

National Environmental Justice

Advisory Council

Meeting

July 21 - 23, 2009

Wednesday, July 22, 2009

National Environmental Justice Advisory Council

July 22, 2009

NEJAC Members Present:

John Ridgway, Co-Chair
Elizabeth Yeampierre, Co-Chair
Don Aragon
Chuck D. Barlow
Sue Briggum
Peter Captain, Sr.
Jolene M. Catron
Wynecta Fisher
William Harper
Jodena Henneke
Christian Holmes
Hilton Kelley
J. Langdon Marsh
Shankar Prasad
John Rosenthall
Patricia E. Salkin
Omega Wilson

NEJAC Members Absent:

Richard Moore, Chair
M. Kathryn Brown
Gregory J. Melanson
Paul Mohai

EPA Members Present:

Victoria Robinson, Designated Federal Officer
Charles Lee, Director, OEJ
Pamela Barr
Rob Brenner
Eric Burneson
Mike Burns
Miguel Flores
Mike Gaydosh
Nancy Gelb
Cynthia Giles
Jim Jones
Gay MacGregor
Jim Newsom
Dan Olson
Rick Parkin
Laura Yoshii

National Environmental Justice Advisory Council

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M O R N I N G S E S S I O N

(8:54 a.m.)

Welcome and Review of the Previous Day***by John Ridgway, Co-Chair***

MR. RIDGWAY: All right, I am just going to quickly review some agenda items here, recognizing we are starting a little late. For people in the audience, I appreciate your patience. We had a late night last night so I think people are still waking up here but we are going to just wipe those bleary eyes away and cut into this agenda.

The first thing is to just review what happened yesterday and we may have a chance for a couple of quick comments on that. And then when Cynthia Giles shows up, and she is not here yet, we will go ahead and transition into that 9 o'clock agenda item for looking at the new OECA leadership.

So I am going to wing it here a little bit on the review of yesterday. It was obviously a long day and it was very well attended. We had the great opportunity to listen to the Administrator Lisa Jackson and see the majority of the senior management of the EPA, at least in the context of implementing environmental justice, front and center which was great and I appreciate that.

Then I think it is clear also we did not have much time to get into some of the agenda items in the afternoon when looking at how we engage with communities. I mean that

is a topic that goes far and wide and it also relates to the comment session last night which is probably 90 percent of how this Council engages with the community short of going out to these communities.

And we certainly were invited to visit some of the communities that were discussed last night and I want to acknowledge that invitation respectfully in that I would like to accept such invitations but the logistics around that is something that we have not discussed. And it has happened in the past where the Council when convening out in the real world, outside of D.C. here, has visited communities in the past; it has been many years since that has happened. So that may be something that we want to discuss later on if we have a chance but I do want to again acknowledge that invitation with sincerity and I hope that we can get back to these folks and let them know. That was certainly one comment.

I have heard a little discussion around how do we acknowledge the comments that we got from these individuals and community groups in a way that can facilitate the limitations that this group has. It is important that we do not set false expectations and I think that is a challenge in itself.

I want to thank everyone again for their patience last night and questions and we will be able to follow up.

It looks like we had approximately 200 people in the

audience yesterday which I think sets a record for at least the last few years and that is a good sign.

The enthusiasm with a new administration I think is to our advantage and reflects an opportunity to engage this Council in ways that it may not have had a chance in the past few years to realize.

I would like to open it up to Council members if you have any other questions or comments in regard to what you observed yesterday for the good of this Council. And then when Cynthia Giles gets in here we will transition into that.

This is just an open moment for any thoughts. Good morning Wynecta thanks.

MS. FISHER: Good morning everyone. I am Wynecta Fisher, City of New Orleans, Mayor's Office of Environmental Affairs Director.

Yesterday I actually forgot to mention to you guys that prior to coming to NEJAC I worked with Victoria and Region 6 and we actually had a listening session to find out what the concerns were in the Louisiana area. And I submitted some of the testimony yesterday and actually have a DVD that I am trying to copy on my computer and I will give you guys a copy. But it was the hope that if I am going to be a local or state representative, or that is my role if you will, I needed to know what their interests were or their concerns were.

MR. RIDGWAY: Thank you and how can you possibly

share something -- do you have any general thoughts about that listening session that you want to share?

MS. FISHER: It was a good listening session. Region 6 brought their Administrator, a lot of their key department people, everyone from the Environmental Justice Department was there, Deborah, Shirley and Charlotte. There were also people there from DEQ which is our Environmental Quality Agency. There was no one there from the Department of Natural Resources and there were a lot of concerns and just trying to get them engaged will be a challenge for us.

Also and just for those of you who are not familiar with our structure, the Department of Natural Resources manages our coastline and some of our waterways, but they also issue or permit oil and gas drilling. So it is kind of a tricky relationship there but they were not there.

We also had a couple of people from the city offices as well as some of the local universities.

And this listening session happened two or three days after the Dow Chemical incident so it really was timely.

MR. RIDGWAY: Thank you. Good morning Omega.

MR. WILSON: Good morning. I just want to say this for the record. I think Elizabeth, John and Victoria are doing a wonderful job facilitating this whole process. We know it is complicated with all of the support staff so I think I can speak for the membership to compliment all of the

work you have done especially on such a strenuous schedule and complicated process for logistics.

My comment has to do with -- or question I guess has to do with where are we as far as translating some of the things that we are talking about at the regional level and down to the community level? We know that there is infrastructure, what we call the people, the money, and the things that actually roll things down to the community level through the regions. We have talked about how that process should work.

And you know I would hope that there is somebody here who could answer that or address where we are with the capacity at the regional levels to actually start making the things function at a local level based on what the new administration is doing for the environmental justice agenda.

MR. RIDGWAY: Okay, I am going to respectfully table the pursuit on the answer to your question for right now. I am hearing that from a number of people you know and I think there is a need to review what we can do and without setting false expectations for influence at the regional level; but it is a good question. So if you do not mind I would like to table that and maybe I will talk with you to figure out if we have a time slot in this meeting. And if not, I am hoping that we can have more calls before we meet face-to-face and get into some of the meat of the background of these

questions; if that is okay.

Chris, please -- oh I am sorry, Chris before you go I need to apologize and thank the Council for one minor logistic which is that you all have been just on top of introducing yourself before your comments so the people in the audience, not to mention note-takers, know clearly who is speaking. I have not done that so well yesterday or today so I do want to introduce myself for folks in the audience.

I am John Ridgway with the Washington State Department of Ecology. I am acting as a Co-Vice Chair as much as that relationship with the Council exists but I do want to let folks know that I have been working with the Chair and staff here at EPA and Elizabeth Yeampierre is going to be out for a little while this morning in case anybody wants to know what is going on that way. So thank you and go ahead Chris.

MR. HOLMES: Thank you. I am Christian Holmes. That conversation last night with the representatives from the Mossville area and other areas was very moving.

And your point I think we ought to kind of reflect pretty carefully on what kind of recommendations we can make because we do not want to raise false expectations. It really is complicated but I was thinking to myself last night that it is not brain science to be able to tackle a problem like this and to dissect it and analyze it. The problem of course is coming up and implementing any kind of solutions and the kind

of partnerships that you are going to have to develop but they have been done elsewhere in the county. And it may be helpful at some time at NEJAC to look at models where relocation has worked out or partnerships have worked out with industry and then to see to what extent they are replicable in the areas we discussed last night. Thank you.

MR. RIDGWAY: Thank you. I would like to have that discussion as well. Good morning Hilton.

MR. KELLEY: Good morning; how are you doing?
Hilton Kelley with the Community In-power and Development Association, Port Arthur, Texas.

After yesterday's session I went back to the room and I just gave a lot of thought to a lot of the comments and a lot of the stories that were told coming from a lot of our communities across the nation. And in thinking about that I just want to encourage my fellow Council members here and EPA staff and the head of the Council session to think outside the box. It is a new day in EPA and we are all excited about the new administration and the new opportunities that we have under the new administration. So I think it is time that we do away with the old way of doing business and lets all focus on thinking outside the box and thinking about what we can do instead of what we cannot do. Thank you.

MR. RIDGWAY: Thank you. Okay, I think we are going to go ahead and transition here and I am also -- during breaks

and lunch, if you have other thoughts please feel free to come up to me and let me know in terms of reflecting on how things went yesterday.

I am going to turn it over to Charles for an introduction of our next session.

Introduction to New EPA OECA Leadership

by Charles Lee

MR. LEE: Thanks John and good morning everyone. First of all I just want to say that Catherine McCabe who is our Deputy Assistant Administrator was going to be here this morning but there was a medical emergency. She may be able to make it later. In any event, that means that a number of us will just have to take up what she was slated to do.

So the first thing that we were going to have today was a little time with our new Assistant Administrator, Cynthia Giles, and then later a dialog with members of the Executive Steering Committee who are the Acting Regional Administrators, Deputy Regional Administrators, and the Deputy Assistant Administrators around the Executive Steering Committee's priority issues. And that will be moderated by Laura Yoshii who is our lead region Acting Regional Administrator and the Co-Chair of the EJAC Executive Steering Committee.

So the first thing we will do then is for me to introduce Cynthia who will say a few words to you. And so it

is my honor to introduce our new Assistant Administrator for the Office of Enforcement and Compliance Assurance, Cynthia Giles.

Our new Assistant Administrator has an extensive background of thirty years in environmental policy and enforcement. From 2001 to 2005 she has served as the Head at the Bureau of Resource Protection at the Massachusetts Departmental of Environmental Protection. She worked for the EPA's Region 3 in a variety of capacities from 1991 to 1997 as an enforcement attorney.

Her responsibilities include overseeing enforcement of federal laws regulating toxics and protecting air, drinking water, and surface water. She also Chaired a regional Ozone Compliance Initiative developing strategies for reducing smog causing emissions from stationary sources.

Most recently she was the Vice President and Director of the Conservation Law Foundation's Rhode Island Advocacy Center. The Vice President of COF said that Cynthia's unique mix of hard-edged litigation skills, strategic vision, and compassion enabled her to serve effectively as a guardian of Rhode Island and New England's communities and environment making her the perfect candidate to play the role on a national stage. So it is my honor and pleasure to introduce our new Assistant Administrator.

(Applause)

Presentation

by Cynthia Giles

MS. GILES: Thanks very much. I am thrilled to be here and see all of you and really my principal purpose in being here is to listen and to hear what you have to say. But I thought I would start out with just telling you a little bit about the perspective I bring to this position and acknowledging that I have a lot to learn about environmental justice issues and how we can achieve the vision that the Administrator has for environmental justice.

As Charles mentioned I have held a variety of different positions in environmental protection over my career which I think does help me understand a variety of perspectives to the job that we have. I actually started out in the private sector working in a law firm in dealing with environmental pollution issues on behalf of, hopefully desiring to comply, businesses. And I moved from there to prosecuting said businesses for violations of environmental laws as an Assistant U.S. Attorney in Philadelphia.

After doing that for a number of years, which was great fun by the way working as an Assistant U.S. Attorney and much more fun than doing the defense side I would have to say, I moved from there to the Environmental Protection Agency in Region 3 where I did quite a variety of things. I worked as a lawyer in the traditional lawyer role but I also worked in the

science side of the agency, enforcement, and other management roles where I was very much focused on, as Jim Newsom can attest to, pushing us to move from process to achieving results. I continue to be committed to that as a life-long mission and I hope to bring that same perspective and approach; I like to see results from the work that we are doing and be pragmatic in deciding how to accomplish those.

After working at EPA Region 3 I moved to Rhode Island where I did a variety of different things including Chairing the Sierra Club in doing some grassroots organizing in that position which I had not done previously and very much enjoyed and I taught environmental law at the law school up there.

I ran the water programs for the State of Massachusetts for a number of years and most recently was an environmental advocate working primarily on climate change and clean energy issues where we pushed for Rhode Island to join the Regional Greenhouse Gas Initiative which is the first cap-and-trade program in the United States where we had the first carbon auctions in the United States last year. So I have some experience with the nuts and bolts of how a cap-and-trade program works.

So I think I bring a lot of different perspectives to the position that I have now which I am hoping are going to be helpful to me especially in looking at the environmental

justice parts of this job.

As the Administrator said yesterday, one of the foundational principles of this administration is commitment to the rule of law and very particularly commitment to making sure that the law is applied equally everywhere. That all Americans have the protections of the statutes that were passed designed to protect public health and the environment with particular attention to the most vulnerable communities.

As she was talking about, if we pay attention to protection of the most vulnerable and the populations that are today disproportionately affected, we by doing that also protect everyone. And we see that climate change is one example. If the burdens of climate change fall disproportionately on low income communities around the country and around the globe and if we do our best to make sure that those communities are protected, we at the same time are accomplishing benefits for the entire population.

The same thing is true for example in transportation emissions. As you are talking about in this meeting about the impacts of goods movement, what we see is that communities of color and low income communities are disproportionately affected by emissions from the transportation sector. And as EPA takes action to reduce those emissions, it benefits, hopefully that is the intention, it benefits disproportionately also communities that are now impacted.

The same is true in enforcement. We need to make sure that we are enforcing the law equally everywhere. And one of the things that I have already started working on in my relatively early tenure in this office is talking with the Administrator about the fact that the information that we have demonstrates that in fact we are not enforcing the law equally everywhere and that we need to take action on that. Both as states and federal governments we need to take action on that; and more on that in a second.

The other thing that the Administrator talked about at some length yesterday was the commitment to transparency and I would like to take that one step further. I know from talking to the Administrator that she herself in using that word transparency and it means a lot more than just letting people know what we are doing. The power of information to transform action is I think an under-utilized resource. And I know the Administrator is deeply committed as I am to not just being transparent but to actively using the information we have and disseminating the information that we have to communities to enable them to take action on their own behalf.

I don't know how many people here are aware that we recently released on the web a very large quantity of information about compliance status, enforcement actions of states and federal governments under the Clean Water Act. So if you go to the EPA website and look under the Enforcement

Office there, you can look in your own community for what facilities are reporting violations, what has been done if anything about violations reported there at the state and federal level. And it is not just facility specific; you can look community-wide and state-wide to see how your government is doing. I think this is one example of how the power of information can help transform what government does because an informed citizenry is one of our best allies in not only achieving compliance at the facility level but also pressing government to do the job it is suppose to do better.

The environmental justice arena is part of everything that we do but more specifically with respect to the Office of Enforcement, we have been working and will be working with Charles for targeting methodologies for our Enforcement Office. But I wanted to acknowledge that I understand that the Office of Environmental Justice is an agency-wide organization. It is not an enforcement organization.

The Office of Environmental Justice has responsibility to all of the work that the agency does and Charles has I know been laboring hard and long to try to realize that vision and I am very pleased to be joining EPA at a time when the Administrator also shares that commitment and vision. And so I am looking forward to trying to achieve that and working with NEJAC and congratulations on your 15 year

anniversary. I am looking forward to working with you and learning from you about the best ways that EPA can achieve that vision so that the understanding of fair treatment and meaningful involvement can be a reality at EPA.

So I look forward to working with you and hearing from you this morning.

MR. LEE: Thanks Cynthia. Did you want to take some questions?

MS. GILES: Sure that would be great.

Questions and Answers

MS. YEAMPIERRE: Good morning Cynthia and congratulations. I think this is really exciting. I think EPA has put together such a great team because there are a number of you that just together really makes sense to us.

My question has to do with a few things. I just want to tell you that we know the people from Rhode Island legal services and we know that they do a lot of EJ work, they are very excited about such a tiny little state having such big representation; it is really cool. But I wanted to ask you -- being Puerto Rican, I totally understand that concept.

But I want to ask you a question about cap-and-trade specifically because I am part of the environmental justice leadership forum on climate change and a number of us have serious concerns about cap-and-trade and what it is going to mean particularly for communities of color.

Yesterday we heard from a community, Mossville, and a number of communities that are surrounded by industrial sites and one of the biggest concerns that we have had about cap-and-trade is that it does not address the issue of siting. That facilities can continue to get sited in the same communities and that pollution then gets turned into a commodity and so that it is not a real incentive to prevent them from continually being sited in the same places.

And that often the off-sets are not really localized. In a community like Mossville for example, if there were a cap-and-trade program, how could that community benefit from an aggressive pollution reduction project or program? How could that work for them?

So I guess that is my question because you know we understand why cap-and-trade has emerged as a potential solution, but we are not sure that it really addresses the concerns of communities of color. Thank you.

MS. GILES: Excellent point. Let me just respond by saying what my understanding is at this point, and I still have a lot more to learn and want to hear more about these concerns, the cap-and-trade part of the program is for greenhouse gas emissions only. So the cap-and-trade is not intended to apply to other pollutants which have separate programs to address them and which we need to aggressively look at the disproportionate impacts of siting and violations

of those facilities.

Having said that it certainly is true that greenhouse gas emissions, carbon dioxide, are co-located with other pollutants to the extent that when we are implementing the cap-and-trade program we need to make sure that we design it in a way that is not going to have that disproportionate affect. And I still do not know what the discussion so far has been on about how that can be accomplished but I intend to engage on that question.

MR. RIDGWAY: Good morning Lang.

MR. MARSH: Welcome Cynthia, this is a great job and one of tremendous influence and I am sure you are looking forward to having a good time with it as much as you did with prosecuting.

I was glad that you mentioned the goods movement work that we are doing because I think embedded in it is something that I would hope that you all will take a hard look at in terms of different kinds of models of reaching better decisions here applied in the goods movement arena but very applicable across the board for other environmental justice concerns as well as general environmental concerns.

