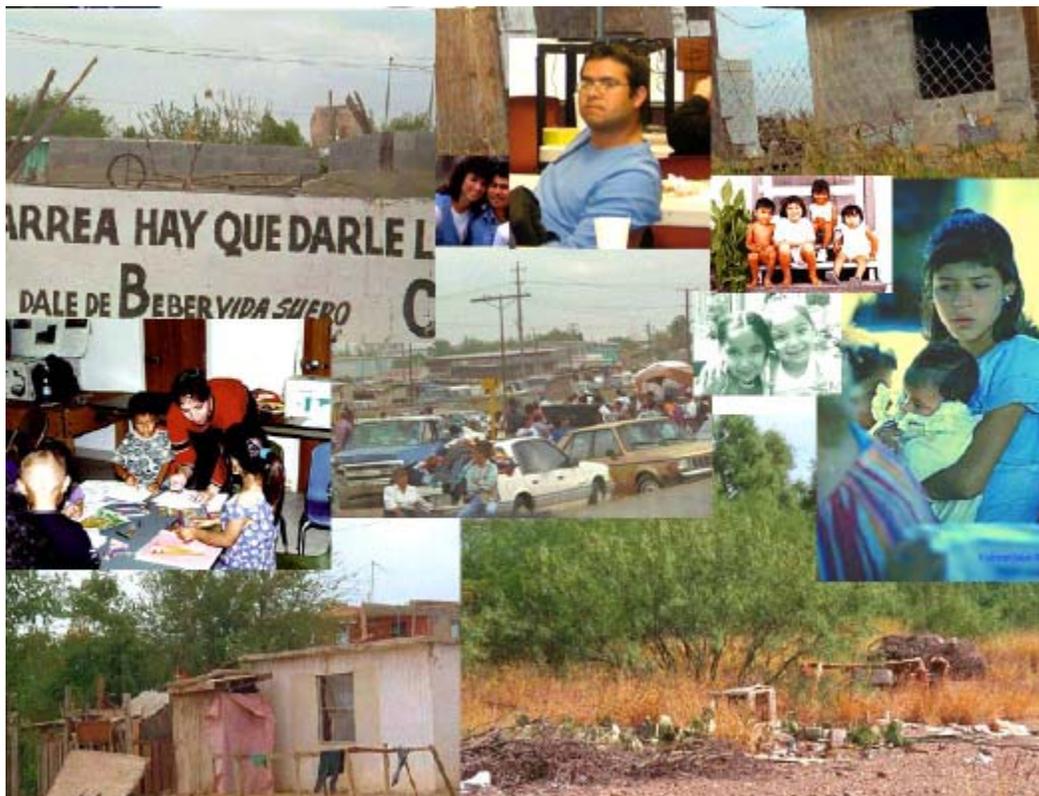


# **BORDER ENVIRONMENTAL JUSTICE REPORT**

A Report developed from the Proceedings of “The NEJAC International Roundtable on Environmental Justice on the U.S.-Mexico Border (August 19-21, 1999, National City, CA)”

## **Unheard Voices from the Border: A Report on Environmental Justice in the U.S.-Mexico Border Region From the Past to the Future**



## **Acknowledgments**

The NEJAC is grateful for the contributions of the border community organizations, the Environmental Protection Agency in funding and assisting in organizing the Border Roundtable, the Environmental Health Coalition for guiding the fact-finding tour, as well as Vermont Law School for providing resources, including work-study funding for research assistants, in the preparation of this report. The Subcommittee is also appreciative of the work of many border community activists, including Jose Bravo, Richard Moore, EPA employees Wendy Graham and Alan Hecht, and many others, without whose help the Roundtable would not have become a reality. We also had the assistance of law students David Pocius, Michael O'Brien, Arati Tripathi, Michelle Gulley, Jeremy Hojnicky, Yadirka Diaz, Marc Majors, Heather Spurlock, Andrea Silberman, Jason Perkey, Thomas Roddy Hughes, Valerie Diden, David Singer, and Jennifer DeLyon in the preparation of this report. Tetra Tech, Inc., also provided assistance with the recording of the Roundtable sessions and preparation of the report. Former and current Subcommittee members Arnoldo Garcia, Caroline Hotaling, Alberto Saldamando, Dianne Wilkins, Cesar Luna, and Tseming Yang were involved in the drafting and editing of this report. In addition, the NEJAC thanks the EPA Region VI Office of Environmental Justice for their contribution of the picture on the cover of this report.

**Please note: Though every effort was made to identify and correctly spell the names of everyone involved, there may be some unavoidable errors in the report and appendices. We apologize for those inadvertent errors.**

### **DISCLAIMER**

**This Report and recommendations have been written as part of the activities of the National Environmental Justice Advisory Council, a public advisory committee providing independent advice and recommendations on the issue of environmental justice to the Administrator and other officials of the United States Environmental Protection Agency (EPA).**

**This report has not been reviewed for approval by the EPA, and hence, its contents and recommendations do not necessarily represent the views and the policies of the Agency, nor of other agencies in the Executive Branch of the federal government.**



## NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

May 5, 2003

Administrator Christine Todd Whitman  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20004

Dear Administrator Whitman,

On behalf of the National Environmental Justice Advisory Council, I am pleased to be able to forward to you *Unheard Voices from the Border: A Report on Environmental Justice in the U.S.-Mexico Border Region From the Past to the Future* (Border Environmental Justice Report).

As you may know, the International Subcommittee of the NEJAC has worked with the Office of International Affairs on U.S.-Mexico border environmental justice issues for a number of years. In 1999, the NEJAC International Subcommittee, along with EPA program offices and regions (e.g., OIA, OSWER, OECA, OEJ, Region 6 and Region 9) sponsored the International Roundtable on Environmental Justice at the U.S.-Mexico Border in National City, CA. The International Roundtable was a historical meeting which brought together community activists, federal, state and local government representatives, and others for a discussion about the border environment and the communities living there.

The Report provides a historical and present-day overview of environmental justice in the U.S.-Mexico Border Region. It reviews how race, poverty, and the international border have affected communities and the management of the shared border environment. It also details the diverse set of specific environmental justice issues, ranging from pollution, toxics, and public health matters to labor justice, immigration, indigenous peoples, and language matters, that were raised by the participants of the International Roundtable. Finally, the Report also draws conclusions and provides proposals for further agency actions that will improve the Agency's response to environmental justice problems. The Report appendices also contain a detailed summary of the proceedings of the International Roundtable on Environmental Justice.

The Report is a valuable contribution to a better understanding of environmental justice at the U.S.-Mexico border. Its content and conclusions will be important to EPA's continuing work on the border environment, especially its binational planning efforts with Mexico on the Border 2012 Plan. For these reasons, the NEJAC urges EPA to carefully consider the content and conclusions of the Report for implementation in further agency activities.

*A Federal Advisory Committee to the U.S. Environmental Protection Agency*

In particular, the NEJAC recommends that EPA:

1. Improve Public Participation Processes by building community capacity and promoting reform of U.S., Mexican, and international institutions, including the North American Commission for Environmental Cooperation, and agencies such that community input is better taken account in programmatic priorities.
2. Broaden environmental protection programs at the border beyond water infrastructure issues.
3. Strengthen and improve coordination of national and cross-border environmental enforcement efforts.
4. Strengthen tribal government capacity and involvement in programs of the U.S., Mexico, and international border institutions.
5. Improve the incorporation of community voices and environmental justice issues in sustainable development efforts at the border.
6. Continue to address site-specific issues, including illegal hazardous waste sites on both sides of the border; and,
7. Re-visit the border communities' recommendations made at the Border Roundtable and provide a follow-up report that details EPA's activities on those community recommendations since EPA's 30-Day Response to them.

The NEJAC is pleased to present this report to you for your review, consideration, response, and action. We believe that these are necessary steps to addressing environmental justice matters at the U.S.-Mexico border. In addition, the NEJAC appreciates any assistance you can provide in processing the recommendations in this report through the Office of International Affairs with consultation as appropriate with Region 9, Region 6, and the Office of Environmental Justice.

Sincerely,

Veronica Eady, Esq.  
Acting Chair

*A Federal Advisory Committee to the U.S. Environmental Protection Agency*

## **What is NEJAC?**

The National Environmental Justice Advisory Council (NEJAC) is a federal advisory committee established by charter on September 30, 1993 "to provide independent advice and recommendations to the Administrator [of the U.S. Environmental Protection Agency (EPA)] on areas relating to environmental justice." In accordance with the provisions of the Federal Advisory Committee Act (FACA) of October 16, 1972, 5 U.S.C. App. 2, the NEJAC has only advisory functions, including making recommendations to the Administrator. *It does not have the authority to take actions on the advice that it provides to EPA.*

The NEJAC is made up of 26 members appointed from environmental justice groups; academia; non-governmental organizations; industry; and state, local and tribal governments, who serve on an Executive Council. To facilitate the Executive Council's operations, six subcommittees exist which focus on issues of air and water, enforcement, health and research, indigenous peoples, international activities, waste and facility siting, and Puerto Rico. Subcommittee posts are filled by NEJAC Executive Council members as well as other individuals.

Each subcommittee has a designated federal official (DFO) and is bound by the requirements of the Federal Advisory Committee Act (FACA). Subcommittees meet independently of the Executive Council and present their findings to the Executive Council for review. All subcommittee recommendations must be approved by the Executive Council. Subcommittees cannot make recommendations independently to EPA.

## **The NEJAC International Subcommittee**

The International Subcommittee studies issues related to environmental justice internationally and provides "independent advice to the Executive Council of the NEJAC and, through the Council, to EPA" on such matters. Some of the areas on which the subcommittee has worked include, but are not limited to:

- Promoting cooperative and supportive relationships to ensure environmental justice in international activities;
- Increasing awareness of issues related to international environmental justice;
- Evaluating the development, implementation, and enforcement of national environmental justice policies and programs by the EPA Office of International Activities (OIA);
- Identifying administrative and legislative options to improve international environmental policies, programs, and activities as they relate to environmental justice concerns.

**Unheard Voices from the Border: A Report on Environmental Justice  
in the U.S.-Mexico Border Region From the Past to the Future**

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October 2002

Dear Friends and Colleagues:

The NEJAC International Subcommittee is pleased to be able to provide you with its Report "Unheard Voices from the Border: Environmental Justice in the U.S.-Mexico Border Region From the Past to the Future," based in large part on the proceedings of the International Roundtable on Environmental Justice on the U.S.-Mexico Border, August, 19-21, 1999 in National City, CA.

The U.S.-Mexico Roundtable was an unqualified success and represents a significant accomplishment in the efforts of border communities and the NEJAC International Subcommittee to promote greater awareness and understanding of environmental justice issues at the Border. Border communities from both countries were able for the first time in history to speak for themselves about environmental justice issues to representatives of both governments. Furthermore, EPA and other government officials gained a new and deepened understanding of the issues.

The delay that has held up the issuance of this border environmental justice report is regrettable. However, it is also a reflection of the significant efforts that International Subcommittee members, who all serve in a volunteer capacity and hold full-time employment elsewhere, made in its preparation. Difficulties of coordination, availability of time, changes of subcommittee leadership and members, and changes of leadership at OIA as well as in the regional offices have made the completion of this Report a minor miracle.

The border environmental justice report addresses a diverse set of environmental justice issues raised by the Roundtable participants. Such concerns ranged from pollution, toxics, and public health matters to labor justice, immigration, indigenous peoples, and language issues. Because of its primary focus on issues raised by participants, the Report is also a snapshot of border environmental justice issues in 1999. We have sought to reference later developments where appropriate and useful. In this regard, EPA's response and follow-up to the Border Roundtable, including its public involvement efforts of border communities in the elaboration of the Border XXI Plan, have been encouraging. However, most issues raised at the Roundtable remain unresolved and continue to be of importance three years later.

In spite of the delay, we believe that the border environmental justice report can still serve a valuable purpose in assisting federal, state and local government officials; community activists; researchers; and others to gain a better understanding of the issues that must be addressed in order to make environmental justice a reality for all at the Border. Its release is also

an opportunity to re-focus EPA's commitment to border environmental justice issues and to commit to a new level of engagement with border communities.

It should be noted that the 1999 Border Roundtable and this report reflect the work of many individuals. In particular, the Border Roundtable itself would not have become a reality without the tireless efforts of then-International Subcommittee Chair Arnoldo Garcia, then-International Subcommittee members Caroline Hotaling, Alberto Saldamando, and Jose Bravo, former NEJAC Executive Council Chair Richard Moore, and then-Indigenous Peoples Subcommittee Chair Tom Goldtooth. Their work and that of all others involved in this project honors the memory of those who have struggled for environmental justice at the U.S.-Mexico Border area, including Martha Valdes, Dana Alston, Carol Hopkins, Dorothy Purley, and Jeanne Gauna.

Sincerely,

Tseming Yang, Chair  
NEJAC International Subcommittee

## Executive Summary

Even though environmental justice issues have become an important policy concern in federal environmental regulation and policy, their recognition and implementation have lagged far behind in the U.S.-Mexico border region. Like other parts of the country, environmental justice concerns range from media pollution to community health to more general social justice issues. However, there are also many unique issues that location at the border presents, such as the historical legacy of the region with regard to conquest and race, the challenges of cross-border movements of people and pollutants, economic competition pressures of jurisdictional boundaries for environmental regulation and enforcement, and the problems of accountability of corporate polluters, governments, and international institutions to border communities. These issues have not gone un-noticed. Yet, solutions for them have remained elusive.

To address some of these concerns, the NEJAC International Subcommittee and EPA's Office of International Activities co-sponsored the International Roundtable on Environmental Justice on the U.S.-Mexico border (August 19-21, 1999, National City, CA). The Roundtable brought together a wide range of stakeholders in border environmental justice issues, including community representatives from both sides of the Border, federal agencies, state and local government officials, and representatives of the Mexican government. But most importantly, it gave border communities the opportunity to address their concerns and expectations about the environmental future of the region *in their own voices*. These issues they raised included concerns about water pollution, hazardous wastes and toxics, community health, labor justice, the impacts of government policies with regard to immigration and free trade, indigenous people, and public involvement of border communities in border decision-making.

Border communities also had many recommendations for federal government action to address these issues, all of which are set out in Appendix B. Among the key areas for federal government actions are:

- 1) improving public participation, including community capacity building, the creation of a border community-based environmental justice commission, and reform of government programmatic priorities and international institutions,
- 2) broadening environmental protection programs at the border beyond water infrastructure issues,
- 3) strengthening cross-border environmental enforcement and coordination,
- 4) strengthening tribal government capacities and involvement,
- 5) ensuring that sustainable development approaches include broader notions of environmental justice and broader interests of communities, and
- 6) addressing site-specific issues.

These areas of federal government action will be crucial for making substantive progress toward achieving the goal of environmental justice at the U.S.-Mexico border.

## Introduction

Even though environmental justice has become an important issue in federal environmental regulation and policy, little attention has been paid to it in the U.S.-Mexico border region until recently. However, its call for protecting and serving all communities regardless of income, immigration status, nationality, or citizenship, has no less applicability there. Many border communities are impoverished. Race relations at the border have been troubled. And as Diane Takvorian of the Environmental Health Coalition has pointed out, “Border communities bear the impacts of policies and decisions made in both Washington, D.C. and Mexico City.” Yet they have little influence over those decisions. Like many other communities across the country, they also house industries and the military.

Environmental justice issues faced by these communities are also uniquely intertwined with the international boundary. As the nexus of international and domestic environmental regulatory problems of two countries, the border creates special difficulties with regard to the role of civil society in environmental decision-making and the problem of environmental discrimination.

The inability of the U.S. and Mexican governments to resolve these issues led the NEJAC International Subcommittee and EPA’s Office of International Activities to co-sponsor a 2½-day conference in National City, California, August 19-21, 1999. The International Roundtable on Environmental Justice on the U.S.-Mexico border brought together community representatives from both sides of the Border, federal agencies, state and local government officials, and representatives of the Mexican government to engage them on issues that “imperil the health and future of entire communities and natural habitats.”<sup>1</sup> It also gave border communities the opportunity to address their concerns and expectations about the environmental future of the region *in their own voices*.

This report is intended to accomplish two purposes: 1) to provide a roadmap to environmental justice issues in the U.S.-Mexico border region, and 2) to elaborate on the specific issues raised by border communities.

Section I of the report provides a basic overview of environmental justice at the U.S.-Mexico border area. First, it sketches out the problem of cross-border environmental protection and the existing major environmental programs created to address them. It then provides an overview of the familiar issues of environmental justice in the border region, as they are also encountered elsewhere in the country. Finally, it considers the unique aspects of environmental justice at the Border, rooted in the region’s history, the special problems of cross-border pollution, and the special problems of accountability to environmental justice communities.

Section II summarizes the discussions and events of the Roundtable. It outlines the major environmental justice issues raised, and provides a synopsis of the recommendations issued by the Roundtable participants. In particular, it elaborates on issues of:

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<sup>1</sup> See *Arnoldo Garcia’s comments, Appendix B, p. 9.*

- 1) Water Pollution;
- 2) Hazardous Waste and Toxics;
- 3) Community Health;
- 4) Environmental Justice and Labor Justice;
- 5) Trade, Migration, and Environment;
- 6) Indigenous Peoples and Border Justice; and
- 7) Border Communities and Public Participation.

Appendix C contains a detailed description of the events and a full list of the community recommendations. Unfortunately, due to funding limitations, a complete written transcript of the proceedings is not available.

Section III looks to the future by reviewing some of the preliminary outcomes of the Roundtable, including EPA's preliminary response to the Roundtable recommendations. This section also puts the community recommendations into the context of existing EPA programs and border institutions. It seeks to explain in concrete terms what EPA needs to do to improve the handling of environmental justice issues, including:

- 1) improving public participation, including community capacity building and the creation of a border community-based environmental justice commission as well as reform of government programmatic priorities and international institutions.
- 2) broadening environmental protection programs at the border beyond water infrastructure issues,
- 3) strengthening cross-border environmental enforcement and coordination,
- 4) strengthening tribal government capacities and involvement,
- 5) ensuring that sustainable development approaches include broader notions of environmental justice and broader interests of communities, and
- 6) addressing site-specific issues.

These recommendations also set out suggestions for how EPA and border institutions can incorporate these concerns into existing programs and policies.

The Report's examination of environmental injustice problems at the U.S.-Mexico border is ultimately useful not only to a better understanding of environmental justice issues, but also of the correlation between cross-border phenomena and environmental problems more generally in this region. As the U.S. and Mexico seek to improve their economic relations, they must give priority to the protection of the environment and the citizens for whom that environment is home. This report should serve as a stepping-stone for positive change in the future. As Rubén Solís of the Southwest Workers Union stated, the border is not a divide between two different countries, but an opportunity to build bridges and connect people.

## **I. A Road Map to Environmental Justice in the U.S.-Mexico Border Region: Race, Poverty, Shared Environments, and the International Border**

As the interface between a developed nation and a developing nation, the border is the place where two very different cultures, political systems, and economies meet. The most noticeable feature is the vast disparity in wealth. A short trip from San Diego, California to Tijuana, Mexico is one vivid illustration. At the Border, first-world expectations and promises of a better life meet with third-world poverty, infrastructures and living conditions. These conditions have special impacts on problems of environmental justice in that area.

To understand the problem of environmental justice in the U.S-Mexico border region and how it can be addressed, it is thus necessary to understand:

- the separate problems of transboundary environmental regulation and environmental justice;
- the combined effect of these two problems on the difficulties regulators face; and
- the unique historical and regional challenges associated with the border area.

This section briefly reviews the problem of transboundary environmental regulation and the programs at the U.S.-Mexico border designed to address them, the issues of environmental justice that are familiar elsewhere, and finally the problems that are specific to environmental justice at the Border.

### ***A. Shared Environments and Cross-border Pollution: The Problem of Cross-border Environmental Protection***

There are special challenges to protecting the environment in the proximity of an international boundary. Governmental regulatory efforts have dominated attempts to address these cross-border environmental problems.

#### ***1. The Nature of Cross-border Environmental Problems***

The international border is an artificial geographic boundary that divides natural habitats and ecological systems straddling the Border. More problematically, by dividing political and regulatory jurisdictions, the border impedes regulatory efforts to address problems of environmental degradation, such as “pollution spill-over” and economic competition effects.<sup>2</sup>

Pollution “spillovers” are situations where pollution affects not only the country that is creating it, but also “spills” across the border and into another country.<sup>3</sup> Those within the same

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<sup>2</sup> See generally TOM BARRY & BETH SIMS, *THE CHALLENGE OF CROSS-BORDER ENVIRONMENTALISM: THE U.S.-MEXICO CASE* (1994) (discussing the U.S.-Mexico Border environment); SHARED SPACE: RETHINKING THE U.S.-MEXICO BORDER ENVIRONMENT (Lawrence A. Herzog, ed., 2000) (discussing the U.S.-Mexico relations in the borderlands).

<sup>3</sup> See generally Thomas W. Merrill, *Golden Rules for Transboundary Pollution*, 46 DUKE L.J. 931 (1997) (discussing transboundary pollution regulation internationally).

jurisdiction as the polluter can seek redress through legal and other channels if they are adversely affected. However, those on the other side of the border usually cannot obtain such remedies even though the pollution impacts may be the same. The persistence of cross-border air and water pollution, including pollution of the New River, the Rio Grande River, and the waters off the Pacific Coast, illustrate these problems.

Problems of economic competition have more indirect, though no less serious, environmental consequences. In such instances, economic competition between two countries for industrial investment, economic development, and jobs can create a “race to the bottom” with regard to environmental protection standards. Pressure to lower standards or not to enforce them in order to make industrial operations cheaper for polluting industries can create a pollution haven. In border areas, these effects can be especially severe because another political jurisdiction may be just a few miles away. Such geographical proximity can create opportunities for businesses to evade a whole range of government regulations and enforcement, including environmental and worker safety regulations, while retaining many of the original location’s benefits, such as easy access to consumer markets. In the U.S.-Mexico border area, this is particularly visible in the maquiladora industry, where many businesses, large and small, have located facilities just across the border in Mexico. There, they can take advantage of financial incentives and, arguably, more industry-friendly regulations, while staying close to the U.S. consumer market.<sup>4</sup>

## **2. *Environmental Programs and Institutions at the Border***

To address these problems, the U.S. and Mexican governments have collaborated through several programs to protect the border environment. Of particular relevance are the U.S.-Mexico Border XXI Program, the Border Environment Cooperation Commission (BECC), the North American Development Bank (NADB), the International Boundaries and Waters Commission (IBWC), and the North American Commission for Environmental Cooperation (NACEC).

### *U.S.-Mexico Border XXI Program and EPA Regions 6 and 9*

EPA, especially Regions 6 and 9, has been engaged in various bi-national cooperative efforts with Mexico, especially through the nine border workgroups of Border XXI. Border XXI is a direct outgrowth of the 1983 La Paz Agreement.<sup>5</sup> It was established as a response to environmental harm caused by the maquiladoras and to bring together the diverse U.S. and Mexican federal entities responsible for the border environment. Its main goal has been to protect the environment and public health and to promote sustainable development at the U.S.-Mexico Border. Border XXI has sought to achieve these goals by emphasizing three strategies:

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<sup>4</sup> See, e.g., Edward J. Williams, *The Maquiladora Industry and Environmental Degradation in the United States-Mexico Borderlands*, 27 ST. MARY’S L.J. 765, 784-807 (1996) (discussing factories along the U.S.-Mexico Border).

<sup>5</sup> AGREEMENT BETWEEN THE UNITED STATES OF AMERICA AND THE UNITED MEXICAN STATES ON COOPERATION FOR THE PROTECTION AND IMPROVEMENT OF THE ENVIRONMENT IN THE BORDER AREA, 22 I.L.M. 1025, Aug 14, 1983.

- 1) increasing public participation in environmental policy-making;
- 2) encouraging decentralization of environmental management by strengthening state and local governments; and
- 3) improving cooperation and communication among national, state and local agencies.<sup>6</sup>

Border XXI is currently one of the most significant bi-national programs designed to address environmental issues related to the dramatic surge in population and industrialization in the border region. Its efforts are intended to address problems ranging from infrastructure improvement needs in the region, such as sewage treatment, waste disposal, and drinking water supplies, to other environmental needs, such as air pollution, habitat destruction, and biodiversity.

*The Border Environment Cooperation Commission (BECC) and the North American Development Bank (NADBank).*

The BECC and NADBank came into existence through the BECC-NADBank Agreement in November 1993. Their purpose was to create an environmental infrastructure program at the Border. The BECC is a bi-national organization created to help border states, localities, and the private sector develop and find financing for environmental infrastructure projects. Its primary mission is to work with state and local governments to identify appropriate projects for support. The NADBank is a bi-national financial institution that provides loans, loan guarantees, and other assistance to projects certified by the BECC. Its mission is to create opportunities for public and private investors to invest in these projects.<sup>7</sup>

The institutions maintain a preference for water pollution, wastewater treatment, and municipal solid waste projects. Related matters include industrial and hazardous waste projects, water conservation projects, water and wastewater hookups for housing, and recycling and waste reduction projects. Both institutions are unique in that they address only issues of environmental infrastructure in the border area.

The U.S. and Mexico have recognized that these institutions are not perfect and "that immediate measures [are] needed to strengthen the performance of NADBank and BECC to identify and fund environmental infrastructure projects on the Border."<sup>8</sup> As a result, a bi-

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<sup>6</sup> Environmental Protection Agency, *Border XXI Framework Document* at <http://www.epa.gov/usmexicoborder/ef.htm> (Last updated on 1/22/97). Its work is conducted by nine bi-national workgroups consisting of EPA staff and their Mexican counterparts: 1) water, 2) air, 3) hazardous and solid waste, 4) pollution prevention, 5) contingency planning and emergency response, 6) cooperative enforcement and compliance, 7) environmental information resources, 8) natural resources, and 9) environmental health. These workgroups seek to bring together agencies that historically have not worked together or have not focused on environmental issues. In doing so, the program ensures that persons working on border issues understand the structures in which they must work.

<sup>7</sup> See [North American Development Bank](http://www.nadbank.org), 1995 Annual Report 6 (1996) [last visited April 18, 1998], <http://www.nadbank.org>

<sup>8</sup> Joint Statement by Presidents Vincente Fox and George W. Bush, Sept. 6, 2001, available at <http://www.whitehouse.gov/news/releases/2001/09/20010906-8.html>.

national working group, including EPA and the International Boundaries and Waters Commission (IBWC), has been developing joint recommendations about appropriate changes.

*The North American Commission for Environmental Cooperation (CEC)*

The CEC was established by the North American Agreement on Environmental Cooperation (NAAEC) to address regional environmental concerns, to prevent potential conflicts between trade and environmental protection interests, and to promote the effective enforcement of environmental law. Its provisions complement the environmental provisions of NAFTA.

Much of its work has focused on establishing bi-national, cooperative initiatives to address pollution impacts on public health and the environment. Of particular note, it also administers the Article 14 citizen submission process of the NAAEC, under which citizens may bring a NAFTA country's failure to effectively enforce its environmental laws to the CEC for investigation. However, the submission process's sole remedy is the preparation of a factual record that may be made public by decision of the three parties. The CEC has no independent power to sanction a NAFTA country for failure to effectively enforce its environmental laws.

Nineteen (19) of thirty-four (34) citizen submissions filed since 1995 have been closed without factual records. Three (3) submissions have resulted in published factual records. Twelve (12) submissions remain active; seven (7) of these are in the process of having a factual record developed. One of the three published factual records found that Mexico had done little to enforce its environmental laws. In that matter, the Metales y Derivados case, no further action has been taken and the hazardous waste site at issue remains largely unremediated.

*International Boundary Waters Commission.*

In 1944, the U.S. and Mexico created the International Boundary and Water Commission (IBWC), the successor of the International Boundary Commission, which was responsible for U.S.-Mexico border issues.<sup>9</sup> The IBWC's mission is to administer the numerous boundary and water treaties between the two nations. These treaties address issues of water rights in the Rio Grande and of the Colorado River, flood protection, border sanitation and other water quality problems, and demarcation of the international boundary.

***B. The Familiar Face of Environmental Justice: The Manifestation and Scope of Border Environmental Justice***

In spite of the numerous border environmental programs supported by the U.S. and Mexican governments, little attention has been focused on environmental justice issues. In fact, none of the border programs described above has made environmental justice a programmatic priority. However, as activists in environmental justice communities understand well, and as government officials have slowly begun to recognize, problems of environmental justice exist in the border region just as they do elsewhere.

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<sup>9</sup> TREATY BETWEEN THE UNITED STATES OF AMERICA AND MEXICO, 59 Stat. 1219, Signed in Washington D.C. on February 3, 1944.

Many of them reflect former-Reverend Benjamin Chavis' notion of environmental racism<sup>10</sup> and EPA's definition, which focuses on discrimination against racial or socio-economic groups in the meaningful involvement in environmental decision-making and disproportionate environmental burdens. Others are also rooted more generally in exclusion and political marginalization of communities and larger questions of social justice and equity.<sup>11</sup> For example, urban communities in San Diego, such as Barrio Logan, and border communities surrounding the maquiladora industries are exposed to the same health and safety risks as those experienced by urban communities and workers elsewhere. Questions have been raised about the environmental regulatory compliance of major military installations, such as the naval base in San Diego, and their responsiveness to community concerns about pollution emissions and toxics. Rural communities face significant pesticide exposure issues that stem from pesticide applications in fields that are often near their homes. These problems are as ubiquitous and urgent at the border as in other parts of the country.

Problems of environmental justice are closely related to broader social justice issues on both sides of the border. Poverty in particular poses a direct challenge to public health and environmental protection goals. Poor communities cannot afford to take prudent environmental and public health measures. For example, inability to afford appropriate means of disposing of household sewage, such as via a septic system, can lead to groundwater contamination. Building shanty homes in unoccupied rural areas, such as the colonias, can lead to habitat destruction and impair the survival of endangered species.

Poverty also challenges government assumptions about public health risks resulting from varying levels and types of exposures to pollution, pesticides, and other toxic contaminants and government responses to public health impacts. As has been well illustrated in many developing countries, the poor frequently must forego measures to protect themselves against pollution and toxics and are unable to seek appropriate health care when adversely impacted.

Problems of environmental justice also have a similar close association with worker and human rights issues. When workers are exploited, it is not uncommon to find that they must endure unhealthy or otherwise dangerous workplace circumstances as a condition of employment. These workers may be forced to work without safety equipment or to engage in other practices that endanger their health. Furthermore, when workers, and by extension their families, are not protected by their workplace rights, their livelihoods become more vulnerable, and they are more easily and severely affected by pollution, contamination, and poor environmental conditions.

Ensuring labor rights can also be directly connected to regulatory compliance. Violations of labor rights may be the direct result of attempts to retaliate against workers' efforts to assure a

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<sup>10</sup> See Rev. Benjamin F. Chavis, Jr., *Foreword*, in *CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASSROOTS 3* (Robert D. Bullard ed. 1993) (including discrimination in regulation and enforcement, deliberate targeting in waste facility siting, official sanctioning of dangers and life-threatening conditions, and historical exclusion from the environmental movement leadership of people of color).

<sup>11</sup> See, e.g., Robert Kuehn, *A Taxonomy of Environmental Justice*, 30 *Envtl. L. Rep.* 10681, 10683-84 (2000).

healthy and safe workplace or to obtain company compliance with regulations and standards designed to protect the natural environment and surrounding communities. When workers are not assured that their rights in the workplace are protected, they cannot be counted on to assist government agencies in the enforcement of environmental laws. In fact, a workplace that does not respect workers' rights is also unlikely to be concerned about environmental compliance and pollution control. Efforts to address environmental justice cannot ignore such broader problems.

### ***C. The Unique Roots of Environmental Justice at the U.S.-Mexico Border***

In spite of the many similarities to environmental justice issues elsewhere, the border's history and circumstances have also made environmental justice issues there unique in many respects.

#### ***1. Border Environmental Justice and the Mixed Legacy of Conquest, Exploitation, and Cooperation in the U.S.-Mexico Border Area***

Issues of discrimination, exclusion and marginalization have been uniquely shaped by the Border. Like elsewhere, racial minorities in the southwest U.S., and in particular those of Mexican descent, experience discrimination. Such discrimination has had long historical antecedents.<sup>12</sup>

The border arose out of the Mexican-American war of 1846-1848, when the U.S. conquered and Mexico ceded most of the present-day southwestern United States in the Treaty of Guadalupe-Hidalgo.<sup>13</sup> The territories include much of present-day Arizona, New Mexico, and California. The redrawing of political boundaries caused significant social dislocations of native populations, turning them into foreigners in spite of having lived there for many generations. Some Native American tribal communities were cut in two by the redrawn boundary, with tribal lands that still straddle the U.S.-Mexico Border. Native Mexican citizens suddenly became foreigners in their own homes. They were largely prohibited from gaining U.S. citizenship. Many other rights, such as the ability to testify in court and to vote, were sharply restricted.<sup>14</sup>

Problems of discrimination and exclusion also have roots in other contemporary issues, especially negative images and stereotypes associated with those of Mexican ancestry. For example, the politics of immigration with its current backlash against illegal immigrants, the attempts to fence the Border, and the war on drug smuggling at the border have created images and stereotypes of these individuals as foreigners, illegal immigrants, or drug criminals. They fuel images of the U.S. being invaded by illegal workers from the South. Such attitudes have been exacerbated especially by law enforcement's focus on illegal immigration and drug smuggling.

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<sup>12</sup> See generally Juan Perea et al., *Race and Races: Cases and Resources for a Diverse America* (2000).

<sup>13</sup> See Treaty of Guadalupe-Hidalgo, 9 Stat. 922, T.S. No. 207 (Feb. 2, 1848). DALE HATHAWAY, *ALLIES ACROSS THE BORDER: MEXICO'S "AUTHENTIC LABOR FRONT" AND GLOBAL SOLIDARITY*, iv (2000). In the subsequent Gadsden Purchase (1853), Mexico ceded additional territory to the United States, which resulted in today's U.S.-Mexico border.

<sup>14</sup> E.g. *People v. De La Guerra*, 40 Cal. 311 (1870).

Of course, many of Mexican ancestry are either citizens, permanent residents, or otherwise legally in the U.S, and assumptions about lack of U.S. citizenship and illegal status is an oftentimes a false stereotype. More insidiously, such images also ignore the history of government-sponsored programs that have brought migrant worker movements into the U.S. in the past. The presence of significant numbers migrant workers from Mexico in the U.S. is a phenomenon that stretches back at least to World War II when the Bracero program created a precedent for the large-scale importation of agricultural workers from Mexico. Instituted in 1942 as a guest laborer program in response to World War II labor shortages,<sup>15</sup> the Bracero program allowed the recruitment and transport of workers to the U.S. for work in the agricultural industry and subsequent return.<sup>16</sup> The practice continues to this day, though on a smaller scale.

The program might have had promising beginnings. However, its actual operation depressed agricultural wages and resulted in the exploitation of many workers.<sup>17</sup> Bracero workers frequently were paid less than their contracted wages or not being provided the contracted-for housing and food.<sup>18</sup> When the Bracero Program expired in 1964,<sup>19</sup> many laborers in northern Mexico were left unemployed. Pressures for labor to search for work in the North have continued to this day.

To the extent that border residents are non-citizens, discrimination and exploitation have been presented a special problem. Their lack of citizenship and undocumented status usually makes them less likely to seek help or redress from government authorities if they believe involvement of government officials, and thus immigration officer, may result in their deportation.<sup>20</sup>

## **2. *Border Environmental Justice and Cross-border Regulation and Enforcement***

Government responses to environmental and public health problems have also been uniquely shaped by the Border. International borders limit not only the reach of direct governmental power and regulation over polluting activities but also the political accountability of regulatory authorities to the populations that are affected by pollution.<sup>21</sup> These issues raise particular concerns for environmental justice issues there with regard to:

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<sup>15</sup> TITLE V OF THE AGRICULTURE ACT OF 1949 (formally 7 USCA section 1461-1468). *See also* Richard B. Craig, THE BRACERO PROGRAM: INTEREST GROUPS AND FOREIGN POLICY ix n.1 (1971). “Bracero” is a Spanish term literally meaning one who works with his arms. The nearest English equivalent is “field hand”.

<sup>16</sup> *See* Craig at 43.

<sup>17</sup> Kitty Calavita, Inside the State: The Bracero Program, Immigration, and the I.N.S., 19, 71 (1992).

<sup>18</sup> *See Id.* at 42. *See also* U.S. IMMIGRATION POLICY AND THE NATIONAL INTEREST: STAFF REPORT OF THE SELECT COMMISSION ON IMMIGRATION AND REFUGEE POLICY TO THE CONGRESS AND PRESIDENT OF THE UNITED STATES, 673 (Apr. 30, 1981).

<sup>19</sup> *See* Kitty Calavista, *United States Immigration Policy: Contradictions and Projections for the Future*, Ind. J. Global Legal Stud. 113, 146 (1994) (noting that the Bracero Program stopped in 1964 because of President Kennedy’s intolerance of human rights abuses occurring in the program).

<sup>20</sup> *See* Barry, *supra* note 6, at 27-52.

<sup>21</sup> *See generally* TOM BARRY ET AL., CROSSING THE LINE: IMMIGRANTS, ECONOMIC INTEGRATION, AND DRUG ENFORCEMENT ON THE U.S.-MEXICO BORDER (1994).

- 1) adequate protection of non-citizens under environmental and health and safety laws and regulations as well as bi-national communities, and
- 2) enforcement of environmental laws and regulations against polluters who move across international borders.

**a. *Protecting Communities: Cross-border Movements of People and the Unity of Border Communities***

Cross-border movements and the unity of many cross-border communities raise significant issues about the adequacy of protections accorded to non-citizens under environmental and health and safety laws and regulations.

Theoretically, environmental standards and health and safety protections in the U.S. do not distinguish or discriminate between citizens and non-citizens. In fact, the U.S. Constitution prohibits most forms of discrimination by government officials in this regard. However, the practical reality is oftentimes different.

Non-citizens cannot vote and thus are not members of the political community to which government officials at the federal, state, and local level are accountable. The practical result may often be that environmental, health and safety protections for them are lesser, whether because of government failure to promulgate necessary environmental and health and safety regulations to ensure non-discriminatory protections or due to the failure of government officials to take appropriate actions to enforce and implement protections on the books.

As noted above, such difficulties are greatest for illegal immigrants, who have no legal status in the United States and are particularly vulnerable to exploitation by those who prey on marginalized groups. The most concrete example can be seen in the health and safety protections accorded to migrant farmworkers, many of whom are non-citizens or even illegal immigrants. Their migrant status keeps them in any one community only for short periods of time, and local government officials may derive few political benefits from protecting them against exploitative actions by local residents. The inadequacy of existing environmental and health and safety protections, the weakness of enforcement mechanisms, and the prevalent failure of government officials to enforce health and safety protections accorded to farmworkers are well known.<sup>22</sup>

Similar difficulties arise with bi-national communities that straddle the border. Such communities are most clearly exemplified by Native American tribes whose aboriginal tribal lands were divided by the international boundary and whose tribal members continue to reside on both sides of the Border. They also include other non-Native Americans living at the border, for instance those living on one side of the border and working on the other. They may have friends and family living or working on both sides and regularly utilize various services, obtain health

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<sup>22</sup> See *id.*

care, or frequent stores and establishments in both countries.<sup>23</sup> The many sister cities that have sprung up on both sides of the Border, such as San Diego-Tijuana or Ciudad Juarez-El Paso, show the close connection between the two sides. The political separation created by the border results in inconsistent environmental and health and safety protections that, from the bi-national community's perspective, may be arbitrary and unjustified.<sup>24</sup>

Political accountability by government officials is also limited by the political boundary. Just as non-citizens are excluded from the political community, so is everybody and everything on the other side of the Border. Government officials may even be non-responsive to the problems of their own citizens if on the other side.

### ***b. Enforcement against Polluters***

Significant issues of regulatory enforcement arise because of the ease of polluters' cross-border movements. The basic premise of regulatory oversight of polluting industries is that an entity subject to environmental laws and regulations will be amenable to government enforcement actions when a violation occurs. The validity of that premise is questionable in the U.S.-Mexico border region.<sup>25</sup>

The ease of cross-border movements creates the possibility that violators of environmental laws in the border region can escape enforcement actions simply by crossing the border to the other country.<sup>26</sup> There are practical limits to this possibility. Industrial plants and manufacturing facilities cannot usually be moved easily. Fleeing the jurisdiction is also unlikely to be seriously considered by reputable industrial operators. However, that may not apply to unscrupulous polluters who are ready to simply abandon their facilities or when a company has no ongoing industrial operations. Arguably, the ability of such polluters to profit from their violations and escape with impunity may be seen as a reward for their misdeeds.

Extradition treaties and better cross-border enforcement cooperation can alleviate some of these shortcomings. Authorities can thus request the investigative and enforcement assistance of authorities on the other side of the border.

However, the notion of the border as a bi-national and multi-agency region can cause significant confusion about who really is responsible for environmental enforcement at the border. Given the lack of political accountability of regulatory and enforcement authorities to the population on the other side, and without the public attention given to particularly egregious civil or criminal violations, the reality is that enforcement authorities are unlikely to have much incentive to expend enforcement or investigative resources when such actions do not directly benefit their constituents.<sup>27</sup> Since successful enforcement efforts require cooperation between

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<sup>23</sup> See *id.* at 106-11.

<sup>24</sup> See Ruth Buchanan, *Border Crossings: NAFTA, Regulatory Restructuring, and the Politics of Place*, 2 IND. J. GLOBAL LEGAL STUD. 371, 385-87 (1995) (arguing that the U.S.-Mexico Border is an artificial political boundary).

