MEETING SUMMARY

of the

EXECUTIVE COUNCIL

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

December 9, 10, AND 12, 2002
Baltimore, Maryland

Charles Lee
Designated Federal Official

Peggy Shepard
Chair

CHAPTER ONE
MEETING OF THE
EXECUTIVE COUNCIL

1.0 INTRODUCTION

The seventeenth meeting of the Executive Council of the National Environmental Justice Advisory Council (NEJAC) took place from December 9 through 12, 2002, at the Baltimore Marriott Inner Harbor Hotel in Baltimore, Maryland. Ms. Peggy Shepard, Executive Director, West Harlem Environmental Action, Inc., continues to serve as chair of the NEJAC. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, Office of Environmental Justice (OEJ), U.S. Environmental Protection Agency (EPA), continues to serve as the Designated Federal Official (DFO) for the Executive Council. Exhibit 1-1 identifies the members of the Executive Council who attended the meeting and members who were unable to attend. Approximately 300 people attended the meeting.

This chapter, which summarizes the deliberations of the Executive Council, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the remarks offered by various speakers. Section 3.0, *Policy Dialogue on Pollution Prevention and Environmental Justice,* summarizes the information provided by the Pollution Prevention Workgroup of the NEJAC and describes recommendations discussed by the members of the workgroup and the Executive Council. Section 4.0, *Presentations and Reports*, summarizes presentations and reports made to the Executive Council on various other topics. Section 5.0, *Miscellaneous Business*, summarizes discussions of other items before the Executive Council.

In addition to this chapter, this report includes seven additional chapters that document the NEJAC meeting from December 9 through 12, 2002. On December 9, 2002, the members of the Executive Council were presented two *Case Studies on Pollution Prevention and Environmental Justice*, that describe the efforts of community organizations and federal and state agencies to pursue pollution prevention and waste minimization in two communities affected by environmental justice issues. During the evening of December 10, 2002, the NEJAC hosted a public comment period during which representatives of community organizations presented their concerns about pollution prevention, waste minimization, and environmental justice. Chapter Two summarizes the case studies and the comments offered during the public comment period. On December 11, 2002, the members of the Executive Council who were present on that day participated in the deliberations of six of the seven subcommittees of the NEJAC. Chapters Three through Eight of this meeting summary describe those deliberations.

2.0 REMARKS

This section summarizes the remarks of the Assistant Administrator of EPA's Office of

Exhibit 1-1

EXECUTIVE COUNCIL

Members Who Attended the Meeting
December 9 through 12, 2002

Ms. Peggy Shepard, Chair
Mr. Charles Lee, DFO

Mr. Larry Charles
Ms. Veronica Eady
Ms. Judith Espinosa
Mr. Tom Goldtooth
Dr. Richard Gragg, III
Ms. Eileen Guana*
Mr. Walter Handy, Jr.
Mr. Robert Harris
Ms. Lori Kaplan
Ms. Pamela Kingfisher
Reverend Adora Iris Lee
Mr. Harold Mitchell
Ms. Mary Nelson
Dr. Graciela Ramirez-Toro
Ms. Wilma Subra
Ms. Jana Walker
Mr. Kenneth Warren
Mr. Terry Williams
Mr. Tseming Yang

Members Who Were Unable to Attend

Ms. Anna Frazier
Mr. Jason Grumet
Ms. Jane Stahl

*Attended on December 9 and 10, 2002, only

Enforcement and Compliance Assurance (OECA); the Deputy Assistant Administrator of EPA's Office of Prevention, Pesticides, and Toxic Substances (OPPTS); the Deputy Regional Administrator of EPA Region 3; the Assistant Secretary of Maryland's Department of the Environment (MDE); and a representative from Concerned Citizens of Eastern Avenue, Washington, D.C.

2.1 Remarks of the Assistant Administrator, EPA OECA

Mr. J.P. Suarez, Assistant Administrator, EPA OECA, commended the efforts of the members of the NEJAC and expressed appreciation for the important role that they play in assisting EPA. He added that EPA is indebted to the NEJAC for the voice that it brings to environmental justice. Noting the 10-year anniversary of the establishment of EPA OEJ, Mr. Suarez stated that the "protection and promise" represented by the establishment of OEJ only will be complete when environmental justice is incorporated into all EPA programs and offices.

Mr. Suarez stated that OECA is integrating environmental justice into its programs by:

- Factoring environmental justice into all aspects of planning and budgets, including agreements entered into by OECA with the EPA regional offices that dictate future regional initiatives;
- Emphasizing environmental justice issues as a criteria for case selection so that OECA can provide direct and immediate environmental justice benefits to environmental justice communities
- Using OECA databases and research tools, such as the Permit Compliance System (PCS) and EnviroMapper, to drive strategic efforts for bringing facilities into compliance and eliminating the environmental impacts that noncompliant facilities are having in communities.

Stressing the importance of continued outreach and communication to educate the regulated community about the role of OECA and the areas in which it offers assistance, Mr. Suarez asked the members of the NEJAC to assist OECA in developing compliance assistance tools and delivering them to the regulated community.

2.2 Remarks of the Deputy Assistant Administrator, EPA OPPTS

Dr. William Sanders, Deputy Assistant Administrator, EPA OPPTS, stressed that in his opinion, pollution prevention and environmental justice are the most important issues to be addressed by EPA programs and offices.

Sharing a brief history of his first awareness of, and the introduction of EPA and state agencies to, environmental justice issues, Dr. Sanders commented that two key developments had been critical to the incorporation of environmental justice issues within EPA and state agencies. First, he said, the EPA journal, *Environmental Protection: Has it Been Fair?,* which had focused completely on environmental justice was released in March/April 1992. He noted that several topics that had headlined the first EPA journal about environmental justice (such as "farm workers among the least protected; they suffer the most from pesticides" and "Health concerns for fish-eating tribes; government assumptions are much too low,") remain urgent environmental issues today. Second, an EPA workgroup released a report in June 1992 titled *Environmental Equity: Reducing Risks for All Communities*. Although the response from the environmental justice community to that report had been underwhelming, he said, the report served to move EPA forward in laying the foundation for the creation of EPA's Office of Environmental Equity, now OEJ. In 1995, he continued, OPPTS had been presented with the opportunity to co-sponsor the Health and Research Subcommittee of the NEJAC. Providing assistance and support to the Health and Research Subcommittee is a privilege that OPPTS still holds, he noted.

Continuing, Dr. Sanders commented that OPPTS had linked environmental justice and pollution prevention through its environmental justice and pollution prevention grant program, which operated from 1995 to 2001. He stated that promoting pollution prevention is an important means of achieving environmental justice objectives. Enormous opportunities exist, he continued, to build upon natural synergies between environmental justice and pollution prevention, particularly in areas such as community revitalization and sustainable development.

2.3 Remarks of the Deputy Regional Administrator, EPA Region 3

Mr. Thomas Voltaggio, Deputy Regional Administrator, EPA Region 3, welcomed the members of the NEJAC to Baltimore, Maryland. He stated that EPA Region 3 supports the principles of environmental justice and is committed to continuing its efforts to improve regional environmental justice programs in order to ensure protection of human health and the environment for all communities in the

mid-Atlantic region. He noted that Region 3's active involvement in environmental justice issues began in 1993 as a result of environmental concerns raised in Chester, Pennsylvania. At that time, he explained, EPA Region 3 had collaborated on what he believed to be the nation's first cumulative risk assessment of an environmental justice community. Since that time, he continued, EPA Region 3 has been involved in other important environmental justice efforts, including the following:

- The Baltimore Urban Risk Initiative conducted in Baltimore, Maryland, in 1995 and 1996. The initiative represented a joint effort by the City of Baltimore, the MDE, and EPA Region 3 to identify and address environmental issues of concern.

- The MDE Fish Consumption Survey, a comprehensive study of subsistence fishing in Baltimore Harbor

- Indoor air pilot programs in Baltimore public schools that involved the training of school system heating, ventilation, and air conditioning (HVAC) workers in how to maintain school air handling equipment in a manner that has helped them to operate more efficiently, thus lowering emissions

- An ongoing auto body and auto repair shop initiative in the Park Heights community of Baltimore City, Maryland (see Chapter Two, Section 2.1 of this report for a summary of that effort)

In closing, Mr. Voltaggio stressed that EPA Region 3 is committed to working with the state and local governments in its region to develop a more cooperative, proactive environmental justice program.

2.4 Remarks of the Assistant Secretary, MDE

Ms. Denise Ferguson-Southard, Assistant Secretary, MDE, also welcomed the members of the NEJAC on behalf of Maryland Governor Paris Glendening and Maryland Secretary Ray Pecore. Ms. Ferguson-Southard commented that the topic of pollution prevention and environmental justice was appropriate for the State of Maryland. The state strongly supports integrating environmental justice into its many programs, she said, and pollution prevention is one of the many programs targeted in this effort. She asserted that advancing environmental justice through pollution prevention is part of a transition to a new vision of environmental responsibilities shared among business, government, and impacted communities. As a result of new relationships among business, government, and impacted community members, she explained, pollution prevention strategies and approaches could shift limited resources into more productive, revitalizing work that is assisted and enabled by empowered and engaged community members.

Continuing, Ms. Ferguson-Southard echoed Mr. Voltaggio's statement about the enormous opportunities available to build upon the natural synergies between environmental justice and pollution prevention. She then listed several areas of such opportunities, including (1) the restoration and redevelopment of brownfields sites; (2) "smart growth" initiatives and more integrated transportation and land use planning; (3) alternative fuels; and (4) environmental management systems, which are increasingly being adopted by businesses.

In closing, Ms. Ferguson-Southard commented that the State of Maryland had established the Maryland Environmental Justice and Sustainable Community Commission to serve a role similar to that of the NEJAC. She explained that the commission works with environmental justice communities in Maryland to identify how the state government can best address environmental justice concerns.

2.5 Remarks of a Representative of Concerned Citizens of Eastern Avenue

Mr. Cleo Holmes, Concerned Citizens of Eastern Avenue, Washington, D.C., welcomed the members of the NEJAC on behalf of local grassroots organizations. He shared his observation that as local communities have continued to grow, they have become more sympathetic to each other's causes and concerns. Stating that "communities are in need of [the NEJAC's] chartered mission," Mr. Holmes urged the NEJAC to continue its dedication to environment justice issues.

2.6 Remarks of the Chair of the Executive Council of the NEJAC

Ms. Shepard stressed the significance of pollution prevention for environmental justice communities, stating that pollution prevention can decrease the exploitation of natural resources and improve the public health of susceptible and vulnerable populations.

