

**SUMMARY OF THE
MEETING OF THE
NATIONAL ENVIRONMENTAL JUSTICE ADVISORY
COUNCIL**

**Arlington, Virginia
July 24 and 25, 2012**

PREFACE

The National Environmental Justice Advisory Council (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. To date, NEJAC has held 43 meetings:

1. Washington, D.C., May 20, 1994
2. Albuquerque, New Mexico, August 3 -- 5, 1994
3. Herndon, Virginia, October 25 -- 27, 1994
4. Atlanta, Georgia, January 17 and 18, 1995
5. Arlington, Virginia, July 25 and 26, 1995
6. Washington, D.C., December 12 -- 14, 1995
7. Detroit, Michigan, May 29 -- 31, 1996
8. Baltimore, Maryland, December 10 -- 12, 1996
9. Wabeno, Wisconsin, May 13 -- 15, 1997
10. Durham, North Carolina, December 8 -- 10, 1997
11. Arlington, Virginia, February 23 -- 24, 1998 (Special Business Meeting)
12. Oakland, California, May 31 -- June 2, 1998
13. Baton Rouge, Louisiana, December 7 -- 10, 1998
14. Arlington, Virginia, November 30 -- December 2, 1999
15. Atlanta, Georgia, May 23 -- 26, 2000
16. Arlington, Virginia, December 11 -- 14, 2000
17. Washington, D.C., August 8 -- 10, 2001 (Special Business Meeting)
18. Seattle, Washington, December 3 -- 6, 2001
19. Baltimore, Maryland, December 9 -- 12, 2002
20. New Orleans, Louisiana, April 13 -- 16, 2004
21. Washington, D.C., January 5 -- 6, 2006 (Special Business Meeting)
22. Washington, D.C., June 20 -- 22, 2006
23. Washington, D.C., February 6-7, 2007
24. Teleconference, August 23, 2007
25. Baltimore, Maryland, September 18 -- 20, 2007
26. Teleconference, November 20, 2007
27. Washington, D.C., June 10 -- 12, 2008
28. Teleconference, September 11, 2008
29. Atlanta, Georgia, October 21 -- 23, 2008
30. Arlington, Virginia, July 21 -- 23, 2009
31. Teleconference Meeting, September 24, 2009
32. New Orleans, Louisiana, January 27 -- 29, 2010
33. Teleconference Meeting, April 28, 2010
34. Teleconference Meeting, June 15, 2010
35. Washington, D.C., July 27 -- 29, 2010
36. Teleconference Meeting, August 26, 2010
37. Teleconference Meeting, September 23, 2010
38. Kansas City, Missouri, November 16 -- 18, 2010
39. Teleconference Meeting, March 31, 2011
40. Brooklyn, New York, May 10 -- 12, 2011
41. Albuquerque, New Mexico, October 25 and 26, 2011
42. Teleconference Meeting, January 27, 2012
43. Arlington, Virginia, July 24 and 25, 2012

In addition, NEJAC, in collaboration with EPA, has held other special meetings including the following:

- ❖ Public Dialogues on Urban Revitalization and Brownfields: Envisioning Healthy and Sustainable Communities, held in Boston, Massachusetts; Philadelphia, Pennsylvania; Detroit, Michigan; Oakland, California; and Atlanta, Georgia; Summer 1995
- ❖ Relocation Roundtable held in Pensacola, Florida, May 2 -- 4, 1996
- ❖ Environmental Justice Enforcement and Compliance Assurance Roundtable, held in San Antonio, Texas; October 17 -- 19, 1996
- ❖ Environmental Justice Enforcement Roundtable, held in Durham, North Carolina; December 11 -- 13, 1997
- ❖ International Roundtable on Environmental Justice on the U.S./Mexico Border, held in San Diego, California; August 19 -- 21, 1999

As a federal advisory committee, NEJAC is governed by the Federal Advisory Committee Act (FACA). Enacted on October 6, 1972, FACA provisions include the following requirements:

- ❖ Members must be selected and appointed by EPA.
- ❖ Members must attend and participate fully in meetings.
- ❖ Meetings must be open to the public, except as specified by the EPA Administrator.
- ❖ All meetings must be announced in the Federal Register.
- ❖ Public participation must be allowed at all public meetings.
- ❖ The public must be provided access to materials distributed during the meeting.
- ❖ Meeting minutes must be kept and made available to the public.

- ❖ A designated federal official (DFO) must be present at all meetings.
- ❖ The advisory committee must provide independent judgment that is not influenced by special interest groups.

EPA's Office of Environmental Justice (OEJ) maintains transcripts and summary reports of all NEJAC meetings, which are available on the NEJAC Web site at www.epa.gov/compliance/environmentaljustice/nejac. Copies of materials distributed during NEJAC meetings are also available to the public upon request. Comments or questions can be directed to OEJ via e-mail at <environmental-justice-epa@epa.gov>.

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
JULY 2012 PUBLIC MEETING
ARLINGTON, VIRGINIA**

Meeting Summary

The Executive Council (Council) of the National Environmental Justice Advisory Committee (NEJAC) convened for its public meeting on Tuesday, July 24, 2012 and Wednesday, July 25, 2012, in Arlington, Virginia. This summary presents highlights of the NEJAC members' deliberations during the Council meeting, including action items, requests, and recommendations; and briefly summarizes the issues raised during the public comment period.

1.0 Executive Council Meeting

This section summarizes highlights from the NEJAC deliberations during the two-day. Exhibit 1 lists the members of the Executive Council. A list of attendees, including those who attended in person and those who attended via teleconference access, is presented in Attachment A.

1.1 Introductory Remarks

Attendees were welcomed by **Victoria Robinson**, NEJAC Designated Federal Officer (DFO), EPA Office of Environmental Justice (OEJ) and **Elizabeth Yeampierre**, NEJAC Chair and Executive Director of UPROSE, Inc. Ms. Robinson acknowledged that this was the first time the NEJAC has ever met in a federal facility. Ms. Yeampierre introduced **Lisa Garcia**, Associate Assistant Administrator for Environmental Justice, EPA

Exhibit 1

NEJAC Executive Council

Members in Attendance

Elizabeth Yeampierre, NEJAC Chair, UPROSE, Inc.
Margaret May, NEJAC Vice-Chair, Ivanhoe Neighborhood Council
Teri E. Blanton, Kentuckians for the Commonwealth
Fatemeh Shafiei, Spelman College
Nicky Sheats, Thomas Edison State College
Paul Mohai, University of Michigan
Stephanie Hall, Valero Energy Corporation
Deidre Sanders, Pacific Gas & Electric
Andrea T. Guajardo, Conejos County Clean Water, Inc.
Horace Strand, Chester Environmental Partnership
Kimberly Wasserman, Little Village Environmental Justice Association
Savonala 'Savi' Horne, Land Loss Prevention Project
Vernice Miller-Travis, Maryland State Commission on Environmental Justice and Sustainable Communities
Nia Robinson, SisterSong
Nicolas Targ, American Bar Association
Javier Francisco Torres, Border Environment Cooperation Commission
Edith Pestana, Connecticut Department of Energy and Environmental Protection
John Ridgway, Washington State Department of Ecology
Paul Shoemaker, Boston Public Health Commission
Kenneth Smith, Mayor of Kingsland, Georgia
Peter M. Captain, Sr., Yukon River Intertribal Watershed Council
Monica Hedstrom, White Earth Nation

Members not in attendance

Patricia Salkin, Touro College*
Effenus Henderson, Weyerhaeuser*
Jolene M. Catron, Wind River Alliance*

Office of Enforcement and Compliance Assurance (OECA), and the other members of the Council. Ms. Garcia thanked Ms. Yeampierre for chairing the Council, and spoke of EPA Administrator Lisa Jackson's commitment to environmental justice. **Cynthia Giles**, Assistant Administrator, OECA, described the competitive NEJAC member selection process for this year, and informed the Council of substantial agreements struck between EPA and Marathon Refineries, as well as with BP. **William Benson**, Acting Associate Assistant Administrator, EPA Office of Research and Development (ORD), remarked on the importance of moving to a OneEnvironment model, recognizing the connection between human health and ecological integrity.

Later in the meeting, **Steven Chester**, Deputy Assistant Administrator, OECA, applauded and expressed the importance of the NEJAC's work.

1.2 EPA Plan EJ 2014 Update

The following EPA officials updated NEJAC Council members on Plan EJ 2014:

- **Lisa Garcia**, Associate Assistant Administrator for Environmental Justice, OECA
- **Charles Lee**, Deputy Associate Assistant Administrator for Environmental Justice, OECA
- **Michael Goo**, Associate Administrator, EPA Office of Policy
- **Rafael DeLeon**, Director, EPA Office of Civil Rights (OCR)
- **Helena Wooden-Aguilar**, Assistant Director, OCR

Ms. Garcia gave background on Plan EJ 2014, referencing community concerns over cumulative impacts, pollution permits, and the lack of technical assistance available to interpret some of EPA's decisions. She also referenced EPA staff requests for more tools and guidance for addressing community concerns. Ms. Garcia also discussed the addition of the Civil Rights supplement to Plan EJ 2014, which was created after public comments. Ms. Garcia highlighted the fruitful partnership EPA has enjoyed with CEQ, and plans for the NEPA and Goods Movement work groups to coordinate.

Mr. Lee surveyed the progress made on Plan EJ 2014 goals since the last NEJAC meeting. He discussed EPA's December 2011 public release of the EJ Legal Tools document, describing it as a compendium of legal authorities available for the promotion of environmental justice. Mr. Lee revealed that EPA had conducted a survey of rulemakings done between 2010 and 2012, and found that approximately 75% of them contained at least some form of environmental justice analysis. Mr. Lee highlighted the upcoming availability of new grant resources, including \$1.25 million for EJ Small Grants and the recent awarding of \$2.7 million in Urban Water small grants. Lastly, Mr. Lee discussed the increase in interagency collaboration over environmental justice, with 17 agencies releasing environmental justice strategies as mandated by the President.

Mr. Goo updated the Council on the progress made on the EPA's EJ Screen tool. He described EJ Screen as a tool that creates an index, called the EJ Index, representing the nexus of environmental and demographic factors in a given area. Mr. Goo stressed that the tool does not direct outcomes, but is instead a pre-decisional tool that can be used in permit decisions and rulemakings. Mr. Goo next gave a short demonstration of EJ Screen, highlighting its ability to incorporate 5-year rolling demographics into high resolution maps, creating a modular tool that can layer different types of data over maps, including user-uploaded data. EJ Screen does not combine environmental factors on the maps, acknowledging to the Council that the science for accurately addressing cumulative impacts in this form does not exist yet. EJ Screen allows users to print out summary reports and graphs based on the EJ Index, and can compare the chosen block group to national, state, and regional averages.

Members expressed concern over EJ Screen's inability to address cumulative impacts, which Mr. Goo acknowledged as the next frontier in environmental justice science. **Deidre Sanders**, EJ Program Manager, Pacific Gas & Electric, was curious as to whether EJ Screen would be used outside of the EPA in the federal family. Mr. Goo replied that right now, EJ Screen is an internal tool, but expressed hope that it would one day be made available to all agencies conducting environmental justice analyses.

Mr. DeLeon discussed efforts at the EPA to strengthen civil rights. He started by giving background, discussing the deficiencies found in the EPA's Civil Rights program and Administrator Jackson's efforts to correct them. Mr. DeLeon showcased the progress that EPA has made in addressing its backlog of Title VI complaints, and asserted that rumors of "hundreds and hundreds" of backlogged complaints were entirely false. Mr. DeLeon then highlighted the strategies for strengthening civil rights contained within the supplement to Plan EJ 2014. They include establishing a robust pre- and post-award Title VI (Civil Rights Act of 1964) compliance program, strengthening Title VI in EPA's National Program Manager guidance, partnering with other agencies to strengthen compliance efforts, and the advancement of environmental justice goals through Limited English Proficiency (LEP) strategies. Members expressed concern over the potential for inadequate remedies in Title VI complaint resolutions, and desire for a Title VI guidance that would demonstrate just how a community should expect a case to be decided and what possible solutions were available.

1.3 Science Tools: Overview and C-FERST Demonstration

Andrew Geller, EPA National Exposure Research Laboratory, gave an overview of the Community-Focused Exposure and Risk Screening Tool (C-FERST), currently being developed by the EPA. Mr. Geller stated that the program's goal is to increase the availability and accessibility of EPA science to assist communities with the challenge of identifying and prioritizing environmental health issues and potential actions. C-FERST is being designed to give environmental information to communities in a way that is meaningful and usable, better equipping communities with the tools necessary to make their own environmental and health choices.

Valerie Zartarian, EPA National Exposure Research Laboratory, described C-FERST as a one-stop community shop for environmental science and information, providing a venue for communities to access technical assistance, science communication, and collaboration. Ms. Zartarian then proceeded to demonstrate the capabilities of the C-FERST tool, starting with environmental roadmap reports. These roadmap reports were shown to be capable of allowing community users to do assessments of known environmental hazards over a given area, linking them to health risks and human exposure data, as well as risk reduction strategies from EPA and other authorities. Ms. Zartarian next demonstrated the maps module of C-FERST. This function allows users to select a specific type of pollution, which then overlays the selected map, showing exposure risks and the sources of that risk, so that communities can pinpoint their own vulnerabilities and act accordingly. C-FERST also allows communities to overlay their own locally collected data. Lastly, Ms. Zartarian demonstrated new maps that EPA plans to incorporate into C-FERST as early as the end of August, 2012. These maps contain additional layers as requested by communities, including neighborhood boundaries, schools, and real-time air quality data.

Paul Shoemaker, Associate Director, Boston Public Health Commission, expressed interest in being a pilot tester for C-FERST. **Paul Mohai**, Professor at the School of Natural Resources and Environment, University of Michigan, expressed interest in the linkages between C-FERST and EJ Screen, and their potential compatibility. Members also wondered whether this information was being shared with local governments, particularly those making zoning decisions. Mr. Geller informed the Council that the tool

would be publicly available and useable by local governments. Ms. Sanders expressed concern that C-FERST would be less effective in the western United States, because its counties tended to be bigger in size, potentially masking the disproportionate burden on localized environmental justice communities.

Fatemeh Shafiei, Associate Professor of Political Science, Spelman College, was concerned that there would not be enough resources set aside to train communities in using new tools like C-FERST.

1.4 Review Plan to provide advice about Storm Surge and Maritime Industrial Areas

Elizabeth Yeampierre, NEJAC Chair and Executive Director of UPROSE, Inc., reviewed the plan created by the NEJAC work group last year regarding the threat that climate change poses in the form of storm surges to Significant Maritime Industrial Areas (SMIA). Ms. Yeampierre spoke about the clustering of heavy infrastructure in maritime environmental justice communities, and the fear that climate change and the rising sea levels that come with it could create new Superfund sites and toxic spills throughout coastal SMIA's. Ms. Yeampierre used neighborhoods like Newtown Creek, Sunset Park, and South Bronx in New York as examples of environmental justice SMIA's, highlighting their vulnerabilities to storm surge and the vulnerable of the resident population. Next, Ms. Yeampierre identified the scope of the work group's mission:

- For the NEJAC to provide insight about steps to bring environmental justice to SMIA communities
- To identify the activities and protocols that EPA should conduct to address environmental justice in these communities and the threat they face from climate change
- Identify best practices, tools, and resources that communities can use to reduce toxic risk exposure and minimize potential environmental damage
- Evaluate each communities' capabilities for adapting to climate change, and encouraging partnerships between EPA and community leaders and other stakeholders

Ms. Yeampierre announced that the work group was seeking up to nine new members, balanced for diversity, as well as a non-NEJAC co-chair. The work group would meet via teleconference and prepare a draft report of findings and proposed recommendations.

Dr. Shafiei; **Nia Robinson**, Sistersong; **Javier Francisco Torres**, Border Environment Cooperation Commission; and **Edith Pestana**, Administrator, Environmental Justice Program, Connecticut Department of Energy and Environmental Protection, all volunteered to join the group. **Kimberly Wasserman**, Coordinator, Little Village Environmental Justice Organization, wanted to know what types of bodies of water would qualify under the work group's purview. Ms. V. Robinson, said the work group will construct the parameters. **Savonala "Savi" Horne**, Executive Director, Land Loss Prevention Project, was concerned about Controlled Animal Feeding Operations (CAFOs) and their impact on non-coastal activities.

1.5 EJ in Permitting Public Engagement

Several EPA senior officials discussed critical environmental subjects as it relates to in permitting. Speakers included:

- **Larry Starfield**, EPA Principal Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance
- **Janet McCabe**, EPA Deputy Assistant Administrator, Office of Air and Radiation
- **Carol Ann Siciliano**, EPA Associate General Counsel

The panel discussion began with introductory remarks from Mr. Starfield, who welcomed the NEJAC members, expressed EPA's strong support of the NEJAC members, and emphasize the importance of the NEJAC's advise.

Panelist **Janet McCabe**, discussed EPA's environmental justice permitting initiatives, which include developing tools to give overburdened communities an opportunity to participate in the permitting process. Additionally, she described developing Regional implementation plans to serve as an independent plan for access to the permitting process. These plans would be tailored to the region's specific needs but consistent with agency-wide guidelines.

Panelist **Carol Ann Siciliano** discussed the importance of communication between permit applicants and community members to result in better health and business outcomes. She requested the NEJAC to to make a suggestion to EPA administration with regards to Draft Best Practices for Permit Applicants Seeking EPA Issued Permit: Ways to Engage Communities at the Fence-Line

NEJAC members engaged in discussion following the remarks by EPA representatives. Ms. Miller-Travis, expressed that the EPA has come a long way to advance environmental justice through permitting. Ms. Sanders, thanked the EPA for developing the EJ Legal Tools document and spoke to the importance of including the regulated community in the discussion of how the EPA will consider environmental justice in the permitting process. She also stated that EPA should set the table for discussion as an intervener between permit applicants and communities, as EPA has drafted the permitting guidance documents.

