

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
MEETING SUMMARY
AUGUST 3-5, 1994

1. BACKGROUND

The National Environmental Justice Advisory Council (NEJAC) held its second meeting on August 3-5, 1994, at the Hyatt Regency Hotel in Albuquerque, New Mexico. NEJAC convened the meeting in order to develop the groundwork (e.g., bylaws, goals, responsibilities) for future activities, as well as to discuss environmental justice issues and concerns. NEJAC was created by EPA under the authority of the Federal Advisory Committee Act to provide independent expert advice and counsel to the Agency on policy matters related to environmental justice.

NEJAC is comprised of a parent council (Council) and four subcommittees. The Council is authorized to have up to 25 members who may also serve on a subcommittee. The subcommittees include Public Participation and Accountability, Enforcement, Waste and Facility Siting, and Health and Research. NEJAC's members include representatives of academia; industry; community groups; nongovernmental organizations; state, tribal, and local governments; and environmental organizations.

On August 3, the parent council was convened in order to discuss NEJAC's mission, leadership, protocols and work products. On August 4 and 5, the subcommittees were convened in order to discuss their objectives, work products, and specific environmental justice issues and concerns. The public had an opportunity to provide oral comments on August 3 and 4. On the afternoon of August 5, the full NEJAC was reconvened in order to discuss accomplishments and future plans.

Following is a summary of the parent council's discussions and resolutions, which are organized by subject area. Also included is a summary of the public's oral comments. [Note: See "Subcommittee Notes" for a summary of the subcommittees' meetings on August 4 and 5.]

2. OPENING REMARKS

The meeting began with an introduction of the Council members. Mr. John Hall, Chair of the Council, convened the meeting and welcomed all attendees. Council members immediately began to raise issues such as the process of selecting the Chair and additional Council members, and EPA revisions to the meeting's agenda. Several members felt that EPA's actions on these process issues set an adversarial tone which raised doubts about EPA's sincerity.

Dr. Gaylord introduced a facilitator. Denise Hawkins, who suggested that the Council address several of these process issues and then set the meeting's agenda. The Council agreed to develop "principles of operation" that resolved several of the process issues. Afterwards the Council developed the meeting's agenda.

3. PROCESS ISSUES

The Council discussed several process issues with Dr. Gaylord and Kathy Aterno. The three major categories of concern were: early notification, NEJAC autonomy, and timely reimbursement. The process issues resulted in five principles of operation for the NEJAC, as follows.

Early Notification

The Council members were concerned that they: (1) had not received written materials for the meeting in time to review them before arriving; (2) were not informed of the Administrator's decision on new members early enough, and (3) should be given greater advanced notice when meetings or conference calls are scheduled. Dr. Gaylord apologized for the late distribution of written materials and assured the Council that she will try to expedite the process. She explained that although her office cannot determine when the Administrator's decisions will be made, she will build a better process for notifying the Council as soon as she knows of any decision. Lastly, Dr. Gaylord committed to do better at early scheduling.

NEJAC Autonomy

Council members were concerned that their recommendations were not being implemented, thus suggesting a lack of respect for NEJAC as a whole. This sentiment revolved around the following issues:

- EPA's selection of a Council Chairperson and creation of subcommittees without NEJAC input; and
- The significant changes made by EPA to the agenda developed by the Protocol Working Group.

The Council debated the issue of the selection of the Chair and Subcommittee members. The Council decided to hold a vote expressing their views on the Chair. Dr. Gaylord resolved the issue of Subcommittee appointments by suggesting that any Council member who was dissatisfied with their appointment should speak with her individually. Several Council members stated that, if the Protocol Group or any other body of NEJAC were assigned a task such (e.g., developing an agenda), EPA should not make significant changes without consulting the group. The Council agreed that flexibility is important and should be maintained; yet, changes should be communicated.