<sup>25</sup> See DAVID HUNTER ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND POLICY 483-87 (2d ed. 2002); see also LAKSHMAN D GURUSWAMY ET AL., INTERNATIONAL ENVIRONMENTAL LAW AND WORLD ORDER 24-40 (1994).

<sup>26</sup> See Williams, *supra* note 4.

<sup>27</sup> See generally Alexandra Maravel, *Constructing Democracy in the North American Free Trade Area*, 16 NW. J.

the enforcement authorities of both jurisdictions, failure of either to cooperate can effectively thwart an enforcement action.<sup>28</sup> Without effective and strong international and interagency cooperation, bi-national border enforcement is unlikely to occur.

### 3. *Border Environmental Justice, NAFTA, and the Race to the Bottom*

The premise of the utility of free trade is that trading nations can benefit from each other's competitive advantages through cheaper goods.<sup>29</sup> However, competitive advantages may result not only from different levels of resource wealth and technological capabilities, but also from differences in economic and political conditions. Lesser politically developed countries may have comparatively weak governmental regulatory systems, including those protecting the environment and workers. Such conditions can be associated with lower regulatory compliance costs. However, the by-product may also be laxer regulatory requirements and thus lessened protection of the environment and public health. Ultimately, the result is likely to be greater externalization of pollution costs to the environment and the population.

Apart from the moral issues that exploitation of such competitive advantages poses, increased international trade linkages and increased economic integration of international markets can lead to the familiar "race to the bottom" with regard to wages, worker rights, and environmental standards.<sup>30</sup> Significant economic and social dislocation of people and communities can follow. When a company goes out of business because of foreign economic competitive pressures, employees are laid off and the community's social welfare is adversely affected.<sup>31</sup> If no equivalent economic opportunities arise in that community, laid-off employees may be left in poverty<sup>32</sup> or induced to migrate to other places where employment opportunities

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INT'L L. & BUS. 331 (1996) (discussing public access and government accountability in NAFTA and its side agreements).

<sup>28</sup> See Elaine Moore Hebard, *A Focus on a Bi-national Watershed with a View Toward Fostering a Cross-border Dialogue*, 40 NAT. RESOURCES J. 281 (2000) (discussing the problems of cross-border cooperation in the context of a shared aquifer). Additionally, cross-border enforcement problems are hardly limited to environmental issues. The U.S. and Mexico have a rich history of success and failures in other cross-border enforcement actions such as in drug enforcement.

<sup>29</sup> In a nutshell, the argument asserts that when countries are allowed to focus on what they do best and produce the goods that they are best at making -- what they have a competitive advantage in -- international trading in such goods can create mutual gains and thus benefit everyone. See Neumayer, *supra* note 4; see also Richard B. Stewart, *International Trade and the Environment: Lessons from the Fedreal Experience*, 49 WASH. & LEE L. REV. 1329 (1992); Johnstone, *supra* note 3, at 34-45.

<sup>30</sup> Alternatively, competition pressures may keep environmental standards low. When such low standards are combined with increased pressures for industrialization and economic development, the overall impacts on the environment and populations may be similar.

<sup>31</sup> See, e.g., Dina ElBoghdady, *Stitching Together A Strategy; Levi Strauss to Move Manufacturing Overseas*, WASH. POST, Apr. 9, 2002, at E1 (describing Levi's move overseas after a long history of U.S. manufacturing); Warren Vieth, *President Pushes Lawmakers to Expand Trade Legislation*, L.A. TIMES, Apr. 5, 2002, at C3 (describing the arguments between the President and Senate Democrats over additional funding for workers displaced by foreign competition).

<sup>32</sup> Evelyn Iritani, *High-Paid Jobs Latest U.S. Export*, L.A. TIMES, Apr. 2, 2002, at A1 (discussing the loss of engineering, design, and other high-paying jobs in the U.S., with misplaced workers having a hard time finding replacement jobs).

are available. In essence, trade links not only markets and economies, but also the fate and welfare of distant people and communities.<sup>33</sup>

Such issues have raised important questions about the impacts of NAFTA. Many have suggested that competitive pressures have kept environmental standards and worker protections lower on the Mexican side of the border than on the U.S. However, other insidious effects have also arisen. At the border, holding government officials responsible for protecting border communities and the environment is already difficult because of competitive pressures and economic development. When added to images of people who are associated with a third-world nation and stereotypes of populations usually linked with illegal immigrants and criminals, it is often difficult to foster attitudes that first-world environmental standards and protections should be accorded them. Instead, weak environmental and health and safety standards or lax enforcement are seen as a necessary price for achieving development needs and economic prosperity. Thus, the failure of government officials to take complaints of environmental injustice more seriously is not surprising.

#### **4. *Border Environmental Justice and Problems of Accountability***

Finally, the border also raises issues of responsibility and accountability by polluters, governments, and international institutions for ensuring a healthy environment for all, including environmental justice communities.

##### *Corporate Responsibility.*

What is a corporation's responsibility for protecting workers, communities, and the environment from the adverse effects of pollution and other hazards created by its operations? It means more than just complying with applicable laws and regulations. After all, a lack of applicable regulatory standards does not necessarily imply environmental safety. Instead, it may be a manifestation of inadequate regulation.

In the U.S., corporate image and consumer choice have a substantial effect on a corporation's performance in the marketplace. Their operation can be a powerful force in inducing a corporation to act responsibly towards workers, communities, and the environment. However, to the extent that the poor, minorities, and other marginalized groups are unable to exercise significant market power, third-world images and stereotypes suggest that such populations do not need the same levels of health, safety, and environmental protections as wealthier populations. In fact, physical distance of corporate officials from such problems, whether in other countries or in marginalized and "invisible" communities, will leave them with

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<sup>33</sup> The argument has been made that it is not free trade but market failures and weak regulations that are responsible for environmental degradation. However, free trade is oftentimes an essential ingredient for the exploitation of market failures and weak regulations and thus the creation of the observed social, economic, and political dislocations. See generally Jagdish Bhagwati, *Trade and the Environment: The False Conflict?* in TRADE AND THE ENVIRONMENT 159-90 (Durwood Zaelke et al. eds., 1993); MICHAEL RAUSCHER, INTERNATIONAL TRADE, FACTOR MOVEMENTS, AND THE ENVIRONMENT 6-15 (1997). In the end, such arguments about causal factors are less assertions about causal connections and more normative or public policy judgments that are premised on the inherent value of free markets.

little reason to go beyond what is legally required. In the end, “out of sight” is also often “out of mind.”

### *Governmental Responsibility*

Of course, voluntary efforts, based on appeals to the moral sensibilities of corporate officers and shareholders, can supplement existing regulatory structures. However, they cannot substitute for government regulations since only such obligations are legally enforceable.

While the performance of the U.S. EPA in the border region has been far from a resounding success, complaints about the Mexican government have been even greater. The demands for industrial development and job creation in the border region arguably have made the Mexican government a poor champion of the environmental and health and safety needs of the border communities. Mexico’s political system relies on a strong central government with decision-making focused in Mexico City. As a result, government agencies have been even less responsive to local and environmental justice concerns than U.S. government agencies.

Reorganization of the environmental regulatory agencies in Mexico and enactment of stronger environmental laws have sought to improve environmental protection. But these changes have not resolved many complaints about the failure of Mexican government officials to enforce environmental and health and safety standards. Complaints persist about failures to protect maquiladora workers or to ensure that contaminated sites are appropriately cleaned up.<sup>34</sup>

Lack of resources devoted to environmental enforcement and remediation have been a persistent theme of Mexican environmental regulation.<sup>35</sup> For example, with regard to contamination by hazardous wastes, Mexico has no fund similar to the U.S.’ Superfund law.<sup>36</sup> And in spite of statutory requirements requiring the remediation of contaminated sites and making the contamination of soils illegal, there is no public information and Mexico has never made available information to counter persistent complaints that such laws have not been enforced.<sup>37</sup>

The Mexican government itself reported recently that the Tijuana office of PROFEPA (the Mexican Federal Attorney for Environmental Protection) had as of 1993 a

total of 14 staff persons, including 6 inspectors and 2 lawyers, who worked on proceedings relating to the maquiladora industry (740 companies in September 2000) as well as natural resources. . . . [A] total of 1,200 proceedings have been instituted since 1993, and 800 of them remain open. [However,] 4 or 5 proceedings may relate to the same company.<sup>38</sup>

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<sup>34</sup> Metales y Derivados, Final Factual Record (SEM-98-007), North American Commission for Environmental Cooperation [Metales Factual Record], available at <http://www.cec.org/citizen/submissions/details/index.cfm?varlan=english&ID=67>.

<sup>35</sup> *Id.* at 42-45.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 44.

<sup>38</sup> *Id.* at 43.

According to EPA, “between August 1996 and March 2000, a total of 210 new maquiladoras were built in Tijuana, or an average of one per week, while in that same period the number of inspectors and other personnel of the Profepa State Office in Tijuana remained essentially the same.”<sup>39</sup>

The U.S. government has been comparatively more diligent in this regard. Yet, many have suggested that at the border, its programmatic efforts remain inadequate. Rather than confining its programmatic activities to the U.S. side of the border region, its efforts should address border environmental justice issues more comprehensively. Pollution and environmental degradation are not only affected by government regulatory activities where the facility is physically located. For example, U.S. corporations may receive U.S. government support for their profit-making activities outside of the U.S., such as through loan guarantees extended by federal government agencies to corporate business activities abroad.<sup>40</sup>

More broadly, U.S. involvement in the activities that have affected the development of the border, such as co-sponsorship of the Bracero program, also suggests at least some minimal moral responsibility for contemporary problems at the border. The U.S. was intimately involved in the creation of the Bracero Program. Ending the program in 1964 led to increased unemployment as well as pressures for the establishment of programs to promote industrialization in northern Mexico and the establishment of the maquiladora industry.<sup>41</sup> Moreover, U.S. corporations that relocate operations and facilities across the border to Mexico frequently continue to benefit the U.S., such as through repatriated profits. When one considers the pro-active and assertive efforts of the U.S. government regarding issues such as drug smuggling, the lack of significant comparable efforts related to environmental enforcement matters is troubling.

### *International Institutions*

The creation of international institutions such as the BECC, the NADBank, and the CEC has not provided ready solutions. As noted, none have made environmental justice a programmatic priority. Their responsiveness to concerns raised by the poor and minorities continues to be inadequate. The institutions are accountable only to U.S. and Mexican government officials, rather than to citizens directly. Their lack of interest and commitment to environmental justice issues inevitably reflects the low priorities that their party states truly assign to issues of equity and public participation. border environmental justice issues are simply not of sufficient importance to warrant expending serious political capital with another

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<sup>39</sup> *Id.* at 43.

<sup>40</sup> See Overseas Private Investment Corporation, at <http://www.opic.gov> (last visited June 5, 2002); David Ivanovich, *The Fall of Enron: Government Aid to Enron Could Haunt Taxpayers*, HOUS. CHRON., Feb. 21, 2002, at 13 (discussing OPIC's role in the Enron corporation's foreign investment).

<sup>41</sup> TOM BARRY, ED. MEXICO A COUNTRY GUIDE, 76 (1992). Under the maquiladora program, foreign corporations were given financial incentives to invest in manufacturing and assembly facilities on the Mexican side of the border. See Joel L. Silverman, Note, *The 'Giant Sucking Sound' Revisited: A Blueprint to Prevent Pollution Havens by Extending NAFTA's Unheralded 'Eco-Dumping' Provisions to the New World Trade Organization*, 24 Ga. J. Int'l and Comp. L. 347, 350 (1994).

government. Instead, transfer of authority and financial resources to these institutions permits member governments to deflect criticism about their own failures with regard to cross-border environmental problems.

For example, creation of the CEC was designed to create an international organization charged with illuminating environmental matters in North America. The citizen submission of the NAAEC was to allow citizens some direct input into such international environmental efforts. The process allows citizens to challenge a government's failure to effectively enforce its environmental laws. However, there are no substantive remedies for such a failure.<sup>42</sup> In large part, this is a reflection of the nature of most international institutions and their lack of direct accountability to individuals, a persistent problem of international environmental governance.<sup>43</sup> However, it also illustrates the lack of commitment by the member states to real and substantive public participation by citizens and local communities. In the end, international institutions that are neither transparent nor responsive to citizen input are important contributors to cross-border environmental justice problems.

#### ***D. Recognizing the Importance of Environmental Justice at the Border***

Lack of responsiveness by government programs to the poor and people of color, communities that straddle the border, and non-citizens has led to significant community distress and anger at the Border. It implies that such communities are marginal not only socially and economically, but also as a matter of governmental priority. It confirms that second-class citizenship is not just a socially created fact, based on private discriminatory actions, but that it is also reinforced and adopted by government officials.

Thus, as Jose Bravo of the Southwest Network for Environmental and Economic Justice (SNEEJ) put it, border communities needed to “come together as environmental justice [advocates] and let federal agencies really know how [the border community] really feels... as well as hold [them] accountable on all issues.” In essence, efforts at environmental protection at the border, such as sustainable development planning, cannot occur without the participation and input of local communities and myopically focus on ecological issues alone. Steps to address social and human development problems must be integral parts of such planning.

Then-OIA Assistant Administrator William Nitze acknowledged such community frustration and the need for more programs such as Border XXI, the BECC, and the NADBank during Roundtable discussions. Such concerns, including the need for EPA Regions 6 & 9 to be more responsive to environmental justice concerns, were raised prior to the Border Roundtable. EPA Region 6 & 9 appear to have continued their efforts to address environmental justice issues. In particular, they have engaged in further outreach efforts to communities and industry,

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<sup>42</sup> See Margaret Wilder, *Border Farmers, Water Contamination, and the NAAEC Environmental Side Accord to NAFTA*, 40 NAT. RESOURCES J. 873 (2000) (discussing CEC's citizen submission process in the context of Mexican farmers).

<sup>43</sup> See James Cameron & Ruth Mackenzie, *Access to Environmental Justice and Procedural Rights in International Institutions*, in HUMAN RIGHTS APPROACHES TO ENVIRONMENTAL PROTECTION 124-52 (Alan E. Boyle & Michael R. Anderson eds., 1996).

including holding further roundtable discussion in the border region on the next 5-year-plan under Border XXI.

These efforts are to be commended. However, government efforts to address environmental justice issues must go much farther than they have in the past. EPA, its Mexican counterparts, and the border institutions must recognize that their responsibilities to the border communities go far beyond their explicit regulatory powers or specific mandates. As Alan Hecht recognized, conscientious discharge of government agencies' responsibilities for the border communities requires not only use of their regulatory powers but also their political and persuasive powers to ensure the success of efforts that will improve the lives and environment of those living and working in the border region. This must become one of the highest priorities for government programs addressing border issues.

## **II. The U.S.-Mexico Border Roundtable**

### **A. The Goals of the U.S.-Mexico Border Roundtable**

The International Roundtable on Environmental Justice at the U.S.-Mexico border arose out of longstanding concerns communities have had about environmental justice issues at the border. In particular, it sought to engage a range of constituencies about the nature of the racially, socially and economically disproportionate impacts of environmental degradation in the border region. Participants included representatives and members of communities of color; indigenous peoples; women; labor, environmental justice and environmental protection advocates and activists; affected communities and grassroots groups; the private sector; the U.S. Environmental Protection Agency (EPA) and other U.S. federal agencies; and Mexican government officials.

Its functions were three-fold. First, the Roundtable was to provide an opportunity for stakeholders to raise problems and concerns that have not been adequately addressed and to provide recommendations to EPA on how things can be improved. Second, the Roundtable was intended to educate federal, state, and local government officials in the U.S. and Mexico about border environmental justice concerns in depth and to give them an opportunity to hear first-hand from the communities directly affected. It transformed environmental justice issues from an abstract issue into human faces and specific problems. Third, the Roundtable was intended to formally initiate an ongoing participatory, cooperative, and inclusive process among diverse stakeholders to address border environmental justice issues, including the development of an environmental justice strategic work plan.

Specific objectives identified by the International Subcommittee for the Roundtable included:

- Defining and tracing the evolution of national and international environmental justice issues;
- Identifying environmental justice issues on the border (i.e., colonias, water/sanitation, commercial development, site clean-up, international laws that cause impacts or alleviate environmental justice issues, etc.);
- Providing an overview of domestic and bi-national border programs (federal, state, and local, as well as non-governmental, academic, etc.) and exploring ways to address environmental justice concerns through these existing programs or processes;
- Developing environmental justice border policies, acquiring resources, and implementing strategies that ensure that impacted communities, local initiatives, and populations are included in regional growth plans addressing economic, environmental, and equity issues for the border;

- Identifying existing enforcement and cleanup processes to address environmental justice issues;
- Focusing on the education of ALL participants (for example, by discussing case studies, presenting an overview of environmental activities along the border, providing answers to commonly asked questions, conducting a tour of local sites);
- Reviewing the effectiveness of existing community involvement opportunities and develop recommendations for improvement (for example, community monitoring);
- Identifying new opportunities for communities to participate in border activities and developing recommendations.

## **B. The Roundtable: A Summary Overview<sup>44</sup>**

The Roundtable was held from Thursday August 19 to Saturday August 21, 1999. The first day was dedicated to a fact-finding tour by Roundtable participants and a public dialogue period. On the fact-finding tour, participants visited areas around Tijuana, Mexico and San Diego, California, including communities and industrial sites on both sides of the border. The public dialogue period saw 22 participants from local community groups express concerns about specific regional issues and environmental conditions along the border.

On the following day, the Roundtable opened with remarks from Arnoldo Garcia, then-Chair of the NEJAC International Subcommittee, William Nitze, then-Assistant Administrator of the EPA Office of International Activities, and Jose Bravo of the Southwest Network for Environmental and Economic Justice. Following these remarks, two panels addressed EPA environmental justice programs on the border and Regions 6 and 9 intentions to integrate environmental justice into its work plans. The first panel, made up of senior managers from various divisions within the EPA, focused on international programs in the region, including the Cooperative Enforcement and Compliance work group, the Border XXI program, the La Paz Agreement, the BECC and NADBank. The second panel, featuring representatives from EPA Region 6 and Region 9 and their Mexican counterparts, provided an overview of current border programs and outlines for future integration of environmental justice into its work plans.

Keynote speakers Greg Cooke, Regional Administrator for EPA Region 6, Felicia Marcus, Regional Administrator for EPA Region 9, Diane Takvorian, Executive Director of the Environmental Health Coalition, and Richard Moore of the Southwest Network for Environmental and Economic Justice then addressed the participants during the lunch period.

The remainder of the afternoon was dedicated to smaller work groups addressing the following specific environmental justice concerns:

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<sup>44</sup> A more detailed description of the events and the discussions of the Roundtable are set out in Appendix B.

- 1) Environmental Justice and Labor;
- 2) Immigration, Trade, and the Environment;
- 3) Indigenous Peoples and Border Justice; and
- 4) Environmental Health.

These sessions were led by a moderator and included a diverse panel of speakers designed to facilitate dialogue between participants. Members from federal, state, and local government; community groups; indigenous groups; and other organizations participated. Each work group prepared a list of recommendations for future action in the border region.<sup>45</sup>

The third and final day of the Roundtable was dedicated to de-briefing reports by the individual work groups to the remainder of the Roundtable participants and reflection on the conclusions of the meeting. Each work group reported on the topics of discussion, commitments, and recommendations resulting from their discussions. The combined recommendation list provides an example of the long list of problems and concerns that border communities hope to resolve through a new, cooperative approach to addressing environmental issues along the border.

### **C. The Neglected Issues: Voices from the Border Region**

The issues raised at the Roundtable do not include all the environmental problems found in the border region. Rather, community participants focused on those concerns that are largely unaddressed or neglected by regulatory agencies, yet are of serious concern to communities.

Such matters ranged from traditional pollution control and toxics concerns to community health, labor, and related social issues. The recommendations address matters of substance, such as the inadequacy of applicable environmental health and safety standards and unsatisfactory outcomes of EPA enforcement or regulatory actions. They also address issues of process, such as the lack of opportunities for environmental justice communities to be meaningfully involved in the decision-making processes of border institutions and language barriers to the accessibility and use of environmental information. Accompanying the communities' general concerns were also site-specific issues, such as the abandoned Metales y Derivados lead battery-recycling facility.

For organizational purposes, community concerns have been grouped thematically as follows:

- 1) Water Pollution,
- 2) Hazardous Waste and Toxics,
- 3) Community Health,
- 4) Environmental and Labor Justice,
- 5) Trade, Migration and Environment,
- 6) Indigenous People, and
- 7) Border Communities and Public Involvement.

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<sup>45</sup> The recommendations of the workgroups are set out in detail in Appendix B.

Several of these themes track the concurrent work group sessions conducted at the Roundtable and address the issues raised there. Some of them also overlap significantly, illustrating the interrelationship of the issues to each other.

Three general concerns pervaded the Roundtable discussions. The most significant was a call on EPA to ensure greater involvement and input by environmental justice communities in the policy formulation process of planning the border environment. The second was the need to raise environmental health and safety standards along with other protections for communities on both sides of the border. Finally, communities called on the EPA and the federal government to act sooner rather than later – to take responsibility for ensuring the health, safety, and well-being of border communities rather than engaging in exercises of assigning blame.

Ultimately, the environmental and public health problems of the border region must be considered in the larger context of the region’s social, political, economic, and historical background. Isolating and abstracting particular issues leaves out important components and relations that may be crucial to understanding their impacts and importance to the border communities. It is in that sense that these problems must be solved together.

## **1. Water Pollution**

As has been apparent from the past activities of the Border Environment Cooperation Commission, the North American Development Bank, and EPA, water pollution issues, including the provisioning of drinking water, have been the highest priority for border institutions and government agencies. The majority of NADBank funding and other institutional activities have focused on construction of sanitary sewage treatment facilities, such as the International Wastewater Treatment Plant, creation of potable water systems, and related programs.

Water issues are undoubtedly of great importance to communities at the border. However, EPA, BECC, and the NADBank efforts must address the continuing community concerns about groundwater contamination stemming from industrial waste discharges and agricultural pesticide usage, in addition to sanitary wastes.

Roundtable participants were aware of an EPA investigation at the Muro Farm Labor Camp regarding direct sewer discharges in contact with the drinking water supply.<sup>46</sup> Roundtable participants also raised many concerns about other sources of drinking water contamination, ranging from trichloroethylene (TCE) in Tucson, Arizona’s water supply<sup>47</sup> to the use of former-toxic waste drums used to store drinking water.<sup>48</sup> In addition, tribal participants expressed concerns about pesticide run-offs and other polluting substances affecting groundwater.<sup>49</sup> More broadly, communities have been frustrated about the quantity of available clean water, noting

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<sup>46</sup> See Summary of Fact-Finding Tour *infra* Appendix B p. 2.

<sup>47</sup> See Ms. Cecilia Campillo’s comments *infra* Appendix B p. 6.

<sup>48</sup> See Recommendations related to Environmental and Labor Justice *infra* Appendix B p. 38.

<sup>49</sup> See Summary of Fact-Finding Tour *infra* Appendix B p. 2.

that it has been very difficult for impoverished communities to compete for water resources with more established industrial users.

## **2. Hazardous Waste and Toxics**

Hazardous wastes and toxics have been another important concern of Roundtable participants. EPA Assistant Administrator for Enforcement and Compliance Assurance, Steve Herman, reported progress in the enforcement of hazardous waste laws, especially through the bi-national Cooperative Enforcement and Compliance work group. Such efforts have sought to promote cooperation in the bringing of enforcement cases, demonstrated for example by an investigation in which two U.S. firms and a Mexican target were caught attempting to transport waste across the border. In addition, efforts by EPA Region 6 have provided community grants, supported sister city emergency response plans, made available public information centers, and managed the HAZTracks waste transportation monitoring system.

Nevertheless, these efforts have not fully mitigated hazardous waste problems. Complaints were especially serious with regard to facilities on the Mexican side of the border and the failure by border institutions, such as the BECC and the NADBank, to respond adequately.

### *Abandoned Hazardous Waste Sites and Illegal Disposals*

Abandonment of hazardous wastes has been a serious problem because of the apparent ease with which responsible parties have been able to avoid enforcement actions by crossing the border. While cooperation between U.S. and Mexican enforcement authorities should theoretically prevent such occurrences, complaints about abandoned or unremediated sites and the failure to hold the responsible parties accountable have been persistent.

Chief among them has been a site in Tijuana, Baja California, Mexico commonly known as Metales y Derivados. The Metales y Derivados site is a severely contaminated location that contains an abandoned lead battery recycling plant, formerly operated by New Frontier Corporation. After operating the open-air facility for 10 years, the plant was closed without remediation of the lead-laden soil. A cement wall was placed around it by Mexico's environmental administrative agency (PROFEPA) in 1994 and the plant was closed. However, such measures have neither ensured that the public cannot access the site nor prevented contaminated soil and dust from escaping and contaminating neighboring properties. No substantive remediation has taken place.

Another notorious site has been the Alco Pacifico facility in Tijuana, Baja California, Mexico. The Alco Pacifico site was formerly operated by its U.S.-based parent, RSR Chemetco, and later abandoned. RSR has reputedly been responsible also for other contaminated sites in Mexico; West Dallas, Texas; Los Angeles, California; and North Carolina. Some time after the site was abandoned, contaminated soil from the site was excavated and placed in a landfill.<sup>50</sup>

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<sup>50</sup> See Summary of Fact Finding Tour *infra* Appendix B pp. 2-3. Placement of this waste in Hermosillo has led residents there to file a citizen submission under the NAFTA environmental side agreement. PROFEPA officials

Hazardous waste sites have also affected urban communities, such as San Diego's Barrio Logan. There, the Crosby Street Park was constructed in response to nearby residents' requests for access to the bay to fish. However, in the end the park was built on a brownfields site with low-level petroleum contamination, and fishing is prohibited due to contamination in the bay.

Related to illegal and abandoned waste sites is the problem of entities and individuals who have previously abandoned a polluted site and who later begin operation of a new facility elsewhere. One example of such an occurrence is in Anthony, New Mexico, where the owner of a proposed metal plating facility had previously abandoned two metal finishing plants in El Paso, Texas. Even though the community strongly opposed the proposed construction of the facility, EPA's response was that its jurisdiction over such matters was narrowly limited.<sup>51</sup>

### *Siting Issues*

Industrial and waste facility siting has also been a prevalent issue of concern for border communities. In the U.S. and Mexico, a portion of industrial facility problems is attributable to mixed zoning where land is used for industrial and residential development. Like in many other environmental justice communities, highly polluting industries are frequently located just steps from neighborhoods and schools.<sup>52</sup> Among the solutions sought by community participants for such problems is the establishment of buffer zones and the imposition of moratoria on industrial developers with a track record of polluting or violating local ordinances.

Participants also raised waste and toxics issues when members of poor and minority communities purchase land. Because impoverished communities do not have easy access to information concerning the past uses of land, they have on occasions been severely taken advantage of with regard to potentially contaminated land. For example in New Mexico, impoverished migrant farmers were sold undeveloped land located over a landfill. As these farmers built their community on this land, they encountered significant legal and other problems in dealing with the contamination issues.

Participants also alleged that the dump operating in Sierra Blanca, Texas violates the La Paz agreement.<sup>53</sup> This concern has been supported by a resolution signed by the Mexican Ambassador to the U.S. along with 600 Representatives and 200 Senators of the Mexican government, requesting that the dump be shut down. Apparently, the Texas Natural Resources Conservation Commission (TNRCC) approved the sludge dump without conducting a public hearing and without issuing a permit, approving it on the premise that it would study the beneficial uses of the sludge. Much of the waste originates from sources in New York and other

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have stated that the Alco Pacifico facility has been cleaned up. However, Francisco Pavlovich and Jose Bravo both asserted that the site had not been comprehensively cleaned, and that the community around the site "was not even touched."

<sup>51</sup> See Roger Peña's comments *infra* Appendix B p. 5.

<sup>52</sup> One example of this is Cesar Chavez High School in Houston, TX. See Juan Porras's comments *infra* Appendix B pp. 3-4. San Diego's Barrio Logan is another example of this problem. See Summary of Fact-Finding Tour *infra* Appendix B pp. 1-2.

<sup>53</sup> See Bill Addington's comments *infra* Appendix B p. 4.

states. Although Texas assertedly applies the more stringent law of either the sending or receiving state, and even though the waste would not be suitable for disposal in the dump under New York law, the TNRCC approved the dump without a permit. A Title VI complaint filed with EPA was dismissed on procedural grounds.

### *Effects of Hazardous Waste on Water and Health*

Community participants also alleged adverse impacts from hazardous waste on water and health issues on both sides of the border. Complaints include hazardous chemicals contaminating drinking water sources depended upon by large portions of the population. Since communities are frequently unaware of the contamination, responses to health problems connected to the contaminated water are unnecessarily delayed. In Mexico, communities believe that many of the public health problems are caused by the illegal releases of toxic substances into the communal water supply. Participants pointed to an unusually large number of children with learning disabilities in Mexico. Participants also noted that community exposure to U.S. Air Force-released trichloroethylene in drinking water has exposed residents to increased health risks in Tucson, Arizona.

### *Regulatory Enforcement*

Crucial to addressing hazardous waste and toxics problems are enforcement actions responding to regulatory violations. Community participants asserted the need for heavier sanctions for regulatory violations as well as for quicker responses to complaints related to the illegal transboundary transport and dumping of hazardous wastes. Increased coordination efforts by EPA and the Mexican government in this regard, notably through EPA's HAZTracks system and its Mexican counterpart, have been a positive step. However, greater efforts at ensuring that wastes are repatriated to the country of origin, as required under the La Paz Agreement, are still necessary.

Transboundary and local pollution effects on environmental justice communities also emphasize the need for more cross-border cooperation in bringing enforcement actions against maquiladora plants and other industrial facilities. Greater involvement of citizens in facilitating enforcement efforts and closer attention to community complaints is crucial. Community residents are frequently the first to notice violations.<sup>54</sup> And they will frequently also be the most knowledgeable of health and environmental concerns of the community, the specific facilities associated with such concerns, and the adequacy of remedial actions.

## **3. Community Health**

Community health concerns were among the most important issues raised by community participants. Many of these concerns were related to the adequacy and enforcement of environmental standards designed to protect community health, the processes by which health

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<sup>54</sup> For example, Mr. Manuel Llano, a former chemical industry engineer, stated that he had written numerous letters to Mexican authorities documenting the illegal transportation of hazardous waste by businesses, yet has received no response. See Manuel Llano's comments *infra* Appendix B p. 17.

studies were conducted to measure health impacts, and the existing health care infrastructure designed to prevent and respond to health concerns once they had been raised.

### *Health Impacts of Pollution and Toxins*

Border communities are exposed to a wide variety of health risks, including pesticides, toxins, and other carcinogenic chemicals at work, in the air, and in the water. To address such problems, regulatory efforts must address the sources of such exposures proactively. In particular, a human health-centered perspective requires that prevention of health impairments be the primary focus of governmental efforts, in addition to better treatments following exposure.

Roundtable participants pointed to the common field use of pesticides by the agricultural industry, including at times alleged application of DDT, without community consent or input. For agricultural workers, such exposure problems are exacerbated by a lack of training in handling toxins and inadequate warnings about their health effects. While the EPA mandates that warnings be placed on dangerous chemicals and substances in the U.S., such regulations do not exist on the Mexican side of the border. Furthermore, proper training on the safe use of such toxic chemicals is rare. Providing use and handling training as well as follow-up health risk assessment tests that would evaluate the effects of pesticide residues on the health of the community members could prevent many of these problems.

Serious concerns were also raised about the environmental health risks posed by maquiladoras, especially to women workers exposed to heavy metals, organic solvents, and acids on a daily basis. These exposures have been closely associated with the unusually large percentage of babies born in the border area with neural tube defects.

Communities have responded through projects such as the Environmental Health Coalition's efforts to train women to be promoters, or lay environmental health activists.<sup>55</sup> Another community-based environmental health project is Aqua 21, which aims to improve health through improved water sanitation. Its efforts focus on both improving water purification and infrastructure and promoting basic water safety education through small, community-based organizations in the most impoverished neighborhoods. Much of the program's success has been attributed to the number of organizations working together in bi-national cooperative efforts.<sup>56</sup>

Finally, participants also expressed interest in integrating the concerns, programs, and activities of different environmental justice groups operating along the border. Participants pointed to the use of health-related issues as a unifying theme, specifically recommending the use of health based standards for environmental protection rather than cost-benefit-based standards. In addition, participants suggested that the EPA support and promote standardization among the health registers maintained separately by the U.S. and Mexico.

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<sup>55</sup> See Martha Valdés's comments *infra* Appendix B p. 33.

<sup>56</sup> See Claudia Laffont Castellon's comments *infra* Appendix B pp. 33-34.

## *University Research Programs and Health Studies*

Participants noted various problems with university programs that fund health studies along the border. The three main concerns were deficiencies in community involvement at the planning stages, reports back to the community, and follow-up health care for residents whose ailments have been studied. The net result is that health studies frequently do not translate into improved health care for communities in studied areas.

One participant noted that border communities are attractive study sites for universities because of their demographics and obvious health problems. However, the research group may not address issues that the community feels are important in its area. Participants suggested that academic institutions be required to prepare and implement a plan for the active implementation of research findings to solve, not just analyze, community problems.

Many community members present were concerned that communities often were not involved in the planning process for these studies, resulting in a lack of accountability on the part of the university to the studied community. Participants urged that communities should be given greater influence over research plans by allowing them to play a larger role in the process of awarding grants for research and in matters regarding funding to implement portions of the research program. Participants also pointed out that the most important step is to involve communities at the planning stage of any research program in the region. This includes obtaining input from communities about health issues perceived to be the most important and including them at the beginning of any research program. Furthermore, participants felt that better communications between communities and researchers should be established early on in the planning stages in order to increase the sharing of data and findings.

While problems exist with many of the research programs conducted in the region, it was noted that some programs, particularly those at Howard University and Johns Hopkins University, provide excellent examples of programs that practically benefit the communities. These programs have demonstrated a proven ability to positively affect the social and environmental quality of life in surrounding communities. Such examples should serve as a model for future health studies in the region.

Participants expressed frustration with the low level of community involvement in decisions and lack of participation in the development of public health studies sponsored by government agencies. They urged EPA to strengthen policies that ensure community participation in the development and implementation of programs, such as mandating fiscal sharing by applicants with local organizations in carrying out health studies.

One participant noted that through a former congressional add-on, the EPA had been able to award up to \$250,000 to universities doing research along the border that would partner with a community organization in its efforts. However, many community members attending the session stated that reintroducing such a program would be inadequate due to insufficient community influence. Currently, they explained, many universities are teamed with community

organizations that represent a very small part of the surrounding community and are not receiving substantial community input.

### *Innovative Technology and Data Analysis*

A problem associated with health studies is the need for innovative research techniques to analyze environmental health problems. Often a health effect cannot be traced back to a single source due to the number of potential contributing causes. It was suggested that much of the environmental monitoring currently being conducted on the border did not measure true border resident exposures. To improve research, participants suggested as an example the idea that air quality monitoring be conducted through devices placed on people rather than on rooftops or other stationary locations. Other data and technology recommendations focused on promoting low-cost technologies, both software and hardware, for the gathering of environmental and health information. Just as important, they stated, is the building of accurate and accessible data and information programs in both English and Spanish.

### *Health Care Infrastructure, Capacity Building, and Women's Health*

Health problems related to exposure from toxins in all forms directly raises issues of health care availability to address or prevent such problems. Presently there is a lack of funding, trained professionals, and clinics available to those in need. Throughout the region, particularly on the Mexican side of the border, there is a shortage of existing, affordable community clinics. Existing government health services and environmental agencies are not properly equipped to meet the needs of these communities. Their structures are oftentimes impediments to solving health care issues. Participants suggested that existing agency structures should be re-evaluated in this light with the goal of improving responsiveness to the needs of the surrounding community.<sup>57</sup> Funding to establish more clinics, including clinics dealing with specific diseases like AIDS and tuberculosis, among others, should be considered in this context.

Efforts to meet border health care needs are also affected by area residents routinely crossing the border for such purposes. This leads to difficulties in monitoring health data in the region. More bi-national cooperation to monitor and disseminate health and disease data and to provide funding must occur. Ideally, EPA and the Mexican government should treat the border area as a single unified region regardless of the political boundary. In other words, funding for the border region should not be so heavily concentrated along the U.S. side of the border; rather, there should be a more equitable dispersion of project funding using already existing mechanisms. Thus, funding should support communities presently lacking any nearby health care, allowing clinics to focus on local health issues.

The United States and Mexican governments must also cooperate to fill regulatory gaps existing between the sides of the border. Participants suggested that concerns about the human health impacts from toxic exposures often take a back seat to the drive for economic benefits and increased industrial development. The health needs of both Mexican and United States citizens

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<sup>57</sup> See Beth Hailstock's comments *infra* Appendix B p. 35.

in the region cannot be ignored and will require increased regulation, enforcement, funding for clinics, and dissemination of health data in both Spanish and English.

Community efforts moved forward in this regard. One organization, the Border Health Initiative, has established 37 community clinics in Tijuana, Mexico.<sup>58</sup> However, community efforts alone are not enough and require further government support. Funding requests to expand training on environmental health for *promotoras* and health professionals, establish contingency funds for community and environmental health clinics, and create a liaison position between EPA and environmental justice communities have been made.

Participants also described in detail situations in which women of all ages work in maquiladoras where they are exposed to a variety of toxic and carcinogenic chemicals for at least 48 hours a week. Due to financial and time constraints, it is often impossible for them to see a doctor except to treat an acute problem. One participant noted that recently in one border community, a women's clinic is open one Saturday per month, specifically examining women for cervical cancer and providing mammograms. In one day, she reported, the clinic may see approximately 70 women from various nearby communities seeking out these needed services.

#### **4. Environmental Justice and Labor Justice Issues**

Even though labor issues are not traditionally viewed as environmental issues, the broad view of environmental justice held by many communities includes matters of economic justice and labor.<sup>59</sup> The connection may be direct, when workers are forced to work in unsafe or unhealthy surroundings. However, it may also be indirect, when labor rights violations are a retaliatory response to worker efforts to assure a healthy and safe workplace or to obtain company compliance with regulations and standards designed to protect the natural environment and surrounding communities. In fact, a workplace that does not respect worker rights is unlikely to be concerned about environmental compliance and pollution control more generally.

Maquiladoras, assembly and manufacturing plants on the Mexican side of the border raise many concerns related to wage and hour discrimination, dangerous safety conditions, gender inequalities, exposures to toxic substances, and antagonism to the formation of labor unions. EPA and other government agencies on both sides of the border must cooperate more closely to improve oversight of maquiladora environmental permitting as well as compliance with environmental and labor laws. A key concern for government officials must be to strengthen existing environmental and labor laws in Mexico and to vigorously enforce the laws on both sides of the border.

Female workers at maquiladoras face especially serious problems. They often work in an atmosphere that includes sexual assault, violence, wage inequality, and discrimination against pregnant women. Crucial to addressing such problems is the strengthening of laws against gender discrimination and greater efforts by government agencies to encourage women to come forward and report cases of discrimination and to investigate and prosecute any offenders.

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<sup>58</sup> See Carmen Cutter's comments *infra* Appendix B p. 33.

<sup>59</sup> See Jose Bravo's comments *infra* Appendix B p. 22.

According to a U.S. Department of Labor representative, it has sought to respond to some of these workplace issues through the labor side agreement to NAFTA under its National Administrative Office (NAO).<sup>60</sup> Other participants described experiences with labor and environmental justice ranging from maquiladora<sup>61</sup> and migrant workers' issues,<sup>62</sup> to economic justice and fair treatment of border communities.<sup>63</sup> For example, maquiladoras offer low salaries, they expose workers to toxic substances, fail to train them in the proper use of such substances, engage in gender discrimination, and even engage in sexual assault and violence, particularly against young women.<sup>64</sup> Moreover, border communities have a history of exploitation. The economic development promoted in these communities are jobs that are not wanted elsewhere, such as prisons, incinerators, dumps, hazardous materials, and mining. These jobs are often associated with significant health problems, and occupational health and safety standards are too low to adequately protect workers and communities.<sup>65</sup>

These side effects of NAFTA have largely remained unaddressed, even under the NAFTA side-agreements. Workers have filed complaints and organized better labor unions to protect themselves, but companies have retaliated by firing workers engaged in these activities. Even strikes have been ineffective, as companies can replace the workers the very next day. In order to compensate for these problems, participants argued that NAFTA needs to ensure a living wage, the right to organize, and the need for just transition programs for those workers adversely affected by NAFTA itself.<sup>66</sup>

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<sup>60</sup> See Eida Saragoza's comments *infra* Appendix B pp. 21-22. The NAO's direct functions include informing the public about their labor rights; informing other agencies, such as the EPA and the U.S. State Department, about violations; and promoting good corporate activities, with the overall aim of improving working conditions and living standards in three NAFTA countries. The NAO has held public hearings to bring media attention to labor issues, to inform political representatives, and to bring stakeholders together to discuss and address the issues. In addition, former Secretary Alexis Herman created a women's bureau within the Labor Department, designed to engage in community outreach to persuade women to come forward with their cases of sex discrimination.

Its function most directly related to maquiladora workers has been to accept complaints about violations of labor laws in any of the NAFTA countries. The NAO has received complaints in Mexico against the United States, as well as in the United States against Mexico. They include complaints from violations of worker health and safety laws, wage and hour discrimination laws, and right to association laws. Unfortunately, the current status of the NAO is unclear.