Mr. Sheats expressed concern that sometimes community engagement causes harder feelings because the community members go to meeting after meeting with no favorable results. However, he recognizes the importance of community engagement, so he asked the EPA to work on this issue. Ms. Pestana mentioned the importance of EPA setting an example in the context of permitting for the states, as she hopes that EPA initiatives would trickle down to the states. She also emphasized the importance of community engagement by permit applicants early on in the permitting processes. She also identified that even if permit is issued, the community can still be involved in decisions regarding construction of the facility, the types of fuel the facility uses, the hours of operation, etc. Lastly, she stressed that community engagement has to be very much early on in the permitting process to allow time to negotiate community benefits.

1.6 Update about Environmental Justice at DOJ Environment and Natural Resources Division

Ignacia Moreno, Assistant Attorney General for Environment and Natural Resources Division, emphasized that it is important to do environmental justice work and to give it direction in order to make it a priority. She discussed that there has been a lot of engagement in the environmental division at DOJ, coupled with a recognition that environmental justice is an important fabric of the work at DOJ. Specifically, she recognizes the importance of strongly enforcing pollution laws. Additionally, she described the MOU Interagency group, which meets at a very high level and have very regular meetings to ensure that environmental justice work is concrete and meaningful inter-agency. This group also has a commitment for reporting annually and requires ground work and input from communities, environmental groups, and federal partners. She concluded by highlighting a few cases and matters DOJ has undertaken.

1.7 Aligning EPA Community -Based Program Efforts

Mathy Stanislaus, EPA Assistant Administrator for Solid Waste and Emergency Response, discussed the following:

- The grant program's dedication to giving a holistic approach to communities (this entails not just looking at brownfields needs, but looking at infrastructures to identify investments that would look at redevelopment from a neighborhood community perspective)
- Importance of implementation resources, for example the Partnership of Sustainable communities tied transportation resources to area wide planning grants
- Intersection between environmental justice and planning, which the EPA will expand through the grant program
- EPA's commitment to ensure that all brownfield grant programs communities play a substantial role in grant implementation (i.e. verify letters of support and ensure that there is direct participation)
- EPA's goal to ensure that the job training program results in hiring
- Utilizing equitable development as a ranking criteria and look at cumulative impacts within the criteria
- Operationalizing community in OSRA programs
- Importance of technical assistance in environmental justice to make sure community voices are heard (i.e. partner with NGO's and communities)
- Mentioned pilot to manage available technical resources, which will be in a report issued that identifies 26 action items
- Importance of NEJAC as a diverse body of community voices that are at the table
- Identifying six community based organization strategies
- Integration of Title VI and limited English proficiency in agreements with the states and direct to regional offices in terms of how to integrate environmental justice into program decisions
- Intersection of local governments and environmental justice through a land use workgroup and local government advisory council
- Aligning community based organizations and finding a way to measure the effectiveness of community based work
- Working on best practices to capture practices to collect and point to measured results
- Looking at some opportunities of dealing with better transparency with respect to chemical transactions while being cognizant of national security
- Engaging with federal agency partners as well as environmental justice stakeholders to have a series of dialogues
- Implications of the definition of solid waste rule (which will enable the recycling of hazardous waste) could have the unintended impact to disproportionate amounts of waste in environmental justice communities
- As such, there is a need to balance protections from recycling, but not at the cost of the community being impacted
- The goal is to finalize a rule in December

Following Mr. Stanislaus remarks, NEJAC members engaged in a discussion about providing more resources to communities. For example, **Kenneth Smith**, Mayor, City of Kingsland, Georgia, asked the EPA to find out more about universities that the NEJAC could contact with to pass on expertise to help out small town mayors. Ms. Yeampierre discussed the need for contractor assistance to communities to provide expertise and a framework to communities that do not have the capacity for grant writing.

1.8 Nail and Beauty Salon Worker Health Exposures

- **Mathy Stanislaus**, EPA Assistant Administrator for Solid Waste and Emergency Response
- **Mariam Young**, National Healthy Nail and Beauty Salon Alliance

- **Anuja Mendiratta**, California Healthy Nail Salon Collaborative

Mr. Stanislaus discussed the variety of issues that impact immigrant workers and minorities who are exposed to chemicals. He emphasized the needed role of the federal government to help with this issue to figure and for EPA to convene a workgroup. He highlighted the following goals:

- Protect the health of nail salon workers
- Conduct research projects to determine the exposure in the nail salon environment
- Partner with sister agencies to give grants to take a hard look at nail salon exposure

Next, Panelist **Mariam Young** discussed the occupational exposures facing low-income women of color and women of childbearing age. She stated that there is a lack of attention by federal agencies and advocacy communities to nail salon exposure. She concluded by mentioning a few accomplishments of the National Healthy Nail and Beauty Salon Alliance including a congressional briefing, testimonies by salon workers, capitol visits, advocating for U.S. Occupational Safety and Health Administration (OSHA) to take action on safe hair products, a warning letter issued by the U.S. Food and Drug Administration (FDA) to Brazilian Blowout for safety and labeling violations, and a White House initiative to establish interagency working group.

Lastly, Panelist **Anuja Mendiratta**, mentioned that there is a lack of regulation by the FDA to evaluate products. Moreover, she stated that of the more 10,000 products more than 89% have not been tested. To address these issues, she mentioned that the alliance has been advocating for the passage of the Safe Cosmetic Act. If and when this law is passed, the FDA will have the authority to recall products and will require full disclosure of all ingredients. She also highlighted that the core issue is that many of the products used in nail salons have toxins known to cause problems and cause issues for workers. Particularly, she discussed Toxic Trio Chemicals, known chemicals of concern with known health hazards such as skin, nose, and throat irritation and reproduction issues. In addition, she mentioned that nail salon work is appealing because it is flexible, requires an inexpensive and short training and requires little English. Significantly, nail salon workers have a lack of health care and nail technicians are classified as independent job contractors so they lack job security and OSHA protection. She also discussed that at the core of health and nail salon exposure as an environmental justice issue is that there is a right of all workers to a safe and healthy work environment without being forced to choose between unsafe health, safety, and livelihood. She then stated that the Alliance wants to partner with environmental justice groups and looks to the NEJAC and EPA to advance the work moving forward.

She made the following recommendations:

- OSHA and EPA to collaborate on training and workshops to hair salon workers and public health advocates
- Improve OSHA and language capacity with workers
- Be more proactive in regards to ventilation standards specific to salons
- Classify the “toxic three” as poisonous or deleterious to users of products
- Develop safer products
- Create an interagency workgroup to collaborate to share information among agencies
- Provide funding for worker and greening salon training programs to market in key places, provide great leadership to interagency work group to engage new partners when possible to support the advocacy efforts with funding to get behind the Safe Cosmetics Act
- Advocate reform when possible with white house electorates and Congress

Following this panel, NEJAC members engaged in discussion. Ms. Yeampierre stressed the importance of businesses getting the resources that they need to begin to sell products that are safer. For example, this could involve getting the Department of Labor and Small Business Association involved. Significantly however, she noted that safer products are more expensive. Additionally, she discussed that nail and beauty salons are often the economic basis for communities and the more poor the communities, the more potent the chemicals. Ms. N. Robinson stated that she would like to hear more from the alliance regarding work it is doing with African-American women, as many African-American communities are proliferated with salons. Ms. Miller-Travis stated that this effort seems like it should involve cross-collaboration among various communities and address consumer protection. Mr. Captain said he wished people in cosmetology school had information regarding nail and beauty salon exposure. Mr. Shoemaker noted that nail and beauty salon exposure is an important national issue and that corners are getting cut in regards to safety, usually on the backs of workers.

1.9 Office of Water Update: Hydraulic Fracturing

Nancy Stoner, EPA Acting Assistant Administrator for Water, discussed the environmental justice implications of hydraulic fracturing. Specifically, she discussed the EPA’s Office of Water on hydraulic fracturing. She asked the NEJAC to engage with the EPA in drafting rulemaking documents to better consider environmental justice in the context of water issues. Additionally, Ms. Stoner mentioned the administration’s commitment to develop energy resources and protect the public health and our vital drinking and water resources, the states and federal agencies commitments to ensure that Shale gas extraction occurs safely, and the need to develop oil and natural gas resources in a responsible manner. Ms. Stoner also discussed the source water impacts of hydraulic fracturing.

Ms. Stoner provided an overview of the following acts and EPA’s efforts under these acts in regards to hydraulic fracturing:

Clean Water Act	<ul style="list-style-type: none"> • The Clean Water Act addresses the water quality and permitting aspects (NPDES permit is required for direct discharges) • March Of 2011-EPA issued NPDES FAQs related to shale gas flow back and produced water discharged • 304m-pretreatment standards, regulation and just beginning to gather info now on what the chemicals are and how industry is gathering data to be able to do that • Over the coming months EPA will develop standards and propose rules to apply to shale gas • EPA will attempt to identify environmental justice communities in oil drilling and gas communities and analyze how environmental impacts might specifically harm the communities
Safe Drinking Water Act	<ul style="list-style-type: none"> • EPA’s central authority to protect drinking water is drawn from the Safe Drinking Water Act (SDWA) • The SDWA requires EPA to develop federal regulations for Underground Injection Control (UIC) Programs to prevent endangerment of underground sources of drinking water (USDWs) • SDWA §1431 contains provisions to address imminent and substantial endangerment of USDWs • The Safe Drinking Water Act created underwater injection control program, which is the primary injunction control program to protect underground sources of drinking water • Regulations are already in place for direct discharges doing those FAQ’s.

Lastly, she discussed EPA’s next steps in regards to hydraulic fracturing:

- Get feedback, received some already such as volume being applied to well
- Ensure public comment period facilitates meaningful involvement, considers mailing and is long enough
- Seek comment on appropriateness of and whether there is a basis to welcome input as far as area review

- Conduct case study to assess whether hydraulic fracturing can impact water resources, identify drinking factors that add to the severity and frequency of any impacts
- Draft Permitting Guidance to clarify how companies can comply with the Safe Drinking Water Act, which only applies when diesel fuel is being used and applies where EPA is the permitting authority

Following this panel, several NEJAC members engaged in discussion. Ms. Yeampierre asked what the environmental justice implications are of hydraulic fracturing. In response, Ms. Stoner said that hydraulic fracturing is an issue of great importance to the rural poor and people who rely on well water for their drinking water. Ms. Sanders stated that it would be great to see connections among where hydraulic fracturing is taking place, ethnicities, and economic impact (land quality, etc.). Ms. Blanton stated that hydraulic fracturing is an environmental justice issue. She provided Appalachia as an example where a lot of farmland has been destroyed where farmers have lost water and the ability to grow food. Ms. Miller-Travis asked if there is activity between the Office of Water and other EPA program offices as far as increasing the role of EPA and other stakeholders in Plan EJ 2014. Ms. Guajardo stated that it would be valuable to hear from environmental justice communities that are impacted by hydraulic fracturing. **Reverend Horace Strand**, Chester Environmental Partnership discussed the importance of developing a uniform standard that requires all companies to make clear what chemicals are in their products and properly treat waste.

1.10 ORD 101: An Overview of EPA’s Research Programs

Dr. Robert Kavlock, Deputy Assistant Administrator for Science, provided an overview of EPA’s Office of Research and Development (ORD). He highlighted the following goals:

- Merge research programs having similar expertise to address issues of broad national significance (i.e. assuring the safety of chemicals)
- Provide science to support EPA’s regulatory and enforcement activities
- Help communities identify environmental contributions to health and find ways to reduce health disparities
- Provide decision support tools to help local governments make decisions that: protect the natural environment while maximizing the equitable distribution of its many benefits, provide built environments which promote health, and provide knowledge to inform personal decisions and public health policies that foster healthy lifestyles
- Develop sustainable and healthy communities
- Build a scientific foundation for sound environmental decisions

Dr. Kavlock provided the following examples of what ORD has underway:

Tools	National Atlas for Sustainability (Atlas), Regional Vulnerability Assessment Environmental Decision Toolkit (ReVA), Community/Tribal Focused Exposure Risk Screening Tool (C-FERST/T-FERST), Community Cumulative Assessment Tool (CCAT)
Performance Measures	Human Well-being Index (HWBI), Environmental Quality Index (EQI), Database of Sustainability Indicators
Approaches	Health Impact Assessments (HIA), Social Media, Collaborative Research, Improving Current and Future Tools: Who Uses, Inventory and Evaluation, Gap Analysis, Access

Dr. Kavlock also discussed the sustainable and healthy community’s key efforts for addressing and preventing environmental inequities. Additionally, he discussed the Office of Research and Development’s focus on developing tools to reduce the environmental and societal impacts of chemicals and water

resource management. These include (1) Determining cumulative risk of contaminants by place and setting; (2) Creating public health interventions relevant to environmental justice; and (3) Determining social, economic and environmental determinants of health disparities.

Next, Dr. Kavlock discussed the Homeland Security Research Program Research Themes including securing and sustaining water systems, characterizing contamination and determining risk, and remediating indoor and outdoor environments. He also stated that there is a focus on Human Health risk assessment research that includes:

- Developing assessments for improved public health
- Modernizing risk assessment
- Supporting communities with environmental and health risk assessments
- Providing the science to support air quality standards

1.11 NEJAC Research Work Group Update

- **Paul Mohai**, Co-Chair, NEJAC Research Work Group and member, NEJAC
- **Peggy Shepard**, Co-Chair, NEJAC Research Work Group
- **Jose Zambrana**, DFO, NEJAC Research Work Group

Panelist Jose Zambrana opened the presentation with an overview of EPA's goal to develop science tools and support and conduct research through ORD's six key programs which employs participatory principles:

- Utilizing an integrated approach and focusing on things like cumulative impacts
- Engaging community based leaders in dialogue
- Creating partnerships with entities such as the National Institute of Health and Environmental Health Sciences to research minority health and health disparities
- Getting more capacity and more training within ORD sciences
- Institutionalizing research to prevent and address inequities
- Informing decision-making for local government, communities, people, and choices
- Working collaboratively with communities as ORD's programs are executed
- Making data customized through tools such as C-FERST and ensuring these tools are available, useful, and making a difference
- Developing criteria to ensure that science is making an impact
- Developing non-technical skills to effectively work with non-scientists

Mr. Zambrana asked the NEJAC to advise ORD on these matters and expressed appreciation of the work group's commitment to address these issues

Panelist Peggy Shepard expressed the work group's goal to have preliminary findings in regards to these matters by October. She also stated that the work group will engage with the NEJAC to get its' perspective on the charge questions. She asked that any interested members of the NEJAC who are interested in tackling the charge questions join the Research Work Group.

Panelist Paul Mohai provided a summary of some of the things that the work group has accomplished. He stated that the ORD staff have made presentations to the Work Group to assist members in better understanding the Agency's research programs. He also mentioned that in the course of conference calls held to date, he has surveyed the members to see what should be addressed in the context of

environmental justice. He also conducted a survey where he asked each member about important issues related to these charge questions. Additionally, he stated that the work group hopes to have a strategy in place for tackling the plan and will engage the NEJAC, EPA managers and staff in this process.

Ms. Guajardo discussed the potential value of adding community members to the work group's discussions. Elizabeth Yeampierre mentioned that it is important to have people with various lenses contribute to the work group's discussions. Mr. Sheats asked whether EPA could assist in developing a network of scientists to provide technical assistance to communities. Ms. Miller-Travis emphasized the importance of connecting public health and reaching out to communities.

1.12 NEJAC EJ in Permitting Work Group Update

John Ridgeway, Chair, NEJAC EJ in Permitting Work Group, stated that there will be a draft status report in the coming months. He said the goal is to look at what EPA is proposing and how they plan to go about implementing the permitting initiative. Further, questions and comments will be valued and his job as a work group chair will be to know the status of these plans and for there to be expected opportunities for future meetings. He also expressed that the focus will be just on permits that EPA manages.

Ms. Siciliano said that the next steps are for the work group to assist EPA as the agency considers the most difficult issues that come in response to the federal registrar notice. She said EPA will be looking at the comments and she is hoping the NEJAC will engage on the federal registrar. She also wants the NEJAC to speak on the issue and provide guidance to the business community and discuss actions regions can take to promote outreach. She stated that the goal is to have a final federal registrar notice in the spring, informed by the NEJAC.

He reported that through September EPA will start to digest and look at details. He added that the Work Group hopes to get back with draft comments such that by the end of October EPA will have the ability to be briefed, ask additional questions, and get input about what EPA wants to be counseled on so it can take the NEJAC's advice into consideration as they implement and go forward. He said the work of the work group has been productive and that EPA's efforts have been very promising and welcomed by the work group. He also stated that other stakeholders such as businesses, states, local governments, universities, and community members have been engaged through this process. Lastly, he mentioned that the majority of permits are issued by the states. He also contended that the more EPA can learn from the process, the more states can ensure that environmental justice is a top priority in the context of permitting in the future.

Ms. Hall stated that she thinks the recent federal registrar publication can reach more to the business community, although the model EPA has displayed should be commended.

1.3 EPA Tribal Program: An Overview

The following EPA officials gave an overview of the tribal program at the agency:

- **JoAnn Chase**, Director, American Indian Environmental Office (AIEO), EPA Office of International and Tribal Affairs (OITA)
- **Dona Harris**, AIEO, OITA

Ms. Chase gave background on tribal demographics, as well as the hardship being faced by many tribal communities. She referenced the 1984 EPA Indian Policy, highlighting it as a foundation for the strong relationship that EPA has had with tribal communities. Ms. Chase also discussed the Indian Environmental

General Assistance Programs, which build capacity in tribal lands for implementing and enforcing environmental laws, the EPA Tribal Consultation Policy designed to ensure meaningful and timely opportunities for tribal input on actions that may affect them, and the Tribal Eco-Ambassadors program, a newly piloted research partnership program between the EPA and tribal colleges and universities.

