

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**  
**Baltimore, Maryland**  
**December 9 through 12, 2002**

**Meeting Synopsis**

This summary presents highlights of the 16th meeting of the National Environmental Justice Advisory Council (NEJAC), held December 9 through 12, 2002 at the Baltimore Marriott Inner Harbor Hotel in Baltimore, Maryland. On December 10, the NEJAC hosted a public comment period during which representatives of community organizations presented their concerns about pollution prevention, waste minimization, and environmental justice. Six of the seven subcommittees of the NEJAC met for a full day on December 11, 2002. Approximately 300 persons attended the meetings and the public comment period.

The NEJAC is a federal advisory committee that was established by charter on September 30, 1993 to provide independent advice and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. Ms. Peggy Shepard, West Harlem Environmental Action, serves as the chair of the Executive Council of the NEJAC. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, EPA Office of Environmental Justice (OEJ), serves as the Designated Federal Officer (DFO) for the Executive Council.

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

**REMARKS**

Members of the NEJAC heard remarks from:

- Mr. J.P. Suarez, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA) commended the efforts of the members of the NEJAC and expressed appreciation for the role that they play in assisting EPA in addressing issues related to environmental justice. Noting the 10-year anniversary of the establishment of EPA's OEJ, Mr. Suarez stated that the "protection and promise" reflected by the establishment of OEJ only will be complete when environmental justice is incorporated into all EPA programs and offices. He said that OECA is incorporating environmental justice into its programs by (1) factoring environmental justice into all aspects of planning and budgets, (2) emphasizing environmental justice issues as a criterion for case selection, and (3) using data, experience, and research to drive strategic efforts for getting companies into compliance.
- Mr. Thomas Voltaggio, Deputy Regional Administrator, EPA Region 3, welcomed the members of the NEJAC to Baltimore, Maryland. He stated that EPA Region 3 is committed to continuing efforts to ensure environmental justice for all communities in the Mid-Atlantic region. He added that EPA Region 3 is working with all the state governments in that region to develop a more cooperative, proactive environmental justice program.
- Ms. Denise Ferguson-Southard, Deputy Secretary, Maryland Department of the Environment (MDE), also welcomed the members of the NEJAC, commenting that the topic of pollution prevention and environmental justice was appropriate for the State of Maryland. She stated that state governments, as well as EPA, need the input of NEJAC to ensure environmental justice for communities within their states.
- Mr. Cleo Holmes, Concerned Citizens of Eastern Avenue, Washington, D.C., welcomed the members of the NEJAC on behalf of local grass-roots organizations. He shared his observation that as the number of local communities have continued to grow, they have become more supportive to each others' needs. This has led to producing results.
- Dr. William Sanders, Deputy Assistant Administrator, EPA Office of Prevention, Pesticides, and

Toxic Substances (OPPTS), stressed that, in his opinion, pollution prevention and environmental justice are at the heart of issues being addressed by EPA programs and offices.

### **CASE STUDIES AND RELATED DIALOGUE**

On Monday, December 9, 2002, members of the NEJAC participated in a dialogue about selected communities that are affected by issues related to environmental justice, pollution prevention, and waste minimization. Presenting cases studies, representatives of community organizations and federal and state agencies described efforts to address pollution prevention and waste minimization in two communities affected by environmental justice issues. The topics discussed are described briefly below.

- Mr. Neil Carman, Lone Star Chapter of Sierra Club, presented a case study centered in the Channelview area of Houston, Texas. It is entitled, "Source Reduction Project: A Step by Step Method of Reducing Pollution in Our Communities." The goal of the community-based effort, he reported, was to (1) reduce emissions to promote a cleaner and healthier environment by making the elimination of emissions at the source a priority over minimizing emissions once they have been created; and (2) establish a dialogue between chemical companies and the surrounding community. He reported that the project has yielded significant benefits for the companies as well as the community. Specifically, the community has benefitted from reduced emissions, reduction in flaring, and improvement in plant maintenance and reliability, he said. He also noted that the companies have benefitted due to reduced emissions, which has led to less waste and an increase in profits, as well as an improved image in the community. Mr. Carman explained that plant personnel have become more aware of community concerns and has developed an understanding of why citizens target certain chemicals.
- Mr. Bernard Penner, MDE; Mr. Voltaggio, EPA; and Mr. Henri Thompson, Park Heights Corridor Coalition, Inc., presented a case study from the Park Heights neighborhood of Baltimore, Maryland. It is entitled "Park Heights Auto Body/Auto Repair Shops." They described the goal of the program as one of measuring the results of compliance assistance efforts and inspections to provide information, education, and assistance that will promote a change in behavior of operators of auto body shops. To date, one indicator of success is improved communication and cooperation among EPA Region 3, MDE, and the Park Heights community. The project also focuses on environmental indicators of success such as a decrease in the amount of oil and grease found in the municipal waste water treatment plant. In addition, many effective methods for promoting environmental compliance have been identified, resulting in pollution reduction and prevention, and in waste minimization.

### **REPORTS AND PRESENTATIONS**

During the 3 ½ day meeting of the NEJAC, the members of the Executive Council also received presentations from the following individuals:

- Members of the NEJAC Pollution Prevention Work Group provided a presentation on the NEJAC's draft report, *Advancing Environmental Justice through Pollution Prevention*. During their presentation, the members of the work group reviewed the findings of the Work Group. The draft report was compiled in preparation for the December 2002 meeting of the NEJAC. The members of the NEJAC then discussed the report and proposed recommendations at length, suggesting revisions in the draft report and identifying additional proposals. The OEJ requested that comments from the public on the draft report be submitted to OEJ by January 31, 2003. The anticipated date for the completion of the report is Summer 2003.
- Mr. Hal Zenick, EPA Office of Research and Development, submitted a written presentation about EPA's response to the *Environmental Justice and Community-Based Model Discussion and Recommendations Report*, completed in February 2001 by the NEJAC. The written presentation outlined how EPA has begun to respond to the recommendations presented in that report.
- Mr. Richard Moore, Southwest Network for Environmental and Economic Justice, and Mr. Lawrence Starfield, Deputy Regional Administrator, EPA Region 6, shared lessons learned from

the experience of planning and conducting the Regional Environmental Justice Listening Session held in EPA Region 6 on November 14 through 16, 2002, in Houston, Texas. .

- Mr. Timothy Fields, Tetra Tech EM Inc., and Mr. Michael Steinberg, Morgan, Lewis, and Bockius, shared preliminary findings from a study of environmental justice practices in business and industry. They reported that the OEJ is supporting the study to learn more about industry perspectives about environmental justice, and to highlight some of the best practices to address environmental justice in environmental permitting.

In preparation for the April 2004 meeting of the NEJAC, Mr. Lee presented an overview about cumulative risks and cumulative impacts, highlighting the *Cumulative Risk Assessment Framework* being developed by EPA. He provided an overview of the key definitions and features from the Framework, and outlined the role that NEJAC's process for providing advice and recommendations on the issue, including the establishment in Spring 2003 of a NEJAC Work Group on Cumulative Risks/Cumulative Impacts, and followed by a meeting April 13-16, 2004, in New Orleans, Louisiana.

### **Significant Concerns Expressed During the Public Comment Period**

The Executive Council of the NEJAC hosted a public comment period on December 10, 2002, at which 20 individuals provided testimony and 2 individuals provided written statements. The commenters represented a broad spectrum of stakeholders from around the country, including American Indian and Native Alaskan communities, communities near defense facilities, state agencies, and private industry. Described below are a summary of key concerns citizens expressed during the evening session.

- Many individuals offered suggestions for improving the draft report, *Advancing Environmental Justice Through Pollution Prevention*. Specific recommendations included adding a discussion about pollution prevention at federal facilities, providing more detail about integrated pest management, and developing an insert for Native Alaskan lands.
- Several individuals commented about environmental justice issues related to federal facilities. Military installations should be held to that same standards as private organizations, they said, adding that the fact that EPA has limited jurisdiction over those facilities is a problem.
- Numerous concerns were discussed concerning environmental justice issues in Alaska. The commenters explained that many Alaskan Natives practice a subsistence lifestyle that is very sensitive to exposure from contaminants. In addition, they said, the unique nature of the Alaskan climate is such that traditional risk analysis, contaminant modeling, and typical disposal of contamination that is applied to the rest of the United States is not relevant to or possible in Alaska. Native Alaskan and Alaskan communities are complex and pose unique challenges, they stated.
- Many individuals stressed that it is imperative that communities be involved in decision-making processes. Community members need to be recognized as stakeholders and included in negotiations, they urged. Too often, they explained, environmental permits are granted without public knowledge.

**MEETING SUMMARY**

**of the**

**EXECUTIVE COUNCIL**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

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

**Charles Lee  
Designated Federal Official**

**Peggy Shepard  
Chair**

## CHAPTER ONE MEETING OF THE EXECUTIVE COUNCIL

### 1.0 INTRODUCTION

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

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

In addition to this chapter, this report includes seven additional chapters that document the NEJAC meeting from December 9 through 12, 2002. On December 9, 2002, the members of the Executive Council were presented two *Case Studies on Pollution Prevention and Environmental Justice*, that describe the efforts of community organizations and federal and state agencies to pursue pollution prevention and waste minimization in two communities affected by environmental justice issues. During the evening of December 10, 2002, the NEJAC hosted a public comment period during which representatives of community organizations presented their concerns about pollution prevention, waste minimization, and environmental justice.

Chapter Two summarizes the case studies and the comments offered during the public comment period. On December 11, 2002, the members of the Executive Council who were present on that day participated in the deliberations of six of the seven subcommittees of the NEJAC. Chapters Three through Eight of this meeting summary describe those deliberations.

### 2.0 REMARKS

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

Exhibit 1-1

#### EXECUTIVE COUNCIL

##### Members Who Attended the Meeting December 9 through 12, 2002

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

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

##### Members Who Were Unable to Attend

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

\*Attended on December 9 and 10, 2002, only

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

### **2.1 Remarks of the Assistant Administrator, EPA OECA**

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

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

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

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

### **2.2 Remarks of the Deputy Assistant Administrator, EPA OPPTS**

Dr. William Sanders, Deputy Assistant Administrator, EPA OPPTS, stressed that in his opinion, pollution prevention and environmental justice are the most

important issues to be addressed by EPA programs and offices.

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

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

### **2.3 Remarks of the Deputy Regional Administrator, EPA Region 3**

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

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

- The Baltimore Urban Risk Initiative conducted in Baltimore, Maryland, in 1995 and 1996. The initiative represented a joint effort by the City of Baltimore, the MDE, and EPA Region 3 to identify and address environmental issues of concern.
- The MDE Fish Consumption Survey, a comprehensive study of subsistence fishing in Baltimore Harbor
- Indoor air pilot programs in Baltimore public schools that involved the training of school system heating, ventilation, and air conditioning (HVAC) workers in how to maintain school air handling equipment in a manner that has helped them to operate more efficiently, thus lowering emissions
- An ongoing auto body and auto repair shop initiative in the Park Heights community of Baltimore City, Maryland (see Chapter Two, Section 2.1 of this report for a summary of that effort)

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

#### **2.4 Remarks of the Assistant Secretary, MDE**

Ms. Denise Ferguson-Southard, Assistant Secretary, MDE, also welcomed the members of the NEJAC on behalf of Maryland Governor Paris Glendening and Maryland Secretary Ray Pecore. Ms. Ferguson-Southard commented that the topic of pollution prevention and environmental justice was appropriate for the State of Maryland. The state strongly supports integrating environmental justice into its many programs, she said, and pollution prevention is one of the many programs targeted in this effort. She asserted that advancing environmental justice through pollution prevention is part of a transition to a new vision of environmental

responsibilities shared among business, government, and impacted communities. As a result of new relationships among business, government, and impacted community members, she explained, pollution prevention strategies and approaches could shift limited resources into more productive, revitalizing work that is assisted and enabled by empowered and engaged community members.

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

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

#### **2.5 Remarks of a Representative of Concerned Citizens of Eastern Avenue**

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

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

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

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

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

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

### **3.0 POLICY DIALOGUE ON POLLUTION PREVENTION AND ENVIRONMENTAL JUSTICE**

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

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

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

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

### **3.1 Overview of the Draft Pollution Prevention Report**

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

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

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



performance.

- Pollution prevention should apply relevant lessons from global experience.
- Pollution prevention should promote the use of new and emerging technologies such as alternative fuels and renewable energy.
- Pollution prevention should build on what already exists.
- Pollution prevention should address special economic, political, social, public health, and environmental attributes of at risk and underserved subpopulations (such as tribes and children).

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

As the small workgroups began to prepare individual portions of the report, she explained, two tracks began to emerge: (1) a stakeholder track and (2) a consensus track. Each group in the stakeholder track (community perspectives, tribal perspectives, business and industry perspectives, and government perspectives) developed its own chapter independent of the thoughts and perspectives of the other stakeholder workgroups. A consensus workgroup was formed with representatives of each stakeholder workgroup to incorporate the perspectives of all the stakeholder groups into

another chapter, the consensus chapter. Ms. Subra stressed that all members of the Pollution Prevention Workgroup were engaged in the process and were given numerous opportunities to comment on the consensus chapter as it was being developed.

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

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

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

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

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

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

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

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

In response to the overview of the draft pollution prevention report, Mr. Tseming Yang, Vermont Law School and a chair of the International Subcommittee, asked why a stakeholder perspective from academia had not been included in the report. Ms. Subra responded that, in addition to the participation of Mr. Dean Suagee, Vermont Law School, who had contributed to the tribal perspective chapter of the report, members of academia had participated in the small workgroup that had focused on critical areas and emerging directions in pollution prevention. Mr. Yang stated for the record that omitting an academic perspective from the process represented the loss of an important perspective on

pollution prevention and environmental justice. He also inquired whether representatives of OECA had participated in preparing the report. Ms. Subra responded that OECA representatives had provided input during the initial meeting held in July 2002 but had not formally participated as members of the workgroup.

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

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

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

### **3.2 Community Perspectives on Pollution Prevention**

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

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

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

### **3.3 Tribal Perspectives on Pollution Prevention**

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

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

governments continue to face the internal challenge of developing environmental infrastructure and programs that are comparable to similar state programs, he said.

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

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

### **3.4 Business and Industry Perspectives on Pollution Prevention**

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

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

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

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

### 3.5 Government Perspectives on Pollution Prevention

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

Conservation Act (RCRA) of 1976, and the Clean Water Act (CWA) of 1977.

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

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

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

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

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

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

### **3.6 Presentation of Consensus Proposals**

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

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

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

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

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

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

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

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

environmental auditing, Mr. Yang raised the concern

Exhibit 1-2

### LIST OF CONSENSUS PROPOSALS

#### Community Leadership and Capacity-Building

- 1 Develop and promote implementation of a multi-stakeholder collaborative model to advance environmental justice through pollution prevention that ensures meaningful design and implementation for impacted communities
- 2 Increase community and tribal participation in pollution prevention partnerships by promoting capacity-building in low-income, minority, and tribal communities

#### Using and Expanding Existing Tools to Improve Conditions in Communities

- 3 Identify and implement opportunities to advance environmental justice through pollution prevention in federal environmental statutes
- 4 Promote local multimedia, multihazard reduction planning and implementation
- 5 Promote efforts to incorporate pollution prevention and environmental justice into Supplemental Environmental Projects (SEP)
- 6 Strengthen implementation of pollution prevention programs on tribal lands and in Alaskan Native villages
- 7 Promote efforts to institutionalize pollution prevention internationally, particularly in developing countries

#### Providing Incentives to Private Markets

- 8 Encourage “green buildings, “green businesses,” and “green industries” through programs such as, EPA’s Brownfields and Smart Growth programs
- 9 Promote product substitution and process substitution in areas that impact low-income, minority, and tribal communities
- 10 Promote just and sustainable transportation projects and initiatives
- 11 Provide incentives to promote collaboration among communities, tribes, businesses, and government agencies on pollution prevention projects in environmental justice communities

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

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

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

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

Ms. Walker noted that the issue of enforcement is particularly important in Indian country. There are approximately 53 million acres of Indian lands in the United States, she explained, but state environmental laws almost never apply, and it is up to the tribes or EPA to administer federal environmental laws and enforce them on reservations. Although tribes can assume

responsibility under CWA and CAA, she continued, few tribes have developed the necessary programs to achieve this effectively. Thus, EPA is generally responsible for implementing and enforcing environmental laws in Indian country.

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

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

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

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

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

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

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

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

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

- Assist in developing measurable goals and clear environmental outcomes
- Provide support for consensus building and dispute resolution, where appropriate

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

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

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

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



impacted communities, such as consultant groups.

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

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

- Provide resources to facilitate community and tribal participation in pollution prevention projects
- Use and widely disseminate pertinent educational materials that have already been developed and translated
- Develop a citizen primer on pollution prevention technologies and strategies that is accessible for the layperson, drawing upon pertinent materials that have already been developed
- Create a pollution prevention training academy for communities. This should be a mobile academy that involves cooperation between academic institutions and public and private training institutions and resources, especially those designed for environmental justice communities.
- Create a pollution prevention training academy for tribes, tribal colleges, and Native American organizations
- Compile a collection of case studies featuring community and tribal representation in pollution prevention. Successful collaborations would be useful as examples of pollution prevention partnerships. A clearinghouse containing the case studies should be placed on a web site. The multi-stakeholder collaborative model should be provided to local governments and

community organizations. The model should detail the steps of an effective community involvement process for pollution prevention projects.

- Where appropriate, apply fines collected from noncompliant facilities in environmental justice communities to pollution prevention projects that benefit the health, environment, and quality of life of community members rather than directing these monies to state and local general funds or to the United States Treasury. Community members and facility employees should oversee these projects jointly to ensure that community needs are met and to encourage improved collaboration between the penalized facilities and their neighbors.

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

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

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

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

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

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

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

encourage tribes to integrate pollution prevention into programs for which it has primary authority. EPA should also provide assistance to tribes that choose to promote pollution prevention through tribal laws such as Tribal Environmental Policy Acts (TEPA).

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

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

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

- Identify a mechanism for locating areas with multiple sources of pollution.
- Distinguish between permitted and nonpermitted sources and activities.
- Identify opportunities to implement pollution

prevention at permitted facilities.

- Document and develop regulations, incentives, and other initiatives to reduce pollution from permitted and nonpermitted sources.
- Compile and apply existing EPA and other methods and approaches for multihazard reduction planning.
- Apply the multi-stakeholder collaborative model to accomplish multihazard reduction.

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

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

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

**Consensus Proposal 5.** Ms. Briggum then provided a more detailed overview of Consensus Proposal 5, which calls for promoting efforts to incorporate pollution prevention and environmental justice into SEPs. Ms. Briggum explained that a SEP is an environmentally beneficial project not required by law that an individual, corporation, or government entity agrees to perform in settlement of an enforcement action. In exchange for the party making a legal commitment to undertake a SEP, she said, a percentage of the cost of the SEP may be considered part of the penalty payment. She explained that the Pollution Prevention Workgroup is

interested in building on the concepts already incorporated into EPA’s SEP policy to enrich their application in environmental justice communities. She then shared the following action items developed by the workgroup to facilitate EPA implementation of Consensus Proposal 5:

- Improve the coordination and efficiency of SEP activities through increased programmatic integration of the audit policy, compliance assistance, pollution prevention SEPs, and environmental justice activities.
- Improve the quality of SEPs, increase community participation in SEPs, and reduce the transaction costs of SEP agreements through implementation of pollution prevention SEP training designed for different stakeholder groups, implementation of a Pollution Prevention SEP Library, and finalization of the draft “EPA Guidance for Community Involvement in Supplemental Environmental Projects” (65 *Federal Register*, 40639-40644; June 30, 2002).
- Increase the number of pollution prevention SEPs by (1) encouraging states, tribes, and municipalities to establish SEP policies; (2) establishing a system of incentives both within and outside EPA; and (3) increasing communication between EPA regional SEP coordinators and EPA regional environmental justice coordinators.
- Create market-based pollution prevention SEPs through which an entity could purchase or fund pollution prevention initiatives at non-entity facilities that benefit the impacted low-income or minority community to have a greater impact on impacted communities in general.
- Quantify the results of pollution prevention SEPs through tracking and monitoring; this will help identify uses and appropriate focus areas for the SEPs.

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

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

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

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

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

- EPA should provide or offer assistance to tribal governments that need to fill the enforcement gap by Direct Implementation of Tribal Cooperative Agreements (DITCA).
- EPA should provide or offer assistance to tribal governments for drafting and implementing TEPAs that include pollution prevention requirements.
- EPA should provide or offer assistance to tribal governments to encourage them to engage in land use planning and economic development activities that promote pollution prevention.
- EPA should provide or offer assistance to tribal governments to encourage them to develop walkable neighborhoods, incorporate smart growth principles, and use geographic information system (GIS) technologies to support land use analysis and planning.
- EPA should provide or offer assistance to tribes,

tribal education institutions, and Native American organizations to help them institute educational programs promoting pollution prevention on and near tribal lands.

- EPA should work with other federal agencies to provide or offer assistance to tribes to help them promote pollution prevention initiatives as part of industrial development.
- EPA should provide or offer assistance to tribal governments to encourage them to develop memoranda of understanding (MOU) with adjacent government entities, such as states or municipalities, in order to address pollution prevention issues and implement pollution prevention programs.

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

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

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

### **3.9 Providing Incentives to Private Markets - Consensus Proposal 11**

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

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

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

- EPA should identify “priority pollution prevention communities” based on the risk posed to communities from the aggregate of polluting sources. This initiative should focus on communities of color and low-income communities, thereby reflecting EPA’s stated commitment to environmental justice. EPA should provide both compliance assistance and incentives for pollution reduction and elimination for efforts developed within these communities.
- EPA should develop and implement programs, initiatives, and incentives to encourage businesses to engage in collaborative partnerships to implement pollution prevention, use “green” technologies and nontoxic materials, and design innovative processes in minority and low-income communities. The incentives could include: (1) special recognition of a business for its pollution prevention activities; (2) low-interest loans or grants for research into pollution prevention; (3) expedited permitting; (4) consolidated multimedia reporting; (5) flexible, multimedia, facility-wide permits with a single government point of contact; (6) “smart permits” that allow a range of operating scenarios to be considered by the companies seeking the permits; (7) compliance options in permits based on pollution prevention technologies or innovation; and (8) increased emission reduction credits or higher trading ratios where pollution prevention activities are practiced (in the context of an emission trading program designed to reduce the overall pollution in an environmental justice community).
- EPA should initiate and should encourage states to initiate programs to assist small businesses in developing and implementing pollution

prevention activities, including source reduction, waste minimization, and recycling.

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

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

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

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

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

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

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

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

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

Ms. Subra gave a presentation that outlined what the Pollution Prevention Workgroup identified as the “necessary elements” of a multi-stakeholder collaborative model for advancing environmental

justice through pollution prevention. These elements are presented below:

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

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

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

### **3.11 Enforcement and the Precautionary Principle**

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

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

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

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

Mr. Lee pointed out that there may be situations in

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

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

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

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

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

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

ensure that all participants “had equal space at the table.”

#### **4.0 PRESENTATIONS AND REPORTS**

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

##### **4.1 Region 6 Environmental Justice Listening Session**

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

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

Mr. Moore stated that the planning process also had been crucial to the success of the listening session. The involvement of representatives of all stakeholder groups in the extensive planning process, helped



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

Acknowledging Mr. Moore's comments, Mr. Starfield stated that the listening session had marked the beginning of an ongoing dialogue among stakeholders in EPA Region 6. He agreed that the planning process had been critical to the success of

the listening session. He explained that the planning committee had included representatives of community-based organizations, academia, industry, and government. The planning committee participants had been instrumental in identifying the key topics for discussion during the listening session, he said. The planning committee had developed the listening session agenda and had created workgroups to develop issue papers for each issue identified, he continued. The committee also had played an important role in the success of the meeting by establishing official ground rules and objectives before the meeting, he said.

Mr. Starfield continued that the listening session also

### Exhibit 1-3

#### PRECAUTIONARY APPROACH

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

– Principle 15 -- Rio Declaration on Environment and Development

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

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

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

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

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

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

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

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

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

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

participating in environmental justice listening sessions. He hoped that the positive, constructive work at the first listening session would encourage such states to participate in the future.

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

#### **4.2 Update on OEJ Business Practices Study**

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

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

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

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

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

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

industry representatives with regard to environmental justice.

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

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

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

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

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

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

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

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

- Hosting public participation meetings facilitated by a neutral party before seeking facility permits. Companies using this approach reported significant resource savings when they had addressed community concerns in the planning stages rather than after facility construction.
- Ensuring that senior facility managers live in the community where the facility is placed and hiring from the local workforce to assure community members of the company’s commitment to the community.

In closing, Mr. Fields said that one of the next steps

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

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

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

### **4.3 Update on the Cumulative Risk Assessment Framework**

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

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

the document by the end of 2003.

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

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

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

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

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

## 5.0 MISCELLANEOUS BUSINESS

This section summarizes miscellaneous business conducted by the Executive Council.

### 5.1 Announcement of the April 2004 Meeting of the NEJAC

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

### 5.2 Other Business

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

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

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

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

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

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

**MEETING SUMMARY**

**of the**

**AIR AND WATER SUBCOMMITTEE**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11, 2002  
Baltimore, Maryland**

**Meeting Summary Accepted By:**

**Alice Walker  
Co-Designated Federal Official**

**Eileen Gauna  
Chair**

**Wil Wilson  
Co-Designated Federal Official**

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

**1.0 INTRODUCTION**

The Air and Water Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Ms. Eileen Gauna, Southwestern University Law School, continues to serve as chair of the subcommittee. Ms. Alice Walker, U.S. Environmental Protection Agency (EPA) Office of Water (OW), and Dr. Wil Wilson, EPA Office of Air and Radiation (OAR), continue to serve as the co-Designated Federal Officials (DFO) for the subcommittee. Exhibit 3-1 identifies the subcommittee members who attended the meeting or participated by conference call, as well as those members who were unable to attend.

This chapter, which summarizes the deliberations of the Air and Water Subcommittee, is organized in four sections, including this *Introduction*. Section 2.0, *Activities of the Subcommittee*, summarizes the discussions about the Permitting Workgroup. Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report as well as a summary of significant questions and comments from the subcommittee members. Section 4.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

**2.0 ACTIVITIES OF THE SUBCOMMITTEE**

This section briefly summarizes the discussions of the subcommittee about the activities of the Permitting Workgroup.

**2.1 Report on the Status of the Permitting Workgroup**

Mr. Kenneth Manaster, Santa Clara University School of Law and chair of the Permitting Workgroup, spoke about the efforts of the workgroup to recommend ways to improve the integration of environmental justice into federal environmental permitting. His discussion focused on the workgroup's efforts to prepare a *Environmental Justice Recommended Practices Guide for Permitting* that provides guidance and recommendations for improving the integration of environmental justice into environmental permitting.

He added that the workgroup has recommended examining permitting processes individually to determine their compliance with law. Mr. Manaster pointed out that although adoption of the recommended best practices is optional, the need to recognize good practices for including environmental justice in permitting is crucial. However, he reported that the efforts of the workgroup had been hampered by limited membership and a lack of enthusiastic members. He also stated that the workgroup struggled with defining the distinction between what is "recommended" and what is regulated or required by law. He stressed that the objectives outlined in the guide are only recommended practices and do not have legal standing. Mr. Manaster concluded that the situation required use of a "creative methodology without inhibiting better approaches."

Mr. Manaster then discussed the organization of the *Recommended Practices Guide*, which features two sections. One section focuses on what he termed "flash points" – the most common steps in environmental permitting processes where environmental justice concerns historically have not been addressed adequately. Examples of common flash points include site determination, public participation (including timing and methodologies), cumulative pollutant impacts, determination of facility

**Exhibit 3-1**

<p><b>AIR AND WATER SUBCOMMITTEE</b></p> <p><b>Members Who Attended the Meeting December 11, 2002</b></p> <p>Ms. Eileen Gauna, <b>Chair</b> Ms. Alice Walker, <b>Co-DFO</b> Dr. Wil Wilson, <b>Co-DFO</b> Ms. Wilma Subra</p> <p><b>Members Who Participated via Conference Call</b></p> <p>Mr. Kenneth Manaster Mr. Jason Grumet Mr. Robert Sharpe</p> <p><b>Members Who Were Unable To Attend</b></p> <p>Dr. Elaine Barron</p>
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compliance, and disproportional impacts. Mr. Manaster stated that the guide identifies specific recommendations that would diminish or minimize those steps as “flash points.” Mr. Manaster explained that the second section of the guide identifies both litigation issues and various permit enforcement mechanisms that allow for effective control of harmful effects of the permit. He mentioned that this section lists recommended practices and approximately 10 areas of the permit where safe practices can be found and which need to be organized and documented by the permitting agency and other permit sources.

Mr. Manaster concluded his presentation by stating that the *Recommended Practices Guide* represents a work in progress. His two recommendations for improving the document were to (1) identify and gather similar experiences from around the country and (2) consider other similar efforts and lessons learned. He commented that the workgroup expects to complete the guide in fall 2003.

Ms. Gauna supported Mr. Manaster’s recommendations and emphasized the need to recruit and encourage the participation of individuals who have “genuine experiences” with the subject matter to help prepare the guide. Referring to the workgroup’s struggle with definitions and “finding the right context,” she encouraged the members of the workgroup to seek greater community involvement while developing the guide.

Mr. Robert Sharpe, Illinois EPA and a member of the subcommittee, briefly addressed the state’s perspective about permitting and environmental justice, problems associated with the permits issued, and concerns of the authorities involved. He stressed that the guide does not prescribe specific actions but rather, lists broad recommendations for improving the integration of environmental justice in environmental permitting processes.

Ms. Gauna concluded by emphasizing the importance of timing and public participation in document planning. She closed by reminding the group of the conference call in January 2003. She recommended that as many Workgroup members as possible participated in the conference call to integrate all the proposed ideas.

## **2.2 Investigating Renewable Energy**

Mr. Jason Grumet, Executive Director, National Commission on Energy Policy and a member of the subcommittee, expressed his interest in renewable energy projects. He asked whether there is enough interest in this area to pursue. In response, Ms.

Gauna recommended forming a workgroup to explore the issue.

## **3.0 PRESENTATIONS AND REPORTS**

This section summarizes the presentations made and reports submitted to the Air and Water Subcommittee. The presentations addressed environmental permitting, the EPA Region 6 Environmental Justice Listening Session, and the use of reductions in nitrous oxide (NO<sub>x</sub>) emissions to offset increases in volatile organic compounds (VOC) to promote the reduction in ozone levels.

### **3.1 Environmental Permitting**

The members of the subcommittee were provided an overview about environmental permitting. Presentations included information about the commitment of EPA OAR to environmental justice and an update about EPA’s Pollution Prevention Pilot Program.

#### **3.1.1 EPA OAR Commitment to Environmental Justice**

Mr. Robert D. Brenner, Deputy Assistant Administrator, EPA OAR, presented plans, strategies and activities to incorporate environmental justice into OAR’s existing programs. He emphasized that as the office moves forward to reduce air pollution and protect public health, it will focus on addressing issues related to pollution prevention and permitting. He reaffirmed OAR’s commitment to achieving environmental justice, which, he said, is addressed in OAR’s draft Environmental Justice Action Plan that recently had been submitted to the EPA Office of Environmental Justice for comments. Mr. Brenner also described several programs that reflect OAR’s commitment to environmental justice, which include promoting indoor air and radiation protection through radon and childhood asthma education, conducting transportation planning programs in Baltimore, and introducing pilot projects that focus on toxics in a south Phoenix, Arizona community. Mr. Brenner went on to discuss other efforts that address environmental justice concerns, such as the tracking of emissions caused by the idling of heavy vehicles, emission reduction levels for power plants, the retrofit of diesel equipment, and toxic “hotspots.”

Mr. Brenner commented that OAR’s focus in coming years will be on new source review. (NSR) program. As he stated, modifications to the NSR requirements will address changes made to reform and streamline power plant permitting, the installation of modern pollution prevention equipment, and the effects of emissions. He presented a case study that

illustrated the effects of installing a new turbine in a power plant. He pointed out that the new turbine would be more efficient but possibly could produce more total emissions. Therefore, he explained, the proposed upgrade generated some controversy and could have resulted in higher costs for the plant.

Mr. Brenner then announced that OAR had proposed to use a "percent threshold limit" to address such issues that arise out of routine maintenance, repair, and replacements. Since 1980, he explained, EPA regulations have excluded from NSR review all repairs and maintenance activities that are "routine," but required a complex analysis to determine what activities meet that standard. That approach has deterred companies from conducting repairs and replacements that are necessary for the safe, efficient and reliable operation of facilities, he said, resulting in unnecessary emissions of pollution and less efficient, safe and reliable plant processes. Mr. Brenner explained that a percent threshold limit would encourage companies to implement improvements to their facilities without being concerned about triggering a NSR review. As long as the new development remains under a certain dollar amount threshold, he continued, a NSR review would not be necessary. He explained that the percent value in the case study described above represents what it would cost to rebuild, renew, or replace the old facility. Because EPA has not yet determined the percentage threshold limit, Mr. Brenner encouraged the audience to provide comments to EPA about this issue.

Mr. Brenner commented that the important environmental justice priorities for OAR in the coming years involve pollution prevention and promoting initiatives for clean fuels to reduce toxic chemicals in communities. He provided examples of projects in Cleveland, Ohio and Phoenix, Arizona where OAR had successfully worked with local community groups to develop programs to reduce toxic chemicals in those communities and implement toxic emission reductions. He added that in those projects, the communities had set up coordinated campaigns that addressed diesel retrofit programs, the promotion of local initiatives, public transportation campaigns, the reduction of indoor air pollution in city schools, and other comprehensive efforts to reduce toxic chemicals. Mr. Brenner explained that the applicable EPA regional offices had identified the generators of significant levels of toxic chemical contaminants and worked with the local communities to focus reduction efforts on high-priority sources of toxic chemicals. He cited the South Phoenix project to highlight the need to focus environmental justice efforts based on case-by-case situations rather than relying solely on regulations because environmental

concerns and environmental justice issues vary from community to community.

Mr. Brenner closed by reiterating the need for OAR and the Air and Water Subcommittee to continue to work together to develop partnerships with environmental justice communities. He emphasized that such partnerships are crucial for OAR to be successful in reducing air pollution and protecting public health.

Ms. Gauna requested clarification from Mr. Brenner regarding the percent threshold limit. She also asked about the non-attainment issues and downwind transport of air pollution. Mr. Brenner clarified that the percent threshold limit is still in development and that he anticipates receiving comments from the proposal reviewers about that issue. Regarding non-attainment and downwind transport, Mr. Brenner assured the meeting participants that the proposed flexible permitting program would meet the regular emissions standards and the ozone transport rule. He mentioned that each state would still need to set limits to meet air quality standards and that each plant would have to develop its own model sources and its own monitoring programs.

### **3.1.2 EPA Pollution Prevention Pilot Program**

Mr. Robert Kellam, EPA Office of Air Quality Planning and Standards, discussed the background, assessment, and findings of the Pollution Prevention in Permitting Pilot Program. He explained that the program had been introduced as a flexible permitting program that enabled permitted sources to make quick changes in response to market pressures. Mr. Kellam stated that the program recognizes the need for companies to respond quickly to rapid market changes. He added that administrative friction often occurred because of the costs and delays associated with industries having to retool to make changes driven by the market as well as comply with environmental requirements. He explained that the new, innovative approach to permitting is to provide additional flexibility. This flexibility, continued Mr. Kellam, will help industries meet environmental standards while expanding their facilities. He stated that the most common issue faced by various companies is the need to increase production while not exceeding the permitted emissions limits.

Mr. Kellam then discussed the permitting review process under the pilot program, which includes off-site research, on-site visits, and report drafting and reviews. He briefly described each of the companies participating in the pilot project:

- Minnesota-based 3M, one of the first program participants, makes products that need to be adapted quickly in response to market changes
- DaimlerChrysler joined the program when the company launched its new line of products
- Imation Corp. and Intel Corporation are semiconductor companies that produce products that require frequent testing
- Lasco Bathware, Inc., a Washington-based firm produces fiberglass and acrylic baths and generates styrene emissions as a by-product
- Saturn Corporation, based in Tennessee, participated in the flexible permitting program in 2000 when it retooled its sport utility vehicle line

Mr. Kellam then summarized the findings from Pollution Prevention Pilot Program:

- Although flexible permits ensure compliance and monitoring and data gathering are sufficient, there is a need to focus on permit requirements when the flexible permit is due for revision.
- Flexible permitting is enforceable, noncompliance is detectable, and the initial calculations and findings are replicable.
- Flexible permitting encourages emission reductions and pollution prevention (for example, Intel reduced its emissions of volatile organic compounds (VOC) from 190 tons per year to 53 tons per year, and DaimlerChrysler reduced its general emissions from 1,400 tons per year to 800 tons per year while increasing production).
- Six of the participating companies believe that because of market requirements, flexibility in permitting is needed to reduce emissions.
- Companies that have flexible permits do use them.
- Flexible permitting allows and enhances information-sharing because topics have to be discussed up front.
- Flexible permitting provides the public with access to more information.
- Flexible permitting does produce net financial benefits for both companies and permitting authorities; the additional time and associated cost required to develop a flexible permit versus a conventional permit typically is offset during the permit term by the reduced time needed to process notice of construction applications and permit revisions .
- Participating companies are pleased with the increased permitting efficiency that allows them to focus on other priorities with only minor modifications to the permit.
- Flexible permitting should meet an individual company's needs.

