

PROCEEDINGS OF THE
NATIONAL ENVIRONMENTAL JUSTICE
ADVISORY COUNCIL MEETING

May 20, 1994

A Federal Advisory Committee

Omni Shoreham Hotel
2500 Calvert Street N.W.
Washington, D.C.

National Environmental Justice Advisory Council
Summary of First Meeting
Friday, May 20, 1994
Washington, D.C.

I. General Topics of Discussion

- FACA process and applicability to NEJAC
- Presidential executive order and memorandum
- Letter from the Alliance in Washington on Environmental Justice to Carol Browner
- Protocol
- Mission and sphere of influence
- Organizational structure of NEJAC and its subcommittees
- Operating budget for NEJAC and its subcommittees
- Charter and bylaws
- Public comments to the council

II. Major Issues of Concern and Debate

- Increasing the number of council members from 23 to 25
- Number, purpose, and membership of the subcommittees
- Election of council chairperson versus appointment by EPA
- Electing a Co-chairperson
- Travel assistance for subcommittee members
- Need for and creation of a protocol committee
- Relationship to EPA and the interagency workgroup
- Possible development of other environmental justice FACAs within other agencies
- Coordination with other FACAs
- Funds from EPA's appropriations budgets for the subcommittees
- Actions allowed under the charter
- Comments on the bylaws
- Cultural awareness training

III. Actions Taken by the Council

The council voted to develop its own subcommittees, thus abolishing the subcommittees organized by EPA. The council established a temporary working group to develop the subcommittee structure and choose the members of these subcommittees. The working group will present its decisions to the full committee for approval on June 6, 1994.

The council created a temporary working group to handle protocol issues. This working group will make recommendations to the main council on the relationship of NEJAC to the interagency workgroup by June 6, 1994.

The council voted to increase the membership from 23 to 25. The temporary workgroup on subcommittees will suggest individuals for the two positions to Ms. Browner by June 6, 1994. The council voted to delay consideration of a co-chairperson until additional members have been selected.

IV. EPA's Commitments Rising from the Meeting

- EPA will consolidate comments received on the bylaws and forward them to council members.¹
- EPA will provide a timeline of target dates for interagency workgroup deliverables and agency strategic plans, actions, and activities of which NEJAC should be aware.
- EPA will provide budget information for the council and its subcommittees.
- Administrator Browner, as chairperson of the interagency workgroup, will support NEJAC becoming the main advisor to the interagency workgroup on environmental justice issues, if NEJAC wants to take on such a role. It is unlikely that other FACAs will be formed without the consent of the Administrator.
- Administrator Browner will introduce the issues of cultural awareness training, biodiversity, and subsistence consumption of fish and wildlife into the interagency workgroup process.
- Administrator Browner will accept comments on the interagency workgroup structure from the council once the interagency workgroup approves it.

¹ Comments should be submitted to the Environmental Justice office by June 30, 1994.

National Environmental Justice Advisory Council
Minutes of First Meeting
Friday, May 20, 1994
Washington, D.C.

The National Environmental Justice Advisory Council (NEJAC) held its first meeting on May 20, 1994, at the Omni Shoreham Hotel at 2500 Calvert St., Washington, D.C. The meeting focused on NEJAC's development, responsibilities, procedures and rules, and mission. The NEJAC also heard public comments.

EPA established NEJAC pursuant to the Federal Advisory Committee Act to provide independent expert advice and counsel to the Agency on policy matters related to managing environmental justice. The Council (at the time of the meeting) had 23 members, including representatives of: academia; industry; community groups; non-governmental organizations; state, tribal, and local governments; and environmental organizations. A list of attendees is provided in Appendix A. These minutes summarize the Council's discussions and resolutions by subject area, not chronologically. A meeting summary is available from EPA's Office of Environmental Justice upon request.

1. OPENING REMARKS

The meeting began with an introduction of the council members, statements about the history of the environmental justice movement, and an overview of the meeting agenda. Dr. Clarice Gaylord, Director of EPA's Office of Environmental Justice and the Designated Federal Official of NEJAC, convened the meeting, welcomed all attendees, and introduced the chairperson, John Hall. Mr. Hall is also the chairperson of the Texas Natural Resources Conservation Commission. He greeted the audience, welcomed the Council and suggested that council members introduce themselves. All members, individually, spoke about (1) the organization or community that they represent and (2) their objectives. Mr. Hall reviewed the background of the environmental justice movement and noted the contributions of the members of the Council and the communities that they represent. He urged the Council to focus on the products that NEJAC may need to develop in order to have maximum input and impact.