And basically I see it as a kind of two-pronged effort. One is to ensure that community groups have the capacity and the access to scientific and other technical information to enable them to determine their own course of

action and also to participate in various ways in getting better decisions made. And sort of a complementary model of a collaborative process where communities and agencies and businesses and other stakeholders can engage together in coming up with really holistic solutions that go well beyond what could be done with an enforcement approach by itself.

So I know part of your empire includes the Conflict Prevention and -- whatever it is. Conflict Prevention and Resolution Office, it is one of those acronyms that always escapes me, and I look forward to working together between NEJAC and Charles' office and that office to develop these models further because I think they really do hold the opportunity for a different kind of more holistic, sustainable decision making that will address EJ and other issues.

MS. GILES: Excellent point. I would say that your enforcement office is really not about conflict prevention. We are about conflict to solve problems. But I gather there is an OGC, a conflict prevention office, so I am sure that we will have interesting discussions with them.

But your point is well taken that I recognize that the responsibilities of the Office of Environmental Justice are far beyond that of enforcement. And I have seen in my own work the power of communities to transform themselves really surpasses in many ways what government could do through direct action. And I touched on that a little bit by saying that I

think that one of the roles that government has is to provide communities with the information they need to do that. And I am deeply committed to that and I know the Administrator is too to exploring how can we do that especially with the tools that are available to us now in electronic media of various types to work on that. So that is something -- that area of what the responsibilities of the Office of Environmental Justice is something that I do want to explore more.

I just want to reassure everybody even though I have been a prosecutor that I am able to think about the world in a conflict-resolution way where that is appropriate to achieving the results.

MR. RIDGWAY: Okay, for the sake of time I am going to ask that we move along. And so Shankar I saw that you had your hand up but I am going to preempt you here just so we can stick with the agenda. So I am going to pass this over to Charles.

MR. LEE: Thank you and thank you Cynthia for taking the time to talk a little bit with us and certainly this is just a beginning like you said.

So the next part of this session is going to be a dialogue with the Executive Steering Committee. And Laura Yoshii who I said was the Co-Chair of the Executive Steering Committee along with Catherine is going to moderate this session.

But before I turn it over to Laura I just want to say that a lot of what you are going to be hearing is the result of the kind of passion and vision that Laura has brought to us in her leadership as the Co-Chair of the Executive Steering Committee beginning sometime in the middle of last year. And I think it is really important to note that she brought to that position I will say a life-long commitment to environmental justice which has been reflected in a lot of what has happened with the work that goes on in Region 9 on a day-to-day basis. And so we are really fortunate that she came along at the time that she did and gave us the kind of energy and I think a real excitement to this work and so I want to say thank you Laura.

Dialogue with the EPA Environmental Justice Executive Steering Committee

by Laura Yoshii, Moderator

MS. YOSHII: Thank you so much Charles and it really is a pleasure to be here with the NEJAC.

I just really do want to start by thanking all of you for your service to the agency. The input and insights that you provide really do help guide us and shape the program and so I especially appreciate this morning's opportunity to share with you the work of the EJ Steering Committee. Omega addressed in some ways the question you raised about how do we take some of the input in operationalizing some of the programs.

And what I would like to highlight is first of all to say that -- make sure that everyone understands what the Environmental Justice Steering Committee is. It is an internal organization of all of the regional offices at the high levels; the Deputy Regional Administrators, and at the headquarter offices, all of the Deputy Assistant Administrators. And this was a really important organizing part for the organization in terms of coming together at a very high level to provide the leadership for the agency in focusing in on the priority issues especially the kind of budget alignment issues, policy-level issues, program implementation issues, that really need to have support up and down the organization.

So that body was revitalized, reenergized, we are very happy to be able to be serving as the lead region in our agency. Different regional offices work with different AA-ships to ensure that good communication between the AA-ship and the regional operations.

And we were really pleased to be assigned to work with OECA on both enforcement and because they house Office of Environmental Justice, the Environmental Justice Program.

So we use this internal body to really identify what are the big opportunities to really try to address some of the environmental justice issues and concerns.

And I wanted to go over the major areas that we have

identified, much of it based on input that we had received from the NEJAC. So one area for example is goods movement and air toxics which again this body had identified as very important.

Another area is water infrastructure. And in this area I think it was more identified by many of the regional offices when we recognize that there are some communities that do not have the same access to drinking water as the rest of the country enjoys. And there were particular places, tribal nations in particular and the territories, that were really, really noticeably underserved and I will highlight some of the great progress we have been able to make on that front in better addressing some of those issues.

It was also pointed out by this body and others of the importance of us to be more rigorous as we do our rule making in considering the impacts of EJ communities as we develop those rules and can we more systematically address those concerns as we are developing rules. So we have a workgroup that is focused on that.

We also know that the whole climate change area, the green energy jobs, all of those kind of more emerging new areas are ones that are critically important that we pay attention to as they are evolving and as they are being developed so that again the EJ perspective and the EJ communities are not an afterthought to us but incorporated in

the thinking in the way we develop those initiatives and efforts.

And then lastly but not least is a recognition that many of you have expressed but in operation at the regional level we have all learned that one of the most powerful things is to really engage and support the active involvement of communities. So having showcase communities, Brownfield showcases, CARE program, you know various AA-ships have provided pots of funding that enable us to actually empower communities, develop capacity of communities, to really address their priority concerns.

And what we see emerging from those efforts is not only a long-term capacity, but a real on-the-ground ability to identify, problem solve, and use all of our tools, enforcement, other grants, to support the communities that might address issues that the regulatory framework currently does not adequately address. And it enables us to really make a difference in those communities, to the lives of those that we serve.

And we are continuing to look forward especially under this administration and the strong interest and support of really trying to make sure as we carry out our mission we are in fact doing it in a way that totally engages all of those people that we serve and that we are tapping into the power and passion of the communities.

So with that kind of as the overview, I do want to introduce some of my colleagues that will just give you a brief sense of what those major areas are addressing.

So if I could ask and introduce Rick Parkin who has been working with many others -- basically let me just pause and let you know that in these areas that we have identified various regions and AA-ships have stepped up to kind of work on the work plans that are in turn shared with the broader EJ Steering Committee so that we could again collectively move forward. And Rick and other colleagues are working on the goods movement and air toxics issue.

Comments on the Goods Movement Workgroup

by Rick Parkin and Gay MacGregor

MR. PARKIN: Hello everyone my name is Rick Parkin and I am from EPA Region 10 in Seattle and Michelle Pirzadeh our Acting Regional Administrator was the Chairperson on the subcommittee on Goods Movement and Air Toxics and Gay MacGregor to my left is the Co-Chair.

We had a subcommittee that was composed of Regions 2, 4, 9 and 10 and a number of AA-ships at headquarters as well; OPEI, ORD, OECA, and OIA. And our charge was to recommend one to three goals related to the impacts of goods movement on EJ communities and also to develop an implementation plan to accomplish those goals.

We considered the NEJAC report that we had in draft

at the time and we also received a briefing from the NEJAC Subcommittee on Goods Movement. We also looked at -- tried to learn from the agency's strategy on sustainable ports and other activities that the agency has been engaged in for a while such as the National Biofuel Strategy and things of that nature.

But I will try to abbreviate this and get right to the point. And the point is we identified two goals and those two goals were really aimed at what we considered two major gaps identified by NEJAC and by others.

The first one was really a gap in information and information at a lot of different levels. So we put together a goal and I will just read it here so I get it right, "identify EJ communities neighboring goods movement centers that are likely to have the greatest disproportional impacts and set regional priorities for regional program implementation to target environmental and health issues affecting those communities."

So with this goal we were looking at a number of information gaps. First where are the goods movement centers? We know where the major ports are, airports and some of the train terminals and that sort of thing but we think that overall we do not really know where all of the major goods movement centers are.

And secondly what communities are near them and what

EJ-type communities are near them? And we feel that we need to identify those two things to move forward.

But then also a major gap in information is really what are the specifics about the impact? What are the priorities that we need to be looking at? We think it is very important to tell the story about goods movement and its impacts on communities but we really do not know what the story is. We have some information about some hot spots, some major ports, but we believe that we need better information. So that was goal one.

Goal two was aimed at another gap that is sort of an information gap as well but it is to facilitate doing a better job of evaluating the impact of proposed activities and proposed facilities doing health impact analyses and that sort of thing. Doing a better job during the NEPA review and doing a much better job of coordinating with other agencies that are involved, collaborating with them to identify the issues and resolve them before the facilities are built and doing a much better job of collaborating and working with the communities potentially at risk.

I don't know how much time we have for this so maybe I will stop there and see if Gay would like to add a few things.

MS. MACGREGOR: Hi my name is Gay MacGregor and I am with the Office of Transportation and Air Quality and the

Office of Air.

A couple of things about goal one. One of the things you did not mention Rick is that we had decided that we would choose after getting more information, better information about geographically where goods movement centers are located especially distribution centers and things that we do not have good data on, we would choose one or two per region and maybe less communities that were ready to do some kind of collaborative governance project to try to define what it is we would do in those communities to mitigate the impacts of goods movement.

The other thing is that I think these actions that we are talking about taking are supposed to be completed by 2010; hence we wanted to make sure that we could do a few pilots if you will.

Laura talked about the community involvement and I think that was something that you had in your goods movement report that I hear you will be talking about later today and Terry Goff did talk to us in detail about that report. And the two goals that we choose and the specific actions which we really have not gone into, actually address in one way or another about eleven of the recommendations that are in your report. So we can give you more information about that later if you are interested and I will be staying for that session this afternoon on goods movement.

MS. YOSHII: Great, thanks Gay. And let me just again in the interest of time ask that the rest of the colleagues just do maybe no more than a five minute overview so that we do have time to get input in conversation with the NEJAC.

Miguel Flores from our Region 6 office has been doing work in looking at ways the agency could support EJ communities through our various programs so Miguel do you want to highlight some of the efforts there?

Comments on the EJ Showcase Community Workgroup

by Miguel Flores

MR. FLORES: Thank you Laura and good morning to everyone. It is a pleasure to be here. I am representing Larry Starfield who is our Acting Deputy Regional Administrator for Region 6. And I am glad and happy to talk about the EJ Showcase Community that is one of the five key priorities.

Now showcase communities are intended to be a multi-media cross-program approach to engaging multiple stakeholders in coordinated action in order to address the EJ concerns in high priority areas. It is about, Christian as you mentioned, replicating successful models and solving EJ issues. And Hilton as you mentioned we also need to use some creative and out-of-the-box thinking in terms of how we can become more successful with our environmental justice communities in

solving those issues that are very, very important to them.

All of our regions have communities with large EJ concerns; environmental and health burdens, population vulnerability and opportunities though for federal, state and local agency collaboration particularly with respect to green development, green jobs, and things of that nature.

Our priority is to create an approach through regional management and staff but very key to this is to have the support of our National Program Managers to coordinate our work in EJ communities. We cannot approach things on a media-by-media basis. We need to look at environmental justice communities in a very holistic fashion and I think a key to all of this is, as Cynthia mentioned, is the information sharing as well as the utilization of information to inform solutions for our environmental justice communities.

We need to achieve significant environmental and public health results and that is very key. And I know that our Administrator points to us to ensure that we have these measurable outcomes from our efforts with environmental justice communities. So they need to be robust programs, they need to be result-oriented, have sustainable partnerships especially with our community organizations in the affected areas. And I know that Larry Starfield our Acting Regional Administrator is very, very pro trying to built capacity at the community level and see how we can facilitate solutions

working with the environmental justice community.

We at EPA recognize that through this endeavor with showcase communities that we have to somehow coordinate across the agency so that risks are prioritized and are addressed in a cross-media fashion, air, land, water, et cetera. And we have to strategically use our regulatory as well as our non-regulatory tools such as compliance assistance, enforcement, permitting, site remediation, and stewardship programs. There must be coordination as I mentioned with federal, state, local and tribal governments and coordinate as much as we can with community groups and other relevant stakeholders to set the priorities that are important to communities and foster this type of collaborative decision-making process and problem-solving process.

Now each regional office will identify a showcase community through a methodology that they will choose and these projects will seek to reduce environmental and human health impacts and test and refine cross-program and multi-stakeholder processes.

These demonstration projects will also support the long-term goal of further institutionalizing place-based environmental justice work similar to the routine activities of our Brownsville -- Brownfields Program -- you can tell I am from South Texas, and we are initially fostered by the Brownfields showcase community approach.

Each project should have work plans and specific commitments to address the priority issues identified in the target geographic areas. The leadership team for this priority should ensure that at least for the regional demonstration project, some specific tools and approaches are being tested through these work plans.

The 2004 NEJAC Report recommendations on ensuring risk reduction in communities with multiple stressors, environmental justice and cumulative risk impacts include creating new alliances with universities to help staff local EJ efforts. And I think this is very important to Larry Starfield because he feels that universities can be a resource that should really help communities in trying to develop solutions for some of their environmental concerns.

Also a recommendation to develop an inter-agency showcase community taskforce that will hopefully develop an inter-agency work plan which identifies resources and strategies to address environmental and public health concerns.

So the EJ communities approach seeks to address all of these needs. There is some money that is going to be provided to these showcase communities. You know there is always a dilemma in terms of if we provide a little bit of funding, can we really solve the problem. We really need to look at how we can build capacity so that through the use of

information and through the use of partnerships we can really empower our environmental justice communities to seek out the solutions that they need. Thank you and I will be glad to take any questions.

MS. YOSHII: Thank you Miguel. Mike Burns is here for Jim Jones from OPPTS. They are leading a team looking at the regulatory opportunities to incorporate environmental justice.

Comments on Regulatory Opportunities to Incorporate Environmental Justice

by Mike Burns

MR. BURNS: Thank you very much. We heard last night some very compelling testimony from the public comment period about how the EPA rule making process is failing some of the people who are most in need.

And yesterday at our Tribal Caucus Meeting we heard similar stories about how the standards we are setting may not be addressing the needs of the people who are most at risk or most heavily exposed.

So Administrator Jackson has asked us to address this issue head-on, developing a more systematic method of factoring in environmental justice and disproportionate impact concerns throughout every stage of the EPA rule-making process.

And as a first step in that process -- well let's first look at that process. The EPA rule making process has

at least nine stages that occur twice. Once to get to the proposed rule and once to get to the final rule. A lot of analysis that is required by statutes and executive orders and then a lot of decision making that has to take place with the information that is gathered during that process.

The Administrator's commitment is to make disproportionate impacts, environmental justice concerns, sort of at the core of all of the thinking that occurs at every stage in that process similar to the way that other things that are already in place like small business concerns and economic impact concerns are addressed.

As a first step in this process there are some interim measures that are being addressed, implemented right away. All rules at this point that are going to be issued by EPA, the rule writers are going to be asked at the final stage three basic questions. What did you do to assess the disproportionate impacts and the environmental justice concerns that might be at stake in this rule writing? How did you engage the populations that are going to be most impacted by this action? And then lastly how did that work affect the rule that you are asking the Administrator to sign?

So starting right now those questions are going to be asked and admittedly they are going to be asked at the end of the process and everybody recognizes that it would be much better if the questions were asked at the beginning of the

process and that is what this rule making workgroup is aiming to do.

Our process is divided into two components. The first is to develop sort of process guidance to address every stage in the rule making process, what kind of questions should be asked, what kind of analyses should be done, what kind of information should be gathered, and then to test that process guidance out which we expect to have a draft of this fall against several high profile rule makings, the formaldehyde rulemaking effort which is just getting started, the pesticide worker protection rule which is just at the final stages. I think we are going to be looking at the definition of solid waste rule to see how this would affect that and maybe some rules in the air and the water programs as well.

So to sort of take whatever guidance we have -- you know a lot of work has been done on this in the past and we think we have a lot of good work to start with to put together the protocols and then test them out, see how they work in the real rule writing environment, and then sort of finalize this sort of process guidance by the summer.

The second piece of the action is to develop the technical guidance, the tools that people can use in actually implementing environmental justice and disproportionate impact analyses. And here the products that are going to be produced

are not like just a single set of guidance but probably an evolving set of tools and guidance that will assist the rule writers in both executing analyses to determine what the disproportionate impacts are and engaging the populations that are most affected by the rules that we are writing.

Those tools will be developed simultaneously with the development of the process guidance, all of this coming together roughly by next summer.

MS. YOSHII: Great, thank you Mike. I know Rob Brenner is here from Air and has been working with Charles Lee and many others on the whole issue of climate and green jobs. Charles I think you are going to do the highlights from it?

Comments on the Climate and Green Jobs Workgroup

by Charles Lee

MR. LEE: Thank you Laura. The Steering Committee Workgroup that has been working on this issue is comprised of Region 1 and Region 2 and the Office of Environmental Justice and I think that is just the beginning.

But in the broad area of climate policy and climate change, one way to kind of respond to this particularly in an environmental justice sense is identify opportunities for disadvantaged and EJ communities within the new green economy.

And both the President and the Administrator have said that Americans should no longer have to make the forced choice between environment and economy. And that means that

we are trying to find ways in which green jobs and the benefits of green jobs in development can be found in minority, low income, and tribal communities. And we are trying to identify the niche that we can most effectively use to advance the EJ goals, the agency's EJ goals, and the green economy goals.

This is partly in response to some of the recommendation of NEJAC's recent report on environmental justice, green business and development.

I want to say that we are especially indebted to Ira Leighton who was not able to make it but has been playing probably the leading role in terms of envisioning what this may look like. And in his wisdom he really believed that we should pursue an approach that is very practical that looks at examples that are concrete and not base this on a theoretical discussion.