In addition, Ms. Shepard commended the members of the Pollution Prevention Workgroup for producing a readable and accessible report, *Advancing*

Environmental Justice through Pollution Prevention Report: Pre-Meeting Discussion Draft (draft pollution prevention report), that documents the recommendations of the workgroup and concerns expressed by stakeholder groups.

Finally, Ms. Shepard shared her opinion that the lack of political will and leadership in the country and in the EPA administration with regard to pollution prevention is the critical obstacle to reducing pollution in environmental justice communities. An external campaign is necessary if the recommendations included in the draft pollution prevention report are to be implemented, she stressed.

3.0 POLICY DIALOGUE ON POLLUTION PREVENTION AND ENVIRONMENTAL JUSTICE

The NEJAC, in its continuing efforts to provide independent advice to the EPA Administrator in areas related to environmental justice, focused its seventeenth meeting on the relationship between pollution prevention and environmental justice. On December 10, 2002, the members of the NEJAC heard a panel presentation by the members of the Pollution Prevention Workgroup of the NEJAC. The NEJAC had established the workgroup to assist in developing a report and recommendations on the issue of pollution prevention and environmental justice.

Ms. Veronica Eady, Tufts University and chair of the Waste and Facility Siting Subcommittee, served as facilitator during the policy dialogue. She began the discussion by reminding the members of the NEJAC of the purpose of the current NEJAC meeting. She noted that the issue on which the NEJAC had been asked to consider and provide recommendations to was as follows:

> *How can EPA promote innovation in the field of pollution prevention, waste minimization, and related areas to more effectively ensure a clean environment and quality of life for all peoples, including low-income, minority, and tribal communities?*

During preparations for the NEJAC meeting, the Pollution Prevention Workgroup had prepared a draft pollution prevention report to provide a context for the discussions. The following subsections outline the discussion about the draft pollution prevention report.

3.1 Overview of the Draft Pollution Prevention Report

Ms. Wilma Subra, Louisiana Environmental Action Network and a member of the Air and Water Subcommittee, and Mr. Ken Geiser, Massachusetts Toxics Use Reduction Institute, provided an overview of the draft pollution prevention report. Ms. Subra first explained that the report is a discussion draft reflecting the diverse views, interests, concerns, and perspectives of identified stakeholders, including impacted communities, all levels of government, and business and industry. For the purposes of the report, she stated, pollution prevention is defined by the stakeholders as “a mechanism focused on reduction, elimination, or prevention that helps to protect the environment and improve the quality of life in environmental justice and tribal communities.”

Ms. Subra stated that the framework used by the Pollution Prevention Workgroup to examine the relationship between pollution prevention and environmental justice included the following premises:

- Pollution prevention activities should have a strong nexus with the health, environmental, and quality of life concerns of impacted communities.
- Pollution prevention activities should recognize and respect the importance and value of community knowledge and experience and should have the full participation of impacted communities.
- Pollution prevention activities should focus on all sources, including large and small facilities, public and private facilities, new and old facilities, and area and mobile sources.
- Pollution prevention activities should involve collaborations between all stakeholder groups and build their capacity and should include adequate resources at the state and federal levels.
- Pollution prevention should strive to be proactive, positive, solution-oriented, and holistic in approach and should involve restoration, redevelopment, and construction of development of sustainable economies.
- Pollution prevention should involve culture change in institutions such as governments, businesses, and schools and should include accountability for measuring, monitoring, reviewing, evaluating, and rewarding improved

performance.

- Pollution prevention should apply relevant lessons from global experience.

- Pollution prevention should promote the use of new and emerging technologies such as alternative fuels and renewable energy.

- Pollution prevention should build on what already exists.

- Pollution prevention should address special economic, political, social, public health, and environmental attributes of at risk and underserved subpopulations (such as tribes and children).

Ms. Subra pointed out that the Pollution Prevention Workgroup is composed of representatives of diverse stakeholder groups, including six members from community and nongovernmental organizations, five members from academia, six members from business and industry, three members from state and local governments, and three members representing Indian tribes and indigenous peoples. Recounting the process used by the workgroup to develop advice and recommendations, Ms. Subra explained that before meeting for the first time, members of the workgroup were interviewed about their concerns, expectations, and ideas for the workgroup. These interviews were used to structure the face-to-face meeting of the workgroup members held from July 22 through 25, 2002. A key outcome of the face-to-face meeting was the formation of small subgroups to identify specific topics of interest, including community perspectives, tribal perspectives, business and industry perspectives, government perspectives, critical areas and emerging directions, and multi-stakeholder efforts. Ms. Subra said that the small workgroups interacted via e-mail and conference calls to develop report outlines and then text for each of the areas of interest.

As the small workgroups began to prepare individual portions of the report, she explained, two tracks began to emerge: (1) a stakeholder track and (2) a consensus track. Each group in the stakeholder track (community perspectives, tribal perspectives, business and industry perspectives, and government perspectives) developed its own chapter independent of the thoughts and perspectives of the other stakeholder workgroups. A consensus workgroup was formed with representatives of each stakeholder workgroup to incorporate the perspectives of all the stakeholder groups into another chapter, the consensus chapter. Ms. Subra stressed that all members of the Pollution Prevention Workgroup were engaged in the process and were given numerous opportunities to comment on the consensus chapter as it was being developed.

During the development of the consensus chapter for the report, she continued, proposals began to emerge from:

- Ideas that surfaced at the face-to-face meeting of the Pollution Prevention Workgroup
- Recommendations presented in the individual stakeholder group chapters
- Interviews with the members of the Pollution Prevention Workgroup
- Outreach to a broad base of community members
- Additional documents prepared by workgroup members
- Discussions about the Consensus chapter

The proposals were then presented to the Pollution Prevention Workgroup during a series of conference calls. After much discussion, she said, the workgroup reached agreement on the consensus proposals presented in the report.

Mr. Geiser then provided an introduction to the different stakeholder perspectives included in the report. Mr. Geiser first noted that the history of pollution prevention parallels the history of the environment justice movement. In 1982, he said, 3M Corporation had released a report titled *Pollution Prevention Pays* that demonstrated how one company was advancing not only its economic condition but also its environmental condition by preventing pollution at the source. In 1983, he continued, Mr. Michael Royalston, a French academician, had produced a small book called *Pollution Prevention*. In 1986, EPA had presented its report on waste minimization to Congress, he said, and then the Congressional Office of Technological Assessment, had issued its report on waste reduction. Mr. Geiser commented that these first reports had been crucial for the pollution prevention movement because they had defined source reduction and had clarified the virtues of pollution prevention over a reliance on end-of-pipe technologies.

Continuing, Mr. Geiser pointed out that the environmental justice movement had demonstrated that the use of industrial and agricultural chemicals and their mismanagement over the years had exposed communities to a barrage of toxic and hazardous materials and that the burden of these

problems had fallen most directly on low-income minorities and tribal communities. In addition, he said, the pollution prevention movement had emphasized technical and management solutions for reducing the use of toxic chemicals so that they do not enter the environment and had promoted the economic incentives for practicing pollution prevention.

Although successful partnerships and new ideas for pollution prevention have emerged in recent years, Mr. Geiser noted, the pollution prevention movement began to lose its grassroots base when the Pollution Prevention Act of 1990 was instituted and many states adopted pollution prevention laws over the last ten years. Those involved in the pollution prevention movement had produced some outstanding examples of pollution prevention technologies and of production process to reduce public and environmental exposures, he said, but the fervent drive to develop and promote new pollution prevention concepts and technologies has waned. Mr. Geiser stated that he is pleased that the NEJAC is taking on the pollution prevention initiative.

The road ahead is not easy, he stressed, as the United States faces tough economic conditions. But the convergence between pollution prevention and environmental justice is even more important during these tough times, he said. The time has come for government to recognize that pollution prevention is the most efficient and effective means of addressing and minimizing current and future exposures to toxic and hazardous pollutants in low-income, minority, and tribal communities, he stressed. With all the wealth and ingenuity of the country, the Pollution Prevention Workgroup believes that it is possible to dramatically reduce, if not eliminate, many forms of pollution and waste, he said. We need not continue to tolerate high levels of exposure in our poorest communities, our tribal communities, and our communities of color, he stressed.

In response to the overview of the draft pollution prevention report, Mr. Tseming Yang, Vermont Law School and a chair of the International Subcommittee, asked why a stakeholder perspective from academia had not been included in the report. Ms. Subra responded that, in addition to the participation of Mr. Dean Suagee, Vermont Law School, who had contributed to the tribal perspective chapter of the report, members of academia had participated in the small workgroup that had focused on critical areas and emerging directions in pollution prevention. Mr. Yang stated for the record that omitting an academic perspective from the process represented the loss of an important perspective on pollution prevention and environmental justice. He also inquired whether representatives of OECA had participated in preparing the report. Ms. Subra responded that OECA representatives had provided input during the initial meeting held in July 2002 but had not formally participated as members of the workgroup.

Mr. Yang then asked whether the draft report represents a “least common denominator” report or a true consensus. Ms. Subra stressed that much time had been spent “hashing out” different perspectives and ideas. Mr. Kenneth Warren, Wolf Block Schorr and Solis-Cohen LLP, added that each member of the Executive Council is being tasked with evaluating the usefulness of the report. If the members of the Executive Council find the report useful and substantive, he noted, the workgroup will feel assured that the report represents a true consensus.

Ms. Jana Walker, Law Office of Jana L. Walker and acting chair of the Indigenous Peoples Subcommittee, noted that the two stakeholder groups most often affected by environmental justice issues, tribes and communities, had less representation on the workgroup than government and other groups. She stated that she would like to see more balance in the workgroup. Ms. Subra responded that this issue would be discussed during the presentations about the tribal and community perspectives.

Mr. Terry Williams, Commissioner, Fisheries and Natural Resources, the Tulalip Tribes and a member of the Indigenous Peoples Subcommittee, noted that the draft pollution prevention report does not include a technical discussion about pollution prevention. Ms. Subra stated that a technical discussion would be part of the multi-stakeholder model to be discussed by the Executive Council later in the meeting. The multi-stakeholder model, she added, would determine how the Pollution Prevention Workgroup moves forward with its initiative.

