

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
Public Teleconference Meeting
Thursday, September 23, 2010

MEETING SUMMARY

The National Environmental Justice Advisory Council (NEJAC) convened for a three-hour public teleconference meeting on Thursday, September 23, 2010, from 1:00 p.m. to 4:00 p.m. Eastern time. The meeting included a public comment period.

The NEJAC is a federal advisory committee that was established by charter on September 30, 1993, to provide independent advice, consultation, and recommendations to the U.S. Environmental Protection Agency (EPA) Administrator on matters related to environmental justice. The Council is comprised of 25 members representing academia, business and industry, community-based organizations, non-governmental and environmental groups, state and local governments, tribal governments, and indigenous organizations. One EPA staff member serves as the Designated Federal Officer (DFO) for the NEJAC. Exhibit 1 lists the

Exhibit 1
MEMBERS OF THE NEJAC EXECUTIVE COUNCIL

Members in Attendance

- Ms. Elizabeth Yeampierre, NEJAC Chair, UPROSE, Inc.
- Mr. John Ridgway, NEJAC Vice-Chair, Washington State Department of Ecology
- Mr. Chuck Barlow, Entergy Services, Inc.
- Ms. Teri E. Blanton, Kentuckians for the Commonwealth
- Ms. Sue Briggum, Waste Management, Inc.
- Ms. Jolene Catron, Wind River Alliance
- Ms. Wynecta Fisher, E2 Inc.
- Ms. Stephanie Hall, Valero Energy Corporation
- Ms. Jodena "Jody" Henneke, The Shaw Environmental & Infrastructure Group
- Ms. Savonala "Savi" Horne, Land Loss Prevention Project
- Mr. J. Langdon Marsh, National Policy Consensus Center, Portland State University
- Ms. Edith Pestana, Connecticut Department of Environmental Protection
- Ms. Patricia Salkin, Albany Law School
- Mr. Nicholas Targ, American Bar Association
- Ms. Kimberly Wasserman, Little Village Environmental Justice Organization
- Ms. Victoria Robinson, NEJAC DFO, EPA Office of Environmental Justice

Members Not in Attendance

- Mr. Don Aragon, Wind River Environmental Quality Commission
- Dr. M. Kathryn "Katie" Brown, Formerly University of Cincinnati College of Medicine
- Mr. Peter Captain, Sr., Yukon River Intertribal Watershed Council
- Mr. Hilton Kelley, Community In-Power and Development Association
- Dr. Shankar Prasad, Coalition for Clean Air
- Ms. Nia Robinson, Environmental Justice and Climate Change Initiative
- Ms. Margaret May, Ivanhoe Neighborhood Council
- Ms. Vernice Miller-Travis, Maryland State Commission on Environmental Justice and Sustainable Communities
- Dr. Paul Mohai, University of Michigan
- Father Vien T. Nguyen, Mary Queen of Viet Nam Community Development Corporation

members of the Executive Council who participated in the teleconference meeting, as well as those who were unable to attend.

This summary contains the following sections, which correspond to the meeting agenda:

- 1.0 Welcome and Opening Remarks
- 2.0 EPA Plan EJ 2014
- 3.0 Incorporating Environmental Justice into Permitting
- 4.0 Public Comment Period
- 5.0 Closing Remarks

In addition, three appendixes are included. Appendix A lists the NEJAC Members and shows their affiliations by stakeholder category, Appendix B provides a list of meeting attendees, and Appendix C contains written public comments provided to the NEJAC.

1.0 WELCOME AND OPENING REMARKS

Ms. Victoria Robinson, NEJAC DFO, EPA Office of Environmental Justice (OEJ), welcomed participants to the 36th public meeting of the NEJAC. In her opening remarks, Ms. Robinson noted that the Council had provided advice to EPA for more than 16 years. She added that this teleconference meeting was the fifth of six public meetings that the NEJAC would be conducting in 2010.

Ms. Robinson expressed appreciation for the Council members and the more than 200 pre-registered attendees who were participating in the three-hour meeting, recognizing the significant investment of their time. She also thanked those who had submitted written statements and signed up to provide public comments.

She reviewed the agenda and reminded participants that, as part of EPA's ongoing commitment to ensure transparency and public access to information, the teleconference meeting was being audio recorded. She announced that an MP3 file, Podcasts of individual segments of the meeting, a verbatim transcript, and a meeting summary would be posted on EPA's NEJAC Website (www.epa.gov/environmentaljustice/nejac/). She added that until these materials were posted on the Website, an encore audio recording would be made available.

In closing her remarks, Ms. Robinson reminded Council members, EPA presenters, and public commenters to clearly identify themselves prior to speaking, to speak only after being recognized by the NEJAC chair, to speak directly into their telephone handsets, and to mute their lines when not speaking if on a cell or speaker phone to avoid ambient noise.

Ms. Elizabeth Yeampierre, Executive Director, UPROSE, Inc., and NEJAC Chair, welcomed



The Interagency Working Group on Environmental Justice reconvened on 9/22/10. The IWG will work to identify projects where federal collaboration can support the development of healthy and sustainable communities; seek opportunities to provide green jobs training; and promote a clean energy economy.

everyone with peace and blessings. She recognized such teleconference calls as an excellent and cost-efficient way to get as much civic engagement as possible. She referred to the historic nature of the recent reconvening of the Federal Interagency Working Group on Environmental Justice (IWG) at the White House (see Exhibit 2). She commented that environmental burdens in communities do not happen in silos but rather involve public health, land use, transportation, housing, and other issues; and, combined with the challenges of climate change, environmental problems in vulnerable communities could only be resolved holistically.

Ms. Yeampierre noted that, during the IWG meeting, EPA Administrator Lisa Jackson highlighted (1) the Agency's Plan EJ 2014, which is a four-year roadmap to help EPA develop stronger community relationships and increase the Agency's efforts to improve environmental and health conditions in overburdened communities; (2) the *Interim Guidance on Considering Environmental Justice During the Development of an Action* (EJ in Rulemaking Guidance); and (3) the Partnership for Sustainable Communities between EPA, U.S. Department of Housing and Urban Development (HUD), and U.S. Department of Transportation (DOT) (see Exhibit 3 on next page).

Mr. Charles Lee, Director, OEJ, added that it was EPA Administrator Jackson and CEQ Chair Nancy Sutley who reconvened the IWG on September 22, 2010. He said that virtually all IWG agencies were in attendance, as well as five cabinet members, namely, EPA Administrator Jackson; Attorney General Eric Holder, U.S. Department of Justice (DOJ); Secretary Ken Salazar, U.S. Department of the Interior (DOI); Secretary Ray LaHood, DOT; and Secretary Shaun Donovan, HUD.

Mr. Lee noted that Secretary Donovan had spoke about the importance of environmental justice as a part of HUD's mission in terms of issues such as accessible housing, disaster relief, and sustainable community initiatives. Mr. Lee also identified America's Great Outdoors and the Partnership for Sustainable Communities' Team EJ as examples of interagency partnerships

Exhibit 2
INTERAGENCY WORKING GROUP ON
ENVIRONMENTAL JUSTICE

The Federal Interagency Working Group on Environmental Justice (IWG) was established in 1994 under Executive Order 12898. The IWG is comprised of twelve federal agencies and several White House offices – specifically, EPA; the Departments of Agriculture, Commerce, Defense, Energy, Health and Human Services, Housing and Urban Development, Interior, Justice, Labor, and Transportation; and the Judicial branch of the federal government. With leadership from EPA, the IWG's focus is to (1) integrate environmental justice into federal agency programs, (2) ensure opportunities for collaboration to provide for environmental justice, and (3) share lessons-learned in addressing environmental justice concerns. (Source:

<http://www.epa.gov/environmentaljustice/interagency/>)

discussed during the IWG meeting. He added that common themes discussed throughout the meeting included the relationships between environmental justice and sustainability; and between a clean economy, a clean environment, and a prosperous economy.

Mr. Lee announced that there would be a White House Forum on Environmental Justice geared toward environmental justice communities later in 2010 (details to be determined). He ended his comments by acknowledging the ongoing hard work of the many agencies involved and commended Ms. Lisa Garcia, Senior Advisor to the EPA Administrator on Environmental Justice; and Ms. Nikki Buffa, Associate Director for Outreach for CEQ for their efforts in pulling together the IWG.