So what happened in Region 1 which is New England, they began to develop partnerships with the agencies such as the Department of Labor who Mike said yesterday recently or is presently soliciting applications for their Green Jobs Act which amounts to approximately \$500 million. Specifically Region 1 has been working with the Job Corp which currently trains over 100,000 students in 122 centers nationally.

And what they found was a real interest on the part of the Department of Labor in working with us and a real

synergy between EPA's interests and the Department of Labor's interest in terms of helping to develop a workforce or develop a next generation of the nation's green workforce. And this is very exciting and over the last several weeks we have really seen this come together and a lot of really fruitful dialogue has taken place within EPA around the possibilities of this, not only in Region 1 but across all of the different regions.

A particular approach to this is to be sector based which means that EPA has found certain areas where there is particular demand. It seems like automotive, lead paints, water infrastructure, construction, deconstruction, weatherization, which parenthetically the Department of Energy has several billion dollars worth of funding through the recent Stimulus Act.

And another example of this would be in the area of water infrastructure. Over the next five to ten years nationwide approximately 50 percent of the current certified water systems operators will be eligible for retirement and this means that there is a huge demand for workers which if not filled actually will create a real looming crisis for the nation.

So these are areas in which there are real opportunities and what the exciting thing is is not just that EPA sees this but the Department of Labor and other federal

agencies sees this.

So the next steps are to identify other partners both within the EPA and externally particularly with other federal agencies but also with state and local governments and with the communities and other groups that are represented here.

An example of this would be the Vice President has recently called for efforts to have federal agencies work together on green development projects. And the Council on Environmental Quality has been coordinating these efforts with several different agencies including EPA. Certainly reaching out on the regional level as exemplified by what happened in Region 1 is a model that we can build upon.

Thirdly, we are trying to identify ways to make sure that resources are available to continue these efforts. This is very exciting. On the one hand it is very important looking into the future and we are really happy now that a real conversation about this in terms of not only what EPA does but what other agencies are doing is beginning to take place. And this does speak to many of the questions that you had about how to infuse environmental justice throughout the whole federal government.

MS. YOSHII: Great, thank you Charles. And last but certainly not least I mentioned that another area of great importance for environmental justice was ensuring that support

for safe drinking water and waste water infrastructure was adequately provided to all communities. And I was very pleased to be able to lead with the Office of Water this important priority area and I am really delighted that the Acting Deputy Administrator Nancy Gelb from Office of Water has been able to join us.

Sorry about the mix up on time for the session but you came in just in the nick of time to highlight some of the good accomplishments there. That partnership with this major AA-ship was key because as I mentioned at the beginning, this was a resource allocation issue in making sure that we can allocate resources to meet those needs. Thanks Nancy for being here.

Comments on the Water Infrastructure Workgroup

by Nancy Gelb

MS. GELB: Thank you for having me. I am excited that the Water Infrastructure Project has become one of the EJ Steering Committee's priority projects. It is an area that I have been working on for the last few years in terms of the agency's strategical to reduce by half the number of homes in Indian country that lack access to safe drinking water and sanitation.

It is not an understatement to say that those communities that lack access are vulnerable to serious public health and environmental problems either because of their

limited access to safe drinking water supplies and when I say safe I mean meeting EPA standards or through ineffective or even non-existent waste water treatment facilities or as the result of contamination of those.

In most small communities and many of us know those communities, water infrastructure improvements are impeded by a couple of things including a lack of funding and a lack of solutions; small solutions, scalable solutions that fit that community's needs.

And then the other really big issue as raised by certainly a number of parties including most recently the National Tribal Council is the consequences of a lack of operation and maintenance or certified operators, retaining training, being able to hire certified operators of their waste water or drinking water plants.

So this is an issue that has been underscored for the last few years by the IPPC, the Indian Program Policy Council, which is composed of the senior leaders across the agency, representatives from every region, every AA-ship. And also Region 9 has been working very closely with this over the last few years with the Office of Water to carry out these issues, carry them through the EJ Steering Committee and make sure that as we move forward we are headed in the right direction.

We have also been working for the last three years

with the Cross-Agency Workgroup. We call it the Infrastructure Workgroup comprised of a number of different agencies; Housing and Urban Development, Indian Health Service which is a part of HHS, Department of Agriculture, and Department of Interior. Anyway we have been working closely to come up with strategies for dealing with the access issue.

We have been helped most recently by the Stimulus Bill, the American Reinvestment and Recovery Act bill which provided the agency a huge boon, a huge opportunity in that it brought \$6 billion just to EPA, much less all of the other agencies that received funds, to improve drinking water and waste water systems nationally. The Stimulus Bill included provisions not only for the tribal set-aside which is traditional in our appropriations bill but also making funds more available for disadvantaged communities that otherwise would not have been able to afford a loan.

So I am excited to say that the agency in partnership with Indian Health Service announced \$90 million in EPA funds, a total of \$157 million including IHS funds for 303 projects. To plan, design and construct infrastructure projects on tribal lands. That is a huge benefit and really moves us forward in terms of the access issue. And that is on top of both agencies regular appropriations which I think combined are about \$70 million.

We have been working to obtain information on the

funding from other agencies and how they have allocated their funds. USDA has told us they provided about \$22 million to fund 40 tribal projects for their construction of water and waste water infrastructure.

And what we are hoping to do next and what I hope to have for either the next meeting or for distribution after this point is a map that is able to identify where those projects are located. We know that the bulk of the access issue on tribal lands is in two primary areas. It is in Alaska and it is on Navaho. So we are really working to make progress in those areas and hopefully graphically we can see our progress in just a short while.

The President's budget in 2010 jumped off of the ARRA in one particular way that really helps us. The ARRA provided additional funds. Not only did it provide a larger pot of funds for the SRFs but it provided a larger percentage set-aside for the tribal funds. And the President's budget for 2010 also significantly increases both the total pot of funds but establishes higher set-asides for tribes. Instead of the traditional 1.5 percent it is providing 2.0 percent. And as it looks right now both House and Senate have agreed to that.

In addition it increased the set-aside for territories from .33 percent, a relatively small amount, to 1.5 percent, a huge jump which really adds a large base for us

to continue to work with and again it looks like the House and Senate have agreed with that. So that is a very positive statement.

We know there is work to do. We are assessing the capacity of the Indian Health Service to do this with us and assessing our progress. We will continue to watch the progress of these projects and to make sure that they are successful because it is really important to us. And so it continues to make the argument for additional funds into the future.

I think this is the point Laurie do you want to jump in now and sort of take over.

MS. YOSHII: You did a great job Nancy highlighting those and really to all of you thank you and thanks for the work. I know it has been a big effort but it was just so encouraging. A number of us early in the week were meeting as the EJ Steering Committee and it is just very evident that we are making good progress in so many of these areas.

But as I started out it is important for us to stay in good communication with NEJAC to share these areas, to continue to get your feedback input on how we could effectively execute them.

So I would like to just pause and open it up for your questions to any of us at this point. And of course beyond the question and answer period here we welcome your

continuing input through other ways. And Charles and John and again the question Omega raised, you know whatever that mechanism is for getting that ongoing input we certainly welcome it.

Questions and Answers

MR. RIDGWAY: Sue.

MS. BRIGGUM: Thank you that was a terrific set of presentations. On the OPPTS effort on implementing environmental justice into the regulatory process itself, that is really welcome news to a lot of us long-time NEJAC members who have felt that it would really enrich the decision process to instead of making the enforcement office try to figure out how to find environmental justice after all of the rules are set and you have the law, instead make sure the law was sensitive to environmental justice and you made judgment calls that would enhance environmental justice.

This is just an offer. Our workgroup that Eileen Gauna and I Co-Chair, Shankar is on it and a number of others, has been spending about a year and a half looking at the kinds of tools that might be very helpful to your analysis.

Paul Mohai is one of our members and I know we are going to talk about the definition of solid waste tomorrow but he did an analysis of that that Bernice Miller and others will reference so he is a terrific resource in terms of understanding kind of standard methodologies for doing

analysis that might be helpful in your technical guidance as well as our group's understanding of kind of the ways that these can be used to enhance environmental justice and some concerns you would want to think about perhaps in the regulatory process; so this is just an offer. If you would like some input, I am sure we would be enthusiastic.

MR. RIDGWAY: Shankar.

MS. YOSHII: Excuse me Jim just for a minute because I think Jim you want to acknowledge that generous offer there. And I am sorry Jim Jones, I want to introduce -- Mike did a good job filling in for you, I am sorry you probably had misinformation about the time of the start of this too but I would like to introduce Jim Jones who is the Acting Deputy Administrator for the -- or the Deputy Administrator for Office of Prevention, Pesticides and Toxics.

MR. JONES: Thanks Laura it is a very complicated name to get out but yes I am sure Mike did a great job explaining the nature of the work because Mike is running that workgroup. I apologize for being late and missing that but we very much would like to take you up on your offer and we will follow-up before we leave today. Thank you very much.

DR. PRASAD: I want to thank all of you for being here and also it is nice to see a more smiling and more rigorous, re-energized group here trying to do something that you have all been doing for these years and it is nice to see

the familiar faces and see this spirit being rekindled.

For about a year and a half the only two things I am breathing around have been goods movement and the climate change and cap-and-trade. So I am glad that you guys went ahead and did the implementation plan but it could have been nice for our group to kind of get briefed in much more detail about which recommendations were adopted and how you plan to do the rest.

And it comes back to the question of what we have been talking about since yesterday morning about the need to identify those communities. So there is an improved acknowledgement, awareness of environmental justice at all levels in different parts of the government in different agencies but now it is time to move to the next step of how we identify them and what actions can really be taken.

In that context it is like Sue said, it is really nice to see that you are looking at incorporating the EJ into the rule making but another thing that we may want to seriously consider because the environment is good now politically, is to see how we can have a hook instead of under the executive order part of it, is there a need to formalize that portion so that some specific actions, your budgeting process and all can be incorporated so that there is actually a law written in or some step instead of the executive order functioning part of it. That is something that you all need

to be thinking about how to go about. And that is something that is good.

And then coming back to the climate change, Cynthia thanks for your input and you have worked under EJ and so on but we must always recognize there is always a disconnect when I hear about that climate change is a global problem and we are only addressing that in the context of CO2, or there are other regulations which take care of the co-pollutants because we have a toxics program, we have a criteria pollutant program and this is going to again compartmentalize and this is mainly going to deal with the CO2 or ---.

But we know 99 percent of the time the sources are the same when we are talking of air emissions. And if you look today, the technologies that we can foresee in the next ten years, energy efficiently, product substitution, --- carbon sequestration or any of those that you want to think about have an influence on either the toxics or the other co-pollutants part of it.

So it is important always to think that we are dealing with CO2 in a separate bin, no doubt we have to, but that co-pollutant benefit part can be forgotten in the context of cap-and-trade. And that is where once again trying to go in the direction of a pragmatic attitude will bring us to the same problem that we are facing that the low income minority communities will be facing because the cap-and-trade probably

will lead to that same problem of those facilities might decide not to clean up to the extent they could.

Having said that here is an opportunity for us; we can consider should there be an incentive mechanism so that the reductions take place within those communities. Can we say that there is a penalty for the parties paid in a cap-and-trade for those facilities if they want to participate in a cap-and-trade? Or can we say that there is a set-aside right at the top from the cap-and-trade revenue that comes in so that one can think of doing something in these communities?

So I think those are the kinds of things that we need to consider because we all know cap-and-trade is probably the way that it will go but here is an opportunity and we don't make that mistake again.

MR. RIDGWAY: Thank you, Chris?

MR. HOLMES: I am Christian Holmes; it is nice to see you all. Last night we had this briefing, and some of you were here for it, by a number of citizen groups one of which was from Mossville, Louisiana and they gave us this brochure which I hope you have seen. And the problems that they face, many companies, many pollutants, poverty, a profound sense of having no one to really turn to and I am sure there are other communities around the country that have these kinds of problems in varying degrees. And it is obvious to me that you are not going to be able to tackle a problem like this without

every media office in EPA looking at the problem and it is multi-regional. And I was curious as to what extent has this kind of issue surfaced on your radar screen in this administration and what your thoughts might be as you look out ahead on dealing with Mossville-type communities.

MR. RIDGWAY: Any volunteers on that one?

MR. BURNS: I was here last night for the discussion by the representatives from Mossville and I think in the opening remarks I made about the environmental justice and rule making endeavor is aimed to get exactly at this issue. That we are not going to be able to solve these problems one community at a time and the solution cannot always be to relocate people. That we have to get at the actual standards that we are setting to make sure that they are reflective of the exposures that are occurring in situations like that. We do not know what the answers are. I do not know that you can always set the standard at the level that is going to protect the most exposed individual but you have to at least be aware of it, you have to think about what your options are, and make it transparent to people how you made your decision and what the consequences of that decision are.

So I think the Administrator's commitment to building this into the rule making process which is going to affect every media program, it gets at sort of the fabric of what EPA is putting in place.

MR. HOLMES: Thank you.

MR. GAYDOSH: Let me try and answer that question because it incorporates what Omega asked along with Chris what you are asking and Shankar I think you hit it on the head on a couple of examples that you used.

First of all I am Mike Gaydosh from Region 8. When Cynthia Giles introduced me or talked to our region about three weeks ago, she introduced me as a trouble-maker like she is. So I think that is a little bit of the context you have to put her in and she and I worked together for fifteen years on these issues.

But to answer Omega's question, what are the regions uniquely? I have three things I think my region should engage in. It should start with listening sessions but it should evolve very quickly into feet on the ground at the community level to deal with the highest issues that we see.

So part of our 2011 budget discussions are around things like healthy community focus with feet on the ground, with federal resources there. Where quite frankly maybe a little bit of socialism might help out a touch because that is kind of where we have to go.

The other area where I think we have massive leverage for multi-media, not just environmental multi-media but is in the stimulus dollar situation that is hitting the ground in every community and probably disproportionately

hitting the ground in environmental justice communities in the country.

So we have got to work with in this order essentially, to talk to the Department of Transportation particularly for urban issues, the Department of Energy for energy issues, the Department of Labor for job issues, HUD for housing issues, and then there are a host of other agencies that are in the second tier that we have to work with as federal entities who are under an executive order, the lead for environmental justice issues, with those agencies who quite frankly are not as sensitized to that. So I think that is our unique federal role there.

And last but not least as Cynthia said, we have to look for some results. We do a lot of listening sessions, we have to continue to do that, we have to do some doing sessions too and capture the results.

As you said Shankar, climate change is a local issue because it is really an aggravating factor of all the local issues that affect environmental justice communities disproportionately. So if I were to say what the regions need to do and what we want to try to do in Region 8 is listen but act, work at the health community level at the local grassroots level, and last but not least leverage our resources and not just our resources, multi-media and EPA, but the resources that are hitting the ground because of ARRA

activities with the other federal agencies who have the same requirements that we do in the environmental justice area. Your thoughts on that?

MR. RIDGWAY: Excuse me, I am going to interject. We have a number of your counterparts that want to speak to the comments. I want to get to a couple more of the EPA people and you will hear plenty from the Council too I am sure.

So Rob I think you had your card up first please and if you would introduce yourself that would be great.

MR. BRENNER: Rob Brenner from the Office of Air and Radiation. I think what you are hearing from us is a recognition that if we are going to deal with the very significant problems in environmental justice communities, not only do we need to set good standards in a way that is sensitive to those concerns, make sure they are implemented and enforced in a way that is sensitive to those kinds of concerns, but that we are also going to have to be involved in dealing with infrastructure and economic development issues, economic opportunity issues in those communities.

And you are hearing a series of different ways in which we think we can get involved without going past our mandate as the Environmental Protection Agency but being smart about what we can do.

We have opportunities to collaborate with other

agencies that are doing work that is related to those kinds of concerns. And then when new opportunities come up, so these references to climate are a good example, are we thinking about ways to address the sort of concern you talked about and Elizabeth talked about earlier that if we are not thinking about it you could have a cap-and-trade program result in mechanisms where companies avoid participating. But if we are thinking about it in a way that is strategic, we could think about well are there opportunities to invest in environmental justice communities and produce off-sets.

So for example, the anti-idling programs that we have been doing, the work that you have been doing with respect to ports reducing the idling of ships in the harbor, all of those not only reduce pollutants that are a concern to public health directly but they also reduce greenhouse gases. And there are opportunities in a cap-and-trade system to subsidize those kinds of control programs to provide additional funding for those programs so that we can get both the air quality benefits and the greenhouse gas benefits.

And similarly things like weatherization investments in communities, early reductions where we incentivize companies to not only reduce their emissions but do it early because they can garner additional credits, those are the kinds of things I think we need to be doing as an agency in taking advice from you on how best to accomplish it. So we

take these new opportunities and use them in ways that are helpful and start thinking about that early on while we can still influence legislation or the reg development if we end up going that route.

MR. RIDGWAY: Thank you Rick and then Miguel and then we will get back to the Council.

MR. FLORES: Yes as you probably heard last night, you know EPA Region 6 has been involved with the Mossville community for a long time and our SuperFund and our rec* programs have cleaned up a lot of the things that are affecting the population; I think some people were relocated. It is tough for the agency to always be in the capacity to relocate people because sometimes, in this particular case and in other cases I am sure, we are dealing with legacy type pollutants and you know how do you get your handle around some of these legacy pollutants?

But one of the things that we can do as an agency is to facilitate the discussion between the facilities in question with the local community groups and try to see if we can come to, I hate to use a cliché, but a win-win situation. What are some of the things that we can get the industries or the companies to do that will address those very significant issues that are of concern to the people? So that is something I think that we have offered the community of Mossville to do that. And we will continue to work with that

community to address those issues.

