U.S. EPA NEJAC Committee Meeting

April 16, 2004

Members Present
Veronica Eady, Chairperson
Mary Nelson, Vice-Chair
Charles Collette
Judith Espinosa
Walter Handy
Robert Harris
Jodena Henneke
Phillip Hillman
Lori Kaplan
Pamela Kingfisher
Juan Parras
Graciela Ramirez-Toro
Andrew Sawyers
Wilma Subra
Connie Tucker
Kenneth Warren
Terry Williams

EPA Representatives Present

Barry Hill
Charles Lee, Designated Federal Officer
Mildred McClain
Jim Woolford

"—-" indicates inaudible in the transcript.

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M O R N I N G S E S S I O N

(8:43 a.m.)

MS. EADY: Good morning. Can I have a show of hands again today, how many people are leaving today?

(Show of hands)

(Pause)

MS. EADY: I guess there was just a discussion of sort of moving things around on the agenda. There was another suggestion that we work through lunch. You know, we could probably move the update on the Pollution Prevention Report.

MR. LEE: You know what? Why don't we do this. Barry really wanted to have a good discussion of the OIG Report, and that was scheduled for –- with the NEJAC around the Office of Inspector General's Report. More from the larger perspective of the EPA's Strategic Plan around, and vision around environmental justice.

So that was scheduled for an hour and a half. Why don't we make that an hour. Okay, and then why don't we do the next steps in terms of the NEJAC cumulative risk impacts draft report. I think that is pretty clear. I don't think we need to spend any time on that. Then whey don't we do the update on the Pollution Prevention Report now, and that may take 15, 20 minutes. Then we can move

the –- we can try to do the Federal Facilities Report before we do the IPS. That way, we can make sure that that gets done.

Let's try to make sure that we do the –- let's work through lunch, okay, and then we should try to close this out by around 2:00.

MS. EADY: That sounds good.

MR. LEE: That's good?

MS. EADY: Yes. Sounds good.

MR. LEE: And if everyone would try to keep mindful of the time, we could really try to do that. Okay? So Hank Topper is going to give the presentation. Hank, I am sorry we moved you around three times already, unbeknownst to you.

MR. TOPPER: I have the presentation but I didn't get a chance to load it yet. Should I just talk? Or what do you want me to do?

MR. LEE: Yes. How long is it going to take to load it?

MR. TOPPER: It should be up in just a second.

MR. LEE: Why don't you do that and in the meantime, why don't I introduce you. Originally, Bill Sanders, who also was representing the Office of Prevention Pesticides and Toxic Substances, which was the office that helped to sponsor the NEJAC's Pollution Prevention Workgroup –- and assume the primary

responsibility for implementing the recommendations of the report — was going to give this presentation but he had to leave earlier.

So, Hank Topper, who works in the same office, has actually worked with that process throughout and is going to give his presentation.

Hank brings a lot of areas of experience, including all his work around community assessments and working with community partnerships, and things of that nature. So I think he is going to give you a very interesting report in terms of the things that EPA has done around those recommendations.

Are you ready?

MR. TOPPER: Thank you Charles. It will just wait a second for the presentation to come up.

MS. NELSON: Excuse me, while we are waiting can I just make a comment?

MR. LEE: Sure.

MS. EADY: Yes Mary.

MS. NELSON: I just want to say thank you, thank you, to EPA staff for putting together the matrix of all our commitments of how we are going to disseminate to the Cumulative Risk Report. That it is really good work and I am sure that — it seems to me the main thing we all said was we wanted a kind of summary, a graphically

interesting, concise summary of the report that we could use. Whether in PowerPoint presentations or in hand-outs or whatever else. So just thank you, thank you, for this. It is a good start, I think, for disseminating the good work to date.

MR. LEE: At first blush, we said we were going to give an award to the person that gave the most commitments. The one with the biggest is Pam Kingfisher.

(Applause)

Update on Pollution Prevention Report

by Hank Topper

MR. TOPPER: Okay, I think it is up now. First of all, I would like to explain that since I am from the Office of Pollution Prevention and Toxics, I may miss some contributions in the agency that relate to the Pollution Prevention Report, so I would like to invite other people from the agency to complete the presentation when I finish, or add things to it that we might have missed from the perspective that we had.

(Slide)

I am going to focus on some key elements in the Pollution Prevention Report and talk about the progress that has been made in the agency to date in response to that report. I think the themes, in particular, that we picked out are developing the collaborative model

which, I think, is the key aspect of the report that everyone thought was essential.

I think improving our ability to understand risks and priorities was another key part of the report. Getting to work in communities, the pilot aspect of the report was particularly important, and using P2 to reduce community risk. They are the four elements that I think I am going to focus on to talk about the agency's response to the report.

(Slide)

In terms of the collaborative problem-solving model, there has been a lot of really interesting developments since the P2 Report came to the agency. I know you have heard earlier in this meeting about the new administrator's Enlibra Principles, so there is a lot of real overlap and synergy possible with agency leadership on the issue of collaboration.

So there is some new agency leadership on this that will come from the administrator that will help us develop this collaborative problem-solving model. I think that should be really helpful.

The EJ Collaborative Problem-Solving Grant Program has begun and is now in operation and is making significant contributions

to developing this collaborative problem-solving model that was emphasized in the P2 Report.

The Office of Environmental Justice's support to the development of this report, the Cumulative Risk Report, certainly has made major strides towards developing that collaborative model that we are all working towards as well.

I would like to tell you that the model for collaboration has been adopted in the Air Program's community projects that are now going on throughout the country. The Urban Air Toxic Strategy calls for local assessments of air quality, and of all the projects that the Air Office has been sponsoring throughout the country have been adopting the collaborative model. So there is a real impetus from that direction to the development of this approach as well.

We are actually going to take training to all the agency community involvement staff on the Collaborative Problem-Solving Model in a panel organized by Charles for the Denver National Community Involvement Conference. So we are making some major efforts and significant efforts, I think, to train EPA staff on the Collaborative Problem-Solving Model.

That model is also incorporated as a key part of the Community Air Screening How-To Manual, which I will talk about later.

(Slide)

The second element that I would like to focus on is the issue that was raised in the P2 Report about the need for communities to get a better understanding of risk and to have tools and screening assessment tools that enable them to understand and prioritize risk in a more effective method.

You know, you have seen the RAIMY Model demo'd outside, which is really an effective screening tool. We have also worked to get the Risk Screening Environmental Indicators Model, which is the TRI-based Screening Model. So we have done some real work in developing screening tools that will give communities the ability to set clearer priorities and more effective priorities. Both of those are focused on air quality and are not multimedia, however.

The other tool, which is the EJ Geographic Assessment Tool, which was also demo'd, is a good tool for helping communities set priorities as well.

We also are now getting ready to publish a Community Air Screening How-To Manual, which is a key tool that will enable communities to prioritize and understand local air quality. All these are tools that we are beginning to develop that will try to speak to the question of setting priorities and screening.

And, of course, the cumulative risk matrices that Wilma had on the wall before are being developed by NEJAC and by the agency around the cumulative risk issue are good prioritization tools as well. The agency also did and worked with the community in Chelsea, which is highlighted in the Cumulative Risk Report to do a comparative risk study, which is a good community-based participatory research method of understanding and prioritizing risks.

And if you want to look at that case study in the back in the appendices of the Cumulative Risk Report. So there has been a good bit of activity in the agency to try to respond to the P2 recommendations for better tools to enable communities to prioritize and screen risks.

(Slide)

The P2 Report also emphasized the importance of doing pilots, getting to work in communities, learning how to use pollution prevention, taking a collaborative problem-solving pollution prevention approach in communities. There actually have been over the last two years the initiation of a good number of community projects under the aegis of the Urban Air Toxics Initiative that I mentioned before.

You have heard of probably the project that was done in Cleveland. It is still ongoing. The project in St. Louis, west Oakland.

So there are a lot of projects that have begun that are now working directly in communities to address air quality issues in particular.

There is a project that has been started in south Phoenix that you have also probably heard of that is a multimedia toxics risk reduction project. You have probably heard individually of all these. These are just kind of put together so you can get a perspective of the new initiatives that are going on under the Environmental Results Program from OECA. In Park Heights in Baltimore, Maryland, there has been a really good pollution prevention project that has been developed working with auto body shops and auto refinishers in that community.

And the agency started a major effort at the community level in the Diesel Retrofit Program. Clean Bus Program and major agency initiatives to try to address the risks in communities from diesel particulates. So this is a particularly important and growing area for the agency because of the importance of the risks that comes from diesel particulates. So there are a lot of initiatives that have reached the community level on this issue as well.

Then, of course, as you have heard the CARE Program will begin in September, October, which is the agency's new initiative to address multimedia toxics issues at the community level and to address cumulative risk issues. So there have been actually a lot of

new agency initiatives to actually get the work in communities and to look for pollution prevention opportunities.

(Slide)

We have also done some work to make pollution prevention resources more accessible to communities. There is a wealth of pollution prevention resources out there. There is a Pollution Prevention Roundtable, there is a tremendous amount of resources. Most of them focused at industry and small businesses to date. But now the agency is beginning to take steps needed to make those resources and tools more accessible to communities.

If you look, in fact, in the back of the Cumulative Risk Report, you will see one of the appendices is actually a list of pollution prevention resources that can address community problems.

The Air Office is preparing now, and will soon publish a whole series of community fact sheets on pollution prevention that will be tremendous tools for communities to use covering all types of businesses and the kinds of businesses that are likely to be found in environmental justice communities.

So we will have soon a list of fact sheets that we can use in our communities that will give community organizations the ability to identify community businesses, and then to find easily the pollution

prevention resources and pollution prevention options that are available.

For instance, in auto refinishing, auto body shops that you find frequently in environmental justice communities, you will have a fact sheet that will be directed to the community organizations to help them identify those businesses and to understand the options for reducing exposures from those businesses. You also have fact sheets that you can give to those local businesses to help them understand the pollution opportunities that they have. So that is going to be a really useful tool that will come out very soon.

The CARE Program, the CARE team that has been organized in the agency is now putting together a resource kit that will also bring together and make more accessible all the pollution prevention resources that are available in the agency.

The design for environment and the pollution prevention programs themselves have begun outreach efforts to try to make their resources that directed at business, much more accessible to communities. So those are the efforts that are undergoing to make pollution prevention resources out there more accessible.

(Slide)

Just as a quick summary, I think since the Pollution Prevention Report has come out, I think we have actually seen a lot of

new approaches. There is actually a lot of enthusiasm for this new approach, and there is a lot of new commitment in the agency to getting pollution prevention at the community level.

We are getting to the point where we actually can bring good science and the bias for action together. This is a real step forward for us to be able to bring this together at the community level so we can more effectively address environmental risks.

But the real story is that this is only a beginning. If you look at all of these things, they are just examples here and there. There is a pilot in Baltimore for design for environment programs, there are projects that the Air Office sponsors around. So it is not like we are really where we need to be, but we are more at the pilot stage, just beginning things. So it is a good start, but a lot more work needs to be done.

So it is a real challenge and an opportunity for us. The way we look at it in the agency, I think, is this is the time where we really had the tools and the resources, and now it is up to us to really pull things together and make this work.

So, that is it. If there are any questions, I would be glad to have them.

MS. EADY: Thank you. Questions from the council? I see Wilma, you have your card up.

MS. SUBRA: I would like to thank Hank for that great presentation. There are a couple of new members around the table. This was the project that was presented at the last NEJAC Council meeting. The Cumulative Risk Project is the one for this meeting. So I think it is very important that we do get the follow through so that we understand that things do happen within the agency, after we have spent a lot of time doing this work. So thank you very much for this presentation.

MS. NELSON: Hank, what needs to be –- this is very exciting to see, again, as Wilma said, this good work happening and being sort of integrated into the agency. How do we move it from a promising start into a way of doing business, or into expanding the scope of it?

MR. TOPPER: Well, I think, in my opinion, that the Cumulative Risk Report dovetails perfectly with the Pollution Prevention Report. So I think the work that we are doing now, and you are doing to bring the Cumulative Risk Report to the agency is probably the best next step to get this work continuing.

So I think getting the CARE Program going effectively, and making that work is probably –- and that matches with the Cumulative Risk Report. I think maybe making sure that those pilots that get started in the CARE Program work and can be used as examples of,

this method really does work and is probably going to be key for us all.

So I think having us all emphasize or focus on making these new CARE pilots that we will be starting soon work will be the key to progress.

MS. EADY: Thank you, Hank. Any other questions or comments? Judy.

MS. HENNEKE: Yes, thank you. This is very good and I appreciate the agency preparing this for us because I think, as Wilma said before, it is really important that when we do these reports we have some discussion or some idea, and not only for us, but for everybody, what you are doing on some of the action items. So this is great.

Thank you for emphasizing the fact about the pollution. You know, the cumulative risk being a follow on to a lot of things that are being done and said in the pollution prevention outcome.

MR. TOPPER: Yes.

MS. EADY: If no other questions, we'll move on. Thank you very much Hank.

MR. TOPPER: Thank you.

MR. LEE: Thank you Hank. Is Barry here? Barry.

MS. EADY: Yes, Barry is here.

MR. LEE: Well, I am going to introduce him. As you all know, there has been a great deal of discussion, particularly at the Executive Council, around a recent report from the EPA's Office of Inspector General on the Environmental Justice Program at EPA. And as was said, there are a lot of very, very, very important underlying issues here that really speak to some very fundamental questions about what it means to integrate environmental justice within an agency like EPA.

I am not going to go through all those specific questions. One thing that came up in one of the NEJAC discussions was — in the OIG Report — we believe because it has some fundamental flaws, fails to see what exactly is the vision and the strategic plans of the Office of Environmental Justice and the Environmental Justice Program at EPA.

So we wanted to actually provide that for you and Barry kind of wanted to present on that. After that, you know that there has been a discussion under Veronica's leadership a draft letter has been drafted by you around the Office of Inspector General's Report.

So I think that the way this should be done, Veronica, is to have Barry give his presentation and then have a period of discussion. And then towards the end, you know, come to some kind of consensus around the letter.

We are going to truncate this from the hour and a half to an hour, if at all possible.

Discussion of Office of Inspector General's Report on Environmental Justice

by Barry Hill

MR. HILL: Good morning everyone.

(A chorus of good mornings)

MR. HILL: You wanted to schedule time to talk about the IG Report. What I would like to do today is something different from what I ordinarily do. I ordinarily give speeches, things that are written out, and I give a lot of those things over the course of a year. But I wanted to do two things today. I wanted to do a little bit of preaching and, hopefully, a little bit of teaching.

When I say preaching, what I want to do is to talk from the heart, rather than from a prepared statement because this issue is incredibly important to me. This is, in many respects, my life's work, and also for many of you. So I want to do a little bit of preaching today.

I guess like a Black Baptist minister, sometimes you use the English language in order to press a point. So there may be times that I will use words inappropriately because they sound better for

that particular moment, and you will see what I am talking about in this presentation.

But I want to teach too. I have been a teacher, law school, graduate school, other places, for over 30 years. Teaching is not a vocation, it is a way of life in many respects. What I want to do is to talk about civil rights law, environmental law, the whole notion of an executive order, and I want to talk about the fact that we really stand on the shoulders of people who have come before us.

They have taught us some very, very valuable lessons. Lessons that we can use right now as we discuss the issue of environmental justice and the Inspector General's Report. So, here it goes.

(Slide)

My theme for today is separate but equal has no place in American society. Separate is inherently unequal. I am not just talking about treatment, I am talking about using different standards, I am talking about using executive orders, as compared to environmental laws. I am talking about using different policies, depending on who lives in these various communities. And the fact of the matter is, that the Supreme Court said that separate but equal has no place in American society.

We have seen the walls of discrimination come tumbling down in housing, in public accommodations, in employment, and economic development, and so many other aspects of American life. We are dealing with the same problem, the same issue, in the environment.

Now I said that the walls have come tumbling down, but I didn't say that the problems have been eliminated. I had an experience the other night here in Louisiana, in New Orleans. It just shows how things have not changed in many ways. I was on Bourbon Street the other day and I was walking with my queen. And all of a sudden, two cops came up to me — came up to her. They had evil intentions on their minds. They said, we want to talk with you. We want to talk with you. We want to talk with you.

And I am, well, what? What is happening? We want you to accompany us. So Nicky is saying, what is wrong? Where are you taking him? Somebody had said that a Black man in a dungaree pants and a dungaree shirt had just robbed somebody. Now, I am saying, how stupid can you be. I am 55 years old, I got all this gray hair, I am a grandfather. Why would I stick up somebody on Bourbon Street? A White tourist?

So Nicky is getting upset. And then she asked one of the cops, is this a reality? Are you all real cops? And they assured her,

we are cops and we want to talk with this gentleman. It just showed where things are at as a practical matter. They were going to arrest me.

Now, I had three ways in which I can deal with this issue. I could act "ghetto", and you all know what I am talking about. I am from the housing projects in Brooklyn, and you know we can get "ghetto" sometimes. Get your (mumbled words) hands off me. You know, what are you talking about? I could have acted that way.

Or I could have come up with the tone of an educated person. Well, my name is Barry Hill and I am a lawyer and I am here on behalf of the –- you know, all this other stuff. Or, I could have been calm and cool. So I chose the latter because Nicky was getting upset.

And I said, this is not the way to deal with it, not here in Louisiana. And later she asked me, she said, how could you be so cool under those circumstances? And I didn't answer her. And I guess I can give my reasons now. I had a secret weapon. If I was going to go to jail, I was going to tell her, go back to the hotel and get Charles Lee.

(Laughter)

MR. HILL: Charles can talk you to death. If anybody could get me out of jail that day, it would have been Charles. After awhile,

Charles would be talking and they would say, just leave with him. Just take him. Just take him. But that's my man.

(Laughter)

MR. HILL: That's my man. That is my secret weapon.

Now, getting back to my theme, separate but equal has no place. Separate is inherently unequal. What I am going to do is give you a lot of facts during the course of this presentation. Now, there are two types of facts, there are the kind of facts that you research, and then there are the kind of facts that you simply make up.

All of the facts that I am giving you today will be ones that you can research very, very easily. But there are some facts that I don't want to talk about. And let me give them to you.

(Slide)

The first fact was that the IG's office was misinterpreting a document. A 10-year-old document, the Executive Order. There are three people on OEJ's current staff who had an opportunity to weigh in on as it was being developed. That was Bob Knox –- and I am going to talk a little bit about credentials, not to bolster or anything like that, but to give you an idea about where we were at in this whole thing.

Bob has been at the agency for almost 40 years. He was involved with the Executive Order as it was being drafted 10 years

ago. So that is 10 years of experience with this document. The other person was Charles. Charles is the architect in many respects of the environmental justice movement. If it hadn't been for Charles, many of us wouldn't be here today. I know I wouldn't be.

When the United Church of Christ issued its report in October of 1987, the following week I was up in New York traveling to talk to Charles. And since that day, since October of '87, I have been involved in the issue of environmental justice. So let's say that for 10 years Charles has had at least this kind of experience with the Executive Order as it was being drafted, as it was being developed, and working on it.

As I said, I have been involved since '87, and in 1994 I was representing the American Bar Association as this document was being developed. I know every semi-colon, every comma, every phrase, what it was all about. So at the very least, we have 30 years of experience in dealing with this document. Three people that I just named.

So now the Inspector General's Office, they come in. They have been looking at our office for a year. So now we can give first-hand experience about this document, what it means, the words, the phrases. And they are going to come in in one year and tell us what

these words mean. From my point-of-view, that is pretty arrogant. That is very arrogant.

You are going to tell me, you are going to tell Charles, you are going to tell Bob, that we are going to have to come up with this magic number, this methodology that is going to be able to determine how many Black people live in Harlem, how many Puerto Ricans live in Spanish Harlem, how many poor Whites in Appalachia, there must be in order to move forward in addressing the laws, rules, and regulations that we have.