2. HOW NEJAC OPERATES AS A FACA COMMITTEE

Dr. Gaylord explained the Federal Advisory Committee Act (FACA) process. She showed a 14-minute video tape developed by the General Services Administration that described the history of FACA, responsibilities of FACA committee members, and the regulations and procedures governing FACA committee operations. After the video, she

gave a presentation on (1) the objectives of EPA in forming NEJAC as a FACA committee, as outlined in the charters (2) several federal requirements that apply to NEJAC, and (3) the roles of the committee officials. Appendix B provides a copy of the charter. The responsibilities of the chairperson, designated federal official, council members, and subcommittee members were discussed. She stated that in an open process the government needed each council member's expert opinions in order to do its business.

Bylaws

Dr. Gaylord discussed the proposed bylaws of NEJAC developed by her staff. Council members should review the bylaws and submit comments to her office by June 30. All comments will be reviewed by the council members and any changes to the bylaws discussed and approved by the Council at the next meeting.

3. EXECUTIVE ORDER 12898 AND PRESIDENTIAL MEMORANDUM

Background

Executive Order (E. O.) 12898 was signed by President Clinton in February 1994. E. O. 12898 directs each federal agency to make achieving environmental justice a part of its mission by identifying and addressing the effects of their respective programs, policies, and activities on minority and low-income populations in the U.S. The Presidential Memorandum encourages the application of existing civil rights and environmental statutes to promote environmental justice.

Ms. Jean Nelson, EPA's General Counsel spoke about the mandates of the executive order and presidential memorandum. Ms. Nelson reviewed the major components of the executive order: planning, action, specific activities, Jean Nelsons General Counsel accountability of federal agencies to the interagency workgroup, research and data, collection of data, subsistence consumption, and enforcement of the order. She pointed out that the presidential memorandum is a strong statement to federal agencies and departments that federal actions under NEPA, the Clean Air Act, and other statutes should be evaluated for adverse environmental effects on minority and low-income communities.

The executive order contains "elements of success," such as the system of accountability and specific deadlines that make this executive order effective.

Jean Nelson, General Counsel

EPA staff addressed questions on E. O. 12898 and the presidential memorandum.

- Ms. Laurie Morissette asked if NEJAC's scope of work included access to other federal agencies? For example, will NEJAC receive briefings on developments in other federal agencies or have access to data from outside EPA. Dr. Gaylord answered that NEJAC is able to request any types of information necessary to carry out its charge. Mr. Hall responded that NEJAC could not operate as an island, and it should decide what its actions were going to be and what parameters to work within in order to address environmental justice issues.
- Ms. Cindy Thomas of the Alaska Office of Environmental Health asked about the relationship between NEJAC and Congress. Ms. Kathy Atterno of EPA responded that NEJAC's recommendations may be included in EPA's report to Congress. NEJAC has no formal role in relationship to Congress.
- Dr. Jane Delgado of COSSMHO asked Ms. Nelson to expand on the meaning of the word enforcement as it is used in section 1-103 "Development of Agency Strategies" of the executive order. Ms. Nelson stated that the word enforcement is meant to describe the existing enforcement components within each federal agency. The order requires each agency, in its strategy, to address enforcement components that may need revising.

After the question and answer period, Mr. Hall recessed the meeting for 15 minutes.

4. INTRODUCTION OF THE EPA ADMINISTRATOR

Mr. Hall introduced Carol Browner, the Administrator of the EPA. Mr. Hall gave an overview of Administrator Browner's experience and accomplishments. He also stated that Administrator Browner joined the meeting to speak about her vision for NEJAC and answer any questions.

Administrator Browner thanked the council members for agreeing to address environmental concerns as part of this FACA committee and develop solutions and recommendations for EPA and the Administration. The Administrator believes that if

the Council is to work as a group, they must develop an atmosphere where different perspectives are shared and differences are honored. In addition, the Council must seek to resolve differences and find areas of common agreement in a way that is responsive to the people of this country.

It is important that we seek to find areas of common agreement and to move forward in a way that is responsive to the people of this country.

Carol Browner, EPA Administrator

EPA recognizes that the legal requirements governing NEJAC may seem cumbersome. Although EPA must follow the law, Ms. Browner asserted that EPA's committed to creating the flexibility needed for NEJAC to function effectively.

Mr. Charles Lee of the United Church of Christ Commission thanked the Administrator for her remarks, her commitment to environmental justice, and EPA's constructive efforts on the issue. Mr. Lee suggested that the Council discuss the issues raised in the letter from the Alliance for the Washington Office on Environmental Justice.

