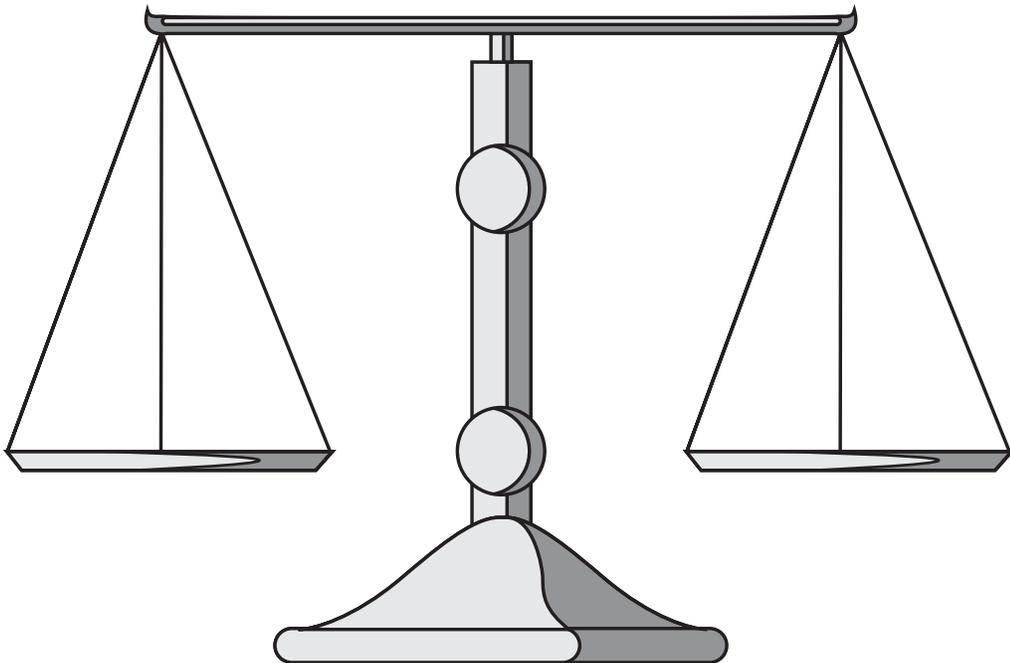


Office of Environmental Justice (OEJ)



Summary of the Meeting of the National Environmental Justice Advisory Council

A FEDERAL ADVISORY COMMITTEE



EXECUTIVE SUMMARY

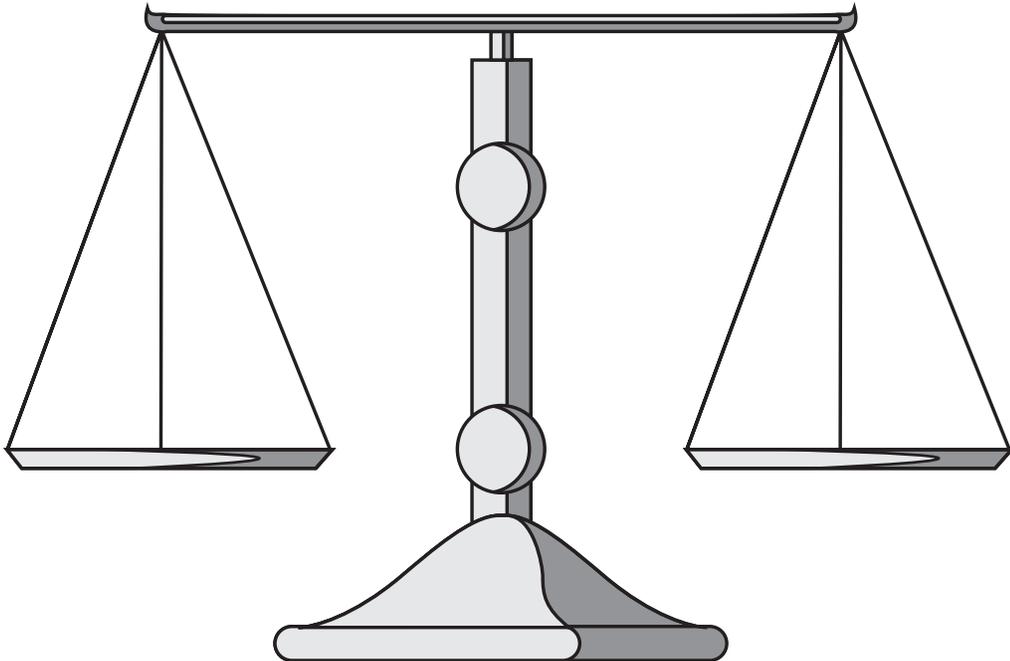
Hilton Crystal City at National Airport
Arlington, Virginia
November 30 through December 2, 1999

Office of Environmental Justice (OEJ)



Summary of the Meeting of the National Environmental Justice Advisory Council

A FEDERAL ADVISORY COMMITTEE



EXECUTIVE SUMMARY

Hilton Crystal City at National Airport
Arlington, Virginia
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PREFACE

The National Environmental Justice Advisory Council (NEJAC) is a federal advisory committee that was established by charter on September 30, 1993, to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. The NEJAC is made up of 25 members, and one DFO, who serve on a parent council that has six subcommittees. Along with the NEJAC members who fill subcommittee posts, an additional 39 individuals serve on the various subcommittees. To date, NEJAC has held fourteen meetings in the following locations:

- Washington, D.C., May 20, 1994
- Albuquerque, New Mexico, August 3 through 5, 1994
- Herndon, Virginia, October 25 through 27, 1994
- Atlanta, Georgia, January 17 and 18, 1995
- Arlington, Virginia, July 25 and 26, 1995
- Washington, D.C., December 12 through 14, 1995
- Detroit, Michigan, May 29 through 31, 1996
- Baltimore, Maryland, December 10 through 12, 1996
- Wabeno, Wisconsin, May 13 through 15, 1997
- Durham, North Carolina, December 8 through 10, 1997
- Arlington, Virginia, February 23 through 24, 1998 (Special Business Meeting)
- Oakland, California, May 31 through June 2, 1998
- Baton Rouge, Louisiana, December 7 through 10, 1998
- Arlington, Virginia, November 30 through December 2, 1999

The NEJAC also has held other meetings which include:

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

As a federal advisory committee, the NEJAC is bound by all requirements of the Federal Advisory Committee Act (FACA) of October 6, 1972. Those requirements include:

- Members must be selected and appointed by EPA
- Members must attend and participate fully in meetings of NEJAC
- Meetings must be open to the public, except as specified by the Administrator
- All meetings must be announced in the Federal Register
- Public participation must be allowed at all public meetings

- The public must be provided access to materials distributed during the meeting
- Meeting minutes must be kept and made available to the public
- A designated federal official (DFO) must be present at all meetings of the NEJAC (and its subcommittees)
- NEJAC must provide independent judgment that is not influenced by special interest groups

Each subcommittee, formed to deal with a specific topic and to facilitate the conduct of the business of NEJAC, has a DFO and is bound by the requirements of FACA. Subcommittees of the NEJAC meet independently of the full NEJAC and present their findings to the NEJAC for review. Subcommittees cannot make recommendations independently to EPA. In addition to the six subcommittees, the NEJAC has established a Protocol Committee, the members of which are the chair of NEJAC and the chairs of each subcommittee.