Ms. Harris discussed the Tribal and Indigenous EJ Policy, and its goal of developing processes for better understanding and addressing specific tribal environmental justice concerns. Ms. Harris also spoke about two tribal works, the NEJAC Indigenous Peoples Work Group, and internal EPA Tribal and Indigenous Peoples Environmental Justice Work Group. She expressed hope that the internal EPA work group would have a shareable working draft of its strategies for promoting and addressing environmental justice in tribal communities by the end of August.

Members expressed concern over the lack of coordination between government entities involved in tribal issues, which Ms. Chase acknowledged is a challenge for the federal family. Members also wanted to know if there had been progress by the federal government in the restoration of land and health in the wake of the uranium contamination on tribal lands discussed at last year's NEJAC meeting. Ms. Chase replied that she was cautiously optimistic about these efforts, and highlighted a program moving people in Navajo country out of dangerous environments and into new homes. Members asked for tangible evidence of results. Ms. Guajardo expressed frustration with federal chemical and radiation research ongoing on her tribal lands, to which Ms. Chase expressed optimism that the newly-created Tribal office within the Department of Energy (DOE) would help the DOE work together with tribes. Members also requested information regarding green jobs for tribal communities.

1.4 NEJAC Indigenous Peoples Work Group Update

Members of the NEJAC Indigenous Peoples Work Group updated the Council on the Work Group's progress. These members include:

- **Monica Hedstrom**, Co-Chair, NEJAC Indigenous Peoples Work Group and member, NEJAC
- **Katsi Cook**, Member, NEJAC Indigenous Peoples Work Group
- **Daniel Gogal**, DFO, NEJAC Indigenous Peoples Work Group

Ms. Hedstrom provided an overview of the Work Group, reviewing the EPA charge which asked the NEJAC to assist the agency in developing policy, as well as to provide input on the agency's draft Indian policy. Ms. Hedstrom stated that she expects the Work Group to have a working draft of their recommendations for NEJAC review by the end of August, with a plan to develop final draft recommendations on the charges by the end of October.

Ms. Cook then presented a series of preliminary recommendations for the EPA. These include:

- Ensuring that tribal members and communities have the ability to engage on environmental justice issues
- Compliance with the 1984 EPA Indian Policy
- Development of health-based standards applicable to tribal populations, and including cultural and treaty-reserved resources and subsistence practices
- A focus on process and empowerment of communities, so that they can create and own their preferred community outcomes
- Proactive implementation of existing legal tools to address environmental justice concerns in tribal communities

- The availability of tribal environmental program funding focused specifically on the development of community outreach
- Work with other federal agencies to build a better understanding of tribal constituencies

Members expressed concern about overlapping federal agencies slowing down meaningful public participation. Members also expressed a preference for individualized treatment for different tribal groups, rather than a “one-size fits all” approach to tribal governments. Members suggested that Health Impact Assessments be used for individual tribal populations.

1.5 Asthma Action Plan

Officials from the EPA and the Department of Health and Human Services (HHS) discussed federal action plan regarding asthma, produced by the Children’s Environmental Health Task Force, commissioned by President Barack Obama. These officials were:

- **Peter Grevatt**, Director, EPA Office of Children’s Health Protection
- **Sandra Howard**, U.S. Department of Health and Human Services

Ms. Howard gave a short overview of the task force, and introduced its Asthma Disparities wing. She explained that the Asthma Action Plan is a coordinated federal effort to address the asthma disparities disproportionately affecting low-income and minority children, and it is supported by HHS Secretary Kathleen Sebelius and EPA Administrator Lisa Jackson.

Mr. Grevatt described the Action Plan in detail. He identified the National Asthma Education Guidelines for controlling asthma, including pharmacological treatment, asthma education to improve self-management skills, and reduction in exposure to environmental triggers. He attributed the disparities in asthma prevalence and severity to decreased access to healthcare amongst minority and low-income communities, resulting in fewer early diagnoses and less access to treatment, as well as greater exposure to environmental risks in the communities, at school, and at home. Mr. Grevatt then introduced four strategies contained in the Action Plan for addressing asthma disparities:

- Reduce barriers to the implementation of Guidelines-based care, working in homes and neighborhoods to educate people about how to properly control and treat asthma
- Promote cross-sector partnerships amongst federally coordinated community-based programs
- Improve capacity to identify the children most affected by asthma disparities, locating clusters of asthma cases and identifying the potential sources
- Research into the factors that government and communities can control to reduce the overall burden of asthma on our children

Lastly, Mr. Grevatt asked the Council two questions:

- What are effective ways to engage and outreach this information to environmental justice stakeholders, to help effectively disseminate this Action Plan?
- Does the Council have thoughts about other topic areas that would similarly benefit from this kind of coordinated approach?

Ms. Yeampierre asked Mr. Grevatt where he believed the gaps in outreach existed, so that the Council could help them. Mr. Grevatt responded that he didn’t believe that there significant gaps in outreach, but that for the Action Plan to be successful, it would need to be implemented by communities at the local level.

Rev. Strand expressed concern that much of the suggestions in the Action Plan have already been tried, and that in the past, the funding has been pulled before low-income families could make the necessary adjustments to their homes, schools, and communities. Ms. Howard shared Rev. Strand's frustration with the inconsistent funding of these initiatives. Mr. Shoemaker agreed with Rev. Strand, arguing that financial investment was crucial to federal outreach in the communities. Mr. Shoemaker also added that the lack of access to health information by the communities makes it difficult to locate asthma clusters and alleviate them. Ms. Pestana stated that she supports electronic medical records that can be shared between providers, since low-income people are more likely to use different doctors or the emergency room for their health needs.

Members suggested that EPA lower the Particulate Matter 2.5 standard as low as possible when the rule is revised, to 11 or lower. Members suggested that the agencies put out a best practices guidance for retrofitting existing homes for asthma control and reduction, providing federal assistance for such a program. Members also stressed that asthma disparities are not limited to urban areas, and that agencies should be careful not to ignore rural asthma disparities.

1.6 Old Business/Next Steps/Closing Remarks

The Council reflected on the information shared during the meeting, and Ms. Robinson informed the members about opportunities for participation in some of the work groups that had presented over the last two days. The following next steps were then identified:

- The NEJAC requested a dialogue on Title VI between the Council and the EPA, or the formation of a work group to dig deeper into the issues that the Council has with Title VI enforcement. Ms. Robinson and Mr. Lee responded that the EPA will follow through with a response to this.
- The NEJAC agreed to explore the issue of worker exposure in nail and beauty salons as a possible charge.
- The NEJAC agreed to draft a letter to EPA Administrator Lisa Jackson regarding the upcoming rulemaking on hydraulic fracturing. The letter is to include advice to the Administrator about the rulemaking, questions about the environmental justice analysis being done for the rulemaking, and more advice for successfully considering environmental justice concerns before a rule is promulgated. **Mr. Nicolas Targ**, Co-Chair, Environmental Justice Caucus, American Bar Association, and Ms. Sanders agreed to draft the letter.

2.0 Public Comment Period

On July 24, 2012, the NEJAC held a public comment period to allow members of the public to discuss environmental justice concerns in their communities. Exhibit 2 lists the individuals who spoke during the public comment period, as well as those who provided written testimony. This section briefly summarizes the spoken testimony and the associated outcome of NEJAC deliberations.

2.1 John Gustafson, Private Citizen, Bethesda, MD

Mr. Gustafson first recommended that the EPA coordinate with OSHA to develop ad

hoc committees to bring these agencies together on a regular basis. He also requested that the EPA national response team establish an ongoing response team to solve problems to prevent chemical accidents. Second, he suggested that both the states and the Department of Justice be involved during

emergency responses. Third, he requested that EPA retain its' authority when there is a release whether it resulted in an offsite or onsite spill. He also noted that often these releases are in low-income communities. Fourth, he recommended that EPA use the general duty clause under facility inspection. Lastly, he requested that annual status surveys be dropped to save money and address budget issues.

2.2 Steve Fischbach, Rhode Island Legal Services, Providence, RI

Mr. Fischbach expressed that EPA should be applauded for the fact that it is willing to revisit the enforcement of Title VI and promoting enforcement. On the other hand, he stated that EPA does not seem to be getting very far. Mr. Fischbach said he hoped there would be progress regarding Title VI enforcement by EPA and that this would be given the same weight as the environmental policy. He also suggested that the EPA revise, rescind, or re-rule on the *Select Steel* decision, as he expressed that there was no Title VI violation, which will exacerbate environmental justice concerns. Moreover he also suggested that EPA should be involved in complaints. Next, Mr. Fischbach stated that he understands EJ Plan 2014 will be looking at Title VI regulations and that will extend the periods by which EPA has to respond to complaints. In his view, if this is the only change, EPA will not achieve environmental justice goals. Lastly, Mr. Fischbach made three recommendations:

- If EPA finds that it is not the provider of financial assistance it should dismiss the case instead of trying to figure out who is the proper federal authority
- EPA should issue a recipients guidance so that recipients know what their responsibilities are
- EPA should issue trainings so recipients know how to address issues regarding communities of color

2.3 Michael Jacoby, Private Citizen, Seven Valleys, PA

Mr. Jacoby stated his view that it is important to view the manufacture of chemicals as an environmental justice issue, as chemicals are made in environmental justice communities. In this regard, TSCA reform is necessary and needs to involve the EPA, environmental justice communities and health groups. He also expressed that industry has not been paying its' fair share. He also discussed that in the last thirty years, Leukemia has increased by more than 20%, breast cancer has increased and is now a risk for one in eight women, asthma has become a legacy of concern for communities of color, and lead issues are leading to development disabilities. Moreover, according to ASTDR, almost half of all Americans live with chronic diseases, which constitute 70% of deaths and health care costs. In closing, he said these issues need to be looked at from an environmental justice lens, as these statistics are worse in environmental justice communities and that EPA needs more authority in addressing these concerns.

Mr. Jacoby also discussed the need to have better accuracy of the data utilized at EPA. Specifically, he stated that there is a verification process that is missing that requires data to be verified once it is submitted. He recommends getting communities involved in this verification process.

2.4 Rick Hind, Greenpeace, Washington, DC

Mr. Hind requested that the EPA issue new rules and regulations to prevent chemical disasters, using Section 112(r) of the Clean Air Act (CAA). He highlighted the risks faced by Americans living in populous areas containing dangerous facilities. Mr. Hind stressed the environmental justice implications of this risk, noting that a single facility in New York City puts 12 million people at risk, and that within a 1-mile radius of that facility, the population is 53% African-American. Mr. Hind showed that this trend continues in other

major cities. Mr. Hind argued that safer chemical processes can eliminate these kinds of risks, and urged the federal government to restrict dangerous processes to avoid catastrophic risks.

2.5 D.L. Hughley, Central Productions, New York, NY

Mr. Hughley suggested that the African-American male be put on the endangered species list. He also discussed that many endangered species have more protection than African-American males.

2.6 Brent Newell, Center on Race, Poverty, & the Environment

Mr. Newell concurred in Mr. Hughley's view that endangered species have more protection than African-American males and women of color. He also expressed that Title VI private parties have no ability to provide a remedy for Title VI and that the only remedy is to apply for an administrative complaint. He also expressed his view that EPA needs to be more diligent in FOIA requests and provide more clarity for when claims are ripe.

2.7 Jalonne White-Newsome, WE ACT for Environmental Justice, New York, NY

Dr. White-Newsome requested that the EPA ensure that communities of color have a voice in the upcoming revisions on Particulate Matter standards. She recommended 11 micrograms per meters cubed as the appropriate new standard, and asked the NEJAC to formally weigh in on this issue. Dr. White-Newsome also asked the NEJAC to investigate methods for informing local adaptation efforts regarding climate change. Finally, Dr. White-Newsome requested that the NEJAC represent environmental justice concerns in the upcoming reform of the Toxic Substances Control Act (TSCA).

2.8 Leslie Fields, Sierra Club, Washington, DC

Ms. Fields planned to comment on rulemaking, but received calls from communities with environmental justice concerns and chose to comment on their behalf. Ms. Fields first commented on the proposed new crossing at the Ambassador Bridge in Detroit, Michigan. She stressed the international bridge brings 20,000 vehicles per day into low-income and minority communities, communities which already face a disproportionate amount of pollution. Ms. Fields worries that the new bridge will make the situation worse, accumulating all of the negative effects on an already overburdened community. Next, Ms. Fields asked the NEJAC to follow environmental justice concerns related to hydraulic fracturing, especially in rural communities.

2.9 Sacoby Wilson, University of Maryland, College Park, MD

Dr. Wilson requested that the NEJAC address industrial hog farming, and their intimidation of rural communities. He urged the NEJAC to advise the EPA on Controlled Animal Feeding Operations (CAFOs). Next, Dr. Wilson urged the NEJAC to investigate the movement of dangerous chemicals through communities on trains, arguing that communities have the right to know which chemicals are moving through them in order to prepare for potentially catastrophic risks. Lastly, Dr. Wilson directed the Council's attention towards the cumulative impacts faced by environmental justice communities in the Carolinas, and highlighted the problems faced by these communities with the expansion of the Port of Charleston, South Carolina.

2.10 Michele Roberts, Mossville Environmental Action Now, Westlake, LA

Ms. Roberts testified that EPA rulemakings on polychlorinated biphenyls (PCBs) favor corporations, while people in the Mossville community bear the negative consequences, with dioxin in their blood. She testified that the EPA did not properly seek input from communities during its PCB rulemakings, and submitted a letter signed by 60 community groups urging Administrator Lisa Jackson to rescind her decision on PCBs, asking the Council to present it to the Administrator. Ms. Roberts then discussed the rights of indigenous communities in central Florida. She testified that the indigenous groups in this area were forced to go to the United Nations to seek relief from six pesticide corporations contained in their communities, and that a United Nations tribunal had found widespread human rights violations against indigenous peoples in Alaska and Florida. Ms. Roberts asked the NEJAC to agree with the findings of the Permanent Peoples Tribunal at the United Nations, and to help free these indigenous communities from discriminatory practices and cumulative impacts.

2.11 Written Comments

The following individuals submitted written comments for the record. Copies of those documents are included in Appendix B of this report.

- Caleen Sisk, Winnemem W
- intu Tribe (Redding, CA)
- Devawn Oberlender, Environmental Advocates of the NRV (Blacksburg, VA)
- Storm Cunningham, ReCitizen L3C (Washington, DC)
- Marc Brenman, Social Justice Consultancy (Kensington, MD)
- Dvija Michael Bertish, Rosemere Neighborhood Association (Vancouver, WA)
- Beverly May (Langley, KY)
- Donna Aros (Louisa, KY)
- Ivy Brashear (Viper, KY)
- Sharman Chapman-Crane (Eolia, KY)

APPENDIX A
National Environmental Justice Advisory Council
July 2012 Public
List of Attendees

In-Person Attendees

Last Name	First Name	Organization	City	State
Ablard	Edward	REACH/NAACP	Alexandria	VA
Aguayo	José	Center for Health, Environment & Justice	Falls Church	VA
Ali	Mustafa	U.S. EPA	Washington	DC
Anderson	Israel	U.S. EPA Region 6	Dallas	TX
Ansher	Liza	U.S. EPA		
Atagi	Tracy	U.S. EPA	Washington	DC
Baca	Andrew	U.S. EPA	Washington	DC
Baig	Sameea	Sustainable Community Development Group	Washington	DC
Bailey	Joseph	U.S. EPA	Washington	DC
Baker-Branstetter	Shannon	Consumers Union	Washington	DC
Barzyk	Tim	U.S. EPA RTP	Durham	NC
Bearfighter	Charles	U.S. EPA	Washington	DC
Beers	Samantha	U.S. EPA Region 3	Philadelphia	PA
Bell	Aaron	U.S. EPA	Washington	DC
Benjamin	Kent	U.S. EPA	Washington	DC
Benson	William	U.S. EPA	Washington	DC
Bickers	Kelly	American Forest & Paper Association	Washington	DC
Bilardo	Elyse	U.S. EPA		
Blanton	Teri E.	Kentuckians for the Commonwealth	Berea	KY
Bolden	Janice	U.S. EPA Region 3	Philadelphia	PA
Bonanni	Christina	U.S. EPA	Washington	DC
Bowler	Gina	U.S. EPA	Washington	DC
Brady-Roberts	Eletha	U.S. EPA Cincinnati	Cincinnati	OH
Braun	Amy	U.S. Department of Agriculture	Washington	DC
Bravo Toscano	José	Just Transition Alliance	San Diego	CA
Braz	Amy	U.S. EPA Region 1	Boston	MA
Brenman	Marc	Social Justice Consultancy	Kensington	MD
Bruss	Joe	U.S. EPA	Washington	DC
Buggs	Jesse	City of Bowie, MD	Bowie	MD
Burwell	Kristen	University of Maryland	College Park	MD
Buster	Pamela	U.S. EPA	Washington	DC
Buzzelle	Stanley	U.S. EPA	Washington	DC
Cairns	Holly	Pennsylvania Department of Environmental Protection	Pittsburgh	PA
Calin	Sade	Concerned citizen		
Captain, Sr.	Peter M.	Yukon River Inter-Tribal Watershed Council	Fairbanks	AK
Carey	Pat	U.S. EPA	Washington	DC
Carraway	Candance	U.S. EPA RTP	Research Triangle Park	NC
Case	Heather	U.S. EPA	Washington	DC
Charles-Shannon	Velma	U.S. Department of Agriculture	Washington	DC
Chase	JoAnn	U.S. EPA	Washington	DC
Chester	Steven	U.S. EPA	Washington	DC
Childers	Andrew	BNA	Arlington	VA
Codrington	Ann	U.S. EPA	Washington	DC