Ms. Yeampierre acknowledged Mr. John Ridgway, NEJAC Vice Chair and Manager, Information Management and

Communications Section, Washington State Department of Ecology, who chairs the Council's subgroup on EPA's charge to the NEJAC on permitting. She also recognized Ms. Kimberly Wasserman, Coordinator, Little Village Environmental Justice Organization, who chairs the Council's Plan EJ 2014 subgroup. She expressed her appreciation for their leadership on the subgroups. She also thanked Ms. Robinson for organizing the teleconference meeting and noted that such meetings received much attention and provided opportunities to make progress on issues that impact communities.

Mr. Aaron Bell, NEJAC Program Manager, OEJ, conducted a roll call of the NEJAC members. Ms. Robinson confirmed that enough members were present to establish a quorum (as required under the Federal Advisory Committee Act) and, therefore, the meeting could proceed.

2.0 EPA PLAN EJ 2014

Ms. Kim Wasserman, Chair of the NEJAC Plan EJ 2014 subgroup, began by thanking the members of the subgroup for their efforts. She presented the outline of the subgroup's report of recommendations and invited comments from the rest of the Council. She explained that the subgroup would reconvene on the following Monday to finalize its comments on the EPA's Plan EJ 2014.

2.1 Report from Plan EJ 2014 Subgroup

Ms. Wasserman commended Administrator Jackson and EPA for prioritizing environmental justice in the Agency's work, and she encouraged EPA to continue making progress in this area. Prior to reviewing the activities of the subgroup, Ms. Wasserman reviewed the stated overall goals of Plan EJ 2014:

1. To protect the environment and health in overburdened communities.
2. To empower communities to take action to improve their health and the environment.
3. To establish partnerships with local, state, tribal governments and organizations to achieve healthy and sustainable communities.

She reported that the subgroup had concerns about the first goal, noting that it should emphasize "protect *and improve* the environment and health..." (emphasis added). She indicated that the subgroup's report would request the addition of the second element to the goal.

Ms. Wasserman reviewed the three questions that EPA had charged the NEJAC with addressing, and provided the subgroup's initial feedback on each. In response to the first charge question about whether the five Cross-Agency Focus Areas (listed below) were the correct ones, she summarized the subgroup's responses, as follows:

- **Rulemaking** – The subgroup requested

Exhibit 3 PARTNERSHIP FOR SUSTAINABLE COMMUNITIES

On June 16, 2009, EPA joined with the U.S. Department of Housing and Urban Development (HUD) and the U. S. Department of Transportation (DOT) to help improve access to affordable housing, more transportation options, and lower transportation costs while protecting the environment in communities nationwide. Through a set of guiding livability principles and a partnership agreement that will guide the agencies' efforts, this partnership will coordinate federal housing, transportation, and other infrastructure investments to protect the environment, promote equitable development, and help to address the challenges of climate change. (Source: <http://www.epa.gov/smartgrowth/partnership/index.html>)

that Plan EJ 2014 include language that calls for EPA to evaluate existing rules and regulations for successes and lessons learned in the context of environmental justice.

- **Permitting** – The subgroup requested a stronger word than the term “considering” in terms of incorporating environmental justice into permitting. Ms. Wasserman reported that members also requested more information on how cumulative impacts would be addressed in permitting, as well as how the permitting process might involve and impact other stakeholders besides communities. She said that the subgroup acknowledged the importance of EPA providing guidance and oversight to states with delegated authority to administer permits.
- **Compliance and enforcement** – The subgroup raised concerns about the criteria EPA would use in deciding when and how to “pursue enforcement and provide compliance assistance to areas that yield the most environmental benefits or reduce risk to human health.” Ms. Wasserman also noted that the subgroup needed more detailed information from EPA in terms of enforcement actions such as those specifically related to Title VI complaints.
- **Community-based action** – The subgroup recommended that EPA extend and provide more funding support for its Community Action for a Renewed Environment (CARE) and Environmental Justice Small Grants programs. Ms. Wasserman noted that as other funding sources diminish more communities are looking toward EPA for financial help. She added that EPA should provide funding to ensure that multiple stakeholders are involved.
- **Administration-wide action** – Ms. Wasserman did not provide any specific comments related to this Cross-Agency Focus Area.

Ms. Wasserman presented two activities raised by the subgroup as potential additional focus areas for the Agency:

1. Incorporating environmental justice into capital and other investments, which would give EPA the authority to review NEPA compliance of other agencies that invest federal dollars into local programs to ensure that they do not create or exacerbate disproportionate impacts.
2. Climate mitigation.

“How can we give these more teeth?”
– Ms. Kimberly Wasserman, Little Village
Environmental Justice Organization

Ms. Wasserman added that, with respect to assessing disproportionate impacts, subgroup recommendations included generating robust results that could drive policy; and convening stakeholders to develop scientifically valid, understandable, and practical outcome measures. She also acknowledged the importance of drawing from past NEJAC reports.

In response to the second charge question, “How can EPA strengthen specific actions within the five Cross-Agency Focus Areas?” Ms. Wasserman expressed the subgroup’s sentiment that Plan EJ 2014 was very general, which made it challenging to provide specific feedback. She stated that it was critical for EPA to lay out a process and timeline for implementation, as well as expected and measurable outcomes in the Plan.

In response to the third charge question, “How would you prioritize the five Cross-Agency Focus Areas?”, Ms. Wasserman reported that the subgroup agreed that every focus area was critical, and that the five areas were interdependent. She noted that although prioritization would be more feasible after identification of specific action items, the subgroup recommended the following order of priority:

1. Community-based action
2. Administration-wide action
3. Permitting
4. Rulemaking
5. Compliance and enforcement

Ms. Wasserman added that the subgroup recommended referring to past NEJAC reports to give additional “teeth” to the Plan, including *Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*, issued in December 2004. She noted that concerns had been raised about the representation of tribal communities on the NEJAC and requested input from the Council on this matter. She also noted the concerns around local government and zoning practices and land use – and how these issues would be addressed in the Plan. (The report is available online at <http://www.epa.gov/compliance/ej/resources/publications/nejac/nejac-cum-risk-rpt-122104.pdf>.)

Ms. Wasserman welcomed feedback from the Council, noting that the subgroup aimed to compile its recommendations by Oct 1. Ms. Yeampierre thanked Ms. Wasserman and the subgroup for “an extraordinarily comprehensive job,” given the short time frame for the task. She reported that EPA had granted the public’s request for an extension on the comment period on Plan EJ 2014 until October 22, 2010.

2.2 Member Dialogue

This section provides highlights of the Council’s discussion regarding Ms. Wasserman’s presentation:

- Ms. Edith Pestana, Administrator, Environmental Justice Program, Connecticut Department of Environmental Protection, asked whether the subgroup discussed recommending that EPA create “an environmental justice law,” which would be stronger than Executive Order 12898. Ms. Wasserman stated that the subgroup had not previously considered this but would discuss it.
- Mr. Nicholas Targ, co-Chair, Environmental Justice Caucus, American Bar Association, recommended that EPA establish environmental justice regulations that have the force of law.
- Mr. Langdon Marsh, Fellow, National Policy Consensus Center, Portland State University, noted that EPA invests in various kinds of environmental improvements. He continued that, while there had been notable achievements in integrating environmental justice considerations into several of the Agency’s programs, he emphasized the importance of making environmental justice “universal” wherever EPA had influence – for example, through the IWG and Sustainable Communities Partnership – to ensure that environmental justice was also addressed in investment decisions made by federal agencies such as HUD, DOT, and DOI. He recommended adding “investment in infrastructure” as a sixth focus area.
- Mr. Chuck Barlow, Assistant General Counsel, Entergy Services, Inc., asked about “next steps” in the process. Ms. Robinson responded that the subgroup would meet on the following Monday to debrief, incorporate Council members’ comments, and develop a final report of recommendations to the NEJAC. She committed to providing further details on the

timeline after the next meeting of the subgroup.

- Mr. Ridgway expressed his plan to coordinate with the Plan EJ 2014 subgroup on permitting-related issues.
- Mr. Marsh echoed Ms. Yeampierre's commendation to the subgroup. In terms of the fourth Cross-Agency Focus Area of supporting community-based action, he suggested that the Council include in the report a reaffirmation of some of the recommendations made in the Goods Movement report about supporting community-based processes that involve collaborative problem solving. He noted that this was different from capacity building and did not have to only involve increased funding. He referred to the IWG and Sustainability Communities Partnership as other ways to approach these issues.