Mr. Kellam reported that another round of pilot projects would be conducted, which will include the Eli Lilly and Company papermill facility in Indiana. He concluded his presentation by pointing out that successful companies possess two tendencies within their corporate culture that allow them to meet the market demand while remaining in compliance with environmental regulations: (1) documented compliance history, pollution prevention programs, and the ability to monitor and track changes through continuous modeling and monitoring, and (2) the technical capacity to operate within the requirements of their permits.

Ms. Guana then opened the floor to discussion from members of the audience.

Mr. Neil Carmen, Sierra Club Lone Star Chapter and a member of the audience, commented on the potential disadvantages of flexible permitting. He expressed concern that the recommended methodology for achieving air pollution reductions would result in increased pollution in other media such as water and soil. Mr. Carmen also recommended that the permitting agencies examine air toxicity differences and apply rankings to differentiate between the "good" and the "bad" companies that currently are participating in the flexible permitting pilot program. Mr. Carmen also inquired about the duration of the program.

Mr. Kellam responded that monitoring of increased waste in water and soil would be required to examine the effects of implementing the flexible permitting program. He noted that the guidance currently does not address this issue. He also commented on the need to use analysis, guidelines, and discussions with waste departments to formulate such a monitoring program. Discussing air toxicity differences, Mr. Kellam stated that the issue is being examined. He stressed, however, that if an applicable requirement exists for a specific pollutant, EPA cannot relax the requirement; the Agency can only promote flexible permitting for meeting the current environmental demand, he said. Mr. Kellam commented that it might be difficult to rank participating companies as "good or bad" because some companies might be willing to reduce emissions and assist the community but may not be aware of their responsibilities to do so. He cited as an example one company that local residents complained was emitting an odor. Initially, the company was not aware of its responsibility to address the emission or the impact of the odor on the surrounding environmental justice community; however, he continued, once the company was informed about their responsibility, the company responded quickly to the problem, and in the end,

the community was happy. Mr. Kellam stated that the duration of the flexible permitting program is currently five years but the period is not fixed because companies can apply for permit modifications.

Mr. Carmen continued to comment about ambient air monitoring before and during the flexible permit pilot program. He expressed concern about whether any of the facilities in the project is emitting hydrogen chloride (HCl), which is highly toxic even at low levels. Mr. Carmen also described serious concerns about emissions of styrene. His final comment referred to modeling individual sources versus cumulative sources. Mr. Carmen explained that traditional screening levels often do not indicate problems in a point source evaluation; in contrast, cumulative modeling would show otherwise, he said.

Mr. Kellam responded that air monitoring was being performed before and during the pilot program, but he did not know whether ambient air was monitored during the project. Regarding monitoring for HCl, Mr. Kellam said he was unable to comment because not much off-site monitoring data for HCl is available. Regarding the issue of styrene and other common toxic emissions, Mr. Kellam noted that a flexible permitting program might provide opportunities for noncompliant companies to improve their environmental culture, especially larger firms located in areas or states without responsibility for those emissions.

Mr. Raju Kakarlapudi, EPA Region 7 and a member of the audience, commented that some companies have strong environmental management systems in place that are worth exploring and learning from. He also pointed out that the results of small pilot projects are often difficult to replicate in the real world.

Ms. Liz Heron, reporter for *Inside Washington* and a member of the audience, raised the question of what happens after a company moves beyond the pilot phase. Ms. Heron commented on the histories of the participating companies and questioned whether they are aware of their responsibilities and whether they have had any prior permitting problems. Also, with regard to community involvement, Ms. Heron raised the question of whether any independent support is available for the communities to participate in the evaluation of flexible permits or receive technical assistance grants similar to other programs. She went on to comment about the traditional distrust of many communities for federal and state government agencies and wanted to know what is being done to improve their trust of those agencies.

Mr. Kellam responded that after the pilot program is completed, participating companies should be able to cost-effectively reduce their air emissions while remaining competitive; companies likely would not continue using the program if it is not cost-effective, he said. Mr. Kellam stressed that the program is not for every company and has natural limiting factors. He explained that the flexible permitting program can help companies meet or exceed requirements for emissions reductions, but cannot be used by itself to negotiate requirements. Regarding the environmental records of participating companies, he stated that the companies varied in their backgrounds. He cited the example of Lasco Bathware, Inc., which has a history of not following through on its commitments. Therefore, that company required greater effort to integrate into the program, he continued. Mr. Kellam stressed that the "interest of the companies to make things work" is one of the most crucial factors for success of the program. Therefore, he said, EPA does not select program candidates based on a firm's environmental record.

Turning to community involvement, Mr. Kellam stated that the extent of support for community involvement is unknown because there is a lack of documentation for what is a state-based program. He repeated that EPA's flexible permitting guidance is not mandatory; however, it encourages state and local permitting authorities to use flexible permits where allowed by their regulations, and as resources and needs dictate, he explained. The guidance does not exempt sources from fully complying with requirements of the Clean Air Act or the Operating Permits Program, he cautioned. Mr. Kellam commented that it is natural for communities to be suspicious of companies that lack good environmental programs; therefore, he stated, in addition to having faith in those companies, independent technical review are needed to assist communities in better understanding the issues. He recommended the participation of academic institutions as one way to improve trust between communities and federal and state agencies. He cited the participation of Tulane University's engineering and law departments as an example of how a university can assist communities technically, as well as "energize" them. He noted that Tulane University gained the trust of the community by providing it with engineering support, data calculation and replication, and continuous monitoring and modeling. Mr. Kellam concluded by stating that the bottom line for flexible permitting is to motivate companies to stay underneath the permitted emissions limits and thus reduce the amount of pollution emitted.

Mr. Carmen commented that the biggest challenge for communities that want to participate in determinations for siting new facilities is participating during permit renewal and modification. He stated that any flexible permit program must address those issues, as well as how siting determination is conducted. Ms. Gauna added that public participation, timing, cumulative impacts, and compliance findings are just as relevant and important to the permit renewal and modification process. She mentioned that the permitting guidance makes distinctions between a new siting decision and permit modification and renewal.

### **3.2 EPA Region 6 Environmental Justice Listening Session**

Mr. Richard Moore, Executive Director, Southwest Network for Economic and Environmental Justice (SNEEJ), and Ms. Sunita Singhvi, EPA Region 6, provided an overview of the EPA Region 6 environmental justice listening session held in Houston, Texas, from November 14 through 16, 2002. Ms. Wilma Subra, Louisiana Environmental Action Network and member of the subcommittee, served as the chair for the afternoon discussion.

Mr. Moore began the presentation with a general overview of SNEEJ, its partnership with EPA Region 6, and how that partnership had been formed. Mr. Moore explained that SNEEJ is an independent, grassroots non-profit organization based in New Mexico that initially had struggled with EPA Region 6 over environmental justice issues. He stated that in early 1990, SNEEJ had sent a letter to President George W. Bush and the EPA Administrator, charging EPA with environmental racism. He explained that the letter had expressed SNEEJ's opposition to the proposed changes in the new source review provisions of the Clean Air Act and the proposed rule for preventing significant deterioration and nonattainment.

Mr. Moore noted the struggle between national environmental organizations and grassroots "organizations of color" about environmental issues. He pointed out that often, there are only "subliminal" differences between these organizations about environmental issues and civil issues. Mr. Moore explained that sometimes environmental cases have been litigated as civil cases rather than as environmental enforcement cases. That approach does not give the community the leverage to protect itself, he noted. He then cited several examples of such cases, including children poisoned after eating chipped lead-based paint, pollution from the uranium mining industry, and odor from sewage plants. e

Mr. Moore further commented that in the 1990s, EPA's early environmental justice efforts were not protecting minority groups living in the southwestern United States. Therefore, he said, a coalition of grassroots organizations had requested a meeting with the EPA Regional Administrator. Mr. Moore stressed that the meeting was a crucial beginning for an open dialogue among the groups involved. He noted that trust is a crucial factor which requires communication between all parties involved. Mr. Moore reported that the environmental justice listening sessions now have the endorsement and support of both the Regional Administrator and the Deputy Regional Administrator of EPA Region 6. He stressed the importance of them maintaining an open-door policy. All public institutions must allow people to feel that they are part of the process and that such institutions are accessible to them, he noted. He emphasized the need to build long-term relationships and commitments through consistent participation of all groups.

Mr. Moore ended his presentation by describing the first Region 6 environmental justice listening session as mainly an open-dialogue forum conducted in partnership with representatives of communities; state, tribal, federal, local, and municipal governments; industry; and academia. Mr. Moore stated that a broad number of topics ranging from enforcement, permitting, United States-Mexico joint border issues, and facility siting had been discussed.

Ms. Singhvi also reported on what she termed the success of the environmental justice listening session. She mentioned that the planning committee for the listening session included representatives of various chemical associations, local industry, state agencies, and universities. She also stated that the inclusion of academic institutions was intended to maximize the success of the session. Ms. Singhvi stressed that the listening session's focus had been the public; therefore, she stated, public participation had been highly encouraged. She summarized the main agenda of the session, which included encouraging greater overall participation by various stakeholders, getting certain individuals "on board," and permitting. Discussing difficulties with addressing issues related to the United States-Mexico border, Ms. Singhvi stated that there is a need to go beyond the current approach. She mentioned a report being developed that addresses issues associated with integrating environmental justice into all the United States-Mexico border programs and activities.

Ms. Singhvi concluded by discussing the goals of the listening session, which were to provide the Region 6 environmental justice community; local, state,

tribal, and federal government agencies, and industry with opportunities to communicate and develop strong working relationships and to improve information-sharing among the groups involved.

Ms. Subra concluded by emphasizing the need for states to be represented at environmental justice listening sessions and the importance of getting input directly from the community.

Dr. Mohammad Hatim, EPA Region 2 and a member of the audience, suggested promoting an environmental justice listening session in each state or EPA region. Ms. Singhvi responded by discussing the logistical and resource constraints associated with conducting a listening session in each state or EPA region. She explained that the possibility of having a such sessions in each state would largely depend on the availability of funding. She stated that the Texas listening session had been conducted on a trial basis and that its success could encourage other states to follow suit. In addition, Ms. Singhvi stressed the importance of conducting follow-up work after the listening session. She also stressed the need for discussion panels to include representatives of various stakeholder groups, including environmental justice communities, industries, and states. Ms. Singhvi concluded by stating the need to conduct listening sessions based on state-by-state cases with a focus on local issues and local participation.

Dr. Hatim raised the possibility of expanding the United States-Mexico border region. Ms. Singhvi stated that there EPA had not discussed doing so. She added that she hopes representatives of Puerto Rican communities are able participate in the EPA Region 2 listening session scheduled for March 2003.

In conclusion, Mr. Moore reported that as follow-up to the Texas environmental justice listening session, there are plans to conduct environmental justice training for businesses, communities, and representatives of other stakeholder groups; the trainers would be representatives of grassroots groups and EPA, he said. He mentioned the possibility of partnering with other agencies to conduct the training as one way promote the program. He stressed the importance of promoting ownership of and participation in the program. He concluded by requesting recommendations and feedback from the audience.

### 3.3 Using NO<sub>x</sub> Emissions to Promote Reductions in Ozone Levels

Mr. William Luthans, EPA Region 6 (based in Baton Rouge, Louisiana), spoke briefly about efforts underway to use reductions in NO<sub>x</sub> to offset VOC increases to obtain reductions in ozone levels. He reported that EPA Region 6 had conducted a study about the substitution of NO<sub>x</sub> for VOCs. Mr. Luthans explained that NO<sub>x</sub> was being considered as an alternative because studies have shown that reductions in Nox levels are more effective in promoting ozone quality than reductions in levels of hydrocarbon . Computer models have shown decreasing returns for hydrocarbon reduction on ozone quality, he explained. He pointed out that a 30 percent reduction in hydrocarbons would result in only a 1 part per million reduction in ozone levels. In conclusion, Mr. Luthans stressed the need to identify any concerns the public may have about the offset program and solicit their comments.

### 4.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the Air and Water Subcommittee.

- ✓ The subcommittee agreed to develop a best practices guide that identifies and recommends useful practices for incorporating concerns about environmental justice into the permitting process at the federal, state and local levels. The Permitting Workgroup will continue work on the *Environmental Justice Recommended Practices Guide for Permitting*. New members will be recruited for the workgroup to ensure representation of appropriate stakeholder groups. A first draft of the guide is expected to be completed by fall 2003.

**MEETING SUMMARY**

**of the**

**ENFORCEMENT SUBCOMMITTEE**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11, 2002  
Baltimore, Maryland**

**Shirley Pate  
Designated Federal Official**

**Robert Kuehn  
Vice Chair**

**CHAPTER FOUR  
MEETING OF THE  
ENFORCEMENT SUBCOMMITTEE**

**1.0 INTRODUCTION**

The Enforcement Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Mr. Robert Kuehn, University of Alabama School of Law, serves as vice-chair of the subcommittee. A chair for the subcommittee needs to be identified. Ms. Shirley Pate, U.S. Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 4-1 identifies the subcommittee members who attended the meeting and members who were unable to attend.

This chapter, which summarizes the deliberations of the Enforcement Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA OECA. Section 3.0, *Activities of the Subcommittee*, summarizes the discussions about activities of EPA OECA's Compliance Assistance Tools Workgroup. Section 4.0, *Presentations*, provides an overview of each presentation made to the subcommittee, as well as a summary of relevant questions and comments from the subcommittee members and any answers provided by presenters. Section 4.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee during the one-day meeting.

**2.0 REMARKS**

Ms. Pate opened the subcommittee meeting by welcoming the members who were present. She then requested that the members of the subcommittee introduce themselves. Ms. Pate next introduced Ms. Harris, who provided opening remarks to the subcommittee.

Ms. Harris began by welcoming the members of the subcommittee and stated that she was looking forward to the discussion with the subcommittee. She continued by explaining that she had begun her current position in May 2002 and had previously served as regional counsel and division director in EPA Region 4.

Ms. Harris explained that environmental justice is very important to the current EPA administration. She said that Mr. J.P. Suarez, Assistant Administrator, EPA OECA, is committed personally to emphasizing environmental justice and incorporating it into OECA's programs and activities. She stated that in keeping with the reinvigoration of environmental justice within OECA, she wanted to work more closely with the Enforcement Subcommittee of the NEJAC. She expressed her concern that no representative of community stakeholders currently serves on the subcommittee, and stated that she recognized the need to improve the relationship between the subcommittee and OECA. Ms. Harris stated that OECA values the Enforcement Subcommittee's input on compliance and enforcement programs and that she would like to find a more efficient way to use the subcommittee as a tool to provide insight on enforcement issues.

Ms. Harris next described activities that OECA is undertaking taking with regard to environmental justice. She referenced the OECA organizational chart and explained that the Office of Planning, Policy Analysis, and Communications manages OECA's environmental justice program and coordinates activities with the subcommittee. She continued by explaining that each major EPA headquarters and regional program office had been asked to develop an environmental justice action plan that demonstrates how environmental justice is to be incorporated into EPA's programs and policies. She said that OECA had recently had completed its

**Exhibit 4-1**

**ENFORCEMENT SUBCOMMITTEE**

**Members Who Attended the Meeting  
December 11, 2002**

Mr. Robert Kuehn, **Vice-Chair**  
Ms. Shirley Pate, **DFO**

Ms. Beverly McQueary Smith  
Mr. Howard Shanker  
Mr. Kenneth Warren

**Members  
Who Were Unable To Attend**

Mr. G. William Rice



draft environmental justice action plan, which is currently is being reviewed by the directors of the various OECA offices. Ms. Harris noted that OECA's action plan is organized around several main elements: civil and criminal enforcement, compliance monitoring, compliance assistance, and compliance incentives. She continued by adding that the plan outlines Ms. Harris's and Mr. Suarez's personal expectations and provides guidance to the EPA regions on the incorporation of environmental justice into their programs.

Ms. Harris explained that she and Mr. Suarez envision enforcement moving in three main directions, including the: (1) improvement of information management systems, (2) creation of additional tools like the Enforcement and Compliance History Online (ECHO) Pilot Web Site designed to assist EPA in making smarter decisions about enforcement actions, and (3) strategic targeting to address environmental concerns in environmental justice communities.

Ms. Harris briefly described some of OECA's current national priorities that are particularly pertinent to environmental justice communities. The most significant priorities include storm sewer overflows (SSO) and combined sewer overflows (CSO) from municipal wastewater systems, air pollutants, concentrated animal feeding operations (CAFO), and drinking water. She announced that EPA had settled a case in Baltimore that would reduce hundreds of thousands of gallons of raw sewage that was being discharged in the area. She also announced that the new policy guiding the use of supplemental environmental projects (SEP) would be signed by Mr. Suarez in the near future that would address the involvement of affected communities with the development of SEPs.

Ms. Harris concluded by stating that the EPA would continue to work with states to address resource issues related to the incorporation of environmental justice into state programs and to identify more efficient ways to address issues related to environmental justice. For example, she continued, the Environmental Results Program (ERP) in Baltimore, Maryland represents is a collaborative effort between the State of Maryland and EPA Region 3 to use integrated strategies (a combination of compliance tools) to address environmental problems on a community-wide basis. She stated that the use of integrated strategies to enhance the environment and public health in environmental justice communities is one of the goals in OECA's environmental action plan. She added that making greater use of strategic enforcement targeting to address environmental concerns in environmental

justice communities would be important because the results of targeting analysis determines how OECA will allocate resources.

Ms. Beverly McQueary Smith, Touro College and member of the subcommittee, asked Ms. Harris about EPA's budget for enforcement and compliance assistance in 2003. Ms. Harris responded that EPA is currently working under a continuing resolution that is funded at fiscal year (FY) 2002 levels. Ms. Harris stated that she remained optimistic that once the budget for FY 2003 is approved, it would be funded at the same levels as in FY 2002; however, she stated that there is a possibility that the budget could decline to FY 2001 levels.

Mr. Kuehn stated that he agreed with Ms. Harris's earlier statement that the subcommittee needs to include among its members a representative of a community stakeholders. However, he suggested that more than one community representative be asked to participate. Commenting He then stated that 90 percent of enforcement occurs at the state level, he asked Ms. Harris to identify EPA's role in "policing" states and whether there would be strict oversight of enforcement programs that are delegated to states. She acknowledged that EPA needs to work with the states to build relationships and trust. She continued by stating that the environmental justice action plans currently being prepared by OECA, EPA HQ program offices, and EPA regions should facilitate that process.

Mr. Kenneth Warren, Wolf, Block, Schorr and Solis-Cohen LLP and member of the subcommittee, addressed the issue of information flow between OECA and the Enforcement Subcommittee. He explained that in the past, the subcommittee had limited interaction with OECA. He suggested that ongoing communication be maintained between the subcommittee and OECA to ensure that the subcommittee is kept informed of current events. Ms. Harris responded that it would be productive to have open discussions between representatives of OECA and the subcommittee about general enforcement topics. She suggested that a quarterly conference call be held between OECA and members of the subcommittee. The members of the subcommittee, along with Ms. Pate, and Ms. Harris agreed to schedule a conference call for January 2003 to clarify the role of the Enforcement Subcommittee with respect to working with OECA and to identify ways to improve the relationship and communication between the subcommittee and OECA.

## Exhibit 4-2

**STATUS OF BACKLOG OF  
TITLE VI COMPLAINTS**

In 1997, the U.S. Environmental Protection Agency (EPA) established a task force headed by Ms. Gail Ginsberg, EPA Region 5, to address the backlog of Title VI complaints filed under Title VI of the Civil Rights Act of 1964. Initially, 66 cases had been backlogged; currently:

- 38 cases have been closed:
  - 2 cases were resolved after an investigation was initiated
  - 20 cases were rejected
  - 6 cases were withdrawn
  - 9 cases were dismissed after investigation
  - 1 case was referred to another agency
- 28 Complaints are pending:
  - 18 cases currently are under investigation
  - 6 cases have been suspended pending litigation
  - 4 cases are being held for informal resolution or alternative dispute resolution (ADR)

EPA anticipates that the backlog should be eliminated by June 2003. At that time, may be moved to EPA's Office of Compliance (OC).

Noting that concerns about the backlog of cases filed under Title VI of the Civil Rights Act of 1964 concerns had been discussed during the public comment period of the previous night, Mr. Kuehn asked Ms. Harris what role the Enforcement Subcommittee's should play with regard to addressing such concerns. Ms. Harris responded that an update from OECA about complaints filed under Title VI could be a topic for the January 2003 conference call. She also suggested that Ms. Karen Higginbotham, EPA OECA, participate in the call to provide background information about Title VI. Exhibit 4-2 summarizes the status of Title VI complaints registered with EPA.

Ms. Smith made a brief comment about compliance monitoring suggesting that EPA explore ways to "grow" its own scientists through partnerships with academia.

### 3.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, which included a status report on the activities of EPA's Compliance Assistance Tools Workgroup.

### Compliance Assistance Tools Workgroup

Ms. Deborah Thomas, EPA OECA, provided a status report about EPA's Compliance Assistance Tools Workgroup. She began her presentation by stating that EPA had tasked the Workgroup to design compliance assistance materials that would be helpful to communities and to identify ways to engage the communities in the distribution of those materials. She reported that members of the workgroup include Mr. Howard Shanker, Hagen, Berman & Mitchell, PLLC, and chair of the workgroup; Mr. Bernie Penner, Maryland Department of the Environment (MDE); Ms. Harris; Mr. G. William Rice, EPA Region 7; and Ms. Susana Almanza, People Organized to Defend Earth and Her Resources.

Ms. Thomas stated that the components of an effective enforcement and compliance program are:

- Providing compliance assistance
- Conducting compliance monitoring
- Offering incentives to encourage compliance
- Taking civil and criminal enforcement actions

Ms. Thomas emphasized that it is important to integrate the use of each component to make EPA's enforcement compliance program successful. She defined compliance assistance as providing the information necessary to help the regulated community understand and comply with environmental requirements. Compliance assistance activities also provide information about pollution prevention, waste minimization, environmental management systems, and other ways to improve and protect human health and the environment, she continued, adding that EPA, other federal agencies, states, tribes, trade associations, nonprofit organizations, and environmental groups all provide compliance assistance.

Ms. Thomas noted that compliance assistance is provided through a variety of methods, including (1) outreach (for example, through the development of compliance guides and fact sheets, as well as web-based training), (2) organized systems to provide responses to inquiries (for example, through staffing a telephone hotline), and (3) on-site assistance (for example, through conducting compliance assistance visits, environmental audits, and inspections). She said that EPA plans to develop compliance guides that review new environmental rules, summarize existing requirements for small businesses, discuss problems business may experience complying with existing requirements, and explain existing requirements for specific industry sectors. Ms. Thomas referenced EPA's Compliance Assistance

Clearinghouse which can be accessed online at <<http://www.epa.gov/clearinghouse>>. She stated that the clearinghouse is a web-based vehicle that is a comprehensive source of information, tools, and resources. In addition, users can add and share information, she continued, adding that the clearinghouse provides links to numerous environmental web sites.

Ms. Thomas said that EPA has entered into partnerships with other government agencies, industry, academic institutions, and environmental organizations to develop sector-specific Compliance Assistance Centers. Exhibit 4-3 lists the industry sectors for which compliance assistance centers have been established. Additional information about the compliance assistance centers is available at <<http://www.assistancecenters.net>>.

Ms. Thomas said that compliance assistance is “linked” to environmental justice because such assistance can empower communities by giving them increased knowledge about regulatory compliance, and environmental and health and safety. With such knowledge, she commented, individuals are better able to understand facilities in their neighborhoods and communities are able to have more effective interactions with businesses. In addition, assisting different stakeholders to better understand environmental compliance “evens out” the information power balance among EPA, states, and tribes, she said. Ms. Thomas explained that the link between compliance assistance and environmental justice could be enhanced through expanded dialogue with EPA about priority-setting and planning, development of compliance assistance, increased knowledge about how EPA works (for example, its use of regional compliance

assistance coordinators and environmental justice coordinators), expanded community involvement in the selection of SEPs, maintaining a dialogue with states and tribes about environmental justice issues, increased participation in EPA-sponsored training to increase environmental compliance literacy, and other tools (for example, preparing documents and web sites in languages other than English). Ms. Thomas concluded that a dialogue between EPA and the NEJAC is needed to enhance the compliance assistance program’s value to environmental justice communities.

Mr. Warren stated that through compliance assistance, EPA’s Office of Compliance is trying to build capacity in communities. He asked whether that office has the resources to educate communities in that regard. Ms. Thomas responded that, currently, the office’s resources are stretched but the budget for education is an issue that should be discussed in the future. An unidentified member of the audience stated that the education of communities is an ongoing problem, adding that because enforcement flows from complex environmental regulations, it is difficult to educate communities about the entire enforcement process. The audience member stated that she would like to see lawyers work *pro bono* as liaisons between EPA and local communities. Ms. Thomas said that she had attended a compliance forum during the previous week where she had learned of an effort in Laredo, Texas where waste was being disposed of illegally. The community got involved because of increased truck traffic across the U.S. and Mexico border and members of the community are helping to identify the truckers she said. She said that funds to conduct seminars on compliance assistance were obtained through an environmental justice grant.

#### Exhibit 4-3

##### SECTOR-SPECIFIC COMPLIANCE ASSISTANCE CENTERS

The U.S. Environmental Protection Agency (EPA) has established compliance assistance centers for the following industry sectors:

- Local Governments
- Agriculture
- Transportation
- Federal Facilities
- Automobile Services and Repairs
- Chemical Manufacturers
- Paints and Coatings
- Printers
- Metal Finishers
- Printed Wiring Board

Ms. Smith stated that it is important to decide how to best replicate the success of the Laredo, Texas effort. She said that there is a “new culture of people” who are aware of environmental regulations. She emphasized the importance of preparing informational material in multiple languages so that all people can easily understand such materials. She noted that using the Internet to disseminate information is a valuable tool, however she stated that EPA must recognize that “digital gaps” exist in many communities. She suggested that EPA donate old computers to communities where people may not have access to the internet. Finally, Ms. Smith suggested that a task force comprised of teachers be created to discuss how to educate local communities about environmental regulations. Ms. Thomas said that the EPA Office of Environmental Education already is attempting to address some of those issues.

Mr. Shanker said that the workgroup has had difficulties in addressing the tasks assigned to it. Mr. Warren stated that the workgroup's original assignment to design compliance assistance tools and identify ways to engage the community in the distribution of that material might not be the best assignment for the workgroup. He commented that the failure to include on the subcommittee representatives of community stakeholders had hampered its ability to address the tasks assigned to it.

The subcommittee then discussed possible issues that it could address in the future with regard to compliance assistance. Mr. Penner stated that enforcement and compliance assistance are not "either/or" activities but rather form a continuum. He suggested that the subcommittee develop a "road map" identifying when compliance assistance is appropriate. For example, he stated that when noncompliance is a result of ignorance, it can easily be addressed with education. He also suggested that the subcommittee translate regulations into "plain English," particularly for those communities with environmental justice concerns. Finally, he suggested that the subcommittee develop a research protocol for identifying high-risk sectors in environmental justice communities.

Ms. Evans suggested that the subcommittee focus on compliance assistance and pollution prevention as opposed to enforcement for small businesses. Ms. Harris added that communities play a big role in compliance assistance because they are on the "front line" of the impacts from industry. She added that EPA needs to convince the public that their involvement in compliance assistance would be well spent. Ms. Thomas stated that all information received from the public is reviewed carefully in developing compliance/enforcement approaches. Commenting that every environmental action taken by EPA is an opportunity to educate the public, Mr. Kuehn suggested that the subcommittee contact Mr. Mark Dorfman, who is affiliated with a nonprofit organization in Boston, to obtain information about possible compliance assistance approaches. Mr. Dorfman conducts audits but insists that members of local communities conduct the audits along with him, Mr. Kuehn explained.

The subcommittee members present agreed to work with OECA during a future conference call to clarify which questions the Compliance Assistance Tools Workshop should address. Mr. Shanker requested that members of the subcommittee forward related suggestions to him or Ms. Pate.

## 4.0 PRESENTATIONS

This section summarizes the presentations made to the Enforcement Subcommittee. The presentations addressed regional enforcement issues, Enforcement and Compliance History Online (ECHO), SEPs, and environmental justice targeting for criminal enforcement cases.

### 4.1 Regional Enforcement Issues

Ms. Elisabeth Evans, EPA Region 8, presented information about the Northeast Denver Environmental Initiative, the Migrant Farm Worker Drinking Water Project, and the enforcement of the Worker Protection Standard (WPS) project. She described those projects as excellent examples of the challenges faced by an environmental justice community. She stated that the communities in which the projects are conducted:

- Exhibit much higher ethnic diversity and minority populations than other areas in the region and state
- Exhibit lower income and socioeconomic status than other populations in the region and the state
- Have pose health risks and exposures to contaminants in the area but they are difficult to quantify
- Have produced in some portions of the communities some frustration and distrust toward the institutions that work in those communities

#### 4.1.1 Northeast Denver Environmental Initiative

The Northeast Denver Environmental Initiative is a multi-agency, multi-disciplinary project which addresses environment justice concerns in the northeast Denver metropolitan area. The project is envisioned as a cooperative partnership utilizing federal, state, county and local government authorities to address community concerns proactively regarding potentially harmful environmental consequences of industrial and transportation developments. EPA has received support from Federal Highway Administration (FHWA), Colorado Department of Public Health and the Environment (CDPHE), Colorado Department of Transportation (DCOT), the city and county of Denver, the Tri-County health department, Commerce City, and several community and nonprofit organizations on this initiative. The goals of the project are to improve coordination and communication between the partner organizations

and the communities to address environmental concerns through compliance assistance, enforcement authorities, pollution prevention, and other tools available to the agencies. Exhibit 4-4 highlights information provided in Ms. Evans presentation.

Ms. Evans explained that the initiative had been challenging but that the efforts undertaken by EPA Region 8 had been successful. For example, she stated that:

- 59 percent of all regulated facilities in northeast Denver had been inspected during the last three years
- 99 percent of the major, synthetic minor, and state-permitted minor Clean Air Act (CAA) facilities had been inspected during that same period

She reported that few instances of noncompliance with environmental laws had been found, which indicates that simply ensuring compliance by regulated facilities is not enough to protect the health and welfare of the local communities. Ms. Evans suggested two strategies for addressing environmental justice concerns in northeast Denver, including (1) the formation of partnerships to address the most apparent health risks in northeast Denver and (2) the provision of education, public participation, and empowerment in the community.

Ms. Evans cited the Northeast Metro Pollution Prevention Alliance (NEMPPA) as an example of a successful partnership. She explained that NEMPPA is a coalition of local, state, and federal government agencies and local industry leaders working to address pollution in the Denver area. NEMPPA works with local trucking companies to develop workable solutions that benefit all parties.

Ms. Evans reported that its projects include energy efficiency grants; the Diesel Truck Program, which delivers the message that idling engines waste fuel and contribute to air pollution; and citizen involvement program in reporting trucks that do not comply with efforts to reduce pollution.

Ms. Evans also stated that an example of another opportunity to address environmental justice concerns is the upcoming National Environmental Policy Act (NEPA) environmental impact statement (EIS) required for the expansion of Interstate 70. EPA is working with CDOT and the FHWA to ensure inclusion of environmental justice concerns in the EIS, she reported. Ms. Evans stated that the expansion project represents a unique opportunity for front-end, meaningful public involvement and the development of alternatives that truly consider potential environmental impacts on northeast Denver neighborhoods.

Ms. Evans then described the following elements that she believes are important in promoting successful public participation:

- Providing accessible, useful information to the public
- Providing opportunities for meaningful public involvement
- Linking public concerns and values to EPA actions

Ms. Evans also described several SEPs conducted by Conoco and the EPA Region 8 environmental justice listening sessions as examples of success in public involvement. Ms. Evans stated that the citizens of northeast Denver had been asked by EPA Region 8 to identify the issues of highest concern to them and that the citizens repeatedly identified air

#### Exhibit 4-4

##### Northeast Denver Environmental Initiative

Northeast Denver has many potential health risks associated with the existence of heavy industry, multiple transportation corridors, and patterns of land use. For example:

- 5,000 diesel tractors are housed, serviced, and operated out of the northeast Denver neighborhoods and almost 500 regulated facilities, 3 major highway corridors, and 2 active Superfund sites also are located in that area.
- Total air releases of hazardous air pollutants in northeast Denver are 10 times higher than in the city of Denver and 5 times higher than those reported for the State of Colorado.
- There are significantly more mobile emissions per capita in northeast Denver than in the city of Denver. Studies performed by the Colorado Department of Health revealed that approximately 74 more cases of cancer had been diagnosed among residents living in northeast Denver neighborhoods than would be expected based on state averages.
- Northeast Denver contains some of the oldest neighborhoods in the city. As a result, lead paint issues plague the neighborhoods.
- Two different studies have demonstrated that children in northeast Denver had blood lead levels that, on average, are at least twice the national average.

quality, development of a community and recreation center, and environmental education as important issues. Through SEPs arising from a settlement with Conoco, a number of local environmental projects that address those concerns were funded by Conoco with more than \$500,000.

In summary, Ms. Evans reiterated that most of the industries located in the northeast Denver area were in compliance with environmental laws. Some successes had been achieved through SEPs, partnerships, and public involvement; however, challenges remain, she said. Mr. Warren asked how she plans to measure the success of the initiative. Ms. Evans responded that success would be measured in terms of improved communication with government agencies, changes in industry, and the results of the EIS for the Interstate 70 expansion.

Ms. Mimi Guernica, EPA OECA, asked about EPA's relationship with the State of Colorado and whether the agencies shared each others databases. Ms. Evans responded that EPA is working with many different agencies in the state and that their working relationships had been good, especially with CDOT. However, Ms. Evans stated, EPA had not been successful in sharing other agencies' databases. Ms. Guernica then asked whether SEPs and pollution prevention strategies had been used in the area. Ms. Karen Kellen, EPA Region 8, responded by saying that SEPs are being implemented through state-managed oversight and that pollution prevention is being implemented through partnerships with local communities and business.

#### 4.1.2 Migrant Farm Worker Drinking Water Project

Ms. Evans then presented information about the Migrant Farm Worker Drinking Water Project, which she stated addresses the safe drinking water needs of a sector of the population that is often described as "invisible." Most of the farm workers (growers) in Colorado are Hispanic migrant workers, she stated. Ms. Evans explained that the project grew out of EPA's focus on drinking water in areas with the largest presence of migrant farm workers, the greatest use of agricultural chemicals, and the presence of migrant worker camps that should be regulated under the Safe Drinking Water Act (SDWA). The project was intended to locate such camps and assess the quality of drinking water sources without triggering the shutdown of those camps "as a form of grower retaliation," she continued. The project was selected as one of 15 national environmental justice demonstration projects by the Interagency Working Group on

Exhibit 4-5

#### MIGRANT FARM WORKER DRINKING WATER PROJECT PROJECT PARTNERS

- ✓ Colorado Department of Public Health and Environment
- ✓ U.S. Department of Labor
- ✓ U.S. Department of Health and Human Services
- ✓ Colorado Department of Agriculture
- ✓ Plan de Salud del Valle, Inc.
- ✓ Valley Wide Health Services
- ✓ Colorado Community Health Network
- ✓ Colorado State University Cooperative Extension
- ✓ High Plains Inter-Mountain Center for Agricultural Health and Safety

Environmental Justice. Exhibit 4-5 lists the project partners.

Ms. Evans said that the goals of the project were to:

- Create a database of agencies that are involved with migrant farm worker agencies
- Create a database of locations of migrant farm worker camps locations and their associated sources of drinking water
- Assess the safety of these drinking water sources by identifying contaminants present
- Target counties with the highest concentrations of migrant farm workers and the greatest pesticide usage
- Provide technical assistance to growers who need or request it
- Determine which migrant worker camps should be regulated under the SDWA

The project currently is focusing on the last two goals, she said.