3.2 Community Perspectives on Pollution Prevention

Ms. Connie Tucker, Southern Organizing Committee for Economic and Social Justice, summarized the information presented in Chapter 3 of the draft pollution prevention report. Ms. Tucker stated that the community perspectives subgroup viewed the task of developing the community perspectives chapter as an opportunity to redefine pollution prevention from an environmental justice perspective. She pointed out that the community

perspectives chapter does not begin by addressing pollution prevention directly but rather by identifying the impacts of not implementing pollution prevention. The community perspectives subgroup, she said, believes that the chapter represents an opportunity to educate community members as well as business and industry representatives about the adverse impacts of pollution on public health and the environment.

Continuing, Ms. Tucker said that the latter portion of the community perspectives chapter presents a discussion about solutions and recommendations for pollution prevention. Before closing, Ms. Tucker noted for the record that the community perspectives chapter includes a discussion about the need for enforcement in pollution prevention and addresses the precautionary principle, which mandates that practices should be prevented and eliminated if the possibility of harm exists, and is intended to prevent harm before it occurs. The community perspectives subgroup is discouraged, she noted, that considerations about enforcement and the precautionary principle are not included in the consensus chapter of the report.

3.3 Tribal Perspectives on Pollution Prevention

Mr. Tom Goldtooth, Indigenous Environmental Network, discussed information presented in Chapter 4 of the draft pollution prevention report. He noted that the trib perspectives subgroup had focused on developing tribal perspectives about pollution prevention and environmental justice and had stressed the many different challenges that tribes face in applying environmental justice in Indian country. He explained that tribes face not only government systems requiring assimilation of environmental justice but also traditional systems involving traditional knowledge, tribal elders, and spiritual teachings. Also, he continued, a complex relationship exists between the tribal governments and tribal government-run and operated facilities in Indian country. In some cases, he explained, business operators are also tribal community members.

Over the past few decades, Mr. Goldtooth continued, the federal government had encouraged development of the rich natural resources that exist on Indian lands. An ongoing challenge for tribal governments is the management of environmental and cultural impacts that result from developing natural resources in Indian country, he said. For example, he explained, mining and other mineral extraction processes require water diversion which can result in flooding of Indian lands. Also, tribal governments continue to face the internal challenge of developing environmental infrastructure and programs that are comparable to similar state programs, he said.

Mr. Goldtooth noted that transboundary issues, those issues extending across the U.S. borders with Mexico and Canada, also are addressed in the tribal perspectives chapter.

Mr. Goldtooth stressed that the tribal perspectives subgroup had tried to be respectful of the diversity among tribal communities when developing its chapter. The subgroup had tried to be “mindful” of tribal grassroots organizations, tribal elders and traditional people, and modern tribal government systems and their need to develop their own environmental programs, he said. Although the participants in the subgroup do not represent the more than 2 million American Indian and Latin Native Indian populations present in the United States, he stressed, the Pollution Prevention Workgroup believes that it has the experience and knowledge to develop language that the members of the NEJAC can “chew on” and use to develop useful recommendations for pollution prevention and environmental justice in Indian country. In closing, Mr. Goldtooth commented that the members of the tribal perspectives subgroup requested that Chapter 4 undergo an additional review by another tier of representatives of tribal governments, intertribal organizations, and community and grassroots organizations.

3.4 Business and Industry Perspectives on Pollution Prevention

Ms. Sue Briggum, Waste Management Inc., summarized information presented in Chapter 5 of the draft pollution prevention report. She stated that the business and industry perspectives subgroup had representation from large, medium, and small manufacturing businesses and a number of different business and industry sectors in the United States. The subgroup also solicited recommendations from the American Business Roundtable and the American Chemistry Council.

Ms. Briggum said that the chapter on business and industry perspectives provides a thorough discussion of opportunities that could be leveraged in environmental justice communities to reduce the impacts of pollution and address community concerns.

The business and industry subgroup had not included a discussion about compliance in its

chapter, she pointed out, because the subgroup believes that pollution prevention means going beyond compliance and doing more than what is required by regulations. She stressed that this subgroup had begun with the premise that business and industry should and would comply with every single regulation. The chapter outlines the incentives that the workgroup had identified for businesses to move beyond compliance voluntarily, she said. The business and industry subgroup had viewed the implementation of a collaborative model to advance environmental justice through pollution prevention as an enormous opportunity for businesses and industries to be "good neighbors," engage with local communities on constructive projects, and identify more opportunities for problem-solving. Acknowledging that financial incentives always interest the business community, she noted that the chapter identifies numerous government subsidies that should provide incentives to implement pollution prevention in markets that have historically resisted the initiative because of financial considerations. Ms. Briggum also acknowledged that public recognition is an incentive for the business community to pursue pollution prevention efforts.

3.5 Government Perspectives on Pollution Prevention

Mr. Andrew Sawyers, MDE, discussed information presented in Chapter 6 of the draft pollution prevention report. Providing historical context for government perspectives on pollution prevention, Mr. Sawyers said that the 1960s had been characterized by widespread demonstrations and concerns about environmental pollution, the publication of Rachel Carson's book *Silent Spring*, and demonstrations by African-American. In 1970, the National Environmental Policy Act (NEPA) was signed into law to establish the basic national charter and declaration of a national policy for protection of the environment, he continued, adding that later that year, EPA had been established and tasked to manage the environment, and the Clean Air Act (CAA) had been adopted into law. Adoption of the CAA had instituted the control activities of the newly formed EPA and had begun a history of regulatory standards and permits designed to control pollution, he said. Mr. Sawyers continued summarizing the time line of government action on the environment, noting that the 1970s also had brought the adoption of the Federal Environment Pesticide Control Act of 1972, the Water Pollution Control Act amendments of 1972, the Ocean Dumping Act of 1972, the Safe Drinking Water Act of 1974, the Toxic Substances Control Act of 1976, the Resource Recovery and Conservation Act (RCRA) of 1976, and the Clean Water Act (CWA) of 1977.

Many of the control programs initially adopted have been successful, Mr. Sawyers continued. However, as time passed, it became obvious that the regulatory framework should be expanded to address pollution before it is released into the environment. This realization led to the adoption of the Pollution Prevention Act (PPA) in 1990, he said, and government agencies at all levels has been encouraged to implement this act. Implementation of the PPA, coupled with decades of environmental justice concerns, led to the issuance of Executive Order 12898 by President Clinton in 1994.

Mr. Sawyers stated that it is obvious that pollution prevention and environmental justice have similar goals. These goals are best achieved through a multi-stakeholder process, he said. As an example, Mr. Sawyers mentioned that MDE had moved to support business pollution prevention activities through an innovative project called the Environmental Results Program (ERP), which promotes the use of pollution prevention as a tool to achieve compliance and offers technical assistance to business working to implement pollution prevention. Use of pollution prevention as a tool to achieve compliance and promote the environmental justice is an example of how local, state, and federal governments, industry, and community organizations can collaborate to attain desirable outcomes for a range of stakeholders, he said.

Any multi-stakeholder process, Mr. Sawyers stressed, must include mechanisms for identifying and promoting success and for using other agencies and organizations to promote the process. In addition, government agencies must listen to the community in order to gain its perspective, identify potential problems with the process, and pinpoint areas for compromise, he said.

Mr. Sawyers said that multi-stakeholder partnerships may be used to advance the complementary goals of pollution prevention and environmental justice. He stressed that there are many opportunities within the existing framework to integrate pollution prevention and environmental justice. Additionally, he said, this integration may be applied to other partnership efforts, such as EPA's National Environmental Partnership Performance Systems (NEPPS), EPA's Pollution Prevention Incentives for States (PPIS), and other voluntary programs.

In closing, Mr. Sawyers reiterated that from a government perspective, pollution prevention and

environmental justice are mutually beneficial for the revitalization of local communities. Through pollution prevention and environmental justice programs, he stressed, governments can continue to build and strengthen infrastructure on all levels and in all sectors, including business, industry, and local communities.

3.6 Presentation of Consensus Proposals

Ms. Subra and Mr. Geiser presented the draft consensus proposals for advancing environmental justice through pollution prevention for consideration by the members of the Executive Council. The draft consensus proposals are presented in Chapter 2 of the draft pollution prevention report.

Mr. Geiser stressed that the proposals represent the consensus of the multiple stakeholders represented in the Pollution Prevention Workgroup, stakeholders include communities, tribes, government agencies, and business and industry representatives. He echoed Ms. Shepard's previous statement that the implementation of the ideas encompassed in the consensus proposals is as important as their creation, and he stated that it is the collective judgment of the workgroup that the consensus proposals are substantive enough or sufficiently substantive to foster their implementation.

Continuing, Mr. Geiser stated that the NEJAC should urge EPA to implement the consensus proposals with the full participation of appropriate stakeholder groups. Implementation of the proposals, he said, would improve the quality of the environment for all people, particularly low-income, minority, and tribal communities. However, without the active engagement of these communities, sustaining the benefits of the proposals that would be difficult, he said. He noted that an involved community would have a vested interest in the process that would enhance the chances for both immediate and long-term success. Business and industry would also benefit from proposal implementation in the form of more efficient processes, cost savings, and creation of jobs, he continued.

Before presenting each of the consensus proposals, Mr. Geiser explained that the 11 proposals in the draft pollution prevention report generally fall within 3 categories: community leadership and capacity-building, using and expanding existing tools to improve conditions in communities, and providing incentives to private markets. Exhibit 1-2 lists the 11 consensus proposals developed by the Pollution Prevention Workgroup.

In response to the overview of the consensus proposals, Mr. Larry Charles, ONE/CHANE, Inc. and a member of the International Subcommittee, noted that there appear to be opportunities for integrating the work of the Pollution Prevention Workgroup with other ongoing initiatives of the NEJAC. For example, he said, the International Subcommittee of the NEJAC has formed an initiative to provide recommendations and advice about strategies to influence multinational corporations to operate their international facilities in the same way they operate their U.S.-based facilities.

Mr. Charles then offered several comments about the consensus proposals. He first recommended that the draft pollution prevention report clearly promote the use of zero emission technologies in existing facilities, stating that the implementation of such technologies could have the most immediate and substantial impact in improving the environment both domestically and internationally. He also recommended that the report include specific recommendations for policy change at all levels of government to provide incentives for emission reduction at existing facilities. Regarding new facilities, He also advocated promoting a national moratorium on facility siting in impacted communities. Finally, Mr. Charles recommended that the report include a recommendation that the government provide resources for community capacity-building through the application of a specific fee to support such activities as part of the permitting process.