3.0 INCORPORATING ENVIRONMENTAL JUSTICE INTO PERMITTING

Mr. Ridgway, Chair of the NEJAC's Permitting subgroup, explained that EPA had charged the NEJAC to examine permitting based on the following questions:

1. What types of EPA-issued permits are of the greatest concern and interest to communities with environmental justice challenges and environmental justice stakeholders?
2. What types of EPA-issued permits are of the greatest importance in protecting the health and welfare of minority, low-income, and tribal communities?
3. What types of EPA-issued permits seem best able to incorporate environmental justice concerns into permit decision-making in the near term – based on the nature of the activity being permitted, how its impacts are distributed, how permits can be used to manage those impacts, and other considerations?

He reported that the subgroup was comprised of Mr. Don Aragon, Executive Director, Wind River Environmental Quality Commission; Ms. Sue Briggum, Vice President, Waste Management, Inc.; Ms. Jodena Henneke, Program Manager, The Shaw Environmental & Infrastructure Group; Mr. Hilton Kelley, Director, Community In-power and Development Association; Ms. Vernice Miller-Travis, Vice Chair, Maryland State Commission on Environmental Justice and Sustainable Communities; Ms. Pestana; and Dr. Shankar Prasad, Executive Fellow, Coalition for Clean Air.

3.1 Report from the Permitting Subgroup

Mr. Ridgway reported that the subgroup's discussion focused on permits issued by EPA, as well as states, tribes, and other entities with delegated authority to administer federal laws; and the role of public participation in those permitting processes. Turning his attention to the timeframe of the subgroup's work, Mr. Ridgway reported that the subgroup planned to send a draft document to the full Council for review about two weeks prior to the next in-person NEJAC meeting in November 2010.

Mr. Ridgway acknowledged the participation of Ms. Suzi Ruhl, Senior Attorney Policy Advisor, OEJ, on the subgroup's first teleconference meeting and her help in clarifying the procedures and types of EPA-issued permits. He mentioned the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) as examples of statutes over which EPA has the primary lead. He reported that EPA's Office of Pesticides was engaged in work on cumulative risk.

Mr. Ridgway noted the following points, which were raised during the subgroup's first meeting:

1. A memorandum by Mr. Gary Guzzi, former EPA General Counsel, provided a legal perspective on the Agency's authority in terms of addressing environmental justice. Mr. Ridgway stated that the subgroup's report would make references to the "Guzzi memo," which was written in 2000.
2. A review should be conducted of environmental justice concerns that have been brought to the NEJAC's attention over the years and the associated permits (if any) to address them. Ms. Briggum added the need for two perspectives – how EPA regards its authority (in terms of permits that it issues directly versus those that it delegates); and a grassroots perspective on the kinds of issues raised.
3. A review should be conducted of existing NEJAC documents related to permitting and public participation, including an examination of issues that remain unaddressed and those that could be raised to the IWG. Mr. Ridgway stated that the subgroup had no intention of "reinventing the wheel," but also acknowledged that some of the documents had been written 10 years ago and may need to be updated.

"We have no intention of reinventing the wheel."

– Mr. John Ridgway, Washington State
Department of Ecology

Mr. Ridgway then described two ways in which environmental justice could be incorporated into the permitting process administered by delegated authorities:

1. Performance Partnership Agreements (PPAs) – Mr. Ridgway described PPAs as formal agreements that exist between delegated authorities (such as states and tribal governments) and the regional EPA Administrators. He noted that there was "ample room" in PPAs to address environmental justice and noted that members of the public were invited to review and comment on them.
2. Memoranda of Understanding (MOUs) – According to Mr. Ridgway, MOUs are legal documents that hold delegated authorities accountable to update their laws when federal rules are changed. He added that in some cases, states and tribal governments could go beyond EPA requirements.

Mr. Ridgway reminded the Council that EPA provides funds for delegated authorities to administer federal laws, and states and tribal governments could, therefore, be held accountable for how those funds are spent in areas such as environmental justice.

3.2 Member Dialogue

NEJAC members asked clarifying questions and made comments pertaining to Mr. Ridgway's presentation, as summarized below:

- Ms. Patricia Salkin, Associate Dean and Director, Government Law Center, Albany Law School, acknowledged the importance of both subgroups raising concerns about land use and zoning in the context of environmental justice.
- Ms. Pestana raised strong concerns about whether EPA was willing to have permit writers use the cumulative risk models that the Agency had developed in the 1990s.

- Mr. Targ asked whether the subgroup was also looking at issues of alternate siting and configurations of facilities. Mr. Ridgway stated that the subgroup had not delved into these issues, but rather was initially focusing on general issues of concern and advice. He asked Mr. Targ to explain the distinction between land use and zoning. Mr. Targ explained that the Clean Air Act's permitting provisions for certain types of facilities called for consideration of siting issues, configurations, and arrangements, independent of local zoning. He added that municipalities are in charge of zoning. Although the Agency does not have authority over zoning, he said, it could look at the impacts that a facility may have on the surrounding land uses and populations. He added that the subgroup could examine how EPA has used, or can use, that authority. Ms. Henneke noted that EPA has very limited land use authority. Mr. Targ clarified that the Agency did have the authority to examine the impacts of facilities on surrounding land use. As an example, he noted EPA's authority in the New Source Review (NSR) permitting process.
- Turning attention to the recent reconvening of the IWG, Ms. Stephanie Hall, Senior Counsel, Environmental Safety and Regulatory Affairs, Valero Energy Corporation, asked whether there was greater power and authority across various agencies than the subgroup was acknowledging. Mr. Ridgway agreed that there could be many opportunities beyond EPA's direct authority. Those opportunities, he added, should be identified.
- Ms. Jolene Catron, Executive Director, Wind River Alliance, acknowledged the absence of Mr. Aragon on the first meeting of the subgroup, as well as this teleconference meeting, and noted that his input from the perspective of tribal governments and tribal environmental agencies was critical in the permitting discussion. She raised concern about the absence of outside experts in the subgroup discussions. Mr. Ridgway echoed her concern and stated that the subgroup would recommend the inclusion of external advice. He also recognized the delegated permitting authority of some tribal agencies. Ms. Robinson acknowledged the concerns raised and noted that Mr. Aragon had sent her an e-mail regarding his schedule conflict with this meeting due to his role as Vice Chair of EPA's National Tribal Operations Committee (NTOC), which had a national teleconference meeting at the same time.
- Ms. Teri Blanton, Fellow, Kentuckians for the Commonwealth, commented that permitting was one of the most important issues for the NEJAC to consider, especially because many issues involving permits are delegated by EPA to the states and other entities.
- Ms. Pestana reported that, based on the State of Connecticut's PPA with EPA, the state would not review permit applications in an environmental justice community until an outreach plan had been developed and an informational meeting had been held that included notification of all stakeholders. She recommended that EPA not review applications until after proper public participation had taken place in affected communities.
- Ms. Pestana noted that that it had been 20 years since the *National Law Journal* first compared the amount EPA had spent on remediation in white versus minority communities. She wondered how this comparison might be different today and whether EPA was now spending an equal amount on remediation and enforcement across the U.S.
- Mr. Barlow suggested that the NEJAC keep in mind the rules under the Clean Air Act (CAA), noting that litigation was underway. He stated that if the "tailoring rule" was struck down in court, states would need to issue a very large number of CAA permits fairly quickly. He cautioned that this might cause states to sacrifice environmental justice due to the additional

permitting pressure.