Members of the NEJAC are presented in the table on the following page. A list of the members of each of the six subcommittees are presented in the appropriate chapters of the report.

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL MEMBERS OF THE EXECUTIVE COUNCIL (1999)	
Designated Federal Official: Mr. Charles Lee, Associate Director for Policy and Interagency Liason, EPA Office of Environmental Justice	Chair: Mr. Haywood Turrentine
Members	
Mr. Don Aragon Ms. Rose Marie Augustine Ms. Leslie Ann Beckoff Cormier Ms. Sue Briggum Mr. Dwayne Beavers Mr. Luke Cole Mr. Fernando Cuevas, Sr. Ms. Rosa Franklin Mr. Arnoldo Garcia Dr. Michel Gelobter Mr. Tom Goldtooth Ms. Jennifer Hill-Kelley	Ms. Annabelle Jaramillo Ms. Vernice Miller-Travis Mr. David Moore Dr. Marinelle Payton Mr. Gerald Prout Ms. Rosa Hilda Ramos Ms. Peggy Shepard Ms. Jane Stahl Mr. Gerald Torres Mr. Damon Whitehead Ms. Margaret Williams Mr. Tseming Yang

EPA's Office of Environmental Justice (OEJ) maintains transcripts, summary reports, and other material distributed during the meetings. Those documents are available to the public upon request.

Comments or questions can be directed to OEJ through the Internet. OEJ's Internet E-mail address is:

environmental-justice-epa@.epa.gov

Executive Summaries of the reports of the NEJAC meetings are available in English and Spanish on the Internet at the NEJAC's World Wide Web home page:

<http://www.epa.gov/oeca/main/ejnejac/index.html> > (click on the publications icon)

EXECUTIVE SUMMARY

INTRODUCTION

Exhibit ES-1

This executive summary provides highlights of the fourteenth meeting of the National Environmental Justice Advisory Council (NEJAC), held November 30 through December 2, 1999 at the Hilton Crystal City at National Airport in Arlington, Virginia. Each of the six subcommittees met for a full day on December 1, 1999. The NEJAC hosted on November 30 a public comment period which focused on issues related to environmental justice and the issuance of environmental permits. The NEJAC also hosted on December 1 a second public comment period for general environmental justice issues. Approximately 400 persons attended the meetings and the public comment periods.

The NEJAC is a federal advisory committee that was established by charter on September 30, 1993 to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. Mr. Haywood Turrentine, Laborers' District Council Education and Training Trust Fund (an affiliate of the Laborers' International Union of North America), serves as the chair of the Executive Council. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, EPA Office of Environmental Justice (OEJ), serves as the Designated Federal Official (DFO) for the Executive Council. Exhibit ES-1 lists the chair and DFO of the executive council, as well as the persons who chair the six subcommittees of the NEJAC and the EPA staff appointed to serve as the DFOs for the subcommittees.

OEJ maintains transcripts and summary reports of the proceedings of the NEJAC meetings. 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-language versions.

REMARKS

Ms. Carol Browner, Administrator, EPA, extended her appreciation to representatives of EPA and members of the NEJAC who have been working on addressing issues related to environmental justice at the agency. She stated that addressing environmental justice is not an easy task and one that is not becoming easier to address as new evidence is identified that minority and low-income communities do bear a disproportionate "brunt of [the impacts of] our modern technological society." She emphasized the need for

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL CHAIRS AND DESIGNATED FEDERAL OFFICIALS (DFO)

Executive Council:

Mr. Haywood Turrentine, **Chair**
Mr. Charles Lee, **DFO**

Air and Water Subcommittee:

Dr. Michel Gelobter, **Chair**
Ms. Alice Walker, **co-DFO**
Dr. Wil Wilson, **co-DFO**

Enforcement Subcommittee:

Mr. Luke Cole, **Chair**
Ms. Shirley Pate, **DFO**

Health and Research Subcommittee:

Dr. Marinelle Payton, **Chair**
Mr. Lawrence Martin, **co-DFO**
Mr. Chen Wen, **co-DFO**

Indigenous Peoples Subcommittee:

Mr. Tom Goldtooth, **Chair**
Mr. Daniel Gogal, **Acting DFO**
Mr. Anthony Hanson, **Alternate DFO**

International Subcommittee:

Mr. Arnoldo Garcia, **Chair**
Ms. Wendy Graham, **DFO**

Waste and Facility Siting Subcommittee:

Ms. Vernice Miller-Travis, **Chair**
Mr. Kent Benjamin, **DFO**

the members of the NEJAC to stay focused on the topic of this meeting. Ms. Browner expressed her belief that when decision-makers truly engage a local community, up front and in an informed and meaningful manner, the quality of the decision that the agency or other regulatory entity is able to make is dramatically improved compared to a decision that is made without the engagement of the community. She continued by saying that the challenge that lays before EPA is how to involve a local community in an effective, open, honest, and informed manner.

Ms. Browner concluded her remarks by stating that the agency needs to take a “real look” at the regulatory decisions made as well as the guidance and framework that EPA issues to state and local governments to ensure that principles related to environmental justice are being integrated into the decision-making process for issuing permits.

Mr. Steven Herman, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA), expressed the agency’s continuous appreciation to the members of the NEJAC for their invaluable assistance in providing EPA advice and counsel on issues related to environmental justice. Mr. Herman then noted the change in format for this and future meetings of the NEJAC. He explained that each NEJAC meeting now will focus on a single issue and its relationship to environmental justice. Announcing that this meeting of the NEJAC would focus on permitting, Mr. Herman stated that through panel discussions, members of the NEJAC, EPA, and other meeting participants will examine aspects of permitting related to various authorities and opportunities where the agency can ensure that environmental justice is integrated into the decision-making process for issuing permits. Mr. Herman concluded his remarks by noting that numerous assistant administrators and other senior-level managers of EPA will be in attendance at this meeting.

Mr. Barry Hill, Director, EPA OEJ, began his remarks by stating that environmental justice is “something that belongs to everyone” in that every American citizen is entitled to clean air, water, and land based on the United States’ protective environmental laws. He continued by defining environmental justice, and explaining that the concept:

- ▶ Acknowledges that environmental justice is a basic right of all Americans to live and work in environmentally protected surroundings.
- ▶ Recognizes that environmental justice is not only an environmental issue, but a public health issue.
- ▶ Recognizes that environmental justice is forward-looking and goal-oriented because the concept seeks to include affected communities in the decision-making processes.
- ▶ Indicates that environmental justice is inclusive.