And if we don't meet this basic level, this basic threshold on a national level, there is nothing that you need do in that particular community. The laws were not written that way. I have been teaching law, environmental justice at the top school, top rated school in the United States, in the world. My students have been looking at this Executive Order for 12 years now. Nobody, nobody has ever come up with an interpretation like the Inspector General.

I recall as I was thinking about it this morning, at the Exit Conference where they had an attorney who was young, very, very young. And he is going to try to match wits on a legal basis with me? Or with Nick. Nick stands almost seven feet in the air, and this was a little guy. A little guy. I have no problem against short people, but

this was a little guy, in stature as well as intellectual capacity. And he has the nerve to say, what does your office do on a daily basis?

And I just sat back and I said, now these are people who are evaluating us and they still don't know what we do on a daily basis. I said to myself, we are in deep doo-doo if these are the people who are evaluating our program. But I don't want to talk about these facts.

Let me give you another fact. I said, okay, look, if you don't believe Charles, Bob, or me, with respect to our interpretation of the law, why don't you talk to other people? Why don't you talk to White folk? Maybe they will help you.

(Slide)

The IG's office refused to do that. They absolutely refused. I gave them the names of people that they can talk with, who were involved with the Clinton White House, who were assigned to the President's Council on Environmental Quality, who were at the Justice Department with Janet Reno, who worked on the document. Talk to them. Talk to them if you don't believe our interpretation.

They said, no. Well, can we show them the document, your draft? They said, no. Now, the draft Evaluation Report was issued less than a week before Christmas, so I am spending all of my holiday, all of my vacation working on this. I am asking them for an

extension because Steve Johnson, the Deputy Administrator was in Japan. I said, can we get a week to get others involved from the agency? They said, no. You are going to have to do it within 30 days, that is it.

So we got in contact with Steve Johnson from Japan. He said, I understand what is being said, sign it. Get it to them. So you have the IG's office who not only didn't listen to our interpretation, but refused to consult anyone else.

(Slide)

The former Assistant Administrator, J.P., he said, Barry, did the IG's office know who you are? Who Charles is? And other people on the staff? Do they know what you have done with this document? That you have been involved directly with writing it? I said, we told them. So he said, look, I am going to speak to the Inspector General herself to try to get her involved in this. Because she has to read it. She said, no. The draft has been issued, let it proceed through the process.

He said, it doesn't make sense for the agency and for the IG's office to have such radically different interpretations of the document. She didn't want to get involved.

(Slide)

Phyllis said, well look, before the Exit Conference takes place, why — don't we try to meet with the IG's office to see if we can come closer to an interpretation of this document? Before the Exit Conference. They said, no. We don't want to.

(Slide)

Another fact. Myself, several other people were inaccurately quoted in the document. Our comments were taken out of context, the quotes in many respects didn't even follow the assertions that were being made. If you were writing something, it is called a non-sequitur. It just doesn't follow the assertions that you are making and the quotes that you are using. Read it. Look at it for yourself.

Another fact. Decisions are made in the agency on a consensus basis. It is not about me. It's not all about me. There must be a consensus decision made by the Executive Steering Committee regarding major initiatives on environmental justice.

And that is the Deputy Regional Administrators and the Deputy Assistant Administrators of the Agency. And we do reach consensus, that is how it should work because of the fact that the Office of Environmental Justice doesn't issue any permits, we don't write any conditions in these permits. We don't run any programs, we

don't make decisions on a daily basis that affect people's lives. It is within the regions and program offices.

So since it is their responsibility, it makes sense for them to agree on these major initiatives. These are facts that I don't want to talk about.

(Slide)

This is a real issue. When you get right down to it, whether or not the agency takes any —-- environmental justice considerations into the decision-making process, should it be based on environmental laws or something else? Should it be based on an executive order? Should it be based on civil rights law? Let's examine this question.

(Slide)

Now, every movement has a chief theoretician. Every movement. The environmental justice movement has its chief theoretician, and that is Bob Bullard. Bob has written more books, more articles, given more lectures around the world than anyone else. Bob understands this movement inside and out. So let's see what he says.

"The solution to unequal protection lies in the realm of," damn, "environmental justice for all Americans." " Environmental justice for all Americans." Now, isn't this the phrase that the Inspector

General's Office said was wrong what we do in the agency? " Environmental justice for all Americans." That we are abandoning minority and low-income communities because we say environmental justice for all.

I mean, if the environmental justice movement was created because of the fact that there was environmental injustice in those communities, doesn't it make logical sense for there to be environmental justice for all communities to ensure that these communities, like other communities, have clean land, clean air, and clean water? It is very simple.

So Bob says, "environmental justice for all Americans. No community, rich or poor, Black or White, should be allowed to become a sacrifice zone." Very telling statement. What we are doing within the agency is consistent with what the chief theoretician of this movement has said.

"There is a need for a federal fair environmental protection act that would transform protection from a privilege to a right." What is Bob saying? You need law. If there was this law, there would be greater assurance that rights and privileges would be protected. But let's talk about privilege versus a right.

(Slide)

A right is something that belongs to you as a member of this society. As a citizen of this country. The basic document of this country says: "We the people of the United States," something like that, "in order to form a more perfect union, establish rights," and so on.

They have inalienable rights, inalienable rights. Life, liberty and the pursuit of happiness. Inalienable rights. Inalienable means you can't take it away from people. This belongs to them as members of society. That is a right.

In contrast, a privilege. A privilege is something that can be taken away from you. For example, your ability to drive a car. As soon as you turned 18, you don't have an absolute right to a driver's license.

You have to pass a test. And you can maintain the ability to ride, to drive, if you obey the rules of the road. So if it can be given to you, it can be taken away from you. That is what a privilege is.

Now, people understand the distinction between a right and a privilege in the movement.

(Slide)

They have principles of environmental justice. Now, this is taken directly from the summit that occurred in 1991 that Charles helped organize. I am just going to give you five principles.

(Slide)

Principle four:

"Environmental justice calls for universal protection from nuclear testing and the extraction" — so on and so forth — "that threaten the fundamental right."

They don't say privilege, they say right. It belongs to people of color as a result of being citizens of this country. It is a right.

Five:

"Environmental justice affirms a fundamental right to political, economic, cultural and environmental self-determination of all people."

A right, not a privilege.

Six:

"Environmental justice demands the right to participate."

The right to participate, not the privilege to participate. The right to participate "as equal partners at every level of decision-making."

(Slide)

Seven:

"Environmental justice affirms the right of all workers."

The right of all workers "to a safe and healthy work environment. It also affirms the right of those who work at home to be free from environmental hazards."

And, finally, "Environmental justice protects the right of victims of environmental injustice to receive full compensation." So we are talking about rights, rights, rights. Not privileges.

(Slide)

So how do you protect, how do you secure, how do you ensure these rights? Is it an executive order or is it environmental laws? An executive order is a policy statement, nothing more, nothing less. Made by a president for his administration.

An executive order can be changed at any moment by that president, or a subsequent president. So you would be in one hell of a situation if you based everything on an executive order.

(Slide)

The executive order even tells you this. Section 6-609 of 12898:

"This order is intended only to improve the internal management" — "only to improve the internal management of the Executive Branch."

"It is not intended, nor does it create any right" — any right — any right. It doesn't create any right —" that is enforceable at law or equity by a party against the United States." Nothing.

You can't take it to court, you can't use it, so don't bank on it.

(Slide)

It goes on to state:

"To the greatest extent practicable and permitted by law." It is telling you exactly what you need to do. Don't rely on the executive order, go back to law. Go back to law. The first sentence says, go back to law. " To the greatest extent practicable and permitted by law."

(Slide)

That phrase was important to the American Bar Association. It was important to the American Bar Association to have the President issue a memorandum to spell out what these laws might be, to let everyone know what that first sentence meant. "To the extent practicable and permitted by law."

This is what the memorandum says. "Environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities. Application of these existing statutory provisions is an important part of this administration's efforts." That is on one side.

The administrator's memorandum of August 9, 2001, says the same thing. And you know why, the same person wrote the damn thing. Me! To spell out this is what is needed. Go back to law. Use

the law in order to address these issues in these communities, not an executive order. As you can see, I am very passionate about this.

(Slide)

So what have we done as an office? We were behind Gary Guzzi issuing that memorandum to spell out to EPA employees what laws could be used to address the concerns of these communities. We had the Environmental Law Institute issue "Opportunities for Advancing Environmental Laws." For advancing environmental justice. We had ELI not only write something that is very esoteric and useful for regulators, but we asked ELI to produce a citizens guide, a citizen's guide so that they could use it. Because if they can use the law, doesn't it make sense that they can have an effect on their communities?

(Slide)

We go on. We had the Environmental Law Institute, in partnership with the United Church of Christ and the Southwest Network issue the DVD that you all have, "Communities and the Law." We have the Environmental Justice Toolkit being issued this month in final, which spells out in Appendix B all the laws that could be useful for addressing the issue of environmental justice.

And, finally, our office is going to pay for the Environmental Law Institute and others to conduct training on environmental laws

and alternative dispute resolution. Now this to me shows strategy, shows planning, shows determination, but the IG's office says," oh, no: we don't have any strategy. We don't know what we are talking about." Ugh, man.

(Slide)

Let's talk about which laws, civil rights or environmental laws. So I hope –- I hope by now all of you can understand that an executive order is not the way to go. You don't base what you are doing on an executive order. The agency can't base what it is doing on an executive order. And if anyone tells me, like the IG's office, that the executive order is the priority of the agency, a 10 year old document, I would have to say, are you on drugs? Are you crazy? That doesn't make sense.

Why do you have a different policy? Why are you advancing a different policy for low-income and minority communities as compared to other communities? Other communities use law, why shouldn't we? Use an executive order that can be written off, written out of existence.

If you recall, when the Bush Administration came in, there was concern on the part of communities as far as what was going to happen to the executive order. Charles came to me and said, Barry, you need to do something. You need to do something. So I went to

the Deputy Administrator and said, what's up? What's up? What are you going to do with the executive order? She said, the White House, we are not going to eliminate it.

So she asked me, well, what should we do? I said, well, why don't you issue a memorandum consistent with the President's Memorandum that talks about environmental laws and to say that this is the agency's priority. And that is what she did. That is what she did.

So which laws? Civil rights laws or environmental laws? There is an overlap between Title 6 and environmental law.

(Slide)

On the Title 6 side you have race, color, national origin, federal funding. You can't use federal money to discriminate on the base of race, color, or national origin. If you do, the money will be taken away from you. The money will be taken away from the state. That is the only thing that Title 6 allows the federal government to do. You can't use Title 6 to close down a facility in any community. The agency doesn't have the statutory authority to do that. The law doesn't give the agency that authority.

The environmental law side, "all Americans, including minority and low-income communities." I believe that they would be included as Americans. You don't need federal funding. You can go

to court. You can assert your rights. Protect your rights. You don't need federal funding for that.

(Slide)

And civil rights law, you need a "suspect class." The laws were created for that particular purpose, to protect a suspect class. A suspect class based upon race and ethnicity. Income ain't no suspect class. Low-income does not require any protection under the laws. None whatsoever. The laws are not written that way.

(Slide)

With environmental laws you don't need a suspect class. A decision is not based upon race, ethnicity, culture, income, education. All means all. All. Simple.

(Slide)

But we have a problem. We are trying to fit a civil rights paradigm into an environmental laws paradigm. (Linda Smith, who you know, we were trying to put this thing together to make it visual, but it didn't work. You know, to show the circle going into a square hole. But the idea is that it just doesn't fit. It just doesn't fit.)

I have provided an article for you that was published two years ago in the Environmental Forum, "Lemons into Lemonade." Has that been passed out Linda?

MS. LINDA: Yes.

MR. HILL: "Lemons into Lemonade." I wrote that article out of anger. We had just appeared before the Civil Rights Commission talking about Title 6. And the impression that was being given to communities was that Title 6 is going to save you. Title 6 is the answer. And Title 6 is not the answer.

What I tried to do in that article is to show how and why it is not the answer. Trying to use a civil rights paradigm to fit into an environmental law paradigm. There is no case, no case, using that particular approach that has been successful. The Supreme Court said, you can't use it in Sandoval. They told you this will not work.

So you have to use environmental laws. I use the article to talk about the anti-discrimination law approach. We used the 14th Amendment, Equal Protection Clause, and show you why those cases have not worked. I talked about the Title 6 approach and why that does not work. And why "environmental law, with a twist," has worked on behalf of communities facing environmental justice concerns. Read it, see what you think about it.

(Slide)

Now, remember I told you that we have to learn lessons from those who have come before us. What I have done is to use Thurgood Marshall who gave us some excellent lessons. He is the man as it relates to civil rights law. This is a statement that was made

by Vernon Jordan to celebrate the case at Howard University Law School's Brown v. Board of Education event. It hasn't been very long. It has only been 50 years ago that this notion of separate but equal was eliminated. Fifty years ago.

Vernon Jordan says, "The case presented by Thurgood Marshall and his team was legally and morally irrefutable. Brown exposed the widening gap between the state and local laws. Something had to give and it had to be the Jim Crow Laws. Brown is a milestone in America's continuing battle to reconcile the letter of the law with the spirit of the American dream of life, liberty and the pursuit of happiness for all."

(Slide)

But you have got to understand about the Civil Rights Movement and what it is that Thurgood Marshall, Justice Marshall, was fighting about. Let me use this, and I am going to talk to you as a Black man. I have been that all my life.

James Baldwin once said that we are a people of good stock. We have picked cotton, we have dug ditches, we have built railroads. But yet, at the same time, we have taught higher mathematics at some of the greatest institutions of learning in this world. We have survived against the most indomitable odds. What was James Baldwin talking about?

In the book by Randall Robinson, The Case for Reparations, What America Owes to Blacks that was issued about two or three years ago, Randall Robinson talks about the fact that in the history of man, in the history of man, there have been only two societies, two governments, where segregation was required by law. Segregation was required by law.

You have South Africa with Apartheid. Apartheid means, literally translated, separate development. Segregation of the races. It lasted from 1947 to 1994. The other country was the United States. For 262 years, there was this peculiar institution called slavery. Segregation by law.

After the Civil War you had 100 years of Jim Crow laws where this continued. You have lynchings, beatings, killings, all kinds of things that were happening. And then you have Brown v. Board of Education. These are facts, not anything that I made up. They can be researched. This is reality and, quite frankly, the vestiges of these problems exist in every aspect of American life and, perhaps, even in the environmental area, which we are dealing with right now.

That is what Brown v. Board of Education was all about. So the lesson learned is that you cannot use separate policies, separate standards, separate executive orders for one group of people and law for everyone else.

(Slide)

We understand this within the Office of Environmental Justice, and I believe the agency had this particular point of view, as reflected in the Administrator's Memorandum. We have five steps to integrating environmental justice. It started with the NEJAC reports. I am just using this as an example.

The NEJAC Report on the use of the law. As a result of that report, it went to the Analysis Stage. We had the OGC Memorandum, and you have the ELI Report. Then as part of the analysis, you have the National Academy of Public Administrators doing their thing, which OEJ was responsible for.

Next stage is Training. We have a basic workshop in environmental justice being taught all throughout the regions. You have Implementation, you have the Administrator's Memo, you have the EJ Steering Committee that I talked about earlier, you have the OEJ Toolkit that is being released shortly.

Finally, you have Evaluation. IG review, management accountability and responsibility. Those are the steps that we use. All of this was explained to the IG's office, as it was explained to the NEJAC a couple years ago. But, the IG's office said, we have no strategy.

(Slide)

This is what the IG said. This is what the Office of Environmental Justice is all about. We have only one mission. To assist the agency in integrating environmental justice. That is all that we are required to do as it relates to our mission. This is just a symbol of all of the things that we do do in order to accomplish that mission.

A lot of activity, a lot of planning, a lot of cajoling, a lot of pleading, a lot of strong lobbying in order to accomplish that mission.

(Slide)

Let me end this presentation by reading from the eulogy of Thurgood Marshall. This was given by Vernon Jordan again in '93. And, again, I am using Thurgood Marshall to demonstrate that we must learn from the lessons that he and others have taught us.

"To those of my generation" –- and this is Vernon Jordan speaking — "growing up in the segregated south, Thurgood Marshall was more than a crusader for justice. More than a torch bearer of liberty. More than a wise and learned man of the law. He was a teacher who taught us to believe in the shield of justice and the sword of truth. A role model whose career made us dream large dreams and work to secure them. An agent of change who transformed the way

an entire generation thought of itself, of its place in our society, and of the law itself."

And of the law itself.

"Picture, if you will, the inescapable power of the beacon light Thurgood Marshall beamed into our cramped and constricted community. A community in which the law ordained that we could only attend segregated inferior schools. A community in which the law ordained that our parents be denied the right to vote. A community in which the law ordained segregation in the courtroom and exclusion of our parents from the jury box. It was Thurgood Marshall's mission to turn these laws against themselves. To cleanse our tattered Constitution and our besmirched legal system of the filth of oppressive racism. To restore to all Americans a Constitution and a legal system newly alive to the requirements of justice. By demonstrating that the law could be an instrument of liberation, he recruited a new generation of lawyers who had been brought up to think of the law as an instrument of oppression. Those of us who grew up under the heal of Jim Crow were inspired to set our sights on the law as a career to try to follow him on his journey of justice and equality."

We, in the Office of Environmental Justice, take those words very, very seriously. We believe that the law, environmental law, can be used as the instrument for change in the communities that are exposed disproportionately to environmental harms and risks.

You know, I said to the staff, you know, we were demoralized after the IG Report because they got it wrong. We worked long and hard hours, many people in the regions and Program Offices have committed thousands, and thousands, and thousands of hours and dollars, and millions of dollars to begin to address the concerns of this community.

But I said to them, and I say to you, how should we be judged? Should we be judged based upon an IG report that doesn't really understand the program, that doesn't understand what we do, why we do things? An IG's office that is telling us that an executive order is a priority, not environmental laws.

Or should we continue to move forward, in spite of, not because of what the IG's office has said? We are going to do it. We firmly believe that we are on the right path. We firmly believe that we have placed the agency on the right path, embracing the law, using the law. Thank you.

MS. EADY: Thank you Barry. Questions from the council, comments? And Ken Manaster, I also wanted to –- if you had wanted

to engage in this discussion, feel free to come forward. Chip and then Phil.

MR. COLLETTE: I too believe in those words. I am a new member on the council. I know, and knew, none of this history. I am presently an environmental lawyer, but in the not too distant past I litigated in the civil rights area in class actions. I have a math background, I understand the mathematics and statistics that go in and limit civil rights litigation.

Without any of this knowledge, without any of this history, when I read the OIG Report cold, just based on my personal experience, I was offended. It is equal justice for all. It is environmental law for all. Sixty years before Brown v. Board of Education.

The U.S. Supreme Court wrote in Yit Woh v. Hopkins, the Constitution is color blind. And it is. Barry, it is. It is rights for all. You have my support.

I will say further, because of my understanding of the statistical analyses and the processes that go into disparate impact, disparate analysis cases, disaggregation, multiple regression analysis. If the position, or the methodology of the IG's Report were to be adopted, it would eviscerate the idea of implementing cumulative impacts.

I have been so excited to see where this council and this agency is going that I cannot begin to express it. I came cold to this. Marva will tell you, I debated a long time about whether to accept this obligation. I am here on my own time, not as a representative of any agency. I have no official sanction from my agency to be here.

But it is equal justice for all. The difference between the OIG's presentation and the NEJAC's cumulative risk and what Barry is saying, if I understand you, is you start with environmental law. You have to start with environmental law, then you identify where it impacts the most because your tool is the environmental law. The OIG Report would absolutely, totally reverse that. It would say identify and then maybe apply environmental law. That would marginalize, that would minimize environmental justice efforts.