Ms. Evans explained that the objective of the project was to target migrant farmworker camps that might have public water systems and conduct water sampling with the permission of the growers who owned the camp. Once such sampling is conducted, the water then is tested for contaminants such as chlorinated pesticides organophosphates, nitrate, nitrite, sulfate, lead, arsenic, and selenium, as well as for the presence of *E. coli* and total coliform bacteria, she said. She continued by saying that the project focused on camps in Weld County, Colorado that were thought to use well water. She stated that out of the 211 camps examined, approximately 23 camps were identified as using wells as drinking water sources. Ms. Evans stated that Weld County was chosen because agriculture accounts for 37 percent of the land use and because approximately

2 million pounds of pesticide per year is used in the county.

Ms. Evans said that the project has faced many challenges. Navigating the jurisdictional tangle of federal, state, and local agencies that are involved with migrant farm workers was the first challenge, she said, stating that there also was some reluctance by those agencies to share data. Other challenges, she continued, include the lack of authority to collect samples on private property unless the owner granted permission and the fear of undocumented workers of the federal government. Ms. Evans emphasized that the U.S. Department of Justice (DOJ) Immigration and Naturalization Service (INS) was not involved in the project.

Ms. Evans also reported that the migrant worker camps that had met the size requirements to be regulated under the SDWA were further investigated. She noted that the SDWA is designed to ensure safe drinking water through regulation of public water systems that serve more than 25 individuals for more than 60 days per year or which have more than 15 service connections. The SDWA requires periodic water testing to ensure the safety of drinking water.

Ms. Evans said that EPA had prepared the agricultural community for the project by meeting with the Weld County Commissioners, the local Health Department, and the Colorado Union Association. Next, she continued, EPA had sent letters to growers seeking permission to collect water samples and followed up with telephone calls, she said. Ms. Evans reported that four camps then were sampled the results of which indicated that two camps had registered nitrate levels at about 25 milligrams per liter (mg/L), which is two and half times the SDWA maximum contaminant level (MCL) of 10 mg/L. Ms. Evans said the next step would be to ask permission from the growers to resample the two camps at which high concentrations of nitrate and sulfate were detected. She added that EPA would refer the evaluation of all camps that potentially are large enough to be regulated under the SDWA to the Colorado Department of Public Health and the Environment (CDPHE). CDPHE would then determine if the camps had public water systems that should be regulated, she said, adding that EPA and CDPHE would work with growers to find technical resources to address nitrate problems and other contamination.

Mr. Warren asked Ms. Evans whether she had talked directly to any migrant farm workers. Ms. Evans responded that she had been unable to speak to many of the workers. Mr. Warren suggested that EPA Region 8 develop a more proactive way to

include the migrant farm workers in the project. Ms. Smith suggested involving individuals with bilingual language skills or who possess strong connections with the local community. Ms. Michelle Yaras, EPA OECA, stated that she had been involved in developing new definitions for the Worker Protection Standard (WPS) and that the focus had been to include information provided by workers.

#### **4.1.3 Enforcement of the Worker Protection Standard**

Ms. Evans then reported about revisions to the WPS, which aims to protect all handlers of pesticide as well as agricultural laborers. The WPS is intended to reduce the risk of pesticide exposures to agricultural workers and handlers, she explained, stating that the standard requires:

- Pesticide safety training for workers
- Notification of pesticide applications
- Use of personal protective equipment by handlers
- Conformance with restrictions (time intervals) onto areas at which pesticides have been applied
- Decontamination supplies for workers
- Emergency medical assistance

Ms. Evans explained that the WPS had been in effect since April 1994, but that efforts to ensure compliance had been challenging. She reported that EPA inspectors face challenges because (1) the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) does not provide explicit authority for the inspection of grower operations; (2) the targeting of inspections must to coincide with periods of recent pesticide use and farm worker employment; (3) the interviewing of workers typically requires bilingual inspectors or the use of a translator; and (4) FIFRA limits any initial enforcement response to a Notice of Warning, rather than more stringent enforcement responses (for example, notice of violations).

Ms. Evans said that a Colorado Legal Services Survey conducted during the 2001 growing season had revealed violations of the restricted-entry intervals and demonstrated that after the application of pesticides, workers had reported irritation of the nose and throat, dizziness and weakness, and breathing difficulty. She reported that EPA Region 8 manages the WPS Program in Colorado and Wyoming, stating that in 2001, EPA Region 8 had inspected 23 facilities, 87 percent of which had been found to be out of compliance. Facilities that were not in compliance were issued Notices of Warning and EPA conducted compliance assistance efforts at these facilities, she continued. Facilities that had

received Notices of Warning, were targeted for re-inspection in 2002, she said. Ms. Evans announced that in 2002, EPA Region 8 had inspected 30 facilities, 17 of which had received Notices of Warning in 2001. She stated that, 81 percent of those facilities re-inspected in 2002 were in compliance. Of the 13 facilities inspected for the first time in 2002, only 5 were out of compliance, she said.

Ms. Evans concluded her presentation by stating that facilities found to be out of compliance after receiving a Notice of Warning are subject to a penalty. EPA Region 8 had filed and settled one case against a facility, assessing a \$6,090 penalty, she said. The end goal, she stated, is compliance, and she stated that EPA Region 8 is aggressively pursuing facility compliance and permanent behavioral changes to protect farm workers. Although penalties are small (FIFRA limits penalties to \$5,500 per violation), the cases would have a substantial deterrent effect, Ms. Evans said.

#### **4.2 Enforcement and Compliance History Online Pilot Web Site**

Ms. Betsy Smidinger, EPA OECA, provided an overview of EPA's new ECHO pilot web site. She announced that the web site had been made available to the public on November 20, 2002, and is currently undergoing a 60-day review and comment period. She explained that the web site had been developed as part of EPA's effort to build infrastructure that would make the enforcement program more "transparent." Commenting that the Freedom of Information Act (FOIA) establishes the right of citizens to request government records, Ms. Smidinger explained that the FOIA had been amended by the "eFOIA law", which directs the government to use technology, including the internet, to make record review easier and to provide information in the form asked for by the requestor. ECHO had been designed to fill the information void and move the EPA enforcement program toward compliance with eFOIA, she stated. Ms. Smidinger stated that public access to government information can serve as a driver or incentive to get problems fixed and to market successes. In addition, she continued, many violators are discovered through tips, and public access to government records provides a forum to learn more about the operations of regulated facilities. She also emphasized that with the increased reliance on information in government information systems, it becomes increasingly important that such information is correct.

Ms. Smidinger then explained the steps that had led to the development of ECHO. In 1990, she said,

EPA had launched the Integrated Data for Enforcement Analysis (IDEA) web site and made it available by subscription. Members of the subcommittee asked whether the fee for IDEA could be waived for environmental justice communities and academia. Ms. Smidinger stated that she did not know but she would find out and report back to the subcommittee. She said that IDEA is the source of data in the ECHO site; however, not all the data on IDEA is available on ECHO because of the sensitive nature of some of the data, she said. In the intervening 12 years, she continued, EPA had conducted two web-based pilots: a sector facility indexing in 1998 and Region 10 EC-Online in 2001. Ms. Smidinger added that in 2000, an EPA-State Public Access Workgroup was organized to address issues related to public access to government enforcement information and the Online Targeting Information System (OTIS) had been released to the states on a virtual "extranet." EPA had also received FOIA requests for a national web site, she said, resulting in the development of the ECHO pilot web site; EPA had begun to develop web-based data quality review procedures in 2002, she said.

Ms. Smidinger explained that ECHO is unique because it does not use Oracle; rather the backbone of ECHO is IDEA, a mainframe system that downloads compliance and enforcement data from more than 10 databases every month, she said. Mr. Smidinger stated that ECHO contains compliance and enforcement data for more than 800,000 regulated facilities, including CAA stationary sources, CWA permitted dischargers (under the National Pollutant Discharge Elimination System), the Resource Conservation and Recovery Act (RCRA) hazardous waste generators and handlers, and other facilities that have been subjected to federal enforcement actions under any statute (for example, facilities listed in EPA's Integrated Compliance Information System [ICIS]). ECHO users have a variety of search options and are able to receive multimedia reports, she continued, adding that ECHO reports are supplemented with data from the U.S. census. A list of the types of information found in ECHO is summarized in Exhibit 4-6.

Ms. Smidinger said that ECHO offers many innovative features. Because of ECHO, a data steward network had been developed with states to handle comments on the system, she explained, Ms.



Smidinger added that the network uses EPA's Integrated Error Correction Process (IECP) to allow data stewards to see the report and line that were commented on. ECHO also contains caveat boxes that explain when information is not required and uses "interpreted" data that makes the web site much easier to decipher and use. Two weeks after ECHO had been launched, queries to the system averaged about 10,000 per workday with more than 125,000 queries received since the site's inception), Ms. Smidinger explained. She added that the feedback button had received a total about 80 comments and 50 questions and that more than 700 errors had been reported to date for a wide range of data. Of the 80 comments that had been received, she continued, 40 percent were positive, 26 percent were positive with suggestions, 23 percent were neutral with suggestions, 4 percent were negative, and 7 percent were concerned with homeland security. General comments consisted of recommendations for providing more information about the nature of the violations and whether they pose a threat, questions about downloading files, or questions about why a particular facility is listed in the database. Ms. Smidinger said that EPA is responding to comments in a prompt manner. Examples of specific comments about ECHO are shown in Exhibit 4-7.

Ms. Smidinger explained that the next step would be to solicit comments during the 60-day review and comment period. After EPA addresses the comments, the "pilot" designation would be removed from the web site, she said.

Ms. Smidinger said that the subcommittee and the

Exhibit 4-6

### ENFORCEMENT AND COMPLIANCE HISTORY ONLINE (ECHO)

Databases accessed by ECHO include the Air Facility System (AFS); the Permit Compliance System (PCS); the RCRA Information System; and the Integrated Compliance Information System (ICIS), which contains multi-statute federal enforcement data. The following data is included in ECHO:

- Name and address of each facility
- Facility characteristics (type of permit, latitude and longitude, Standard Industrial Code (SIC) code, etc.)
- Inspection history
- Compliance status and violations
- Formal enforcement actions taken during the last two years
- Penalties assessed during the last two years
- Demographics within one, three, and five miles of the facility
- Key compliance and enforcement data from EPA and

environmental justice community could support ECHO by providing links to ECHO in the web pages managed by those organizations, sending e-mails containing information about the project to other environmental justice organizations, notifying list servers or e-mail group subscribers that may be interested, submitting comments about the applicability of the information on the site to environmental justice concerns, and submitting to EPA any errors encountered. She explained that through ECHO, environmental justice communities would be able to assess overall or corporate

Exhibit 4-7

### USER COMMENTS TO ECHO

The following comments to the ECHO web site were provided by users:

*"...the ease of use and speed at which the queries are processed is very good. The level of detail possible is great. Finally a way to check compliance for facilities and getting new information (RTK site usually has very old information) and it doesn't cost anything. Thanks."*

– Industry Representative

*"Great database! Very useful information on local companies. Hope you can make this a permanent database. Very useful to the public."*

– Academician

*"This is an impressive and valuable resource for citizens and communities located near industrial facilities. Even though I have participated in a Citizens Advisory Panel to the South Baltimore chemical industry, I have never received information on most of these non-compliance and enforcement activities. Keep up the good work!"*

– Citizen Group

ECHO Pilot Web Site: [www.epa.gov/echo](http://www.epa.gov/echo)  
Send comments to [echo@epa.gov](mailto:echo@epa.gov)

compliance records, determine whether individual permits are being complied with, examine environmental justice issues using searches based on an area's percentage of minorities, and examine the level of state or EPA enforcement activity in particular areas. Ms. Smidinger concluded with a brief demonstration of ECHO. During the demonstration, Ms. Smidinger explained that a reference to this web site could be provided in lieu of a written response to a FOIA request about EPA compliance/enforcement data. She also said that discharge management reports required of NPDES still are being filed in hard copy format, and thus, would involve significant costs to make them available electronically.

Mr. Bernie Panner, Maryland Department of the Environment and a member of the audience, explained that development of ECHO had been challenging because of the history of the development of the data. He noted that, in the past, enforcement data had been maintained on paper. He went on to say that when databases (e.g., IDEA) finally were created, each agency had used different definitions and data fields. He described this situation as "information chaos." There is still concern about how the data is being presented, he said, but he said he felt EPA is "making progress" to collect information about large facilities. The information for smaller facilities still has some discrepancies, he said.

Ms. Alisa Harris, Pennsylvania Department of Environmental Protection and a member of the audience, suggested that EPA use other models as a reference to improve the web site. She offered to provide information about Efacts, which was made available to the public in Pennsylvania. She also suggested extending the 60-day review and comment period so that members of the subcommittee would have adequate time to review the web site. She further suggested that a workgroup be formed to review the web site and to educate the public about how to use those types of tools.

Subcommittee members also expressed concern that the public had not been involved in the development of the ECHO Pilot Web Site. The subcommittee agreed to request an extension of the 60-day public review and comment period to give the subcommittee time to conduct a review and provide advice about the web site.

#### **4.3 Supplemental Environmental Projects Guidance**

Ms. Rosemarie Kelley, EPA OECA, provided an

update about the upcoming Community SEP Guidance. She described a SEP as an environmentally beneficial project that is undertaken by the defendant in an enforcement action as part of a settlement to reduce the amount of a fine or penalty. The defendant must agree to complete the project, she continued, and EPA would consider the project when determining a fine. To qualify as a SEP, the project must be completed in response to an enforcement action, must go beyond compliance with environmental laws, and must be related to the environmental action, she stated. For example, if a company violates a SDWA standard, its SEP should be related to providing clean drinking water, Ms. Kelley explained.

Ms. Kelley said that the SEP Policy had been last updated in 1998, adding that a potential upcoming change to the policy would allow SEPs that could eventually result in profits for the violating company. However, she noted, the policy is expected to dictate that a project cannot be profitable immediately (that is, until after 5 years of existence), she also noted that a profitable project also might be allowed in the future if it would benefit environmental justice communities, she said.

Ms. Kelley stated that EPA's 1998 SEP Policy had included a section on community involvement. She further stated that, in 1999, a workgroup had been developed to identify cases where it would be appropriate to include community involvement. As a result of the workgroup's efforts, a draft Community SEP Guidance was published in June 2000, which advises early involvement and education of the community about SEPs. Ms. Kelley stated that the guidance encourages communities to participate in the SEP process and emphasizes that outreach efforts must be conducted by EPA or state agencies in the affected community. She said that comments to the draft guidance had been provided by four public interest groups and one industry group. The public interest groups' comments had overall been very positive, she reported, but they did suggest that the guidance be written in a more positive tone. In contrast, she said, comments from industry representatives had been "very negative" in which they had stated that involving the community in decisions about SEPs "would be a mistake."

Ms. Kelley said that the Community SEP Guidance provides information primarily for the EPA regional offices and the DOJ, although information is available to affected communities and defendants in enforcement actions. The guidance also encourages development of regional SEP libraries and a national database that are internet-accessible to be used as resources for new ideas, she said,

adding that the cost to establish the database have been estimated to be approximately \$200,000. Ms. Kelley said that EPA hopes to start developing this database in FY 2003. Ms. Smith asked how the projects would be funded. Ms. Kelley responded that she hopes the funds can be obtained from the regional offices. She also referred to the CWA trust fund bill, which would have funded a dedicated pool of money for beneficial projects; however, the legislation had not passed in Congress. In response to a request, Ms. Kelley said that she would send Ms. Smith a copy of the bill.

Ms. Kelley stated that one concern about involving communities in SEPs is that SEPs must comply with court-imposed deadlines and often have time constraints and that community involvement may slow the process and threaten completion of projects by those deadlines. For example, she said that the City of Atlanta had been sued and there had not been adequate time to involve the community until the end of the project. She also said that community involvement would be hard to implement in cases where there are issues of imminent and substantial endangerment to human health or the environment or confidentiality. However, she added, the guidance suggests that in those cases, information be shared as soon as possible with the community.

Mr. Kuehn asked why a defendant would be reluctant to enter into a SEP. Ms. Kelley said that it is getting harder to find good ideas for SEPs. EPA previously had given credit for projects as simple as purchasing a fire engine. She said that EPA no longer is willing to give credit for projects that have already been done; rather, she explained, EPA wants SEPs in which the defendant actually has to do something that would benefit local environments, such as providing clean drinking water.

Mr. Kuhn continued the discussion by asking about how states have implemented with SEPs. Ms. Kelley responded by saying that she is not involved with state SEPs. An audience member said that several states (for example, Ohio) keep a running list of SEPs they would like to see implemented so that when an enforcement action arises, the state can make suggestions. Ms. Kelley added that states also can "bundle" cases. Ms. Harris asserted that states have more flexibility in crafting SEPs; for example, she explained, federal SEPs do not allow a zero penalty, whereas the State of Pennsylvania does. Ms. Evans said that the real benefit of a company's entering into a SEP is the positive publicity. She continued by saying that another potential for a SEP involves identifying a relationship (or nexus) between the reason for the environmental action and the SEP. Ms. Kelley responded that it

sometimes it is necessary to be creative. She said that SEPs are more flexible than people may think.

Ms. Kelley concluded her presentation by reporting on the Breathmobile, a Baltimore-based SEP implemented by SE Johnson. She explained that SE Johnson had distributed Allocare, an asthma product, without first registering the product. Ms. Kelley stated that the fragrance in Allocare had caused a bad respiratory allergic response, and that many people who had been exposed to it in their homes had to be evacuated. Consequently, she continued, SE Johnson had to recall the product, remove out the fragrance, pay a \$200,000 penalty, and enter into a \$700,000 SEP. For the SEP, SE Johnson used trained doctors at the University of Maryland to run the Breathmobile, which is a full-time project that treats children in inner-city schools for asthma. In the months since the project's inception in March 2002, the Breathmobile had visited 23 schools and treated 200 children, 98 percent of whom were African-American, she reported. Of the 200 children treated, 94 percent had asthma and 74 percent had asthma that was triggered by an allergen. SE Johnson funded the Breathmobile for one year; it will be funded by the University of Maryland in future, Ms. Kelley said.

The discussion of SEPs concluded with Ms. Kelley stating that EPA is trying to implement pollution prevention in SEPs by considering the benefit of 100 percent fine or penalty mitigation. Ms. Evans made a final comment that some SEPs have resulted in technical changes within a facility, which indirectly benefit the community; however, she stated, some of the money used for SEPs should directly benefit the community. Ms. Smidinger noted that a line in ECHO refers to SEP cost; however, the web site does not provide any details about SEPs.

#### **4.4 Environmental Justice Targeting for Criminal Enforcement Cases**

Mr. Nick Swanstrom, EPA Office of Criminal Enforcement, Forensics, and Training (OCEFT), gave a presentation about the role of criminal enforcement in environmental justice. Mr. Swanstrom stated that his purpose for speaking to the NEJAC members was to share information in an effort to overcome communities' historical mistrust of the Agency. He explained that OCEFT directs EPA's Criminal Program; provides a broad range of technical and forensic services for civil and criminal investigative support; and oversees EPA's enforcement and compliance assurance training programs for federal, state, and local environmental professionals. Mr. Swanstrom continued that the mission of OCEFT is to identify, apprehend,

prosecute, and convict those who are responsible for the most significant violations of environmental law that pose substantial risks to human health and the environment. He stated that environmental justice had been a national initiative in EPA's Criminal Program since the early 1990s.

Mr. Swanstrom then defined environmental justice and referred to the Environmental Justice Collaborative Model (February 2002) developed by the Federal Interagency Working Group on Environmental Justice (IWG). He said that the 11 federal agencies represented on the IWG had developed and issued an Interagency Environmental Justice Action Agenda. Mr. Swanstrom noted that the goals of the agenda are to:

- Improve coordination and cooperation among federal agencies
- Make government more accessible and responsive to communities
- Initiate environmental justice demonstration projects to develop integrated, place-based models for addressing community quality-of-life issues
- Ensure integration of environmental justice into policies, programs, and activities of federal agencies

Mr. Swanstrom explained that the underlying premise of the action agenda is that a collaborative model is an effective method for comprehensively and proactively addressing environmental justice issues. He also stated that the IWG, in partnership with various stakeholders, had established 15

demonstration projects to test this premise. Exhibit 4-8 lists the demonstration projects. He explained that OCEFT's role is to act as a liaison between the people working on the projects and the federal government and to look into unresolved issues at the project sites.

Mr. Swanstrom concluded his presentation by stating that OCEFT has partnerships with many different associations, including regional environmental enforcement associations such as the Midwest Environmental Enforcement Association, the Northeast Environmental Enforcement Project, the Southern Environmental Enforcement Network, and the Western States Project, as well as law enforcement support organizations such as the International Association of Chiefs of Police and the National Organization of Black Law Enforcement Executives (NOBLE). Mr. Swanstrom also described as an example OCEFT's partnership with NOBLE's "pilot" environmental justice project. He stated that NOBLE had been formed in 1976 and now has more than 48 chapters across the nation consisting of more than 3,500 law enforcement professionals. The purpose of NOBLE is to help shape law enforcement policy in areas of vital importance to minorities and the law enforcement community, he said. OCEFT also has a partnership with the Hispanic-American Police Command Officers Association (HAPCOA), an organization that had been formed more than 30 years ago and which provides annual national conferences for training, networking, and establishing relationships and partnerships within the law enforcement profession.

Exhibit 4-8

**Interagency Environmental Justice Action Agenda  
15 Demonstration Projects**

- Re-Genesis: Cleanup and Revitalization through Collaborative Partnerships
- Protecting the Community Health and Reducing Toxic Air Exposure through Collaborative Partnerships in Barrio Logan
- Metiakatia Indian Community Unified Interagency Environmental Management Task Force
- Protecting Children's Health and Reducing Lead Exposure through Collaborative Partnerships
- New Madrid County Tri-Community Child Health Champion Campaign
- New York City Alternative Fuel Vehicle Summit
- Addressing Asthma in Puerto Rico – A Multifaceted Partnership for Results
- Bridges to Friendship: Nurturing Environmental Justice in Southeast and Southwest Washington
- Bethel New Life Power Park Assessment
- Camden-City of Children Partnering for a Better Future
- Easing Troubled Waters: Ensuring Safe Drinking Water Sources in Migrant Farm Worker Communities in Colorado
- Environmental Justice and Public Participation Through Technology: Defeating the Digital Divide and Building Capacity
- Oregon Environmental Justice Initiative
- Greater Boston Urban Resources Partnership: Connecting Community and Environment
- Environmental Justice in Indian Country: A Roundtable to Address Conceptual, Political, and Statutory Issues

## **5.0 SIGNIFICANT ACTION ITEMS**

This section summarizes the significant action items adopted by the Enforcement Subcommittee.

- ✓ Schedule a conference call that includes Ms. Harris for January 2003 to:
  - Clarify the role of the Enforcement Subcommittee and identify ways to improve the relationship and communication between the subcommittee and OECA
  - Identify specific topics that the subcommittee should address in the future
  - Clarify the question that the Compliance Assistance Tools Workgroup should address with regard to compliance assistance. Members of the subcommittee should forward suggestions to Mr. Shanker or Ms. Pate
  - Discuss Title VI concerns (including an update about EPA's progress with Title VI complaints)
  - Discuss the ECHO Pilot Web Site
  
- ✓ Submit a formal letter to Ms. Harris requesting an extension of the 60-day public review and comment period for the ECHO Pilot Web Site

**MEETING SUMMARY**

of the

**HEALTH AND RESEARCH SUBCOMMITTEE**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11, 2002  
Baltimore, Maryland**

**Brenda Washington  
Co-Designated Federal Official**

**Pamela Kingfisher  
Vice-Chair**

**Gary Carroll  
Co-Designated Federal Official**

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

**1.0 INTRODUCTION**

The Health and Research Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Ms. Jane Stahl, Connecticut Department of Environmental Protection and chair of the subcommittee, was unable to attend the meeting. Ms. Pamela Kingfisher, Indigenous Women's Network and vice-chair of the subcommittee, presided over that day's session. Ms. Aretha Brockett, Office of Pollution Prevention and Toxics (OPPT), U.S. Environmental Protection Agency (EPA) and Ms. Brenda Washington, EPA Office of Research and Development (ORD), continue to serve as the co-Designated Federal Officials (DFO) for the subcommittee. Mr. Charles Lee, EPA Office of Environmental Justice (OEJ) and DFO for the NEJAC Executive Council, was present and participated extensively in the discussions.

After welcoming the members of the subcommittee, Ms. Kingfisher informed the group that Mr. Franklin Carver, North Carolina Central University and a member of the subcommittee, recently had resigned as a member of the subcommittee. Exhibit 5-1 identifies the subcommittee members who attended the meeting and the member who was unable to attend.

This chapter, which summarizes the deliberations of the Health and Research Subcommittee, is organized in four sections, including this *Introduction*. Section 2.0, *Activities of the Subcommittee*, summarizes the discussions about the activities of the subcommittee, including its deliberations about the subcommittee's strategic plan and procedures for reviewing and approving NEJAC reports. Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report made during the one-day meeting, as well as a summary of relevant questions and comments from the subcommittee members regarding those presentations and reports. Section 4.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

**2.0 ACTIVITIES OF THE SUBCOMMITTEE**

This section summarizes the discussions about the

activities of the subcommittee, which included deliberations about the Health and Research Subcommittee Strategic Plan, the Framework for Cumulative Risk Assessment, and the process for reviewing and approving NEJAC reports.

**2.1 Update on the Health and Research Subcommittee Strategic Plan**

Ms. Kingfisher reminded the subcommittee members present that the strategic plan was created in response to a request from the NEJAC Executive Council. She noted that the document outlines the activities planned for the subcommittee for the next two years. She also noted that a copy of the plan was included among the meeting materials.

During the discussion about the strategic plan, the members of the subcommittee agreed that the plan should be kept simple and focus on attainable goals. Subcommittee members expressed the need to ensure that:

- Goals articulated at previous sessions of the subcommittee are reflected in the strategic plan

**Exhibit 5-1**

**HEALTH AND RESEARCH SUBCOMMITTEE**

**Members Who Attended the Meeting  
December 11, 2002**

Ms. Pamela Kingfisher, **Vice-Chair**  
Ms. Brenda Washington, **Co-DFO**  
Ms. Aretha Brockett, **Co-DFO**

Mr. Mark Armentrout  
Ms. Valerie Jo Bradley  
Mr. Lawrence Dark  
Mr. Richard Gragg III  
Mr. Walter Handy  
Ms. Lori Kaplan  
Reverend Adora Lee  
Ms. Laura Luster  
Mr. Mark Mitchell  
Ms. Dorothy Powell

**Member  
Who Was Unable To Attend**

Ms. Jane Stahl, **Chair**

Schedules are realistic and meet the needs of the subcommittee

- Goals and objectives are consistent with one another

After reviewing and discussing the draft strategic plan, the members agreed to revise the goals of the strategic plan as follows:

- Provide comments to the Framework for Cumulative Risk Assessment to EPA through the NEJAC Executive Council by July 15, 2003
- Prepare a research and programmatic agenda about environmental stressors and health disparities

The members also expressed the need to expand the language used to describe the goals. They agreed to form a workgroup that would be tasked to develop language that would reflect the intent of the members of the subcommittee. Exhibit 5-2 lists the members of the subcommittee who agreed to serve on the Strategic Plan Workgroup.

## 2.2 Status of the Framework for Cumulative Risk Assessment

The Health and Research Subcommittee held an extensive discussion about EPA's draft Framework for Cumulative Risk Assessment (Framework), the first step in a long-term effort to develop Agency-wide cumulative risk assessment guidance. According to information posted on the EPA Risk Assessment Forum Internet web site <<http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=54944>>, the Framework is "intended to foster consistent approaches to cumulative risk assessment in EPA, identify key issues, and define terms used in these assessments. The Framework identifies the basic elements of the cumulative risk assessment process and provides a flexible structure for conducting and evaluating cumulative risk assessment, and for addressing scientific issues related to cumulative risk. Although the Framework report will serve as a foundation for developing future guidance, it is neither a procedural guide nor a regulatory requirement within EPA, and it is expected to evolve with experience. The Framework is not an attempt to lay out protocols to address all the risks or considerations that are needed to adequately inform community decisions. Rather, it is an information document focused on describing various aspects of cumulative risk."

Mr. Lee clarified the relationship between the terms "risk" and "impact," explaining that risk is defined as the probability of harm or adverse effects while "impact" is defined as the resulting harm or adverse effects. He explained that with the development of a scoping and planning memorandum in 1997, EPA began working to develop a cumulative risk assessment framework. The draft cumulative risk assessment framework had been prepared by EPA in 1999, he said, and had been subject to three peer involvement meetings and two consultations with the EPA Science Advisory Committee in 2001. Mr. Lee explained that the framework document had then undergone external peer review in June 2002 and that EPA plans to release the published version of the document by the end of 2003.

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

After some discussion about the document, the members agreed that in some instances, data collected as part of a cumulative risk assessment will reveal issues considered more pertinent by an affected community, than concerns about the actual or potential exposures to toxic chemicals. For

### Exhibit 5-2

#### MEMBERS OF HEALTH AND RESEARCH SUBCOMMITTEE WORKGROUPS

##### Strategic Plan Work Group

Ms. Dorothy Powell  
Ms. Lori Kaplan

##### Cumulative Risk Work Group

Mr. Lawrence Dark  
Mr. Richard Gragg, III  
Ms. Pamela Kingfisher  
Laura Luster



example, community concerns about the lack of access to healthcare may outweigh immediate concerns about potential exposure to toxic chemicals, they said. Socioeconomic issues such as an increased exposure within communities should be evaluated in a cumulative risk assessment, the members said. Ms. Dorothy Powell, Associate Dean, College of Pharmacy, Nursing and Allied Sciences, Howard University and a member of the subcommittee, agreed to draft a white paper that strengthens the discussion about environmental stressors and health disparities for inclusion in the NEJAC draft report titled *Advancing Environmental Justice Through Pollution Prevention* (draft pollution prevention report)

Regarding the role of the NEJAC in assisting EPA in the development of guidelines for cumulative risk assessment, Mr. Lee reported that a NEJAC workgroup on cumulative risk would be created in Spring 2003 as part of the NEJAC's planning efforts for the April 2004 meeting of the NEJAC. The policy topic for that meeting would be "Cumulative Risk and Cumulative Risk Assessment, he said. Working in partnership with EPA program and regional offices, other EPA advisory committees, and other federal agencies, the workgroup would develop a draft report and consensus proposal to be presented at the April 2004 meeting of the NEJAC, he continued. Mr. Lee provided examples of the issues that the workgroup would be charged to address, including:

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

The subcommittee requested that a member of the subcommittee be appointed to participate on the work group. The subcommittee also formed an internal workgroup to evaluate and prepare comments to the draft Framework for Cumulative Risk Assessment document. Mr. Martin Halper, Senior Science Advisor, EPA OEJ, agreed to assist with the workgroup. Exhibit 5-2 lists the members of

the Cumulative Risk Workgroup.

### **2.3 Discussion about the Process for Reviewing and Approving NEJAC Reports**

The members of the subcommittee discussed the process for reviewing and approving reports generated by the NEJAC, noting that the process is fluid and often cannot adhere to a specific schedule or model. When a document like the draft pollution prevention report is prepared, the audience for which the document is written should be clear, they said.

New members of the subcommittee requested a flow chart of the report review and approval process. Ms. Marva King, NEJAC Program Manager, EPA OEJ, indicated such a flow chart had been included among the materials prepared under the General and Administrative tab of the meeting binder that had been distributed to all conference attendees. The subcommittee concluded that approval and implementation of proposals or recommendations outlined in reports like the draft pollution prevention report depend either on which proposals or recommendations are adopted by the NEJAC or on those for which a consensus is reached. Once proposals or recommendations are adopted by the NEJAC, EPA decides which ones can be implemented, they said.

## **3.0 PRESENTATIONS AND REPORTS**

This section summarizes the presentations made and reports submitted to the Health and Research Subcommittee. Specific presentations included an overview of the draft pollution prevention report, an overview about EPA's Response to the World Trade Center Attack, and a discussion about interagency participation and communication.

### **3.1 Overview of Draft Pollution Prevention Report**

Ms. Sharon Austin, EPA OPPT and DFO of the NEJAC Pollution Prevention Workgroup, provided an overview of the draft pollution prevention report.

Ms. Samara Swanston, The Watch Person Project, provided an explanation of her role in the development of the draft pollution prevention report. She noted that she had been contracted to work with the workgroup, taking the various "issue papers" that had been prepared by the individual stakeholder subgroups and integrate them into a cohesive document. Ms. Swanston indicated that pollution prevention can be a potentially significant tool for environmental justice because most projects do not

reflect a true relationship among communities, business, and government. Communities often are willing to address issues facing them; however, resources may not be available to allow them to devote the time needed to address those issues, she said.

Ms. Austin stated that written comments to the pollution prevention report should be forwarded to her at:

Office of Pollution Prevention and Toxics  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, MC 7406M  
Washington, D.C. 20460  
Telephone: (202) 564-8523

### **3.1.1 Chapters 1 and 2, Stakeholder Perspectives and Consensus Recommendations**

Ms. Austin noted that Chapter 1 of the draft report described the perspectives of various identified stakeholder groups, including impacted communities, all levels of government, and business and industry. Recounting the process used by the workgroup to develop its advice and recommendations, Ms. Austin explained that the 21 members of the workgroup, who represented various stakeholder groups, were interviewed about their concerns, expectations, and ideas for the workgroup. Many areas of common interest as well as areas of difference were revealed during that process, she said. The interviews then were used to structure the face-to-face meeting of the workgroup members that had been held from July 22 through 25, 2002, she continued. A key outcome of the face-to-face meeting was the formation of subgroups to identify specific topics of interest, including community perspectives, tribal perspectives, business and industry perspectives, government perspectives, critical areas and emerging directions, and multi-stakeholder efforts. Those perspectives then were delineated in subsequent chapters of the draft report.

Ms. Austin also noted that she anticipates that (1) discussions about the role of enforcement in a vigorous pollution prevention strategy; (2) the merits of relying on the "precautionary principle" (which states that the lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation), and (3) other science-based issues, should be included in the final version of the report.

### **3.1.2 Chapter 3, Community Perspectives**

Ms. Connie Tucker, Executive Director, Southern Organizing Committee for Economic and Social Justice, provided a summary of Chapter 3, Community Perspectives, of the draft Pollution prevention report. She noted that the omission of information about the role of enforcement in a pollution prevention strategy "is a critical mistake." She also stated that because attendance at the previous day's NEJAC meeting was not as high as had been anticipated, the comments submitted during the public comment period by members of affected communities were not as "aggressive". Ms. Tucker also indicated that pollution prevention is a tool that can be used to integrate environmental justice into existing statutes. She requested that the members of the subcommittee provide her with comments to Chapter 3 at a later date. She also invited members of communities to review and provide comments about the draft report to her.

Ms. Powell asked who are the target audiences of the draft pollution prevention report. Ms. Austin replied that the immediate target audience is the EPA Administrator and EPA OPPT, which would be implementing the proposals in the consensus chapter. Ms. Tucker added that she considered the two primary target audiences to be the NEJAC and affected communities.

Ms. Powell recommended that the critical issues overlooked in the draft pollution prevention report be revisited and the report amended to reflect them so that the report would reflect a single voice. The report should not include a collection of minority or contradictory perspectives, she said. Ms. Austin and Ms. Tucker agreed that some issues should be made clearer in the final version of Chapter 2, Consensus Recommendations, of the draft pollution prevention report. They added that the Pollution Prevention Workgroup is expected to reconvene to revisit the issues at hand and subsequently provide a document about which the NEJAC could make a decision.

Other issues about the pollution prevention report that had been discussed by the subcommittee included the time frame for completing the report, obtaining a "true consensus in the consensus chapter," and defining such terms such as "tribes." Mr. Halper indicated that the time frame for completing the Pollution prevention report or any NEJAC report depends on several issues, including the number of recommendations identified. The process takes as long as is necessary to develop a document on which the NEJAC can agree, he said.

### 3.1.3 Chapter 4, Tribal Perspectives

Mr. Tom Goldtooth, Indigenous Environmental Network, summarized the issues confronting tribes, tribal communities, and tribal governments that are discussed in Chapter 4, Tribal Perspectives, of the draft pollution prevention report. He stated that the report must use consistent language when referring to tribes and tribal organizations. People living in the tribal communities also are concerned about the erosion of tribal sovereignty, he stated. In addition, Mr. Goldtooth requested the members of the subcommittee submit comments to the chapter on tribal perspectives.

Mr. Dean Suagee, Vermont Law School, also provided input about the tribal perspectives chapter of the report. He indicated that historically, tribal governments had not been included in discussions with other government bodies. Consultation with tribal communities is essential for getting tribal perspectives about pollution prevention initiatives, he said, explaining that consultation with tribal communities often is limited to brief discussions with people who work with tribal communities and not with the actual members of those communities. Mr. Suagee also stated that the final pollution prevention report should discuss solar and renewable energy, and alternative sources of transportation, so that people would not have to rely on cars.