Mr. Hill then stated that based on these premises the definition of environmental justice is compatible with the mission of EPA to protect human health and to safeguard the environment.

Continuing his remarks, Mr. Hill pointed out that environmental justice is at a critical stage from the point of view of environmental law and public policy. He then proceeded to provide historical examples of environmental justice, starting with the issuance in 1987 of a report by the United Church of Christ on race and environmental contamination to present day legal cases to highlight the various stages of environmental justice as a legal concept.

Mr. Hill concluded his remarks by stating that for this meeting OEJ has asked the NEJAC to provide advice and recommendations on how best to integrate environmental justice into the decision-making process related to permitting so that the concept can be applied as measurable, rationalized, and routine standards of evaluation.

Ms. Samantha Fairchild, Director, Office of Enforcement, Compliance, and Environmental Justice, EPA Region 3, emphasized that environmental justice continues to be a major area of concern at EPA Region

3 and that the regional office has taken steps to improve communication among all affected stakeholders. For example, she explained that EPA Region 3 is developing partnerships with state environmental agencies in the five-state region to provide assistance during the decision-making process related to permits. This effort includes establishing consistent meetings with states to discuss potential environmental justice issues before those issues become legal problems, she said. Ms. Fairchild also noted that EPA Region 3 has participated in Pennsylvania's Environmental Equity Work Group to define and identify criteria for environmental justice communities.

Continuing her remarks, Ms. Fairchild also noted that the regional office has been involved in several studies to investigate public health issues in environmental justice areas with heavy industry as well as conducted a study in a southwest Philadelphia, Pennsylvania area that is heavily concentrated with auto body and paint shops. She explained that the information collected from these studies will assist the state of Pennsylvania and Region 3 meet the needs of its citizens. Ms. Fairchild concluded her remarks by stating that the NEJAC is a valuable tool to grapple with the many complex problems facing communities related to environmental justice.

Mr. Bradley Campbell, White House Council on Environmental Quality (CEQ), reported on the second environmental justice listening session held in New York, New York in March 1999 that continued to bring together various federal agencies and community members to discuss issues related to environmental justice. Mr. Campbell explained that the purpose of the listening sessions was to ensure the environmental justice principles that have been integrated into EPA's policies and programs also are being implemented in other federal agencies actions that affect local communities. As a result of the listening session, he noted, several federal agencies, such as the U.S. Army Corps of Engineers (USACE), agreed to reopen public comment periods to review permits related to transportation decisions for New York City. In addition, the Healthcare Financing Administration agreed to help local New York communities to gain better access to medical care for asthma related health problems.

PUBLIC COMMENT PERIODS

The NEJAC hosted public comment periods on November 30 and December 1, 1999. More than 30 people participated in the two public comment periods. Significant concerns expressed during the public comment periods included:

- ▶ Several commenters continued to express concern about the "unfair process" under which permits are issued by the Louisiana Department of Environmental Quality (LDEQ).
- ▶ Many commenters expressed concern about the "unrealistic" time frame by which to review and provide comments on proposed permits during the decision-making process. Many commenters recommended that EPA revise the time line related to issuing a permit to provide for earlier notification of a proposed permit, as well as provide documents in easier to understand language.
- ▶ Several commenters expressed concern about the lack of options available for recourse once a permit has been issued and a facility has begun operations.
- ▶ Several commenters recommended that the NEJAC address environmental justice issues at federal facilities.

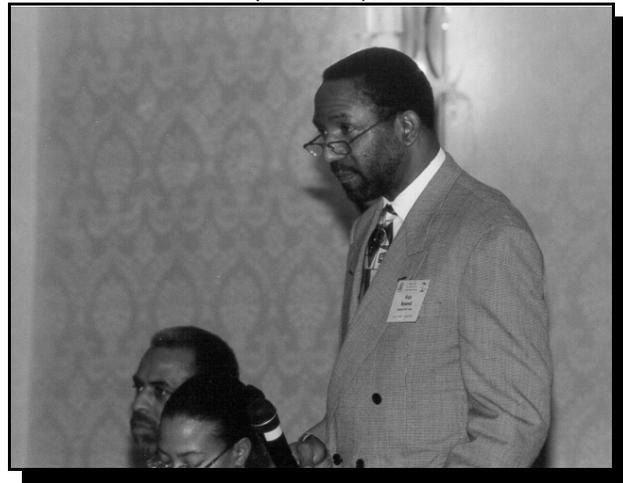
PANELS ON PERMITTING AND ENVIRONMENTAL JUSTICE

The NEJAC, in its continuing efforts to provide independent advice to the EPA Administrator on areas related to environmental justice, focused its fourteenth meeting on a specific policy issue -- permitting and environmental justice. On Tuesday, November 30, 1999, the members of the NEJAC listened to a series of panels comprised of various stakeholders that were designed to provide insight into the issues and concerns raised with respect to environmental justice in the permitting process.

Mr. Richard Lazarus, Professor of Law, Georgetown University Law Center and former member of the Enforcement Subcommittee of the NEJAC, provided background information on the historical development of integrating concerns related to environmental justice into the permitting process. Mr. Lazarus explained that "environmental justice permitting" refers to the consideration of concerns related to environmental justice in the context of an environmental permitting authority's decision to grant, deny, or condition a permit at a facility, the operation of which has adverse or potentially adverse environmental effects on the community. Ms. Zulene Mayfield, Chester Residents Concerned for Quality Living, presented an overview on the challenges her community has faced related to state environmental agencies and the permitting process. Ms. Mayfield emphasized the necessity for local and state agencies to allow local affected communities to participate earlier and more often in the decision-making process. Mr. Carlos Porras, Communities for a Better Environment, provided information on several communities near Los Angeles, California facing environmental justice issues related to air quality and permitting. Mr. Porras explained that there are several challenges EPA needs to address related to permitting that included collecting more reliable data.

The panel presentations included (Exhibit ES-2 provides the names of the panelists):

- ▶ *Facilitated Dialogue* — Mr. Kojo Nnamdi of National Public Radio, facilitated a dialogue among representatives of communities; industry; tribes; and state, local, and federal governments to identify issues and concerns related to environmental justice and permitting. (Exhibit ES-3 shows Mr. Nnamdi facilitating.) The primary issue identified by all stakeholder groups was that the public should become involved in the permitting process as early and as often as possible. Several members of the panel expressed concern that members of the public believe that public outreach related to permitting is superficial, citing the fact that although a regulation may take two years to develop, the public only receives 30 days in which to review and provide comment.



ES-3: Mr. Kojo Nnamdi facilitating a dialogue session on issues related to environmental justice and the permitting process.