Mr. Yang voiced concern that enforcement is not included as a key component of the draft pollution prevention report. He stated that although he agreed that pollution prevention should "go beyond compliance," omission of enforcement as an important tool in pollution prevention is not realistic. As an example, Mr. Yang pointed to case studies presented to the NEJAC on December 9, 2002 (see Chapter Two, Section 2.0 of this report for a summary of those case studies), in which facilities had not been in compliance when pollution prevention activities were implemented. Enforcement is an important form of deterrence, he stressed, describing such deterrence as a "negative" incentive for industry to reduce or prevent pollution.

Then, referring to the ongoing debate among EPA, the states, environmental justice communities, and industry about whether cooperative programs should replace or take priority over enforcement and environmental auditing, Mr. Yang raised the concern

Exhibit 1-2

LIST OF CONSENSUS PROPOSALS

Community Leadership and Capacity-Building

1 Develop and promote implementation of a multi-stakeholder collaborative model to advance environmental justice through pollution prevention that ensures meaningful design and implementation for impacted communities

2 Increase community and tribal participation in pollution prevention partnerships by promoting capacity-building in low-income, minority, and tribal communities

Using and Expanding Existing Tools to Improve Conditions in Communities

3 Identify and implement opportunities to advance environmental justice through pollution prevention in federal environmental statutes

4 Promote local multimedia, multihazard reduction planning and implementation

5 Promote efforts to incorporate pollution prevention and environmental justice into Supplemental Environmental Projects (SEP)

6 Strengthen implementation of pollution prevention programs on tribal lands and in Alaskan Native villages

7 Promote efforts to institutionalize pollution prevention internationally, particularly in developing countries

Providing Incentives to Private Markets

8 Encourage "green buildings, "green businesses," and "green industries" through programs such as, EPA's Brownfields and Smart Growth programs

9 Promote product substitution and process substitution in areas that impact low-income, minority, and tribal communities

10 Promote just and sustainable transportation projects and initiatives

11 Provide incentives to promote collaboration among communities, tribes, businesses, and government agencies on pollution prevention projects in environmental justice communities

that the NEJAC will send a message that it promotes cooperative, voluntary approaches over enforcement approaches and that enforcement is not an important part of pollution prevention, unless the draft report is modified.

Ms. Shepard echoed Mr. Yang's concerns, stating that she considered the omission of enforcement issues from the draft pollution prevention report to be "a fatal flaw."

Responding to Mr. Yang's comments, Ms. Briggum explained that enforcement had been discussed at length by the Pollution Prevention Workgroup; however, no consensus regarding enforcement as a pollution prevention tool could be reached, she said. Ms. Tucker responded that the omission of enforcement from the consensus chapter is a major concern for the community perspectives workgroup. She reminded the members of the NEJAC that the draft report is open for comment and that stakeholder comments could help "nudge along" those stakeholder groups that are not supportive of addressing enforcement in the consensus proposals.

Mr. Sawyers also offered several comments in response to Mr. Yang's concerns about the omission of enforcement considerations from the report. Mr. Sawyers first stated that although enforcement always would remain an option, past experience had shown that the government needs to take a different approach when dealing with environmental justice communities. Referring to the Park Heights case study, Mr. Sawyers pointed out that the community wanted enforcement actions if needed, but that it also wanted the companies to remain viable within their community. Also, Mr. Sawyers explained that a common concern raised by communities is that once enforcement actions are taken, the government no longer maintains a presence in the community. Communities prefer a sustained government presence, he said. Mr. Sawyers continued that from the government's perspective, stressing collaboration and compliance assistance as approaches to pollution prevention allows the government to maintain a presence in communities that historically have not had any regulatory oversight.

Ms. Walker noted that the issue of enforcement is particularly important in Indian country. There are approximately 53 million acres of Indian lands in the United States, she explained, but state environmental laws almost never apply, and it is up to the tribes or EPA to administer federal environmental laws and enforce them on reservations. Although tribes can assume responsibility under CWA and CAA, she continued, few tribes have developed the necessary programs to achieve this effectively. Thus, EPA is generally responsible for implementing and enforcing environmental laws in Indian country.

Ms. Walker then asked the Pollution Prevention Workgroup to clarify the references to tribes throughout the draft pollution prevention report, as the references are inconsistent. She further requested that the detailed text presented on page 107 of the draft report which discusses the challenges faced by tribal governments also be included in the consensus chapter.

Mr. Williams suggested that the draft pollution prevention report include an action item for development of a science-based approach for measuring the progress and changes made through implementing the proposals and associated actions presented in the consensus chapter. He noted that this approach should draw upon traditional tribal knowledge. He also requested that the report be clarified regarding the distinctions between trust lands and off-reservation resources or reserves.

Ms. Shepard remarked that community-driven pollution prevention projects can arm communities with the kind of information they need to press the case for further enforcement with the government. However, she added, pollution prevention capacity-building and adequate and sustained funding from public and private sources are necessary to facilitate community and tribal participation in pollution prevention projects.

Ms. Eileen Gauna, Southwestern University School of Law, warned against urging the government to provide incentives to businesses by including flexible conditions or pollution prevention compliance options in permits, as mentioned in the consensus chapter. She stated that flexible protocols are more difficult to monitor, inspect, and enforce. She also warned against government agencies providing incentives such as emission reduction credits and higher trading ratios, stating that such items can become viewed as substitutes for compliance.

Mr. Robert Harris, Pacific Gas and Electric Company and member of the Waste and Facility Siting Subcommittee, formally moved to request that the Pollution Prevention Workgroup revise the report to include language clarifying that enforcement is indeed a key component of pollution prevention.

3.7 Community Leadership and Capacity-Building - Consensus Proposals 1 and 2

Consensus Proposal 1. Ms. Subra provided a more detailed description of Consensus Proposal 1, which calls for development of a multi-stakeholder collaborative model to advance environmental justice through pollution prevention. Ms. Subra remarked that development of a multi-stakeholder collaborative model had received the strongest endorsement from all stakeholder groups participating in the Pollution Prevention Workgroup. She explained that this proposal reflects the desire of impacted communities, tribes, business and industry representatives, and government agencies to support community-driven and community-based pollution prevention processes. Ms. Subra added that these processes should clearly identify issues of concern, set measurable objectives, yield real environmental benefits, and offer meaningful opportunities for constructive engagement among various stakeholders. A multi-stakeholder model is envisioned as a tool for communities, industry, and government, she continued, and it should build the capacity of communities, effectively gauge environmental impacts, implement new pollution prevention technologies and initiatives, and assess the results from both the monetary and environmental standpoints. She added that a multi-stakeholder collaborative model should incorporate pollution prevention methods and initiatives already developed by EPA or other stakeholder groups.

In putting forth Consensus Proposal 1, Ms. Subra stated, the NEJAC would be providing EPA with a set of guidelines for implementing collaborative efforts to advance environmental justice through pollution prevention. The guidelines suggest that EPA:

- Secure adequate institutional, technical, and financial resources
- Provide assistance and facilitation to build a community's capacity to meaningfully direct collaborative efforts
- Facilitate development of multi-stakeholder partnerships
- Identify clear pollution prevention opportunities and methods
- Link pollution prevention efforts with community-based health concerns, lead testing and abatement, brownfields redevelopment and revitalization, transportation and air issues, local multimedia hazard reduction, use of SEPs, promotion of clean energy, and other environmental justice initiatives
- Assist in developing measurable goals and clear environmental outcomes
- Provide support for consensus building and dispute resolution, where appropriate

Ms. Subra then described action items developed by the Pollution Prevention Workgroup to facilitate EPA's implementation of Consensus Proposal 1. These action items include:

- Develop a multi-stakeholder collaborative model that incorporates (1) principles outlined in Chapter 1 of the draft pollution prevention report, (2) successful pollution prevention methods and approaches already developed by EPA and other stakeholders, and (3) a process for monitoring and incorporating new sustainable development and pollution prevention initiatives
- Identify opportunities for using the multi-stakeholder collaborative model to advance environmental justice through pollution prevention
- Provide opportunities for community involvement in promoting pollution prevention initiatives that include incentives not only for production facilities and small businesses but also for communities and tribes in the surrounding areas
- Initiate a grant program for advancing environmental justice through pollution prevention that uses the multi-stakeholder collaborative model
- Incorporate successful programs, especially regional programs, into the multi-stakeholder collaborative model and transfer the successes through implementation of similar programs in other parts of the country

Ms. Walker suggested that Consensus Proposal 1 be revised to include an action item for building on lessons learned from earlier, related programs and approaches as well as global experiences. She added that the action item should reflect the precautionary principle as it relates to environmental justice and pollution prevention.

Mr. Lee recommended that Consensus Proposal 1 specifically state that community representation in the development and implementation of the multi-stakeholder collaborative model must be reflective of the communities that are impacted, rather than reflective of persons working on behalf of the

impacted communities, such as consultant groups.

Reverend Adora Iris Lee, United Church of Christ and a member of the Health and Research Subcommittee, commented that Consensus Proposal 1 should be modified to state more clearly that EPA's role in developing a multi-stakeholder collaborative model is to provide financial resources and that the model's creation and implementation should be community-driven and community-based.

Consensus Proposal 2. Ms. Tucker then provided a more detailed review of Consensus Proposal 2, which calls for increasing community and tribal participation in pollution prevention partnerships by promoting capacity-building in low-income, minority, and tribal communities. Ms. Tucker explained that the proposal is designed to address the "resource divide" between community involvement and pollution prevention initiatives. Ms. Tucker then described action items developed by the Pollution Prevention Workgroup to facilitate EPA implementation of Consensus Proposal 2. These action items are:

- Provide resources to facilitate community and tribal participation in pollution prevention projects
- Use and widely disseminate pertinent educational materials that have already been developed and translated
- Develop a citizen primer on pollution prevention technologies and strategies that is accessible for the layperson, drawing upon pertinent materials that have already been developed
- Create a pollution prevention training academy for communities. This should be a mobile academy that involves cooperation between academic institutions and public and private training institutions and resources, especially those designed for environmental justice communities.
- Create a pollution prevention training academy for tribes, tribal colleges, and Native American organizations
- Compile a collection of case studies featuring community and tribal representation in pollution prevention. Successful collaborations would be useful as examples of pollution prevention partnerships. A clearinghouse containing the case studies should be placed on a web site. The multi-stakeholder collaborative model should be provided to local governments and community organizations. The model should detail the steps of an effective community involvement process for pollution prevention projects.
- Where appropriate, apply fines collected from noncompliant facilities in environmental justice communities to pollution prevention projects that benefit the health, environment, and quality of life of community members rather than directing these monies to state and local general funds or to the United States Treasury. Community members and facility employees should oversee these projects jointly to ensure that community needs are met and to encourage improved collaboration between the penalized facilities and their neighbors.