<sup>61</sup> See Manuel Llano's comments *infra* Appendix B pp. 13-14 (describing the negative effects of working in the chemical industry); Cipriana Jurado Herrera's comments *infra* Appendix B p. 23; Teresa Leal's comments *infra* Appendix B p. 23 (advocating the creation of a buffer zone around industries to combat pollution concerns); Francisco Pavlovich's comments *infra* Appendix B p. 16 (describing the violations at the Cytrar site).

<sup>62</sup> See Fernando Cuevas's comments *infra* Appendix B p. 21 (describing issues with regard to migrant farm workers in the U.S.); Carlos Marentes's comments *infra* Appendix B p. 6 (emphasizing that low wages, health risks, and lack of health benefits continue to present serious problems for farm workers); Alan Valencia's comments *infra* Appendix B p. 17 (describing the risks that pesticides pose to farm workers).

<sup>63</sup> See, e.g., Cesar Luna's comments *infra* Appendix B p. 23 (commenting on the U.S. Navy's plan to build a large home-port for nuclear-powered vessels in south San Diego).

<sup>64</sup> See Cipriana Jurado Herrera's comments *infra* Appendix B p. 23.

<sup>65</sup> See Ruben Solis's comments *infra* Appendix B p. 22.

<sup>66</sup> *Id.*

## *Topic-specific Discussions*

Wage Discrimination. Participants urged strongly that the Equal Employment Opportunity Commission (EEOC) become more involved in labor issues at the border. Community participants indicated that the EEOC has been very responsive in Texas and has brought successful wage discrimination complaints. Community participants also raised concerns about industries moving to lower-wage countries and suggested that such companies should have to pay their workers the same wages as in the U.S.

Participants also called for development of a “Just Transition” programs under NAFTA to assist workers affected by the migration of firms to other countries. Such programs must be “just” and include elements to address medical health concerns of the displaced workers. Funding for the medical benefits program should come from the U.S. government and polluting industry.

Maquiladoras. Participants raised the need to view concerns with maquiladoras as a global issue that is not limited to the joint U.S.-Mexico border. Key priorities in this regard include increased oversight of environmental permitting and compliance by both the U.S. and Mexican governments, the “repatriation” of waste to the country of origin of the maquiladora, and investigations into the general and reproductive health of workers in maquiladora industries. Other key concerns include strengthening weak sanctions for violations of labor and environmental laws and extending requirements for the recycling of wastewater. Finally, companies must be prevented from escaping stricter environmental laws in one country by moving to the country with weaker standards, but instead held to the stricter standards.

Site-Specific Concerns. Participants also raised concerns about several industrial sites and affected communities located in Mexico and the United States. In addition to requests for assistance in remediating the Cytrar and Metales y Derivados sites, participants called for action in Anapra, Chihuahua; Candados Presto; ARASCO; Sierra Blanca; Sunland Park, New Mexico; Valle Juarez; and the Rio Grande/Rio Bravo watershed basin.<sup>67</sup>

Bilateral Cooperation and Agreements. Participants raised significant dissatisfaction with the inadequacy of protections afforded to border residents under existing bi-national agreements. Frustration included the level of protection afforded by the La Paz Agreement with regard to mining industry activities, particularly facilities employing cyanide to leech out ore. Because drops in the metals market might encourage owners to abandon mines without cleanup, participants called for the establishment of an international tribunal to address the shutdown and remediation of closed mines. In addition, several participants called for NAFTA be renegotiated, along with the side agreements for the BECC and the NADBank. In particular, entities such as the CEC Labor Commission should be given independent decision making power and granted the capacity to enforce the agreement.

Participants also requested an international border commission to specifically address issues related to environmental justice on the U.S.-Mexico border. Such a commission would be

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<sup>67</sup> For more detailed recommendations, see page 40.

better able to ensure that environmental justice communities are treated and viewed as an equal partner in the decision-making.

Civil Rights Concerns. Many participants expressed dismay at the status of administrative complaints filed with EPA under Title VI of the Civil Rights Act of 1964 (Title VI). They characterized the implementation of EPA's administrative guidelines as "a failure" because of the lack of any positive decisions in response to a community complaint. Urging the EPA to be more proactive in investigating complaints rather than dismissing them out of hand, the participants stated that the agency needs to revise its implementing procedures and develop "community-friendly," understandable guidelines that clearly describe what complaints are appropriate and acceptable.

## **5. Immigration, Trade, and Environment**

The effects of increased trade on the environment have already been the subject of significant interest by environmentalists. However, the relationship of immigration to environmental issues, and particularly with regard to environmental justice for border communities, has been largely neglected. Government agencies have also largely failed to understand the link between immigration and environmental degradation.

According to Arnolando Garcia, the challenge of the relationship between immigration, trade, and the environment consists of "how . . . we combine environmental protection with human rights issues framed as environmental justice issues, given that the authority of EPA in this instance is very limited." He suggested that the limitations of orthodox views about this relationship require that one "expand the mindset" of how environmental protection takes place within the context of immigration and trade by examining the cause of immigration; determining how trade impacts our communities on political, economic, and environmental levels; and becoming more familiar with how we think of the border. It raises questions about whether the border is just a political boundary or a different type of metropolitan region with different dynamics of growth. Close scrutiny suggests that while the border may raise different obstacles to achieving environmental justice, the fundamental policy goals of environmental justice should not be different from those applicable domestically.

NAFTA's closer economic trade linkage of Mexico and the United States has amplified the concentration of people and industries in the environmentally sensitive border region. The result has not only been economic shifts of industries, including the growth of the maquiladora industries in the northern parts of Mexico and changes in the economy elsewhere, but also migrations of workers and their families.

Migration may be the result of a number of contributing factors, including poor economic and development practices, environmental degradation, and the negative consequences of globalization.<sup>68</sup> There are also important antecedents for massive migrations to northern Mexico

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<sup>68</sup> See Cathy Tactaquin's comments *infra* Appendix B p. 26; Maria Antonia Flores's comments *infra* Appendix B p. 26 (addressing deteriorating labor opportunities in El Paso and migration).

and across the border to the U.S. in the Bracero and maquiladora programs.<sup>69</sup> Some of that migration now manifests itself as illegal immigration into the U.S. by those seeking employment and a better life.

Government efforts to stop illegal immigration have had some direct environmental consequences. Aggressive immigration enforcement has forced migrants to attempt more dangerous crossings in high-mountain or desert areas. The resulting efforts by thousands of U.S. border agents with cars, vans, and other equipment seeking to stop illegal immigration have put additional stress on the sensitive border ecosystem. The riskier crossings have also led to many more illegal migrants dying in their attempt to enter the United States.

Migration patterns, including illegal immigration, are thus connected to larger international economic restructuring trends, as environmental degradation oftentimes is. Linkage of markets results not only in the restructuring and disruption of national economies but also of local economies. This recognition points out an insidious and unjust premise in the judgment of those who blame immigration for environmental degradation rather than economic development, consumption patterns in industrialized countries, and free trade. Inherent in blaming illegal immigrants and the poor in developing countries for environmental degradation, rather than the lifestyle and need for economic expansion of the economies of industrialized countries, is the notion that the wealthy are entitled to be wealthy while the poor should stay poor. Instead, one might argue, it is the economic needs of markets in the industrialized nations and their impacts on local economies elsewhere that are the root causes of migration and the environmental degradation that liberalized trade brings.

As a result, addressing traditional ecological problems and environmental justice issues at the border will require not only efforts in addressing the causes of environmental degradation, but also associated causes of social and economic disruption and inequities. It is the inextricable linkage of these associated causes of social and economic inequities with environmental justice that requires integrated efforts on all fronts to achieve environmental justice for border communities.

Participants noted a number of issues relevant to immigration and trade, including more general issues of globalization,<sup>70</sup> human rights,<sup>71</sup> and environmental racism. Participants believed that a bi-national approach is crucial to solving these and other bi-national problems.

Mr. Roberto A. Sanchez-Rodriguez presented four recommendations for community revitalization and improved environmental justice across the border. First, communities should adopt a broader perspective when discussing the border and environmental justice. The agencies and community groups must understand that the economy relates to the environment and the social consequences that come from this dynamic. The border complicates these issues because two nations and societies are involved. Even if Mexico's economy may have improved with

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<sup>69</sup> See Domingo Gonzales's comments *infra* Appendix B p. 28.

<sup>70</sup> See Cathy Tactaquin's comments *infra* Appendix B p. 26.

<sup>71</sup> See Roberto Martinez's comments *infra* Appendix B p. 27 (likening the "triple wall" near the International Wastewater Treatment Plant to a demilitarized zone).

NAFTA on the whole, ensuring the fair distribution of such benefits must be considered more closely. Second, communities must also build coalitions among environmental justice groups that include community organizations, labor unions, local authorities, federal and state agencies, and business groups, avoiding the myth that business and industry are enemies. Third, coalitions should set a positive precedent illustrating how cooperative efforts can function, so as to accomplish overall change, rather than just individual victories. Finally, communities should take advantage of existing organizations to create new opportunities for achieving environmental justice, including greater reliance on sustainable development.

Mr. Sanchez-Rodriguez also suggested that the EPA must understand that NAFTA is driving immigration from Mexico to the U.S. and that international trade agreements such as GATT and NAFTA present the greatest threats to U.S. environmental laws. One recent example included a Canadian NAFTA challenge to a California law banning certain toxics. More significantly, however, free trade agreements effectively turn over democratic rights to multinational corporations whose interests are represented by NAFTA and GATT, leaving the local communities at risk.

Lastly, Mr. Sanchez-Rodriguez also recommended that the EPA should provide an agency progress report describing how the agency is being perceived, what progress has been made, and how the agency can be improved. This information should be available to communities to empower them to affect change.

Finally, since it is unlikely that NAFTA will be rescinded, participants acknowledged that concerned parties will have to work within the parameters of NAFTA to improve the situation at the border. However, the reality remains that populations at the border will continue to grow exponentially, and people will move into environmental justice communities because there is no other place for them to go. Thus, EPA will need to develop a bottom-up process to help solve such problems, including investment in the education and training of border community residents.

### *Topic-specific Discussion*

Interagency and Bi-national Cooperation. The participants explored how various agencies are working together to resolve border and environmental justice issues and how border issues are being addressed on a bi-national level. OIA Deputy Assistant Administrator Alan Hecht commented that the issue of government agencies cooperation is complicated because in many instances the various agencies are not linked in any way to each other. However, the U.S. and Mexico periodically do engage in cabinet-to-cabinet communications regarding high-level policy issues. There have been suggestions to make Border XXI an organization that convenes all agencies, though to-date, few multi-agency meetings have been held.

Many agencies have not been responsive to efforts to incorporate social justice issues in their work. Community advocates could alleviate some of this resistance by framing the issues facing border communities through broader perspectives. For example, approaching a border

issue as one affecting many different types of communities would broaden the scope of the problem and perhaps encourage other agencies to become involved.

Enforcing Environmental Regulations. The group explored the relationship between trade, immigration, and the difficulties of environmental enforcement in the wake of NAFTA. Enforcement has become more difficult with the advent of free trade as multinational companies claim infringement of free trade as a method of defeating local environmental regulations.

Community Involvement. The issue of community participation arose when the group discussed the proposed triple wall in Mexico. A representative of the U.S. Border Patrol stated that the U.S. Army Corps of Engineers (USACE) had been contracted to convene a focus group to discuss the proposed triple wall. Focus group meetings held since April 1999 have included representatives of 20 environmental and cultural groups. Various participants stated that the triple wall illustrates the difficulties of balancing environmental protection with trade and the lack of community participation in the decision making process. The wall threatens the environment by damaging estuaries and the river shed that cuts across the border. An environmental impact study was performed on the wall areas; however, since the study was conducted in six separate, independent sections, it was unable to convey a comprehensive picture. Participants also expressed concerns about the process employed by USACE to involve members of affected communities. They noted that no members of Mexican communities participated in focus group meetings and that no information had been communicated to them. To date, the USACE has failed to respond to such concerns.

EPA's role in this regard could serve to improve border issues by supporting community empowerment through education and health development. EPA was also urged to include communities in its decision-making by actively seeking their input, instead of imposing unilaterally determined solutions.

## **6. Indigenous People and Border Justice**

Participants included tribal citizens, representatives from tribal communities including the Mojave Elders Group, and the EPA staff working at tribal levels. The group highlighted the environmental injustices occurring within the border region and the impacts on all. Three firm recommendations were agreed upon:

- Increase community participation and communication at the local level. Community members should be involved in policy issues that affect them. More effective communication at the local level must be established. Direct communication links must also be established between the Mexican Government and EPA Region 9 in order to increase effective dialogues. Redefinition and modification of public participation for the upcoming Border XXI planning process is essential.
- Tribes in Region 9 should meet with California Governor Gray Davis. Felicia Marcus (EPA) agreed to request a meeting with the tribes living in Region 9 with Governor Davis and to provide a written copy of the request to the tribes.

- Include the Colorado River Watershed/Delta as part of the Border XXI program. Tribal people living along the Colorado River outside the 100 km definition of the border zone, as defined by Border XXI, are affected by border contamination. However, since these tribes are outside of the 100 km zone, they are not protected by nor benefit from Border XXI legislation and funds. Inclusion of this region through a watershed approach would better address their needs.

### *Topic-specific Discussion*

Waste Dumps on Indigenous Borderlands. Participants referred to the disproportionate number of environmental justice cases affecting tribal lands throughout the session. Historically, tribal lands have been adversely affected by low economic growth and lack of political influence. The radioactive Waste Dump in New Mexico (WIPP), the petroleum contaminated soil releases at the Cahuilla Indian Reservation, and widespread pesticide contamination on Mexican farmlands exemplify this phenomenon. Participants agreed that all these issues need attention and deserve a response not only because of the destruction of the land, but because of the effects these practices have on public health. Participants discussed studies associating children's health and environmental contamination and, in particular, a study on the increased number of children with learning disabilities in Mexico affected by the toxic unloading. Alberto Saldamando, in summary, said, "Areas of national sacrifice tend to be Indian land. In the name of development, people lose their rights. People are in great distress."

Impacts of NAFTA on the Environment. With liberalized and increased trade across the border, participants feared a race to the bottom with regard to environmental standards as well as an increase in environmental injustice. Thus, the U.S. economy might emulate Mexico by creating pressures to lower labor, land, resource costs and to relax regulations, resulting in further exploitation of the border region. The participants discussed the functions of the U.S.-Mexico border, suggesting that it does not serve to keep U.S. companies out of Mexico, nor contamination in Mexico out of the U.S.; rather, it serves as an artificial divide for the creation and maintenance of environmental injustice.

Tribal Sacred Sites. One participant recounted an incident in which the U.S. Government decided to measure the spirituality of the land at Ward Valley, California. According to the participant, the government representative surveyed each person as to how many times he or she prayed on the land in an attempt to quantify the sacredness of the land. Such efforts are bound to be unsuccessful in creating a measurable unit of sacredness of the land. Drawing on this experience, the participants identified as essential a new relationship with the government; one in which both parties understand and respect one another.

Bad Actor Law. Participants expressed outrage at the fact that Alco Pacifico and similar companies have been allowed to relocate operations "time and time again" and continue to destroy the environment and harm people's health. Participants agreed that the EPA should stop companies that have a history of environmental injustice and not allow them to do it again. "Three strikes and you're out!" they urged.

Conclusions. Many common themes kept reappearing throughout the discussion, such as the inadequacies of the Border XXI 100 km zone definition, lack of indigenous representation, and the need for effective legislation to reflect indigenous peoples' values. Participants described the ensuing environmental destruction on the border as affecting not only the people living within the 100 km zone but a much larger area. Moreover, areas on both sides of the border need to be addressed in the same manner.

These preceding recommendations could not address all the issues discussed during the session, and participants agreed to defer discussion of the following issues to a subsequent meeting:

- Contaminants, water quality and resource protection
- Children's health
- Border XXI Process
- EPA commitment to apply Presidential Executive Orders regarding government-to-government relations with tribes to all its international programs
- Application of all Executive Orders regarding tribal people to international programs
- Bad Actor Law

## **7. Border Communities and Public Participation**

Border communities represent a diverse group of people, history, culture, language, and socio-economic status. However, they also share much in common with regard to the economic, political and environmental challenges of the border, including the adverse effects of water pollution, hazardous waste, health concerns, labor, migration, and indigenous issues. Four issues have been of particular concern to such communities:

- 1) the need for greater community participation in planning and decision-making processes;
- 2) the need for improved environmental education and training programs to help communities prevent problems or address them by themselves;
- 3) the need for greater accessibility and availability of information in both English and Spanish; and
- 4) resolution of cross-border politics and jurisdictional issues.

### *Public Participation*

Among the most effective ways to begin the process of resolving border environmental justice issues would be to increase community involvement in decision-making process. The failure to do just that has been especially remarkable with regard to border environment planning under the Border XXI Program, since ensuring public involvement is one of its three primary strategies. Transparency and openness of policy planning at the border may have significantly improved over the years. However, without the actual ability of communities, in particular environmental justice communities, to influence such activities, such transparency has little

meaning. The lack of involvement by environmental justice communities is a key failing of the Border XXI program to-date and will need to be addressed.

Public participation problems have also arisen in other environmental programs. For example, the Baja Agua project, a program intended by EPA to provide water quality infrastructure for the Río Bravo has been criticized for not including affected communities.<sup>72</sup> This failure undermined the program's implementation and led to resistance from the very people it sought to help. Similar public participation problems also occurred in the context of siting the Sierra Blanca nuclear waste dump in Texas<sup>73</sup> as well as issues in Tucson, Arizona.<sup>74</sup>

To be successful, public participation must occur at the earliest stages possible, before commitments are made that may have adverse effects. Community input must be substantively taken into account rather than discarded. A solid dialogue between border communities and government agencies from both sides of the border can facilitate a candid and cooperative relationship beneficial to all parties. Even if not every community concern can be addressed by government agencies, a constructive dialogue can foster an atmosphere of respect that can result in progress towards solving other issues. Models for such efforts have been set out in the *Model Plan for Public Participation* prepared by the National Environmental Justice Advisory Council (1996).

### *Environmental Education and Training*

Environmental education programs help empower communities to address many issues themselves. For example, proper training on the use of chemicals, pesticides, and other toxics can prevent many illnesses and contamination problems. Training on the proper use of safe water handling and transportation can also prevent water-borne illnesses.

Mr. Che Lopez of Southwest Public Workers Union urged that youth be integrated into the decision-making process since they are more vulnerable to the impacts of contamination and pollution. He requested that the EPA financially support youth to educate other youth about issues related to environmental and economic justice.

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<sup>72</sup> See Oscar Romo's comments *infra* Appendix B pp. 12-13 (noting the community participation problems, particularly that all communication occurs between Washington, D.C. and Mexico City, leaving little room for public involvement).

<sup>73</sup> See Richard Boren's comments *infra* Appendix B p. 4. Allegedly, the State opposed educating Latinos about it out of fear of their opposition. In addition, the Texas Natural Resources Conservation Commission failed to provide a Spanish translation of the environmental impact assessment, limited community participation where possible, and refused to hold hearings altogether. Finally, when the EPA held a public comment period in El Paso, TX regarding the Border XXI plan, most of the comments made concerned the Sierra Blanca Dump, yet not one sentence in the Border XXI plan covered the dump.

<sup>74</sup> See Rose Augustine's comments *infra* Appendix B p. 5. Input from communities on a lengthy environmental document prepared by federal agencies was not solicited until they were asked to provide comment within 30 days. This was far too short a time in which to comment on such a large document. Communities need legal, financial, and other assistance in order to fully present their concerns and desires with agency plans.

## *Language Accessibility*

Lack of availability of environmental information in Spanish has not only been a significant barrier to community participation in environmental planning and decision-making, but also a more general impediment to appropriately protecting border communities. Not only are non-English-speaking residents unable to review environmental documents or health and safety regulations, but they also cannot understand warning and danger signs, pesticide labels, or notices about environmental hazards.

Some private efforts, such as that of Mr. Gabriel J. Cano of the National Safety Council, have sought to address this problem. Mr. Cano's organization, the National Latino Lead Education Program, has been engaged in educating Latino communities about prevention of lead poisoning. He reported that the program features a 30-second video, a week-long series of public service announcements for radio, reference sources for Internet web sites, and posters for distribution in Spanish, which are also featured on buses in big cities.

However, such private efforts are not enough. While information in English is available on the Internet, such information is usually not simultaneously available in Spanish. The EPA was urged to devote more resources to providing Spanish-language versions of its resources, such as Right-to-Know laws and the toxic effects of chemicals. Such information should also include EPA programs, EPA data on hazardous waste transportation and violations, health data on both sides of the border, health study reports, and other pertinent information that would help communities and groups gain a better understanding of what government agencies are doing in the border region. Health and waste violation information can provide valuable insights for communities and groups which could aid them in holding politicians accountable for health and environmental problems, as well as the polluters. Such efforts should also include the creation of a list of communities in need of such information and resources and the assembly of a panel made up of affected communities along the border to determine specific informational needs.<sup>75</sup>

## Cross-Border Politics of Environmental Regulation and Enforcement

Finally, problems of regulatory and enforcement jurisdiction, along with border politics, are also in need of resolution. While laws and sanctions against polluters and law violators must be strengthened, effective enforcement must come first. The EPA must work more closely with its Mexican counter-parts and take a proactive role in assuring that they address environmental justice issues in as determined a manner as possible.

### **D. Roundtable Recommendations Synopsis**

The full and unedited list of Roundtable recommendations can be found in Appendix C, as part of the Extended Meeting Summaries. The synopsis of the community recommendations here has been re-organized along thematic groupings and has been shortened and edited. In addition, Roundtable participants issued several key consensus recommendations for EPA. These are set out below.

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<sup>75</sup> See Adrian Boutoureira's comments *infra* Appendix B p. 7.

## Key Roundtable Recommendations for EPA

- Develop an Environmental Justice Commission on the U.S.-Mexico Border, 75 percent of whose members should be community-based environmental justice organizations
- Commit to a response to the tribal people as to EPA's capabilities
- Address every issue/recommendation discussed with a list of those that will be committed to and recommend methods for handling the remaining topics
- Distribute this information more effectively at the local level
- Address these issues directly rather than responding through the NEJAC
- Commit to total cleanup of the Candados Prestos, Ciudad, Juarez, Mexico and Metales y Derivados, Tijuana, Mexico sites, as well as a site assessment of the Gato Negro site located outside Matamoros, Mexico.

### Environmental Justice Community Participants Recommendations

(A full and unedited listing can be found in Appendix C as part of the conference summaries.)

#### 1. Public participation

##### 1a. Environmental Justice Community Involvement in Decision-making and Planning

- Ensure that next round of the Border XXI Plan incorporates citizens' voice and concerns.
- Improve outreach efforts in lower income, rural, and unincorporated areas by EPA and other federal agencies
- Utilize communities more heavily as informational resources in identifying violators and in determining regulations in need of improvement
- Provide grant assistance for community coalition building as precedents for further cooperative efforts.
- Establish a community liaison position within EPA for border environmental justice communities.

##### 1b. Accessibility and Dissemination of Information/Environmental Education

- Make all EPA information available in Spanish.
- Develop understandable, "community-friendly" guidelines explaining requirements for Title VI complaints.
- Establish an EPA office in Mexico near the border.
- Provide a list of all available EPA documents and how to gain access to them.
- Engage in more outreach, tours, and conferences for local leadership, other agencies, and school boards.

#### 2. Beyond Water Infrastructure Development: Broadening Environmental Protection Programs at the Border

##### 2a. Community Health

- Integrate public health and environmental protection and encourage more cooperation in this regard.
- Emphasize public health in the development of environmental standards, rather than economic ramifications.
- Develop bi-national environmental health funding and monitoring.
- Improve bi-national health care.
- Encourage border environmental health research that is responsive to the public.
- Develop environmental monitoring plans that consider and monitor probable paths of exposure and include multiple exposures (i.e. home, workplace, schools, etc.) and test for multiple chemicals.
- Improve the public dissemination of environmental health information.

##### 2b. Strengthening Enforcement

- Investigate and address Title VI civil rights complaints regarding permitting of hazardous waste facilities instead of rejecting them.

- Enforce a Bad Actor Law to keep known polluters from repeatedly polluting, take past history of a company into account in enforcement actions, and seek enactment of effective legislation and enforce it.
- Increase authority of NAFTA-related institutions such as the CEC and Labor Commission to enforce and levy sanctions.
- Address environmental justice and maquiladora issues in the entire country, not just in border regions.

### **3. Strengthening Cross-border Environmental Enforcement and Coordination**

- Do not allow operation of any maquiladoras in Mexico that leave the U.S. because they have not complied with U.S. laws and standards.
- Ensure that maquiladoras transport wastes back to the country of origin.
- Ensure that maquiladoras adhere to environmental protection laws of their countries of origin, or whichever are more stringent.
- Ensure that actions taken on the U.S. side of the border are also taken on the Mexican side of the border.

### **4. Strengthening Tribal Participation in Decision-making**

- Apply a holistic approach to Border XXI that is consistent with indigenous peoples values, including social, political, economic, environmental and cultural considerations.
- Apply all Presidential Executive Orders related to tribal people to international programs.
- Include indigenous representatives from each nation in Border XXI and other bi-national policymaking programs.

## **5. Communities and Environmental Justice: Fulfilling the Promise of Sustainable Development**

### **5a. Integrating Social Impacts with Environmental Protection**

- Review NAFTA and its side agreements/institutions with respect to labor, transportation, agricultural, environmental, and human rights issues.
- Consider broader social and economic consequences for communities, including the social makeup of those who are benefited, when considering the border and environmental justice.
- Develop links to other agencies through more aggressive implementation of sustainable development principles.
- Create a just transition program for all affected parties, such as workers and communities, as equal players.
- Invest in human capital with a 10-20 year outlook and ensure that models for development are bi-nationally based.

### **5b. Labor Justice and Immigration**

- Prohibit the Bracero program in the United States to ensure the protection of farmworkers.
- Require maquiladoras to guarantee salary scales similar to those of their country of origin.
- Guarantee the right of workers to organize in the United States and Mexico.
- Use a bi-national approach to immigration and the environment.

## **6. Remediation of Sites on both Sides of the Border: Site-Specific Issues**

- Facilitate a meeting between the Environmental Health Coalition and the Navy for an equal and fair exchange of information regarding nuclear homeport plans for the San Diego Naval Station.
- Perform a health study in Anapra, Chihuahua, where 55-gallon drums previously used as toxic waste drums are now being used for domestic water storage by the local people.
- Prevent ASARCO from being opened and address contamination-related health issues of local children by conducting studies, evaluating environmental risks and informing and educating the local communities.
- Close the WIPP program in New Mexico and resume its investigation despite DOE pressure to stop.
- Close the dump in Sunland Park, New Mexico.
- Renegotiate and reevaluate water rights in Valle de Juarez, Mexico to ensure that irrigation waters are sufficient and clean enough to meet the needs of the local farmers, as irrigation waters are currently heavily contaminated by maquiladoras in the area.

- Examine involvement of NADBank and BECC in the primary treatment plant in Valle de Juarez and challenge the current plan to spread the plant sludge in Valle de Juarez as fertilizer.
- Reconsider and revise plans to clean up the Rio Grande/Rio Bravo, since prior studies were conducted during high flow season and cannot be considered representative.
- Remediate the CYTRAR site completely with regard to heavy metal contamination and return the full volume of wastes to the U.S.

## **7. Recommendations Directed at Border Communities Themselves**

- Community activists need to acknowledge that measuring progress takes time. Engagement between the agencies and communities should grow. We need to build mechanisms for more open participation in the short and long term.
- Through congressional representatives and community activism help support the EPA efforts to build projects in Mexico.
- Build coalitions among environmental justice groups that include community organizations, labor unions, local authorities, federal and state agencies, and business groups. The myth that business and industry are enemies must be broken.
- Improve involvement by African-American communities in border organizing efforts.

### **III. The Future of Environmental Justice at the Border**

#### **A. Preliminary Outcomes**

##### **1. Allowing Communities to Speak for Themselves and Educating Government Officials**

The Roundtable was an unqualified success in regards to its goals of: 1) providing border communities an opportunity to raise problems and concerns of importance to them about environmental justice issues and 2) educating federal, state, and local government officials on the U.S. as well as Mexican side about the specific problems and concerns of the environmental justice communities at the border. In attendance were many border community representatives and leaders as well as high-level EPA officials, including Assistant Administrators and Regional Administrators. Many staff members of other federal agencies, border institutions such as the BECC, NADBank, and CEC, state and local officials, and several Mexican government officials of SEMARNAP and PROFEPA participated as well. Communication and mutual education were far ranging and in-depth, as the descriptions of the proceedings show. As a result, the Roundtable constituted an unprecedented opportunity for border communities to make their case with regard to issues of concern.

It was also apparent that the Roundtable presentations and discussions were very valuable in educating officials of government agencies and border institutions about the needs and concerns of environmental justice communities. As Deputy Assistant Administrative Alan Hecht noted, the tour of “environmental justice areas was an excellent opportunity to see first-hand areas of particular concern to communities.” At the same time, the Roundtable also provided a valuable opportunity for border community representative to gain a better understanding of EPA programs and resources and to initiate contacts with relevant agency staff to bring their concerns more readily to bear on government actions.

##### **2. Initiating Ongoing Participatory, Cooperative, and Inclusive Processes**

The Roundtable also set as a goal the formal initiation of ongoing participatory, cooperative and inclusive processes among diverse stakeholders to address international environmental justice issues at the U.S.-Mexico border and to lay the groundwork for an environmental justice strategic work plan for the border, specifically Regions 6 and 9 of the EPA. EPA officials, such as Regional Administrators Felicia Marcus and Gregg Cooke, made commitments to engage the border environmental justice communities more deeply in their work at the border were encouraging. For example, EPA Region 9 Administrator Felicia Marcus indicated that she was at the Roundtable “to share progress and listen to see how [EPA] can do a better job. . . . We need your support to help us figure out how to do it.” The outcomes in this regard have been less clear. This issue is discussed further below.

### 3. Specific Roundtable Objectives

The International Subcommittee also hoped to accomplish a number of specific objectives through the Roundtable. Many have been directly addressed by the work of the participants at the Roundtable and the recommendations that were crafted as a result. These policy and site-specific recommendations are addressed further below.

- *Defining and tracing the evolution of national and international environmental justice issues*

These issues were discussed by participants and are set out in this report.

- *Identifying environmental justice issues on the border (i.e., colonias, water/sanitation, commercial development, site clean-up, international laws that cause impacts or alleviate environmental justice issues, etc.)*

These issues were discussed and identified during the Roundtable and are set out in Section II.

- *Providing an overview of domestic and bi-national border programs (federal, state, and local, as well as non-governmental, academic, etc.) and exploring ways to address environmental justice concerns through these existing programs or processes*

EPA staff and Mexican environmental officials provided important overviews of programs related to border environmental justice issues. They are described in section I of this report as well as in the Roundtable proceedings set out in Appendix B.

- *Developing environmental justice border policies, acquiring resources, and implementing strategies that ensure that impacted communities, local initiatives, and populations are included in regional growth plans addressing economic, environmental, and equity issues for the border*

The Roundtable participants discussed such issues. Recommendations of the border community participants in this regard are set out in full detail in Appendix B as well as in summary form in section II.

- *Identifying existing enforcement and cleanup processes to address environmental justice issues.*

The recommendations of the border community participants in this regard are set out in section II.

- *Focus on the education of ALL participants (for example, discuss case studies, present an overview of environmental activities along the border, provide answers to commonly asked questions, conduct a tour of local sites, among others).*

The Roundtable served an invaluable educational function for all Roundtable participants, both border communities as well as government officials.

- *Review the effectiveness of existing community involvement opportunities and develop recommendations for improvement (for example, community monitoring)*

The recommendations of the border community participants are set out in Appendix B and in summary form in section II.

- *Identify new opportunities for communities to participate in border activities and develop recommendations*

The recommendations in this regard are set out in Appendix B and in summary form in section II.

#### **4. EPA Reactions and 30-Day Response Letter**

It is encouraging to note that within thirty days of the conclusion of the Roundtable, EPA sought to provide responses to many of the issues and recommendations of the border community participants (see *30-Day Response*, Appendix D). It attempts to answer many of the questions posed by the Roundtable participants and to initiate a process of dialogue about more substantive issues. However, many issues remain unresolved, including the Roundtable participants' most important recommendation for the creation of a border environmental justice commission.

In 2002, EPA held a series of six further roundtable meetings throughout the border region to allow communities to provide input to the development of a new U.S.-Mexico border Environment Program. These efforts are encouraging, and appear to evidence stronger commitment to addressing the larger issues embodied within the border community recommendations. However, genuine progress toward environmental justice at the border cannot stop with these efforts, and more remains to be done.

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It is clear that the Border Roundtable was in itself a successful event and unprecedented in its effort to bring a wide-range of stakeholders in environmental justice at the border together. Yet, full success can only be judged by the passage of time and the federal governments actions in meeting its obligations to the border communities. EPA's follow-up in seeking more community input in the formulation of the new Border Plan is encouraging. However, the changes in process will also have to be reflected in changes in policy and programmatic actions. The border communities await those changes.

## **B. Next Steps: What Must Be Done**

The broad themes that we have used to organize the issues above are *makeshift* and overlap significantly. Even if they are necessary as a matter of practical reality, categories are ultimately artificial in their attempt to abstract particular problems from their larger social, historical and ecological context within which they are embedded. The environmental justice issues raised by the border communities defy easy categorization as either Mexican or U.S. responsibilities, as environmental or health or social problems, or as substantive versus procedural issues.

Solutions to environmental degradation and public health risks from maquiladora industry pollution and uncontrolled growth at the border cannot be found without addressing the underlying poverty and social conditions that give rise to these problems in the first place. Employment discrimination and poor labor conditions in maquiladora plants are frequently closely tied to issues of community and worker health. Water pollution and uncontrolled growth on the border (both residential and industrial) are part and parcel of issues of poverty and unemployment.

These difficulties reinforce a central point about the application of sustainable development concepts at the border – that humans are part of the environment and that addressing social conditions is crucial to any viable plan to achieve sustainable development at the border. After all, sustainable development is as much about people as it is about the ecological system. Excluding human and social concerns from environmental planning for the border region is no less arbitrary from a sustainable development perspective than is dividing the border environment into U.S. and Mexican portions from a purely ecological perspective. If EPA is serious about achieving sustainable development in the border region, ecological problems cannot be arbitrarily separated from other social problems faced by border communities.

That does not mean that EPA need ultimately attempt to solve all of the social problems that are connected to ecological and public health issues in the border region. But its responsibilities, if taken seriously, are considerably greater than narrowly addressing ecological and pollution-related public health issues. Nor is it enough for EPA to engage in a clerk-like performance of its broader obligations to the border communities by simply passing community complaints that are deemed non-environmental to other, unresponsive agencies within the federal government.

If EPA's commitment to sustainable development at the border is genuine, its commitment to environmental justice there must be as unflagging as its commitment to ecological concerns. Its concern with the welfare of minority populations and the poor must be as great as with the welfare of the rest of the population. Ultimately, this may mean that it must take responsibility for and actively serve as a catalyst in ensuring that other agencies are fulfilling their responsibilities to the border communities and that, together as a whole, the federal government is achieving environmental justice for all. While such a role might sound daunting, it is no different from efforts it has undertaken to solve other complex environmental

problems, such as air pollution, transportation policy, and urban sprawl. EPA's duties are little different from the responsibility that the federal government as a whole has to its people – to ensure and promote their welfare. Failure by some agencies and parts of the government to act in this fashion does not excuse knowing inaction by others.

The important question that we are left with is what should be done going forward and how it can be accomplished. Given that many of the communities' recommendations have already been set out above and in the appendix, it would be redundant for this Report to repeat them here. However, it is worthwhile for us to relate the necessary steps to achieve environmental justice at the border into the context of EPA's more general programmatic activities and existing border institutions.

## **1. Improving Public participation**

### **a. Community Capacity Building**

#### *A Border Community-Based Environmental Justice Commission*

The most important environmental justice issue at the border is community access to and involvement in government planning and decision-making about the border environment. In this regard, following the communities' recommendation to create a border community-based environmental justice commission would be a key step to improving public participation problems. The purpose of such a border environmental justice commission would facilitate communication between communities and EPA by creating a direct and standing source of information about community concerns. It would also provide a more direct access point for communities to provide input into ongoing decision-making processes.

The NEJAC, and in particular the International Subcommittee, has fulfilled some of these functions in the past. But as a logistical matter, a nationally derived and Washington, DC-based advisory committee cannot perform such functions as effectively as a regionally based environmental justice commission. Given the significant regulatory planning and decision-making that has occurred in the context of various border institutions and EPA's Border XXI programmatic efforts, continuous and close involvement by those with direct personal experience and knowledge of border environmental justice problems is indispensable. The creation of a border environmental justice commission is thus an important and necessary next step.

#### *Removing Language Obstacles*

Language barriers are naturally part and parcel of public participation issues. Yet, they have more wide-ranging consequences with regard to environmental justice. Language barriers make meaningful use of environmental information disseminated by governmental agencies or border institutions impossible. EPA and other institutions have made progress on this issue, issuing documents in Spanish and thus making them more accessible to the Latino population in the border region. However, to eliminate language barriers in a broader and more effective fashion, translation should reach beyond official government reports and include other

environmental information, including submissions of industry information, such as Toxic Release Inventory data.

### *Environmental Disclosures by Maquiladora Industries*

Maquiladora industries operating on the U.S. side of the border are subject to public disclosure requirements under the Emergency Planning and Community Right-To-Know-Act.<sup>76</sup> However, such requirements do not apply to their counterparts on the Mexican side. Disclosure of such information would ultimately allow communities to protect themselves much better than they can now. It would also prevent polluters from hiding from public scrutiny and criticism behind a veil of secrecy.

Achieving such disclosure is surely not easy, as it will require changes in Mexican law. Yet, it is also one of the most worthwhile legal changes in Mexican law to seek, given that it will present significantly fewer issues of implementation and enforcement than changes that seek to impose more substantive regulatory burdens. Most importantly, public disclosure requirements allow communities to better utilize more informal pressures and the markets to improve the environmental conduct of polluters.

### *Environmental Education*

Finally, improving public participation cannot occur without efforts to increase the awareness and knowledge of communities about environmental and public health issues. Complementing public disclosure requirements, environmental education efforts allow communities to help themselves by recruiting them into efforts to identify, recognize, and solve environmental problems or issues of non-compliance.

## **b. Reform of Government Programmatic Priorities and International Institutions**

In spite of the importance of improving public participation, such efforts are unlikely to succeed if they are not accompanied by the reform of government programs and institutions.

### *Border XXI*

The problem of public participation here is reflected in the recently released progress report on Border XXI, *U.S.-Mexico Border XXI Program: Progress Report 1996-2000* (Border XXI Progress Report). The Border XXI report acknowledges the importance of environmental justice. It specifically identifies concerns about environmental justice at the border (pp. 15-16) as part of its efforts to “Decentralizing Environmental Management Through Local Capacity Building.” While its recommendations do address issues of capacity building of border tribes as one means of such decentralization efforts, it is telling in many respect that it makes no specific recommendation as to how better to bring about environmental justice in the border region.

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<sup>76</sup> 42 U.S.C. § 11001, 11044(a) (1986).

There seems to be one rather obvious means of addressing such issues – creation of a working group, commission (as border communities recommended) or other body designed to focus directly on environmental justice issues. Such a body could bring much needed attention to opportunities in how existing government agency and border institutions can incorporate environmental justice community concerns into their operations and planning. The lack of such a public involvement workgroup among the nine existing workgroups seems a glaring omission.

Creation of such a body would re-affirm EPA's commitment to environmental justice. It would also constitute an explicit recognition that industry, traditional environmental organization, and state and local governments, whose interests appear to have been much better represented in the existing work of the Border XXI workgroups, frequently do not adequately represent the interests of environmental justice communities – a reality that environmental justice advocates have known for a long time.<sup>77</sup>

Finally, it could serve as a conduit for the interests and concerns of border environmental justice communities not just in the U.S. but also in Mexico. The ultimate result might be to spur the Mexican government into addressing the environmental justice issues in a more serious and committed fashion.

#### *EPA Regions 6 and 9*

EPA Regions 6 & 9 should continue their efforts regarding outreach and consultation with border communities. The efforts that have recently been made by these Regions in holding public listening sessions with border communities are to be commended. They speak well of their overall efforts and commitments to the border communities. However, it should be noted that efforts at increasing and maintaining community involvement in EPA's decision-making processes must continue and should particularly include earlier and frequent consultations with the communities.

#### *U.S.-Mexico Border Institutions: Border Environment Cooperation Commission (BECC) and North American Development Bank (NADBank)*

Like other international institutions, the BECC and the NADBank are largely inaccessible and have generally been unresponsive to communities. Their processes still effectively preclude access and participation by poor and minority citizens. Achieving greater transparency of these institutions, especially in regard to their decision-making processes, and providing for improved opportunities for community input and influence of such decisions, remains a key issue with them.

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<sup>77</sup> For example, an examination of the participants of Border Institute I, a conference convened in December 1999 in Arizona to engage in policy discussions about the future of the U.S.-Mexico Border and co-sponsored by EPA, was overwhelmingly made up of state, local, and federal government officials, staff from border institutions, industry representatives and academics. See *The U.S.-Mexico Border Environment: A Road Map to Sustainable 2020*, Southwest Center for Environmental Research and Policy 19 (1999).

In a sense, as organizations created to benefit the bi-national region of the U.S. and Mexico and as creations of governments that should be accountable to the people of that region, such international institutions should also be equally accountable to the border communities. Their obligation should be to ensure that the voices and concerns of those who live and work at the border are adequately incorporated into institutional decision-making. Clearly, that has not occurred. Unless they become more responsive to community needs, as expressed by the communities themselves, the BECC and NADBank will remain tools of foreign and industrial development policy of Washington, DC and Mexico City rather than providers of critical services to communities.