- ▶ *EPA Panel* — Senior managers from EPA's Office of Solid Waste and Emergency Response (OSWER), Office of Air and Radiation (OAR), Office of Water (OW), and Region 3 provided information on their program's efforts to incorporate environmental justice into the permitting processes. Each of the headquarter program offices announced to the members of the NEJAC various commitments to increase public involvement and revise the permitting processes to integrate environmental justice into them.

PANEL PRESENTATIONS ON PERMITTING RELATED TO ENVIRONMENTAL JUSTICE**Overview:**

Introduction: Richard Lazarus, Georgetown University Law Center (Washington, D.C.)
 Community Case Studies: Zulene Mayfield, Chester Residents Concerned for Quality Living (Chester, Pennsylvania)
 Carlos Porras, Communities for a Better Environment (Los Angeles, California)

Facilitated Dialogue:

Community: Margie Richard, Local Resident (Norco, Louisiana)
 Community: Zack Lyde, Local Pastor (Brunswick, Georgia)
 Industry/Business: Michael Steinberg, Morgan, Lewis and Bockius (Washington, D.C.)
 Tribal/Indigenous: Bill Swaney, Confederated Salish and Kootenai Tribes (Pablo, Montana)
 State Government: Alissa Harris, State of Pennsylvania (Harrisburg, Pennsylvania)
 Local Government: Matt Ward, National Association of Local Government Environmental Professionals (Washington, D.C.)
 Federal Government: William Harnett, U.S. Environmental Protection Agency (EPA), Office of Air Quality Planning and Standards (Washington, D.C.)

EPA Panel:

Office of Solid Waste and Emergency Response: Timothy Fields, Jr., Assistant Administrator (AA)
 Office of Air and Radiation: Robert Brenner, Acting Deputy AA
 Office of Water: Dana Minerva, Deputy AA
 Region 3: John Armstead, Associate Director, Environmental Services Division

Panel 1: Addressing Real Life Dilemmas of Environmental Justice in Permitting: How Do We Respond to the Legacy of Land Use Impacts?

Academia: Yale Rubin, Professor Emeritus, Massachusetts Institute of Technology (Cambridge, Massachusetts)
 Industry/Business: Michael Gerrand, Arnold & Porter (New York, New York)
 Community: Paula Forbis, Environmental Health Coalition (San Diego, California)
 Local Government: Sarah Lyles, City of Detroit (Detroit, Michigan)

Panel 2: The Current State of Environmental Justice and Permitting: What Are Its Limitations?

Industry/Business: Jerry Martin, Dow Chemical (Midland, Michigan)
 Community: Larry Charles, O.N.E./C.H.A.N.E. (Hartford, Connecticut)
 State Government: Andrea Kreiner, Delaware Department of Natural Resources and Environmental Control (Dover, Delaware)
 Federal Government: Steve Heare, EPA Office of Solid Waste

Panel 3: Opportunities for Improvement: What Factors Should EPA Consider to Help Ensure Environmental Justice in Permitting?

Academia: Eileen Gauna, Southwestern University Law School, (Los Angeles, California)
 State Government: Robert Shinn, New Jersey Department of Environmental Protection (Trenton, New Jersey)
 Community: Nathalie Walker, Earthjustice Legal Defense Fund (New Orleans, Louisiana)
 Tribal/Indigenous: Stuart Harris, Confederated Tribes of Umatilla (Pendleton, Oregon)

- ▶ *Panel 1: Addressing Real Life Dilemmas of Environmental Justice in Permitting: How Do We Respond to the Legacy of Land Use Impacts?* — Representatives from academia, industry, community, and local government discussed the dilemmas for the permitting process related to the historical development of land use and zoning requirements. Several members of the panel recommended that EPA involve stakeholders of local government earlier in the development of guidance and policy to help prepare local governments to implement new regulations.
- ▶ *Panel 2: The Current State of Environmental Justice and Permitting: What Are Its Limitations?* — This multi stakeholder panel identified areas of concern and gaps related to integrating environmental justice into the permitting process. A primary concern expressed by several members of the panel focused on the need for local, state, and federal government agencies to diversify their staff to better understand the needs and concerns of their constituents.
- ▶ *Panel 3: Opportunities for Improvement: What Factors Should EPA Consider to Help Ensure Environmental Justice in Permitting?* — Members of the multi stakeholder panel provided recommendations to EPA on how to improve efforts to integrate concerns related to environmental justice into the permitting process. Several key recommendations included:
 - Create an air emissions credits trading review board to evaluate the disparate effects the trading of air emissions credits may have on an affected community.
 - Provide additional resources to improve data from geographical information systems to more accurately identify demographics and other cultural considerations.

COMMON THEMES

During the meetings of the Executive Council and its subcommittees, the members of the NEJAC discussed a wide range of issues related to environmental justice. Specific concerns of and commitments made by the NEJAC include:

- ▶ Continued concern about the “crisis” environmental contamination conditions under which certain residents of Louisiana live.
- ▶ Concern about the lack of public participation in the decision-making process related to issuing permits.
- ▶ Recommendation that EPA develop a process by which the agency can step in to “fill the regulatory gap” left when EPA is not the primary authority.

Members of the NEJAC recommended that the EPA Administrator assume an active role in discussions with LDEQ about the environmental contamination and the issuance of permits in that state. In addition, the Executive Council also approved a resolution that requested that the EPA Administrator recommend that the Inspector General of EPA conduct an audit of the LDEQ to ensure that the state agency is in compliance with applicable environmental laws.

Members of the NEJAC, as well as members of the various panels, agreed that local communities need to be included often and as early as possible in the decision-making process related to issuing permits. The Executive Council agreed to create a special work group to develop a report to provide advice on how EPA can integrate concerns related to environmental justice into the permitting process in a manner that would be beneficial to all stakeholders. Ms. Vernice Miller-Travis, Partnership for Sustainable Brownfields Redevelopment and chair of the Waste and Facility Siting Subcommittee of the NEJAC, agreed to chair the work group.

Several members of the NEJAC expressed concern about several cases, such as waste transfer stations, in which a “regulatory gap” is created because EPA is not the primary authority and the local or state agency

is not responding to concerns of its constituents. The members recommended that EPA develop a process by which the agency can step in to “fill” such a gap.

SUMMARIES OF THE SUBCOMMITTEE MEETINGS

Summarized below are the deliberations of the members of the six subcommittees of the NEJAC during their meetings.

Air and Water Subcommittee

The Air and Water Subcommittee reviewed the activities of its three work groups on cumulative permitting, urban air toxics, and fish consumption, and proposed a new work group of the subcommittee which would focus on public utilities. Updates from the current work groups included:

- ▶ The Work Group on Cumulative Permitting proposed a list of issues for EPA to consider related to public participation and permitting.
- ▶ The Work Group on Urban Air Toxics discussed and offered comment to EPA OAR on the agency’s urban air toxic strategy.
- ▶ The Work Group on Fish Consumption focused its efforts on subsistence fish consumption, specifically related to cultural practices of native communities; fish monitoring; the necessity for fish advisories; and reducing human exposure to contaminants in fish.