- Ms. Hall asked whether the subgroup was considering the broad application of environmental justice across all permits, regardless of location. Mr. Ridgway confirmed that environmental justice concerns should be considered across the board. Ms. Hall asked about situations where there were no communities near the permitted facility or industry. Mr. Ridgway said that he was not aware of any permits where communities did not “weighed in,” regardless of distance from the facility. Ms. Henneke gave the example of some large agricultural facilities like confined animal feeding operations (CAFOs) that might be located far away from any community.
- Ms. Catron commented on the underground injection control (UIC) permitting process and how EPA would prioritize it in terms of hydraulic fracturing (see Exhibit 4). She noted that hydraulic fracturing was difficult to explain to tribal communities. She urged EPA to make the permitting of hydraulic fracturing a high priority, especially in the context of the national dialogue on the issue. Ms. Blanton echoed Ms. Catron’s sentiment and noted that there were other forms of injections related to coal waste. She also expressed concern about the future impacts of carbon capture and sequestration, and how that would be covered by UIC permits.
- Ms. Wynecta Fisher, Social and Environmental Equity Project Coordinator, E2 Inc., expressed concern about facilities that fall “just under” the state threshold for a permit that may also be located in “clustered” areas. Mr. Ridgway clarified that the rules regarding threshold for compliance are set at the federal level and, therefore, delegated authorities have to ensure compliance with at least the federal threshold. He acknowledged the concern about the clustering of unpermitted facilities.
- Mr. Barlow noted that FIFRA and UIC may be examples of permitting programs that fall under the purview of multiple agencies within each state (for example, natural resource agencies and pollution control agencies). He urged the subgroup to keep this in mind as it developed recommendations. Mr. Ridgway agreed with the importance of keeping this in mind and said the subgroup would include this topic in its report. He added that the IWG might be able to play a key role in raising the need for coordination and collaboration among state agencies.
- Mr. Blanton commented that CWA is delegated to states and other federal agencies. She noted EPA’s responsibility to make sure that CWA is enforced by the various entities, as part of the Agency’s oversight authority.

Exhibit 4
HYDRAULIC FRACTURING

Hydraulic fracturing is the injection of fluid – usually water containing special fluid additives – under pressure to facilitate the production of oil and natural gas. The pressure exceeds the rock strength and the fluid opens or enlarges fractures in the rock. These larger, man-made fractures can extend as much as several hundred feet into the reservoir rock. After the formation is fractured, a “propping agent” is pumped into the fractures to keep them from closing when the pumping pressure is released. Hydraulic fracturing allows oil or natural gas to move more freely from the rock pores to a production well so it can be brought to the surface.

(Source: http://www.epa.gov/oqwdw000/uic/wells_hydrofrac.html)

- Mr. Robinson advised that the subgroup seek input from NEJAC regarding how the subgroup’s findings should be framed. Mr. Ridgway explained that the subgroup’s report would include findings and recommendations. He clarified that findings could include references to previous NEJAC reports, and comments heard from the public or through Council deliberations.
- Mr. Ridgway reviewed the following timeline for the subgroup:
 - Teleconference meetings – September 24, October 8, and October 25
 - Draft report for NEJAC review – November 1, 2010
 - In-person discussion – week of November 16, 2010

Ms. Robinson reminded Council members that they could contribute to the work of either subgroup by providing input to the subgroup chairs, regardless of whether they were serving on the subgroups. She also provided the following e-mail address that members of the public could use to provide input to the subgroups: environmental-justice@epa.gov, Subject Line: NEJAC Comment. She said comments would be routed to the appropriate NEJAC subgroup for its consideration. Mr. Ridgway advised that members of the public look at the charge posted on the NEJAC Website (www.epa.gov/environmentaljustice/nejac) to help frame their comments.

4.0 PUBLIC COMMENT PERIOD

The NEJAC held a public comment period to hear from concerned citizens and members of affected communities. Comments were heard from five individuals from around the country, four of whom also submitted written comments. One additional written comment was received for inclusion in the public record. Exhibit 5 lists the individuals who provided verbal and written comments.

Sections 4.1 through 4.5 summarize the spoken comments presented. Section 4.6 identifies the individual who submitted written comments but did not speak during the public comment period. Section 4.7 highlights the Council discussion at the end of the public comment period. All written comments are included in Appendix C.

4.1 Mr. Daniel Parshley, Glynn Environmental Coalition, Brunswick, GA

Mr. Parshley introduced himself as project manager with Glynn Environmental Coalition in Brunswick, Glynn County, Georgia. He mentioned that he had spoken briefly with Ms. Robinson prior to the call. He noted the relevance of the Council’s discussion to the experience of his grassroots organization, which he described as having faced numerous environmental problems related to permitting. He asked what mechanisms

<p>Exhibit 5 INDIVIDUALS WHO PROVIDED PUBLIC COMMENT</p> <p>Spoken Comments</p> <ul style="list-style-type: none"> • Mr. Daniel Parshley, Glynn Environmental Coalition, Brunswick, GA* • Mr. David Ludder, Law Office of David A. Ludder, Tallahassee, FL* • Ms. Elizabeth O’Nan, Protect All Children’s Environment, Marion, NC* • Mr. John Shapiro, Western P.A.C.E., Santa Fe, NM • Ms. Rosa Hilda Ramos, Comunidades Unidas Contra la Contaminacion, Cataño, Puerto Rico* <p>Written Comments Only**</p> <ul style="list-style-type: none"> • Ms. Joyce Grant, Citizens for Oceanfront Preservation, Asbury Park, NJ <p>Notes: <i>*In addition to speaking, Mr. Parshley, Mr. Ludder, Ms. O’Nan, and Ms. Ramos also submitted written comments.</i> <i>**Written comments are included in Appendix C.</i></p>

were available for communities to bring their concerns to the attention of EPA. He raised concerns about how progress at the Agency would translate to progress at the community level.

He commented that four Superfund sites were located in his community due to the failure of the permitting process. He added that the community was prevented from alerting EPA about the problems.

Mr. Parshley noted that a search conducted on the EPA Website for “Office of Environmental Justice” generated no results. He added that attempts to navigate through the NEJAC Website led to “dead links.” He said there was no link that members of the community could use to submit environmental justice concerns. He noted that, during his conversation with Ms. Robinson, it was evident that there were “significant problems” on the EPA Website and improvements were needed.

He also observed that environmental justice complaints sent to EPA Headquarters were often routed back to the EPA Regional Offices. He commented, “Part of environmental justice should

“Environmental justice should be the community’s access to all levels of the EPA and all levels of the decision-making process.”

– Mr. Daniel Parshley, Glynn Environmental Coalition

be the community’s access to all levels of EPA and all levels of the decision-making process.” He noted that responsible parties of Superfund sites generally have easier access to EPA than members of the community. He urged EPA to

(1) include search terms on the Agency’s Website that provide a clear mechanism for community members to submit their environmental justice complaints; and (2) provide for an appeals process for issues that cannot be resolved at the Regional level.

Mr. Parshley also submitted written comments, which are presented in Appendix C, Section C.1.

Highlights of the discussion that followed Mr. Parshley’s comments are presented below:

- Ms. Robinson reported that EPA was moving toward a topic-driven Website structure, instead of one focused on EPA programs and offices. She said EPA recognized that certain topics (such as environmental justice) cut across programs and Regions. She explained that the Agency was developing a “microsite” for environmental justice and recognized areas for improvement. She said that she would continue a dialogue with Mr. Parshley.
- Mr. Ridgway referred to the statement at the end of Mr. Parshley’s written comments, “NEJAC should evaluate Regional and EPA [Headquarters] responses to [environmental justice] concerns on an annual basis and provide a score on overall performance.” He noted that this would be a huge undertaking but also acknowledged that he would be interested in how EPA was receiving and addressing environmental justice concerns. He raised this as an issue for the NEJAC to consider.
- Ms. Robinson reminded the Council that NEJAC, as a FACA committee, could not monitor or provide oversight to EPA functions. She said that the Council’s sole function was to provide advice and recommendations to the Agency. She deferred to Mr. Kent Benjamin, Associate Director, OEJ, to discuss performance measures. Mr. Benjamin expressed appreciation for Mr. Parshley’s comments. He reported that the Agency was reviewing its environmental justice Website (www.epa.gov/environmentaljustice), page by page, to correct all broken links and incorporate updates. He explained that efforts were being

made to enhance relationships with the Regions and improve the Regions' actions in response to environmental justice complaints. He noted that the Regional Offices have direct contact with communities, and that communities with complaints are encouraged to contact Headquarters if the Regional responses are unsatisfactory.

4.2 Mr. David Ludder, Law Office of David A. Ludder, Tallahassee, FL

Mr. Ludder introduced himself as a private attorney based in Florida but practicing in Alabama. He stated that he occasionally represented environmental justice communities. He described his current case involving 64 African American residents near a landfill in Alabama who were receiving Tennessee Valley Authority coal ash from Kingston, Tennessee. He noted that the community was suffering with no protection from EPA or the state.

“EJ is nothing more than lip service in Alabama.”