Veronica and Charles will tell you that as a new member of the council, basically, I was pretty silent in the telephone conference calls until this issue came up. This is, perhaps, a watershed moment. We must, we must, unanimously reaffirm. If we want environmental justice, and I do, to go forward in this country we must unanimously reaffirm, which I now know to be the —— position. I did not when I reached my conclusions, but I now know it to be the position of the agency, and the position of the Office of Environmental Justice.

Again, I was offended by the OIG Report. Oh, and by the way, I am a Republican.

MR. HILL: Chip, thank you. Thank you for those words. And I agree with you wholeheartedly. This is a watershed event as it relates to environmental justice programs in the agency. And I have fought back very, very firmly with some of my colleagues. I told them that I am not going to agree with this notion that the executive order is the agency's priority. Because that would destroy the whole program. I said that I can't betray my people by signing onto that.

Barry, Barry, why don't you capitulate on this issue? Why don't you change a word? You can't, you can't concur with something that is wrong. It is wrong. And if there is any notion that the agency is moving in the direction of the IG's office, they have to get another person. I can't agree with it because that would destroy me as a person, as a professional. I can't sign on to that.

So I am going to fight, I am going to fight even more. I am going to fight even harder because we have to prepare a response by June 1st. We have a month and a half. And if there are any of my colleagues on the senior level that are going to push for this notion, as you pointed out Chip, it would kill everything that we stand for. Everything that we are fighting for. We can't give in. We can't go back.

MR. HILLMAN: Yes, Barry, first of all I just want to thank you for the tutorial. You said you were going to educate us and, in fact, for me personally, you have done that. As I think about how to expand this to a larger audience, will this presentation be available? Can we get a copy of this? I am looking to you Veronica and Charles because I think this level of understanding is a way of grounding people in this issue that, for me, has been personally just –- I am in a different place, and I thank you for that.

MR. HILL: Thank you. Yes, it will be available. We will send it by e-mail or make hard copies. Whatever it is that you want. I will appear if you want and do it. That is how important it is. We have to get the people in the communities to understand this. We have to get people within the agency to understand this. EJ coordinators, deputy regional administrators, everyone, to know what this fight is all about. This may by hyperbole, you know, but this is as important as Brown v. Board of Education in this area. Environmental justice in this area. It is very important, so sure, it will be available.

MR. HILLMAN: Thank you.

MS. EADY: Terry, Juan and then Pam.

MR. WILLIAMS: I too want to thank you, Barry, for your preaching, your teaching.

MR. HILL: Let the church say Amen.

MR. HILLMAN: My father was a preacher. I want to tell you, in my life, I have been very fortunate many times to be at the right place at the right time. And of those, a few have been early on being selected to be a tribal representative on the environmental equity discussions a number of years ago. Which lead to some early involvement with the NEJAC. But also, from the tribes, being able to sit down with CEQ during the development of 12898 with Dyna Bear, with Ray Clarke, and others to help bring a tribal perspective to the work that you were doing.

And also, with the American Indian Environmental Office's Director, I was able to work with staff to continue that involvement and to continue trying to link the Indian Office with the Environmental Justice Office to make sure that we had some cohesiveness.

And now, on the NEJAC, again, here I am again. I kind of drifted in. But there are a few other things that I was present at. When CEQ developed their Cumulative Effects Impact Report, my staff and I, both from EPA and from Tulalip, got to participate in looking at what was important in understanding cumulative effects and how you think about that in all aspects, including EJ.

We did a review from Tulalip of the NEPA in Indian country, a national review contracted by CEQ and EPA. And, again, in that review we looked at not only environmental law, but environmental

justice and what are the things that stand out to us. What is working and what is not working. And we reported that to CEQ and it has been in their annual reports.

But I think that where you are at right now, I fully agree. And I think that all I can do from my perspective right now is to try to commit to you that I will do what I can to bring the tribes in to help support what you need to get accomplished. And if we can talk about what that looks like, I will look at working with the tribes nationally to see if we can get some support in by June 1st.

MR. HILL: I would appreciate it. Thanks Chip.

MR. PARRAS: Can you hear me?

MS. EADY: Yes.

MR. PARRAS: My name is Juan Parras and I am here representing a community organization out of Houston, Texas. I have some issues, I guess. Though I totally agree with everything you said, the facts that you have stated, the perhaps misinterpretation of the OIG Report on Environmental Justice, there are other issues that I have that seriously concern me representing community groups. One is that, for instance, you stated on your second fact that the OIG refuses to talk with anyone else regarding their mistaken interpretation or allow anyone else outside of the EPA to review the report.

Now, that is a serious concern to me because not only have they allowed that review not to be reviewed — I mean, the draft report to be reviewed outside upon your request, but what I am saying is the communities have not even seen the report yet. And, in a sense, the deadline that was placed on the agency to respond will not give community input. That is one of my biggest concerns is that the agency, or whomever responds, is responding on behalf of communities, yet, they themselves don't even have the report.

So what you are asking the OIG to do is what I am asking the Office of Environmental Justice - to also consider for communities. That you are responding about them reviewing any documentation. Whether it is right or wrong. I am not questioning the issue, but partly the process. It looks like you have been asked to respond for communities and to justify your programs, and the community is unaware of that.

And let me bring another point to fact, is that in the testimony that we heard from citizens' complaints, or issues, they were exactly saying that. You are not doing enough for environmental justice communities. And that, to me, was very repetitive.

And, again, you articulated all your facts and the issues, and I for one would say that as a member of the NEJAC Board, the initial draft that we have drafted to the EPA Administrator, I am

starting to think whether we should, maybe not send this draft letter to the Administrator, and sit back and let the agency respond to whatever issues they have to respond. And then to follow up maybe from the NEJAC Executive Board at a later time when we can dissimulate this information to our communities and get sort of petitions from the communities re-enforcing things that the EJ community is doing, or the Office of Environmental Justice is doing.

That is basically all that I have to say because I feel that separate but equal is a good issue and I think that we are not asking for us to be treated separately and for the law to be applied. But, yet, the separatism does exist. Thank you.

MS. KINGFISHER: Thank you. My name is Pam Kingfisher and I am not an attorney, I am just a Native woman from the communities. I feel like the celebrations that we have had over the years on the executive order came off the backs of work, you know, of the community people that was then pulled together and brought into these theories by really brilliant people who have helped move many of these issues.

I feel like there is some truth in the OIG Report because we continue to hear from our sponsoring agencies of ORD and OPPTS that they don't understand about EJ communities, and indicators for EJ communities, and how to implement things, and how to bring this

1 into their daily work. Yesterday, we were asked repeatedly by a
2 couple of folks from those agencies to help them with that.
3 So I have to agree with part of the OIG Report, although, as
4 an evaluator, I don't have any of the information to really look at these
5 deeper arguments. I have to trust part of what you all are doing.
6 We have environmental laws and those are there for
7 everyone. So we are not separate, but we have been given this
8 handle to be able to use and leverage to bring attention to a lot of
9 problems where many things have now been cleared up because we
10 were able to focus on specifically EJ communities. And once we
11 protect the most vulnerable, then everyone is protected so much
12 better. All the laws work better.
13 So, I, as Native people, we continue to use every one of
14 those laws, but we also really respect this executive order to give us
15 an extra handle to make more things happen. So I have a lot of
16 mixed feelings. After your presentation, I have more questions than I
17 had beforehand about the letter, and signing that letter. There are a
18 lot of personal issues here, there is a lot of defensiveness, and I am
19 just not sure about the details of this evaluated process.
20 MR. LEE: I will try to — let me just say a few words to give
21 another perspective to what Barry said, and maybe connect it in terms
22 of some of the content of the IG's Report. I think that this is not going

1 to be the first time that this should be talked about, or needs to be
2 talked about. Because there are a set of very, very, very fundamental
3 issues here and I think that — I mean, there was a very good
4 discussion that Chuck was part of in the Enforcement Subcommittee
5 yesterday.
6 You know, I spent time with the members of the
7 Enforcement Subcommittee and there were a couple of things that I
8 said that I think important to add to the historical perspective that
9 Barry gave. First of all, I think it is true, and I think that most people
10 that are like yourself, Pam, and others actually agree with the IG's
11 Report.
12 On the surface, what it seems the IG is saying is correct.
13 You know, and the motivation for that, as you expressed, is actually
14 very well motivated. But there are some issues that are underneath
15 that that I think have to be kind of teased out. It really is a watershed,
16 and I just get into a second about why I think that is the case.
17 The second is that if we are going to talk about issues of
18 environmental justice as being very, very, very complex issues, and
19 issues of environmental justice, like Barry eluded to, addresses
20 issues of race, and class, and equity, and justice in society, right.
21 They are all very controversial, as well as being just plain complex in
22 terms of all the different kinds of factors that we talked about when we

1 talk about cumulative risks and the impacts. Not only presently, but
2 over time, and things of this nature.
3 So, you know, there is some methodological questions from
4 an analysis point-of-view that grow out of this, that if we don't figure
5 out a right way to understand them, it is going to end up marginalizing
6 the issue. So I think that is the larger perspective.
7 The third thing I would say is this. You know, the issue of
8 environmental justice as a — I mean, issues of environmental justice
9 has been there for hundreds of years, but the concept of
10 environmental justice in a systematic way only has existed since the
11 1980s. You know, 1982 was in Warren County, North Carolina, and
12 in 1987 was my report, "Toxic Waste and Race," 1991 was the
13 People of Color Environmental Leadership Summit, in 1994 is the
14 Executive Order. This is not that old.
15 So the fact that we are working through all this is a very
16 quickly evolving process and we are all learning about this all the
17 time. See, if you were to look at the IG's Report and to connect it to
18 what Barry said, if you look at probably the most important — the IG's
19 — I will ask everyone to go to page eight of the IG's Report. There is
20 a text box there. It speaks to a lot of issues that a number of us have
21 been thinking about for a long time, but has yet to crystalize.

1 And, in fact, these are the issues at the bottom of a lot of
2 the kind of difficult questions the ORD and other people are asking
3 about, analysis, and what are environmental justice communities, and
4 things of this nature. Actually, the way it happened was Barry said to
5 me, you know, read that text box and what it actually says. And for
6 those of you who don't have it, what it does is it talks to the arguably
7 the most important phrase in the Executive Order, which is:
8 "To the extent practicable and permissible under law, each
9 federal agency shall make as part of the environmental
10 justice's — mission by identifying and addressing
11 disproportionately high and environmental effects on other's
12 programs, on minority populations, and low-income
13 populations."
14 Right. And so the IG's office, what they did, what they underlined the
15 words they thought were important. And that was identifying,
16 addressing disproportionately minority populations and low-income
17 populations. They forgot about the fact that there is the phrase, a
18 very important phrase that Barry has been talking to, which is "to the
19 extent permissible and practicable under law," right.
20 They also forgot about, actually, the other concept that is in
21 there, which is "disproportionately high and adverse human health
22 and environmental effects." See, and what that is, is actually

1 something that a number of us have been thinking about. And what it
2 is, is actually it is a transposition of civil rights concepts on an
3 environmental law paradigm. The question becomes, as Barry was
4 saying, can you superimpose that?
5 Because what that assumes, there is a presumption –- and
6 most people talk about environmental justice as this early stage of the
7 game thinks this way. What that interpretation says, and the IG's
8 Report actually says this –- so what it is saying is, as Barry has said
9 it, you know, the idea behind civil rights legal concepts is the idea of a
10 protected class. You know, so they are saying once you identify that
11 protected class –- and they are saying you can be afforded extra
12 measure of protection.
13 But then, if you look at the vast majority of laws within the
14 U.S. Environmental Protection Agency's authorized to implement,
15 those are environmental laws. And there is no such thing as a
16 protected class with the environmental statutes. Actually, the phrase
17 that the IG's office misses, which is "identifying and addressing
18 disproportionately high human health and environmental effect" is
19 what environmental laws can find cognizable. Okay.
20 Now, so what that does is this, it puts the Environmental
21 Justice Program into a box. The permit writers and –- I mean, ever
22 since the NEJAC Report on Permitting came out –- you know, Barry

1 and I were out in Region 9, and the permit writers were there. Okay,
2 race and class, what are we going to do with it? What are we going
3 to do with it?
4 So the thing is that the motivation for this is really, I think,
5 well founded, but it its superimposed imposition that is going to put
6 this in a box. And we can talk about a lot of the concepts that are
7 very difficult to begin to understand, one of which is the
8 disproportionate impacts, which has been a discussion in the last
9 couple days, right. And you know how complex that can become.
10 And you should know that there was a time when there was
11 a point-of-view that said, because we can't define disproportionately
12 we should take it off the table. We said, no, you have to keep it on
13 the table.
14 Now, having said that, the reason why this is a watershed
15 question, and I told Barry as soon as this came out, this is actually not
16 a bad thing. This is a good thing because it crystalize some
17 questions that we need to have some discussions about, not just now,
18 but for a long time because it is so fundamental.
19 I want to bring you to –- when a number of us met with
20 Administrator Bill Riley back in 1992, and this is when the EPA was
21 about to announce the establishment of the Office of Environmental
22 Equity, which is a precursor to the Environmental Justice Office, you

1 know, I asked them the question, how is EPA going to ensure that the
2 Environmental Equity Office does not become marginalized like the
3 Civil Rights Office did? The answer to that question isn't a simple
4 one, and it took us a long time to figure that out. It is this —- conflict
5 between civil rights and environmental approaches; both of which are
6 important, but both of which has its place. But if you superimpose it,
7 you are going to project this kind of dilemma.
8 You know, there is another interesting question that is at
9 the bottom of this, and this is why this is –- you know, like Barry says,
10 I should really say this because I keep saying this –- this is not a
11 question about being wrong, this is being on the wrong side of history.
12 And if you go back to the early '70s when the EPA was first
13 established, Bill Ruckleshouse, who was the first EPA Administrator,
14 was asked by Congress to go and testify. The question they asked
15 them was, how is EPA going to address issues of civil rights and, I
16 guess, social equity? Something of that, you know, equity issues.
17 And he said something like this. As important as those
18 issues are, EPA is a science agency and as it is starting out, it needs
19 to get its science-base in order as it is –- you know, and then it needs
20 to address these issues.
21 Now, fast-forward 20 years later and toxic waste and race
22 comes out. The United Church of Christ who I worked for sent it to

1 the EPA. And you know what the response was? EPA addresses
2 issues of technology not sociology. So I often wonder if Administrator
3 Rucklehouse's answer was back in the 1970s, yes, as difficult as
4 these issues are, and within the context of the laws of EPA is
5 authorized to administer that it will work to incorporate these concerns
6 into its science-base as part of the analytical framework, where would
7 we be today? Perhaps, in 1987, you didn't even need toxic waste
8 and race.
9 So the thing is that the executive order brings –- you know,
10 there is a lot of very difficult questions in here, and it is true that most
11 people, I believe, would interpret this in the way that IG's office did.
12 And the reason why this is such an important question we got to really
13 get to the bottom of, because this is not a question about what
14 happens a year from now, or five years from now, 15 and 20 and 25
15 years from now.
16 MS. EADY: So the order is –- Ken, is it on this issue?
17 MR. MANASTER: Yes.
18 MS. EADY: Okay, Ken, I am going to go to you and then
19 Judy, Graciela and Andrew.
20 MR. MANASTER: Thank you. My name is Ken Manaster. I
21 have been serving on the Air and Water Subcommittee of the NEJAC
22 for the last three years.

MS. EADY: And, Ken, you are the Acting Chair, which is higher.

MR. MANASTER: I think I am the Acting Chair of the Air and Water Subcommittee, though there is a little confusion on that. I am a law professor at Santa Clara University in California and I have been participating most recently in some of the conference calls of the Executive Council on the OIG Report and the draft letter.

I just wanted to comment that it seems to me that a lot of the controversy about this report, and the dissatisfaction with it relates to definitional problems of two types. The first relates to, as Charles was just saying, the extraordinary difficulty of coming up with the precise definition of important concepts like disproportional effects, or disparate impact.

Similarly, the difficulty of coming up with a definition of what an environmental justice community exactly is. And I agree with what I understand to be the agency's disagreement with the OIG's assertion that it is the agency's responsibility, or OEJ's responsibility to come up with some precise definitions of those terms. I think to try to pin down the methodology for that really would do a disservice to this effort. It would be, I think, very controversial and very debatable as a legal proposition. And, of course, the agency struggled with this

some years ago in working through the Interim Guidance draft and such under Title 6.

So I think that set of definitional problems is certainly not something that I have ever understood the executive order to require the agency to try to solve. I doubt if it is possible and I am not convinced that if the agency tried to solve it, it would be legal. So in that regard, I think the OIG Report has really gone off in a very unproductive and erroneous direction.

The other definitional problem, which is somewhat surprising to me that it even comes up at this stage is, what does the term environmental justice mean. In that regard, it seems to me we have one term that has two usages. One is the very general usage, the statement from Dr. Bullard that Mr. Hill quoted that says, environmental justice is for everyone. It is about equality. I don't see any room for disagreement that that is the foundational meaning of that term.

The problem I see is that —- maybe it is not a problem —- the reality is that environmental justice has also taken on a second usage, which is to focus on the problem of disproportionate, unfair, inequitable effects on certain vulnerable populations. And the executive order was focused on environmental justice not in the

general usage sense, but in the more particular, more specific sense of focusing on the most vulnerable populations.

And the facts that I am familiar with, and what I am hearing today, suggest to me that the OIG Report is incorrect in saying that the agency has moved away from the basic tenant of the executive order, which is to address environmental justice, meaning an unfair shake for minority and low-income communities, the more vulnerable populations in our society.

I think from everything I have learned and heard today and followed over the years, I think the OIG Report is wrong on that. The problem is, to the extent that the agency says and emphasizes that environmental justice is for everyone, it sounds like the agency is backing away from that usage of environmental justice. It seems to me that that is part of the problem, part of the salt in the wound here, that we are talking about two different meanings, two different usages of the same term.

Part of what I am having a little trouble understanding is the extent of discomfort with what I see as, I think Charles used the term, the well motivated report here, saying let's not deviate from that core mission, that core objective of the executive order. And I can't see any basis for objecting to that motivation.

Just my final point is that I would hope that in the agency's response, it avoids that definitional confusion and makes clear that the agency's commitment to environmental justice remains the commitment to environmental justice in the sense of addressing the particular concerns for vulnerable populations that the executive order addressed.

And Veronica has drafted a letter that, I think, handles that problem extremely well.

MR. LEE: Let me just say something on that last point, because it is actually a nuance here that is very, very —- I mean, I am glad Ken raised that, because there is a lot of nuances here that is very important. And, actually, I think that Ken is right, my reading of the draft letter that Veronica did actually handles it very, very well.

But I think it is important and helpful to see some of the complexities. And I think that everyone looks at this from different vantage points. And we need to be cognizant of that.