Timely Reimbursement

Bunyan Bryant raised the issue of timely reimbursement for travel expenses and travel reimbursement for members without credit cards. He suggested that the Agency may be creating hardship for participants by not allowing up-front allotments for travel and not processing reimbursements in a timely manner. Kathy Aterno explained that EPA as a whole does not provide up-front travel allotments and that the problem is an Agency-wide issue. Deeohn Ferris pointed out that the bottleneck is not within the Office of Environmental Justice. Dr. Gaylord concurred and noted that the Agency generally takes between 30 and 45 days to process a travel reimbursement. She also committed to process the paperwork in the Office of Environmental Justice within one or two days of receipt of a member's travel voucher and expenses.

Principles of Operation

The discussion of process issues resulted in the development of five principles of operation intended to guide NEJAC and EPA activities:

- 1) EPA should provide written materials to Council members seven (7) days prior to scheduled meetings.
- 2) When the Council is assigned a task and makes a decision, EPA should not make substantial changes to that decision. Significant changes suggest a lack of respect for NEJAC.
- 3) When the Council makes specific requests or proposals, EPA should relay decisions to the Council immediately. (The details of that decision can be discussed at a later date.)
- 4) Council members should be given sufficient advance notice when meetings or conference calls are scheduled. The travel reimbursement process should be expedited to limit
- 5) The travel reimbursement process should be expedited to limit financial burdens to the Council.

4. VOTE ON THE STATUS OF THE CHAIR

Several Council members expressed concern that the Chair of NEJAC should be elected by Council members, rather than being appointed by the Administrator. Another concern was that the Chair should not be the head of a state agency that may be liable for environmental discrimination. The Council, with Mr. Hall's support, decided to conduct a vote in order to express this view.

In response to these concerns, Mr. John Hall resigned from his position as Chair of the Council. He indicated that the manner of his appointment had become a fractious issue and, as environmental justice was an important issue, he no longer wished his role as Chair to impede the Council's progress. He stated that the Council needed to move ahead and not squander the opportunity to affect policy on environmental justice issues.

The Council discussed how to conduct a vote to express their views and concerns about the Chair. One sentiment, shared by all, was that the vote was necessary in order to move the Council to address substantive environmental justice issues.

Charles Lee introduced the following motion: "For the record, NEJAC expresses its concern regarding the improper message being sent in the formation of the first NEJAC by: (1) the fact that the Chair was appointed rather than elected; and, (2) the fact that the head of a governmental entity charged with making official decisions on environmental justice was selected." The motion was seconded and the Council voted. The motion passed with nine in support, two against, and three abstentions. The Council elected to wait until Friday to elect the new Chair. In the meantime, Dr. Gaylord served as the Acting Chair and the Designated Federal Official of NEJAC.

We came here to take care of business. What we're really talking about is environmental democracy.. from the bottom up, not from the top down. We want to make a new democracy that is an environmental as well as an economic democracy.

Richard Moore

5. ELECTION OF THE CHAIR

On Friday, Richard Moore was nominated to serve as Chair of NEJAC. He accepted the nomination. No other Council members accepted nominations for the Chair. The Council voted to accept Richard Moore as the nominee for the Chair of NEJAC. Dr. Gaylord pointed out that the nominee must be approved by the Administrator.

6. BY-LAWS

A copy of the by-laws that reflected all the changes to the document submitted by the Council members was distributed. The document was reviewed by EPA's Office of General Council (OGC) and Committee Management Office (CMO). Several changes that OGC recommended, such as not using the term "Executive Committee," were incorporated.

The Council reviewed each section of the by-laws and accepted previously proposed edits and provided new comments to the document. A final version of the by-laws is included as an appendix.