### 3.2 Overview of EPA's Response to the World Trade Center Attack

Mr. Christopher Jimenez, On-Scene Coordinator (OSC), EPA Region 2, discussed EPA's response to the terrorist attack on the World Trade Center (WTC) on September 11, 2001. He stated that EPA's response activities had focused on addressing contamination and exposures to asbestos fibers, chemicals related to jet fuel and gasoline fuel, and particulate matter in ambient air that resulted from the collapse and destruction of the WTC towers. Mr. Jimenez added that real-time air monitoring and sampling had been conducted at the excavation site, throughout the five boroughs of New York City, in nearby towns in New Jersey, and at the Staten Island Landfill where debris from the excavation site had been taken for examination and disposal. The WTC response involved several federal, state, and local government agencies as well as contractors, he confirmed. He noted that work at the excavation site had continued through August 2002 and that work at the Staten Island Landfill had been completed two months later.

Mr. Jimenez stated that additional information about EPA's response to the WTC attack can be obtained

from:

Mr. Steve Touw, MS21  
US EPA Facilities  
Raritan Depot  
2890 Woodbridge Avenue  
Edison, NJ 08837-3679  
Telephone: (732) 906-6900  
E-mail: [touw.steve@epa.gov](mailto:touw.steve@epa.gov)

### 3.3 Discussion about Interagency Participation and Communication

Mr. James Tullos, Health Partnership Specialist, Division of Health Education and Promotion, Agency for Toxic Substances and Disease Registry (ATSDR), briefly discussed improving interagency participation and communication between the NEJAC and other federal agencies. He reported that ATSDR had established subcommittees and workgroups that are available to provide assistance to the Health and Research Subcommittee. Dialogue between individuals on the ATSDR subcommittees and the Health and Research Subcommittee is encouraged, he stated.

Issues raised during Mr. Tullos's presentation included how ATSDR views environmental justice, how ATSDR makes a determination of environmental justice in a community, and the need for a consistent definition of environmental justice among federal agencies. Mr. Tullos stated that the ATSDR Office of Urban Affairs (OUA) is responsible for making environmental justice determinations. Such decisions, which are made by the Director of OUA, are based on a policy signed by the Centers for Disease Control and Prevention and ATSDR. He agreed to provide a copy of the policy document to the NEJAC. Mr. Tullos further explained that ATSDR would like to (1) see how agencies can work together at the community level, (2) determine how many agencies are needed during an initial contact with a community, and (3) define how much information is needed during that first initial contact. He indicated that ATSDR is anticipating tasks on which ATSDR personnel can assist the Health and Research Subcommittee. Mr. Lee indicated that the NEJAC previously had worked with Dr. Faulk, Director of ATSDR, during the May 2000 NEJAC meeting that had been held in Atlanta, Georgia. Dr. Faulk is the ATSDR liaison for the NEJAC, Mr. Lee said.

Mr. Hal Zenick, EPA ORD, indicated that work is being done to establish a dialogue with and create an interagency relationship with Mr. Tommy G. Thompson, Secretary, U.S. Department of Health and Human Services. This effort had started in 2000

when the NEJAC Health Report was being prepared. Ms. Wilma Subra, Louisiana Environmental Action Network and member of the Air and Water Subcommittee, is working on a collaborative model for developing interagency partnerships not only with government agencies but also with the private sector, Mr. Lee reported.

The discussion ended with remarks by the Reverend Adora Lee, Director of Environmental Justice Programs, United Church of Christ and a member of the subcommittee, who indicated that the work of the NEJAC should culminate in tangible results for the people who provide comments to the NEJAC during the public comment period. Rev. Lee added that the most important work of the NEJAC is to have “real-life impacts” on communities, such as when it makes recommendations calling for the involvement of communities in planning and permitting.

#### 4.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the Health and Research Subcommittee.

- ✓ Recommend to EPA the name of a subcommittee member to serve as chair of the subcommittee
- ✓ Engage Ms. Powell to draft a white paper that strengthens the discussion about environmental stressors and health disparities for inclusion in the draft pollution prevention report
- ✓ Revise the Health and Research Subcommittee Strategic Plan to ensure that the goals articulated previously by the subcommittee are reflected in the strategic plan, that schedules are realistic and meet the needs of the subcommittee, and that goals and objectives are in tune with one another. In addition, expand the language used to describe the goals in the subcommittee’s strategic plan to more fully explain the subcommittee’s intentions.

**MEETING SUMMARY**

**of the**

**INDIGENOUS PEOPLES SUBCOMMITTEE**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11, 2002  
Baltimore, Maryland**

**Daniel Gogal  
Designated Federal Official**

**Terry Williams  
Acting Chair**

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

**1.0 INTRODUCTION**

The Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Ms. Jana Walker, attorney at law, resigned as chair of the subcommittee, and Mr. Terry Williams, Fisheries and Natural Resources Commissioner for the Tulalip Tribes, had been asked by the subcommittee members to serve as the Acting chair of the subcommittee, pending appointment by the EPA Administrator. Mr. Daniel Gogal, U.S. Environmental Protection Agency (EPA) Office of Environmental Justice (OEJ), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 6-1 identifies the subcommittee members who attended the one-day meeting and members who were unable to attend.

This chapter, which summarizes the deliberations of the Indigenous Peoples Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Activities of the Subcommittee*, summarizes the discussions of the activities of the subcommittee during the one-day meeting, including its discussion of the NEJAC Pre-Meeting Draft Report, "Advancing Environmental Justice through Pollution Prevention." Section 3.0, *Presentations and Reports*, provides an overview of each presentation and report as well as a summary of relevant questions and comments from the subcommittee members. Section 4.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

Mr. Don Aragon, Wind River Environmental Quality Commission and member of the subcommittee, led the participants in an invocation to begin the meeting. Following the invocation, Mr. Gogal reviewed the agenda for the meeting and explained that comments from observers would be welcome during the public dialogue session scheduled for that afternoon. Mr. Gogal then took the opportunity to allow observers to introduce themselves.

**2.0 ACTIVITIES OF THE SUBCOMMITTEE**

This section discusses the activities of the subcommittee, which included nomination of a new chair of the subcommittee, discussion of the NEJAC draft pollution prevention report *Advancing Environmental Justice Through Pollution Prevention*,

and an overview of the Indigenous Peoples Subcommittee Strategic Plan.

**2.1 Nomination of a New Chair**

Ms. Walker made a motion to nominate Mr. Williams to serve as acting chair of the subcommittee for the upcoming year. Mr. Dean Suagee, Vermont Law School and a member of the subcommittee, seconded the motion. Mr. Williams accepted the nomination and was unanimously selected by the members present to lead the subcommittee, pending appointment by the EPA Administrator. Mr. Williams agreed to serve as acting chair for the duration of the one-day meeting.

**2.2 NEJAC Draft Pollution Prevention Report**

The members of the subcommittee discussed the NEJAC draft report *Advancing Environmental Justice through Pollution Prevention* (pollution prevention report). Ms. Walker suggested that the subcommittee review recommendations 6, 8, and 10 described in chapter 2 of the that report which had not been discussed during the deliberations of the NEJAC Executive Council on Tuesday, December

**Exhibit 6-1**

**INDIGENOUS PEOPLES SUBCOMMITTEE**

**Members Who Attended the Meeting  
December 11, 2002**

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

Ms. Jana Walker  
Mr. Dean Suagee  
Mr. Don Aragon  
Mr. Tom Goldtooth

**Members  
Who Were Unable To Attend**

Mr. Moses Squeochs  
Ms. Karen Wilde Rogers  
Ms. Coleen Poler  
Mr. Jose Aguto, **Alternate DFO**  
Ms. Anna Frazier

\* Pending approval of EPA Administrator

10, 2002. The members of the subcommittee also agreed to discuss recommendation 9 because of its relevance to the issues of indigenous peoples. Exhibit 6-2 lists the recommendations discussed during the subcommittee meeting.

Ms. Walker emphasized the importance of embracing in the draft report all indigenous populations, including Indian tribes, Pacific islanders and Alaskan Natives. To avoid cumbersome repetition throughout the report, she recommended incorporating in the pollution prevention report the language provided in the "Interpretive Notes" section of the NEJAC *Fish Consumption and Environmental Justice* report which had been revised and published in November 2002. She explained that a paragraph from that report explains which phrases should be substituted in the text of the pollution prevention report for a comprehensive list of indigenous communities. The members of the subcommittee agreed to advise the NEJAC to edit the fourth paragraph of the Executive Summary of the pollution prevention report to read as follows:

*This draft report works to identify and discuss the particular issues that this question raises when - as is often the case - those negatively impacted by pollution are communities of color, low-income communities, tribes, and other indigenous peoples. This Report uses the phrase "communities of color, low-income communities, tribes, and other indigenous peoples" in an effort to capture, in shorthand form, all of the various groups and subgroups that are affected by environmental injustice. It is meant to include all people of color, low-income people, American Indians, Alaska Natives, Native Hawaiians and other Pacific Islanders, and other indigenous people located within the jurisdictional boundaries of the United States. In an effort to avoid cumbersome repetition of this phrase, the Report also substitutes the phrases "affected communities and tribes" and "affected groups;" these shorter phrases are meant to be similarly inclusive.*

### 2.2.1 Comments to Recommendation 6

Recommendation No. 6 in Chapter 2 of the pollution prevention report discusses product and process substitution in areas that affect low-income, minority, and tribal communities. Mr. Aragon opened the discussion about that recommendation by discussing the transfer of federal facilities to tribal communities. Many of those facilities, he stated, are highly contaminated with lead and asbestos. Mr. Aragon argued that such facilities must be brought into

## NEJAC DRAFT POLLUTION PREVENTION REPORT

### Chapter 2 Recommendations

**Recommendation 6:** Promote Product Substitution and Process Substitution in Areas which Impact Low Income, Minority, and Tribal Communities

**Recommendation 8:** Promote Just and Sustainable Transportation Projects and Initiatives

**Recommendation 9:** Strengthen Implementation of Pollution Prevention Programs on Tribal Lands and Alaskan Native Villages

**Recommendation 10:** Promote Efforts to Institutionalize Pollution Prevention Internationally, Particularly in Developing Countries

compliance with environmental laws before they are transferred out of federal ownership so that tribes do not inherit facilities that pose health hazards. The members of the subcommittee agreed that facility transfer is an important issue affecting indigenous communities and proposed adding the following action item to the pollution prevention report:

*Action Item E (new): In carrying out the federal trust response, work collaboratively with the U. S. Department of the Interior (DOI), the Bureau of Indian Affairs (BIA), and other federal agencies to ensure that all federal facilities and property transferred to tribes area safe, and in compliance with all applicable environmental laws*

Ms. Walker acknowledged that indigenous communities must be afforded the same level of environmental protection that is given to other minority groups when communities containing those groups assume take possession of former federal facilities. The members of the subcommittee agreed that language for a new action item should be added that reads:

*Action Item F (new): Work collaboratively, with other federal agencies to ensure that all federal facilities and property transferred to low income and minority communities are clean, safe and in compliance with all applicable environmental laws*

Mr. Williams suggested the addition of a third action

item designed to promote model agreements to limit the types of pollutants entering and leaving a facility. He stated that these agreements would provide an opportunity for EPA and tribes to work collaboratively to develop and provide new opportunities for tribes to communicate with one another. The members of the subcommittee agreed that the language for such a new action item should read:

*Action Item G (new): Develop and promote model agreements in pollution prevention in Indian lands and within Alaska Native villages.*

## 2.2.2 Comments to Recommendation 8

Recommendation No. 8 in Chapter 2 of the draft pollution prevention report discusses efforts to promote just and sustainable transportation projects and initiatives. Mr. Tom Goldtooth, Indigenous Environmental Network and a member of the subcommittee, suggested that the subcommittee add language to the background text of that recommendation to address the transportation through native lands and reservations of hazardous and radioactive wastes, including mixed oxide (plutonium/uranium nuclear fuel) waste. He added that a discussion of sacred sites and cultural considerations should be added to the text as well. The members of the subcommittee agreed to recommend new language to address Mr. Goldtooth's concerns. The new language, which could appear after the phrase "land use issues" on page 32, line 26 of the draft pollution prevention report, would read as follows:

*“ . . . , including but not limited to places that have religious and cultural importance to tribes (including Alaska native villages) and other indigenous peoples. . . . ”*

Mr. Williams agreed with Mr. Goldtooth and suggested that the text on page 32, line 10 of the draft pollution prevention report be revised to add the words "urban and rural" after "low income and tribal." He explained that this addition would broaden the scope of the sentence to include those communities in rural settings through which hazardous wastes often are transported.

Mr. Suagee suggested that the recommendation include a discussion about "walkable neighborhoods." He explained that walkable neighborhoods are planned communities in which roads are not necessary because all basic necessities are located within walking distance of a resident's home. He acknowledged that this concept may not apply in a rural setting but stated that it should be should considered as an alternative to

building roads. The members of the subcommittee agreed to revise the last sentence of action item B to read as follows:

*“ . . . Transportation planning should emphasize the use of walkable neighborhoods.”*

Mr. Aragon added that state agencies should be included among the organizations listed in Action Item A as working in partnership with the U.S. Department of Transportation (DOT). Mr. Williams agreed and suggested that two additional action items be added to recommendation 8. The first recommendation, he stated, would promote cooperating agency status for indigenous peoples and the second would better define the term "meaningful and early" within the National Environmental Policy Act (NEPA) to mean participation beginning at the point where "purpose and need" have been identified. He explained that two states, North Carolina and Washington, have adopted language that calls for early participation of indigenous peoples in their state NEPA processes; a similar approach should be referenced in the new action item, he stated. The members of the subcommittee agreed to recommend language for two new action items:

*Action Item J (new): Promote cooperating agency status for tribes and Alaska Native villages with the U.S. Department of Transportation when transportation projects will or may affect tribal or village interests.*

*Action Item K (new): Define "meaningful and early" to mean participation beginning at "purpose and need." (within NEPA, see North Carolina and Washington state laws).*

## 2.2.3 Comments to Recommendation 9

Recommendation No. 9 in Chapter 2 of the draft pollution prevention report focuses on activities to strengthen the implementation of pollution prevention programs on tribal lands and in Alaskan Native villages. Mr. Goldtooth proposed that the second paragraph of the background text for this recommendation be modified to discuss the impacts of pollution on the rights of native communities to practice their culture and maintain the integrity of sacred sites. He added that the language should clarify any misunderstandings that exist about the protections afforded to sacred sites and the cultural practices of indigenous communities. He emphasized the importance of properly representing in the draft report the needs of indigenous peoples and urged the subcommittee to further review the



text of this recommendation after the meeting.

Mr. Aragon pointed out that only three Indian organizations are named in the first paragraph of recommendation 9. He argued that the text either should be inclusive of all such organizations or exclude all references to specific organizations. Mr. Suagee, who said that he had participated in the development of that section of the draft pollution prevention report, responded that he had included the three organizations for which EPA provided funding but that he would edit the text to be more inclusive of other tribal organizations.

#### 2.2.4 Comments to Recommendation 10

Recommendation No. 10 of the draft report discusses ways to promote internationally efforts to institutionalize pollution prevention, particularly in developing countries. Mr. Suagee suggested that the subcommittee devote some time to addressing international sustainable development and how they apply to indigenous communities. He stated his belief that less developed countries, in pursuing solutions to their environmental problems, want what they perceive to be “proper solutions” to environmental problems because more developed countries have adopted those solutions.. The members of the subcommittee agreed that such less developed countries, including countries with indigenous communities, must move beyond what developed countries have implemented and explore new and more innovative ways to solve environmental problems. Mr. Suagee advised the subcommittee to discuss whether Indian organizations can play an appropriate role in the transfer of technology from developed countries to undeveloped and rural countries around the world. Indigenous tribes may be willing to consider technology transfer, a topic, he added, that should not be considered beyond the scope of the mission of the Indigenous Peoples Subcommittee.

The members of the subcommittee agreed to propose two new action items focusing on biological diversity and resource management:

*Action Item D (new): Add in parentheses: “Including the convention of biological diversity Article 8D”*

*Action Item E (new): Promote the use of traditional knowledge to focus on resource management with less disturbance with maintaining ecosystem structure.*

Mr. Suagee suggested that the subcommittee compose a new action item to improve the tribal

consultation process, particularly when Alaskan and Hawaiian Natives participate in global treaties. He added that seldom has consultation been a formal process and that representation of tribal communities has not been adequate. The U.S. State Department has argued that it is not under any legal obligation to include tribes in the consultation process, he continued. The members of the subcommittee agreed to write a new action item addressing that issue.

Mr. Aragon proposed a new action item that addresses trans-boundary pollution prevention issues. The action item, he said, would address the issues of border tribes (those tribes living along the U.S. borders with Canada and Mexico) and coastal tribes (tribes living in the coastal regions of the United States). He added that in many cases, the contamination created in one country affects tribes residing in a neighboring country, forcing the tribe in the neighboring country to deal with the cleanup. He acknowledged that climate change also is an important issue with regard to international and trans-boundary pollution prevention. Mr. Williams responded that those issues historically have been addressed under the North American Free Trade Agreement (NAFTA). He added that some processes had been started to address those issues but that there has been minimal insight into which direction to go. Therefore, Mr. Williams continued, NAFTA may not be the appropriate means through which to address such issues but it is a place to start.

The members of the subcommittee agreed to compose an action item advocating a new, multi-prong approach to encourage discussion of issues that affect tribes internationally, such as climate change, water contamination, and species shift. Mr. Aragon suggested that the report include a discussion about treaty rights because some tribes possess treaty rights that extend beyond their tribal boundaries. He added that the International Joint Commission (IJC), an independent, joint Canada and U.S. agency that provides oversight of shared water resources, intends to fill two seats with a Canadian and a Native American because the commission now recognizes that it must include indigenous peoples in its discussions.

Mr. Williams and Mr. Goldtooth agreed to write a comprehensive list of action items within recommendation 10 to be submitted to the NEJAC for inclusion in the final pollution prevention report.

#### 2.3 Review of the Strategic Plan

The members of the subcommittee briefly discussed the subcommittee's strategic plan, including the subcommittee's goals and objectives as well as the development of proposed activities and target completion dates. Mr. Williams and Ms. Walker reviewed the four goals of the subcommittee for 2003 as outlined in the strategic plan. Exhibit 6-3 presents the four goals of the subcommittee to be pursued during 2003 and 2004.

The members of the subcommittee agreed to meet in 2003 despite the fact that they would not be meeting with the NEJAC for a year and a half. The 2003 meeting would allow Mr. Williams and new subcommittee members to become familiar with the goals and operations of the subcommittee.

### 3.0 PRESENTATIONS AND REPORTS

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

#### 3.1 Presentation About the Tribal Wind Power Demonstration Project Plan

Mr. Robert Gough, consultant with the Rosebud Sioux Tribe (RST) & the Intertribal Council on Utility Policy (COUP), provided background information about the Tribal Wind Power Demonstration Project, which advocates tribal development of wind resources on Indian reservations in the northern Great Plains. Mr. Gough explained that the demonstration project is the first phase of the Environmental Justice Revitalization Project, a grassroots initiative intended to realize tribal aspirations for community revitalization.

Mr. Gough stated that the Tribal Wind Power Demonstration Project encourages the development of wind energy generation on Indian reservations as a viable strategy for community revitalization through the development of sustainable tribal economies. He added that the project would address past and ongoing environmental injustices that he said have resulted from the building of mainstream dams on the Missouri River. Mr. Gough stated that the project is an opportunity for tribes to control the development of energy sources and benefit from the management of such sources.

Following the presentation, Mr. Goldtooth pointed out that the draft pollution prevention report includes an unfinished section addressing energy issues to which the subcommittee can provide additional text advocating tribal energy management as part of pollution prevention efforts. Mr. Gough provided a written statement that he offered for use in completing that section.

Mr. Gogal noted that the wind power demonstration project is one of 15 projects identified for the second round of projects being considered by the Interagency Working Group on Environmental Justice (IWG) chaired by Mr. Charles Lee, EPA OEJ and DFO of the NEJAC Executive Council. If the project were to be selected as a finalist, Mr. Gogal explained, the project would be funded by EPA and the tribes would begin to implement the first phase of the project.

Mr. David Ullrich, EPA Region 5, stated that concern about climate change is worldwide, especially in the areas surrounding the Great Lakes. He asked Mr. Gough whether the demonstration project proposal had considered concerns about the aesthetics of

#### Exhibit 6-3

#### INDIGENOUS PEOPLES SUBCOMMITTEE STRATEGIC PLAN GOALS FOR 2002 THROUGH 2004

1. Assist the NEJAC in providing recommendations and advice to EPA on the development and implementation of EPA policy, guidance, activities, and protocol as well as environmental legislation and regulations to help achieve environmental justice for Tribes and other indigenous peoples
2. Provide opportunities for representatives of Tribes, other indigenous peoples, and national, regional, and local tribal and indigenous organizations to bring their environmental justice concerns to the NEJAC's attention as it develops policy advice and recommendations for EPA to address those concerns
3. Provide recommendations and advice to the NEJAC and its subcommittees to ensure that environmental justice issues affecting, involving, or of concern to Tribes are addressed by EPA in a manner that fulfills the trust responsibility, respects tribal sovereignty and the government-to-government relationship, upholds treaties, and promotes tribal self-determination
4. Coordinate and collaborate with EPA-supported tribal organizations and the NEJAC and its subcommittees and workgroups to identify priority environmental and public health concerns of Tribes and other indigenous peoples and determine ways that EPA can address these issues

large wind turbines, noise pollution, and hazards to bird populations. Mr. Gough answered that such potential problems arising from the project had been considered and addressed in the proposal. For example, he said, to address the aesthetic concerns, the project would include a screening process giving tribes the opportunity to oppose construction of the wind turbine near their villages. He added that results from a survey had shown that tribes are receptive to the construction of such equipment and any possible resultant noise because the project would give them a sense of ownership and independence. He acknowledged that birds could be at risk if the project were implemented but stated that the risk would be minimized by constructing in areas outside the migratory patterns of native birds.

### **3.2 Presentation by the Native Village of Selawik, Alaska**

Mr. Benten Davis, water technician for the Native Village of Selawik, Alaska, provided information about the environmental impact of a new gravel road scheduled to be built that would lead from his village to a newly constructed landfill. He stated that the dust from the road would compound the problems that the village residents already have with silt deposits and melting permafrost, which can result in giant sinkholes and other damage to the local ecosystem. He argued that dust particulates from the road would pollute the air, causing health problems for the people in the village. Mr. Davis requested that the subcommittee speak on his behalf to the U.S. Department of Transportation (DOT) to advocate paving the road to minimize dust pollution. Mr. Williams asked whether anyone other than members of the village would use the road, and Mr. Davis replied that the residents of his village would be the only people using the road.

Clarifying why this issue is appropriate for consideration by the subcommittee, Mr. Gogal stated that building a gravel road rather than a paved one might cause adverse health effects such as asthma and other respiratory problems for the people in the village. He added that this issue is a pollution prevention issue and should be addressed by the members of the subcommittee.

### **3.3 Presentation by the Ponca Tribe of Oklahoma**

Mr. Ron Sherron, Ponca Tribe of Oklahoma, described the environmental impacts caused by leaking wastewater lagoons located near his tribe. He explained that the company that owns the lagoons had operated two years without permits,

after which it received permits for two of the four lagoons. However, Mr. Sherron stated, there is evidence to prove that the permits were fraudulently obtained. The permits state that groundwater at the site is located 80 feet below ground surface (bgs), but actually, he explained, groundwater is located at 20 feet bgs. Mr. Sherron further stated that the lagoons for which the permits were obtained were faulty and that contaminants from the lagoons have leaked into the groundwater and contaminated the drinking water wells of 14 homes adjacent to the company's plant. The tribe had taken this issue to the Oklahoma state attorney general, the Oklahoma Department of Environmental Quality (Oklahoma DEQ), and EPA, urging them to withdraw the permits, he reported. Mr. Sherron then explained that a visible kill zone is present where the groundwater from the lagoon area reaches the Arkansas River. According to Mr. Sherron, no sampling has been conducted at the lagoon site, although Oklahoma DEQ has sampled seeps, lagoons, and pools in the area and has identified hydrocarbons in the water.

Mr. Sherron urged the subcommittee to communicate with EPA about this situation. Specifically, he asked for a letter of support from the NEJAC to the EPA Administrator on behalf of his tribe. He also requested that the letter propose an independent assessment of the situation with EPA support.

Mr. Suagee asked whether the area where the groundwater enters the river is tribal land. Mr. Sherron responded that ownership of this area is disputed and that tribal land lies immediately adjacent to the impacted area. Mr. Williams asked Mr. Sherron to provide the subcommittee with a more detailed written historical summary about the lagoon site so that the NEJAC could include the information in a letter to EPA.

Mr. Aragon commented that EPA should step in on behalf of the tribe and enforce a cleanup under the Safe Drinking Water Act because the Agency has exhibited little tolerance at similar sites for the type of contamination involved at the site described by Mr. Sherron. Mr. Gogal and Mr. Williams provided Mr. Sherron with information for several points of contact within EPA who would be able to help with his request for assistance.

### **3.4 Presentation by the Inupiat Community of the Arctic Slope**

Ms. Edith Tegoseak, Inupiat Community of the Arctic Slope, first spoke about language barriers between government agencies and tribal communities. She

asked the subcommittee to encourage the use of broad terms (such as “community” rather than “village”) when tribal communities are discussed or referred to in text. She also advocated that agencies should ask questions of Alaskan Native participants while they are at meetings rather than later, when agency representatives have returned home and are more likely to not remember the context of previous conversations.

Ms. Tegoseak then described some of the environmental problems faced by the native people of Alaska. She noted that, often, roads into and out of villages are not available. Where roads are built, she added, Alaskan Natives must deal with dust control and air quality issues. She stated that EPA would be wise to include Alaskan communities in its discussion about pollution prevention because native people know firsthand what environmental problems exist. Ms. Tegoseak urged that if Alaskan Natives are included in the discussion, the information must be presented in a manner that they can understand.

Mr. Williams asked Ms. Tegoseak, as an Alaskan Native, to explain the difference between a village and community. Ms. Tegoseak responded that lands in Alaska are not referred to as “reservations,” but as “communities.” She then explained that the term “community” is used most often and that “villages” typically refers to places that have populations of less than 500 people.

Mr. Suagee, agreeing with Ms. Tegoseak, added that EPA generally is aware that Alaska’s culture, institutions, and ecosystems are different from other states but few people within EPA specifically understand how the culture and language are different. He expressed his appreciation to the Alaskan Natives present at the meeting for traveling to Baltimore, Maryland to help the subcommittee understand the issues facing Alaskan Natives.

### **3.5 Presentation by the Tanana Tribal Council of Tanana, Alaska**

Ms. Kathleen Peters-Zuray, Tanana Tribal Council of Tanana, Alaska, provided information about a tribal environmental agreement submitted by members of her community to EPA. The agreement involved enforcement of environmental assessments and cleanups in her community. She began by describing the lifestyle of the people living in Tanana. She explained that the residents rely on salmon for a large part of their subsistence. Unfortunately, she explained, the salmon population had been seriously diminished in recent years by metals contamination in the Yukon River, from which people in Tanana also receive their drinking water.

Ms. Peters-Zuray requested that the subcommittee make a statement to EPA on behalf of the people of Tanana with regard to a multi-agency project that she currently manages. As part of that project, she reported that she had submitted a tribal environmental agreement that affirmed the government-to-government relationship between the Tanana Tribal Council and eight federal agencies, including EPA, the Federal Aviation Administration (FAA), the U.S. Air Force, and the Bureau of Indian Affairs (BIA). The agreement outlined seven steps that described how the parties to the agreement would work collaboratively to address the environmental problems in Tanana. The steps included identifying problems, setting priorities among the problems, agreeing on strategies for solving the problems beginning with the highest-priority problem, and implementing the most feasible cleanup strategies.

Ms. Peters-Zuray stated that after submitting the tribal environmental agreement to the federal agencies, she invited them to Tanana to meet with the people and sign the agreement. She explained that to date, she has received verbal agreements but no commitments in writing. She then stated that she needs the NEJAC to influence EPA and the other agencies to sign the agreement. She also advocated holding an environmental justice listening session in Alaska because, she said, Alaskans often cannot afford to attend listening sessions elsewhere in the United States and, therefore their concerns often are not considered in the discussions at those sessions.

Ms. Walker asked whether individuals own the land in Tanana or whether it is owned communally. Ms. Peters-Zuray responded that the land is owned communally but that members of the tribe recognize and respect the hunting grounds and individual lands of individual residents. Mr. Suagee urged Ms. Peters-Zuray to bring her concerns to the NEJAC Enforcement Subcommittee because it would be better able to address the problems that she had described.

### **3.6 Presentation about Supplemental Environmental Projects**

For this presentation, members of the NEJAC Enforcement Subcommittee joined the members of the Indigenous Peoples Subcommittee. Ms. Shirley Pate, EPA Office of Enforcement and Compliance Assurance and DFO of the Enforcement Subcommittee, facilitated the joint session about supplemental environmental projects (SEP).

Ms. Rosemarie Kelley, EPA Office of Regulatory

Enforcement, gave a brief overview about SEPs. She explained that in a SEP, in-kind services are performed for, or cash contributions made to, a project designed to advance environmental interests. For these projects, an organization agrees to perform the project in partial settlement of an enforcement action, but the organization is not otherwise legally required to perform the project and retains no monetary benefit from the project. Mr. Gogal asked Ms. Kelley to describe ways that tribes can get involved with SEPs. She responded that tribes should reference the community involvement guidance for SEPs that recently was issued by EPA. She also stated that guidance for tribal involvement with SEPs is scheduled to be issued in the near future. She went on to describe two situations in which SEPs can be applied in tribal communities: (1) when a tribe is a plaintiff and (2) when a tribe is affected by a person already being sued.

Mr. Gogal asked Ms. Kelley to explain how SEPs have been implemented in tribal communities. Ms. Kelley responded that one common situation in which a SEP is implemented is when a company that had been found in noncompliance hires a tribe as a contractor. She explained that there must be a relationship between the requirements of a SEP and the affected community. For example, she stated, a community could be located along an impacted river several hundred miles downstream from the source of contamination and still participate in the implementation of a SEP. Mr. Williams asked Ms. Kelley who initiates a SEP. She responded that a SEP can be initiated by any source, however she added, the defendant company decides whether to conduct a SEP or pay the full penalty.

Mr. Williams asked whether SEPs are implemented in criminal cases. Ms. Kelley responded that SEPs only are used in civil cases. However, a member of the audience stated that she had knowledge of a criminal case in which SEPs had been implemented as a form of punishment during settlement.

Ms. Kelley urged the members of the Indigenous Peoples Subcommittee to submit through the NEJAC comments to EPA about the tribal guidance on SEPs. She also suggested that the subcommittee advocate educating tribal communities about SEPs and obtain feedback about the types of projects tribes would like to see. Ms. Kelley explained that it is important to get tribes involved early in the SEP process because often, a community does not get an opportunity to comment on such remedies until after a SEP has been implemented.

### **3.7 Presentation about the EPA Criminal**

### **Investigation Division**

Mr. Nick Swanston, Director of the EPA Criminal Investigation Division, made a presentation about the role of criminal enforcement in environmental justice. See Chapter 3 of this report for a summary of that presentation.

### **3.8 Presentation by the Native Village of Nowatak, Alaska**

Ms. Hilda Booth, Native Village of Nowatak, Alaska, described the problems that her village has experienced with erosion. She explained that every year, the riverbank near her village erodes approximately five additional feet. When erosion first became a problem, she explained, the people in the village used logs and sandbags to control it. She reported that EPA had assured the tribe that the U.S. Army Corps of Engineers (USACE) would control the erosion by implementing a \$2 million project to block part of the river to divert the water in another direction. However, in the spring, the structure blocking the riverbank was washed away, she said, and now the tribe is back where it started, still looking for ways to get funding to control the erosion.

Ms. Booth and Mr. Francis Chin, Maniilaq Association, then described the problems that the village has faced as a result of the erosion. They explained that the dump site for the village used to be located next to the river. Over time, however, the erosion of the riverbank caused the contaminants at the dump site to leach into the river and to move toward nearby homes, she said. Ms. Booth went on to explain that a new dump site was built farther away from the river and that, in response to concerns about erosion, the U.S. Department of Housing and Urban Development has built new houses farther away from the river but closer to the new dump site. Ms. Booth added that the residents living in the new houses close to the dump site are beginning to develop health problems caused by the burning of wastes at the site.

Mr. Williams asked Ms. Booth what the USACE had done since the water diversion project failed. She responded that people in the village had asked the USACE to return to Alaska in the Spring but that USACE personnel had not. Mr. Gogal asked whether representatives of the EPA office in Alaska had made any contact with her tribe about the situation. Ms. Booth replied that EPA representatives had observed the dump site during the Spring and had been informed of the situation since then. Mr. Chin added that EPA now has said that it could offer no assistance because no funding currently is available.

Mr. Gogal asked about the size of the original dump site. Mr. Chin responded that the dump site occupies about 100 square feet but that the problem is the content of the site, not its size. Mr. Gogal replied that it might not cost much to remove the original and new dump sites and build a new one far away from the homes and the river. He added that EPA should conduct a cost analysis for that action and that the site might qualify for Brownfields redevelopment grants. Mr. Gogal assured Ms. Booth and Mr. Chin that he would contact EPA representatives in Region 10 to explain the situation and ask those representatives to contact Ms. Booth or Mr. Chin discuss the next plan of action.

Mr. Williams added that federal agencies, not tribes, are responsible for obtaining grants. He advised the tribe to begin by identifying which government agency is responsible for addressing the issue. Mr. Gogal cautioned that the tribe should not rely on government agencies to do the work to address the situation. He stated that the tribe should do what it could to make the situation better while and should also seeking help. There must be a commitment from the tribe, he added, to manage the situation so that it does not happen again.

#### 4.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the Indigenous Peoples Subcommittee.

- ✓ Departing members of the subcommittee will provide pertinent contact information to new members
- ✓ Prepare a comprehensive list of new action items for the NEJAC to consider when it reviews the draft pollution prevention report
- ✓ Prepare a letter to the chair of the NEJAC urging that the council (1) consider holding an environmental justice listening session in Alaska and (2) get a response from the EPA Indian Coordinator for that area
- ✓ Encourage more interaction between the Enforcement Subcommittee and the Indigenous Peoples Subcommittee. Ms. Pate and Mr. Williams will develop questions to be addressed in a joint conference call between the two subcommittees.
- ✓ Consider establishing a new organization composed of tribal law enforcement officers
- ✓ Develop a list of experts within indigenous communities to encourage the involvement of such communities in international issues
- ✓ Track points of contacts so that members of the community can be quickly directed to the appropriate person. During the next conference call, the subcommittee will discuss ways to implement this new policy.

**MEETING SUMMARY**

**of the**

**INTERNATIONAL SUBCOMMITTEE**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11, 2002  
Baltimore, Maryland**

**Wendy Graham  
Designated Federal Official**

**Tseming Yang  
Chair**

**CHAPTER SEVEN  
MEETING OF THE  
INTERNATIONAL SUBCOMMITTEE**

**1.0 INTRODUCTION**

The International Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Mr. Tseming Yang, Vermont Law School, continues to serve as chair of the subcommittee. Ms. Wendy Graham, U.S. Environmental Protection Agency (EPA) Office of International Activities (OIA), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Mr. Jose Bravo, Just Transition Alliance, a former member of the International Subcommittee, attended the meeting as proxy for Mr. Cesar Luna, Border Environmental Justice Campaign, who as unable to attend. Exhibit 7-1 identifies the subcommittee members who attended the meeting and the members who were unable to attend.

This chapter, which summarizes the deliberations of the International Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, 5.0, *Activities of the Subcommittee*, presents items identified by the members to facilitate a beneficial relationship between the subcommittee and EPA OIA. Section 3.0, *Discussion of Corporate Responsibility*, summarizes the discussion about the corporate responsibility of United States-based multinational corporations to comply with the health, safety, and environmental laws and regulations of the foreign countries. Section 4.0, *Presentations and Reports*, presents an overview of presentations and reports about topics other than corporate responsibility and includes a summary of relevant questions and comments from the subcommittee members. Section Section 5.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

**2.0 ACTIVITIES OF THE SUBCOMMITTEE**

Mr. Yang described the subcommittee's accomplishments during the past year, including:

- Its work with the Amazon Alliance on Plan Columbia, a group examining at the effects of eradication of coca crops in Colombia
- Its completion of the Draft Report on the

International Roundtable on Environmental Justice on the United States-Mexico Border, August 1999, National City, California, which had been submitted to the Executive Council for review and approval

- The work of Mr. Philip L. Hillman, Polaroid Corporation and member of the subcommittee, in preparation for the discussion about international corporate responsibility. See Section 3.0 of this chapter for a summary of that discussion.

