coverage. Mr. Shapiro explained that the revision has authorized many states to revise their regulations to include the new provisions.

Exhibit 3-3

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters. In most cases, the NPDES permit program is administered by authorized states. Since its introduction in 1972, the NPDES permit program is responsible for significant improvements to our Nation's water quality.

For further information on NPDES, visit www.epa.gov/npdes.

Mr. Shapiro also discussed the Permitting for Environmental Results (PER) initiative, which is a multi-year effort by EPA and the states to improve the overall integrity and performance of the NPDES program. Since most states are authorized to implement the NPDES program, Mr. Shapiro stated that the PER initiative is based on a partnership between the states and EPA. The purpose of PER, he added, is to promote collaborative effort to develop a set of national measures that can be applied state by state, and be used as key measure of success or failure. He noted that EPA and the states are focusing on identifying permits with the highest environmental significance to ensure better state and Federal resources allocation.

Another area of interest, Mr. Shapiro shared with the members, is the development and use of electronic tools to streamline the permit process. He provided an example, electronic Notice of Intent (eNOI), which is an electronic storm water notice of intent application designed for use by construction sites and industrial facilities that need to apply for coverage under EPA's Construction General Permit (CGP) or Multi-Sector General Permit (MSGP-2000). He also highlighted the permit scanning program to increase public access to permits. In addition, he noted a mapping tool developed by EPA to link water program data from multiple offices that allow users to screen permitted facilities for discharges.

An important focus of OW, Mr. Shapiro concluded, is in its commitment to support communities. He commented on the difficulty often experienced by communities and Tribes in achieving the goals of the Clean Water Act. Therefore, Mr. Shapiro explained, the OW programs focus on supporting these communities to operate small wastewater system to meet national standard develop capacity to meet complex environmental standard, as well as to provide adequate financing and technology through a "Small Communities Team."

3.3 Indoor Air Quality Program

Ms. Elizabeth Cotsworth, EPA Office of Radiation and Indoor Air (ORIA), presented information on the prevention of indoor air pollution. Ms. Cotsworth explained that indoor air pollution sources that release gases or particles into the air are the primary cause of indoor air quality problems in homes. Inadequate ventilation, she continued, can increase indoor pollutant levels by not bringing in enough outdoor air to dilute emissions from indoor sources and by not carrying indoor air pollutants out of the home. High temperature and humidity levels, she stated, also can increase concentrations of some pollutants. Ms. Cotsworth stated that there are many sources of indoor air pollution in any home. For example, she noted, combustion sources such as oil,

gas, kerosene, coal, wood, and tobacco products; building materials and furnishings as diverse as deteriorated, asbestos-containing insulation, wet or damp carpet, and cabinetry or furniture made of certain pressed wood products; products for household cleaning and maintenance, personal care, or hobbies; central heating and cooling systems and humidification devices; as well as outdoor sources such as radon, pesticides, and outdoor air pollution.

Ms. Cotsworth continued her presentation by discussing the health effects from indoor air pollutants that may be experienced soon after exposure or, possibly, years later. She explained that several immediate effects that may show up after a single exposure or repeated exposures, include: irritation of the eyes, nose, and throat, headaches, dizziness, and fatigue, which are usually short-term and treatable. She noted that sometimes the treatment is simply to eliminate the person's exposure to the source of the pollution, if it can be identified. Symptoms of some diseases, including asthma, hypersensitivity pneumonitis, and humidifier fever, also may show up after exposure to some indoor air pollutants, she noted. In addition, other health effects that may show up years after exposure or only after long or repeated periods of exposure, include: respiratory diseases, heart disease, and cancer. She stated that studies are showing that Hispanic and African-American communities are suffering a higher rate of indoor air pollution, primarily from second-hand smoke and biological contaminants (body parts from insects and rodents).

To provide education on the effects of indoor air pollution, Ms. Cotsworth stated that EPA and the Advertising Council have launched media campaigns to increase national awareness of the serious health effects caused by indoor air pollution. One such campaign, Ms. Cotsworth noted, included the to increase awareness related to asthma and indoor air pollution is the Goldfish Campaign, which features a child who describes feeling like a fish with no water when he has an asthma attack. She noted that grants may be available for communities related to indoor air pollution through ORIA's community-based air toxics projects. She explained that communities across the U.S. are taking an active role in improving air quality and finding solutions to other environmental concerns they face. EPA, she noted, is providing financial and technical assistance for community-based projects to resolve health and environmental issues cause by indoor air pollution.

Ms. Cotsworth concluded her presentation by discussing EPA's Clean School Bus USA, which is a public-private environmental partnership, that seeks to reduce children's exposure to air pollution from diesel school buses. The program emphasizes three ways to reduce public school bus emissions through anti-idling strategies, engine retrofit and clean fuels, and bus replacement. The goal of Clean School Bus USA, Ms. Cotsworth explained, is to reduce both children's exposure to diesel exhaust and the amount of air pollution created by diesel school buses. She stated that EPA is working aggressively to reduce pollution from new heavy-duty diesel trucks and buses by requiring them to meet tougher and tougher emission standards in the future. Clean School Bus USA, she continued, is designed to jump-start the process of upgrading the nation's public school bus fleet so that this generation of school children can reap the benefits of technologies that are available now to reduce emissions.

Mr. Bill Harnet, EPA OAR, continued the discussion on air quality issues by presenting, A Guide to Air Quality and Your Health. The Air Quality Index (AQI), Mr. Harnet explained, is an index for reporting daily air quality and informs the public how clean or polluted the air is and what associated health effects might be of concern. The guide, he stated, also has been translated into Spanish and is available to the public. Mr. Harnet noted the balanced representation of the Clean Air Act advisory group, with inclusion of members from the environmental groups, industry, and grassroots organizations. He explained that the primary purpose of the advisory group is to review the Clean Air Act and to receive feedback from the communities.

4.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action item adopted by the subcommittee.

- T Beginning May 18, 2004, conduct a conference call every three weeks to focus on revising the “Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting.”
- Ms. Henneke and Mr. Sharpe will work on Section 3a (Public Participation) and Section 3b (Permit and Terms)
 - Mr. Manaster will focus on the Introduction and Flashpoint sections.

The goal of the subcommittee is to produce a final document by June 29, 2004 and then decide when to seek technical advice from subject matter experts.

MEETING SUMMARY

of the

ENFORCEMENT SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 15, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Vicki Simons
Acting Designated Federal Official**

**Juan Parras
Acting Chair**

**CHAPTER FOUR
MEETING
OF THE
ENFORCEMENT SUBCOMMITTEE**

1.0 INTRODUCTION

The Enforcement Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Mr. Juan Parras, De Madres a Madres, Inc., served as acting chair of the subcommittee. Ms. Vicki Simons, U.S. Environmental Protection Agency (EPA) Office of Enforcement Compliance Assurance (OECA), served as the acting Designated Federal Official (DFO) for the subcommittee. Exhibit 4-1 lists the members who attended the meeting and identifies those members who were unable to attend.

This chapter provides a summary of the deliberations of the Enforcement Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the acting chair; the acting DFO; and Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA OECA. Section 3.0, *Facilitated Discussion of OECA's National Program Priorities*, summarizes the discussion of OECA's national program priorities. Section 4.0, *Presentations*, provides an overview of each presentation as well as a summary of questions asked and comments offered by the members of the subcommittee. Section 5.0, *Action Items*, identifies the action items adopted by the subcommittee.

Exhibit 4-1

ENFORCEMENT SUBCOMMITTEE
Members Who Attended the Meeting April 15, 2004
Mr. Juan Parras, Acting Chair Mr. Vicki Simons, Acting DFO
Ms. Susana Almanza Mr. Charles "Chip" Collette
Members Who Were Unable To Attend
Mr. Kenneth Warren, Chair

2.0 REMARKS

Mr. Parras, acting chair of the Enforcement Subcommittee, opened the meeting by welcoming the members and Ms. Simons, the acting DFO. Ms. Simons then introduced Mr. Rey Riveria, Environmental Justice and Tribal Coordinator, EPA Office of Solid Waste and Emergency Response (OSWER), Office of Brownfields Cleanup, who will serve as the permanent DFO for the subcommittee. Ms. Simons also announced the new members of the subcommittee, Mr. James Huffman, Lewis and Clarke Law School, and Mr. Benjamin Wilson, Beveridge and Diamond. She explained that their appointments to the subcommittee were not finalized soon enough for them to attend the meeting. Ms. Simons then introduced Ms. Harris.

Ms. Harris began by thanking the members of the subcommittee for their commitment to attending and participating in the meetings of the NEJAC. She stated that she enjoyed the dialogue about cumulative risks and impacts that took place during the Executive Council meeting held on the two previous days and looked forward to hearing the thoughts of the subcommittee members about that session.

Ms. Harris then reminded the members of the subcommittee that OECA had asked the subcommittee to provide comments on OECA's national program priorities and to identify mechanisms that EPA could use to effectively integrate principles of environmental justice into its enforcement and compliance assistance programs. Exhibit 4-2 provides background information on OECA's national program priorities.

Exhibit 4-2

In a memorandum dated August 11, 2003, from Ms. Harris to the members of the subcommittee, she had presented the following questions to the subcommittee:

- & What are the most significant human health or environmental problems that you are seeing in environmental justice communities which can be addressed effectively through enforcement actions or compliance assistance activities?
- & Are there particular industries located near environmental justice communities that have disproportionate impacts on those communities?
- & Can you direct EPA to specific environmental justice communities that are at risk from the cumulative impacts of multiple sources of pollution?

The subcommittee members used these questions as a starting point at their meeting on September 17, 2003, and identified several areas of concern that included, lead, accidental releases, the toxic release inventory (TRI), oversight of state and local enforcement programs, Federal facilities, water quality, and air quality issues.

Ms. Harris informed the subcommittee members that although environmental justice was not selected as a stand-alone priority, OECA senior managers determined that environmental justice concerns are broad and cross-cutting. Therefore, she stated, these managers decided that such concerns should be incorporated into each national priority area and that specific performance measures should be established within each priority area to ensure that principles of environmental justice are integrated.

The following priorities were selected:

- Wet weather
- Air toxics
- New source review (NSR) and prevention of significant deterioration (PSD) requirements under the Clean Air Act (CAA)
- Mineral processing
- Tribal compliance
- Petroleum refining
- Safe Drinking Water Act (SDWA) and microbials
- Financial responsibility

Detailed descriptions of the priority areas are provided in Section 3.0 of this chapter.

OECA NATIONAL PROGRAM PRIORITIES

On October 1, 2003, EPA issued its new strategic plan that describes how the agency will use its resources to accomplish EPA's mission. The new plan covers fiscal years (FY) 2003 through 2008 and consists of five goals with the OECA's activities contained in Goal 5 – Compliance and Environmental Stewardship. Therefore, OECA has aligned its FY 2005 through 2007 work planning cycle to align with EPA's strategic planning cycle.

The enforcement and compliance assurance programs have selected national program priorities by considering patterns of noncompliance and environmental or public health risk associated with regulated sectors, particular pollutants, or specific regulatory requirements. Priorities usually are national in scope and must be appropriate for Federal attention and response.

During Summer 2003, OECA asked each EPA regional office to

- & Conduct internal discussions about existing and potential national program priorities
- & Engage state and tribal regulatory partners in discussions of existing and potential national program priorities for FY 2005 through 2007

In addition, EPA conducted outreach related to priorities at a meeting of the Enforcement Subcommittee of the NEJAC on September 17, 2003.

OECA selected its national program priorities using the following criteria:

- & Significant environmental benefit: In what specific areas can the Federal enforcement and compliance assurance programs produce a significant positive impact on human health or the environment? What are the known or estimated public health or environmental risks?
- & Noncompliance: Are there particular economic or industrial sectors, geographic areas, or facility operations where regulated entities have demonstrated serious patterns of noncompliance?
- & EPA responsibility: What identified national problem areas or programs are better addressed through EPA's Federal capabilities in enforcement or compliance assistance?

Ms. Harris expressed her appreciation to the subcommittee for developing and submitting papers on its proposed priority issues. She then explained that although not all the recommendations of the subcommittee were selected as National Program Priorities, OECA continues to address the remaining issues. For example, she stated, lead in water continues to be a serious issue, and OECA is working closely with the local agencies of the District of Columbia to address the lead issues that face the residents of Washington, DC. In addition, OECA's Office of Regulatory Enforcement is working with regional offices to monitor lead levels at schools in Philadelphia, Pennsylvania; Baltimore, Maryland; Boston, Massachusetts; and New York City and Syracuse, New York. OECA also is partnering with the EPA Office of Water to compile data about cities that have lead levels in their drinking water that are reaching action levels.

In addition, Ms. Harris explained that EPA, the U.S. Department of Housing and Urban Development (HUD), and the U.S. Department of Justice (DOJ) are working on a joint initiative to investigate and promote compliance with the Federal Lead-based Paint Disclosure Rule. This initiative includes a strong environmental justice component because the focus is on low-income communities, which often have a high incidence of childhood blood-lead poisoning that is associated with older, substandard housing. A number of settlements reached so far have required property owners and managers to inspect and test housing for the presence of lead-based paint, she stated. A priority also has been placed on abating hazards in residential units occupied by children. Ms. Harris stated that settlements have resulted in commitments to inspect and test more than 160,000 housing units and in collection of more than \$350,000 in penalties.

Continuing, Ms. Harris proceeded to update the members on activities related to the TRI. Ms. Harris stated that based on the most recent publicly available TRI data, over 3,000 facilities failed to submit approximately 8,000 reporting forms under the TRI on time during reporting years 2000 and 2001. In addition, releases of about 1.3 billion pounds of materials were reported late; therefore, that information could not be included in the public data release reports, depriving people of information on chemicals being released near the locations where they live. To address this problem, OECA's Office of Regulatory Enforcement has started a new initiative to target companies that submit TRI forms late. Under the initiative, OECA developed a three-tiered enforcement response:

- Tier one applies to facilities that reported too late for 2000 and 2001. Under this scenario, companies will receive an opportunity to either dispute the violation or settle in accordance with EPA's penalty policy.
- Tier two applies to facilities that reported too late for the public data release report for one of the two years. Under this scenario, companies will receive either an opportunity to dispute violations or an offer to settle for a flat penalty of \$5,000 per facility.
- Tier three applies to facilities that reported late but whose information was included in the public data release report. These facilities will receive a notice of noncompliance.

Ms. Harris explained that the purpose of the initiative is to help ensure that the public has timely access to information about releases of chemicals in the community by providing a stronger incentive for facilities to report on time. She concluded by stating that to measure the initiative's success, EPA will compare late reporting rates before and after the initiative.

Ms. Harris then discussed issues related to accidental releases and explained that OECA's Resource Conservation Recovery Act (RCRA) Enforcement Division has the lead on enforcing the Chemical Accident Prevention Provisions of the CAA. These regulations require companies that use toxic substances to develop a risk management program. The components of a risk management plan include:

- & A hazard assessment of the potential effects of an accidental release, an accident history for the last five years, and an evaluation of worst-case and alternative accidental releases
- & A prevention program that includes safety precautions and maintenance, monitoring, and employee training measures

- & An emergency response program that identifies emergency healthcare facilities, employee training measures, and procedures for informing the public and response agencies should an accident occur

Since the regulations went into effect in 1999, EPA has taken more than 150 enforcement actions against violators. Most recently, OECA issued an Expedited Settlement Approach Policy to streamline the administrative enforcement process for easily correctable violations.

In areas related to providing oversight of state and local enforcement programs, Ms. Harris stated that OECA, with the assistance of the EPA regions, states, and the Environmental Council of States (ECOS), is developing a new tool to assess state performance in enforcement and compliance assurance activities. The purpose of the assessment is for states to determine performance standards in collaboration with the EPA regions. Under the framework, 13 areas are identified for evaluation of state performance, including timely reporting of violations, inclusion of injunctive relief and return to compliance, and timely initiation of enforcement actions. Over the next eight months, EPA will conduct a pilot assessment of one state in each region. Upon completion and evaluation of the pilot assessments, OECA will work with the regions to establish schedules for completing assessments with all the states. Ms. Harris stated that the lessons learned will be shared with the members of the subcommittee and their comments will be requested. She then asked for suggestions on how to engage the public in with this process.

Ms. Susana Almanza, People Organized in Defense of Earth and Her Resources (PODER) and a member of the Enforcement Subcommittee, asked whether the public currently is involved. Ms. Harris responded that currently OECA is focusing on the states agreeing to the assessments. She explained that not all states have agreed to them. Mr. Chip Collette, Florida Department of Environmental Protection (FDEP) and a member of the Enforcement Subcommittee, agreed with Ms. Harris. He explained that the states need to be in agreement, and then EPA can request comments from the public. Ms. Almanza asked whether this process is voluntary for the states. Ms. Harris explained that EPA has the authority to assess the states at any time; however, EPA has not done this consistently. Ms. Harris referred to the 1986 memorandum titled *Policy Framework for State and EPA Enforcement Agreements*, which outlines the process for establishing and maintaining the state and EPA relationship for enforcement and compliance assurance.

Ms. Harris continued by discussing issues related to Federal facilities. She explained that OECA's Federal Facilities Enforcement Office (FFEO) has developed an inspection and enforcement initiative to provide support and resources to EPA regional offices in order to help them conduct multimedia inspections at Federal facilities and provide follow-up case support when appropriate. The initiative, she explained, follows OECA's "smart enforcement principles":

- & Address significant environmental, public health, and compliance problems
- & Use data to make strategic decisions for better utilization of resources
- & Use the most appropriate tool to achieve the best outcome
- & Assess the effectiveness of program activities to ensure continuous program improvement
- & Effectively communicate the environmental, public health, and compliance outcomes
- & Consider environmental justice as a factor in determining inspection targets

She concluded her update on issues related to Federal facilities by stressing that environmental justice factors will be critical in identifying targets for inspection and that preference will be given to facilities in environmental justice communities.

Ms. Harris concluded her remarks by emphasizing that environmental justice will be an integral part of OECA's national program priorities. She stated that each program office in OECA has developed an environmental justice action plan that includes performance goals and outcomes for the next two years. In addition, OECA senior managers recently developed a *Concept Paper for Environmental Targeting* that will assist OECA in identifying a consistent set of parameters that can be used to define

environmental justice communities and to help develop a targeting tool to identify disproportionate impacts in such communities. In 2003, she stated, 600 million pounds of potential pollutants were reduced because of enforcement actions, but OECA cannot identify what percentage of this reduction was in environmental justice communities and is trying to better quantify this achievement.

Ms. Almanza expressed concern that environmental justice was not selected as a stand-alone priority. She asked how OECA senior managers will ensure that environmental justice is taken seriously. Ms. Harris responded that every program in OECA had to develop performance measures in this area.

Mr. Parras stated that the siting of schools next to hazardous facilities or on brownfields-type properties is a major concern that had not yet been addressed during the meeting. Mr. Parras expressed the importance of examining the decisions to locate schools on such properties. In his community, a school was located in the middle of a group of petrochemical plants. The affected community had no resources or political clout to protest the siting. He explained that this type of problem is occurring throughout the United States. Ms. Harris suggested that the subcommittee follow up with Mr. Bill Sanders, Director of the Office of Children's Health. Ms. Marva King, EPA Office of Environmental Justice (OEJ), also suggested that the subcommittee talk with Mr. Kent Benjamin, Environmental Justice Coordinator for EPA OSWER and the DFO for the Waste and Facility Siting Subcommittee.

In closing, Ms. Harris thanked the subcommittee members for all their efforts.

3.0 FACILITATED DISCUSSION OF OECA'S NATIONAL PROGRAM PRIORITIES

This section summarizes the subcommittee's facilitated discussion of OECA's national program priorities. Ms. Tinka Hyde, Enforcement Coordinator, EPA Region 5, began this session by explaining the nature of the concerns related to each national priority. OECA's national program priorities are summarized in Exhibit 4-3.

Ms. Simons then explained that performance-based strategy teams at OECA are beginning to develop goal statements to address each national priority. She informed the subcommittee members that this would be an opportune time for them to offer their comments on the selected national priorities and to make recommendations on how OECA could integrate environmental justice into the goal statements.

Ms. Simons encouraged the subcommittee members to consider how OECA could address environmental justice in its national priorities by using the following factors:

- Outreach, education, and communication
- Collaborative problem-solving
- Coordination among Federal, state, and tribal partners
- Tools, targeting, and assessment

Through a facilitated discussion, the members of the subcommittee then offered comments and recommendations on each national priority. The discussion is summarized below.

3.1 Wet Weather Issues under the CWA

Regarding wet weather issues, Mr. Collette said that most states operate their own National Pollutant Discharge Elimination System (NPDES) programs under the CWA. He expressed concern that individual facilities are not applying for NPDES permits. He explained that the effects of not complying with NPDES usually are very broad, and he asked whether EPA has mechanisms to identify environmental justice communities that may be impacted. Mr. Collette continued by saying that states need to be involved when EPA addresses this priority area. He concluded by saying that at a state level

**OECA'S NATIONAL PROGRAM PRIORITIES
FOR 2005 THROUGH 2007**

OECA has selected the following national program priorities for FY 2005 through 2007.

National Program Priority	Nature of Concern to be Addressed
<i>FY 2005 Priority</i>	
Petroleum Refinery Sector	Reduce air emissions and eliminate unpermitted releases from an estimated 162 operable domestic refineries throughout the United States
<i>FY 2005 through 2007 Priorities</i>	
Wet Weather Issues under the Clean Water Act (CWA)	Ensure compliance with CWA requirements to address storm water runoff, overflows from combined and sanitary sewers, and concentrated animal feeding operation (CAFO) discharges. These discharges can contain bacteria, pathogens, and other pollutants that may cause illnesses in humans; lead to water quality impairments, including beach and shellfish bed closures; and harm the nation's water resources.
NSR/PSD requirements under the CAA	Ensure that NSR and PSD requirements under the CAA are implemented. Failure to comply with NSR and PSD requirements may lead to inadequate control of emissions result in the release of thousands of tons of pollution to the air each year, particularly nitrogen oxides, and volatile organic compounds, and particulate matter.
Air Toxics and the CAA	Reduce public exposure to toxic air emissions by using directed monitoring and enforcement to ensure compliance with the Maximum Achievable Control Technology (MACT) standards. This is the second phase of this priority following four years of compliance assistance and development of implementation tools.
Tribal Compliance	In Indian country and tribal areas in Alaska, address significant human health and environmental problems associated with drinking water, hazardous waste management, and environmental risks in tribal schools (such as lead-based paint risks); ensure compliance within targeted areas, and address adjacent, noncomplying facilities impacting Indian Country and tribal areas.
Mineral Processing under RCRA	Address unpermitted mineral processing facilities. Evidence gathered in recent inspections indicates that mineral processing facilities are failing to obtain the necessary permits and adequately manage their wastes. EPA has found that mishandling of mineral processing wastes has caused significant environmental damage and resulted in costly cleanups. These highly acidic wastes have caused fish kills, and the arsenic and cadmium that these wastes often contain have been found at elevated levels in residential drinking water wells.
Financial Responsibility	(To begin in FY 2006) Strengthen compliance with financial responsibility requirements under various environmental laws to ensure that individuals or companies handling hazardous waste, hazardous substances, toxic materials, or pollutants have adequate funds to close their facilities, clean up any releases, and compensate any parties affected by their actions.

(at least in Florida), concerns related to environmental justice are not considered during the process of issuing NPDES permits.

Ms. Hyde responded that facilities may not have NPDES permits for a variety of reasons; for example, a permit could have expired, or a permit did not address long-term problems. For combined sewer overflows, EPA Region 5 works closely with the states. Ms. Harris added that most states have geographic information systems (GIS) similar to EPA's that could assist the states in identifying potential environmental justice communities. Most of the EPA regions are generally familiar with the issues, and several regions assist the states in analyzing permit applications, Ms. Harris stated. Ms. Almanza asked how EPA can ensure that a state addresses environmental justice concerns when considering whether to issue a permit. Ms. Harris explained that it often depends on a state's ability to establish an environmental justice program. She added that the EPA regions will continue to stress that states should address environmental justice concerns during the permitting process.

Members of the subcommittee also inquired about additional approaches that EPA could use to improve its ability to identify communities with significant environmental and public health problems. Ms. Almanza recommended reviewing complaints submitted to EPA under Title VI of the Civil Rights Act of 1964 or using GIS mapping tools. She commented that most wastewater treatment plants are located in communities of color; for example, in Austin, Texas, 90 percent of industrial zoning is in communities of color. Continuing, Ms. Almanza stated that development of a Federal policy on zoning also should be considered. Ms. Harris then added that in Atlanta, Georgia, all wastewater treatment plants currently are located in communities that have environmental justice concerns. Ms. Hyde offered to provide the subcommittee with a report that identifies the locations of all combined sewer overflows in the United States.

Ms. Simons then summarized the recommendations of the subcommittee related to wet weather issues:

- Review complaints submitted to EPA under Title VI of the Civil Rights Act in order to identify communities with environmental and public health problems
- Ensure that states consider environmental justice concerns when issuing citations for wet weather violations
- Use GIS mapping tools to identify wastewater facilities in environmental justice communities
- Examine the compliance of Federal facilities with the CWA by requesting additional information on targeting
- Examine the wet weather impacts on colonias (Follow up with Ms. Wendy Graham, Environmental Justice Coordinator for the EPA Office of International Affairs and the DFO for the International Subcommittee.)

3.2 Air Toxics and the CAA

Beginning the discussion of air toxics, Ms. Almanza recommended that EPA determine whether if states are conducting air monitoring in communities of color. In addition, she stated that the air toxics need to be considered in relation to cumulative impacts on high-risk communities. Ms. Harris explained that there also are attainment issues to consider. She suggested that the members of the subcommittee follow up with the Air and Water Subcommittee on this issue. She also recommended inviting an EPA region that conducts air monitoring in high-risk communities to report its findings to the subcommittee at a future meeting.

Continuing, Mr. Parras described a program in Houston, Texas, that trained members of an impacted community how to collect air samples with the assistance of EPA, the state, and the city. The next step was to place air monitors in the community; however, the program ran out of funding. The state was asked to provide the air monitors but never did so because of the cost. Ms. Hyde clarified that EPA is not focusing on placing air monitors but on collecting data that already exists to identify highly impacted areas. Ms. Harris stated that placing air monitors in communities would be a good supplemental environmental project (SEP) for noncompliant industries. Ms. Almanza recommended that the information that EPA collects for the *Concept Paper for Environmental Targeting* be used to identify highly impacted areas and then to ensure that no other facilities are sited in these areas. She hopes that the states also will use this information.

Mr. Parras suggested that mercury contamination also should be included in the air toxics priority area. In Texas, he stated, numerous coal-burning facilities for specific chemicals cause excessive mercury contamination of the air.

Ms. Simons summarized the recommendations of the subcommittee related to air toxics:

- Conduct air monitoring for specific chemicals in communities
- Consider air toxics in relation to cumulative impacts
- Invite an EPA region to present a report on toxics monitoring (Mr. Mark Hansen, EPA Region 6, was recommended as a potential presenter.)

- Continue funding citizen air sampling in Houston, Texas (Mr. Doug Liptka, EPA Region 6, currently is working on a request for additional funding.)
- Recommend air monitoring as a SEP
- Include mercury contamination in the priority area
- Coordinate with Mr. Wil Wilson, Environmental Justice Coordinator for the EPA Office of Air and Radiation and the DFO for the Air and Water Subcommittee
- Recommend that states use GIS mapping and other data collection methods before siting facilities in highly impacted communities

3.3 NSR/PSD Requirements under the CAA

Ms. Harris began the discussion of NSR/PSD requirements by informing the subcommittee members that EPA has proposed new rules to clarify NSR. In addition, she explained that the Equipment Placement Rule (EPR) has been stayed by EPA. There is an existing rule, however, that places limitations on the resources that EPA can use. Because of these limitations, Ms. Harris stated, it has become important for EPA to ensure that OECA is addressing the appropriate issues (for example, pollution prevention). She explained that OECA continues to enforce the existing law despite the current stay on the proposed EPR.

Mr. Parras then referred to a report issued by EPA's Office of Air and Radiation (OAR) on nonattainment areas. He asked whether OECA could take any action to address these nonattainment areas. Ms. Harris explained that OECA does not have the authority to enforce the CAA; however, she stated, OAR currently is working with the states to address such issues. Mr. Collette also pointed out that addressing ozone in terms of attainment is an environmental justice issues for all because it impacts everyone. Ms. King recommended that the Enforcement Subcommittee coordinate with the Air and Water Subcommittee to address these issues. Also, the Enforcement Subcommittee members requested that Ms. Simons ask Mr. Wilson to provide information on nonattainment and ozone issues. Ms. Almanza stated that it is important to examine the cumulative impacts of nonattainment on environmental justice communities.

Ms. Harris added that as a mechanism for enforcing the requirements of the CAA, state governments often distribute or refuse to distribute transportation funding based on attainment or nonattainment. For example, in Atlanta, legal authorities were used to dispute a transportation conformity plan.