APPENDIX A

Last Name	First Name	Organization	City	State
Colander	Brandi	White House Council on Environmental Quality	Washington	DC
Comisky	Nicole	White House Office of Management and Budget	Washington	DC
Cook	Katsi	Running Strong for American Indian Youth	Alexandria	VA
Coomes	Jessica	BNA	Arlington	VA
Corbin-Mark	Cecil	WE ACT for Environmental Justice	New York	NY
Corrales	Mark	U.S. EPA	Washington	DC
Covington	James	U.S. EPA	Washington	DC
Csank	Diana	White House Council on Environmental Quality	Washington	DC
Curry	Bridgid T.	U.S. EPA	Washington	DC
Dalemarre	Laura	University of Maryland	College Park	MD
Darling	Corbin	U.S. EPA Region 8	Denver	CO
De Robertis	Cecilia	U.S. EPA	Washington	DC
DeLeon	Rafael	U.S. EPA	Washington	DC
Douglass	Erika	ASPH Fellow	Washington	DC
Downing	Melinda	U.S. Department of Energy	Washington	DC
Dreyfus	Melissa	U.S. EPA	Washington	DC
Epps-Price	Lena	U.S. EPA RTP	Research Triangle Park	PA
Favors	Sonja B.	Alabama Department of Environmental Management	Montgomery	AL
Feldman	Howard	Energy API	Washington	DC
Ferguson	Cynthia	U.S. Department of Justice	Washington	DC
Ferris	Deeohn	Sustainable Community Development Group	Washington	DC
Fields	Leslie	Sierra Club	Washington	DC
Fischbach	Steven	Rhode Island Legal Services	Providence	RI
Fitzpatrick	Ryan	U.S. EPA	Washington	DC
Freeman	Tamara	U.S. EPA Region 7	Kansas City	KS
Furie	Greg	U.S. EPA		
Gaines	Jeffrey C.	U.S. EPA	Washington	DC
Gamble	Janet	U.S. EPA	Arlington	VA
Garcia	Lisa	U.S. EPA	Washington	DC
Gatson	Krystal	U.S. EPA	Washington	DC
Geller	Andrew	U.S. EPA RTP	Research Triangle Park	NC
Giles	Cynthia	U.S. EPA	Washington	DC
Gogal	Danny	U.S. EPA	Washington	DC
Goo	Michael	U.S. EPA	Washington	DC
Gordon	Lauren	CNMC	Washington	DC
Graves	Beth	Environmental Council of the States	Washington	DC
Grevatt	Peter	U.S. EPA	Washington	DC
Grimm-Crawford	Barbara	U.S. EPA	Washington	DC
Guajardo	Andrea T.	Conejos County Clean Water, Inc.	Antonito	CO
Gustafson	John	Private Citizen	Bethesda	MD
Guyton	Kate	U.S. EPA	Washington	DC
Gwinn	Maureen	U.S. EPA	Washington	DC
Hall	Stephanie	Valero Energy Corporation	San Antonio	TX
Harmon	Shani	U.S. EPA	Washington	DC
Harrell	Carlotta	Georgia Conference of Black Mayors	Stockbridge	GA
Harris	Dona	U.S. EPA	Washington	DC
Harris	Reginald	U.S. EPA Region 3	Philadelphia	PA
Hatcher	Judy	Panna	Washington	DC

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Last Name	First Name	Organization	City	State
Hawkins	Tonya	U.S. EPA	Washington	DC
Hayes	Declan	U.S. EPA	Washington	DC
Hedstrom	Monica	White Earth Nation	White Earth	MN
Herbert	Rachel	U.S. EPA	Washington	DC
Herrera	Angeles	U.S. EPA Region 9	San Francisco	CA
Hind	Rick	Greenpeace	Washington	DC
Holloway	Mike	U.S. EPA	Washington	DC
Horne	Savonala "Savi"	Land Loss Prevention Project	Durham	NC
Horter	Bennett	U.S. Department of Agriculture	Washington	DC
Howard	Marcel	Westminster College	Washington	PA
Howard	Sandra	U.S. Department of Health and Human Services	Washington	DC
Hughley	DL	Central Productions	New York	NY
Imperiale	Sara	Natural Resources Defense Council	New York	NY
Jackson	Chazeman	U.S. Department of Health and Human Services	Rockville	MD
Jacobs	Jon	U.S. EPA	Washington	DC
Jacoby	Michael	Concerned citizen	Seven Valleys	PA
Jobe	Sheldon C.	Sustainable Community Development Group	Washington	DC
Jones	Sunita	U.S. EPA	Washington	DC
Kadry	Abdell	U.S. EPA	Washington	DC
Katonica	Kim	U.S. EPA	Washington	DC
Kavlock	Robert	U.S. EPA	Washington	DC
King	Toshia	U.S. EPA	Washington	DC
King	Marva	U.S. EPA	Washington	DC
Kovski	Alan	BNA	Arlington	VA
Kramer	Jennifer	U.S. EPA		
Kretzmann	Hollin	Clean Air Council	Philadelphia	PA
Kunn	Abigail	Bracewell & Giuliani		
Kwok	Rose	U.S. EPA	Washington	DC
Larkin	Cheryl	S.M. Stoller Corporation	Washington	DC
Lawrence	Othalene	U.S. Department of Energy	Washington	DC
Lee	Charles	U.S. EPA	Washington	DC
Lee	Matthew	U.S. EPA Region 3	Philadelphia	PA
Lee	Suzette Tay	APEX Direct, Inc.	San Francisco	CA
Lewis	Heather	U.S. EPA	Washington	DC
Lewis	Sheila	U.S. EPA	Washington	DC
Liu	Shuping	Center for Health, Environment & Justice	Virginia	VA
Lung	Tai C.	U.S. EPA	Washington	DC
Maddin	Stephanie	Earthjustice	Washington	DC
Martin	Allison	U.S. EPA RTP	Research Triangle Park	NC
Martin	Karen L.	U.S. EPA	Washington	DC
May	Margaret J.	Ivanhoe Neighborhood Council	Kansas City	MO
McCabe	Janet	U.S. EPA	Washington	DC
McDonald	Claude E.	Alabama Department of Environmental Management	Montgomery	AL
McOliver	Cynthia	U.S. EPA	Washington	DC
Mendiratta	Anuja	California Healthy Nail Salon Collaborative	Berkeley	CA
Meza-Cuadra	Claudia	Columbia University	Oakton	VA
Miller	Steve	U.S. Department of Energy	Washington	DC
Miller-Travis	Vernice	Maryland State Commission on Environmental Justice and Sustainable Communities	Bowie	MD
Minter	Marsha	U.S. EPA	Washington	DC

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Last Name	First Name	Organization	City	State
Mitchell	Mark	Mitchell Environmental Health Associates	Hartford	CT
Mohai	Paul	University of Michigan School of Natural Resources and Environment	Ann Arbor	MI
Moore	Gwenerver	U.S. EPA	Arlington	VA
Moreno	Ignacia	U.S. Department of Justice	Washington	DC
Moss	Daniel	Society of Chemical Manufacturers & Affiliates	Washington	DC
Motilall	Christina	U.S. EPA	Washington	DC
Muriel	Jasmin	U.S. EPA	Washington	DC
Murray	Rianna	University of Maryland	College Park	MD
Nash	Stephanie	U.S. Fish and Wildlife Service	Arlington	VA
Neal	Daria	U.S. Department of Justice	Washington	DC
Newell	Brent	Center on Race, Poverty, and the Environment	San Francisco	CA
Nguyen	Loan	U.S. EPA	Washington	DC
Nixon	Pamela	West Virginia Department of Environmental Protection	Charleston	WV
Nweke	Onyemaechi (Maechi)	U.S. EPA	Washington	DC
Olden	Ken	U.S. EPA	Washington	DC
Olp	Kevin	U.S. EPA	Washington	DC
Olson	Cindy	Eco-Coach	Washington	DC
Outlaw	Riché	New Jersey Department of Environmental Protection	Trenton	NJ
Pair	Quentin	U.S. EPA	Washington	DC
Patterson	Jacqueline	NAACP	Baltimore	MD
Payne-Sturgis	Devon C.	U.S. EPA	Washington	DC
Perry	Simona	C.A.S.E Consulting Service	Montgomery Village	MD
Pestana	Edith	Connecticut Department of Energy and Environmental Protection	Hartford	CT
Peurifoy	Cynthia	U.S. EPA Region 4	Atlanta	GA
Phoenix	Janet	Coalition for Environmentally Safe Communities	Herndon	VA
Porter	Andre N.	U.S. EPA	Washington	DC
Potter	James	U.S. Department of Housing and Urban Development	Washington	DC
Ranon	Liliana	League of United Latin American Citizens	Washington	DC
Reddoor	Charles	U.S. EPA	Washington	DC
Reed	Sharlene	U.S. Department of Transportation	Washington	DC
Reeves	Dawn	Inside EPA	Arlington	VA
Rehr	Rebecca	University of Maryland	College Park	MD
Reynolds	David	Inside EPA	Arlington	VA
Rice	Jocelyn	U.S. EPA	Washington	DC
Richardson	LaShonia	U.S. EPA	Arlington	VA
R'id	Amatullah	U.S. EPA	Washington	DC
Ridgway	John	Washington State Department of Ecology	Olympia	WA
Roberts	Michele	MEAN		
Robinson	Nia	SisterSong	Greensboro	NC
Robinson	Victoria	U.S. EPA	Washington	DC
Rodia	Monica	U.S. EPA	Washington	DC
Roemele	Julie	U.S. EPA	Washington	DC
Roepe	Wayne	U.S. EPA	Washington	DC
Rogers	Lisa M.	U.S. EPA	Washington	DC
Ross	Bennett	APEX Direct, Inc.	Bartlett	IL
Ross	Joi	APEX Direct, Inc.	Bartlett	IL
Roy	Denise	U.S. EPA	Washington	DC

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Last Name	First Name	Organization	City	State
Ruhl	Suzi	U.S. EPA	Washington	DC
Sanchez	Yolanda	U.S. EPA	Washington	DC
Sanders	Deidre	Pacific Gas & Electric	San Francisco	CA
Semple	Sally H.	ERG	Chantilly	VA
Shafaei	Fatemeh	Spelman College	Atlanta	GA
Shapiro	Michael	U.S. EPA	Washington	DC
Sheats	Nicky	Center for the Urban Environment	Trenton	NJ
Shepard	Peggy	WE ACT for Environmental Justice	New York	NY
Shirley	Jacqueline	Alaska Tribal Governments	Anchorage	AK
Shoemaker	Paul	Boston Public Health Commission	Boston	MA
Shuster	Elizabeth A.	Food & Water Watch	Washington	DC
Siciliano	Carol Ann	U.S. EPA	Washington	DC
Simms	Patrice L.	Howard University	Washington	DC
Sinha	Prasiddh	U.S. EPA	Washington	DC
Smith	Kenneth	City of Kingsland, Georgia	Kingsland	GA
Stanislaus	Mathy	U.S. EPA	Washington	DC
Starfield	Lawrence	U.S. EPA	Washington	DC
Stoner	Nancy	U.S. EPA	Washington	DC
Strand	Horace	Chester Environmental Partnership	Chester	PA
Sutton	Loretta Boldin	U.S. EPA	Washington	DC
Swain	Amber	The Solution Group	Lexington	KY
Talcott	Frederick W.	U.S. EPA	Washington	DC
TallBear	Jody	U.S. Department of Energy	Washington	DC
Targ	Nicholas	American Bar Association	San Francisco	CA
Tenner	Lee	U.S. EPA	Arlington	VA
Tennessee	Denise	U.S. EPA Region 4	Atlanta	GA
Torres	Javier Francisco	Border Environment Cooperation Commission	El Paso	TX
Totten	Arthur	U.S. EPA	Washington	DC
Tremain	Ryan	U.S. Department of Labor	Washington	DC
Varney	Trish	The Solution Group	Prestonsburg	KY
Vazquez Guemarez	Felix	U.S. Department of Energy	Washington	DC
Walker	Alice	U.S. EPA	Washington	DC
Walker	Teneille	U.S. EPA	Washington	DC
Ware	Pat	BNA	Arlington	VA
Washburn	Ed	U.S. EPA	Washington	DC
Washington	Phillip	U.S. Department of Agriculture	Riverdale	MD
Wasserman	Kimberly	Little Village Environmental Justice Organization	Chicago	IL
Weinstein	Lisa	Association of Clean Water Administrators	Washington	DC
Wells	Jasmine	U.S. EPA	Washington	DC
Wells	Kim	The Solution Group	Prestonsburg	KY
Wells	Sharon T.	U.S. EPA Region 1	Boston	MA
Wendt	Minh	U.S. Department of Health and Human Services	Rockville	MD
Wesley	Terry	U.S. EPA Region 2	New York	NY
White	Sherri	U.S. EPA	Washington	DC
White- Newsome	Jalonne	WE ACT for Environmental Justice	Washington	DC
Williams	James A.	Environmental Technology Council	Washington	DC
Wilson	Michaelle	U.S. EPA	Washington	DC
Wilson	Holly	U.S. EPA RTP	Research Triangle	NC

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Last Name	First Name	Organization	City	State
Wilson	Sacoby	University of Maryland	College Park	MD
Wilson	Wilbert	U.S. EPA	Washington	DC
Wood	Chauntelle	U.S. EPA	Washington	DC
Wooden-Aguilar	Helena	U.S. EPA	Washington	DC
Woodruff-Taylor	Sheritta	U.S. EPA	Washington	DC
Yao	Aaron	International Leadership Foundation	Washington	DC
Yeampierre	Elizabeth	UPROSE, Inc.	Brooklyn	NY
Yehle	Emily	Environment & Energy Publishing	Washington	DC
Yeung	Miriam	National Health Nail and Beauty Salon Alliance	Brooklyn	NY
Yost	Chip	National Association of Manufacturers	Washington	DC
Zambrana	José	U.S. EPA	Washington	DC
Zartarian	Valerie	U.S. EPA RTP	Research Triangle Park	NC

Teleconference Attendees

Last Name	First Name	Organization	City	State
Aird	Geri	Sierra Club Atlantic Chapter	Fayetteville	NY
Asbury	Loretta	ATSDR	Atlanta	GA
Avery	James W.	U.S. EPA	Washington	DC
Bahadori	Tina	U.S. EPA	Washington	DC
Barrino	Reginald S.	U.S. EPA Region 4	Atlanta	GA
Berner	Daniel	Beveridge & Diamond	Austin	TX
Binder	Jonathan	U.S. EPA	Washington	DC
Bittel	Elizabeth	University of Colorado at Boulder	Boulder	CO
Blachman	Susan	Environmental Finance Center, Dominican University of California	San Rafael	CA
Bohac	Bridget	Texas Commission on Environmental Quality	Austin	TX
Bohlen	Carolyn	U.S. EPA Region 5	Chicago	IL
Burns	Kathleen	ScienceCorps	Lexington	MA
Burton	Laureen	U.S. EPA	Washington	DC
Carpenter	Adam	American Water Works Association	Washington	DC
Catron	Jolene	Wind River Alliance	Fort Washakie	WY
Comerford	Sherri	U.S. EPA	Washington	DC
Comisky	Nicole	White House Office of Management and Budget	Washington	DC
Corazzin	Brendan	U.S. EPA Region 7	Kansas City	MO
Crawford	Chase	Southern Company	Birmingham	AL
Darney	Sally	U.S. EPA	Research Triangle Park	NC
Devose	Pauline	U.S. EPA	Philadelphia	PA
Dickens	Shantray	North Carolina Department of Transportation	Raleigh	NC
Edwards	Carol	Kamens Angels	Kansas City	MO
Erickson	Patricia M.	U.S. EPA	Cincinnati	OH
Euling	Susan	U.S. EPA	Washington	DC
Everitt	Sara	Chevron Corp	San Ramon	CA
Ewing	Jamie	Arkansas Department of Environmental Quality	North Little Rock	AR
Fekete	Gabrielle	U.S. EPA	Research Triangle Park	NC