Mr. Yang stated that although the next complete meeting of the NEJAC is not scheduled to occur until April 2004, the subcommittee should attempt to meet prior to that date. He suggested that the subcommittee meeting be convened in a city such as San Diego, California, or El Paso, Texas that is located near the United States-Mexico border.

Mr. Yang pointed out that the items to be discussed during the current meeting of the subcommittee reflect the priorities outlined in the International Subcommittee Strategic Plan that recently had been revised. Pointing to Goal 6 of the Strategic Plan, Mr. Yang suggested that the relationship between environmental justice and the work of the various international agencies is important and should be actively engaged by EPA. Exhibit 7-2 presents the text of that goal.

**Exhibit 7-1**

<p><b>INTERNATIONAL SUBCOMMITTEE</b></p> <p><b>Members Who Attended the Meeting December 11, 2002</b></p> <p>Mr. Tseming Yang, <b>Chair</b> Ms. Wendy Graham, <b>DFO</b></p> <p>Mr. Jose Bravo, <i>proxy for Mr. Cesar Luna</i> Mr. Larry Charles Ms. Carmen Gonzalez Ms. Dianne Wilkins</p> <p><b>Members Who Were Unable To Attend</b></p> <p>Mr. Philip L. Hillman Mr. Cesar Luna Mr. Jose Matus</p>
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## Exhibit 7-2

INTERNATIONAL SUBCOMMITTEE  
STRATEGIC PLAN

## Goal 6

Engage in further discussion with OIA about the subcommittees's work on the accountability of:

- The Commission for Environmental Cooperation (CEC), the Border Environmental Cooperation Commission (BECC), the North American Development (NAD) Bank, and the International Boundaries and Waters Commission
- International environmental institutions such as the United Nations Environmental Program and other treaty organizations
- Foreign policy-oriented federal agencies and entities

Mr. Jerry Clifford, Deputy Assistant Administrator, EPA OIA responded that the Commission for Environmental Cooperation (CEC) is overseen by an advisory committee; adding that he did not think it would be helpful for the International subcommittee to assist with that advisory committee's processes. However, he stated, the Border Environmental Cooperation Commission (BECC) and the North American Development (NAD) Bank do not have effective advisory committees. Reporting that there is a plan to restructure the BECC and the NAD Bank to work under the same advisory board, Mr. Clifford stated he would like to see a citizen advisory position added to that new board. Mr. Clifford suggested that he would like to use the existing Good Neighbor Board in that capacity.

Commenting about the subcommittee's continuing concerns about U.S. international trade policies and the U.S. Department of State, Mr. Clifford recommended the subcommittee provide advice about environmental justice through the Trade and Environment Policy Advisory Committee (TEPAC), a federal advisory committee jointly administered by EPA and the United States Trade Representative (USTR). Mr. Clifford stated that through its role as an advisory body to OIA, the NEJAC could provide recommendations about how OIA could challenge TEPAC to engage in environmental justice issues.

The subcommittee members agreed to meet with TEPAC via a teleconference call to provide recommendations about environmental justice as it relates to international trade. Ms. Carmen Gonzalez, Seattle University School of Law and member of the subcommittee, pointed out that the NEJAC is unique

among advisory councils in that it also serves as a conduit between environmental justice grassroots organizations and EPA. Mr. Clifford encouraged the subcommittee to continue to bring such issues as the aerial eradication of coca crops in Colombia to the attention of EPA.

### 3.0 DISCUSSION ABOUT INTERNATIONAL CORPORATE RESPONSIBILITY – THE MORAL DILEMMA

This section summarizes the subcommittee's discussion about how to encourage the responsibility of United States-based multinational corporations to comply with the health, safety, and environmental laws and regulations of the foreign countries in which they operate. The discussion also examined whether such corporations were required to maintain the standards they employ to operate their facilities located in the United States. Various perspectives were offered by representatives of an advocacy organization, a corporation, and the EPA.

Mr. Yang introduced the discussion by stating that there is a perceived disconnect between economic and financial policy and environmental responsibility in developing countries. He noted that United States-based multinational corporations have moved their production operations to foreign countries, typically developing countries, where there are weak environmental regulations or poor enforcement of the health, safety, and environmental standards that must be met in the United States. The subcommittee is concerned about international environmental responsibility, he explained, particularly as it relates to transboundary issues in the United States-Mexico border area and shipments of hazardous waste from the United States to South Africa. Mr. Yang summarized his remarks by reading the following statement prepared by Mr. Hillman:

*"The goal of the International Subcommittee is to develop best practices and identify strategies that can be used by government and non-government organizations to challenge and influence United States multinational corporate behavior. We want to develop a method that would encourage companies to take the 'high road' and become better global citizens."*

Drawing a connection between international corporate environmental responsibility and pollution prevention (the policy issue being discussed during the current meeting of the NEJAC), Ms. Dianne Wilkins, Bullock Memorial Association and member of the subcommittee, stated her belief that in the

United States many corporations consider pollution prevention to be a voluntary effort. For the many United States-based multinational corporations operating in locations outside the United States, that perception is “more than voluntary,” she asserted; explaining that those corporations operate as if they do not have to be proactive about pollution prevention. She emphasized the importance of international pollution prevention efforts because “pollution does not know boundaries.”

The presentations are described below, as well as a summary of the relevant questions and comments of the subcommittee.

### 3.1 Coalition for Environmentally Responsible Economies

Ms. Debra Hall, Coalition for Environmentally Responsible Economies (CERES), opened her presentation about international corporate responsibility by stating that the discussion would examine the complexities of corporate responsibility, address moral dilemmas and management challenges, and link pollution prevention to sustainability and a “systems approach” by highlighting corporate best practices. For companies, she stated, there are values for “doing the right thing,” and a company’s values must be consistent with its management approach.

Ms. Hall then provided background information about CERES. She described CERES as a coalition of more than 80 environmental, religious, labor, and public interest groups as well as investors representing more than \$300 billion in invested capital. The coalition was established in response to the 1989 Exxon oil spill in Alaska. Its members include a network of more than 65 corporate endorsers representing diverse industries and businesses, she said. Ms. Hall explained that the members of CERES advocate an innovative, practical approach to advancing corporate accountability through public reporting and stakeholder engagement. She reported that the coalition had developed the CERES Principles, a 10-point code of environmental conduct that its members have endorsed:

- Protection of the biosphere
- Sustainable use of natural resources
- Reduction and [safe and responsible] disposal of wastes
- Energy conservation
- Risk reduction
- Safe products and services
- Environmental restoration
- Informing the public

- Management commitment
- Audits and reports

CERES has promoted standardized environmental reporting since its formation in 1989, Ms. Hall continued, noting that CERES has helped turn corporate environmental disclosure into a routine part of business behavior. In 1997, she said, CERES launched the Global Reporting Initiative (GRI), an international effort to create a common framework for reporting the economic, environmental, and social impacts of corporate activity. Ms. Hall noted that the GRI Sustainability Reporting Guidelines are a widely accepted standard for corporate sustainability reporting worldwide. Companies that have endorsed the CERES Principles are obliged to report annually on their environmental performance, she said. In 2002, GRI became an independent institution whose mission is to develop and disseminate globally applicable sustainability reporting guidelines, she said.

Mr. Bravo then asked about CERES’ position on environmental justice and whether environmental justice is integrated into the coalition’s work. Ms. Hall replied that CERES is an environmentally focused coalition that is concerned about sustainability and social responsibility issues but that it does not specifically spell out environmental justice as part of its principles.

### 3.2 DuPont Company

Mr. Ed Mongan, DuPont Company (DuPont), described DuPont as a multinational chemical company in which corporate responsibility is part of the culture. He then presented an overview of DuPont’s commitment to corporate responsibility. In the 1980s, he said, when it became apparent that environmental issues such as ozone depletion and global warming were “not just local but global in scope,” DuPont began making changes involving environmental corporate responsibility. DuPont now has an environmental policy board that focuses on the broader issues of global impacts, including those related to environmental impacts, worker safety, and product stewardship.

Mr. Mongan then shared his personal experience involving pollution prevention and DuPont’s supply chain relationship with the automobile industry. He began by explaining that DuPont Canada’s Performance Coatings had initiated a partnership with Ford Motor Company’s Oakville, Ontario, automotive assembly plant. The resulting financial contract was based on the number of cars painted rather than the historical metric of gallons of paint used, he said. DuPont applied its extensive know-

how in paint application technology to Ford's painting operations, he continued, noting that as a result, paint application efficiency improved greatly; less paint was used; volatile organic emissions from the plant were lowered by 50 percent over a four year period; and Ford Motor Company's costs related to painting operations dropped by almost 35 percent. The improved efficiency also created significant value for DuPont, more than offsetting the reduction in gallons of paint sold, he said.

Mr. Mongan mentioned that DuPont interacts with its competitors, including the Dow Chemical Company, to discuss the process for benchmarking pollution prevention and "sustainable systems" performance across a company or industry and to share best practices. He added that among the industry, there is a fair level of comfort with the sharing of environmental information.

Mr. Mongan continued by describing DuPont's experience with stakeholder engagement and involvement. He stated that DuPont has established a community advisory panel or similar interaction process for almost every DuPont facility around the world. Such stakeholder engagement has increased corporate transparency and communication between a facility and the local communities and, in most cases, has helped to forge a relationship of trust and mutual respect, he said. Mr. Mongan added that in foreign countries, stakeholder involvement has proven to be more challenging, in part because governments in those countries often discourage interaction between the company and stakeholders. DuPont does not track stakeholder involvement in its environmental database, Mr. Mongan explained, noting that stakeholder engagement has led DuPont to develop the following corporate statement on sustainable growth: "to increase the value of goods and products to society while decreasing their environmental footprint." Ms. Wilkins suggested that DuPont share its experience in stakeholder involvement with other companies.

Ms. Gonzalez asked whether any government regulations, such as limits to chlorofluorocarbons, had pushed DuPont into developing environmental policies. Mr. Mongan replied that they had and that DuPont felt it was better to cooperate with the limits than to oppose them. Ms. Wilkins added that the development of the Toxic Release Inventory (TRI), an EPA database containing information available to the public about toxic chemical releases and other waste management activities, spurred many companies to begin revising their environmental policies and practices. Mr. Mongan replied that DuPont once topped the TRI listing of toxic chemical releases, mostly because of its deep well injection of

hazardous waste.

Mr. Mongan explained that in the late 1980s, when public opinion polls had ranked DuPont low, DuPont's Chief Executive Officer (CEO) had challenged the company to push corporate environmental policy as a company priority. He said that the CEO had set company goals for emission reductions, pollution prevention, and a reduction in the use of deep well injection of hazardous waste. Those goals, Mr. Mongan continued, led to the development of a corporate environmental plan that includes a database through which DuPont facilities can track their wastes, emissions and consumption of energy and water. DuPont began to report internally on the progress corporate environmental goals, which drove the individual facilities and associated business units to improve their performance, he continued. Those reports identified where cost savings had occurred as a result of pollution prevention and reductions in emissions and waste, as well as where deficiencies were occurring.

Mr. Bravo asked whether the information contained in the reports is available to the public or EPA. Mr. Mongan replied that the information is not available to parties outside the company.

Ms. Wilkins stated that there must be a commitment from top management in a company for pollution prevention to be successful. Lower-level employees need the direction and commitment of management to implement pollution prevention, she stated. She added that pollution prevention can create cost savings for companies but that in her experience, there are often problems with quantifying savings and conducting accurate benefit analyses. Ms. Wilkins stated many companies can experience cost-savings from implementing low-cost or no-cost pollution prevention projects. Mr. Mongan added that a company also can pursue "the low-hanging fruit" (those pollution prevention objectives that are easiest to meet) and the associated cost savings can be used to fund future projects.

Mr. Larry Charles, ONE/CHANE, Inc. and a member of the subcommittee, added that corporate environmental responsibility contributes to corporate competitiveness because such responsibility becomes part of the performance appraisal for business sectors. Mr. Mongan agreed and said that DuPont is determined not to be the number one polluter among chemical companies. DuPont has a companywide standard that each division within the company has a goal of zero waste generation and zero emissions, he said, adding that each division is expected to implement the best technology available, giving priority to technologies that limit

potential risk to human health or the environment.

Mr. Bravo asked whether DuPont had considered whether the transportation of goods could be conducted in a "sustainable manner." Mr. Mongan replied that although DuPont manufactures many products in large volumes to be used locally rather than shipped, he suspects that DuPont may ship some products between the United States and Mexico.

Mr. Bravo also asked whether DuPont looks at violations of human rights in foreign countries where it does business. Mr. Mongan replied that this subject is outside of his environmental expertise and that he could not provide an accurate answer. Mr. Bravo added that the members of the subcommittee do not separate human rights issues from environmental issues.

Mr. Charles asked whether Mr. Mongan had suggestions for encouraging other companies to use recommended best practices and tools for environmental . Mr. Mongan stated that engaging the companies is a challenge but that management changes are effective. Mr. Charles also asked whether DuPont has a statement of principles about environmental stewardship. Mr. Mongan answered that DuPont does have a commitment to safety, health, and the environment, explaining that although DuPont is not an endorsing member of CERES, it does evaluate itself against the performance of other firms that participate in that organization. Mr. Mongan then provided DuPont's web site address, <<http://www.dupont.com>>, which contains additional information about its environmental program.

With regard to motivating multinational companies to be environmentally responsible, Mr. Yang asked Mr. Mongan what motivated DuPont to pursue internal environmental standards. Mr. Mongan stated that the founder of the company had been an advocate of worker safety who recognized that efforts to improve safety resulted in improved environmental performance.

Mr. Charles asked whether Mr. Mongan believed if DuPont's view of corporate responsibility is being embraced by other companies. Mr. Mongan replied that he did believe that others were embracing that philosophy.

### 3.3 Recent Efforts by EPA OIA

Ms. Suzanne Giannini Spohn, EPA OIA, Office of Technology Cooperation and Assistance, began by describing OIA's efforts to promote internationally, standards for pollution prevention and environmental

sustainability. She stated that the mission of OIA is to cultivate capacity-building (the development of an organization's core skills and capabilities, such as leadership, management, financial, programming, and evaluation, to build that organization's effectiveness and sustainability) for environmental protection. OIA works with governments and companies to foster such capacity-building, she said. She then provided brief examples of projects conducted in Thailand and China with United States-based companies that have operations in those countries.

Ms. Giannini Spohn stated that many international locales need investments from private resources because the public sector cannot fund investments that address environmental quality. She noted that as United States-based companies adapt domestic environmental standards to the foreign countries in which they operate, foreign governments are able to see improvements to local environments and how such standards can be applied within the context of local laws. She stated that it is not realistic to expect a company to compete in an economic environment where it is seen as a bad corporate citizen. She pointed out that countries often have environmental laws and regulations in place but there is a lack of or poor enforcement of such laws. The reasons for this situation, she said, includes limited resources and the dilemma created when workers are displaced when enforcement actions result in plant shutdowns.

Mr. Charles asserted that for many United States-based corporations, profit is the only motive and companies must see a competitive advantage to achieve corporate environmental responsibility. Ms. Giannini Spohn replied that environmental costs often are not factored into the cost model for the development of products and that when operations are shut down for irresponsible environmental activity, often the workers bear the burden in the form of layoffs or termination. Many international companies do not see it as cost-effective to use natural resources efficiently; some firms actually receive government subsidies for resource extraction and water and energy usage, she explained. Such companies would rather increase sales and decrease costs than implement environmentally responsible practices, she noted. Ms. Wilkins stated that corporations need to consider pollution prevention and environmental justice jointly, not as separate issues.

Mr. Bravo stated that one problem with promoting environmental justice has been the dilemma posed when communities are made to choose between remaining silent about concerns about pollution caused by their employer and jeopardizing their jobs

when calling for employers to address polluting the environment in which residents live and work. Communities must choose between jobs or the environment, he said. He stated that he does not support sacrificing public health for employment, nor does he consider the choice of jobs over the environment as an “either/or” dilemma. Mr. Bravo added that existing zoning policies add to this dilemma when polluters operate in residential areas but whose activities are tolerated because the firms provide jobs for local residents. He pointed to the worker displacement that had led to the development of the maquiladora industry along the United States-Mexico border as an example of what can happen if the problem is not addressed.

Mr. Chris Herman, EPA OIA, stated that trade agreements should be designed to “level the environmental playing field” for multinational companies of all sizes. He stated that the failure to promote environmental stewardship often does not lie with the inability of small- or medium-sized companies to comply with environmental regulations but rather the problem lies with the those governments that perceive changes in market competition as barriers to trade. Mr. Herman added that one way to protect a society’s ability to change corporate behavior and promote innovate corporate mechanisms is to develop appropriate trade rules and that this is a process that already should have begun.

### **3.4 Tools for Change in Corporate Responsibility**

Ms. Hall described the following tools for change in corporate responsibility:

- Stakeholder dialogue
- Reporting
- Investor activism
- Partnerships
- Technical assistance
- Funding

She also explained that GRI, an independent global institution, is developing a “generally accepted framework” for sustainability reporting. Ms. Hall stated that GRI has created Sustainability Reporting Guidelines that are available at <http://www.globareporting.org>. The goal of the Sustainability Reporting Guidelines, she continued, is to enable companies and other organizations to prepare comparable reports about economic, environmental, and social indicators. The guidelines also describe reporting principles that detail how to address the life cycle of products, she added, noting that GRI also plans to begin development of facility reporting guidelines.

As an action item for the subcommittee, Mr. Charles suggested the development of a set of principles for United States-based multinational corporations to use as tools to address what he termed “the corporate environmental responsibility dilemma.” He said he envisioned the proposed principles as a product that could positively influence “people’s lives in areas are impacted negatively by United States-based multinational corporations.” He further suggested that the subcommittee obtain the support of the NEJAC for the development of the principles.

Ms. Hall then introduced Ms. Leslie G. Fields, Friends of the Earth and member of the NEJAC Waste and Facility Siting Subcommittee. Ms. Fields described the efforts of her organization to promote international right-to-know standards. Noting that United States companies operating abroad are not required to disclose information about their international operations that they are required to disclose about its domestic operations, she stated that this lack of disclosure has resulted in environmental, labor, and human rights abuses. Such abuses have given rise to public distrust of the United States among communities around the world, she said.

Ms. Gonzalez raised a concern that multinational corporations learn to work with local communities when addressing environmental, health, and safety issues. She added that when discussing trade rules and funding options, corporations also should consider the concerns and needs of local communities affected by their operations.

Mr. Yang mentioned that in addition to enforcement actions and associated legal penalties, social norms play a significant role in influencing the behavior of multinational companies. He added that the problem with achieving corporate responsibility across various countries is that trade markets are influenced largely by economic incentives, not environmental incentives.

## **4.0 PRESENTATIONS AND REPORTS**

This section summarizes the presentations made and reports submitted to the International Subcommittee that involved issues other than corporate responsibility.

### **4.1 Update on United States-Mexico Activities**

Mr. Gregg Cooke, Regional Administrator, EPA Region 6, opened his presentation with an update about the development of the Draft Border 2012 Plan – United States-Mexico Environmental Program, a 10-year program that is designed to protect public

health and the environment along the United States-Mexico border. He stated that to develop the draft plan, EPA had worked with local, state, and tribal governments along the border to achieve a “community-based level of participation.” As part of that effort, EPA had hosted 11 public meetings to discuss the development of the draft plan, he added, noting that many of the meetings were well attended by citizens of Mexico. Mr. Cooke added that copies of the Draft Border Plan had been distributed to obtain public comments and that the public comment period had ended on November 22, 2002. Mr. Cooke encouraged the members of the subcommittee to submit comments to the report.

Mr. Bravo asked why site-specific cleanup plans are not addressed in the draft border plan. Mr. Cooke replied that the draft plan divides the United States-Mexico border area among four regional committees centered in “sister cities,” those cities located directly across from another city situated on the Mexico side of the border. These committees have been asked to focus on environmental and environmentally-related public health issues specific to each region, he said, which should address site-specific cleanup efforts.

Ms. Laura Yoshii, Deputy Regional Administrator, EPA Region 9, began by stating that the draft border plan reflects the International Subcommittee’s desire to take a community-based, “bottoms up” approach to environmental issues in the border area. She added that the plan focuses on EPA’s obtaining positive environmental results, not just conducting meetings about environmental issues. Ms. Yoshii said that in addition to developing the draft border plan, EPA is continuing to promote progress on water infrastructure development and tribal land, solid and hazardous waste, and air quality monitoring issues. She emphasized that EPA wants to build the capacity of communities located along the border to address local environmental issues and that the EPA border offices in San Diego, California and El Paso, Texas, remain available as resources for this effort.

Mr. Charles asked what environmental standards would be applied to projects or activities along the border. Ms. Yoshii replied that the standards would be specific to the country in which a site is located.

Mr. Jerry Clifford, Deputy Assistant Administrator, EPA OIA, stated that the initiation of an environmental program, such as that outlined in the Draft Border Plan, is not a revolutionary idea for the United States but is entirely revolutionary for Mexico. In the past, he explained, efforts to address environmental issues along the border had not

involved Mexican citizens because there had not been a mechanism through which to engage individual citizens. Mr. Clifford added that public participation is new to many citizens of Mexico. Until the development of the Draft Border 2012 Plan, he explained, representatives of EPA and Mexico’s Secretariat for Environment and Natural Resources (SEMARNAT), the environmental authority for Mexico, had been working together on a government-to-government basis but that such efforts had not involved the citizens of Mexico in any local capacity.

Mr. Bravo stated that although binational partnerships had been formed to address environmental issues along the United States-Mexico border, efforts to ensure environmental justice in that region had not had an impact. He also stated that despite the fact that commissions, such as the BECC and the NAD Bank, they do not focus on environmental justice issues in the border region. Citing the recent completion of the subcommittee’s report about the International Roundtable on Environmental Justice on the United States-Mexico Border, Mr. Bravo stated that there is a need for a regular avenue for community input into decisions about environmental issues. He recommended the creation of an additional community-based advisory committee to provide input to EPA about border environmental justice issues. He asserted that people living in communities located along the United States-Mexico border are not interested solely in attending meetings; rather, he said, they would prefer to see results in the form of site cleanups.

Ms. Yoshii addressed Mr. Bravo’s comment by stating that under the Draft Border 2012 Plan, tangible results should be obtainable. Mr. Enrique Manzaniilla, EPA Region 9, added that site cleanups are an issue throughout Mexico, not solely at sites along the United States-Mexico border. Mr. Cooke stated that the formation of an additional advisory committee to address environmental justice in the border region would not be effective. In addition, he stated, site-specific environmental justice issues are better approached on a local or regional level. Mr. Clifford added that the Draft Border 2012 Plan is not designed to have “government bureaucrats sitting around the table” but rather to have local community representatives living on both sides of the border working together to address priorities.

Mr. Bravo stated that the existing commissions addressing border issues focus primarily on water pollution issues. Many other issues need to be addressed, he asserted. Mr. Clifford responded that the BECC and the NAD Bank were designed to

address water and water infrastructure issues. The top three priorities for SEMARNAT are “water, water, and water,” acknowledged Mr. Cooke.

#### 4.2 Update about Persistent Organic Pollutants

Ms. Angela Bandemehr, EPA OIA, presented information about the progress of the Stockholm Convention on Persistent Organic Pollutants (POP), a global treaty adopted in May 22, 2001 to protect human health and the environment from POPs. She reported that the United States, along with 150 other countries, have signed the treaty; only 23 countries have ratified it, she said. Ms. Christine Whitman, EPA Administrator, signed the treaty in May 2001, Ms. Bandemehr noted; adding that the legislative package for the treaty is under Congressional review for ratification. Voluntary implementation of the Stockholm Convention begins prior to its entry into force, which will occur after 50 countries have ratified the treaty, she said.

Ms. Bandemehr then provided a description of POPs, explaining that they are organic compounds from natural or manmade sources that remain intact in the environment for long periods of time, become widely distributed geographically, accumulate in the fatty tissue of living organisms, and are toxic to humans and wildlife. There are two different types of POPs, she continued, commenting that POPs either are substances produced intentionally (such as pesticides and industrial chemicals which include chlordane, DDT, endrin, heptachlor, mirex, and man-made polychlorinated biphenyls (PCB)), or unintentionally (such as dioxins, furans, and naturally-occurring PCBs). Ms. Bandemehr explained that exposure to POPs can occur through during their production and use, and in the consumption of food contaminated with POPs. Populations with a potentially higher risk of exposure to POPs are those exposed through use and those who rely on a subsistence diet of foods contaminated with POPs, she said.

Ms. Bandemehr explained that the key provisions of the Stockholm Convention require parties to:

- Prohibit most of the production and use of nine pesticides and industrial chemicals
- Restrict the production and use of DDT
- Prohibit the production of new PCBs, and plan the phase-out of the use of PCBs by 2025
- Take measures to reduce or eliminate releases of POPs generated as the by-product of other processes
- Manage wastes containing POPs in an environmentally sound manner

The treaty also contains a provision for the addition of new POPs to the list of chemicals subject to the terms of the treaty. Each of the ratifying parties is required to develop an implementation plan, an action plan, and a national focal point for the exchange of information, she said. She noted that the Global Environmental Facility is the principal organization tasked with providing interim financial assistance to countries. Provisions for technical assistance for participating countries currently is being developed, she reported.

Ms. Bandemehr reported that the United States has taken a series of actions to address POPs:

- Pesticides
  - All uses canceled under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
  - All food tolerances revoked
  - No production, import, or export
- PCBs
  - Manufacture and new uses prohibited in 1978 under the Toxic Substances Control Act (TSCA)
  - Regulated as a hazardous air pollutant under the Clean Air Act (CAA)
  - Regulated as a priority toxic pollutant under the Clean Water Act (CWA)
- Dioxins and Furans
  - Regulated as hazardous air pollutants under the CAA
  - Regulated as priority toxic pollutants under the CWA

Ms. Bandemehr also presented the subcommittee with copies of resources about POPs and the Stockholm Convention through which to find outreach materials and information about points of contact.

#### 4.3 Update on the Aerial Eradication of Coca Crops in Colombia

Ms. Betsy Marsh, Amazon Alliance, a non-government organization, provided an update about Plan Colombia, a program to eradicate coca crops in Colombia that is funded by the U.S. Department of State (State Department). She commented that the issues associated with the program first had been brought to the attention of the NEJAC more than two years ago, who had in turn had asked EPA to become involved in monitoring Plan Colombia. She then praised the subcommittee for its opposition to Plan Colombia.

Ms. Marsh reported that since the plan's inception, more than \$1 billion in support had been provided by the State Department for the counter-narcotics program that has as its primary component the aerial spraying of herbicides that are intended to destroy illegal coca crops in Columbia. The program initially covered 235,000 acres in 2001 which was increased to 300,000 acres in 2002, she explained. She stated that the program is considered by many to be ineffective.

Ms. Marsh stated that her organization had been working with EPA to encourage the U.S. Congress to require the State Department to conduct the aerial spraying of herbicides in accordance with all label requirements and to conduct an adequate assessment of the human health risks associated with the program. She said that in response to the State Department's *Report on Aerial Spraying in Columbia*, EPA had prepared a report which highlighted its uncertainty about the human health risks and the lack of data about the effects of the 20-year program. Ms. Marsh added that a letter written by EPA to Congress refrained from drawing attention to such concerns and that the State Department had downplayed the concerns and stated that it would switch to a less toxic mixture of pesticides. Currently, the State Department is supporting a \$440 million foreign aid bill to continue the aerial spraying program in Columbia, but the legislation has not yet been approved, she stated. The bill includes the conditions that the herbicide application must be carried out in accordance with label requirements and that the risk to human health must be evaluated, she said.

Ms. Kim Stanton, Washington Office on Latin America, first commented that her organization focuses on the "human rights side" of the aerial spraying program. She then explained that the legislation, first proposed by the U.S. Senate and which includes provisions for effective monitoring and enforcement, had not been voted on by either members of the Senate or the U.S. House of Representatives. She noted that in addition to the President signing the final legislation, the Secretary of State will be required to certify the bill. She added that the fate of the bill would be known in January or February 2003.

Ms. Cameryl Hill-Macon, EPA OIA, explained that EPA had insufficient information to perform an adequate analysis of the aerial spraying program. The actual chemical make-up of the herbicides used had not been communicated to EPA.

#### **4.4 Update on Farmworker Health and Worker Protection Programs**

Ms. Allie Fields, EPA Office of Prevention, Pesticides, and Toxic Substances (OPPTS), began by introducing that office's recent work on pesticide worker safety programs. She noted that the programs currently include an applicator certification and training program, an agricultural worker protection program, outreach and education programs, and the development of national strategies to encourage health care providers to provide coverage for agricultural workers.

Ms. Fields stated that the applicator certification and training program includes national standards for purchasing and applying restricted-use pesticides. She reported that the program had been reviewed by EPA in 1998 and 1999, which had identified several recommendations for revisions to the program. Those recommendations were presented in a Draft Program Proposal as follows: update competency standards for applicators, establish a core competency exam for applicators, establish a minimum age standard for applicators, and integrate the program with other worker safety programs, such as those handled by the Occupational Safety and Health Administration.

Ms. Fields stated that EPA's agricultural worker protection program is designed to reduce risks of illness or injury resulting from occupational exposure to pesticides by agricultural workers and pesticide handlers. The program requires basic safety training, informational posters, notification to workers about pesticides, the central posting of labels, and site information, she said. Ms. Fields then described the milestones achieved by the program from 1983 through 2002. She explained that the program assessment facilitated development of a national enforcement program element review, national program assessment workshops, and workgroup projects. Ms. Fields also described the outreach and education programs, whose elements include training, Hispanic radio network programs, videos, manuals, and curricula.

Dr. Artensie Flowers, EPA Office of Prevention, Pesticides, and Toxic Substances, presented information about an initiative of the National Environmental Education and Training Foundation (NEETF) and the EPA Office of Pesticides Program working in collaboration with the U.S. Department of Health and Human Services (DHHS), the U.S. Department of Agriculture (USDA), and the U.S. Department of Labor (DOL). The objective of the initiative, she reported, is to improve the recognition, management, and prevention of health effects from exposure pesticides and to integrate environmental health and safety concerns at all levels of education for the target audiences, primary health care



providers.

Continuing, Dr. Flowers noted that the initiative includes a three-pronged strategy for implementation within educational and practice settings, and resources and tools. She reported that specific accomplishments include development of an Implementation Plan in March 2002, as well as development of National Pesticide Competency Guidelines for Medical and Nursing Education, National Pesticide Practice Skills Guidelines for Medical and Nursing Education, and a Pediatric Health Care Providers Pilot Study. Dr. Flowers then stated that a national forum is planned for 2003 to launch the initiative, build a national consensus about the goals and objectives of the initiative, and establish a nationwide network of health care providers committed to incorporating environmental health into educational and practice settings. Dr. Flowers added that a children's health network is developing a national registry to track immunizations of the children of farmworkers.

Ms. Marva King, EPA Office of Environmental Justice, recommended that Dr. Flowers and Ms. Fields contact Dr. Dorothy Powell, Howard University and member of the Health and Research Subcommittee, to discuss common issues.

Asserting that there is an enforcement problem associated with farmworker health and worker protection, Mr. Yang stated that despite the fact that the USDA is responsible for inspection of farmworker conditions it is inclined to promote the best interests of the farm owners rather than the farmworkers. Mr. Yang added that EPA is helping USDA improve its enforcement of farmworker protection.

Mr. Clifford asked why the International Subcommittee addresses farmwork health issues that arise domestically and indicated that they might be better addressed in another subcommittee. Mr. Bravo replied that Mr. Fernando Cuevas, Sr., a former member of the International Subcommittee who works with farmworker health organizations, initially had brought the issues to the attention of the subcommittee. Mr. Bravo added that concerns about the health of migrant farmworkers in the United States had evolved from concerns associated with the exportation of pesticides to Mexico from the United States, as well as concerns about produce treated with pesticides that is imported to the United States. Mr. Bravo suggested that outreach and education about pesticides and their effect on farmworker health should be provided to migrant farmworkers when they initially arrive to begin work in the United States.

## 5.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the International Subcommittee.

- ✓ Create a set of principles for United States-based multinational corporations to use as tools to address the corporate responsibility dilemma, and obtain the support of the NEJAC for the development of the set of principles
- ✓ Meet with TEPAC via a conference call to provide recommendations on environmental justice in international trade.

**MEETING SUMMARY**

of the

**WASTE AND FACILITY SITING SUBCOMMITTEE**

of the

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 11, 2002  
Baltimore, Maryland**

**Kent Benjamin  
Designated Federal Official**

**Veronica Eady  
Chair**

**CHAPTER EIGHT  
MEETING OF THE  
WASTE AND FACILITY SITING SUBCOMMITTEE**

**1.0 INTRODUCTION**

The Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Ms. Veronica Eady, Tufts University Department of Urban and Environmental Policy, continues to serve as chair of the subcommittee. Mr. Kent Benjamin, Environmental Justice and State Liaison, Innovation, Partnerships, and Communication Office (IPCO), U.S. Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 7-1 identifies the subcommittee members who attended the one-day meeting and members who were unable to attend.

This chapter, which summarizes the deliberations of the Waste and Facility Siting Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair, the DFO, and the Assistant Administrator of EPA OSWER. Section 3.0, *Activities of the Subcommittee*, summarizes the discussions about activities of the subcommittee, including its discussion of the subcommittee's strategic plan and reports. Section 4.0, *Presentations and Reports*, presents an overview of each presentation and report, as well as a summary of relevant questions and comments from the subcommittee members. Section 5.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

**2.0 REMARKS**

Ms. Eady opened the subcommittee meeting by welcoming the members present and introducing Mr. Benjamin; Ms. Marianne Horinko, Assistant Administrator, EPA OSWER; and Mr. Tom Dunne, Associate Assistant Administrator, EPA OSWER. Ms. Eady announced that Ms. Mary Nelson, Bethel New Life, Inc., had been selected to serve as the vice-chair of the subcommittee. Finally Ms. Eady then thanked Ms. Tasha King, EPA OSWER, who assists Mr. Benjamin, and Ms. Holly Welles, Pacific Gas and Electric Company, who assists Mr. Robert L. Harris, Vice President of Environmental Affairs,

Pacific Gas and Electric Company, and a member of the subcommittee, for their support of subcommittee activities.

Ms. Eady reviewed the agenda for the subcommittee meeting and reminded the subcommittee members present that the theme of the NEJAC meeting was pollution prevention. She encouraged the subcommittee members to review the NEJAC's draft pollution prevention report and provide comments to its content, with special attention to recommendation number 5 that addresses Brownfields and redevelopment programs.

Mr. Benjamin then addressed the subcommittee members present and the public audience. He stated that the subcommittee members were meeting to share ideas about subcommittee business and that they had invited speakers and presenters to discuss topics pertinent to such business. He stated that although the meeting was open to the public, it was not an open forum at which

**Exhibit 8-1**

**WASTE AND FACILITY SITING SUBCOMMITTEE**

**List of Members Who Attended the Meeting  
December 11, 2002**

Ms. Veronica Eady, **Chair**  
Mr. Kent Benjamin, **DFO**

Ms. Michelle B. Alvarez  
Mr. Robert Collin  
Ms. Judith M. Espinosa  
Ms. Denise D. Feiber  
Ms. Leslie G. Fields  
Mr. Randall Gee  
Ms. Donna Gross McDaniel  
Mr. Robert L. Harris  
Mr. Mosi Kitwana  
Mr. Michael J. Lythcott  
Dr. Mildred McClain  
Mr. Harold Mitchell

**List of Members  
Who Were Unable To Attend**

Ms. Mary Nelson, **Vice-Chair (Acting)**  
Mr. Melvin Holden  
Mr. Vincent Wardlaw

members of the audience could participate in deliberations. He noted that only subcommittee members and invited speakers should speak during the subcommittee meeting unless a member of the public had requested and had been invited to speak on a topic that was relevant to subcommittee business.

At the conclusion of Ms. Eady's and Mr. Benjamin's remarks, Ms. Horinko greeted the subcommittee members and thanked them for their efforts. She noted that she was familiar with the past and present work of the subcommittee. She then briefly outlined two key points regarding the interaction of the subcommittee and OSWER. First, Ms. Horinko reiterated OSWER's continued commitment to environmental justice concerns. She stated that since 1991, OSWER had demonstrated this commitment by incorporating environmental justice into its programs. Notable achievements, she said, include OSWER's environmental justice directive of 1994 and the annual report on environmental justice begun in 1995. She indicated that she would like to continue OSWER's positive relationship with the NEJAC, a relationship that had been fostered by Mr. Timothy Fields, former Assistant Administrator for OSWER, and others, especially in the area of Brownfields redevelopment. Ms. Horinko stated that the latest environmental justice and revitalization projects, which had been fostered through interagency partnerships such as the Federal Brownfields Partnership, demonstrate a direct link between environmental justice and Brownfields. She stated that the work of the NEJAC and the subcommittee had directly led to implementation of new initiatives, such as the American Society for Testing and Materials (ASTM) standard for Brownfields sites. Ms. Horinko commended the subcommittee members present for their efforts.