3.4 Mineral Processing under RCRA

Ms. Harris explained that mineral processing as regulated under RCRA was selected as a national priority because many mineral processing facilities have been operating as though they are exempt from RCRA. Mishandling of mineral processing wastes has caused significant environmental damage and is resulting in costly cleanups, she explained. For example, in discussions with the regulated community, EPA Region 4 was led to believe that waste from mineral processing plants was exempt. It is now known that exempt waste was mixed with nonexempt waste, and the region is revisiting these issues.

Continuing, Mr. Collette stated that Florida has problems with phosphate mining and gypsum stacks associated with ongoing coal-firing operations. Mr. Collette explained that gypsum is the by-product of a pollution control process at power plants and that the low-income, rural communities that live near the plants have little capacity or ability to address the problems with gypsum stacks. He expressed his belief that regulators need to be more proactive in identifying what needs to be done to address such problems. Mr. Parras asked how gypsum stacks can be eliminated. Ms. Harris responded that there are opportunities for enforcement when violations are cited. For example, facilities can be made to conduct pollution prevention activities through SEPs. The subcommittee requested a compliance and enforcement update on this issue in the future.

3.5 Tribal Compliance

The members of the Enforcement Subcommittee agreed that the tribal compliance priority area should be addressed by the Indigenous Peoples Subcommittee. The Enforcement Subcommittee then decided to coordinate with Mr. Daniel Gogal, EPA OEJ and the DFO for the Indigenous Peoples Subcommittee, regarding recommendations for OECA's tribal compliance national priority.

Ms. Harris explained that OECA is identifying issues that are unique to specific tribes. It is important to note, she said, that some tribes are very sophisticated and are operating facilities that are causing significant environmental impacts. Ms. Teresa Cooks, Communication Specialist, EPA Region 6, stated that in Region 6, the Mescalero Tribe has 14 water systems, and for the first time, all 14 systems are in compliance. Mr. Parras indicated that low-level radioactive waste also should be addressed as part of the priority area.

3.6 Financial Responsibility

Ms. Harris explained that financial assurance requirements under environmental laws ensure that persons or companies handling hazardous or toxic materials have adequate funds to close facilities, clean up releases, and compensate anyone harmed by releases. EPA is now aware, she continued, that many companies may not have been honest about having adequate funding to close their facilities. When these facilities close and the required funding is not in place, EPA will need to fund the cleanup and have no ability to pursue recovery costs.

4.0 PRESENTATIONS

This section summarizes the presentations made and reports submitted to the Enforcement Subcommittee.

4.1 Facilitated Discussion: *Office of the Inspector General's Report: EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice*

Mr. Charles Lee, Associate Director, EPA OEJ, discussed the *Office of the Inspector General's Report: EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice* (IG report) and the areas in which EPA differs with the Office of the Inspector General's (OIG) findings. Mr. Lee explained that although OEJ disagrees with some findings in the report, OEJ believes that the report has provided an opportunity for EPA to focus on environmental justice. He went on to say that environmental justice is a complex issue and that it is important to have discussions about the concepts of environmental justice and the values associated with it.

Mr. Lee then offered the members of the subcommittee a brief history of the origins of the environmental justice movement. He noted that environmental justice became a nationally recognized issue in 1982 and that in 1983, the U.S. General Accounting Office (GAO) found that three of four commercial hazardous waste facilities in EPA Region 4 were in minority areas and that the fourth was in a low-income area. Mr. Lee explained that EPA responded by forming the Environmental Equity Workgroup in 1990. In June 1992, the workgroup noted that minority and low-income populations bear a higher environmental risk burden than the general population, and in November 1992, EPA established the Office of Environmental Equity (which was renamed the Office of Environmental Justice in 1994). The next major milestone, Mr. Lee stated, was on February 11, 1994, when President Clinton issued Executive Order 12898, "Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations." Mr. Lee also commented that he and Mr. Barry Hill, Director of EPA OEJ, participated in the effort to develop the language that became Executive Order 12898.

Mr. Lee then explained that the IG report sought to answer the following questions:

- & How has EPA implemented Executive Order 12898 and integrated its concepts into EPA's regional and program offices?
- & How are environmental justice areas defined at the regional levels, and what is the impact?

Mr. Lee explained that OIG believes that EPA has not fully implemented Executive Order 12898 and has not consistently integrated environmental justice into its day-to-day operations. In addition, the IG report states that "EPA has not identified minority and low-income, nor identified populations addressed in the executive order, and has neither defined nor developed criteria for determining disproportionately impacted." Mr. Lee then summarized the three recommendations of the IG report:

- & Develop a standard strategy that limits variations related to GIS applications, including use of census information, determination of minority status, determination of income threshold, and all other criteria necessary to provide regions with information for environmental justice decisions
- & Require that the selected strategy for determining an environmental justice community be consistent for all EPA program and regional offices
- & Develop a clear and comprehensive policy on actions that will benefit and protect identified minority and low-income communities, and strive to include this policy in states' Performance Partnership Agreements and Performance Partnership Grants

Mr. Lee, however, expressed his belief that it is critical to continue to address disproportionate impacts even though the definition of such impacts may vary among EPA and the states.

Mr. Lee informed the subcommittee members that throughout EPA, a new approach to addressing environmental justice has begun to link social and public health factors. For example, OECA has developed the *Concept Paper for Environmental Targeting*.

Continuing, Mr. Lee explained that the premise of the IG report would require the development of a uniform, quantitative, national standard for defining an environmental justice community. The recommendations in the IG report flow from this premise. He explained that other Federal agencies, such as the White House Council of Environmental Quality, the U.S. Department of Transportation (DOT), and DOJ, have developed definitions for environmental justice communities; however, the definitions vary from simplistic to complicated. Mr. Lee stated that each community is unique and should be treated as such. Mr. Lee expressed OEJ's belief that by defining environmental justice, salient issues may be missed. For example, Mr. Lee stated that setting thresholds will create real problems. If "24.9" is established as a threshold, communities with a score of "24.8" would be excluded.

Mr. Lee then noted that one of the most significant parts of the IG report appears on page eight. The report quotes the executive order:

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions...(emphasis added)

He explained that EPA has not been able to address this section of the executive order because the phrase is a transposition of civil rights legal concepts regarding environmental law. The problem with this transposition is that environmental law does not address a protected class, he stated. The more precise analytical method to use, Mr. Lee explained, is to address environmental justice issues that include adverse impacts on human health, unique exposure pathways, sensitive populations, and multiple cumulative impacts. Mr. Lee stated that human health and environmental effects are a nexus and explained that it is important to determine how to integrate civil rights with social concepts.

Mr. Collette commented that he had conceptual problems with the IG report. He explained that he was most disturbed by OIG's assumption that "disproportionate impact" can be easily handled or identified. He continued by explaining that "disproportionate impact" analysis looks at issues in isolation and would not allow for a cumulative analysis. He also stated that statistical analysis is costly and that EPA probably does not have the resources to apply it.

Ms. Almanza asked what prompted OIG to conduct the evaluation. Mr. Lee explained that OIG asked to investigate the environmental justice implications of air emission trading and as the OIG was collecting this data, it believed that there also was a need to examine EPA's overall implementation of the executive order.

Ms. Almanza expressed agreement with Mr. Lee that environmental justice should not be limited by a single definition. She continued that a definition should not be so concise that some communities will be overlooked. Mr. Lee added that the more fundamental fear is that once environmental justice communities are defined, the issue will be marginalized because enforcement of environmental justice cannot be directly linked to environmental laws. Mr. Lee identified three conundrums of environmental justice: (1) problem-solving, (2) the meaning of "disproportionate impacts", and (3) the conflict between civil rights law and environmental law.

Mr. Parras stated that communities are unaware of the IG report and therefore have not provided any comments. He continued by stating that those who know about environmental justice often view it as an affirmative action program intended to address environmental problems. He then asked whether EPA will request that communities comments on the IG report. Mr. Lee reiterated that EPA's response is dictated by the statute and must be provided within 90 days; however, communities are welcome to provide report comments to OIG.

Mr. Lee also pointed out that most communities do not understand the challenges involved in promoting their cases. Most communities read the executive order and then ask EPA to designate them as environmental justice communities in order to solve their problems. This approach often leads to frustration.

Mr. Parras suggested conducting an outreach campaign for communities about the IG report and EPA's response to assure them that the scope and agenda for environmental justice have not changed. Mr. Lee agreed that there needs to be communication with communities. He also stressed that there needs to be a better understanding of the limits of environmental laws. Ms. King said that OEJ will be distributing 10,000 copies of a DVD titled, *Communities and Environmental Laws and Citizens Guide to Environmental Justice*. Ms. King stated that OEJ is excited about distributing the DVD titled to communities in an effort to educate them about the use of environmental laws. She continued by explaining that OEJ will be providing training on the DVD in the near future.

Ms. Almanza stated that communities do not understand the difference between civil rights and environmental justice. Mr. Lee agreed and stated that most community and advocacy groups have yet to make a distinction between the two concepts. Ms. Almanza also stated that the IG report does not change anything for the communities including the need to still respond to their requests for help. She stated that it is important not to get caught up in "paperwork." Communities, she explained, will try all avenues, including civil rights laws, education, and other Federal agencies, to seek relief from their environmental problems.

4.2 Presentation and Discussion: *Concept Paper for Environmental Targeting: Policy and Technical Issues*

Ms. Hyde explained that the *Concept Paper for Environmental Targeting: Policy and Technical Issues* is the result of an effort that started in May 2003. OECA, she stated, identified a need for

- & A consistent set of parameters that can be used to define an environmental justice community
- & A proactive targeting tool to assist EPA regions and headquarters program offices in identifying the potential for disproportionate impacts on communities

As a result, a small workgroup was developed to work with OEJ in order to develop a targeting tool, stated Ms. Hyde. The concept paper, Ms. Hyde stated, focuses on work within OECA, but other EPA program offices may be able to adopt some of the concepts presented.

Continuing, she explained that the workgroup recommends that OECA apply a nationally consistent set of environmental, health, and demographic factors to identify and set priorities among communities with environmental and public health problems as well as to evaluate OECA's national priority sectors to determine which facilities are located in geographic areas of concern. In addition, Ms. Hyde noted that existing health vulnerabilities and environmental conditions will be used as threshold criteria to allow the workgroup to first identify geographic areas of concern with environmental and public health issues. Once areas of environmental and public health issues are identified, community demographic indicators will be used to help prioritize the areas where resources will be deployed. Exhibit 4-4 provides additional information on the indicators for the study.

Exhibit 4-4

**CONCEPT PAPER FOR ENVIRONMENTAL TARGETING:
IDENTIFICATION OF INDICATORS**

The recommendations identified in the *Concept Paper for Environmental Targeting* recommends that the OECA apply a nationally consistent set of environmental, health, and demographic factors to identify and set priorities among communities with environmental and public health problems as well as to evaluate OECA's national priority sectors in order to determine which facilities are located in geographic areas of concern. To accomplish these goals, the following approach is recommended:

Existing Health Vulnerabilities and Environmental Conditions: The following indicators are recommended for use as threshold criteria, to allow EPA to first identify geographic areas of concern with environmental and public health issues.

- Environmental Compliance Factors
 - Facility density
 - Frequency of compliance monitoring
 - Compliance history of facilities an area
- Health (Vulnerability) Factors
 - Nationally available (Centers for Disease Control and Prevention) health data (for example, cancer mortality, cancer incidence, infant mortality, and low birth weight rates)
 - Available local data (for example, asthma, childhood lead poisoning, and birth defects)
- Environmental Factors
 - TRI emissions using Risk Screening Environmental Indicators Program
 - EPA emission data and ambient environmental data (nonattainment and 305(b) stream data)
 - Available local data (such as beach closures or fish advisories)

Community Demographics Once areas with environmental and public health issues are identified, the following community demographic indicators should be used to set priorities for areas where EPA should deploy its resources:

- Locations where minority populations (defined as all races, except non-Hispanic whites) reside at higher than the state averages
- Locations where the percentage of children (six years of age or younger) and older Americans (65 years of age or older) higher than the state averages
- Locations where the percentage of individuals (or families) whose median household income is at or below the U.S. Department of Human Health Services-defined poverty level is higher than the state average

Ms. Hyde stated that OECA should develop, maintain, and use the recommended environmental justice targeting tool to prioritize geographic areas with environmental and public health issues and to assist in making resource deployment decisions. Ms. Hyde said that the next steps will be to finalize the concept paper, establish a task team to develop a targeting tool, and apply the tool to the national priorities. She stated that she hopes this approach will be applied to the national priorities for FY 2005.

Mr. Parras asked whether the members of the Enforcement Subcommittee would be given the opportunity to comment on the concept paper. Ms. Hyde stated that she would be happy to receive recommendations from the subcommittee. Ms. Simons asked whether the concept paper would result

in a new database. Ms. Hyde responded that the information collected is to be integrated into existing databases. Ms. King commented that the communication and translation of this information will be important. Communities need to understand what the targeting tool is and how it may affect them. Ms. Simons asked whether the workgroup has considered how communities will access the information. Ms. Hyde stated that this is a dilemma for the Enforcement Program because some of the information may be confidential. Overall, the subcommittee members stated that they are happy that OECA has taken the initial steps to develop a targeting tool.

5.0 ACTION ITEMS

This section summarizes the action items adopted by the subcommittee.

- 7 Develop recommendations for community outreach concerning the IG report:
 - Establish immediate communication with communities about EPA's response to the report
 - Focus ongoing outreach on training and resources
 - Use the Enforcement Subcommittee as a vehicle to review and help implement the communication strategy

- 7 Coordinate with other subcommittees of the NEJAC regarding OECA's national program priorities:
 - Coordinate with Mr. Wilson for recommendations related to OECA's air toxics national priority
 - Coordinate with Mr. Gogal for recommendations related to OECA's tribal compliance national priority

- 7 Coordinate with Mr. Sanders regarding the issues of schools being located in highly industrialized and potentially toxic areas

- 7 Provide the members of the subcommittee with a report that identifies locations of combined sewer overflows (Ms. Hyde)

MEETING SUMMARY

of the

HEALTH AND RESEARCH SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 15, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Sam Williams
Co-Designated Federal Official**

**Pamela Kingfisher
Acting Chair**

**CHAPTER FIVE
MEETING OF THE
HEALTH AND RESEARCH SUBCOMMITTEE**

1.0 INTRODUCTION

The Health and Research Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Ms. Pamela Kingfisher, Shining Waters, continues to serve as the acting chair of the subcommittee. Mr. Sam Williams, U.S. Environmental Protection Agency (EPA) Office of Research and Development (ORD), and Mr. Gary Carroll, EPA Office of Pollution Prevention and Toxics (OPPT), continue to serve as the Co-Designated Federal Officials (DFO) for the subcommittee. Exhibit 5-1 lists the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Health and Research Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the Co-DFO and the chair. Section 3.0, *Presentations and Reports*, provides an overview of each presentation provided and report discussed during the subcommittee meeting as well as a summary of major questions and comments from the subcommittee. Section 4.0, *Activities of the Subcommittee*, summarizes the activities of the subcommittee, including the discussion of the subcommittee's *Strategic Plan* and reports. Section 5.0, *Action Items*, identifies the action items adopted by the subcommittee.

2.0 REMARKS

Mr. Williams, Co-DFO of the Health and Research Subcommittee, opened the meeting by providing an overview of the guidelines of the NEJAC and the protocol to be followed during the subcommittee meeting. Mr. Williams indicated that the NEJAC was created in accordance with the requirements under Federal Advisory Committee Act (FACA) and that the subcommittee, as part of the NEJAC, must follow the same FACA requirements as the Executive Council of the NEJAC. Mr. Williams explained that although the meeting was open to the public, a public comment period was not scheduled for the subcommittee meeting. However, questions from the audience would be taken if time permitted. Mr. Williams also pointed out that the subcommittee meeting was being recorded and that a meeting summary would be prepared and made available to the public in the future. Mr. Williams announced that a revised subcommittee agenda was available and asked all members of the audience to sign in. Finally, Mr. Williams stated that Mr. Richard Garnas, EPA ORD, would be taking over as Co-DFO as the representative from ORD following the April 2004 meeting.

Ms. Kingfisher, acting chair of the Health and Research Subcommittee, welcomed the members of the subcommittee and the audience. Ms. Kingfisher indicated that since September 2003, members of the subcommittee had worked on the draft report titled, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risk/Impacts*, which was submitted in January 2004 to Mr. Charles Lee, Associate Director, EPA Office of Environmental Justice (OEJ), and DFO for the Executive Council of the NEJAC. Ms. Kingfisher encouraged the members of the subcommittee to provide comments on the draft report. Ms. Kingfisher provided a brief overview of the agenda and thanked Mr. Williams for his work as Co-DFO over the last year and for developing the meeting agenda. At the request of Ms. Kingfisher, the members of the subcommittee, presenters, and members of the audience introduced themselves.

Exhibit 5-1

<p>HEALTH AND RESEARCH SUBCOMMITTEE</p> <p>Members Who Attended the Meeting on April 15, 2004</p> <p>Ms. Pamela Kingfisher, Acting Chair Mr. Sam Williams, Co-DFO</p> <p>Ms. Mark Armentrout Ms. Valery Jo Bradley Ms. Jan Marie Fritz Mr. Walter Handy Ms. Lori Kaplan Ms. Laura Luster Mr. Mark Mitchell</p> <p>Members Who Were Unable To Attend</p> <p>Mr. Gary Carroll, Co-DFO Mr. Richard Gragg Ms. Dorothy Powell</p>
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3.0 PRESENTATIONS AND REPORTS

This section provides a summary of the presentations provided to and reports discussed with the members of the Health and Research Subcommittee. Presentations were provided by EPA personnel representing ORD and OPPT, the two EPA offices that sponsor the Health and Research Subcommittee. A panel discussion also was conducted with community members who discussed environmental and health threats in Mossville, Louisiana.

3.1 Health and Research Activities of EPA ORD

Mr. Williams provided an update on ORD's health and research activities. He began by stating that ORD is composed of approximately 1,950 employees working in 13 laboratories and various research facilities across the United States. Mr. Williams explained the primary mission and activities of ORD as follows:

- The primary mission of ORD is to provide credible, relevant, and timely research results and technical support to inform EPA policy decisions.
- ORD makes decisions that are "scientifically sound" using relevant, high-quality, and cutting-edge research in the areas of human health, ecology, pollution control and prevention, and economics.
- ORD ensures proper characterization of scientific findings and the appropriate use of science in EPA's decision-making process.
- ORD also uses computational toxicology, which is the integration of modern computing and information technology with molecular biology and chemistry. The objectives of computational toxicology are to (1) improve linkages among environmental release data, fate and transport data, exposure data, health effect data, and data regarding adverse outcomes; (2) provide predictive models that can be used for screening and testing; and (3) enhance quantitative risk assessments, particularly in terms of being able to use risk assessments as predictive tools while also meeting the specific needs of EPA program and regional offices.

During his presentation, Mr. Williams explained that ORD has several ongoing, high-priority research projects involving human health, particulate matter, drinking water, clean water, global change, endocrine disruptors, ecological risk, pollution prevention, and homeland security. As part of these projects, ORD also is identifying susceptible subpopulations. Susceptible subpopulations are those populations (for example, children and older adults) within a group who are differentially affected by exposure to environmental pollutants.

Mr. Williams explained that the major goals of ORD are to identify and determine the basis for the health effects of environmental pollutants on susceptible subpopulations and to develop tools that can be used to predict how these subpopulations will respond to various environmental pollutants.

Mr. Williams went on to explain that ORD also is focusing research on EPA's Border 2012 Program. The goal of the Border 2012 Program is to reduce the highest public health risks and to preserve and restore the natural environment along the U.S.-Mexico border. Examples of work done under the Border 2012 Program include lead surveillance in several border communities, introduction of folic acid supplement programs for women to reduce the risk of birth defects, and assessment of transboundary transport of air emissions originating in Mexico. Currently, ORD is working on Border 2012 Program projects that address children's health issues, such as respiratory health, asthma cases resulting from air pollution, and multipathway and multipesticide exposures.

Mr. Williams also provided an update on ORD's multiyear plans for research projects over a five- to eight-year time frame. The multiyear plans are living documents that focus on key research questions and significant outputs, communicate the direction of ORD's research program both internally and externally, and demonstrate how ORD's research programs contribute to EPA's goals. Exhibit 5-2 provides a list of web sites on how to get additional information on ORD research and upcoming activities.

Exhibit 5-2

Following Mr. Williams' presentation, members of the subcommittee asked whether ORD's research process provides opportunities for public comment. EPA ORD staff members explained that all ORD research undergoes a review process by a review board and that public comment periods are part of that process. The Board of Scientific Counselors, an independent advisory board, provides advice to EPA on matters related to research.

3.2 Environmental Justice Priorities and Activities of EPA Office of Prevention, Pesticides, and Toxic Substances

Mr. Bryan Symmes, Associate Director, National Program Chemicals Division, EPA Office of Prevention, Pesticides, and Toxic Substances (OPPTS), provided information on OPPTS' research priorities and activities related to environmental justice issues. OPPTS is composed of three offices, which include OPPT, the Office of Pesticide Program (OPP), and the Office of Science Coordination and Policy (OSCP). OPPTS' goal related to environmental justice is "to achieve environmental justice by decreasing the burden of environmental risk to all communities by promoting pollution prevention, safer chemicals, and reduced chemical exposures." Mr. Symmes explained that to accomplish this goal, OPPTS developed an *Environmental Justice Action Plan* that includes the following key commitments:

- Further incorporate environmental justice principles in all program areas
- Provide training to all personnel in order to impart a basic knowledge of the principles of environmental justice (The goal is to train 25 percent of OPPTS employees within two years and all employees eventually.)
- Set expectations for staff and management
- Incorporate specific objectives and activities into divisional work plans
- Ensure effective public participation processes

**FOR ADDITIONAL INFORMATION ON THE U.S.
ENVIRONMENTAL PROTECTION AGENCY (EPA)
OFFICE OF RESEARCH AND DEVELOPMENT'S (ORD)
RESEARCH ACTIVITIES**

Border 2012 Program

- Environmental Health Workgroup Home Page:
<http://www.epa.gov/orsearch/index.html>
- EPA's Border 2012 and the Centers for Disease Control and Prevention's Public Health Tracking Home Page:
www.cdc.gov/tracking/

Multiyear Plans

- Synopses of ORD's multiyear plans can be obtained from the web site: www.epa.gov/osp/

Science Inventory

- Agency-wide database of 4,000 scientific and technical work products on EPA's science activities:
www.epa.gov/si/

Science of Environmental Justice Workshop

- May 25 and 26, 2004, Boston University, George Sherman Union, Boston, Massachusetts
www.namsinc.org/EJWorkshop/

EPA Science Forum 2004

- June 1 through 3, 2004, Mandarin Oriental Hotel, Washington, DC
<http://www.epa.gov/ord/scienceforum/2004/index.htm>

According to Mr. Symmes, OPPTS expects that its action plan will assist EPA in being proactive and in making every effort to identify areas where risks are disproportionate. Also, where pollution prevention is not possible, OPPTS will take appropriate steps to minimize or eliminate unreasonable environmental risks.

Mr. Symmes pointed out that EPA will “hold management accountable” for carrying out the objectives and activities specified in the action plan. Managers and environmental justice coordinators and teams have been designated, and they are accountable for ensuring that employee training is conducted and that principles of environmental justice are incorporated into program initiatives. Mr. Symmes stated that OPPTS is facing challenges in trying to actively involve stakeholders and in making its operations “transparent.” To facilitate stakeholder input at OPPTS, the following groups have been created (in addition to the Health and Research Subcommittee of the NEJAC) and efforts have been made:

- Environmental Justice Coordinating Council
- Environmental Justice Team
- National Pollution Prevention and Toxics Advisory Committee
- Forum on State and Tribal Toxics Action
- National Pollution Prevention Roundtable

Mr. Symmes also provided an overview of other components of the OPPTS *Environmental Justice Action Plan*, including review of registration and re-registration processes for pesticides; worker protection standard improvements; the Hispanic Radio Network, which will provide information in Spanish for the Hispanic community; environmental justice brown bags for OPPTS staff; small environmental justice grants for communities; and improvement of integrated pest management (IPM) practices in both rural and urban schools. In addition to IPM, OPPTS is looking at issues related to lead and asbestos in schools. Mr. Symmes indicated that asbestos is a re-emerging priority for the Agency.

The Health and Research Subcommittee discussed integration of environmental justice principles into OPPTS programs. The discussion focused on the lack of or diminished attention to principles of environmental justice in the day-to-day program activities of OPPTS. During the discussion, OPPTS personnel expressed interest in obtaining suggestions from the subcommittee on ways to integrate principles of environmental justice into their programs, especially programs related to research. OPPTS personnel also asked for ideas and suggestions about ways that EPA can better engage communities, states, and tribes.

Mr. Mark Mitchell, President, Connecticut Coalition for Environmental Justice and member of the Health and Research Subcommittee, asked about testing and reporting of high-production-volume (HPV) chemicals. Mr. Symmes explained that all HPV chemicals are regulated by the Toxic Substances Control Act (TSCA). Mr. Symmes indicated that OPPTS is working on basic screening levels for such chemicals and has determined through the Voluntary Children’s Program that a small number (about 20 to 30) of these chemicals cause developmental effects in children. Mr. Symmes stated that industry is providing data on the toxicity of HPV chemicals and that EPA is working on providing the data to the public. Mr. Symmes agreed to provide a list of the chemicals to Mr. Mitchell.

Exhibit 5-3 contains information about the HPV chemical testing program.

Exhibit 5-3

Mr. Mitchell also asked Mr. Symmes how to obtain funding for lead programs on the local level, pointing out that there are Federal funding programs but no local ones. Mr. Mitchell went on to say that information is needed to educate local communities about lead poisoning. Mr. Symmes replied that OPPTS has relevant outreach programs but that data needs to be gathered on the effectiveness of those programs. Mr. Symmes indicated that OPPTS needs input on outlining a “new direction” for the lead program.

Ms. Artensie Flowers, Environmental Justice Coordinator, EPA OPP, provided an update on some of the activities of OPP. Ms. Flowers indicated that as part of OPPTS’ action plan OPP is conducting IPM in schools in rural areas and in New York City. OPP successfully completed IPM in all the schools in Auburn, Alabama, and is planning IPM initiatives in Texas. OPP also is in the process of preparing the scope of work (SOW) for the OPP Environmental Justice Small Grants Program. OPP plans to award a grant to one community group in each EPA region in the amount of \$15,000. The objective for the environmental justice small grants is to provide education on safe use of pesticides in residential areas, safety information for people working with pesticides, and information on illegal uses of pesticides. Ms. Flowers expressed an interest in having the members of the Health and Research Subcommittee provide assistance to OPP in writing the SOW for the Environmental Justice Small Grants Program request for proposals. Mr. Mitchell indicated that some community groups are locked out of small grants programs if the groups are affiliated with larger organizations. Mr. Mitchell went on to say that in Connecticut, community groups are associated with state programs so that the groups can receive funding from the state.

Ms. Jan Marie Fritz, Associate Professor of Planning and Health Policy, University of Cincinnati and member of the Health and Research Subcommittee, commented that OPP should consider reducing the grant award amounts to \$5,000 in order to reach more community groups. She added that community groups often can “make a little go a long way.” Mr. Marty Halper, Senior Science Advisor, EPA OEJ, indicated that OEJ often uses discretionary funds to supplement small grants that already have been awarded to community groups. Ms. Flowers indicated that the OEJ Small Grants Program is being used as the model for OPP’s Environmental Justice Small Grants Program.

Shifting focus to another area of concern, Ms. Bradley asked which office of EPA was addressing air sampling issues in lower Manhattan, New York, as a result of the terrorist attack of September 11, 2001. Ms. Bradley indicated that odors were present there up to two weeks after the tragedy. She also pointed out that air sampling immediately following the tragedy was focused on the lower Manhattan area; although surrounding communities were affected, attention was not given to those areas. Mr. Symmes replied that OPPTS was not involved in air sampling issues in lower Manhattan; however, he indicated that he would find out who Ms. Bradley should contact about her concerns.

Mr. Symmes also indicated that the OPPTS Exposure Assessment Branch is working to develop Internet access tools, and a “how-to screening manual” is scheduled to be published soon. These tools are designed to assist communities in understanding and prioritizing health risks. Mr. Henry Topper, OPPT,

HIGH-PRODUCTION-VOLUME (HPV) CHEMICAL TESTING PROGRAM

HPV chemicals are those chemicals that are produced in or imported into the United States in quantities that exceed 1 million pounds per year. The HPV chemical testing program was developed by the U.S. Environmental Protection Agency (EPA) in consultation with the Environmental Defense Fund and the Chemical Manufacturers Association. The objective of the HPV chemical testing program is for the chemical industry to generate a complete set of baseline health and environmental effect data on chemicals for which no data is available and to make currently available data accessible to the public.

Thus far, the HPV chemical testing program includes

- 2,167 chemicals
- 333 manufacturers of chemicals
- 97 consortia of companies
- As of October 2003, data on 1,081 chemicals submitted to EPA by the chemical manufacturers and consortia
- Of the 1,081 chemicals for which data has been submitted, there are 928 chemicals in 96 different categories and 153 individual chemicals

explained that the Risk Screening Environmental Indicators Tool provides toxic release inventory information for large facilities, and the National Air Toxics Assessment can provide risk information based on the census tracts of the U.S. Bureau of the Census. Mr. Topper said that he would provide Mr. Williams with the Internet web site addresses for these screening tools.