In closing, Ms. Tucker requested that the members of the NEJAC also review the additional recommendations for capacity-building presented in Chapter 3 of the draft pollution prevention report. Specifically, she asked the NEJAC to consider including the following three recommendations presented in Chapter 3 in the consensus chapter of the report:

- Environmental justice and pollution prevention grants should be reinstituted. Successful projects developed through the grant program should receive sustained funding and should be expanded to other environmental justice communities, thereby building on past success. Ms. Tucker asked the members of the NEJAC to provide comments on this recommendation.
- Pollution prevention resources and funds should be directed primarily at impacted communities (and their selected representatives) that are addressing environmental justice and pollution prevention issues rather than at other external bodies, such as organizations set up by polluters.
- Fines imposed on facilities for noncompliance should be set aside to fund environmental initiatives for the community. There is precedent for such use of fines, and it serves as a way to ensure that local benefits result from imposition of fines.

In response to Ms. Tucker's summary of Consensus Proposal 2, Dr. Graciela Ramirez-Toro, Inter American University of Puerto Rico and chair of the Puerto Rico Subcommittee, suggested that the specific role of the government in capacity-building be incorporated into the proposal.

Ms. Pamela Kingfisher, Indigenous Women's Network and member of the Indigenous Peoples Subcommittee, suggested that the Pollution Prevention Workgroup clarify the role of the training academies included in Consensus Proposal 2. She pointed out that the current proposal refers to creating such academies but does not include specifics on how they would be funded or on their purpose and role in advancing environmental justice. Mr. Williams suggested adding text to state that pollution prevention training academies would provide training on national and international laws that provide guidance regarding the protection of resources, rights and resources (such as the United Nations Convention on Biological Diversity). Mr. Goldtooth added that the training academies should also provide training on international property rights.

3.8 Using and Expanding Existing Tools to Improve Conditions in Communities - Consensus Proposals 3, 4, 5, and 6

Consensus Proposal 3. Mr. Geiser briefly introduced the recommendations of the Pollution Prevention Workgroup presented in Consensus Proposal 3, which calls for identifying and implementing opportunities to advance environmental justice through pollution prevention in federal environmental statutes. The recommendations are:

- EPA should review existing federal statutes to identify avenues for increasing pollution prevention as well as impediments to integrating pollution prevention under existing regulatory directives. EPA should document the avenues or mechanisms identified, the impediments discovered, and approaches to overcome the impediments.
- EPA should encourage the states to review existing source reduction opportunities in the context of state permitting, enforcement, and inspection programs and should identify impediments to incorporating source reduction at the state level. The states should document the opportunities identified and pursued to implement source reduction measures as well as the actions undertaken to overcome impediments to source reduction at the state level. EPA should provide some regulatory framework for accomplishing this task.

- In consultation with tribes, EPA should review the implementation of federal environmental statutes in Indian country to identify ways to integrate pollution prevention into the aspects of the statutes that EPA implements directly and to encourage tribes to integrate pollution prevention into programs for which it has primary authority. EPA should also provide assistance to tribes that choose to promote pollution prevention through tribal laws such as Tribal Environmental Policy Acts (TEPA).

- EPA should implement a review of federal and state pollution prevention measures for duplication of effort and should eliminate such duplication where possible.

In response to Mr. Geiser's summary of the recommendations presented in Consensus Proposal 3, Ms. Judith Espinosa, University of New Mexico and member of the Waste and Facility Siting Subcommittee, warned that the final recommendation might be misunderstood as encouraging EPA to eliminate state laws that duplicate federal laws. Rather, she continued, the recommendation should be aimed at encouraging EPA to institute a formal and effective communication program so that duplicate efforts are eliminated. Ms. Lori Kaplan, Indiana Department of Environmental Management and member of the Health and Research Subcommittee, agreed with Ms. Espinosa's statement and added that the recommendation might also include a discussion of resource allocation to avoid duplicate efforts. Mr. Williams requested that tribal pollution prevention measures also be included in the recommendation. Ms. Espinosa and Ms. Tucker agreed to work together to revise the recommendation in response to these comments.

Consensus Proposal 4. Ms. Diane Wilkins, Bullock Memorial Association and member of the International Subcommittee, then introduced Consensus Proposal 4, which calls for promoting local multimedia, multihazard reduction planning and implementation. Ms. Wilkins stated that although exposures to some pollutants might be fairly similar across the country, studies in a number of areas indicate that exposures to some pollutants and the associated risks can vary significantly from one area to another. Thus, pollution prevention should target local sources. Ms. Wilkins then read the following action items developed for EPA implementation of Consensus Proposal 4:

- Identify a mechanism for locating areas with multiple sources of pollution.

- Distinguish between permitted and nonpermitted sources and activities.

- Identify opportunities to implement pollution

prevention at permitted facilities.

- Document and develop regulations, incentives, and other initiatives to reduce pollution from permitted and nonpermitted sources.

- Compile and apply existing EPA and other methods and approaches for multihazard reduction planning.

- Apply the multi-stakeholder collaborative model to accomplish multihazard reduction.

Regarding Consensus Proposal 4, Ms. Espinosa recommended that the definition of "nonpermitted sources" be included in the proposal. For clarification, Ms. Briggum advised the members of the NEJAC that the definition of nonpermitted sources intended by the Pollution Prevention Workgroup includes sources not requiring a permit because the facilities are either "grandfathered" from current regulations or not large enough to meet the source pollutant criteria that require a permit.

Ms. Gauna suggested that the first action item included in Consensus Proposal 4 be revised to recommend that EPA identify mechanisms for locating areas with multiple sources of pollution, inventory the sources, and develop a baseline for measuring progress at these sources over time. At the urging of Ms. Eady, Ms. Gauna agreed to draft the revised action item and submit it to the Pollution Prevention Workgroup. Ms. Walker asked that the phrase "in consultation with communities and tribes" be added to the beginning of the action item.

Stating that the multi-stakeholder collaborative model described in Consensus Proposal 1 should be implemented on a local or regional level, Dr. Richard Gragg, Florida A&M University, commented that text might be included in Consensus Proposal 4 that relates its action items to those proposed in Consensus Proposal 1.

Consensus Proposal 5. Ms. Briggum then provided a more detailed overview of Consensus Proposal 5, which calls for promoting efforts to incorporate pollution prevention and environmental justice into SEPs. Ms. Briggum explained that a SEP is an environmentally beneficial project not required by law that an individual, corporation, or government entity agrees to perform in settlement of an enforcement action. In exchange for the party making a legal commitment to undertake a SEP, she said, a percentage of the cost of the SEP may be considered part of the penalty payment. She explained that the Pollution Prevention Workgroup is interested in building on the concepts already incorporated into EPA's SEP policy to enrich their application in environmental justice communities. She then shared the following action items developed by the workgroup to facilitate EPA implementation of Consensus Proposal 5:

- Improve the coordination and efficiency of SEP activities through increased programmatic integration of the audit policy, compliance assistance, pollution prevention SEPs, and environmental justice activities.

- Improve the quality of SEPs, increase community participation in SEPs, and reduce the transaction costs of SEP agreements through implementation of pollution prevention SEP training designed for different stakeholder groups, implementation of a Pollution Prevention SEP Library, and finalization of the draft "EPA Guidance for Community Involvement in Supplemental Environmental Projects" (65 *Federal Register*; 40639-40644; June 30, 2002).

- Increase the number of pollution prevention SEPs by (1) encouraging states, tribes, and municipalities to establish SEP policies; (2) establishing a system of incentives both within and outside EPA; and (3) increasing communication between EPA regional SEP coordinators and EPA regional environmental justice coordinators.

- Create market-based pollution prevention SEPs through which an entity could purchase or fund pollution prevention initiatives at non-entity facilities that benefit the impacted low-income or minority community to have a greater impact on impacted communities in general.

- Quantify the results of pollution prevention SEPs through tracking and monitoring; this will help identify uses and appropriate focus areas for the SEPs.

Ms. Eady commented that EPA Region 1 had identified a specific banking institution for SEPs and that persons with internet access could view information on specific SEPs on line. She suggested that the EPA Region 1 SEP paradigm could be used by other regions that do not have similar models.

Consensus Proposal 6. Mr. Goldtooth then introduced Consensus Proposal 6, which calls for strengthening the implementation of pollution prevention programs on tribal lands and in Alaskan Native villages. Mr. Goldtooth stated that tribal

governments and organizations are prepared to play a significant role in strengthening pollution prevention programs. For example, he said, the National Tribal Environmental Council (NTEC), an intertribal organization with representatives from about 170 tribes, provides an important mechanism for sharing information. He added that many other organizations can serve as resources for educational programs and as clearinghouses for information, including the Institute for Tribal Environmental Professionals (ITEP) at Northern Arizona University and the National Tribal Environmental Research Institute (NTERI) operated by the Inter-Tribal Council of Arizona.

Mr. Goldtooth also pointed out that tribes generally support the concept of pollution prevention because it is consistent with tribal values that encourage planning for future generations. He added that pollution prevention is the key to preserving tribal resources on and off the reservations. Finally, Mr. Goldtooth stated that tribal governments and Alaskan Native villages are increasing economic opportunities on tribal lands through partnerships with business and industry. Successful partnerships involve developing research projects, providing technical direction and administrative support for selected pollution prevention projects, and developing new methods and technologies that conserve energy and reduce waste and emissions.

Mr. Goldtooth then read the following action items included in Consensus Proposal 6:

- EPA should provide or offer assistance to tribal governments that need to fill the enforcement gap by Direct Implementation of Tribal Cooperative Agreements (DITCA).

- EPA should provide or offer assistance to tribal governments for drafting and implementing TEPAs that include pollution prevention requirements.

- EPA should provide or offer assistance to tribal governments to encourage them to engage in land use planning and economic development activities that promote pollution prevention.

- EPA should provide or offer assistance to tribal governments to encourage them to develop walkable neighborhoods, incorporate smart growth principles, and use geographic information system (GIS) technologies to support land use analysis and planning.

- EPA should provide or offer assistance to tribes, tribal education institutions, and Native American organizations to help them institute educational programs promoting pollution prevention on and near tribal lands.

- EPA should work with other federal agencies to provide or offer assistance to tribes to help them promote pollution prevention initiatives as part of industrial development.