*The North American Agreement on Environmental Cooperation (NAAEC) and the Commission for Environmental Cooperation (CEC)*

Unlike the BECC and the NADBank, the CEC appears to have been more accessible to private citizens and NGOs. However, that has largely not been true for communities seeking to advance environmental justice issues. U.S.-Mexico border community representation on the Joint Public Advisory Commission (JPAC) and the National Advisory Commission (NAC) remains minimal or non-existent. Moreover, since its inception almost ten years ago, the CEC has yet to focus on issues of environmental justice in the voluminous reports it has issued since then. Taking up such a project would provide much-needed balance to the CEC's work and focus some of its work on issues of direct relevance to communities affected by the dislocative effects of NAFTA.<sup>78</sup>

The NAAEC's article 14 & 15 citizen submission and factual record development process has become a significant avenue for environmental and community groups to raise attention to failures of the parties to effectively enforce their environmental laws. In particular, with regard to the Metales y Derivados site in Tijuana, Mexico, community use of the citizen submission process resulted in a factual record that documented a significant enforcement failure by the Mexican government. Unfortunately, action has yet to be taken by any of the governments on these findings. No government has acted on its power to address Mexico's non-compliance through bilateral dispute resolution proceedings. In fact, of a total of 34 citizen submissions filed since the establishment of the process in 1995, approximately two-thirds of the submissions have been dismissed without the development of factual records. Three factual records have been developed, yet *no government has ever sought to pursue such instances through formal dispute resolution procedures, as provided for by the NAAEC. Thus, no government has ever attempted to bring the offending government into compliance with its obligations under the NAAEC.* The effect has been that the complaining citizens and NGOs have been left largely without redress.

If that does not in itself appear troubling, it should be when this lack of remedies is compared to NAFTA's chapter 11 investor protection provisions. Chapter 11 has allowed foreign business investors to bring claims against NAFTA parties for activities intended to

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<sup>78</sup> The CEC appears to have begun considering environmental justice issues among its priorities only very recently, for example by extending small grants to San Diego's Environmental Health Coalition, which has been engaged in various environmental justice work at the border.

protect the environment and human health. Thus, NAFTA has brought a system of improved protections for free trade, business, and investors, but it has left adversely affected communities behind. The improvement of protections and remedies for such communities must become a key priority for the CEC if it is to play a greater role and retain relevance in the life of border environmental justice communities.

## **2. Beyond Water Issues: Broadening Environmental Protection Programs at the Border**

Increased responsiveness of EPA and border institution to environmental justice issues will mean in large part the broadening of regulatory attention and programmatic activities from a primary focus on water issues to hazardous waste, community health, and other related environmental justice concerns. Border XXI may accommodate many of these demands within its existing programs. However, a true response will mean doing more than putting old goods into new packaging; it will require re-direction of resources and programmatic priorities.

## **3. Strengthening Cross-border Environmental Enforcement and Coordination**

The Metales y Derivados matter has demonstrated that cross-border environmental enforcement and coordination still needs to be strengthened considerably. That includes both efforts at enforcement information exchange and communication and more diligent efforts in bringing about enforcement actions. Especially where a polluter or pollution victims are within the jurisdiction of U.S. federal government authorities, EPA and other federal agencies have an independent responsibility to the communities to ensure that the polluter is held accountable. That may mean raising such issues to higher levels within the Mexican government and exercising all available influence when Mexican officials are unable or unwilling to bring their own enforcement actions. Ultimately, environmental protection and community protection concerns should not continue to be subordinated to economic development, free trade, and other foreign policy objectives the way they have in the past.

Strengthened cross-border enforcement efforts will also mean improved control over maquiladora industries on both sides of the border, as well as improvements in and greater consistency in enforcement and application of regulatory standards on both sides of the border.

## **4. Strengthening Tribal Government Capacity**

As in other parts of the country, tribal governments' capacity to address environmental justice issues on their own remains one of the most pressing environmental justice issues with regard to indigenous peoples. More resources must be devoted to helping tribal governments help themselves. At the same time, it can also not be ignored that many issues faced by tribal governments parallel those faced by environmental justice communities more generally, especially issues involving early and substantial involvement of tribes in environmental decision-making.

## **5. Communities and Environmental Justice: Fulfilling the Promise of Sustainable Development**

Border XXI's focus on sustainable development at the border has important implications for environmental justice communities. If the goal of sustainable development at the border is taken seriously, it will require programmatic and regulatory efforts to expand in focus beyond pure ecological and pollution issues. True sustainable development will achieve broader notions of environmental justice that relate labor justice and other social justice concerns to the problems of free trade and the environment. It will require more substantive regulatory recognition of the close connection between ecological and social issues and the interconnected impacts of economic development and free trade on social and environmental issues.

Just as environmental costs should be internalized or otherwise addressed by government, so should social dislocation and other externalities. In the end, EPA and the border institutions will have to take a broader view of environmental justice than just to consider pollution control and the public health issues they raise.

## **6. Remediating Sites on both Sides of the Border: Site-Specific Issues**

Finally, it will not be enough for EPA and other institutions to engage in high-level and abstract policy formulation and program development. Following through with environmental justice problems means also following through with regard to specific issues impacting communities. Frequently, it is the very difficulty or inability to obtain redress for their complaints that is characteristic of the plight of environmental justice communities. Remedies for the discriminatory treatment experienced by marginalized groups, whether racial or ethnic minorities or the poor, must include substantive relief for their complaints on site-specific issues. Thus, abstract policy development cannot substitute for concrete actions related to specific sites and communities.

## Conclusion

This report has sought to act as a guide to environmental justice issues at the border both through the eyes of the NEJAC International Subcommittee as well as the broader views expressed by the border communities at the Roundtable. It is also a response to the challenge issued by then-Deputy Regional Administrator Jerry Clifford to the International Subcommittee and the border communities: transcend site-specific concerns and formulate environmental justice in a larger policy context and through prospective policy recommendations. The report's recommendations seek to do just that -- connect community needs and recommendations to existing EPA programs and environmental institutions.

Yet, there is also a reciprocal challenge that EPA must face up to. Just as a public policy dialogue about environmental justice may require the communities to present and explain their issues to the best of their abilities and in good faith, there is also an obligation for EPA to make genuine efforts to understand these concerns through the eyes of the communities. Dismissing such concerns just because the issues are difficult to understand or to incorporate into existing policies and programs is an abdication of responsibility. EPA has an affirmative obligation to take community concerns seriously. As in any dialogue, the participants must meet each other part of the way.

The success of the Border Roundtable in bringing together a wide range of border environmental justice stakeholders is an important milestone in this dialogue. However, simply conducting a dialogue cannot in itself be enough. Further progress and work on environmental justice issues is necessary, as is a renewed commitment by EPA to such issues at the border. Ultimately, EPA's environmental justice work cannot be merely a public relations or communications strategy for border communities. Substantive understanding and action must back up public announcements of sympathy and words of understanding. Only through further acts of engaging border communities more closely in decision-making processes and in concretely addressing their substantive concerns that EPA's true commitment to the border communities and to a genuine realization of sustainable development in the border region will be proven.

## **Appendix A --- Agenda of the Border Roundtable**

Agenda

*Thursday, August 19, 1999*

### **Public Comment Period**

**7:00 p.m. – 9:00 p.m.**  
**Holiday Inn Terrace Ballroom**

This session features an open dialogue about environmental justice issues on the U.S.-Mexico border.

*Friday, August 20, 1999*

### **Roundtable convenes**

**8:30 a.m.**  
**Holiday Inn Terrace Ballroom**

### **Seventh Generation Singers**

**8:30 a.m. – 8:45 a.m.**

The drum group of this Southern California Indian youth singing group will open the program with several songs, including Bird Singing, a traditional singing of the Kumeyaay Peoples. Ranging in ages from 6 to 12, the singers and drummers are members of several tribes indigenous to the Southern California border region.

### **Welcoming Remarks**

**8:45 a.m. – 9:15 a.m.**

*Arnoldo Garcia*, Chair, National Environmental Justice Advisory Council (NEJAC),  
International Subcommittee

*William Nitze*, Assistant Administrator, U.S. Environmental Protection Agency (EPA), Office of  
International Activities (OIA)

*Jose Bravo*, Co-Chair, Border Justice Campaign, Southwest Network for Environmental and  
Economic Justice

### **EPA Environmental Justice Programs on the Border**

**9:15 a.m. – 10:15 a.m.**

This session features a panel who will provide an overview of EPA programs and activities related to the U.S.-Mexico border. After presentations, participants will have the opportunity to provide comment and ask questions of the panel.

Moderator: *Charles Lee*, Associate Director, EPA Office of Environmental Justice (OEJ)

Panelists: *Steven Herman*, Assistant Administrator, EPA Office of Enforcement and  
Compliance Assurance (OECA)

*Romulu Diaz*, Assistant Administrator, EPA Office of Administration and

Resources Management  
*Alan D. Hecht*, Principal Deputy Assistant Administrator, OIA  
*Jerry Clifford*, Deputy Regional Administrator

**BREAK**

**10:15 a.m. – 10:30 a.m.**

**Overview of EPA Border Programs**

**10:30 a.m. – Noon**  
**Holiday Inn Terrace Ballroom**

This session features representatives of the EPA Region 6 and Region 9 border programs who will provide an overview of current border program activities and plans to integrate environmental justice into its work plans. After brief presentations, participants will have an opportunity to provide comment and ask questions of the panel.

**LUNCH**

**Noon - 1:45 p.m.**  
**Holiday Inn Terrace Ballroom**

Keynote Speakers: *Gregg A. Cooke*, Regional Administrator, EPA Region 6  
*Felicia Marcus*, Regional Administrator, EPA Region 9  
*Diane Takvorian*, Executive Director, Environmental Health Coalition  
*Richard Moore*, Coordinator, Southwest Network for Environmental and Economic Justice

**Concurrent Work Group Sessions**

**2:00 p.m. – 5:30 p.m.**  
**Radisson Suites**

These sessions feature dialogues on specific issues related to environmental justice on the border. Led by a moderator, each session will include resource panelists who will offer differing perspectives with which to spark open discussion among participants. Facilitators will assist the moderator to ensure that sessions stay on track.

**Environmental Justice and Labor Justice Issues:** This session will explore specific examples of environmental and economic justice issues affecting U.S.-Mexico border region. The purpose of the work group is to provide federal agencies with an overview of these issues to assist them to better define the priorities for grassroots organization.

**Immigration, Trade, and Environment:** This session will include presentations and discussions of environmental justice, human rights, and “free trade,” and environmental protection and their impacts on border communities.

**Indigenous Peoples and Border Justice:** This session will include presentations and discussions that examine environmental justice issues impacting Indigenous Peoples along the U.S.-Mexico border, as well as those Indigenous populations within interior lands that are impacted by trade policies between U.S. and Mexico.

**Environmental Health Along the U.S.-Mexico Border:** This session will focus on a broad spectrum of health issues for residents living in the border region.

**Reception**

**6:00 p.m.  
Radisson Suites**

Remarks: *Martha Valdes*, Environmental Health Coalition of San Diego  
*Alberto Saldamando*, International Indian Treaty Council and member, NEJAC  
International Subcommittee

**Public Comment Period**

**7:00 p.m. – 9:00 p.m.**

This public dialogue is an optional event and will only be held as need arises.

**Saturday, August 21, 1999**

**Roundtable Reconvenes**

**8:30 a.m.  
Radisson Suites**

**Remarks**

**8:30 a.m. – 8:45 a.m.**

The moderator will provide a review of the day's activities and will review the activities for the scheduled day.

Moderator: *Arnoldo Garcia*, NEJAC International Subcommittee

**Reports from Work Groups**

**8:30 a.m. – 10:30 a.m.**

A representative of each work group will describe the recommendations, commitments, and action items discussed during the work group sessions held the previous day. The community members of each work group will select their representative.

**BREAK**

**10:30 a.m. – 10:45 a.m.**

**Reflections and Next Steps**

**10:45 a.m. – Noon**

An opportunity for participants to provide input, ask questions, and discuss the work group sessions.

**Summation and Closure**

**Noon – 12:30 p.m.**

Remarks: *Arnoldo Garcia*, NEJAC International Subcommittee, *William Nitze*, EPA OIA  
*Jose Bravo*, SNEEJ

## **Appendix B Annotated Agenda of the Border Roundtable with Extended Summaries of Sessions**

*Thursday, August 19, 1999*

### **SUMMARY OF FACT-FINDING TOUR**

On Thursday, August 19, 1999 approximately 90 representatives of the U.S. Environmental Protection Agency (EPA) and invited members of border-related community interest groups spent the day on a fact-finding tour of environmental justice areas in the U.S.-Mexico border area. This summary presents a site-by-site overview of the locations visited, as well as related environmental justice concerns and other pertinent issues raised throughout the tour.

Each bus was staffed with a narrator who provided general site-specific history and current information about each location visited. Additional detail about the sites was provided by other knowledgeable individuals or by community and government representatives who boarded the buses at select locations. Video material provided by EPA was viewed between locations to provide tour participants with additional background information about environmental conditions in the border area.

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**Barrio Logan, San Diego, California.** Barrio Logan (translated as the Logan Neighborhood) is located in southeast San Diego and is home to a predominantly Latino community (86 percent), with a growing African-American population (4 percent). According to the Environmental Health Coalition (EHC), a San Diego-based grassroots organization, a 1967 city ordinance prohibited land purchases by people of color in the city, except in Barrio Logan. Barrio Logan is the only area in the city zoned for mixed (industrial and residential) use.

Barrio Logan is home to Chicano Park, a small public park located beneath the super structures of Interstate 5 (I-5). Chicano Park has become a symbol of the community solidarity in Barrio Logan, and local artists have painted brightly colored murals on nearly all of the columns supporting the I-5 overpasses. This artwork recently became the center of a heated debate between the community and the California Department of Transportation (CALTRANS) because an earthquake-retrofitting project threatened destruction of the bridge columns and murals. An agreement was reached, however, and CALTRANS is proceeding with the project without damaging the artwork.

EHC-trained outreach workers or *promotoras* boarded the tour buses at Chicano Park to present information about environmental concerns in the Barrio Logan community. Mixed zoning issues were the focus of their concerns — a number of highly polluting industries are located just steps from residences and schools. The buses toured the neighborhood and drove past several industries, including a chrome plating facility, a chemical storage facility, a shipbuilding yard, and a sweetener manufacturer, all within very close proximity to homes and apartments.

The tour of Barrio Logan concluded with a visit to the pier at Crosby Street Park. The park was constructed in response to nearby residents' requests for access to the bay to fish, but was built on a brownfield site with low-level petroleum contamination. Fishing is prohibited due to contamination in the bay. EHC representatives made a presentation at the park highlighting dismal health and pollution statistics in Barrio Logan.

**Pala Band of Mission Indians, Pala, California.** Mr. Jim Fletcher, Tribal Affairs Coordinator, EPA Region 9 San Diego Border Office, provided introduction to "Luiseño Country" where the Pala Reservation is located, noting that the area is the "avocado capital of the world." He then introduced Mr. Greg Mojado, a representative of the tribe who narrated the tour of the reservation.

Mr. Mojado indicated that the reservation is roughly 12,000 acres in area and houses about half of the 980-member tribe. Environmental concerns on the reservation include the use of pesticides in surrounding avocado groves (and its effect on air and water quality), pollution in the San Luis Rey River (and groundwater), which runs through the area, animal waste from local dairies, and vehicles abandoned as junk. The community also has been fighting the siting of a solid waste landfill in Gregory Canyon, an area named Medicine Rock that is deemed sacred by the tribe.

The group visited the Muro Farm Labor Camp, a housing facility for migrant farm workers. The camp houses 100 to 125 laborers and their family members, and was recently the target of an EPA investigation for water quality violations after a toddler drowned in an open septic pit. EPA investigators found direct sewer discharge in contact with the drinking water supply, and issued an Administrative Order against the property owner. Portable toilets and bottled water were provided to residents in the camp in response to imminent threats to their health.

**Metales y Derivados, Tijuana, Baja California, Mexico.** The tour continued into Mexico to view the severely contaminated former location of a lead battery recycling plant. According to tour narrators, New Frontier Corporation operated Metales y Derivados for 10 (ten) years, then closed the plant without remediating lead-laden soil at the open-air facility. Tour participants walked around the site, which was enclosed by a cement wall placed by Mexico's PROFEPA when the plant was closed in 1994. The tour continued down a dirt path to overlook Colonia Chilpancingo, Tijuana, Mexico, a neighborhood located near the site where residents have reported incidents of infants born with hydroencephaly. At the overlook, PROFEPA officials spoke about their efforts to prevent incidents similar to the Metales y Derivados case from occurring by improving the tracking of hazardous waste between the U.S. and Mexico. They also provided an update about the site, indicating that New Frontier is in the process of requesting a credit line to clean up the site and convert it to an aluminum refinery.

**Alco Pacifico, Tijuana, Baja California, Mexico.** Due to time restrictions, the Alco Pacifico site was not toured. Narrators provided background information about the site and the controversy that continues regarding the handling of remediation waste from the site. According to the narrators, the Alco Pacifico site was abandoned by its U.S.-based parent, RSR Chemetco, which was also responsible for other contaminated sites in Mexico; West Dallas, Texas; Los

Angeles, California; and North Carolina. Contaminated soil from the site was recently excavated and placed in a landfill using funding from fines levied against the California-based transporter that improperly documented facility material and waste shipments. Mr. Francisco Pavlovich, Alianza Civica, Hermosillo, Sonora, Mexico, described how 23,000 cubic meters of contaminated soil were moved from the Alco Pacifico site to an illegal landfill located just 6 (six) kilometers outside of Hermosillo, Sonora, Mexico. He said that there have been numerous protests about the waste and landfill, as well as requests for public information that have been unanswered by Mexican authorities. Since placement of this waste in Hermosillo appears to violate the NAFTA environmental side agreement, residents have filed a petition with the CEC.

**International Wastewater Treatment Plant, Tijuana, Baja California, Mexico.** Tour participants had a drive-by view of the Tijuana side of the International Wastewater Treatment Plant (IWTP) that was constructed to improve bi-national human health conditions. The narrator said that the IWTP is a sore subject with local grassroots organizations, in part because the environmental impact statement filed for the project failed to recognize the presence of residents 50 feet away from the plant in Mexico. The buses stopped at Playas de Tijuana in front of Parque de la Amistad (Friendship Park), a park that lies on the U.S.-Mexico border, but is divided by a fence that extends into the Pacific Ocean intended to stop undocumented immigrants. Participants exited the buses to view the long list of names posted on the fence of individuals who have died during their attempts to enter the U.S. under the INS' Operation Gatekeeper program. Mr. Bravo explained how a total of 428 people had died in 5 years.

## **SUMMARY OF PUBLIC DIALOGUE**

An open public dialogue was held on August 19, 1999 at which approximately 22 people expressed concerns and posed questions about environmental justice and issues related to the joint border between the U.S. and Mexico. The following presents a summary of the comments in the order in which they were offered. The audiotapes of the proceedings of the public dialogue includes a verbatim record of the public comments and is available upon request at EPA's Office of International Activities.

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**Mr. Juan Porras** spoke regarding Cesar Chavez High School that has been built ¼ mile from four facilities that have been “grandfathered” or exempted from the strict pollution prevention, public health, and public input requirements imposed on other facilities. He requested that a study be conducted to identify the cumulative health effects of such close proximity on residents and students. He also called for the closure of the school because of its proximity to the four facilities, a sewage plant, and a railroad. Noting that 90% of the students attending the school are Latino, Mr. Porras maintained that the school's proximity to the facilities is a slap in the face to the community and Cesar Chavez for whom the school was named. Further, the City of Houston found that the plants that are ¼ mile away from school have emissions exceeding EPA limits and there is no emergency evacuation route for the students in the event of an explosion or accident.

**Mr. Richard Boren**, Alianza Internacional Ecologista del Bravo, Chihuahua, Mexico and Texas, criticized EPA's silence in the battle against the Sierra Blanca nuclear waste dump. Explaining that EPA had rejected a complaint filed under Title VI of the Civil Rights Act of 1964 by residents, Mr. Boren noted that no Title VI complaint had ever been resolved in favor of communities. He stated that he views the siting of the dump as an environmental justice issue because 70% of the local population is Mexican American. He also criticized the Texas Natural Resources and Conservation Commission (TNRCC) for not providing Spanish-language versions of the informational materials. He closed this portion of his comments by maintaining that the Sierra Blanca dump violates the spirit of the La Paz agreement.

Mr. Boren also pointed out other problems. The state was commissioned to conduct a study in 1984, but opposed educating Latinos out of fear of opposition. Further, the TNRCC, which is funded by the EPA, did not provide a Spanish translation of the Environmental Assessment, limited community participation where possible and refused to hold hearings altogether. Finally, when EPA held a public comment period in El Paso, TX for the Border XXI plan, most comments made concerned the Sierra Blanca Dump, yet, not one sentence in the Border XXI plan covered the Dump.

**Ms. Laura Pierce**, Rio Grande/Rio Bravo Basin Coalition, Laredo, Texas, voiced concern about the growth of residential and commercial construction in the Rio Grande basin. She asked that EPA, the NEJAC, and other government agencies consider changes in the quality of water and other water supply problems that are caused by this growth. In the Border region, water quantity is an increasing issue due to competition with water rights because poor communities cannot compete for these rights.

**Mr. Bill Addington**, Sierra Blanca Legal Defense Fund, explained that the dump operating in Sierra Blanca, Texas violates the La Paz agreement, a concern he said that is echoed by many representatives of Mexico who signed a petition to shut down the dump because of violations to the agreement. Mr. Addington criticized the TNRCC for approving the sludge dump without conducting a public hearing and without issuing a permit, approving it on the premise that it would study the beneficial uses of the sludge. He also explained that much of the waste transported to the dump originated from sources located in New York and other states. Citing a Texas law that states that the more stringent law of either the sending or receiving state should apply to waste transported into or out of Texas, Mr. Addington stated that under New York law the waste would not be suitable for disposal in the dump. A resolution was signed by the Mexican Ambassador to the U.S., 600 Representatives of Mexican government as well as 200 Senators requesting the dump be stopped. The TNRCC approved this Dump without a permit, yet, the Title VI complaint was thrown out because a license had not been granted. He concluded his comments by requesting that a health study be conducted at the site.

**Mr. Gabriel J. Cano**, National Safety Council, described his organization's National Latino Lead Education Program designed to educate Latino communities about how to prevent lead poisoning. He reported that the program features a 30-second video, a week-long series of public service announcements for radio, reference sources for Internet web sites, and posters for distribution in Spanish that are featured on buses in big cities.

**Ms. Rose Augustine**, Tucsonans for a Clean Environment, Tucson, Arizona, spoke regarding community participation. Pointing to a lengthy environmental document that had been developed by federal agencies, private companies, and the city, she stated that input from communities was not solicited until they were asked to provide comment within 30 days. She argued that 30 days was too short a time under which to comment on such a large document. In addition, communities do not have the expertise to review a document such as that, she noted, explaining that communities need legal, financial, and other assistance. She requested that EPA provide those resources to communities. Ms. Felicia Marcus, Regional Administrator, EPA Region 9, promised she would review the matter with her staff and provide a response to Ms. Augustine, adding that the lack of community participation should not have occurred.

**Mr. Roger Peña**, Anthony Community, Health, and Environmental Council, Anthony, New Mexico, expressed his opposition to the proposed construction of a metal plating facility in Anthony, New Mexico. He explained that the owner of the facility, Bruce Freeman, who has said he has been used as a government witness by the EPA, had previously abandoned two metal finishing plants in El Paso, Texas several years earlier. The community was left to conduct and pay for the cleanup. Mr. Peña wanted to know whether EPA could intervene when a situation involves a “documented polluter.” Mr. Gregg Cooke, EPA Regional Administrator, EPA Region 6, explained that EPA jurisdiction over the site is limited to oversight under the permitting process required under the Resource Conservation and Recovery Act (RCRA).

**Ms. Teresa Leal**, Comadres, Nogales, Sonora, Mexico/Arizona, discussed the need for citizen participation and her frustration at how the government money is wasted when citizen participation does not occur at the appropriate times. She also requested that regulatory compliance issues be explained in layman’s terms, privacy boundaries for companies be removed, and EPA be required to provide full technical support for cleanup and prevention of contamination. There is also a need to put more focus on the La Paz Agreement as the border area becomes a depository for profit-making and industrial waste.

**Mr. Rubén Solís**, Southwest Public Workers’ Union, San Antonio, Texas, vehemently expressed his negative view of EPA, claiming that EPA is guilty of environmental injustice. He also criticized the North American Development Bank as a way to create high paid jobs for bureaucrats at the expense of the poor who primarily are affected by the development funded by the bank. EPA is guilty because it does not enforce the laws for people of color or low-income people and does not enforce laws equally. He concluded his remarks by stating that the roundtable meeting was not a “true” roundtable because communities and agencies were in opposition and did not sit as equals.

**Mr. Steve Lopez**, Tribal Representative, Colorado River Native Nations Alliance, discussed indigenous people’s issues along the joint U.S.-Mexico border. He thanked the NEJAC for its help in fighting the construction of the Ward Valley nuclear waste dump, and he requested their assistance in further promoting the concerns of indigenous peoples regarding environmental justice. Mr. Lopez requested a meeting be held within the next 60 days between tribes and California Governor Gray Davis to discuss the governor’s position on indigenous issues at the

border. Ms. Marcus responded that she will contact Governor Davis and send him a letter communicating this request, but cautioned that it is difficult to set up a meeting with the governor.

**Mr. Carlos Marentes**, El Paso Centro de los Trabajadores Agricolas Fronterizos, El Paso, Texas, discussed several issues of concern to farm workers, such as low wages, health risks, and benefits. He critiqued how the average household income for a farm worker is only \$6,000, workers are becoming sick more frequently, and females are at risk of more health problems. He pleaded that conditions for farm workers be improved.

**Mr. David Dispendi** communicated the neglect of colonias at the border, describing his negative experience with the TNRCC and EPA in addressing environmental issues within these communities. He claimed that decisions appear to be made on the basis of economic interest rather than out of concern for public health and environmental safety. Mr. Dispendi explained that the EPA needs to prove to the community that when EPA says “environmental justice,” the agency truly means it. He further stated he does not feel like telling the EPA the problems these colonias have because it does not do any good. Poor communities lack power to do anything about the injustices. Further, the people who make the decisions are not attending this Roundtable anyway.

**Ms. Cecilia Campillo**, Tucson, Arizona, expressed her discontent over meetings such as the Roundtable since she has not seen any change for communities or the environment. She listed problems such as health effects resulting from exposure to trichloroethylene (TCE) in drinking water and the contamination in Southside Tucson whose cleanup has been neglected by the U.S. Air Force. Tests conducted in 1981 showed that underground water contained TCE, a known carcinogen. She strongly criticized the EPA Regional Administrator for not being aware of some of the problems raised in the public comment period. The people did not participate in the decision-making process because it was done behind shut doors.

**Mr. Felix Perez**, Alianza Internacional Ecologista del Bravo, Juarez, Mexico, voiced the need for more environmental justice in the border region. Calling government and big business enemies of environmental justice, he pointed to serious environmental problems such as untreated water, loss of natural resources, and lead poisoning of children. He called for input from community representatives when agencies make decisions about environmental justice.

**Ms. Graciela Avila**, Citizens for Alternative to Radioactive Dumping, agreed with much of what had already been said by previous commenters, adding her consternation over how EPA appears to know what the problems are but has not used this knowledge to bring about positive changes. She also requested investigation of the effects of radioactive dumping.

**Ms. Carla Sbert**, Commission on Environmental Cooperation (CEC), described the process for citizen submissions to the CEC on matters related to the enforcement of environmental regulations. The process features a review by a committee, the secretariat, and cabinet members, followed by a review of the factual record, she explained. She extended her phone numbers for anyone who has questions on the process: 514-350-4400 (reception), 514-350-4321 (her line).

They do not deal with environmental justice issues directly, but the process offers a good opportunity to review the enforcement process of the law/regulation for whatever country.

**Ms. Rosa Ortega**, Companeros, U.S.-Mexico Border Health Foundation, expressed her disapproval of a thermoelectric plant proposed for Agua Prieta. She expressed distress over the impacts of the plant on limited local water sources. She stated that she is concerned that the plant will make water scarce, pollute the area, and negatively affect the migratory birds that use the area.

**Mr. David Harper**, Colorado River Indian Tribes, echoed Mr. Lopez's request for a meeting between Governor Gray Davis and indigenous tribes. He requested that a copy of EPA's letter to the governor be sent to the tribes. Mr. Harper added that he resents the hierarchy of the government that blocks tribal communication with government representatives such as the governor. He requested that Governor Davis rescind the land application for the proposed Ward Valley dump so that the issue will be dead. When the government wants something from tribes, access is easy but if the tribe wants something from the government, they have to climb a structural ladder, making them feel like a second-class citizen. Mr. Harper closed with an indication that a lack of response by the governor will result in a demonstration by the tribes at Governor Davis's office.

**Mr. Adrian Boutureira**, Environmental Research Foundation, expressed discontent with the lack of Spanish-language resources available to the community. He stated that he is frustrated that while information in English is available on the Internet, such information is not simultaneously available in Spanish. Mr. Boutureira asked EPA to devote more resources to provide Spanish-language versions of its resources. Right to Know laws and the toxic effects of chemicals should be provided in Spanish over the internet if they are available in English. EPA should document a list of communities that need info and resources and create a panel of affected communities along the border with their specific needs for info such as the short/long term effects of toxins.

**Ms. Nushune Heredia**, Cahuilla Indian Reservation, expressed frustration over the lack of progress by EPA in addressing a dump located on her reservation that accepts petroleum-contaminated soil from Miramar Naval Base. She expressed frustration with EPA, explaining that she has seen no positive action except those that benefit the companies responsible for the contamination. She appealed to EPA for help, requesting resources to study water quality and to investigate cattle death in the area. For over 9 (nine) years, the EPA has not helped the reservation, but rather the dumpers through grants. The excuse is that EPA does not have jurisdiction, but then why do they have jurisdiction over the dumpers? This issue has been presented to the EPA since 1994, yet nothing has been done.

**Ms. Marina Ortega**, California Indians for Cultural and Environmental Protection, explained that cultural values are the heart and soul of indigenous peoples and should be considered equally to those of the dominant culture. She expressed a need for an open-door policy on information in which no one would be able to hide information based on sovereignty. There is development on Indian land on both sides of the border and if their cultural values are ignored,

then there is racial discrimination. Individuals and community leaders should have input as a part of the voice of the Reservation.

**Mr. Che Lopez**, Southwest Public Workers Union, stated that he spoke on behalf of the youth who live in the border area. He stated that he is interested in integrating youth into the decision-making process because they are the most affected by environmental contamination. He requested financial assistance to assist youth to educate other youth about issues related to environmental and economic justice.

*Friday, August 20, 1999*

### **Welcoming Remarks**

*Arnoldo Garcia*, Chair, National Environmental Justice Advisory Council (NEJAC),  
International Subcommittee

*William Nitze*, Assistant Administrator, U.S. Environmental Protection Agency (EPA), Office of  
International Activities (OIA)

*Jose Bravo*, Co-Chair, Border Justice Campaign, Southwest Network for Environmental and  
Economic Justice

**Mr. Arnoldo Garcia**, Urban Habitat Program and Chair of the NEJAC International Subcommittee, extended his appreciation to representatives of EPA, members of the NEJAC International Subcommittee, and local communities who had been working to address issues related to environmental justice on the U.S.-Mexico border. Recalling a saying of his grandmother, he noted that unfortunately, the “same idea with different words is not the same idea.” Environmental justice means protecting and serving all communities regardless of income, immigration status, nationality, or citizenship, their place occupied in the bio-region, or their production /consumption processes on the U.S.-Mexico border, he stated. “We must acknowledge that we can not achieve this without a struggle.”

Mr. Garcia explained that the roundtable represents a part of the ongoing efforts to change the relationship between EPA, other federal agencies, and communities to one that is more accountable, more open, and transparent in the development and implementation of policies and programs. Participants are here, he continued, to figure out how to change EPA policies and programs to include the environmental justice demands of community-based organizations working on the border. It is important to remember that community participation, input, and leadership are cornerstones of environmental justice, he explained. Environmental justice at the border is a bi-national issue because pollution cannot be stopped with fences, nor can communities or agencies solve problems unilaterally, he said.

Mr. Garcia concluded his remarks by stating that the roundtable is part of an urgent ongoing dialogue to engage impacted communities on issues that “imperil the health and future of entire communities and natural habitats which are separated by what amounts to bi-national land use zoning, better known as our border.”

**Mr. William Nitze**, Assistant Administrator, EPA OIA, opened his remarks by stating that environmental justice is one of the highest priorities of the EPA Administrator. He commented that in his capacity as the national coordinator for bilateral work related to the U.S.-Mexico border, he understands the frustration of many communities along the border, as well as the limited role EPA as a federal agency can play in issues along the border. Mr. Nitze noted that EPA and other federal agencies will have to work with communities to recognize the constraints under which the various stakeholders operate. Only then can we produce better results within those constraints and possibly remove several of these obstacles. He called for all participants to do better in coordinating the various efforts of federal agencies to maximize solutions.

Mr. Nitze also stated that EPA currently is assessing the progress made under the Border XXI program, a bi-national water program initiated in the early 1990s to “get the United States and Mexico to work together to share the border region in a new way.” With Border XXI, EPA has been working hard to improve environmental problems along the border long before the North American Free Trade Agreement (NAFTA). The next step, he explained, is the development of a new border plan that will address the needs of sustainable development along the border. During 2000, the agency expects to prepare a progress report and conduct a series of public consultation meetings with local communities, non-governmental organizations, and EPA’s partners in state and local agencies, Mr. Nitze said. He added that agencies need to be “more creative in adjusting the work” of the Border Environment Cooperation Commission (BECC) and the North American Development Bank (NAD), which provide vitally needed environmental waste water (one word “wastewater”) treatment infrastructure on both sides of the border.

Mr. Nitze concluded his remarks by stating that government agencies alone cannot achieve sustainable development. We must not limit ourselves to addressing unmet needs of the past but must identify new opportunities for young people living on both sides of the border, he said. Ideally, the Border XXI program should respond to the demands of border communities with respect to what they see as their future, he continued, noting that EPA’s role would be to work with them to help them realize their vision. Mr. Nitze committed that EPA will try to do a better job of helping border communities to secure the resources they need to accomplish this task.

**Mr. Jose Bravo**, Southwest Network for Environmental and Economic Justice (SNEEJ), stated that communities of color and grassroots organizations involved in border issues do not “buy” the Border XXI program or the BECC as viable solutions to the region’s problems. He explained that although he applauds the efforts of some organizations working with the BECC, there has not been a change in the five years since NAFTA was signed. He questioned the progress achieved under Border XXI related to sustainability, commenting that one cannot achieve sustainability by failing to include in the design of the program the persons affected by the problem or by funding a program on an annual basis. He explained that communities were not opposed to free trade but rather “this” free trade where solutions are posited in bilateral side agreements. Because the framers of NAFTA failed to include environmental justice in its criteria, only mainstream environmental organizations were invited to help draft the side agreements, he continued. Historically, these same organizations have had a rough relationship with communities of color and grassroots border organizations, he said, because the mainstream

organizations would “rather protect the lizard, not the farm worker right next to the lizard being fumigated by pesticides.”

Mr. Bravo stated that his organization views the roundtable as one of the “last-ditch efforts” to work together with federal agencies to resolve border issues. This meeting will determine how communities will forge relationships in the future, he commented, emphasizing that in the upcoming election year, communities will take the fight “to the street” if necessary. He urged participants to “come together as environmental justice [advocates] and let federal agencies really know how we feel but also that we will hold [them] accountable on all issues.” My challenge is to move forward and deal with these issues, he concluded.

## **EPA Environmental Justice Programs on the Border**

Moderator:

*Charles Lee*, Associate Director, EPA Office of Environmental Justice (OEJ)

Panelists:

*Steven Herman*, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance (OECA)

*Romulu Diaz*, Assistant Administrator, EPA Office of Administration and Resources Management

*Alan D. Hecht*, Principal Deputy Assistant Administrator, OIA

*Jerry Clifford*, Deputy Regional Administrator

### **Panel I: Overview of EPA Programs and Activities**

This panel featured senior managers of EPA who provided an overview of EPA programs and activities related to the border region. Moderated by Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, EPA OEJ, the discussion focused on what Mr. Lee described as the theme of the roundtable: the promotion of interactive dialogue between various stakeholders. After brief presentations, participants were provided an opportunity to provide comment and ask questions of the panel.

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**Mr. Steven Herman**, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, shared information about the agency’s environmental enforcement activities related to the border region. He explained that EPA’s border enforcement and compliance programs are managed regionally in conjunction with counterparts in the appropriate state agencies. Staff managing the transboundary enforcement program, also managed regionally, work closely with the states and Mexico’s environmental agency, he said.

On a bi-national level, Mr. Herman continued, EPA participates on the Cooperative Enforcement and Compliance work group, which supports U.S. and Mexico federal, state, and local environmental enforcement officials bring together various agencies that historically have not

worked together or have not focused on environmental issues. He stated that the overall goal of the program is to identify and develop cooperative environmental enforcement and compliance actions, adding that one key objective is to ensure that the persons working on border issues understand the structures under which the other works. Mr. Herman reported that in this effort, EPA has made modest progress. He explained that during the past two years, representatives of the United States (U.S.) and Mexican environmental agencies have participated in joint training on topics ranging from principles of environmental enforcement, pretreatment inspections, hazardous waste laws, the transboundary movement of hazardous waste, air and pesticide pollution, and a comparative analysis of the legal structures in the U.S. and Mexico.

In addition, Mr. Herman pointed to the growing cooperation in how the U.S. and Mexico target and investigate enforcement cases. He pointed to a recent case in which two U.S. firms and one Mexican firm were caught attempting to transport waste across the border. This integrated effort is needed so that the border does not become a haven for polluters, he concluded.

**Mr. Romulo Diaz**, Assistant Administrator, EPA Office of Administration and Resource Management, stated that there is a need for a vision for change in the way EPA does business. He noted that the EPA Administrator and other senior managers within the agency share a common vision of wanting to improve the agency's ability to communicate with communities around the country, particularly communities of color.

Mr. Diaz pointed to the National Hispanic Outreach consultation meeting held two days previously as proof of this commitment. Mr. Diaz reported that participants in the consultation meeting agreed that a national strategy was needed to address issues associated with community involvement, education, environmental and business partnerships, and the recruitment and employment of Hispanics in the EPA workforce.

Mr. Diaz offered participants of the roundtable the opportunity to provide input in the development of the strategy through an Internet site. Mr. Diaz also announced that the consultation meeting had produced a report that compiles the activities and programs of EPA associated with border and Latino community issues. Mr. Diaz further said that communities are integral to holding agencies accountable.

**Mr. Jose Bravo** noted that the National Hispanic Outreach consultation meeting of which Mr. Diaz spoke was a closed session to which the public was not invited.

**Mr. Alan Hecht**, Principal Deputy Assistant Administrator, EPA OIA, stated that the previous day's tour of environmental justice areas was an excellent opportunity to see first-hand areas of particular concern to communities. The tour provided a good place from which to begin today's dialogue on how EPA and its partners can address the problems seen, he added.

Mr. Hecht emphasized that such a task requires a partnership. Continuing, he noted that it is important to understand who each of the partners are and what each brings to the dialogue. The purpose of the Border XXI program is to establish a common framework in which all the partners can come together to be a part of the planning and implementation process.

Acknowledging Mr. Bravo's challenge to be more responsive to the concerns of affected communities, Mr. Hecht stated that EPA has "tremendous power" to convene – to bring partners together to address concerns – and to communicate – to learn what the issues are and be responsive in communicating what is known about environmental conditions and how best to resolve them.

**Mr. Jerry Clifford**, Deputy Regional Administrator, EPA Region 6, offered a regional perspective on environmental justice and tribal issues and how they intersect in the border region. He noted that education and communication continue to be key to progress. Referring to Mr. Bravo's comments about "being fed up with educating EPA and [its Mexican counterpart]," Mr. Clifford stated that education will go on for some time because there are more than 18,000 employees in the agency who all can not be trained at once.

Reflecting on the comments offered during the earlier fact-finding tour and public comment period, Mr. Clifford noted that it appears that most people do not fully understand how EPA is structured or who to contact for assistance. For them, he explained, they see a myriad of people working in a faceless bureaucracy.

Mr. Clifford concluded his remarks with a challenge to the members of the NEJAC International Subcommittee. He asked that as it thinks about the issues and recommendations it will forward to the NEJAC, the subcommittee should consider framing site-specific concerns within the context of national issues.

**Mr. Charles Lee** then opened the floor to comments from participants.

**Mr. Oscar Romo**, Tijuana, Mexico, criticized the Baja Agua project that he stated is supported and promoted by EPA. Although the facility is to be built on Mexican soil, he claimed that the Mexican community was not aware of the project and that the community does not believe it needs the project. EPA takes pride in solving a problem with something the community does not see as a solution, he said. Mr. Romo recommended that EPA consult more with all its partners in Mexico. Noting that most of the communication occurs between "Washington, D.C. and Mexico City," he complained that local residents do not have access to decisions at those levels.

Mr. Romo also questioned the criteria used by the BECC and why they have approved 21 projects in the U.S. while only 12 projects have been certified for Mexico. He said that the design of certain rules creates a bias for projects in the United States (U.S.) over Mexico. He asked that EPA look more closely at what the policies and criteria should be. Mr. Herman urged Mr. Romo to speak with representatives of EPA Region 9 who were in attendance at the meeting. He also commented that the EPA Administrator recognizes the critical importance of consultation with local communities. Increasing community involvement in decisions has been a common theme throughout the Administrator's term, he added.