7. RELATIONSHIP TO INTERAGENCY WORKING GROUP ON ENVIRONMENTAL JUSTICE

Members of the Interagency Working Group (IWG) presented the current activities of several task forces and the areas/issues on which the task forces were requesting comment from the Council:

- Georgia Johnson, Department of Energy (DOE), reported on the activities of the Task Force on Outreach and Public Participation. She reported that the task force: (1) translated Executive Order 1289 into Spanish; (2) wishes to hold at least one public meeting by January 1995 in order to get comments on the Agencies' strategic plans; and, (3) discussed how NEJAC might be able to provide guidance on public participation in Federal programs. She noted that most of the Agencies had very little experience with public participation and that the task force would need NEJAC's guidance to meet its deadlines as outlined in the executive order. She provided the Council with a draft public participation document developed by DOE and a memorandum that described the specific issues on which the task force was requesting advice. The Public Participation and Accountability Subcommittee was tasked with responding to the IWG Task Force on Outreach and Public Participation.
- Karen Shelton, Department of Justice (DOJ), was the next speaker. She provided an update on the activities of the IWG Task Force on Enforcement and Compliance. The task force plans to: identify test cases for litigation; develop training and educational programs for Federal employees on how to enforce Executive Order 12898; and identify existing laws and regulations that can be used to enforce environmental justice. The task force members requested that the NEJAC provide them with information on what statutes have been applied to past enforcement or environmental justice and the effectiveness of those cases. The Enforcement Subcommittee was tasked with responding to the IWG Task Force on Enforcement and Compliance.
- Dr. Gaylord gave an update on the activities of the IWG Task Force on Implementation. She presented a draft document guiding agencies on the self-evaluation to be used in developing an environmental justice process. She asked NEJAC members to: (1) review the draft document and submit comments as soon as possible; (2) submit suggestions on a process for reporting the success of agency strategies and programs; and (3) assist in developing tools to monitor whether environmental justice goals are being met.

_Kathy Aterno reported that the IWG Task Force on Native Americans would also request input from NEJAC. The IWG Task Force on Definitions and Standards was also requesting NEJAC's input on definitions for a list of terms, such as "environmental justice." Deeohn Ferris pointed out that some terms may have been defined at the 1991 People of Color in Environmental Leadership Conference.

Ad Hoc Group

Members of the Council asked questions about NEJAC's role in advising the IWG. Velma Veloria asked if the work-products from the IWG would be reviewed by the Council. Kathy Aterno indicated that the IWG would discuss that issue. In addition, Kathy Aterno suggested that the Council could develop an ad hoc group to work with the IWG Subcommittee on Policy and Coordination in order to figure out how NEJAC and the task forces could work together.

The Council agreed to form an ad hoc group to address the interface between the Council and the IWG. The ad hoc group members are: Cindy Thomas, Herman Ellis, Beverly Wright, and Bunyan Bryant. The following activities were proposed as the ad hoc group's mission:

- 1) Clarify how the Policy and Coordination Subcommittee and the Council should interface;
- 2) Develop a charge to subcommittees; and
- 3) Develop a schedule of dates to meet with IWG Subcommittee.

In addition, the Council proposed that the next meeting should be held in Washington, D.C., in October/November and that the primary focus of the meeting should be the implementation of Executive Order 12898.

8. SUBCOMMITTEES

The NEJAC is comprised of four subcommittees: Public Participation and Accountability, Enforcement, Waste and Facility Siting, and Health and Research. The subcommittees met for the first time on August 4-5, 1994.

The Council elected Chairs for each subcommittee. The following subcommittee Chairs were elected:

- 1) Public Participation and Accountability-- Peggy Saika
- 2) Enforcement -- Deeohn Ferris
- 3) Waste and Facility Siting -- Charles Lee
- 4) Health and Research -- Robert Bullard

The Council directed the subcommittees to develop an agenda, respond to Interagency Workgroup requests for comment and advice, and include the following issues in their discussions:

- 1) Implementation of Executive Order 12898
- 2) Recommendations from Health Research and Needs Symposium
- 3) 17 Principles of Environmental Justice
- 4) International Issues
- 5) Cultural Values and Tribal Concerns
- 6) Root Causes of Environmental Justice
- 7) Input on EPA's Strategic Plan
- 8) Farmworker Protection Rule
- 9) Peacetime Conversion of Resources
- 10) Community Economic Development

9. NEJAC MEMBERSHIP

Several changes have been made in NEJAC membership. There were three resignations and two new appointments.