MR. PARKIN: Well I have been waiting so long I forgot what I was going to say. I will make something up. So you asked, Chris, about our experience with communities, have many companies, many pollutants, poverty, no where to turn and I wanted to just talk a second or two about communities in Alaska.

I know we have an expert here who can correct me where I go wrong but we have a lot of very small villages, small individually but cumulatively add up to a significant number of people, hundreds of thousands of people, who face those very conditions. But it is even worse than it sounds because a lot of the development that has taken place on their natural lands has forced them to change their way of life and change their culture which has forced poverty upon them. They were not really suffering from poverty when they lived their lives and did things their way but when forced to live under Western paradigms, they do find themselves in poverty and they have no where to turn really.

And one of the things that you brought up Mike, about listening, is so important. We at Region 10 really have prided ourselves on our ability to listen and we were shocked and embarrassed and really dismayed to learn how poorly we really did listen with these very communities, especially in the North Slope of Alaska, where they have issues that never

occurred to us.

One of the things that we have a workgroup working on is water infrastructure. And EPA has been working on water infrastructure in Alaska for quite a long time in building both drinking water and water treatment facilities there.

But one of the things that we never considered was the fact that people maybe will not be able to subscribe to those very facilities that we are building because they have to make choices on how to use their money. Should they heat their homes or should they have clean water? And when you combine the cost of diesel fuel which is used to generate electricity and heat the homes, the cost of fuel at \$9 and \$10 per gallon, correct me Peter if I am getting that wrong, with -60 degree temperatures you can see that is a pretty big budget those folks are forced to deal with.

So listening is very important and I think we are taking baby steps in listening. We created a whole protocol on how to work with those villages especially on the North Slope of Alaska where they face situations that we cannot even imagine if we do not listen well.

But another key item I think is to really think out of the box as people have said here already today and to work at the national level to -- and to work with industry to ensure that the folks up there who are suffering the brunt of the impacts of developing their territories also share in the

benefits and do not have to pay exorbitant costs from fuel -- coming right from where they live but they have to pay for such high prices.

It is the kind of story that I wish everyone would have the opportunity to hear people tell because it really can get you behind this movement if you are not already behind it.

Peter, maybe you want to correct some of my errors, I don't know.

MR. CAPTAIN: Thank you Rick, no you are right, it was something I was going to raise. Oh incidentally I am Peter Captain, Senior Representative from Alaska. And we do pay exorbitant prices up there. Don't let the newspapers fool you in that you know well in Anchorage they pay \$3.24 a gallon. Well that is true but that is not where we come from. Where we come from was what Rick was alluding to where you pay anywhere from \$10 to \$15 a gallon for gas and/or heating oil. And I was going to mention to Nancy that the disparity and us getting funding -- you know down here you will probably get \$150,000 for a project, well our \$150,000 for a project up there, more than three-quarters of that go to shipping our project material in and other things such as that. So in actuality the project dollars probably come down to maybe \$100,000 plus so we are not really the benefit of fair funding I think. But Rick I want to thank you for raising that issue.

MR. RIDGWAY: Okay, just for who is quued up here,

back to the Council. I have Elizabeth, Don, Wynecta, Omega, Hilton, Jody, Jolene, Lang -- we are not going to get through you all unless you can make your questions and/or comments brief. The same applies to EPA people and the NCIC have your card up as well. Elizabeth.

MS. YEAMPIERRE: Okay, I am going to try but you know I have been waiting a long time so I have a lot of comments. It is Elizabeth Yeampierre, Executive Director of UPROSE in Brooklyn, New York and President of the New York City Environmental Justice Alliance.

Just a few things; first I want to start by thanking Rob for the comments that you have made and talk specifically about Sunset Park and climate change and then some other comments that I have based on the presentations that you have given.

The reason I brought up climate change and the issue of siting is that we are concerned about the knocks, the socks, the PM2.5. The city has put together this plan 20/30 to address reducing carbon emissions in New York City by 30 percent but it has to aggressively deal with hot spots and it does not necessarily do that. The focus nationally has been on carbon without paying attention to the co-pollutants that Shankar so eloquently described and so we are really concerned about that.

So to give you an example, in Sunset Park which is

where our organization is based, we have 48 peakers and you know peakers are those power plants that operate when there is the most demand in New York City; 48 old, clunky, polluting peakers. And so now a company called USPowerGen wants to expand generation and bring in new generation and what they often tell us is that the new generation is cleaner, it is better, faster, sounds like a Transformers movie right? But it still pollutes. And so this new generation is brought into the community on top of the old generation. New generation still produces knocks, socks, and PM2.5 so it is an addition. It is on top of without taking out the old infrastructure.

So it is an opportunity to really incentivize the local economy and the businesses that operate these old peakers so that we will embrace bringing in new technology if you take out the old technology. And so the model, the way that it makes it appear to people in our communities, is that this is better without paying attention to the fact that we have 125,000 people living next to 48 peakers. So that is a serious problem. We need to figure out how the funding comes down to those businesses so that they can actually take them out. They are only going to do it if they get paid for it.

The other thing that I wanted to mention is I actually thought that this presentation was really excellent and I think it is a message particularly to the public that in all of these agencies there are people who go in with good

intentions who really care about the environment and some of them even care about the people who live in these places. And so I think that there is a window of opportunity now that really requires, as Hilton mentioned earlier, a level of aggressiveness to really take advantage of this window.

You know you have got ---, you have got Nancy Sutler, you have Lisa Jackson, you have a number of people that really are on point in making sure that something happens very quickly in our communities. And so I would encourage you to do that and certainly Nancy's presentation, the fact that during a time of fiscal austerity there is more money being allocating to address environmental remediation in these communities is actually really exciting and really shows that there are people looking out for us.

I am trying to talk fast; I am trying to be real --- about this. In terms of the listening sessions, the brother over here mentioned that you are taking baby steps. My question really is, because I get really concerned when there is urgency and where ecosystems are absolutely disappearing in Alaska and affecting the way people live there, whether this is the time for baby steps and learning and trying to figure it out. As an agency I think you need to figure out whether you have the cultural competencies to actually engage in listening sessions.

And you have to also figure out that -- you know

when I think of listening sessions and I think about people who are struggling to make a living, working to try to figure out how they can make presentations so that they can educate the EPA about what the issues are in their community, I would like to know that that comes with an action plan, a time line, that there is going to be reporting back and forth about, this is the progress we have made, this is what we need in order to get it done, these are what the challenges are.

Believe it or not, when the community is faced with real information about what some of the challenges are, whether it is financial, whether it is the inability of an agency to address that maybe, maybe it is another agency's responsibility, we can be really reasonable about -- because we at least know that we are not on the "pay no mind" list.

I would suggest that you do that because I think that right now we are living at a time when everything is urgent and unlike times in the past where the political will did not exist for you to knock it out, the political will I think is there now. So it could be a really exciting time for you guys as staff.

I know that it will re-energize you, make you feel excited to go to work every single day if you take advantage of the opportunity. So I would urge that you think about it differently and that you do not think about this as an opportunity to "oh you know we have made mistakes." There is

not any time for mistakes, there is not.

I mentioned yesterday that 40 communities in New York City are at risk for a potential storm surge; so that is New York City under water. So if you know what happened with the World Trade Center and how that affected the economy throughout the entire United States, imagine what that means.

So we are taking it locally at a grassroots level without resources, very seriously in terms of educating our base and trying to think technically about what kind of infrastructure is truly green, how to create a green working water front in the Sunset Park which is huge, working with Mayor Bloomberg to make that happen, and if we could do that without resources we kind of expect folks to like step up on the learning curve on this.

But to end on a positive note I really think that you have done a presentation that I think sends to the public a message that you have got some stellar staff that really cares deeply and is really moving quickly to address the concerns in our community.

MR. ARAGON: My name is Don Aragon; I am the Executive Director for the Wind River Environmental Program for the Shoshone and Arapaho tribes in Fort Washington, Wyoming.

To begin with I want to thank Nancy and Laura; I think you have done an excellent job. And this is a great

paper and good news to hear about moving forth with correcting some of the infrastructure problems that we have been meeting on for years with the TOC, the Tribal Operations Committee, and working with the EPA's strategic plan. You know one of the high concerns there was, how are we ever going to implement these huge problems that we were facing and looking at it, it is very encouraging to hear that something is being addressed and done with that.

And you know I think that for the Indian tribes that will be benefiting from these you know I think that it also serves with bringing about good health to our people and our communities. We have a problem with the Indian Health Services' budget and so forth that cannot provide enough healthcare to some of our people. And you know when our environments are the cause of the health problems in the first place, you know we have to start solving the concerns some place.

And I really think that the message that I heard today too about working cooperatively with the other federal agencies is really a necessity that has to happen. Because each of the different federal programs has pots of money and if you put them together we could solve some problems but on an individual basis, when they work individually, you work individually. It really complicates things and so by working cooperatively and in collaboration with these other federal

agencies I can only see beneficial things happening for Indian tribes.

I will give you a quick example here of the USDA, they give us money to buy equipment for solid waste and stuff but they do not give us any money for operation and maintenance. So I can buy a garbage truck but I do not have any money to run it or even hire people to work in those facilities.

So these are complexity things, you know, I hope that your programs address and take a look at this and with this collaboration thing.

I think that I would like to also bring to the attention of the -- when the agency is working with Tribes and moves us through the process of treatment as a state, the TAS process, and we are building our capacity to gain primacy over these programs, that once we gain the TAS and the primacy, that you do not abandon us.

I think that I talked with the new Administrator Lisa and told her that there is another arena that we need to be looking at and this is the life after TAS. Once you hand over the primacy to the Indian tribes to start managing and taking on the responsibility of these Clean Air Acts or Clean Water Acts or even Safe Drinking Water Act, you are still going to have to provide the technical assistance and some financial support to continue with helping the tribes build

full capacity to their primacy.

And I think if you take a look at the Navaho Indian Reservation down there, that is an example of one of the tribes that has received primacy but yet they still need a lot of technical assistance. And in talking with them on the TOC, we see that is this the avenue that other tribes are going to be taking? So we need to be really working together for the future of what is going to happen with the Indian tribes as we move into these.

And then lastly I want to bring up the fact that I am pleased to hear that there is some sensitivity going on and we need more sensitivity training to understand things. I am one of those that was very fortunate -- I think about 8 or 9 years ago that I had the privilege of going to Alaska and taking a look at the problems up there. And I went with Danny Gogal and some other people from the EPA.

One of the things that we did was we planned that trip to be in the middle of winter in February so that when we went out to Cautsabu* we could actually see the impact of winter on communities. And for us that do not see that or have any kind of understanding of what impacts the elements can do to you, all man it was an eye opening experience. When everything is frozen, you know you walk over to the tap, you think you can turn the water on, and you know there is science and everything -- it was really an eye opening experience and

I think that for the EPA to take a look at it from this point of view I really think that it is going to be beneficial to the Alaskan people.

And as one of the gentleman over there stated, as you change their lifestyles, hey, you know we need to also be there to help them with the transition so that the facilities, the infrastructures that they need are operational.

And I think one of the shocking things that I have seen up there was the honey buckets that people use and of course the disposal of those is another concern in solid waste management. There is a whole arena of things that need to be done with them.

And I speak for the Indian people from the TOC, making sure that when we identify these problems we also need to work with the agency to identify solutions. Just to come to you with all of our problems really does not benefit either one of us but if we work together for the solution of these things, I think that we can work in unison and really make some accomplishment. Thank you Laura and thank you Nancy, I sure appreciate what you are doing.

MS. GELB: I just wanted to take a minute to respond because the issues in Alaska are so different and I am not as hardy as you are Don. I went to Alaska in the summertime and I actually have been a couple of times now. We went out West.

We actually had the opportunity with our last AA,

Ben Grumbles, on a climate change trip to visit the village of Newtok which is a village that is actually being relocated because of the impacts of climate change on the village.

And then this last summer went up North to Fort Yukon and to Beaver. Beaver is a small village, maybe 35 homes; they have a haul system for water. Water there costs about \$30 for three or four day's worth of water. Most of us do not pay that in a month. It is hard to imagine.

And maybe you are right, maybe just visiting and getting the chance to talk with people; and there were not a lot of people, they were out fishing, the large part of the village anyway. But it really was eye-opening; and we were there as part of the large inter-agency taskforce group. We had met in Anchorage to discuss allocation of funding and then we wanted to actually see what some of the circumstances were.

So in Alaska I just wanted to say that all of the federal agencies actually meet to discuss the allocation of all of the federal funds to the projects so that they can prioritize the projects, match up the funding into buckets as it is needed, recognize as you said the very high cost of projects in Alaska; it is not like the lower states. When you are dealing with temperatures of a zillion degrees below zero you really need to have infrastructure that is so different from anywhere else.

So the group up in Alaska is working very hard to

address some of those issues and address the opportunities that we might have to join together, to look for solutions, to look for operations and maintenance solutions where we have the authority. EPA has very limited, almost no authority in terms of operations and maintenance.

But one of the other things that we are doing as an inter-agency group is prioritizing the funding across the agency and EPA and looking to encourage the other agencies to do it, to prioritize funding according to IHS' SDS list, their Sanitation Deficiency list which basically identifies the highest priority projects for those that lack access to drinking water, those that totally lack access to waste water, and those that lack access to both.

It is nice when you have enough money to do all tiers of projects but the truth is that in the federal budget we do not. The stimulus funds actually gave us that opportunity to hit some of what I would call lower priority projects because some of the higher priority projects just were not shovel ready. But we are working together as a group to address the allocation of funds by need and to address the allocation and the cost of the projects.

In terms of O & M that is an issue that the infrastructure taskgroup or the inter-agency task group has brought up several times looking to see where and which agencies have the ability to do that. IHS is less limited

than we are but their funding is always constrained. But we are looking to work with them to figure out how best to use that authority.

The inter-agency task group has several subgroups set up to address each of the problem areas that nearly everybody has identified here. So they are continuing to work forward as a federal family to find solutions; so I just wanted to add that.

MR. RIDGWAY: I wanted to thank you Nancy and recognize that it is my understanding that most of our EPA guests are going to have to leave within the next five or ten minutes and so we probably have more comments and questions.

We will probably continue with those comments for the record and I will ask our EPA guests to check back with what was shared on behalf of this topic if you do need to leave before we are done sharing our comments.

MR. LEE: I wanted to say this at the end but I really do think it is important to say this when all of the members of the Executive Steering Committee are here.

I just wanted to say I really appreciated your comments Elizabeth and everyone else's that spoke too. I think the really kind of deep commitment that exists within the agency's career staff, and these are the top career staff in the agency around environmental justice -- and I think that I have a unique perspective on this. And one of the things

that I think is a message that is very important to get across particularly to the EJ communities and the EJ organizations is that there is a group, there is a deep and abiding commitment to environmental justice within the agency's career employees. And that is something that is a real resource to work with.

And so rather than -- the opportunity to really work together is kind of the new day that is here in terms of the opportunity to work together, it is something that we really have to take advantage of.

And I do want to say that the other thing that goes along with that that we are not recognizing enough is that on an everyday basis there is a lot going on in terms of EPA's actions, in terms of what is being done on an everyday basis that benefits environmental justice communities. And to say that is not to pat ourselves on the back or pat anybody on the back but it is to say that is something we can build upon.

So I want to just kind of make sure that is stated because it is a real opportunity for us to take advantage of that.

MS. YEAMPIERRE: Charles I do not want to be out of order but I had just passed a note to Laura that said that it is very important that you let communities know what you have already accomplished. That is just as important as saying these are the things we cannot do. That is not just important for you, but it is important from the community side. But

anyway, that is it, sorry.

MR. RIDGWAY: I am going to also, on behalf of the Council, just say to Nancy we very much would like to see that map in terms of where these projects are going to happen. Visually seeing that is as important as a list and report so we look forward to that when you have a chance.

Okay, thanks for your patience Council members.

MS. FISHER: Good morning, Wynecta Fisher, City of New Orleans, Mayor's Office of Environmental Affairs; I am the Director. Thank you so much for coming and thank you for being committed and engaged with the communities on different environmental justice issues. And I actually have two questions; I will be very brief.

Mike Burns you talked about the rule making process and that there were several steps involved and what I would like to ask you is one of the questions you asked was what did you do to assess EJ concerns and how did you engage the population? I would like to ask you to really look at those documents when you get them. And begin to involve that grassroots organization as a partner at the beginning. And not just the grassroots organization that you are familiar with, definitely get the grassroots organization that you are familiar with and work with all the time, but reach out into the community. I mean our current President began his career being a grassroots organizer. You learn so much knocking on a

door -- of course it is very easy to pick up the phone and call the one group that you normally speak to but get them engaged at the very, very beginning and I think that would be very important.

And then finally Miguel, Region 6, what can Region 6 do to assist the states that are part of Region 6 with the siting issue? The siting issues in our region impact the EJ community more than anything else. What can Region 6 do to assist those states in dealing with those siting issues because we have -- I know we talked about Mossville but currently in St. James Parish and I know that Louisiana is not just the only one, but in St. James Parish there are currently three facilities and there are six more that are sited to be put there. So now you are going to have another problem. So what can Region 6 do to assist those states?

MR. FLORES: You know EPA can work with the communities to help characterize the nature of the problem because once we have a full characterization of the problem then we can begin to work with our states as well as with the facilities and the community to begin to -- how we can partner together to begin to address the concerns of the community.

We also need to use our regulatory authority to ensure that states are being as aggressive as they can be in terms of enforcing their own regulations and do a much perhaps better job of oversight of some of these state programs in

making sure that they are addressing environmental justice issues in the way that they need to be addressing environmental justice issues.