Lastly, the members of the Health and Research Subcommittee and OPPT personnel discussed the need to decide how the subcommittee could provide assistance to EPA in integrating principles of environmental justice and issues of susceptibility and vulnerability into OPPT activities and in targeting risk reduction efforts. In particular, Mr. Topper indicated that OPPT needs assistance in incorporating vulnerability elements into the Community Action for Renewed Environmental (CARE) Grants Program.

Mr. Symmes added that for some programs, such as those addressing exposure to mercury and lead, EPA is coordinating with other Federal agencies, such as the Centers for Disease Control and Prevention (CDC). Finally, Mr. Symmes discussed areas in which OPPTS would like further feedback and comments from the NEJAC. Those areas include tribal strategy development, greater stakeholder involvement, and mercury and lead research and programs.

3.3 Research to Empower Communities to Participate More Effectively in Environmental Cleanups

Dr. Kevin Garrahan, Ph.D., EPA ORD, provided information on EPA's research efforts to empower communities to participate more effectively in environmental cleanups. This initiative originated in 2001 during the review process for the National Research Council report titled *Risk Management Strategy for PCB-Contaminated Sediments*. In its review comments, EPA recommended that risk communication research be included in the risk management strategy for contaminated sediments.

EPA's ultimate objective is to develop improved methods, models, and research approaches that include meaningful participation by community members. To achieve this objective, ORD solicited research proposals in June 2002 and received 27 responses. ORD awarded two research grants based on the proposals received: (1) a grant of \$175,000 was awarded to Michigan State University (MSU) and (2) a \$375,000 grant was awarded to the Social and Environmental Research Institute (SERI).

The MSU study is designed to evaluate the effectiveness of public issue forums as a means of enhancing the involvement of "ordinary" citizens in decision-making. The study is expected to last two years and will examine how resident participation changes pre-existing attitudes, knowledge, and choices; it also will identify the strengths and weaknesses of public forums. The MSU study is being conducted in two phases. During Phase I of the study, a guide will be developed for a site to describe conditions and several cleanup options. During Phase II of the study, the guide will be used in focus groups made up of unaligned citizens to determine the usefulness of the guide to the citizens in making informed choices. Dr. Garrahan indicated that the public issue forums will be conducted throughout the study to determine whether the choices of the community members have changed. Dr. Garrahan explained that the status of the MSU study as of April 2004 was as follows:

- MSU has evaluated several candidate sites and selected the Tittabawasee River in Michigan; the site selected has contaminated sediments, unaligned citizens and environmental justice concerns and is in the early stages of the cleanup process.
- MSU has developed an interview guide.
- MSU has interviewed state officials; interviews with EPA and Dow Chemical personnel are pending.

The SERI study is titled *A Comparative Analysis of Three Tools to Evaluate Community Involvement*, and its goal is to evaluate the usefulness of three tools that measure community preferences and the effectiveness of community involvement: questionnaires, focus groups, and "Q" methodology. The "Q" methodology is a process in which statements are assigned values and are subsequently ranked and

sorted based on the values assigned. The objectives of the SERI study are to (1) develop and apply three real-time methods to measure community preferences for cleanup methods and satisfaction with the community involvement process and (2) identify strengths, weaknesses, and the best context for each tool. The SERI research study has three phases. Phase I involves selecting a case study site, gathering background information by interviewing stakeholders, developing criteria for success, selecting an advisory panel, developing and applying the three methods of measuring community preferences and satisfaction, and evaluating the results. During Phase II of the study, SERI will select a second case study site and repeat the Phase I tasks for that site. Phase III will entail comparing the results of the two case studies and identifying the strengths and weaknesses of each tool. Dr. Garrahan indicated that the status of the SERI study as of April 2004 was as follows:

- SERI has evaluated several candidate sites and selected the Ciba-Geigy site in Toms River, New Jersey; the site selected has contaminated sediments, has environmental justice concerns, and is in the early stages of the cleanup process.
- SERI is preparing to interview stakeholders.

During the discussion following Dr. Garrahan's presentation, he indicated that one of the challenges encountered in the studies was the selection of case study sites with similar issues. Mr. Kyle Bryant, Special Consultant, Community-Tribal Subcommittee (CTS), Agency for Toxic Substances and Disease Registry (ATSDR), asked whether different learning styles, such as the Meyers-Briggs and True Colors styles of learning, were factored into the methods for measuring community involvement, as opinions obtained can be based on learning styles. Dr. Garrahan replied that different learning styles form one of the issues that the studies are designed to evaluate; therefore, different learning styles are factored into the measures to obtain community involvement. Exhibit 5-4 contains contact information for the MSU and SERI research studies.

3.4 Overview of EPA's Draft Report on the Environment, Human Health Chapter

Ms. Rebecca Calderon, Acting Division Director, Human Studies Division, EPA ORD, informed the members of the subcommittee about the process and approach that ORD used to develop the *Draft Report on the Environment Technical Document, Human Health Chapter*, as well as the feedback that ORD obtained on the document during a review process by the Agency's Science Advisory Board. Ms. Calderon indicated that ORD was tasked to prepare the report by former EPA Administrator, Governor Christine Todd Whitman. The draft report contains information on four topics: air, land, human health, and the environment. The draft report discusses national environmental conditions and trends and, where possible, their effects on human health and the environment. It also discusses environmental measures and indicators and the challenges that the United States faces with respect to improving those measures and indicators. Ms. Calderon pointed out that EPA is not a health agency; therefore, it faces the challenge of having to rely on health data reported by others. EPA's ultimate goal is to have health data available on a web site where individuals can quickly access information that is relevant to their health issues.

Exhibit 5-4

**U.S. ENVIRONMENTAL PROTECTION (EPA)
OFFICE OF RESEARCH AND DEVELOPMENT (ORD)
RESEARCH GRANTS**

EPA ORD awarded two research grants in 2002 to develop methods, models, and research approaches that include meaningful participation by community members related to risk management strategies for PCB-contaminated sediments. Included below are the points of contact for each grant.

Public Issues Forums as a Mechanism for Empowering Communities in Environmental Cleanups by Michigan State University

Principal Investigator: Dr. JoAnn Beckwith
Phone Number: (517) 432-7733

A Comparative Analysis of Three Tools to Evaluate Community Involvement by Social and Environmental Research Institute

Principal Investigator: Dr. Seth Tuler
Phone Number: (413) 387-9320

Ms. Calderon's presentation focused on the human health chapter of the draft report. The goals for the human health chapter were to determine how human health is measured, the causes of death, susceptible populations, and emerging issues facing human health. To achieve the goals set forth for the chapter, ORD evaluated three case studies in which indicators were used to determine the links between health effects and the environment.

The human health chapter concludes that the health of the U.S. population is generally good and is improving, life expectancy has increased, and infant mortality has decreased but is still among the highest for developed countries. Also, the death rates for cancer, heart disease, and strokes are declining. Ms. Calderon noted that the increase in life expectancy may be affected in the future by high obesity rates in the United States. The chapter also concludes that susceptibility varies from person to person and that issues other than the indicator exposures may have an effect on health. Some of these other issues or factors include genetics, age, lifestyle, and general health.

Ms. Calderon urged the members of the subcommittee to keep in mind that many studies have demonstrated an association between environmental exposures and diseases or health problems; however, she said, "association" is not the same as "cause and effect." Ms. Calderon went on to say that factors such as race and ethnicity were not included in the study. Also, environmental justice issues were not included in the study because there was no consensus among the ORD staff members working on the project on how to integrate principles of environmental justice in the report.

The Science Advisory Board reviewed the human health chapter of the draft report and provided recommendations, including the following:

- Criteria for environmental data and disease have a specific bias for acute effects; therefore, focus more on chronic effects
- Include more discussion of the relationship between disease and air, land, and water, particularly with respect to causality
- Expand the discussion of susceptibility with respect to the elderly, gender, and genetics
- Include diet as part of exposure
- Look further at linkages between health and ecosystems
- Include an examination of environmental justice issues

Ms. Calderon indicated that although the draft report on the environment will not be finalized, another report on the environment will be prepared and is expected to be completed in January 2006. The next report will attempt to address some of the challenges faced in developing the current draft report. Some challenges for the next report involve the need to be "all things to all people;" clarification of the primary intent and audience of the report; mortality versus morbidity; and the relationships among national, regional, and state communities.

ORD anticipates that the human health chapter of the next report on the environment will include better explanations of linkages, innovative methodologies, accountability, and sensitive subpopulations; more case studies; better integration of issues related to air, land, and water; and the results of partnering with other agencies and institutions, such as CDC's Environmental Public Health Tracking Network and the National Children's Study.

At the end of the presentation, Ms. Calderon answered questions from members of the Health and Research Subcommittee. Several members were concerned that the report is a draft and is not expected to be finalized. Members also asked whether there was a press release notifying the public

of the availability of the draft report and whether there was a public comment period to obtain feedback on the draft report. Members also asked about the usefulness of a draft report and why the report was not going to be finalized. Ms. Calderon explained that a press release was issued to notify the public of the availability of the draft report, and EPA obtained feedback from the public primarily through the Science Advisory Board and academia. She also explained that a report that provides information on health issues is valuable regardless of whether the report is “draft” or “final.” Ms. Calderon indicated that although the report is a draft, it does not contain the disclaimer “do not cite or quote.”

Members of the Health and Research Subcommittee and Ms. Calderon then discussed ways that the subcommittee could become involved in the review process for EPA’s *Draft Report on the Environment* Technical Document that is scheduled to be released in January 2006 as well as additional components that could be added to the January 2006 report. These components include principles of environmental justice indicators such as ethnicity and socioeconomic factors along with mechanisms to engage states, tribes, and communities in the preparation of the report. Mr. Walter Handy, Assistant Commissioner, Cincinnati Department of Health and member of the Health and Research Subcommittee, asked whether a discussion of cumulative risks will be included in the January 2006 report. Ms. Calderon indicated that the discussion of exposures will likely be expanded and that a discussion of cumulative risk as it relates to regulatory programs will be added. Mr. Handy expressed concern about cumulative risk having an impact on regulatory decision-making. For example, he said, Mossville is exposed to permitted releases that are affecting the community.

The members of the subcommittee expressed interest in obtaining regular updates on the progress of the draft report. Ms. Calderon agreed to discuss the subcommittee’s request to be included in the review process for the draft report with ORD, and she will notify the subcommittee of ORD’s response through Mr. Williams.

3.5 Mossville: What Worked, What Did Not Work, and What the Community Learned

Ms. Eranica Jackson, Representative, Mossville Environmental Action Now (MEAN); Ms. Monique Harden, Co-Director and Attorney, Advocate for Environmental Human Rights; and Ms. Wilma Subra, Representative, Louisiana Environmental Action Network (LEAN), provided an overview of issues facing the community of Mossville, Louisiana. The presentation focused on the historical challenges that community members have faced in their attempts for Federal agencies to address health issues as well as the successes that the community has achieved in creating awareness of the issues despite the continued permitted and nonpermitted air emissions that still affect the Mossville community.

Ms. Jackson said that in 1998, at the urging of MEAN, local residents, and environmental organizations, ATSDR collected blood samples from 28 Mossville residents for dioxin analysis. In April 1999, analytical results for the blood samples indicated that the dioxin concentrations in the blood of Mossville residents were two to three times higher than the national average for the general public. In May 2000, MEAN first reported to the NEJAC about the issues facing residents of Mossville, particularly the lack of response that Mossville received from EPA, ATSDR, and the Louisiana Department of Environmental Quality (DEQ) about the high levels of dioxins in residents’ blood. The high levels of dioxins are attributed to local sources of exposure. Ms. Jackson also noted that because of the large number of industrial facilities in the area, dioxins probably are not the only contaminants to which Mossville residents are exposed.

Ms. Jackson indicated that MEAN urged the appropriate government agencies to work with Mossville residents to accomplish:

- Reduce industrial pollution
- Clean up contaminated areas in the Mossville community
- Assist residents in obtaining health services to address the contaminants to which they are exposed

- Assist consenting residents with relocation

Despite the community's urging, its recommendations and requests were rejected by both state and Federal agencies. Subsequently, MEAN gained support from the NEJAC as well as numerous environmental justice organizations and health advocates. These parties assisted MEAN in demanding that agencies take action to address the environmental and health protection needs of Mossville residents. As a result, ATSDR took the lead in addressing the dioxin crisis in Mossville; however, Mossville residents believe that ATSDR has not acted in accordance with the Executive order on environmental justice. In particular, Mossville residents believe that they have not been afforded meaningful participation in activities of ATSDR related to the Mossville situation. Ms. Jackson went on to say that ATSDR has shown a pattern of delays and of cancelling meetings with Mossville residents. Most troubling to the residents, however, was ATSDR's attempts to mislead them by proclaiming that based on a new study, local blood levels of dioxins had decreased below the national average.

Ms. Jackson further explained that ATSDR had conducted two studies. One was a follow-up to the 1998 study in Mossville, and the other was a new study in Calcasieu Parish that included few or possibly none of Mossville's residents. (Mossville is located in Calcasieu Parish.) The new study in Calcasieu Parish indicated that blood levels of dioxins were below the national average. Ms. Jackson went on to say that ATSDR sided with industry representatives in saying that dioxins are not a problem in Calcasieu Parish; however, no information was provided to indicate that dioxins remained a problem in Mossville. As a result, MEAN took on the responsibility of educating the public about the misconception and the misleading information about dioxin exposure. Ms. Jackson explained that in fall 2003, ATSDR was to release a report summarizing the results of the two studies; however, as of April 2004, the report had not yet been released.

Therefore, MEAN recommended that the Health and Research Subcommittee of the NEJAC contact ATSDR and ask it to provide information that Dr. Henry Faulk, Deputy Administrator of ATSDR, promised to Mossville residents. This information includes a PowerPoint presentation on the Mossville follow-up study preliminary test results and information regarding contaminant levels required to justify resident relocation. MEAN also requested that the subcommittee help Mossville residents to obtain meaningful participation in ATSDR investigations of the community. According to Ms. Jackson, ATSDR currently is conducting a study of a vinyl plant owned by Georgia Gulf. MEAN has requested that ATSDR include the Mossville community in the research efforts; however, the community has not been allowed to participate in a meaningful way to date. In her closing statements, Ms. Jackson acknowledged and thanked Dr. Reuben Warren, Urban Affairs Office, ATSDR, for the support that he has provided to the local health clinic in Mossville.

Ms. Subra then gave a presentation on the community-based air toxics initiatives in Mossville, Louisiana. The presentation focused on five issues: fugitive emissions, ambient air concentrations exceeding regulatory criteria, ambient air monitoring programs that fail to analyze for released chemicals, frequent accidental releases and upset conditions, and excessive flaring. Ms. Subra was part of the NEJAC Work Group on Cumulative Risk and has worked with the Mossville community and Calcasieu Parish since 1997.

In her presentation, Ms. Subra indicated that although data from local industry indicates that pollutant release rates are declining, they actually are increasing. Contaminants of concern in the Calcasieu Parish include volatile organic compounds (VOC) such as vinyl chloride; trichloroethylene; 1,2-dichloroethane; and chloroform. Two of the major problems are fugitive emissions and accidental releases. Fugitive emissions are leaks from valves and other nonregulated or unmonitored areas rather than releases from stacks. Often fugitive emissions are closer to communities and have greater effects on them. Accidental releases are not illegal, Ms. Subra stated, as long as they are reported. Ms. Subra stated that the concentrations of 1,2-dichloroethane in Calcasieu Parish were higher than anywhere else in the nation. As a result, in 1996 and 1998, the community conducted its own studies; it was able to

document that the VOC concentrations in ambient air in the community were above the national average. EPA subsequently took the data to local industry and made the facilities take steps to reduce air emissions. Because of community involvement, air monitoring stations were placed in Calcasieu Parish, and monitoring is conducted every six days for a 24-hour period. This monitoring has indicated that concentration of VOCs in ambient air have decreased in Calcasieu Parish, but Ms. Subra explained that the data is misleading. She pointed out that local industry knows the monitoring cycle and ensures that releases do not occur on the day when monitoring occurs. However, on the days when monitoring does not occur, there are accidental releases. Because accidental releases are reported but not regulated, the contaminants released into ambient air continue to magnify exposure in the community and represent a cumulative risk issue. Ms. Subra also indicated that work needs to be done to determine whether exposure occurs during sampling as well as to identify the best days for sampling. She also said that more emphasis be given to selecting proper background sampling locations.

Finally, Ms. Harden discussed the concerns of Mossville residents regarding meaningful community participation, particularly participation in ATSDR-led activities. Ms. Harden expressed concern about ATSDR's continued lack of responsiveness to the Mossville community. Ms. Harden requested that the Health and Research Subcommittee assist the local community in becoming involved in meaningful ways in ATSDR's ongoing investigations of Mossville. Ms. Harden indicated that MEAN also is interested in information regarding ATSDR's relocation policy in general and particularly with respect to contaminant concentrations and conditions that would trigger relocation efforts. Ms. Harden indicated that under the leadership of Mr. Jerry Clifford, former Deputy Regional Administrator of EPA Region 6, quarterly meetings were held to inform Mossville residents and discuss their concerns. Ms. Harden went on to say that it was under Mr. Clifford's leadership that air monitoring began in the Mossville community; however, there have been staff changes at EPA, and the Mossville community is not receiving the type of Agency support or involvement that it formerly did.

Following the presentation, Ms. Kingfisher indicated that the NEJAC is not tired of hearing from Mossville but rather is tired of the lack of action and change. Ms. Kingfisher further stated that the Health and Research Subcommittee is committed to helping Mossville residents. Ms. Valery Jo Bradley, Executive Director, Mount Morris Park Community Improvement Association and member of Health and Research Subcommittee, asked what the subcommittee could do to get EPA to support Mossville. Mr. Mike Callahan, Scientist, EPA Region 6, indicated that he would talk with Mr. Larry Starfield, Deputy Regional Administrator, EPA Region 6, about the issues facing the Mossville community. Ms. Harden indicated that there were several things that EPA could do in the short term to help the community, including:

- Resuming the quarterly meetings to discuss monitoring and enforcement
- Preparing newsletters to keep the community informed
- Conducting public or small group meetings
- Encouraging ATSDR to discuss its dioxin testing with the community

Ms. Harden indicated that simply stated, the community needs to be at the table providing advice on issues affecting it.

After a brief break, Ms. Kingfisher announced that Mr. James Tullos, National Center for Environmental Health, ATSDR, was present and that he had contacted his agency and communicated the issues brought up during the Mossville discussion. She said that Mr. Tullos indicated that the information will be transferred to the persons within ATSDR who are directly responsible for addressing the issues. It was agreed that the Health and Research Subcommittee will contact MEAN to provide an update. Ms. Kingfisher indicated that the subcommittee will "take Mossville under its wings;" however, the subcommittee cannot be a "go between" for Mossville and ATSDR. Mr. Tullos indicated that he will stay in contact with the subcommittee regarding issues facing the Mossville community.

4.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the Health and Research Subcommittee, the draft document *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risk/Impacts*; and the subcommittee's *Strategic Plan* for 2005 and 2006.

4.1 Discussion of *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risk/Impacts*

The members of the subcommittee discussed the draft report titled *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risk/Impacts* (cumulative risk report), which was prepared by the Cumulative Risk/Impact Work Group of the NEJAC. In particular, the members discussed the need to clarify terminology used in the report (such as "research" and "community-based research") to make sure that it is understood by those reading the report. Ms. Fritz indicated that definitions for and differentiation between "participatory" and "collaborative" research and "qualitative" and "quantitative" research are needed in the cumulative risk report. The members of the subcommittee discussed drafting a letter to the Work Group, that would outline specific concerns and recommendations regarding the draft report.

In addition, the members of the subcommittee invited representatives of ATSDR and the Community-Tribal Subcommittee of ATSDR to participate in future subcommittee meetings and conference calls in order to provide input on ongoing environmental justice research. The discussion focused on how to effectively collaborate on health issues and how to make this collaboration an ongoing activity of the Health and Research Subcommittee and the ATSDR's advisory committee. The Health and Research Subcommittee members were invited to join monthly conference calls held by the Community-Tribal Subcommittee of ATSDR. The members of the Health and Research Subcommittee encouraged members of the Community-Tribal Subcommittee to provide comments on the draft cumulative risk report during the 30-day comment period. Ms. Kingfisher thanked ATSDR, especially Mr. Jamie Purvis, for providing support to the Health and Research Subcommittee during summer and fall 2003.

4.2 The Health and Research Subcommittee *Strategic Plan* for 2005 and 2006

Members of the subcommittee discussed the subcommittee's *Strategic Plan* for 2005 and 2006. The members of the subcommittee indicated that several activities in the current plan have been accomplished and that this should be reflected in the new plan. Items that will be included in the *Strategic Plan* for 2005 and 2006 include reviewing documents and providing technical support for ORD and OPPTS.

Ms. Kingfisher recognized Ms. Brenda Washington, EPA ORD, for her work in helping to coordinate the activities of the Health and Research Subcommittee. Ms. Kingfisher went on to explain that the terms for many of the subcommittee members expire at the end of December 2004. Ms. Kingfisher took a poll of the current subcommittee members to find out which of the members are interested in serving another term. Subcommittee members who are interested in serving another term include Mr. Mitchell, Mr. Handy, Ms. Laura Luster, Mr. Fritz, and Ms. Lori Kaplan. Ms. Laura Luster, Program Manager, Training and Community Development, Luster National, Inc. and members of the Health and Research Subcommittee, suggested that youth be a factor in selecting new members for the subcommittee. Ms. Luster went on to say that younger people will bring energy to the subcommittee. Ms. Fritz indicated that an Alaskan Native also should be considered. Ms. Lori Kaplan, Commissioner, Indiana Department of Environmental Management and members of the Health and Research Subcommittee, added that someone with a background in children's issues also should be considered. Mr. Williams indicated that the current members of the subcommittee should provide nominations for new members because the subcommittee needs a balance of persons with different skills and organizational backgrounds. Mr. Williams added that he and Mr. Garnas will meet with Ms. Victoria Robinson, NEJAC National Program

Manager, EPA OEJ, to discuss selection of new subcommittee members in accordance with FACA guidelines.

Ms. Kingfisher also indicated that for the Health and Research Subcommittee to be successful, support is needed from its EPA sponsor agencies, ORD and OPPTS. She mentioned that administrative support is needed for such activities as preparing meeting minutes, tracking action items and assignments, and coordinating communication with EPA program offices. She also commented that an extra telephone call with the Co-DFOs is needed before subcommittee meetings. Ms. Kingfisher thanked Mr. Williams for his efforts in putting the current meeting together and for his support to the Health and Research Subcommittee. She also thanked the audience and presenters for attending the meeting.

5.0 ACTION ITEMS

This section summarizes the action items adopted by the subcommittee.

- T Prepare a “white paper” on efforts being undertaken by state and Federal agencies to incorporate environmental justice indicators into their research. The paper will be shared with ORD. The Health and Research Subcommittee also will recommend that the Executive Council review the white paper and discuss ways that the NEJAC can influence the inclusion of environmental justice indicators in future research conducted by EPA.
- T Develop guidelines for conducting research, especially community-based participatory research, that researchers and communities can use. Existing similar documents of this nature developed by Federal agencies, such as the National Center for Environmental Health, will be consulted as resources in developing the guidelines.
- T Assist ORD in making environmental justice principles a focused element of its multiyear plan. The multiyear plan discusses environmental justice issues in a broad sense; however, specific issues related to environmental justice principles are not identified. The subcommittee also will focus on identifying vulnerability elements in the multiyear plan.
- T Review ORD research grants and explore ways that research grants, specifically small grants, can be used to effectively engage communities, states, and tribes.
- T Provide advice to the OPP Environmental Justice Small Grants Program regarding how the program can be used to engage communities, states, and tribes. The subcommittee also agreed to review the program SOW and request for proposals and to be included in future document reviews as needed.
- T Help OPPTS determine a new direction for the lead program.
- T Assist OPPTS by reviewing the CARE Grants Program to provide information for the targeting of risk reduction efforts in CARE communities. The subcommittee also will assist in identifying ways to incorporate vulnerability elements into OPPTS activities.
- T Follow up with MEAN and the Mossville community regarding efforts to re-establish a dialogue between ATSDR and the community.

MEETING SUMMARY

of the

INDIGENOUS PEOPLES SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 15, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Daniel Gogal
Designated Federal Official**

**Terry Williams
Chair**

**CHAPTER SIX
MEETING OF THE
INDIGENOUS PEOPLES SUBCOMMITTEE**

1.0 INTRODUCTION

The Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Mr. Terry Williams, Tulalip Tribes, continues to serve as chair of the subcommittee. Mr. Daniel Gogal, U.S. Environmental Protection Agency (EPA) Office of Environmental Justice (OEJ), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 6-1 lists the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which summarizes the deliberations of the Indigenous Peoples Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair and the DFO. Section 3.0, *Activities of the Subcommittee*, summarizes the activities of the subcommittee, which included discussions of recommendations on the draft *Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs*; for a document prepared by the subcommittee, a report prepared by the NEJAC, and the process for applying to serve on the subcommittee. Section 4.0, *Presentations*, provides an overview of each presentation as well as a summary of relevant questions and comments from the members of the subcommittee. Section 5.0, *Action Items*, summarizes the action items adopted by the subcommittee.

2.0 REMARKS

Mr. Williams, chair of the Indigenous Peoples Subcommittee, opened the meeting by welcoming the members of the subcommittee and Mr. Gogal, the DFO. Mr. Tom Goldtooth, Indigenous Environmental Network (IEN), presented a traditional invocation to begin the meeting. During the invocation, Mr. Goldtooth asked for peace and safety for all attendees of the meeting and their families. Following the invocation, Mr. Gogal welcomed all visitors and provided reviews of two documents for the members of the subcommittee to discuss during the meeting: (1) a preliminary draft document written by members of the subcommittee, *Meaningful Involvement and Fair Treatment by Tribal Environmental Regulatory Programs* (the meaningful involvement document) and (2) a draft NEJAC report, *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* (the cumulative risk report).

3.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, which included discussions of (1) comments and recommendations provided by tribal organizations with regard to the meaningful involvement document, (2) how the NEJAC cumulative risk report can better address tribal issues, and (3) the application process for serving on the Indigenous Peoples Subcommittee.

3.1 Discussion of Recommendations for the Subcommittee's Meaningful Involvement Document

Mr. Gogal provided a brief description of the process that the subcommittee followed when developing the meaningful involvement document. He stated that a Meaningful Involvement and Fair Treatment Work Group was created that consists of several members of the Indigenous Peoples Subcommittee, as well as Mr. Goldtooth; Ms. Anna Frazier, Dine CARE; and Ms. Jeanette Wolfley, Shashone-Bannock Tribes. Ms. Wolfley prepared the text of the document under the guidance of the other members of the Meaningful Involvement and Fair Treatment Work Group. Mr. Gogal explained that the purpose of the document is to provide advice to EPA about how to most effectively work with tribes in order to ensure their meaningful

Exhibit 6-1

INDIGENOUS PEOPLES SUBCOMMITTEE

Members

**Who Attended the Meeting
on April 15, 2004**

Mr. Terry Williams, *Chair*
Mr. Daniel Gogal, *DFO*

Mr. Stephen Etsitty, *Proxy*
Dr. Doo Jung Jin
Mr. John Roanhorse
Ms. Karen Wilde Rogers
Ms. Pemina Yellow Bird

Members

Who Were Unable To Attend

Mr. Calvert Curley
Ms. Coleen Poler, *Vice Chair*
Mr. Bob Smith, *Alternate DFO*

involvement and fair treatment in the development and implementation of Federally authorized tribal environmental programs. He added that the issues addressed in the document about public participation and due process, have been contentious issues within tribal organizations for several years. During deliberations with members of the subcommittee over the past year, Mr. Gogal explained, members of some tribal grassroots organizations debated the degree to which the Federal government should impose public participation requirements and due process on tribal governments that have very different ways of governing their people.

Mr. Gogal emphasized the importance of talking about “participation” rather than “consultation” during deliberations because the two words have different meanings. Issues involving public participation have caused several tribal organizations to view the meaningful involvement document as fuel for organizations that wish to diminish tribal sovereignty. Mr. Gogal stated that the members of the Indigenous Peoples Subcommittee agree that tribes should be sovereign and should be allowed to participate in and manage Federal environmental programs. Mr. Gogal said that it is an appropriate time for the subcommittee to address the issue of public participation in written format.

Mr. Gogal reviewed the tentative timeline for finalizing the meaningful involvement document (see Exhibit 6-2). He stated that the timeline is flexible but emphasized the importance of receiving comments as soon as possible. Anyone with comments was encouraged to send them to Mr. Gogal within the next month. His e-mail and mailing addresses are provided on the first page of the preliminary working draft of the meaningful involvement document. Members of the subcommittee will revise the document during the next few months and will provide copies of the revised draft to the individuals who submitted comments. Those individuals will be given approximately 30 days to verify that their comments were adequately addressed and to submit any additional comments. Members of the subcommittee then will revise the document by August 2004 and submit it to the members of the NEJAC for their review and comment. After all comments are addressed and the Executive Council approves the document, Mr. Gogal explained, the NEJAC will submit the final document to the EPA Administrator for consideration.