The subcommittee also hosted a joint session with the Enforcement Subcommittee of the NEJAC that focused on OAR’s economic incentives program (EIP), Tier II/gasoline sulfur rule, and OW’s proposed rule on standards for total maximum daily load (TMDL).

Enforcement Subcommittee

The members of the Enforcement Subcommittee heard three presentations on environmental justice and the decision-making process related to permitting. The members of the subcommittee also participated in a discussion about the proposed budget cuts for OECA. In addition, Ms. Ann Goode, Director, EPA Office of Civil Rights (OCR), provided the subcommittee with an update on activities at OCR and the progress on processing administrative complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI).

In addition, the members of the subcommittee discussed at length three pending resolutions that had been forwarded by mail ballot vote to the Executive Council of the NEJAC for approval. The pending resolutions addressed state-issued variances from the Clean Air Act permit requirements, EPA’s proposed guidance on EIP, and the economic benefit to industry of noncompliance with environmental laws. The members of the subcommittee also began discussions on a proposed resolution on concentrated animal feeding operations (CAFO).

Health and Research Subcommittee

Members of the Health and Research Subcommittee heard presentations by the following individuals:

- ▶ Dr. Dorothy Patton, EPA Office of Research and Development (ORD), presented information on the responsibilities of ORD, including the office’s activities and new directions for the future.
- ▶ Dr. William Sanders, EPA Office of Pollution Prevention and Toxic Substances (OPPTS), provided an update on EPA’s proposed lead rule, EPA’s community-right-know program, and the agency’s community assistance technical team.

- ▶ Dr. Henry Falk, Agency for Toxic Substances and Disease Registry (ASTDR), discussed his agency's approach to conducting environmental health assessments.
- ▶ Dr. Jerome Balter, Public Interest Law Center of Philadelphia, provided information on a model used by the city of Philadelphia, Pennsylvania to evaluate and support an administrative complaint filed under Title VI.

Members of the subcommittee also agreed to develop resolutions on 1) guidelines for community-based research ethics and 2) to request that EPA and other federal agencies explore opportunities to fund environmental health research topics identified by communities.

Indigenous Peoples Subcommittee

Members of the Indigenous Peoples Subcommittee continued to discuss the development of a consultation and collaboration guidance to provide assistance to federal and other agencies on how to participate in meaningful consultation with tribal governments and tribal communities. The subcommittee agreed to distribute the draft guidance to all federally recognized tribes for review and comment. In addition, the subcommittee agreed to forward by March 2000 a copy of the guidance to the members of the Executive Council for approval.

Members of the subcommittee also discussed and developed a strategic plan for the subcommittee for the next two years. Several goals expressed in the strategic plan include identifying key environmental justice issues, particularly related to permitting, in Indian Country and provide training to members of the NEJAC on environmental justice issues related to indigenous peoples.

In addition, members of the subcommittee discussed EPA's proposed core standards for water quality for Indian Country, the air permitting program related to tribes, and the recent trade negotiations related to persistent organic pollutants (POP).

International Subcommittee

Members of the International Subcommittee reviewed more than 100 recommendations that were generated from the Roundtable on Environmental Justice on the U.S./Mexico Border meeting held in August 1999 in San Diego, California. The members established priorities among the recommendations and decided to focus on:

- ▶ Creation of a binational community-based commission that would monitor and assist in the development of environmental policies that would affect the border region.
- ▶ Cleanup two contaminated sites, Metales y Derivados near Tijuana, Mexico and the Condado Prestos in Ciudad Juarez, Mexico.
- ▶ Conduct of a site assessment of the Matamoros Tamaulipas site in Mexico.

Members of the subcommittee also participated in discussions with Mr. Alan Hecht, Principal Deputy Assistant Administrator, EPA Office of International Activities (OIA); Mr. Gregg Cooke, Regional Administrator, EPA Region 6; and Dr. Clarice Gaylord, Special Assistant to the Regional Administrator, San Diego Border Liaison Office, EPA Region 9.

Waste and Facility Siting Subcommittee

Members of the Waste and Facility Siting Subcommittee discussed issues related to environmental justice and the administration of the Superfund program by EPA. The members of the subcommittee recommended that communities be protected as EPA continues to delegate authority to tribes and states under Superfund.

Members of the Waste Transfer Station Work Group of the subcommittee presented its report of recommendations on criteria for siting waste transfer stations, a planning process to assure a more equitable distribution of waste transfer facilities among communities, and a more deliberative approach to evaluate how many of these types of facilities are necessary. The members of the work group noted that, in the absence of a federal baseline for waste transfer stations, there exists an enormous variability in operating practices among such facilities.

In response to continued concerns expressed during earlier public comment periods of the NEJAC, members of the subcommittee agreed to participate in quarterly conference calls convened by EPA Region 6 to address environmental justice issues related to Calcasieu Parish, Louisiana. Also, members of the subcommittee agreed to address differences between presentations made by staff of EPA related to the relocation of community members of Pensacola, Florida and those comments offered by affected community members during the December 1, 1999 public comment period.

SUMMARY OF APPROVED RESOLUTIONS

This section summarizes resolutions that were discussed by the subcommittees and approved by the Executive Council of the NEJAC during the meeting. Appendix A provides the full text of each resolution that was approved by the Executive Council.

- ▶ The NEJAC recommends that EPA request that Puerto Rico Commonwealth revise its State Implementation Plan to comply with the .1lbs/MBTU federal emission limitation of particulate matter and the appropriate sulfur dioxide emission limitation for the entire island including the non-attainment area.
- ▶ The NEJAC recommends that EPA request that the U.S. Department of State and the United States Trade Representative (USTR) comply with the provisions expressed in Executive Order 12898 on environmental justice and Executive Order 13141 related to environmental reviews of trade agreements.
- ▶ The NEJAC recommends that EPA communicate to the U.S. Secretary of State that the United States supports the adoption of the current draft declaration on the rights of Indigenous Peoples before the United Nations.
- ▶ The NEJAC requests that EPA Region 2 facilitate a meeting between the Westside Homeowners Protective Association, the Venice Park Civic Association, the U.S. Department of Transportation, the South Jersey Transportation Authority, and the New Jersey Department of Environmental Protection to address the issues of exposure of community residents from contaminated soil, long-term air quality issues, and the potential adverse effects to the community residents after the construction of the Atlantic City/Brigantine Connector tunnel project.
- ▶ The NEJAC recommends that the EPA Administrator request that the Inspector General of EPA conduct a full audit of the state of Louisiana's permitting programs with particular attention to the violations of EPA's public participation regulations, the public participation guidelines of the NEJAC, and the provisions of the U.S. Constitution.
- ▶ The NEJAC recommends that EPA amend the agency's proposed EIP regulations to include considerations and requirements related to environmental justice.