We can also facilitate with industry and try to bring industry together. We can be if you will the convener of stature in terms of bringing groups together to not only understand and characterize what the problem is but then also to try to facilitate what an equitable solution would be to some of these concerns.

MR. RIDGWAY: Thank you.

MR. WILSON: Omega Wilson with the Revitalization Association, Mebane, North Carolina, community-based perspective members for NEJAC. Quickly I would just like to thank Mike, Mike and Miguel and all of the talent at 12 for the tremendous amount of work that you have done.

And I would also like to complement the fact that you have heard from the community's perspective something that I have been saying for two to two and a half years at this level. That environmental justice communities are not air, they are not water, they are not soil, they are living organisms and they cannot live without one of those.

There is a basic elemental thing that I learned in eighth grade that seems not to be a part of policy and how things are implemented at the federal level that at the local level common sense tells us that all of those things are part

of our communities. But when we start talking about regulatory things and how we address them, community people are just dumbfounded how things are implemented at the federal and state level that do not put those things together for communities. Water pollution comes from the air, soil pollution comes from water, I mean you cannot separate those. I appreciate the fact that you have included that as a part of what you are looking at.

The other part has to do with -- I know you mentioned how you plan to address things before they happen. I am not sure whether it was Miguel or Mike, which Mike said that but in our area we have been addressing how it corridors from the goods movement process specifically in our community and it is mentioned in our goods movement piece later on today about how you mitigate, how you get involved before it tears down your community and digs up a 150 year old cemetery that goes all the way back to slavery.

In our state, a lot of the problems that Shankar is dealing with in California, the state has already set aside thousands of acres of land to take the overflow of the ports that Shankar and people in California are driving out. So they are already planning to take the overflow, we are already planning to take corridor overflow and build massive infrastructure in our state. And it is not "if" it is "when," it is already going through the state legislature, it is

already on our local websites.

How are you going to address this whole thing of state primacy where the state says we have your federal money, now back off; we are going to do with it what we like. Local land use policy says we will decide what goes where and how and the buddy plan says we are going to wink at federal regulations. I mean that is the reality where I live and where we work. How are we going to get through these cultural barriers, racial barriers, and political barriers to make regional level things for the steering committee work on the ground?

MR. PARKIN: I might have been the one that brought up the idea that we need to be ahead of the game.

One of the things that we talked about in the goods movement workgroup and I alluded to it but I did not talk about it in detail is that not only at the state level but at the federal partner level we have to increase and renew our collaborations because there are federal partners who do have oversight over what the state does with that money after they get it and we need to work with them. We need to work with them at the early planning stages to make sure the concept of mitigation is worked into their plans. And the concept of avoiding impacts and minimizing impacts and then those impacts that are left over that cannot be avoided have to be mitigated. It is something that has to be in the plan very

early so that there is budget for it and we can do that.

Also we have states in Region 10 that for example do not recognize federally recognized tribes and their sovereignty. So we have to step in for them and we have to consult with those tribes where the state will not. And then when we learn things from those consultations, we have to step in with the state, try to reconcile differences, and work with the federal partners who have more say in those areas.

So one of the things that we can do and I am not answering your whole question comprehensively but one of the things that we can do is form partnerships with those entities, make the necessary comments, make the necessary comments in the NEPA process even if they are ignored by the state or by the project proponents, they are in the record and EPA is the NEPA expert agency, the agency with the authority for NEPA. So when we put something in the record it has a lot of deference down the road.

And now in this era we are in now we have a lot of support to do that, say the right things, and make sure they are in the record. So I think that is a start.

MR. FLORES: I just want to add just very quickly that the questions that Jim talked about, you know those are the types of questions that we need to be asking -- that needs to be part of our daily conversation with our state agencies. What are going to be the impacts on these communities at the

beginning? So once we bring these types of questions into our daily dialogue with our state partners, with our local partners, I think we are not going to get there as fast as we could be if we just start asking those very basic questions about what is going to be the impact on this population as a result of this action. So I think we need to just engage our partners in that type of a dialogue.

MR. WILSON: I just want to quickly say, apparently you have already done this, but include the opportunity to getting Governor's offices as a part of the bully pulpit because the level of visibility there is more powerful now because of the economy than ever before. That people listen and that relationship with Governor's offices do not transcend who is elected, that it stays as a part of the policy part of what Governors have to do.

MR. RIDGWAY: Okay, I am going to check in with the process here. First I want to say thank you to the executives from EPA who are here today. We have heard a lot of advice that we need to continue to have this kind of engagement on a regular basis. We look forward to that. I personally will work with Charles and Victoria to see how we can facilitate that in our future meetings.

So thank you and we look forward to seeing you implement all of this good work, we wish you good luck, and we encourage you to take advantage of the opportunities that are

before us that perhaps have not been as available in the past.

I do want to give you a chance to go on to your appointment. I know that you have to move along. We are scheduled to end the session right now but I want to ask that we let Charles at least if not other EPA staff that can stay, continue to listen to the comments and people here on the Council that still have something either to say or ask. So we will continue this for at least the next few minutes until we can get through the comments. And again I will ask the Executive Steering Committee folks to check back with Charles and/or others regarding these comments that you will not be able to hear over the next few minutes as we try to wrap this up.

So with that I am going to ask if Laura or Charles want to add anything and again I am going to thank you very much for your time.

MS. YOSHII: Thank you John. I just want to -- because unfortunately I do have to run off to the other National Tribal Operations Committee meeting but to just say how much I appreciate this opportunity and all of the comments you have provided. We indeed will -- and many of other staff that will be with you to hear the comments and to incorporate them as we move forward on this. We really look forward to this active engagement with the NEJAC as we try to reinvigorate all of our efforts. Thank you.

MS. GILES: I want to thank everybody, this has been an educational experience for me and I appreciate the comments and I encourage people to stay in touch with me through Charles or directly and speaking bluntly is always appreciated so it is clear. So I appreciate people doing that and I look forward to working with you more.

MR. LEE: I just want to thank Cynthia and all of the Executive Steering Committee members for taking the time to spend with us and we will continue this.

MR. RIDGWAY: Okay, I am going to continue on here. Next up is Hilton. And if EPA folks have to leave just go ahead, if you can stay we appreciate that too.

(Applause)

MR. KELLEY: Thank you my name is Hilton Kelley with the Community In-power and Development Association located in Port Arthur, Texas along the Gulf Coast.

Really I have a couple of brief comments that I would like to make and hope that you all will consider.

In Port Arthur, Texas just like Mossville and other communities along the Gulf Coast there is a serious issue when it comes to enforcement of the Clean Air Act laws. I think that will be a great place to start.

If we look at some of the upsets and some of the violations that are taking place along the Gulf Coast and other refinery and chemical plant communities, you will find

that if we look at the laws that are presently on the books and look at what is taking place behind a lot of those fences, we can find that there are things that we can do to help enforce the laws that are presently on the books and that would be a great way to get started with cleaning up some of the issues we have with our ground level ozone, with a lot of the pollution problems in many of our communities. Let's start enforcing and let's empower our regional EPA offices, let's give them the manpower and the resources they need to do their job more efficiently.

When I was out protesting many times as a community activist, what we found when we visited the EPA office Region 6 is that there was always a lack of resources. They never had enough money to police many of these areas or to do a lot of follow up. But if we get those resources to the regional level and help them to do their job more efficiently, I believe that we can start to clean up many of the communities in those areas that you guys may not be able to personally visit.

And also I think it is time that we take a look at how some of our local and regional departments and principalities are able to circumvent federal laws. And what I mean by that is in Port Arthur, Texas about a year and a half ago the United States Army was shipping VX nerve gas waste hydrolysate to the city of Port Arthur for incineration.

And we know that there are federal laws that forbid the transportation of chemical weapons across state lines. And yet this chemical weapon was transported across 8 state lines to the city of Port Arthur on the Gulf Coast for incineration in a community of color where it is disproportionately impacted by air related chemical and also toxic wastes that is being injected underground. We are disproportionately burdened with air related chemicals from refineries, chemical plants and incinerator facilities.

And constantly other entities of that nature are knocking at the door of our Mayors, our Governors, our state representatives and asking can they come to Port Arthur to dump their waste. And most of the time people on those levels are saying yes it is fine with us as long as you pay some of the bills. But the people are sick and tired of being sick and tired. The people are sick and tired of crying out and yet it is falling on deaf ears. This is why I am sitting at this table today. It is time to enforce the laws that are on the books and it is time to stop local governments and regional EPAs from allowing the federal laws from being circumvented. This will help alleviate a lot of the problems in the small rural areas where our voices are seldom heard. Thank you.

MR. BRENNER: Let me make a quick response to the first part of your question and your comment regarding air

emission from facilities.

As of the last couple of weeks, we have a very powerful new tool for dealing with that. You mentioned the word upset and that is an important word with respect to this because we feel like a lot of the real significant health risks we are seeing from facilities like refineries and other large facilities are what happens during what is called start-up, shut-down and malfunction periods, the upset periods.

And the courts recently threw out a Bush era provision that allowed people to during those start-up, shut-down and malfunction periods, have dramatically higher emissions than they would otherwise be required to have. That provision is now gone, vacated by the courts and we are now required to go back through sector by sector, refineries, chemical plants, and other kinds of facilities that you are going to be especially concerned about and figure out what does make sense in terms of a provision. What represents appropriate practices for them to use during times when they are having problems with the facilities to ensure that there are not these large burps of emissions.

So we have now started that process and that is the area where I think there is an opportunity for us to work with you. There will be rule makings underway to accomplish that. The rule makings will follow these new guidelines that Chris and others, that Mike talked about earlier so I think we are

going to be able to make some very dramatic progress in that area.

MR. KELLEY: That is great and this is something that people on the Gulf Coast and Philadelphia and other areas where there are refineries and chemical plants can appreciate simply because we know that incidents will happen at these types of facilities because we are dealing with volatile compounds, we are dealing with making gasoline and oil products, and you are going to have incidents to where they have to sometimes flare and let off a lot of steam and smoke.

But what we have found over the years is that many of these industries that were somewhat hurting financially used this as a tool and a mechanism to help get rid of waste that was not wanted. And they use that as a way of getting it illegally. It is illegally dumping technically. But they do it so that they do not have to dump legally. And we are being harmed by that dramatically in our communities. So thank you for that and we can appreciate that.

MS. HENNEKE: I am Jody Henneke with the Texas General Land Office, formerly with the Texas Commission on Environmental Quality; hey Miguel how are you?

I have been waiting a while so I have what may be some disjointed comments that just keep ratcheting on.

Having grown up in Oklahoma I am very appreciative of the infrastructure coming into Indian country but living

where I live now I also encourage that we do not forget the US-Mexico boarder. Texas has the longest stretch of that border and Miguel, as you know, there are places there where it is just -- it does not even ratchet up to a third-world country.

We have some real infrastructure issues to deal with and fascinatingly enough colonias are becoming more prominent into interior Texas. So we have some real issues that I hope that continue -- I know there has been focus in the past but I hope that continues. That is one thing.

Hilton and I have had conversations for a long, long, long time. In one of my former lives I was the Regional Director for the Houston Region and I had enforcement authority over the largest petrochemical refining complex in the world. And I came to have an appreciation for the phrase "start-up, shut-down, and upsets." And I have actually enforced against companies for operating in a continuous state of start-up before. I think I was one of the first in the country to do that.

But there needs to be regulatory help by that and Omega who is not in here right now fusses at me at times over policy and not action. But that is a policy that through your regulation development that you need to be able to help your states that have primacy to enforce those programs. And in Texas, Texas has primacy for almost all of the environmental

programs including the Clean Air Act.

The other thing that again in a different part of a former life, I had state implementation plan developments. And those are interesting and challenging at best especially when you have a large population and a large industry base.

Cap-and-trade is not one of my favorite kinds of things because if you are not careful it can feel like a shell game to the person who is sitting there in that community next to that refinery. As much as is possible, I would encourage in any cap-and-trade program that the benefit of the reduction is felt in that community. It is not always possible.

I got to have a conversation with a refinery row community and by the way you guys called me to have me have the conversation with the community because the refinery had to go, they were going to be one of the few to produce low sulfur diesel. The emissions were going to go up around the community and there was not going to be -- all I could say is for the good of the whole. Well for the good of the whole kind of sucks after a while. So I encourage you as much as is possible to come up with something in a cap-and-trade situation that that impacted community will benefit from somehow.

And then the other thing is, very much along those same lines, is SEPs. I know EPA uses SEPs and uses them very successfully. Again please make sure that the communities

that are impacted by those environmental violations to begin with receive some positive benefit back into the community whether it is retrofitting buses, whatever it may be that can come back into that community that they see and feel a real affect.

And then the last thing and some of you have touched on it -- these guys have heard this speech from me about four times already so just bear with me folks. Please do not forget as you go through your regulation development, as you go through developing your programs; please do not forget that the preponderance of those programs will be implemented by the states. Some of the tribes have primacy as well and there are a few locals that have primacy but by bunches the preponderance of those programs are done by the states and without -- and I would just go for decent buy-in. I would hope for stepping up to adequate and really good.

I mean Miguel we know states in our region that will tell you flat out they do not have environmental justice issues. You know without buy-in from -- and that is such an overused phrase but you really have to work with your states and in more than a way of just evaluating their program. Because that just sets you up in an adversarial position and it does not go very far.

So while you are working with the industry base, whomever that may be, trying to establish those necessary

regulatory schemes as well as grassroots folks and all, bring your states in at the same time. Rob and I have worked together too.

MR. BRENNER: Let me just respond to that Jody and at the same time it touches on issues that Elizabeth raised earlier. And you are both right in that there are certain windows of opportunity to do things and you better be ready when they come up.

This is one of the windows of opportunity where it is really important to link our existing environmental programs with the upcoming climate programs. We are either going to have cap-and-trade legislation which is the Administration's preference or we are going to be implementing climate change programs under the Clean Air Act. One of the two is going to happen.

It is really important that as each company makes its decisions on how it is going to comply, that they see the full set of requirements they are going to be facing. That they see what are the air toxics requirements that are coming up, what are the new source performance standards, and if we are really good at it, what are the water and waste requirements too because that is when the companies will make good decisions about the investments. That is when things like pollution prevention strategies or other -- when you look at the full set of requirements. And that is when those

turbines you talked about decide well it is not just that we maybe want to buy some credits to offset our greenhouse gases, we know that we have some other requirements coming in the air and water area so maybe what we should do is shut down this old inefficient turbine and replace it with a newer cleaner turbine or energy efficiency or something else.

So that is going to be very important for us as an agency to get organized to deal with each of these sectors and help them address and show them what the rules are going to be for addressing energy, environmental, and climate considerations at the same time.

And then just finally one other point about siting because a couple of you have raised it and you raised it in a way that I think is appropriate. That the new facilities tend to be fairly clean that are coming in; they are cleaner. It is the old facilities; it is the grandfathered facilities that pose the greatest environmental risk. And at the time when new development is coming in either because there are recovery and reinvestment act dollars available or because there are new economic opportunities or for whatever reason new requirements, new facilities are coming in, that is the time to make sure we are also addressing the old ones and getting more than off-setting reductions so that on balance emissions are going down. And those are the kinds of strategies that we need to be pursuing with you at this point.

MR. RIDGWAY: Okay, we have four cards up and that is all we are going to allow to go up. We have gone a long time without a break. So we have Jolene, Lang, and John; Jolene first. Three cards that is, excuse me.

MS. CATRON: Good morning my name is Jolene Catron and I am Executive Director of Wind River Alliance. We are located in Ethete, Wyoming. There are a couple of things that I wanted to cover and I will try to be brief here.

With the new -- especially around drinking water and unfortunately Nancy and Laura had to leave, but around the new drinking water funding coming in I am really mindful of the NEJAC publication, the meaningful involvement and fair treatment by tribal regulatory programs which was a document created by a subcommittee of the NEJAC several years ago. I would recommend that document be brought to the attention of all of the Regional Administrators as a guidance document that was created by NEJAC on how to include public participation and meaningful involvement within tribal communities. I think it is a very well written document and I would suggest that each one of you read it. We have a CD Rom with all of those documents on there and I am sure the NEJAC would be willing to let you borrow it.

The other thing I would like to touch on too -- just a quick question for Mike Gaydosh -- how do you spell your last name? G-o-d-a-s-h?

MR. GAYDOSH: It is spelled on the card.
G-a-y-d-o-s-h.

MS. CATRON: I could not find your name in the directory and I was trying to figure that out. Can you please say that again?

MR. GAYDOSH: G-a-y-d-o-s-h.

MS. CATRON: Okay thank you. And you are filling for somebody right now?

MR. GAYDOSH: Carol.

MS. CATRON: Okay, because Carol is listed on our list and I did not see your name.

MR. GAYDOSH: Carol is at the TOC meeting that is why I am here.

MS. CATRON: Let's see what else -- I think that is all I needed to cover, thanks.

MR. MARSH: Thanks, Lang Marsh, National Policy Consensus Center out in Portland, Oregon and former State Director in Oregon and before that in New York. And I say that because I have been dealing with EPA pretty much constantly for the last 35 years and I have to say this is the most hopeful and exciting time that I can remember for this agency and I really appreciate what kind of good ideas you have had but also the spirit from Lisa on down that we have heard at this meeting is just really very encouraging. And part of this is this spirit of partnership so I really do look

forward to working with you all.

I had three quick comments. One on the regulatory means. I think it is wonderful what you are proposing to do and excellent. I have actually some other ideas about that regulatory process that do not deal specifically with EJ that I will deal with you offline perhaps.