5. LETTER FROM THE ALLIANCE FOR THE WASHINGTON OFFICE ON ENVIRONMENTAL JUSTICE TO THE ADMINISTRATOR

Twelve members of the Council drafted and signed a letter to administrator Browner dated May 11, 1994. Appendix C is a copy of the letter. The letter had been distributed to EPA staff, the Council, and the public. The group chose Dr. Robert Bullard of the University of California at Los Angeles to introduce the letter and detail their concerns. The issues raised were related to the process, protocol, scope of work, and membership selection of the Council.

Administrator Browner suggested using the categories of process, protocol, scope of work, and membership as a means to organize the discussion. She suggested making a list of the discussion topics mentioned in the letter and to add any other topics that members wanted to discuss. Council members agreed and suggested additional topics.

Several comments were made regarding the letter and topics to be discussed. Mr. Chuck McDermott of Waste Management noted that he, or any other industry representatives, had not been asked to review or sign the letter. Mr. Herman Ellis of Rohm & Haas Company stated that the letter was adversarial and suggested discussing the substantive issues first and the process issues last. Dr. Bullard disagreed, saying that the process issues should be addressed first because past mishandling on process issues had created an adversarial atmosphere. After several council members expressed their opinions, the Council voted to have Administrator Browner conduct a discussion of the

relationship between NEJAC and the interagency workgroup first, and then address other discussion topics. A list of the issues discussed appears below²:

Discussion Topics

Process

- Educating subcommittee members about their role; and getting feedback from them
- Cultural sensitivity training within the federal government

Protocol

- Formation of a protocol subcommittee to handle meeting times, agendas, etc.,
- Delivering meeting materials early
- Comments on the bylaws
- Travel assistance for subcommittee members
- Funds from EPA's appropriations budgets for the subcommittees

Scope of Work

- Number, purpose, and membership of the subcommittees
- Actions allowed under the charter
- Relationship of NEJAC to EPA and the interagency workgroup
- Possible development of other environmental justice FACAs within other agencies
- Coordination with other FACAs

Membership

- Including all stakeholders in NEJAC
- Increasing the number of council members from 23 to 25
- Election of council chairperson versus appointment by EPA
- Electing a co-chairperson

Summaries of the discussions on the above topics appear in the following sections.

² The topics are not listed in the order discussed. They are organized into several categories for clarity.

6. NEJAC's RELATIONSHIP TO THE INTERAGENCY WORKGROUP AND SCOPE OF WORK

The discussion of NEJAC's relationship to the interagency workgroup was far reaching. Administrator Browner answered all questions from the floor.

Other FACA Committees Within Other Agencies

Administrator Browner expressed her wish that NEJAC be the only EPA advisory committee having environmental justice as its main focus. Additionally, she hopes that NEJAC advises other Agencies through the interagency workgroup. Her support for a crosscutting advisory role for NEJAC is based on her belief that other agencies have less experience (1) analyzing environmental justice problems and (2) developing programs and solutions to eliminate them. She said that, as chairperson of the interagency workgroup, she will support NEJAC becoming one of the main advisors to the workgroup, if the Council wants to take on such a role. Many council members agreed with her and suggested topics to be incorporated into the interagency workgroup progress. Administrator Browner agreed to introduce the issues of cultural awareness training, biodiversity, and subsistence consumption of fish and wildlife into the interagency workgroup process.

The Council voted to develop a protocol working group to make recommendations to the Council on its relationship to the interagency workgroup by June 6, 1994.

NEJAC's Scope of Work

Administrator Browner asserted that the scope of work is to be determined by NEJAC. Administrator Browner recognizes that the problems to be addressed are fundamental and are going to require fundamental change. Therefore, it is imperative for NEJAC to show success by setting both short- and long-term goals.

My role is not to set the agenda, but instead to receive advice. I hope that the Council will take a strong stance and will make bold recommendations to EPA and other agencies.

Carol Browner, EPA Administrator

Dr. Gaylord answered questions on the charter. She explained that although the charter can not be changed, it is flexible enough to include any activities in the Council's scope of work.

7. ORGANIZATIONAL STRUCTURE OF NEJAC AND ITS SUBCOMMITTEES

The development of NEJAC's organizational structure was vigorously debated. The main focus was the lack of full stakeholder participation. Council members were concerned that key stakeholders had not been asked to join and that NEJAC had no input in developing the subcommittees or electing the chair. Discussion of these issues raised auxiliary concerns such as travel assistance for members of the subcommittees (introduced by Dr. Bunyan Bryant of the University of Michigan) and the limitations of the operating budget (introduced by Dr. Jane Delgado). The Council sought to address all of the concerns.

NEJAC Subcommittees

The Council voted to develop its own subcommittees, thus abolishing the subcommittees organized by EPA. A temporary working group to develop the subcommittee structure and choose the members of these subcommittees was established. This working group will present its decisions to the Council for approval on June 6, 1994.