– Mr. David Ludder, Law Office of David A. Ludder

Mr. Ludder referred to his written comments, which he had submitted prior to the meeting (see Appendix C, Section C.2), related to Title VI of the Civil Rights Act (see Exhibit 6). He noted that Title VI offered the best opportunity for EPA to advance environmental justice in permitting but added that it was not being used very well. He asserted that states (such as Alabama) apply to EPA for grant money, claiming to comply with Title VI, but in actuality, states disregard Title VI after submitting their applications. He added that there were generally no efforts by states to comply with Title VI until complaints were filed with EPA.

Mr. Ludder urged for “radical change” in the process for implementing Title VI, and he

Exhibit 6 TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. If a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action. Aggrieved individuals may file administrative complaints with the federal agency that provides funds to a recipient, or the individuals may file suit for appropriate relief in federal court. Title VI itself prohibits intentional discrimination. Most funding agencies, however, have regulations for implementing Title VI that prohibit recipient practices that have the effect of discrimination on the basis of race, color, or national origin.

(Source: <http://www.justice.gov/crt/cor/coord/titlevi.php>)

recommended an amendment to the Title VI regulations requiring states to perform disparate impact analyses of all permits unless categorical exclusions had been approved. He reported that nothing was being done in Alabama, but the state was asserting that it was in compliance “just to get the money.” He commented, “EJ is nothing more than lip service in Alabama.”

A summary of the Council's discussion following Mr. Ludder's comments follows:

- Mr. Ridgway noted that Mr. Ludder's concerns were similar to those raised by Ms. Pestana earlier in the teleconference meeting, during which she had referred to disparate impact analyses conducted by the National Law Journal in 1992. He suggested that EPA require states applying for financial assistance to perform a disparate impact analysis relative to the requested assistance. He asked whether EPA or any states were conducting disparate impact analyses related to Title VI.

- Mr. Targ stated that, based on his experience with the State of California where he practiced, he was not aware that the Agency required any such analysis prior to states receiving grant funding. He added that states self-certify their intention to comply with Title VI. Continuing his remarks, Mr. Targ reported that litigation was ongoing in the Ninth Circuit Court and elsewhere regarding Title VI issues involving EPA and other agencies, and that DOJ was reorganizing and conducting an internal review of its divisions with Title VI responsibilities. He added that DOT was looking at specific projects that have received stimulus funds within the context of Title VI. For example, he noted that the Bay Area Rapid Transit (BART) Oakland Airport Interconnector project had temporarily lost its funding due to Title VI issues. He noted that NEPA required disproportionate impact analysis.
- Mr. Benjamin confirmed that DOJ was working with EPA to enhance efforts in Title VI. He stated that he would report back in the future on the status of those activities. He noted that Plan EJ 2014 included an element on how permitting would be addressed in the coming years and gave assurance that he would raise this concern to the groups working on this issue.
- Mr. Ludder expressed appreciation for EPA's efforts to improve its approach to handling complaints. He clarified that his comments were not directed to EPA's approach to implementing Title VI but rather that EPA should require the states responsible for issuing permits to conduct disparate impact analyses for the permits that they issue.

4.3 Ms. Elizabeth O’Nan, Protect All Children’s Environment, Marion, NC

Ms. O’Nan, Director, Protect All Children's Environment (PACE), described her organization as a group of individuals that have been poisoned by chemicals and were institutionally injured or disabled by chemical exposures. She stated that the current term for this disability is Toxicant Induced Loss of Tolerance (TILT), characterized by continuous and ongoing injury from pollution and unnecessarily toxic products. She added that this population was continually being “re-injured” in their daily lives.

She commented that, while many from the TILT community have spoken to the NEJAC, the group was not represented on the Council nor recognized by EPA. She referred to a 2002 resolution by the NEJAC requesting that EPA recognize the existence of this “sensitive” population (also known as people with “multiple chemical sensitivity”), adding that EPA had rejected the resolution. She asked that the NEJAC urge EPA to recognize this “exponentially-growing disability.”

“As long as ... individuals have had their lives ripped out from under them by these environmental injustices..., it seems like any other issues that we’re addressing here...miss the point.”

– Ms. Elizabeth O’Nan, *Protect All Children’s Environment*

She also asked for assistance from NEJAC and EPA in dealing with unusual and problematic issues that arise from continuous exposures. She stated, “As long as [we have] these individuals that have had their lives ripped out from under them by these environmental injustices..., it seems like any other issues that we’re addressing here...miss the point.”

In addition to urging EPA to act on the previous NEJAC resolution, Ms. O’Nan referred to the following additional recommendations, which are also presented in her written comments in Appendix C, Section C.3.

1. Enact the Toxic Tort Abatement Act to reduce injustice in courts for those who are inevitably

chemically injured by toxic chemicals. Provide funds for assistance and special needs.

2. Provide sanctuary emergency shelter and special needs housing for the chemically disabled.
3. Include communities in community planning efforts, and recognize the needs of those disabled by TILT.
4. Educate physicians through the Department of Health and Human Services to treat all levels of chemical injury.

The Council had no comments following Ms. O’Nan’s testimony.

4.4 Mr. John Shapiro, Western P.A.C.E., Santa Fe, NM

Mr. Shapiro stated that his organization primarily dealt with veterans’ issues. He reported that an increasing number of veterans were having problems with toxic exposure, especially in low-income communities. He said that toxic exposure among veterans had historically been a problem, noting that 25 percent of all injuries in World War I were chemical injuries. He asserted that doctors started treating such injuries in 1918 by “avoidance,” that is, moving their patients to the mountains, desert, or beach to help them feel better. He said that Great Britain had been tracking chemical injuries among its veterans since 1921 and found that most did not get better. He added that the health of most of the Vietnam veterans who were exposed to Agent Orange, Agent Purple, dichlorodiphenyltrichloroethane (DDT), and chlordane had not improved, and they continued to live in low-income communities with toxic exposure in their homes.

“The government has really dropped the ball on this, in a very severe way.”

– Mr. John Shapiro, Western P.A.C.E.

He explained that when these veterans go to the Veterans Administration (VA) Hospital with complaints about their chemical-related injuries, they are often scoffed at or told that, instead of having multiple chemical sensitivities, they are actually suffering from a mental illness called “olfactory hallucinations.” He reported that no treatment protocols exist, however, private physicians have obtained positive results with glutathione (administered intravenously or in nasal sprays) and colestyramine. Mr. Shapiro further asserted that the University of Virginia Medical School has had success with detoxifying employees exposed to pesticides at toxic waste sites.

Mr. Shapiro commented that HUD had “dropped the ball,” noting that most veterans are homeless. He said that on-base housing was highly contaminated with chlordane from the 1950s until mid-1970s, when it was finally banned. He added that the incidence of diabetes in young veterans was rising, especially among Native Americans. He reported that many physicians attribute this to pesticides that act as estrogen xenobiotics that mimic hormones.

He referred to the water supply at Camp Lajeune, NC, which he said had been “knowingly contaminated” and exposed tens of thousands of marines and their families to high levels of solvent. He stated, “the government has really dropped the ball on this, in a very severe way.” He cited economic studies reporting that it was cheaper to keep veterans, children, employees, and members of the community healthy. He stated that a small group of “rogue chemical corporations” pollute and add high costs to the healthcare system and taxpayers.

He welcomed listeners to contact him at johnshapiro2000@yahoo.com.

The Council had no comments following Mr. Shapiro’s testimony.

4.5 Ms. Rosa Hilda Ramos, Comunidades Unidas Contra la Contaminacion, Cataño, Puerto Rico

Ms. Ramos stated that she was a former NEJAC Executive Council member and expressed appreciation for the Council’s efforts. She commented that she was surprised that the NEJAC was at the “same point” as when she left – still talking about permitting problems, risk assessments, toxic exposure, cumulative health effects, grassroots community participation, and other topics. She expressed her sadness for the lack of progress.

She noted the lack of representation on the NEJAC of “abused communities” such as (1) the island of Puerto Rico, which she said was “poorer than the poorest state of the United States, with 4 million people;” (2) low-income white people of the Appalachians facing problems associated with the mining and coal industries; and (3) Latino farm workers who were at risk from exposure to insecticide spraying.

“It’s your responsibility to convey...to [Administrator] Jackson that something has to be done to regulate more the oil ...and gas industry.”