The question I have is whether when your taskforce is finished with those guidelines or guidance whether you would move to the actual enforcement side and see if there are not some opportunities to do what you are doing to sort of relook at the way enforcement has been done with respect to EJ and see if there are not some opportunities to bring more EJ considerations into the enforcement process.

And along with that I am glad that Jody mentioned SEPs, that is something dear to my heart. We did a study a few years ago that pretty much indicated that there is a lot of room for doing more SEPs both at the federal and state level.

One of the things I just wanted to point out is that, see if there are not opportunities to use SEPs not only to do investments in particular projects that benefit the community but also to help fuel a broader collaboration among the people affected, the communities affected, local governments, other businesses, not the target businesses that were paying the SEPs, but to use that as an opportunity to

look for leverage investments by a number of other parties into the community so that you get a lot more out of the SEP than just the individual thing. And I will send you all if you would like the report that we did about that.

On the showcase communities again I wonder if it is not appropriate to ask if one of the criteria for selecting the showcase community is the opportunity to do some investment either of technical or funding in the kinds of things that we are talking about in the goods movement report. In other words, community facilitated strategy or a collaborative governance type approach so that we get the benefit of piloting how those things are best done. I will not go into that in more detail but you can read that in our report.

I would like to emphasize something that I think you said Miguel about that Larry and you are very interested in having universities participate. We are trying to work with universities around the country to create more capacity for them to assist in doing these collaborative kinds of things and so I am very eager to have that conversation as well.

My final segment is again to support what Jody said and others, Omega, as you go forward with this steering committee work, see where you can involve the states and tribes as much as possible. Some of them will not want to play, I know that, but the fact that you offered to have them

play is a very instructive teaching moment. So go where you can to make partnerships but also know that it is very helpful just to have it out there that you want to work with them. Thank you very much, this is great work.

MR. RIDGWAY: Miguel you had a card up, did you want to make a comment?

MR. FLORES: Yes I just wanted to respond to -- make a few comments related to what Jody talked about.

Number one I appreciate you bringing up the US-Mexico border, that is something having been born and brought up on the border obviously it resonates with me and I am very much involved with EPA programs with the US and Mexico dealing with water and waste water infrastructure. But also with things like disposal of used tires that are creating a huge environmental impact with respect to dengue fever and other things. Household hazardous waste, where we encourage people to recycle but then they don't have any place to go and place the recycling in so we are working with communities on both sides of the border to try to get a handle on that.

But I also want to mention that our Administrator Lisa Jackson, myself and a whole bunch of others were in Puerto Rico last week at the LULAC Convention. And in talking to my very good friend Carl Soderberg who is the Director of the Caribbean office he points out all the time that in Puerto Rico only 36 percent of the population receives safe drinking

water. By that meaning the water that they receive meets all safe drinking water standards. So if that isn't an environmental justice issue what is? You have an island of 4 million people and 36 percent of that population is not receiving clean drinking water. I mean that is a huge investment that I believe the agency needs to make. That is speaking for myself.

The other thing you know with respect to -- and I think it addresses some of your concerns as well Hilton and that is that we now have the political will of Lisa Jackson to move forward in looking at Texas' state implementation, their air permitting program is completely broken. And we are taking action and you will shortly hear of some of the actions that EPA is going to take with respect to the air permitting program in Texas because through a bunch of revisions to the rules, they have got some real, real problems and we are going to address them. Some of them being of course what you mentioned in terms of off-sets.

The last thing is the siting issue. I used to work in my former life with the National Park Service and we had these little gems called Class I areas which are significant national parks and when we came up with a cap-and-trade system for SO₂ I was always very concerned that the off-sets that one -- that we needed to look at how folks that were not going to reduce emissions, what the impact on the Class I areas are.

So those were kind of our EJ communities if you will.

So I think that is a very, very important issue that we really need to scrutinize in seeing and making sure that if there are off-sets or whatever that those off-sets, people who are buying those off-sets, you know they are in those places where they are really having a huge impact. So how -- so I will just say that is a hugely important issue that resonates with me from my previous experience in air.

MS. YEAMPIERRE: Hi I just wanted to respond to your issue about Puerto Rico. You know I'm Puerto Rican, born and raised in New York City but Rican none the less.

And what I understand about the problem with water in Puerto Rico specifically is that it is not that there is not enough water but that the resorts, the hotels, the US owned industries are using up all of the water at the expense of the local community. So there are towns where you have these huge developments of the tourist industry, of all of these hotels and they use an enormous amount of water. And the people who actually live in those communities do not have access to the water.

So I think that has to be looked at but I appreciate you raising it because there is not anybody here from the island and I think it is important. I have even said NEJAC meetings should be held there every once in a while but I understand that there is a rule that says that we cannot meet

in the sunshine. Thank you.

MR. RIDGWAY: Okay, we really are pressing our luck here. I understand, Jim I will have you go. Jody I am not sure we are going to get into the details about what is broken in Texas or not. Jim go ahead and Jody I am going to give you one minute.

MR. NEWSOM: I do talk rather slow but I will try to speed it up. I am Jim Newsom the Acting Deputy for the Mid-Atlantic Region, Region 3 in Philadelphia.

I was listening very closely to what Marsh said about the supplemental environmental projects, SEPs, and in fact almost at the instant that you said that I spoke to Rob and I said you know we really have got to look at our SEP projects. And I think that EPA really has an opportunity here.

Part of the issues with SEPs in the past, and I know you are aware of this, has been the definitional issue of SEP and some of the issues that we have had with DOJ. It is a new day and it is a new age and I think it is an area that we really, really could capitalize on through working with DOJ to try to get a further expansion of what a SEP really is. And I know in our Region we are looking quite closely at some of our past SEPs and future SEPs that we see in some of the settlements that are coming up. So I just want you to know that is an area -- I am sorry that Cynthia and Catherine were

not here to hear that but I am sure Charles will take it back and I certainly will also. So I think SEPs are really something that we can really make some real improvement in some of the EJ communities so thank you for bringing that up.

MR. RIDGWAY: That is good to hear, thank you.

MS. HENNEKE: Miguel you knew I would have to say this. I think it is a mischaracterization to say that the permitting process in Texas is totally broken. It is one of the more complex, multi-layered, expensive, oldest permitting programs in the country. There may be some issues that EPA wants to tweak a little but they have one of the most extensive modeling networks and monitoring networks in the country. So I don't want the folks in the audience to think that it is just running amok out there in Texas because that is not the case and I think I did that in under a minute.

MR. RIDGWAY: Good job Jody, thank you. Okay, everybody thank you so much for your patience in listening and we are going to now break for lunch. We will reconvene at 1:00. Thank you.

(Whereupon a luncheon recess was taken)

A F T E R N O O N S E S S I O N

(1:05 p.m.)

MS. ROBINSON: Thank you for getting back here on time. We are going to go ahead and move straight ahead into our next item on the agenda which is a discussion about the Goods Movement Workgroup report on goods movement, impacts on air quality in communities.

I am going to introduce Shankar and Terry in just a moment but I want to make sure everybody knows where they can find the report in the book. Under the tab that says Workgroups, the very first one, you will find the report.

As we discussed, after Terry and Shankar give an overview about the report and recommendations, we are going to go into looking at any comments you have. We will be passing around Sue's comments in a few moments; we are printing those out right now Sue that you submitted to me.

As we go through the report and you are making comments, please reference the page number and the line number so that everybody knows where to follow the language. If we need to put it up on the screen, we will put that page up on the screen; we will tee that up on the LCD projector.

And then I know that there are a couple of items that need to be addressed specifically around some consensus issues on the report.

I wanted to say that in basically the two years that

I have worked with this workgroup on this issue, it has been a very -- one it has been enjoyable, it has been full of passion, full of all kinds of emotions and it is a rollercoaster ride but it has been great and I have been blessed to be able to work with two very good Co-Chairs, Terry and Shankar, who have been able to balance the issues and concerns of the members of the workgroup I think relatively well. And I think that the report that the workgroup produced is very good. I mean they worked hard to really create a document that they believe has some meaning and some value.

So I am going to go ahead and turn it over to Shankar and Terry and then we will proceed from there.

ACTION: Goods Movement Final Report of Recommendations

by Shankar Prasad, Moderator

DR. PRASAD: Thank you and thanks Victoria.

Victoria was probably very shy in making the comment about how arduous the task was but at the same time I also applaud the support the whole of the OEJ staff provided during this tough task of almost a two-year period. It was a long hard fought road and the people were -- you have the list of the workgroup members and I have a tremendous amount of respect for each one of them and also for my Co-Chair, Terry Goff who was really very helpful in crafting this document and trying to bring the people together and make it a success.

It has a lot of history but at the same time many of

you may recall about a little over two years ago I made a presentation about why we should focus on the goods movement. Though California focused on it, we knew that as the future rolls in and with the infrastructure development and the increase of this shipping and globalization and so on this will be a major issue as we move forward.

With that, yesterday I have flagged you the difference of opinion. There are 40 recommendations in the book but there is only 1 which was not arrived at by consensus. All of the other 39 were arrived at by consensus. And some of you may have one or two wordsmithing that needs to be addressed and things like that; we will work with you individually on that. And my Co-Chair Terry Goff from Caterpillar will give you a brief overview on that and we will after that open up for the comments and how we want to handle any difference of opinion on a particular recommendation.

Any guidance on that aspect that can be given by OEJ will also be appreciated as to how they want to handle that piece as well.

Comments

by Terry Goff

MR. GOFF: Thank you very much Shankar and it was -- I will join the mutual respect society here in that working with Shankar and Victoria has indeed been a pleasure and working with the entire workgroup, some of the members of

which are in fact members of NEJAC who can testify I think for themselves to the many hours of conference calls and face-to-face meetings that it took to develop the report.

I guess I would draw your attention -- the purpose of this part of the presentation is to level-set so that NEJAC itself can ask questions and discuss the report. We are not going to go through all 40 recommendations in detail, those are before you but we did want to begin by giving you the major context and issues that are addressed within the report.

As you will note in the joint cover letter that Shankar and I put at the beginning of the report there really are three over-arching themes that come out of this report.

One is that clearly in response to NEJAC's charge, the group focused on the impacts on impacted communities particularly in the area of EPA's core health accountabilities. So you notice health is the first over-arching theme of the report.

The second over-arching theme is a sense that we have an opportunity to act with urgency. There is not a need, as you go through these recommendations some are more difficult than others, some may already be underway as we progressed through the process of doing the report, but there is an opportunity here for the agency to act with urgency to address the concerns of impacted communities and we believe the recommendations that were laid out provide a roadmap that

will allow the agency to take urgent action.

The third major over-arching theme is the understanding that the impact of goods movement on impacted communities is differentiated by those communities, their locations, and the nature of goods movement in those areas. To that point the workgroup clearly came to the conclusion that there is not a singular national solution to this challenge.

Much of the challenge associated with goods movement is localized, therefore, as we move into the section of recommendations there is a strong sense that the regions, the EPA Regions, need to be directly involved with local communities, local government, and state government agencies to impact the improvement of air quality in communities impacted by goods movement. So a strong differentiation message and a strong sense that the EPA Regions need to have a very strong role in this process.

In terms of the actual recommendations themselves, they are divided into a variety of categories but some of the key conclusions that I think are highlighted within the cover letter that are important here is there are a number of recommendations that relate to capacity building within the communities themselves. What can be done to improve community ability to interact with the various systems and interests that are impacting them in the goods movement sector?

There is again a strong emphasis on action by the regions; that regions know their localities best, they are closest to the impacted communities, and they need to have a leadership role in this process.

There is a strong set of recommendations on collaboration. How do communities and regulatory authorities collaborate to achieve equitable solutions? So a strong sense of collaborative recommendations.

A strong set of recommendations related to the deployment of the technologies that are available today. In many respects the technologies needed to improve air quality within impacted communities exists today. And a lot of this report is built around accelerating the deployment of those technologies; both the cleaner versions of existing technologies as well as the introduction of alternative technologies that are in the marketplace and available today to improve air quality in the area of goods movement facilities.

And finally a robust set of recommendations related to research. There are still many uncertainties in this space. There are opportunities for the agency to support meaningful research that will help improve the understanding of the impacts of goods movement on impacted communities, research that can lead to new solutions where there are challenges that have not yet come to fore with obvious

solutions; so a strong research element of the report also.

So as a level-set, public health is a focus, urgency is possible, and differentiated approaches are critical to really be able to work with the localized communities in here.

And the way that happens is through collaborative governance, through the deployment of technology, through the implementation of good solid research, through the involvement of the regions, and through the building of capacity within the impacted communities. Over-arching, those are the themes of this report.

There are as Shankar mentioned 40 specific recommendations and we will be happy to address questions that exist on any of those recommendations. As he indicated there was really quite a remarkable achievement here in that these recommendations across that span of subjects were achieved with consensus. That not everybody agrees to everything individually but there was consensus; these are the correct recommendations for comprehensive agency action.

There is one specific recommendation, Number 19, in which there were differentiated views and we will talk about that as we move through what the affirming and dissenting views on that were to open that up for NEJAC's consideration as you determine what you want to do with the report moving forward.

From an introductory standpoint I think that gives

you a level-set and I think we would like to move now into a discussion of the specifics of the report. Shankar, some additional comments?

DR. PRASAD: I just want to also acknowledge the role of the NEJAC members who participated in the workgroup. And if any of them want to offer some comments at the beginning, they are welcome to do so at this point.

Open Discussion

MR. WILSON: I would just like to of course thank Victoria, Shankar and Terry for guiding a pretty big ship for this voyage of two years plus.

One of the things I would like to mention is a lot of the things that we were working on as far as the goods movement piece -- the Steering Committee talked about earlier, highlighted, or has taken into account some of the work we have already done which makes me feel good. You know that some other people are looking at some of the things that we have talked about and consider it certainly worthy of being a part of the Steering Committee's work. And of course we still have a lot of work to do as far as implementation is concerned beyond policy approval of what we have already put together.

We know that there are a lot of questions to be asked and together hopefully we will be able to answer most of them. And with your insights and suggestions, be able to come up with some fine-tuning of all of the stuff that we have been

working on.

MR. MARSH: Lang Marsh, National Policy Consensus Center. I would like to second what Omega said about the leadership, it was absolutely superb. Victoria, Shankar, and Terry did a great job of planning, organizing, bringing people together, getting us in the right frame of mind including a wonderful retreat in Long Beach, California where everything came together except this one issue.

And I would also like to say that while this report focuses, as we were asked to, on goods movement that many of the recommendations have applications well beyond the goods movement area to other environmental justice arenas. And so as you look at this report and hopefully approve it, that it is good to think that there are many of the themes that will come back again and again in other issues whether it is climate change or localized air pollution issues, or whatever. So thank you to the three of you. I think we could not possibly have done it without you.

DR. PRASAD: Thanks for the kind words and I want to thank Terry and Victoria as well.

One of the things that also came out coming from the health background, one thing I want to highlight, one of the recommendations, is how do we characterize the near-source impacts?

There is a challenge on that because in California

we could do a little better in terms of characterizing the near-source impacts because diesel exhaust has a cancer risk number. The same was evaluated by EPA some years back and they could not arrive at any kind of a number on that. So one of the recommendations we have made is that in 2002 when EPA decided that they could not come up with a risk number, it is something that as a researcher and --- there is a newer body of studies and so on, so they should take a second look at that, revisit that issue, and sort of at least put to bed whether we are going to depend on the PM or the particulate matter levels or are we going to do something beyond that. So that is something we want to highlight, that part of it.

And also I want to highlight that Omega --- a picture, a community facilitated strategy of how to engage the community; his original piece of conceptual framework with some details. It took us a while to arrive at that final figure but that is something and also Lang's eloquent piece on collaborative problem solving. And Cynthia Marvin from California Air Resources brought the highlights and the importance of the regulatory framework. And Andrea Hricko was responsible for the health piece that was also very -- although it was short it highlights the very salient points of what is known in the literature.

(Pause)

DR. PRASAD: So now let's go around the table and

see if questions are there and move forward. Charles do you want to say anything? I also want to welcome Gay MacGregor who has seen the draft report and if she has some comments on that she is welcome to provide them.

MR. RIDGWAY: John Ridgway, Washington State, Department of Ecology. I did read the report as soon as it was sent out and I have tons of hand-written notes the majority of which I am just going to pass on directly to Victoria because they are minor in context as far as grammatical things.

It is very well done, it is very thorough and I commend you for that. I will try to keep my comments and questions here just limited to a couple that are a little more substantive.

I will start with page 6 of the report. This might be relatively minor but it is item 2.4 Community Impacts and Environmental Justice. And you have a little graph in there that is entitled Ethnicity Distribution for Communities near the Ports of Los Angeles and Long Beach. I think it is a technicality but I am not sure you are measuring just ethnicity or are you? There is a distinction between race and ethnicity here and I might want to ask if that is precisely what you wanted to say in the title of that graph. Ethnicity is usually referenced to Hispanics and I am not sure that is what this graph is just trying to convey.

DR. PRASAD: We will make sure to check on that, how it was done. I think it probably is right because if it is taken from the census that was drawn from there that is the same language we will have to use there.

MR. RIDGWAY: Okay, I think it is worth double checking.

A little more substance, page 13 where the recommendations actually start, the very first one talks about how "EPA should promote decision making processes that empower impacted community and tribal stakeholders through collaborative problem-solving approaches that include" and then it goes on to a number of things there. In the big picture, this collaborative problem-solving work does not happen for free. So the question is who pays for this?

Is the recommendation that EPA try to use its resources to bring all of these many impacted parties together or is there some magical way that the costs are shared in hoping that people will volunteer to que this up? It is important, it is a minor thing in some regards, but I would like to see some recommendations that are maybe a little specific as to who takes the leadership in facilitating the cost of this kind of collaboration that I agree absolutely needs to happen. Any thoughts on that?