From the point-of-view of the position —- the concern that Ken raised that is a concern of a lot of people, which has to do with a lot of, I guess, issues and movements that deal with issues of justice and equity, the idea of saying that, say, for example, low-income, or people of color, tribal groups, are the ones that needs focused attention on. You know, one of the concerns that I think is very much

1 well motivated of saying, okay, if you are going to say environmental
2 justice is a —– invariably, those kinds of groups get –- you know, they
3 may acknowledge that they actually should be there, but they are
4 always at the bottom of the pile, right.
5 And that is a very, very real thing. I think that if we think it
6 out, and I don't think we need to –- we don't have the time to do it,
7 think it out in terms of all the methodological analytical questions and
8 a truly good understanding of disproportional impact would actually
9 address that question. But I don't think we need to get there.
10 Now, that is one perspective. Another perspective is, how
11 do you operationalize this from the point-of-view of really putting in a
12 positioning to question within an agency so that you can get the most
13 integration? That is a very practical question, right? Now, how do
14 you do that within the complexities of all the, I guess, perceptions
15 about environmental justice?
16 You know, if everybody in the agency, or a lot of people
17 think of environmental justice as just affirmative action, then there is
18 already marginalization, right. So these are the two kinds of –- and
19 also, the more fundamental question, like Barry says, how do you get
20 the people in the agency to see this as something that is not just a
21 side issue, but something that is very much part of the way they do
22 business everyday? The permit writer sees this as part of the things

1 they do every day, not something to add on later. In any part of the
2 decision-making process.
3 So these are the two tensions involved here that are very
4 important to be cognizant of, right. So I just have to say, nobody ever
5 said this was a simple issue.
6 MS. HENNEKE: Well, thank you. And thank you, Barry, for
7 that nice overview and reminding us what it is we are doing about –-
8 why we are sitting around the table.
9 After listening to that, I would like to suggest that –- I
10 started looking at the letter again that we are thinking about sending,
11 and I am wondering, I would like to change it and make it even
12 stronger; particularly, after Chip's eloquent discussion as well. But to
13 me, when we get talking about special boundaries and going through
14 some of that in the letter, I think it deviates from what some of the
15 purposes of what we are talking about here.
16 But I guess my real problem with the OIG Report is what
17 Charles was talking about on page eight and what is shown up here
18 on the executive order. And I guess where I become upset about
19 this, like Chip does, is the fact that the OIG is concentrating on talking
20 about identifying geographically and spatially minority and low-income
21 populations. The executive order doesn't say that. It does not say
22 that you are going to identify geographically or spatially any kind of

1 population. It says that EPA and other federal agencies will look at
2 the adverse human impacts that their policies and activities are
3 having on low-income and minority populations.
4 And I think in this letter we need to specifically say that. I
5 also think that we ought to address our Cumulative Risk Report,
6 which actually does talk about disproportionality, what that means, the
7 social science to back it up, the health science to back it up, and all of
8 that kind of thing.
9 And I think this letter would be, now looking at it again, it
10 would be better if we took our Cumulative Risk Report and actually
11 showed where we do define those.
12 The other thing is I feel, you know, as a Hispanic woman,
13 as a Chicano, I don't want, as the OIG Report reflects, to be
14 considered in the same spacial geographic arena as African-
15 Americans in the south, or those who are in cancer alley, or Alaskan
16 Natives that we heard about. We are different people. You cannot
17 spatially project those impacted communities who, just because they
18 sit in a certain place, are adversely effected. And let's just call it that,
19 environmental racism. Because that is what this is.
20 I mean, we have done a politically correct statement by
21 saying environmental justice, but this started out –- I mean, Charles'
22 report was "Environmental Racism." That is what it is, and that is

1 what it comes down to, and we heard that earlier when we were
2 talking about our Cumulative Risk Report.
3 We don't like to say that anymore because environmental
4 racism is an offensive term to people, but when you see people
5 coming in from Alaska, and our Native peoples, and our African-
6 Americans, and Latinos, and Chicanos, living in the kind of filth that
7 they live in in this country, shamefully live in, filth from air pollution
8 and filth from water pollution, and people that don't even have good
9 drinking water, in a country so rich, that is nothing but racism.
10 And I don't think that it is fair for the OIG to put us in spacial
11 identification because that is not what environmental justice is.
12 MS. RAMIREZ-TORO: I agree with Judy. I agree with you
13 and my first reaction to the document was in the same direction that
14 Barry was presented, we are going backwards. I come from a small
15 island, and I am going to do a little bit of education here, it is 100
16 times 35 but it has almost like five million inhabitants. The Puerto
17 Ricans in the island has a culture, has a social context very different
18 than the Puerto Ricans that live in the states.
19 Because of our history in the island, we have been dealing
20 with issues of integration for 500 years. There is no Puerto Rican on
21 the island that wouldn't feel proud about talking about their Indian

1 blood, or their Black blood, or their Spanish blood. And that is what
2 they are.
3 As a matter of fact, a couple of years the Time magazine
4 constructed the American of the future in a composed picture for the
5 first page, and it was kind of funny because it looked like a Puerto
6 Rican because we are going towards integration of the people.
7 In 1952, we adopted one of the more liberal constitutions of
8 the world, where one of the rights of the people is their right for a safe
9 environment. And the local laws are all written in the direction that a
10 safe environment is the right of everybody, no matter what you think
11 your ethnicity is. And when I say that, it is because phenotypically in
12 Puerto Rico you can look one way, but be mixed in many different
13 ways.
14 A lot of times I stay quiet in this meeting because I feel that
15 there is a –- you are having a conversation that we had in the '40s, so
16 you need to grow that way. I am sorry, I sound –- how you say it?
17 Preaching? I don't know.
18 (Laughter)
19 MS. RAMIREZ-TORO: But that is why I keep quiet because
20 I am like, I have the answer for that. Anyway, our problem with
21 environmental justice in Puerto Rico is disparities. Disparities, social
22 disparities, the relationship, the political relationship because we

1 might have lost that protect the environment for all, but we still have
2 the federal laws. And we have a dual system where the federal law
3 always prevails. So we like to have better federal laws that assure
4 environmental justice for all because we are —- in Puerto Rico.
5 So I am not talking for the subcommittee because the other
6 problem that we are having now is we don't have members, as last
7 December in our subcommittee. But as a representative of a specific
8 group, which is the Puerto Ricans in the island, that is why we wanted
9 and fight for a subcommittee that was not related to a single issue.
10 That is why the Puerto Rico Subcommittee covers all the
11 environmental issues.
12 So I really think that going into the direction of the report will
13 be taking us, in the case of Puerto Rico, like 50 years back.
14 MS. EADY: Andrew, Mary, and then Juan, and then Walter.
15 MR. SAWYERS: I wanted to sort of –- I have a few things I
16 wanted to say, and I guess in the spirit of legitimacy, I am not going to
17 debate the legal or technical merits. I think Barry, Chip and Ken did
18 an admirable job. I am going to sort of discuss my point-of-views
19 from a practical perspective, as a state regulator.
20 I have been the EJ Coordinator for the State of Maryland
21 for thee and a half years. I have had a lot of discussions with
22 communities about environmental justice concerns. One hundred

1 percent of those discussions are based on trying to figure out what
2 environmental laws can help me. I have never had a discussion, I
3 have never had a request, to use executive order 12898.
4 I use the order as a guidance, but in no way, shape, or form
5 I can reference the order in trying to address EJ concerns. So I am
6 not even sure if we need to sort of discuss the legitimacy of the OIG
7 Report because it, frankly, misses the point. Executive Order 12898
8 doesn't help the state. It is there as a guidance and that is exactly
9 what we do.
10 And this is, again –- and Judith will probably agree with me
11 –- the state is where these things are regulated, so this is not a
12 substantive issue, if you will, at the state level. And I have said to
13 Barry and Charles, we will –- the State of Maryland will submit a
14 response. Because this doesn't help us in any way.
15 I want to also say, if we wort of —- to the OIG construct that
16 we need to start thinking about identifying EJ communities, we are,
17 frankly, marginalizing the EJ issue. Now I have said that many times.
18 Environmental justice is for all, I mean, if we decide that we are going
19 to just focus on certain communities, you know, we are going to – at
20 least in Maryland, we have achieved a lot of things. We have used
21 this collaborative paradigm, if you will, that I brought a lot of people to
22 the table to talk about this. One of the reasons why the governor

1 signed the law is because he saw there was a fair amount of
2 commitment across the state around this issue.
3 Historically, this issue was sort of very confrontational, if
4 you will. The governor would never have signed the law to mandate
5 strong inquiry to focus on the issue. So I continue to say
6 environmental justice has to be integrated in the context that it sort of
7 represents everyone in the states, at least in Maryland. Everyone in
8 the State of Maryland.
9 I also, and I guess Juan made this point, I see the IG
10 Report as an opportunity, if you will. And I think Barry articulated this
11 very well. I see it as an opportunity to sort of clearly define something
12 that is already defined. But to broaden the reach, if you will. A lot of
13 people are not aware of some of the definitional issues which Ken
14 talks about. Which, I think, needs to be clarified a little bit.
15 But it is there. So it is just a matter of using this IG Report
16 as the platform, if you will, to educate and let people be aware of what
17 the direction is, if you will. That we are trying to collaborate, we are
18 trying to develop mitigation projects, intervention projects. And that
19 might, from a state's perspective, from a regulator's perspective, this
20 is the way to go.
21 And we are firmly behind it. We are not going to deviate, so
22 even if the OIG Report somehow was to be considered within the

Executive Branch of EPA's how they wanted to do business, I don't think the State of Maryland would consider it, frankly. I think we have a direction that we are pursing and we are going to continue to pursue it. It is firmly in line with what the Office of OEJ is doing.

MS. NELSON: I am interested in our next steps, and what our role needs to be. I certainly agree with Judy and your last comments, that it is a miss-thing. The spacial thing as opposed to looking at this wider issue, and the marginalization, the impact of that.

But what do we do? It seems to me we have heard a suggestion from Pam, we need a little stronger letter. Or I guess it was Judy, we need a stronger letter, but we don't need to be abrasive. What we need to do is to figure out how to make the ends –- focus on the primary issues, okay. And I think the Cumulative Risk Report to send that along with it.

So a letter is one thing and I don't think today we are going to word-craft that. It seemed to me we need to set a process in place to finish word-crafting that. And we need to take the people who have got the most stuff to put in here, but are there some other things in addition to a letter that we need to be doing, or that we can turn this lemon into lemonade, in a sense, in terms of helping us articulate more clearly. Because this is a complex issue and on the first reading you think one thing, until you look at the substantive issues behind it.

So how do we move forward and what steps do we need to take beyond the letter? And can we, now this morning, at least ensure a process for redoing the letter in a timely basis so it gets in there. And then whatever else we need to be doing.

MS. EADY: I do want to just say, before I go to Juan and Walter, that it seems like given Pam's comments and Juan's comments, that we don't have a consensus here that we are going to send a letter out. So I think that we are going to have to do some work on figuring out how to figure in the comments that have been made to sort of retreat from doing the letter. So I just wanted to interject that.

Pam, I will come back to you if that is okay. Juan, since Walter hasn't commented, can I get Walter's comment first and then come back to you. And then Pam.

MR. PARRAS: Yes.

MR. HANDY: Yes, I think that the letter that we are all sort of focused on needs to continue the theme that I think it already has begun, and that is to take away this dichotomous analysis that it is either this or that. And I would be willing to, not having talked to Pam about it, I would be willing to bet that Pam would be willing and, perhaps, Juan, to support a letter that focused as much on some of the benefits of the executive order; that is, highlighting concerns that

people continue to have, but not losing sight of a principle tool that I think has been mentioned, and that is the law.

But I think the executive order did do exactly what we are kind of doing now. It is focused discussion. It has provided –- and I regard law as being, perhaps, one of the last steps that society's take to address issues. And I think the executive order was, perhaps, an early step. So, perhaps, we are beyond that now, but I guess I have heard a number of people say that we don't want to lose sight of the fact that with limited resources, priorities matter. That is why I think the executive order has been a success.

MR. PARRAS: Once again, I support what we are doing and the direction that we are thinking. However, my concern is communities, again. And what I would like to see, as Mary said, you know what are the next steps that we can take.

One is that I would recommend that we write a generic letter from the community perspective, and then as an executive board member, then go back to our communities and get them to sign on immediately. I mean, they don't have a deadline, they don't have to present this by what, June the 1st? But at least it would indicate that there is support for NEJAC and for the agency's position in this.

Because while I do represent the communities, and I could say, well, I support it, the thing is, they don't know what I am voting

on, basically. Because I haven't told them yet. So what I am saying is that we need to go back, get some sort of sign-on letter, either as an attachment to the letter that maybe may proceed upon further discussion, or even to get one from the Office of Environmental Justice with all the facts that you stated that maybe people can sign-on.

Some kind of community involvement, because right now there is no community involvement other than those that are here representing communities.

MS. KINGFISHER: I would just really like to thank Ken for your points, and you must be an excellent instructor. I really understood a lot more just by what you said. And Judy, your point about spacial is very well taken. And those things are very well buried in here. It is true that the first reading, and second and third also, I must say, for non-attorneys. So that as this goes out to communities, if there could be a cover letter that would sort of frame it, because they are all going to react just like I have.

I have had the privilege of being on some phone calls, but the conversation was already at such a high level I was confused by most of it. And trying to read this, because we had only received it the day of the call, so I hadn't read it and it was very hard to get up to

speed because you guys had already been thinking about it and were going.

So I would just say that we are going to have this community reaction, and a few of these points here today have really helped me understand. I really appreciate the clarity and the plain language that has come out of that. I think that is important. So I am amenable and open to things, but it really needs to be clear and not so condescending.

MR. LEE: Let's kind of sort this out, because a lot of issues are on the table and there are process questions that one needs to be cognizant of, and then there are things that –- and there are clearly needs, I think, the identification of those kind of needs and ways to address them are very much legitimate.

I think, first of all, I mean, I would break this out in terms of three things. There is a response that you may want to give formally as an advisory committee. You know, that is something that you had started to work on. And I think that if you want to continue to work on that, that would be important and it would be –- but I would suggest that you set a very clear time frame.

You are not going to get into the –- actually, you should make the decision as to whether or not a response is important, or the most perfect response is important. Because you can make the most

perfect response a year from now and nobody would ever hear it. You know, so I think your timing on that question, you guys have got to think about it is going to be very, very important.

The second question, which is a big one, has to do with your desires as individuals around people that you work with and members of the community sending letters. If you want to do that, you certainly should do that. And that is up to you to do that. That is not something that this body, nor the Office of Environmental Justice should have anything to do with.

You know, so I think that if you want to encourage others to do that, that is important. That you should do. Personally, I do think that is very important, but that is something that you need to keep separate from your formal response as an advisory body.

The third thing has to do with the concern that Juan, I know, raised, and others have raised, and Pam just raised, about really engaging with communities around how to think about these issues. And, in fact, the point has been made over and over again, this is not really a bad thing that the OIG Report did. It is a good thing, because it focuses some attention on some very, very important issues.

And I think on that note, I would encourage you to certainly do what you can, but I think the Office of Environmental Justice –- you know, if you want the Office of Environmental Justice to help engage

and do education with the communities around the issues implicit in this, that certainly is something that you could ask for. I think Barry would agree with me that we would certainly want to engage and do so.

I mean, I think that needs to be thought out and it is not possible at this point to say prescriptively what that is, but certainly the sense of what you are suggesting is something that I think will be very well taken.

MS. EADY: We have a couple more comments. Judy and then Andrew.

MS. ESPINOSA: Thank you. Mine is more one of a process question. And thank you for clarifying that. I think, one, is we ought to send a letter, and we can work on it in the next few weeks to redraft and whatever and get people's comments. But I think it is important as a NEJAC Advisory Council that we do that. And I hope that we can get consensus on that.

I do think, Juan, what you are saying is important and maybe we can put something together that can be a sign-on letter for the networks and for the communities to be able to sign-on to send as a response as well. Because I think it is a way of educating the communities, as well as getting folks to support the environmental justice work that we have all been doing for a long time now.

Lastly, it seems to me that we need to make sure that we do have training in our communities, or when people see this, that we do have some kind of a simple fact sheet, like we always talk about, that explains what is in here. That we can give to people. Because no one is going to read all this. What they are going to hear is, you know, the bullets. Regions don't use consistent approaches, the implication, they have not fully implemented environmental justice, that there is no definition. All of that is what they are going to see, and all that is what they are going to hear.

So if we can have a bullet or a fact sheet response to that, and I don't know how we go about doing that. I think that would be helpful.

MR. LEE: A suggestion around that. There is a statement that was sent to you on behalf of the agency in response to the IG's Report. You know, and maybe you could take that and study it and give us advice about whether or not that is really getting the point across. And any suggestions working off of that in terms of something like a fact sheet could then be very helpful.

Because, you know, the thing is that your sense of how to best communicate a very complex message. To members of the public, and to communities, in particular, would be very helpful.

MS. NELSON: Charles, as somebody who had to — I have been approached by a number of people already who got the wrong interpretation of this, and I sent this off. It is still too complex, the response. So we have got to figure out how to boil it down to the essential issues and just make one or two or three points. You know, sermons with more than three points don't get over.

So, it would seem to me that we have got to identify the most critical issue here, hone in on it in very understandable ways, and then make that clear.

MS. ESPINOSA: Right. And I would be glad to work on something like maybe the three biggest issues that we want to kind of talk about. But the last question I had was for Barry, and that is I got a little excited when you said you were not going to let anyone in the agency deviate from what you believe to be the true essence of the environmental laws and what environmental justice really means. And I am wondering, I know the agency has a long response to the OIG. When will we know whether this has been changed, or whether this is your final response?

MR. HILL: Well, we have to prepare a response by June 1st, and that is what we are working on right now.

MS. ESPINOSA: This is the basis though, the draft that we see currently, right?

MR. HILL: Yes, that is the basis. That response was their draft evaluation report after we did the Exit Conference, they issued their final report. So we have to respond to their final report by June 1st, and we are going through that process right now within the agency.

MS. ESPINOSA: So, hopefully, we can be assured that the official response is not going to deviate much from this.

MR. HILL: Yes.

MS. EADY: We need to start to wrap-up because we need to have the presentation by the Federal Facilities Working Group. I am going to come to you Chip, and Dr. McClain who is recovering from an illness, she is not feeling very well. So, Chip, if you could just make the last comment and then we will move on.

MR. COLLETTE: Two items briefly. This is a watershed moment and I agree with Judy. The most important thing is the fact that there is a response from this council, not the substance of that response. The fact of the response.

The second thing, at least to me and how I see a short presentation could be made in response to the OIG's Report, because that was what struck me, is not a rebuttal, but the effect — the effect will, if it is implemented, marginalize and minimize

environmental justice in this country forever. And that is a very short point that can be made very readily.

MR. LEE: Thank you. And I guess, Barry, did you want to make a final comment?

MR. HILL: No, I have said all that I need to say.

MR. LEE: So we are going to close this out. But I do want to make a final comment, which is just a very short point. That is a question that I want everybody to think about. It has been eluded to over and over again in this discussion. And that has to do with the concept of defining environmental justice communities. And I just want everybody to think about that. You know, that is a question that has been out there.

And our question is, is that the right question? See, that is a very important question. And we don't have time to get into it, but — you know, it went like this. Everybody is trying to figure out what is an environmental justice community. And all of a sudden it dawned on us the question is, maybe that is not the right question. So I just want to make sure we leave it there, because it has been said over and over again here. You know, we don't have time to get into it, but we want to.

So we are going to move on. Veronica has had to step out for a second and we are going to have the report around the Federal

Facilities Working Group Report. And it is a report that has been formally transmitted to the Executive Council form the Waste and Facilities Siting Subcommittee.

As you know, many years ago, I think back in 2000, there was this issue that was raised at NEJAC, and the NEJAC requested that there be a group that was established to address the federal facilities issues. And that, for purposes of making it most workable, that became a working group under the Waste and Facilities Siting Subcommittee.

It is Chaired by Dr. Mildred McClain and it was supported by the Federal Facilities Restoration Office, which is part of the Office of Solid Waste and Emergency Response. You know, the report has been sent to you 30 days ago and we are handing it out again.

Before I turn it over to Mildred and Jim Woolford, who is the Director of that office, I just want to say, personally, how much we appreciate the work that Dr. McClain and members of that working group put into the effort, as well as the support of the Office of Federal Facilities Restoration.

And one of the persons that we really need to point out, in terms of credit, is Trina Martynowicz. Trina, you want to stand. She served as the DFO for this working group and she really brought a

sense of commitment and dedication and passion to the work. And I think that is something that one should not lose site of.