- ▶ The NEJAC recommends that EPA's policies on determining appropriate penalties for noncompliance require that these penalties reflect the economic benefit of noncompliance enjoyed by violating facilities.
- ▶ The NEJAC recommends that EPA adopt a national policy which prohibits federal recognition of variances issued by states to the permitting requirements under Title V of the Clean Air Act.

NEXT MEETING

The next meeting of the NEJAC is scheduled for May 23 through 26, 2000 in Atlanta, Georgia at the Omni at CNN Center. Planned activities will include two opportunities for the public to offer comments. Exhibit ES-4 identifies the dates and locations of future meetings as well as the issues the NEJAC plans to address. For further information about this pending meeting visit NEJAC's home page on the Internet at: http://www.epa.gov/oeca/main/ej/nejac/conf_ne.html or call EPA's toll-free environmental justice hotline at 1-800-962-6215.

Exhibit ES-4

**FUTURE MEETINGS OF
THE NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

<u>Date</u>	<u>Location</u>	<u>Issue</u>
May 23 - 26, 2000	Atlanta, Georgia	Community Health
December 2000	Washington, D.C.	Interagency Environmental Justice Implementation

APPENDIX A
FULL TEXT OF THE RESOLUTIONS

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**RESOLUTION CALLING FOR AN AUDIT OF
LOUISIANA PERMITTING PROGRAMS**

WHEREAS, public participation in environmental decision-making is fundamental to environmental justice, as it allows those affected by decisions to take part in them;

WHEREAS, all major environmental laws contain legally binding public participation requirements;

WHEREAS, EPA offices with permitting authority further agreed to and embraced the NEJAC Public Participation Guidelines;

WHEREAS, the right to legal representation is indispensable for public participation and essential to the viability of citizen suit provisions of said federal environmental laws;

WHEREAS, public participation and speech on environmental decisions is constitutionally protected by the 1st Amendment;

WHEREAS, NEJAC has heard testimony at each of its last five meetings from residents of Louisiana, who have presented substantial evidence indicating a pattern of intimidation by the State of Louisiana of citizens engaged in public comment, leading to the curtailing of citizens' right to free speech in environmental permitting processes;

WHEREAS, the State of Louisiana has moved to abridge citizens' rights to legal representation in environmental decision-making;

WHEREAS, the failure to guarantee public participation represents dereliction of the State of Louisiana's delegated and authorized environmental permitting programs;

WHEREAS, implementation failures and delegated programs undermine the federal government's authority for those programs at the national level;

WHEREAS, such threats to federal authority, if confirmed, provide grounds for the revocation of the State of Louisiana's permitting authorities;

THEREFORE, BE IT RESOLVED, that the NEJAC recommends that the Administrator direct the Inspector General to conduct a full audit of the State of Louisiana's permitting programs with particular attention to violations of the Agency's public participation regulations, the NEJAC's public participation guidelines, and the U.S. Constitution.

**RESOLUTION ON POLLUTION CAUSED BY THE PUERTO RICO
ELECTRIC POWER AUTHORITY (PREPA)**

WHEREAS, the Puerto Rico State Implementation Plan Revision of 1993 to reduce PM10 has failed to obtain attainment in the Guaynabo non attainment area

WHEREAS, NAAQS exceedances have occurred for four consecutive years

WHEREAS, these exceedances were predicted in the modeling process of the 1993 SIP revision

WHEREAS, exceedances in Puerto Rico during dust migration episodes from the Sahara dust and the Monserrate volcano eruptions are always predictable by the available satellite technology

WHEREAS, the state cannot control non anthropogenic emissions, it can control anthropogenic emissions from point sources such as power plants stacks to ensure NAAQS compliance

WHEREAS, the use of a fuel with a sulfur content of 1.5% as a control strategy to minimize the impact of the Puerto Rico Electric Power Authority (PREPA) in the non attainment area in Cata-Guaynabo has failed to obtain attainment in the area

WHEREAS, PREPA has no pollution control in its stacks

WHEREAS, a residual oil with 1.5% of sulfur content is considered a dirty fuel

WHEREAS, the particulate emission limitation (mass emission) of .3lbs/lbs/MBU is less restrictive than the federal standard of 0.1 lbs/MBTU

WHEREAS, the state mass emission standard of 0.3 lbs/MBTU has never been proven by the state to be equivalent to 20% opacity,

WHEREAS, the PR state mass emission limitation of .3lbs/MBTU has been identified by EQB officials as a "typographical error"

WHEREAS, the state emission standard cannot be less restrictive than the federal particulate standards,

WHEREAS, PREPA has been identified as egregious opacity violator while firing 1.5% sulfur fuels since 1993,

WHEREAS, the use of a fuel with 1.5% sulfur content has failed to sustain a clean emission in PREPA's stacks,

WHEREAS, relying in opacity as the only federally emission standard to protect the health of the people from excessive sulfur dioxide emissions from a dirty fuel results in an unequal protection of law to residents,

WHEREAS, PREPA has been convicted of criminal environmental actions in a federal Court as is under certain strict probation terms,

WHEREAS, eliminating the mass emission limitation in a non attainment area for particulates, in the Cataño-Guaynabo area, contravenes the Clean Air Act

WHEREAS, PREPA is the second Public Utility with the highest revenues in the USA,

WHEREAS, PREPA has a monopoly in energy sales, even in the presence of other cogenerators

WHEREAS, PREPA is included by EPA as one of the 100 dirtiest power plants in terms of sulfur dioxide and particulate emissions,

WHEREAS, the installment of appropriate enforceable limitations is the only mechanism available in Puerto Rico to protect its citizens from acid rain and sulfur dioxide emissions because PREPA is exempted to comply with the title IV program provisions

WHEREAS, PREPA has made significant modifications and capital investments and no longer qualifies to be exempted to comply with the New Source Performance Standards,

WHEREAS, Puerto Rico must be treated as a state,

Be it resolved that EPA should take the following actions,

1. To request the Puerto Rico Commonwealth State to revise its State Implementation Plan in order to establish the .1lbs/BMTU Federal emission limitation of particulate, and the appropriate sulfur dioxide emission limitation for the entire island including the non attainment area,
2. To request PREPA to establish a continuous SOx emission monitoring mechanism
3. To request PREPA to fire a residual oil with a sulfur content no higher than .5 percent in all of its plants.