The second key point that Ms. Horinko discussed was OSWER's intention to incorporate ideas and lessons learned from the NEJAC and the subcommittee into future programs and efforts. She noted that there are many ways to do this, including addressing stakeholder concerns in local neighborhoods, conducting site visits as part of publishing case studies, and providing assistance and guidance under the Superfund program. Ms. Horinko committed OSWER to partner with the NEJAC in what she termed the "important and groundbreaking work" of cleaning up and returning sites back to the community to create community pride-of-ownership. She stated that the NEJAC's input about the OSWER priorities is an example of a key activity for integrating environmental justice

concerns into OSWER's programs. She concluded by noting that Mr. Benjamin would continue to be of service to the NEJAC and the subcommittee and that he would continue to work with her on these key issues.

At the conclusion of her discussion, Ms. Horinko welcomed any questions from the subcommittee members. Dr. Mildred McClain, Executive Director of Harambee House, Inc. and member of the subcommittee, noted that several communities had reviewed the OSWER's list of priorities and had noted that there is no explicit mention of environmental justice. Dr. McClain asked Ms. Horinko to share her thoughts regarding development of those priorities. Ms. Horinko began by explaining that the absence of explicit mention of environmental justice concerns in the list of priorities does not indicate a lack of commitment to environmental justice by OSWER. She cited OSWER's continued commitment to and involvement in Brownfields redevelopment and revitalization as examples of actions taken by EPA that had resulted from recommendations by the NEJAC. Ms. Horinko specifically highlighted OSWER's one-stop Brownfields web site initiative; its focus on pollution prevention, waste minimization, and recycling issues; homeland security and job training programs; and OSWER's continued commitment to workforce diversity and development as additional examples of OSWER's commitment to environmental justice. She concluded by noting that although the words "environmental justice" are not explicitly referenced in the priorities, OSWER remains committed to the NEJAC and its recommendations. Dr. McClain thanked Ms. Horinko for her candid response and added that OSWER may want to explore a partnership with the Academic Institutions, Communities, Agencies Network (ACA-NET), which is a coalition of universities that work together and with communities that may be threatened in some fashion by contaminated sites. She also asked Ms. Horinko to consider adding the words "environmental justice" to the OSWER priorities, and Ms. Horinko agreed to examine the issue and consider the proposal.

Mr. Michael J. Lythcott, President of The Lythcott Company and member of the subcommittee, then commented that there are many definitions of "community," such as "impacted community" and "environmental justice community." He asked Ms. Horinko whether OSWER was aware of the many terms commonly used today to describe communities and whether OSWER had any plans to standardize how it defines communities. Ms.

Horinko replied that OSWER had not considered a formal policy to date, although it would entertain the creation of a policy to standardize the definition of an environmental justice community. She also stated that OSWER could suggest a standard definition to its partners in other federal agencies and that she and Mr. Benjamin would examine this issue in the future.

Mr. Robert L. Harris, Pacific Gas & Electric Company and member of the subcommittee, then asked about OSWER's hiring practices; specifically, he inquired about policies that encourage hiring locally as part of workforce development efforts. Ms. Horinko responded that she is very interested in this issue and that she, Mr. Benjamin, and Mr. Barry Green, Deputy Assistant Administrator, EPA OSWER, would examine the idea of local hiring practices as a possible policy for the OSWER workforce development program.

Mr. Harold Mitchell, Director of Regenesys, Inc. and member of the subcommittee, then asked when OSWER would sign the [insert name of report] dioxin report that had been approved by [insert person/organization]. Ms. Horinko responded that she did not know the exact date, but she felt that the report would be signed soon. She said she understood that the report had been approved for some time and that OSWER is preparing to implement the programs associated with the report. She agreed to take the question of timing to Mr. Steven Johnson, Associate Administrator, EPA Pesticides Program.

Ms. Horinko concluded her remarks by stating that she, Mr. Benjamin, and her staff would address the action items identified during the subcommittee's discussion.

### 3.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, which included review of the Waste and Facility Siting Subcommittee Strategic Plan, a status report on the Federal Facilities Working Group, development of recommendations for the six OSWER priorities in the NEJAC context, and a status report on the Unintended Impacts Working Group.

#### 3.1 Review of the Waste and Facility Siting Subcommittee Strategic Plan

Ms. Eady reminded the subcommittee members present that the strategic plan was created in

response to a request from the NEJAC Executive Council and that it contains the planned activities for the subcommittee for the next two years. She also noted that the copy of the plan that was included in the meeting materials had a typing error on page one. She explained that the document identified four goals but only described three of them in the strategic plan. She indicated that this error would be corrected in future printings of the strategic plan. Ms. Eady then reviewed each goal:

- Goal 1: "Strengthen the role of community residents in the cleanup and disposition of federal properties through the work of the NEJAC Federal Facilities Working Group." Ms. Eady noted that the working group had been delayed in recent months but is revitalizing its work with renewed energy. She also stated that additional information regarding the activities of the working group would be presented later in the subcommittee meeting (see section 8.X of this chapter for that discussion).
- Goal 2: "Foster community-based planning approaches for the reuse of property that will promote sustainability, properly weigh impacts of cleanup, and foresee and forestall unintended consequences such as gentrification and displacement." Ms. Eady stated that she feels good progress has been made toward achieving this goal through the energy and activities of the subcommittee members. She also stated that additional information regarding this goal would be presented later in the subcommittee meeting (see section 8.X of this chapter for that discussion).
- Goal 3: "Influence land use issues and initiatives within OSWER as they develop to make them as sensitive as possible at the outset to environmental justice issues and to ensure that environmental justice goals are incorporated into the implementation of the six OSWER priorities." Ms. Eady stated that she feels good progress has been made toward achieving this goal through the subcommittee's continued work with OSWER and that this topic would be discussed in further detail during the subcommittee meeting (see section 8.X of this chapter for that discussion).

Mr. Robert Collin, Associate Professor of Environmental Studies, University of Oregon and member of the subcommittee, expressed concern that the subcommittee would not meet in full or face-to-face for 16 months after this meeting. He stated

that the subcommittee might need a “fuller expression” before the next full subcommittee meeting to address the issues related to federal facilities. Mr. Benjamin responded by stating that the subcommittee and the working groups would be meeting via conference call later in the fiscal year and that resources would be available for continued communication. Mr. Benjamin concluded by stating that additional information about future meetings would be discussed later in the subcommittee meeting (see section 8.x of this chapter for that discussion).

### **3.2 Status Report of the Federal Facilities Working Group**

Dr. McClain and Ms. Trina Martynowicz, Analyst, EPA Federal Facilities Reuse and Revitalization Office (FFRRO), updated the subcommittee about the activities of the Federal Facilities Working Group. Dr. McClain and Ms. Martynowicz were joined by Ms. Doris Bradshaw, Defense Depot, Memphis, Tennessee, who is assisting the working group. Dr. McClain commended Ms. Bradshaw for raising her own funding to attend the NEJAC and subcommittee meetings.

Dr. McClain began the update by stating that work had slowed in the past year but that the working group is back on task. She noted that the communities that had requested the formation of the working group are in the same position in which they found themselves before the group was formed. She stated that U.S. Department of Defense (DoD) and the U.S. Department of Energy (DOE) facilities under possible examination by the working group are still operating and that the communities still need assistance addressing issues concerning these facilities. Therefore, she concluded, it is important that the work continue. Dr. McClain stated that the report being produced by the working group will be important for those and other federal facilities, as well as for EPA.

Dr. McClain explained that the working group initially had reviewed case studies for 30 facilities and then narrowed the number down to 15. She stated that the working group now must select 5 of the 15 case studies; the criteria and process for selecting the case studies would be discussed during a January 2003 conference call, she added. She noted that the selected case studies must include at least one with a DoD facility, one with a DOE facility, and one with a U.S. Department of Interior (DOI) facility. Dr. McClain also stated that the working group is completing the case study methodology, including

the approach and structure of the study, methods for data collection and analysis, and approaches for interviews. She indicated that the methodology is being examined in conjunction with the structure of the final report.

Dr. McClain stated that the working group currently is scheduling conference calls with the communities that had requested the formation of the working group. She indicated that the focus of the conference calls would be communication and strategies for involving the communities. She then asked that a representative of the subcommittee present the subcommittee’s strategic plan to the communities during the work group’s next conference call to foster better communication between the groups. Ms. Eady and Mr. Benjamin agreed to participate in the next conference call.

Dr. McClain continued by stating that the working group is preparing a budget for the coming year because it needs operating funds as well as funds for its consultant to develop the case studies. She stated that the working group also is developing a schedule of deliverables in conjunction with the budget, as well as a time line showing the history of the working group. Lastly, Dr. McClain stated that the working group would like to add two new members, one from academia and one from local communities.

Ms. Martynowicz then thanked the subcommittee members present for their support and noted that although she has been in her position for only two months, she is looking forward to working with them. She stated that a memorandum of understanding (MOU) regarding the working group had been distributed among EPA OSWER, DoD, DOE, and DOI. She noted that this represented a good step toward establishing working relationships with those agencies. She also stated that she is working to obtain technical support for the working group. Ms. Martynowicz concluded by stating that the working group is planning to visit the five selected communities, depending on the funding available, to examine firsthand the exact local problems encountered by the communities.

Dr. McClain noted that the working group also is looking for EPA-sponsored events upon which the group could “piggyback” to use its funding efficiently and effectively. She stated that this approach would allow the working group to use every venue possible to gather data that would contribute to better recommendations. She then asked the subcommittee members to notify the working group

about any new EPA events in the coming year.

Ms. Bradshaw asked the subcommittee to consider allowing two more community members to assist the working group. She noted that if EPA has limited funding for these community members, the communities are willing to send letters to Ms. Christine Todd Whitman, Administrator, EPA, requesting that she send a letter to DoD asking for funding for a local workgroup. She also noted that the communities feel that DoD, DOE, and DOI are not communicating with them and are not fulfilling promises. She stated that EPA should ask those agencies about their intentions toward the communities.

Dr. McClain then stated that the working group would revisit the MOU to ensure that all the agencies still agree with the commitments outlined therein. She indicated that the working group would invite their federal partners to participate in the next conference call. Dr. McClain then asked that Mr. Charles Lee, Associate Director of Policy and Interagency Liaison, Office of Environmental Justice, EPA, share his perspectives, as he has been addressing issues such as those encountered by the working group.

Mr. Lee stated that he was happy to see the working group make progress and was looking forward to reviewing its deliverables. He also stated that the leadership of OSWER seeks to understand the perspectives of other agencies and that the working group must work in concert with OSWER and not working at cross purposes. He also explained that the working group needs to focus on the charter of the NEJAC, which is to provide advice to EPA about environmental justice concerns, not to conduct public meetings and create case studies. He noted that those activities are elements of good recommendations but that the end product of any working group or subcommittee effort should be recommendations that the NEJAC, as an advisory committee, can provide to EPA. He suggested that the actions of subcommittees focus on those types of recommendations. Mr. Lee continued by commending the subcommittee and the working group; he stated that he thinks their efforts represent a good start. He suggested, however, that they focus their activities on the advice that they, and the NEJAC, want to provide to EPA. He suggested that this approach would help focus their efforts and minimize community frustration.

Mr. Lee also suggested that the working group create definitions, such as a definition for the term "stakeholder" and identification of the stakeholders

in specific communities, as it continues its work. He noted that this would help familiarize communities with the views and approaches of the government agencies and promote understanding by all the stakeholders. Also, he emphasized that the environmental justice community, the NEJAC, the subcommittee, and the working group all need to understand and define what constitutes success. Mr. Lee explained that the success of their efforts would not be measured by easier identification of contaminated sites, but rather by clarification of the activities conducted to not only identify but clean up contaminated sites. He cited as an example the Washington Navy Yard in Washington, D.C., where the Commanding Officer is a proponent of environmental justice concerns and openly discusses revitalization of the local communities. Mr. Lee concluded by challenging the subcommittee members to not only focus on problems but to provide recommendations and solutions.

Dr. McClain responded by stating that Mr. Lee's comments represent the thoughts and activities of the working group. She noted that the case studies and final report to be produced by the working group are tools to provide advice through the NEJAC and that they do not represent end products. She also stated that the working group is careful not to make excessive promises to the communities, as the communities are sensitive to government organizations that do not fulfill commitments. Lastly, Dr. McClain asked Mr. Lee to participate in the working group's next conference call to share his thoughts and ideas. Mr. Lee agreed to do so.

Ms. Eady noted that many comments expressed during the December 10, 2002 public comment period of the NEJAC meeting pertained to federal facilities. (see Chapter 2.0 for a detailed summary of those comments). She then asked whether it is appropriate for the subcommittee to refer the commenters to the working group with regard to issues related to its study and whether the working group had a mechanism through which to address such comments. She also asked how the NEJAC's pollution prevention report would address issues related to federal facilities. Dr. McClain replied that after the last meeting of the working group in Charlotte, North Carolina, it was decided that the subcommittee members could provide information to the working group. She concluded by stating that the working group members do not want to over-commit itself but will welcome additional comments from the public and additional candidates for case studies. She stated that the working group wants to select the five case studies by the second week of

January 2003 to move the project to the next phase. She asked the subcommittee members to quickly recommend any potential case studies to the working group to help it meet that deadline. Ms. Martynowicz added that the subcommittee should encourage any members of the public who have questions to contact the members of the working group.

Ms. Bradshaw noted that the communities are not receiving any information from the working group. To alleviate this situation, she said, the working group intends to obtain their feedback by sending its draft report to the communities. Dr. McClain added that she and Ms. Martynowicz had discussed this issue and would continue to foster better communication between the working group and the communities. Mr. Lee stated that using the draft pollution prevention report and involving all the communities are important but that if these activities slow the process, the working group might need to forego them. He then shared a quotation that illustrated his point: "The enemy of producing something worthwhile is trying to be perfect."

Mr. Harris thanked the working group for the update and then asked whether the group included a representative of industry or business. He suggested that the working group consider including a representative of one of those sectors if they already are not represented. Dr. McClain responded that the working group currently does not include a representative of industry or business but indicated that the group would examine this issue with Mr. Benjamin in light of current resource constraints.

Mr. Lythcott noted that the Washington, D.C., site proposed for one of the case studies also is on the short list of case studies to be examined by the Unintended Impacts Working Group. He cited this as an example of an opportunity for synergy between the two working groups and suggested that the groups also could collaborate on case study methodologies. Ms. Denise D. Feiber, Public Information Director, Plant Industry Division, Florida Department of Agriculture and Consumer Services, and member of the subcommittee, stated that she had raised the idea of cross-fertilization between the working groups in a previous meeting and felt it would be helpful. She also stated that she would like to see more concrete goals and objectives for the working groups, as some of the current goals and objectives are vaguely stated. She noted that the goals should be measurable and concrete. Dr. McClain responded that the Federal Facilities Working Group currently is examining its goals and

objectives to ensure that they are specific, measurable, and time-phased. She then asked that Mr. Benjamin discuss the availability of resources.

Mr. Benjamin stated that the subcommittee currently is working to identify available resources. He then gave one example of some of the funding choices that the subcommittee faces. Noting that not all the members of the Federal Facilities Working Group were funded to attend the NEJAC meeting, he stated that because the working group's mission is very focused, its limited resources must be used for the specific tasks of the working group and not for attending the NEJAC meeting. Mr. Benjamin stated that he is supportive of all the subcommittee's initiatives but that funding must be focused. Mr. Benjamin also noted that the federal government continues to operate under a continuing resolution from Congress and may receive funds in January 2003; until then, he continued, EPA is operating under fiscal year (FY) 2002 funding levels.

### **3.3 Status Report of the Unintended Impacts Working Group**

Mr. Lythcott provided background information about the Unintended Impacts Working Group. He stated that the project had evolved over time and that the need for the project had developed from the subcommittee's interactions with communities. He noted that the U.S. Congress, local governments, and developers all are supportive of the project and continue to show support as it continues to evolve. Mr. Lythcott then indicated that Mr. Mosi Kitwana, Director of Research and Development, International City/County Management Association (ICMA) and member of the subcommittee, and Ms. Suganthi Simon, EPA OSWER, are coordinating the working group.

Mr. Lythcott stated that the goal of the working group is to determine whether there are unintended impacts on communities as a result of revitalization and redevelopment projects and, if so, what can EPA do to identify, mitigate, and address those impacts with local communities. He explained that the working group plans to use case studies of successful revitalization and redevelopment projects nationwide on which to base its recommendations. He also noted that the working group assumes for the candidate projects that some activities have taken place and that the local governments feel the projects are successful.

Mr. Lythcott also stated that the working group is aware of the scarce resources available for case



studies and that it will rely on literature searches to identify additional candidates, explaining that if a project is successful, it likely has been the subject of a publication. He noted, however, that such publications usually highlight only the positive impacts of the projects and not necessarily unintended impacts, which are the focus of the working group. Mr. Lythcott stated that the working group is not concerned about the type of property reuse, such as residential or light industrial reuse, associated with the potential projects. He continued by stating that the working group reviewed more than 100 projects from which it is recommending seven. He stated that once the subcommittee approves the projects, the working group would conduct more comprehensive research of the project sites. He stated that Mr. Vincent Wardlaw, Senior Project Manager, DecisionQuest and member of the subcommittee, had developed a template for reporting about performing place-based studies and that the working group is considering using that template.

Mr. Lythcott referred to a table provided to the subcommittee members present that outlined the possible projects. Mr. Kitwana stated that the table shows the preliminary profile of each site proposed for the case study and that the working group had already produced more detailed analyses of several of the sites. He stated that the working group seeks subcommittee approval to move forward with research on the proposed sites. Mr. Lythcott stated that the subcommittee could either agree with the working group's research to date or discuss the proposed sites. Urging a decision from the subcommittee he stated that gentrification already is occurring at several of the proposed case study sites and the receivers of monies associated with Brownfields redevelopment have multiple agendas; an overarching concern about this situation led to the working group's project, he said. He then briefly presented several key points for each proposed case study site:

- Portland, Oregon: The project involves a redevelopment zone near a light rail line in an African-American community. Displacement and gentrification are the key issues.
- East Palo Alto, California: Several issues facing the site include the history of minority segregation in the area, the need to provide geographic balance with a case study on the west coast, and the fact that significant Brownfields money is available in the region.
- Washington, DC: Issues of concern at this site include gentrification, the number of publications concerning the city, and the availability of funds.
- Dallas, Texas: This "interesting" site is a housing project located next to a lead smelter that was active during the 1960s and was selected because it has substantial local history, plenty data, and involvement of several federal agencies.
- Camden, New Jersey: This case study involves a planned waterfront redevelopment and was suggested because of interesting "local politics," including organized African-American groups and the mayor's recent criminal conviction for ties to organized crime.
- Lowell, Massachusetts: This case study involves an EPA Brownfields Showcase Community with good documentation, plenty data, and a diverse local population.
- Stanford, Connecticut: Several issues include diversity of geography, planned waterfront development, gentrification, and the socioeconomics of the region and state.

Ms. Feiber asked how the case study projects correlated with the OSWER program areas such as brownfields revitalization and Superfund. Mr. Lythcott stated that the working group had agreed that the emphasis should not be on specific EPA programs because the funding for those programs comes from the same agency. Although the issue still is being discussed by the working group, the members have agreed that it is not an issue of high priority, he said.

Ms. Alvarez asked Mr. Lythcott to review the project selection criteria. She noted that the geographic locations of the proposed projects are concentrated in the eastern and western portions of the country, while none are located in the central United States. She asked whether geographic diversity was necessary. Mr. Lythcott stated that although the working group is concerned about geographic diversity, it does not consider it to be essential the credibility of the report. He concluded by stating that the working group is willing to discuss the issue if the subcommittee members feel that such diversity different would help make the report more credible. Mr. Kitwana added that the members of the working group, who all had identified several sites, had designed the study as a "snapshot" of the issue

rather than as a full research project because of limited resources. He stated that the working group is hopeful that their effort would illustrate the need to research the issue further with more funding. Mr. Kitwana then noted that six EPA regions are represented in the proposed case studies and that they would appreciate input about the research conducted thus far.

Mr. Lythcott asked how many members of the subcommittee were willing to approve the proposed list of case studies without further discussion. Ms. Gross McDaniel stated that she was in favor of the proposed list and indicated that she had substantial information about the Lowell, Massachusetts, site and the diverse minorities living nearby. Ms. Eady indicated that she would like to continue the discussion and opened the floor to further questions.

Ms. Feiber asked whether a tribal site would be included in the study; she noted that the issue might be raised by the public at a later date. Mr. Gee, who stated that gentrification is not prevalent on tribal lands in Oklahoma, commented that the public wants to build on "greenfields" rather than on Brownfields sites. Mr. Collin reminded the subcommittee members that there are Native Americans living in cities and not on reservations who could be included in the urban focus of the study. Mr. Gee agreed, adding that although Indian reservations are defined and designated by federal or state governments, Native American heritage transcends those boundaries. He added that the subcommittee should consider evaluating the impact of revitalization on urban Native Americans.

Ms. Leslie G. Fields, Director, International Programs, Friends of the Earth and member of the subcommittee, stated that the subcommittee had not envisioned gentrification in a rural setting and asked whether there are other unintended impacts in a rural setting that the working group should consider. Ms. Alvarez stated that such impacts have never been addressed in Dallas, Texas, and that the intention of the study is to identify such impacts. Mr. Gee reminded the subcommittee members that communities generally favor revitalization despite possible unintended impacts, because, he said, communities believe such projects generally help local economies. Mr. Collin countered that although he appreciates the point made by Mr. Gee, he stated that some communities may not favor revitalization projects that satisfy a goal that is national in scope if they feel it will hurt the local economy. As example, he cited concerns about the old-growth forestry in Oregon as an example of a land use decision that

may hurt local communities and economies. He explained that although the people of the nation may benefit by the setting aside of forested lands, local logging communities bear the economic burdens when timber is not harvested.

Ms. Espinosa also suggested the working group examine small, urban communities along the border of the United States and Mexico. She noted that such communities are located in semi-rural settings with diverse populations and are probably good sites for the study. Mr. Lythcott agreed that the border communities would offer good case studies for examining the patterns of unintended impacts, as there are many revitalization projects in the region. Mr. Benjamin noted that the subcommittee and the working group must keep budget and schedule issues in mind while discussing possible case study sites. He stated that the working group must focus the study so that it does not grow into a large, multiyear project. He encouraged setting time and resource constraints and managing the study within these constraints. He also noted that rural and border areas might have substantial data gaps and that the subcommittee and working group must be mindful of the extra time and effort that would be necessary to collect information that is not readily available.

Last, Mr. Lythcott urged the subcommittee members to remember the focus of the NEJAC, which is to provide recommendations to EPA. He stated that the intent of the study should not be to solve the identified problems but to present an overview of those problems to EPA with recommendations for possible solutions. Mr. Lythcott thanked Mr. Benjamin for reminding the subcommittee of these points and stated that one of the recommendations of the study and of the NEJAC could be to conduct additional research into the topic. He stated that this is a fairly easy recommendation to present but that the conducting a cost-benefit analysis related to further studies would be difficult. He noted that such studies must balance the needs of the stakeholders with the funding and benefits of the projects.

Ms. Eady asked whether the report would discuss unintended impacts that are not necessarily negative, such as situations in which gentrification has been beneficial. She cited the example of businesses moving into revitalized areas and the benefits to the local community of increased services. Mr. Lythcott acknowledged that some people may feel that gentrification has positive impacts. He indicated that if the working group finds examples of such impacts, they would be included in

the final report. He also stated that the interests of owners of buildings must be compared to the interests of their tenants. Mr. Kitwana stated that gentrification is a difficult issue because people approach the subject from different value-laden perspectives. He indicated that the impacts of gentrification might be intended or unintended, depending on a person's viewpoint and values. He stated that all perspectives must be taken into consideration in the study. He also stated that different types of impacts are associated with land and real estate compared to health care and other services. He suggested that another way to think about this issue is to call the impacts "trade-offs." He stated that the value of the case study report lies in highlighting the issue as one that communities, stakeholders, and all levels of government, must discuss as part of future development and revitalization efforts. He concluded by stating that the subcommittee should enrich the discussion and increase community participation in the discussion.

Mr. Benjamin added that the report may be able to capture attitudes toward change and how change is perceived by local communities. Mr. Lythcott stated that although the focus is to provide recommendations, the value-laden issue of gentrification could be addressed in the general section of the report. He stated, however, that the focus of that section should be on community information and achieving community power over revitalization projects by preparing for them. He acknowledged that the report must be objective and thus such value-laden subjects as gentrification might not be fully explored.

Mr. Collin stated that most revitalization funds go to urban planners who usually do not think that gentrification has a negative impact. He offered that it all depends on one's perspective and that some groups feel that gentrification is all about winning new funding awards. He agreed that the subcommittee must remain objective and initiate constructive dialogue about the issues.

Ms. Espinosa stated that the issue of gentrification involves local government zoning and politics or the lack thereof. She explained that local governments control or influence local zoning which affects the success of gentrification. She stated that the discussion is timely and that the issues should be kept in mind while the study is undertaken. She also reminded the subcommittee that although the NEJAC is offering advice to EPA about the issue, it must recognize that local governments also would see the final report.

Ms. Eady stated that as the project evolved, there had been conversations about creating focus groups composed of representatives of communities and government agencies. She asked how the working group had developed its proposed approach to the study, which does not use focus groups. Mr. Kitwana responded that one factor in changing the methodology of the study is that a whole body of research about gentrification exists that is not related to environmental or Brownfields issues. He stated that the subcommittee must remember its goal to provide recommendations about environmental justice; focus groups could raise many other unrelated subjects, he said. Mr. Lythcott added that cost also was a factor considered when developing the current methodology. He stated that the working group would like to "piggyback" onto other projects being conducted by other agencies, an approach that could be difficult if focus groups were used. He also stated that there had to be a balance between numbers (facts and figures) and the voice of the people (narrative), and the working group felt that it could better achieve this balance by using a case study approach. Ms. Simon added that the emphasis at the community level on qualitative data rather than quantitative data is part of the proposed methodology and that the group would rather spend the available resources obtaining the communities' point of view rather than the perspectives of focus groups.

At the conclusion of the discussion, the subcommittee agreed that the working group should move forward to the next level of research on all the proposed place-based sites.

### **3.4 Developing Recommendations for the Six OSWER Priorities**

Ms. Eady referred the subcommittee members to the handout that outlined the six OSWER priorities. She noted that the priorities are good mechanisms through which to communicate with OSWER about the subcommittee's goals. She stated that the face-to-face meeting conducted in the past year had been a good forum for increasing communication between OSWER and the NEJAC. Ms. Eady reminded the subcommittee that during that meeting, several subcommittee members had agreed to contact OSWER staff about the priorities. Ms. Eady then indicated that she had written a letter to Ms. Horinko informing her about the subcommittee's intent to contact OSWER staff about the six priorities. Mr. Benjamin noted that the subcommittee had been provided a list of points of contact within OSWER and who on the subcommittee is responsible for

contacting each. Ms. Donna Gross McDaniel, Laborers-AGC Education and Training Fund and member of the subcommittee, stated that Mr. Green should be added as a point of contact for workforce development.

Dr. McClain asked whether the language in the handout and the language on the OSWER web site are different, as the web site appears to include more information about the priorities. She suggested that the subcommittee use the information on the web site.

Ms. Eady again encouraged the subcommittee members to examine the pollution prevention report. She noted that the subcommittee had accomplished the two goals set forth since the face-to-face meeting: (1) find information for points of contact and (2) gather data. She then asked the subcommittee about the next step. Ms. Gross McDaniel stated that she thinks the next step is to obtain the "buy-in" of the OSWER points of contact about the NEJAC's response to the priorities and that their efforts should be focused to move forward. Ms. Michelle B. Alvarez, Staff Attorney, Natural Resources Defense Council and member of the subcommittee asked whether resources are available for technical support for reports, such as the pollution prevention report. Mr. Benjamin noted that technical personnel could participate in the telephone calls but that their participation would be informal. Mr. Lythcott noted that communication between the environmental justice community and OSWER is the cornerstone for developing new ideas. Ms. Feiber agreed with Mr. Lythcott and stated that this was the original intent behind reviewing OSWER's six priorities. She added that communication is necessary to expose subcommittee members to the OSWER organization and to bring information back to the subcommittee.

Ms. Eady then reviewed the action items of the discussion:

- ✓ The following subcommittee members who are responsible for communicating with OSWER about its six priorities would contact their counterparts in OSWER before the subcommittee conference call scheduled for February 2003:
  - Ms. Judith M. Espinosa, Director of the ATR Institute, University of New Mexico, would coordinate for the revitalization priority
  - Mr. Randall Gee, Environmental Scientist, Cherokee Nation Office of Environmental Service, would coordinate for the homeland

security priority.

#### 4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the Waste and Facility Siting Subcommittee, including pollution prevention projects related to worker training and homeland security, OSWER waste minimization programs, OSWER electronic permitting, and lessons learned from the EPA Region 6 listening session on environmental justice.

##### 4.1 Pollution Prevention Projects Related to Worker Training and Homeland Security

Ms. Sharon Beard, National Institute for Environmental Health Sciences (NIEHS), and Mr. Brian Christopher, Alice Hamilton Occupational Health Center, provided a general overview of their organizations' missions and programs. Specifically, Ms. Beard and Mr. Christopher indicated that their organizations can provide training to local governments and communities about such topics as weapons of mass destruction, emergency response, and pollution prevention. Ms. Beard stated that they had conducted such training at various locations throughout the United States. Mr. Christopher added that they also had conducted various other types of training related to worker safety and homeland security that had been developed after the September 11, 2001 terrorist attacks and later anthrax incidents. He also noted that 60 percent of their training courses are conducted in Spanish to accommodate Spanish-speaking communities.

Dr. McClain asked how federal facilities, such as DOE facilities that routinely deal with homeland security and counter terrorism issues, could help train the communities surrounding them. She cited as an example the DOE Savannah River facility and the surrounding communities, as it had been determined that communities on both sides of the river required training about such issues. Ms. Beard stated that they are working with various groups to identify needed training and that grant recipients are allowed to use their funds to obtain training in the appropriate subject areas. She also stated that their organizations also are creating more train-the-trainer programs to help communities establish their own training programs.

Mr. Gee asked whether tribal organizations are included in the current training efforts. Ms. Beard responded that no tribal organizations currently are involved in the training initiatives. However, she

stated, several organizations are working with local tribes to identify funding to begin training initiatives in 2003.

Ms. Fields asked about the communication process between the agencies cleaning up the Brentwood Post Office in Washington, D.C. at which a letter laced with anthrax had been found and the surrounding community. Mr. Christopher stated that multiple agencies at all levels of government are involved in communicating with the community at that site. He stated that the Washington, D.C. Department of Health is responsible for communication with the community, which is particularly important because dioxin gas now is being pumped into the facility using a new process. He stated that the D.C. Department of Health has undertaken community meetings to provide information to the community. He noted that although the meetings were conducted well the technical material presented could have been simplified.

Mr. Lythcott asked whether the trainees usually are beginning a career in homeland security or counter terrorism or are receiving the training for short-term use. He also asked whether mechanisms exist for nontechnical people to become 40-hour certified under the regulations of the Occupational Safety and Health Administration (OSHA). Ms. Beard stated that anyone can receive the OSHA training and if Mr. Lythcott is interested, he should contact the grant recipients. She also stated that although trainees who usually attend the courses come from a variety of backgrounds, the training provides the basic skills and is introductory in nature. She added that if trainees are interested in new careers, this training could serve as the initial training in an apprenticeship leading to more advanced training in the future.

#### **4.2 OSWER Waste Minimization Programs**

Ms. Janette Petersen, Acting Associate Division Director, Hazardous Waste Minimization and Management Division, EPA OSWER, presented an overview of the EPA's Resource Conservation Challenge (RCC) and environmental justice. She stated that the RCC is a program designed to encourage greater recycling, more waste reduction, and better recovery of energy from waste. She indicated that the program reflects the original intent of the Resource Conservation and Recovery Act (RCRA), which was to create better systems of waste management as well as to recover valuable materials and energy from wastes. Ms. Petersen stated that the program has two distinct goals related

to Government Performance and Results Act (GPRA) requirements:

- ✓ Increase the national recycling rate to 35 percent by 2005
- ✓ Cut the presence of 30 priority chemicals in hazardous waste by 50 percent by 2005

Ms. Petersen indicated that the program uses the Toxic Release Inventory (TRI) and data from biannual reporting to measure progress toward achieving those goals.

Ms. Petersen also described in general several environmental justice-oriented projects, including helping tribes reduce waste and protect the environment, implementing outreach programs in Hispanic communities, and reaching out to educate urban African-American consumers. She described the National Waste Minimization Partnership, which is the driving force behind those projects. Lastly, Ms. Petersen stated that the charter members of the partnership want to know whether environmental justice waste minimization partnerships are a good idea and whether the NEJAC can help with these efforts.

Dr. McClain asked how the RCC addresses the commitment of business to voluntary programs, given that many companies do not "live up" to promises made during conferences such as the World Summit on Sustainability Development, convened in Johannesburg, South Africa on August 26 through September 4, 2002. Ms. Petersen responded that there are programs in EPA that have been successful, such as EPA's 33/50 Program, which targeted 17, and that some "beyond - compliance" initiatives have achieved substantial results. Dr. McClain then asked whether communities also agree that such programs are successful. Ms. Petersen indicated that she did not know. Mr. Collin stated that under the 33/50 Program, retail stores were successful because they had face-to-face interaction with customers, whereas wholesalers were not successful because they did not have such interaction with their customers. See Exhibit 8-2 for additional information about EPA's 33/50 Program. Mr. Collin then asked whether generators of low-level waste can join such partnerships and whether cumulative impacts are examined in the projects. Ms. Petersen replied that anyone can join the partnerships. She also indicated that cumulative impacts had not been examined thus far. Mr. Kitwana asked whether household waste also is examined in such programs, and Ms. Petersen stated that it is.

Ms. Petersen asked the subcommittee whether it was interested in participating in joint projects. The subcommittee members agreed that they were interested in pursuing such projects, as such projects are both beneficial and good opportunities to partner with OSWER. Ms. Petersen indicated that she would create a plan of action to work with the subcommittee and discuss it through conference calls. Dr. McClain indicated that she was interested in participating in such conference calls and would represent the subcommittee if necessary.

#### 4.3 Electronic Permitting

Mr. Vernon Myers, EPA OSWER, presented information about EPA's new electronic permitting (E-Permitting) project. He stated that the purpose of his presentation was to provide information to the subcommittee and to open a dialogue about possible projects of interest to the subcommittee and the NEJAC. Mr. Myers explained that E-Permitting is a process by which permitting activities are automated, including providing guidance, preparing applications, issuing permits, and compliance reporting, in a paperless, electronic manner. He explained that the benefits of E-Permitting include a reduction in paperwork, an improvement of permitting efficiency, better tracking of the status of permits, an

improvement of compliance reporting, more accurate data, more efficient collection of permit fees, and a more transparent permitting process. He stressed that for the E-Permitting project to be successful, it must reach communities, various stakeholder groups, and environmental groups.

Mr. Myers stated that E-Permitting is feasible but requires a significant investment of resources; therefore, EPA is developing the system piece by piece in conjunction with the states. He explained that EPA does not expect to build a national E-Permitting system; rather, EPA would assist states in integrating RCRA E-Permitting into the state's electronic systems. He explained that EPA currently is assessing state RCRA E-Permitting needs, developing model permits and applications, studying additional data needs, and developing electronic forms. He stated that EPA had visited New York, Mississippi, and Texas to gather information about their E-Permitting systems and to determine the potential interest in partnering to assist with a RCRA E-Permitting module. Finally, Mr. Myers explained that stakeholder involvement is needed to help shape the direction of RCRA E-Permitting and that OSWER would continue to work with states, EPA regions, environmental groups, industry, and community groups to gather data and solicit input about the process.

#### Exhibit 8-2

##### EPA 33/50 PROGRAM

The U.S. Environmental Protection Agency's (EPA) 33/50 Program targeted 17 priority chemicals and set as its goal a 33% reduction in releases and transfers of these chemicals by 1992 and a 50% reduction by 1995, measured against a 1988 baseline. The first of EPA's growing series of voluntary programs, its primary purpose was to demonstrate whether voluntary partnerships could augment the Agency's traditional command-and-control approach by bringing about targeted reductions more quickly than would regulations alone.