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Last Name	First Name	Organization	City	State
Fields	Joy	Piedmont Triad Regional Council	Greensboro	NC
Forph	Klie	U.S. EPA	Washington	DC
Foster	Laurie	King County Public Health	Seattle	WA
Frazier	Tasha	U.S. EPA Region 2	New York	NY
Gage	Becky	Member of Citizens Against the Landfill in Hempstead (CALH)	Hempstead	TX
Gamble	Janet	U.S. EPA	Arlington	VA
Garza	Sarah	Port of Corpus Christi Authority	Corpus Christi	TX
Garza	Yolanda	California Department of Toxic Substances Control	Chatsworth	CA
Geller	Andrew	U.S. EPA	Research Triangle Park	NC
Geyer	Rebecca	U.S. EPA Region 5	Chicago	IL
Goldberg	Deborah	Earthjustice	New York	NY
Goodman	Iris	U.S. EPA	Washington	DC
Gordon	Laura	Member of the public		
Gwinn	Maureen	U.S. EPA	Washington	DC
Harper	Jewell A.	U.S. EPA Region 4	Atlanta	GA
Heger	Michelle	U.S. EPA Region 5	Chicago	IL
Herrmann	Jonathan G.	U.S. EPA	Cincinnati	OH
Huckstep	Ramona	Missouri Department of Natural Resources	Columbia	MS
Huddell	Bonnie	Native Village of Barrow	Barrow	AK
Isler	Vicki Jan	Montclair State University	Montclair	NJ
Jackson	Dan W.	U.S. EPA Region 8	Denver	CO
Jackson	Zelma M.	Washington State Department of Ecology	Richland	WA
Jacobs	Jon	U.S. EPA	Washington	DC
Jones	Katrina	U.S. EPA Region 5	Chicago	IL
Jordan	Troy	Chesapeake Energy	Oklahoma City	OK
Katz	Stacey	U.S. EPA	Washington	DC
Kelly	Kerry	Waste Management	Washington	DC
Kelly	Leah	Environmental Integrity Project	Washington	DC
Kirshenbaum	Lyn	U.S. Department of Housing and Urban Development	Philadelphia	PA
Klieforth	Barbara	U.S. EPA	Washington	DC
Kohn	Jeff	U.S. EPA	Washington	DC
Kremer	Fran	U.S. EPA	Cincinnati	OH
Levinson	Sarah	U.S. EPA Region 1	Boston	MA
Lewis	Heather	U.S. EPA	Washington	DC
Linthurst	Rick	U.S. EPA	Research Triangle Park	NC
Liv	Chanya	U.S. Department of Health and Human Services	Washington	DC
Lorscheider	Ellen	North Carolina Department of Environment & Natural Resources	Raleigh	NC
Luo	Honghong	Bellevue/NYU Occupational & Environmental Medicine Clinic	New York	NY
MacKenzie-Taylor	Deborah R.	Michigan Department of Environmental Quality	Lansing	MI
Marshall	Sunaree K.	U.S. Department of Housing and Urban Development	Washington	DC
Martin	Jerry D.	Kentucky Department of Environmental Protection	Frankfort	KY
Maynard	Ariel	The Solution Group, LLC	Prestonsburg	KY
McDonald	Michael E.	U.S. EPA	Research Triangle Park	NC

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Last Name	First Name	Organization	City	State
Millard	Margaret F.	U.S. EPA Region 5	Chicago	IL
Miller	Steven	U.S. Department of Energy	Washington	DC
Minor	Michael E.	U.S. EPA Region 7	Kansas City	KS
Moore	Michelle	New York State Department of Environmental Conversation	Long Island	NY
Moulton	Sean	OMB Watch	Washington	DC
Moyer	Denise	BP America Production Company	Houston	TX
Myers	Robert	U.S. EPA	Arlington	VA
Nguyen	Phuong	U.S. EPA Region 5	Chicago	IL
Nguyen	Tam	USDA Forest Service	Washington	DC
Norlien	Kathleen	Minnesota Department of Health	St. Paul	MN
Olivia	Raquel	Kaplan College	McAllen	TX
O'Malley	Mary	Member of the public	Washington	NJ
Oommen	Regi	Eastern Research Group, Inc.	Morrisville	NC
Page	Kenneth L.	Illinois EPA	Springfield	IL
Page	Angela	U.S. EPA	Arlington	VA
Pelej	Jennifer	Wisconsin Department of Natural Resources	Madison	WI
Pham	Lisa	U.S. EPA Region 6	Dallas	TX
Piras	Pat	Sierra Club	San Lorenzo	CA
Plagakis	Sofia	OMB Watch	Washington	DC
Quinones	Amanda	U.S. Department of Energy	Washington	DC
Quiveors	Lisa D.	U.S. Department of Homeland Security	Washington	DC
Rende	Leigh	U.S. Department of Justice	Washington	DC
Reyes	Deldi	U.S. EPA Region 9	San Francisco	CA
Robbins	Matt	U.S. EPA Region 4	Atlanta	GA
Robinson	Marvin	Quindaro Ruins/Underground Railroad-Exercise 2013	Kansas City	MO
Romero	Ruben	U.S. EPA	Chicago	IL
Ross	Heather	U.S. EPA Region 1	Boston	MA
Rountree	Tamara	U.S. Department of Justice	Washington	DC
Saperstein	Mark	BP	La Palma	CA
Savery	Daniel	Maryland Department of Labor	Baltimore	MD
Sayre	Phil	U.S. EPA	Washington	DC
Scott	Jessica	U.S. EPA	Washington	DC
Sharma	Swati	San Francisco Department of the Environment	San Francisco	CA
Sheppard	Deena	U.S. EPA Region 5	Chicago	IL
Skogstrom	Tiffany	Boston Public Health Commission	Boston	MA
Smith	Lorisa S.	Missouri Department of Natural Resources	Jefferson City	MO
St. John	Karen	BP America	Washington	DC
Stewart	Linda	Michigan Department of Community Health	Lansing	MI
Sullivan	Erin	U.S. EPA Region 3	Philadelphia	PA
Trice	Jessica	U.S. EPA	Washington	DC
Twitchell	Miriah	State of Alaska Division of Water	Juneau	AK
Vanaustein	Cathleen	U.S. EPA Region 3	Philadelphia	PA
Vandrunick	Suzanne	U.S. EPA	Washington	DC
Waghiyi	Vi	Alaska Community Action on Toxics	Anchorage	AK
Walleigh	Leslie	Maine CDC	Augusta	MA
Walsh	Dylan	Solutions Journal/Freelance	New Haven	CT
Watkins	Tim	U.S. EPA	Research Triangle Park	NC

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Last Name	First Name	Organization	City	State
Wiley	Julie D.	Sandag	San Diego	CA
Wilson	Erika	U.S. EPA	Washington	DC
Wilson	Michaelle	U.S. EPA	Washington	DC
Woods	Barry	Buzzards Bay Water	Buzzards Bay	MA
Woods	Courtney	LA Bucket Brigade / NC Environment Justice Network	Durham	NC
Yu	Anna	White House Council on Environmental Quality	Washington	DC
Zartarian	Valerie	U.S. EPA	Boston	MA

APPENDIX B

WRITTEN COMMENTS

**National Environmental Justice Advisory Council
July 2012 Public Meeting
Written Public Comment**

Name: Caleen Sisk

Title: Tribal Chief and Spiritual Leader

Organization: Winnemem Wintu Tribe

City, State: Redding, California

Brief description of concern:

As the leader of a tribe that is considered a disadvantaged community, we have had a great deal of interaction with environmental justice workers, and we are increasingly wary of them.

Though they might have good intentions or think because they have "justice" in their job title, they are doing good. Many of them lack the cultural competency, compassion and humility to appropriately work with disadvantaged communities.

We do not need saviors, but simply need help amplifying our voice and increasing our resources. Too often EJ workers, thinking they have all the answers, don't appropriately value our communities' experience and knowledge. They can end up doing more harm than good.

What the NEJAC should advise EPA to do:

I would like to speak about the need for justice workers to understand this our perspective that environmental justice workers need more cultural competency training and the understanding that tribes like mine have been environmental justice workers for a long time, long before it was ever a buzz word in mainstream circles.

**National Environmental Justice Advisory Council
July 2012 Public Meeting
Written Public Comment**

Name: Devawn Oberlender

Title: Spokesperson

Organization: Environmental Advocates of the NRV

City, State: Blacksburg, Virginia

Brief description of concern:

Lack of EPA oversight and enforcement of RCRA statues by the permitting agencies in the Commonwealth of Virginia who are responsible for Federal Facilities. Specifically, the Radford Army Ammunition Plant is operating under a State Title V permit that has been expired since 2009. Despite this, a Major Class 3 Permit Modification to the Open Burning Ground (OBG) was issued last November. This OBG is within a residential community that is a HUD recognized socio-economically challenged region of Appalachia.

**National Environmental Justice Advisory Council
July 2012 Public Meeting
Written Public Comment**

Name: Storm Cunningham

Title: Chief Executive Officer

Organization: ReCitizen, L3C

City, State: Washington, D.C.

Brief description of concern:

I would like to make the attendees aware of the convergence of three national trends: 1) restorative development, 2) citizen-led renewal, and 3) crowd technologies that enable citizens to initiate and fund local environmental cleanup and neighborhood revitalization initiatives without approval by the usual obstructive public or political institutions.

**National Environmental Justice Advisory Council
July 2012 Public Meeting
Written Public Comment**

Name: Marc Brenman

Organization: Social Justice Consultancy

City, State: Kensington, Maryland

What the NEJAC should advise EPA to do:

EPA should enforce Title VI of the Civil Rights Act of 1964, and should investigate complaints promptly, and make objective findings. When cases are settled, complainants should be involved in the negotiations. EPA should not permit "sacrifice zone" where cumulative environment insults are allowed. No permits should be granted or allowed to be granted by recipients of federal financial assistance by EPA that unduly burden people of color and low income people.

Advocates for Environmental Human Rights * CATA-The Farmworkers Support Committee
Center for Community Action and Environmental Justice * The Center on Race, Poverty & the
Environment * Central Valley Air Quality Coalition * The City Project * Earthjustice
Environmental Justice League of Rhode Island * Farmworker Justice
Global Community Monitor * Human Synergy Works * Los Jardines Institute (The Gardens
Institute) * National Black Law Students Association * Natural Resources Defense Council
New Mexico Environmental Law Center * Public Advocates Inc. * Sierra Club
Tri-Valley CAREs * West End Revitalization Association * Marc Brenman
Eileen Gauna * Ruth Wilson Gilmore * Gregg Macey * Vernice Miller-Travis

July 3, 2012

Lisa Jackson
Administrator
Attn: Plan EJ 2014
USEPA
Office of Environmental Justice
Mail Code 2201-A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson,

The undersigned organizations and individuals submit these comments on the draft of “Plan EJ 2014 Supplement: Advancing Environmental Justice Through Title VI,” to emphasize the importance of Title VI enforcement in communities across the country and to call on EPA to dedicate to this effort the resources and expertise needed now and over a sustained period of time to address discrimination on the basis of race, color, and national origin, and to advance environmental justice in an effective and meaningful way. For too long communities have waited for EPA’s Office of Civil Rights (“OCR”) to prevent and address racial and ethnic disparities in the distribution of environmental contaminants and health hazards, as well as the denial of environmental benefits. We appreciate EPA’s recognition that Title VI and nondiscrimination statutes are “important tools in the Agency’s efforts to address discrimination and advance environmental justice,”¹ and we are pleased to see a timetable for concrete action to overcome deficiencies in EPA’s Title VI enforcement program. At the same time, the Title VI Supplement is skeletal, leaving many of the details to be worked out at a later date. In this letter, we identify some of the key issues that must be resolved in a final Title VI Supplement.

1. Effective Title VI Enforcement Rests on the EPA’s Willingness to Establish Zero Tolerance of Discrimination and to Impose Meaningful Remedies.

¹ EPA, *Plan EJ 2014 Supplement: Advancing Environmental Justice Through Title VI Draft 1* (2012) (“*Title VI Supplement*”).

The Title VI Supplement emphasizes improved communication with recipients of federal funds, promotion of dialogue with the states, and the creation of incentives through performance agreements and performance partnership grants.² While it is important that EPA establish measures to assist recipients in understanding their Title VI obligations within the context of their regulatory programs and legal authorities, a focus on the preventative aspect of Title VI compliance, alone, is not enough.³ The history of EPA's failure to enforce Title VI has dramatically demonstrated that recipients will not fulfill their obligations under Title VI and use their legal authorities or expertise aggressively to eliminate, reduce or avoid racially disparate impacts. The economic and political pressures toward regulatory leniency are simply too great. EPA has been well aware of this dynamic, particularly in light of the candor of a high ranking state official, who noted in 2000, after EPA's last significant effort to implement Title VI, that EPA's Draft Title VI guidance was a "tiger without teeth" and that "he was not going to pay particular attention to it."⁴ Indeed, in the years following the issuance of draft guidance documents,⁵ Title VI enforcement was at a standstill. Cases that were not dismissed under procedural or jurisdictional grounds remained unresolved. It is time for the EPA to put the teeth back into the civil rights tiger, and use its authorities under this important civil rights law to remedy actions with unjustified disparate impacts. Until that happens, Title VI enforcement will continue to be illusory.⁶

A recent Title VI case illustrates how OCR is effectively failing to deter federal fund recipients from discriminatory practices, and bears out the observation that federal funds have never been revoked from recipients of funding from EPA based on a violation of Title VI of the Civil Rights Act of 1964. In that case, *Angelita C. v. California Department of Pesticide Regulations*,⁷ the first and only time that EPA has formally made a preliminary finding of

² *Id.* at 1-3.

³ The Title VI Supplement seems to focus almost exclusively on public recipients of federal funds. This document, and EPA's enforcement program, should make clear that all programs and activities receiving EPA funding must comply with Title VI, whether they be public or private.

⁴ See *Environmental Justice: Draft Revised Civil Rights Guidance Clarifies Definitions, Addresses State Issues*, 31 Env't Rep. 1331 (June 23, 2000) (quoting Russell Hardin, then Director of Michigan's Department of Environmental Quality).

⁵ Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance), 65 Fed. Reg. 39,650 (June 27, 2000) ("Draft Guidance Documents").

⁶ In a similar vein, we hope that EPA's commitment to Title VI enforcement will translate into an approach that is holistic rather than segmented. For example, the draft Title VI Supplement recognizes that OCR has pre-award and post-award compliance responsibility ("affirmative responsibility") as well as the authority to investigate and resolve complaints. See *Title VI Supplement*, *supra* note 1, at 4. OCR does not, however, address how the agency might use these authorities together—for example, if a complaint is filed with a jurisdictional defect that otherwise raises cognizable claims, OCR should use its affirmative authority to conduct a post-award compliance review. A commitment to Title VI enforcement should include a clear message that agency staff should exercise the full scope of their authority and responsibility to ensure that federal monies are not being used in a discriminatory manner.

⁷ *Angelita C. v. California Department of Pesticide Regulations*, Title VI Complaint No. 16R-99-R9 (Apr. 22, 2011), <http://www.epa.gov/ocr/TitleVIcases/title6-settlement-agreement-signed.pdf>.

discrimination, it took OCR more than ten years, from 1999 to 2011, to find that there was a *prima facie* violation of Title VI.⁸ We applaud EPA for finally making a preliminary finding. Despite the finding, however, the California Department of Pesticide Regulations (“DPR”) was not in jeopardy of losing funds provided by EPA for the application of the toxic pesticide methyl bromide on Latino schoolchildren and DPR was not held accountable for its actions. Although we understand that fund termination is a remedy generally preceded by other less drastic forms of corrective action, in the absence of real, meaningful enforcement mechanisms, OCR operates as a toothless vehicle for enforcing Title VI. Ultimately, in this case, as in other pending matters, OCR failed to remedy or prevent racially disparate pesticide exposures.

Though we are eager for EPA to develop a strong enforcement program that will ensure compliance with the nondiscrimination requirements of Title VI, we raise concerns about *Angelita C.* in more detail because OCR’s handling of the case continues to demonstrate to recipients of federal financial assistance that EPA is still not prepared to demand that recipients change their ways to assure compliance.

Complainants in *Angelita C.* alleged that the DPR discriminated against Latino school children by allowing unhealthy levels of methyl bromide, a highly toxic fumigant, to be applied near schools attended primarily by Latino students. Schools with predominantly white student populations, by contrast, were not subject to unhealthy methyl bromide exposures in California. This pattern and practice of allowing methyl bromide to be applied near schools, the complaint alleged, caused an adverse and disparate impact on Latino school children and their parents, which violated Title VI of the Civil Rights Act.

EPA agreed, and on April 11, 2011, issued a preliminary finding that the Complaint established a *prima facie* violation of Title VI.⁹ Despite the Preliminary Finding and without notifying the complainants, EPA then negotiated a settlement agreement with DPR that required extended monitoring of methyl bromide and other pesticide products at several monitoring stations in San Joaquin, Kern, Ventura, Santa Barbara, and Monterrey counties through 2013 and further ordered DPR to conduct outreach and communications on pesticide drift. Under the settlement agreement, there is no required cessation of racially disparate pesticides exposure. EPA did not ensure that discriminatory methyl bromide or other pesticide exposures would cease, nor did the agency mandate use reduction should monitoring disclose excessive ambient concentrations of a pesticide.¹⁰ The agreement merely required additional monitoring when

⁸ See *id.*

⁹ See EPA Office of Civil Rights, *Investigative Report for Title VI Administrative Complaint File No. 16R-99-R9 37* (Aug. 25, 2011), available at www.epa.gov/ocr/TitleVI/cases/ir-082511.pdf.

¹⁰ EPA justified the settlement agreement recently in a letter from Raphael DeLeon to Brent Newell, dated May 23, 2012 (attached as Exhibit 1). EPA believed that the settlement was appropriate given the complaint’s focus on methyl bromide, regulations adopted by DPR to limit fumigant usage in certain California air basins, and the belief that the Montreal Protocol had reduced Methyl Bromide Usage. Letter from Raphael DeLeon, Dir., EPA, to Brent Newell (May 23, 2012) (on file with author). EPA failed to recognize that, as a matter of federal law under the Clean Air Act, the fumigant cap will only apply in Ventura County, that several other fumigant products are replacing methyl bromide, and that the most recent pesticide emissions inventory (2010) demonstrated increased

discrimination occurred rather than prohibiting the conduct. The significance goes beyond this individual case: the threat of EPA enforcement will not be taken seriously by funding recipients if EPA's compliance assurance efforts do not eliminate the adverse and disparate impact on the basis of race and ethnicity. If other Title VI complaints demonstrate merit, as *Angelita C.* did, and EPA does not demand compliance with Title VI, then recipients of federal funding will ignore Title VI to the detriment of affected communities nationwide.

2. EPA's Title VI Program Must Be Consistent with the U.S. Government's Legal Obligations under Executive Order 12250, Executive Order 12898, and the Convention on the Elimination of all Forms of Racial Discrimination, a Human Rights Law.