Exhibit 6-2

TENTATIVE TIMELINE FOR FINALIZING THE MEANINGFUL INVOLVEMENT DOCUMENT

May - June 2004	Members of the subcommittee address comments and revise the draft document
June - July 2004	Individuals who submitted comments have 30 days to submit any additional comments
August 2004	Revised draft is submitted to the members of the NEJAC
September 2004	Final draft is submitted to the EPA Administrator

Mr. Goldtooth and Ms. Pemina Yellow Bird, North Dakota Intertribal Retirement Committee and member of the Indigenous People Subcommittee, expressed their thanks to Ms. Wolfley for preparing the meaningful involvement document. They requested that Ms. Wolfley tell the group about the process used to develop the draft document. Ms. Wolfley began by saying that she was hired by EPA to assist the Indigenous Peoples Subcommittee to write the document and that she worked with the members of the Meaningful Involvement and Fair Treatment Work Group to develop the concepts for the document. Members of the work group developed the framework of the document and defined the charge in Attachment A of the document. The charge to EPA states that the document discusses short- and long-term actions that EPA should take to help tribes address meaningful involvement and fair treatment issues related to development and implementation of Federally authorized or approved tribal environmental programs. Ms. Wolfley stated that it was her task to expand on the ideas and concepts in writing and that she made every effort to capture the perspectives of those in the work group. She stated that Chapter 2 was the most difficult to prepare because it was challenging to condense the history of tribal policy into a few pages. She stated that she had to compromise between giving credit to the tribal governments and showing respect for the rights of non-natives in terms of public participation. Ms. Wolfley stated that there seems to be an assumption that all tribal governments reject public participation, which is not the case.

Members of the subcommittee then discussed comments submitted by various tribal organizations and made recommendations for incorporating the comments into the meaningful involvement document. A summary of the subcommittee's discussion is provided below. Recommendations are presented according to the chapter of the document, followed by a general discussion of the purpose and focus of the document.

General Comments on the Meaningful Involvement Document

This section provides a summary of general comments about the document:

- Mr. John Roanhorse, Institute of Tribal Environmental Professionals and member of the Indigenous Peoples Subcommittee, recommended that the document include an example of successful implementation of due process or public participation in Alaska.
- Mr. Gogal recommended that the members of the Meaningful Involvement and Fair Treatment Work Group consider articulating recommendations in the document and make a distinction between actions and recommendations. He also recommended that the document be formatted in such a way that recommendations stand out. In addition, Mr. Gogal suggested that the members of the Meaningful Involvement and Fair Treatment Work Group add a discussion about EPA's providing public participation training to tribes and that the members include language emphasizing that EPA should continue to conduct outreach to tribes and inform them that they are welcome to participate in the decision-making processes.
- Ms. Yellow Bird recommended adding a discussion of natural resources as described on page 3 of Mr. Dean Suagee, Director of the First Nations Environmental Law Program, Vermont Law School and former member of the Indigenous People Subcommittee, paper titled *Dimensions of Environmental Justice in Indian Country and Native Alaska*.
- Mr. Roanhorse recommended including the perspective of academia in the document. He agreed to provide the members of the subcommittee with several Harvard University reports and other academic reports that exhibit an unbiased perspective on the issues. The issues presented in the reports should be included in the subcommittee's document in a concise, unbiased way that tribal members can understand. Members of the subcommittee agreed that tribal communities are divided between those who support environmental justice issues and those who do not and that the document must appeal to both bodies of opinion.
- Mr. Goldtooth requested that an example from the work of Mr. Chris Peters, Seventh Generation Fund, be included in the document. Mr. Peters has developed methods that tribal communities can use to develop sustainable communities based on traditional values within a modern society.

Chapter 2

This section provides a summary of the comments discussed related to chapter two of the meaningful involvement document.

- *Chapter 2, Background* - Members of the subcommittee agreed to include a discussion of the court cases cited on pages 1 and 2 from comments submitted by the Pueblo Laguna (Nevada v. Hicks; Atkinson Trading Company, Inc. v. Shirley; United States v. Lara; and Curo v. Reina). Mr. Roanhorse stated that including a description of the court decisions is important because they demonstrate that the position of tribal communities has become more challenging to enforce in the past 10 years. Mr. Stephen Etsitty, Navajo Nation Environmental Protection Agency and proxy member of the Indigenous Peoples Subcommittee, agreed with Mr. Roanhorse and added that it is difficult to condense the history of tribal governments into a few pages of a document. Mr. Etsitty also stated that the four court cases should be reflected in the background paragraph of the document because the cases demonstrate how some state governments are beginning to encroach on tribal government regulatory actions. He added that the document should mention emerging issues that apply to tribes conducting meaningful public participation and due process, even though he recognized that it will not be possible for the document to include references to the most current issues.

- *Chapter 2, Section B, Environmental Jurisdiction on Tribal Lands* - Mr. Gogal confirmed that the members of the subcommittee wish to create a paragraph titled "Emerging Issues" as the first item in Section B of chapter two and that the text will discuss recent court cases. The text will serve as a placeholder and will require further discussion on the part of the work group. Mr. Etsitty recommended incorporating references to court cases throughout the document as appropriate. The discussion of court cases presently is limited to the first full paragraph on page 16. Ms. Wolfley stated that the discussion of court cases currently is limited to discourage tribes from structuring their programs according to court cases.
- *Chapter 2, Section B, Subsection 1, Development Impacting Indian Lands* - Mr. Roanhorse requested that language be added about (1) the impact of urban sprawl on reservations, (2) specific issues raised by individuals in Alaska, and (3) the clash between economic and industrial development and traditional values. Mr. Roanhorse requested that the subcommittee consider including examples from industry in this section.

Chapter 3

This section provides a summary of the comments discussed related to chapter three of the meaningful involvement document.

- *Chapter 3, Section A, Subsection 2, Respecting Interests of Community*, first paragraph - Mr. Goldtooth recommended that Ms. Wolfley reword the following sentence to avoid focusing on the negative aspects of tribal government and to focus more on obtaining input from native people.

"Some tribal leaders, in addressing the myriad of important issues pertaining to running a government appear to overlook the traditional tribal values of respect, reciprocity, humility, and connectedness as these relate to land and tribal members."

Mr. Gogal reviewed a comment submitted by the Pueblo of Laguna suggesting that the word "religious" be added to the following sentence:

"Tribal environmental program decisions affect the entire social, [religious], and political fabric of a community because such decisions impact the communal rights to live on, use, harvest, conserve, and transfer lands within the reservation, and the land, itself, as community."

Members of the subcommittee reached a consensus not to include the word "religious" in the sentence. Rather, they agreed to develop appropriate language that refers to tribal cultural and spiritual beliefs. The language will be approved by all members of the subcommittee and then will be included throughout the document, where appropriate. Ms. Yellow Bird will work with Ms. Wolfley to develop the language and will e-mail it to the members of the subcommittee. Ms. Yellow Bird and Ms. Wolfley will refer to Mr. Suagee's paper and previous documents generated by the Indigenous Peoples Subcommittee for sample language.

Another comment submitted by the Pueblo of Laguna suggests adding the term "land bases" to the following sentence found in the first sentence of third paragraph:

"Given the history of neglect by the Federal government in protecting tribal [land bases], waters, soils, air, and placing the health of tribal members at risk, tribal community members are keenly aware of the long term consequences of uninformed decision-making and over-exploiting resources."

Members of the subcommittee reached a consensus to add the term "land bases" but agreed that additional discussion is needed about how the term applies to Alaskan Natives.

Members of the subcommittee agreed to expand the text in order to address the comment regarding the term "in their own vision" on page 4 of the Pueblo Laguna comments on the last paragraph of this

subsection. The members agreed that the quote provided in the comment should be cited in the document. Ms. Wolfley will ask Pueblo Laguna to identify the source of the quote.

Additional Discussion on the Meaningful Involvement Document

Mr. Williams stated that many of the members of the subcommittee are reviewing the comments on the meaningful involvement document for the first time. He encouraged the members to review these comments in more detail during conference calls in the near future.

Mr. Goldtooth inquired whether EPA's American Indian Environmental Office (AIEO) or the National Tribal Environmental Council (NTEC) were approached about providing comments. Mr. Gogal responded that he had attended several meetings with AIEO during which the work group developed the charge that is clearly stated in Attachment A of the document. Mr. Gogal said that AIEO believes that this document addresses a sensitive issue but recognizes that it is an appropriate issue for the NEJAC to address. Mr. Gogal also stated that he has been in contact with individuals at NTEC as well as other tribal organizations to obtain their input on the document. Mr. Gogal added that he was scheduled to participate in a meeting with NTEC in the next week to discuss the document further.

Mr. Roanhorse described an example of one tribe that created a separate company to focus on public participation and implementation of environmental programs, thus alleviating the burden on the tribe. Mr. Gogal agreed that this approach should be considered as an option for tribes.

Mr. Gogal noted that the document has three audiences: (1) EPA and the NEJAC, (2) tribal organizations, and (3) nontribal organizations. He added that the purpose of the document is to describe the fundamental rights of the tribes and advise EPA about how to enforce those rights but that its additional purpose is to promote understanding and appreciation of the tribal system among nontribal organizations.

Ms. Yellow Bird responded that the document should not have nontribal individuals as a target audience. She emphasized the importance of focusing on receiving feedback from native individuals. Ms. Yellow Bird later clarified that it is not her intention to exclude nontribal people from discussions with the tribes but that the subcommittee should make the concerns of tribal people its priority and that the ultimate goal of the document should be to preserve tribal culture. Ms. Yellow Bird emphasized the importance of focusing "on the resource" when writing the document and when providing advice to EPA. Given the fact that the issues involve resources that fall under tribal control, Ms. Yellow Bird said, it is very important that the subcommittee focus on tribal cultures and needs. She clarified that it is not her intention to exclude anyone from having a voice but rather to focus on gathering public comments from tribal members.

Mr. Gogal stated that the issues of public participation requirements and due process become critical when tribes seek to participate in Federal environmental programs because any organization participating in a Federal program must follow a process of public participation and fair treatment. However, the mechanisms by which tribes seek to conduct public participation can vary from those of other government entities as long as the tribal mechanisms have the fundamental components. Mr. Williams responded by saying that tribes must follow a process of public participation to a reasonable extent but also have the right to develop their own environmental policies rather than "mirror" the processes of the Federal government.

3.2 Discussion of Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts

Mr. Charles Lee, Associate Director for EPA OEJ, joined the members of the subcommittee along with Dr. Hector Gonzalez, City of Laredo. Mr. Lee provided background about the NEJAC's draft report on cumulative risks and impacts. He explained that two indigenous representatives participated in a work group that developed the draft cumulative risk report. He described the eight themes used to organize the recommendations in the report and added that the report will serve as guidance for EPA to make changes over the next several years. Mr. Lee said that he welcomes comments from the tribal members about their perspective on cumulative risks. He explained that the report lacks discussion of ecological restoration and recovery concepts, which are different from traditional risk assessment methods.

Mr. Williams stated that members of tribal communities have been aware of the issues surrounding cumulative risks for many years and have responded to EPA by providing information and comments. Mr. Williams also stated that tribal communities that have subsistence lifestyles are most affected by cumulative risks. As an example, Mr. Williams explained that tribal women in the Tulalip Tribes collect grasses and chew on them to soften them for basket weaving. Some of these grasses have been sprayed with chemicals that cause adverse health effects for those women. Mr. Williams went on to explain that the tribal government was able to stop the spraying of an area of grasses that the women can now use for basket weaving without the risk of negative health effects. He also cited scientific studies proving that subsistence-lifestyle tribal members who change to a diet of processed food exhibit higher risks of developing diabetes, cancer, and heart disease. He stated that EPA and other Federal agencies must recognize the effects that their actions have on tribal traditions and must understand how heavily subsistence communities rely on natural resources.

Mr. Williams stated that the U.S. government must recognize that the species that members of tribal communities rely on for food do not live solely on tribal land but more often somewhere else, which is another way that cumulative risks impact tribal communities. Mr. Williams said that the Federal government must therefore focus on restoration and recovery to restore essential species to tribal lands.

Mr. Williams addressed the issue of implementing a program that focuses on restoring species on tribal lands. He stated that most health issues found among members of tribal communities are caused by contamination that is unregulated. Therefore, Mr. Williams stated, EPA should develop a new statutory process that includes a method for identifying species that need restoration and should develop programs that will reduce the risks to those species.

Finally, Mr. Williams said that EPA should be aware that tribes have traditional knowledge that can be useful in modeling projects; however, much of the traditional knowledge is considered sacred by the tribal people. Tribes will share such information with the understanding that the information will not be made public without their prior consent.

Mr. Goldtooth emphasized the importance of addressing the cultural and psychological impacts that a loss of natural resources has on tribal people. These impacts are not easy to define in government processes and are often considered to be insignificant. Mr. Goldtooth said that these impacts, such as depression resulting from loss of land, should be described in the cumulative risk report. He added that there have been several initiatives to quantify psychological and cultural impacts on tribal communities but that this has proven to be a challenging process. Mr. Goldtooth also stated that the scientific studies described in the cumulative risk report use western forms of science. He explained that tribal people rely on traditional forms of science, which also should be noted in the cumulative risk report.

Mr. Goldtooth explained that there are alternatives to risk assessment when cumulative risk impacts are to be quantified. He advocated the use of a precautionary approach and urged the members of the subcommittee to obtain training in the precautionary approach in order to learn how such a process can be implemented in the future.

Mr. Lee thanked the members of the subcommittee for their comments and suggestions for improving the cumulative risk report. He explained that risk assessment is a new and evolving field and that relatively few of individuals were experienced in risk assessment methods. Mr. Lee recommended that the cumulative risk report include a discussion of the links between risk assessment and ecological assessment.

Mr. Lee stated that he would like one of the final 15 recommendations in the report to address cumulative risks from a tribal perspective. He agreed to follow up with Mr. Gogal in order to discuss how the language in the cumulative risk report could be adjusted to incorporate the comments offered during the subcommittee's meeting.

3.3 Discussion of the Application Process for Serving on the Indigenous Peoples Subcommittee

Mr. Gogal reported that OEJ currently is seeking nominations for individuals who are interested in serving on the Indigenous Peoples Subcommittee beginning in January 2005. He explained that two individuals, Mr.

Peters and Ms. Charon Asetoyer, Native Women's Health Education Resources Center, have been recommended by OEJ to serve on the subcommittee but could not attend the NEJAC meeting.

Mr. Gogal reviewed the process for applying to serve on the subcommittee. Exhibit 6-3 summarizes the application requirements. Mr. Gogal stated that although there is no official deadline for receiving applications, OEJ encourages applicants to submit their application packages as soon as possible. All applications should be sent to Mr. Gogal or Mr. Lee at OEJ. Their contact information is provided in the meaningful involvement document and on OEJ's web site. After receiving applications, Mr. Gogal explained, OEJ will contact the applicants if additional information is needed.

Exhibit 6-3

**DOCUMENTS TO SUBMIT WHEN APPLYING TO
SERVE ON THE INDIGENOUS PEOPLES
SUBCOMMITTEE**

- A letter addressed to Mr. Gogal or Mr. Lee that describes your interest in serving on the subcommittee and all of your relevant experience. The letter also must identify one of the following categories that describes your field of expertise:
 - Government
 - Academia
 - State/Local Government Representative
 - Business/Industry Representative
 - Tribal/Grass Roots
- One letter of recommendation
- A resume including all of your contact information and relevant experience

Mr. Gogal explained that OEJ must submit at least three names for each category of expertise to EPA OECA and that OEJ provides its own recommendation for each individual. Mr. Gogal added that an individual who applies to serve on the Indigenous Peoples Subcommittee also is considered for the other six subcommittees. If an individual is selected to serve on one of the subcommittees, the person will be contacted and given the opportunity to accept or decline the offer.

Mr. Gogal said that the issues that the Indigenous Peoples Subcommittee will address in the next two years are (1) how the National Historic Preservation Act (NHPA) can be used to preserve tribal lands and sacred places and (2) the impacts of global warming on indigenous populations.

Mr. Gogal reported that EPA Region 10 has agreed to sponsor an Alaskan representative to serve on the Indigenous Peoples Subcommittee. Mr. Gogal pointed out that this is a wonderful opportunity for Alaskan tribal people to provide input during the subcommittee's deliberations. OEJ is in the process of identifying individuals in Alaska who are interested in serving on the subcommittee, and Mr. Gogal encouraged the Alaskan participants in the meeting to discuss this opportunity with other tribal members in Alaska.

Mr. Goldtooth asked what steps are being taken to improve the transition between members of the subcommittee. He encouraged the subcommittee to consider increasing the time of overlap for individuals serving on the subcommittee and to conduct an orientation process for new subcommittee members.

4.0 PRESENTATIONS

This section summarizes the presentations made to the Indigenous Peoples Subcommittee.

4.1 Maniilaq Association

Ms. Hazel Apok, Maniilaq Association, began by explaining that the Maniilaq Association is a nonprofit consortium of 12 Federally recognized tribes in northwest Alaska. As a representative of the association, Ms. Apok offered several recommendations to members of the subcommittee. She recommended that the subcommittee advise EPA to recognize tribes as sovereign nations and allow them to exercise self-governance. She also stated that the most appropriate way to determine whether Alaskan tribes are practicing public participation is to survey each tribe in Alaska and learn about the processes that it follows to implement environmental programs. She recommended that EPA increase its collaboration with tribal organizations, preferably in person. Ms. Apok explained that each tribe in Alaska governs its people in a different manner and that how each governs is written into tribal policies, bylaws, and constitutions. She added that a survey would allow EPA to determine whether the policies of each tribe are consistent with EPA regulations.

Mr. Williams responded to Ms. Apok's testimony by saying that members of the subcommittee and many individuals in EPA are unaware of the issues facing tribes in Alaska. He emphasized the importance of having a representative from Alaska serve on the subcommittee and eventually on the Executive Council of the NEJAC. Mr. Williams asked the Alaskan Natives present at the meeting to consider serving on the subcommittee and to spread the word to others in their communities. He emphasized that if an Alaskan Native was on the subcommittee, this would help other members of the subcommittee to relay the issues facing Alaskan tribal members to the NEJAC. Ms. Apok responded that members of the subcommittee should visit the tribal members in Alaska and determine who would be the best individual to represent the Alaskan people on the Executive Council of the NEJAC.

4.2 Native Village of Selawik

Mr. Bente Davis, Native Village of Selawik, stated that tribal communities in Alaska need additional training related to applying for grants. He stated that such training would enable the communities to become more self-sufficient and effective in obtaining funding from EPA. He also requested that individuals who are trained in a technical field also should be trained in managing grants.

Mr. Gogal responded that this issue applies directly to the issues brought up in the meaningful involvement document. He acknowledged that there is a need to provide public participation resources such as grant application training to tribes so that they can effectively implement environmental programs.

Mr. Roanhorse agreed with the presentation and comments and said that the members of the subcommittee, EPA, and other government agencies must learn more about the issues facing tribal communities in Alaska. He added that there is much to be learned to determine how the subcommittee can help to create programs that are more appropriate for tribal communities in Alaska.

Ms. Yellow Bird asked Mr. Gogal whether EPA currently has a grant management program. Mr. Gogal responded that such programs exist but are not consistent among EPA regions. He added that training about writing grant applications is available on EPA Region 5's web site.

Mr. Williams asked Mr. Davis what recommendations the subcommittee can make to the NEJAC about obtaining input from the tribes in Alaska. Mr. Davis replied that the subcommittee should approach the tribal members in Alaska in person and should develop a survey asking these people to provide their ideas about meaningful involvement and fair treatment. Dr. Doo Jung Jin, Northwest College, agreed that it is a good idea for representatives of the subcommittee to visit the tribal members in Alaska and witness how they conduct public involvement. Ms. Apok added that public participation is taking place in Alaskan tribes but in a number of different ways.

Mr. Gogal asked Ms. Apok to submit an example of successful public participation in an Alaskan tribal community for inclusion in the meaningful involvement document, and Ms. Apok agreed to do so.

4.3 Ugashik Traditional Village

Mr. Roy Matsuno, Ugashik Traditional Village, expressed concern about lack of funding for enforcement of tribal environmental policies and requested additional funding of enforcement programs for tribes. Mr. Roanhorse asked who tribal organizations are taking enforcement actions against, and Mr. Matsuno responded with a few examples. He explained that there have been several fuel spills by commercial fishermen and that tribal communities have no avenue for enforcing cleanup activities. He also explained that a barge owned by the state of Alaska on a river near a tribal community is contaminating the tribe's water source. The tribal community currently does not have the enforcement authority to force the state to decontaminate the barge.

Mr. Etsitty informed the group that tribal compliance is one of the national priorities of EPA's Office of Enforcement and Compliance Assurance (OECA) for fiscal years 2005 through 2007. Mr. Etsitty encouraged Mr. Matsuno and other participants in the meeting to contact OECA representatives and provide comments for them to consider, including comments regarding the tribal compliance national priority. Mr. Gogal provided the names of OECA contacts to Mr. Matsuno.

4.4 National Tribal Environmental Council, Bureau of Indian Affairs

Mr. David Conrad, Executive Director, NTEC, provided several suggestions to the subcommittee for improving the meaningful involvement document. He urged members of the subcommittee to adopt a “Bias for Action” approach that focuses on the positive progress related to tribal environmental programs that has been made in tribal communities. He stated that such an approach would provide incentives for tribal organizations to take action and provide comments to the subcommittee.

Mr. Conrad stated that he is aware of several tribal members who do not agree with the charge included in the meaningful involvement document and stated that some tribal members are not commenting on the document because they do not believe that the subcommittee has credibility. To change the perspective of these tribal members, Mr. Conrad recommended that the document emphasize successes rather than the negative aspects of the issues that divide tribal communities. Mr. Conrad said that tribes must be motivated to obtain training in public participation rather than being forced to do so by a strictly prescribed plan.

Mr. Conrad concluded by saying that tribal governments are being singled out by the Federal government with regard to public participation requirements and due process. Several tribal communities believe that the subcommittee's meaningful involvement document will report only the criticisms and will give the impression that tribal people cannot run a government effectively.

Ms. Wolfley responded that the members of the subcommittee are aware of the differing opinions between tribal members and organizations. However, she added, those opinions have not stopped the subcommittee from preparing the document because it is important to address the issues that are dividing tribal communities. Ms. Wolfley added that the most important point that the document addresses is whether tribes should be forced to adopt European ideals of public participation and due process. She argued that EPA still is learning about implementation of public participation requirements and due process in a traditional context.

Mr. Williams stated that tribes need to be aware of the flexibility that is inherent in EPA requirements. Tribes must follow Federal requirements, but they do not have to follow them precisely, said Mr. Williams. He also pointed out that there is a Federal regulation that recognizes tribal members as citizens, of both their tribes and the United States. Under that regulation, the Federal government has an obligation to ensure that citizen rights to public participation and due process are protected.

Mr. Gogal addressed Mr. Conrad's point about the disagreement of tribes regarding the charge in the meaningful involvement document. He explained that the charge has been in place for 14 years and that the members of the subcommittee believe that this is an appropriate time to address the issues again. Mr. Gogal challenged tribal members to take a proactive approach in obtaining information about what is working for states and the Federal government.

Ms. Yellow Bird thanked Mr. Conrad for his comments and agreed that tribes do “feel singled out” by the Federal government when it comes to public participation and due process. She added that the Federal government should review all forms of government, including tribal governments, to ensure that the appropriate processes are being followed.

4.5 Newhelen Tribe

Ms. Agnes Rychnovsky, Newhelen Tribe, described a mining project that is scheduled to take place near her village in Alaska. She expressed her concern about the potentially devastating impacts that mining would have on a nearby lake that currently is pure. Ms. Rychnovsky stated that the mining company has been able to obtain air and water quality permits from the state of Alaska without the state recognizing the potential impacts on tribal communities. She added that tribes are not provided with sufficient notice to give testimony against the permits, and she urged the members of the subcommittee to support the inclusion of tribal representatives at the beginning of any decision-making process that may have an impact on their communities.

Ms. Yellow Bird asked Mr. Lee what the NEJAC can do to address the fact that these tribes are being asked to implement meaningful public participation but that the state is not providing them with the same rights. Mr.

Lee responded that Ms. Rychnovsky and other Alaskan tribal members should contact EPA Region 10 to inquire about the public participation process. Mr. Lee and Mr. Gogal agreed to contact EPA Region 10 in order to discuss the issues and determine the best approach for improving the public participation process for the Alaskan tribes. Ms. Rychnovsky thanked the subcommittee members for their time and extended an invitation for the NEJAC to have a meeting in Alaska.

4.6 Makah Tribe

Mr. Vince Cook, Makah Tribe, expressed his appreciation to the subcommittee for preparing the meaningful involvement document. He suggested that the members of the Meaningful Involvement and Fair Treatment Work Group move the paragraph currently appearing before the conclusions on page 33 of the document to the background chapter. The paragraph states that "EPA needs to budget for, and offer, financial assistance and technical support to promote and provide for meaningful involvement and fair treatment." Mr. Cook proceeded to provide additional suggestions for conducting effective outreach in tribal communities. His approach involves meeting individuals in a tribal community face-to-face and engaging them in the decision-making process.

4.7 Tulalip Tribes

Mr. Williams presented the results of a project that he and other members of the Tulalip Tribes began in 2003. The project involves the development of three training manuals. The first manual describes ways that tribes can interpret NHPA and the National Environmental Policy Acts (NEPA) to ensure that tribal individuality is maintained. The second manual describes a methodology for adapting a watershed analysis of the northwest United States to the hydrology of various other regions in the United States, thus providing a standard methodology for tribes to use when researching the watersheds in their regions. The third manual currently is under development. Mr. Williams explained that all three manuals are collaborative decision-making tools that tribes can use to address environmental problems in their regions.

Mr. Williams described the treaties that exist between tribal people and other American people to ensure that the two groups can coexist peacefully and live in parallel without causing harm to each other. However, Mr. Williams explained, those treaties are not being upheld. Tribal communities are being overwhelmed by environmental impacts resulting from the actions of nontribal people. Mr. Williams explained that tribes historically survived and stayed in good health because 100 percent of the required resources were available and that the tribes did not have to spend time searching for food or other essential items. He reported that only about 20 percent of the essential resources are available to tribes today because of either species shift or climate change. Mr. Williams said that it may be possible to restore tribal lands to the extent that 80 percent of the essential resources are available.

Mr. Williams explained that members of the Tulalip Tribes use NEPA, watershed analysis, and traditional knowledge to establish collaboration with the U.S. government. He added that the tribes have established a NEPA-style process that allows a tribal agency to become a co-lead for the program and to invite trustees to participate with tribes in identifying available species in the area. Based on interviews with approximately 14 percent of the population in Tulalip, Mr. Williams explained that approximately 100 plants are critical to the day-to-day lives of Tulalip natives. After determining the availability and status of each species, the tribes used NEPA and watershed analyses to determine species presence or absence and used traditional knowledge to identify how the loss of each species impacts the cultural and spiritual aspects of the tribes.

Mr. Williams explained that tribal and nontribal populations within the watershed were interviewed to determine their commonalities and an implementation strategy. Based on the interview results, it was determined that the Tulalip Tribes can achieve species recovery that 80 percent of the essential species will be present in the watershed. To achieve this goal, the tribes established a watershed group to analyze the potential for and design of restoration and recovery projects. So far, Mr. Williams reported, the group has worked with the community to raise \$11 million in grant money that will be used to restore the salmon population; a matching grant in the amount of \$40 million. Mr. Williams acknowledged that the goal of the project will not be achieved in a short time. He concluded by encouraging tribes to continue to conduct cumulative risk analyses and to create legal mechanisms that will allow them to achieve cooperating agency

status. He reported that the watershed group will meet again in June 2004 and will begin contacting other tribes to determine whether they wish to implement similar projects.

Mr. Lee stated that a new grant program has been established for sustainability projects. He agreed to send information about the program to Mr. Gogal for distribution. Mr. Lee added that he would like to include a description of Mr. Williams' project in the cumulative risk report. Mr. Lee will coordinate with Mr. Gogal and Mr. Williams to obtain the project description for the report.

5.0 ACTION ITEMS

This section summarizes the action items adopted by the subcommittee.

- T Members of the subcommittee will address comments and revise the preliminary draft of the meaningful involvement document.
- T Ms. Yellow Bird will develop language concerning the cultural and spiritual meaning of environmental resources for inclusion in the meaningful involvement document.
- T Mr. Roanhorse will provide the members of the subcommittee with several academic reports from Harvard reports that present unbiased analyses of the effects of economic development on tribal communities.
- T Members of the subcommittee will continue to address all public comments on the meaningful involvement document in follow-up conference calls.
- T Members of the subcommittee will research the possibility of EPA hosting a NEJAC meeting in Alaska.
- T Members of the subcommittee and members of tribal organizations will continue to conduct outreach to tribal communities in order to obtain feedback on the meaningful involvement document.
- T Ms. Apok will provide the members of the subcommittee with an example of successful implementation of public participation in Alaskan tribal communities.
- T Mr. Gogal and Mr. Lee will contact individuals at EPA Region 10 to discuss what Region 10 is doing to ensure that Alaskan tribes are being offered a fair public participation process.
- T Mr. Gogal and Mr. Lee will discuss how to include the comments of the subcommittee in the NEJAC cumulative risk report.
- T Mr. Lee will provide Mr. Gogal with information about a new grant program for sustainability projects.