- EPA should provide or offer assistance to tribal governments to encourage them to develop memoranda of understanding (MOU) with adjacent government entities, such as states or municipalities, in order to address pollution prevention issues and implement pollution prevention programs.

In response to Mr. Goldtooth's introduction to Consensus Proposal 6, Ms. Walker suggested that the term "assistance" in the recommendations be clarified as "technical and financial" assistance.

Ms. Kingfisher suggested that the proposal also discuss protection of sacred sites as an important part of any pollution prevention program on or near tribal lands.

Mr. Williams commented that EPA could also assist tribes in educating state and local governments about the impacts of pollution on tribes.

3.9 Providing Incentives to Private Markets - Consensus Proposal 11

Mr. Warren introduced Consensus Proposal 11, which calls for providing incentives to promote collaboration among communities, tribes, businesses, and government agencies on pollution prevention projects in environmental justice communities. He stated that this proposal is based on the idea that even full compliance with environmental laws by businesses often does not fully address community concerns. Mr. Warren explained that Consensus Proposal 11 is targeted at creating a system of incentives that can be incorporated into the multi-stakeholder collaborative model. The role of government is to serve as a facilitator, he added, providing resources and incentives that will encourage businesses and communities to collaborate. He then summarized the following recommendations included in Consensus Proposal 11:

- EPA and states should implement pollution prevention programs and outreach efforts that target environmental justice communities. EPA

should provide incentives for communities to participate in collaborative pollution prevention activities by offering resources for capacity-building and by disseminating written information concerning pollution prevention. EPA should consider both input from communities and the environmental risk to communities when issuing permits and setting standards. EPA should designate a knowledgeable technical assistance staff within OECA to (1) coordinate EPA outreach efforts and facilitate dialogue among community, business, and government; (2) help identify specific pollution prevention projects that are suitable for a community; and (3) educate companies and communities about the existence of proven, cost-effective technologies and innovative opportunities for pollution prevention.

- EPA should identify "priority pollution prevention communities" based on the risk posed to communities from the aggregate of polluting sources. This initiative should focus on communities of color and low-income communities, thereby reflecting EPA's stated commitment to environmental justice. EPA should provide both compliance assistance and incentives for pollution reduction and elimination for efforts developed within these communities.

- EPA should develop and implement programs, initiatives, and incentives to encourage businesses to engage in collaborative partnerships to implement pollution prevention, use "green" technologies and nontoxic materials, and design innovative processes in minority and low-income communities. The incentives could include: (1) special recognition of a business for its pollution prevention activities; (2) low-interest loans or grants for research into pollution prevention; (3) expedited permitting; (4) consolidated multimedia reporting; (5) flexible, multimedia, facility-wide permits with a single government point of contact; (6) "smart permits" that allow a range of operating scenarios to be considered by the companies seeking the permits; (7) compliance options in permits based on pollution prevention technologies or innovation; and (8) increased emission reduction credits or higher trading ratios where pollution prevention activities are practiced (in the context of an emission trading program designed to reduce the overall pollution in an environmental justice community).

- EPA should initiate and should encourage states to initiate programs to assist small businesses in developing and implementing pollution prevention activities, including source reduction, waste minimization, and recycling.

- EPA should facilitate the formation of government-private sector partnerships to encourage businesses that cannot eliminate their wastes to recycle them. EPA should develop programs to increase the volume of recyclable and reusable materials collected from public and private sources (for example, electronics and paper products from businesses and consumers). EPA should provide incentives to increase the use of products made from recycled materials because without recycled product use, the collection of recyclables is unsustainable.

In response to Mr. Warren's presentation of Consensus Proposal 11, Ms. Gauna warned against labeling environmental justice communities as something other than environmental justice communities, stating that such communities had worked for many years to develop their own terminology and find their own voice. She also said that she believed that there are inherent problems with the concepts of flexible permitting, expedited permitting, and interfacility emissions trading. Flexible permits are highly technical and are difficult for communities to analyze, she said. Also, implementation of favorable trading ratios or offsets for pollution reduction or prevention is problematic, she stated, because it can result in pollution prevention becoming a substitute for compliance. Ms. Gauna then remarked that the pollution prevention report should clearly state that incentives should be offered to companies headquartered outside environmental justice communities that implement pollution prevention strategies at their facilities within such communities. Mr. Warren responded that the Pollution Prevention Workgroup views the proposed trading programs as incentives to trade pollution out of environmental justice communities. He added that flexible permitting is intended to encourage a facility to do more than is required by a standard permit. See Chapter Three, Section 3.1.2 of this report for a discussion about flexible permitting.

Mr. Harris suggested that the Pollution Prevention Workgroup include a recommendation in Consensus Proposal 11 that EPA provide incentives to companies that prioritize the cleanup of Brownfields sites in environmental justice communities.

Mr. Lee stated that promoting pollution prevention requires moving beyond the one-dimensional strategy of enforcement; thus, incentives can be a

necessary and important tool in promoting pollution prevention. However, he stressed, there must be conditions for considering and providing such incentives. He then offered the following conditions for consideration by the Pollution Prevention Workgroup and the members of the NEJAC:

- Health concerns in an environmental justice community must be addressed fully before incentives are offered.
- If a strategy to address the health concerns is in place and is satisfactory to the community, independent environmental testing by an entity selected and managed by the community (but paid for by the facility seeking the incentives) should be performed to confirm that environmental issues have been mitigated.
- The facility must be committed to ongoing compliance and must agree to provide regular proof of ongoing compliance. The community should have exclusive control of the timing and extent of ongoing testing and monitoring.
- A model for resolving environmental conflicts should be developed and incorporated into the incentive programs.

Mr. Lee then stated that the issue of providing incentives to facilities is complicated and raises concerns on many levels. He encouraged the members of the NEJAC and members of the audience to review Consensus Proposal 11 and to provide detailed input to the Pollution Prevention Workgroup for its consideration when revising this proposal.

Stating that the workgroup had not achieve a true consensus regarding the language used in the third recommendation, which proposes incentives for facilities that implement pollution prevention strategies above and beyond compliance assurance, Ms. Tucker asked that the recommendation be withdrawn from Consensus Proposal 11 and revised by the workgroup before it is included in the final pollution prevention report. Members of the workgroup agreed to her request.

3.10 A Multi-Stakeholder Collaborative Model for Advancing Environmental Justice through Pollution Prevention

Ms. Subra gave a presentation that outlined what the Pollution Prevention Workgroup identified as the "necessary elements" of a multi-stakeholder collaborative model for advancing environmental justice through pollution prevention. These elements are presented below:

- All stakeholders must be engaged in the process and willing to actively participate.
- Every step of the process must involve all stakeholders.
- Opportunities for public education and public input must be provided throughout the process.
- The process must be community-based and designed to consider environmental issues impacting communities.
- The involvement of communities and tribes is critical to the process and is just as important as the involvement of government, businesses, and industries.
- Community and tribal commitment to long-term monitoring of the success of the process is important.

Ms. Subra stressed that the process should be initiated by the affected community or tribe. She added that all affected stakeholders should be identified and engaged at the beginning of the process. She then pointed out that affected stakeholders could include community groups, tribal organizations, nongovernment organizations, civic organizations, state and federal agencies and authorities (including agencies responsible for the environment, natural resources, agriculture, health, economic development, and emergency response), businesses and industries operating facilities in the affected community, and associated industry organizations.

Continuing, Ms. Subra stated that after the process is initiated, representatives of all the stakeholder groups should research, identify, and prioritize the environmental issues within the affected area or community and develop a multi-stakeholder approach to address the issues. Then pollution prevention initiatives should be implemented to address the prioritized issues through a collaborative effort by all stakeholders, she said. Pollution prevention initiatives should be periodically reviewed and successes and failures should be tracked to evaluate the need for additional pollution prevention measures.

3.11 Enforcement and the Precautionary Principle

Mr. Warren offered several comments to frame the discussion about enforcement and pollution prevention. First, he stressed that it was not the intention of the Pollution Prevention Workgroup to imply that pollution prevention should be promoted as a substitute for, or a way of precluding, enforcement. In his opinion, he said, conventional enforcement authority under the existing environmental statutes is independent, and actually supportive, of pollution prevention. He said that the draft pollution prevention report would be revised to reflect these concepts. However, Mr. Warren stated that he is reluctant to include language in the report that implies a vigorous enforcement program needs to be implemented by EPA as part of a pollution prevention strategy. He explained that the workgroup had drafted the report with the intention that pollution prevention should be implemented by facilities that are already in compliance.

Mr. Yang agreed with Mr. Warren's statements but pointed out that enforcement should be addressed in the pollution prevention report because many facilities are not in compliance. Otherwise, he warned, the NEJAC would be sending the message that incentive-based and cooperative approaches should be implemented rather traditional enforcement procedures even when a facility is not in compliance.

Ms. Briggum thanked Mr. Yang for his comments, stating that she understood his point that some pollution prevention activities may appear to reduce pollution overall but may involve substituting practices that are more difficult to monitor and quantify. She said that the pollution prevention report should communicate that pollution prevention programs must be easy to monitor and must include understandable and enforceable provisions to ensure that the pollution reduction is real.

Mr. Geiser stressed that he believed that the draft pollution prevention report could present enforcement measures as pollution prevention tools without detracting from the innovation, creativity, and flexibility that are also needed for pollution prevention. He commented that enforcement should be included as a pollution prevention measure because enforcement measures create costs for facilities that can be reduced by better management of materials and energy; therefore, enforcement can encourage facilities to prevent pollution. Also, he continued, enforcement serves to "level the playing field" for facilities, providing a competitive advantage for facilities that maintain compliance.

Mr. Lee pointed out that there may be situations in which enforcement should not be the first step taken and that this decision should be made with the input of the community, which may want to pursue alternative approaches. He also encouraged the Pollution Prevention Workgroup to include a discussion in its report regarding why pollution prevention is important, especially for environmental justice, disproportionately impacted, minority, low-income, and tribal communities.

Turning the discussion to issues related to the precautionary principle and pollution prevention, Mr. Geiser pointed out that during the last 25 years, many federal statutes had been established that promote precaution; thus, the precautionary principle is not a new an idea, he said. Regardless, there are common criticisms of the precautionary approach. First, he said, business and industry fear that their inability to quantify the effectiveness of their pollution prevention efforts in protecting human health makes them vulnerable to legal challenges. Second, there is uncertainty regarding the science that control measures are based on, he continued. Finally, he said, people concerned about economic development fear that precaution cripples innovation and lessens the capacity to develop new technologies and materials.