**RESOLUTION ON “CREDIBLE DETERRENCE” CIVIL PENALTIES:
CAPTURING THE ECONOMIC BENEFIT OF NONCOMPLIANCE**

Whereas, “Capturing the Economic Benefit” means that when a penalty is assessed against an environmental violator, a significant part of the assessment is calculating the costs avoided as a result of non-compliance, plus the interest earned on money as a result of delayed compliance; and

Whereas, Examples of economic benefit from noncompliance include delayed and avoided pollution control expenses, delayed and avoided installation, operation, and maintenance costs of pollution control equipment, and delayed and avoided costs of one-time acquisitions needed for compliance; and

Whereas, under U.S. EPA Policy and many federal environmental laws and regulations, one of the major considerations in calculation of any proposed penalty assigned to a violator is the question of what the economic benefit was to the violator; and

Whereas, the underlying policy consideration is that the penalty burden must be at least as great as the benefit of the violation or there would be no reason to comply;
and

Whereas, the EPA Strategic Plan, Goal 9, calls for the Agency to provide a “credible deterrent to pollution and greater compliance with the law”;

We hereby resolve that:

- ▶ EPA Penalty Policy which requires that penalties should include the component of economic benefit should be complied with at the national, regional, and state level.
- ▶ Technical assistance in calculating the economic benefit (EBN calculation training) should be provided to all enforcement authorities who assert that they can’t do it because they don’t know how.
- ▶ A model penalty policy that includes providing for the calculation of economic benefit should be made available to all enforcement authorities who assert that they can’t do it because they don’t have such a penalty policy.
- ▶ Any enforcement authority asserting that their laws prevent them from calculating the economic benefit should be required to provide an Attorney General’s (or the equivalent) certification to that effect.
- ▶ EPA Regional Officials should consider taking independent enforcement actions against facilities in cases where state assessed penalties do not recover substantial economic benefits of noncompliance.
- ▶ A requirement of capturing the economic benefit should be incorporated as part of the Memoranda of Agreement with the Regions, or EPA’s Performance Partnership Agreements with the delegated agencies, or through any other delegation agreements.
- ▶ To establish credible deterrence it should be made clear that agencies are delegated legal authority to establish general pollution control requirements consistent with federal statutory mandates and EPA policies and that as to capturing the economic benefit, they will not be allowed to sink below the minimum.

**RESOLUTION ON EPA TO AMEND ITS ECONOMIC INCENTIVE PROGRAM (EIP)
REGULATIONS TO INCLUDE ENVIRONMENTAL JUSTICE CONSIDERATIONS
AND REQUIREMENTS**

WHEREAS, the EPA is advocating both environmental justice as a means to reduce pollution in communities of color and pollution trading as a cost-effective method to reduce pollution.

WHEREAS, the EPA has adopted Economic Incentive Program (EIP) regulations which establish approvability requirements for pollution trading programs.

WHEREAS, the EIP regulations currently do not include safeguards sufficient to prevent adverse environmental justice impacts, including the creation of toxic hot spots in communities of color.

WHEREAS, the Assistant Administrator of the Office of Air and Radiation (OAR) has met with the NEJAC Enforcement Subcommittee to discuss environmental justice concerns related to emissions trading, and appeared generally receptive to the concerns raised by the NEJAC.

WHEREAS, the NEJAC recognizes the willingness of EPA OAR to continue to have a dialogue with the NEJAC until these issues are resolved.

WHEREAS, certain pollution trading programs have the potential to create, perpetuate or exacerbate air pollution toxic hot spots in communities of color by allowing facilities in those communities to increase or continue emissions.

WHEREAS, certain pollution trading programs allow facilities to increase or continue emissions of highly toxic chemicals, due to offsets obtained from decreases in less toxic chemical emissions, thereby resulting in a net increase in airborne toxicity.

WHEREAS, since stationary source polluters are often disproportionately located in communities of color, while mobile source pollution is widely distributed geographically, mobile to stationary source pollution trading has the potential to create or exacerbate toxic hot spots.

WHEREAS, pollution trading programs require accurate quantification of emissions reduced and increased through the program, and such quantification is particularly difficult in the case of mobile source trading programs.

WHEREAS, pollution credits should only be granted for emission reductions that are real, surplus, and quantifiable, and pollution credits should therefore not be granted for emission reductions that would have resulted even in the absence of the pollution trading program.

WHEREAS, economic modeling tools exist that allow agencies to predict the probable geographic and demographic impact of pollution trading programs, including the location of probable pollution credit purchasers and sellers.

WHEREAS, a fundamental principle of the environmental justice movement is that communities affected by pollution must be allowed to participate in decisions affecting their environment.

BE IT RESOLVED THAT NEJAC urges EPA to Amend the EIP Regulations to:

- ▶ Prohibit the trading of toxic air pollutants, as defined in the Emergency Planning and Community Right-to-Know Act if the result would be adverse health or environmental impact(s) in an environmental justice community, and unless EPA requires the states to develop adequate quantification protocols that must be reviewed and approved by EPA into an enforceable state implementation plan (SIP) prior to trading plan implementation to ensure accurate quantification of pollutants to be traded and to ensure enforceability and verifiability.
- ▶ If trading of toxic chemicals is allowed, prohibit emissions trading that will result in an increase in toxic chemical pollution in already overburdened communities, taking into account cumulative pollution risks. If trading of toxic chemicals is allowed, require implementing agency to consider selective toxicity of specific chemicals being traded, and to prohibit trading that will expose the public to unacceptable risk.
- ▶ Prior to approval of any pollution trading program, require the agency proposing the program to conduct an economic analysis ~~similar~~ comparable to the model prepared by the Regional Economic Modeling, Inc. (REMI) to determine the location of probable emission credit purchasers and sellers. Require the agency to overlay the REMI analysis with demographic information to determine whether the proposed trading program will have an adverse impact on communities of color. Prohibit emissions trading programs that are predicted to have an adverse impact on communities of color.

- ▶ Require that at a minimum, all facilities ~~must~~ install technology-based controls defined as reasonably available control technology (RACT) under the Clean Air Act, and prohibit trading that allows companies to avoid installing RACT.
- ▶ Require all emissions trading programs to incorporate public participation components that include notification to affected communities of any trade that will result in an increase or continuation of toxic chemical pollution, and allow the affected communities a reasonable opportunity to review and comment upon said adverse impacts. Require the responsible agency to retain discretion to revise or reject the proposed pollution trade based upon comments received.
- ▶ Prohibit mobile-to-stationary source trading where the result would be adverse health or environmental impact(s) in an environmental justice community, and unless EPA requires the states to develop adequate quantification protocols that must be reviewed and approved by EPA into an enforceable state implementation plan (SIP) prior to trading plan implementation to ensure accurate quantification of pollutants to be traded and to ensure enforceability and verifiability.
- ▶ EPA should retain requirements in found in the emissions trading policy statement regulation requiring a portion of the economic benefit resulting from pollution trading to benefit the public through increased emission reductions.