- Jane Delgado, who represents the non-governmental organization (National Coalition of Hispanic and Human Services Organizations), resigned before the Albuquerque meeting.
- Sam Winder, a Tribal representative (National Tribal Environmental Council), resigned at the Albuquerque meeting. He stated that he felt his time is better spent devoted to other matters at EPA. He thanked Dr. Gaylord, Ms. Aterno and Administrator Browner for their efforts.
- John Hall resigned as Chair of NEJAC; however, he did not resign as a member of the Council.
- Velma Veloria of the Washington State Legislature and Baldemar Velasquez Farm Laborers Organizing Committee, were appointed to the Council. Ms. Veloria was able to attend the Albuquerque meeting.
- Bob Bullard made a motion that Gail Small, an Enforcement Subcommittee member, be nominated to the parent council. The vote will be conducted by mail.

10. MISCELLANEOUS ISSUES

The Council did not have a quorum on the afternoon of Friday, August 5. Thus, although several motions or suggestions were made, the parent council could not vote on them. Votes on the following motions will be held by mail.

- The Health and Research Subcommittee suggested that the Council endorse recommendations from the Health Research and Needs Symposium and use them as a model for forming environmental justice research policy. The Symposium's report should be forwarded to EPA, ORD, the IWG, the President's Council for Sustainable Development (PCSD), and all Federal agencies.
- Bob Bullard made a motion that the Council send a strong statement to the Administrator emphasizing the importance of workforce diversity, particularly in top-level positions, and its relation to ensuring environmental justice.

11. ACTIONS TAKEN BY THE COUNCIL

- The Public Participation and Accountability Subcommittee was tasked with responding to the Interagency Working Group Task Force on Outreach and Public Participation.
- The Enforcement Subcommittee was tasked with responding to the Interagency Working Group Task Force on Enforcement and Compliance.
- The Council agreed to form an ad hoc group to address the interface between the Council and the IWG. The ad hoc group members are: Cindy Thomas, Herman Ellis, Beverly Wright, and Bunyan Bryant.
- EPA agreed to provide written materials to Council members seven (7) days prior to scheduled meetings.
- When the Council is assigned a task and makes a decision, EPA should not make substantial changes to that decision without Council involvement.
- EPA should relay decisions to the Council immediately, especially when the Council makes specific requests or proposals.
- Council members should be given sufficient advance notice when meetings or conference calls are scheduled.

- EPA agreed to try to expedite the travel reimbursement process in order to minimize financial burdens to the Council. Specifically, Dr. Gaylord committed to process the paperwork in the Office of Environmental Justice within one to two days of receipt of a member's travel voucher and expense report.

12. PUBLIC PARTICIPATION

Following is a summary of the oral comments made during NEJAC's public comment period:

Connie Martinez - San Jose Awareness Council

- She has lived in the middle of a Superfund site for 27 years, about two blocks from General Electric (GE). Although GE has taken responsibility for contaminating the site, it is cleaning up at a very slow rate. Her family wants GE to increase the rate of clean-up.
- Her husband has lived there most of his life and he has been exposed to contaminants. She has had eye problems since she has lived there.
- Neighborhood property has been devalued.
- She also read a letter from the Bunker Hill Community requesting EPA to abate the main source of contaminants on the 21-acre site.

Michael Guerrero - South West Organizing Project from Albuquerque

- Mr. Guerrero's group focuses on environmental pollution and its effect on people of color in New Mexico. EPA has not protected these communities.
- The largest dump in the State of New Mexico is on the U.S. border with Mexico. There is an elementary school three hundred yards away from the dump. The children could no longer go outside because of the smell and smoke. This dump would not have been sited in a white community.
- Mountainview, New Mexico has a city sewage plant and 30 to 40 industries using hazardous waste; however, the local fire station has no means of addressing a hazardous waste accident.
- Chicano communities are poisoned the most. Inhabitants of New Mexico are primarily people of color and, in that context, they feel that they are most disproportionately affected by these problems. These communities feel they are facing various issues due to economic decisions from generations of colonization.