Mr. Geiser then commented that the draft pollution prevention report should be revised to encourage government and industry to "act in the face of uncertainty" and prove the effectiveness of their environmental protocols in protecting human health and the environment. At the same time, he continued, the report should contain language challenging proponents of the technology to carry the burden of proof. By including these two ideas without struggling with the term "precautionary principle" itself, he said, the members of the Pollution Prevention Workgroup and the NEJAC should be able to reach a consensus on the topic.

Mr. Goldtooth stated that pollution prevention must dictate the need for precautionary action even in the absence of full scientific certainty, with the understanding that, where uncertainties exist about some of the cause-and-effect relationships, those uncertainties shall not be a rationale for postponing protective action. **See Exhibit 1-3 for the full text of the information presented about the precautionary principle.**

Concluding the policy dialogue, Mr. Lee reiterated to the members of the Executive Council and audience that the Pollution Prevention Workgroup requests that they review the draft consensus proposals in depth and provide written comments and

recommendations to Ms. Marva King, OEJ, by January 31, 2003. Regarding the next steps in the development of the pollution prevention report, Mr. Lee explained that the workgroup would rework the draft report in the coming months and submit a revised version to the members of the NEJAC for their review in late April 2003. The process should come to a close in Summer 2003 with the transmittal of the report and its recommendations to the Administrator at EPA, he said.

4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations and reports made to the Executive Council of the NEJAC. Specific topics include a report about the Environmental Justice Listening Session sponsored by EPA Region 6, an update on OEJ's Business Practices Study, and an update on the Cumulative Risk Assessment Framework.

4.1 Region 6 Environmental Justice Listening Session

Mr. Richard Moore, Southwest Network for Environmental and Economic Justice, and Mr. Lawrence Starfield, Deputy Regional Administrator, EPA Region 6, shared lessons learned from the EPA Region 6 environmental justice listening session held in Houston, Texas, from November 14 through 16, 2002. Mr. Moore began the presentation by commenting that, in his opinion, EPA Region 6 "has come a long way" in moving from "playing a role in environmental racism" to actively collaborating with grassroots organizations and environmental justice communities to find solutions to environmental injustice. He then conveyed his respects to Mr. Starfield and Mr. Gregg Cooke, Regional Administrator, EPA Region 6, stating that the leadership at EPA Region 6 had given the regional staff the "political and moral authority" to address the environmental justice issues that had been brought before them for many years.

Continuing, Mr. Moore said that a trusting relationship had been formed throughout the many months of planning for the environmental justice listening session and that this relationship had been further solidified during the listening session. This trust, he stressed, had laid the framework for a successful process in the recent listening session and for future listening sessions.

Mr. Moore stated that the planning process also had been crucial to the success of the listening session. The involvement of representatives of all stakeholder groups in the extensive planning process, helped ensure that all participants "had equal space at the table."

Mr. Moore then shared his opinion that the phrase "listening session" might not be an appropriate term for the meeting because the discussions had not been limited to sharing information; rather they had focused on developing solutions as well, he explained. Although it is unrealistic to think that all the major environmental justice problems in EPA Region 6 would be solved quickly, he said, the listening session had been a successful, first step towards long-term results.

Acknowledging Mr. Moore's comments, Mr. Starfield stated that the listening session had marked the beginning of an ongoing dialogue among stakeholders in EPA Region 6. He agreed that the planning process had been critical to the success of the listening session. He explained that the planning committee had included representatives of community-based organizations, academia, industry, and government. The planning committee participants had been instrumental in identifying the key topics for discussion during the listening session, he said. The planning committee had developed the listening session agenda and had created workgroups to develop issue papers for each issue identified, he continued. The committee also had played an important role in the success of the meeting by establishing official ground rules and objectives before the meeting, he said.

Mr. Starfield continued that the listening session also

Exhibit 1-3

PRECAUTIONARY APPROACH

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

– Principle 15 -- Rio Declaration on Environment and Development

"One of the definitions of precautionary approach that is out in the world is: The precautionary approach challenges us to prevent harm before it occurs. It holds that where there is scientific evidence that an activity threatens wildlife, the environment, or human health, protective measures should be taken even in the absence of full scientific certainty. Within the U.S. there are federal statutes that embrace aspects of the precautionary approach, i.e., the Toxic Substances and Control Act (TSCA), drug laws, Occupational Safety and Health Act (OSHA) within the General Duty Clause and others.

"Internationally (the U.S. Department of State takes part in these international activities), examples where the precautionary principle is recognized, for example, are: The Rio Declaration at the Earth Summit in June 1992 firmly placed precaution on the global stage. The principle has been embraced in other international agreements dealing with high-stakes environmental concerns of limited scientific certainty, such as, the UN Agreement on High Seas Fishing, the Convention on Climate Change, the Montreal Protocol on Substances that Deplete the Ozone Layer, and many other agreements. The approach has gained widespread acceptance as a guiding principle for environmental decision making. The January 2000 Cartagena Protocol on Biosafety reaffirmed several times the precautionary approach and the appropriateness of taking protective action where there is a "lack of scientific certainty due to insufficient relevant scientific information and knowledge regarding the extent of the potential adverse effects...."

"Too often in history we have waited for damage to occur before taking action. We have a hole in the ozone layer; marine fish stocks are depleted; rivers in the U.S. are contaminated with mercury and dioxin contamination and have fish advisory notices; and climate change threatens future generations. Damaging effects of bioaccumulative toxic chemicals have already been witnessed throughout the country and the world, but future problems can be averted if the U.S. and other countries incorporate precautionary measures.

"The precautionary approach can best be understood as an overarching principle informing each step of the decision-making process. In keeping with the ideals of foresight and careful planning, the principle places great weight on data collection and analysis. The information-gathering process involves multiple sources, including the public, to ensure that all relevant data are considered. The analysis must go well beyond risk assessment. Though a useful tool in certain contexts, risk assessment has the potential to narrow rather than broaden the analysis in at least two respects: (1) by inserting estimates where uncertainty exists and (2) through its focus on quantifying "acceptable" levels of health or environmental damage. The precautionary principle, by contrast, calls for review of the proposed action in light of all the possible options and alternatives."

had been a success because of the strong participation by state and federal agencies (for example, the U.S. Department of Labor) that had addressed issues for which EPA does not have authority.

In closing, Mr. Starfield said that EPA Region 6 plans to host additional listening sessions in 2003 beginning in Texas and Louisiana. He stated that this approach will allow the discussions to focus on more local issues. He stated that EPA will encourage additional state agencies to participate. Noting that tribes and tribal organizations had not been included in the listening session planning process, Mr. Goldtooth encouraged their future participation in listening sessions held in Region 6 and other EPA regions.

Ms. Subra, who said she had participated in the listening session, commended EPA Region 6 for encouraging its program managers to attend the meeting. The EPA program managers who had attended the listening session had participated in the panels and engaged in discussions with the community representatives, she explained. She said that their participation had been important because solutions to environmental justice problems are ultimately developed in the EPA program offices. Ms. Subra requested that EPA Region 6 encourage the participation of program managers from state agencies in future meetings.

Ms. Mary Nelson, Bethel New Life Inc. and member of the Waste and Facility Siting Subcommittee, asked about the process for implementing recommendations proposed at the listening session. Mr. Starfield responded that the planning committee had established a workgroup for each topic that would work with participating federal and state agencies to see the action items through to implementation.

Reverend Lee recommended that the planning committee establish a system for monitoring action items.

Ms. Eady asked why government and tribal representatives of Oklahoma had not participated in the listening session. She recommended that Mr. Randall Gee, Cherokee Nation and member of the Waste and Facility Siting Subcommittee of the NEJAC, be asked to participate in future listening sessions. Mr. Starfield responded that state agencies in Oklahoma had been asked to participate. He said that Oklahoma does not have an organized environmental justice movement. He also added that some states have misgivings about participating in environmental justice listening sessions. He hoped that the positive, constructive work at the first listening session would encourage such states to participate in the future.

Pointing out that like some states, some EPA regional offices are more engaged in environmental justice issues than other regional offices, Ms. Kaplan asked whether there is an initiative to repeat Mr. Moore's and Mr. Starfield's presentation for management at other EPA regional offices. Mr. Barry Hill, Director, EPA OEJ, responded that the Executive Steering Committee for EPA's Interagency Working Group on Environmental Justice, which includes as members the EPA Deputy Regional Administrators and Deputy Assistant Administrators, had agreed to have each EPA program office and EPA region develop an environmental justice action plan. He added that many of the action plans would incorporate an environmental justice listening session.

4.2 Update on OEJ Business Practices Study

Mr. Michael Steinberg, Morgan, Lewis, and Bockius, and Mr. Timothy Fields, Tetra Tech EM Inc., presented preliminary observations made in an EPA OEJ study being conducted to learn more about industry perspectives about environmental justice and to highlight best practices regarding environmental justice as it relates to environmental permitting and facility siting. The study is being conducted for OEJ by a contractor team in collaboration with the National Association of Manufacturers and the Business Network on Environmental Justice. Mr. Steinberg first explained that the objectives of the business practices study include the following:

- Gain a better understanding of how business and industry view and approach issues of environmental justice in the context of their facility siting and permitting practices.
- Identify and document successful approaches used by business and industry to address environmental justice as part of their facility siting and permitting practices.
- Share experiences, successful approaches, and lessons learned through working with other stakeholders (such as community groups).
- When possible, identify and highlight the benefits to business and industry resulting from incorporating environmental justice into facility siting decisions and permitting practices.

Mr. Steinberg explained the methods used to perform the business practices study, which include the following:

- Identify industry sectors and candidate companies to participate in the study.
- Identify other stakeholders such as community organizations to provide outside perspectives on business and industry practices.
- Conduct interviews with industry representatives and other stakeholders.
- Review technical documents (such as company policies and permits) from participating industry sectors and companies.
- Prepare case studies to highlight some industry best practices and innovative approaches to environmental justice.

Mr. Steinberg explained that representatives from EPA Headquarters and the EPA regions and about a dozen environmental justice activists had been interviewed to help identify companies recognized for addressing environmental justice in their facility siting decisions and permitting practices. As a result, in-depth interviews had been conducted with ten companies from five different industry sectors, including light industrial and manufacturing businesses, chemical manufacturers, petroleum businesses, energy and utility companies, and waste management and disposal facilities. The interviews had been performed using a standard questionnaire that reflected the study objectives.