MEETING SUMMARY

of the

INTERNATIONAL SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 15, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Wendy Graham
Designated Federal Official**

**Phillip Hillman
Acting Chair**

**CHAPTER SEVEN
MEETING OF THE
INTERNATIONAL SUBCOMMITTEE**

1.0 INTRODUCTION

The International Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Mr. Philip Hillman, Poloroid Corporation, serves as the acting chair of the subcommittee. Ms. Wendy Graham, U.S. Environmental Protection Agency (EPA) Office of International Affairs (OIA), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 7-1 presents a list of the members who attended the meeting and identifies the member who was unable to attend.

This chapter, which provides a summary of the deliberations of the International Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, provides a summary of the opening remarks of the acting chair. Section 3.0, *Update on Environmental Justice Activities of EPA's OIA*, provides a summary of activities EPA's OIA currently is conducting related to environmental justice. Section 4.0, *Reports on U.S.-Mexico Border Activities*, summarizes the updates provided by representatives of EPA regions 6 and 9 on activities related to the U.S.-Mexico border area and environmental justice. Section 5.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

2.0 REMARKS

Mr. Hillman, acting chair of the International Subcommittee, opened the meeting of the subcommittee by welcoming the members the present, Ms. Graham, and presenters. The subcommittee members and presenters introduced themselves to the group.

Mr. Hillman described the collaborative relationship between the members of the subcommittee and OIA. Mr. Hillman expressed his desire for OIA to seek the advice and counsel of members of the subcommittee on specific issues and also have OIA provide feedback to the subcommittee on issues that the subcommittee addresses.

Mr. Hillman expressed concern about the slow progress of appointing members to the subcommittee, particularly the vacancy of a community representative on the subcommittee. He added that he believes the slow approval process results in a diminished capacity of the subcommittee.

3.0 UPDATE ON ENVIRONMENTAL JUSTICE ACTIVITIES OF EPA'S OIA

This section provides a summary of the activities of EPA's OIA related to environmental justice.

3.1 Environmental Justice Training for OIA Staff

Acting on a previous subcommittee recommendation, Mr. Jerry Clifford, Deputy Assistant Administrator EPA OIA, announced that OIA currently is coordinating and hosting several environmental justice training forums for staff of OIA. OIA has invited Mr. Barry Hill, Director, EPA's Office of Environmental Justice (OEJ), to provide lectures to staff at an all-hands meeting of OIA in May 2004. The lecture, Mr. Clifford states, will focus on the importance of integrating environmental justice principles into OIA's international work. Ms. Graham also stated that OEJ is conducting training on environmental justice issues to other program staff throughout the Agency, specific to the type of work each office addresses. Further, Ms. Graham announced that OIA has developed a "Speaker Series" to lecture staff on various issues related to environmental justice within an international context.

Exhibit 7-1

INTERNATIONAL SUBCOMMITTEE
Members Who Attended the Meeting April 15, 2004
Mr. Philip Hillman, Chair Ms. Wendy Graham, DFO
Ms. Carmen Gonzalez
Members Who Were Unable To Attend
Ms. Leslie Fields

Mr. Clifford then discussed other proposed training programs that OIA is attempting to implement in developing countries that include: environmental enforcement, review, impact, and assessment training. He indicated that he was uncertain of the extent that environmental justice practices are applied within the training programs in other countries.

Ms. Dianne Wilkins, Oklahoma Department of Environmental Quality, encouraged Mr. Clifford to integrate environmental justice principles into all international training programs. She mentioned that the methods she has used to integrate environmental justice principles into her pollution prevention training, include using many different environmental practices to best meet the needs of developing countries.

Ms. Carmen Gonzalez, Assistant Professor Seattle University School of Law and member of the International Subcommittee, indicated the need for comprehensive and consistent environmental justice training throughout all EPA programs. Ms. Gonzalez explained that she integrates environmental justice principles throughout all the curriculum of her university courses rather than presenting the concept of environmental justice as an add-on topic.

Mr. Clifford emphasized the need for the members of the subcommittee to recommend to the Executive Council of the NEJAC the need to incorporate environmental justice principles into the development of training courses. Members of the subcommittee agreed to contact Mr. Charles Lee, Associate Director, EPA OEJ; Mr. Hill; and Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA) about the need to include environmental justice principles into the training curriculum developed by EPA.

3.2 Environmental Justice Principles and Trade Agreements

Mr. Clifford requested that the members of the subcommittee provide advice and counsel to OIA on incorporating environmental justice principles into trade agreements with other countries. Mr. Clifford explained that during trade agreement negotiations, environmental officials usually are not invited to participate. He added that the United States is requiring that environmental and labor issues are addressed in trade agreements and as a result, countries are forced to consider the issues. He also explained that there is a shortage of resources available across the U.S. government to adequately follow-up on commitments made during the negotiation phase of trade agreements. The subcommittee offered to provide guidance in the development of training related to the review of trade agreements to ensure that environmental justice principles are considered.

3.3 Update on North America Free Trade Agreement (NAFTA) Ten-Year Anniversary Assessment

Mr. Clifford then informed the members of the subcommittee that the ten-year anniversary of the signing of NAFTA is approaching. The Joint Public Advisory Committee (JPAC), composed of members from U.S., Mexico, and Canada who provide advice to the Commission of Environmental Cooperation (CEC) on all matters within the scope of the North American Agreement on Environmental Cooperation (NAAEC), is conducting a ten-year assessment of NAFTA. The review will include recommendations for new directions and areas to address in the future related to the environment and trade. Members of the subcommittee offered to provide comments on the ten-year assessment to EPA by the end of May 2004.

Mr. Hillman asked what specific comments should the members of the subcommittee provide about the assessment. Mr. Clifford replied there was a need to ensure the ten-year assessment addresses environmental justice principles and concerns.

Mr. Clifford added that the members of the JPAC would like to address environmental issues related to indigenous people living near the U.S.-Mexico border area. As part of the subcommittee review of the assessment, Mr. Clifford requested that the member of the International Subcommittee work with the members of the Indigenous People Subcommittee on this issue.

3.4 Corporate Responsibility

Continuing to update the members of the subcommittee on OIA's environmental justice activities, Mr. Clifford stated that OIA would like to work with the members of the subcommittee to address issues related to corporate responsibility, such as hazardous waste disposal and "green" supply chains. OIA, he continued,

currently is facilitating initiatives to improve corporate responsibility; however, the office is lacking resources to advance the progress. Mr. Clifford explained that OIA is attempting to develop initiatives related to corporate responsibility and hazardous waste within the context of the CEC.

Former member of the subcommittee, Mr. Jose Bravo, Just Transition Alliance, suggested that principles of corporate responsibility should be incorporated into the ten-year assessment of NAFTA with respect to recommendations and lessons learned.

Mr. Hillman stated that investment groups are placing an emphasis on corporate social responsibility with the use of measures and indexes to rate corporations. He recommended that EPA simply ask corporations about their operating procedures in their U.S. facilities and whether those procedures differ from those used in international facilities and why.

Mr. Hillman then described Polaroid Corporation's standard on green supply chains for production of products, including verifying that suppliers use green supply chains. Mr. Clifford noted that Walmart has set a standard with their green supplier requirements in China.

3.5 EPA OIA's Environmental Justice Action Plan

Mr. Clifford concluded the updates on OIA's activities by stating that OIA has developed an action plan for integrating environmental justice into its practices and programs. The plan, he explained, states that within the mission of OIA, the office will promote environmental justice principles by informing their counterparts of EPA's commitment to be fair and inclusive in all of their work, and by suggesting environmental justice concepts that identify and address disproportionately high and adverse human health or environmental effects of activities that target minority and low income populations. In response, members then discussed comments on OIA's Environmental Justice Action Plan.

4.0 REPORTS ON U.S.-MEXICO BORDER ACTIVITIES

This section provides updates from EPA regions 6 and 9 related to activities underway in the border areas of the United States and Mexico.

4.1 Update by EPA Region 6

Ms. Olivia Balandran, Associate Director for Environmental Justice, EPA Region 6, presented information on the *Final Report on the Border Issues Subcommittee for Environmental Justice Listening Session*. The Environmental Justice Listening Session on Border Issues was comprised of representatives from environmental justice groups from the U.S.-Mexico border area of EPA Region 6. Ms. Balandran reported that the listening sessions were held as a means to address regional border issues in a more timely manner. The report identifies the primary concerns, priorities, and key recommendations for action by EPA that were developed by participants of the border session.

Ms. Balandran then highlighted the primary concerns identified by the participants of the listening session:

- Insufficient follow through on action items identified at the 1999 Environmental Justice Roundtable held in National City, California
- The lack of environmental justice principles included in *Border 2012: U.S.-Mexico Environmental Program* document, which describes the plan for environmental activity along the U.S.-Mexico border area for the next 10 years

Other key recommendations made by the participants of the listening session include:

- The addition of an eleventh EPA region along the entire U.S.-Mexico border from Brownville, Texas to Tijuana, Mexico with its own regional office
- The creation of a binational environmental justice border commission specifically to address issues of concern border residents. The commission would include members of grassroots organizations to ensure "up front" community involvement

- The integration of environmental justice into the *Border 2012* program vision and guiding principles
- The cleanup of three sites El Gato Negro Landfill, Matamoros, Mexico; Candados Presto, Juárez, Mexico; and Metales y Derivados, Tijuana, Mexico

Mr. Bravo stated that the recommendation to include environmental justice principles in the *Border 2012* document had been made prior to the document's completion. He also added his support of the new EPA regional office located along the U.S.-Mexico border, commenting that it is difficult to address issues efficiently that are border-wide through both regions 6 and 9. He expressed his concern that the cleanup issues in the U.S.-Mexico border have not received an appropriate response level within EPA. Such organizations as the BECC and North American Development Bank (NADBank), he explained, focus on water-related issues and not cleanup. He concluded by noting that EPA has made progress in addressing border related problems.

Mr. Clifford asked Mr. Bravo to gather community views and develop a concept paper on what such a commission would entail. Mr. Bravo agreed to provide this paper to Mr. Clifford in the near future.

4.2 Update by EPA Region 9

Ms. Barbara Maco, Environmental Justice Coordinator, EPA Region 9, reported on the new bi-national clean-up pilot project now underway at the Metales y Derivados site located in Tijuana, Mexico. She stated there is an established community advisory group for the site. Mexico and U.S. EPA officials plan to continue to support the community group following the site cleanup.

Other updates from Region 9 include:

- EPA Region 9 is working to include environmental justice considerations as part of the air permitting process for a proposed refinery in Yuma, Arizona
- A listening session is planned in Arizona with the community group, Environmental Justice in Arizona
- EPA Region 9 is planning an environmental justice roundtable prior to September 2004

5.0 SIGNIFICANT ACTION ITEMS

This section summarizes the action items adopted by the subcommittee. The members of the International Subcommittee agreed to adopt the following action items:

- T Review the content of EPA's OEJ environmental justice training for all EPA offices that currently IS underdevelopment
- T Contact Mr. Lee, Mr. Hill, and Ms. Harris about the need to integrate environmental justice principles in all training content developed by EPA
- T Provide recommendations to the members of JPAC related to NAFTA's ten-year anniversary assessment

MEETING SUMMARY

of the

WASTE AND FACILITY SITING SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 15, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Dr. Andrew Sawyers
Chair**

**Kent Benjamin
Designated Federal Official**

**Michael Lythcott
Vice Chair**

**CHAPTER EIGHT
MEETING OF THE
WASTE AND FACILITY SITING SUBCOMMITTEE**

1.0 INTRODUCTION

The Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Dr. Andrew Sawyers, Environmental Justice Coordinator, Maryland Department of the Environment, was elected as the new chair of the subcommittee. Mr. Kent Benjamin, U.S. Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 8-1 lists the members who attended the meeting and identifies the member who was unable to attend.

This chapter, which summarizes the deliberations of the Waste and Facility Siting Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair and the DFO. Section 3.0, *Activities of the Subcommittee*, summarizes the activities of the subcommittee, which included updates on the status of three work groups of the subcommittee and an update on the subcommittee's *Strategic Work Plan*. Section 4.0, *Presentations and Reports*, provides an overview of OSWER updates delivered on four presentations. Section 5.0, *Action Items*, summarizes the action items adopted by the subcommittee.

2.0 REMARKS

Dr. Sawyers, chair of the Waste and Facility Siting Subcommittee, opened the meeting by welcoming the subcommittee members present and Mr. Benjamin, the DFO. Dr. Sawyers commended the work of the subcommittee and affirmed that the members have provided good leadership for the NEJAC. He went on to say that one of the goals of the meeting would be to identify projects that fall within the purview of the subcommittee and that could make a substantial improvement in people's lives over the next few years. He emphasized the importance of gauging progress in terms of tangible, "on-the-ground" improvements and of developing metrics for measuring the success of the projects implemented.

Mr. Benjamin stated that the agenda of the meeting would include reviewing the status of the activities of the subcommittee's three work groups that focus on the following issues:

- Five Priorities
- Unintended Impacts
- Federal Facilities

He stated that these reviews would be followed by an update on the *Strategic Work Plan* of the subcommittee and presentations from representatives of OSWER.

Exhibit 8-1

WASTE AND FACILITY SITING SUBCOMMITTEE
Members Who Attended the Meeting on April 15, 2004
Dr. Andrew Sawyers, <i>Chair</i> Mr. Michael Lythcott, <i>Vice Chair</i> Mr. Kent Benjamin, <i>DFO</i>
Ms. Michelle Alvarez Mr. Robert Collin Mr. Randall Gee Mr. Robert Harris Mr. Mosi Kitwana Ms. Mary Nelson Mr. John Ridgway Ms. Connie Tucker Mr. Vincent Wardlaw
Members Who Were Unable To Attend
Ms. Judith Espinosa

3.0 ACTIVITIES OF THE SUBCOMMITTEE

Exhibit 8-2

**U.S. Environmental Protection Agency (EPA)
Office of Solid Waste and Emergency Response (OSWER)
The Five Priorities**

1. **Emergency Response and Homeland Security:** Every year, OSWER's Emergency Response Program conducts or oversees hundreds of emergency responses to clean up oil spills and hazardous substance releases. OSWER ensures that the cleanup is appropriate, timely, and minimizes human and environmental risks. OSWER's Emergency Response Program provides the people and skills necessary to respond to national security threats faced by this country. The possibility of future terrorists attacks or other large-scale disasters necessitate a national response that is immediate, protective, and preventive.
2. **One Cleanup Program:** The One Cleanup Program (OCP) is OSWER's vision for how different cleanup programs at all levels of government can work together to improve the coordination, speed, and effectiveness of cleanups at the nations' contaminated sites. OCP encourages improved collaboration among EPA cleanup programs with state, tribal, local, and other federal agency programs and stakeholders. For information on the One Cleanup Program, go to <http://www.epa.gov/oswer/onecleanupprogram>.
3. **Land Revitalization:** The Land Revitalization Agenda (LRA) promotes the reuse of once-contaminated sites in order to revitalize America's communities. Because cleanup and reuse are mutually supportive goals, property, reuse should be an integral part of the way OSWER does business. To learn more about OSWER's Land Revitalization Initiative, go to <http://www.epa.gov/oswer/handrevitalization>.
4. **Energy Recovery, Recycling & Waste Minimization:** The Resource Conservation Challenge (RCC) is a major cross-Agency initiative that identifies innovation, flexible, and more productive ways to conserve natural resources through (1) materials pollution prevention, recycling and reuse; (2) reducing chemicals in all their uses; and (3) conserving energy and materials. The RCC also includes a retail component that educates consumers about resource conservation opportunities. For more information about the Resource Conservation Challenge, go to <http://www.epa.gov/epaoswer/osw/conserve/>.
5. **Workforce Development:** OSWER is committed to developing the full potential of its workforce by encouraging creativity and innovation, providing career development opportunities, and assuring that a diverse pool of qualified candidates is available for all OSWER job opportunities.

This section discusses the activities of the subcommittee, which included providing progress reports of the three work groups of the subcommittee. This section also provides an update on the subcommittee's *Strategic Work Plan*.

3.1 Five Priorities Work Group

Ms. Marjorie Buckholtz, Director, EPA Innovation, Partnership, and Communications Office OSWER, provided an update on the status of the Five Priorities Work Group of the Waste and Facility Siting Subcommittee. A description of the five priorities is presented in Exhibit 8-2.

Ms. Buckholtz stated that one of the goals of the Work Group is to encourage open discussion among members of the subcommittee about how they can help implement the five priorities and develop relevant projects that produce net environmental improvements and tangible results. She emphasized that the underlying theme for the priorities falls under the rubric of innovation and that the priorities provide the opportunity and funding for testing new ideas. Ms. Buckholtz asked the subcommittee members to submit proposals for projects they are interested in pursuing. Mr. Michael J. Lythcott, the Lythcott Company and Vice-Chair of the Waste and Facility Siting Subcommittee of the NEJAC, asked a question regarding the Emergency Response and Homeland Security priority; he asked if EPA was directing its efforts toward better coordination among first responders to emergency situations. Ms.

Buckholtz responded by saying that there is work going on in that area, although it is insufficient. She stated that a project in this area could potentially be pursued as an innovation pilot test under the priority, and she encouraged Mr. Lythcott to submit a proposal that particularly addresses cultural barriers and tailoring response actions to the needs of diverse communities.

Ms. Buckholtz provided another example of an initiative that the subcommittee could undertake that would fall under the Land Revitalization priority. The initiative would involve assessing existing watershed pilot studies of various sites to determine ways that they could be integrated with redevelopment activities. She mentioned that Ms. Dale Matey, EPA Office of Superfund Remediation and Technology Innovation (OSRTI) would be the point of contact for this project.

Ms. Linda Garczynski, Director EPA Office of Brownfields Cleanup and Redevelopment, provided a status update on the institutional controls tracking effort under the Land Revitalization priority. She stated that geographic information system (GIS) software is being used as a tool to overlay data pertaining to institutional controls with locational information in order to assist in implementing, monitoring, and enforcing the controls. She pointed out that the data in the system currently is basic in nature and that local governments usually are responsible for adding information to the system for the sites in their jurisdiction.

Dr. Sawyers followed with a general question about whether there were focused efforts to clean up smaller brownfields communities. Ms. Garczynski responded that approximately 52 percent of the brownfields grants awarded by EPA are issued to communities with a population of less than 100,000. In addition, EPA is conducting many outreach activities to provide direct support to communities without grants. She stated that EPA is providing some type of funding to all 50 states and 40 tribes to assess resources in order to provide support to communities.

Mr. Lythcott noted that there is growing concern about the negative impact of brownfields developers on low-income communities, even with what has been defined as “acceptable levels of displacement” in brownfields policies. He also stated that under the brownfields program, developers are provided with preassembled parcels of land to reduce their risk and ensure a definite return on their investments. He asked whether anyone is looking into this matter and whether there is a way that EPA can leverage its influence on investors to convince them to invest correctly. Dr. Sawyers responded that the subcommittee should develop a more structured effort to look into this matter. He suggested meeting with Mr. Lythcott to further discuss the issue. Mr. Mosi Kitwana, International City/County Management Association (ICMA) and member of the Waste and Facility Siting Subcommittee, added that the issue of displacement is largely a local one. He added, however, that the subcommittee does have the potential to have a significant impact on the matter and that it is worthy of debate. He went on to suggest that he could organize a meeting to further discuss this issue and possibly include it as a separate session at the upcoming brownfields conference.

Mr. Lythcott raised another question about cleanup standards for revitalized sites as well as “fence-line communities” that continuously are underfunded. He asked whether there is room for such communities to have a stronger say in establishing the level of cleanup and whether there are ways to funnel more resources to them. Dr. Sawyers asked Mr. Lythcott to speak with Ms. Buckholtz about how the subcommittee can address this issue. Mr. Benjamin and Ms. Buckholtz added that including the issue in the *Strategic Work Plan* of the Subcommittee could help make a strong case for discussion and possible implementation.

In the context of helping to implement OSWER’s five priorities, Mr. Kitwana emphasized that there are many plans being initiated at the local level that Federal agencies are not aware of and vice versa. Therefore, he recommended that the members of the subcommittee investigate ways to interact with external associations, such as those working with state and local governments, for the purposes of enhancing subcommittee planning and product development. He stated that this interaction would help the subcommittee to assess the work of other associations and to focus its own efforts.

Dr. Sawyers stated that currently there is no point of contact for the Energy Recovery, Recycling, and Waste Minimization priority. He volunteered to be the temporary point of contact until a permanent one is assigned. Mr. Randall Gee, the Cherokee Nation and member of the Waste and Facility Siting Subcommittee, volunteered to be the point of contact for the Workforce Development priority.

In response to Ms. Buckholtz's update on OSWER's five priorities, members of the subcommittee discussed how they can align their initiatives with those of OSWER. They discussed the possibility

of identifying pilot projects under each of the priorities. Specifically, under the Land Revitalization priority, they agreed to develop recommendations for improving emergency response plans and the reporting of stored hazardous chemicals for chemical plants located in environmental justice communities. Ms. Buckholtz offered to set up a meeting between the subcommittee members and Ms. Debbie Dietrich, Director, EPA Office of Emergency Prevention, Preparedness, and Response, if they were interested in developing a project in the area of homeland security. Mr. John Ridgway, Washington State Department of Ecology and member of the Waste and Facility Siting Subcommittee, volunteered to be the point of contact for this effort and to initiate further discussions. He mentioned that he has 14 years of experience with the Community Right-To-Know Initiative.

Dr. Sawyers concluded the session by stating that there are good opportunities for the subcommittee to partner with OSWER and that the recommendations discussed should be formalized during the afternoon session of the meeting.

3.2 Unintended Impacts Work Group

Mr. Butch Wardlaw, WPI and member of the Waste and Facility Siting Subcommittee, provided a status update on the activities of the Unintended Impacts Work Group. Mr. Wardlaw continued by stating that although EPA considered the redevelopment aspects of the projects to be successful, the projects may have had negative unintended impacts such as displacement of residents or unfair compensation for land taken from communities. The focus of the study was on lessons learned, impacts on key stakeholders, identifiable trends, and realistic recommendations for EPA. Based on the study, members of the Work Group developed a draft report titled *Unintended Consequences of Environmental Redevelopment in Five Environmental Justice Communities: A Critical Exploration* (the unintended impacts report). The report contains an analysis of five place study locations around the United States and provides recommendations based on an assessment of the quantitative and qualitative impacts of

Exhibit 8-3

PLACE STUDY LOCATIONS AND PRIMARY RESEARCHERS FOR UNINTENDED IMPACTS WORK GROUP STUDY

- East Palo Alto, California, EPA Region 9 - John Ridgway
- Albina Community, Portland, Oregon, EPA Region 10 - Robert Collin
- Pensacola, Florida, EPA Region 4 - Michael Lythcott
- Washington, DC, Navy Yard, EPA Region 3 - Butch Wardlaw
- Cherokee Nation in Oklahoma, EPA Region 6 - Randall Gee

redevelopment projects at these locations. The five place study locations and the primary researcher for each are listed in Exhibit 8-3. Mr. Robert Collin, Department of Environmental Studies, University of Oregon and member of the Waste and Facility Siting Subcommittee, clarified that place studies differ from case studies in that place studies are specific to a site and its unique characteristics, which cannot be generalized. The five sites were analyzed in this manner to protect their social, cultural, and economic integrity. The recommendations in the report focus on minimizing negative unintended impacts and on capitalizing on positive unintended impacts.

Dr. Sawyers stressed the importance of articulating the success of the East Palo Alto place study analysis to the Executive Council of the NEJAC. He added that it is important for the authors to maintain objectivity throughout the report, even though they may have some degree of personal knowledge about the sites analyzed. Ms. Mary Nelson, Bethel New Life, Inc. and member of the Waste and Facility Siting Subcommittee, added that the recommendations in the report need to be more specific; in addition, if overarching themes are present, they should be identified as well. Ms. Garczynski added that if any of the authors would like to speak with her regarding brownfields issues in the context of the report, she could make herself available.

Mr. Wardlaw asked the members of the subcommittee to review the report in order to assess its readability and the strength of its conclusions, provide input on how the recommendations in the

report can be refined in a way that is useful for EPA, and provide recommendations on how to distribute the final report.

The members of the subcommittee agreed to review the draft report and provide comments. Mr. Lythcott stated that the final report can be used as a basis for making recommendations to the Executive Council and EPA with regards to actions that can minimize negative unintended impacts of redevelopment projects.

3.3 Federal Facilities Working Group

Dr. Mildred McClain, Harambee House, Inc., provided an update on the status of the Federal Facilities Working Group of the subcommittee. The Working Group was established to pursue the first goal identified in the subcommittee's *Strategic Work Plan*, which described in Exhibit 8-4.

Dr. McClain stated that the Working Group was able to accomplish the first two objectives. For the first objective, Dr. McClain was assigned to act as a liaison between the Working Group and the subcommittee. Ms. Trina Martynowicz, EPA OSWER Federal Facilities Restoration and Reuse Office (FFRRO), was assigned as the DFO for the Working Group. For the second objective, the subcommittee was in regular, direct contact with the Working Group to provide feedback and advice as necessary on the selection of case studies. Once the case studies were selected, the Working Group prepared a draft report, *Environmental Justice and Federal Facilities:*

Recommendations for Improving Stakeholder Relations Between

Federal Facilities and Environmental Justice Communities. The subcommittee reviewed the report and provided comments. The Executive Council of the NEJAC then received the report and also provided comments. Dr. McClain stated that work on the third and fourth objectives currently is in progress.

Dr. McClain provided a brief overview of the process used to produce the draft report, which presents best practices to encourage closer collaboration and coordination between Federal facilities and impacted communities. The report identifies and evaluates key issues of concern to environmental justice communities with regard to activities and operations at and around Federal facilities and presents a set of national policy recommendations to address these issues. The information in the report was based on Working Group visits to five Federal facilities. These visits were conducted to identify and examine common variables associated with stakeholder participation within environmental justice communities. The sites visited are identified in Exhibit 8-5.

Exhibit 8-4

FIRST GOAL IN THE WASTE AND FACILITY SITING SUBCOMMITTEE STRATEGIC WORK PLAN

The Waste and Facility Siting Subcommittee has identified three main goals and their respective objectives to be pursued for fiscal years 2003 and 2004. The first goal states:

Strengthen the role of community residents in the cleanup and disposition of Federal properties through the work of the NEJAC Federal Facilities Working Group (FFWG)

The objectives to achieve the goal include:

- 1.1. Establish collaborative and close coordination between the work of the Waste and Facility Siting Subcommittee and that of the FFWG
- 1.2. Assist the FFWG in identifying case studies whose key issues of concern will be evaluated to develop general principles based on examples from actual sites
- 1.3. Compile a list of resources available to communities to assist them in participating more effectively in the cleanup of Federal properties
- 1.4. Provide a forum for dialogue between Federal agencies and communities impacted by Federal facilities

Dr. McClain stated that the report provides five recommendations and three considerations to strengthen the role of community residents in the cleanup and disposition of Federal properties. Mr. Jim Woolford, Director, EPA FFRRO, added that the recommendations currently are very general in nature and can apply both to Superfund and brownfields sites. Dr. McClain mentioned the need to refine the language in the recommendations; make the format of the recommendations consistent; identify an appropriate location in the report for each recommendation; and elaborate on ways that the recommendations can be implemented, especially with regard to the issue of Alaskan

Exhibit 8-5

SITES VISITED BY THE FEDERAL FACILITIES WORKING GROUP TO PREPARE THE DRAFT REPORT

- Fort Wingate Army Depot Activity, Gallup, New Mexico
- Hanford 100-Area (USDOE), Hanford, Washington
- Kelly Air Force Base, San Antonio, Texas
- Defense Depot Memphis, Memphis, Tennessee
- Savannah River Site (USDOE), Savanna, South Carolina

communities and Federal facilities. She requested that the members of the subcommittee respond to recommendations made by the members fo the Executive Council of the NEJAC regarding the draft report.

Dr. McClain pointed out that there are glaring omissions in the report involving references and specific recommendations to the U.S. Department of Defense (DoD). She recognized the difficulty of bringing

DoD to the table and stated that dialogue is needed in this area. Ms. Nelson added that it is necessary to meet with appropriate DoD officials in order to get their input on this subject. She stated that DoD does not have an environmental justice coordinator at this point and that the NEJAC should begin by convincing DoD of the importance of appointing a coordinator.

In response to Dr. McClain's presentation on the Federal Facilities Working Group's draft report, members of the subcommittee discussed the importance of inviting Federal facility representatives to participate in meetings with the Working Group. The members expressed concern about the number of DoD sites that have environmental justice issues.