The program also sought to foster a pollution prevention ethic, encouraging companies to consider and apply pollution prevention approaches to reducing their environmental releases rather than traditional end-of-the-pipe methods for treating and disposing of chemicals in waste.

Since the program ended in 1995, businesses can no longer commit to participation in the 33/50 program.

Mr. Lythcott then stated that the perspective of communities is that permitting is a high-level function and that communities can gain leverage over industry through hearings for new permits or applications for permit renewal. He stated that communities rely on the existing process to ensure their active participation in that process. He explained that communities and permitting administrators have different perspectives; for example, he explained, there is a "digital divide" because not all communities are online and have access to electronic systems. Citizen involvement is critical to good policy, but it takes time, he concluded. Mr. Myers responded that the permitting process can be automated in such a way as to notify the communities about pending actions. He stated that the goal is to make the permit application process more transparent and less cumbersome for communities. Mr. Lythcott added that state regulators often deal with communities, and those communities often rely on the existing EPA permitting process to help balance their concerns with those of state regulators.

Ms. Fields asked what evidence would be made available to communities through E-Permitting. Mr.

Myers replied that EPA currently is exploring options and that this is one issue about which OSWER is soliciting input from groups, such as the NEJAC.

Dr. McClain stated that to gain the real support of the communities, such communities need to be involved throughout the permitting process. She added that the United States is divided into rural and urban areas and that sometimes communities in rural areas do not even have access to telephones, much less computers. She recommended that states build technology centers to increase interaction with the communities. She asked how states currently share information about the permitting process with communities. Mr. Myers indicated that those issues are being examined and that OSWER is finding that each state is dealing differently with its communities. He stated that OSWER had begun to work with the states and communities to address those issues and offered to share additional information about those issues in the coming months. Ms. Sonya Sasoville, Chief, Permits Branch, EPA OSWER, added that OSWER views the Internet as a good medium through which to disseminate information but wants to give communities access both through the internet and through sensible parallel processes.

Ms. Alvarez noted that the E-Permitting project should include electronic access to other information such as logs, notices of violation, settlement agreements, fines, fine history, mitigation measures for violations, and accident reports. Mr. Myers indicated that OSWER currently is working with EPA's Enforcement Branch to provide access to this information by coordinating information with identical EPA facility identification numbers. He added that EPA would develop training about this information, as many stakeholders are not familiar with all the documentation.

Ms. Espinosa noted that E-permitting would build trust with the communities and that she welcomes such a system as a positive addition to the permitting process. She added that such a system would need to be user-friendly and searchable by using simple words. Ms. Espinosa then asked whether the permit application themselves would be on line, whether the public would be able to track applications through the permitting process, and whether public hearing information would be included in the system. Mr. Myers stated that there are proposed systems that update information daily; if such a system is properly implemented, he explained, it should make all the information available in real time, allowing the public to track applications through the process. He added that OSWER is looking for these types of questions

to gain a better perspective about what stakeholders would like to see built into the system.

Regarding communication with communities, Mr. Harris noted that communities should be aware that the permitting regulations, requirements, and process had not changed and that the documents are available in hard copy format upon request if Internet access is not available. Mr. Myers agreed that this is a very important message to send to stakeholders and stated that EPA would work with communities throughout implementation of the system to ensure that the stakeholders understand this point. Mr. Benjamin indicated that he would remain in contact with Mr. Myers regarding the subject of E-Permitting and that he would keep the subcommittee informed of future progress.

#### **4.4 EPA Region 6 Environmental Justice Listening Sessions**

Ms. Sunita Singhvi, EPA Region 6, presented information about EPA Region 6 environmental justice listening sessions. She explained that the listening sessions were interactive, solution-oriented dialogues conducted with community representatives and in partnership with state, tribal, federal, local, and municipal government representatives and industry. She explained that the first such listening session had occurred in November 2002 in Houston, Texas. She stated that the region took three months to plan this session to get the appropriate stakeholders involved early in the process. She reported that the session was very positive. She explained that the region partnered with the Southwest Network for Environmental and Economic Justice, Exxon Mobil Corporation, and several other representatives of industry, as well as academic partners and representatives of other federal and state government agencies. She stated that coordination with these groups was the key to the successful session. She also explained that several other activities contributed to the success of the session, including:

- Conducting weekly conference calls
- Soliciting input about the discussion topics from the stakeholders
- Narrowing the topics to an established agenda
- Recording the session using notetakers or a court reporter
- Using a public comment period
- Conducting a "meet and greet" before the session to allow stakeholders to meet one another

Mr. Gee noted that he knows of several communities in Oklahoma that would be interested in such sessions. Ms. Singhvi stated that she would be happy to come to Oklahoma and speak about the approach used to conduct such sessions.

Ms. Espinosa asked whether the information recorded during the November 2002 listening session would be available through the EPA Region 6 web site. Ms. Singhvi indicated that the information would become available but that she was unsure of the timeframe. She added that a document outlining the region's lessons learned also would be made available.

Mr. Lythcott noted that environmental justice meetings sometimes do not run smoothly, as participants' expectations do vary greatly. He asked how EPA Region 6 had managed that issue. Ms. Singhvi replied that trust was the most important factor, adding that involving the community early in the process and living up to promises made had contributed to the success of the session. Ms. Singhvi concluded by stating that this session had been successful but that success is a journey, and such sessions would continue to improve over time. Ms. Eady indicated that the subcommittee would like future updates about the listening sessions.

## 5.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the Waste and Facility Siting Subcommittee.

- ✓ Ms. Horinko and Mr. Benjamin will continue to work together to increase the coordination between the NEJAC and OSWER with a specific focus on OSWER's six priorities. Additionally, they will work on such specific issues as standardization of the definition of an environmental community, local hiring practices and policy under the workforce development program, final approval of the dioxin report (in conjunction with the pesticides program), and the possibility of adding the words "environmental justice" to the OSWER priorities.
- ✓ The subcommittee members responsible for communicating with OSWER about OSWER's six priorities will contact their counterparts in OSWER before the subcommittee conference call scheduled for February 2003. Ms. Espinosa will coordinate for the revitalization priority, and Mr. Gee will coordinate for the homeland security priority.

- ✓ The Unintended Impacts Working Group will move forward to the next level of research on all proposed case study sites.
- ✓ The members of the subcommittee will continue to coordinate with the pollution prevention, waste minimization, and E-Permitting programs conducted by OSWER.



**MEETING SUMMARY**

**of the**

**CASE STUDY PRESENTATIONS AND  
THE PUBLIC COMMENT PERIOD**

**of the**

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

**December 9 and 10, 2002  
Baltimore, Maryland**

**Charles Lee  
Designated Federal Official**

**Peggy Shepard  
Chair**

**CHAPTER TWO  
CASE STUDY PRESENTATIONS  
AND PUBLIC COMMENT PERIOD**

**1.0 INTRODUCTION**

On December 9, 2002, two case studies dealing with pollution prevention and environmental justice were presented to the members of the National Environmental Justice Advisory Council's (NEJAC) Executive Council. The case studies provided the NEJAC with examples of pollution prevention projects that have been undertaken in different communities.

The Executive Council of the NEJAC also held a public comment period on December 10, 2002. During the evening session, 22 individuals offered comments to the Executive Council.

This chapter presents summaries of the information that the Executive Council received during the presentation of the case studies and the comments offered during the public comment period. Section 2.0, *Case Studies Presented on December 9, 2002*, summarizes the case study presentations about pollution prevention and opportunities to apply pollution prevention to benefit communities addressing concerns about environmental justice. Section 3.0, *Public Comment Period Held on December 10, 2002*, summarizes the comments offered on that date related to pollution prevention and other general topics of interest to the NEJAC. This section also summarizes the dialogues that occurred between the presenters and the members of the Executive Council which followed those presentations.

**2.0 CASE STUDIES PRESENTED ON  
DECEMBER 9, 2002**

This section summarizes the two case studies that were presented to the members of the Executive Council of the NEJAC.

**2.1 Source Reduction Project**

Mr. Neil Carman, Lone Star Chapter of the Sierra Club, presented a case study titled "Source Reduction Project: A Step-by-Step Method of Reducing Pollution in Our Communities." The Source Reduction Project is a community-based effort to work with the Equistar Chemicals and Lyondell Channelview plants in Houston, Texas to reduce air emissions at the source, he explained. He stated that the project could serve as a model

that other community groups could adopt if they are interested in performing source reduction activities.

Mr. Carman pointed out that the Houston metropolitan area, located in Harris County, Texas, is one of the most industrially polluted urban areas in the United States and is home to a sizable minority population. According to the 2000 federal population census, the county has a 56 percent minority population of about 3.4 million people, he said. He noted that there are many industrial communities within the county, including Pasadena, Deer Park, Baytown, Channelview, Laporte, and Bayport. In 1996, he reported, Harris County posted the highest number of Toxic Release Inventory (TRI) releases of cancer-causing chemicals. In addition, he continued, the area ranks number one in the number of oil refineries, chemical and petrochemical plants, hazardous waste incinerators, and other "polluting plants." In 2000, approximately 190 TRI chemicals accounted for 23 million pounds of air releases in Harris County, he declared. Some of the TRI chemicals released were benzene; 1,3-butadiene; ethylene; propylene; toluene; xylene; and vinyl chloride. Mr. Carman pointed out that, in 1999 and 2000, Houston surpassed Los Angeles, California as the U.S. city with the greatest number of high-ozone days.

As a result of the conditions described above, the Source Reduction Project was undertaken with the intent of reducing source air emissions at the Equistar Chemicals and Lyondell Channelview (formerly ARCO) plants, Mr. Carman continued. Participants in the project included the members of the Community Advisory Panel for Lyondell and Equistar (CAPLE) and plant corporate staff and employees. He pointed out that the community had expressed concern because not only do the plants routinely emit toxic chemicals but because a deadly accident in which 18 people at the Equistar plant had been killed in 1989.

Mr. Carman emphasized that the goal of the project has been to reduce emissions to promote a cleaner and healthier environment within the local communities affected by the plants. He explained that the project focused on eliminating emissions at the source – pollution prevention – rather than minimizing emissions once they have been created – pollution control. In addition, he continued, the project's goal also included establishing a dialogue

between the two chemical companies and the surrounding community. However, he continued, that goal proved to be a challenge because of the historically adversarial relationship between the community and personnel at the plants, the threats of lawsuits by local residents, and citizens contacting regulatory agencies with complaints about the plants. The mission of the Source Reduction project was to address community concerns that emissions have a direct effect on community health, the environment, and the quality of life of local residents, he added. He noted that although industries typically do not agree that emissions are linked to health issues, they have been making substantive operational changes to address community concerns by implementing pollution prevention measures.

To date, Mr. Carmen reported, progress on the Source Reduction Project has been made in achieving the following seven goals:

- Reduce emissions to promote a cleaner and healthier environment
- Focus on source reduction, starting with an overview of all processes and possibilities for reduction
- Make continuous improvements in plant operations
- Achieve community and plant agreement on which source reduction opportunities to pursue
- Give the community a better understanding of source reduction
- Create a process for dealing with source reduction that can serve as a model for dealing with other environmental issues
- Do not neglect other issues while giving time to source reduction

In addition, he continued, the plants have responded to six citizen requests dealing with the following issues:

- Implement an aggressive fugitive emission monitoring program
- Reduce flaring at the Equistar Chemicals plant, particularly emergency flaring and the flaring of off-specification olefins, through source reduction and better flare efficiency
- Implement aggressive reactive, preventive, and predictive maintenance programs
- Reduce benzene emissions from a specific process flare at the Lyondell Channelview plant
- Reduce styrene emissions from a specific tank at the Lyondell Channelview plant
- Reduce butadiene emissions at the Equistar Chemicals plant

Mr. Carman pointed out that as a result of the project, there have been several actual reductions in emissions of target chemicals, such as benzene. Recent sampling at the Lyondell Channelview plant had indicated that the plant had reduced the level of benzene sent to its flare by more than 2 million pounds per year; consequently, he continued, more than 40 thousand pounds less benzene was emitted from the flare, he stated. In addition, he continued, Equistar's reduction in flaring at its plant had reduced 1,3-butadiene emissions from 261,000 pounds in 1996 to 74,600 pounds in 1999. In addition, Equistar had four engineering teams examining ways to reduce olefin flaring, and Lyondell personnel were looking for ways to reduce styrene emissions, he stated.

The project has yielded significant benefits for the companies as well as the community, Mr. Carmen explained. Both Equistar Chemicals and Lyondell have benefitted from source reduction, which has led to less waste and an increase in profits, and an improved image in the community, he pointed out. He explained that plant personnel have become more aware of community concerns and have developed an understanding of why citizens target certain chemicals. The community has benefitted from reduced emissions and a potential for more reductions, an increased knowledge of plant operations, a reduction in flaring, and improvements in plant maintenance and reliability, he said. In addition, he continued, with an increased knowledge of plant operations, the community can influence plant culture.

No regulatory agency representatives of the city, county, state, or the U.S. Environmental Protection Agency (EPA) were involved in the project, he noted. This approach was initially difficult, he continued, because the community did not have a sufficiently technical understanding about the technical aspects of the project. Mr. Carman explained that because the community and plant personnel maintained extremely polarized positions, initially, meetings and technical debates often were hostile. However, he pointed out, small group meetings allowed for in-depth discussions about residents concerns and focused problem-solving of technical issues. A united focus on source reduction was maintained throughout the process by all parties, he stated.

The local residents used a step-by-step process to achieve their goals, he explained. That process included improving their understanding of technical issues with the creation of a matrix through which to select target chemicals, participating in tours of the plants, developing requests and evaluating the

responses of plant management, and determining how corporations make decisions related to environmental issues, he added. He noted that other communities can use this process as a guide.

Mr. Carman stated that Phase II of the project had been terminated, primarily because the city of Houston is being pressured to reduce smog and to cut nitrogen oxide emissions by 80 percent and the plants now need to divert resources away from the Source Reduction Project. As a result, there probably will not be any further emission reductions achieved from this project, he noted.

Following his presentation, Mr. Carman opened the floor to questions from the Executive Council. Mr. Larry Charles, ONE/CHANE, Inc. and member of the International Subcommittee, stated that the project represents a breakthrough for communities without adequate resources that want to address similar challenges and handle similar environmental issues themselves. He noted that the model that was described should encourage community members to act as equal stakeholders with industry, as well as possess the capacity for funding ongoing compliance monitoring and continuous process improvements.

Ms. Peggy Shepard, West Harlem Environmental Action and chair of the Executive Council, asked Mr. Carman whether regulatory officials were involved in the Source Reduction Project. Mr. Carman responded that many local residents living near the Equistar and Lyondell plants had been extremely frustrated because they had been fighting the companies for "a long time" and knew that the plants would not be shut down. They also had expressed frustration with the state and federal regulatory agencies, and as such, chose to avoid dealing with those agencies, he stated. Mr. Carman added that Equistar and Lyondell maintained that they were in compliance with all their existing permits, and therefore the regulatory agencies were not included in the project.

Mr. Tom Goldtooth, Indigenous Environmental Network and member of the Indigenous Peoples Subcommittee, stated that it is important to develop a matrix to establish priorities for reduction among chemicals. In addition, he continued, community involvement is very important. Mr. Goldtooth then asked whether there was strong participation of minorities in the Source Reduction Project. Mr. Carman responded that an effort was made to talk to and reach out to all members of the community but that there had not been strong participation in the project by minorities. Mr. Goldtooth then asked

whether dioxin was discussed for inclusion in the target chemical matrix. Mr. Carman noted that dioxin had been considered but the Equistar and Lyondell companies had indicated that they had no maintenance data showing that dioxin was an air emission, present in water discharges, or present in hazardous waste at their plants.

Mr. Tseming Yang, Vermont Law School and chair of the International Subcommittee, asked Mr. Carman whether the plants had been in compliance with their permits and what made the plants willing to participate in the project. He also asked what alternative action the community would have taken if the plants had not been willing to participate. Mr. Carman responded that initially there had no record of regulatory compliance issues but that a violation was discovered after a subsequent Freedom of Information Act (FOIA) request had been submitted. However, there was no basis for a citizen lawsuit because there were not enough violations, he explained, adding that the companies were willing to initiate a formal dialogue with the community because the residents had been extremely persistent in raising issues with the plants over the years.

Ms. Lori Kaplan, Indiana Department of Environmental Management and member of the Health and Research Subcommittee, stated that pollution prevention measures that go above and beyond regulatory requirements are the right thing to do. She pointed out that demonstrating the cost savings benefit of implementing pollution prevention measures can persuade companies to undertake those types of projects. She asked Mr. Carman to elaborate on the increased profits realized by the companies during the project. Mr. Carman replied that he did not have specific examples of such benefits but that the companies stated that the project had helped them.

Reverend Adora Lee, United Church of Christ and member of the Health and Research Subcommittee, expressed her concern regarding the sustainability of the project and how the companies would be held accountable for continuing source reduction. Mr. Carman pointed out that the companies were concerned about their ability to continue to focus on the project when they had to dedicate resources to meeting the new nitrogen oxide requirements. He noted that the project might resume in the future but that he did not expect that it would.

Mr. Richard Gragg, Florida A&M University and member of the Health and Research Subcommittee, noted that he is glad that companies are attempting to be successful at source reduction, but he

expressed concern about using the Source Reduction Project as a model. One of the crucial aspects of pollution prevention from an environmental justice perspective is the participation of local community members affected by the pollution, he stated, and it is hard to evaluate this project when only six community members were involved. Mr. Gragg then asked who appointed Mr. Carman as the technical advisor for the project. Mr. Carman responded that the community members had appointed him as their technical advisor. Mr. Gragg reiterated that without what he termed “representative participation” from the entire community, the project could not be called successful despite the fact that it had achieved some source reductions. Mr. Carman pointed out that many local residents depend on the chemical industry for jobs and that many may not have been willing to participate in or be perceived as saying anything negative about the plants.

Mr. Terry Williams, Tulalip Tribes and member of the Indigenous Peoples Subcommittee, asked Mr. Carman whether the community had requested from the companies additional information, such as soil or water quality monitoring data, and whether there had been any discussions among the citizen groups in terms of monitoring health conditions among residents living in the vicinity of the plant. Mr. Carman replied that personal health issues were discussed during several meetings and that the companies had at one point talked about performing a health study. However, the project did not focus on soil or water issues because 99 percent of the cancer-causing chemicals released by the plants were emitted into the air, he stated.

Ms. Pamela Kingfisher, Indigenous Women’s Network and member of the Health and Research Subcommittee, stated that the economic benefits of pollution prevention over pollution control should be marketed to other companies. She asked Mr. Carman whether someone would be developing guidance about how to adapt the project model for use at other firms. Mr. Carman replied that several community members had spoken with various community advisory panels in Houston, but that a dedicated group of people was needed to make this model work.

## **2.2 Park Heights Environmental Results Project**

Mr. Bernard Penner, Maryland Department of the Environment (MDE); Mr. Tom Voltaggio, EPA Region 3; and Mr. Henri Thompson, Park Heights Coalition, presented a case study about the Park Heights Environmental Results Project, a project that focused

on auto body and mechanical repair shops in the largely low-income Southern Park Heights community in Baltimore, Maryland. Mr. Penner expressed hope that the project would serve as a model for improving the working relationship among regulators, the regulated community, and local residents.

Mr. Penner pointed out that the project has three essential components. The first component is statistical and involves establishing percentage goals for compliance that “make sense,” he said. The second component aims to improve the effectiveness of compliance assistance, he continued. MDE should reach out to educate auto body shop personnel, he explained, and offer good advice to the small businesses that typically slide beneath the regulatory radar. Third, the project aims to improve the quality of life of local residents by raising community awareness about which shops are doing a good job of complying with regulations, he added.

Mr. Penner stated that the Park Heights auto body/repair shop sector had been picked specifically for the project because of the lack of enforcement presence within that sector. In addition, he continued, Park Heights has a high concentration of such shops within a relatively small residential area where contamination from the shops poses a multimedia impact.

The methodology implemented for the project initially required identifying the universe of local body shops by identifying where in the neighborhood the shops were located, Mr. Penner explained. The next step involved creating a metric or a standard measurement by which to define how success would be determined, he said. Using what has been termed a Environmental Business Performance Indicators (EBPI) metric would be used to help judge compliance at the shops, he stated. Baseline inspections of small businesses were conducted at the beginning of the project prior to any outreach efforts, he said. The next step will be to render compliance assistance to all the shops in the project universe, he added. Training sessions will be held, he continued, and resources pooled to help solve various problems. For instance, the management of waste oil is a problem for many facilities, he stated, explaining that waste oil handlers do not like to remove oil from tanks holding less than 500 gallons despite the fact that most shops use 55-gallon drums to store waste oil. One possible solution would be to accumulate the waste oil at a central location for pickup, he pointed out. After the compliance assistance period, final inspections will be

conducted, he said. Mr. Penner pointed out that the results of the pre-project inspections will be compared to the results of the inspections conducted after the compliance assistance measures have been implemented. Benefits of this methodology include improving compliance, enhancing communication between the regulators and the regulated community, and improving the regulatory process, he stated.

Mr. Penner stated that baseline inspections have been completed and that compliance assistance guidebooks are being developed. However, because the compliance assistance and followup inspections have not been completed, it is not known whether the project would be a success, he concluded.

Mr. Voltaggio commenced his discussion by pointing out that the Park Heights community is a largely low-income and minority community that has long been in need of redevelopment and revitalization. The community have expressed concerns that the high concentration of auto body shops are sources of environmental pollution that adversely impacts community health, he said.

Mr. Voltaggio went on to explain that the Park Heights project represents a cooperative partnership among EPA Region 3's Office of Enforcement, Compliance, and Environmental Justice (OECEJ); the EPA Office of Enforcement and Compliance Assurance (OECA); MDE; and the residents of Park Heights, Maryland. Members of the community initially had believed that approximately 150 auto body and repair shops operated in the area, he stated, but after research, EPA and MDE were able to identify only approximately 50 auto body and repair shops currently operating in the neighborhood. He noted that many of the shops discovered had not been included in MDE's permitted and regulated facility databases. Using what he termed "an integrated strategy," Mr. Voltaggio reported that MDE and OECEJ are working with the community to address the environmental problems that these shops present.

Mr. Voltaggio pointed out that OECA had provided \$275,000 in funding for the project. Funded activities include planning and design of the compliance rate analysis and distribution of compliance assistance guidebooks for auto body and repair shop owners, the development of a multimedia checklist for the pre-project and post compliance assistance inspections at the shops, the hiring of community members to locate and identify the shops in the community, and the statistical analysis of the two

rounds of inspection data, he explained.

The project was designed to conduct inspections at a statistically valid number of randomly selected shops to obtain an initial rate of compliance, Mr. Voltaggio continued. OECEJ completed over 40 inspections in July 2002, and followup inspections will be conducted in July 2003, he explained. The shops will be evaluated using EBPIs to determine whether the shops would be able to improve their environmental performance after July 2003, he said. He stated that MDE plans to provide compliance assistance and pollution prevention outreach to the universe of auto body shops in Park Heights between the two inspections. He pointed out that compliance assistance efforts will include training shop personnel to conduct a self-certification program geared toward environmental compliance.

Mr. Voltaggio stated that the goal of the project is to measure the results of the compliance assistance efforts and inspections to see whether information, education, and technical assistance would promote a change in the behavior of operators in the auto body and repair shop sector. Indicators of success so far include improved communication and cooperation among EPA Region 3, MDE, and the Park Heights residential and commercial community, he noted. In addition, he continued, environmental indicators of success include a decrease in the amount of oil and grease found in the influent to the local municipal wastewater treatment plant.

Following Mr. Voltaggio, Mr. Thompson explained that the Park Heights Coalition, which had been incorporated as a nonprofit organization in 1996, aims to promote community-driven revitalization planning for a self-sustaining future. Park Heights, once a prosperous community, now has "a lot of crime and elevated asthma and cancer rates," he stated. Residents and businesses in the area had been neglected when it comes to economic, social, and environmental development, he declared.

The presence of auto body shops have raised concerns in the community because of their proximity to daycare facilities, restaurants, and residential areas, he said, which sparked the community in 2000 to draft a revitalization plan that addresses educational, health, and environmental issues. In 2001, representatives of EPA Region 3 and MDE had visited Park Heights where they had been able to view firsthand the number of auto body shops and their proximity to residential areas, he continued. From that, a dialogue between local residents, EPA, and MDE had been established, he said. The coalition has a good relationship with the

local business community, he said, but there had been initial skepticism about getting involved with EPA.

Mr. Thompson emphasized that the Park Heights project provides an opportunity to both regulate and educate businesses as well as to educate members of the local community. The businesses are vital to the community, he pointed out, because they provide jobs and valuable services. Mr. Thompson stated that he was very excited to be part of the project and asked that funding for the project be continued to ensure its completion.

Following the presentation, Mr. Charles pointed out that the project's success requires improving the knowledge and of both the community members and regulators, as well as their level of comfort with the process. In addition, he stressed the importance of walking the "fine line" between economic development and the protection of human health. Mr. Charles expressed hope that the project would help establish standards and principles for the development of a model of economic growth that includes addressing pollution prevention principles.

Mr. Kenneth Warren, Wolf, Block, Schorr and Solis-Cohen and member of the Enforcement Subcommittee, pointed out that the government had made extraordinary efforts to involve the community and to act as a facilitator. The creative use of the EBPI metrics by which to examine compliance rates prior to compliance assistance is a valuable tool, he asserted. Mr. Warren asked whether "enforcement flexibility" – the selection of compliance assistance over a traditional enforcement approach – is generally applicable at sites for all environmental justice communities. Mr. Voltaggio replied that the fundamental purpose of the project is to provide assistance to facilities that ordinarily would not be targeted for enforcement. The types of facilities participating in this project are not large and normally would not be inspected, he stated. Mr. Penner added that it is very difficult to get flexible enforcement approaches such as compliance assistance to work because if a significant violation is discovered that potentially impacts human health, an enforcement action can take place, he noted.

Ms. Kingfisher asked Mr. Penner whether the limited amnesty (an approach that reduces civil penalties and the threat of criminal liability for companies that audit, but includes conditions and exceptions to protect the public and provide a continued incentive for companies to prevent violations before they occur) was documented by a signed memorandum of understanding between EPA, MDE, and the

regulated community. Mr. Penner replied that the limited penalty amnesty provided under the project is similar to that provided under EPA's environmental audit policy. If a facility discovers a violation during an environmental audit and completes a compliance plan, the regulatory agency would forego an enforcement action, he explained.

Ms. Eileen Gauna, Southwestern University School of Law, asked how the regulated community responded to the random, unannounced inspections and how compliance would be assured over the long term once the project is completed. Mr. Penner stated that by getting the community involved, EPA Region 3 and MDE hope to ensure future compliance. Mr. Thompson noted that the regulated shops did not respond negatively to the inspections because as part of the project start-up. EPA Region 3 and MDE had "done a good job" of explaining the project and its benefits. Mr. Thompson added that money and personnel are needed to hold workshops and training sessions for citizens so that the future success of the project can be ensured.

Mr. Goldtooth asked whether any body shops are owned by individuals who live outside the community and whether some shops are mobile and shift from location to location. Mr. Penner responded that MDE recently had received baseline demographic data regarding shop owners who live in the community and those who do not, but that MDE had not had time to evaluate that data. He added that the project is limited to auto body shops that have a fixed address. Mr. Goldtooth noted that he suspected that some of the shops might be small, home-based operations. He stated that the owners of that type of operation need to be educated as well. Mr. Thompson confirmed that many of the shops are "backyard operations," and he reiterated the importance of educating and assisting their owners.

### **3.0 PUBLIC COMMENT PERIOD HELD ON DECEMBER 10, 2002**

This section summarizes the comments presented to the Executive Council during the public comment period held on December 10, 2002, along with the questions and observations that those comments prompted among members of the Executive Council.

The comments are summarized below in the order that they were offered. In addition, written comments were submitted and read into the record.

#### **3.1 Mr. Don Norwood, Urban Community Environmental Resource Center, Baltimore, Maryland**

Mr. Don Norwood, Urban Community Environmental Resource Center (UCERC), Baltimore, Maryland, presented his comments regarding the Baltimore Aggregate Recycling Company (BARC), which performs gravel crushing operations in Baltimore. Mountains of dust and dirt at the facility extend up to three stories high, he said. As trucks enter and leave the facility, they blow dust into the air, and nearby residents are subjected to particulate contamination, he explained. According to Mr. Norwood, the community had taken several preventive measures, such as forming a community-based environmental advocate group, circulating petitions in the community to gather support for the group, and educating community members about environmental concerns associated with the facility.

Mr. Norwood suggested several possible scenarios to improve the situation. Noting that the facility previously had been removed from the District of Columbia, he suggested that the facility again move its operations to another location. He also suggested that the property could be converted into a business park because of its proximity to Edison Highway and the railroad. In addition, he continued, a community-based monitoring program should be implemented to help prompt enforcement when violations occur at the facility.

MDE had been conducting a study of the air quality around the facility, but the results of the study had not yet been obtained, he stated. The community recently had been successful in blocking a permit application submitted by BARC to expand its operations and install additional crushers, he pointed out. BARC had recently changed its name, and in response to pressure from the community, it had decreased its crushing operations in August 2002, he added. In conclusion, Mr. Norwood reiterated that the facility is an environmental hazard to the community and that the "pollution needs to be stopped."

Ms. Mary Nelson, Bethel New Life and member of the Waste and Facility Siting Subcommittee, asked Mr. Norwood whether the community had involved the regional or state EPA offices in its efforts against the facility. Mr. Norwood replied that both the regional and state EPA offices had been contacted.

### **3.2 Ms. Francis Chin, Maniilaq Association, Kotzebue, Alaska**

Ms. Francis Chin, Maniilaq Association, Kotzebue, Alaska, emphasized that self-monitoring businesses are not taking appropriate measures to comply with environmental regulations. She pointed out that the

Komiko lead and zinc mine, a self-monitoring company in her community, recently had been fined for various regulatory infractions and was now self-monitoring under the terms of a supplemental environmental program (SEP) agreement. The company now is being allowed to perform environmental compliance monitoring itself, she stated. Tribes should be involved in decision-making processes, she continued, because they are the ones affected by the contamination. They also should have the ability to monitor, she asserted. In conclusion, she pointed out that the trust of the tribes in the government would be greatly enhanced if they were involved in decisions about efforts to remedy environmental problems that directly affect them.

### **3.3 Mr. Chavel Lopez, Southwest Public Workers Union, San Antonio, Texas**

Noting that communities bear the burden of pollution and lack of cleanup daily, Mr. Chavel Lopez, Southwest Public Workers Union, San Antonio, Texas, stated that many individuals die from cancer and nervous system disorders in the communities in which the union's members live. For years, he explained, San Antonio had been struggling for a cleanup of contamination caused by Kelly Air Force Base (KAFB). Communities, which had been impacted by contamination from the nearby base for decades, had not been remediated, nor had they received any assistance for the health problems that affect residents, he said. Prevention of pollution needs to start with the involvement of affected communities in the decision-making process, he asserted, because those decisions directly affect them.

The cleanup of KAFB's contaminated sites should be started with aggressive technologies as fast as possible, he stated. Passive technologies such as natural attenuation should not be considered because these types of technologies continue to allow damage to neighborhoods, he declared. There must be no more rollbacks of environmental and enforcement laws from the Bush administration, declared Mr. Lopez. The military should be held to the same laws and standards as private industries and other polluters, he stated. In addition, he noted that environmental justice grants should be driven by grassroots organizations and that such organizations should be equal decision-makers in grant processes.



### 3.4 Ms. Hilda Booth, Native Village of Noatak, Alaska

Stating that the Noatak Village is located in the northwest region of Alaska, Ms. Hilda Booth, Native Village of Noatak, Alaska, explained that she wished to discuss issues related to a local dump in her community. The dump, along with equipment used for its maintenance and operation, is contaminating homes nearby, she asserted. The community is looking for a solution to the problem, including closing the dump and moving it elsewhere, she stated. Seventy-five percent of the community maintains a subsistence lifestyle, she said, and people are concerned about the affect of contamination on the local wildlife they consume. In addition, she continued, erosion problems are forcing Native Alaskans to move, and people living downriver are afraid to fish because gravesites are being exposed in the area.

Mr. Charles asked who owns the land where the dump is operated. Ms. Booth responded that the village owns the property, not a private company. Mr. Charles then asked whether the village had asked EPA for assistance in managing the landfill. Ms. Booth said that her community had asked EPA for help in maintaining and operating the dump because the community depends solely on volunteers, but that EPA had not responded to its requests. The use of volunteers is proving to not be sufficient, Ms. Booth said.

Mr. Goldtooth asked what was causing the erosion in the village. Ms. Booth responded that a river runs through the village in the spring and erodes approximately five feet of the land each year. Mr. Goldtooth then asked whether permafrost occurs in the area and whether there are global warming concerns. Ms. Booth replied that permafrost exists in that region and that there are concerns among residents about global warming. He pointed out that several villages in Alaska are experiencing problems associated with managing waste sanitation. These villages are isolated and have no revenue base, he declared. Permafrost limits landfill construction, but using batch, low temperature incinerators to burn waste would add to the toxic burden, he said. These are serious issues that had been brought before the Executive Council previously, he stated, and the administration needs to address these issues because pollution prevention pose unique challenges in Alaska.

Mr. Williams noted that the tribes receive some funding from EPA to deal with environmental problems but that there needs to be a better

understanding of the funding process between states and tribes. The states have an obligation to be part of the solution, research the problems, and work with the tribes to understand how they interpret state obligations, he stated.

Mr. Gragg stated that action item number nine in the NEJAC Pollution Prevention Workgroup's draft report *Advancing Environmental Justice Through Pollution Prevention* (draft pollution prevention report) should be augmented to mention state roles.

### 3.5 Ms. Susanna Almanza, Southwest Network for Economic and Environmental Justice

Mr. Ron Sherron, Ponca Tribe of Oklahoma, Ponca City, Oklahoma, read a letter prepared by Ms. Susanna Almanza, Southwest Network for Economic and Environmental Justice (SNEEJ), addressed to Mr. George Bush, President of the United States, and Ms. Christine Whitman, EPA Administrator. The letter stated that SNEEJ; Communities for a Better Environment (CBE); and the Center on Race, Poverty, and the Environment (CRPE) object to the proposed changes to the Clean Air Act's (CAA) new source review (NSR) provisions. During the past decade, environmental justice had been transformed from a controversial movement to an established fact, the letter stated. Rather than developing strategies to enhance the environment in low-income communities and communities of color, the Bush administration had proposed to eliminate some of the few environmental protections that have benefitted these communities, Ms. Almanza asserted in her letter .

Ms. Almanza letter in her letter that on June 13, 2002, the Bush administration had announced the single largest rollback of the CAA in its 30-year history. The administration had proposed to eliminate the NSR provisions and replace them with voluntary, free-market measures, the letter said. Such deregulation is certain to have its worst impacts on low-income communities and communities of color that do not have the economic ability to pay for clean air, she pointed out.

When the NSR requirements were developed in the 1970s, old power plants, refineries, and other major sources of pollution to install the best available control technology when they undergo major modifications, the letter noted. Now, rather than requiring all existing plants to install modern pollution controls immediately, the letter continued, old facilities will be allowed to phase-in modern controls over time when they engage in major modifications. Communities of color and low-income communities

are home to a disproportionately large number of these old, highly polluting facilities, the letter pointed out. Seventy to eighty percent of all power plant emissions and virtually all refinery pollution comes from facilities that were built before 1977, she states in her letter, and communities suffer from being located near chronically polluting facilities. NSR is one of the only means to ensure that these polluters would install modern technology, the letter emphasized.

The Bush administration's proposed changes would allow thousands of major polluters to increase their emissions, Ms. Almanza asserts. Under existing NSR rules, the letter continued, a facility must install the best available technology if it was to undergo a major modification that would result in an increase in emissions. To determine whether such an increase would occur, the regulatory agency must determine the facility's baseline emission, the letter explained. The Bush administration proposes to allow a facility to choose any two years over the past ten years for establishing a baseline, the letter pointed out. This proposal would allow facilities to avoid NSR by selecting an anomalous year of high emissions as a baseline, the letter stated.

In addition, the Bush administration has proposed plantwide applicability limits, the letter explained, under which a source could increase its emissions as long as it had decreased its emissions by an equal amount in the past ten years. The administration has also proposed the elimination of the requirements for non-utilities to obtain enforceable pollution limits through permits for pollution increases resulting from modifications, the letter noted. Rather than having enforceable permits specifying operating conditions that can be monitored, reported, and examined by government inspectors or the public, the letter continued, the administration eliminates these safeguards. Eliminating the opportunity for the public to access information undermines the ability of community members to engage in the process of protecting their air, the letter declared.