Other provisions of law reinforce EPA's duties under Title VI.¹¹ For example, pursuant to Executive Order 12250, "Leadership and Coordination of Nondiscrimination Laws,"¹² Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations" ("EJ Executive Order"),¹³ as well as obligations under the International Convention on the Elimination of All Forms of Racial Discrimination ("CERD"), a human rights law, EPA is required to issue appropriate directives, implement Title VI and other applicable civil rights laws, and afford "effective protection and remedies" for actions with the "purpose or effect" of negatively impacting members of particular racial and ethnic groups.¹⁴

The United States ratified CERD in 1994, incorporating its provisions into the American system of law pursuant to Article 6 of the U.S. Constitution.¹⁵ As the U.S. Government explained in 2000, compliance with CERD is fully consistent with domestic civil rights laws, including Title VI of the Civil Rights Act of 1964, which is part of "the most important civil rights legislation in U.S. law...."¹⁶ Furthermore, the U.S. Government has noted that the EJ

emissions in California, and, for Ventura County and its fumigated strawberry fields, the highest emissions levels since 1990.

¹¹ Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d (2012).

¹² Exec. Order No. 12,250, 45 Fed. Reg. 72,995 (Nov. 4, 1980).

¹³ Exec. Order No. 12,898, 59 Fed. Reg. 7629 (Feb. 11, 1994).

¹⁴ See International Convention on the Elimination of All Forms of Racial Discrimination, Dec. 21, 1965, 660 U.N.T.S. 195, 212; see also International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

¹⁵ U.S. Const. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). The United Nations adopted CERD in 1965. The United States joined as a signatory to CERD in 1966 and ratified CERD in 1994. See Reports Submitted by States Parties Under Article 9 of the Convention, CERD/D/351/Add.1, ¶ 3 (Oct. 2000) available at <http://www.state.gov/documents/organization/100306.pdf>.

¹⁶ *Id.* at ¶ 88.

Executive Order and the application of Title VI to achieve environmental justice are critical to fulfill the non-discrimination mandate of Article 5 of CERD, which prohibits racial discrimination and guarantees the enjoyment of the right to public health without distinction as to race, color, national or ethnic origin.¹⁷

We urge EPA to recognize that the development of an effective Title VI program is the legal foundation for the implementation of environmental justice policies and furthers the ability of the United States to protect human rights in compliance with CERD.

3. The Title VI Supplement Should Explicitly Address How EPA's Enforcement Program will Incorporate and Promote the Objectives of Environmental Justice.

EPA continues to express its commitment to environmental justice in the Title VI Supplement. However, the goals and strategies outlined in the Title VI Supplement raise serious questions about how EPA will resolve longstanding concerns about the implementation of its own Title VI regulations, let alone broader challenges that Plan EJ 2014 seeks to address. Despite the issuance of the EJ Executive Order that was signed by President Clinton nearly twenty years ago,¹⁸ environmental justice communities remain vulnerable due to the policies and decisions of a variety of parties, including the recipients of federal funds. Critics recognize that EPA does not adequately exercise its authority to shield environmental justice communities from disparate impacts.¹⁹ EPA's planning process, including Plan EJ 2014 and EPA's Strategic Plan for 2011 to 2015, will only succeed if it carefully examines the root causes of its inadequate response.

One such cause is the failure of EPA to incorporate principles of environmental justice into all of its programs, policies, and activities.²⁰ Recently, EPA established three broad goals to inform its efforts to reach a level of integration first envisioned in the EJ Executive Order: (1) protect health and environment in "overburdened communities;" (2) "[e]mpower communities to take action to improve their health and environment;" and (3) "[e]stablish partnerships with

¹⁷ *Id.* at ¶¶ 389-95. See also International Convention on the Elimination of Racial Discrimination, *supra* note 14, at art. 5(e)(iv), available at <http://www2.ohchr.org/english/law/cerd.htm>.

¹⁸ Exec. Order No. 12,898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 Fed. Reg. 7629 (Feb. 11, 1994).

¹⁹ See, e.g., Nat'l Acad. of Pub. Admin., *Environmental Justice in EPA Permitting: Reducing Pollution in High Risk Communities is Integral to the Agency's Mission* 2 (2001); U.S. Comm'n on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice* 167 (2003); Bradford C. Mank, *Executive Order 12,898*, in *The Law of Environmental Justice: Theories and Procedures to Address Disproportionate Risks* 101, 103 (2d ed. 2008). Denis Binder et al., *A Survey of Federal Agency Responses to President Clinton's Executive Order 12,898 on Environmental Justice*, 31 *Envtl. L. Rep.* 11,133, 11,141 (2001); See also Bayview Hunters Point Cmty. Advocates, The Chinese Progressive Ass'n, People Org. to Demand Envtl. & Econ. Rights & Our Children's Earth Found., *Letter to U.S. E.P.A.*, (July 15, 2005).

²⁰ See EPA, *Plan EJ 2014* 4 (2011), available at <http://www.epa.gov/compliance/ej/resources/policy/plan-ej-2014/plan-ej-2011-09.pdf> ("Plan EJ 2014").

local, state, tribal, and federal governments and organizations to achieve healthy and sustainable communities.”²¹ EPA further recognizes that environmental justice is not just an environmental and public health issue, but a civil rights imperative as well.²² While we agree with these goals, our concerns about the Title VI Supplement are in part due to the document’s failure to establish concrete mechanisms to promote these basic objectives.

EPA historically promoted a limited number of initiatives to ensure that communities are protected from disparate impacts, such as the Agency’s Small Grants Program and a Federal Interagency Working Group on Environmental Justice. Plan EJ 2014 tries to make broad improvements to these efforts. For example, the plan appears more focused on community “empowerment” than previous efforts, and it expands the concept of “fair treatment” to include not only the distribution of burdens but also “the distribution of the positive environmental and health consequences from [EPA] activities.”²³ The Title VI Supplement briefly mentions ways in which a focus on benefits and burdens might be addressed, such as re-evaluating Title VI regulations and reviewing programmatic standard operating procedures. Yet the Title VI Supplement fails to explain how a more inclusive view of disparate impact would guide EPA’s complaint processing or compliance assurance efforts. More broadly, it is troubling that EPA continues to stress that it has “considerable latitude” in determining disparate impact without providing needed specificity about basic methodology or defining the standard itself.²⁴ This is disappointing, particularly in light of the significant advances that have been made in empirical environmental justice research. Moreover, vague promises to reconsider Title VI implementing regulations without elaboration only perpetuates the concern that EPA will opt to enhance its flexibility at the expense of a prompt processing timeframe and clearer standards for how burdens and benefits should be distributed by recipients of federal funds.

With regard to Plan EJ 2014’s goal of community empowerment, the Title VI Supplement only mentions, in a general way, the value of community participation in the pursuit of environmental justice. Evidence of this focus on participation can be found in the recommendations of EPA’s Civil Rights Executive Committee in January 2012.²⁵ We agree on the importance of this principle, but methods of implementation remain fairly abstract within the document. Change in EPA’s policy and practice will require concrete steps, which should be prioritized in the Title VI Supplement. EPA’s current policy and practice leaves out impacted

²¹ *Id.* at i.

²² *See id.*

²³ *Id.* at 3.

²⁴ Civil Rights Exec. Comm., EPA, *Developing a Model Civil Rights Program for the Environmental Protection Agency: Final Report* 12 (Apr. 13, 2012), available at http://www.epa.gov/epahome/pdf/executive_committee_final_report.pdf. For additional comments on EPA’s Draft “Recommendations for Developing a Model Civil Rights Program,” see The City Project, Letter to Lisa Jackson (February 17, 2012), attached as Exhibit 2.

²⁵ *Id.* at 15 (“In some cases, better communication, community engagement, and technical assistance may mitigate or resolve community concerns.”).

communities from participation in Title VI complaint processing.²⁶ Complainants are the people most affected by discriminatory impacts, and their continual absence from participation in the investigation and resolution of Title VI complaints only ensures that important aspects of the investigation and remedial action will be minimized or missed altogether. If the EPA is to take seriously the goal of community empowerment, as well as the recommendation of EPA's Civil Rights Executive Committee, the Agency should place environmental justice communities on equal footing with other stakeholders in Title VI implementation. In contrast, the Title VI Supplement is heavily weighted in favor of assisting and involving recipients of federal funds, in order to "improve efficiencies in Title VI compliance."²⁷ Language in favor of pre- and post-award compliance assurance for fund recipients, technical assistance to recipients, and efficiencies in compliance is not matched by even a broad sketch of how communities might play a productive role, pursue meaningful data collections and effective remedies, or engage in other activities throughout the complaint process. The only exception to this in the Supplement is a brief discussion regarding limited English proficiency.

The Title VI Supplement furthers EPA's cross-agency focus, which may be a positive step. However, the document does not explain how communities, were they to be meaningfully included, would navigate an increasingly Byzantine multi-agency process. For example, EPA suggests that there should be efforts to mobilize resources "across EPA," partner with other federal agencies, and share responsibility among offices (including OCR) and EPA regions.²⁸ But little is said in the Supplement about how complainants will interact with the recently proposed Case Management Protocol, which would be set by internal agency order.²⁹ EPA is prioritizing work with other federal agencies "to strengthen the use of Title VI," but fails to identify activities or tasks to improve coordination of referrals and follow up.³⁰ In addition, the Title VI Supplement and work of EPA's Civil Rights Committee to limit the Office of Civil Rights' involvement in case processing threaten to further marginalize communities who seek meaningful involvement at each stage of an administrative complaint. Without concrete, practical ways to remove participatory barriers, EPA cannot achieve its overarching goal of establishing effective partnerships that prevent discrimination, not only between EPA and recipients of federal funds, but across a range of stakeholders.³¹

EPA's relative lack of attention to community concerns and the limited role of complainants, its insistence that it has substantial "latitude" in investigating and making determinations about disparate impact (without more elaboration), and its desire to promote an

²⁶ While the Draft Investigator Guidance notes that the EPA "may" involve complainants in complaint processing, 65 Fed. Reg. at 39,671, it is the experience of many of the signatories that the communities with which they work have not been afforded the opportunity to be involved.

²⁷ *Title VI Supplement*, *supra* note 1, at 1.

²⁸ *Id.* at 4; *Plan EJ 2014*, *supra* note 20, at 10-11, 14.

²⁹ *Plan EJ 2014*, *supra* note 20, at 13.

³⁰ *Id.* at 8, 20.

³¹ *Id.* at i.

informal, alternative dispute resolution-driven process that omits community participation fails to provide assurance that meaningful Title VI reform is underway.³² Unfortunately, EPA does not explain how it intends to use citizen-generated and recipient-generated data, how it will reconcile potential inconsistencies with its own data and other evidence of disparate impact, or how its decisions will result in the achievement of non-discrimination standards through appropriate enforcement mechanisms.

4. A Robust Title VI Compliance Program Requires that EPA Finalize Guidelines to Ensure Clarity, Transparency, and Standardization, and that Those Guidelines Comport with Civil Rights Law.

The Title VI Supplement sets the goal of establishing “a robust Title VI pre-award and post-award compliance program,”³³ but fails to commit to finalizing draft Title VI guidance documents.³⁴ More than a decade ago, EPA published the Draft Guidance Documents. Indeed, many of the signatories to this letter submitted extensive comments on the Draft Guidance Documents.³⁵ EPA has neither responded to those comments nor, after twelve years, finalized guidance documents. Continued reliance on the Draft Guidance Documents raises a host of substantive and procedural questions, not the least of which is a lack of clarity and transparency about the non-discrimination standards to be applied by OCR. As an element of the Title VI Supplement, EPA should commit to finalizing revised guidance documents, both to clarify and standardize EPA’s practices and, also, to bring EPA’s policies and practices into line with the standards utilized by the Department of Justice and other agencies and to resolve the flawed provisions in the Draft Guidance Documents. While an exhaustive analysis of the Draft Guidance Documents is outside the scope of these comments, this section contains a few illustrative examples of their deficiencies.

Historically, EPA has tended to interpret its Title VI responsibilities and authorities through the lens of traditional environmental regulation—relying on a presumption that protection for communities is adequate if recipients are in compliance with environmental statutes. Simply put, this approach is inconsistent with civil rights law and has failed to eliminate the adverse or disparate impacts to environmental justice communities that EPA’s Title VI regulations seek to forbid. We strongly urge EPA to move away from reliance on the traditional environmental regulatory approach to discrimination issues and to apply the congressionally mandated civil rights framework. A revision of the Draft Guidance Documents

³² *Id.* at 12.

³³ *Title VI Supplement*, *supra* note 1, at 3, 5.

³⁴ *See id.* at 5 (Activities 1.1 – 1.5).

³⁵ *See generally* Ctr. on Race, Poverty, & the Env’t, Cal. Rural Legal Assistance Found., *Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (August 26, 2000), available at http://www.epa.gov/ocr/docs/t6com2000/t6com2000_071.pdf; *see also* Eileen Gauna, *EPA at 30, Fairness in Environmental Protection*, 31 *Env’t. L. Rev.* 10528 (2001) (analyzing the Investigatory Guidance).

should make clear that technical compliance with environmental laws and regulations is not the measure of whether programs or activities have an “adverse impact” within the meaning of civil rights law. While the framework for assessing whether a recipient is in violation of the discriminatory effects standard in EPA’s Title VI implementing regulations includes a determination of whether the impact of a recipient’s programs or activities is both “adverse” and borne disproportionately by a group of persons based on race, color, or national origin, the regulations are silent as to how “adverse impact” is to be assessed. Compliance with environmental laws and standards should not be the ruler for civil rights compliance. Title VI is a civil rights statute, and it is independent of environmental laws and standards. Before the Supreme Court ruling in *Alexander v. Sandoval*,³⁶ when cases of disparate impact were adjudicated in court, the threshold for establishing impact was much lower than EPA’s current standards suggest. With rare exception, the crux of the inquiry focused on whether or not the impact was felt disproportionately on the basis of race or national origin, not the magnitude of the impact itself.³⁷ In one of the few cases to question whether plaintiffs had established the impact prong of the *prima facie* case, *U.S. v. Bexar County Hosp.*,³⁸ the court was concerned about whether traveling for what the court presumed would be superior health care constituted cognizable harm, not whether the level of impact met a technical standard imposed by the U.S. Department of Health & Human Services or another statute.

In particular, final Title VI guidance documents should remove any confusion caused by the *Select Steel* decision.³⁹ Compliance by recipients with standards adopted pursuant to the Clean Water Act, Clean Air Act, or other environmental laws does not mean that persons are not adversely affected by the recipients’ programs or activities. Environmental statutes, regulations, and standards are the outcome of political and administrative processes, which take into account an array of competing interests and criteria. As was the case with *Select Steel*, these standards may involve averaging emissions over large geographical areas that, if viewed in isolation, can hide disparities. They are, again, not the benchmark for a determination of “impact.” Among other things, environmental standards do not fully capture harms to public health and the environment. These standards change over time, for instance, precisely because they are found to be insufficiently protective.⁴⁰ We note, also, that the Draft Guidance Documents already

³⁶ *Alexander v. Sandoval*, 532 U.S. 275, 275 (2001) (holding that “[t]here is no private right of action to enforce disparate-impact regulations promulgated under Title VI”).

³⁷ See Jenkins, *Title VI of the Civil Rights Act of 1964: Racial Discrimination in Federally Funded Programs*, in *Civil Rights Litigation and Attorney Fees Annual Handbook* 186 (1994).

³⁸ *U.S. v. Bexar County Hosp.*, 484 F. Supp. 855, 859-60 (W.D. Tex. 1980).

³⁹ EPA, Office of Civil Rights, *Investigative Report for Title VI Administrative Complaint File No. 5R-98-R5* (1998) (“*Select Steel*”).

⁴⁰ Primary National Ambient Air Quality Standards for Nitrogen Dioxide, 75 Fed. Reg. 6,474, 6,480 (Feb. 9, 2010) (discussing new evidence regarding the relationship between NO₂ exposure and health effects). Along these lines, we note the decision of the Environmental Appeals Board (EAB) in which the EAB concluded that EPA erred when it relied solely on compliance with the then-existing annual National Ambient Air Quality Standard (“NAAQS”) for nitrogen dioxide (NO₂) as sufficient to find that the Alaska Native population would not experience “adverse human health or environmental effects from the permitted activity.” Though this decision arose in the context of the EJ Executive Order, and also turned on the fact that the NO₂ air quality standard was under revision, it is clear that

contain some language clarifying that “[c]ompliance with environmental laws does not constitute per se compliance with Title VI.”⁴¹ We agree. But although the provisions in the Draft Guidance Documents suggest that compliance with environmental laws may not be *per se* compliance with Title VI, nonetheless as a practical matter environmental regulatory standards largely determine Title VI compliance because of the presumption of compliance that EPA imposes if environmental standards are not exceeded.⁴² Other sections of the Draft Guidance Documents currently reinforce the erroneous notion that environmental standards will be used to determine whether a program or activity has an “impact.” This is in error. While noncompliance with an environmental or health standard may be relevant to a finding of adverse impact in some contexts, compliance with a federal, state, or local environmental standard does not negate otherwise valid evidence of harm or disparity under civil rights law.

Revisions of the Draft Guidance Document must also correct other errors. To consider just one of many, for example, the guidance should make clear that adverse impacts may involve harms to health, damage to the environment, reduction in property values, harm to cultural values (including, for example, harm to cultural or sacred sites), or social harms (including, for example, segregatory effects), among others, and are not limited to measurable health effects recognized by environmental regulations. Title VI prohibits recipients from excluding, denying the benefits of a program or activity, or subjecting people to discrimination on the basis of race, color, or ethnicity. This language contemplates the full range of potential impacts—for example, permitting that would have a segregatory effect is a cognizable form of injury.⁴³ In addition,

current compliance with an environmental standard is not determinative of whether an action or policy has an adverse impact. Though EAB rulings have not uniformly required the Agency to take into account newer data regarding the sufficiency of environmental standards to protect public health when issuing permits. *see, e.g., In Re Shell Offshore, Inc., OCS Permit No. R10OCS030000*, at 82-83 (March 30, 2012) (Order Denying Petitions for Review), available at [http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Decision-Date/148252B4723F0450852579D100714934/\\$File/Shell%20Kulluk.pdf](http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Decision-Date/148252B4723F0450852579D100714934/$File/Shell%20Kulluk.pdf), there is no doubt that standards in force to implement environmental laws at any given time do not and cannot capture all impact of a challenged activity.