Mr. Steinberg then shared some of the industry perspectives about and challenges for environmental justice that had been identified during the study. Most companies interviewed recognize the distinction between environmental justice and community involvement, he said, but associate a more negative connotation with the term "environmental justice." That term provokes anxiety on the part of some industry representatives, he explained, and many industries believe that using the "language of discrimination" results in increased stakeholder polarization and an increase in confrontation. He also noted that several companies had declined to participate in the study, including some of the companies identified by environmental justice activists as setting positive industry examples for addressing environmental justice issues. Mr. Steinberg commented that this circumstance is powerful evidence of the uneasiness felt by many industry representatives with regard to environmental justice.

Continuing, Mr. Steinberg stated that industry representatives identify conflicting and unclear definitions of environmental justice as an obstacle to addressing environmental justice issues related to facility siting decisions and permitting practices. For example, definitions of environmental justice offered by industry representatives varied and ranged from: "no intentional discrimination," "equal standards and equal enforcement," "meaningful public participation," and "equal distribution of environmental burdens," he said.

Another obstacle marked by industry representatives is a perceived lack of clear legal and regulatory requirements for environmental justice, Mr. Steinberg continued. He stated that some industry representatives had remarked that legal and regulatory requirements for environmental justice had not been adequately defined or communicated to industry. He explained that these individuals stated that industry requires certainty and predictability to make decisions about facility siting and modernization; they need to know the specific requirements for addressing environmental justice issues in order to make good decisions, he said. In short, industry is frustrated that there is no prescribed approach for addressing an environmental justice situation, he said. Mr. Steinberg reported that one industry official had called environmental justice an "unsubstantiated obstruction" to the process of facility siting.

Specific challenges for addressing environmental justice in facility siting and permitting decisions that Mr. Steinberg reported cited by industry officials include the following:

- Lack of "real models" for approaching environmental justice issues
- Difficulty in "trying to translate the [environmental justice] principles into action"
- Limited understanding of the meaning and application of the environmental justice terms, such as "meaningful involvement" and "significant impact"
- Difficulty in applying a single standard to different environmental justice situations
- Challenges in determining the appropriate individual or group to "speak" for the community

- Concern about potential legal challenges involving environmental justice issues even if facilities consider such issues in their facility siting decisions or permitting practices

Mr. Steinberg then turned over the presentation to Mr. Fields, who shared observations regarding "what works" in terms of industry addressing environmental justice issues. Several industry representatives interviewed had stated that they have formal environmental justice policies, while others had reported having "social responsibility," "sustainable development," or "good neighbor" policies that generally encompass environmental justice principles, Mr. Fields reported. Also, a representative of one company had reported that the company follows an "environmental justice approach" as part of its analysis before making siting decisions or permitting implementing practices, he added. He continued that several industry representatives had cited use of a neutral or third-party facilitator as a key factor in successful community involvement.

Continuing, Mr. Fields said that some companies had reported success in using national-level environmental justice criteria to guide their efforts with local level solutions to address community-specific environmental justice issues. He added that one company had reported successfully employing the public participation guidelines developed by the NEJAC. Most companies reported that state and local government assistance had been important in identifying key stakeholders and available resources, he said. And some companies had reported success stemming from establishing and funding community advisory panels to identify the needs and concerns of local communities.

Mr. Fields then highlighted two successful and innovative approaches for addressing environmental justice issues that had been reported in the study:

- Hosting public participation meetings facilitated by a neutral party before seeking facility permits. Companies using this approach reported significant resource savings when they had addressed community concerns in the planning stages rather than after facility construction.

- Ensuring that senior facility managers live in the community where the facility is placed and hiring from the local workforce to assure community members of the company's commitment to the community.

In closing, Mr. Fields said that one of the next steps in the business practices study is to conduct more interviews with key industry and other stakeholders such as automotive factories, steel manufacturers, and retail establishments. He asked the members of the NEJAC for recommendations of other industry sectors that should be included in the study. Mr. Fields also stated that case studies would be prepared to highlight best practices identified and lessons learned. A report summarizing the study's findings would also be prepared, he added.

Mr. Goldtooth suggested that representatives of mining companies be interviewed in the study. Mr. Fields responded that two mining companies had been contacted to schedule interviews. Stating that the U.S. Chamber of Commerce is involved in environmental justice issues, Ms. Eady suggested that representatives of this organization be interviewed in the study.

Mr. Warren commented that the report associated with the business practices study should send a clear message to the business community about what environmental justice means from EPA's point of view so that industry can "adjust" to EPA's approach. He also stated that the report should encourage EPA to play the role of "facilitator" as well as "regulator" in promoting consideration of environmental justice issues in facility siting decisions and permitting practices. Mr. Steinberg responded that the main objective of the report would be to communicate the benefits of incorporating environmental justice into facility decision-making to business and industry.

4.3 Update on the Cumulative Risk Assessment Framework

Mr. Lee introduced the topic of the next meeting of the NEJAC: Cumulative Risk and Cumulative Risk Assessment. He first clarified the relationship between the terms "risk" and "impact," explaining that risk is defined as the probability of harm or adverse effects while "impact" is defined as the resulting harm or adverse effects.

Beginning in 1997 with the development of a scoping and planning memorandum, Mr. Lee explained, EPA had been working to develop a cumulative risk assessment framework. The draft cumulative risk assessment framework had been prepared by EPA in 1999, he said, and had been subject to three peer involvement meetings and two consultations with the EPA Science Advisory Committee in 2001. Mr. Lee explained that the framework document had then undergone external peer review in June 2002 and that EPA plans to release the published version of

the document by the end of 2003.

Mr. Lee explained that the framework document is intended to provide an overview of the parameters constituting cumulative risk and impacts and cumulative risk assessment. The framework document is to serve as a base for development of case studies and issue papers on specific topics related to cumulative risk and cumulative risk assessments, he explained. These case studies and an issue paper will be developed during 2003, he said, and presented to the members of the NEJAC at the next NEJAC meeting schedule for April 2004. After receiving input from the NEJAC members on these items, EPA would start developing guidelines for cumulative risk assessment.

Continuing, Mr. Lee clarified the definitions of cumulative risk and cumulative risk assessment. First, he stated that cumulative risk is defined as the combined risks associated with aggregate (multi-pathway, multi-source, and multi-route) exposures to multiple agents or stressors over time. He then stated that cumulative risk assessment is an analysis, characterization, and possible quantification of the combined risks to health or the environment associated with multiple agents and stressors over time. He stressed that the "key definition points" for cumulative risk are the concept of multiple stressors or chemicals, the concept of combined risks, and the fact that cumulative risk assessment can be qualitative rather than only quantitative.

Mr. Lee explained that the cumulative risk assessment framework puts forward an iterative, three-part process for conducting cumulative risk assessment, including: (1) planning, scoping, and problem formulation; (2) analysis; and (3) risk characterization. Important features of the cumulative risk assessment process include targeting of multiple chemical and non-chemical stressors, a population-based approach, emphasis on all stakeholders, and evaluation of both human health and ecological factors, he said. Another important feature to be addressed in the framework document and integrated into the cumulative risk assessment process is the concept of vulnerability. Vulnerability, he explained, refers not only to the physical susceptibility or sensitivity of a population but also to social vulnerability to chemicals or stressors because of factors such as where people work, income levels, and access to healthcare. These factors, he noted, can result in differential levels of preparedness and differential abilities to recover from environmental stressors.

Regarding the role of the NEJAC in assisting EPA in the development of guidelines for cumulative risk assessment, Mr. Lee explained that a workgroup will be established within the NEJAC in Spring 2003 to work in partnership with EPA program and regional offices, other advisory committees, and other agencies. The workgroup will develop a draft report and consensus proposal to be presented at the April 2004 meeting of the NEJAC. Mr. Lee provided examples of the issues that the workgroup would be charged to address, including:

- Exploring how cumulative risk assessment can be better grounded in a real-life context of disproportionately impacted communities and tribes
- Determining practices for ensuring stronger community involvement in the planning, scoping, and problem formulation phase of cumulative risk assessment
- Addressing how the concept of vulnerability can be incorporated into the cumulative risk assessment process
- Identifying methods for more effective use of information obtained from a cumulative risk assessment.

5.0 MISCELLANEOUS BUSINESS

This section summarizes miscellaneous business conducted by the Executive Council.

5.1 Announcement of the April 2004 Meeting of the NEJAC

Mr. Lee announced that the next meeting of the NEJAC would be held in April 2004 in New Orleans, Louisiana. He explained that the annual meeting of the NEJAC, which historically had been held in December, would be scheduled for April so that the meeting could be held in the appropriate fiscal year, while providing additional time for the substantial preparation necessary to address the topic of cumulative risk.

5.2 Other Business

The members of the Executive Council passed two motions proposed by Mr. Yang to (1) correct several omissions from the final fish consumption report and (2) clarify how the Executive Council would refer to requests for EPA actions.

In his first motion, Mr. Yang asked that the set of

"proposed overarching recommendations" dated March 15, 2002, that had been submitted to the NEJAC by the Fish Consumption Workgroup and approved by the Executive Council be added to the final fish consumption report as an appendix. He also requested that the report be revised to include a preface containing a statement made during the December 2001 meeting of the NEJAC by Ms. Daisy Carter, Project Awake and former member of the Air and Water Subcommittee and the Fish Consumption Workgroup,. Ms. Carter's statement is presented below.

> *Let everybody know this environment belongs to all of us. And when you contaminate the water and contaminate the fish, you are contaminating all of us. I tell you, I don't know if you know anything about Isaiah. Isaiah was a great prophet, you know, and he said, "I have played, I have taught, and I have preserved" -- I'm sorry, I may be misreading something -- "and I wonder if anybody is listening" -- so I want to know if anybody is listening. And if you are listening, I want to know what you are going to do about it.*

Mr. Yang continued with a request that the work of the Fish Consumption Workgroup and Ms. Catherine O'Neill, Associate Professor of Law, Seattle University, be specifically acknowledged in the final fish consumption report. Mr. Yang asked that the changes to the fish consumption report be made immediately and that the revised report be transmitted to the EPA Administrator and posted on the internet.

Mr. Yang then motioned that the members of the NEJAC vote to clarify and formalize terminology for referring to requests for EPA action. Specifically, Mr. Yang proposed that requests for action that have been approved formally by the Executive Council be termed "recommendations" and requests for EPA action that have been forwarded to the Executive Council for consideration by either a workgroup or subcommittee be termed "proposals."