Dr. McClain mentioned the importance of looking into ways to continue the activities initiated by the Working Group, as it will be disbanded in the near future. Dr. Sawyers responded that in order to ensure that the draft report is made final in a timely manner and minimal additional resources are used, the time period for comment solicitation will be extended by a maximum of one month, and the guidelines for providing comments will be stringent.

3.4 Update on *Strategic Work Plan* of the Subcommittee

Dr. Sawyers and Mr. Lythcott jointly moderated a discussion of the subcommittee's *Strategic Work Plan*. They opened the discussion by asking members of the subcommittee as well as others present at the meeting to review the *Strategic Work Plan* and provide comments or recommendations for updates. Dr. Sawyers mentioned that the document identifies three main goals. For goal 1, which is under the purview of the Federal Facilities Working Group, he suggested including a "best practices" section in the draft report that the Working Group prepared and identifying ways to collaborate with Federal facilities in order to address environmental justice issues. For goal 3, objective 3-1, "*Establishing ongoing contacts with OSWER staff responsible for the five primary priorities identified by OSWER Assistant Administrator Marianne Lamont Horinko,*" Dr. Sawyers suggested adding two more objectives to include (1) working closely with OSWER to implement its priorities and (2) using OSWER programs and concerns to guide the efforts of the subcommittee. He also encouraged the subcommittee members to begin identifying potential new projects for the subcommittee to consider implementing. He reiterated the example of assessing existing watershed pilot studies of various sites under the Land Revitalization priority to determine ways that they could be integrated with redevelopment activities.

Members of the subcommittee agreed to develop recommendations under the Land Revitalization priority for improving emergency response plans and the reporting of stored hazardous chemicals for chemical plants located in environmental justice communities.

They also agreed to review the subcommittee's *Strategic Work Plan* and use the progress update handouts to acknowledge goals that have been completed. The members also agreed to add new tasks to existing goals in the document. Mr. Benjamin asked the subcommittee members to consider the issues discussed at the meeting and to identify any issues that may be important enough to "rise" to the level requiring a working group to be established. He also suggested updating the *Strategic Work Plan* to cover up to the next 2½ years so that new subcommittee members will have a plan in place when they begin their terms. Mr. Kitwana suggested adding objective 2.3 to goal 2 in order to build more effective partnerships in overall planning. He suggested that the members of the subcommittee investigate ways to interact with external associations, such as those working with state and local governments, for the purposes of enhancing subcommittee planning and product development. He also brought up the issue that the work of the subcommittee does not appear to have been distributed equally among all the members. He stated that there is a need to reassess how work is divided. He asked the subcommittee to consider strategies for more effectively getting the work done and for obtaining further resources.

Some members of the subcommittee questioned the importance of the subcommittee's efforts and whether they have been helpful to communities. Other members mentioned that OSWER approves of and supports the subcommittee's work and that many of the products generated by the subcommittee are used by OSWER. Mr. Kitwana made the point that if the work of the subcommittee is valuable, more resources need to be provided for the subcommittee to continue making progress in its activities.

Mr. Lythcott brought up the point that many of the members of the subcommittee are nearing the end of their terms and that institutional knowledge can be lost if it is not passed on. Mr. Ridgway added that the process of appointing new subcommittee members currently is taking a long time. He stated that if the process can be expedited, new members will have more time to interact with existing members and gain institutional knowledge before the existing members finish their terms.

4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the Waste and Facility Siting Subcommittee.

The members of the subcommittee heard presentations from representatives of EPA OSWER, including Ms. Pat Carey, Ms. Tammie Owen, Ms. Glynis Hill, Mr. Vernon Myers, and Mr. Benjamin. The presenters provided updates on various OSWER initiatives and policies.

Ms. Carey provided an update on the Superfund Interim Policy on Permanent Relocation. Development of the policy was initiated in 1995 based on a request made by the Waste and Facility Siting Subcommittee. The Escambia Superfund site in Pensacola, Florida was chosen as a pilot project, and seven forums were held to gather stakeholder input. In 1999, the Interim Policy was issued. Ms. Carey stated that a lot of progress has been made under this policy since it was issued. For example, in March 2002, five facilitated focus groups convened in Pensacola, Florida, to assess the relocation process at the Escambia site. The focus groups helped to raise many issues, such as relocation support services, appraisal and identification of comparable housing, relocation payments, inspections, and problem resolution processes. Ms. Carey stated that 19 relocations have occurred under the policy and that three more are ongoing. Mr. Lythcott added that the efforts carried out by Ms. Carey's office should be described in the unintended impacts report.

Ms. Owen discussed the Hazardous Waste Targeting Project, which aims to provide incentives to companies for reducing the use of chemicals. The project is part of the National Waste Minimization Partnership program, a voluntary initiative with the aim of providing companies with incentives to go beyond compliance. She stated that future goals of the project will include using GIS programs to locate facilities with high volumes of chemical releases and providing the information to regional coordinators who can encourage facilities to participate in the Partnership program.

Ms. Hill and Mr. Myers presented an update on the Resource Conservation Recovery Act (RCRA) Demographics Study findings, elaborating on the progress under the Government Performance Results Act (GPRA) at facilities permitted under RCRA. The purpose of the study was to develop a GPRA environmental justice database and summary report to serve as screening tools. The tools were used to compare GPRA progress made near RCRA-permitted facilities and corrective action facilities in potential environmental justice communities to progress made near such facilities in potential non-environmental justice communities. Each facility was then determined to be in a potential environmental justice or non-environmental justice community.

The database developed as a result of the study can be queried, and the data can be summarized and graphically presented to show differences in progress between facilities in potential environmental justice and non-environmental justice communities. The database also can be used with a GIS application to generate maps that provide a visual comparison of facilities that are not under control to GPRA RCRA-permitted facilities. Mr. Myers added that many sites were not included in the study because good locational data was not available for the GIS. Dr. Sawyers stated that he would like to look into this study in more detail, and identify any trends.

Mr. Benjamin summarized some accomplishments of OSWER in 2003. He stated that OSWER sent the Office of Environmental Justice a “success stories” report for fiscal year 1999 through 2001 that includes progress made in the environmental justice arena. He said that the first OSWER Environmental Justice Awards were issued in the categories of “Individual EPA Staff,” “EPA Teams,” and “Community-based Organization.” Other accomplishments included the Office of Underground Storage Tanks organizing its first roundtable discussion of environmental justice issues and OSWER kicking off its first environmental justice training program by providing training to all its senior managers.

5.0 ACTION ITEMS

This section summarizes the action items adopted by the subcommittee.

- T Identify potential projects that can be conducted as pilot tests under the five priorities of OSWER and prepare proposals for the projects
- T Consider developing recommendations related to improving emergency response plans for chemical plants located in environmental justice communities
- T Assess existing watershed pilot studies of various sites under the Land Revitalization priority to determine ways that they can be integrated with redevelopment activities
- T Set up a meeting between Dr. Sawyers and Mr. Lythcott to develop a more structured effort addressing the issue of negative impacts of brownfields developers on low-income communities, even with what has been defined as “acceptable levels of displacement” in brownfields policies
- T Set up a meeting between Mr. Lythcott and Ms. Buckholtz to discuss how the subcommittee can address the issue of communities needing a stronger say in establishing levels of cleanup at revitalization sites

- T Review and provide comments on the draft unintended impacts report
- T Add information on the Superfund Interim Policy on Permanent Relocation and the work done by Ms. Carey's office to the draft unintended impacts report.
- T Respond to recommendations made by the NEJAC Executive Council regarding the draft report prepared by the Federal Facilities Working Group
- T Look into the database produced as a result of the RCRA Demographics Study to identify any trends
- T Look through the *Strategic Work Plan*, and make recommendations for plan updates to cover up to the next 2½ years
- T Consider topics discussed at the meeting and identify issues that may be important enough to warrant the establishment of a working group
- T Investigate ways for the subcommittee to interact with external associations, such as those working with state and local governments, for the purposes of enhancing subcommittee planning and product development

MEETING SUMMARY

of the

PUBLIC COMMENT PERIODS

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 13 and 14, 2004
New Orleans, Louisiana**

CHAPTER TWO
PUBLIC COMMENT PERIODS

1.0 INTRODUCTION

The Executive Council of the National Environmental Justice Advisory Council (NEJAC) held two public comment periods during the meeting of the NEJAC conducted from April 13 through 16, 2004 in New Orleans, Louisiana. The first public comment session was held on Tuesday, April 13, and focused on issues related to cumulative risks and impacts. During the session, two written and nine oral statements were offered. The second public comment session was held on Wednesday, April 14, and provided the opportunity for submittal of general comments related to environmental justice concerns. During the session, one written and 21 oral statements were offered.

This chapter summarizes the testimony that the Executive Council of the NEJAC received during the public comment periods as well as the comments and questions that the testimony prompted from the members of the Executive Council. Section 2.0, *Public Comment Period Held on April 13, 2004*, summarizes the testimony offered on that date related to cumulative risks and impacts. Section 3.0, *Public Comment Period Held on April 14, 2004*, summarizes the testimony offered on that date related to environmental justice concerns. These sections also summarize the dialogues between the presenters and the members of the Executive Council that followed the presentations.

**2.0 PUBLIC COMMENT PERIOD HELD ON
APRIL 13, 2004**

This section summarizes the comments presented to the Executive Council during the public comment period held on April 13, 2004, along with the questions and observations that the comments prompted from members of the Executive Council.

Comments are summarized below in the order in which they were offered.

**2.1 Mr. Roosevelt Roberts, Rubbertown
Emergency Action, Louisville,
Kentucky**

Mr. Roosevelt Roberts, Rubbertown Emergency Action, Louisville, Kentucky, submitted a written statement to the members of the Executive Council. In that statement, Mr. Roberts noted that his low-income, minority community is located near 11 chemical plants in Rubbertown, the industrial portion of Louisville, and that community residents are being exposed to hazardous air pollution at levels 100 times higher than levels considered to be safe by state and local environmental officials. The pollutants include *1,3-butadiene*; *acrylonitrile*; *vinyl chloride*; *chlorprene*; and *formaldehyde*, he wrote. Levels of *1,3-butadiene* have been increasing by 35 percent per year since 2000, the statement noted.

The written statement noted a report that was released in November 2003 stating that the communities located near the chemical plants will have between 76 and 690 additional cancer cases per million residents because of exposure to toxic air pollution. Air monitors located in the communities are used to predict the prevalence of other health effects in addition to cancer, Mr. Roberts continued in his written statement, and local health officials have been unresponsive to the concerns of the residents. A study conducted by the University of Louisville revealed excessively high levels of cancer in the communities, he noted, but the high levels of cancer were attributed to poor diet, alcohol consumption, and smoking. The study's findings led an environmental specialist at one of the chemical plants to claim that the toxic air emissions from the plants did not adversely affect the health of the people living in the surrounding communities, Mr. Roberts wrote.

The study conducted by the University of Louisville hinders any serious attempt to address the impact of toxic air pollution on human health in Louisville, Mr. Roberts asserted in his statement. Mr. Roberts requested that Louisville be one of the five communities located in U.S. Environmental Protection Agency (EPA) Region

4 that the Agency investigate related to cumulative risks and impacts.

2.2 Mr. Bob Collin, Willamette University, Salem, Oregon

Mr. Bob Collin, Willamette University, Salem, Oregon, and member of the Waste and Facility Siting Subcommittee of the NEJAC, submitted a written statement to the members of the Executive Council. In his statement, Mr. Collin pointed out that he was among approximately 10 scientists selected by EPA to peer review the cumulative risk methodologies identified in the *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts* report the cumulative risk report developed by the Cumulative Risk/Impacts Work Group of the NEJAC. He noted that he was selected because of the environmental justice publications he has written in the past.

Mr. Collin congratulated the Executive Council on the development of the cumulative risk report and pointed out that linking the report to an action plan was insightful on many levels. Cumulative risk is a difficult issue, he stated, and the report fills a meaningful void with environmental truth, which will lead to environmental justice and sustainability. He pointed out that the United Nations Education, Scientific, and Cultural Organization (UNESCO), as well as the Canadian Province of British Columbia, has developed and refined methodologies for assessing cumulative risk. Canada has a Cumulative Risk Association that was founded around the year 2000, he noted.

Former EPA Administrator Carol Browner initiated a sector-based approach to permitting, he said. According to Mr. Collin, industrial stakeholders fear cumulative impacts in a sector-based approach because a given sector may be blamed for all sector impacts. To clarify, Mr. Collin added that individual sectors would potentially be held responsible for past, present, and future industrial and municipal emissions. This is the reasoning behind industrial stakeholder resistance to sector-based environmental regulation, he stated.

2.3 Ms. Johanna Congleton, Physicians for Social Responsibility, Los Angeles, California

Stating that she would like to present a comment and a question, Ms. Johanna Congleton, Physicians for Social Responsibility, Los Angeles, California, identified several reasons why working with health professionals in community clinics that serve environmentally impacted communities is important to EPA. Researchers and community members have a better understanding of the health outcomes that healthcare providers are seeing that are potentially related to environmental risk factors, she stated. Working with health professionals on community capacity-building research projects provides an opportunity to inform community clinic staff about environmental risk factors, she pointed out.

Physicians frequently see health problems associated with environmental pollution, she said, but there are many environmental risk factors of which physicians are not aware. Physicians receive very little training on environmental risk in medical school, she pointed out, and few are even aware that the U.S. Food and Drug Administration has health advisories for fish consumption. There is an opportunity for health professionals to achieve a better understanding of what is happening in impacted communities and for community members to take note of what health professionals are seeing in the clinics, she added. Ms. Congleton then pointed out that in California, Physicians for Social Responsibility has developed an environmental exposure history intake examination for uninsured farm workers who have been exposed to pesticides.

Ms. Congleton asked the members of the Executive Council to check on EPA's progress made in implementing the recommendations identified in the *EPA Louisiana Environmental Program Oversight Audit Report*. Mr. David Neleigh, EPA Region 6, Water Enforcement Branch, Compliance Assurance and Enforcement Division, Dallas, Texas, stated that the report was not discussed during the EPA Region 6 Stakeholder Meeting held on April 13, 2004, and offered to answer any of Ms. Congleton's questions after the public comment period. However, he explained, there was an extensive review of Louisiana's water, Resource Conservation Recovery Act (RCRA), and air programs during the stakeholder meeting.

2.4 Ms. Shawna Larson, Alaska Community Action on Toxics, Anchorage, Alaska

Stating that she had concerns about the risk-based approach being used by EPA, Ms. Shawna Larson, Alaska Community Action on Toxics, Anchorage, Alaska, began her comment by providing background information on her local community. The population of Port Graham is 200, she said, and one can travel there only by boat or plane. The community has one school, one clinic, two stores, and one dump; and people depend on salmon, seal, halibut, octopus, clams, and mussels for food. Port Graham has survived many challenges, she continued, including Russian and European settlers who brought colonialism, oppression, and alcoholism as well as events such as the *Exxon Valdez* oil spill.

Ms. Larson pointed out that 85,000 chemicals currently are on the market and that 8,000 new chemicals are introduced every year. Breast milk is the most contaminated food on the planet, she pointed out. Humans and animals are suffering a toxic burden, she declared, and it is not uncommon to find caribou, moose, fish, or seals with tumors and lesions.

The current risk assessment approach does not factor in cultural indicators such as higher consumption rates, she stated, and native populations eat large quantities of fish, plants, and animals. In addition, she continued, chemicals are assessed individually as opposed to being assessed as an aggregate.

Ms. Larson added that the word “stakeholder” needs to be redefined. She said that there is too much concern about including industry as a stakeholder, which is a conflict of interest. If EPA had regulations that eliminated toxic chemicals, industry would create safe alternatives, she asserted. In addition, she said, science can be corrupted by special interests. We need to rely on traditional knowledge that has been accumulated and passed on through generations of experience, she stated.

Risk assessment is a flawed concept, declared Ms. Larson, because it forces communities to prove that contaminants in fact cause harm. The biggest concern voiced by tribes in Alaska is cancer, she stated, because before 1950 it was

virtually nonexistent there. Ms. Larson requested that the NEJAC prevent risk assessment from becoming another issue that the tribes have to “survive”. She requested that it focus on the precautionary principle and test chemicals before they are allowed on the market. In addition, she said, cumulative impacts should not be assessed based on the average white male.

Ms. Connie Tucker, Southeast Community Research Center, Atlanta, Georgia, and member of the Waste and Facility Siting Subcommittee of the NEJAC, stated that NEJAC’s hope that the cumulative risk tool will replace the current risk assessment tools. Ms. Tucker pointed out that most of Ms. Larson’s concerns are shared by the grassroots environmental justice community and stated that the NEJAC needs to work hard on implementing a new cumulative risk assessment paradigm. Mr. Terry Williams, Tulalip Tribes, Maryville, Washington, and chair of the Indigenous Peoples Subcommittee of the NEJAC, thanked Ms. Larson for bringing up the matter of traditional knowledge, and he encouraged her to continue to make people aware of it.

Mr. Juan Parras, De Madres a Madres, Inc., Houston, Texas, and member of the Enforcement Subcommittee of the NEJAC, added that it is a shame that Native American tribes are not recognized by the state. The United States is fighting for democracy and freedom in Iraq, and if the United States is willing to fight for freedom for people in other countries, he explained, it should be willing to help indigenous Americans here as well.

2.5 Mr. Richard Burton, Jr., St. James Parish Citizens for Jobs and the Environment, Convent, Louisiana

Mr. Richard Burton, Jr., St. James Parish Citizens for Jobs and the Environment, Convent, Louisiana, provided the Executive Council with a hazard analysis report that was developed by the St. James Parish Emergency Operations Center in 1994. None of the 16 chemicals identified in the report have been reduced, he stated, and more manufacturing plants have been moving into the local area. The facilities are releasing wastes into the river, he stated, and when he inquired about what happens when wastes from different plants mix in the river, he was told that the chemicals would dissipate because of the river’s size. He noted that EPA has transferred power to

take action to the Louisiana Department of Environmental Quality (DEQ).

Mr. Burton stressed that the people in his community are very poor and lack jobs and they have the burden of the industrial plants in their back yards. Nobody is listening to the community's concerns, he declared. The mentality in the community is that whatever the government says is what happens, he explained, and it is hard to change that mentality. It is hard to help people who don't want to help themselves, he continued, but he stated that he will continue to work for the benefit of the people. Xavier University performed a study that revealed that a large number of adults in the community have upper respiratory problems, he stated. Many children in the neighborhood have to use respirators and are slow in learning, he added, and they are unable to get sufficient medical help. In conclusion, Mr. Burton pointed out that members of his community had been to the NEJAC meeting several times before to express the concerns of his community.

Ms. Tucker stated that Mr. Burton's testimony is an example that everything the NEJAC has done has failed. She recommended that the NEJAC implement a special initiative to find out what the NEJAC can do for St. James Parish. Ms. Judy Henneke, Texas Commission on Environmental Quality, Austin, Texas, and member of the Air and Water Subcommittee of the NEJAC, expressed her shock at the release rates and large quantities of petrochemical exposure in Mr. Burton's community. She noted that the NEJAC has been discussing environmental justice for many years, and the fact that his community is not improving is sad. The NEJAC needs to identify how progress can be made so that people do not have to keep returning to the Executive Council for help, she stated.

2.6 Mr. Tom Goldtooth, Indigenous Environmental Network, Bemidji, Minnesota

Complimenting the NEJAC's Cumulative Risk/Impacts Work Group for developing the cumulative risk report, Mr. Tom Goldtooth, Indigenous Environmental Network (IEN), Bemidji, Minnesota, stated that EPA's request for the NEJAC to provide recommendations for actions that EPA should take regarding the issue of cumulative risk is timely. This is an action item

that has been requested for over 10 years by the environmental justice movement, he said.

IEN fully supports most of the draft text the cumulative risk report, Mr. Goldtooth noted, and the consistent mention of tribes in addition to communities is to be commended. American Indian and Alaskan Native tribes are not ordinary stakeholders or communities, he asserted, but stakeholders who possess inherent sovereign powers.

Mr. Goldtooth pointed out that the section titled "Special Concerns of Tribes" on page 41 of the report requires some editing, and he stated that he would express this concern during the meeting of the Indigenous Peoples Subcommittee.

Tribal and native environmental organizations have been engaging in a dialogue with EPA and other Federal agencies for over 10 years regarding the need to develop mechanisms for assessing cumulative impacts within the National Environmental Policy Act (NEPA) process, standard-setting, and risk management, he stated. One continuing problem within EPA's risk management framework is how to quantify the cultural and spiritual values that are important to American Indians and Alaskan Natives, he said. Stressors mentioned in the report recognize socioeconomic factors, he continued, however, Native Americans suffer from psychological postcolonization syndrome because of the loss of their lands and the abuse of what they consider sacred.

IEN recognizes the need for improved collaborative models for problem-solving initiatives that bring all stakeholders together, he explained, but in recent years such collaborations have left legacies of deception and of manipulation of laws and permitting. Fair and equal collaboration and multi-stakeholder processes will be challenging, Mr. Goldtooth pointed out, but IEN will not give up the fight for environmental and economic justice. In conclusion, Mr. Goldtooth stated that the cumulative risk report is the first of many steps toward addressing a new paradigm of environmental protection in the United States.

Mr. Williams asked Mr. Goldtooth to clarify what he meant when he mentioned collaborative problem-solving as a way to address cultural risks. Mr. Goldtooth stated that the foundation of

indigenous peoples is their relationship to mother Earth, which is a sacred entity. Environmental justice and environmental protection are spiritual work, he said. Risk managers have a difficult time understanding the importance of and quantifying the issues associated with the spiritual perspective, he explained.

Ms. Pamela Kingfisher, Shining Waters, Austin, Texas, and vice chair of the Health and Research Subcommittee of the NEJAC, asked Mr. Goldtooth whether he believed that the draft cumulative risk report addresses the guidelines that had been developed by the Indigenous Peoples Subcommittee. Mr. Goldtooth noted that the IEN agreed with most of the report but believed that there should be some modifications to address specific tribal considerations. Language should be added to clarify the political and legal relationships that tribes have with the Federal government and the fiduciary responsibility that EPA has to tribes, he said.

2.7 Ms. Doris Bradshaw, Defense Depot Concerned Citizen's Committee, Memphis, Tennessee

Ms. Doris Bradshaw, Defense Depot Concerned Citizen's Committee, Memphis, Tennessee, stated that information on Federal facilities and environmental justice is missing from the cumulative risk report. A primary issue missing from the report involves base closure and cleanup, she said, as well as risks to communities that are located near Federal facilities which suffer from cancer and reproductive health problems. Ms. Bradshaw pointed out that the members on the Executive Council of the NEJAC represent special interests but that the NEJAC is not bringing in the voices of impacted communities, and she believes that such communities are being disrespected.

Environmental concerns at Federal facilities are very complex and EPA does not like to address issues associated with them, she noted, but there is a need to look at the risks that such facilities pose to communities in the long run. Ms. Bradshaw questioned how EPA is protecting human health, if the Agency will not address cleanup issues at Federal facilities. The military is not above the law, she declared, and EPA needs to take a stand. A recent Record of Decision issued for a Federal facility in her

community proposed institutional controls, she explained. "Is the EPA going to be the watchdog and provide oversight of the institutional controls?" she questioned.

People in her community are getting cancer and other illnesses, she explained, and the toxics are coming from industry, not the community. In conclusion, Ms. Bradshaw stated that until there is honest communication with people in impacted communities, things are not going to get better.

Ms. Tucker asked Ms. Bradshaw whether she was still a coordinating council member in the African-American Environmental Justice Action Network. Ms. Bradshaw responded that she was still involved in that organization. Ms. Tucker then asked whether Ms. Bradshaw had any specific recommendations related to the cumulative risk report. Ms. Bradshaw stated that the report should have an entire chapter dedicated to Federal facilities because the environmental problems associated with such facilities are unique. Ms. Tucker pointed out that there was a special report on unintended impacts of Federal facilities and asked Ms. Bradshaw whether she was involved in the development of that report. Ms. Bradshaw noted that she is a member of the Federal Facilities Working Group (FFWG) and would address the special report during the rest of the week. Ms. Tucker stated that EPA has dedicated a lot of resources to Federal facilities but that EPA will never have the authority to effectively address facilities of the U.S. Department of Defense (DoD) and U.S. Department of Energy (DOE). Ms. Bradshaw reiterated that EPA is supposed to protect human health and that it has jurisdiction over DoD and DOE. EPA needs to stand its ground, she declared. Ms. Bradshaw stated that there should be a subcommittee to address environmental justice concerns at Federal facilities as part of the NEJAC.

Mr. Andrew Sawyers, Maryland Department of the Environment, Baltimore, Maryland, and acting chair of the Waste and Facility Siting Subcommittee of the NEJAC, stated that he would like to discuss the cumulative risk report with Ms. Bradshaw during the meeting of that subcommittee.

Ms. Mary Nelson, Bethel New Life, Inc., Chicago, Illinois, and vice chair of the Executive Council of

the NEJAC, pointed out that the cumulative risk report proposes a different paradigm for Federal facilities. A more creative way to get DoD and DOE to cooperate and listen to community concerns needs to be developed, she stated. We need to think of different ways to approach the problem outside of EPA, she said, and to find a way to generate Congressional interest. Ms. Bradshaw agreed that the only way that anything will be accomplished related to Federal facilities is if there is Congressional support. She pointed out that U.S. Representative Bob Filner (California) was working on a bill to address Federal facilities, but when the terrorist attacks occurred on September 11, everyone lost focus. Communities have no right to sue, she explained, and the military claims that it cannot do its job without certain exemptions. Ms. Bradshaw then reiterated that it is the responsibility of EPA to protect human health and that EPA should do so for everyone.

2.8 Ms. Brenda Brandon, Haskell University Environmental Research Studies Center, Lawrence, Kansas

Pointing out that tribal communities face many hazards, Ms. Brenda Brandon, Haskell University Environmental Research Studies Center, Lawrence, Kansas, stated that she has experience working with 22 tribal communities that are dealing with hazardous waste issues. Elders in the community of Haskell feel as though their spiritual values have been reduced to “vulnerabilities”, she said rather than respected as the basis for our lives.

Ms. Brandon pointed out that her job at the Haskell University Environmental Research Studies Center focuses on integration of traditional ecological knowledge with western science. Traditional knowledge is rooted in thousands of years of experience, she said. There is a current and overwhelming increase in the environmental impacts on tribal communities, she stated, and cumulative and cultural risk is not being addressed in NEPA, Superfund, or other regulatory programs. There also is a lack of educational resources and capacity-building programs for tribes, she said pointing out that less than 1 percent of minority college funding goes to tribal colleges. Meanwhile, 80 percent of the nation’s resources located on tribal lands are being taken from them, she added. The government is trying to keep tribes “stupid”, she

asserted, adding that tribal students cannot attend major universities because of a lack of funding. There needs to be honest, collaborative efforts by government agencies to work with tribes, she said, so that the tribes can effectively address cumulative risk concerns themselves. With more resources, tribal educational programs can help develop effective leadership skills within tribal communities while honoring and respecting tribal values, she stated.

2.9 Ms. Rebecca Jim, Tar Creek Local Environmental Action Demanded Agency, Vinita, Oklahoma

Ms. Rebecca Jim, Tar Creek Local Environmental Action Demanded Agency, Vinita, Oklahoma, stated that she hoped that the NEJAC would continue to pursue community-based risk assessment because it can provide a real benefit to communities that have culturally-based risks. Ms. Jim stated that her tribal community depends on the land for fishing and hunting, and she hopes that one day all of the tribal lands will be evaluated so that the community knows which parts are safe for practicing a subsistence lifestyle.

Tar Creek is 7 miles long, she explained, and there haven’t been any fish in it for 24 years. Acid mine drainage flows into the creek, she noted, and the creek flows right through tribal lands. As a result, people in the community do not know what is safe to eat, she said. The creek is a symbol of the impact of contamination, she said, and she has taken many groups of students on trips to study it.

When looking at multiple exposures, she explained, it is necessary to account for generations of exposure. Most of the tribal lands are covered with mine waste and cannot be sold because of an arrangement with the U.S. Department of the Interior (DOI), she stated. The Quapaw lands in her community are terribly impacted by the mine waste at the Tar Creek Superfund site, she said. Most people do not want to sell their land, she continued, but they want to receive money that was promised to them years ago. Ms. Jim noted that it would take an act of Congress to clean up her community, and she questioned how many acts of Congress it would take to clean up all of America.

2.10 Ms. Carletta Garcia, Laguna Acoma Coalition for a Safe Environment, Albuquerque, New Mexico

Stating that she was concerned about uranium mining, Ms. Carletta Garcia, Laguna Acoma Coalition for a Safe Environment, Albuquerque, New Mexico, explained that her community was once the site of the largest uranium mine in North America. The top 18 inches of soil at the mine has been reclaimed, she noted, but the health of her community still is tainted by radiation.

The Radiation Exposure Compensation Act (RECA) of 1990 proposes to provide payments to individuals who have contracted cancer and other diseases as a result of radiation exposure, she stated. However, she continued, RECA excludes many cancers and other diseases in all uranium miners who worked in the mine after 1971. Most of the Native Americans in her community rely on the U.S. Public Health Service (PHS) for their medical needs, she explained, but PHS is suffering from a lack of funding. The RECA trust fund has run out of money, she said, and the future of the program lies in the hands of the U.S. Congress to reauthorize the act.