⁴¹ 65 Fed. Reg. at 39,680.

⁴² *Id.* (“[W]here the area in question is attaining that [NAAQS] standard, the air quality in the surrounding community will generally be considered presumptively protective and emissions of that pollutant should not be viewed as ‘adverse’ within the meaning of Title VI.”).

⁴³ The Draft Guidance Documents contain language that may be interpreted as limiting analysis of effects to a subset of impacts. *See, e.g.,* 65 Fed. Reg. at 39,660 (In a section entitled “Relevant Data,” the draft Guidance lays out an “order of preference” of relevant data to be used to conduct the analysis of adverse impact. The list starts with “[a]mbient monitoring data” and “[m]odeled ambient concentrations.” Notably, the list does not specifically identify outcome data—for example, high asthma or cancer rates. The list itself and the prioritization of items on the list reinforce an impression that a finding of adverse impact is contingent on environmental laws and standards and, also, that non-environmental harms will be ignored.); 65 Fed. Reg. at 39,661 (“Generally, the risk or measure of impact should first be evaluated and compared to *benchmarks* provided under relevant environmental statutes, regulations or policies.”) (emphasis added); 65 Fed. Reg. at 39,680 (examples of adverse impact benchmarks); 65 Fed. Reg. at 39,680 (“[W]here the area in question is attaining that [NAAQS] standard, the air quality in the surrounding community will generally be considered presumptively protective and emissions of that pollutant should not be viewed as ‘adverse’ within the meaning of Title VI.”). These provisions and any similar language in the Draft Guidance Documents should be revised to make clear that while violations of environmental standards are evidence of harm, compliance does not negate other indicia or evidence of impact.

investigating adverse impacts should not be constrained by gaps in scientific knowledge about exposure, exposure pathways and health effects, or more broadly, the expertise of EPA or the recipients. As stated above, evidence of any adverse impact is relevant to a finding of discrimination.⁴⁴ Moreover, the standard for measuring impact is “adversity,” not “significant” adverse impact, as the Draft Guidance Documents would suggest. A narrow interpretation of the term “significant” can set the bar so high that it would effectively gut Title VI enforcement. Reliance on regulatory significance levels can also ignore the contributing effects of cumulative impact and synergistic risks, among other things. Instead, EPA should recognize that adverse impact above *de minimis* levels can constitute a violation.⁴⁵

In addition to modifying provisions regarding the process for engaging complainants to incorporate principles of environmental justice,⁴⁶ EPA should also clarify how the “cost and technical feasibility” of less discriminatory alternatives will be assessed.⁴⁷ As the Draft Guidance Document is currently written, consideration of cost and technical feasibility could obliterate the obligation not to discriminate.

5. Any Re-Evaluation of EPA’s Title VI Regulations Should Strengthen, Not Weaken EPA’s Title VI Enforcement Program.

The Title VI Supplement indicates that in consultation with the U.S. Department of Justice, EPA will re-evaluate its Title VI regulations and make any necessary changes.⁴⁸ To address environmental justice issues effectively in its Title VI enforcement program, EPA must re-shape its regulatory approach under Title VI in both form and substance. To that end, we support a thoughtful re-evaluation of EPA’s Title VI regulations, but believe the re-evaluation

⁴⁴ The Draft Guidance Documents err when limiting cognizable harms to those within EPA’s or a recipient’s expertise or “authority.” *See, e.g.*, 65 Fed. Reg. at 39,670 (“[I]n determining whether a recipient is in violation of Title VI or EPA’s implementing regulations, the Agency expects to account for the adverse disparate impacts . . . within the recipient’s authority.”).

⁴⁵ The guidance should not raise the ante by requiring that the adverse impact be “significantly adverse.” *See, e.g.*, 65 Fed. Reg. at 39,680 (“OCR intends to use all relevant information to determine whether the predicted impact is significantly adverse under Title VI.”); 65 Fed. Reg. at 39,680 (“Where the risks or other measure[sic] of potential impact meet or exceed a significance level, they generally would be recognized as adverse . . .”); 65 Fed. Reg. at 39,660 (“Adverse disparate impact decision: Determine whether the disparity is significant.”); 65 Fed. Reg. at 39,661 (“Resources for Assessing Significance of Impact: Assessing the significance of a risk . . .”); 65 Fed. Reg. at 39,661 (“[Y]ou may consider whether any scientific or technical information indicates that those impacts should be recognized as significantly adverse . . .”); 65 Fed. Reg. at 39,665, 39,684 (definition of term “adverse impact:” “A negative impact that is determined by EPA to be significant based on comparisons with benchmarks of significance . . .”).

⁴⁶ *See, e.g.*, 65 Fed. Reg. at 39,671 (suggesting that OCR “may” involve complainants in the informal resolution process, leaving this important step to OCR’s discretion).

⁴⁷ *See* 65 Fed. Reg. at 39,683 (“OCR will likely consider cost and technical feasibility in its assessment of the practicability of potential alternatives.”).

⁴⁸ *Title VI Supplement, supra* note 1, at 7 (Strategy 1, Activity 1.4).

should only be used as an opportunity to clarify and strengthen the regulations, rather than to weaken them.

Most significantly, revisions should not be used as an opportunity to modify timelines for agency action.⁴⁹ Only six percent of the 247 Title VI complaints have been addressed within the OCR's twenty-day time limit.⁵⁰ This backlog of cases, stretching back to 2001, represents decades of delay. As the Deloitte Report clearly showed, OCR's failure to comply with the timelines reflects poor performance on the part of the agency rather than a problem with the regulatory timeline.⁵¹

At the same time, reconsideration of the Title VI regulations provides an opportunity to include formal rights for complainants to participate meaningfully in the administrative process and informal resolution, with provisions to address issues of confidentiality. Such revisions are essential for bringing processes for complaint investigation into line with environmental justice principles. The OCR complaint investigation process has excluded complainants, the community stakeholders, from the decision-making process. As discussed above, this practice is in direct contradiction of the primary strategy underlying the Plan EJ 2014 to "[e]mpower communities to take action to improve their health and environment."⁵² To address these issues, communication and consultation should, for example, be required at the stage of informal resolution.⁵³ Revised regulations should also make clear that if the Administrator reviews a determination of the Administrative Law Judge, complainants should also be notified and given reasonable opportunity to file written statements and present their evidence and arguments to the Administrative Law Judge.⁵⁴

6. The Re-Evaluation of the Regulations and Interpretive Guidelines Should be Transparent and Engage Stakeholders.

⁴⁹ See 40 C.F.R. § 7.120 (2012) (OCR to notify complainant and recipient of receipt of the complaint within 5 days and complete the jurisdictional review within 20 days from the acknowledgement of the complaint); 40 C.F.R. § 7.115(c) (OCR to complete investigation and issue preliminary findings within 180 days of the start of a compliance review or complaint investigation).

⁵⁰ Deloitte Consulting LLP, *Evaluation of the EPA Office of Civil Rights 2* (2011). As of April 2012, eleven complaints were still in the "Jurisdictional Review" period, long past OCR's twenty-day time limit. EPA, Office of Civil Rights, *Title VI Complaints Listing*, http://www.epa.gov/ocr/docs/extcom/2012_04_title_vi_open-complaints.pdf (last updated Apr. 2012).

⁵¹ Deloitte Consulting LLP, *supra* note 50, at 2.

⁵² *Plan EJ 2014*, *supra* note 20, at i.

⁵³ See 40 C.F.R. 7.120(d)(2), and if OCR is making a finding, 42 C.F.R. 7.130(b)(1).

⁵⁴ See 40 C.F.R. 7.130(b)(3)(ii).

From a process standpoint, we urge EPA to be transparent and engage relevant stakeholders in the process of re-evaluating and revising the agency's Title VI regulations and interpretive guidelines.

We appreciate the effort with which EPA has responded to the Deloitte Consulting's Evaluation of the EPA Office of Civil Rights and how the Agency has proactively pushed forward EJ Plan 2014. Yet we remain concerned about the lack of transparency and involvement of the environmental justice community in the actual reform measures and potential regulatory amendments. We very much appreciate the willingness of the Administrator and senior EPA staff to meet with environmental justice leaders and advocates to hear our concerns and recommendations regarding EPA's enforcement of Title VI, but providing this opportunity to express our concerns has not yet led to involvement in the agency's actual reform efforts. The Title VI Supplement, as described above, only vaguely describes EPA's goals and activities regarding Title VI. As such, it is difficult to comment on the proposed activities when the Supplement describes them in such a vague, conclusory manner. For example, EPA only states that it will include stakeholder input in Activities 1.2 (post-award monitoring) and 1.4 (amending Title VI regulations) and proposes to include stakeholders' involvement "as necessary." Based on the Title VI Supplement, we remain concerned that there will be no further opportunity to participate in the majority of EPA's Title VI reform efforts, and that EPA will preclude the environmental justice community from the opportunity to participate in EPA's efforts to amend 40 C.F.R. part 7 until after EPA publishes proposed changes in the Federal Register. By that point, the Agency is likely to be committed to the course of action reflected in its proposal, and subsequent input from the environmental justice community is not likely to have much effect. Conversely, through proactive involvement of the environmental justice community, EPA will establish trust in, and earn respect for, EPA's efforts to ensure meaningful enforcement and implementation of the Civil Rights Act.

A robust Title VI enforcement program will require sustained attention and resources at what we understand to be a difficult time for EPA. Nonetheless, it is imperative that EPA demonstrate leadership by taking long overdue steps to make sure that federal dollars are not subsidizing discriminatory actions and that Title VI of the Civil Rights Act serves to prevent and address discrimination on the basis of race, color, and national origin. EPA must be clear with its recipients that they must comply with Title VI and other non-discrimination laws, and the enforcement program must reinforce this message with meaningful processes and remedies that prevent and remedy discriminatory actions. All of us, including EPA, must clearly state that we will no longer tolerate environmental "sacrifice zones," or areas where cumulative environmental insults have greatly degraded the quality of life in a defined area, disproportionately and adversely affecting people of color and low-income people. This is a bottom line, and all recipients—and OCR staff—must understand that actions with an unjustified discriminatory impact, such as adding yet another polluting source to an already overburdened community, are unacceptable and against the law.

Thank you for this opportunity to comment on the Title VI Supplement to Plan EJ 2014. Again, we appreciate your recognition of the importance of Title VI enforcement.

Sincerely,



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July 17, 2012

Lisa Jackson
Administrator
Attn: Plan EJ 2014
USEPA
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Washington, DC 20460

Dear Administrator Jackson,

In March 2010, the US District Court of Washington entered a Stipulated Judgment in favor of the Rosemere Neighborhood Association, concluding a seven year stretch of administrative Title VI complaints and litigation in *Rosemere v. EPA*.

In February 2003, Rosemere first filed a Title VI administrative complaint with EPA's Office of Civil Rights ("OCR") alleging that the City of Vancouver, WA had discriminated in the provision of municipal services in violation of the Civil Rights Act of 1964. Rosemere alleged that Vancouver failed to use EPA funds to address fairly long-standing problems in low-income and minority neighborhoods in West Vancouver.

Soon after, the City of Vancouver began an investigation into the internal operations of Rosemere and then revoked Rosemere's status as a "recognized" neighborhood association. The city also stripped the neighborhood of its historical name, actions later deemed "suspicious" by EPA in an investigative report. Rosemere filed a second Title VI complaint with the EPA in December 2003 alleging retaliation by the City of Vancouver. Rosemere filed suit against EPA on two separate occasions citing EPA's failure to accept, investigate, and issue findings on Rosemere's complaints. Each time, EPA responded to Rosemere only after the litigation was filed and EPA sought to dismiss the cases as "moot."

In September 2009, the Ninth Circuit reversed the District Court's ruling to dismiss Rosemere, citing EPA's "consistent pattern of delay." The appellate court substantiated the claim that Rosemere is in "realistic danger of sustaining a direct injury as a result of the agency's [EPA's] disregard of its own regulations" by failing to investigate Title VI complaints. In the subsequent settlement agreement for that case, EPA's Office of Civil Rights admitted that its actions were unlawful when it failed to process Rosemere's complaint of retaliation against the City of Vancouver in accordance with the law. During the lawsuits, discovery showed that EPA investigators were either biased against Rosemere or did not follow investigative protocols to produce an informed ruling. In our experience, this lack of integrity in the investigative process only exacerbated the impacts brought to light in the Title VI complaints.

Despite Rosemere's lawsuit and the subsequent national debate of the failures of the OCR, and despite your continued promises for EPA to increase efficiency in that office to make Environmental Justice a national priority, the OCR continues to fail in its intake and investigation guidelines in regard to Title VI complaints. To date, the EPA has ignored Rosemere's various requests to meet with you and to voice our concerns and share

our experiences in order to offer suggestions to improve OCR's operations. And to date, only one case has ever attained a ruling of discrimination in support of Title VI claims [Angelita C. v. California Department of Pesticide Regulations] and it took more than ten years to achieve that result. Most cases are dismissed outright, claiming jurisdictional issues or other bureaucratic problems. Many groups across the country wonder why the OCR functions under such a dismal record, and this points succinctly to how OCR is disconnected from the disparate impacts that can be suffered by Environmental Justice populations nationwide.

Environmental Justice Enforcement is a very important tool that should be used to address discrimination that can cause adverse health impacts and environmental harm to neighborhoods where low income and minorities live and work. Whereas we appreciate the Title VI Supplement's attempt to begin to fine tune the various agency failures, we feel that the timelines are vague and deficient and that they need to be more detailed to ensure future compliance success. We offer the general comment that EPA's enforcement model under the supplement attempts only gentle compliance -- collaboration, and conciliation rather than the promise of clearly defined relief. For example, in the Angelita case, the state of California did not experience the withholding of federal funds as required under Title VI guidelines when a real first-time case discrimination was established. We acknowledge that the state of California is currently experiencing a serious budgetary crisis, and that a freeze of federal funds as mandated under Title VI could be very serious, but without consistent penalties for discriminatory behavior there can be no success in altering the on-the-ground conditions that contributed the disparate impacts.

Furthermore, the agreement that EPA made in this case with the state of California was made absent the citizens that brought the complaint forward. The impacted parties in the Agelita case were left entirely out of the settlement process and their voice was not considered. Rosemere finds this to be an exacerbation of the harms already suffered by the complainants. The Title VI program is the only pathway for the public to address issues of environmental discrimination, and removing the plaintiffs from the settlement discussions is ethically and morally wrong. EPA hailed the Angelita case as a giant step forward, but we disagree with this assessment. Furthermore, the settlement did not require the state of California to stop spraying pesticides that were harming Latino school children, but instead only required additional monitoring of the problem. This outcome does not adequately address the significant Title VI problem brought before the agency. There still appears to be a cerebral disconnect between Washington D.C. and the on-the-ground problems brought forward by the community. Thus, OCR's actions appear to be arbitrary rather than objective, especially without documented investigational protocols in place.

Rosemere generally agrees with the broader goals of the Title VI Supplement, but we feel the necessary details of implementing a successful program are absent. Were OCR to implement better enforcement protocols and more objective investigative procedures that showed better results, the public would be more apt to support the overarching goals of community education for Environmental Justice as envisioned when the program was initiated via President Clinton's Executive Order. It is our opinion that the Title VI Program and the currently vague investigative procedures seem to merely be tailored to support the agency that is being investigated rather than support the complainant. Rosemere experienced this first hand when OCR held in depth interviews with the City of Vancouver, and decided to dismiss our complaint without even interviewing our list of witnesses. The process in the Rosemere case became a political matter rather than a means to achieve relief from discrimination.

It is our understanding that EPA has not responded to public comments submitted by various groups over the years that pertain specifically to Title VI procedural guidelines. The final supplement should be very specific about guidelines and use established protocols to keep investigations objective, similar to the way the Superfund petition process works. For example, if a complaint scores, it moves on to the next investigative level without fail.

It is hard to believe how after 20 years in the Environmental Justice program only one case was found to have merit. Rosemere did establish a prima facie case of retaliation on its face, but the lack of investigation sullied the final report, and the initial Title VI concerns that were the catalyst for the administrative complaint were never addressed. The whole point of Rosemere's original Title VI complaint was that the policies of local government supported the existence of ghettoism, wherein areas of low-income and minority populations did not enjoy the same benefits of more affluent sections of the developed urban area, and the result was substandard living conditions and an increase in environmental harm. There was no investigation into how local governmental decisions contributed to the decline of low-income and minority property values where EPA's Environmental Justice thresholds had been met, and even EPA staff at the regional level were embarrassed that EPA headquarters refused to see the merits of the Rosemere case. Instead, EPA chose to dismiss legitimate concerns using technical deficiency in the Title VI complaint as an excuse. In the end, EPA's behavior in this case (and many others) simply condoned the discriminatory behavior that contributed to reduced standard of living for the impacted Environmental Justice community.