- The ability of industries to relocate in Mexico will be used as a bargaining chip with New Mexican workers. This will become increasingly relevant in light of NAFTA.
- The Council should look at EPA's overall policy and help these communities.

Lori Goodman - Dane Care

- Phil Harrison has been working on the problem of uranium contamination on the Navajo Reservation. (Submitted statement from Phil Harrison of the Uranium Radiation Victims Committee of Red Valley Chapter).
- The Council imposes government, but does not understand or represent the people. She encouraged NEJAC to keep this in mind. She believes that there should be a separate committee addressing .native issues.
- The Bureau of Indian Affairs (BIA) has authority over NEPA enforcement. Recently, her organization has requested an environmental impact statement.

Alicia Keeswood - Dane Care

- Ms. Keeswood read a letter from the Black Mesa Big Mountain Community requesting that a timeline for implementing emergency response investigations be addressed for their community. The letter questions whether EPA really wants to implement the 1984 Indian Policy and addresses specific pollution problems that EPA documented but failed to act upon.
-
- The letter also requests that EPA communicate directly with the community of all advisory council meetings well in advance so the community has time to prepare statements.
-
- The community requests the creation of a Native American office in Washington, D.C. It also requests a facility for lodging of environmental justice native grassroots organizations, as well as drivers to transport participants to and from meetings.

Tom Goldtooth - Indigenous Environmental Network

- EPA should address its current fish consumption guidelines, which he believes are outdated and incorrect.
- EPA has consistently ignored religious and cultural differences. EPA's pesticides rules do not prevent local communities from issuing ordinances about the use or application of pesticides.
- In Torrence, California, there is a sewage plant that is not being properly regulated because of a conflicting regulatory roles. EPA says the sludge is not hazardous and therefore the plant is not subject to EPA regulation. The BIA says the plant is, in fact, an EPA issue. He suggested that the Council's Subcommittee on Waste and Facility Siting should investigate the situation.

Ben Goldman

- Ben Goldman discussed the results of an update to the 1987 *Toxic Waste and Race Report*, which was co-sponsored by the Center for Policy Alternatives, the NAACP, and the Commission for Racial Justice. The findings show that the problems of environmental justice have grown since 1987.
- People of color are still three times as likely as white people to live near a hazardous waste facility.

Douglas Meeklejohn - New Mexico Environmental Law Center

- Mr. Meeklejohn believes that siting decisions are based on technical data. In these situations, it often happens that the party who can afford the best consultant wins.
- In this scenario, cultural or quality of life issues are not considered. The impact on the quality of life is not viewed as relevant. Affluent communities that have political influence can protect their quality of life, while poor communities with less political influence cannot. Executive Order 12898 puts communities in an advisory capacity but gives them no authority to react. It does not allow a community person to decide how to implement the order. EPA needs to listen to the people being impacted by these facilities. The people impacted should be making decisions. This should be done at the Interagency Working Group level and throughout the Federal government.

Teresa Juarez - Sawmill Advisory Council

- Through the years, Teresa has seen no environmental justice. By the time enforcement actions go through the bureaucracy, there is no justice in her community.
- There must be enforcement at the local level. Communities need to see proactive economic change and compensation for injustices that take place. business and industry have come into communities and destroyed the air, water, and soil, as well as the communities' culture.
- Ms. Juarez asked the Council what it would do to help communities. She challenged the Council to resist becoming a part of the bureaucracy.

NEJAC's Response to Public Comments

Dr. Gaylord agreed to implement a process wherein EPA staff will review and respond to public comments.

13. NEXT MEETING

The next meeting of the NEJAC will be held outside of Washington, D.C., at the Hyatt Regency at Dulles Airport on October 25-27, 1994.