(Pause)

Federal Facilities Draft Report

Waste and Facility Sitings Subcommittee

by Dr. Mildred McClain

DR. MCCLAIN: Good morning everybody.

(Several members respond with good morning)

DR. MCCLAIN: Okay, I am going to try that one more time. Buenos dias. Oh, okay, I have got to speak Spanish up in here. Okay, I am going to try again. Good morning to the Executive Council. I want to thank you for this opportunity that has been four years in the making.

I first of all want to thank Kent Benjamin and Trina Martynowicz for the extraordinary work that they did in supporting this effort of the Federal Facilities Working Group. And certainly to the Waste and Facility Siting Subcommittee, under the leadership of Brother Andrew, we extend our thanks for housing us over the last 18 months, which has given us the opportunity to finish this report.

Unfortunately, we don't have a full house, but I expect that you will forward to your colleagues the importance of the content of

this report. I think if I am not mistaken, my history tells me that from the inception of NEJAC, communities from across this country who are impacted by the past, present and future missions at federal facilities have come to this body looking for guidance, support, for help in improving the relationships between the communities who are near neighbors to federal facilities, and the persons who run those facilities.

For your information, in the back of the room we have copies of this report. Please secure a copy and we are open to all comments, advice, and recommendations, even though it has been approved by our subcommittee in its draft form.

This report is a historical report because, to my knowledge, this is the first time that we have a substantive presentation on federal facilities. In our history, there has been a reluctance to address the complexity and the problems that exist at federal facilities. In the hood, we say, ya'll been scared. But with this body, some courageous people spoke up and said, Jim, we ain't scared, we are going to take the bull by the horns.

So with this, we are honored to present this draft report. In this draft report we have submitted for your consideration, five general recommendations. I know you have read the report, you will continue

to read it. Our five recommendations are general, and then we have three specific considerations that we would like for you to review.

Our first recommendation talks about enhanced community assessments and communication methods needed to improve cultural sensitivity for environmental justice communities. And we do have a very specific definition of environmental justice communities. And I know that you have your mind full with this report that just went before us, but we hope that you have a few little things left over so that you can entertain these other recommendations.

The second recommendation talks about the access to adequate health services that are needed, because we conducted five site visits that included Kelly Air Force Base, Ft. Wingate, Hanford, the Memphis Depot Site, and the Savannah River Site. These sites fall under the jurisdiction of the Department of Energy and the Department of Defense.

And all of our recommendations come from the data that we gathered from the five sites. The working group made a deliberate decision that despite our own experience and expertise, that instead of recommending what our hearts wanted to, that it was our responsibility to recommend what the people at these sites wanted. So these recommendations, indeed, reflect those stakeholders that we met with over the last 18 months.

The third recommendation talks about additional resources that are needed for capacity building. So that, indeed, these communities that are impacted by federal facilities, some which have Superfund sites, have the capacity to participate in a substantive and significant way, where their level of understanding and their level of input is important and critical and can be used to shape the decisions that must be made that impact the quality of their lives.

After all, all of our goals relate to the fact that we are looking for building and maintaining clean, safe, and sustainable communities. Communities that have the capacity to have the quality of life that all Americans have. I hope I don't need to repeat that.

Our fourth recommendation focuses on the need for improved and effective communications between the facility, the regulators, and environmental justice communities.

And then finally, our final recommendation talks about the need for new and consistent opportunities to help environmental justice communities influence decisions because we can come to the table year after year, month after month, activity after activity, but if we are not influencing the decisions that are being made that impact our lives, then we might as well stay home and save the government, Charles, much money that we know it takes to bring us to these meetings.

These are not astounding, awesome, radical recommendations, but they are ones that communities feel need to be implemented in order to bring about a different situation in their communities. The three considerations that we ask you to review, ask three very simple things.

One, to establish a workgroup to review federal facilities in Alaska. Because of budgetary constraints, we were unable to include in our case studies Alaska. That has a significant number of federal facilities and FUDs that need to be addressed, but because of their geographical location, it precluded us from going because if we had selected to go to Alaska, we would have only been able to conduct three, as opposed to five, case studies.

And we thought we wanted to provide some semblance of a breath of communities. So we are asking that we look at establishing a working group, specifically designed to focus on federal facilities in Alaska.

Secondly, we ask that there is a designated seat for federal facilities on the executive council of NEJAC. And then, finally, there is an incredible need for a federal advisory committee to examine all of the issues related to federal facilities.

These are the recommendations and the considerations that we are putting before you. We ask for your advice. We know

that there is still work to be done on this report. It is in its draft form. We are still refining the language of our recommendations. We are looking to see if we have missed any critical elements that need to be included. We are trying to address the issue of Alaska.

And then, finally, we know that we must pay special attention to the Department of Defense. We think that as the subcommittee puts its strategy together for forwarding this report and looking at implementation phases and action plans, that the Department of Defense will be at the core of what we are doing.

I particularly want to thank Jim Woolford for his support of this process. I thank him for his presence here today to represent EPA and what we are trying to do, and I ask for your critical review of this report. But, more importantly, I ask for your advice that would strengthen and make this a document that we can use as communities, as facilities, and other entities that are trying to have a positive partnership between the community and those that we serve.

Thank you. I am going to turn it over now to Jim Woolford.

MR. WOOLFORD: Thank you Mildred. I, essentially, am asking you for the same thing Mildred is. For your critical review and you input on this report. I want to thank Dr. McClain, not only for her efforts in this, but for her efforts over the past 10 years in addressing critical environmental justice issues at federal facilities.

I first met Dr. McClain 10 years ago on another FACA Group, the Federal Facilities Environmental Restoration Dialogue Committee and that committee made several critical recommendations about improving community involvement, public participation in federal facilities. And while I believe, and my federal colleagues believe, we have made progress by leaps and bounds considering where we were back then, this report, I think, clearly demonstrates we have a ways to go. There is much room for improvement on that point.

I would like to thank also Kent Benjamin who helped really make this happen with Trina on the EPA side. And I have to say this, I know that not all my federal colleagues with agree with every word in the report, and they may take exception to some of the statements in there, but to me those do not detract from the overall power of the report, the overall recommendations that are in the report. I think they are very important and can point us to a path we can follow to continue to improve our work, the Federal Government's work, with communities, with environmental justice communities around federal facilities. With that, I will turn it back.

MS. EADY: Thank you. Questions from the council. And Dr. McClain, I had a question and I heard a little of your presentation yesterday in the workgroup. And just a clarification question. When

you ask for a seat on the council, does it dedicate it to federal facilities? Are you saying a community member from the federal facility community?

DR. MCCLAIN: (Nodding head)

MS. EADY: Okay. Mary.

MS. NELSON: Having known the tortuous nature of the workgroup and just getting it established and having a staff person and all of the things, let me just commend the group, and Jim as well, for getting it to this point and making these very clear recommendations.

As we heard from the people, so many of the people who came to testify were people around federal facilities; and particularly, DOD facilities. And I know the politics and the sense of that. But I am eager in a positive way to figure out how can we help what happens to this report, number one.

Number two, what can the NEJAC do for following up on any of these recommendations? Some of them, it seems to me, the whole cumulative risk recommendations kind of parallel it, so some of those will really be strengthening that whole thing.

So of these things, who has the power to establish a workgroup to review the federal facilities in Alaska? Where does that lie and what can this group do to help? And I clearly know that the

FACA on this would come out of somebody else. But what is it we can do to help move this along, this good work that has been done, so that it doesn't just die on the shelf?

MR. LEE: Let me respond to that Mary, and I wanted to, actually, had before clarify some of the process questions that comes up with this report. You know, the report presents a set of recommendations that are broad in terms of those five things that Mildred talked about. And, certainly, that is what EPA would take as the body that you are making, this advice and recommendations to and review them to see how they can implement them.

In terms of the three items that are at the end, in terms of specific actions, you know, that too EPA has to review. Now, from your point-of-view, processwise, the NEJAC cannot, in and of itself, establish workgroups. NEJAC is not an independent body. It is a body established under a charter by the agency. So the agency has to establish that.

The same thing is true in terms of the seat for any kind of seat in terms of the council membership itself. And, certainly, the creation of a federal advisory committee is even a larger question. You know, that has to do with the agency establishing a charter around that, and also that is something all federal advisory

committees, as I recall, have to submit a charter to another federal agency, and so on and so forth.

So those are all kind of questions that –- just for your background. Just in terms of why that is the case. I mean, on the first one, which is probably the one that is the most prominent, perhaps, is that the appropriate offices and the resources has to be acquired and committed to do things like that. You know, certainly, you don't want to make these things in name only.

So that is one reason why I think as we understood how –- as you all know, in terms of the efforts to identify and work through how to make the subcommittees work, you know, you realize there was a whole set of interplay between various program offices, and different individuals, as well as resources and other types of things that had to be committed.

So those are some of the reasons why I said what I said.

MS. NELSON: But can I just clarify that a minute, in a sense that this is a sub-group in a sense kind of report. So it doesn't have the full impact, these recommendations. So does the NEJAC, itself, do we need to endorse this report and then commend it to the administrator? That kind of a thing?

MR. LEE: I am sorry, in terms of –- and I thought that was clear and I should have mentioned this before. Where this is in terms

of process, and I am not sure this is totally clear because I have heard things that maybe I am mistaken, but as I understand it, the process that you are operating under goes like this. This is a workgroup that is part of the Waste and Facility Sitings Subcommittee. The workgroup transmitted formally a report to the Waste and Facility Sitings Subcommittee which reviewed it, and then formally, about 30 days ago, transmitted it formally to the Executive Council. It is now in the hands of the Executive Council to deliberate upon and to adopt for transmittal to the EPA Administrator.

Now, at this point, what we are doing here right now –- and this was gone over several times on several conference calls, so that is why I probably neglected it –- at this point you are now deliberating upon this after this was sent to you 30 days ago so that you had time to be prepared for a discussion. What I did not want to do is to move this to a vote right now. But, if you are ready at the point right after the discussion, we would then, within the next several days, as soon as humanly possible to develop a ballot for the executive council members around this report. And at which point, if the majority feels that this can be moved in the form that is appropriate, then it can be adopted.

MS. EADY: Charles, I just had a question. I seem to remember, and I am not sure if it was the PT Report, or the Fish

Consumption Report, but when we were in the balloting process, there were comments made and slight revisions, and things like that. Since this report is transmitted from a subcommittee, can we still do that during the balloting process?

MR. LEE: Yes. I mean, I think that the heart is –- it is hoped that this discussion will present certain things that –- you know, you are the person, Veronica, as Chair of the Executive Council, responsible for it now. So if this brings up issues that you feel, and the council feels, needs to be incorporated that is one way of doing that.

The other is, of course, during the balloting process people do raise a lot of comments and those need to be worked through by the executive council in terms of whether or not you feel that that should be incorporated.

MS. EADY: Okay, thank you. And I don't want the subcommittee or the workgroup to think that we are going to go and change this significantly, so I think that it is important to, through Andrew, to keep in touch and let folks know what the conversation is. Andrew.

MR. SAWYERS: I just want to really thank Dr. McClain and Jim and Trina and Kent. They have put in two years of a lot of work,

and I think the integrity of the effort must be protected. Dr. McClain and I had a long conversation about this yesterday.

But in that context, I wanted to be somewhat accommodating and one of the conversations I wanted to have with Veronica is to continue with the balloting process. But during that process, to try to accommodate some of the concerns that were raised, I would personally write a letter to the workgroup members, and only the workgroup members, to submit any additional comments they had in two weeks. And that would be in a formal transmission. And then the balloting process could be completed by then.

But, again, I would feel that we would do a disservice to the workgroup if we did anything more than that and had a full-scale changing of the report. And that response will also be scripted. It will be if you have a specific change per page, or something to that effect. It is not changing the format.

Dr. McClain and others were on several conference calls and they have talked to everyone, including everyone who raised concerns, they had at least six months to offer their input. And in some cases, they decided not to. But based on some of the questions that were posed to NEJAC, I just think it is in the best interest. And to remove, as Charles has said, this potential cloud, if

you will, to the workgroup members alone any additional insights that they have.

MR. LEE: So if you want the Office of Environmental Justice to wait two weeks before we develop a ballot, that is fine.

MR. SAWYERS: Yes, that is the process. Yes. So Kent and I will –- Kent absolutely doesn't agree with this. Kent thinks we should go ahead, and I fully understand because he is protecting the integrity of the process and the rules which were meant to be followed. And I am, unfortunately, trying to bend the rules to be somewhat accommodating. But I think it is a good process, if you will, to remove some of the concerns that were raised.

MR. LEE: But let me just say one thing, and I think this is important to note. I mean, I think Kent's concern –- you know, the rules in terms of making sure that there is a clear process that everyone understands and is working under and, you know, achieving finality so that there is work –- the products that come out of this. You know, it is very important because if we don't have those, then we just get this interminable process.

You can really dissipate all the effort and the work that has been done. And I would ask that all of you appreciate the management issues having run committees like this, because our staff time is involved, resources are involved, and things like that.

And, certainly, I am sure Jim has an answer for that. You know, he is accountable for how those resources are expended. And I just hope that you are cognizant of things of that nature. So, you know, when these rules and certain time lines are set, they are not being done frivolously or for any reason other than to make sure these things are done as effectively as possible.

MR. SAWYERS: And, Charles, I absolutely agree with you. It is one of the reasons why as we sort of stretch this process out a bit, it is going to be tightly constrained. It is just going to be limited to making specific changes. Because Jim and I had a talk yesterday, and I am not sure if there are more resources to lend in this effort. It would not be protecting the work that Dr. McClain and her group did.

I mean, all the workgroup members were very much in agreement and in consensus around the report. During the deliberation process, and over the last two nights, we heard comments from people who did not raise those comments during the conversations. And they had the opportunity to do so, so I fully support the effort going ahead. And to be accommodating, we will sort of make this minor deviation from the rules.

MS. EADY: Andrew, let me just ask –- and, Mary, I am going to come to you –- Andrew let me just ask you a clarifying

question. So your recommendation is that the council communicate with the workgroup and give them the additional two weeks?

MR. SAWYERS: Yes, right.

MS. EADY: Okay, and you and Kent will work with me to make that happen.

MR. SAWYERS: Yes. And we will do this formally. We will submit an e-mail to the workgroup members, all the workgroup members. And I think maybe one or two do not have e-mails, we will write a formal letter and you will have to, essentially, respond to us by May 15th, or have a date worked out. I will just send it immediately back to you because I suspect the revisions will be fairly simple.

MS. EADY: Okay, thank you. Mary.

MS. NELSON: I just didn't want to lose the sense that we, as the NEJAC, at this point commend the report and wish it to move forward. So even though we are delaying this two week time, we are wishing you to do the ballots to go ahead so that it can move forward and have some stronger recommendations than that of the full impact of the NEJAC that could then move forward with that.

MR. SAWYERS: Absolutely, because Jim's office is actually –- Jim's office wanted to respond at some point, so they are awaiting formal communication from NEJAC. So we are not going to

delay that process any. I want that to go ahead as quickly as possible.

MR. WOOLFORD: If I could comment on that, I would much rather focus my resources, and the agency's resources, on responding to the thrust of the report. And I think from what I have heard of the criticisms, we are not talking about changing the overall five recommendations.

Actually, the recommendations –- or the overall five recommendations, and then there are observations that are related to the five sites. The agency needs to respond to –- and other federal agencies need to respond both to the five sites, in particular, their issues, and then to the five recommendations.

You know, I have already begun, the wheels are already working about how to lay out how to do that. How to work with other federal agencies, how to work internal within EPA, start working with the communities to make some things happen. So I am waiting to see the final report and read what it has to say. I am anxious to see that.

But I am not going to be really sitting on my hands for the next month and a half saying, oh, when are we going to get this? Because I think it is important to start getting that momentum built up

to take on the important issues that have been identified and, I think, need to be addressed.

MS. EADY: Good. Thank you very much. I do want to say that I, personally, have witnessed the process of this report and it hasn't been an easy process. Dr. McClain, I want to thank you and congratulate you on your perseverance. And also I want to acknowledge Trina Martynowicz who, with Dr. McClain, was able to turn this project around and finally get it to come to the executive council.

(Applause)

MR. SAWYERS: I just wanted to say one final thing. The workgroup is, actually, no longer constituted. And to Dr. McClain, she actually agreed to work through completing the revisions over the next two weeks. So she is really doing us a service by lending her support to this effort. So when you really think about it, this effort, frankly, should not be going ahead. So thanks to her, she has agreed to extend her service to complete it. So thanks, Dr. McClain.

MS. EADY: Great.

MR. LEE: Okay, are we ready to move on?

MS. EADY: Yes, we are.

MR. LEE: Great. Tetra Tech has graciously obtained lunches for you and, I think, it is sandwiches. There are sandwiches and soft drinks and waters, or whatever.

MS. EADY: And Tetra Tech means Tim Fields, so I just thought I should say Tim's name.

MR. LEE: Okay, so when they are here, certainly, you can avail yourself of that. Because I think it was the sense of the bodies that you work through lunch so we can get out around 2:00.

Okay, having said that, Danny, can we ask you to come here?

MS. EADY: And while Danny is coming, let me just say one thing. For those of you on the council who have not gotten your Federal Express box so that you can send your packages back, your binders and things so that you don't have to carry them on the plane, they will be delivered into this room for people who have not gotten their boxes.

What you should do is put your binder and everything you want to have sent back to your homes in the box. You won't get an air bill, just write your name on the box. The air bills have already been made out. So these will be collected, or we can probably –- oh, okay, we have boxes over at the table over there. So you can go get boxes at the table.

Write your name on the box and the staff will take care of it and make sure that an air bill with your name and address gets on it. Federal Express ensures that it arrives safely back home. So, Charles.

MR. LEE: Before we move on, and I certainly –- I don't know if Jen is here, but –- well, why don't we wait. Because I wanted to make sure we recognize the OEJ and the Tetra Tech, the contractor staff people that made all this possible. So why don't we just wait. Danny, why don't we go to you. Danny, I will give it to you to introduce this and introduce Terry.

Incorporating Public Participation
Processes in Tribal Environmental Programs
Indigenous Peoples Subcommittee
by Daniel Gogal

MR. GOGAL: Thanks Charles. Charles, obviously, has asked me to come up here to go off in discussion this morning about the Indigenous Peoples Subcommittee's project document they have been working on, relative to what are clearly two fundamental concepts within the area of environmental justice: meaningful involvement and fair treatment.

My name is Daniel Gogal, I work in EPA's Office of Environmental Justice. One of the many roles I have is serving as the

Designated Federal Officer for the Indigenous Peoples Subcommittee. This particular issue has been one that has been before the subcommittee pretty much as long as the subcommittee has been in existence back in '96, I think, is when the subcommittee got created.

We are very fortunate to have an individual who is serving as the Acting Chair of the Indigenous Peoples Subcommittee, Terry Williams, because of experiences that he has had in the past relative to this issue. I am going to let him, actually, talk about how in his mind, this issue has evolved, and his understanding of the importance of the subcommittee and the agency looking at this issue in general.

So without further ado, I will introduce, as you all know, Terry. And I want just mention one thing. As far as his experiences he, in addition to serving as the Commissioner for Natural Resources for the Tulalip Tribes, Terry was the first Director of EPA's American Indian Environmental Office when it was established in the mid-'90s. And it's really in that capacity that he was able to come front and center to looking at this issue, meaningful involvement and fair treatment of tribal governments, when they are developing and implementing federal environmental programs.

And just to make that connection, we have been talking for many, many years within the agency, as well as the NEJAC has,

about the Federal Government and federal agencies implementing environmental justice, addressing the issues of environmental justice. That lead into a discussion with the state governments, identifying and addressing and implementing efforts to address environmental justice. And now we have gotten to the point of looking at Tribal Governments and their efforts to, as we just stated, develop equal involvement and fair treatment processes.