**Ms. Cipriana Jurado Herrera**, Centro de Investigacion y Solidaridad Obrera, Ciudad Juarez, Chihuahua, Mexico and Co-Chair, Border Justice Campaign, SNEEJ, raised several concerns:

the clean up of the Rio Grande/Rio Bravo area has not been completed, nor is it progressing quickly; exposure of women working in maquiladoras to toxic pollutants for which scientific resources are needed to study and diagnose health effects from such work; the lack of Spanish-language versions of resource materials with which to educate residents of border communities for whom Spanish is their primary language; and lead poisoning that is occurring in children.

**Mr. Diaz** responded that the concerns expressed by Ms. Jurado Herrera and Mr. Romo about the cleanup of the Rio Bravo and the proposed Baja Agua facility represent “purely transboundary issues,” because the plant infrastructure and the aquifers and other natural resources do not respect national borders. Because the affected region exists on both sides of the border, we cannot say that if we keep the infrastructure entirely in one country that we will be able to accomplish the job, he said. Mr. Diaz also stated that EPA understands the concerns and sentiments of community residents that cleanup is not progressing fast enough. EPA also understands the need for bilingual communication and is trying to provide the necessary tools.

**Mr. Hecht** responded to concerns about public health by reiterating that EPA had made public health a priority in the existing Border XXI plan, establishing a health work group to explore such issues. He also underscored the importance for the agency of protecting children’s health. Mr. Clifford added that new training programs undertaken by EPA and the Agency for Toxic Substances and Disease Registry (ATSDR) promote the use of *promotoras*, or local residents, who serve as environmental health and justice advocates for local communities.

**Mr. Manuel Llano**, an engineer, stated that he had worked in a chemical plant, delivered a poignant and emotion-filled exposition on the negative effects of working in the chemical industry. Describing how his health and physical capacity has been compromised by such work, he spoke on behalf of his grandchildren and other disabled workers when he explained the environmental injustice, discrimination, and dangers of chemical plants and the contamination of nearby communities. He pleaded with the panel to which he addressed his comments to understand that the conditions under which residents live in border communities lower the quality of life for the residents. Unfortunately, residents living in the border area are not protected by the La Paz Agreement, he claimed. He concluded by saying that he did not want to die knowing that the panel to which he addressed his comments did not help with these issues, but only benefited from the economic and industrial growth at the border.

**Ms. Felicia Marcus**, Regional Administrator, EPA Region 9, committed staff of Region 9 to follow up with Mr. Llano and the issues raised in his comment.

**Mr. Felix Perez**, Alianza Internacional Ecologista del Bravo, Juarez, Mexico, provided comment about ways to encourage true sustainable development. He criticized government agencies for supporting only industrial development, not sustainable development at the border. He voiced the opinion that local communities do not support the “so-called popular projects.” These projects represent that the border region is seeing “only development, not sustainable development, and only industry, not sustainability,” he explained. Because the U.S. is generating most of the projects, it has the capacity to correct these problems, he noted. Mr.

Perez concluded by proposing that industry consider environmental health, human health, and community involvement to encourage sustainable development.

**Mr. Hecht**, who noted that representatives of the BECC and the NAD Bank were in attendance at the meeting, stated that despite falling short of expectations, the 17 projects currently under construction would not exist without the momentum of these institutions. He added that EPA's contributions tend to support development of infrastructure in poorer, rural communities that otherwise would not have these structures. Referring to the concerns expressed during earlier public comment about the BECC and the NADBank, Mr. Hecht agreed that EPA should explore how it can translate these concerns into changes in the BECC and the NADBank.

**Mr. Diaz** acknowledged the level of mistrust by communities in EPA's intentions. The challenge, he said, is to come up with a sustainable balance that recognizes economic needs, protects the environment and public health, and respects community values as the decision-making process occurs.

## **Panel II: Overview of EPA Regional Activities**

This panel featured representatives of the EPA Region 6 and Region 9 border programs who provided an overview of current border program activities and outlined plans to integrate environmental justice into its work plans. After brief presentations, participants were provided an opportunity to comment and ask questions of the panel.

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**Mr. Manzanilla** said the purpose of the regional panel was to provide participants with a "snapshot view" of what EPA and its Mexican counterparts are doing to improve the environment at the border region. He stated that EPA considers environmental justice as being about ensuring fairness and the reduction of disproportionate environmental risks, and involving and empowering communities. Not only does EPA provide information and inform communities, he continued, but the effort also includes what EPA does with the input from communities. It is all about decision-making and accountability, he concluded.

Mr. Manzanilla then introduced representatives of Mexico's Secretariat of Environment, Natural Resources, and Fisheries (SEMARNAP), Eng. Jose Luis Calderon, Deputy Attorney General, Procuraduria Federal de Proteccion al Ambiente (PROFEPA), and Eng. Antonio Sandoval, Delegado, PROFEPA's office in Baja, California.

**Eng. Sandoval** focused his comments on the bi-national efforts undertaken by Mexico and the U.S. to "conserve the ecology" and encourage sustainable development. He stated that in response to economic and social demands, the two governments identified the need to plan for future environmental and social improvements that would operate on a more professional level and enable both countries to address problems along their joint border. He noted that most activity has focused on reducing illegal hazardous waste.

**Mr. Manzanilla** then introduced staff of EPA's two regional offices that address issues related to the U.S.-Mexico border. He emphasized that given the limited time available for presentations, a complete picture of the activities EPA has undertaken cannot be presented. There is currently an impressive array of activities in many different areas, not only by EPA, he explained, but by its counterpart agencies in other federal, state, and local agencies, Mexico, and bilateral efforts such as the BECC and the NADBank. He noted that communities also are active in terms of reducing environmental risks, infrastructure improvements, improving information and monitoring information.

**Ms. Gina Weber**, U.S.-Mexico Border Coordinator, EPA Region 6, announced that EPA Region 6 recently has created an Office of Environmental Justice that reports directly to the Deputy Regional Administrator. She introduced Arturo Duran, Outreach Specialist, EPA's El Paso Border Office as a resource for communities. She commented that EPA also maintains an office part-time in Brownsville, Texas that operates once or twice a month to serve that part of Texas. Communities do not have to wait for meetings such as this roundtable to speak to someone, she added, providing the following toll-free telephone numbers for points of contact:

- 1-800-334-0471 to reach the EPA border offices in El Paso, Texas and San Diego, California
- 1-800-887-6063 to reach other points of contact in Region 6

In addition, Ms. Weber described several efforts undertaken by EPA Region 6 to address border environmental issues. She pointed to community grants, sister city emergency response plans, public information centers, and the HAZTracks waste transportation monitoring system as innovative efforts to resolve hazardous waste and enforcement issues. Ms. Weber also spoke about EPA's efforts to craft an environmental education plan for the border. She explained that EPA has met with community leaders to discuss the plans and receive input from local communities. She asked to meet with Mr. Che Lopez, Southwest Public Workers Union, who had spoken previously about youth education organizations, to explore ways in which such organizations can make the border environmental education plans more successful. She also agreed to meet with Mr. Adrian Boutureira, Environmental Research Foundation to discuss how to better disseminate information to communities and identify which documents are important to the community.

**Ms. Wendy Laird-Benner**, Border Coordinator, EPA Region 9, spoke briefly about the efforts of her region to promote community-identified priorities and community-driven programs. She reported that the agency soon will award five \$20,000 grants to support such activities. Running Grass, Environmental Justice Team, EPA Region 9, described EPA's efforts to integrate environmental justice into border programs and activities. He pointed specifically to EPA's environmental justice small grants program, as well as educational efforts in communities such as Randolph, Arizona.

**Mr. Manzanilla** then opened the floor to comments from participants.

**Mr. Juan Parras** reiterated his concerns about the close proximity in his community of a high school to four industrial facilities that are exempt from some provisions of environmental laws

because they were “grandfathered” as existing facilities. He pleaded with EPA to help close the facilities, as well as provide assistance in closing the school. He concluded by saying he was willing to network with any agency or community that could help.

**Mr. Francisco Pavlovich**, Alianza Civica, Hermosillo, Sonora, claimed that the hazardous waste problems with the Cytrar facility have not been resolved, explaining that 25 million square meters of hazardous waste was transported illegally by Cytrar. He accused Cytrar of contaminating the soil and land of Sonora, Mexico. He criticized Mr. Calderon, PROFEPA, and asked for resolution to the illegal transportation of hazardous waste by Cytrar, as well as the clean up of the Alco Pacifico facility. Responding to a comment by a representative of PROFEPA who claimed that Alco Pacifico has been cleaned up, Mr. Pavlovich and Mr. Bravo were vehement in their response, exclaiming that Alco Pacifico has not been comprehensively cleaned up, and that the community around the site was not even touched. They criticized PROFEPA for not doing its job of protecting the people and environment.

**Mr. Carlos Marentes**, El Paso Centro de los Trabajadores Agrícolas Fronterizos (Border Agricultural Workers Project), El Paso, Texas, spoke about the use of pesticides and the subsequent poisoning of farm workers. He stated that as we work to create safe and healthy work conditions for current and future farm workers, it is important to remember that there is an “unpaid debt” that must be resolved. He explained that in the 1940s, almost 5 million Mexican agricultural workers came to the U.S. to produce the food and agricultural products necessary to help win World War II. However, their efforts have not been recognized or compensated, he stated.

**Mr. Alan Valencia**, Yoemen Tekia Foundation, was emphatic as he tearfully explained that he wants a solution now to the pesticides affecting his people. He claimed that *campesino*, or farm workers, currently do not have environmental justice rights, and he wants that to change. He related a story of a friend who is now dying because of exposure to chemicals spilled from the pesticide tank he was carrying on his back.

**Mr. Llano**, a former engineer who had worked in the chemical industry, spoke about the lack of response from government officials to his correspondence and concerns for citizens. He stated that in 1995 he had written letters to various government officials, including Julia Carabias Lillo, Secretary of SEMARNAP, regarding the illegal transportation by businesses of hazardous waste. He never received a response, he stated.

**Mr. Roger Pena**, Anthony Health and Community Council, Anthony, New Mexico, reiterated his opposition to the proposed construction of a metal plating facility in Anthony, New Mexico (see Summary of Public Dialogue). He wanted to know whether EPA could intervene when a situation involves a “documented polluter.” Mr. Gregg Cooke, EPA Regional Administrator, EPA Region 6, explained that EPA jurisdiction over the site is limited to oversight under the permitting process required under the Resource Conservation and Recovery Act (RCRA).

**Ms. Marina Ortega**, California Indians for Cultural and Environmental Protection, criticized EPA and SEMARNAP for “being a farce” and for generating decisions and actions without

community involvement. She said that she has seen sacred grounds disturbed and mining and cyanide poisoning conducted on indigenous land. She closed by remarking that EPA should change its name from “Environmental Protection Agency” to “Who’s Got Money Agency.”

### **Keynote Speakers**

*Gregg A. Cooke*, Regional Administrator, EPA Region 6

*Felicia Marcus*, Regional Administrator, EPA Region 9

*Diane Takvorian*, Executive Director, Environmental Health Coalition

*Richard Moore*, Coordinator, Southwest Network for Environmental and Economic Justice

As part of the luncheon break on August 20, 1999, keynote remarks were provided by representatives of EPA and two community organizations actively involved in environmental justice and other issues related to the joint border between the U.S. and Mexico. Each spoke briefly about the concerns facing each organization. The following presents a paraphrased summary of their remarks in the order in which they were offered. The audiotapes of the proceedings of the roundtable meeting includes a verbatim record of the keynote remarks and is available upon request at EPA’s Office of International Activities.

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### **Mr. Gregg Cooke**, Regional Administrator, EPA Region 6

“We realize we also need to understand how to better serve border communities. We need to work to stop the spread of "colonias" without basic services such as wastewater treatment. We have established guidelines for BECC projects to incorporate community participation. During the past few years, \$20 million has been allocated by the BECC to help small communities. We want to know the beneficial aspects and ways to change, working with the existing institutions. We also need to encourage innovative approaches to reducing waste, such as recycling waste products from one maquiladora to serve as the raw materials for another. One of the biggest problems is community access to grants. Incremental progress has been made, such as the Border Response Plans. We currently have sister city emergency response plans to respond to public health risks between the border cities.”

He recognized the fundamental disconnect between what EPA tries to accomplish and what the environmental justice movement perceives. There is still value in the water and wastewater efforts that was agreed upon by the two nations. According to Mr. Cooke, the structure of the agreement allows for community participation, which would expand upon these two fundamental goals. After listening to the speakers, however, he recognized that there is a definite disconnect within the process.

There are small dollar grants available that helps the communities access the program. “It is clear to me that the biggest problem, or one of the biggest problems, is access. It’s that you don’t know some of the things that we’re doing. And you don’t know how to access them. And you

don't know how they can help you. And, frankly, we don't know, sometimes, how we should be helping you. And we've got to do a better job of that." "Perhaps we have not been engaging smart enough."

**Ms. Felicia Marcus**, Regional Administrator, EPA Region 9

"The challenge is not whether to address the issue, it's (it is) how to address it. She asked for help in thinking more creatively. We need your support to help us figure out how to do it. Congress responds to the public more than federal employees -- we need your help to communicate these concerns."

When she started working with the border issues, it seemed like "slow ping-pong." It was overly informal. They have moved away from the Fed-to-Fed isolated dialogues into including intergovernmental personnel to the decision-making. However, they are finding it difficult when even the intergovernmental agencies do not agree. Recently, we finally signed an agreement that broadens the list of stakeholders who are invited to engage in bilateral dialogues.

We have plans in place for border coordination. However, we need better tools to address these issues -- that is where the public can help. We need to know how we can build your capacity. We have, historically, more tools to deal with water issues than the toxics. In the toxics arena, government is struggling to implement laws. This is an area where the community can help. Legislation and money are necessary on both sides to attack the issues. "Communities can create the kind of political will to get that kind of resources for us." "Congress responds to the demand of the public." We need to find ways to build regular dialogue and involve other government agencies to hear your concerns. There needs to be some candid and frank discussion to get more tools. "We have not stretched ourselves with the tools that we have." In Region 9, we will commit to doing a better job to:

- engage border communities more aggressively
- provide technical support and funding assistance
- engage in more regular dialogue
  - So things don't build up and are more focused
- look introspectively, not defensively
  - Try to find more innovative ways to accomplish the issues
- interface more with other federal agencies

We must also overcome other obstacles such as having federal employees fighting amongst each other. We must all work together." There needs to be more of a joint effort. It is just hard to figure out how to do it. "We know we are late in addressing these issues." "There are too few of us working on huge problems to be fighting with each other rather than figuring out how to use all of our skills and strengths and tools to resolve these problems." "The folks along the border don't have the time for us to waste fighting with each other, they need us to sit down and work together and solve these problems."

**Ms. Diane Takvorian**, *Executive Director, Environmental Health Coalition*

“The communities along our borders share several characteristics with other communities across the country. We have industries and the U.S. Navy in our communities. These border communities bear the impacts of policies and decisions made in both Washington D.C. and Mexico City. We need to see where we are going, not where we have been. We need to look at the opposition; they are more influential and have more money.” “The problems of the metal plating industry that we have seen need to get addressed. It's not that complicated. We need to work based on the following principals:

- Clean up the 'messes' - let's not argue about it
- Act on community-controlled and community-directed decisions
- Adopt pollution prevention and precautionary policies
- Adopt the policy that 'children come first'
- Provide a united, effective voice for solutions to the problems"

What is different is that we are 10 miles from the U.S.-Mexico border. As a result of this, we see that bad trade policies going into effect. And we see the exploitation of workers the environment and the public. We see how these policies play out. Another unique characteristic is the presence of the U.S. Military that is not regulated like regular industry. “We haven't gone far enough, and we need to achieve some things.” “The environment may be better protected, but we are not there. We need to get the shared vision out there so we can work for it.” “Our challenge is to think more broadly and to think about what the inherent sources of these problems are.” “One of the key problems is that the opposition is more powerful than we are. They have a whole lot more money. They influence politics. And they are buying the ability to pollute in our communities. And we need to be able to upgrade our capacity to really get at our problems and influence government ourselves.”

**Mr. Richard Moore**, *Coordinator, Southwest Network for Environmental and Economic Justice*

We cannot separate where we came from, where we are, and where we are going. DDT was manufactured in minority communities and sent to other countries. We still have many sites like Alco Pacifico. These problems continue because of ignorance and arrogance. “The arrogance of any person to expect us to believe that Alco Pacific didn't poison communities before it came to Tijuana. They were run out of the U.S. and are now in Tijuana doing the exact same thing. It's not that the government doesn't know, it's that they're arrogant.” “We will not put up with arrogance by anyone to convince us that we don't know what we're talking about.”

“The reality is we would not be here discussing EJ if we did not earlier admit to the fact that there is environmental and economic injustice. No matter where we come from, the fact of the matter is, we're here talking about real people with real issues.” “We must move forward without forgetting where we have been or those who have helped us get there. We have seen progress. We must continue working with our communities and organizations along the Mexico

border. We don't want the federal government to do things for the communities. We should be working together since this will benefit everyone.”

"We have given public comment but we don't see anyone responding at this roundtable meeting. We hear institutions claiming to respond to our issues. We see the EPA border offices as doing public relations for industry, to defend their rights.”

He closed with this challenge:

“We, as community people, have to go back home and build the strongest, most powerful grassroots organization that this country has seen. We need to network with each other. We need to join regional networks. Then those networks need to network with each other, including Mexico.” “It’s not a special interest to us that some children get exposed and poisoned by eating apples or whatever it may be with pesticides on it. That’s not special interest, I don’t think. If those were white children, would anybody care or not care?”

“We’re not asking for a favor.” We’re asking for recognition of our rights. “We come from one of the most inspiring movements in this country. The reason we’re here is because we’ve been winning and not losing. We’re not losers. We’re about developing a truly multiracial movement that will be led by grassroots people, and, in the majority, women.”

## **Concurrent Work Group Sessions**

These sessions featured dialogues on specific issues related to environmental justice on the border. Led by a moderator or teams of moderators, each session included resource panelists who offered differing perspectives with which to spark open discussion among participants. The purpose of the work groups was to contribute to the development of an environmental justice framework for border environmental protection and develop criteria that support community-based strategies for the development of environmental justice border policies. In order to enhance existing EPA understanding of border environmental protection and environmental justice, the work groups examined specific issues, trying to identify the model and framework through which to explore environmental justice at the U.S.-Mexico border and in other international contexts. Questions were directed at familiarizing the NEJAC with who is at the border and which projects are occurring at the border, and, most importantly, with what the pervasive and common issues are along the border that can be addressed in a policy context.

## **Environmental Justice & Labor**

### *Panel Presentations:*

**Mr. Fernando Cuevas**, a migrant farmer, spoke about his experiences from striking and boycotting over the years. Specifically, he described his experience with Campbell’s Soup, Heinze Pickles and Deans’ Foods. He showed how his experiences in boycotting taught him about the industry control over companies. He went on to talk about how he learned how to be a

negotiator and use various conflict resolution tactics. He has used these techniques to teach the laborers to confront companies that are abusive and exploitive. He spoke about how these experiences led him to be an organizer. He stressed the importance of teaching youth how to organize and take over the movement for the future.

He cited corruption within the pickle industry. He described how the industry and the banks have been conspiring, “being very slick”, by keeping farmers obligated to major canners. He cited the Mount Olive Pickle industry and how the workers there are not able able to organize or unionize. He asked for support in boycotting Mount Olive Pickles and wants to build boycotting committees in communities.

**Ms. Eida Saragoza**, Department of Labor, stated that there are labor side agreements to NAFTA. The Labor Department administers this side agreement of the NAFTA. The agreement promises to: promote 11 labor principles. “The idea was to improve working conditions and living standards in the 3 (three) countries.” Three mandates for the NAO: inform the public about labor situations in the areas; inform other agencies about legal issues between the countries; and negotiate labor issues of particular concern on a regular basis. “The most controversial role is the NAO’s ability to entertain complaints about labor law violations in the other countries.” To date, NAO has received complaints in Mexico against the U.S. and vice versa. The complaints range from worker health and safety, wage and hour discrimination laws, and violations of the right to association.

In her view, “this is not a perfect agreement. From the labor perspective, I receive complaints that the agreement is absolutely too weak. It doesn’t do enough to force the government to correct particular situations. From the business side, I get complaints that the agreement is too intrusive in interfering with their ability to do business in countries such as Mexico. From the government of Mexico, I get complaints that when I go in and investigate some of the allegations, that in fact there are sovereignty issues that I am violating.”

The agreement has forced the government to address the labor issues in an international arena. There have been notable differences in the way Mexico has responded to these claims; the process has shown a positive difference and the courts are responding positively as well. Moreover, the public hearings that she holds offer media coverage of these issues, which gets the circumstances out in the open. Finally, she invited questions or comments to be directed to the NAO at (202) 501-6653.

**Mr. Rubén Solis**, community political organizer and farm worker, asked why side agreements were placed in NAFTA, and what are the impacts they are having in their communities? “In our standpoint you cannot divorce environmental and economic communities.” Occupational health and safety standards are not enforced or applied by the Labor Department, which means that the offices are inconsistent.

The side-agreements “don’t have teeth because they have paperwork powers but no enforcement powers.” When the Labor Departments establish minimum wage requirements, it “doesn’t

mean not less than, it means no more than.” Attention to the border was brought about by the high level of poverty around the area on both sides.

OCC health and safety standards are too low. He does not believe things are getting better, adding that he believes the issues with which NAFTA is being forced to deal with are not new; they are the same issues with which the Southwest Workers’ Union has been dealing. Now, however, they are only more clearly defined.

**Environmental Justice and Labor Justice Issues:** This session explored specific examples of environmental and economic justice issues affecting U.S.-Mexico border region. The purpose of the work group was to provide federal agencies with an overview of these issues to assist them to better define the priorities for grassroots organizations.

Moderated by **Mr. Jose Bravo**, SNEEJ, the session focused on identifying common issues and concerns related to environmental and labor justice. He defined environmental justice as including economic justice, of which labor is a part, as well as water resources, immigration, and human rights. This is how communities are defining the environment, he said.

The session was structured in two rounds of panel presentations and comments, followed by discussion of issues and development of proposals and recommendations. The Summary of Recommendations section of this report summarizes the proposals and recommendations identified by the participants of this work group.

**Ms. Cipriana Jurado Herrera**, Centro de Investigacion y Solidaridad Obrera, Ciudad Juarez, Chihuahua, Mexico and Co-Chair, Border Justice Campaign, SNEEJ, stated that she worked for electronics maquiladoras from the age of 13. She now works with SNEEJ’s Border Justice Campaign to bring attention to the environmental justice issues and human rights violations she has witnessed first hand: low salaries; exposure to toxic substances because of poor training or lack of access to MSDSs and/or warning labels; non-enforcement of current labor laws; sexual assault and violence, particularly against young women; gender inequalities; and discrimination against pregnant women. She expressed frustration in her efforts to inform the general public about these issues. This is not an easy task because workers who are suspected of collaborating with organizations are usually fired, she complained. She requested help from any individual who may have any suggestions or recommendations.

**Ms. Saragoza** responded to Ms. Jurado Herrera’s request for help by informing her about DOL Secretary Alexis Herman’s work to follow-up on women’s issues with the Mexican government. She explained that Secretary Herman has created a women’s bureau within DOL that goes into communities to try to persuade women to come forward with their cases because the Mexican government now recognizes it is unconstitutional to discriminate against pregnant women. Before this, not one case had come forward, but now things are starting to change.

**Ms. Teresa Leal**, Comadres, Nogales, Sonora, Mexico and Nogales, Arizona, expressed general concern about maquiladoras. She stated that her goal is to unite all movements working to

improve the conditions wrought by maquiladoras and create a common agenda for all. She announced that she plans to develop a statement to present to the World Trade Organization at their meeting in Seattle later this year in hopes of creating an inroads to stop the exploitation of maquiladora workers.

**Mr. Cesar Luna**, Environmental Health Coalition, San Diego, California, commented on the plan of the U.S. Navy to build a large home-port for nuclear-powered vessels less than one mile downwind of the Barrio Logan community in south San Diego (see the Summary of the Fact-Finding Tour for a description of this community). He complained that Navy plans include room for 15 to 20 vessels, but there is no emergency plan to respond to accidents. He requested meetings between the Navy and the local community be held to address the concerns of the community, he continued.

Mr. Luna also raised concerns about the Metales y Derivados site in Tijuana, Mexico, stating that there is no “honest” communication between EPA and its Mexican counterparts. Noting that cleanup of the site can be used to set a precedent, he stated that EPA is in a unique position to bring about historical change and “avoid another Cytrar.” But it is important to remember that communities need to be a part of the solution to avoid the problems that have occurred in the past, he cautioned.

**Mr. Francisco Pavlovich**, an engineer working with the Alianza Civica in Hermosillo, Sonora, Mexico, described the conditions at the Cytrar compound located six kilometers outside of Hermosillo and explained in detail the many violations that have occurred there. He presented pictures documenting many of the violations and explained that for most residents, the issue is no longer the violations but rather remediation of the site.

#### *Group Discussion:*

*Maquiladoras.* Participants discussed the need to view concerns with maquiladoras as a global issue that is not limited to the joint U.S.-Mexico border. They called for increased oversight of permitting and compliance by both the U.S. and Mexican governments, the “repatriation” of waste to the country of origin of the maquiladora, and investigations into the general and reproductive health of workers in maquiladora industries. Other key concerns include strengthening weak sanctions for violations of labor and environmental laws and extending requirements for the recycling of wastewater.

*Site Specific Concerns.* Participants raised concerns about several industrial sites and affected communities located in Mexico and the United States (U.S.). In addition to requests for assistance in remediating the Cytrar and Metales y Derivados sites, participants called for action at the following sites:

- Anapra, Chihuahua – conduct a public health study to investigate the use of former toxic waste drums to store water for domestic consumption
- Candados Presto – clean up the facility
- ASARCO – do not open the facility but conduct studies to evaluate the full environmental risks of such a facility on the local community

- Sierra Blanca sludge dumps – enforce the La Paz Agreement
- Dump near Sunland Park, New Mexico – close the facility
- Valle Juarez – renegotiate or reevaluate water rights so that water needed for irrigation is sufficient and clean for farmers
- Rio Grande/Rio Bravo watershed basin – develop a plan to clean up the area, including conducting another study that is more representative of water flows

*Wage Discrimination.* Citing the success of pursuing complaints of wage discrimination in Texas, several participants urged the filing of such complaints with the Equal Employment Opportunity Commission (EEOC) in other states. Mr. Parras noted that the EEOC has a good reputation for following up on such complaints. Another wage concern is if industries “run” to another country they should have to pay their workers the same wages as in the U.S.

Participants also called for development of “Just Transition” programs under NAFTA to assist workers affected by the migration of firms to other countries. Such programs must be “just” and include elements to address medical health concerns of the displaced workers, they explained. He also suggested that medical program be funded by the U.S. government and the polluting industries.

*Bilateral Cooperation and Agreements.* Participants were adamant about the lack of protection existing bi-national agreements offer residents living in the border region. They expressed frustration with the level of protection afforded by the La Paz Agreement for the mining industry, particularly those facilities employing cyanide to leach out ore. Concerned that drops in the metals market would encourage owners to abandon mines without cleanup, participants called for the establishment of an international tribunal which would address the demobilization and remediation of closed mines. In addition, several participants requested NAFTA be renegotiated, along with the side agreements for the BECC and the NADBank. During the renegotiation, the authority of parties such as the CEC Labor Commission should be given independent decision-making power and granted the capacity to enforce the agreement.

Participants also requested an international border commission to specifically address issues related to environmental justice on the U.S.-Mexico border. A key concern was to ensure that the community is treated and viewed as an equal partner in the decision-making.

*Civil Rights Concerns.* Many participants expressed dismay at the status of complaints filed under Title VI of the Civil Rights Act of 1964 (Title VI). They characterized the implementation of administrative guidelines as “a failure” because not one complaint has been resolved. Urging EPA to be more proactive in investigating complaints rather than dismissing them out of hand, the participants stated that the agency needs to revise its implementing procedures and develop “community-friendly”, understandable guidelines that clearly describe what is an appropriate and acceptable complaint.

#### *Conclusion:*

At the conclusion of the session, the participants identified the following key goals for improving issues related to environmental and labor justice:

- Demand maquiladoras adhere to the highest labor and environmental standards -- take action against non-compliance of environmental laws by U.S. firms and do not accept any firms that do not meet U.S. standards because impacts to the shared ecosystem are felt on both sides of the border
- Address issues and concerns with maquiladoras throughout the country, not only for activities in the border region
- Ensure NAFTA better addresses labor, environmental, and human rights issues
- Commit to involving communities as equal partners
- Just Compensation program: courts award minimal to compensate harmed community members. A committee should be developed to determine whether J.C has been properly received. Sometimes community members don't realize that they are being cheated. People are essentially bought off. This committee could look in and have the authority to assure J.C.

## **Immigration, Trade and the Environment**

This discussion was moderated by **Arnoldo Garcia**, Urban Habitat Program and chair of the NEJAC International subcommittee, and focused on environmental justice in the context of the environment, immigration and trade, and the limited authority of the EPA. There are three areas of interest: 1) the relationship between the EPA, environmental protection and trade as causes of immigration, 2) the political, economic, and environmental impact of trade on border communities, and 3) border issues such as the nature of the border as a political boundary. The EPA must examine its border policies and ensure that they are consistent with other regions in the nation so there are not disparate impacts on any one population.

### **Panel Presentations – Round I**

**Ms. Cathi Tactaquin** began by saying that there must be a bi-national approach to the environmental and immigration issues in the border region. The intersection between environmental degradation and immigration occurs in poor economic and development policies and practices that harm communities and lead to the displacement of populations. The negative impacts of globalization include fierce competition to local markets, which destroys local resources and environments, and puts local policy makers in no-win positions. The resulting poor economic conditions force many to migrate. Even more, those who wish to restrict immigration have accused the immigrant population of causing environmental damage, failing to identify sources such as the military, maquiladoras, the triple wall, and the border patrol. These environmental issues have a disparate impact on the migrant communities along the border. One important step is to empower all people by ensuring equal access to information, allowing people to make informed decisions and find solutions to their environmental problems.

**Ms. Jeanne Gauna**, of the Southwest Organizing Project in Albuquerque, New Mexico, stated that New Mexico is the poster-state for environmental racism. They have a “minority-majority” and are home to a disproportionate number of military bases, uranium mines and many other environmental hazards that have had a great impact. The border is more of a political border that divides a common culture, the only real difference between the north and south being the quality of the roads. NAFTA has had a great impact on issues such as the environment and migration. Workers come to the region to work in the maquilas, a large source of pollution, and are forced

to live in contaminated communities that lack the infrastructure to support them. Another issue is that INS officials are harassing migrants, interfering with their access to the resources and care they need to survive. She concludes that the border serves to separate a people and facilitate the taking of Mexican resources. INS out of New Mexico!

**Maria Antonia Flores**, La Mujer Obrera/Centro Obrero, El Paso, Texas, stated that NAFTA has taken many of the maquila jobs in El Paso to Mexico, causing unemployment to rise and labor alternatives to decrease. NAFTA fails, for in its planning, it did not take into account those who would suffer from its policy. The result is that many people have had to migrate to other communities for work. The EPA must take into account those that are truly affected by the trade between U.S. and Mexico. The effects of NAFTA are not just academic, but have a real impact on communities that are being left behind by the “new economy” and are in need of alternative forms of employment.

### **Group Discussion:**

**NAFTA and the EPA:** Many of the comments focused on the effects NAFTA has had on immigration, the environment, and the border region. When NAFTA was signed, there was no consideration of the impact it would have on border communities and workers. The movement of jobs from one side of the border to the other has caused an increase in migration. Many communities have popped up and grown in population, lacking sufficient infrastructure such as water and waste treatment, and/or are contaminated with the pollutants from the nearby maquilas. One gentleman pointed out that NAFTA allows US companies and farmers to dump their products in Mexico below market prices, driving Mexican producers out of business. Another issue is the impact that INS and border control have had on the environment. Environmental hazards are a motivating factor in migration, yet Congress suspended environmental regulations along the border so that the ‘triple wall’ could be built, the purpose of which is to slow immigration.

**EPA Representatives:** During this comment period, EPA representatives responded to the comments and presentations. One comment stressed that the EPA and the Clinton Administration truly believe that free trade and higher levels of environmental protection are compatible. Studies at the EPA show that NAFTA has helped in creating jobs across the border and enabled the Mexican economy to perform better than it would have given the fall of the peso. Also, it was stressed that Mexico’s change to a more industrialized economy will have a short-term adverse impact on some, but that overall, it will improve the economic situation.

The other concern addressed was the EPA working with other federal agencies in order to address environmental justice issues in the border region. They acknowledged the difficulty in getting the agencies to work together, but through the Border XXI program, there is hope in bringing all the parties together to find solutions. There are other bi-lateral meetings and organizations in which environmental issues are raised, but no national or international mechanism for bringing all those involved together.

## **Panel Presentations – Round II**

**Mr. Robert Martinez**, U.S.-Mexican Border program, American Friends Service Committee, discussed immigration and the environment as human rights issues. Many government projects, like the Triple Wall and the International Wastewater Treatment Plant, have created many environmental and human rights problems. When the Congress passed Operation Gatekeeper in 1994, they created a demilitarized zone in which 428 people have died in border crossing attempts. With few other opportunities, immigrants are willing to risk their lives for the opportunity to work in the U.S. The Triple Wall and other measures drive migrants to extremely dangerous parts of the border for which they are not prepared. Their organization is working on a project to place white crosses along the border where people have died. These are just some of the human rights issues that the border faces.

**Mr. Roberto A. Sanchez-Rodrigues**, made four recommendations for community revitalization and environmental justice. First, adopt a broader social and economic perspective when discussing the effects and impacts of NAFTA and GATT on the border. Second, build a coalition enabling environmental justice groups, labor unions, local authorities, federal and state agencies as well as business and industry interest groups to come together to address these issues. Third, coalitions should set a positive precedent to encourage a cooperative effort to effect overall change, not just small, individual victories. Fourth, encourage existing agencies and organizations to develop the opportunities available under NAFTA in a manner that promotes sustainable development and awareness of environmental justice. NEJAC and the EPA must work to protect existing U.S. environmental law from multinational trade agreements, which threaten the democratic voice of local communities while bolstering the interests of multinational corporations. Lastly, the EPA ought to provide an annual report that describes how the agency is being perceived, what progress is being made, and how the agency should be improved.

**Mr. Domingo Gonzales**, the Border Campaign, spoke of the historical lessons to be found concerning the border region, immigration, economic decision-making, the environment, environmental justice, and sustainable development. Migrant workers began coming North with the prohibition of slavery, and continued with the Bracero Program during WWII and the Maquila Program in the 1960s. The U.S. sought migrant workers for cheap labor and increased profit, but did not do so because they cared for their well being. Historically, the border region, lacking resources like water, has never been able to support much development. If Congressmen and the corporations that have made millions on the border had consulted the local communities, they would have been able to prevent the current problems border communities face due to the lack of resources like water. In order to learn from the mistakes of the past, local communities must be empowered and given a voice in the decision-making process. The EPA and other agencies must create proper mechanisms to include locals in addressing the border issues. With NAFTA, these border communities with their environmental justice issues will continue to grow, as there are not many other choices for the affected populations. Without a bottom-up approach, the EPA and other agencies will never understand the issues and there will never be real solutions to the many border issues.

## **Group Discussion:**

This group discussion centered around the shortcomings of NAFTA, the effect it has had on border communities, as well as efforts by the EPA and the federal government to address these issues.

***Shortcomings of NAFTA:*** One of the ideas from the comment period was that NAFTA only considers the needs and benefits of the industrialized nations. Had current border issues such as pollution, labor and immigration been taken into full consideration, then they could have been avoided from the start. As it stands, NAFTA is nothing more than a great tax break for the US and the means by which multinational corporations get around environmental and labor regulations. Mexico is not sharing in the benefits of free trade and is now faced with a fight for their cultural, spiritual and human rights. Again, there is a call for those impacted to have a voice in the policy making so that they may have an opportunity to stand up for themselves.

***EPA and Federal Government Efforts:*** Representatives from the EPA and federal government stated that they are working to include the communities of the border region in addressing these issues, but that it is difficult to get government agencies together. There are more and more high-level meetings between the US and Mexico; and although the Border XXI program is supposed to convene all government agencies, they have had little success. The NADBank is also getting involved with over 200 water/wastewater projects, 16 currently underway and 6 more planned for year 2000. Recently though, Congress cut the budget in half because there were not enough people pushing for it, so there is a call for communities to start working on their legislatures to fund such programs. There is agreement that there must be more communications and efforts made to achieve better collaboration between the agencies. Alan Hecht from the EPA made the point that NAFTA is not going to be repealed anytime soon and millions of people have come to rely on the current system for jobs. Noting that the system is not perfect, he asked how the EPA and the federal government should decide who gets what and how wealth is distributed?

## **Final Session – Conclusions and Recommendations**

The main focus of this final comment period was the offering of solutions and areas that need to be focused on.

Education was stressed as a key step towards empowerment and finding solutions. One recommendation was that education in the environment and economics should be pushed in the public schools so that future generations are able to get involved and find solutions. There were also groups that wanted to know more and have greater access to information.

Enforcement was also suggested. It was pointed out that one of the problems with enforcement is the issue of a nation's sovereignty and the inability of the U.S. to enforce environmental laws against corporations operating in Mexico. Bi-lateral cooperation between the U.S. and Mexico was offered as a solution, as was the suggestion that U.S. monitor the repatriation of hazmat to

monitor compliance with current laws. Another suggestion was to organize all NGOs and organizations working on monitoring so that they are able to share information and resources.

It is stressed that in order to find a solution, we must stop approaching the border unilaterally. It is a common bioregion with a growing common culture, history, and people and the two nations must work together to find a common solution.

At the conclusion of the session, the participants identified the following key goals for improving immigration and trade issues:

- Use a bi-national approach when addressing border issues, including developing bi-national models for development
- Understand that the environment and migration are impacted by political and economic indicators
- Use a historical perspective to understand situations today
- Recognize that environmental justice is not an isolated issue but is part of social processes
- Commit to involving communities as equal partners
- Accept that economic development should coincide with human development
- Enforce against companies that pollute on the border
- EPA should encourage people to push the Agency, encourage people to become part of the political process
- EPA must allow better and easier access to public information and compliance standards. EPA should accurately calculate waste by the maquiladoras; it can do that by figuring out what the maquiladoras are importing into Mexico, i.e. what specific chemicals and their amounts. EPA already can know what is being exported into Mexico and also what the US imports, therefore it can understand what chemicals, and their amounts remain in Mexico
- There is a problem with municipal waste in the border towns on the Mexican side. Mexico only enforces its environmental laws against Mexican companies but not against multi-nationals.
- There should be a monitoring commission to consult with EPA on border issues. NEJAC could take on this role.
- The problem is not that the border exists, but that the border is being managed unilaterally on many levels: Environmentally, Socially, and Economically.
- Borders are positive in many respects. They can help allow for defining oneself both culturally and spiritually.
- EPA should learn from the past.
- EPA should work with and change what exists.

### **Indigenous Peoples and Border Justice:**

This session included presentations and discussions that examine environmental justice issues impacting Indigenous Peoples along the U.S.-Mexico border, as well as those indigenous populations within interior lands that are impacted by trade policies between U.S. and Mexico. The diverse group included tribal citizens, representatives from tribal communities including the Mojave Elders Group, and EPA staff working at tribal levels. All participants agreed that there are many issues that need to be dealt with concerning environmental justice on the border and the discussion began with listing those issues. Although participants expressed that the two and half hours allotted for the discussion appeared to be insufficient for such an important discussion, they indicated that they were encouraged by the three solid recommendations that resulted from their deliberations:

- Community participation and communication: Participants agreed they must be empowered and have a voice in policy that affects them, which includes having an effective means of communication at the local level. Also, direct communication links must be established between the Mexican Government and EPA Region 9 to increase effective dialogue. Establishing this communication could be accomplished by reorganizing the Border XXI program to include community voices and establishing a direct line to those agencies and officials who make the decisions.
- Tribes Meet with Governor Davis: Felicia Marcus (EPA) has agreed to try and set up a meeting between tribes living in Region 9 and Governor Davis. She will provide a written copy of the request to the tribes.
- Colorado River Watershed/Delta: This area must be included in the Border XXI program. Tribal people living along the Colorado River outside the 100-km border zone are affected by border contamination. However, since these tribes are outside of the 100 km zone, they are not protected by Border XXI legislation or funds. If a watershed approach was used to define the boundary zone, this area would be sheltered.

### **The Summary of Recommendations**

***Waste Dumps on Indigenous Borderlands:*** Participants identified the disproportionate number of environmental injustices affecting tribal lands throughout the breakout session. Historically, low economic growth and political weakness make tribal lands vulnerable to these types of violations. The radioactive waste dump in New Mexico (WIPP), the petroleum contaminated soil releases at the Cahuilla Indian Reservation, and large pesticide contamination on Mexican farmlands are examples. Participants agreed that these issues must be addressed considering the destruction of the land and effects on public health. Current studies show a link between children's health and environmental contamination. A study by Dr. Gelate links the increased number of Mexican children with learning disabilities to toxic unloading. Alberto Saldamando concluded that the areas of national sacrifice tend to be Indian land and that people are losing their rights in the name of development. Tribal communities lack the power and resources to fight off the wealthy developers in order to protect their land and rights.