Ms. Garcia described how water in her community is contaminated because of mine tailings that continue to seep into aquifers. In addition, many people were exposed to radiation on clothing worn by family members who worked in the mine, she said. People who lived close to the mine were exposed to radiation when winds carried contaminated dust into their homes, she added. Ms. Garcia stated that her house was located 1,000 feet away from the mine and that her mother died of cancer because of radiation contamination.

In conclusion, Ms. Garcia declared that people have the right to live a healthy life, drink good water, and breathe healthy air. The job of EPA is to protect human health and to strengthen the laws that protect human health, she stated. EPA should focus on promoting solar, wind, and water-generated power, she said.

Ms. Veronica Eady, Tufts University, Medford, Massachusetts, and chair of the Executive Council of the NEJAC, asked Ms. Garcia what state she lived in. Ms. Garcia responded that she was from Albuquerque, New Mexico. Ms. Tucker

asked Ms. Garcia whether she had read the cumulative risk report. Ms. Garcia noted that she had been trying to read it over, and she added that it would be helpful to have information sent to the participants before the meeting of the NEJAC. Some people are not wealthy enough to own computers; therefore, they cannot review the meeting materials beforehand, she stated. Ms. Tucker suggested that Ms. Garcia review the report and provide recommendations within the public comment period of 30 days.

Ms. Nelson asked Ms. Garcia whether the issue of the RECA trust fund being out of money was being looked at by Congress. Ms. Garcia said that she believed it was and pointed out that any new funds approved would not be placed in the trust fund until 2005. Ms. Nelson then asked whether someone on the Executive Council could look into the impact of uranium on human health and whether uranium contamination falls under EPA's jurisdiction. Mr. Charles Lee, Designated Federal Official (DFO) of the NEJAC and EPA Office of Environmental Justice (OEJ), stated that he would look into the issue.

Mr. Williams stated that people can become numb when they hear all the similar stories related to indigenous peoples. Tribes need to develop a process to gain attention in order to address their problems, he declared, because all the problems still exist. Even though the Tulalip Tribes have become more economically sound, its members still suffer from cancer, heart disease, and diabetes, he stated. People who depend on traditional subsistence foods face an impossible struggle, he said.

Thanking Ms. Garcia for speaking, Ms. Kingfisher pointed out that whenever the Nuclear Regulatory Commission, DoD, or DOE is in charge, EPA stays away. The Federal walls need to be broken down, she asserted, and DoD and DOE need to cooperate.

Ms. Henneke noted that listening to all the real-life stories and experiences was very profound. She added that it is unfortunate that economic development and jobs are placed above the health and welfare of people and the environment. Mr. Henneke suggested to Mr. Lee that the Executive Council address this issue in the cumulative risk report. The problem is that Federal agencies point fingers and claim that they

do not have jurisdiction, she explained. She pointed out that EPA is in a difficult situation because it needs to try to get along with its sister agencies, and she expressed hope that the collaborative approach outlined in the cumulative risk report would improve the situation. But there needs to be some accountability, she said, because defense-related entities are cloaking themselves in homeland security. Ms. Henneke expressed hope that the cumulative risk report would provide EPA with the strength to confront its sister agencies and show them that there needs to be a paradigm shift in order to address cumulative risk issues.

Ms. Nelson stated that it is worth the struggle to try to get DoD and DOE to the table in order to discuss the paradigm shift with them. Ms. Henneke pointed out that the states offer examples of how to implement a collaborative approach and resolve disputes with Federal facilities. If states can do this, it is possible at the Federal level, she stated.

2.11 Mr. Hilton Kelley, Community Monitoring, Port Arthur, Texas

Stating that his community is 13 miles west of the Louisiana border, Mr. Hilton Kelley, Community Monitoring, Port Arthur, Texas, informed the Executive Council that the community is surrounded by refineries and chemical companies. The companies exist all along the Gulf Coast, he explained, and as a result the water is completely contaminated. Beaches in Port Arthur are contaminated with tar pits, he said, and people suffer from asthma, other respiratory problems, tumors, and liver and kidney disease. A University of Texas Medical Branch concluded that there is a direct correlation between the chemicals being emitted from the refineries and chemical plants and the illnesses in the community, he continued.

The major health problems in the community are associated with *benzene* and *hydrogen sulfide*, which attack the nervous system, he explained. Children are suffering from dyslexia, and schools have a high dropout rate, he said. He asserted that society will pay for all of these problems. Mr. Kelley noted that he has spoken before Congress on this issue, and he believes that he is starting to gain some ground with EPA. We cannot let industry hide under the veil of homeland security, he declared, adding that there should be more of

a focus on the security of people who are being contaminated by industry. Mr. Kelley also noted that he is trying to acquire the funding to open an environmental health education resource center in his community. He is attempting to get industry to invest in the center, he said, because companies are supposed to be reinvesting in the communities in which they operate.

Ms. Tucker stated that she believes that a community environmental health education resource center is an excellent idea. She suggested that Mr. Kelley read the cumulative risk report. Communities do not have any tools to work with, she explained, but the cumulative risk tools outlined in the report provide hope. Ms. Wilma Subra, Louisiana Environmental Action Network, New Iberia, Louisiana, and member of the Air and Water Subcommittee of the NEJAC, suggested that Mr. Kelley develop a "Multiple, Aggregate, and Cumulative Risks and Impacts" matrix for his community similar to the ones provided in the April 2004 NEJAC conference binder.

Mr. Williams suggested that the Executive Council solicit comments from Native Hawaiians because they face the same issues as were discussed by other presenters during the public comment period.

3.0 PUBLIC COMMENT PERIOD HELD ON APRIL 14, 2004

This section summarizes the comments presented to the Executive Council during the public comment period held on April 14, 2004, along with the questions and observations that the comments prompted from members of the Executive Council.

Comments are summarized below in the order in which they were offered.

3.1 Anonymous, Florham Park, New Jersey

A Florham Park, New Jersey, resident submitted a written statement to the members of the Executive Council. In the statement, the commentator asked the Council whether taxpayers paid for people to attend the NEJAC meetings or participants used their own funds to attend. The commentator then suggested that the

NEJAC meetings be held in places where environmental injustice has taken place such as Newark, New Jersey. In addition, the commentator stated that there is not enough public notice before the NEJAC meetings and pointed out that the Federal notice for the current meeting was posted on March 26, 2004.

3.2 Ms. Carletta Garcia, Laguna Acoma Coalition for a Safe Environment, Laguna Acoma, New Mexico

Ms. Carletta Garcia, Laguna Acoma Coalition for a Safe Environment, Laguna Acoma, New Mexico, submitted a written statement to the Executive Council of the NEJAC expressing concern about uranium mining and its effects on her community. She explained that the Radiation Exposure Compensation Act (RECA) that was passed in 1990 proposes to provide individuals with "compassionate" payments who have contracted certain cancers and diseases as a result of their exposure to radiation; however, RECA has excluded many cancers and other diseases that have affected uranium miners who worked in mines after 1971. She stated "Just how compassionate is that?" because many Native Americans in her area rely on the Public Health Service (PHS) for their medical needs. She also expressed concern that PHS does not keep very accurate records; partly due to the lack of funding and job downsizing of the PHS. In addition, Ms. Garcia expressed concern that the RECA trust fund has run out of money and approved claimants have been given "IOUs" from the U.S. Department of Justice. The continuation of this program currently lies in the hands of the U.S. Senate Judiciary Committee, she wrote.

In her statement, she also wrote that uranium mining has long and reaching devastation to the way of life for Native Americans. The water in her community is contaminated because of mine tailings that continue to seep into the aquifers and which will remain hazardous for millions of years, she wrote. She continued by stating that this water will eventually reach the rivers that channel water to largely populated areas and contamination will spread. Ms. Garcia noted that many families were exposed to radiation because of the clothing worn by the miners. This clothing then was washed with the family laundry. And some members, who were unlucky enough to live

close to the mines, were exposed when the winds carried dust into their homes.

Ms. Garcia wrote that she is one of the unfortunate ones who grew up living in this radiation nightmare. Her home was located about 1,000 feet from the uranium mine and the "giant monster" has consumed her culture, her health, and her family. She explained that her mother, the late Ms. Dorothy Purley, was a Uranium miner and although she was gravely ill, she tirelessly lobbied for compensation for uranium workers who died of cancer because of the radiation contamination. Ms. Garcia noted that since her mom worked after 1971, she was not eligible for compensation.

Ms. Garcia is committed to fight for the rights of her people. She stated in letter that "We have the right to live a healthy life, we have the right to have good drinking water, and we have the right to breathe clean, fresh air. We have the right to ask the EPA to protect us, because that is their job. It is their job to strengthen the laws that protect us, to be the voice that speaks for us." She concluded her statement by saying that her mother always told her never to complain unless she had some answers for her complaints. Ms. Garcia's answers include, solar, wind and water generated power; no nuclear power; and do onto others as you would have them do onto you; and most of all, peace."

3.3 Ms. Viola Waghiyi, Alaska Community Action on Toxics, Anchorage, Alaska

Ms. Viola Waghiyi, Alaska Community Action on Toxics (ACAT), Anchorage, Alaska, stated that ACAT is a nonprofit organization that empowers individuals and tribes seeking assistance with toxic contamination issues that affect human health and the environment. Half of the organization's constituents are indigenous people living in Alaska who continue to practice their traditional subsistence lifestyle and culture. Ms. Waghiyi noted that two of her colleagues had testified at the December 2001 NEJAC meeting held in Seattle, Washington, but had not received any follow up to their concerns.

Alaska has 700 formerly used defense sites (FUDS), she said, two of which are located on St. Lawrence Island near Nome, Alaska. The U.S. Army Corps of Engineers (USACE) is responsible

for the cleanup of the two FUDS on St. Lawrence Island, she asserted, and USACE has been criticized for failing to adequately investigate the chemical and munitions hazards at the 1,500 FUDS that exist across the country. The people of St. Lawrence Island have expressed concern that USACE has ignored advice from workers who witnessed the dumping of toxic contaminants and munitions, she stated. ACAT believes that the science of USACE is biased, she declared.

The people of St. Lawrence Island also are concerned about health problems associated with military contamination, including cancer, diabetes, reproductive problems, nervous and immune system disorders, and learning disabilities, she said. A study funded by the National Institute of Environmental Health Sciences revealed that the people who live on St. Lawrence Island have elevated levels of polychlorinated biphenyls (PCB) in their blood, she noted. Continuing, Ms. Waghiyi asserted that the military has caused impacts that are devastating to the land and environment that the people in her community depend on to support their traditional subsistence lifestyle and culture.

USACE has stated that the water in the Suqi River at the Northeast Cape FUDS is safe to drink, but ACAT's analysis of the water revealed high levels of PCBs, polynuclear aromatic hydrocarbons (PAH), and pesticides, she said. She pointed out that EPA reviewed the Northeast Cape FUDS and determined that it ranks high enough to be included on the National Priorities List (NPL). EPA has not fulfilled its obligation to conduct proper oversight of activities of USACE and has not exerted its regulatory authority to hold the military accountable for properly cleaning up the site, she declared.

Ms. Waghiyi requested that EPA take immediate action to assist the people of St. Lawrence Island. EPA should use its oversight and regulatory authority to protect the health of the people on the island, she stated.

Following Ms. Waghiyi's presentation, Ms. Tucker asked the members of the Executive Council whether they could find out why there has been no EPA intervention at St. Lawrence Island. Mr. Lee noted that the Executive Council would look into the issue. Ms. Tucker informed Ms. Waghiyi that the Executive Council understood her situation and pointed out that it is frustrating to

have people return to the NEJAC because nothing had been done to remedy their problems.

Mr. Williams noted that the testimony of Ms. Waghiyi provided another example of issues involving DoD. He then questioned whether the NEJAC should solicit a formal presentation from DoD to discuss its obligations and relationship with EPA. There is a lack of response to impacted people and DoD and EPA should be able to find a resolution, Mr. Williams said. Ms. Tucker said that this was an excellent idea and reiterated that there is a high degree of frustration in communities where Federal facilities are located. Mr. Lee responded that the NEJAC will look into having DoD come to the next meeting of the NEJAC to provide explanations. He then stated that the NEJAC meeting is not necessarily the best or right place for communities to raise their issues. Identifying the appropriate EPA office and working through that office to follow up is important, he said. With respect to St. Lawrence Island, Mr. Lee stated that EPA Headquarters will follow up with Region 10 and will have the right person get in touch with Ms. Waghiyi.

Noting that Alaskan Natives are the "NEJAC's new Mossville," Ms. Kingfisher pointed out that eight representatives from Alaskan Native Communities were on the agenda to present testimony. Ms. Kingfisher questioned when something would be done to assist Alaskan Natives. She stated that it is heartbreaking to listen to all their testimony, and she pointed out that the burden is always on the communities to travel to the NEJAC meeting and to perform their own research. She then suggested that the next meeting of the NEJAC be held in Alaska.

Mr. Lee noted that Alaskan issues have been on the table for a long time. The NEJAC encourages people to come and present their testimony, he said, but they must realize that the NEJAC is not the only body that can address issues. As an advisory committee, the NEJAC provides advice to the EPA Administrator on how to address these issues, he said. The NEJAC is not the entity that will really be addressing a specific community's problems, and people should not have undue expectations of what the NEJAC can accomplish, he stated. Mr. Williams responded that he understood Mr. Lee with regard to finding the proper forum to voice issues, noting that he has had trouble finding the proper forum to voice

concerns associated with the Tulalip Tribes. He then stated that there are 228 tribes in Alaska, and plenty of legitimate environmental justice concerns exist the state. The NEJAC should help find legitimate mechanisms for Alaskan Natives to use, he stated; otherwise, they will continue to come to the NEJAC for help. Mr. Lee responded that the best way to approach this issue was to discuss it with EPA Region 10 and develop a “thought-out” set of strategies.

Ms. Tucker added that the DoD problem extends beyond Alaska. DoD is continually able to escape addressing the problems that it has created, and she suggested that the NEJAC be proactive and send a letter to DoD itself because she is not willing to sit on the Executive Council and hear the same testimonies every year without taking any action. She stated that DoD should have public hearings in Alaska and other states where it has caused contamination. Ms. Nelson agreed with Ms. Tucker and asked whether the Federal Facilities Working Group of the NEJAC is addressing DoD sites. Mr. Lee replied that the Working Group is addressing both DoD and DOE sites. Ms. Nelson then suggested that people who are concerned about DoD sites meet with members of the Federal Facilities Working Group. Mr. Parras also agreed with Ms. Tucker and stated that, even as an advisory committee, the NEJAC should have the courtesy to address public comments and refer the commenters to the appropriate agencies instead of making people wait several years for a response.

Ms. Eady then stated that EPA should seriously consider placing an Alaskan representative on the Executive Council of the NEJAC. Ms. Subra added that holding a meeting of the NEJAC in Alaska would be good; however, she did not want to wait until the next meeting to begin to address the issues identified. She suggested that Mr. Lee and other EPA OEJ staff identify the stakeholders who may be able to address environmental issues that effect Alaskan Natives and ask them to begin a dialogue with Alaskan community members. Ms. Judith Espinosa, ATR Institute, Albuquerque, New Mexico, and member of the Waste and Facility Siting Subcommittee of the NEJAC, asked Ms. Waghiyi whether anyone at EPA Region 10 had come to visit her community. Ms. Waghiyi stated that a representative of EPA Region 10 had visited her community. She pointed out that DoD had established a restoration advisory board

on St. Lawrence Island; however, DoD has not addressed the advisory board’s concerns, she claimed. Ms. Waghiyi requested that the advisory board be involved at the beginning of the planning process when the 700 FUDS in Alaksa are being addressed instead of simply being told what DoD is going to do.

3.4 Ms. Rosalie Kalastook, Association of Village Council Presidents, Inc., Bethel, Alaska

Providing background information on her organization, Ms. Rosalie Kalastook, Association of Village Council Presidents, Inc. (AVCP), Bethel, Alaska, stated that AVCP is a nonprofit organization that serves 56 tribes in Alaska. The tribal communities are located 10 to 50 miles apart and are low-income communities, she explained. Fuel costs are very high, she stated, and groceries are difficult to afford. Because of the high costs, she continued, the subsistence lifestyle is very important to the communities. Traditional foods are being contaminated, she said, and the legacy of toxics is being passed on to future generations.

Ms. Kalastook then stated that many villages have uncontrolled landfills, several of which are more than 30 years old and leach contaminants into water systems. Although contaminants are abundant in the villages, many people are unaware of the damage they cause, she explained.

Along the Kuskokwim River, which provides approximately 85 percent of their subsistence foods, lies a mercury mine, an abandoned platinum mine, an abandoned Air Force Base, a methane site, and a proposed gold mine, she said. The village residents suffer from asthma, cancer, birth defects, and learning disabilities, she explained. Although EPA’s Tribal General Assistance Program (GAP) has enabled tribal communities to address some of these issues, more help is needed, she said. Ms. Kalastook requested that the NEJAC provide additional assistance in Alaska. There are too many environmental justice issues in Alaska, she declared, and more than writing of reports is required. She requested that the NEJAC make the necessary recommendations to help Alaska achieve the environmental justice that it deserves.

3.5 Mr. Roy Matsuno, Ugashik Traditional Village, Anchorage, Alaska

Expressing his concern about funding for brownfields sites, Mr. Roy Matsuno, Ugashik Traditional Village, Anchorage, Alaska, stated that funding for Alaskan tribal brownfields programs was cut in 2003. He pointed out that money is available for corporate and other brownfields programs but not for tribal programs. Ugashik was one of the few Alaskan Native villages to receive a targeted brownfields assessment, he said, and his village was depending on receiving additional funds to perform cleanup actions. Mr. Matsuno requested that the brownfields funds be reinstated or that EPA assist in the cleanup of his village.

According to Mr. Matsuno, asbestos is blowing across his village from closed cannery factories. In addition, he continued, the village is concerned about contamination in a lake where the Army used to dump materials. Mr. Matsuno pointed out that there are high cancer rates near other FUDS that lie close to the village.

Mr. Parras asked Mr. Matsuno whether his tribe is recognized by the state of Alaska. Mr. Matsuno responded that the tribe is recognized by the state, but he pointed out that the state is not very eager to work with tribes. Mr. Parras then asked whether there is still funding for brownfields sites in Alaska but just not for tribes. Mr. Matsuno stated that the brownfields funding for Alaskan tribes was cut from \$2 million to \$200,000. Corporations are different than tribes because corporations make profits, he stated. Mr. Parras asked whether the lack of funding is causing his tribe to live on contaminated property because it has no resources to clean up the land. Mr. Matsuno replied that the funding was taken away after the targeted brownfields assessment was performed.

Mr. Williams stated that the Governor of Alaska has been arguing with EPA about funding issues for the last few years. Mr. Williams asked Mr. Matsuno whether the state of Alaska has made any commitments to clean up any of the sites that it has asked EPA not to get involved with. Mr. Matsuno replied that the state had not committed any money for the sites, and he noted that the governor had backed off from trying to transfer EPA funds into state hands.

Ms. Espinosa asked Mr. Matsuno to clarify whether the state of Alaska had refused to take brownfields funding from EPA. Mr. Matsuno explained that the state had tried to take over the brownfields program from EPA but that it stopped pursuing the takeover because of a backlash from the tribes and EPA. Alaskan Senator Stevens wrote a rider to a bill that took away cleanup funding for tribes, Mr. Matsuno said.

Ms. Nelson then asked whether anyone attending the NEJAC meeting worked for the brownfields program and whether something could be done to make the tribes eligible for future brownfields funding. Mr. Lee responded that Ms. Linda Garczynski, Director, EPA Office of Brownfields Cleanup and Redevelopment, was in attendance and would be at the Waste and Facility Siting Subcommittee meeting.

3.6 Mr. Randall Mitchell, Treme for Environmental Justice, New Orleans, Louisiana

Stating that he must place "God first because man continues to fail his community," Mr. Randall Mitchell, Treme for Environmental Justice, New Orleans, Louisiana, stated that cancer is epidemic in the Treme community. The community is being contaminated by the former All States Sales and United Chemical Company facilities, he explained. While operating, these companies mixed and sold chemicals such as creosote, rat poison, and roach poison, he said. When the companies closed their facilities, they left numerous tanks of solvents to rot away, he stated.

According to the state of Louisiana's Office of Toxicology and Epidemiology, Treme has the worst cancer problem in Louisiana, Mr. Mitchell said. He described how the community has suffered from cases of throat, liver, lung, and brain cancer. Potential contaminants that could be causing these illnesses include *lead*, *perchloroethylene*, *trichloroethylene*, and *vinyl chloride*, he stated.

Mr. Mitchell requested help in identifying the contamination in the community and having the source removed. He also requested assistance in solving the community's health problems in collaboration with public health agencies. Treme should be declared a Superfund site, he stated. He noted that more industrial facilities currently

are being planned for construction within the community.

Mr. Mitchell asserted that racism is involved in the problem and is a major impediment to establishing trust in the community. New Orleans is one of the most racist and segregated cities in the United States, he declared.

Ms. Tucker asked Mr. Mitchell whether any regulatory agencies has investigated any of the contaminated sites in Treme. Mr. Mitchell explained that Louisiana DEQ sent a representative to perform soil sampling, however, the person left DEQ two weeks after collecting the samples. "We can't trust the DEQ," he said. Ms. Tucker informed Mr. Mitchell that the Removal Program under Superfund at EPA could perform assessments for communities that suspect that they are immediately at risk from waste contamination. Mr. Mitchell noted that there are multiple contaminated sites in the community, and he explained that a 27-block area has soil contaminated by chemical releases from former dry cleaners. Ms. Tucker suggested that Mr. Mitchell contact the EPA Region 6 Removal Program and request that EPA perform a site assessment of the community. Ms. Subra added that she had introduced Mr. Mitchell to staff from Region 6 and that she had requested that Region 6 perform an evaluation of the contamination in his community.

3.7 Ms. Yvonne Powell, People Effected Against Chemical Eugenics, Richton, Mississippi

Stating that "she is sick and tired of being sick," Ms. Yvonne Powell, People Effected Against Chemical Eugenics, Richton, Mississippi, pointed out that in the past she had presented testimony before the NEJAC. Everyone has a different agenda that does not always include addressing the concerns in her community, she said, and she noted that EPA had visited her community but did not do anything to help the residents. EPA informed them that the creosote blocks used by members of the community for heating and cooking purposes could be causing some of the illnesses in the community, but no one has addressed this possibility during EPA's assessment, she said.

Ms. Powell explained that the community originally thought that contamination was coming from a drinking water well. EPA conducted an assessment, she said, and determined that the well water was safe to drink; however, EPA failed to come to the conclusion that the creosote blocks were causing problems. Ms. Powell charged that the assessment was biased, and she requested that someone oversee and review the work performed by EPA Region 4.

Expressing her frustration with having to return to the NEJAC, Ms. Powell questioned why EPA's regional administrators were not in attendance. The people who need to hear the public testimony are not here, she stated. She then reiterated her desire for another EPA region to provide oversight of Region 4.

Ms. Tucker apologized for EPA Region 4's work and pointed out that she had been to the community and had seen the creosote plant. The plant is very close to locations where people live, she said, and she noted that had seen the illnesses in the community. Region 4 has failed in its intervention there, Ms. Tucker stated, and something is very wrong in this area. EPA responds to political pressure, she said, and she stated that she would work with Ms. Powell to resolve the problem.

Ms. Nelson asked Ms. Powell to describe the results of the assessment conducted by EPA. Ms. Powell stated that EPA did not find anything. There are many children with cancer in the community, she stated, and she described how the plant sold creosote blocks to the community for use for heating and cooking. Ms. Tucker stated that she could not understand how EPA could not find contamination in Richton. It's impossible to live that close to a creosote plant without being exposed, she emphasized. Ms. Powell pointed out that the creosote blocks sold by the plant contained high levels of dioxins.

3.8 Ms. Shawna Larson, Alaska Community Action on Toxics, Anchorage, Alaska

Stating that she is used to government rhetoric, Ms. Shawna Larson, Alaska Community Action on Toxics, Anchorage, Alaska, said that she had heard the claims from Federal agencies about their lack of money and had heard them claim that

everything is somebody else's job. She stated that the NEJAC should have an Alaskan Native representative on its Executive Council. The representative should be a traditional, tribal individual, not someone from Anchorage, she said.

Ms. Larson stated that she serves on the Federal Facilities Working Group of the NEJAC, and she expressed her concern that the Working Group had not considered Alaska when analyzing FUDS in the United States. Ms. Larson noted that she was told that there were not enough funds to conduct site visits to Alaska. Alaska has over 600 FUDS and nearly half of the nation's tribes, she explained, and it does not make sense that there were not enough funds to send two people to Alaska.

Ms. Larson stated that as a native person who is directly affected by military sites, she must formally protest the Working Group's final report. The NEJAC asked her to serve on the Working Group, she said, and then told her that there was not enough money to visit Alaska. This is a prime example of environmental injustice, she declared. She requested that EPA recognize that Alaska should be included in all aspects of environmental justice efforts in the future.

Mr. Sawyers said that the conclusions and recommendations outlined in the cumulative risk report apply to Alaskan communities, and he invited Ms. Larson to attend the Federal Facilities Working Group meeting to discuss her concerns.

3.9 Ms. Patricia Rife, Grants Plus, Atlanta, Georgia

Stating that she was impressed with the cumulative risk report, Ms. Patricia Rife, Grants Plus, Atlanta, Georgia, explained that she was worried about the areas of concern regarding disproportionate risks. Indigenous people request that their voice be heard and that they be provided with funding for training and environmental protection planning, she said. There are plenty of government and EPA funds available, she asserted, and the grant process should be made more fair and transparent to prevent environmental injustice.

Citing the more than 600 FUDS in Alaska, Ms. Rife suggested that the NEJAC send a letter to DoD in order to encourage that agency to take

action. Alaskan Native women have the highest rates of cancer in the United States, she stated. The enforcement branch of EPA needs to leverage its regulatory clout and implement enforcement actions, she declared. People will pay attention to the cumulative risk report, she explained, and it can be used as a platform for action. EPA should not back down, she stated. In conclusion, Ms. Rife requested training for indigenous people so that they can prepare plans and learn assessment tools that will help them develop creative strategies themselves. The \$200,000 that currently is available for Alaskan tribes will not go far and it is not enough to initiate cleanup actions, she said.

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

Emphasizing how critical it is to address issues associated with Federal facilities, Ms. Doris Bradshaw, Defense Depot Concerned Citizens Committee, Memphis, Tennessee, pointed out that DoD needs to send representative to the meeting of the NEJAC. DoD representatives attended the NEJAC meeting in December 1999, and a memorandum of agreement outlining what DoD could do to help communities was signed, she said. More than four years have passed since that meeting, and EPA has failed to address any of the Federal facility issues that were discussed. Ms. Bradshaw stated that she was tired of returning to the NEJAC meeting year after year, but her community continues to be contaminated.

Ms. Bradshaw stated that she was upset that a case study of the Defense Depot Memphis was included in the cumulative risk report without any discussion with the Federal Facilities Working Group. The process is flawed if EPA adds sections to the report without discussing them with the Federal Facilities Working Group, she said. The report contains segments in which EPA tries to give itself credit, she said, but EPA has not done a good job of handling Federal facilities. EPA keeps telling communities it does not have the authority to act and that impacted communities should approach a different organization, she explained. EPA has input regarding how Federal facilities are going to be cleaned up, she said, but EPA is not making itself heard "unless the benefitting community is white."

DoD currently is cleaning up a site in Spring Valley in Washington, D.C., she pointed out. The site is located in a rich, predominantly white community where houses were built on top of World War I-era military munitions, she explained. Minority communities are treated differently than white communities during cleanup actions, she said. Ms. Bradshaw reiterated that EPA is supposed to protect human health, and she indicated that she will continue to attend NEJAC meetings until EPA does its job.

Following Ms. Bradshaw's testimony, Ms. Tucker confirmed that Ms. Bradshaw would be attending the Waste and Facility Siting Subcommittee meeting. Mr. Sawyers pointed out that the cumulative risk report was still in draft form, and he requested that Ms. Bradshaw submit recommendations.

3.11 Mr. Dan Jones, Ponca Tribe of Indians, Ponca City, Oklahoma

Mr. Dan Jones, Ponca Tribe of Indians, Ponca City, Oklahoma, explained to the Executive Council that the Ponca Tribe had filed three lawsuits against Continental Carbon Company (Continental Carbon) to force it to clean up its operation and adhere to Federal standards. The Continental Carbon plant in Ponca City is filthy, he declared. However, Oklahoma DEQ filed an *Amicus Brief* in favor of Continental Carbon that stated that there is no problem with the operation, he said.

Mr. Jones explained that Ponca Tribe members who live close to the plant are filing lawsuits for damages related to health issues, and the tribe is attempting to achieve environmental justice. The tribe filed a petition to the EPA Administrator to re-open Continental Carbon's Title V air permit because it contains mistakes and needs to be strengthened, he said. However, EPA has not responded to the petition, he said. In addition, he continued, Oklahoma DEQ needs to withdraw the *Amicus Brief*. There are several industry representatives on DEQ's board, he explained, but there are no American Indian tribal representatives. Mr. Jones claimed that in Oklahoma, the regulated industry is running the regulators. In conclusion, Mr. Jones requested that EPA conduct a separate assessment of Continental Carbon.