**RESOLUTION ON EPA TO ADOPT A NATIONAL POLICY PROHIBITING
FEDERAL RECOGNITION OF STATE-ISSUED VARIANCES**

WHEREAS, the Region IX of the EPA is considering whether to grant federal recognition of state-issued variances from Title V permit requirements, and has proposed to recognize such variances in cases of malfunction, start-up, shut-down, and maintenance;

WHEREAS, the federal recognition of these variances would preclude both federal and community enforcement of the federal Clean Air Act where violations have been documented, and thus provide a disincentive to compliance with Clean Air Act requirements;

WHEREAS, since stationary source polluters are disproportionately located in communities of color, issuance of variances to stationary sources will result in a disproportionate impact on these communities;

WHEREAS, the issuance of variances can result in increased impacts to public health from emissions of air toxics at levels above permit requirements and above those levels which have been analyzed for their impact to public health;

WHEREAS, the issuance of variances could impede reasonable further progress on attainment of federal air quality standards;

WHEREAS, Clean Air Act case law only allows for permit modifications after amendment to the appropriate State Implementation Plan;

WHEREAS, EPA enforcement policy takes into consideration problems such as malfunction, start-up, and shutdown procedures as mitigating factors to penalties assessed for violations;

NOW THEREFORE BE IT RESOLVED THAT:

NEJAC urges EPA to adopt a national policy which:

- ▶ Prohibits federal recognition of variances from Clean Air Act requirements, except for variances resulting in more stringent levels of control at the facility;
- ▶ Acknowledges that existing federal enforcement policies consider the nature of a violation and factors such as malfunction, start-up, shut-down, and maintenance as mitigating factors in determining the appropriate federal enforcement response.

- ▶ Requires consultation with NEJAC before consideration or approving any variance policy, by EPA or any of its regions.

RESOLUTION ON THE UNITED NATIONS DRAFT DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

WHEREAS Executive Order 12898 establishing the National Environmental Justice Advisory Council (NEJAC) recognizes that Indigenous Peoples as a group are especially vulnerable to disproportionate impacts of environmental despoliation;

WHEREAS Executive Order 13107 of December 15, 1998, requires all Executive Departments and Agencies to respect United States human rights international obligations relevant to their functions, and to perform such functions so as to respect and implement those obligations fully;

WHEREAS the International Covenant on Civil and Political Rights (ICCPR) is an international human rights obligation of the United States, which recognizes the right of all Peoples to Self-Determination, including the right of Peoples to freely pursue their economic, social and cultural development and to freely dispose of their natural wealth and resources;

WHEREAS, the ICCPR also provides that Peoples may not be deprived of their own means of subsistence;

WHEREAS, The Vienna Declaration and Program of Action, also applicable to the United States:

- ▶ Reaffirmed that all human rights are universal, indivisible, interdependent and interrelated;
- ▶ Reaffirmed the commitment of the International Community to ensure the enjoyment of all human rights and fundamental freedoms of Indigenous Peoples and to respect and value the diversity of their cultures and identities;
- ▶ Considered the denial of the right of self determination as a violation of human rights and underlined the importance of the effective realization of this right;
- ▶ Called for concerted, positive steps from the international community to ensure respect for all human rights of Indigenous Peoples on the basis of equality and non-discrimination, recognizing the value of their distinct identities, cultures and social organization;

WHEREAS, the international community has recognized the spiritual relationship between Indigenous Peoples and their lands and territories, notably through International Labor Organization Convention no. 169 and numerous special studies;

WHEREAS, other United Nations studies have found that Indigenous lands are being subjected to unprecedented development and frequently resultant irreparable environmental damage;

WHEREAS, the Right to Development is a right of Peoples in which the enjoyment of self determination and full sovereignty over all natural wealth and resources is fundamental;

WHEREAS, the United Nations Commission on Human Rights is presently considering a Draft declaration on the rights of Indigenous Peoples;

WHEREAS, the present draft of the declaration before the Human Rights Commission was elaborated with the full and ample participation of hundreds of Indigenous Nations and thousands of their representatives before the United Nations Working Group on Indigenous Populations over a 12 year period;

WHEREAS, recognizing and underscoring, that these Indigenous participants found that the present draft before the Commission on Human Rights is a minimal standard to ensure the survival of Indigenous Peoples and their environment;

WHEREAS, the Atlantic City Tunnel route traverses within 25 feet of the remaining residents.

WHEREAS, soils that will be excavated for the construction of the Atlantic City Tunnel are contaminated with heavy metals, petroleum-related compounds, and other organic and inorganic substances at levels in excess of health-based standards established by the New Jersey Department of Environmental Protection and 152,000 cubic yards of these soils will be reuse on site.

WHEREAS, the South Jersey Transportation Authority has rejected the request of community residents for controls ensure that contaminants in the soils do not migrate to the adjacent communities, such as air monitoring – on-site and off-site – of the contaminants found in the soils, continuous engineering controls, and covering of the soils.

WHEREAS, excavation of has continued for 9 months and community residents have begun to complain of respiratory difficulties since the beginning of construction – including the triggering of dormant asthma.

WHEREAS, analysis performed by South Jersey Transportation Authority and the New Jersey Department of Transportation acknowledge the possibility that there could be hot spots of carbon monoxide, particulates and sulfur dioxide in areas adjacent to the tunnel.

WHEREAS, the South Jersey Transportation Authority and the New Jersey Department of Transportation have rejected the request of community residents to install air control devices to address the emissions from vehicles using the tunnel and air monitoring of the emissions for a short time period after the tunnel is constructed to ensure local air quality does not create risk to the adjacent communities.

WHEREAS, South Jersey Transportation Authority has failed to address numerous other issues identified by community residents, including the potential for flooding, safety, and structural damage to homes.

WHEREAS, the Atlantic City Tunnel is funded by the State of New Jersey, administered by one of its agencies, and is to serve a casino that is supported by and would directly benefit the City of Atlantic City and the State of New Jersey.

WHEREAS, the unresponsiveness by all state agencies requires the intervention by the USEPA to prevent irreversible damage to health of community residents and the local communities.

THEREFORE BE IT RESOLVED, that the National Environmental Justice Advisory Council calls upon USEPA to IMMEDIATELY, through its Region II Offices, facilitate the convening of all parties, including the South Jersey Transportation Authority, New Jersey Department of Environmental Protection, and the New Jersey Department of Transportation, to address the immediate issues of exposure of community residents to contaminated soil during construction activities, and other issues of potential impact to the community residents after construction, such as flooding, and safety.

BE IT FURTHER RESOLVED, that the National Environmental Justice Advisory Council calls upon USEPA, in consultation with the US Department of Transportation, to convene a meeting of NJ Department of Transportation and South Jersey Transportation Authority, to address the long term air quality issues associated with tunnel.

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APPENDIX B
LIST OF PARTICIPANTS

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