***Effects of NAFTA on the Environment.*** Participants raised concerns about the effects of trade and traffic on the border caused by the implementation of NAFTA. The U.S. is tearing down borders, enabling deregulation of environmental standards, utilization of cheap labor and land, and exploitation of the border region. The U.S. must recognize that the border region is a biosphere and base legislation and policy on its protection. The indigenous people on the border have a birthright to this region, and due to U.S. development and NAFTA, they live and must raise their children with all the health concerns that come with living on dumps and polluted lands. The border functions to protect the interests of the U.S. and its industries, providing cheap labor, land and resources. These policies promote environmental injustice and allow the wealthy and powerful to use the land and its people without consideration of the health or well being of those living in the region.

***Tribal Sacredness.*** A story was told that while the federal government was considering a development permit, officials attempted to quantify the spirituality of a piece of tribal land by asking community members how many times they prayed there. Of course, the government was not able to place a measurable unit of sacredness on the land. One of the great concerns of this group was how to protect their spiritual, religious and cultural sites. First, there must be a common definition of what is a religious, spiritual, or cultural site, which then should open the non-indigenous eyes as to how they must be protected. One recommendation was that all sites be

registered with the federal government so that when someone wants to take advantage of it, there is protection. The problem is enforcement and the native tribes will always lose out to the money and influence of the corporations and politicians.

***Bad Actor Law.*** EPA cannot consider a corporation's past history of violating environmental laws when considering permit applications. Participants expressed outrage at the fact that Alco Pacifico and similar companies have been allowed to relocate operations "time and time again" and continue to destroy the environment and harm people's health. Participants agreed that EPA should stop companies that have a history of environmental injustice and not allow them to repeat their offences. "Three Strikes and You're Out!" they urged.

***Border XXI.*** Many common themes kept reappearing throughout the discussion such as the inadequacies of the Border XXI 100 km zone definition, lack of indigenous representation, and the need for effective legislation to reflect indigenous peoples values. Participants described the ensuing environmental destruction on the border, which affects not only the people living within the 200 km zone set aside by Border XXI, but a much larger area. As this is a common region and the issues are shared by both sides of the border, solutions must be bi-lateral. The Border XXI plan is reviewed every five years and many agree that tribes need to have a voice in this review process. There are 25 or 26 distinct tribes along the border with distinct needs and voices. Each must have the opportunity to represent itself on these matters. Though there are various Executive Orders and Legislative acts that require the U.S. to consult with Tribes, they still have a difficult time being heard and having their opinion considered substantively. In addition, tribes in Mexico are affected as well and must have an opportunity to stand up for themselves.

### ***Conclusions:***

- Reformulate Border XXI, recognizing the inadequacies of the 62 mi (100 km) border. A holistic approach must be applied, consistent with indigenous people's values: social, political, economic, environmental, and cultural.
- Include representatives of indigenous peoples in each entity involved in Border XXI and other bi-national policy-making programs.
- Articulate indigenous environmental values into policies and regulations.

These preceding recommendations could not address all the issues discussed during the session and participants agreed to defer discussion of the following issues at a subsequent meeting:

- Contaminants, water quality and resource protection
- Children's health
- Border XXI Process
- EPA commit to apply Executive Orders on government to government tribal relations in all its international programs
- All Executive Orders applying to tribal people be applied to international programs
- Bad Actor Law

## **Environmental Health Along the U.S.-Mexico Border**

This session was coordinated by **Ms. A. Caroline Hotaling** (Border Ecology Project, Bisbee, Arizona and member, NEJAC International Subcommittee), and moderated by Ms. Hotaling and **Martha Valdés** (Director of the Border Environmental Justice Campaign of the Environmental Health Coalition in San Diego, CA). The work group discussions addressed a broad range of environmental health issues along the border, including health care, pollution and toxics, organizing projects, bi-national medical research, and site-specific issues. Participants in the session included representatives from national, state, and local government agencies, community based organizations, and community people from the border region.

The panelists began by describing how they have worked to improve the environmental health of people living in the border region. These panel presentations are described in detail below. The group was then divided into two sections. One group was conducted in English and one bilingually. The first group, looking at medical research, was moderated by Caroline Hotaling. The second group, addressing pollution and toxics, was moderated by Martha Valdés of the Environmental Health Coalition in San Diego, CA. Although the discussions were centered on certain issues, many other issues arose and were discussed. The moderators emphasized the development of proposals and recommendations to address issues that were considered. The Summary of Recommendations section of this report summarizes the proposals and recommendations identified by the participants of this work group.

### **Panel Presentations:**

**Ms. Martha Valdés**, Environmental Health Coalition (EHC), San Diego, California, described her 20-year old organization that addresses a broad spectrum of health-related issues, including toxic substances and air quality, offering diverse services such as a technical assistance hotline to field community calls, and a Border Environmental Justice campaign. She commented that all EHC's campaigns were created with the express intention to empower the surrounding community. Environmental justice issues are important to EHC, she said, because of their "undeniable effect" on the San Diego and Tijuana communities. Of particular concern are the environmental health risks posed by maquiladoras, especially to women who are exposed to heavy metals, organic solvents, and acids on a daily basis. The effects of such exposure can be most clearly seen in the unusually large percentage of babies born in this area with neural tube defects, she confided. Ms. Valdés described efforts by EHC to fight for environmental justice along the border region, including a project known as Salud Ambiental - Latinas Tomando Acción (SALTA) or Latin Women Taking Action for Environmental Health, which trains women to be *promotoras*, or lay environmental health activists, within their community. She reported that EHC's activities were also key in stopping the local agricultural industry from spraying local fruit farms without community consent, as well as stopping the fumigation of certain fruits with methyl bromide, a potent toxin and carcinogen. EHC sees a great need for improved access to information, which would allow communities to better assess information about the risks to their health.

**Ms. Carmen Cutter**, Border Health Initiative, Project Concern International, San Diego, briefly described the activities of her organization, which focuses on communicable diseases such as tuberculosis and AIDS. They have established 37 community clinics in Tijuana, Mexico. This panelist chose not to speak extensively due to a desire to field questions as they became part of the overall discussion.

**Ms. Claudia Laffont Castellon**, Aqua 21, Ciudad Juarez, Chihuahua, described Aqua 21 as a project designed to improve health through improved water sanitation. The program is a joint venture by the Paso del Norte Health Foundation, the University of Texas El Paso, and Aqua 21, who together provide the financial support and management of the program, she explained. Its efforts are focused on both improving water purification and infrastructure and promoting basic water safety education through small community based organizations in the most impoverished neighborhoods, she continued. Infrastructure improvements made in El Paso/Ciudad Juarez through the Aqua 21 program are supplied by various organizations and include connecting people to the public water system, improving local water storage techniques, and connecting all public water supplies to oxidation plants. Ms. Laffont Castellon asserts that much of the success of the program is due to the number of organizations working together bi-nationally, providing resources that would have been unavailable otherwise.

During the introduction, one participant noted that she felt that the African-American community, including the residents of the neighborhood where the roundtable was taking place, were largely left out of border organizing and environmental campaigns, and she recommended that the African-American populations that reside along the border be recognized and addressed in all programs.

### **Group Discussions:**

***Women's Health and the Lack of Adequate Health Care:*** Participants described in detail situations in which women of all ages work in maquiladoras where they are exposed to a variety of toxic and carcinogenic chemicals for at least 48 hours a week. Because of financial and time constraints, it often is impossible for them to see a doctor unless it is to treat an acute problem, they said. One participant noted that recently in one border community, a women's clinic was established for one Saturday a month, specifically examining women for cervical cancer and offering mammograms. In one day, she reported, the clinic sees 70 women who have traveled from various nearby communities to seek out these needed services.

***Health Standards:*** Discussion centered on ways to integrate the concerns, programs, and activities of different environmental justice groups operating along the border. Participants pointed to the use of health-related issues as a unifying theme, specifically recommending the use of health based standards for environmental protection rather than standards based on criteria the participants perceive as economics. In addition, the participants asked EPA to support and promote standardization among the health registers maintained separately by the U.S. and Mexico.

**Capacity Building:** Several requests were made as to how to build capacity, such as funding for expanding training on environmental health for *promotoras* and other health professionals, the establishment of contingency funds for community and environmental health clinics, and the creation of a liaison position between EPA and environmental justice communities.

**Bi-national Efforts for a Bi-national Region:** Participants urged EPA and the Mexican government to treat the border area as a single unified region and to avoid the tendency to see this area as two different countries. The participants stressed that this is, indeed, how many residents actually conduct their lives in the area. Many U.S. residents living in the border region seek treatment in their neighboring Mexican community and vice-versa. The bi-nationality of the actual health care system *as it is used* by residents of both sides leads to difficulties in monitoring health data along the border, they said. Participants urged increased bi-national cooperation on (1) monitoring and disseminating health and disease data, (2) developing research projects, and (3) providing funding for health programs, as well as increasing funding from the U.S. and Mexico for border programs.

**Health Care Provider Infrastructure:** Beth Hailstock, Cincinnati Health Department and member of the NEJAC International Subcommittee, stated that health service agencies and environmental agencies, where available, often are not equipped to properly meet the *environmental health* needs of the communities they serve, nor are they designed to integrate their programs to better address environmental health issues. She suggested that governments reevaluate the structure of these organizations to see whether they are conducive to the needs of the surrounding community.

**University Research and Monies:** Participants noted that often university programs, which are funded to research border community health problems, do not (1) report back to the community on their findings at all, or (2) provide follow-up health care to residents whose ailments they have studied. One participant noted that border communities are attractive study sites for universities because of their demographics and obvious health problems, but that research does not often translate into improved health care for the studied areas. In addition, the research group may not address issues that the community feels are important in their area, participants noted. Participants suggested that academic institutions be required to prepare and install a plan for the active implementation of research findings to solve, not just analyze, community problems. Many community representatives present were concerned that communities often were not involved in the planning process for these studies, resulting in a lack of accountability on the part of the university back to the community it was studying. Participants urged that communities be given greater influence over the research plan by allowing communities to play a larger role in the process of awarding grants for research, and by getting funding to implement portions of the research program.

One participant noted that through a former congressional add-on, now not funded, EPA had been able to award up to \$250,000 to universities doing research along the border that would partner with a community organization in its effort. However, many community members attending the session stated that such a program was inadequate due to insufficient community influence. Currently, they explained, many universities are teamed with community

organizations which represent a very small part of the surrounding community and are not receiving substantial community input.

One participant pointed to Howard University and Johns Hopkins University as positive university role models. There, public health programs of both institutions demonstrated a proven ability to participate in major neighborhood cleanup efforts and significantly affected both the social and the environmental quality of life of the surrounding communities. Many participants agreed that this would be a good model to pursue, and suggested that communities should be proactive in identifying border universities and agencies that would be willing to consider adopting the HU/JHU model in border communities.

***Community Participation:*** Participants expressed frustration with the low level of community involvement in decisions and lack of participation in the development of public health studies. They urged EPA to strengthen policies that ensure community participation in the development and implementation of programs, including mandating that applicants engage in fiscal sharing with local organizations in carrying out border environmental and public health studies.

***Innovative Technology and Data Analysis:*** A related issue was the need for innovative research techniques to analyze environmental health problems. Often, a health effect cannot be traced back to a single source due to the number of potential causes. It was suggested that much of the environmental monitoring currently being conducted on the border did not represent true border resident exposures. For example, the idea was suggested by one participant of conducting air quality monitoring using monitoring devices placed on people, rather than on rooftops or other stationary locations. Another example given of environmental monitoring directly related to human exposure would be the testing of water at the tap, rather than from the well. Other data and technology recommendations focused on promoting low-cost technologies (both software and hardware) for the exchange of environmental and health information. Just as important, they stated, is the building of accurate and accessible data and information programs in both English and Spanish.

***Bi-national Funding:*** A general concern voiced by community members and government officials alike was that funding for border region projects is heavily concentrated along the U.S. side of the border. A consensus was reached that in order to more equitably disperse project funding, bi-national funding mechanisms which are already in place need to be more accessible. Another suggestion was to further involve the Pan American Health Organization, which could potentially streamline the process for funding Mexican projects.

***Industrial Contamination:*** Participants called for the identification and promotion of buffer zones and moratoriums on industrial developers with a track record of polluting or violating local ordinances. It was noted that industrial developers often leave behind heavily polluted sites on the U.S. side, only to open new industrial sites on the Mexican side. Increased coordination with local officials and the development of a method of tracking bi-national pollutants to prevent further degradation was recommended.

Participants also expressed frustration with other efforts to identify and track hazardous waste. They called for increased coordination between the U.S. and Mexico in tracking transboundary shipments. In particular, they recommended EPA take steps to improve EPA's HazTrack software program. Participants also suggested that data collected by Mexico be made publically available.

***Pesticides and Agricultural Health Risks:*** Participants urged follow-up health risk assessments to test for and evaluate the effects of pesticide residues.

*Saturday, August 21, 1999*

## **Reports from Work Groups & Summation and Closure**

Remarks:

*Arnoldo Garcia, NEJAC International Subcommittee*  
*William Nitze, EPA OIA*  
*Jose Bravo, SNEEJ*

## **SUMMARY OF RECOMMENDATIONS**

The following recommendations were discussed and identified during the concurrent work group sessions, as well as during the report back on Saturday, August 21, 1999. In an attempt for something immediately tangible to come out of the conference, the participants held a final meeting to determine which recommendations they wanted EPA to commit to before leaving that day. It was clear from the participants' comments that the final recommendations were not intended to replace the ones made previously that day, but were aimed at EPA to begin committing to some of the issues that had been raised. Key recommendations to EPA include:

- Develop an Environmental Justice Commission on the U.S.-Mexico Border, 75 percent of whose members should be community-based environmental justice organizations
- Commit to a response to the tribal people as to EPA's capabilities
- Address every issue/recommendation discussed with a list of those that will be committed to and recommend methods for handling the remaining topics
- Distribute this information more effectively at the local level
- Address these issues directly rather than responding through the NEJAC
- Commit to total cleanup of the Candados Prestos, Ciudad, Juarez, Mexico and Metales y Derivados, Tijuana, Mexico sites, as well as a site assessment of the Gato Negro site located outside Matamoros, Mexico.

**Ms. Felicia Marcus**, Regional Administrator, EPA Region 9, responded by saying that the idea of commitment is great. She apologized for all the previous meetings EPA had without the tribal people's participation, and hoped that at the next meeting, EPA "won't need their butts kicked again." She also agreed that a follow-up and report back of what has been done is crucial, and felt that progress has already been made on some of the issues discussed that people are still unaware of. Mr. Jerry Clifford, Deputy Regional Administrator, commented that he was pleased by the level of participation in the Roundtable of the states in his region. For these conferences to be more effective, all the states along the U.S. and Mexico border should be represented,

including states in Mexico. Without Mexico's help, it will be difficult to see that the laws are enforced, he noted.

**Ms. Marcus, Mr Clifford, and Mr. William Nitze**, EPA OIA, all agreed to commit to immediately begin exploring power within the agency to address these recommendations. They committed to getting back to the participants within one month for a status report of EPA's capabilities. With respect to the request for site cleanups and assessment, the EPA managers committed to trying to find a legal way to clean up the Candados Prestos and Metales y Derivados sites and perform the site assessment of Gato Negro within the maximum extent possible. All three expressed that new ways for getting the funding across the border needed to be explored. Despite the persistent belief of community representatives that EPA had the power to actualize these recommendations, EPA felt that they did not. "I don't see a mechanism within EPA today to go in and clean up this problem," Mr. Clifford noted, adding that it does not mean we cannot find a way.

**Mr. Bravo** commented that he still needed time to decide whether the use of Border XXI money to help people at the community level would work. He, like many other participants, said they felt that communities should not have to take a loan from NAD Bank. The problem with that concept, he explained, is that EPA is moving away from making the polluter pay. Why should communities pay for damage to their land when the people causing it never put money back into the local economy, they asked. One participant asked why the communities could not be given \$25 million as seed money to start working when there was \$425 million given to NAD Bank for 16 projects.

**Ms. Marcus** responded that Congress had appropriated that money for specific projects. She said that NAD Bank's earnings can be used more flexibly and that it is very difficult to free up the money. Mr. Nitze suspected that over a five-year period, between \$20 to \$50 million dollars could be taken from the retained earnings of the bank.

**Ms. Hotaling** elaborated on the request for creating an Environmental Justice Commission on the U.S.-Mexico border and stressed that border communities do not want to be isolated. She also felt that to make the working groups more effective, they should be divided by region.

Participants concluded the roundtable meeting by reiterating that it is important to recognize the roundtable is just one point in a long process, but one where "we are in a perilous situation with poverty and health disparities widening between U.S. and Mexico." Actions need to be taken to close the gap, they urged, saying that action needs to be taken by the U.S. and Mexico to empower communities on both sides of the border. Opening democratic spaces within policy making organizations can begin this process, they continued, where environmental justice needs to be promoted in all levels of EPA and there needs to be a sharing of resources within the community.

## **Recommendations related to Environmental and Labor Justice:**

- Establish a border environmental justice commission to address environmental justice issues on the U.S.-Mexico Border.
- Arrange a meeting with the Environmental Health Coalition to have an equal and fair exchange of information between parties regarding nuclear homeport plans for the San Diego Naval Station.
- File complaints and charges of discrimination with Equal Employment Opportunity Commission (EEOC). For example, the EEOC has been very responsive in Texas where a task force has been set up to work with local workers on discrimination issues.
- Address environmental justice issues in maquiladoras by forcing U.S. companies to comply with the highest standards of the three NAFTA countries (i.e. force companies to keep TRI (toxic release inventory)).
- Address environmental justice and maquiladora issues in the entire country not just in border regions.
- Perform a health study in Anapra, Chihuahua, where 55-gallon drums previously used as toxic waste drums are now being used for domestic water storage by the local people.
- Clean up and remediate Candados Presto.
- Do not open ASARCO and address contamination related health issues in local children by conducting studies, evaluating environmental risks and informing and educating the local communities.
- Close the WIPP program in New Mexico. EPA should resume its investigation given that EPA was apparently pressured by DOE to stop.
- Enforce the La Paz Agreement with respect to the Sierra Blanca dump in Sierra Blanca, Texas.
- Close dump in Sunland Park, New Mexico.
- Do not accept any maquiladoras in Mexico that leave the U.S. because they have not complied with U.S. laws and standards.
- Establish a “three strikes, you’re out” policy for polluting industries.
- Force maquiladoras to transport wastes back to country of origin.
- Renegotiate and reevaluate water rights in Valle de Juarez, Mexico to ensure that irrigation waters are sufficient and clean enough to meet the needs of the local farmers. Currently irrigation waters are heavily contaminated by maquiladoras in the area.
- Examine why NAD BANK and BECC are only funding a primary treatment plant in Valle de Juarez. Two plants are being built and they are both only half plants. Challenge the current plan to spread the plant sludge in Valle de Juarez as fertilizer.
- Determine if the Sierra Blanca/New York sludge project is a violation of the La Paz Treaty.

- Investigate and address Title 6 civil rights complaints on the permitting of hazardous waste facilities instead of rejecting them.
- Develop understandable, “community-friendly” guidelines to explain what is appropriate for a complaint, so complaints can be easily drafted and time is not wasted submitting inappropriate or unacceptable complaints.
- The next round of the Border XXI Plan needs to incorporate citizen’s voice and concerns.
- Develop a plan to cleanup the Rio Grande/Rio Bravo. A study was conducted during high flow season and results cannot be considered representative.
- Make all EPA information available in Spanish.
- Create an EPA office in Mexico near the border.
- Force maquiladoras to guarantee salary scales similar to those of their country of origin.
- Force maquiladoras to adhere to environmental protection laws of their countries of origin, or whichever are more stringent.
- Guarantee the right of workers to organize in the United States and Mexico.
- Prohibit the Bracero program in the United States to ensure the protection of farmworkers.
- Create a just transition program which includes all affected parties, including workers and communities as equal players.
- Make industries establish and contribute to a medical health fund to assist affected parties in transition.
- Create a GI-type Bill or declare an executive order of Just Transition so that displaced laborers can be compensated or assisted in transition.
- Perform a study of maquiladora workers and surrounding community members’ health, particularly women.
- Remediate the CYTRAR site completely of heavy metals and return the full volume of wastes to the U.S.
- Analyze and evaluate the water quality and health of the community near the landfill in Sunland Park, New Mexico.
- Review NAFTA in respect to labor, transportation, agricultural, environmental, and human rights issues.
- Increase authority of NAFTA-related parties such as the CEC and Labor Commission to have the ability and capacity to enforce and levy sanctions.
- Sanction all parties that violate the agreements.
- Renegotiate the Free Trade Agreement including the side agreements.
- Reorganize the institutions of the NAD BANK and BECC to include worker and community considerations.

- Identify the decision makers from both countries in the case of Metales y Derivados and convene a meeting between them to decide what will be done to remediate the site and to make the community an equal stakeholder.
- Develop a committee that determines whether just compensation has been received by affected parties for issues related to health, environmental contamination, and worker displacement.
- Establish an international tribunal, which would address demobilization and remediation of closed mining sites especially in case of a sudden cease in operations.
- Improve outreach efforts in lower income, rural, and unincorporated areas by NAFTA/EPA and other federal institutions.

### **Recommendations related to Migration, Environmental Justice and Trade**

- Establish a border environmental justice commission to address environmental justice issues on the U.S.-Mexico border to interact with existing agencies.
- EPA is committed to improve community participation, expand existing programs to include broader social goals via environmental issues, and to focus on providing alternative educational opportunities such as technical training.
- EPA should provide a list of all available documents and how to access these for anyone requesting them.
- Do more outreach and bring enforcement issues and concerns regarding hazardous waste to communities.
- Use a bi-national approach to immigration and the environment.
- Create alternatives for people who are displaced due to change or a move in industry.
- Take a broader perspective when discussing the border and environmental justice. The agencies and community groups must understand that the economy relates to the environment and there are social consequences that come from this dynamic. The border is especially complicated because we are dealing with two nations and societies. Mexico's economy may have on the whole improved with NAFTA, but we must look at the social makeup of those who benefited.
- Build up coalitions among environmental justice groups that include community organizations, labor unions, local authorities, federal and state agencies, and business groups. The myth that business and industry are the enemy must be broken.
- These coalitions should set up a precedent illustrating how a cooperative effort can function. Otherwise we will continually have individual victories, but no overall change.
- Awareness of the opportunities created by NAFTA should be brought more to light. Use the organizations that already exist to create new opportunities. A way to develop links between agencies could be through a more aggressive use of the sustainable development argument and its relationship to environmental justice.
- Communities can be empowered by being included in the decision making process. A coalition should be created that is familiar with the issues and the historical perspectives that can in turn follow-up with further questions on how to solve these issues and can give communities the background necessary to make informed decisions and ask the most relevant questions.

- Through congressional representatives and community activism help support the department of the EPA that can build projects in Mexico.
- Agency progress reports, including how the agency is perceived, what progress has been made, and how the agency can be improved, must be done. Make this information available to communities, thereby potentially empowering these communities.
- Community activists need to acknowledge that measuring progress takes time. Engagement between the agencies and communities should grow. We need to build mechanisms for more open participation in the short and long term.
- A way to get other agencies to respond to border issues is to take a broader stance on the issues facing border communities. For example by approaching a border issue affecting many communities would broaden the scope of the problem and potentially get other agencies involved.
- Community empowerment through education and health development. EPA should include the community in decisions by asking them what they need and want, and not just give communities what the EPA has determined that the community needs.
- Invest in human capital with a 10-20 year outlook, as short-term outlooks do not accurately gauge issues. Models for development should be on a bi-national basis.
- Federal and State agencies need to be educated on all aspects of border issues. Arrange events like the Site Tour and invite high-level diplomats and wider range of agency participation.
- More outreach, tours, and conferences for local leadership, other agencies, and school boards.
- African American community groups and Latino community groups should form an alliance. They face similar issues and can expand the scope of an issue to include greater agency participation.
- Increase restrictions on a bi-national level for pollution levels.
- Need community involvement to help the enforcement agencies know where to look for violators. Can do more planning regarding what industry and sectors need more regulation.
- Oversight by community commission from both sides of the border. The commission would be consulted on border decisions and will be involved in the implementation process or various programs.
- Set up a grant system for those groups that set up coalitions and establish precedents for cooperative efforts.
- Explore the relationship between industry and the labor movement. Ensure maquiladoras do not suppress labor unions.
- Set up a Border Center to educate the community and government contacts on issues.

### **Recommendations Related to Indigenous Peoples Issues**

- Establish a border environmental justice commission to address environmental justice issues on the U.S.-Mexico Border.

- Apply a holistic approach to Border XXI that is consistent with indigenous peoples values, including social, political, economic, environmental and cultural considerations.
- Include indigenous representatives from each nation in Border XXI and other bi-national policy-making programs.
- Articulate indigenous environmental values into policies and regulations.
- Enforce a Bad Actor Law to keep known polluters from repeatedly polluting. Recommend that U.S. Environmental Protection Agency take into account the past history of a company. Recommend effective legislation be made and enforced.
- Recommend that actions taken on the U.S. side of the border also be taken on the Mexican side of the border.
- Apply all Presidential Executive Orders related to tribal people to international programs.

### **Recommendations related to Environmental Health**

- Establish a border environmental justice commission to address environmental justice issues on the U.S.-Mexico Border.
- Develop bi-national mechanisms and responses to serve the environmental health needs of bi-national communities.
- Develop bi-national environmental health funding:
  - Provide sources of bi-national funding; Develop bi-national RFPs
  - Streamline bi-national funding mechanisms - Work with PAHO
  - Pressure USAID to fund Mexico
  - Identify tobacco tax funds that can be used for health and environmental programs along the border
  - Provide more money for EJ grants
- Develop bi-national health monitoring:
  - Support comparable, standardized data collection and health registers in US and Mexico
  - Promote bi-national data exchange
  - Encourage governmental transparency on both sides of the border
- Create a community liaison position within EPA for border EJ communities, to:
  - Determine and address the specific information, environmental health, and related funding needs for EJ communities
  - Assist EJ communities in developing community infrastructure and capacity
- Improve community outreach potential:
  - Build EPA's community outreach infrastructure by investing an extra \$1-2 million/year nationwide
  - Strengthen policies that ensure community participation
- Improve the public dissemination of environmental health information:
  - Build accurate and accessible data information and public information programs, especially for Mexico
  - Promote low-cost technologies for information exchange
  - Promote the donation of computer soft- and hardware to border communities
  - Develop bilingual means of communication and bilingual materials

- Encourage border environmental health research:
  - Better communicate existing health studies from both sides
  - Create opportunities for bi-national research
  - Research respiratory problems
  - Perform epidemiological studies along border
  - Work in coordination with other federal agencies to develop epidemiological studies
  - Encourage the NIEHS to prioritize the border
  
- Encourage publicly-responsive border environmental health research:
  - Act on known problems and do not let studies pre-empt solutions
  - Look to community aid/ “health planning” models like those of Johns Hopkins and Howard University for border clean-up projects
  - Identify and work with border universities to adopt the JHU/HU model
  - Mandate that dissemination and action plans be tied to environmental health research
  - Develop an environmental health equivalent to the Superfund that can be activated when a community need is obvious
  - Work with resource groups such as the American Public Health Association
  - Adopt NEJAC public participation guidelines for all projects funded through EPA
  - Create mechanism which establish Community Based Organizations as fiscal agents or fiscal partners with academic institutions
  - Get up-front community input on RFPs or find mechanisms to assist Community Based Organizations in generating their own RFPs
  - Find funding to increase the capacity of Community Based Organizations to generate their own projects
  - Develop criteria to scrutinize funding recipients for true community involvement
  - Reinstate and reinvent the EPA-Community-University partnership program - which was 250K to a university to partner with communities
  - Encourage SCERP, NIEHS and other programs to become more community-based
  - threaten source of funding if the community is not satisfied with on-going research and projects
  
- Improve bi-national health care:
  - Increase training for promotores and health professionals on environmental health
  - Increase cultural sensitivity training for health professionals on both sides of the border
  - Expand the network of occupational and environmental health clinics in the border region
  - Create contingency funds for community environmental clinics
  - Follow up on the health risk assessment of pesticide residues in border communities
  - Support underserved rural areas where there may be no health care provider at all
  
- Emphasize public health in the development of environmental standards, rather than economic ramifications.
  
- Bridge the gap among different environmental justice groups in the border region using health issues as a unifying point.
  
- Include African American communities in border organizing and education efforts.
  
- Work to integrate and encourage cooperation between public health and environmental departments.
  
- Develop environmental monitoring plans that consider and monitor probable paths of exposure and include multiple exposures (i.e. home, workplace, schools, etc.) and test for multiple chemicals.
  - Improve industrial siting and business responsibility in EJ communities:
  - Use Title 6 more effectively in siting facilities containing hazardous materials
  - Improve HAZTRACKS by further coordination between U.S. and Mexican environmental justice organizations dealing with hazardous waste

- Scrutinize zoning regulations to find areas of weakness allowing industry to build in or around low-income neighborhoods.
- Change zoning regulations to prevent industry to build in or around low-income neighborhoods and impose appropriate fines.

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**30-Day Response**  
**NEJAC Border Roundtable**  
*Follow-Up Items from Saturday, August 21 Session*

**OVERARCHING**

1. **Create Environmental Justice Border Commission.**

**Contact:** EPA Region 9, Wendy Laird-Benner, 415-744-1168

**Response:** EPA fundamentally agrees with the need to better integrate environmental justice throughout our Border Program. EPA also agrees that a more concerted effort must be made to involve communities and environmental justice stakeholders. A variety of institutions (both existing and new) and mechanisms, both short term and long term, could be utilized to accomplish that goal. EPA would like to better understand the needs, role, and scope of this specific request. We would like to discuss this further and ask the NEJAC to identify key individuals who would be part of that dialogue.

2. **Clean up the following sites in Mexico: El Gato Negro, Candados Presto Lock, Metales y Derivados.**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096  
EPA Region 6, Gina Weber, 214-665-8188

**Response:** The U.S. EPA does not have jurisdiction over these sites, which are located in Mexico and can only undertake action related to these contaminated sites upon request from the Mexican Government.

Nevertheless, we have initiated discussions with Mexico's Procuraduría Federal de Protección al Ambiente (Federal Attorney General for Environmental Protection - PROFEPA) to gather pertinent information on the sites and assess how clean up of these sites might be achieved. PROFEPA is well aware of the seriousness of dealing with contaminated sites in Mexico. To this end, they are establishing a fund, which will be supported by fines and penalties collected under PROFEPA enforcement actions, to address the most contaminated sites throughout the country of Mexico. Under this program, PROFEPA has identified 166 abandoned sites (i.e., sites where the owner or responsible party cannot be identified) that need remedial action throughout Mexico.

U.S. environmental response options in Mexico are very limited and fall into three categories: 1) Technical Assistance, 2) Repatriation of Illegally Exported Hazardous Waste, and 3) Emergency Response.

- Technical Assistance: EPA has the authority to provide technical assistance to Mexican Government personnel and consultants on a wide range of environmental issues including, but not limited to, development of sampling and analysis plans, remedial investigation techniques, selection of cleanup technologies, and planning remedial action activities. However, EPA can provide these services only at the request of the Mexican Government.
- Repatriation of Illegally Exported Waste: Under Annex III of the La Paz Agreement, the U.S. has agreed to readmit to the U.S. hazardous wastes generated by maquiladora facilities using raw materials from the U.S. This does not imply that the U.S. is obligated to absorb any of the costs associated with the disposal of such maquiladora waste. Rather, the U.S. has agreed only to admit the entry of such wastes into the U.S. for proper treatment or disposal.

In addition, in 1992, the Border XXI Hazardous and Solid Waste Workgroup agreed on bi-national Guidelines for the Repatriation of Hazardous Waste Illegally Exported/Imported. These Guidelines apply to hazardous wastes that are generated in one country and then illegally exported or imported to the other. In the case of contaminated sites in Mexico, the Guidelines would only apply in cases where hazardous waste is illegally exported to Mexico. The Guidelines do not apply in cases where hazardous waste is generated by a manufacturing operation, such as a maquiladora, as this does not constitute an illegal export.

The Guidelines set up notification procedures between the two countries in cases of illegal exports or imports. Once the two countries agree that an illegal export has occurred, the country which received the illegal export follows is responsible for re-packing the waste and delivering it to the border. The country from which the hazardous waste was illegally exported then takes responsibility for the waste at the border.

- Emergency Response: Under CERCLA (the Comprehensive Environmental Response, Compensation, and Liability Act, commonly known as Superfund), EPA has authority to use Superfund resources to undertake site assessments and remediation in very limited circumstances. In legal terminology, Superfund can only be used to undertake site assessment and remediation in cases where there is an emergency release or substantial threat of release of a hazardous substance, pollutant or contaminant to the environment in the United States, which may present an imminent and substantial danger to public health or welfare. This would mean Superfund might be applicable where contamination from a site in Mexico crosses or threatens to cross the border, perhaps in ground or surface water, and presents such a threat to public health or welfare in the United States. Under the principles of international law, the express consent of the Mexican government would be required before EPA personnel, or other personnel on behalf of EPA, would be able to enter Mexico, for the purpose of conducting any contemplated response activities under CERCLA.

In addition to working to identify ways to work bi-nationally to address existing contaminated sites, EPA and INE are working to prevent the creation of such sites in the future. We are in the final stages of negotiating a *Consultative Mechanism for the Exchange of Information on New and Existing Facilities for the Management of Hazardous and Radioactive Wastes Within 100 Km of the U.S.-Mexico Border*. This agreement will provide a vehicle for sharing information on existing and proposed facilities that store, treat, and dispose of hazardous wastes. Sharing this information bi-nationally, and working to make this information as widely available as possible, will be very important in ensuring that hazardous waste facilities in the border region are properly designed and permitted and subject to public scrutiny. We hope to have a final agreement complete by the end of this year.

### Metales y Derivados

EPA is particularly concerned about the Metales y Derivados site, as the contamination at the site is the result of a U.S.-owned company operating there, and there were clearly violations of Mexican law by the company. Unfortunately, as a U.S. Federal agency, EPA cannot enforce Mexican law, and thus cannot take enforcement action against the owners.

One important point to note related to Metales is that the hazardous waste at the site was generated in the operation of the lead smelting business located there. That is, the hazardous waste was not exported from the U.S., but was generated in Mexico. Thus, it does not constitute an illegal export or import and the “Guidelines for Repatriation” discussed above do not apply.

EPA is currently discussing this site with Mexican officials. EPA has offered to provide technical assistance to the relevant Mexican agencies in any remediation efforts at the site, but the crucial obstacle to remediation is acquiring the money needed to pay for it. EPA is gathering information to more completely characterize the site, in order to estimate the cost of remediation. At the same time, we are aggressively investigating a wide range of options for funding the clean up, including the possibility of use of Superfund, and sale of the land based on its future value as a cleaned-up lot.

EPA is working closely with PROFEPA in attempting to address concerns about this site. Because of the potential threat to public health posed by the contamination at the Metales site, EPA is pursuing both a short-term and a long-term response. In the short term, the walls and tarps at the site must be replaced, to contain the contamination and minimize any public health threat. In the longer term, funds must be identified to cover the costs of remediation at the site. EPA is working with PROFEPA towards achieving both of these goals.

In early September, EPA representatives of the Hazardous and Solid Waste Workgroup met with PROFEPA and the Procuraduría General de la República (PGR - Mexico’s equivalent to the Department of Justice) to discuss the Metales site. At this meeting, EPA agreed to transmit all additional information we gather on the site and its owners to PROFEPA and PGR, to strengthen their case against the owners of Metales, should Mexico choose to request extradition.

EPA is also engaged on this issue through the Commission for Environmental Cooperation (CEC). The CEC is currently reviewing a citizen submission regarding the Metales. EPA is working in cooperation with the Environmental Health Coalition, one of the submitters, to track this case through the CEC review process.

### El Gato Negro

At this time, EPA is coordinating with the PROFEPA delegate in the State of Tamaulipas to determine the current status of this site. Preliminary information indicates that the Gato Negro was a municipal/industrial solid waste disposal facility located in the city of Matamoros, Tamaulipas. It operated for an extended period of time but was closed in November 1993. The dump was authorized to receive only nonhazardous materials such as plastic, linen, paper, etc. and nonhazardous wastes from maquiladoras. PROFEPA noted that this dump has been the subject of much controversy over the years. EPA is awaiting more information from PROFEPA regarding this site. It appears at this point that El Gato Negro was a solid waste facility for which no U.S. response may be required or permitted. However, EPA's final decision on the disposition of this site is pending, subject to additional information from PROFEPA.

### Candados Presto Lock

EPA has requested information from PROFEPA regarding Candados Presto Lock but is still awaiting a full response. In a brief discussion regarding this site, SEMARNAP officials indicated that it had already been remediated. EPA is awaiting more information from PROFEPA regarding this site. However, EPA's final decision on the disposition of this site is pending, subject to additional information from PROFEPA.

## ***TRIBAL SESSION***

**T1. As Border XXI is reformulated, EPA must recognize the inadequacies of the 100 km border and a holistic approach must be applied consistent with indigenous peoples' values.**

**Contact:** EPA San Diego Border Office, Jim Fletcher, 619-235-4763

**Response:** The 100km limit was established by the U.S. and Mexico upon signing the La Paz Agreement, which created the bi-national framework for U.S.-Mexico federal government environmental work along the 2,000 mile border. The 100km limit does not restrict participation, but rather serves to focus attention to this region. EPA is using a holistic approach to border environment, having identified watersheds and airsheds and goes beyond the 100km. For example, when awarding tribal water/waste water infrastructure money in the Imperial Valley we took into account the larger needs of the Torres- Martinez Tribe and funded projects beyond the 100km zone. As another example, EPA has encouraged planning be done for the Salton Sea at a watershed level.

The BXXI Program was a five-year program beginning in October, 1996. EPA is beginning to develop a strategy for outreach and public participation for phase II of the program. The San Diego and El Paso border offices are currently drafting this strategy. Participation of tribal governments and indigenous community members in that process is critical. Issues raised as a result of the NEJAC Border Roundtable, including expansion of the scope of the Program, including utilizing a more holistic approach, recognition of the social-economic-political-cultural dimension will be taken into account in planning the next phase of the Border XXI Program.

**T2. Increase native participation, representation and native funding in the development of the next 5 year plan for the BXXI program - EPA needs to provide funds for tribes to participate in a transparent way in all meetings.**

**Contact:** EPA San Diego Border Office, Jim Fletcher, 619-235-4763

**Response:** Native American participation and representation in planning for the next five years is essential. Over the past three years, we have greatly increased our funding to enhance Tribal participation in our border program.

In addition to funding the NEJAC Border Roundtable, including funds for tribal participation, in February, 1998, EPA sponsored a border tribal conference entitled, "Conference of Native American Nations' on NAFTA and U.S.-Mexico Border Issues," which was held in San Diego. This conference brought together over sixty federal, state, and tribal representatives to discuss the ongoing border environmental activities of the federal and state agencies, environmental concerns of the border tribes, and funding and mechanisms for tribal involvement in on-going border activities. EPA funded participation for two tribal representatives for each of the 27 border tribes to attend the conference.

In 1997, EPA Region 9 provided \$25,000 in grant funding to the Inter Tribal Council of Arizona (ITCA) to assist tribes in addressing environmental issues identified in the Border XXI Framework Document, including providing transportation and per diem costs. ITCA agreed to also assist tribal governments in planning and developing policies to address specific environmental conditions precipitated by border activities. These funds continue to be used by border tribes for travel and per diem to date.

In 1998, \$30,000 was made available through a general assistance program grant, to cover travel for any tribal representative interested in attending a Border XXI Workgroup meeting. Covering travel costs was seen as being one of the biggest restrictions to tribal participation.

In FY99, \$170,000 was committed by Region 9 to enhance tribal involvement in the Border XXI Program. \$65,000 was allocated to the Tohono O'odham Nation to hire a Border XXI coordinator who will coordinate the outreach to Arizona border tribes, including publication of a newsletter and development of a Web site; travel/per diem to attend Border XXI meetings; completion of an evaluation of Arizona tribal border issues and concerns; and development of a list of key contacts within each of the Arizona border tribes who need to be informed of workgroup events and meetings. \$65,000 will be allocated to Torres-Martinez and \$65,000 will

be allocated to Cuyapaipe Band of Mission Indians to do similar work with California border tribes.

**T3. All 25-border nations should be included on committee (as they are sovereign)**

**Contact:** EPA San Diego Border Office, Jim Fletcher, 619-235-4763

**Response:** In 1984 EPA developed an Indian Policy that was endorsed by Administrator Browner in 1991. This policy, and its subsequent implementation, has resulted in government-to-government relationships with all tribes, not just those along the border.

In 1998, responding to state and tribal pressure for additional commitments of participation, EPA, DOI, and HHS began developing the “Coordination Principles,” acknowledging the significant role that state and tribal governments play in the bi-national BXXI Program and workgroups. The Coordination Principles recognize the sovereignty and cultural tradition of border tribes. Tribal leaders added the following language which was approved by all signatories: “ U.S. Indian Tribes are sovereign nations, and all Indian communities in the border area have a long tradition of stewardship of the border region, which calls for their active participation in the Border XXI Program, workgroups, and sub-workgroups”.

Signatories to the Coordination Principles included, EPA and SEMARNAP on behalf of all the federal agencies involved in Border XXI and the environmental agency directors for all ten border states. Further the Coordination Principles stipulate that “state and tribal representatives have the same opportunity and responsibility to serve as members of workgroups and co-chairs of sub-workgroups”. With tribal support, the principles were signed at the National Coordinators Meeting in Ensenada (May, 1999) by all nine border states, EPA and SEMARNAP (as Secretariat of the Border XXI Program). We are following up with the tribes individually to discuss with them their interests.