DR. PRASAD: I want to reflect something on that. One of the things we said in our letter is they should

identify what are the hot spots, prioritize where that focus has to happen at the regional levels. So each region should do that. And subsequently, naturally, if the agency is to focus on that, that agency has to take the initial resource allocation to initiate this. But depending on how long that goes on or what is in the scale* then the question of how the funding will come to continue the process, all of those things will come. But at a point of origin and the initiation, it has to be from the regional level office because that can be the center in order to bring the state, local, and other players to the table. And Lang might want to add and Terry might have something.

MR. MARSH: Lang Marsh, National Policy Consensus Center. That is partially addressed John in Recommendations 37 and 38 which are on page 27. We have a section there at the end of the report on resources, incentives and financing and Recommendation 37 is designed to say in effect EPA should not be required to pay for everything but should play a role in finding resources for the process costs as well as other costs of the implementation of whatever agreements are reached through a collaborative process or a community facilitated strategy.

So one of the things -- I will give you my personal experience, that once you get a collaboration going with a certain amount of seed money, often, in fact in most cases it

continues with the support of the parties until they reach agreements on what needs to be done and how things should be implemented. And then it becomes a question of project and program financing which can be addressed in a number of different ways.

You are absolutely right to focus on those costs because sometimes the seed money will need to come from EPA or a state agency if they cannot find a foundation or an involved business or somebody, some organization or entity to put up those relatively few thousand dollars necessary to get something going.

I think a deeper question and one which I wanted to bring up tomorrow is what are the roles of EPA and the state agencies in funding the capacity development for local community groups? You know, how do they get -- I totally second what Shankar said about Omega's innovation on the community facilitated strategy, it is very well thought through but it depends on developing technical know-how and information, and so forth that is dependent on some source of funding and that I think is something we need to address more broadly than just for this particular report. Does that answer, or was that a helpful answer?

MR. RIDGWAY: Yes, that is helpful. It is not a simple answer; I realize that and depending on the complexity and what is initiating the need for the collaboration may be a

factor as well.

(Whispering)

MR. RIDGWAY: If you could speak up a little louder so the audience could hear you too that would be great or get the mike a little closer.

Okay, two more points and then I will give up the mike here.

There is a reference on page 13, bear with me for a second -- no I am going to move on. Page 17 and 18 we are talking about data. It is actually at the top of page 18. Right at the very top and we are talking about information that says "no other goods movement facilities have air monitoring programs with results publicly available." And I think this brings up an interesting point about -- does that imply that there is a lot of information that the ports are hanging on to that they are not sharing in terms of these dynamics that may foster a recommendation that more information could be made available than is and it is not just because it is not in EPA's control? Any thoughts on that?

MR. GOFF: We did not do an extensive review of the air monitoring activities at every single port in goods movement facilities. So a direct answer to that question is really not possible.

I think the drive here is the communities at this point have very limited ability to measure the impact or

progress in their area without localized air monitoring. The National Ambient Air Quality Standards really drive monitoring at the county level, the broader regional level, not at the localized impact level that seem to relate to goods movement facilities.

So the real thrust here is to both make public what data is available on air quality so a community knows what the situation is today, what a goal is, and whether they have achieved it. Because right now there is very little hard data to suggest have you achieved a goal? So we think monitoring is critical to that process. So if there is data out there, we would like to see that publicly exposed to the communities and we would like to seek the establishment of additional localized monitoring. Again so a community is empowered to know what is the air quality today, what is it next week, what is it in a year, what is it in five years, as a plan is put in place. And a community then knows whether real progress is being made in terms of air quality.

So underlying those recommendations is that sense that communities are empowered by data, data in this space, primary data; a large part of that comes from localized monitoring. So make available what is out there, we do not know what all that is, and as an agency encourage and develop programs that drive more localized monitoring as a part of evaluating the potential impact of a goods movement facility.

MR. RIDGWAY: Okay, it just kind of implies that there may be data but it is not shared with the public and I would hope that is not true or if it is that we recommend that those that have it do share it for the benefit of all.

My last general theme here and this is also touched upon on page 18, it is contained within the second bullet from the top where it is talking about "in addition the US Department of Transportation does not have its own health research agenda in this area, nor a joint program with EPA and/or NIEHS."

And to me this touches on the theme we have heard about before and it is referenced later on in this document, working with other federal agencies. And I have a personal interest and I think an appropriate one for this Council which is here is another example of where we need better collaboration across federal agencies on these EJ issues and whether it is the inter-agency working group for EJ or others; there was even one referenced earlier today from the EPA leadership of some collaborative processes going on but that is a fundamental problem. And if we can make some recommendations regarding the executive order and the inter-agency EJ efforts led by EPA, I think that would be appropriate.

I think that message needs to continue to be delivered to EPA and encourage them to foster an enhancement

of that kind of collaboration.

I will leave it at that, thank you.

MS. BRIGGUM: Thanks and I am going to put on my hat as the big corporate trucking company at the moment just to have a couple of practical issues that I would like you to think about addressing and I will just focus actually on two. One is on the EMS and then one additional issue.

On environmental management systems they are incredibly important. They are used throughout business. They are very different for like a medium sized trucking company versus a large diversified company like ourselves and many others that have fleets as well as a lot of other fixed facilities. And so I would ask that you think about this as you describe it.

In our company describing an EMS as reporting only twice a year and top down would be anathema. I mean we have spent years saying "every one of you has to see yourself as an environmentalist" and environmental management starts at every single person and we have this elaborate computerized system of accountability for hundreds of people if not thousands that have all of these tasks they have to perform. So I think that just strikes me as off when I look at it.

I really like what is on EPA's web page on environmental management systems where they tie it to sustainability so I think you might find some really nice

language there that would capture it.

And that brings me to my most significant concern which is on page 26, Recommendation 32 which reads as if you were operating in the port area, you not only would need to have an EMS but you would want to have it checked by an independent party and that is just -- that raises enormous implications.

Our EMS is spectacularly complicated because we do not just track violations but the whole point is to hit all the precursors. It is highly proprietary; we would not want to give it away for free to anybody. It also really goes to individual behaviors that keep people from doing something that could eventually be a violation. And so you really do not want to give this out to someone else.

The whole point is, okay you did the wrong thing, we were able to catch it in time, but we got you and if you do it again there will be a disciplinary charge. That kind of thing can appear in an EMS system and so I cannot see that many businesses would be willing to say, yes you could have an independent third party look at that; it just really goes into business operations. So I could see encouraging it but the idea of thinking there would be that check might raise an issue.

Also just structurally some companies will use their EMS as kind of the mechanism of their interaction with

communities and others will not. In corporates there are whole departments that do this so the EMS will normally be your engineering department and then you may have a whole community outreach or you might do it through operations where the General Manager has personal obligations in order to work with the community, understand what is going on, live there, et cetera and if you suggest that it has to go through one structure then that makes it hard because people look at this and say "well there is some real turf war here." We do not want everybody who is in community relations and outreach suddenly to have to be subservient to the environmental departments.

So it is just wordsmithing but it is a practical suggestion.

MR. GOFF: I think that is a great suggestion and a lot of that surrounds context. The context of this Recommendation came to a large extent to the use of EMS systems in interaction with communities.

So to the extent an EMS system becomes an important part of goods movement facilities interaction with the community, some measure of transparency was suggested in this process and EPA providing technical assistance.

I think it is important and I would share your view that there are many corporate proprietary aspects of how you might approach certain problem solving that perhaps need to be

protected in that process but a lot of this surrounds context and that is a very important point.

MS. BRIGGUM: And you could probably do that by a mechanism to check the functioning and usefulness of the interactions as opposed to suggesting you are checking the EMS per se.

And then the only other thing -- I apologize I cannot find where it was but do you say at one point there ought to be a one-minute idling shut off? I think I read that. Chuck thought he saw it too; we cannot find it.

If you did, could you rethink that because if you look at a diesel truck when you turn it on you know you get your puff of smoke and then it is going to go for a while. After it has been on for a certain amount of time, you have too many emissions so anti-idling and automatic shut-off is really important. We do that, but at a minute? Every time you take a FedEx package in you are going to have the truck start up and you are going to actually increase pollution rather than reduce it.

So if you could be a little more flexible in terms of anti-idling. It is appropriate and should be mandated according to the appropriate vehicular function and local law or something like that.

MR. GOFF: I will certainly look at that because I would not have agreed to a one-minute sort of a thing. That

is illogical in and of itself and pretty self-evident in its lack of logic. But I do know that we do have a specific idling section in the report and we will look at that and ensure that it is consistent.

I think a core part of the overall idling question is one of the challenges that end users have in the idling space is the inconsistency that exists today in the approaches to idling based on many localities doing different things. And particularly goods movement on an interstate basis, informing the drivers of what the rule is in community X, Y or Z all of which differ. That was a core underpinning of this, that there should be some consistency. And I think the standard would need to be looked at carefully but I guess I would be surprised if we had a minute in here but maybe we do so we will look.

MS. BRIGGUM: It could have been my nightmare.

MS. YEAMPIERRE: May I respectfully suggest that we use language that is more inclusive. We had a presentation earlier where people were talking in acronym and I would suggest that in the future the NEJAC actually give out a glossary to the public so they can follow the discussion. I do not know if people in the public -- I do not know who is but we all recognize that there are different levels of capacity so I do not know that people in the public know what an EMS is. I do not know that they understand why it is

proprietary. I do not even know that there may be people who understand what we are talking about when we talk about goods movement which is about the trucks that come in and out of our neighborhoods everyday. So I would urge that we try to talk -- every profession has its own language and so if we could try and just break it down and make the information accessible I think it would be more useful so that people can follow the discussion. Thank you.

MS. ROBINSON: Before you start I want to talk about this process because Sue has proposed something that I think is going to require some action. It is one thing to say incorporate some additional language on something but Sue's comment about Recommendation 32 is about rethinking including that recommendation at all and I think it would behoove us to decide, make some decisions today on whether or not -- do we include things like that or how we want to handle these comments because otherwise we are going to end up down the road, four more months down the road, having other documents to be reviewed in public. So I think we should address your comment.

MS. BRIGGUM: Friendly amendment; I said strike it because I thought you really did want to have this check of your system but if instead you are talking about checking to make sure you are implementing these practices and it would be independent, that is fine. So that turns that into

wordsmithing. I could live with the recommendation if it were changed in a way that you were going to the heart of the protections and not the check on the system itself.

MS. ROBINSON: Okay, so do you want to come and see me afterwards so I can get some language? Thanks.

MS. SALKIN: Patty Salkin, Albany Law School, Government Law Center. I want to add my thanks to the working group. This is really a terrific, well done report, well written, and very comprehensive.

As you might imagine my eyes went immediately to Recommendation 23 on page 23 which has to do with land use decisions. While I clearly am supportive and like it I just wanted to offer some comments that might be able to supplement what is in there if there is interest among the working group.

The recommendation talks about making some fact sheets and I guess I am also back on page 22 that EPA should make some fact sheets available for how local governments can incorporate some of these. I think we should also make the fact sheets available to communities so that the community advocates understand how they can be more effectively involved in the process, in the land use review process. So whether the same fact sheet can be used for both stakeholders or whether there have to be separate fact sheets as appropriate, we ought to just consider that.

On the siting issues, although we generally talk

about siting in 23; there is an opportunity to be a little bit more specific like site design dealing with -- I know you have traffic pollution but site design issues, local governments can regulate ingress and egress of the trucks. You mentioned buffering but maybe we can provide just an explanation of how it could actually help because I am not sure it is real or if it is -- people talk about buffering all the time but can buffering really handle the air pollution problems or concerns here. It might help reduce a little bit of the noise but I think it is mentioned here in the context of air pollution.

I might also mention that local governments might be advised to handle these kinds of siting issues by special permit review. Hopefully they do and they do not just automatically allow the use as a right but that provides for a whole litany of criteria that the local governments can use to review the siting decisions.

And then as the theme, and John started with this, the coordination again with other federal agencies. There are other plans that local governments may be developing in some of these areas pursuant to other federal and state statutes that could be coordinated.

For example, for the ports, this is not going to apply to the trains necessarily, but for the ports a lot of these local governments may get funding for a local waterfront revitalization plan that cover the port area. And so NOAA,

National Oceanic and Atmospheric Administration, they have federal policies that the states and local governments have to comply with in order to get the funding to do the plans and I am not sure that EJ considerations are part of those policies at the federal and state level. This might be a good opportunity particularly because the local governments may want planning dollars in order to upgrade the facilities at the port and that would come through the planning of the LWRPs.

The same thing for the Federal Stafford Act which I think FEMA oversees and that deals with the disaster mitigation plans. And again at the ports and these points of entry, you have got another plan going on that handles different kinds of land use aspects and I would want to make sure that those plans also account for the people that are living nearby and not just that the ships, the trucks, the equipment that is there. So this might be again an opportunity to reach out to make sure there is coordination with all of these different plans and all of these different agencies that impact the land uses.

DR. PRASAD: As a practical next step will you be able to provide something that could be incorporated over the next couple of weeks as we finalize this?

MS. SALKIN: Yes, I think it is more instructive or exemplary as opposed to changing anything that is in the

spirit of what is here.

DR. PRASAD: Yes, yes.

MS. MacGREGOR: This is Gay MacGregor and I am with the Office of Transportation and Air Quality and the Office of Air and Radiation. It is not really my position to comment on this report but I did want to say there are a number of groups in the agency who are very much looking forward to the recommendations here and my office in particular will be of -- many of the 40 recommendations have to do with diesel. I also serve on the agency wide Ports Team. We are following this.

I Chair the Clean Air Act Mobile Source Technical Review, trying not to speak in acronyms here but it gets long, Mobile Source Technical Review Subcommittee which is also a federal advisory committee. I Chair their workgroup, Terry Goff is on it, on diesel. My office also has the SmartWay program and the National Clean Diesel Campaign for which we just distributed \$300 million in recovery funding.

So there are a number of groups that I am involved in and my Office of Transportation and Air Quality is following this and we congratulate you on the work that you have done. We will be looking forward to hearing what the consensus is of your group in the next few weeks.

DR. PRASAD: Thanks.

MR. HOLMES: Christian Holmes. On page 23 I just

want to comment on item 24 and commend the group for developing this recommendation dealing with a best practices clearinghouse. And it occurred to me there are other areas where best practices clearinghouse would be appropriate particularly given our discussion this morning and last night about endangered communities and how to deal with them so that one is not reinventing the wheel but has a best practices approach. So I think this is a great approach for this challenge and for others.

MR. KELLEY: Hilton Kelley, Community In-power and Development Association, Port Arthur, Texas along the Gulf Coast.

I just have a couple of comments here. The Environmental Management System, EMS, I think is a great tool. And the reason why I say this is because in communities that are located directly next to shipyards, rail trains, and what have you, refineries and chemical plants, many times they are exposed to emissions coming from diesel engines because of the amount of traffic that is importing goods into the refineries or to the rail yards or to the shipyards.

And many of these communities are really small but yet at the same time imagine if you will coming out of your front door on a daily basis and it is difficult to cross the street because of the number of 18-wheelers flying through your community which is only a little two lane street; one

going in either direction.

The community that comes to mind when I speak of this is Beaumont, Texas. And Beaumont, Texas has Exxon Mobile at I believe their North end. It is called the Charlton-Pollard District, predominantly African American, and many times these folks have complaints because the streets are literally torn up. The curb is torn up in many of the areas simply because many of the trucks that come through there are too large. But yet day-by-day for the last 40 or 50 years trucks have been blasting through that community and they have not gotten a lot of reprieve from that so I think this environmental management system is a great tool and I think we need to put it to use in communities like Beaumont, Texas and the Charlton-Pollard District.

If we visit areas like this, and they have them all over Louisiana as well, especially when you have refineries or chemical plants that are going through an expansion, you see a huge influx of traffic from 18-wheelers going through those communities and the property value just plummets. I mean nobody wants to live in this area, not even the people that are there. But because they cannot afford to go anywhere else they are located between railroads, refineries, and then shipyards at the other end. And really it is a very disappointing situation to be in and to know that you cannot even sell your property even if you wanted to leave because of

the amount of industrial activity that is taking place in those areas.

I have tons and tons of pictures of this and I would just like to somehow get them to be added into the report. But yet this is a great tool but I think we have to put it to use.

DR. PRASAD: Thanks.

MS. YEAMPIERRE: I don't know if it is in the report so I apologize if I did not see it but early on I had mentioned that in our community there are 1,200 manufacturers and a lot of those businesses are small businesses and the trucks are too old to be retrofitted or to be re-powered. So a lot of these small businesses are really sort of these family businesses that are really the economic backbone of our community and we want to figure out how we can transition them into the green economy and how we can incentivize them so that they could have vehicles that are less polluting in the community.

We actually retrofitted 12 of those vehicles in our neighborhood and it was really hard. We had to meet with the truckers at like 4:00 a.m. when they get started to work.

We do not want them to suffer as a result of a policy that is necessary to reduce emissions because these are workers that are actually breathing it in as well. And I just wanted to know whether that had been covered and if not, is

that something that could be included in it.

MR. GOFF: I think it is covered a bit in the technology section in terms of deployment; the need to provide assistance to upgrade technology so you do not have the puff of black smoke anymore. If somebody bought a truck or supplied a truck that was 2007 or later, there ought not be a puff of black smoke from that truck anymore. The point being the technologies are there to help.