And in my own thinking on this, I view the Federal, Tribal and State Governments as the three sovereigns that exist in this country. And, unfortunately, many folks have not been provided that insight because of the way that many of us have been educated in this country in our own schools and what not. We are told about the sovereignty of the Federal Government, the State Government, and the local governments are creatures of the state. And that is about the extent of our trained education predominantly. At least, I think, that is how most of us initially may have been informed of how our government is structured.

But the reality is, there are three sovereigns. And that is one of the issues that confronts us and why there is focus within this subcommittee on this particular issue.

So, without continuing any more, I am going to turn it over to Terry.

Comments

by Terry Williams

MR. WILLIAMS: Thank you Danny. We do have from our committee a report that has been handed to you, and I will get to summarizing that. But first, I think I should respond to what Danny has been mentioning to you, and that is in Indian country for numerous reasons, Indian country has been under attack and their jurisdiction and sovereignty. Generally, over land and resource issues within the boundaries of their reservations or lands.

Most notably, when we are talking about meaningful involvement or due process, Indian country received a significant challenge in the mid-'90s by a senator from the State of Washington. And it wasn't that tribes didn't have due process mechanisms within their government or jurisdiction, it was because of non-Indian land ownership within the boundaries and what we called checkerboard lands between the United States and the tribes.

But the control over those lands -- and this particular senator had intervened to try to demonstrate that tribes could not manage, or did not have the appropriate jurisdiction and wanted to impose the federal or state law on our lands, claiming that due process wasn't available to non-member tribal residents, or non-Indians within the boundaries. And this was purely an economic

attack, that they were trying to get hold of water resources and management of other resources within our boundaries.

A number of us from Indian country went to the senator's committee, which he chaired in Congress, and challenged him, and swung the committee around to understanding that it wasn't as simple as the senator had portrayed. And, in fact, presented enough evidence that they backed off on the challenge to the tribes.

The fact is though, there were commitments made to Congress to look at a more thorough review of due process in Indian country and how we work. And today, I don't believe that work has been completed and, personally, I see this report as an avenue through the Environmental Protection Agency to have a document that shows that a review has been done, and that we can address many of the issues and demonstrate the types of actions that the tribes do take.

Further, and in listening to Charles talk about Bill Ruckleshouse early on, and EPA -- and I know Bill -- in fact, I just had dinner with him the other night. But when he talked about Bill trying to address environmental justice issues and the creation of EPA, and how difficult he thought that would be -- and maybe we should address that a little later on -- when I first opened the Indian Office for Carol Browner numerous tribal members from around the

United States and different tribes approached me as a director and said they wanted to talk about meaningful involvement and due process in Indian lands.

I believe I gave the same response Bill did. That is, we are having a difficult time establishing jurisdiction within the tribes within the U.S. on issues of air and water and other programs that were being delegated and being challenged. And I felt that the due process needed to wait until we had the tribes secure in their governmental role. And, in fact, at the time I think we were being sued, the agency was being sued, EPA. About once a month we were being sued by Arizona, Utah, Montana, Wyoming and a long list.

Many states felt challenged or just flat disagreed that tribes should have jurisdiction over air and water. And we went through some very tough battles, but the agency and the tribes won those battles. Secured the rights for the tribes and secured the process.

Meanwhile though, almost probably 15 years or more later since the senator's hearings and almost 10 years later from the opening of the Indian Office, this question of meaningful involvement and due process has not been resolved in a way that I think is supportable. So I do believe that we need to take a look at this in Indian country, as well as through this process and work through how to come up with something that is constructive.

Now I say that recognizing that many tribes are offended by this, by this process, by us even reviewing the subject. And to tell you how that offense is taken, for me, is relatively easy. Because when Danny first talked to me about this, my first response, I think, was we should have had meaningful involvement and due process available to us in 1776. This country would look a lot different, in government and in land ownership.

But we didn't. And even today the injustices to the tribes over land and resources are still out there. They are still in our face, and federal agencies still don't cooperate with the tribes in terms of resolving issues, much less does the United States. The amount of claims for land and water and other resources by tribes nationally is long. The list is long. And we are still wrestling through all of those.

And at the same time, wrestling through a major court decision with the tribes and the Bureau of Indian Affairs Department of Interior on trust resources, where the tribes have claimed harm into the billions of dollars that the United States has lost. And holding those dollars in trust for the tribes.

The courts more recently ruled that the United States has failed in their trust and threatened even internment of some of the secretaries and administrators. Because of withholding evidence or destroying evidence, and many other things.

In light of all of that, we turn around and we still say to the tribes, whether you have been abused for 200 years or not is not a question at the moment, it is how are we going to explain our management to the United States so we can have resolution of this problem, because it won't go away. The Congress, I am sure, will come back. Others are still going to be concerned, and we need to justify our actions.

With that, we did have numerous discussions in our subcommittee yesterday, plus comments from tribes from around the country, including I think we had at least four presentations from Alaska, we had a presentation from the Director of the National Tribal Environmental Council, which has 115 tribes participating in their organization, and the Wakaw Tribe — and the representative is still here, Vince, thank you. Who came all the way from the State of Washington to be here to comment.

We talked about where we are heading with this and what we can do, and I think the document is moving along and progressing fairly well; although, as the director of NTEC, National Tribal Environmental Council, told us that a number of their member tribes couldn't get past the first page. That was the EPA charge to look at this issue.

The fact that the charge the way it is described, because of the history of Indian country and Indian governance, that charge was just so offensive to them that they just stopped right there. They didn't look at page two, or how we tried to get past that charge and talk about the issues.

And, quite frankly, talk about the difference between tribal governance and public involvement, or the tribal members' involvement. There are many different ways, I explained to the group, just saying one of the traditional ways of the Tulalip where I am from was that our people, when we had issues go into the long house, and it is a consensus-based process, the leadership, the membership, all of us sit around and we argue out what is best for the tribe. And at the end of that process, we walk out with a direction.

Now, that is not exactly what was envisioned under NEPA and it is not exactly what was envisioned under the environmental justice process of public comment. But, it is how we do things. Many tribes around the country have different types of processes like that. A lot of them consensus-based like ours.

A lot of the processes now have been altered to try to fit NEPA, or try to fit TEPAs, Tribal Environmental Policy Acts, that are being developed, or to fit other mechanisms that are required for us to maintain a relationship with the U.S. or to receive grants or funding.

But the intent is that we need to articulate how we communicate, not only with our tribal members, but other members of the community within our boundaries. And in this document, you will see a few somewhat models of how tribes are addressing that.

But I think the dialogue over the next few months, as we continue going into the review and getting comment will be lively, will be intense, but I am hopeful that we can continue the good work that has started here and come up with something for you relatively soon so we can stay on course with the schedule.

We are intending on meeting with a number of the tribal organizations and trying to explain just exactly what we are talking about here today.

In addition to the due process discussions, we did hold discussions on the cumulative risk as well. Several of our members had not had the time to actually review the document, but we talked through the issues. Tom Goldtooth and myself talked about the comments that we made during Executive Session and Public Comment Period.

I think the committee got the gist from our comments how to look at that document in terms of strengthening the tribal section. I think that they are pleased with the direction that we have been providing the comments, and hopeful that we will get in, or submit,

some written comments to get that together in time for you to finish up business on that section.

We had three action items that we worked through for the committee. One was looking at language in the document where we are talking about cultural and spiritual. And there is some sensitivity in Indian country how that is defined. So one of our members, Permina Yellow Bird is going to be working with us to help to get a definition for the committee so we have something to work with.

There was a second issue of getting comments in to these drafts, and I think Danny is going to talk just in a moment about our deadlines and what our expectations are for both the meaningful involvement and cumulative risk deadlines for comment. But the committee is working to achieve those comments by deadline.

Then we also talked about –- well, actually, made request to the Alaskan participants to help us think through looking at nominations from them to have someone appointed to work with the NEJAC and the subcommittees. And also, looking into having the NEJAC attend meetings in Alaska and the possibilities of that.

And with that, I think I will just finish my comments and have Danny respond to the time frames. I think that pretty much covers the activities that we went through yesterday. Thank you.

Comments

by Daniel Gogal

MR. GOGAL: I just wanted to, in addition to mentioning the schedule for completing the document, which generally I will mention will track somewhat what the Cumulative Risk Report schedule is. There was an initial letter that went out to all the tribes, all the federally recognized tribes, to the heads of those tribes, the chairman or president, or what not, as well as to the environmental directors of the tribes, and to the tribal grassroots and other interested parties that I have a list of that I thought would be interested in the document.

This was back in November as a letter of intent that the subcommittee was considering focusing on this issue and asking for some input to the subcommittee as they begin the effort of putting together this report, or this document.

It is important for me to note just for your own information that this has been something the subcommittee actually, as I mentioned, has been on their radar screen for over 10 years, or however long the subcommittee has been around, eight years or so. But also a couple years ago they started to put together an outline and trying to flush out what would be an appropriate set of subjects to be discussed in such a document.

So it has been something that has taken quite a bit of time to get to where it is now, but they also recognize that it is still, as the

title of the document says, preliminary working draft. It is not complete, they knew it wasn't complete when they sent it out. Partly, to make sure folks were able to see in this context that there was some sincerity in wanting to get their input.

There is some discussion about sometimes things are too purified, if you will, when they go out and people get the interpretation that they really don't care about getting input on this. So you might find some areas that you see very clearly needed to be enhanced. The subcommittee, obviously, would very much appreciate getting your input now on what you see. If you want to wait until the revised working draft is done, that is fine too.

I know from a personal level if I look at a document too many times I don't see things after awhile, so you might want to wait. But if you are not the kind of person that has that problem, then I would say have at it as it is now.

But as far as the time frame, the subcommittee went out with a draft in February asking for comments by April 5th in order to enable them to have a discussion at the meeting, which they did. However, folks are invited now to look at the document and the —— period now is another 45 days. So they are asking that comments be submitted by June the 15th back to the subcommittee through me. My name and address and all that is on the document.

Then the subcommittee plans on developing a revised working draft and that is going to be sent out to those who commented so they can see what was done with the comments to the preliminary working draft. And then, ultimately, the subcommittee will complete a final draft that will be submitted to the Executive Council, obviously, for your review. And, ultimately, with the changes that you all deem necessary approval, and with the idea they go into the agency in September, which I think is the same schedule for the ——- Report.

I am just going to say, Charles, is giving me the time now signal, which I appreciate, because time is of the essence here. But I do want to —-

MR. LEE: Well, we are going to continue this discussion, Danny.

MR. GOGAL: No, no. I am not saying it in a negative way.

MR. LEE: We need to take a break.

MR. GOGAL: I just want to mention one quick thing. This is actually pretty important. That what dawned on me when we were talking about this is that the next time there is discussion on this document, we probably should provide some background to the current status of tribes in this country. And those who are not as familiar with understand more directly the nature of this issue.

I just wanted to point that out because some of you might be saying, why aren't they giving us more background. So, Charles, thank you for that time, and Veronica.

MR. LEE: Great. We want to continue this discussion, I mean, we just have to manage a number of things. So don't go away. The first thing is that the court room reporter has to take a break. I apologize.

The second thing is that the food that Tim Fields and Tetra Tech have been so gracious to provide for you is here. So as we take a break, you certainly can avail yourself food. But the third thing which I want to do, and I want to make sure everybody acknowledges this, is you know we wait until the end of the day —- this never happens, and I think we would be remiss. You know, a lot of people from EPA have played very important roles in making this work. Everybody from Region 6, and many of their staff, and from the other EPA regions and other program offices.

A lot of them you have seen and have acknowledged their work already, but there is two sets of people that work behind the scenes who you never get to see and really are very part and parcel of making this meeting a success. And that is the Tetra Tech contractor staff, as well as the Office of Environmental Justice staff. So I just want to make sure they all get a —-

(Applause)

MR. LEE: Two people that we really should point out, one is the new NEJAC National Program Manager, Victoria Robinson. And Victoria, if you could stand.

(Applause)

MR. LEE: And Jen Grund, right, who is not here.

(Applause)

MR. LEE: She is out doing her job. It is for the record.

MR. LEE: See, I asked them to stay, but Danny you went on for so long.

MR. GOGAL: I am sorry.

(Laughter)

MR. LEE: Okay, everybody take a break.

(Whereupon, a brief recess was taken)

MR. WILLIAMS: While you are thinking about the questions, there is one thing I forgot to do I wanted to do just quickly. And that was to thank a couple of people. One was Janet Wolfly who had dedicated her time to get this document produced for us. And I think that with all the comments and the discussion surrounding the debate, she did an excellent job of gathering that and getting it together for us.

Also, to Danny for tenaciously chasing all of us down and making sure that we did get this together and the ability to get here and do this this week. So thank you, Danny.

MR. GOGAL: Thanks, Terry.

MS. NELSON: I want to thank you for the good work that has been done on this, and it seems to me this is an issue that has been nagging at the whole process and all of us for along time. So this is so timely and so important that we can now keep it moving. So thank you, Terry, for your good leadership for helping to make that happen.

In the interest of it being the most useful kind of document that it possibly can be, which is my hope, is that it seemed to me hard to find the recommendations. Some of them I know aren't quite there yet, but buried in here are some good ideas. So I would hope you either have —- and you probably both have an executive summary, or that you box in if you are going to do recommendations in the body of things that you make it graphically clear what are the specific recommendations. And you might want to do that.

So I think how it is laid out could be —- so that it is easier for those of us who are trying to walk through this thing, to be able to put our hands on, well, now what. What happens next and how do we

take this good, good information and make it work in our settings. And there may be two different kinds of sets of recommendations.

I mean, there may be ones for EPA, or government agencies as a whole. There may be others that are for the tribes themselves, of ways to –- you know, how do we help make this stuff happen in our own settings. So it just seems to me there needs to be a lot more clarity around that in order to capitalize on the good work that has been done.

MR. WILLIAMS: That is an excellent comment and I thank you for that Mary. I know that we were just struggling to get this draft together and to you, and it still has been reviewed by a small number of tribes. So we are expecting that this next round will have more information and more to work with. We will make sure that we are clear about that. Thank you.

MS. EADY: Mary, that is a really good comment. You might even consider in your introduction, sort of at the end of the introduction, summarize what the recommendations are and then go into the body of the report.

I just have a question, again, a process question. You may have said this, Danny. Approximately how much time do we have if we wanted to comment on this draft before the next one comes out?

MR. GOGAL: Yes, the way we thought about it is just to give at least 30 to 45 days from today for additional time for comments. So as always, the earlier the better, but I think June 15th is the time that we thought would be reasonable.

MS. EADY: Okay, great.

MR. GOGAL: And between now and then, the subcommittee is going to continue to work on it so it is going to be progressively improved on. However, the comments that are submitted between now and the 15th, obviously, would be looked at in the context of the continued revisions that will be done. And with the idea of a month out, July 15th, having a revised working draft that would go out to those who commented.

And quite likely, we will discern whether we want to send that to the executive council, not because the subcommittee doesn't want you input, but just because you have got a lot going on and it is best definitely to have the executive council focus on it when it is a final draft. And that that be a robust discussion occur at that point in time. Pam, you will get it regardless, obviously. So anyway, that is the thinking.

MS. EADY: Thank you. And excuse my crunching. Juan and then Judy.

MR. PARRAS: Along that same process, how much time do they have on the other one, like Environmental Justice and Federal Facilities, would that also mean 30 to 45 days, or what? You know, for comments on it.

MR. SAWYERS: Well, I don't know the formal process, that is going to be sort of an executive discussion.

MS. EADY: Yes, generally, when a ballot is sent out, it is flexible. It can be 30 days, it may have been in the past as many as 60 days. I think 30 days is probably a good turn around. But we are flexible. I mean, there is not a –-

MR. PARRAS: Well, yes, generally speaking, even if it is 30 days, if there are citizens — I guess objectives or whatever, are they attached to the document themselves or are they separate documents?

MS. EADY: Comments. Juan wants to know how long is the balloting period for the Federal Facilities Report. And what was your —

MR. PARRAS: And the other question is, if comments are submitted, are they attached to the actual report, or are they separate documents, or what?

MR. LEE: The first one is about 30 days. And, you know, actually –- yes, let's make it 30 days. No, the comments submitted

have to be addressed by the executive council for incorporation. It does not –- I mean, let's assume you make a comment, it doesn't mean that everyone would agree with it.

MR. PARRAS: Sure.

MR. LEE: You know what I am saying? And so, no, generally speaking, there are cases where that could happen, but certainly that is not a good thing. Is that there is such a division that it becomes a minority report of such, but I think that is something you want to avoid.

MR. PARRAS: No, I was asking for the process because I am not familiar with it, okay.

MS. EADY: And on the Federal Facilities Report, there are going to be another two weeks before we get to the balloting process. So there will be two weeks.

MR. SAWYERS: I mean, Juan, it is going to be sent to I think Doris –- it is going to be sent to Shawna, they are all going to have an opportunity to send additional information in over the next two weeks. I think we are setting a May 15th deadline. So we are specifically going to send them an e-mail and a formal letter asking. And we are going to sort of scope how we would like to get the responses.

1 MR. PARRAS: But May the 15th would be the deadline, or
2 what?
3 MR. SAWYERS: For her. Yes, they have been involved in
4 this process for the last two years.
5 MR. PARRAS: Okay.
6 MR. SAWYERS: So this is just sort of accommodating
7 some of the concerns that they raise to ensure that it is represented in
8 the report. I just want to make sure that they get another chance. So
9 we are just going to extend that review just for the workgroup
10 members. This is a two-year process which, frankly, I don't think
11 should be extended much longer.
12 MR. PARRAS: And, Juan, that is not to suggest that say if
13 you happen to talk to someone who has read it and they say, oh, you
14 know, I think that this needs to be changed or something, or make a
15 suggestion. You can do that, but they can't do it.
16 MR. PARRAS: Sure.
17 MS. ESPINOSA: Thank you Terry. I appreciate this. I
18 think this is really an important document and it is something that
19 reminds me when the OIG Report is speaking about the Office of
20 Environmental Justice not defining environmental justice
21 communities. I mean, if this isn't that, I don't really know what is.
22 This is a very good document because it defines a relationship

1 between environmental justice and the EPA and the indigenous
2 peoples in this country.
3 And I think to get it in writing with some historical
4 perspective, and the issues of sovereignty, is a leadership role in the
5 inter-agency working group, you know, and at the federal level all
6 together. So I appreciate this and I echo the same suggestions that
7 Mary had on the recommendations standing out. I am sure you will
8 do that.
9 I also, coming from the Cumulative Risk Workgroup
10 discussion that you gave suggestions, and I know Pam did, and also
11 Tom along the way, about having a better write-up on the tribal
12 issues. There is some good things in here that I think we can pull out
13 some paragraphs and utilize for a better discussion in that report.
14 And I am wondering if you –- I know it says do not cite or duplicate,
15 but if you wouldn't mind if we attempted to take some things from
16 here to put in there. I know you might submit some separate written
17 up statements, but since it is already written a lot of it.
18 MR. WILLIAMS: Right. I think we can work out something
19 there sort of how to do that. I wanted to comment on what you said
20 from the examples from the tribes. One of the things that occurred to
21 me after arriving here this week was looking at the connection
22 between this and the cumulative risk document and vulnerabilities

1 and the cooperative or collaborative types of approaches. You will
2 see that the paragraph that we put in this document from Tulalip,
3 giving an example of due process, one of the things that we did at
4 Tulalip was we have within our boundaries right now a population of
5 about 3,500 tribal members and over 6,000 non-Indians. But we do
6 the environmental management within our boundaries.
7 Historically, we have had a pretty poor relationship with that
8 non-Indian sector. They have, traditionally, tried to gain control of our
9 lands through other means, through state or local government, or
10 federal government at times. But as we became more adept at
11 instituting our regulatory controls, we invited in for our Land Use
12 Planning Committee a couple of non-Indians to sit on the committee.
13 Because of doing that and getting them actively involved,
14 getting them educated in part of the decision-making, we ended up
15 reducing the majority of the conflict between the Indian and non-
16 Indian population within our boundaries. And to the point that at one
17 point the county was trying to assert their jurisdiction within our
18 boundaries beyond what the tribe ever agreed to. And the non-Indian
19 citizens within our boundaries opposed the county and supported us,
20 which was a big switch.
21 But I think the intent was just to point towards those
22 collaborative processes, and this is just one example of a way to help

1 through that collaboration in education that there are a lot of things
2 that you can resolve.
3 MS. EADY: No more questions?
4 (No response)
5 MS. EADY: Thank you Terry, thank you Danny. That is
6 great. We will have a look at it and June 15th is certainly reasonable.
7 So thank you very much and we look forward to seeing the next draft.
8 MR. WILLIAMS: Thank you.
9 MR. GOGAL: All right, thanks.
10 MS. EADY: Okay, so next on the agenda, Wilma is going to
11 cover Permitting and Recommended Practices Guide for the Air and
12 Water Subcommittee.