A number of tribal representatives have participated and played a role in the annual BXXI National Coordinators Meetings. Campo EPA Director, Mike Connelly and Mark Sixkiller of the Pala Band of Mission Indians, spoke at the 1997 National Coordinators Meeting in Matamoros, Mexico, highlighting the need to involve border tribes as sovereign nations in the Border XXI Program. Tohono O’odham Legislative member, Kenneth Williams, spoke at the March, 1998 National Coordinators Meeting in San Diego, presenting results of the Border Tribal conference and highlighting the need to recognize that border tribes such as Cocopah and Tohono O’odham have strong cultural and community ties on both sides of the international border. Over 12 tribes were represented during the special session with SEMARNAP, EPA and nine border state environmental agencies to discuss agreement on “Coordination Principles,” establishing mechanisms for including border states and U.S. tribes as partners in the Border XXI Program. This took place during the 1999 National Coordinators meeting held in Ensenada.

In March, 1998, the U.S. Co-Chairs of the nine Border XXI Workgroups (Air, Water, Pollution Prevention, Cooperative Enforcement and Compliance, Contingency Planning and Emergency Response, Environmental Information Resources, Hazardous and Solid Waste, Environmental

Health, and Natural Resources) confirmed their desire to include U.S. border tribes as partners in the Border XXI Program and within the Border XXI Workgroups and Subworkgroups. Since its inception, various tribal representatives have participated in Border XXI Workgroups or Subworkgroups. Tribal representation at workgroup meetings has included:

- Natural Resources Workgroup – Tohono O’odham, Cocopah and the Native American Environmental Group, which represents Pechanga, San Pasqual and La Jolla tribes.
- Hazardous & Solid Waste and Enforcement Workgroup – Tohono O’odham, Campo and Torres-Martinez.
- Contingency Planning & Emergency Response Workgroup – Tohono O’odham and Campo.
- Air Workgroup – Torres-Martinez and Twenty-Nine Palms.

EPA has used an “open house meeting” on a number of occasions to enhance tribal involvement in the Border XXI Program. The first open house meeting, specifically for tribal governments and indigenous communities, was held August 12, 1997 in San Diego at the Liaison Office. Over thirty-one tribal representatives attended. The objectives of the session were to provide participants with a brief overview of Border XXI history and current activities. In addition, this was an initial attempt to begin an information exchange and gain a better understanding of border tribal concerns. The second open house was held on October 2, 1998. Thirty-three tribal representative from 14 of the 27 border tribes participated. The objects of this session were to discuss development of a work plan for \$170,000 in grants to be awarded to three border tribes (described above). Subsequent open house sessions have occurred focused on gaining input on the “Coordination Principles” (described above) and tribal involvement in the National Coordinator’s meeting.

**T4. EPA must articulate Indigenous cultural, social and environmental values into policies and regulations in BXXI and other programs.**

**Contact:** EPA San Diego Border Office, Jim Fletcher, 619-235-4763

**Response:** For indigenous cultural values to be incorporated into our programs, EPA must bring tribal voices to the table to speak directly for themselves. As mentioned above, we are developing an outreach strategy for bringing together all stakeholders, including tribal representatives, to participate in phase II of the BXXI Program.

Recognizing a need to have an EPA representative placed in the border area who could specifically respond to tribal concerns, in August, 1998, James Fletcher was hired by Region 9 as border tribal outreach coordinator. Jim is responsible for conducting outreach to border tribes on Border XXI meetings, events and issues; overseeing grant projects awarded to border tribes; and bridging the relationship between border tribal representatives and EPA Region 9. Having an EPA staff person in the San Diego Border Office who comes from the Southern California tribal community has increased awareness and need to better articulate the tribal cultural and social values in the border program.

**T5. Need to work on ways to ensure that peoples of the same tribal nations currently separated by the border can be equally recognized as members of those nations.**

**Contact:** EPA San Diego Border Office, Jim Fletcher, 619-235-4763

**Response:** Mexico does not recognize tribal nations as sovereign governments, and U.S. federal recognition is only applicable within the U.S. However, EPA has various grant opportunities that can provide funds to U.S. organizations (and tribes) to do work with counterparts in Mexico, including the U.S.-Mexico Border Grants Program, a competitive grants program offered every two years, including this year (1999-2000).

U.S. funds can also be used for tribal members to travel across the border to attend border meetings and accomplish goals of any bi-national grant. For example, EPA Region 9 provided \$35,000 to Campo for an environmental education grant in 1999. The objectives of the project are: 1) Provide trilingual environmental education materials for the schools of the Indian communities of the California/Baja region; 2) Reinforce mechanisms for the transmission of traditional environmental management concepts from elders to youth; and 3) Establish new partnerships between teacher, students and elders related to environmental education. Campo environmental education representatives are currently working with the Instituto Culturas Nativas de Baja California (CUNA) to implement the project on both sides of the border. CUNA representatives will be incorporating teachers and students from the five Indian Tribes located in the Northern part of Baja California Norte. EPA Region 6 has provided a \$50,000 grant to the Local Emergency Planning Committee in Eagle Pass, Texas, with an Memorandum Of Understanding with the Kickapoo Indian Tribe. The fire department in Eagle Pass has and will continue to train the Kickapoo's in how to respond to structural fires and emergencies.

Note: All bi-national projects are subject to U.S. State Department approval.

***IMMIGRATION, TRADE & ENVIRONMENT SESSION***

**ITE1. Empower communities and provide them with the opportunity to define for themselves what they would like (i.e., capacity building should include the grass roots) and how they see their future/ enable them (stop paternalistic approach).**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768  
El Paso Border Office, Darrin Swartz-Larson, 915-533-7273

**Response:** One of the main goals of the EPA border liaison offices is to empower communities by providing the information that communities need in order to actively participate in improving their local environment. This goal arises from EPA's recognition that local communities, as the people most impacted by environmental problems, must be part of the process of identifying and resolving the environmental problems in their community. To this end, we carry out a number of activities aimed at increasing community members' environmental awareness and knowledge of environmental laws, regulatory bodies, and organizations and agencies addressing environmental problems. We provide extensive assistance to community members who call or visit our offices looking for information or trying to determine the

appropriate government agency to address their concerns. We hold public meetings in border communities to describe EPA's activities and solicit feedback, and participate in meetings held by community-based organizations to engage in discussions led by community members exploring ways to resolve environmental issues.

As liaisons for the border communities, the EPA border liaison offices regularly inform EPA colleagues in Dallas and San Francisco, who are responsible for specific technical areas, of the concerns expressed by communities. We also provide contact information directly to the communities. Our Dallas, San Francisco, and Washington, D.C. colleagues on the Border XXI workgroups also have a direct role in working with communities to foster their active participation in addressing local environmental issues. It is clear from the NEJAC recommendation, however, that our offices and the Border XXI workgroups are not reaching all border communities or that our activities are not effectively enabling communities to have the active, empowered role desired. The EPA border liaison offices will seek more feedback from border communities about how we should address this concern, and will work with the Border XXI workgroups to develop a plan for empowering communities.

One goal of Border XXI is to achieve sustainable development in the border region. To this end, EPA organized a workshop in Brownsville, Texas on March 22-25, 1999 for the purpose of showcasing community activities aimed toward sustainable development. Proceedings of the Conference were highlighted at the White House Conference on Sustainable America in Detroit in May, 1999 and are available on line at <http://www.us-mexicoborder.com>. This first conference and others that will follow are designed to encourage local communities to take actions to help shape their future economic and social development. Through Border XXI, EPA will continue to act as a catalyst for community-led development of sustainable development in the border region.

### **ITE2. Raise standard of living.**

**Contact:** Department of Labor, Irasema Garza, 202-501-6653

**Response:** The EPA is sharing this action item with the Secretary of the U.S. National Administrative Office of the Department of Labor and with the President's Interagency Task Force on the Economic Development of the Southwest Border.

### **ITE3. Social-economic benefits should go directly to community.**

**Contact:** Department of Labor, Irasema Garza, 202-501-6653

**Response:** The EPA is sharing this action item with the Secretary of the U.S. National Administrative Office of the Department of Labor and with the President's Interagency Task Force on the Economic Development of the Southwest Border.

**ITE4. Capacity building should include grassroots groups as well as a variety of other agencies like local authorities, labor groups, and others to incorporate other levels of skills.**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768  
El Paso Border Office, Darrin Swartz-Larson, 915-533-7273

**Response:** EPA recognizes that grassroots community organizations play a vital role in organizing communities and enabling them to become more active in environmental activities. A number of EPA programs offer annual grant opportunities that enable grassroots organizations and other entities to strengthen their institutional capacity. Grants that can be used for the border region include Environmental Justice, Environmental Education, Environmental Justice through Pollution Prevention, and Sustainable Development Challenge grants. Through these grant opportunities, grassroots organizations are able to work within their communities to develop and implement projects that advance their goals related to health and environmental protection. The Border XXI Program also provides grant opportunities to further Border XXI's goals and objectives. In the past, EPA has sponsored 23 Border XXI grants in the border region, the majority of which have been community-oriented grants. EPA is committed to supporting grassroots organizations and will initiate discussions with border area organizations to identify additional capacity building needs and opportunities.

**ITE5. Focus on training to provide new alternatives for displaced workers.**

**Contact:** North American Development Bank, Annie Alvarado, 210-231-8000  
**Response:** The Department of the Treasury and the NADBank have a program intended to address this issue - the U.S. Community Adjustment and Investment Program. For more information please contact Annie Alvarado at (210) 231-8000

**ITE6. Provide access to information on both sides of the border.**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768  
El Paso Border Office, Darrin Swartz-Larson, 915-533-7273  
EPA Region 9, Marie Martel, 415-744-1639

**Response:** EPA established the border liaison offices to significantly expand the border communities' access to information. The El Paso and San Diego Border Liaison Offices and the Brownsville satellite office house public information centers containing Border XXI and other environmental publications, and computer workstations with Internet access (in El Paso and San Diego). A toll-free telephone line (800-334-0741) allows the public to request environmental information and to contact both the San Diego and El Paso offices. In addition, the border liaison offices use several mechanisms to reach out to border communities and provide environmental information in the states of Texas, New Mexico, Arizona, and California: public meetings, open house events, announcements/notices (sent by mail and e-mail), Border XXI documents placed in 100 public libraries along the border, the U.S.-Mexico Web page, and the quarterly Region 6 Border Bulletin newsletter.

In June 1999, the El Paso Border Office hosted community meetings in the New Mexico and Texas border region to solicit feedback from the communities about their environmental information needs and effective mechanisms to provide timely and accurate environmental information. The San Diego border liaison office conducted a similar effort this month for the border communities in Arizona and California. A total of 11 community meetings were conducted by the EPA border liaison offices. The information gathered from these community meetings will be reviewed by the border liaison offices and the Border XXI Environmental Information Resources Workgroup and will be used to develop new strategies to meet the information needs of the border communities. These new strategies will be discussed with Mexico through the EIR Workgroup, and we will continue to encourage Mexico to take appropriate steps to increase access to information in Mexico.

**ITE7. Enforcement on border as well as restoration, ensure environmental compliance bi-nationally and ensure fines are given to community.**

**Contact:** EPA/OECA, Tim Whitehouse, 202-564-2315

**Response:** EPA is committed to ensuring environmental compliance along the United States border with Mexico as well as ensuring that areas harmed by non-compliance with the nation's environmental laws are cleaned up. When taking an enforcement action, EPA seeks to bring the violator back into compliance with the law as quickly as possible. EPA may also seek a penalty to capture any economic benefit the violator gained as a result of its unlawful conduct and to provide deterrence against future violations. In addition, as part of an enforcement settlement, the defendant/respondent may agree to undertake a project to improve its environmental performance in a way that goes beyond what is required under the law. These projects are referred to as a Supplemental Environmental Project (SEP). In exchange for the legal commitment to undertake a SEP, some percentage of the cost of the project may be considered as a factor in establishing the penalty paid by the defendant/respondent.

The success of EPA's enforcement programs along the border, and elsewhere, are dependent upon community input. Individuals may comment on all aspects of consent decrees resolving environmental violations once they are lodged by the court but before they are made final. Also, EPA often relies on individuals and companies to report environmental problems. People living in Arizona and California who are concerned about environmental violations in the border area should contact John Rothman at EPA San Francisco at 415-744-1041 or the San Diego Border Office at 619-235-4711. Those in New Mexico and Texas should contact Bonnie Romo at EPA Dallas at 214-665-8323 or the El Paso Border Office at 915-533-7273. Tim Whitehouse, who works in EPA's Office of Enforcement and Compliance Assurance in Washington, D.C., can also be used as a point of contact for those wishing to report environmental violations or for those wishing to discuss environmental compliance issues in general. He may be reached at (202) 564-2315 or at [whitehouse.tim@epa.gov](mailto:whitehouse.tim@epa.gov).

Although EPA welcomes community input to the greatest extent possible in its enforcement and compliance programs, we cannot ensure that fines for environmental violations go the community. Under the Miscellaneous Receipts Act (31 U.S.C. § 3302(b) (1982)), fines that EPA

collects for environmental violations must be given to the United States Treasury. This purpose behind this law is to ensure that monies collected by the federal government are claimed as public revenues and are subject to public control through the Congressional appropriations process. Because of this law, and because of the Constitutional requirement that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by law...”, EPA can not give any fines that it collects for environmental violations to the community. Any money that EPA gives to communities must be specifically appropriated by Congress.

In terms of ensuring compliance bi-nationally, while EPA works with PROFEPA, Mexico’s environmental enforcement agency, on a variety of transnational enforcement and compliance issues, EPA has no authority to operate internally within Mexico to ensure that companies within Mexico are complying with Mexican law. Instead, EPA works with PROFEPA to address issues of mutual concern in ways that respect each country’s sovereignty and resources at all times. Toward this end, EPA co-chairs the Border XXI Cooperative Enforcement and Compliance Workgroup with PROFEPA. These cooperative efforts have centered on detecting violations and targeting enforcement resources, cooperating in specific cases and sharing of enforcement information, capacity building through training and technical consultations, and promoting environmental compliance through environmental auditing and pollution prevention.

The Border XXI Cooperative Enforcement and Compliance Workgroup welcomes public input. Each year, EPA and PROFEPA develop an implementation plan for the workgroup’s activities in the coming year and hold an annual meeting to discuss the implementation plan and other enforcement and compliance issues along the border. All members of the public are encourage to provide their comments on the implementation plan and to attend Cooperative Enforcement and Compliance Workgroup annual meeting. For further information, please contact Tim Whitehouse in January at (202) 564-2315 or at [whitehouse.tim@epa.gov](mailto:whitehouse.tim@epa.gov) or refer to the Border XXI Web site at <http://www.epa.gov/usmexicoborder>.

#### **ITE8. Incorporate precautionary principles**

**Contact:** EPA Region 6, Joy Campbell, 214-665-8036

**Response:** The key priorities of the U.S.-Mexico Pollution Prevention Workgroup are to promote pollution prevention and energy efficiency as a means of achieving sustainable growth along the border area. Due to limited resources, the workgroup has concentrated its efforts on capacity building within federal, state, municipal governments and universities as well as participating industries to institutionalize pollution prevention concepts as an environmentally healthy and cost-effective way to address the rapid economic growth along the U.S.-Mexican border. One of the goals stated within the Border XXI Framework document is to incorporate pollution prevention concepts into the efforts of all the Border XXI workgroups.

There is still a great deal of work to be done to achieve the goals of the Pollution Prevention Workgroup. Integrating pollution prevention ideals into the fast-growing industries of the border region presents a tremendous challenge. Our ability to meet this challenge will be greatly

improved by broad participation in the workgroup, by industry and the public. Some of our efforts to date to achieve the goals of the workgroup include:

- The Texas Natural Resource Conservation Commission has conducted site assessment visits at 21 maquiladoras, aimed at assisting them in pollution prevention. This effort has helped these industries to realize annual reductions of 8.6 tons of hazardous waste, 52,000 tons of nonhazardous waste, 31 million gallons water conserved and 10.9 million kilowatt hours of electrical energy conserved. Due to the above reductions, the maquiladoras have reported annual savings of close to 8.4 million dollars.
- The California Department of Toxic Substances Control has offered many pollution prevention workshops for industry in Baja California. Topics of past workshops have included pollution prevention for the electronics industry and reduction of volatile organic chemicals. Over 250 representatives of industry and government in Baja California have been trained through these workshops.
- The San Diego-Tijuana Border Waste Wise Program, which focused on reduction of solid waste in the maquiladora industry in Tijuana, resulted in site assistance visits to 27 maquiladoras. This first phase of this program, which ran from 1996 to 1998, was so favorably received by industry in Tijuana that this year EPA is beginning a second phase of the project, which will include hazardous waste, wastewater, and energy use and continue to offer site assistance visits. More information on this project is available on the Border Waste Wise Web site at: [www.borderwastewise.org](http://www.borderwastewise.org).
- The Arizona Mexico International Green Organization (AMIGO), an EPA-funded project of the Arizona Department of Environmental Quality, aims to bring together Arizona and Mexican industries to share ideas and technologies that reduce waste and pollution and increase profits, worker safety and environmental health. The project focuses on the Arizona-Sonora border and currently has 28 members, including industry from the U.S. and Mexico.
- In March, 1999, EPA and PROFEPA organized a conference for the parent companies of maquiladoras, to encourage them to take part in PROFEPA's Industria Limpia program and to urge them to operate their maquiladoras in accordance with the same standards they follow in the U.S.
- EPA and SEMARNAP have created bilingual pollution prevention manuals for industry in the following sectors: textiles, wood finishing, metal finishing, and electronics. These can be obtained by contacting the Pollution Prevention Workgroup.
- EPA and PROFEPA produced a bilingual video entitled "Environmental Auditing and Pollution Prevention Strategies for Compliance in the Maquiladora Industry." This video presents pollution prevention as a solution to compliance problems in the maquiladora industry. This video can be obtained by contacting the Pollution Prevention Workgroup.

### ***ENVIRONMENTAL JUSTICE & LABOR SESSION***

**EJL1. Protection of the right to organize in the U.S. or Mexico; that it be a convention and have the power of the courts.**

**Contact:** Department of Labor, Irasema Garza, 202-501-6653

**Response:** The EPA is sharing this action item with the Secretary of the U.S. National Administrative Office of the Department of Labor and with the President's Interagency Task Force on the Economic Development of the Southwest Border.

**EJL2. Prohibition of the Bracero Program in the U.S.**

**Contact:** Department of Labor, Irasema Garza, 202-501-6653

**Response:** The EPA is sharing this action item with the Secretary of the U.S. National Administrative Office of the Department of Labor and with the President's Interagency Task Force on the Economic Development of the Southwest Border.

**EJL3. Compensate displaced workers.**

**Contact:** Department of Labor, Irasema Garza, 202-501-6653

**Response:** The EPA is sharing this action item with the Secretary of the U.S. National Administrative Office of the Department of Labor and with the President's Interagency Task Force on the Economic Development of the Southwest Border.

**EJL4. Sample/study of chemical drums which are used for potable water in *colonias* (in Mexico)**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096

**Response:** The use of drums which may have previously contained chemicals, for transporting and storing water in colonias is an issue EPA has not previously focused on. Unless such drums are carefully cleaned, using them to store drinking water could potentially have significant health impacts on the users of that water.

There are a number of approaches available to EPA to look into this issue further. We will recommend that this topic be considered as an important area of research by the Southwest Center for Environmental Research and Policy (SCERP). A SCERP project could look into how common this practice is, whether any health effects can be connected to chemical contamination from used drums, and what alternative sources of drinking water might be available. In addition, this issue represents an opportunity for collaboration between the Hazardous and Solid Waste Workgroup and the Environmental Health Workgroup. We will discuss the possibility of a joint project on this issue at the upcoming meeting of the Environmental Health Workgroup, to be held in El Paso in October.

In addition, in cases where chemical drums are used to store drinking water in the United States, EPA may be able to take enforcement action. This possibility will need to be evaluated as more information is gathered on this issue.

#### **EJL5. Close ASARCO and complete an evaluation of damages/environmental risks**

**Contact:** EPA Region 6, John Hepola, 214-665-7220  
EPA Region 6, Mark Potts, 214-665-6746

**Response:** The EPA is unable carry out the Committee's recommendation to close the ASARCO plant in El Paso, Texas. The EPA does not have the authority to close a business enterprise. Our authority is such that regulated industry is given the rules of environmental regulation, to which they must adhere. A gross failure to adhere to regulations can, in rare circumstances, give the EPA the option to file a civil injunction against a company, temporarily halting operations until the company can meet adequate environmental control measures. Such is not the case with ASARCO at the present time. Although the ASARCO plant recently elected to cease production operations, on a temporary basis, plant officials indicate this was for economic reasons.

As part of their operating restrictions, the plant must closely monitor air pollution emissions using continuous monitoring equipment. Local state and city officials operate ambient pollution monitors nearby, to ensure that local air quality meets national standards. Air quality in the region containing the ASARCO plant complies with national standards for lead and sulfur dioxide. This air quality information, including emissions from the plant itself, is available to the public through the national databases of pollutant emissions.

The EPA, the TNRCC, and the City of El Paso work together to impose environmental restrictions on the plant, ensure they are implemented on the prescribed schedule, and conduct scheduled and unscheduled inspections to verify compliance. Over the years, all the regulatory agencies have levied fines against the plant for violations found.

The public can access important enforcement information through the Integrated Data for Enforcement Analysis system (IDEA). It provides data on facilities that were potentially involved in EPA enforcement or compliance actions. Implemented in early 1991, IDEA supports a multi-media approach to the analysis of environmental problems in air, water, toxics, spills, and others. Users from the public sector can access IDEA by dialing up with a computer. See the EPA Home page, <http://www.epa.gov> for additional information.

Operations at the ASARCO plant have changed over time, as new processes were added or dropped, and additional pollution control equipment was added. In 1985, the operations at the lead plant were suspended. In 1993, the plant installed continuous top-feed oxygen process technology (CONTOP), to increase production and reduced sulfur emissions.

#### **EJL6. Close WIPP in New Mexico; EPA should resume its investigation given that it was apparently pressured by DOE.**

**Contact:** EPA Region 6, Nick Stone, 214-665-7226

**Response:** The EPA is unable to carry out the committee's recommendation to close the Waste Isolation Pilot Plant (WIPP) facility in Carlsbad, NM. EPA has certified that the WIPP can adequately meet the disposal standards at 40 CFR 191. The Agency's evaluation was thorough and considered multiple scenarios of repository failure without finding a significant release of radiation to the environment. The facility has opened and received transuranic waste from three facilities. EPA will continue to monitor the operation through approval of the waste characterization process at Department of Energy (DOE) facilities and oversight of the Resource Conservation and Recovery Act (RCRA) permit by the State of New Mexico when it is issued. Further information regarding this site can be obtained by the public by calling the EPA WIPP Hotline at 1-800-331-WIPP (9477).

#### **EJL7. Comply with the La Paz Agreement in reference to Lodos Negros de Sierra Blanca.**

**Contact:** EPA Region 6, Stephanie Kordzi, 214-665-7520

**Response:** On March 23, 1992, the Texas Water Commission issued two "registrations" to MERCO Joint Venture to land apply sewage sludge generated at wastewater treatment plants in New York City, New York. The sewage sludge is land applied on two sites totaling 87,474 acres. The sites are located approximately seven miles from the town of Sierra Blanca, Texas. On April 17, 1992, EPA Region six requested MERCO submit an application for a discretionary "sludge only" National Pollutant Discharge Elimination System (NPDES) permit. On October 2, 1992, EPA decided a permit was not required because data showed the sludge posed no significant threat to public health or the environment. EPA requested MERCO continue to provide copies of monitoring results. Exceedences of applicable federal sewage sludge standards have not been identified. The sludge is tested monthly to determine if it is hazardous, but has always been found nonhazardous. MERCO continues to submit monthly monitoring results to the EPA for review. No violations of the Part 503 regulations have been identified. EPA authorized in September 1998, the Texas Natural Resources Conservation Commission to implement the Federal sewage sludge program.

There are no formal obligations under the La Paz agreement regarding the MERCO site. However, in the spirit of La Paz, the U.S. and Mexico often share information regarding potential sources of pollution in the border region that might be of concern to the other country. This practice typically applies to facilities of significant concern, such as hazardous waste management facilities or major air pollution sources. Because the sludge at the MERCO site has always been found to be nonhazardous, it has not been identified as a bi-national environmental concern. Given this, EPA believes that it has complied with both the letter and the spirit of La Paz.

#### **EJL8. Close Sun Land Park.**

**Contact:** EPA Region 6, Willie Kelley, 214-665-6760  
EPA Region 6, Anan Tanbouz, 214-665-8195

**Response:** The EPA is unable to carry out the Committee's recommendation to close the Sunland Park landfill in New Mexico. Before subtitle D was promulgated in 1993, the owners of the Joab New Mexico Landfill purchased some additional property in Sunland Park, New Mexico. The property is adjacent to the original landfill, and borders Mexico. This land was being used to dump trash and waste from a nearby horse racing facility. However the site was not officially a landfill. The owners of the Joab New Mexico Landfill came in and set up the new parcel as a regional landfill, and began accepting trash from El Paso, greater New Mexico, and Juarez. Residents accused the Sunland Park facility of accepting hazardous waste from Juarez' maquiladoras. EPA investigated these allegations by doing a detailed inspection of the facility and were unable to substantiate the facility was accepting hazardous waste.

The landfill is authorized and permitted by the State of New Mexico to receive only nonhazardous wastes. It currently receives wastes from New Mexico, West El Paso, and Texas. It also receives wastes from Mexico that is classified as nonhazardous. EPA staff contacted the State of New Mexico Environmental Department (NMED), the regulatory authority, and were informed that the facility is properly permitted. The facility complies with NMED siting criteria and, all applicable permit requirements, including closure and post closure plans.

**EJL9. Do not accept maquilas in Mexico that have not complied with U.S. standards.**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096

**Response:** The Mexican government develops and enforces the standards that apply to maquiladoras. Thus, EPA cannot directly affect the regulations that govern maquiladoras in Mexico. However, EPA does have a number of programs in place aimed at improving the environmental performance of maquiladoras, and encouraging maquiladoras to meet the standards that their U.S. parent companies must meet. We would like to work with NEJAC and other environmental justice stakeholders to continue to further our efforts in improving environmental performance of maquiladoras in Mexico.

EPA's primary area of focus in working with the maquiladora industry is pollution prevention. We have a wide variety of programs in this area, some directly carried out by EPA and some carried out by state agencies supported by EPA funding. Examples of these programs include:

- The Texas Natural Resource Conservation Commission has conducted site assessment visits at 21 maquiladoras, aimed at assisting them in pollution prevention. This effort has helped these industries to realize annual reductions of 8.6 tons of hazardous waste, 52,000 tons of nonhazardous waste, 31 million gallons water conserved and 10.9 million kilowatt hours of electrical energy conserved. Due to the above reductions, the maquiladoras have reported annual savings of close to 8.4 million dollars.
- The California Department of Toxic Substances Control has offered many pollution prevention workshops for industry in Baja California. Topics of past workshops have included pollution prevention for the electronics industry and reduction of volatile organic chemicals. Over 250 representatives of industry and government in Baja California have been trained through these workshops.
- The San Diego-Tijuana Border Waste Wise Program, which focused on reduction of solid waste in the maquiladora industry in Tijuana, resulted in site assistance visits to 27 maquiladoras. This first phase of

this program, which ran from 1996 to 1998, was so favorably received by industry in Tijuana that this year EPA is beginning a second phase of the project, which will include hazardous waste, wastewater, and energy use and continue to offer site assistance visits. More information on this project is available on the Border Waste Wise web site at: [www.borderwastewise.org](http://www.borderwastewise.org).

- The Arizona Mexico International Green Organization (AMIGO), an EPA-funded project of the Arizona Department of Environmental Quality, aims to bring together Arizona and Mexican industries to share ideas and technologies that reduce waste and pollution and increase profits, worker safety and environmental health. The project focuses on the Arizona-Sonora border and currently has 28 members, including industry from the U.S. and Mexico.
- In March, 1999, EPA and PROFEPA organized a conference for the parent companies of maquiladoras, to encourage them to take part in PROFEPA's Industria Limpia program and to urge them to operate their maquiladoras in accordance with the same standards they follow in the U.S.
- EPA and SEMARNAP have created bilingual pollution prevention manuals for industry in the following sectors: textiles, wood finishing, metal finishing, and electronics. These can be obtained by contacting the Pollution Prevention Workgroup.
- EPA and PROFEPA produced a bilingual video entitled "Environmental Auditing and Pollution Prevention Strategies for Compliance in the Maquiladora Industry." This video presents pollution prevention as a solution to compliance problems in the maquiladora industry. This video can be obtained by contacting the Pollution Prevention Workgroup.

**EJL10. Hazardous wastes which originate from U.S. firms should be returned to the U.S. beyond 2000.**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096

**Response:** Currently, hazardous wastes generated by maquiladoras are required by Mexican law to be returned to the country of origin of the raw materials used in manufacturing. There has been a great deal of confusion as to whether this requirement would be eliminated with the full phase-in of NAFTA in the year 2000. This year, EPA and INE developed a policy paper stating that this requirement will remain in force after the year 2000. In other words, maquiladoras will continue to be required to return their hazardous waste to the country of origin of the raw materials beyond the year 2000. The continuation of this requirement is critical for the protection of the environment along the border, in both countries.

**EJL11. Valle de Juarez - evaluate the water policies to ensure sufficient water for agricultural use - policies currently compete with agriculture and maquilas.**

**Contact:** EPA OIA, Marico Sayoc, 202-564-6433

**Response:** The EPA is working with the IBWC, the BECC and the NADBank towards sustainable water policies that do not generate competing interests throughout the border region. All projects intended for NADBank financing must be certified by the BECC which applies stringent sustainable development criteria in its review. Specific to Valle de Juarez, the EPA, the BECC and the NADBank are looking at water reclamation opportunities available with operation

commencement of the new wastewater treatment plant. We are hoping that water conservation for all sectors will reduce the overall demand for water.

**EJL12. Investigate why funding of treatment plants is only half-done (at Juarez and elsewhere).**

**Contact:** EPA/OIA, Marico Sayoc, 202-564-6433

**Response:** For the first time, Ciudad Juarez's sewage will be treated at advanced primary with operation commencement of the Ciudad Juarez wastewater treatment plant in December. At the time of the wastewater treatment plant's design, Mexico was undergoing the peso devaluation. Instead of eliminating all plans for a wastewater treatment plant at secondary treatment, all parties decided to build an advanced primary treatment plant with the intention of going to secondary when funds were more readily available.

**EJL13. Do outreach to rural communities.**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768

El Paso Border Office, Darrin Swartz-Larson, 915-533-7273

**Response:** The EPA border liaison offices conduct extensive outreach activities in rural communities along the border, including holding public meetings to provide information about activities taking place in particular communities, hosting open house meetings on topics of interest to communities, attending meetings with community organizations and local governments to exchange information and create partnerships, and conducting environmental education activities.

The El Paso Border Liaison Office participates in several planning groups and local committees that address colonias issues, including the Paso del Norte Coalition for Solid Waste and the Water and Wastewater environmental justice committee. In these committees, the El Paso Border Liaison Office assists in planning, coordination, and development of strategies and activities to improve the quality of life of the colonias communities. In addition, EPA has been working with colonia groups and organizations through EPA grants to assist colonia residents in installing septic tanks, connecting their homes to potable water distribution systems, and providing environmental education and awareness materials on solid waste and drinking water issues and solutions. In August 1998, a Sustainable Development Challenge Grant was awarded by EPA to Organizacion Progresiva de San Elizario to train colonia residents in building at least four passive solar adobe homes in San Elizario, a colonia just south of El Paso. The project will train unskilled residents and at-risk youths in adobe construction skills.

In San Diego, the San Diego Border Liaison Office has hosted special meetings in community-based locations, such as the Sherman Heights Community Center, to reach more of the Hispanic audience in San Diego County. In addition as an effort to conduct better outreach to rural communities facing environmental justice issues, the San Diego Border Office is engaged in a

number of different projects including (1) last year providing funding for a bi-national environmental education program for rural communities residing in Imperial and Mexicali Valleys; (2) providing funding for a tribal/Mexican environmental education project with the Campo Tribe and CUNA (Instituto de Culturas Nativas de Baja California), both dealing with rural border communities; (3) providing financial assistance to the California Rural Legal Assistance Program (CRLA) to provide pesticide safety, Workers Protection Standards, and water pollution training to border migrant farmworkers who work the border crops in El Centro, California and Imperial Valley. The CRLA has a network to reach more than 1,000 farmworkers and to provide training materials in both English and Spanish; (4) through the CRLA and similar NGOs which service rural communities on both sides of the border, the San Diego Border Liaison Office will extend its outreach database and conduct more projects with these communities.

EPA will continue to reach out to rural communities and look for additional ways to reach more communities and provide effective outreach.

**EJL14. NAFTA focus on water exclusively is insufficient (need clean up & restoration).**

**Contact:** EPA/OIA, Marico Sayoc, 202-564-6433

**Response:** The BECC and the NADBank, created by NAFTA environmental side agreements, were designed to address water, wastewater and solid waste infrastructure. This is not to say that we do not recognize other environmental needs in the border region. However, at the time NAFTA was designed, water, wastewater and solid waste needs were estimated to be at 8 billion dollars and highest priority among border residents. Water and wastewater infrastructure was selected because it impacts a large number of people (including both U.S. and Mexican communities) and is a major transport of disease and exposure to toxics. After five years of experience, the NADBank is beginning to consider other environmental priorities. However, additional resources are necessary as current resources cannot meet existing needs for water and wastewater infrastructure.

**EJL15. Use precautionary/prevention technologies rather than end of pipe**

**Contact:** EPA Region 6, Joy Campbell, 214-665-8036

**Response:** See response to question #ITE8 on page 14.

In addition, the U.S.-Mexico Pollution Prevention workgroup has developed partnerships with the U.S.-Mexico Foundation for Science, Maquiladora Associations, academia and industry to promote pollution prevention and energy efficiency in a way that is beneficial for the environment, the community and for economic growth. Highlights include the Texas Natural Resource Conservation Commissions' (TNRCC) border pollution prevention program which has fostered partnerships state to state and through bi-national site assessment visits at maquiladoras

as well as through a wide variety of outreach via workshops and communication with educational institutions along the border. Another highlight is the industry outreach for pollution prevention accomplished through Arizona's Department of Environmental Quality (ADEQ)'s AMIGO program. This program consists of pollution prevention technology sharing between industries whether in Sonora or Arizona and also consists of technology assistance through ADEQ. Through our local border partnerships we are able to leverage resources for promoting prevention that best pertain to an area's needs as the cost effective alternative to dealing with end-of-the-pipe damage.

**EJL16. EPA owes data to community on the New River (Lower Colorado River Toxics Study) - where is it?!**

**Contact:** EPA Region 9, Eugenia McNaughton, 415-744-1162

**Response:** The report for the Lower Colorado River Toxics Monitoring Study, based on two sampling events (1994-1996), is undergoing a final edit. The publication of the report is long overdue, but not for lack of effort. The project has gone through many changes of hands, each requiring another round of review and editing. While there remain two small factual issues to be resolved with the Comisión Nacional del Agua, tremendous progress has been made since the International Boundary and Water Commission accepted the lead for finishing the report. The length of time it has taken to get to this point has been a source of frustration for agencies and public alike, but, after all this time, it would not serve any purpose to publish an incomplete or inaccurate report. Although the data set is too small to draw conclusions about water quality, the study is important because it represents a bi-national Lower Colorado River basin-wide effort, and includes sampling locations in the U.S. and Mexico.

The data from the study are already available in tabular form and as raw data sets from the U.S. Geological Survey. This includes U.S. data only. The contact person is Roy Schroeder, U.S. Geological Survey, 5735 Kearney Villa Road, Suite O, San Diego, CA 92123, 691-719-3062, raschroe@usgs.gov. Additionally an Environmental Health Consultation was performed by the CA Department of Health Services, using the information from the study. Those reports have just become available. The contact person is Reber Brown, CDHS-EHIB, 1515 Clay Street, Ste. 1700, Oakland, CA 94612, (510) 622-4487 (VM), (510) 622-4505 (fax), rbrown5@dhs.ca.gov.

**EJL17. Community needs to be equal partner in BXXI**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768  
El Paso Border Office, Darrin Swartz-Larson, 915-533-7273

**Response:** As noted in our response to *Empower Communities*, EPA recognizes that local communities must be part of the process of identifying and resolving the environmental problems in their community. The Border XXI Program currently has several formal mechanisms for involving border communities in the development and implementation of Border XXI activities, including providing comments on Border XXI documents (including those that define program goals and objectives for specific geographic areas) and attending Border XXI

meetings open to the public. Through these fora and mechanisms, the public has an opportunity to recommend modifications to Border XXI objectives so that they reflect the changing dynamics of the border region.

In addition to the formal community participation opportunities, EPA believes it is crucial that the border communities and EPA maintain effective two-way communication. To this end, EPA directs a great deal of effort to providing environmental information and program updates, addressing community concerns, participating in community meetings, hosting open house meetings, and promoting environmental education activities.

**EJL18. Border Office work plan does not include community in developing.**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768  
El Paso Border Office, Darrin Swartz-Larson, 915-533-7273

**Response:** The border liaison offices each develop annual operating plans to implement outreach activities in the border communities. Although there is no formal mechanism to solicit community input on these internal planning documents, the border liaison offices prepare these annual operating plans based on continual feedback from border communities. The El Paso and San Diego Border Liaison Offices will discuss ways to communicate our respective goals and objectives to our border communities. In addition, EPA is interested in receiving feedback from border communities about what they feel the role and functions of the border liaison offices should be.

**EJL19. Need feedback loop.**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768  
El Paso Border Office, Darrin Swartz-Larson, 915-533-7273

**Response:** As the main liaisons between EPA and the border communities, the border liaison offices are responsible for working with the Border XXI workgroups to provide communities with information on Border XXI activities, and for soliciting community feedback on these activities and relaying it to the workgroups. NEJAC's comment points to a current weakness in this feedback system: there is no clear process or mechanism involving the border liaison offices to ensure that the workgroups are responding to the needs being expressed by the community. EPA will discuss how to address this weakness and is interested in receiving specific recommendations from NEJAC on mechanisms that will enhance the integration community feedback into our programs, and clearly communicate to border communities the status of their comments and actions taken.

**EJL20. Completely remediate Cytrar - completely returning the full volume of wastes to the U.S.**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096

**Response:** EPA has no jurisdiction over this facility, which is located 275 km from the US-Mexico border. The Cytrar facility in Hermosillo was a hazardous waste disposal facility permitted by Mexico's National Institute of Ecology (INE). In late 1998, when Cytrar's permit was up for renewal, INE chose not to renew it, after vocal public opposition to the disposal at the facility of hazardous waste from Alco-Pacifico in Tijuana, and concerns about Cytrar's compliance status.

Any remediation of this site would have to be undertaken by the Mexican government. In addition, although remediation wastes from Alco-Pacifico were disposed of at the Cytrar facility, only a fraction of the waste at Cytrar is from Alco-Pacifico. The vast majority of the hazardous waste disposed of in the operation of the Cytrar facility came from Mexican national industry. Thus, even if SEMARNAP determined that remediation of this former disposal facility were necessary, it is very unlikely that any remediation wastes would go to the United States. If SEMARNAP does undertake remediation of this site, EPA could provide technical assistance based on U.S. experience cleaning up former hazardous waste facilities.

**EJL21. Evaluate groundwater quality and the health of the community near the landfill at Cytrar.**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096

**Response:** Because the former Cytrar hazardous waste disposal facility in Hermosillo is well outside of the 100 km border region, any assessment of groundwater quality or public health in the area would have to be done by the Mexican government. Upon request from Mexico, EPA might be able to offer technical assistance in carrying out such an assessment. However, this would be unusual, given that the facility is 275 km from the border and thus does not fall within the scope of Border XXI or the La Paz Agreement.

**EJL22. Sanction those like Cytrar that have violated the agreements.**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096

**Response:** It does not appear that the operators of the Cytrar facility in Hermosillo have violated any international agreements. The Cytrar facility was a hazardous waste disposal facility permitted by INE. In late 1998, when Cytrar's permit was up for renewal, INE chose not to renew it, after vocal public opposition to the disposal at the facility of hazardous waste from Alco-Pacifico in Tijuana, and concerns about Cytrar's compliance status. Thus, Cytrar may have violated Mexican law in some aspect of its operation. However, the La Paz Agreement would not apply to a facility so far from the border, so there is no way in which the operators of Cytrar or the Mexican government could have violated that agreement.