– Ms. Rosa Hilda Ramos, *Comunidades Unidas Contra la Contaminacion*

Ms. Ramos also expressed her disappointment about the Council’s lack of discussion around exploding refineries and pipelines. She asked the NEJAC to recommend greater regulation of the oil and gas industry. She added that Administrator Jackson should promote the inclusion of affected communities in FACA committees. She said, except for EPA, “the little guys, the ones who really suffer, EJ

communities, do not have a voice in developing any federal agency policy, [which explains] why environmental abuses abound.” She also acknowledged that EPA staff were “very good,” and said that Administrator Jackson should encourage more ideas from staff.

Ms. Ramos also submitted written comments, which are presented in Appendix C.

Ms. Yeampierre informed Ms. Ramos that Ms. Blanton was a representative on the NEJAC from Appalachia, and that she herself was Puerto Rican from New York City. She reported that that she and other activists from New York City had met with Ms. Judith Enck, Regional Administrator, EPA Region 2, and requested that EPA pay special attention to Cataño – where an explosion and fire occurred at the Caribbean Petroleum Corporation (CAPECO) on October 23, 2009. Ms. Yeampierre expressed hope that Ms. Ramos had the opportunity to engage EPA effectively. She urged her to write, call, or e-mail Region 2; and offered her help to Ms. Ramos (in her capacity as Executive Director of UPROSE, Inc., “Brooklyn’s oldest Puerto Rican organization”).

4.6 Written Comments

Appendix C presents all written comments submitted for the public record. Four individuals who spoke also submitted written statements prior to the teleconference meeting. In addition, a written statement was received from Ms. Joyce Grant, Citizens for Oceanfront Preservation, Asbury Park, NJ, who did not speak during the meeting.

4.7 Member Dialogue

Highlights of the discussion among NEJAC members following the public comment period are summarized below:

- Mr. Marsh noted that several public commenters spoke about the special needs of people with chemical sensitivities. He suggested having someone look into the work that was being done to address those issues, for example, by EPA's Office of Research and Development or the National Academy of Sciences. Mr. Ridgway added that this issue was also related to TSCA reform and requested that EPA keep the Council updated on the Agency's role in TSCA reform activities.
- Ms. Fisher noted the challenge of teaching EPA's rule writers and permit reviewers about environmental justice. Ms. Robinson responded that the Agency has identified training as a very important component of its work, not only in a classroom setting but also in on-the-job "teachable moments." She reported that an EPA training program for those involved in the Agency's rulemaking process included a module on environmental justice. She also mentioned EPA's Environmental Justice in Rulemaking Guidance as another means of increasing staff awareness.
- Ms. Yeampierre commented that the NEJAC was regarded by many as a "one-stop shopping" place for environmental concerns. She recognized a need for cross links on the NEJAC Website to direct people to other FACA committees that might be more appropriate to address their concerns. Ms. Robinson agreed, adding that she and Mr. Lee were working with other FACA committees to incorporate considerations of environmental justice into their decision-making and deliberations. She referred to an EPA Website that lists all the Agency's FACA committees and their respective missions (www.epa.gov/ocem/faca/facacomcontacts.htm). Ms. Robinson committed to follow-up on Ms. Yeampierre's suggestion of introducing cross links and invited the Council to provide other suggestions on how to make EPA's NEJAC Website more user-friendly. She also added that efforts were underway to help other federal advisory committees increase representation of members who understand environmental justice issues. She noted that some former NEJAC members had been asked to join other federal advisory committees.

5.0 Closing Statements

Ms. Robinson announced that the next in-person meeting of the NEJAC was scheduled for Tuesday, November 16, through Thursday, November 18, 2010, in Kansas City, Missouri, at The Westin Crown Center hotel. She encouraged everyone to visit the NEJAC Website for more information on registering for the meeting and arranging hotel accommodations. She said that information would also be sent through EPA's EJ ListServ.

Ms. Yeampierre thanked everyone for their time and adjourned the meeting.

Appendix A
NEJAC Public Teleconference Meeting
Thursday, September 23, 2010

List of Members

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Executive Director
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Brooklyn, New York

VICE-CHAIR

John Ridgway

Manager, Information Management and
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Program
Washington State Department of Ecology
Olympia, Washington

OTHER MEMBERS

ACADEMIA (3)

M. Kathryn Brown

Formerly University of Cincinnati College of
Medicine
Cincinnati, Ohio

Paul Mohai

Professor
School of Natural Resources and Environment
University of Michigan
Ann Arbor, Michigan

Patricia E. Salkin

Associate Dean and Director
Government Law Center
Albany Law School
Albany, New York

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Sue Briggum

Vice President, Federal Public Affairs
Waste Management, Inc.
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Wynecta Fisher

Social and Environmental Equity Project
Coordinator
E2 Inc.
New Orleans, Louisiana

Stephanie Hall

Senior Counsel, Environmental Safety and
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Valero Energy Corporation
San Antonio, Texas

Jodena Henneke

Program Manager, Commercial, State, and Local
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The Shaw Environmental & Infrastructure Group
Austin, Texas

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Teri E. Blanton

Fellow
Kentuckians for the Commonwealth
Berea, Kentucky

Hilton Kelley

Director
Community In-power and Development
Association
Port Arthur, Texas

Margaret J. May

Executive Director
Ivanhoe Neighborhood Council
Kansas City, Missouri

Fr. Vien T. Nguyen

Pastor
Mary Queen of Viet Nam Community
Development Corporation
New Orleans, Louisiana

Kimberly Wasserman

Coordinator
Little Village Environmental Justice Organization
Chicago, Illinois

Elizabeth Yeampierre [see Chair above]

NON-GOVERNMENTAL/ENVIRONMENTAL GROUPS (6)

Savonala 'Savi' Horne

Executive Director
Land Loss Prevention Project
Durham, North Carolina

J. Langdon Marsh

Fellow, National Policy Consensus Center
Portland State University
Portland, Oregon

Vernice Miller-Travis

Vice Chair
Maryland State Commission on Environmental
Justice and Sustainable Communities
Bowie, Maryland

Shankar Prasad

Executive Fellow
Coalition for Clean Air
Sacramento, California

Nia Robinson

Environmental Justice and Climate Change
Initiative
Greensboro, North Carolina

Nicholas Targ

Co-Chair, Environmental Justice Caucus
American Bar Association
San Francisco, California

STATE and LOCAL GOVERNMENTS (2)

Edith Pestana

Administrator, Environmental Justice Program
Officer of the Commissioner
Connecticut Department of Environmental
Protection
Hartford, Connecticut

John Ridgway [see Vice Chair above]

TRIBAL GOVERNMENTS and INDIGENOUS ORGANIZATIONS (3)

Don Aragon

Executive Director
Wind River Environmental Quality Commission
Eastern Shoshone and Arapaho Tribes
Fort Washakie, Wyoming

Peter M. Captain, Sr.

Elder Advisor to the Executive Board of Directors
Yukon River Intertribal Watershed Council
Fairbanks, Alaska

Jolene M. Catron

Executive Director
Wind River Alliance
Fort Washakie, Wyoming

Appendix B
NEJAC Public Teleconference Meeting
Thursday, September 23, 2010

List of Attendees

Ajanaku, Abena
Georgia Department of Natural
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Akula, Maya
California Department of Toxic
Substances Control
Chatsworth, CA

Allegra, Kim N.
University of California, San
Francisco
Oakland, CA

Amegashie, Carolyn
Wisconsin Department of
Transportation
Madison, WI

Andarde, John
Old Bedford Village
Development Corporation
New Bedford, MA

Augurson, Shirley
U.S. EPA Region 6
Dallas, TX

Baecker, Renee
South Carolina Department of
Health & Environmental Control
Columbia, SC

Baird, Barbara
South Coast Air Quality
Management District
Diamond Bar, CA

Bateman, Ellen
George Mason University
Arlington, VA

Bautista, Eddie
New York City Environmental
Justice Alliance
Brooklyn, NY

Beardsley, Betsy
Alaska Wilderness League
Anchorage, AK

Bell, Janet
Bell Associates
Wheat Ridge, CO

Bell, Aaron LeVar
U.S. EPA
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Benson, Sonja L.
Alaska Department of
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Fairbanks, AK

Bird, Cathie
Statewide Organizing for
Community eMpowerment
Pioneer, TN

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Bone, Tracy
U.S. EPA
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Bonogofsky, Alexis
National Wildlife Federation
Billings, MT

Booher, Robert
Puget Sound Clean Air Agency
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Carter, Brenda
Illinois Environmental Regulatory
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Childers, Andrew
BNA Daily Environment Report
Arlington, VA

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Davis, Consuelo Flores
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Deganian, David
The University of Georgia School
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Athens, GA

Dennis, Carol
White House Office of
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Ditmore, John
Coffeyville Resources Refining
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Erraguntla, Neeraja
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Friedman, Brian
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Garrigan, Lee
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Guarino, Doug
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Guitar, Christine
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Hammond, Lisa
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Hanley, Rachel
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Wright-Bailey, Alice
Pennsylvania Department of
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Norristown, PA

Appendix C
NEJAC Public Teleconference Meeting
Thursday, September 23, 2010

Written Public Comments

This appendix contains written statements provided by members of the public.