Permitting and Recommended Practices Guide

Air and Water Subcommittee

by Wilma Subra

MS. SUBRA: I am going to do a brief report-out on both the permitting recommendation practice and the work of the Air and Water Subcommittee, if that is okay.

MS. EADY: Great, perfect.

MS. SUBRA: I assume they are going to be passing out to you the minutes of the Air and Water Subcommittee. I just wanted to point out a few of the unique issues that we learned yesterday in various briefings we had before the Air and Water Subcommittee.

Larry Weinstock with the Office of Air and Radiation who reported to us on the first day of the council meeting, talked to us about the CARE Program and heard about the permitting document that we are developing and agreed to consider putting it as a resource into the process that they are going to use for the CARE Program. So that was very positive.

Mike Shapiro, who is Deputy Assistant Administrator of the Office of Water, told us about some of the programs they were doing and I would just like to touch on a couple of things that relate to community members and the work in their communities.

In their work to improve permitting, they are establishing national measurements, which include things like the size of the back-log, and the status of non-compliance, and water discharge permits. And they established a state self-assessment process.

Now, both of these things have been completed, but are not publicly available because they are being internally reviewed. But they are supposed to let us know when they are publicly available and I think those of you who work at the state level will be real interested in how your state assessed itself and then how at the national level they evaluated that state assessment.

They also established a smarter permitting process, and they established a goal for these highest priority permits that 95 percent of the highest priority permits be current. In the State of Louisiana, we had a huge back-log. We had expired permits that had been expired like 10 years, and we had new permits that were thousands of them waiting to be reviewed and issued.

So when they talk about establishing a goal of 95 percent of the highest priority permits being issued, or being current, that is a really big deal. And they have also established a goal of 90 percent of all the other permits being current. So you might want to look at the status in your state.

Elizabeth Cocksworth, from the Office of Radiation and Indoor Air, talked to us about indoor air triggers for things like asthma and reactionary diseases.

And I think this plays into some of the conversation we had in the first day. The indoor air triggers are cockroaches, dust mites, pet dander, and second-hand smoke. So when you heard a lot of the conversations about what is the most important thing to be dealing with, from the children's aspect, with the increase in asthma in children, these are really important things to do at the household level versus the outdoor area where a lot of work.

And then, the most amazing thing was she talked about low-level radiation waste. That there are only three facilities in the United States that can take low-level rad waste. There is an advance notice of rule-making that would allow permitted RCRA sub-title C hazardous waste landfills to accept low-level rad waste. There are 20 of these facilities in the United States, Louisiana is the proud state owner that has one of these. Juan, I think there is one or more in your state.

So we may want to be on the look out, because once this happens and they are allowed to take low-level rad waste, it is —- the door. And, again, it is an advance notice of rule-making and she is supposed to send us the notice when it comes out.

And then Bob Harnett of the Office of Air Quality Planning and Standards talked to us about an air quality index that will be a thing that the EPA does at the national level, which will provide e-mail service to community members, or any organization who requests to be notified when the air in your area will be unhealthy. So that then you can take the appropriate precautions if you have health impacts from unhealthy air.

And this, like I said, will be done at the national level for all the United States. So you get on the e-mail and you start receiving these notices when the air is unhealthy.

Ken has been heading up the group that has been looking at a guide and recommendations for improving the integration of environmental justice into the environmental permitting process. We have been working for two and a half or three years on this, and we have identified flash points that fall into three categories: siting, public participation, and the permitting process itself.

The new facilities, as you know, the citizens frequently don't even know about this facility or the siting process until most of the issues are agreed to between the industry, the local government and the regulatory agency. So we are developing recommended practices for the public participation part, for the permitting part, which will include siting and the actual permitting process, and for

enforcement and compliance. So after the permits are issued, how the EJ community can interact and be a part of the process and deal with the enforcement and compliance issues.

We have targeted the end of June of '04 to have it in complete rough-draft form. Then we are going to be interacting with the technical people in the agency, other than those who already sit on the workgroup. And then we will bringing it back to the council for your consideration, review, and comment.

MS. EADY: Thank you Wilma. Judy, I see your card up.

MS. ESPINOSA: Oh, I'm sorry.

MS. EADY: That's an accident. Okay, did anyone have any questions or comments for Wilma?

(No response)

Subcommittee Report-Outs

MS. EADY: If not, I think that we should continue. As you know, we have rearranged the agenda a bit and I think that we are going to be finished very shortly. I guess we will just move forward with the subcommittee report-outs. Some of the subcommittees have already sort of had a word, and I will come back to you too to see if there is anything additionally that you want to say. But let's continue with the rest of the subcommittees.

I think that Graciela is gone. It's okay. I guess she will be back. So I will start with the enforcement, Juan, if you don't mind.

Enforcement Subcommittee

by Juan Parras

MR. PARRAS: Good, I am glad there is somebody still here.

MS. EADY: Oh, wait. Juan, before you start, Terry what time is your flight?

MR. WILLIAMS: Oh, I have got time.

MS. EADY: Oh, okay. Good. Please.

MR. PARRAS: I will be through in five minutes anyway.

Well, just to give you a little bit of history, I just got on the Enforcement Committee and the priorities that we had submitted, and I guess Chip will confirm this, is they totally changed from the positions papers that we are now working on. So just our first meeting was yesterday, of course, and we have got a lot of information that we kind of went through it, and we kind of tried to figure out how EJ issues can be incorporated into those issues.

The topics that I am talking about is, one is the wet weather. And wet weather refers to the issues of combined sewer overflow, sanitary sewer overflows in stone water and concentrated animal feed operations. We have some information on it, but we

haven't completely analyzed it and see how we can integrate EJ issues into it.

Then the other one was air toxics. Again, they are fairly new to us. We have gone over the materials, we looked at them, and we are going to further evaluate them for more input from the committee itself.

We have a new source review, the same thing, mineral processing, tribal compliance, and financial responsibilities. In the short time that we had yesterday, we sort of went through them, we made some recommendations, and those recommendations are –- two of them –- one is –- well, first of all, let me tell you another thing.

We did have some speakers come and address the Enforcement Committee. One of them, of course, was Phyllis Harris, the Principal Deputy Assistant Administrator. Mr. Charles Lee, and Ms. Tinka Hyde, with the Enforcement Coordinator. The reason I wanted to mention them is because one of our topics of discussion was the OIG Report. And, basically, what it says here is that with the committee's support, you know, the agency response, and also we fully support EPA's NEJAC Cumulative Risk Report.

The second item was that the members wish to ensure that the concept of the papers are incorporated into EJ mappers. Tinka Hyde made a good presentation of how they are starting to draft a

paper as to how to actually seek out and find environmental justice communities if that seems appropriate. So we supported her ideas as to how we can start tracking environmental justice communities.

And then of significance, the items that we recommended for action are: that the OIS Report that immediately –- as soon as we can, that we start doing community outreach and letting the communities know what is coming down the line so that they can be supportive of our notions to support. Well, write the letter.

And then we also to continue to have an ongoing outreach that should focus on training and resources provided so that we can continue with outreach to communities. Also, to use the Enforcement Subcommittee as a vehicle to review and help implement the communication strategies. The Enforcement Committee is willing to do whatever it can in its capacity to push the issue of NEJAC support, you know, and letter to the State EPA Director.

Then, basically, that was it. Like I said, we didn't have too much time to discuss issues that were fairly new to us as far as what is our position and how we are going to integrate them into EJ issues. And, Chip, if you have anything else to say?

MR. COLLETTE: No, no I don't.

MR. PARRAS: But, basically, that was it. We are starting all over on prioritizing issues. Later, as we finalize them, we will

present to you a final document and, hopefully, it will not take five to 10 years, as some of these processes seem to take. Okay.

MS. EADY: Wonderful.

MR. PARRAS: Thank you.

MS. EADY: I am glad that you and Chip are both here. I remember not so long ago when the DFO for enforcement had to give the report-out because there weren't any members. So it is great to see that that subcommittee is turning around.

MR. PARRAS: And I want to thank Ms. Simmons for actually helping us put this together and facilitating the committee. And at least helping us bring back something to this committee.

MS. EADY: Yes, wonderful. Does anybody have any questions or comments?

(No response)

MS. EADY: Okay, let's go on to the next one. Phil, do you want to give International?

MR. HILLMAN: Certainly.

MS. EADY: Oh, Graciela. I am sorry. If you don't mind, Phil, I will go to Graciela first.

Puerto Rico Subcommittee

by Graciela Ramirez-Toro

MS. RAMIREZ-TORO: The committee has been working. The problem that we have had in the last year is that the timing of our work, with the timing of procedures and things, such as appointment of the members, doesn't seem to come together. We were able, in terms of the –- let me start by the work that we were able to do. We were able to have three meetings to discuss the Cumulative Risk Report before December. Before all the members concluded their appointment. We have written comments that we are going to submit during the period.

Some of them I already presented during the deliberations here, others are more specific, but it is not going to make any big change or significant change on what we talk about this couple of days.

That was most of the work that we had. We had decided that we were going to wait for this meeting and then have a public meeting on May 7th and, actually, it was being advertised by The Federal Register and everything. But when I arrived here, the staff meeting advised us to cancel that meeting because the only appointed member right now is me. So legally, under the FACA law, we cannot have a public meeting to discuss or to inform the public in Puerto Rico.

What I decided was then that we are going to just act as a link with the environmental groups and people that are from the communities so that they at least get a copy of it.

And that is what we are going to be doing, but we cannot do it formally as a committee. And that worries me as a whole because when we were very happy when finally we were able to get a subcommittee on the NEJAC because, as I said earlier, our issues are a little bit different from the mainland and we wanted to be able to have a group contribution so issues from the islands –- because the U.S. has many territories that are islands –- can be brought up to the national arena.

But with this problem of the appointments, we haven't been able to be effective. And that worries, of course, because we say, well, in a couple of years somebody is going to look back and say, well, we gave these tools to Puerto Rico and they never did anything with it. But really, we don't have the tools in place. So it is something that is difficult.

I know that it is not a problem of the Office of Environmental Justice. I know that because I am in another FACA and now all the appointments have to go through the White House and it is the changes in how we do things that effect these issues. But I think that for the benefit of all the groups, because I see the same problem in

some of the other subcommittees, it is a difficulty to bring the members together, that that is something that we should keep in our minds and see how we can deal with it.

Essentially, that is where we are. We submitted all the candidates to the Office of Environmental Justice. I think the papers came on December or something like that, and they are in the process of pursing the appointments. So that is where we are.

MS. EADY: Thank you Graciela. I think it is pretty amazing that you have been able to do so much work without any members. Chip.

MS. RAMIREZ-TORO: That is because the members are working even though they are not appointed.

MS. EADY: Go ahead Chip.

MR. COLLETTE: I don't want to delay adjournment, but briefly, it just so happens that I serve on one other national advisory council. And this is just a suggestion or question that can't be answered, but maybe it is something they need to pursue.

I also serve on the Governmental Advisory Committee to the United States Representative to the North American Council on Environmental Cooperation. It is composed of Canada –- that is the environmental side accord to the North American Free Trade Act.

And, actually, while it comes up in different context, there are environmental justice issues there. And I would just wonder, or perhaps explore it, I am not aware of any contact between our International Subcommittee. And the Council Ministers meet annually. We are meeting in Mexico City in June, but there really would be a need, I think, on the international side to try to tie into the environmental agreement –- the North American Agreement on Environmental Cooperation. We need to have some crossroad there.

MS. EADY: Phil, did you want to comment on that?

MR. HILLMAN: Yes, I would like to respond to that. And I was going to bring this up in our report. One of the things that is coming out is the 10 Year Review of NAFTA, and as a part of that review, Jerry has asked the International Subcommittee to go through that and recognize there probably are some items that we can do differently, looking at the next 10 years; specifically, around items of environmental justice. So we have a tie-in that way.

Also, Jerry is going to bring back some information from ––-, and asked our opinion on that also.

MS. EADY: Thanks Phil. Mary.

MS. NELSON: It seems to me it is an issue for almost all of our committees about getting the people through the process. And I know somehow your hands are tied, but is there anything we all need

to more pro-actively be doing so that they can end up with people on their committee and these other committees?

MR. LEE: Well, the Puerto Rico Subcommittee's appointment issues are different than other ones because of the local political situation. So that is it. But, no, the appointment process has been retooled in the past couple of years and they are still trying to get it so that it is being perfected.

And that has, actually, been one reason why the delay last year in terms of the appointments. And if you note, that the appointments for this year are just about completed. And that should be done almost any minute, but it was not done in time for this.

Related to that also is the subcommittee appointments. I mean, that is the status of them.

MS. RAMIREZ-TORO: The one thing, if I may, that we could address, I think, some way is that in our case when the appointments come in, they come retroactive. So you get appointed for a year, but half of your year is gone. So I think that at least if we could, whenever the appointments comes, that is the date that you start your term, maybe then we could deal with it a little bit.

MR. LEE: Yes, that is a good point.

MR. SAWYERS: Charles, I support that because I was just reading –- and I think I spoke to Marva, I was just reading through the

appointments list and I think I got my letter last September and it said it was a three year appointment, but then I realized my time was up in '05. And then I think Marva or Victoria said it is retroactive from the time I was nominated, which I think, to a certain extent, it very –-

MR. LEE: Yes. There are a lot of issues there, you know, one of those being that.

MS. EADY: So Graciela, just to clarify, you have members –- you know, if you look at the page that has the subcommittee membership on it, some of them say appointment pending, some of them say reappointment pending. So there are some people that are being reappointed, but because they are not officially reappointed yet, and it will be retroactive once that happens, you don't have official members other than yourself.

MS. RAMIREZ-TORO: Exactly. Exactly. And even the ones that get appointed might only be appointed for three months or four months, depending on when the appointments come. So in three months, we are in the same place.

MR. SAWYERS: And just on the appointment issue, Mary just talked about it, December of this year I think we will only have –- is it two Mary? Only two on the Waste and Facility Siting Subcommittee remaining. Myself and John Ridgeway. And that

process, I think, has started to get reappointments, but I am not sure exactly what is going to happen then.

MS. EADY: If there are no other –- Judy, did you have a question or comment?

MS. ESPINOSA: Well, I was going to leave this until the end of the meeting, but since we are all talking about it now, I was looking through the book and regarding appointments to the NEJAC, there will be 15 people leaving at the end of this year on this council. Or their terms are up, I don't know if they will be leaving or not.

And there is currently seven vacancies. So I think that –- I know Charles can't do anything about it to move the process any faster, nor can Barry, but I do think that all of a sudden it just struck me that at the end of 2004, 15 people are due to go off the council. That won't give you a quorum much anymore, I don't think. Particularly, with seven vacancies currently now on the council that have not been filled.

So I am kind of with Graciela, if you are in the process of appointing people, it might be nice that if you don't get to appointment until June or July or August or something. You have got some staggered terms that go on here because, you know, you may find yourself at the beginning of 2005 with not too many people sitting

around the table. And if you also can't get extensions on some people, then that is a problem too.

MS. EADY: Charles, do we have appointments pending on the council? On the Executive Council?

MR. LEE: Yes. You have six or seven. And they should be done any minute, any day. So that takes care of half or a third of the problem that Judy talked about. And then we have to do this for the beginning of next year.

MS. EADY: Can we start the process for next year? Or have we started the process for next year?

MR. LEE: Yes, we have started already.

MS. EADY: Okay, good. If there are no other questions or comments on Graciela's report, let me move to international and Phil Hillman.

International Subcommittee

by Phillip Hillman

MR. HILLMAN: Not to beat this horse to death, but we are also depleted in terms of resources. If you look, there are only three people on the committee and a couple of appointments pending. So one of the things we have talked about with Jerry is looking at what are capacity is currently to do things. Just simply to get things done.

When you think about how we interact with the committee, there are things that Jerry may request of us that we respond to, and then there are the ideas that we come up with where we try to influence Jerry in his organization to move on. A lot of that comes from the community input that we have to the International Subcommittee, and we have right now no community input. So that is an issue for us. So, I know your hands are tied Charles, but I just wanted to add that to all the other things you are working on.

One of the areas that we did look at is training. And in the area of training, OIA is committed to do EJ training for all their members. Within that training though, we are looking at how you might customize it for the international piece of it. They have asked us to participate as a subcommittee in the formation of that training. So that we look at that as a real opportunity in terms of how that might get shaped, how we can bring some focus to EJ on an international viewpoint.

The other piece is as we look at trade agreements, all trade agreements by executive order have an environmental review connected to them. We have been asked by Jerry to look at certain trade agreements and review them from the standpoint of that environmental review. Our sense is there may not be a lot of EJ influence in that and, hopefully, we can do some of that in terms of

the review. There is training connected with that also that they provide for the country so that they can do their own environmental review of these trade agreements.

We have asked to participate in that training and, again, from the standpoint of looking at how we get EJ issues into that review. Now, the third thing, and I think this may be a broader issue is, if you think about training, there are a lot of opportunities that training goes forth. And is this something for the Executive Council to look at on a broader scope to say, are there opportunities where EJ issues should be incorporated in the training going forth? Whether it be permitting, whether it be capacity building. There are opportunities, I think, that we can look at as an executive committee to ensure that the EJ perspective is accounted for.

In looking at what we are going to be working on –- well, one in particular and I eluded to earlier –- is the 10 year review of NAFTA is coming up. And there has been a request made of the subcommittee for us to do a review of that 10 year agreement and to make some recommendations back to the OIA concerning what opportunities may exist to do some things differently; specifically, with respect to environmental justice issues as they come up.

There is also a joint public advisory committee that is also looking at this and we are to tie in with them as part of that review and providing comment opportunity.

And, finally, we had a review by Regions 6 and 9 and they were looking at the activities related to the U.S.-Mexican border. And they had what is called EJ Listening Sessions. Several items of interest were identified by the border residents, including long-standing recommendations to create a U.S.-Mexico border commission specifically to address issues of concern to border residents. And this was also presented as part of our subcommittee meeting.

And the last task, I think, that was given to us was to look at whether or not we could establish a connection –- and I have already mentioned this to Terry –- to the Indigenous Subcommittee, are there opportunities, are there some things that we can work on collectively as we go forth? Any questions?

MR. COLLETTE: Just briefly, and I do not know whether this is physically possible, but the last time the two subcommittees meet, the Public Advisory Committee and the Governmental Advisory Committee two weeks from now on the 28th and 29th we are meeting in D.C. And they will not meet again then until –- we will not get together again until actually the NAFTA meeting in Mexico City.