**EJL23. Review in-depth the impacts of NAFTA in regards to labor, environment and agriculture.**

**Contact:** EPA Region 9, David Berman, 415-744-2006

**Response:** The U.S. government prepared a comprehensive review of the NAFTA and the labor and environmental side agreements to the NAFTA entitled “Study on the Operation and Effects of the North American Free Trade Agreement.” The report, released by the White House in July, 1997, includes analysis of the effects of the environmental and labor protections incorporated in the NAFTA and the NAFTA side agreements. It also includes analysis of the effect of the NAFTA on key sectors, including agriculture. The U.S. General Accounting Office (GAO) prepared a report entitled “North American Free Trade Agreement - Impacts and Implementation,” in September, 1997, for submission as testimony before the Trade Subcommittee of the House of Representatives Ways and Means Committee. The GAO report also examines the environmental and labor protections created under the NAFTA and the side agreements. The Commission for Environmental Cooperation (CEC), created under the environmental side agreement to the NAFTA, is mandated under the side agreement with “considering on an ongoing basis the environmental effects of the NAFTA.” The NAFTA Environmental Effects project was established in 1995 as part of the CEC’s work program. The three NAFTA governments allocated a total of U.S. \$140,000 in 1999 for the project. As part of the project, the CEC has worked with a diverse group of public and governmental stakeholders to develop a framework for assessing these effects, and in June, 1999, the CEC released the “Final Analytical Framework (Draft) for Assessing the Environmental Effects of the North American Free Trade Agreement (NAFTA).” As part of the process of developing the framework, the CEC produced three in-depth sector studies: “Maize in Mexico: Some Environmental Implications of the North American Free Trade Agreement;” “Feedlot Production of Cattle in the United States and Canada: Some Environmental Implications of the North American Free Trade Agreement;” and “Electricity in North America: Some Environmental Implications of the North American Free Trade Agreement.” The CEC is hosting a North American Symposium on Understanding the Linkages between Trade and Environment in October, 2000. A call for papers for presentation at the symposium has been issued by the CEC. The purpose of the symposium is to bring together the leading institutions and organizations in North America to discuss the linkages between environment and trade in the NAFTA context and to encourage further analysis in light of the analytic framework developed by the CEC.

**EJL24. Address Naval facilities in San Diego Port.**

**Contact:** EPA Region 9, Clarice Gaylord, 619-235-4767  
EPA Region 9, David Tomsovic, 415-744-1569

**Response:** EPA is enhancing its effort to communicate more closely with local communities impacted by the Naval facilities in San Diego. Specifically, the San Diego Border Office has a designated staff person to address environmental justice problems and the office is working with groups like the Environmental Health Coalition to establish quarterly sessions with communities and the agency. Additionally, Region 9's Federal Facilities staff is setting up regular meetings with Navy and EPA staff to discuss and deal with local environmental issues such as homeporting of nuclear carriers, air quality monitoring in Barrio Logan and other issues.

## ***HEALTH SESSION***

### **H1. Pollution-toxics-health care systems need to be examined.**

**Contact:** EPA, George Goldstein, 919-541-4903,  
DHHS, Ginni Gidi, 301-443-4010

**Response:** The focus of this question is not clear. We would appreciate clarification of its intent.

### **H2. Need more epidemiological studies.**

**Contact:** EPA, George Goldstein, 919-541-4903,  
DHHS, Ginni Gidi, 301-443-4010

**Response:** Again, without the advantage of knowing the background for this request, it is difficult to answer. However, we would point out that several efforts are underway on the border to increase the epidemiology knowledge base for public health concerns. These include:

C	Ten Against Tuberculosis
C	Bi-national Infectious Disease Surveillance Project
C	U.S.-Mexico Diabetes Project

It also should be noted that the majority of Federal agencies participating on the EHWG have extramural grants programs with community-based components. Access to this information can be obtained by going to the EHWG Home page and clicking on the icon for the agency of interest.

In addition, the two Federal Health Agencies along with its State partners, the Pan American Health Organization and the U.S.-Mexican Border Health Association have published “Sister Communities Health Profiles, 1989-1991” and “Mortality Profiles of the Sister Communities on the United States-Mexico Border”, mortality statistics for the sister cities along the U.S.-Mexico Border. The documents are available at a nominal fee from the U.S.-Mexico Border Health Association in El Paso, Texas.

U.S.-Mexico Border Health Association  
6006 N. Mesa, Suite 600  
El Paso, Texas 79912

**H3. Need health-based (not economic-based) standards.**

**Contact:** EPA, George Goldstein, 919-541-4903,  
DHHS, Ginni Gidi, 301-443-4010

**Response:** The DHHS is preparing a response to this question.

**H4. Support bi-national health registered.**

**Contact:** EPA, George Goldstein, 919-541-4903,  
DHHS, Ginni Gidi, 301-443-4010

**Response:** The DHHS is preparing a response to this question.

**H5. Standardize data.**

**Contact:** EPA, George Goldstein, 919-541-4903  
DHHS, Ginni Gidi, 301-443-4010

**Response:** The two Federal Health Agencies are working with the Pan American Health Field Office in El Paso, Texas and the border states to standardize a set of health indicators. The data set would provide yearly comparisons of health trends for the border.

**H6. EPA offer guidance to cities on zoning.**

**Contact:** EPA Region 9, Sara Russell, 415-744-1029

**Response:** Zoning laws that are in harmony with the environment and public health is important to all communities. Zoning ordinances are created at the local level either by city government or county government for unincorporated areas. As such, the federal government does not have any authority in this area. We can, however, encourage cities to review their zoning codes and make sure they are benefiting all the city's residents. We have seen many instances where zoning has created an unfavorable situation by allowing industrial and manufacturing companies to be located next to residents. EPA Region 9 has been working on an Environmental Justice project in West Oakland, a neighborhood in the City of Oakland. The City is currently reviewing their zoning laws to prevent this kind of development in the future. The City has completed a summary of good examples of zoning laws from the City of Fresno and the City of Portland. At the time of this writing, the City of Oakland is forwarding this summary to EPA Region 9 but we do not have it at this moment. For a copy, please contact, Sara Russell, EPA Region 9 at, (415) 744-1029 or email: russell.sara@epa.gov.

Several additional references may be useful to local communities. The American Planning Association Publication: "Industrial Performance Standards for a New Century," Report #444, is a good guidebook on performance standards for new industrial companies.

Another resource for zoning information throughout the U.S. is the Dept. of Energy's Excellence in Sustainable Development Web site at: <http://www.sustainable.doe.gov/landuse/lucodtoc.htm>

In addition, EPA is co-sponsoring a Partners for Smart Growth Conference, Nov. 17-19 in San Diego. The conference will cover many case studies of different types of smart growth projects throughout the U.S.. For conference details please see the Urban Land Institute's Web site at: <http://www.uli.org>

## **H7. Create EPA liaison position for environmental health**

**Contact:** EPA, George Goldstein, 919-541-4903  
DHHS, Ginni Gidi, 301-443-4010

**Response:** Under the Border XXI Program, Dr. Hal Zenick, EPA and Mr. Richard Walling, HHS are the U.S. co-chairs for the Environmental Health Workgroup (EHWG). In addition, EPA and HHS/CDC in cooperation with the Pan American Health Organization Field Office in El Paso, Texas have seconded Dr. Enrique Paz to facilitate border EHWG. There are strong ties with the state border health offices and PAHO Field Office to provide this liaison function. The U.S.-Mexico Border Health Association, also provides an excellent venue for environmental health interaction. As one of the oldest membership organizations on the border, its environmental health conference group brings together federal, state and local on both sides of the border to discuss issues of common interest.

Co-chairs of the EHWG:

Dr. Hal Zenick  
National Health and Environmental  
Effects Research Laboratory  
Environmental Protection Agency  
Research Triangle Park, NC 27711

Mr. Richard Walling  
Office of International and Refugee Health  
Parklawn Building Room 18-74  
Rockville, Maryland 20857

Dr. Gustavo Oliaz Fernández  
Division of Environmental Health  
Ministry of Health  
Mariano Escobedo 366  
Col. Anzures  
Mexico, D.F. 11570

EHWG Web site: [www.epa.gov/orsearch](http://www.epa.gov/orsearch)

PAHO Field Office Web site: [www.fep.paho.org](http://www.fep.paho.org)

USMBHA Web site: [www.usmbha.org](http://www.usmbha.org)

## **H8. Translate materials into Spanish (community must identify needs).**

**Contact:** EPA/OARM, Arturo Garcia-Costas, 202-260-4600

**Response:** EPA and INFOTERRA, has constructed a Spanish Language Publication Web page. This page provides one-stop access to most of EPA's on-line Spanish documents. This valuable site can be accessed at Home page: [www.epa.gov/oia](http://www.epa.gov/oia).

A focused effort among all Regions and OIA has not been made until recently; however, as a direct result of the National Hispanic Stakeholder Consultation that was held prior to the NEJAC Roundtable an informal discussion group was formed to discuss issues related to Spanish translation on September 13, 1999. This discussion group came up with four relatively broad objectives to serve as a framework for future translation issues meetings that include:

- Initiate an institutional informal dialogue of translating EPA documents into Spanish;
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- Discuss the translation protocol of what should be translated, what needs to be translated, and what would EPA like to be able to translate. The translation of material would depend on resources, needs of the community with documents of highest demand given priority, and the idea of what material should be translated in order to relate certain aspects of the agency to a broader audience; and
- Inventory existing EPA documents that need to be translated such as basic information and regulations and what documents are already translated.

## **H9. Improve HAZTRAKS**

**Contact:** EPA Region 9, Chris Reiner, 415-744-2096

**Response:** The Hazardous and Solid Waste Workgroup has made significant improvements the HAZTRAKS system in the last 2 years. The Workgroup is now developing a new, thoroughly revised version of HAZTRAKS. Due to contractual difficulties, this version will not be complete this year as we had originally hoped, but will probably be released early in 2000.

In addition to improvements in HAZTRAKS, there have been a number of important advances this year in relation to EPA and INE's ability to track cross-border movement of hazardous waste. First, INE has developed their own hazardous waste tracking database, known by its Spanish initials as SIRREP. SIRREP is compatible with the HAZTRAKS database and will enable INE to track movement of hazardous waste, particularly waste from maquiladoras, with much greater accuracy than in the past.

Second, this year EPA completed an in-depth analysis of U.S. and Mexican data on hazardous waste transport across the border, in order to resolve discrepancies in our data sets. In the past, the U.S. and Mexican figures for how much hazardous waste moved across the border were quite different, and there was not a clear explanation of this discrepancy. Our analysis has shown that most of this discrepancy came from differences in how EPA and INE define hazardous waste, and that a smaller portion of the discrepancy came from the ways our reporting systems worked.

The introduction of SIRREP, as well as some changes to Mexico's reporting system, should resolve these problems and essentially eliminate this discrepancy in our waste transport figures.

General information from HAZTRAKS is available on the HAZTRAKS Web site at <http://www.epa.gov/earth1r6/6en/h/haztraks/haztraks.htm>. EPA and Mexico's National Institute of Ecology have discussed making all of the information from HAZTRAKS public. It appears that we will be able to do this, and that the information contained in the next version of HAZTRAKS will be available to the public.

#### **H10. Link Elected Officials.**

**Contact:** San Diego Border Office, Lorena Lopez, 619-235-4768  
El Paso Border Office, Darrin Swartz-Larson, 915-533-7273

**Response:** The EPA border liaison offices will ensure that local elected officials are given opportunities to participate in the development and implementation of the next phase of Border XXI. The EPA border liaison offices will develop a strategy for their involvement that will include inviting local elected officials to participate in meetings and discussions, providing presentations and briefings for groups of local elected officials, and keeping local elected officials informed during the development and implementation of the program.

EPA has begun a new outreach to local elected officials. In cooperation with SCERP, EPA has launched a once a year 3-day seminar on Border 2020. The first conference was held in Rio Rico Arizona in December 1998; a second conference is planned for the spring of 2000. These meetings are designed to bring together elected officials, Congressional leaders and community activists to discuss economic and social development on the border. While the first meeting failed to attract a significant number of elected officials, EPA is redoubling its efforts to attract elected officials to the spring meeting. Proceedings of the first Rio Rico meeting are available from SCERP in San Diego at [scerp@mail.sdsu.edu](mailto:scerp@mail.sdsu.edu).

#### **H11. P2, low-cost technologies exchange.**

**Contact:** EPA Region 6, Joy Campbell, 214-665-8036

**Response:** The U.S.-Mexico Pollution Prevention Workgroup's efforts have included workshops which emphasize pollution prevention and energy efficiency techniques which are cost effective to municipalities, universities and industry. The border states have worked to address the issues in their geographical areas by providing conference workshops in different media or industry sectors along the U.S.-Mexico Border taking into consideration resources and needs. Under the Border XXI U.S.-Mexico Pollution Prevention Workgroup, the following successes demonstrate our efforts in promoting pollution prevention concepts and technologies exchange:

- In the maquiladora sector, TNRCC jointly with Mexico's Procuraduria Federal de Proteccion al Ambiente (PROFEPA) have now completed a total of 21 site assistance visits (SAVs). Figures to date indicate reported annual reductions of 8.6 tons of

hazardous waste, 52,000 tons of nonhazardous waste, 31 million gallons water conserved and 10.9 million kWhr of electrical energy conserved. Due to the above reductions, the maquiladoras have reported annual savings of close to 8.4 million dollars.

- The AMIGO program has worked to bring Arizona and Mexico industries together to share technologies that reduce waste and pollution and increase profits, worker safety and environmental health. The focus has been to promote pollution prevention and improve waste management practices among maquiladoras in the Arizona-Sonora border region through a voluntary and non-regulatory partnership between government and industry. Activities have included networking opportunities and technological and information exchanges through facility tours, workshops and conferences.
- Industry specific workshops were also presented by DTSC including the Pollution Prevention Workshop for Maquiladoras focusing on the Electronics Industry. The pollution prevention workshop for the electronics industry was held in San Diego, on May 15, 1997, and a companion workshop was presented on the Mexico side of the Border on May 12, 1998. The pollution prevention workshop for maquiladoras was held in Tijuana, Baja California, Mexico.
- Wastestream workshops were also developed and presented. Namely workshops which focused on the reduction of volatile organic compounds (VOCs). Two workshops were presented, on May 25, 1999, in Mexicali, Baja California and June 22, 1999 in Tijuana, Baja California. Maquiladoras, academia, government, and consultants were represented at the workshops.
- Meetings with various Mexican government officials, including representatives of PROFEPA, have been held to discuss pollution prevention development and priorities in an effort to promote pollution prevention practices.

## **H12. Create buffer zones.**

**Contact:** EPA Region 9, Sara Russell, 415-744-1029

**Response:** Buffer Zones are a tools used by local communities to among other things, ensure that there is adequate space between businesses and residents. Once again, while the federal government has no role in promoting a specific type of zoning tool, showing examples from other communities where this tool has been used may be useful in attracting attention from your Planning Commissioners. The resources mentioned in question #H6, EPA offer guidance to cities on zoning, may be able to help you with this specific tool.

## **H13. Ensure access to Mexico data.**

**Contact:** EPA Region 9, Marie Martel, 415-744-1639  
EPA Region 9, David Berman, 415-744-2006

**Response:** Access to timely and reliable information is vital if the public is to participate in the environmental decision-making process in a meaningful way. Public access to information is central to EPA's mission. Greater access to data from Mexico, as well as increased data collection by the Mexican government, would be welcomed by EPA. Core information workgroup team members will continue to work with Mexico to address issues related to the release and exchange of information. The subcommittee will encourage Border XXI workgroups to design projects which have a strong component for public access to information. Access to legal expertise related to the release of information is provided by members of the group. A system which provides online access to Mexican laws will be presented at the El Paso Meeting in November by the U.S.-Mexico Chamber of Commerce. Mexico will give a presentation on the release of information. Greater tribal/state/industry stakeholder involvement continues to be sought. It is expected that the subcommittee will continue to work in partnership with Mexico so that the border community is well informed and has improved access to important environmental information.

EPA is working to expand access to information through our partnership with Mexico and Canada in the Commission for Environmental Cooperation (CEC). The CEC work program includes the North American Pollutant Release and Transfer Register project, an effort strongly supported by EPA. For 1999, \$285,000 in funding for this effort was approved by the U.S., Mexico and Canada. The goal of the project is to ensure that citizens have access to accurate information about the release and transfer of toxic chemicals from specific facilities into and through their communities. The CEC released its latest report, entitled "Taking Stock," earlier this month. To date, Mexican data has not been included in the reports because Mexico has not had a program in place to collect the data. In addition, Mexico's data collection efforts are voluntary; industry is not required the submission of toxics release and transfer information. With EPA support, the CEC has provided assistance to Mexico in setting up a data collection program.

EPA and the U.S. government have been actively engaged with Mexico and Canada in negotiating a Transboundary Environmental Impact Assessment (TEIA) agreement. Under a TEIA agreement, each country would receive advance notice if certain types of projects were expected to have an impact on the environment.

EPA and INE are in the final stages of negotiating a Consultative Mechanism for the Exchange of Information on New and Existing Facilities for the Management of Hazardous and Radioactive Wastes Within 100 Km of the U.S.-Mexico Border. This agreement will provide a vehicle for sharing information on existing and proposed facilities that store, treat, and dispose of hazardous wastes. Sharing this information bi-nationally, and working to make this information as widely available as possible, will be very important in ensuring that hazardous waste facilities in the border region are properly designed and permitted and subject to public scrutiny. We hope to have a final agreement complete by the end of this year.

#### **H14. More effective use of Title VI.**

**Contact:** Office of Civil Rights

**Response:** The Office of Civil Rights (OCR) is in the process of revising the Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Interim Guidance) that was issued in February 1998. The Interim Guidance is internal guidance which provides a framework for OCR's processing of complaints that allege discrimination in the environmental permitting context filed under Title VI of the Civil Rights Act of 1964.

#### **EPA's Efforts to Date to Ensure Stakeholder Input**

- Solicited public comment on the Interim Guidance (over 120 comments received);
- Met with a number of stakeholder representatives including those from environmental justice groups, communities, industry, state and local governments, and the civil rights community to discuss their concerns and views on issues associated with the Interim Guidance.
- Established an advisory committee which provided additional information on the spectrum of committee member perspectives on a number of issues under consideration in the Interim Guidance revision process.

#### **EPA's Next Steps for Stakeholder Input & Strategy to Revise Internal Guidance**

- Continue to meet with individual stakeholder groups, such as the state and local government representatives, environmental justice groups, and industry, to discuss issues of concern;
- Hold facilitated focus group session with stakeholder group representatives to receive more feedback on draft options under consideration for inclusion in the revised internal guidance;
- Public draft, revised internal guidance in the Federal Register in September and accept comments for a 60-day period;
- Hold public listening sessions across the country during 60-day comment period;
- Consider information collected during all these stakeholder forums will be considered in finalizing the final version of the internal guidance; and
- Continue interagency coordination through our work with the Department of Justice and the Council on Environmental Quality.

#### **H15. Contingency funds for community health clinics.**

**Contact:** EPA, George Goldstein, 919-541-4903  
DHHS, Ginni Gidi, 301-443-4010

**Response:** Referred to Health Resources and Services Administration, Border Health Unit for follow-up. Provisions for the allocation of funds for this purpose under the Migrant Health Centers and Community Health Centers programs does not exist.

#### **H16. Increase Funding for EJ grants.**

**Contact:** EPA Region 6, Olivia Rodríguez Balandrán, 214-665-7257

**Response:** In its 1992 report, *Environmental Equity: Reducing Risk for All Communities*, EPA found that minority and low-income populations may experience higher than average

exposure to toxic pollutants than the general population. As a result, the Office of Environmental Justice (OEJ) was established in 1992.

In June of 1993, OEJ was delegated granting authority to solicit, select, supervise and evaluate environmental justice-related projects. Since 1994, more than 13 million dollars have been awarded to 660 projects. While most EPA programs are experiencing budget constraints, the EJ Small Grants program will attempt to maintain the same level of funding for Fiscal Year (FY) 2000 as it received in 1999. \$1,600,000 has been requested for FY 2000 grants.

We encourage EJ stakeholders to also take advantage of other EPA financial assistance opportunities such as the EJ Pollution Prevention Program, Environmental Education grants programs, Brownfields Assessment Pilots, and the Sustainable Development Challenge Grant Program. More detailed information, including a Region 6 point of contact, is included in the Attached Chart #1.

#### **H17. Increase use of promotores programs (including environmental health).**

**Contact:** EPA, George Goldstein, 919-541-4903  
DHHS, Ginni Gidi, 301-443-4010

**Response:** Referred to Health Resources and Services Administration (HRSA), Border Health Unit for follow-up. It should be noted that HRSA and EPA will be announcing this Fall the joint funding of a competitively awarded contract to support environmental health education program for border health providers including promotores. The goal will be to improve promotores ability to educate and support community members on preventive health measures.

#### **H18. Create certification program for promotores.**

**Contact:** EPA, George Goldstein, 919-541-4903  
DHHS, Ginni Gidi, 301-443-4010

**Response:** Referred to the State Border Health Offices and Health Resources and Services Administration (HRSA) for Follow-up. For the past four years HRSA has funded the Border Outreach Demonstration Contract which has trained nearly 1,000 people in communities in each of the four border states, most of whom are promotores. However, certification of health professionals and ancillary health personnel is normally a state function, and may vary from state to state. The recently signed Texas House Bill #1864 will examine certification and development of uniform curricula for promotores/community health workers, and the role they can play in managed care.

#### **H19. Identify exiting bilingual materials**

**Contact:** EPA/OARM, Arturo Garcia-Costas, 202-260-4600

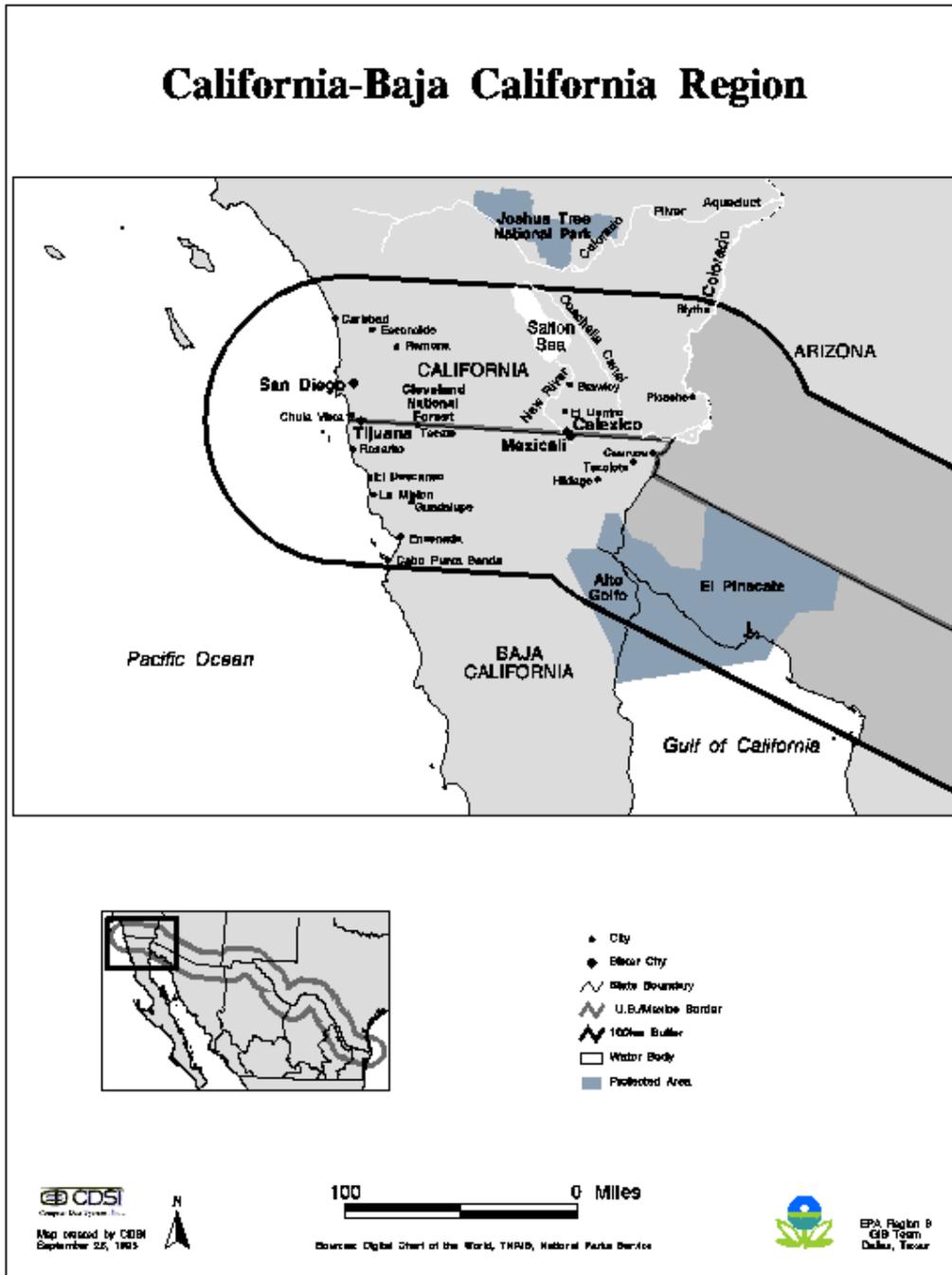
**Response:** EPA and INFOTERRA, has constructed a Spanish Language Publication Web page. This page provides one-stop access to most of EPA's on-line Spanish documents. This

valuable site can be accessed through the top level of Office of International Activities' (OIA) home page: [www.epa.gov/oia](http://www.epa.gov/oia).

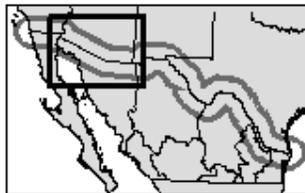
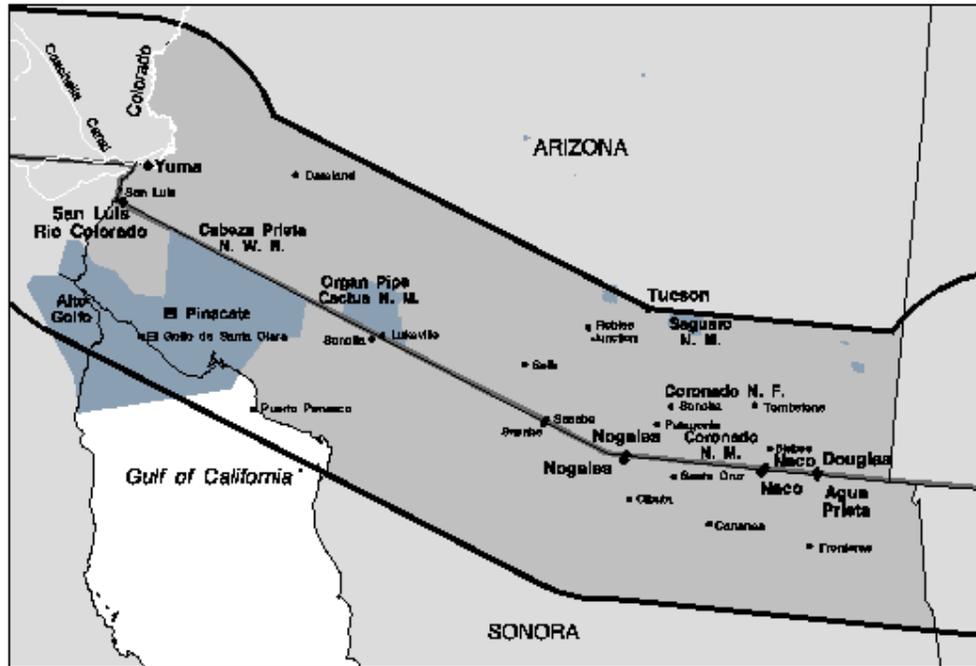
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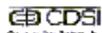
Appendix E ----- Maps of the U.S.-Mexico Border Region



# Arizona-Sonora Region



- ▲ City
- ◆ Border City
- State Boundary
- U.S./Mexico Border
- 100km Buffer
- Water Body
- Protected Area



Map created by CDSI  
September 20, 1999



100 0 Miles

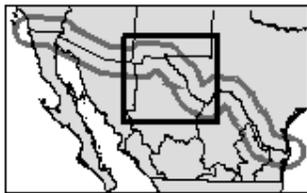
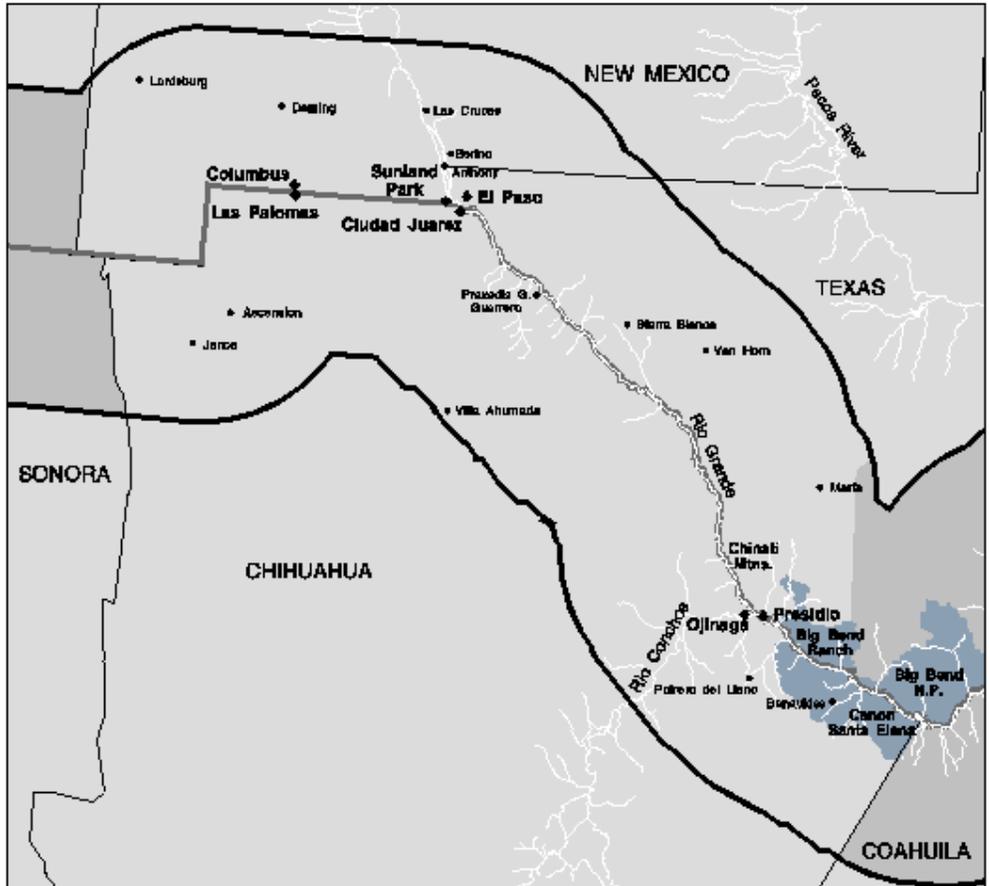


Source: Digital Chart of the World, THAD, National Parks Service



EPA Region 9  
GIS Team  
Dallas, Texas

# New Mexico-Texas-Chihuahua Region



- City
- ◆ State City
- State Boundary
- U.S./Mexico Border
- 100km Buffer
- Water Body
- Protected Area

  
 Map created by CDSI  
 September 20, 1999



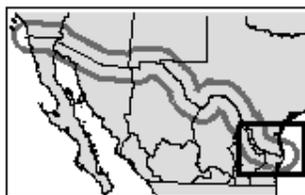
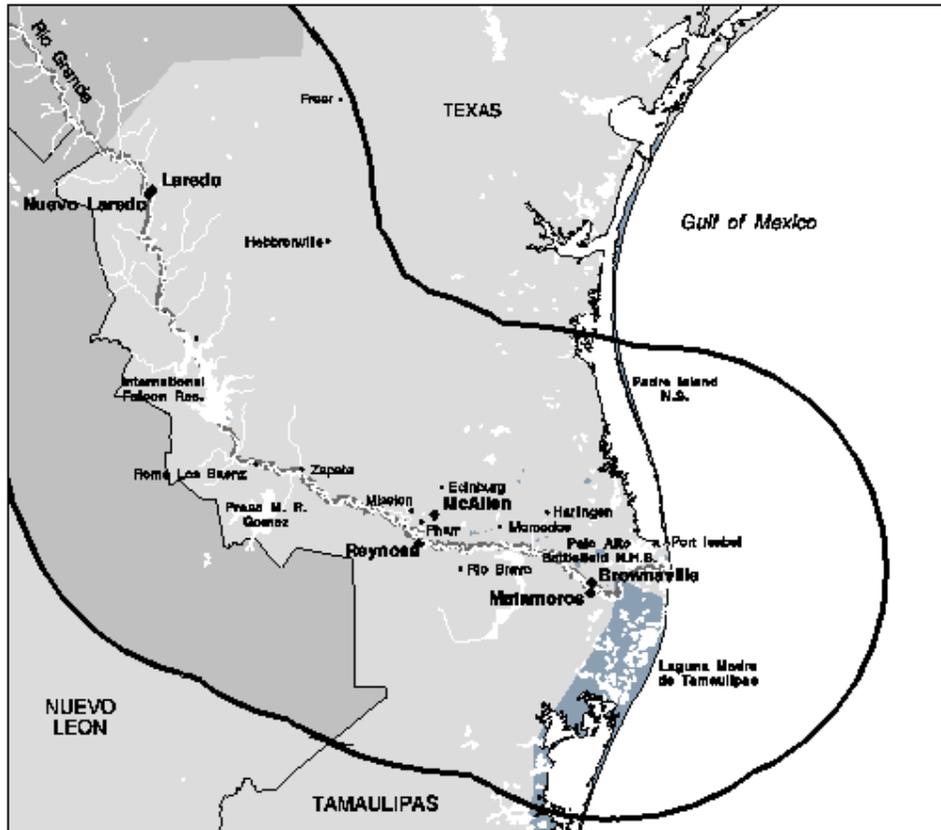
100 0 Miles  


Source: Digital Chart of the World, TNWB, National Parks Service, TOP&W



EPA Region 6  
 GIB Team  
 Dallas, Texas

# Texas-Tamaulipas Region



- City
- ◆ State City
- State Boundary
- U.S./Mexico Border
- 100km Buffer
- Water Body
- Prohibited Area

**ES&CDSI**  
Environmental Systems & Consulting, Inc.  
 Map created by CDSI  
 September 20, 1999



100 0 Miles

Source: Digital Chart of the World, TNRS, National Parks Service, TDP&W



EPA Region 6  
 GIB Team  
 Dallas, Texas

## Appendix F --- Annotated Timeline of Selected Major Events of the U.S.-Mexico Border History

**1836:** Texas becomes independent from Mexico.<sup>79</sup>

**1846-1848:** U.S./Mexican War. Ended with the Treaty of Guadalupe-Hidalgo, while U.S. troops occupied the Mexican capital. Mexico ceded California and New Mexico to the U.S., while recognizing the Rio Grande and western border of Texas as Political Border. U.S. pays Mexico \$15,000,000 in cash and assumes \$3,250,000 more in U.S. citizen claims against Mexican government.<sup>80</sup>

**January 1885** - A Free Trade zone is established along the entire Mexico/U.S. border. A business boom occurs in El Paso (Juarez).<sup>81</sup>

**1889:** Creation of the International Boundary Commission (IBC). This consisted of a United States section and a Mexico section. Among other things, the IBC was responsible for boundary location issues arising from shifts in the Rio Grande/Rio Bravo.<sup>82</sup>

**1904:** The first border patrol is established to stop Asian workers from coming into the United States through Mexico.<sup>83</sup>

**1924:** Congress officially establishes the United States Border Patrol on May 28, 1924. As mandated by this Act, the small border guard in the then Bureau of Immigration was reorganized into the Border Patrol. The initial force of 450 officers was given the responsibility of combating illegal entries and the growing business of alien smuggling. The United States Border Patrol is the mobile uniformed law enforcement arm of the INS.<sup>84</sup>

**1933:** Mexican government promotes industrialization and economic development by establishing free trade privileges in the region.

**1942:** Bracero Program, a precursor to the maquiladoras program: Agreement Respecting the Temporary Migration of Migrant Agricultural Workers. To counteract WWII labor shortages, the Program brought over 400,000 temporary Mexican workers to the US to work in agricultural

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<sup>79</sup> See The Texas Declaration of Independence, (March 2, 1836).

<sup>80</sup> See Treaty of Guadalupe-Hidalgo, 9 Stat. 922, T.S. No. 207 (Feb. 2, 1848).

<sup>81</sup> See Jonathan C. Brown, "LABOR AND FREE TRADE IN LATIN AMERICA: THE HISTORICAL EXPERIENCE" *Institute of Latin American Studies University of Texas-Austin*, <http://lanic.utexas.edu/project/labor95/brown.html>, (visited January 31, 2002).

<sup>82</sup> See 26 Stat. 1512, The Water Treaty of February 3, 1944 (TS 944, 59 Stat. 1219) indefinitely extended the Convention of 1889.

<sup>83</sup> See *The Border: History*, <http://www.pbs.org/kpbs/theborder/history/index.html> (visited January 31, 2002).

<sup>84</sup> Immigration and Nationalization Service Online, <http://www.ins.usdoj.gov/graphics/index.htm>, (Last Modified 01/28/2002).

areas. The program ended in 1964, leaving hundreds of thousands of Mexican workers idle, most in Mexico's border cities. "Braceros" was the term given to these workers.<sup>85</sup>

**1944:** Creation of the International Boundary and Water Commission (IBWC), which succeeded the IBC, to address border water sanitation projects. The IBWC was responsible for the planning, construction, operation, and maintenance of wastewater treatment plants in the border region. The IBWC is still in operation.<sup>86</sup>

**1965:** Mexico's President Gustavo Diaz Ordaz establishes a border industrialization plan, Programa de Industrialization Fronteriza [Border Industrialization Program, BIP]. The primary objective was to encourage industrialization in the northern regions of Mexico to address the unemployment plaguing the area in connection with the end of the Braceros program. This was done primarily through financial incentives for foreign investment in the maquiladoras industry. Investors are able to capitalize on technological sophistication of U.S. and cheap labor in Mexico.

**1978:** Memorandum of Understanding signed by Presidents Carter and Echeverria which pledged to work towards better environmental cooperation.

**1983:** Signing of the Agreement Between the United States and the United Mexican States On Cooperation for the Improvement of the Environment (La Paz agreement). Also established six work groups: enforcement, water, hazardous waste, air, emergency response and planning, and pollution prevention. One main stipulation was that all waste generated by maquiladoras using US raw material inputs must be returned to the US.<sup>87</sup>

**1986:** Mexico Joins GATT.<sup>88</sup>

**1990:** Formation of the Integrated Border Environmental Plan for the United States- Mexico Border Area (IBEP). Based on La Paz and known as the 'Border Plan,' this plan focused on trade aspects of environmental problems in the border region, with one objective to realize economic benefits from trade while protecting the environment. To this end the IBEP attempted to improve enforcement of environmental laws, reduce pollution, increase cooperation, and increase knowledge on issues.

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<sup>85</sup> See Maria Elena Bickerton, Prospects For a Bilateral Immigration Agreement with Mexico: Lessons From Bracero Program, 79 Tex. L. Rev. 895, 906 (2001).

<sup>86</sup> TREATY BETWEEN THE UNITED STATES OF AMERICA AND MEXICO, 59 Stat. 1219, Signed at Washington February 3, 1944.

<sup>87</sup> See Elizabeth A. Ellis, Bordering on Disaster: A New Attempt to Control the Transboundary Effects of Maquiladora Pollution, 30 Val. U. L. Rev. 621,636 (1996).

<sup>88</sup> GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT) 38 I.L.M. 1720 (1999). See also DALE HATHAWAY, ALLIES ACROSS THE BORDER: MEXICO'S "AUTHENTIC LABOR FRONT" AND GLOBAL SOLIDARITY iv, 2000.

**1992:** US, Mexico and Canada conclude NAFTA, effective January 1, 1994.<sup>89</sup>

**1993:** NAFTA side agreements:

- Mexico, US & Canada enter the North American Agreement on Environmental Cooperation (NAAEC), which creates the North American Commission for Environmental Cooperation (CEC). The commission establishes a mechanism to adjudicate claims that one of NAFTA's signature countries failed to enforce its environmental laws and seeks to increase information and public participation. It also provides lots of information and seeks to increase local participation in environmental issues.<sup>90</sup>
- Adoption of the Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environmental Cooperation Commission (BECC) and a North American Development Bank (NADBank). BECC and NADBank work together to provide money to address border environmental infrastructure projects. BECC works with state and local governments to identify appropriate environmental infrastructure projects, while NADBank provides opportunity for public and private investors to invest in these projects.<sup>91</sup>

**1996:** Under President Clinton's direction, U.S. Border Patrols are bolstered, sensors are installed and 40 miles of 14-foot fence is built to deter the flow of illegal immigrants.<sup>92</sup>

**1996:** Finalization of a five-year plan to address environmental concerns along the border, the Border XXI Program, setting goals for achieving sustainable development on the border in three ways: increase in public participation in environmental policy making; encourage decentralization of government management by strengthening state and local governments; improving cooperation and communication among national, state and local agencies. A variety of government agencies on both sides of the border are involved. The plan also allows creation of nine topic-specific workgroups. At expiration of five-year plan, another five-year plan goes into effect.<sup>93</sup>

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<sup>89</sup> See CANADA-MEXICO-UNITED STATES: NORTH AMERICA FREE TRADE AGREEMENT, 32 I.L.M. 1519 (1993).

<sup>90</sup> See CANADA-MEXICO-UNITED STATES: NORTH AMERICAN AGREEMENT ON ENVIRONMENTAL COOPERATION, 32 I.L.M. 1480 (Sept 14, 1993).

<sup>91</sup> Agreement Between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environmental Cooperative Commission and A North American Development Bank, Hein's No. KAV 3745, State Dept. No. 94-28 at 22, Nov 16-18, 1993.

<sup>92</sup> See The Border: History, <http://www.pbs.org/kpbs/theborder/history/index.html> (visited January 31, 2002).

<sup>93</sup> Environmental Protection Agency, *Border XXI Framework Document*, (Last updated on: 01/22/97 06:36:14 PM visited January 31, 2002, <<http://www.epa.gov/usmexicoborder/ef.htm>>).

## Appendix G List of International Subcommittee Members 1999-2002

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