(Note to readers: Statements included in this appendix are shown verbatim, as provided by the individuals who submitted them, with no modifications or changes.)

Sections C.1 through C.4 present written comments from the following individuals who also spoke during the public comment period:

- Mr. Daniel Parshley, Glynn Environmental Coalition, Brunswick, GA
- Mr. David Ludder, Law Office of David A. Ludder, Tallahassee, FL
- Ms. Elizabeth O’Nan, Protect All Children’s Environment, Marion, NC
- Ms. Rosa Hilda Ramos, Comunidades Unidas Contra la Contaminacion, Cataño, Puerto Rico

Section C.5 presents the written comment from Ms. Joyce Grant, Citizens for Oceanfront Preservation, Asbury Park, NJ, who did not verbally address the NEJAC during the public comment period.

C.1 Mr. Daniel Parshley, Glynn Environmental Coalition, Brunswick, GA

1. A Brief Description of the Concern: On the August 26, 2010 NEJAC call, I discussed the lack of any EPA Office of Environmental Justice, no web link to the EPA Office of Environmental Justice, no email address for the EPA Office of Environmental Justice, no phone number for the EPA Office of Environmental Justice, no person listed by the EPA as being the staff of the EPA Office of Environmental Justice, and the web link provided by NEJAC as being the EPA Office of Environmental Justice (<http://www.epa.gov/oeca/oej>) results in the message "The requested item was not found on the EPA's Web Server" (as of 9-16-10). Therefore, the only reasonable conclusion that can come from these facts is there is no EPA Office of Environmental Justice. Therefore, the process of "...discussion will be EPA's charge to the NEJAC on incorporating Environmental Justice into the permitting process and EPA's Plan EJ 2014" is premature. The first task should be to 1.) establish an EPA Office of Environmental Justice to monitor compliance and enforcement, 2.) establish a web link to the EPA Office of Environmental Justice. 3.) establish an email and postal address, and phone number for communities, individuals, and EJ organizations to report EJ violations to the EPA Office of Environmental Justice, 4.) hire a person to staff the EPA Office of Environmental Justice and put the person's name, email address, postal address, and phone number on the EPA Web site. Notable is that EJ violations submitted to Lisa Jackson via postal mail do not receive a response. This fact further reinforces that the EPA does not have an Office of Environmental Justice, or the Office of EJ is severely dysfunctional and not serving to report or resolve ongoing EJ problems and complaints. The Nation would be better served by NEJAC addressing the above problems as part of their current charge. Failure to do so will only result in another dysfunctional program under the auspices of the "EPA Office of Environmental Justice".
2. What You Want the NEJAC to do: There are systemic problems within the EPA at the Regional and HQ levels that routinely deny communities EJ. Systemic problems need systemic changes, which EPA HQ must implement. NEJAC needs to demand that EPA HQ respond to EJ complaints at a minimum, and monitor EPA HQ responses to evaluate the effectiveness in addressing EJ concerns. Also, NEJAC should evaluate Regional and EPA HQ responses to EJ concerns on an annual basis and provide a score on overall performance.

C.2 Mr. David Ludder, Law Office of David A. Ludder, Tallahassee, FL

1. I have long been concerned that state environmental agencies are ignoring Title VI of the Civil Rights Act and 40 CFR 7.35(b) and (c) and that EPA is doing nothing to change the status quo. These provisions prohibit recipients of EPA financial assistance from administering programs (e.g., permit programs) that have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex. Currently, applicants for financial assistance merely have to certify that they comply with Title VI at the time they apply for financial assistance, but they do not have to develop or implement any programs (e.g., demographic and disparate impact analyses of individual permits) to ensure compliance with Title VI after receipt of financial assistance. Requiring states to develop and implement programs to ensure compliance with Title VI would be a giant leap forward and afford at least the possibility of equal protection for all. I have attached a suggested rule amendment that I believe would require states to develop and implement permitting programs (including demographic and disparate impact analyses of individual permits) that ensure compliance with Title VI.
2. What You Want the NEJAC to do: Recommend to EPA Administrator a rule amendment to require that state financial assistance recipients perform disparate impact analyses of all permits unless categorical exclusions have been approved.

C.3 Ms. Elizabeth O’Nan, Protect All Children’s Environment, Marion, NC

My name is Elizabeth O’Nan. I have served as director of Protect All Children’s Environment (PACE) since 1987. PACE is a national support organization for citizens of all ages who have been injured or disabled by chemical exposures. I have repeatedly appealed to NEJAC for assistance and recognition of the environmental injustice inflicted upon these citizens. I was told repeatedly told by Aaron Bell that I would be contacted to discuss these serious issues, but never was there any follow up to my petitions and never was I allowed on any agenda. Again I ask for environmental justice for a group of citizens who have been much abused by their government and the corporations who have profited from their poisoning.

Citizens disabled by Toxicant Induced Loss of Tolerance (TILT) suffer continuous and ongoing injury from the ubiquitous nature of pollution as well as the innumerable unnecessarily toxic products that have been allowed on the market without proper testing for health safety. Additionally, basic needs that allow TILT patients to "avoid" additional toxic exposures that cause accumulative degenerative injuries such as housing, food, safe alternative products, alternative or distance schools, etc., are not within the reach of most. Further, the special environmental needs of this entire population are being ignored and unaddressed.

Due to corporate lobbying, propaganda, revolving doors, and criminal behavior, this exponentially increasing number of citizens has received little or no justice, recognition, assistance, or compassion. All 5 Cross-Agency Focus Areas: Rulemaking, Permitting, Compliance, Community-Based Action and Administration-Wide Action have ignored and failed this "sensitive" population.

No one who does not suffer from TILT can imagine the isolation and the difficulty in finding safe housing, education, food, work, emergency shelter, medical care, or just simply avoiding further injury from chemical exposures.

NEJAC must recognize and work with the TILT and chemical injury population to facilitate their access to and assistance in all 5 Cross-Agency Focus Areas in order to prevent new TILT disabilities and to provide environmental protection, and justice for those who currently suffer from TILT. The first and primary step is simply to recognize that we exist and suffer the most extreme form of environmental injustice. Rulemaking would be a priority to bring about recognition and incorporation of those with TILT. Administration-Wide Action could facilitate justice in the other Cross-Agency Focus Areas.

There is much that can be done:

1. Enact the Toxic Tort Abatement Act that will reduce injustice in our courts for those who are inevitably chemically injured by toxic chemicals by providing funds for assistance and special needs.

2. Provide sanctuary emergency shelter and special needs housing for the chemically disabled in the National Forests as an Americans with Disabilities accommodation by the US Forest Service in conjunction with Housing and Urban Development.
3. Work with Communities to recognize the needs of those disabled by TILT when they are planning their communities.
4. Educate physicians through Health and Human Services and state medical licensing to recognize and treat all levels of chemical injury.
5. Reduce permits for pollution to accommodate those disabled by TILT as what causes immediate illness for a person with TILT will inevitably cause injury in others given continued exposures.

C.4 Ms. Rosa Hilda Ramos, Comunidades Unidas Contra la Contaminacion, Cataño, Puerto Rico

Description: I am very happy to see that Ms. Jackson has indeed incorporated an intention to act addressing our petition to eliminate the total disconnect between federal agencies regarding the administration of Environmental Justice.

Our little community in Cataño has been historically abused. In 199 it was already identified as such and used as an example in the Boston Globe to validate Mr. Al Gore proposal to identify environmental abuse against small communities. We were used to call for action to protect the wellbeing of totally disenfranchised people who are exposed to a disproportionate amount of toxics in the environment. That happened before Mr. Clinton was chosen to be a President.