A recommendation, or a question, if there is anyway you can make contact with –- there are 12 member committees, if there is any way you can make contact with the public, the chairman of the Public Advisory Committee –- I do not know that chairman –- prior to the Washington meeting in two weeks, it is probably your window of opportunity.

MS. EADY: Great. Thanks Chip.

MR. HILLMAN: Thank you.

MS. ESPINOSA: Phillip, thank you for pointing out the need for the public input and the lack thereof at this point in time. I think that is really an important point that you just made to do that. And I hope that that can happen as you get new members, but it is critical. And I think it shows how critical it is when we have business folks on our NEJAC who are pointing that out to us. Because even they see that need and that lack. So, hopefully, that will be heard at higher levels.

And also, I think, that I just want to reiterate, I think the NAFTA review would be a really great project from the environmental justice area and from the NEJAC to take a look at I think. It is critical, so many of our people have been effected by it, even those that supported it are having a lot of discussion as to what it means and how it is effecting this country.

And, of course, as you go down the bottom of the rung on the social scale, you know, those at the bottom get hurt even more. So I appreciate you looking at taking that up and, hopefully, it can be supported generally by the NEJAC and by the OEJ because I really think that the 10 years is a nice way to look back at it.

MR. HILLMAN: And, perhaps, that may be worth, as a report-out back to the Executive Committee in itself.

MS. ESPINOSA: Yes, yes.

MS. EADY: Great. Terry.

MR. WILLIAMS: Yes, thank you. Phillip did just talk to me about the issues upcoming with NAFTA and asking about the tribes. And one of the things I did going into the Indian Office in 1995 was ask the administrator to put some funding into the tribal program to be able to assist the tribes in commenting on the effects of NAFTA. And the administrator did do that. We had two organizations, formed one for the Canadian border and one for the Mexican.

I am not sure the status of their work right now, but certainly I think we need to talk to them to find out what the issues are how that is going.

Now, additionally –- well, I told Phillip we would stay in contact somehow here, but for the last eight years, I have been on the U.S. Delegation to the U.N. on bio-diversity. I was appointed by the

State Department and worked for State and Interior. Mainly looking at cultural sustainability and looking at the use of traditional knowledge and protections of that knowledge. But there are some issues I am sure would be able to create some dialogue here.

As well as one of my other projects that I just, actually, stepped down from. But for seven years I co-chaired for a non-profit organization, the International Association of Impact Assessment, their indigenous section. But the reason I mention that is that there was 115 countries involved in that organization and what we were looking at was how to incorporate tribal and indigenous into the process of impact assessment and how to look at the different types of problems. A lot of those are transboundary.

So, at some point here with Phillip, I will sit down and talk about what some of the issues are out there and how we might be able to look at those to be helpful to you.

MR. HILLMAN: Just another point in terms of what we are missing. We are also missing some indigenous input, so I really, really appreciate that. It would be extremely helpful to the credibility of how we respond if we could get that.

MR. WILLIAMS: Okay, thank you.

MR. PARRAS: You know, since he is trying to find communities that they can work with, another avenue would be the

AFL-CIO. They are here in Washington, D.C. and if you contact them, they will connect you to other communities in other parts of the countries in the world. Because, you know, labor issues in NAFTA is a tremendous labor issue for some of those unions. So that is who you can reach out to.

MR. HILLMAN: And, Charles, I am not sure it is as much find, I mean, I think we can find people, it's a matter of getting them through this process and in place to serve.

MS. EADY: Thank you. If there are no other questions or comments for Phil, let's keep going. We are almost there. Pam.

Health and Research Subcommittee

by Pamela Kingfisher

MS. KINGFISHER: Thank you. We met yesterday and heard from our sponsoring agencies. And we have really been struggling over the past year to figure out how to give really meaningful advice and comments to our sponsoring agencies. Most of the last year we spent developing a vulnerability matrix and looking at the cumulative risk questions.

So we heard from Kevin Garrahan, it was a pretty interesting discussion from ORD about two research projects that involve public issue forums with disadvantaged members. They are involved in the development of metrics to evaluate community

preferences and satisfactions regarding community involvement and decisions around environmental cleanups. And that was real interesting.

And from all of our presenters, we asked them to think of and talk to us about activities we could be involved in with them, or advising them on.

We also heard from Rebecca Calderin from ORD around the Draft Report on the Environment Technical Document, the Human Health Chapter. And it was interesting to hear her supply us with the feedback that ORD obtained on the document during the review process from the Science Advisory Board. So we plan to look at that.

We also heard from Byran Symmes from OPPTS around their research priorities and activities related to issues of environmental justice.

Then we hosted a panel from Mossville with Wilma Subra, Eranicia Jackson from Mossville Environmental Action Network, and Monique Harden, the attorney who helps them from the Advocate for Environmental Human Rights Organization. They provided a real historical overview of the challenges they face. And Wilma just did an excellent job of providing us with handouts and overheads. A very detailed, but very basic description of the contamination that they face and what has gone on there.

There were many issues discussed regarding the study by ATSDR and a community perception of a lack of follow-up communication and community participation by the Mossville residents. They asked for our subcommittee's assistance in calling upon ATSDR to respond to the concerns of Mossville residents.

Scientist Mike Callahan was in the room and offered to work with Region 6 to help coordinate some communication and renewed efforts to assist Mossville. The community members suggested the reinstatement of the quarterly community meetings and possibly communicating updates through a newsletter to the residents.

As well, Mr. James Tullis of ATSDR was with us and was asked to follow-up on these issues for us, and report back to the Health and Research Subcommittee so that we can know that the Mossville residents' concerns are being addressed. During the lunch hour, Mr. Tullis called Atlanta and informed the appropriate person about the panel discussion and came back to us and reported that this report will be forward to Henry Falk and Mr. Tullis will communicate back to myself around this. I will be following up with Mossville on a pretty continuous basis.

From the things that the sponsoring agencies discussed with us, I guess the first piece we talked about was we really sort of

drafted our input to the ensuring risk reduction and communities with multiple stressors, the cumulative risk work.

And, particularly, we discussed the need to clarify language and terminology used in the report, such as research and community-based research, to make sure it's understood by those reading the report. The members of the subcommittee discussed that we will draft a letter to the workgroup with our written comments very briefly, and will also be attaching the vulnerability matrices that we worked on this last year.

One of the issues that the subcommittee was asked to focus on is the need for integration of environmental justice principles into EPA programs; particularly, with our sponsoring agencies, ORD and OPPTS. They talked about a lack of, or diminished attention to principles of environmental justice and the day-to-day activities and expressed an interest in obtaining suggestions from our subcommittee on ways to integrate the principles of environmental justice into their programs, especially in research. They are also interested in obtaining ideas from us on mechanisms, on engaging communities, states and tribes.

We came up with seven items –- oh, in addition, the Health and Research Subcommittee members were invited to join monthly conference calls held by the Community Tribal Subcommittee of the

ATSDR. Their DFO and a member were with us throughout the day, and we also invited them to reciprocate on our phone calls and to participate in possible future meetings for the purpose of providing input on ongoing environmental justice research.

We talked about how to collaborate on health issues and how to make this ongoing part of our work. We encouraged the ATSDR Subcommittees to also provide comments on the risk reduction Cumulative Risk Report because they had some very strong concerns they wanted us to carry forward. But, we thought it was more important that it come from them to the workgroup.

We came up with seven action items, and these will need to be prioritized and probably cut down. Because we noted our whole subcommittee disappears in December, so you will be starting over, brand new, with all new people. We are not sure that they would pick up this sort of link the agenda, because we feel like we finally have a basic understanding of some of the work we should do and the subcommittee is pretty well oriented now.

We will collect examples of efforts being undertaken by state and federal agencies to incorporate environmental justice indicators into their research. The paper will be shared with ORD and we felt like this needed to be elevated. It is really a pretty big elephant in the living room, and we wanted to further down the line

recommend to the executive council in NEJAC and discussion ways that NEJAC can influence the inclusion of environmental justice indicators in future research conducted by EPA.

We discussed developing guidelines on conducting research, especially as it relates to community-based participatory research that researchers and communities can use. Existing similar documents from other agencies can be pulled in on this. We were asked to assist ORD in making principles in environmental justice a focused element of this multi-year plan. And also, focus on the vulnerability elements within that.

We were asked by ORD to research their –- no, we weren't. We would like to discuss with ORD their research grants and explore how grants can be tools to effectively engage communities, states and tribes. And we were asked by OPPTS to read their upcoming RFP on the Small Grants Program and to assist them in making that really plain language. And, to be included as a stakeholder in their future document reviews as needed.

We were also asked that we could provide advice to OPPTS in assisting them in determining a new direction for the Lead Program. And, finally, to assist OPPTS by reviewing the Community Action for Renewed Environment, the CARE Program, to provide details on targeting risk reduction in CARE communities.

We will be receiving new DFO, so we are just always learning. Thank you. Oh, I wanted to say that we did reiterate to Mossville that we are not tired of hearing from Mossville, we are tired of no action being taken to help the residents of Mossville. So, thank you.

MS. EADY: Thank you Pam. So, not to belabor this, but your entire subcommittee is leaving, and your DFO?

MS. KINGFISHER: Well, our DFO will change next week, and we have two DFOs, but we will get a new one next week. So at the end of December, then all the committee is off.

MS. EADY: Oh, okay. Juan.

MR. PARRAS: Basically, that is what happened to us. Our DFO retired and we got another one and that one is fixing to leave. So we are fixing to get another DFO.

MS. EADY: Thanks Juan. Any other questions or comments?

(No response)

MS. EADY: Thank you Pam, that was a great report. It sounds like you guys are really busy. And, particularly, I am glad that you are paying attention to the Cumulative Risk Report, and I want to encourage the other subcommittees –- and I know that you may have discussed this already and didn't mention it in your reports, but be

sure to discuss that with your subcommittee members and it would be great if you could provide comments on it.

I am also glad that you are tracking the Mossville issue. So that is great.

Just two more subcommittees. Terry, I am going to go to you first since I am not really sure when you are leaving.

MR. WILLIAMS: We're good.

MS. EADY: You are good. Okay. Andrew, did you want to add anything?

Waste and Facilities Siting Subcommittee

by Andrew SAWYERS

MR. SAWYERS: Well, just a little bit. I think we talked about most of it, but we met with the sponsoring office yesterday, and we had Marjorie Buckholtz and Linda Garczynski, and quite a few of their staff were there. Mariana Horenka just reduced –- they had six goals establishing OSWER –- or six priorities, and there is now five priorities. But in the statement sort of preceding the priorities, environmental justice is now integrated into it. And she is encouraging the entire OSWER to ensure that in whatever their deliberations are, or implementations, and so forth, that environmental justice becomes an integral part of it.

Tim Fields was also there and one of the things that Marjorie sort of committed to is to encourage us to focus on the revitalization component, which is one of the five priorities. She is interested in even funding innovations pilot project to demonstrate some of the capacity, environmental justice capacity. So, we are going to be working jointly with her office to develop some projects and, certainly, we will discuss those projects with NEJAC.

Tim mentioned to me this morning one of the things that I have since talked to Marjorie's office about is sort of following up on the Brownsfield conference, the last Brownsfield conference, which was held in Portland. I think last year, right Tim?

MR. FIELDS: That is right.

MR. SAWYERSS: Last year. And several recommendations came out of that conference to address the inter-relationship between Brownsfield and environmental justice. And I think there is some support to continue that effort. So I will talk to Marjorie's office and Linda and others to see what else can be done.

Linda Garczynski and I talked at length about a project she wants to sort of take a comprehensive look at on unintended impacts. We have an Unintended Impacts Workgroup. I think to a certain extent, the treatment so far probably is not –- I am not sure we are going to yield the kind of report that I thought we would get out of it.

So, in part, after the conversation with Linda, I think there is an opportunity to actually have a much more comprehensive effort with the full support of OSWER, including financial and other resources.

So this has the possibility to become a fairly huge NEJAC subcommittee type work with the full support of OSWER.

And that is about it. There are a lot of other things that took place, but the one thing I would like to say, I think we have a very robust dynamic workgroup. Unfortunately, we are going to lose all but two of us December 31st. But we have a DFO who will be there and will continue to be in that position. So that is about it. We are going to submit a full minutes, but a lot of discussion took place.

MS. EADY: Thanks Andrew. Any questions or comments for Andrew?

(No response)

MS. EADY: Okay.

MR. SAWYERSS: I am sorry, the final thing I would like to say is OSWER is really supportive of the workgroup and they have shown their commitment. I just want to thank them. I don't think there is anyone from OSWER here, but Linda Garczynski, Marjorie, Marianne Horenka, they are really supportive about the workgroup. I mean, of what the subcommittee is doing and have pledge to provide

resources for us to continue our work. So I really appreciate that effort.

MS. EADY: And Andrew, I just want to say, I think it is great that they are going to support the Unintended Impacts Report and it sounds like it is going to be very comprehensive. So that is wonderful.

Now that Tim Fields is back in the room, Tim, thank you for lunch. You kept us from fainting and you helped us to be able to finish early. So we really very much appreciate that.

Charles, unless you have something –- did you have some closing comments you wanted to make?

MR. LEE: Yes, just a few. First of all, I think I would really urge that everyone that has comments on the Cumulative Risk Impacts Draft Report to send them in within 30 days. And that is to make sure that we get this out on time.

The only other comment I want to make was that I want to thank everyone. Those of you that are here, and those of you that had to leave in terms of taking time out of your schedule to spend these days with us here, as well as all the work that went into preparing for this meeting.

I mean, my sense on just from the comments people have made, and I felt really gratified by, was the fact that many people

came up to me and said they have really learned a lot from the meeting. And, you know, the way you have carried out the discussion and it was, I think, helpful. Not only in terms of the subject matter as far as the issues being addressed, as far as developing recommendations, but it was also very helpful for those who participated in terms of attending the meeting.

So I guess I just want to end by really thanking all of you and also thanking Veronica for doing a great job in chairing the meeting. And then we can go on from there.

MS. EADY: And I just want to say –- oh, Graciela, you have a comment, so why don't you make your comment.

MS. RAMIREZ-TORO: I hope you didn't answer this question when I was out, but I was, you know –- one thing that came to my mind when we were talking about the reappointments is that usually by the end of the meeting, we have an agenda for the next year. And this meeting we haven't talked about what is the future of NEJAC, what is our next topic. So is that we haven't decided yet, or is there any further –-

MR. LEE: In terms of this, there is two issues you raised. The first is the next charge, question, that EPA wants to provide to the NEJAC to focus on, that has not yet been decided yet. And,

obviously, the timing of the next meeting is going to be very much related to that. So that is going to be dependent upon that.

MS. EADY: And also the location of the next meeting will be dependent on that question.

MR. LEE: Right. Right.

MS. ESPINOSA: Well, I have the same question Graciela did. Because usually by now we have some idea of how we are going to move forward in the next year. And then when the new people are appointed, we get together on the phone or whatever and talk to them about outlining whatever. And, again, I am just going to raise this concern that there is 15 of us going off the council, and when Pam says all of her subcommittee members are gone and I look in there and it is startling. It is beginning to worry me.

I wasn't so worried when I saw this at the first part of the meeting time, when I was looking through the folder, but I am now. Because if it takes this long to get seven people appointed, what is it going to take –- the then 15 and we are always going to have this huge gap.

And not only a huge gap, but the work product that comes out, people will not benefit from people like Wilma Subra and Mary Nelson and others who have been doing this work for yeas and year and years. And Connie Tucker, who will be off as well. And I just feel

that the lack of overlap and the institutional memory of this group is gone after this year.

And that takes nothing away from the new members, but there is something to be said for the institutional memory of the NEJAC. And I am fortunate to have Richard Moore in my state and others that I can see and deal with all the time, but those who do not, who are more isolated from that institutional memory, I am very concerned and I am beginning to be paranoid about it. Let me just put it to you that way.

MR. LEE: Well, we don't want you to be paranoid.

MS. ESPINOSA: I don't know if I should be, but it goes back to my old '60s days. I am just, you know.

MR. LEE: We certainly don't want you to be paranoid.

MS. EADY: No. And I share your concern, especially, when I hear about the subcommittees and that Health and Research which has been so productive and doing so much work, is going to be completely gone in December. I find that really disconcerting.

Charles, before you respond, Andrew, did you want to —-

MR. SAWYERSS: I just wanted to say to Judith, I am probably not as concerned, and I will tell you why. I sit on another FACA, the Environmental Finance Advisory Board, which gets a lot of financial assistance from EPA's financial office. And you would think

getting members onto that board would be much quicker, it is the same process. I think the process —- you know, Charles says they are trying to streamline it, but it is just very difficult at this time to get new members on.

So I think the process ultimately will work, but it is just not this board alone. So if we are scared that they are sort of marginalizing the EJ Board, it is not just this council. Other boards are across EPA.

MS. ESPINOSA: No, and I understand that.

MR. SAWYERSS: They are experiencing the same concern.

MS. ESPINOSA: And that is part of my concern. I realize it is not just NEJAC.

MR. LEE: Yes, I appreciate the issues that are being raised around the membership issues, and it is something that we share your frustrations. We share on an everyday basis nearly. So, you know, I hear what you are saying, and I hear the concerns about the transitions, and the overlaps, and issues of continuity, and things of this nature.

I mean, I think the fact of the matter is is that over time, the NEJAC has become —- I mean, it is not just one committee. You know, it is one committee with seven subcommittees and a number of

workgroups. You know, so these are going to be institutional complexities that are there. So I think that there are going to be certain periods of time when a certain kind of these issues are going to emerge.

But I would just ask that you just look at it another way, which is to say that, you know, the process that was started several years ago to actually retool the NEJAC, you know, we realized was going to take awhile to get grounded. And you are beginning to see not only —- I mean, you began to see a couple of years ago the fruits of that in terms of the reports and recommendations. You know, last year, the year before you saw the report-back around the pollution prevention recommendations which, ultimately, is where this thing all is where the rubber meets the road as far as —- I mean, making recommendations is important and necessary, but it is not sufficient as what you do to implement them.

And then you are beginning to see out of the subcommittees real substantial work products. And that took several years. So I think that —- you know, I don't want you all to leave today —- I want you to all leave today, (1) recognizing that we hear what you are saying, and that there is a lot of concern on the part around issues like that; (2) that we are going to work through —- I mean, in Andrew's words are clearly important to hear, which is that we will

work through all these and we have to, perhaps, do certain kinds of things to compensate, perhaps, but we will work through these things; and (3) not to lose sight of the significant progress and the work that you have done and the contributions that you made. Which is quite substantial.

MS. EADY: Charles, I just want to encourage you and OEJ in light of all of the discomfort that we voiced, to really work hard to think about what the next question might be. And maybe on the next conference call, we can come back to the conference call having given some thought to it ourselves as council members and have a discussion about maybe some suggestions that we can make to at least get that piece of it going before so many of us, including myself, disappear from the council in December.

MR. LEE: Right, okay.

MS. EADY: I want to thank you all for a wonderful meeting. When I asked you to be on time, you were five minutes late. That is really, really an accomplishment.

(Laughter)

MS. EADY: So I want to thank you. It was a wonderful, wonderful meeting. And I want to also thank the Cumulative Risk Workgroup. They put in so much work coming into the meeting, and

1 so much work at the meeting, presenting and helping us understand
2 the goals of the report and the work that they had put into the report.
3 So thank you all very much. I know that many of us will still
4 be here tonight and are leaving tomorrow, and I am one of those
5 people. So let's keep an eye out for each other so we can continue to
6 maybe get together socially and talk about some of these issues
7 more.
8 I hope you all have safe travels. I think we all have our air
9 bills right now, and so just don't forget to drop your boxes off on your
10 way our. I will talk to you on the next conference call.
11 (Whereupon, the meeting was concluded at 1:45 p.m.)