Budgetary Concerns

Many council members expressed that budgetary concerns tend to guide the level of participation. The issue of subsidies for subcommittee members was discussed. It was clarified that at this time, a subcommittee member's travel to subcommittee meetings is paid for. However, travel to meetings of the Council is not covered for subcommittee members. EPA will provide budget information to NEJAC.

Membership

The Council addressed membership concerns. The Council voted to increase the membership from 23 to 25 in order to include additional stakeholders. The temporary workgroup on subcommittees will suggest individuals for the two positions to Ms. Browner by June 6, 1994.

Dr. Bullard said that the ability of NEJAC to operate effectively may be impaired if NEJAC has a chairperson who is also head of a state agency that is liable for environmental discrimination. Administrator Browner said that it is important to recognize that each member of the Council has a particular background and that no professional affiliation precludes being a committed and effective member of the Council; She has confidence in Mr. Hall's ability to chair NEJAC. Mr. Ellis declared that he believes that Mr. Hall will be an impartial chair. Dr. Bullard suggested that a grassroots activist should have been chosen as chair. Administrator Browner suggested creating a co-chair or a vice-chair position. The Council agreed to elect a co-chairperson or vice

chairperson, but also delayed consideration of this position until additional members have been selected.

8. PROTOCOL

Dr. Bullard noted that several protocol issues had been mishandled. For example, several of the members did not receive a personal letter asking them to participate. He also said that the meeting had been scheduled without consideration of the members' schedules. He suggested addressing these concerns by forming a protocol committee. Administrator Browner apologized for any mishandling of protocol items and agreed that forming a protocol committee is a good idea. The Council created a temporary working group to handle protocol issues. This working group will organize times, distribute materials, and set agendas for future meetings and conference calls. Future protocol responsibilities can be handled by an Executive Committee as described in NEJAC's proposed bylaws.

9. PUBLIC COMMENTS

James Friloux - Louisiana Department of Environmental Quality (LDEQ)

- Louisiana is in the forefront of the environmental justice movement. The state legislature has an environmental justice program. LDEQ also sponsors public hearings.
- Louisiana has a citizen advisory council on environmental justice that participates in the state planning process, and sponsors meetings with affected communities and industry representatives.

Ray Hernandez - New York City Department of Environmental Protection

- New York City has model environmental justice programs focusing on community participation. The programs address the problems of the Greenpoint/Williamsburg community in Brooklyn and the West Harlem community in Manhattan.
- The programs educate residents about environmental issues, promote economic development that emphasizes pollution prevention, and initiate public/private partnerships to solve environmental problems.

John Kyte - National Association of Manufacturers (NAM)

- NAM wants to work with all communities concerned with environmental justice.
- NAM supports continued, sound scientific research into factors affecting human health and the environment.
- NAM supports non-discriminatory enforcement of environmental laws and regulations in the administration of environmental programs.
- NAM supports open and informed dialogue with citizens about environmental decisions by industry that affect local communities.

Nina Laboy - Bronx Clean Air Coalition

- The Bronx community is disproportionately affected by environmental hazards.
- There will be a summit focusing on solutions to the community's environmental concerns.
- Two year-long task forces will be created; one will develop legislation and the other will establish an environmental non-profit organization in the Bronx.
- Please support the Bronx Clean Air Coalition.

Arthur Ray - Potomac Electric Power, representing himself

- The federal, state, and local governments have failed to act in the interests of their people.
- Government kowtowing to industry has created this problem.
- How are the environmental justice "edicts" from NEJAC going to be implemented at the state level?

- The Council should address who within EPA is the ultimate arbiter of when an environmental justice concern is involved.
- The Council should address international and border issues.
- Implementation within EPA is going to be key to the Council's success.

Larry Springer - Chemical Manufacturers Association (CMA)

- CMA wants to ensure that the concerns of all parties are captured.
- CMA's Responsible Care Community Awareness and Emergency Response code is one of the vehicles for addressing environmental justice concerns of an affected community

Louise Benally- Big Mountain Community

- Strip mining and contamination of the land and animals is threatening the local economy and way of life.
- There must be a real dialogue with grassroots groups controlled by affected communities.
- The interagency workgroup should create an office with staff and meeting space to liaison with grassroots groups.
- EPA must provide funds to its staff to build relationships and dialogue with grassroots groups.
- Native people and native lands are dying as a result of environmental injustice and the importance of this issue should be stressed.

Appendix D provides a copy of the pre-registered comments.

OTHER

The mission of the temporary working group on protocol was expanded to include making recommendations to the Council on its relationship with the interagency working

group. The working group's membership was expanded from seven to ten. Appendix E provides a list the names of protocol and subcommittee working groups members.

Meeting Adjourned.