Ms. Subra asked Mr. Jones whether the air program in Oklahoma is delegated to the state. Mr. Jones responded that the air program is delegated to the state. Ms. Subra then asked whether he has considered filing a complaint with the state agency that has jurisdiction over air issues because it is not enforcing the requirements. Mr. Jones indicated that the Ponca Tribe had filed such a complaint. He then invited the NEJAC to conduct a site visit.

Ms. Espinosa asked Mr. Jones whether Oklahoma DEQ had sent a notice of violation (NOV) to Continental Carbon. Mr. Jones replied that Continental Carbon was issued a NOV and fined \$4,800. Ms. Subra asked whether Mr. Jones had tried to contact the EPA Region 6 Administrator about the issue. Mr. Jones said that the tribe had contacted the Region 6 Administrator, and Mr. Jones believed that Region 6 would be performing an assessment of Continental Carbon.

Ms. Subra asked Mr. Jones whether the lawsuit that the tribe had filed is based on documents submitted by Continental Carbon showing that the company was out of compliance. Mr. Jones responded that the lawsuit is based on such documents. Mr. Williams asked Mr. Jones whether he had been working with EPA's American Indian Environmental Office or its counterpart in EPA Region 6 to develop a strategy and whether either office is providing any support. Mr. Jones replied that the EPA Region 6 has been very supportive. Mr. Williams suggested that Mr. Jones continue the dialogue with Region 6 to obtain assistance and to identify steps for achieving a solution. Ms. Henneke then asked whether Continental Carbon is the only carbon plant in Oklahoma and whether it is the only source of black carbon in the state. Mr. Jones confirmed that Continental Carbon is the only source of black carbon in Oklahoma.

3.12 Mr. Benton Davis, Native Village of Selawik, Selawik, Alaska

Expressing concern about the impact of pollution on human health and migratory animals, fish, and birds, Mr. Benton Davis, Native Village of Selawik, Selawik, Alaska, stated that fish and animals must be tested for contaminants after the traditional native processes of storage and cooking. Mr. Davis wondered whether the impact of

contamination on fish and animals worsened when they are stored or cooked traditionally. We must determine how pollutants impact human health, he said, because pollution has a disproportionate effect on the traditional subsistence lifestyle of Alaskan Native populations.

Mr. Davis requested that EPA provide feedback about the results of its testing of contaminants. In addition, native tribes need more information and assistance to address health problems such as asthma and cancer, he said. These ailments have increased exponentially in Selawik because of a 14-year-old lead and zinc mine owned by Tech-Cominco, he stated. Mr. Davis pointed out that there were very few occurrences of cancer in the tribe's history before the mine was opened. EPA should enforce all regulations when dealing with this corporate polluter, he declared.

Ms. Eady asked Mr. Davis whether he had a specific request for the NEJAC or EPA. Mr. Davis asked the NEJAC to request that EPA investigate the issues he had discussed. EPA tests for pollutants in fish and animals, he said, but it does not test meat and fish after they are processed in traditional ways. Ms. Eady informed Mr. Davis that the NEJAC would request that EPA look into the issues and would forward any related correspondence to him.

3.13 Mr. Pat Bryant, Urban Strategies, New Orleans, Louisiana

Pointing out that he served on the first NEJAC Executive Council, Mr. Pat Bryant, Urban Strategies, New Orleans, Louisiana, noted that his comments were to be considered for the cumulative risk report. There continue to be communities outside the ring of environmental protection, he said, and the current permitting process takes little account of the cumulative environmental stress to air, land, and water. Zones of "environmental sacrifice" continue to exist, he explained, and these happen predominantly in communities where people of color and low-income people live.

One environmental problem that the state of Louisiana ignores concerns solid waste collection, said Mr. Bryant. Privatization in the 1960s and 1970s of solid waste collection and disposal created racial and economic zones of distinction in New Orleans, he stated. Local garbage

collection is dominated by Waste Management, Inc., he explained, and a loophole in its contract allows company to not pick up all the trash that is put out for collection. The trash that is not collected finds its way to vacant lots and houses in minority and low-income neighborhoods, he said. Mr. Bryant asserted that the city does not fix the problem because the waste management companies provide politicians with large campaign contributions. The mayor of New Orleans currently is reviewing a proposal to extend Waste Management, Inc.'s contract, Mr. Bryant said, and the mayor recently fired the city sanitation director because the director refused to approve the contract.

Mr. Bryant also noted that Waste Management, Inc., has been submitting invoices to the city for work that was not done. Urban Strategies has filed complaints with the U.S. Federal Bureau of Investigation (FBI) and Waste Management, Inc., he said, but nothing is happening. Many residents do not even know which day of the week the company will pick up garbage, and the company routinely leaves behind 10 percent of trash each month, he added.

Mr. Bryant requested that the NEJAC ask the appropriate House and Senate committees to schedule hearings to address the issue and to invite leaders of affected communities to testify. EPA should exercise its oversight authority in this aspect of environmental protection and should direct Louisiana DEQ to improve garbage collection in New Orleans, he said.

Pointing out that Mr. Bryant is a veteran member of the environmental justice movement, Ms. Tucker stated that she had never viewed trash collection as an environmental justice issue. She pointed out that there appears to be significant corruption of political officials by waste management organizations, and the issue deserves a major investigation. Ms. Nelson asked Mr. Bryant whether the city's contracts with Waste Management, Inc., really allow the company not to pick up all trash put out for collection. Mr. Bryant clarified that if trash is left at a vacant lot or house, the company does not have to pick it up. In addition, the company does not have to collect anything weighing more than 75 pounds, he said, so all heavy waste materials end up in vacant lots. Ms. Nelson then asked whether larger residential units have to arrange for private garbage collection. Mr. Bryant

confirmed that residential buildings larger than a four-plex have to arrange for private collection. Ms. Nelson asked whether the new contract had been signed yet. Mr. Bryant explained that it is on the mayor's desk and that he will probably sign it even though state law requires that the work be rebid. Ms. Nelson suggested that he try to find a way to bring this issue into the public light. She also suggested that he try to find a public interest law firm to pursue the contracting issue.

Ms. Tucker then stated that it is often not good enough to fight against something, and she suggested that Mr. Bryant fight for something such as sustainable waste practices. In addition to pursuing accountability, Mr. Bryant should pursue a parallel struggle for increased recycling, she said. Ms. Nelson pointed out that there is economic value associated with recycling. Mr. Bryant noted that recycling was saved in New Orleans a few years ago, and recycling efforts have recently doubled in the community with the help of public outreach activities.

3.14 Ms. Hazel Apok, Maniilaq Association, Kotzebue, Alaska

Ms. Hazel Apok, Maniilaq Association, Kotzebue, Alaska, stated that she is an Inupiat Eskimo and that her community is located 40 miles above the Arctic Circle. Ms. Apok stated that, while reviewing some of the recent documents developed by the NEJAC, she was concerned about the references to Alaskan Natives as "people of color and low income." The multiple contaminants affect not only me, she said, but people of no color and medium to high income as well. She pointed out that the multiple stressors identified by the Executive Council do not know whether she is a person of color or low income. They affect all living things, she stated, as well as the air, water, and land. Although people with medium to high incomes have the opportunity to move away from contaminated sites, those who are unable or unwilling to leave their homelands are left to deal with cumulative risks and impacts, she said.

As an Alaskan Native who depends on a subsistence lifestyle, Ms. Apok stated that she is alarmed at the rate of pollution and how it affects the harvesting of food. We need to remove imaginary boundaries and lines between countries, she explained, and focus attention on

worldwide pollution. Environmental laws exist by which everyone should live, she said, and the answer lies in regulation. Ms. Apok pointed out that waivers and exemptions for those who generate pollution are killing the planet Earth.

3.15 Mr. Jose Bravo, Just Tradition Alliance, San Diego, California

Pointing out that he used to serve on a subcommittee of the NEJAC, Mr. Jose Bravo, Just Tradition Alliance, San Diego, California, stated that his organization currently is working on five environmental justice sites in the United States. These sites include Kelly Air Force Base in San Antonio, Texas; Ponca City, Oklahoma; Arizona Portland Cement; Rillito, Arizona; and sites in Los Angeles, California; and Rubbertown, Kentucky. Mr. Bravo focused his presentation on the Rubbertown, Kentucky, site and read a statement prepared by Rubbertown Emergency Action.

There are 11 chemical plants in Rubbertown, he said, including American Synthetic Rubber, Dupont, Dow, and Borden Chemicals facilities. Rubbertown is home to thousands of African-American and low-income white residents, he explained, and despite the companies' efforts to portray themselves as good neighbors, the plants have a troubling history. In 1965, an explosion and subsequent fire at the Dupont plant caused 112 deaths, he stated. In the 1970s, workers at the BF Goodrich plant were diagnosed with a rare liver cancer that is attributed to vinyl chloride exposure, he said. In 1985, an explosion at the Borden Chemicals plant caused three deaths, he stated. Continuing, Mr. Bravo explained that in 1996, Rubbertown homes were evacuated after a train containing toxic and explosive chemicals derailed.

A study conducted in 2003 revealed that air pollution from the chemical plants was deadly, he stated. He added that air monitors have detected hazardous air pollutants from the chemical plants at levels that are hundreds of times higher than those considered to be safe by state and local environmental officials. Mr. Bravo asserted that workers and community members should be brought together to tackle each issue because they are natural allies. He then requested that the NEJAC ask EPA Region 4 to conduct a site visit in Rubbertown in order to learn about the community's concerns.

Ms. Subra pointed out that EPA's new Community Action for a Renewed Environment (CARE) grant Program is selecting one community to be studied in each EPA region. Rubbertown was selected in Region 4, so that community should be receiving additional attention in the future, she stated.

3.16 Mr. J. Kyle Bryant, Agency for Toxic Substances and Disease Registry, Fayetteville, Georgia

Stating that the current approach to addressing environmental injustice focuses on brokering levels of acceptable risks to the "have nots," Mr. J. Kyle Bryant, U.S. Agency for Toxic Substances and Disease Registry (ATSDR), Fayetteville, Georgia, pointed out that as long as private industry is driven by profits, there never will be true collaboration between industry and impacted communities. As America becomes more ethnically diverse, the dynamics of power and privilege also will change, he said. This being the case, he continued, America's values, priorities, and national interests will change as well. He pointed out that one approach to addressing this reality is for EPA to lead the education of the entire U.S. population about the connection of humans to the environment. As Americans become more informed, their consumer choices will force industries to augment their processes, he asserted.

Mr. Bryant then pointed out that when cumulative risk is discussed, personal economic loss is not factored into the equation. An example of personal economic loss involves homeowners who reside in Superfund or brownfields communities, he said. Residents of these communities have to deal with health issues as well as property devaluation, he pointed out. Mr. Bryant coined the term "brownhouses" to imply that residences within Superfund and brownfields communities are economically stigmatized. There is an obvious disconnect between EPA and the U.S. Department of Housing and Urban Development (HUD), he said. When a lending institution is involved in the sale of a commercial or residential property, the institution conducts a due diligence environmental site assessment, he explained. If the institution discovers environmental contamination, the financing opportunity is destroyed, he said.

Mr. Bryant stated that there needs to be intensive education of the housing industry, including

banks, lenders, and brokers, about environmental impacts and public health. Ms. Nelson pointed out that this is an issue that the Interagency Working Group on Environmental Justice (IWG) should investigate. Ms. Nelson then asked Mr. Lee whether HUD is represented on the IWG. Mr. Lee confirmed that HUD is a member of the working group. Ms. Nelson suggested that the issue of house valuation would be good for HUD to examine. Ms. Nelson suggested that Mr. Bryant provide specific examples of bank comments on financing issues. Mr. Bryant stated that he would do that, and he pointed out that the housing industry requires environmental clearances on property. He noted that EPA can issue letters to homeowners in Superfund communities that prohibit people from using portions of their houses because of contamination. He pointed out that it is difficult to sell a house when one has to explain the associated environmental liabilities to potential buyers.

3.17 Ms. Anne Rolfes, Louisiana Bucket Brigade, New Orleans, Louisiana

Stating that she has worked along Cancer Alley in Louisiana, Ms. Anne Rolfes, Louisiana Bucket Brigade, New Orleans, Louisiana, expressed her concern about outstanding NOV's. Enforcing NOV's seems like a practical way to provide solutions to many environmental justice problems, she said. Many communities have several existing NOV's that only need to be enforced, she declared.

An Exxon-Mobil facility in Chalmette, Louisiana, has been averaging one flaring incident every six days, Ms. Rolfes explained. A neighborhood block consisting of 17 homes exists near the facility, she stated, and residents of 16 of the homes have cancer issues. The facility has burned noncompliant gas fuel, she explained, which has resulted in significant sulfur emissions. There is an existing NOV for the facility, and EPA assured the community that resolution of the NOV is forthcoming, she said. Ms. Rolfes requested that EPA provide the community with a formal, written update on the status of that particular NOV.

The lack of NOV enforcement has been an issue outside EPA Region 6 as well, Ms. Rolfes pointed out, and she stated that all NOV's should be enforced. Advising EPA to take such action is a

practical step that the NEJAC can take to alleviate many environmental justice issues, she stated. She also requested that refineries be held responsible for pollution that results from repeated accidents.

Refineries and EPA should tell the truth about air pollution, she said, because residents have the right to know what kind of air pollution they are breathing and how it affects their health. In addition, EPA should stop rubber-stamping permits, she said. Refineries should not receive new permits if they are violating environmental laws, she asserted. In conclusion, Ms. Rolfes stated that refineries should be good neighbors and help pay the cost of monitoring for air contamination.

Mr. Kenneth Warren, Wolf, Block, Schorr and Solis-Cohen and acting chair of the Enforcement Subcommittee, suggested that Ms. Rolfes speak with Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA), during the meeting of the Enforcement Subcommittee.

3.18 Ms. Willye Jean Turner, Educational Asthma Support Team, New Orleans, Louisiana

Pointing out that living in New Orleans is a challenge for people with breathing problems, Ms. Willye Jean Turner, Educational Asthma Support Team, New Orleans, Louisiana, stated that many chemical plants are located in New Orleans' neighborhoods. These plants release harmful pollutants, she declared, and explosions often release gases into the air. When an explosion occurs, community residents are told that they are not in danger if they are not within a certain radius of the explosion or if the wind is not blowing in their direction, she explained. But we know that the chemicals released are harming and polluting the air we breathe, she stated.

Ms. Turner questioned how EPA can tell people in the community that they are not being affected by the releases. When chemicals are released into the air, they do not remain stationary but instead are dispersed by wind, she pointed out. Ms. Turner noted that there has been a rise in asthma cases, and breathing is becoming more difficult. She requested that EPA do a better job of ensuring healthy air and that it provide oversight

to make sure that factories are not breaking environmental laws.

Ms. Subra asked Ms. Turner whether she knew the source of the air pollution. Ms. Turner stated that most of the pollution was coming from Shell and Mobil plants across the river. EPA has performed testing in the yard of her home, but the Agency told her that there is nothing to be concerned about, she said.

3.19 Ms. Debra Ramirez, Citizens Against Contamination, Lake Charles, Louisiana

Pointing out that she had appeared before the NEJAC several times in the past, Ms. Debra Ramirez, Citizens Against Contamination, Lake Charles, Louisiana, stated that she is tired of the bad health and suffering in her community. Three different surveys have exposed the health problems in her community and EPA's inactivity, she said. People are suffering from endometriosis, asthma, emphysema, other respiratory problems, skin rashes, ovarian tumors, and cancer, she stated. Various industries operating in the area, including Vista and PPG Industries, are polluting the community, she explained. It is time for EPA to address cancer clusters and stop running from the truth, she declared. EPA and Louisiana DEQ already know about the problems in the community, she stated, but they are ignoring the contamination because it would be expensive to remediate. Once people realize what is happening to them, the government is going to be inundated with lawsuits, she asserted.

Pointing out that Ms. Ramirez was an original community leader in Mossville, Louisiana, Ms. Subra noted that environmental injustice is a big problem in Mossville and much evaluation is needed to address the problems that its residents face. She suggested that Ms. Ramirez attend the meeting of the Health and Research Subcommittee scheduled for the next day.

Ms. Eady then asked Mr. Lee what had transpired since a joint meeting regarding Mossville that was held by the Waste and Facility Siting Subcommittee several years earlier. Mr. Lee noted that ATSDR performed a study of Mossville in 2000 and that there has been some subsequent attention to the issues EPA Region 6.

Ms. Ramirez then pointed out that many people are unaware of the dangers they are exposed to while living among huge industries. She reiterated that people in Mossville are exposed to dioxin levels that are far above EPA's standards.

3.20 Mr. Tom Goldtooth, Indigenous Environmental Network, Bemidji, Minnesota

After complimenting the dedication of the members of the Executive Council, Mr. Tom Goldtooth, IEN, Bemidji, Minnesota, stated that he wished to address some issues that had been brought before the NEJAC in past years, but have not been adequately addressed. One of these issues, explained Mr. Goldtooth, was a request made by Alaskan Native tribes to have a meeting of the NEJAC in Alaska. The number of NEJAC meeting participants from Alaska has increased, he said, and the public comments from Alaskan Natives have demonstrated the serious environmental protection and health issues that they face. In 2001, EPA's OEJ had hosted an environmental justice workshop with other Federal agencies at the Alaska Forum on the Environment, he stated. At the forum, EPA made commitments to develop strategies for addressing environmental issues that affect Alaskan Natives and to develop some steps for action, he noted. These commitments have not been kept, he pointed out, and IEN is requesting that the NEJAC address this matter.

Mr. Goldtooth also noted that various presentations have emphasized the importance of the NEJAC advising the EPA Administrator about issues associated with the Executive order on environmental justice regarding activities that EPA is pursuing in the international community. EPA and other Federal agencies are active in global initiatives such as the United Nations (UN) Framework Convention on Climate Change, he said. In addition, the UN Environmental Programme undertook a process to develop a global assessment of mercury, he stated. To complete the global mercury assessment, a working group consisting of representatives of government, nongovernment, and private sector organizations was established, he explained. The working group concluded that there was sufficient evidence of mercury's adverse effects on human health and the environment to warrant international action, he stated. Mr. Goldtooth asserted that the NEJAC, through its International

Subcommittee, must be active in such international forums to advise EPA on policy matters that effect minority communities and indigenous peoples.

In conclusion, Mr. Goldtooth presented the members of the Executive Council with an IEN fact sheet that discusses the issues of climate change and global warming. Since the early 1990s, the ecosystems of Mother Earth have been compounding in change, he stated. When this phenomenon is combined with the continued production and release of toxic chemicals, a crisis is created that disproportionately impacts minority communities and indigenous people, he explained. Mr. Goldtooth asserted that the NEJAC needs to schedule a session to discuss this issue.

Ms. Eady requested that Mr. Goldtooth provide a copy of his testimony to Mr. Philip Hillman, Polaroid Corporation, and chair of the International Subcommittee of the NEJAC. Mr. Williams noted that the Tulalip Tribes had recently finished a climate change model of the Snohomish River, which runs next to its reservation. The model revealed that land use impacts exacerbate the effects of climate change, he said, and one way to minimize climate change is to address some of the initial land use impacts.

3.21 Ms. Susana Almanza, People Organized in the Defense of Earth and Her Resources (PODER), Austin, Texas

Ms. Susana Almanza, People Organized in the Defense of Earth and Her Resources (PODER), Austin, Texas, and a member of the Enforcement Subcommittee of the NEJAC, stated that people of color and indigenous communities often are disproportionately impacted by environmental hazards. These situations have come about through the targeting of poor communities by polluters, unjust land and economic policies, and unjust application and enforcement of environmental laws, she said.

Since 1993, community leaders and organizations have filed 143 complaints with EPA under Title VI of the Civil Rights Act of 1964 to address environmental racism, she stated. Of the 143 complaints, not one has been resolved in favor of the complainant, she explained. Ms. Almanza emphasized that most of the complaints were dismissed or rejected for technical reasons and

not because of a failure to show discriminatory effects. The lack of involvement of the complainants in the review, investigation, and decision-making process is troubling, she stated.

Ms. Almanza then asked the members of the Executive Council about the current status of the *Draft Revised Guidance for Investigating Title VI Complaints*. The Southwest Network for Environmental and Economic Justice had concerns about the initial guidance and submitted comments in the hope of strengthening the document, she explained. The Network was very displeased with the revised guidance and now believes that it should be abandoned altogether, she stated. The guidance failed to incorporate any substantive recommendations made by the Network, she said, and it is unresponsive to concerns raised by the environmental justice community. In addition, she continued, many provisions that place Title VI complainants at a greater disadvantage were introduced into the guidance. For example, she stated, no rights of appeal for complainants are built into the guidance. A complainant can challenge EPA's finding in court, but many community residents lack the resources to hire a lawyer or pay for studies that are required to prove a claim, she said. Ms. Almanza pointed out that in most cases, the complainant or community is totally dependent on EPA to ensure civil rights.

Ms. Almanza declared that the NEJAC, along with other environmental organizations must pursue justice in communities. The health and lives of the people in our communities are not for sale, she stated. In conclusion, she requested that the NEJAC, EPA, and OEJ address her concerns in a face-to-face meeting and discuss what steps should be taken. Ms. Almanza requested a response from the members of the Executive Council by May 31, 2004.

Mr. Lee told Ms. Almanza that the Executive Council would make sure that EPA's Office of Civil Rights received her handouts and would follow up on her request. Ms. Espinosa pointed out that civil rights are being eroded in communities because of inaccurate interpretations of laws, and she encouraged the NEJAC to press this issue. She stated that the NEJAC should try to formulate a response close to the deadline requested by Ms. Almanza. Ms. Almanza pointed out that EPA is required to

respond to complaints within a certain number of days, but a complaint that she filed in 1995 is still pending. At least the NEJAC would be responding to her request, she said, noting that EPA does not even follow its own laws. In addition, she continued, EPA should notify complainants when it makes arrangements and deals with states. Ms. Espinosa pointed out that the burden is on the communities to check on the status of Title VI complaints and that it would be beneficial to post complaint status information on a web site. That kind of communication would do a lot to alleviate the burden on communities, she said.

3.22 Mr. Genaro Lopez, Southwest Workers Union, San Antonio, Texas

Denouncing what he termed EPA's inactive attitude toward protecting people of color and poor communities from environmental pollution, Mr. Genaro Lopez, Southwest Workers Union (SWU), San Antonio, Texas, stated that EPA consistently is pulling grassroots representatives into an ineffective, bureaucratic process that excludes community voices. Environmental racism remains alive in minority communities despite efforts to work with EPA, he said. Minority communities and workers have their air, health, and lives compromised by the impacts of polluting industries, he stated. EPA has turned a blind eye to the exploitation and poisoning of minority communities and has failed to provide equal protection under the law, he declared.

Kelly Air Force Base closed in July 2001, and the surrounding community has not received any answers about the contamination of over 30,000 families and 10,000 workers, Mr. Lopez said. There is no cleanup plan in place, he claimed, and the Air Force has not accepted any responsibility for the high level of health problems found in the surrounding community, which include cancer, leukemia, asthma, and other ailments.

SWU was one of the groups in San Antonio visited by the FFWG of the NEJAC, Mr. Lopez said. When the FFWG met with community members after meeting first with the Air Force and the San Antonio Metropolitan Health District, he explained, the members of the community were offended. In addition, the cumulative risk report falsely states that the Air Force has a great public

participation model, he asserted. Community members do not want to sit on advisory boards, he declared, explaining that they prefer participating on boards where decisions are being made.

EPA needs to take a firm stance against the Bush Administration and its rollback of air, water, and soil protection, Mr. Lopez stated. In addition, EPA has failed to recognize a single case of environmental racism in the state where the most Title VI cases have been filed for discriminatory activity by federally funded entities, he said. Mr. Lopez pointed out that EPA and the Texas Commission on Environmental Quality (TCEQ) had developed a process for resolving Title VI complaints in Texas, but the communities were never informed about this process.

The NEJAC has recommended guidelines for effective public participation, but they are not being followed by the Air Force, TCEQ, or ATSDR, he noted. The NEJAC's power to implement and enforce policies within EPA and other regulatory agencies needs to be assessed, he stated. In addition, he continued, EPA and the NEJAC should implement a tracking system so that they can track requests and responses and show accountability to communities. Lack of accountability is what frustrates people and causes them to repeatedly come back to the NEJAC meetings, he explained.

Mr. Lopez requested that EPA act in a "transparent manner" by becoming more accessible, accountable, and responsive to community organizations. EPA should follow the NEJAC guidelines for public participation, he said. In addition, he continued, EPA should compel other government agencies to take action about the lack of public participation and the prevalence of environmental racism. In conclusion, Mr. Lopez emphasized that EPA should take a stance on the cleanup standards that must be achieved in the community surrounding Kelly Air Force Base and ensure that those standards are enforced.

Pointing out the persistence of issues related to Federal facilities and the fact that it had been approximately ten years since the IWG was formed, Ms. Espinosa stated that the NEJAC should invite the Federal defense agencies to provide a briefing to the Executive Council on their activities to address environmental justice.

Ms. Tucker suggested that Mr. Lopez attend the Waste and Facility Siting Subcommittee meeting to discuss his interest in Federal facilities. She also suggested that the Executive Council consider restructuring the public comment period because it is hard to devote enough attention to the comments when it is late at night.

Mr. Lee suggested that Mr. Lopez attend the discussion of the *Office of Inspector General Report* scheduled for April 16, 2005. Mr. Lee then pointed out that, in the past, every concern that was voiced at the meeting of the NEJAC was tracked, and letters were sent to all the commenters. He noted that a lot of paperwork was required but not a lot of issues were resolved. The decision-makers need to be the ones who hear the concerns of the people, he stated. Ms. Eady emphasized that any commenter who requested a response from the NEJAC would receive one.

Mr. Sawyers invited Mr. Lopez to submit comments to the cumulative risk report. Ms. Nelson added that Federal facilities require a political solution. The Congressional delegations of the impacted communities need to be identified, she said, and a synergism developed between the communities that are impacted by Federal facilities and their Congressional delegations. Accountability needs to be raised in the communities where Federal facilities are located, she stated. Congressional representatives always strive to get Federal facilities in their communities, but the representatives need to start thinking about the impact that those facilities have on the communities, she explained.

Mr. Goldtooth pointed out that in Alaska, there had recently been collaboration among Alaskan Natives, the state, and DoD to address Federal facility issues. Commitments were made by the Federal agencies to collaborate and address the issues in a systematic, realistic way, he noted. However, he continued, the Federal agencies dropped the ball, and there has been no follow up. Only selected communities are being assessed, he stated, and the other communities are upset because they are not receiving any attention. But the collaborative model is a tool that can be used, he said.

Mr. Warren stated that the environmental justice strategies that need to be used in today's political

environment are complex. The Executive Council needs to look at what OEJ has been doing to help environmental justice communities. OEJ has been doing an excellent job, he said, and the strategies that it has implemented have been intelligent.

Mr. Lopez added that the strategy must be developed from the bottom up to include communities in the decision-making process. Mr. Lee then pointed out that many challenges are associated with bringing different agencies together to discuss environmental justice issues.

3.23 Mr. Richard Burton, Jr., St. James Parish Citizens for Jobs and the Environment, Convent, Louisiana

Noting that he had provided comment during the public comment period held on April 13, Mr. Richard Burton, Jr., St. James Parish Citizens for Jobs and the Environment, Convent, Louisiana, stated that there is a problem with a local farm organization being paid to dispose of human waste by spreading it on sugar cane crops as fertilizer, he reported. In addition, he continued, Rubber Marine is taking burnt grain from New Orleans and disposing of it as compost on fields in Convent. Smoke originating from the burnt grain is causing people to get sick, he stated. Louisiana DEQ sent a representative to examine the problem, he noted, but the representative reportedly came at 5:00 a.m. when it was cool and there was lots of dew on the ground. Mr. Burton expressed his doubt that the representative even came to Convent to examine the problem, and he added that the representative never bothered to contact any of the affected residents.

Mr. Burton requested that the NEJAC help prevent the burnt grain from being disposed of in his community and the human waste from being spread on fields. We have been fighting all kinds of pollution in the community, he said, and people are suffering.

Ms. Subra noted that there are very few regulations applicable to the spreading of sewage sludge on agricultural fields and indicated that this is a big issue across the country. Ms. Subra then asked Mr. Burton whether any areas other than Jefferson Parish had sent waste to Convent and whether the burnt grain problem is ongoing. Mr.

Burton replied that the burnt grain problem had been ongoing for several years. Mr. Burton explained that Louisiana DEQ told the community that nothing can be done about the burnt grain because it is being burned on the river, and maritime law prevents DEQ from taking action. When the grain is moved to land, Mr. Burton stated, DEQ says that it cannot govern agriculture. Ms. Subra said that she would look into the issues and get in touch with Mr. Burton. Ms. Nelson then pointed out that the issue of sludge disposal extends beyond EPA Region 6, and she suggested that the Executive Council discuss it in depth at a later date.

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