The Title VI Supplement indicates EPA will re-evaluate its Title VI investigative protocols in coordination with the U.S. Department of Justice. This was something that was promised by OCR more than two years ago during litigation with Rosemere. Basic Department of Justice investigative guidelines could have been implemented immediately, and the delay on this important task makes the public question EPA's stated commitment to making the Title VI program a national priority. Simply reshuffling OCR staff while maintaining the status quo is not sufficient to forward the cause. It is reasonable for the community to participate directly in revamping OCR's operations. It is reasonable for the community to request EPA to be more open, to collaborate with the complainants as well as the agencies that are the target of complaints. Please don't let this process degrade further into a debate limited to state's rights of self government v. federal regulation. That argument is easily used to dismiss valid claims of discrimination and only points out how civil rights violations continue unabated in our nation.

Thank you for your consideration of these comments. Rosemere requests the ability to be included in future ongoing dialogue with you in order to help facilitate much needed improvements in OCR's operations.

Sincerely,

A handwritten signature in black ink, appearing to read "Dvija Michael Bertish". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dvija Michael Bertish
Director of Environment & Conservation
Rosemere Neighborhood Association
360-281-4747
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Beverly May
United Nations Women's Tribunal on Climate Justice
May 10, 2012
Charleston, WV

Distinguished jurists, thank you for coming to the mountains to hear the stories of our lives, which are bound up with the story of coal mining. I am Beverly May. I was born and still live in Floyd County, Kentucky and am a family nurse practitioner. I have been charged with presenting the current research on the impact of coal mining on human health. Being neither a researcher nor an epidemiologist, I have no claim to present myself as an expert witness except this: My very first memories are of seeing blasting at night out my bedroom window as a coal company destroyed our hillsides over the objections of my parents. That was 1963 and I was five years old. For centuries, coal was brought up from under the mountains but during early 1960s a new and crude technology was developed in which the mountain was ripped and blasted away from the coal. For over fifty years surface mining has deforested the mountains, buried and poisoned the streams which supply our drinking water, and unleashed millions of tons of diesel fuel used for blasting into the air and soil upon which our lives depend. We who live in the mountains remain as horrified by this devastation as my family was fifty years ago. But only in the last 6 years have we begun to understand the human toll of mountaintop removal from the perspective of public health research.

First, we should remember that chronic stress has profound ill effects on the body. Long term stress, which is really just another way of saying living in constant fear, causes the immune system to fail. It causes a release of the stress hormone cortisol which in turn increases the likelihood of heart disease, gastrointestinal illness, high blood pressure and depression. There are many other ways living near a strip mine can make you sick, but the daily exposure to blasting, confronting fast moving, overloaded coal trucks on narrow roads and dealing with lost well water is more than enough stress to take a toll on a mine neighbor's body and spirit. Knowing this, it was not surprising when Dr. Michael Hendryx at WVU, reported in 2007 that people who live in counties with high coal production are more likely to be hospitalized for hypertension and chronic lung disease. Then in same year he released another peer-reviewed study which found higher rates of chronic heart, lung and kidney disease in counties with the highest levels of coal production.

In 2008, there was another report looking at the relationships between human health and coal production. Dr. Hendryx looked at age-adjusted death rates in coal producing counties and found that those rates increase with increasing coal production. In the study, he controlled for socioeconomic factors which are linked to poor health and early death such as poverty, lack of education, and smoking. These socioeconomic disadvantages caused an increase in mortality in the counties with higher coal production but there was an increase in mortality beyond that. In total there were an extra sixteen hundred deaths in the coalfields every year. The researchers concluded what mine neighbors have long suspected – that “elevated mortality...may also reflect environmental contamination from the coal mining industry”.

Several studies have also focused on the relationship of coal mining and cancer. In 2008 a study appeared linking lung cancer to high coal production while controlling for smoking. Anyone who has lived, or even visited a home, near a strip mine knows there is a constant problem with dust wafting in from the mine itself or falling from trucks. It settles on porches and gardens and sifts into homes, it gets kicked up again every time a car passes on the road. It turns out the coal contains impurities such as arsenic and cadmium which are known causes of lung cancer. Last year, researchers from the University of Kentucky found three clusters of increased rates of lung cancer in the state. The most prominent cluster was centered over the coal producing counties of eastern Kentucky. They found a 21% higher incidence of lung cancer while controlling for age, gender and smoking and concluded this disparity could be due to environmental exposures related to coal mining such as arsenic. Dr. Nathaniel Hitt led a study which linked failing ecological integrity of mine impacted streams to higher rates of respiratory, digestive, urinary and breast cancers. This is especially frightening in east Kentucky where the Kentucky Division of Water has found that 95% of streams coming from surface mined areas have impaired biotic integrity. These ecological studies were supported by a door-to-door survey of residents along West Virginia's Coal River which found higher rates of cancer than in demographically similar area without coal mining.

The last study I want to discuss is for me the most disturbing. Dr. Melissa Ahern and Dr. Michael Hendryx worked with a group of geographers to look at the incidence of birth anomalies occurring in counties with MTR, those with other types of coal mining but not MTR and counties with similar socioeconomic and demographic patterns without coal mining. They found a significantly increased level of birth defects reported in MTR counties and found that this effect appeared to get worse over time. Again, the authors controlled for known causes of birth defects such as advanced maternal age, obesity, smoking and socioeconomic factors such as level of education. They found that socioeconomic disadvantage accounted for some of the disparities in the rate of birth defects, but not all. Maternal residence in a MTR county was an independent predictor for six of seven categories of birth anomalies studied. The effect was particularly pronounced for cardiorespiratory defects, with a rate ratio nearly double that of areas without mining. The study established a correlation between birth defects and MTR but not causation. But the toxic by-products of mining which are known teratogens will sound familiar-arsenic, iron, aluminum and lead have been found in well water and streams near mines, coal slurry can carry mercury, arsenic, barium and lead into groundwater, dust from mines can carry heavy metals and well as benzene and polycyclic aromatic hydrocarbons to nearby homes. There was a 26% increase in all types of birth defects in the 1.8 million birth records studied from 1996 to 2003 but in the most recent years studied – 2000 to 2003 the rate was 42%. That the effect appeared to be getting worse makes sense given what we know about water quality after streams have been lost to MTR. The mine sites continue to leach heavy metals and other contaminants for decades after reclamation has been completed. And every new permit issued adds to the cumulative burden of environmental damage and poor health outcomes in mountain communities.

All of the research points to what mountain people have known since surface mining began; it is not possible to destroy our mountains without destroying *us*. It is not possible to poison our streams without poisoning our children for untold generations to come. As you listen to our stories today, please remember they are not isolated episodes of harm but part of a web of exploitation by the coal industry coupled with collusion by all levels of government. For every witness you hear today, there are hundreds more whose voices have been silenced by intimidation and defeat. To be present, to hear our stories and then carry them in your hearts and to the United Nations, is a profound act of empathy for which I am unspeakably grateful.

Beverly May, RN, MSN, FNPc
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Rev. Donna Aros

United Nations Women's Tribunal on Climate Justice

May 10, 2012

I am full-time United Methodist clergy: I'm almost ashamed to say it in this context, but it is who I am. Martin Luther King Jr. commented that the church should be the headlights for positive change—but on issues of land/air/ water, and people of Appalachia, the church has been the taillights, far behind in this work.

We UM clergy are under the system of itineracy: that is, we are sent to appointments by our bishop. Before coming east almost 2 years ago, I lived and served in central Kentucky. I have worked with our conference Justice Team for 8 years, mostly in the area of Creation Care and our Christian response as God's stewards of Creation. During that time I was introduced to the radical strip mining practice known as mountaintop removal — by people living in areas affected, and then by taking tours by van and airplane to see firsthand the devastation done to the land. The most vivid image for me was sitting high up in a small aircraft, looking out the window on one side and seeing as far as the eye could see — lush, green rolling hills, punctuated naturally by areas of higher elevation, to my mind, just as God the Creator had intended. I turned to look out the other side — and the terrible reality of MTR crashed into my brain: again, as far as the eye could see, was a desolate moonscape in shades of gray .. one side, LIFE; the other, DEATH.

Then I moved to eastern Kentucky, where the large ornate church next town south had been built by a coal baron early in the last century, and many churches are still now very much controlled by men in the coal industry. I heard there was strip mining in my county, and wanted to see for myself, but after driving up some narrow windy roads, was unable to find the sites — well-hidden, as many sites have been, I thought. But in the next county over the story is different — anyone can see the immense expanses of flat bare land left by MTR. Over 30% of the area of the county. County officials / others seem proud of it — and have big signs labeling a “business park,” which is in reality just acres upon acres of flat and empty space. The only thing there is a dead-looking gray block prison.

When I was first told I'd be moving to Louisa, I looked on the map to find it, and was overjoyed to see it was located on a river. The Big Sandy, with West Virginia on the other side. Actually, Louisa is at the joining of 2 forks, forming the Big Sandy River. I have always been drawn to water, to wade in, turn over rocks, fish. I tried, but couldn't find a place to get into the water near town. I then learned from various people that it was not a good idea to do so — one told the story of a man falling overboard while working on a tug, and contracting a terrible infection; several said that they like to fish but never eat what they might catch.

How sad. Looks like there'll be no baptisms in the river!

Moving into the parsonage located adjacent to the church downtown, we noticed a water purifier attached to the kitchen faucet, and asked the departing pastor about it. He advised us to drink only purified water — bottled or run through this apparatus. So we do — and my husband and I have been sufficiently concerned about water quality that we prepared affidavits to be used in a lawsuit brought by KFTC and others.

To add to our unease over the health conditions here, the Big Sandy power plant, one of dirtiest in nation, is just 5 miles north of us, downriver. Coal trains with 100 cars each, run every day just one block from our house, and coal trucks go constantly on the road one block from us in the other direction, I am assuming to deliver fuel to the power plant, or maybe beyond. Our adult children came in for a visit a few weeks after we moved here. We needed more chairs, so the boys were sent out to the screened in patio to bring some in. Without thinking, they brought a couple inside, then looked at them and asked, "What is this black stuff all over the chair?" Of course it was coal dust and ash. One commented, "And we are all breathing this?" Yes, we are, and so is the entire community.

As I prepared my first bulletins for Sunday worship, I used ones from previous Sundays to go by. I was absolutely appalled, still am, by the number of names on the prayer list-- people with cancer, heart disease, breathing problems. I visited a woman down the block who had a brain tumor — and she identified half a dozen others in a two block radius who also had had brain tumors. Are these negative health effects from the dirty air and water? Though it is difficult for many local people to accept, new studies are showing that it is most likely true.

God created the land in all its beauty and glory; the water, pristine and necessary for life, providing for all our needs in abundance. But the greed of a few have desecrated the garden, and fouled the rivers, bringing death and scarcity to our region. We dishonor God, and desperately harm our people and all living things. This is sin.

Ivy Brashear

United Nations Women's Tribunal on Climate Justice

May 10, 2012

I have lived my 24 years in the hills of eastern Kentucky, and for a good portion of those years, I have known that if I were to have children, I'd want to raise them in the hills where I grew up.

Now, I'm not so sure about that.

A recent study shows that birth defect rates are alarmingly higher where mountaintop removal (MTR) coal mining occurs. That encompasses the entirety of eastern Kentucky.

It's not that this finding necessarily surprises me. I've suspected for years that MTR mining is the cause of higher rates of cancer, heart disease and lung conditions like asthma among those living here. So this new study, which clearly outlines the ongoing assault on the health of Appalachians, is nothing to be shocked about.

I'm not even shocked at the complacency with which this study was received by the coal industry and state officials, mainly because when you're in the business of pollution, deflecting the truth comes as second nature.

All anyone living in Appalachian Kentucky has to do to confirm the results is look around their hollers at all the cases of rare cancers, heart troubles, kidney disorders, lung diseases and yes, even birth defects.

But this new study, which is based on 1.8 million actual birth records, does not concern the living. We have at least some small choice in where we live, the water we drink and the air we breathe.

The unborn, however, have no choice. Though I know no one asks to be slowly poisoned with carcinogens and heavy metals from the land, air and water, it just seems completely and unbelievably criminal for coal companies to stunt Appalachian Kentuckians' health before they are even born.

Not only does the health of Eastern Kentucky babies suffer, but their choices in life become increasingly limited because of the disabilities they may inherit from a legacy of environmental degradation upheld by a greedy and pollution-laced industry.

This is an outrageous reality. But what truly enrages me the most is the knowledge that every coal operator in this state is completely aware of the pollution they are dumping into the air and water. They are also completely aware of the true effects on human health those pollutants cause. I will never be convinced otherwise,

especially after a coalition of environmental groups exposed over 20,000 blatant violations of the Clean Water Act committed by the two largest MTR companies in the state.

Coal production is on the decline in Kentucky and throughout Appalachia. But until the coal runs out, there's going to be a troubling and disturbing undertone beneath the mining and burning of coal – an undertone that we as people of the region can no longer condone, excuse or ignore.

There are alternatives to mining and burning coal. The technologies for renewable energy production free from high levels of produced pollution do exist and are viable alternatives to coal.

We must advocate for options in how our energy is produced; we must fight to save our land and water from a daily deluge of poisons dumped by the coal industry; and we must support a diversified economy that will help us break the shackles placed around our good health by the coal industry and state officials who condone their harmful actions.

We need healthy babies to help us create a bigger and brighter future for our region. If we don't stand up for ourselves, then we must stand up for future generations, whom we now know are being attacked and assaulted by the coal industry before they are even born.

I will have to make a lot of important choices in my life, but of all the major choices I will have to make, wondering whether or not it's safe to birth my future children in my homeland of eastern Kentucky should not even have to register on that list. I, nor any other young woman who wishes to have children in the place of their own birth, should ever have to think about the ramifications our future children might have to endure simply from living where our families have lived for generations.

For coal companies to force that decision upon us is just plain wrong.

Ivy Brashear
Viper, Ky.

I am 24 years old and live in Viper in Perry County and live in close proximity to several MTR mining sites.

Destruction of Communities and Social Disintegration

Sharman Chapman-Crane

United Nations Women's Tribunal on Climate Justice

May 10, 2012

I am Sharman Chapman-Crane and I have lived in Eolia, Kentucky for 25 years. Eolia is an old Cherokee word for "valley of the winds" – for our valley lies between Pine and Black – Kentucky's two highest mountains.

When we settled there our son was five months old. There were several deep mines on up the road from us. Most men worked in the mines. On our road, just three miles long – there were three little stores, one with a gas station, a custard stand, a grade school with 250 children – kindergarten through 8th grade, a post office, and three churches. The valley was beautiful. Many miners and their families kept the store busy.

Today surface mining is the rage. Companies employing less than half the miners than 20 years ago – have caused two of the three stores to close and the school is reduced to 110 students forcing teachers to leave. Many of our families have left. This is congressional district #5 of our nation's 435 districts. My district is at the bottom in physical and emotional health. We have the highest mortality rate and the highest drug abuse rate per capita in the nation.

A couple of companies started surface mining at the head of our road seven years ago – just about a mile from us. Shortly after they commenced their destruction, I developed asthma.

About two years ago they started mining right behind us – a ten minute walk from our back door to the mine site. Explosives being set off usually three times a day – often the explosion catching us unaware and the tremors shaking house, sometimes cracking the foundation. The wind catching the grit and filling the valley in seconds – so fast and so dense it's in your eyes, your mouth, your nose before you can race inside.

But I have some neighbors up the road from me, who have no voice to protest. They're both disabled and they lease their land from the coal company. And it's written into their lease that if they say anything against the company they'll lose their land. But not just them – for you see – their son and his wife and three grandchildren also live there. Where would they go?

So about five years ago the company applied for a valley fill permit – that's when they request permission from the Army Corp of Engineers to bury, pollute, redirect, or diminish a natural source of water. When they requested permission to bury one of Eolia's creeks that ran through three families' land, not everybody could stand together. Some people stood to lose some land and water, some people might lose their homes, some would lose their jobs. Fear descended in my community.

Some neighbors we can't visit because there is only one way in and one way out of the valley. Company people know our vehicles. If our car or truck is seen in certain driveways – those folks, my neighbors, are threatened with losing their jobs or their homes... Yes, we stopped the valley fill in Eolia. The company even apologized, but the emotional damage was done. Neighbors no longer trust each other. They no longer visit.

Because of the distrust I lost my best friend for three years, while she and her husband were fighting cancer and he died... I needed to be there and she needed me there, but the fabric was rent. She runs an outreach in our community – has a thrift store, food pantry, and in the summer houses volunteers who do low income housing repair. I've been on the board of directors since the outreach incorporated. On Tuesday nights I would talk to these volunteers about Kentuckians for the Commonwealth and the social justice work we do. Well when the coal companies found out – they quit giving donations to the outreach.

The next thing I knew, I was not allowed to talk to folks about KFTC or leave printed materials. Next I had to resign from our community park committee because folks believed I was the reason the company donated land and money to another group of neighbors to start a park about a mile from ours.

The fabric of our lives is being shredded. I call it the slicing and dicing at the company's hands. The corporations are masters in these techniques.

About 20 miles down the road, I have friends who live in Benham and Lynch, Kentucky. Coal companies there want to mine below their towns endangering Looney Creek, their surface water source. Looney Creek is so pure, it is above standard before entering the required municipal filtration system. The people are protesting, but Lynch needs a new fire station. The county government has been pressured to tell the people if they won't allow the mining, they won't get the fire station...

There's a legal term in Kentucky – undivided property. Say I have seven children and I leave the land to all seven without dividing it, the company only has to get the permission to mine from one of the seven. It's hard to bring pressure on that one, when often the reason they need the money is to pay off huge medical bills because they can't afford insurance.

These corporations are all about slicing and dicing – families, churches, communities – without heart or conscience... There's a verse in Hebrew scriptures that says "Where there is no vision, the people perish." We need to stand up to these heartless corporations. We need to find ways of restoring our vision. Kentucky's state motto is "United we stand, divided we fall." We need to restore our communities, to stand united, to drive away the fear, to have a common vision.