Twenty years have passed and many good things has changed in our community, but still we are I an abused community. We fought to clean our air and we won. The air is clean but we are still abused by federal agencies, simply because we are a little town mostly inhabited by poor people. Many poor people still have no sewage system, the town is literally dying with abandoned houses.

The Capeco refinery closed but its tank farm exploded because of the lack of federal regulations regarding all the operations of the oil industry. Spills were as usual until it exploded a year ago and no federal indictment has been filed. Until recently there was no federal environmental criminal investigators permanently assigned to our island. EPA attorneys and district attorney had their hands tied because of the lack of this important criminal investigating tool. A criminal investigator who does not speak Spanish and do not know about our tropical environment and culture cannot complete a criminal investigation. I wonder if the newly arrived would be able to collect any evidence, or catch some tip as to asses diligently a criminal case in such a delayed intervention. The refinery management has a total control of its employee and I believe they are terrorized and not willing to cooperate.

Capeco exploded In October of last year. A tank was overfilled, forming vapors that caused an explosion initiated by a truck motor engine. 40 tanks exploded in a chain reaction. Prevention of the formation of exploding vapors by overfilling of the tank , cannot be properly enforced because of the government accepted self-regulating policies regarding the oil industry. The EPA wimpy approach to such events is directed to prevent "oil spills" to the dirt. The federal agency that "investigated" the incident told us that the explosion was "a very rare incident." In fact the truth is that refineries in US operate at will, emitting many toxics into the air, causing many explosions. It is easy find that many "incidents" are totally documented in the web. The explosions always impact closely the poor, minorities and disenfranchised communities.

The Gulf incident was investigated by a clueless "advisory" mainland investigative Agency of some sort, lacking any enforcing power. Usually it takes at least two or more years for them to "prepare" a "report". I bet a cup of coffee they do not have any policy to comply with the EJ Executive order themselves and if they do they do not care a hoot about it. The chief totally evaded meeting with us, and did not allow the media to be in our meeting. Things have not changed since I was part of the NEJAC Executive Council. No real abused community representative is part of the Oil Federal Advisory Committee or any other Committees. The oil industry is totally served by the federal government, and that is an environmental justice abuse itself. In fact most of the

advisory groups do not include affected people by the wrongful advice of the oil industry members. As a NEJAC Council member I had to provoke meetings with some of Oil advisory Council members to talk about tank farm size and explosion prevention. Those were useless meetings; all of them were oil industry representatives and members of the Academia who worked for them. I had no standing to confront them.

Oil industry regulations are absent and compliance is mostly voluntary. Guidance is established by the oil industry itself. Again, oil industry is a self-regulated industry. Not only in Puerto Rico but also in the mainland. BP spill is a shameful example as a lack of commitment to environment protection, and the health of the people of state of Louisiana. Also of lack of commitment and ethics of a "regulatory" federal oversight of oil drilling.

To make things even worse, other federal agencies seem to also ignore the EJ Executive order. Because of us being a small town of only 30,000 residents, we do not qualify to receive money to improve living conditions of our citizens. The whole town is a brown field. Government corruption flourished in our town under the nose of federal Authorities as in other EJ communities in the states. Federal government totally ignored community plea to halt Municipal corruption. Is the DOJ aware of the EJ executive order? Disproportionate polluting means much industry providing good government income. The Municipal government becomes a rich Town with poor people. Fraudulent contracts, projects abound. But who cares?

Even EPA keeps ignoring the enormous negative impact of raw sewage discharge in our Bay that does not allow us to develop tourism in spite of the beautiful San Juan Bay View. EPA has ignored our plea to clean our waters from raw sewage, but spends money "to protect the San Juan Bay Estuary" in projects that do not halt the sewage discharges from Cataño into the Bay.

The Corps of Engineers discriminates constantly against our town. From 2,000 miles away, it ignores the differences of permitting wetland filling in a vast wetland area in the middle of nowhere and permitting 10 acre of wetlands in a 5 square mile town. They do not seem to care about the impact of the storm water discharges of filled land upon poor communities already prone to flooding with sewage waters. Also the Corps of Engineers does not allow public participation, depending only of email addresses of mailing lists that are modified at will. Permits are granted without poor community participation. The Corps has completely ignored our petition to implement a Wetland Bank in our uplands, in order to increase the water retention capabilities of the land and protect the poor from flooding.

Fish and Wildlife Administration granted money to plant trees that create uplands in areas with a marked diminished capability to retain in water, and contributing to increase flooding problems.

We need to create new wetlands but has not gotten any support to get enough SEP funding to buy wetlands.

We are so small, that we do not qualify for Public Housing funds to relocate people from communities that flood with sewage every time it rains.

I keep asking; Where is the Executive Order? Where can we go to support new jobs?

IN FACT THE DOE DISCRIMINATES AGAINST THE WHOLE ISLAND OF PUERTO RICO. We promoted and convinced a former adversary, the Puerto Rico Electric Power Authority to grow marine microalgae in alliance with the University of Georgia and the University of Puerto Rico as well with experienced Microalgae aqua farming experts of Puerto Rico. We can certainly grow in open ponds oil producing microalgae enough to produce clean, non-toxic, degradable, non-exploding fuel from pure vegetable oil. The oil is totally compatible with 77% of the power plants boilers. Because in the USA only 1% of energy is produced by oil combustion, DOE totally ignored our petition to grant money to lower our energy costs. They rejected our grant proposals. Ironically our project won the Economist carbon capture award and Cleantech award in California. The CO2 emitted by the power plants stacks would be used as a nutrient for the microalgae.

We invited EPA to be our partner in this community based proposal and invited Ms. Jackson in a letter. The letter never was answered and no support to get financial aid from DOE ever came. The project produces 0 net carbon emissions. No heavy metals sulfur or carcinogens would be emitted into the environment. Sure, lots of money came from federal government to be used in solar panels, and wind mills. We cannot depend on these

alternatives to generate energy. As a poorer community than the poorest state of the mainland we cannot afford the high costs of solar panels and wind mills. DOE forced Puerto Rico to change the oil fired fuel to a non-renewable alternative; natural gas. Solar panels and wind mills can only be a solution in wealthier mainland communities. Our energy costs are much higher than in any mainland state (except Hawaii). DOE granted large quantities of money to big microalgae farms to produce jet fuel to EXXON and CHEVRON.

I am working as a volunteer to get approval for small business grants for 10 families in a curb side of the Cucharillas wetland. It has been a struggle as usual. Environmental justice to create new jobs.? Totally unheard by federal agencies.

I am afraid that the good intentions of Ms., Jackson will fall through the cracks in which the original Executive order disappeared. How empowered is she as to make other agencies to act accordingly the spirit of the Executive Order?

That is the first step, empowerment to revitalize federal government compliance with of the order on behalf of the "little people".

Rosa Hilda Ramos
Community Representative

C.5 Ms. Joyce Grant, Citizens for Oceanfront Preservation, Asbury Park, NJ

Oceanfront development on the last remaining undeveloped, open space natural resource area on Asbury Park's oceanfront is currently proposed to encroach on Green Acres Land, is located in the high hazard flood zone(v-zone), is in violation of Coastal Zone Management Rules, and negatively impacts environmental justice issues that include decreases in access to public beaches and Green Acres land, and will block the view of four(4) floors and patio of Asbury Tower, a HUD, affordable housing building of 300 to 400 Senior residents. The community outcry over this development goes unheeded by both the Asbury Park Council and owner/developer, iStar Financial/Asbury Partners despite the offer from NJ Conservation Foundation and the Trust for Public Land to buy out the development rights and create a public oceanfront park.

We would like the NEJAC to write a strong letter to the City of Asbury Park protesting this assault of the environment in that area and ignoring the community of Asbury Park whose population is significantly younger, more ethnically diverse and much less affluent than either the County or the State. African Americans comprise the largest ethnic population in the City(6.1%), white population(24.7%), and the Hispanic/Latino population is 15.5%. All are from 2000. The City's per capita income and falling is \$13,516 and roughly half that of the County(\$31,149) and the State(\$27,006). One third of the City's families reported incomes below the poverty line. The threat to Ocean beach recreational Tourism will impact negatively the main source of the City's revenue.

It is critical that open public space be preserved on Asbury Park's oceanfront and the natural environment is protected.

Thank you,
Joyce Grant