The administration claims that the Clear Skies Initiative pollution trading program will clean the air better than NSR, the letter pointed out. However, the letter explained, pollution trading does not decrease emissions; it moves pollution around. The letter pointed out that a facility in a heavily polluted, low-income community could increase its pollution by purchasing credits generated by facilities in different regions that had decreased their pollution. In conclusion, the letter stated that the Clear Skies Initiative would only exacerbate the intolerable

conditions of environmental justice.

Mr. Sherron added that with regard to pollution prevention, Title VI of the Civil Rights Act of 1964 is one of the mechanisms through which grassroots organizations can use to seek legal protection of communities. Mr. Sherron requested that the NEJAC continue to address Title VI issues.

### **3.6 Ms. Doris Bradshaw, Defense Depot Memphis Concerned Citizens Committee, Memphis, Tennessee**

Pointing out that federal facilities are hard to deal with, Ms. Doris Bradshaw, Defense Depot Memphis Concerned Citizens Committee, Memphis, Tennessee, stated that her community is being exposed to radiation from chemical weapons at a nearby federal facility. EPA is supposed to provide enforcement when things are wrong, she declared, but the agency has limited jurisdiction when it comes to federal facilities. Some of the contaminated land in Memphis is being turned over to the city, she stated, and she wondered whether this would change EPA's ability to enforce cleanup action at the site. Noting that she has appeared before the NEJAC many times previously, Ms. Bradshaw declared that she did not feel as though she had the support of the NEJAC.

Ms. Bradshaw reported that there had been a flood in her community during the previous spring and that contaminated runoff had inundated the community. In addition, she continued, there are three ponds on a golf course on which children play that are contaminated with radiation from overflow from the Memphis Defense Depot. Ms. Bradshaw questioned why EPA Region 4 had not provided assistance to remedy the problem, and she asked whether EPA would have the jurisdiction to clean up the land if it is turned over to the city.

Ms. Bradshaw then pointed out that the Federal Facilities Working Group of the NEJAC, which had been formed in response to deep concerns about federal facilities, had not met in over a year. She stated that she had worked for more than six years to "get a platform" from which to talk with federal facilities, and now she felt as if EPA is not receptive to her concerns. In conclusion, she stated that there should be a representative of the U.S. Department of Defense (DoD) on the working group.

Mr. Gragg pointed out that there is no mention of federal facilities in the draft pollution prevention report and that this omission should be addressed in the next draft.

Ms. Veronica Eady, Tufts University and chair of the Waste and Facility Siting Subcommittee, noted that the Federal Facilities Working Group had been adopted by that subcommittee. She pointed out that the previous Designated Federal Official (DFO) for that working group had left EPA. Ms. Eady invited Ms. Bradshaw to attend the Waste and Facility Siting Subcommittee's meeting to speak with the new DFO. Ms. Eady then reiterated that federal facilities should be mentioned in the draft pollution prevention report.

Mr. Charles expressed his disappointment that communities turn to the NEJAC as their last resort. He noted that it is unfair that community members believe that the NEJAC has the power to change operational issues within EPA. The NEJAC does not have the power to address specific issues within communities, he stated. Mr. Gragg pointed out that Ms. Bradshaw's comments dealt with her effort to get involved through the Federal Facilities Working Group and that the working group had not been functional. The NEJAC can help communities address policy issues through community members' participation in subcommittees, he noted, and the subcommittees need to be functional. Ms. Eady added that EPA has agreed to provide financial support for the Federal Facilities Working Group.

Mr. Goldtooth noted that this was not the first time that communities had come before the NEJAC to discuss issues concerning federal facilities. This issue should receive greater priority, he stated, and the leadership of the NEJAC and EPA needs to step forward.

Ms. Nelson reiterated that the NEJAC had been dealing with federal facilities since she had been involved with the NEJAC and that community concerns about the failure of federal facilities to address their impact on local residents should receive greater priority among the goals of the NEJAC. She added that DoD needs to hold open hearings in communities so that local residents can be informed of issues.

### **3.7 Ms. Michele Brown, UCERC, Baltimore, Maryland**

Ms. Michele Brown, UCERC, Baltimore, Maryland, stated that UCERC's mission is to reduce exposure to environmental hazards through pollution prevention in east Baltimore. The organization targets environmental hazards that affect the environmental health of neighborhoods, such as toxic construction materials from demolition activities and recycling, that pollute the environment, she said.

Ms. Brown pointed out that UCERC's strategy is to become a resource that is similar to a public library system, where the public can access information and services. The goal is to have an environmental resource center in every community, she said. In conclusion, she stated that having access to relevant articles and journals would allow communities to make concrete and compelling arguments in support of their positions.

### **3.8 Ms. Edith Tegoseak, Inupait Community of Arctic Slope, Barrow, Alaska**

Stating that her community includes seven villages, Ms. Edith Tegoseak, Inupait Community of Arctic Slope, Barrow, Alaska, explained that there are numerous pollution issues in Arctic villages. She noted that her primary concern today was with oil and fuel permitting processes. Community interaction should be included as part of the permitting process, she declared. The permitting process is often over by the time that her office learns about a permit being granted, she complained. Ms. Tegoseak asked for the NEJAC's help in obtaining funding and a venue from which to address permitting policies and procedures in Alaska. Companies applying for permits are concerned only about monetary issues, she pointed out, and there is no process for tribal courts to appeal a permitting decision. In addition, she explained that tribal courts do not receive adequate funding to take action against such permits.

Mr. Goldtooth stated that Ms. Tegoseak's concerns are reflected in the action items of the draft pollution prevention report, especially the items that discuss the creation of training initiatives for tribes in Alaskan villages. Mr. Goldtooth noted that the Alaska Native Claims Settlement Act involves the Indian Reorganization Act and the tribal government system and that the settlement poses complex challenges. Mr. Williams added that the Alaska Native Claims Settlement Act had left the native tribes of Alaska in a difficult position because they have no authority under which to deal with the problems they are facing.

### **3.9 Mr. Eugene Smary, Warner Norcross and Judd LLP, Grand Rapids, Michigan**

Noting that he had spent 25 years practicing as an environmental lawyer, Mr. Eugene Smary, Warner Norcross and Judd LLP, Grand Rapids, Michigan, stated that the consensus recommendations in the draft pollution prevention report are consistent with official American Bar Association (ABA) policy. It is important to recognize that ABA supports the

principles outlined in the report, he said. Mr. Smary informed the Executive Council that he would provide the members with a copy of an ABA resolution that had been passed in 1995 addressing public participation in environmental decision-making. The collaborative model mentioned in the draft pollution prevention report emphasizes involving all important stakeholder groups, he stated.

Mr. Smary expressed his agreement with the consensus chapter section of the draft pollution prevention report that explains that it is ethical to emphasize pollution prevention in achieving environmental justice goals. This approach makes the community one of the stakeholders in the process of enhancing communities, he noted. The collaborative model mentioned in the draft pollution prevention report is good human and community relations, he continued.

Mr. Smary also mentioned that he would like the report to recognize the incentives available for pollution prevention, such as environmental audit privileges and immunity laws. Environmental audit privileges are used in 25 of 50 states, he said, and a great deal of pollution prevention can be achieved by focusing on small businesses within the urban core. There is political sensitivity associated with the incentives, he acknowledged, but audit privileges had worked successfully in environmental justice communities.

Mr. Charles asked that Mr. Smary explain environmental audit privileges in more detail. Mr. Smary replied that facilities are given specific confidentiality privileges if they accept an environmental audit under certain circumstances. In addition, the privileges provide facilities with immunity from civil penalties, he said. However, he noted that the privileges apply only if a facility's environmental problems are fixed. Mr. Charles then asked what the incentive would be for a facility operator to agree to an audit. Mr. Smary pointed out that the audits give facilities a chance to determine whether they have environmental problems and to avoid potential future punishment.

Mr. Yang countered that environmental audit incentives should not be mentioned in the draft pollution prevention report. He pointed out that the incentives are extremely controversial because they "forgive" companies that have not complied with environmental laws.

Mr. Warren asked Mr. Smary whether environmental management systems might be made applicable to pollution prevention by including source reduction or

other types of reviews in the context of those systems. Mr. Smary pointed out that environmental audits can be used to identify ways in which a facility can eliminate potential violations by means of waste minimization.

Ms. Eileen Gauna, Southwestern University School of Law and chair of the Air and Water Subcommittee, reiterated that audit incentives are an issue that should be carefully considered. EPA penalty policies provide certain incentives as well, so nothing is being lost by not specifically addressing that issue, she said. Mr. Smary reiterated that the NEJAC should consider recommending incentives for pollution prevention and that there was no need to further discuss environmental management systems because the draft report already addresses them.

### **3.10 Mr. Cleo Holmes, Concerned Citizens of Eastern Avenue, Washington, D.C.**

Mr. Cleo Holmes, Concerned Citizens of Eastern Avenue, Washington, D.C., stated that his community is currently being contaminated by a leaking underground storage tank (UST) owned by Chevron Corp. The community had gone through a year of testing, he explained. During initial testing at the site, the potentially responsible party (PRP) had paid for an independent consultant, he said. However, he continued, the consultant has been removed during the most critical stage of testing. Mr. Holmes explained that the consultant had been the community's "first line of attack" in dealing with the contamination. The community had requested that EPA Region 3 allow the community to hire a technical expert to verify the test results, but instead EPA Region 3 had asked the U.S. Army Corps of Engineers (USACE) to do it, he said.

There is an issue of trust, Mr. Holmes emphasized, and the community is nervous. EPA Region 3 should recognize that the community is a major stakeholder that should be involved in the process, he declared. More than one hundred homes are affected by the UST, he stated, and there are daycare facilities located within close vicinity of the leak. Mr. Holmes noted that a consent order was to be issued on December 11, 2002, but the community had not had a chance to review it. Communities should have a venue so that they can oversee the testing process and verify the accuracy of results, he stated.

Ms. Wilma Subra, Louisiana Environmental Action Network (LEAN) and member of the Air and Water Subcommittee, asked Mr. Holmes whether any air samples had been collected around the homes or

other structures at the site. Mr. Holmes replied that only soil vapor samples had been collected. He added that the consent order is based on preliminary testing and does not rely on information from the critical downgradient testing that currently is being performed. Ms. Subra suggested that the community request air sampling in homes and other structures to determine whether high levels of contaminants are present.

Mr. Charles requested that the consensus section of the draft pollution prevention report be modified to state that environmental testing in environmental justice communities should be done in partnership with the communities. He asked Mr. Holmes whose decision it had been to dismiss the independent consultant. Mr. Holmes stated that Chevron had decided to stop using the consultant and that EPA had agreed. Mr. Charles then asked whether any results from USACE's testing are available. Mr. Holmes replied that there are no results from the USACE testing and repeated that the consent order is based on the first stage of testing.

Mr. Charles then noted that EPA is giving funding to some colleges and universities to provide research capacity to environmental justice communities. Morgan State University is one of those institutions, he said, and he suggested that Mr. Holmes contact the university to determine whether it could provide independent verification of the original test results.

Ms. Kaplan asked whether there would be a public comment period when the consent decree is issued. Mr. Holmes responded that the community would be informed of the decree but would not have the opportunity to submit comments to it.

### **3.11 Ms. Audrey Hadley, Native Village of Buckland, Buckland, Alaska**

Noting that many villages in rural Alaska do not have water or sewage facilities, Ms. Audrey Hadley, Native Village of Buckland, Buckland, Alaska, stated that residents living in those communities are concerned about their health. Currently, there is a hepatitis epidemic in her village, she stated, and the village need funds and resources to eradicate health problems and to address environmental issues. She emphasized her concern about a military facility located 40 miles south of her village. Contamination from the facility is impacting subsistence foods in the area, she stated. She emphasized that her community has a subsistence lifestyle and that the contamination is affecting the residents' ability to survive.

Mr. Goldtooth asked Ms. Hadley what types of contamination exist at the military facility. Ms. Hadley responded that asbestos and polychlorinated biphenyls (PCB) are the predominant contaminants at the facility.

Mr. Williams emphasized that tribes in Alaska had been facing such problems for a long time and that hepatitis is a big health problem because sewage is mixing with drinking water. Ms. Eady invited Ms. Hadley to attend the meeting of the Waste and Facility Siting Subcommittee so that she could provide more detailed information about the facility. In addition, Ms. Eady pointed out that the Federal Facilities Working Group would be compiling a report for the Executive Council and that the federal facility in Alaska with which Ms. Hadley is dealing would be a good case study to include in the report.

### **3.12 Mr. John Ridgway, Washington State Department of Ecology, Olympia, Washington**

Mr. John Ridgway, Washington State Department of Ecology, Olympia, Washington, informed the Executive Council that he would be commenting on the consensus recommendations presented in the draft pollution prevention report. Regarding bullet number six, which discusses product and process substitution in areas that affect low-income, minority, and tribal communities, Mr. Ridgway suggested adding references to integrated pest management. In response to bullet number eight, which discusses efforts to promote just and sustainable transportation projects and initiatives, Mr. Ridgway stated that he would advise EPA and other federal agencies to obtain low-emission vehicles for their vehicle fleets. For bullet number ten, which deals with pollution prevention in developing countries, he suggested including a discussion about Hewlett Packard's recently announced voluntary take-back program for electronic equipment. In addition, he continued, the European Union had legislated take-back requirements for all manufacturers within the Union. Mr. Ridgway emphasized that businesses in the United States should be encouraged to "provide mechanisms" in designing and marketing their products and in recycling and reducing the amount of waste created.

Mr. Ridgway noted that baseline measures should be established for pollution prevention. However, he noted, it is difficult to quantify the amount of pollution that is not being generated as a result of pollution prevention efforts. The best approach is obtain source use data from facilities to determine what they are using and therefore how they can reduce releases, he stated. Mr. Ridgway also stated that

facility inspection and compliance histories should be made publicly available so that communities know which facilities are “on the regulatory radar.” In addition, he continued, businesses should be charged incrementally for the amount of waste that they produce as a way to encourage less waste generation. He noted that the state of Washington has adopted this type of system.

Mr. Ridgway then pointed out that the NEJAC is the only venue at which many communities can voice their complaints. Many people do not know where else to go, he stated. As a result, he continued, the NEJAC should not wait more than a year to hold its next meeting.

Ms. Gauna encouraged Mr. Ridgway to submit in writing his comments to the draft pollution prevention report and requested that he provide specific language regarding integrated pest management. Mr. Ridgway pointed out that there is a large population of migrant farm workers in Washington, as well as a serious lack of enforcement of worker protection laws because the workers are not full-time. Mr. Goldtooth then stated that Washington is leading that effort with regard to pollution prevention, and he commended the state for its efforts.

Ms. Nelson then stated that one useful strategy for providing more venues for public comment is to hold regional listening sessions attended by representatives of EPA regional offices. Local solutions would be enhanced because those would have a better understanding of local and regional issues, she stated.

### **3.13 Mr. Ron Sherron, Ponca Tribe of Oklahoma, Ponca City, Oklahoma**

Stating that the Ponca tribe has several issues related to environmental injustice, Mr. Sherron noted that his comment would focus the tribes concerns about the Continental Carbon Company facility in Ponca City, Oklahoma, which produces carbon black facility, he stated, and which is located on tribal land. There are contamination issues associated with air, groundwater, and solid waste resulting from activities at the facility, he said. A U.S. Department of Housing and Urban Development (HUD) housing community lies within 150 feet of the facility, he stated, and tree growth in the area is retarded from contamination. EPA had stated that the facility is creating a product rather than fugitive emissions, and therefore is not violating any regulations, he pointed out. However, he continued, people in the community are suffering from asthma and other respiratory ailments.

Continental Carbon Company had built wastewater lagoons at the facility, Mr. Sherron reported, stating that the facility had lied about groundwater depths at the facility in its permit applications for those lagoons. Many people in the community derive their drinking water from shallow wells that can easily be contaminated by seepage from the lagoons, he explained. In addition, he continued, several barrels of solid waste containing hazardous constituents had rusted through and now are leaking into nearby streams, he said. EPA had tested the barrels and found hazardous constituents, but EPA said the contaminants were not present at action levels, he stated. A Notice of Violation had been issued, but the only action that the facility had taken to date was to build a fence around the property, he said. He reiterated that EPA had continued to overlook the problems at the Continental Carbon facility.

Mr. Sherron added that his tribe had recently been surrounded by state-approved landfills. The landfills are within 50 feet of a main river, he noted, but the state had put them there because the land was cheap.

Ms. Subra asked whether Mr. Sherron had contacted EPA Region 6 to ask for assistance with the facility. Mr. Sherron answered that the tribe had set up a formal meeting with EPA Region 6, which had assured the tribe that it would look into the issues. However, because the community had not seen any action, it had submitted a FOIA request in an attempt to obtain additional information about the facility, but that no relevant records had been found for the facility as a result of the request. Ms. Subra stated that she would help Mr. Sherron set up a follow-up meeting with EPA Region 6.

Mr. Williams asked Mr. Sherron whether the tribe had made attempts to contact the EPA’s American Indian Environmental Office. Mr. Sherron stated that it had but that EPA has difficulty dealing with regulatory and compliance issues in Oklahoma because its jurisdiction is unclear. Mr. Williams stated that the situation is similar to Alaska’s because of EPA’s lack of jurisdiction. A treaty tribe has the right to access EPA programs and EPA funding, he pointed out. Mr. Sherron added that tribal residents are exposed to the environment in more ways than a typical U.S. citizen; environmental standards were set based on the average white male who do not rely on fish and wildlife for subsistence, he explained.

Mr. Gragg pointed out that when communities have existing health problems and then the impacts of exposure to environmental pollution are added, the

existing health problems make people even more susceptible to such impacts. Mr. Gragg reiterated the importance of ensuring that the draft pollution prevention report emphasize that the need for pollution prevention involves the integration of the relationship between environmental pollution and health impacts.

Ms. Kingfisher stated that Mr. Sherron should continue to document his community's struggle and conduct health and community impact surveys because these activities would make a difference. She then declared that his situation is an example of state-supported racism. Mr. Goldtooth added that the State of Oklahoma has a long history of practicing racism against tribes. In environmental justice, it is very important to continue to mention racism, he said.

### **3.14 Mr. Robert Gough, Intertribal Council on Utility Policy**

Representing the Rosebud Sioux Tribe, Mr. Robert Gough, Intertribal Council on Utility Policy, stated that many tribes had been proactive in terms of pollution prevention. He pointed out that tribes in the Dakotas and the northern Great Plains live in one of the richest wind regions in the world. Dams provide about 25 percent of the tribe's energy needs, he said, but the building of dams has had a significant negative impact on tribes because it results in the loss of land and increased erosion problems. In addition, he continued, 75 percent of the tribe's power comes from coal, most of which is young lignite coal. This coal does not produce a lot of sulfur, he said, but it does produce a lot of carbon dioxide.

Tribes are interested in working with the federal government to build sustainable homeland economies based on wind and other renewable energy in the Great Plains, Mr. Gough said. Global warming predictions become more ominous as new evidence is made available, he stated. Global warming leads to a decline in the snow pack in the mountains, and therefore less hydroelectric energy will be available, he noted. This situation motivates the federal government to buy more coal and increases dependence on coal energy, he explained.

Mr. Gough emphasized his desire to get federal government assistance to help the tribes build and develop renewable and sustainable energy sources. He pointed out that the Rosebud Sioux Tribe is working with environmental justice groups around the country to model clean energy projects. He asked that the NEJAC consider the opportunities that

communities in the northern Great Plains offer to develop pollution prevention strategies.

Mr. Gough distributed a document titled *Environmental Justice Revitalization Project Tribal Wind Power Demonstration Project Plan* to the members of the Executive Council. The document stated that the Rosebud Sioux Tribe currently is engaged in a cooperative project with the U.S. Department of Energy and the U.S. Department of Agriculture's Rural Utilities Service to demonstrate tribal ownership and operation of a wind turbine that is being installed on the Rosebud Sioux Indian Reservation. Since 1995, both the Rosebud Sioux Tribe and the Intertribal Council on Utility Policy had been committed to tribal development of wind resources, he said. The Tribal Wind Power Demonstration Project Plan encourages development of significant wind energy generation on Indian reservations in the northern Great Plains. Such development is considered to be a viable strategy for community revitalization to (1) address past and ongoing environmental injustices resulting from the building of mainstream dams on the Missouri River that have been detrimental to Indian culture and (2) provide for future tribal economic, cultural, and community sustainability.

Ms. Gauna requested that Mr. Gough review and comment on the draft pollution prevention report. Mr. Gough pointed out that the Rosebud Sioux Tribe had started a wind project and would be phasing in the first utility-scale turbine in January 2003. Ms. Gauna stated that wind energy would be a wonderful alternative to the planned expansion of hundreds of electric power plants over the next several years.

Mr. Williams then pointed out that several tribes in the State of Washington are working on proposals for similar wind projects. Mr. Gough stated that the wind energy potential on the Rosebud Sioux and Pine Ridge Indian reservations is, if developed, enough to meet the Kyoto Protocol targets for all of North America.

Ms. Subra asked about the mercury content of the lignite coal being burned and whether power plants are being monitored to ensure that they are using appropriate mercury scrubbers. Mr. Gough stated that he believed that a considerable amount of mercury is present in the coal and that many of the power plants had begun operation prior to the CAA, so compliance requirements had been grandfathered.

Ms. Kingfisher added that there is concern in Wyoming that the extraction of natural gas would

cause aquifer dewatering in South Dakota. There are huge energy issues in Indian country, she said.

Mr. Goldtooth stated that the Bush and Cheney energy plan will have a negative effect on environmental justice communities. Ms. Nelson then pointed out that the Congress is expected to reauthorize the energy bill in 2003 and that some members of the Executive Council are working to have pilot demonstrations for alternative energy sources added to the reauthorized bill.

### **3.15 Ms. Marylee Orr, LEAN, Baton Rouge, Louisiana**

Mr. David Wise, Shintech, read a statement prepared by Ms. Marylee Orr, LEAN, Baton Rouge, Louisiana. The statement pointed out that LEAN had been founded as an umbrella organization for grassroots environmental groups throughout Louisiana. The environmental justice members consist of African-Americans, Hispanics, Native Americans, and Asian nationalities as well as the poor, disadvantaged, and disenfranchised, the statement said.

Ms. Orr noted in her statement that environmental justice communities in Louisiana are the recipients of excessive pollutant loading that results in negative impacts to human health and the environment. Volatile and semivolatile organics, dioxins, toxic heavy metals, pesticides, and other pollutants impact air quality, water quality, sediments, soils, animals, and crops, the statement continued.

Pollutant loading is a direct result of ongoing facility operations and inappropriate historical actions, Ms. Orr pointed out in the statement. Ongoing facility operations release excess pollutants as a result of noncompliance with permit conditions, accidental releases, and bypassing of treatment systems because of insufficient treatment capacity, the statement noted. Environmental justice communities living in close proximity to sources of pollution are exposed to excessive levels of contamination, the statement said.

In conclusion, Ms. Orr stated that LEAN supports the NEJAC's pollution prevention initiative for environmental justice communities and that LEAN would be willing to assist EPA and environmental justice communities in implementation of pilot programs in Louisiana.

### **3.16 Ms. Sonia Ivette Dueno, Fellowship of Reconciliation, Washington Office on Vieques, Washington, DC**

Noting that she would be providing an update on the current situation of Vieques, Puerto Rico, Ms. Sonia Ivette Dueno, Fellowship of Reconciliation, Washington Office on Vieques, Washington, DC, stated that data from the Puerto Rico Cancer Registry show that residents of Vieques had a 27 percent higher rate of cancer than residents of the rest of Puerto Rico from 1985 to 1989. In addition, she continued, cancer mortality in Vieques is more than 50 percent higher than in the rest of Puerto Rico.

Vegetation and soil on Vieques have elevated levels of heavy metals such as lead and cadmium, she pointed out. More than two-thirds of the island had been controlled by the U.S. Navy since 1940, she continued, and there are no other significant sources of contamination on the island. EPA had found the Navy to be in violation of the Clean Water Act because of contamination resulting from fire-bombing in eastern Vieques waters, she said, and now EPA is conducting Phase I investigations of 12 Resource Conservation and Recovery Act (RCRA) sites on the island.

During work with impacted communities in Puerto Rico, communicating key information in the native languages of those communities is imperative, she asserted. However, EPA is not utilizing these language tools to the benefit of impacted communities, she said. Language access is an important issue in environmental justice communities because lack of information in native languages hinders the ability of communities to exercise their right to due process and to respond to injustices affecting their daily lives, she declared. Ms. Dueno pointed out that Executive Order 12898 addresses the need to translate crucial public documents for limited- English-speaking populations.

The NEJAC is a crucial, important player in ensuring language access for affected communities, she stated. The NEJAC's role is to provide advice about how EPA should participate for and cooperate and communicate with other federal agencies, state and local governments, federally recognized tribes, and others, she noted. A strong recommendation by the NEJAC would bring the language issue to the forefront and would guarantee that the voices and needs of the residents for whom English is not their native language are heard.

In conclusion, Ms. Dueno asked the NEJAC to request that the EPA Administrator obtain funding for creating a department to provide translations of all draft, preliminary, and final documents that are relevant to impacted communities in languages other



than English. In addition, she requested that the NEJAC convene a meeting in Vieques, Puerto Rico.

Ms. Graciela Ramirez-Toro, Interamerican University of Puerto Rico and chair of the Puerto Rico Subcommittee, stated that the issues associated with federal facilities should be discussed by the Puerto Rico Subcommittee. In addition to the military base on Vieques, five other military bases are present on the island, she pointed out.

**3.17 Mr. Jerome Balter, Public Interest Law Center of Philadelphia, Philadelphia, Pennsylvania**

Stating that he is an attorney specializing in environmental law and representing minority and low-income communities, Mr. Jerome Balter, Public Interest Law Center of Philadelphia, Philadelphia, Pennsylvania, informed the Executive Council that he had represented communities in Chester, Pennsylvania, and Camden, New Jersey, in their efforts to stop pollution violations at waste and sewage facilities and to prevent the proliferation of polluting facilities in those overburdened areas. In the past year, it had become apparent that existing civil rights laws and regulations are incapable of providing relief to environmental justice communities, he stated. Mr. Balter pointed out that in the past two years, the U.S. Supreme Court had declared that victims of environmental injustice have no right to enforce EPA's environmental justice policies and that they have no right or power to prevent state environmental protection agencies from issuing operating permits for additional polluting facilities in their communities. Mr. Balter added that EPA had not found a single instance of environmental racism over the past two years and that EPA had maintained its policy of refusing to accept an environmental justice complaint until after a state had issued an operating permit.

EPA had improved its performance record regarding completion of civil rights complaint investigations by issuing three decisions in 2002, he said. However, he continued, in all these adjudicated cases, EPA could not find a single civil rights violation. EPA's failure to find a single case of environmental injustice in the 130 complaints received by EPA's Office of Civil Rights over the past ten years should make one question environmental justice in the United States, he declared. If communities such as Chester and Camden cannot find relief from environmental racism under existing laws and regulations, new laws and regulations must be demanded, he stated. Under Title VI of the Civil Rights Act, EPA is authorized to withhold federal funds if potential recipients are

found to have violated civil rights laws, he pointed out.

Mr. Balter noted that, in past years, he had urged the NEJAC to support a change in EPA regulations that would replace EPA's complex and unworkable "disparate cumulative analysis" guidance with a protocol based on comparative public health. A change in EPA regulations based on Title VI could not provide relief for victims of environmental discrimination, he said. Mr. Balter urged the NEJAC to recognize that Title VI is not an effective vehicle through which to achieve environmental justice. The NEJAC should support legislation that provides for community enforcement of civil rights regulations and which incorporates existing community health as a necessary criterion for granting or denying operating permits, he stated.

Following Mr. Balter's presentation, Mr. Yang pointed out that the status of Title VI has been discussed extensively by the NEJAC over the past several years. Mr. Warren asked Mr. Balter whether litigation is still an effective means for environmental justice to be achieved and whether he felt that a cooperative, multistakeholder model is worth pursuing. Mr. Balter emphasized that the legal path is not meaningful under Title VI because relief is unattainable via that route. Community action is the best choice, he asserted. After the courts had turned down the environmental justice lawsuit in Chester, not a single operating permit had been granted because of community action, he stated. When a community gets involved and demonstrates opposition, the results are better than those of any law, he declared.

Ms. Kingfisher pointed out that incorporating existing community health as a necessary criterion for granting or denying operating permits should be explored further by the Health and Research Subcommittee. Mr. Balter added that a recent analysis of the health of residents living in various census tracts had revealed that of the poorest 20 percent of the population in Philadelphia, 94 percent of those people are black.

Following up on Mr. Balter's point that racism permeates almost every decision-making process in the country, Mr. Charles pointed out that once the issue had been redefined as political and his community had launched a public attack against local elected officials on the basis of environmental justice, tremendous progress had been made. Environmental justice had become a priority, and people had started trying to find ways to solve the problems, he added. Legal approaches may not be

the best strategy, and the alternative, political action by communities, may be the best strategy, he stated.

Ms. Gauna noted that the Air and Water Subcommittee had also been interested in following up on progress under Title VI because of its relationship to the permitting process. In the beginning, a great deal of attention had been given to pursuing complaints under Title VI because industries were interested in the issues and wanted to know how EPA would resolve those issues, she stated. The agency is still not clear about how it is going to resolve these issues, she said, and as a result, Title VI has “fallen off the radar screen.” Industries are no longer interested because there is no private right of action as a result of recent Supreme Court decisions, she pointed out. If EPA were truly committed to environmental justice, it would provide some certainty to environmental justice communities, she asserted.

### **3.18 Ms. Kathleen Peters Zuray, Tanana Tribal Council, Tanana, Alaska**

Pointing out that her village is located in the interior of Alaska, Ms. Kathleen Peters Zuray, Tanana Tribal Council, Tanana, Alaska, stated that her organization is concerned about the impacts of state and federal facilities on Alaskan Native communities. The U.S. Federal Aviation Administration had closed a site near the village but had made no effort to remediate the impacts related to the site, she said. In addition, she continued, DoD had not cleaned up an airport site once used for its World War II efforts. The tribe had been working on addressing these environmental concerns since 1997, she said. The village has a low-income, minority population of about 400 people, she explained, and it is easy for those agencies to ignore their concerns.

The village’s main concern is the health impacts caused by contamination from the abandoned sites, she stated. The main water well for the village is contaminated with benzene, she said, and for more than a year the residents had not been told that they were drinking contaminated water. There is also a problem with abandoned, contaminated soil piles. To address the piles, the U.S. Department of Health and Human Services’ Indian Health Service had wanted to spread the soil between some homes and a school, but that is unacceptable, she declared. The village has taken a collaborative approach to working with the various agencies involved so that litigation can be avoided, she stated. The village had recently presented each agency with a memorandum of understanding outlining the history of the issues in the village, she said.

Ms. Zuray also noted that the village is concerned about a waste lagoon located in the middle of Tanana that is emptied into the Yukon River twice a year. People downriver are worried about health problems related to the emptying of the lagoon, she pointed out, but the discharge is done in accordance with EPA and Alaska Department of Conservation regulations.

Ms. Zuray reiterated that the village is being ignored but that it had been working within existing government processes to be heard. She also noted that text addressing tribal lands in Alaska should be added to the draft pollution prevention report.

Ms. Judith Espinosa, The Alliance for Transportation Research (ATR) Institute and member of the Waste and Facility Siting Subcommittee, stated that she would review the draft pollution prevention report so that she could help incorporate the comments presented to the Executive Council during the public comment period.

### **3.19 Ms. Laura Luster, Luster National Inc., Oakland, California**

Pointing out that she is a member of the Health and Research Subcommittee, Ms. Laura Luster, Luster National Inc., Oakland, California, informed the Executive Council that she wanted to comment briefly on the NEJAC’s meeting process. The NEJAC’s work is very important, she noted, and she encouraged the NEJAC to look for ways to improve the meeting process. The council members should ask themselves why they are present, and how they can effectively accomplish their goals, she stated. The council should be creative, she said, and find innovative ways to share information and reach out to the public. She added that the skills of a facilitator could be used to support the process when public comments are heard. In conclusion, Ms. Luster reiterated that the council should work with liaisons to make the meeting process better.

Mr. Charles Lee, EPA Office of Environmental Justice (OEJ) and DFO for the Executive Council, stated that from OEJ’s perspective, the NEJAC is an advisory committee to EPA on matters related to environmental justice, he stated. The NEJAC needs to be strategic in terms of what advice would make the most difference at a given point, he explained. There needs to be patience regarding the issues raised, he said, but that does not mean that they are not all important. Mr. Lee added that he would talk to Mr. Barry Hill, Director, EPA OEJ, about issuing an update about Title VI.

Ms. Gauna pointed out that many people have put a lot of time into Title VI and that EPA should at least provide some response before the meeting adjourns. Mr. Warren added that the NEJAC strategic plan calls for development of a communication plan involving the flow of information within NEJAC and noted that the communication plan had not yet been developed. There is no ongoing protocol for information to be submitted to the Executive Council, he stated. Ms. Shepard pointed out that OEJ is supposed to publish a newsletter as a communication vehicle. Ms. Nelson added that a subcommittee group should be formed to develop the communication plan. Ms. Espinosa then stated that the Council should create a schedule so that the public can see what the NEJAC plans to do between meetings. This schedule would facilitate public involvement, she pointed out.

### **3.20 Ms. Beverly Wright, Xavier University, New Orleans, Louisiana**

Ms. Beverly Wright, Xavier University, New Orleans, Louisiana, submitted a letter written by the Deep South Center for Environmental Justice at Xavier University. The letter was written on behalf of the Mississippi River Community Advisory Board (CAB) to Mr. Gregg Cooke, Regional Administrator, EPA Region 6.

The text of CAB's letter stated that the letter was written on behalf of the citizens living along the Mississippi River chemical corridor whose lives are impacted by emissions from approximately 136 petrochemical plants and six refineries. The letter pointed out that TRI emissions from plants along the corridor total nearly 186 million pounds of air, water, and soil pollution. During a CAB meeting, several challenges and possible solutions had been identified, the letter stated. One main issue expressed at the meeting concerned terrorism and the increased risk for people living in the corridor in close proximity to one of the nation's largest ports, the letter said. The letter identified the following questions related to terrorism:

1. What are the possible threats of terrorism?
2. What precautions, if any, have been taken to increase security in order to reduce the risk of terrorism for corridor residents?
3. Is there an evacuation plan?
4. If so, when and how will the community be informed?
5. What, if any, plans of action have been developed for facilities in the corridor?
6. How many meetings or listening sessions has EPA had with corridor facilities since September

11, 2001?

7. Have any threats been made to any of the plants in the corridor?

In conclusion, CAB requested that the EPA Region 6 Regional Administrator meet with CAB to develop better communication and to discuss the questions of residents living along the corridor with regard to their safety. Ms. Wright also requested that the NEJAC facilitate a meeting with EPA Region 6 and the EPA Administrator.

### **3.21 Ms. Shirley Brown, UCERC, Baltimore, Maryland**

Ms. Shirley Brown, UCERC, Baltimore, Maryland, submitted a written statement to the Executive Council concerning BARC. In the statement, Ms. Brown noted that she had observed dust and gravel coming from the facility. She pointed out that she had seen more than 28 loaded dump trucks leave the facility in one two-hour period. Dust and gravel fell from such trucks, she continued in her statement, and other vehicles disperse the dust for miles around. In addition, machinery on the mountains of gravel creates large clouds of dust, she said in the statement.

Ms. Brown explained in her statement that preventive actions taken by the community include having a meeting with residents to discuss the issue, writing to local elected officials, petitioning the residents of the community to support the issue, contacting MDE, and staging demonstrations at the facility on six occasions.

### **3.22 Ms. Laurie Weahkee, Sacred Alliance for Grassroots Equality Council, Albuquerque, New Mexico**

Ms. Laurie Weahkee, Sacred Alliance for Grassroots Equality Council, Albuquerque, New Mexico, submitted a written statement concerning protection of the Petroglyph National Monument, located near Albuquerque. The monument is a Native American place of prayer that contains more than 25,000 petroglyphs, the statement said. The City of Albuquerque had allowed the construction of a private road that connects an older park road through the Boca Negra Canyon, the statement pointed out. Because the road was a private project, the statement explained, the city claims that it did not need to notify anyone of its construction even though thousands of cars will be using it. The Sacred Alliance for Grassroots Equity Council believes that the road was deliberately constructed in such a way as to avoid any public notification because of the

controversial nature of roads through the national park, the statement asserted.

In the statement, Ms. Weahkee requested that the NEJAC document the issue as a violation of environmental justice because it is a deliberate effort to undermine Native American religion. In addition, she requested that the NEJAC study and evaluate the role that private property road construction projects have on transportation policies, including policies for public involvement, technical forecasting, and regional plans.