In the incentives and funding portion, I believe we talked a little bit about the SmartWay Program that Gay mentioned and the work that has been done in that program. Particularly there are some examples in the Northwest with an organization called Cascade Sierra that is providing funding support as part of the SmartWay program to help finance some of the improvements that can improve the legacy fleet. So there are comments in the report on that subject.

One of the core challenges in that space which has been interesting has been discovered I think in the California experience in terms of dealing with the tax exposure that can come when you provide on a free or grant basis some of these technologies. The tax exposure that may exist for that small business, that may not simply even be able to afford to pay the tax on the grant or effectively gift that they received. So there are a variety of places. I would look toward section 3.7 on incentives and funding and then in the technology

section. And perhaps that could be more robustly written. There may be more things needed but certainly the workgroup perceived the challenge that you are talking about; that there are technologies there today.

Many of the businesses that are engaged in these activities are small businesses where their sole asset may in fact be an aged piece of equipment that is in need of improvement and they may well even be part of the economic lifeblood of the impacted community. It is where the income is coming into the community and they own the asset that is also the part of the challenge of the problem. So there was quite a bit of discussion in that space and we could probably -- need to more explicitly weave through the report, the various recommendations, that really do try to address that. But it is a very important point and it was a major part of the workgroup's discussion because that is a big part of the challenge. How do you deal with the small business that is such a major integral part of many of these goods movement activities?

MR. MARSH: May I just add to that Terry? Lang Marsh. One of the recommendations on -- that I talked about a little bit before was on innovative financing ideas and actually with the stimulus package I think or maybe it was with the budget under DERA the Diesel Emissions Reduction Act a grant was given to this organization in the Northwest

specifically for the purpose of assisting in the financing of multi-state efforts to address the very population of small business owners who have trucks that need to be either upgraded or you know go into a new vehicle all together.

So this is by way of a little bit of an advertisement that they are looking for partner states to help in the implementation of that program. And New York was one of the ones that we spoke to. So I will talk to you afterwards to see how that might be done but perhaps we should include a more specific reference to the opportunities for assistance to small truckers in this.

MS. MacGREGOR: Can I just add to that? There is actually on our website a financing portal under SmartWay, it is EPA/SmartWay. And you are right we have given a number of grants over the past few years to start innovative financing so it is not a grant to the individual owner or operator, it is actually a low interest or subsidized loan.

And Cascade Sierra Solutions was the first one to try it but we now have several others that we are starting with and we hope to do more. We have another \$60 million coming in 2009, we are not yet out of 09, but we have another round of grants going where we will probably be doing about 10 percent of that money for innovative financing grants. And that money can then be leveraged by whatever -- like Cascade Sierra Solutions, the example used here, to get more money.

And it is a revolving loan fund in some cases so it pays itself back. But it does provide a small individual owner or operator of a truck or a business that owns a truck the ability to get financing.

DR. PRASAD: Chuck.

MR. BARLOW: Thank you Shankar. Page 8 on line 9 where the report begins to talk about the national policies and programs that could provide legal authority to regulate and mitigate. This is just a thought or suggestion that we might want to add EPA's proposed endangerment finding on CO2 specifically as it regards mobile sources.

That is something that is going to -- it seems to be like it is going to have -- however that comes out and certainly we may end up with legislation, we may end up with regulation, we may end up with both on CO2 for mobile sources but obviously it is going to have a big impact on how manufacturers go forward with what is actually on the market. So it was just my thought that it might be something else that you might want to list here as a possible source of regulation.

On page 21 -- well I really need to start at the bottom of page 20 with Recommendation 17. I think Recommendation 17 is very well stated. It says "EPA should facilitate state and local initiatives that go beyond Federal requirements to cut community and regional pollution."

When you go to the top of page 21 and the bullet point there that is at line 1, we say something that to me is very different and that gives me pause. And that is we say "using Federal leverage (via project approval authority and funding capability) to aid state/local efforts." Again that we are talking about getting people to go beyond what is legally required.

I have no problem with Recommendation 17 but when the bullet point starts using the word "Federal leverage" to get people to do something that is beyond the law, it almost seems to me like that bullet point is talking about suggesting that EPA say we are not going to treat you, whoever the you is, we are not going to treat you the same as we treat other people unless we go beyond the law.

The only change that I would suggest is that we use the word "facilitate" there. Is that we say -- and I think that is what the workgroup is saying and now I could be wrong.

DR. PRASAD: That was the intent actually.

MR. BARLOW: So my only suggestion --

DR. PRASAD: We will certainly wordsmith that and we will work with you on that to fine-tune it.

MR. BARLOW: And I would just suggest very easily you just take out the words "Using Federal leverage" and you just say "facilitating" or something similar but that was my suggestion.

On page 22, line 5 -- and this is really a question and I apologize for not knowing the answer but on line 5 on page 22 we say "through the conformity process, EPA has influence over air quality when new transportation," I don't know what that means. I don't know what the report is. When I think about a conformity process I think about local land use which is not something obviously that is within EPA's jurisdiction so I just do not know what we would be saying there.

MS. MacGREGOR: I am going to answer that. I think it would probably be better if you specified it as the Transportation Conformity Process. There is a process, are you familiar with it?

MR. BARLOW: No.

MS. MacGREGOR: It basically requires the state implementation plan conform to the state transportation plan to put it simply so that there is a budget set for mobile source emissions. And if you have more highway use that is going to cause you to exceed those emissions, you need to reconsider building or expanding a facility. So that actually probably needs more specificity.

DR. PRASAD: Omega.

MR. WILSON: Yes, Omega Wilson with West End Revitalization Association. I just wanted to say something that may respond to some of the things that John has talked

about and Chuck has talked about and Elizabeth has talked about.

The funding part of this, of course, we know is yet to be totally seen or maybe yet to be seen period. And of course we know whatever happens with this is a big seed, a small seed, or a medium sized seed. Clearly we think that the cooperation, I guess that is a way of putting it, cooperation from the inter-agency approach has to be part of the engine that drives this, to say a little acronym. A lot of what is in here cannot be done without the inter-agency approach.

I mean we have Highway, Department of Commerce, I mean we have the Department of Justice, there is no way in the world to do what needs to be done in the heart of this without including the other agencies that are involved. And right now we are at the table from EPA's side of it so how you get those other people to the table has to do with, clearly I think has to do with -- after this is adopted, if it is adopted, what the Administrator has an opportunity to do to get other people at the table to make this work, you know to put all of the arms and legs in it.

One of the things I want to mention as a specific part of this and we have talked about this before as a workgroup and in this group, we talked about it today, and I just want to mention as a specific example.

Right now, and I mentioned this early this morning,

the State of North Carolina and the State of South Carolina are in the process of developing plans in some areas to double their port areas in the next few years. I mean ports that have been developing over 100 and some years expect to double their flow that is on the water and ground traffic in and out of them in the next few years. I am talking about a very short period of time. And this is on the books, it is not a hidden thing, it is out there.

Of course we all know in this room that doing things fast the way they are looking at doing them creates the opportunity for not very good oversight and at the least very poor compliance and not inclusion of the communities that will maybe be impacted by this from the EJ side. So there may be some more environmental justice communities that will be created out of this plan that do not exist now.

So one of the things that I said this morning is how we get the bully pulpit at the state level because we know from the land use part of it that Patty has so eloquently spoke about several times, the people at the state level will listen to their governors before they listen to the federal government. I don't think I am stepping over any line by saying that they will listen to the state and partner with them to see whether or not they should or should not do something.

Because in our state, North Carolina, we had the

Governor, previous Governor not the current Governor, be involved in the situation to partner with industry to say we are going to sue EPA to stop compliance activity. So they are behind the Governor in protecting their own interests for business reasons, corporate reasons, political reasons, et cetera. So we know we have to create that partnership and creating that partnership is who the leaders are in the state who can help translate some of this to make it work.

I also think that a lot of the stimulus money that may in fact at some point in time be used to expand the ports on the East coast and take some of the overflow from the West Coast has to have in it -- or have those various stimulus plans and recovery act plans that may be taking place over several years, the environmental justice vein has to flow through all of this so that funding to create the cooperative agreements, the collaborative problem solving, and capacity building at the community level comes out of funding of projects that currently have not been funded yet.

Now I am not sure all of our language says that and maybe we need some help from Gay and some of the other people at EPA as to how that is going to be put together. But we know that it has to be bigger than what we have started with here to actually make it work. To make it work on the ground for communities that are going to be impacted, EJ communities.

DR. PRASAD: I just want to ask all of the members

to kind of be a little brief because we want to make sure that we have an opportunity for discussion on that difference of opinion piece. So we have -- for other comments let's just go around from -- John you have additional comments?

MR. RIDGWAY: I do and I will be brief and this is putting on my Co-Chair hat as much as to the document but at the end, and this gets to a discussion yesterday, there is no recommendation in here as to how this report should be addressed when delivered to EPA, presuming it will be, on a timeframe basis.

We heard yesterday six months or a year but I heard very clearly from Terry and it is in the report, there is an urgency issue here. So I would like to ask for the Council to consider the recommendation that either in the letter that is submitted with this report from this Council to the Administrator or within the report, I think it can be either place, that a specific request that EPA acknowledge this report and address it to the extent it can in a shorter timeframe rather than a longer one.

And I will throw out a suggestion of six months from the date it is submitted to the Administrator. So that is a proposal here understanding this is a consensus process.

My other comment is to follow up with Shankar. There is a contentious issue in here, number 19, and I would like to hear people's recommendations on how we want to look

at one or the other or include both or neither because there is not a unanimous recommendation on that.

DR. PRASAD: John my suggestion would be that as far as the time duration, it go from the NEJAC's letter since we did not as a group discuss about the timeline but we do say that it is urgent and that each region should prioritize the areas of interest; so we say that. And we, as a Council letter, one could take it and say that activity be initiated immediately and something be done within six months or something like that -- from the Council's letter would be a better place.

MS. BRIGGUM: I will be brief too. Elizabeth I really take your point with regard to using jargon like environmental management system because even when you say those words it is not clear.

And Hilton came up with a perfect example of how you could do a text box that would explain it and be helpful which would be the concept of often you have restrictions on uses of roads because the trucks are inconsistent with the community, that is a legal requirement. If a cop is there and catches you then there is a penalty. But that is not enough obviously and so an environmental management system would be a way that the company could issue or that all of the drivers are following it and then you could have a regional check. I think that might really add some on the ground interest to it.

I would be happy to try and help write up something that might be useful to explain that.

DR. PRASAD: Thank you. Peter.

MR. CAPTAIN: Thank you. I want to thank the workgroup for a very comprehensive report. Peter Captain, Sr., Indigenous People's representative from Alaska. So comprehensive you know that we here that have seen it for the first time cannot digest it all in the three days that we are here. I would suggest in the future you know that these be gotten out to the NEJAC members ahead of time so that we can look at it and formulate our questions at that time instead of formulating them right at the meeting. That is just a suggestion.

A couple of notes from my state. We have very few roads up there; you know everything is brought in by air or moved around within the state by air, there are very few roads. And I would just kind of throw caution to some times in the report, I cannot identify specific spots but I would just throw general caution to limitations that apply to our modes of transportation up there because the costs of goods is so exorbitant that in most cases it is prohibitive to -- even though we should, to place restrictions on a transportation company, because in doing so it jacks up the price of the cost of transportation.

And Sue mentioned something about shutting off

motors, well up in Alaska in the winter you cannot shut off your motor, not for one minute even. Especially in the North Slope you get the 40 below weather on top of that 30 mile an hour wind well you know all of a sudden you are down to -90 with the wind chill factor and it is not just practical to shut off any diesel motor even though it is for the good.

But just those couple of notes that I would like the NEJAC members to know.

DR. PRASAD: Thanks Peter. I am sorry that you did not receive the report earlier. I thought it was at least sent out ten days or --

MS. ROBINSON: It was actually sent out a month in advance. I sent it out twice and we can talk to see if there might have been some kind of email/internet issue. It was sent out twice to the members, once a month ago and then once I think last week as a final reminder.

MR. CAPTAIN: That is the hazards you know of having internet up in Alaska; sometimes you do and sometimes you do not.

MR. HARPER: Bill Harper from PG & E and I also just wanted to congratulate the team, you know you guys did an excellent job and it was a lot of work.

Just one quick point before we get to number 19. On page 14, line 35 where you start to talk about the West Oakland Environmental indicators in terms of talking about the

collaborative partnerships between communities and how we do those. I just wanted to point out that there is an impression when you read that that was largely successful because of the government and community process and it did not really speak to the input from the local business leaders. And I know that even though I don't think you necessarily need to call up PG & E, because of the fleet we have, the CNG fleet, and what was done there to help integrate that. I just think it is important that business be called out in that collaboration as well.

DR. PRASAD: That is true.

MS. HENNEKE: I am sorry I was busy reading. I am just ready to jump into number 19.

DR. PRASAD: Go for it.

MS. HENNEKE: Okay. I guess when I was doing SEPs and regulation development for a living I used to write things and then I would go back and strike out the adjectives and the adverbs and see if that made it better. I know I have a question --

MS. ROBINSON: Jody, just real quick. Just so people will follow. This is on page 21, Recommendation number 19 for those in the audience.

MS. HENNEKE: And I am Jody Henneke with the Texas General Land Office. I have a question as to what you really mean with "fully mitigate" and then at the end of that

paragraph how do you define "Region?"

MS. ROBINSON: Why don't we go ahead and read the recommendation which number 19 is to "Fully mitigate localized impacts from expanding existing freight facilities or siting new ones." Do you want the whole recommendation and get to that one line? Which sentence was the other part in? Which line?

MS. HENNEKE: Go ahead and do "that EPA should establish policies to fully mitigate the impact of the proposed infrastructure and/or facilities projects on site or in the immediate neighborhood." I was a little confused.

Then when you get on down into the body of that "In communities already impacted by high pollution levels from freight facilities, expansion and new facilities should not be considered unless the project and its mitigation measures can be designed to at least 'do no harm' to the localized area" and then on with "as well as the region."

I learned on some work that I did on a NEJAC subcommittee back when I was much younger, I think that we do not even have a really good definition for what neighborhood is much less what region is. So I do not think that is clear.

DR. PRASAD: Region is very clear in terms of the self-pertainment, whatever that area of attainment is, so if you are talking of a Los Angeles --- coastal quality management restrict or if you are talking of an air restrict area. So

region is very well defined.

MR. HENNEKE: But I did not know which kind of region you were talking about.

DR. PRASAD: It is talking about -- I think the intent there was the air --- that goes into consideration in terms of the attainment/non-attainment classification and the SEP when the local air quality plans that ---.

So the region is well defined but when we come to the question now for community or a neighborhood, you are right that we do not have a definition in the context of a geographical boundary. But on the other hand if you prioritize the areas of interest and you go to Oakland or you go to Seattle, that area people would tell you this is the boundary where our problems are. So to that extent it may not be feasible sitting in Washington, D.C. or looking at a map to say this is the area of interest.

But whenever we try to go down to that level and identify which are the priority areas, I think that becomes the community and the neighborhoods and the local government and the local air districts will be able to clearly say that this is the area of concern. So to an extent we have to have a boundary.

And that was the main reason I was telling about why it is important to have a risk number for us to be able to differentiate how do you draw that line where the risk is

higher within an ---, risk starts fading as you move away from that context too.

MS. HENNEKE: What was the thinking of the group between "fully mitigate" and then "to at least do no harm?"

DR. PRASAD: The first intent was it has to be mitigated. If it cannot be mitigated as an expanding or a new area, it should not be built if the question of a localized impact is there. But on the other hand if there is no localized impact and we --- but at the same time we should also be concerned what is going to happen in the context of the regional level. So at the regional level it should not be like -- an overriding concern should not be the reason, the air quality should be the primary concern. And "do no harm" would make sure that it falls under that guidance level.

MS. HENNEKE: I want to hear you talk through and for the world out here Shankar and our long friends, tell me your driving force behind "mitigate" and "fully mitigate?" That you felt compelled to put "fully" in there.

DR. PRASAD: Very often if you look at the areas, depending on which part of the country, you will see that most often the consideration would be at the regional level. And for example even at the regional level one could think of a --- offset or a --- and see that the larger public good would be the driver to approve the project. Whereas here we wanted to make sure if that zone is already impacted, we want

to make sure that part of the expansion of a new siting in that cannot be permitted unless there is a full mitigation from that expansion or the new facility.

MS. HENNEKE: So are you basically expecting that the proposed facility figures out a way to through some other holdings -- I mean you are not talking like a cap-and-trade. You are talking about conning a sister industry into going out of business or something. How do they do that?

MR. GOFF: I am not going to answer the direct question because I honestly do not know the answer to that. But what I think you have hit is the core of how the group separated on the issue. There was never in the group any dissention on the concept of mitigation; that was not the issue. The issues were the points that you raised there in terms of definition as the recommendation is written.

It is why those who are noted in the report with a dissenting opinion actually believe there probably is an opportunity here somewhere for the NEJAC and its wisdom to reach a set of words that convey the need to mitigate, that can maintain the ability to use existing law which is a core problem in our view with the existing language, can adopt sound public policies, can evaluate things on the local community basis based on a broader set of issues than only air quality. Not minimizing air quality but putting it in the context of broader community solutions. That there are ways

to define these terms in a manner that would be appropriate to move forward. And so you have hit some of the core issues.

So if you read the dissenting and the affirming statements under Recommendation 19 I think from those it may be possible to define a set of words that walk through that process. It was unfortunate that the workgroup itself was unable to do that for a variety of reasons. But I do think there is prospect in defining the very kinds of questions you have, to talk through the reality of this recommendation in the context of existing law, sound public policy, and including fairness to the local communities, overall fairness to the local communities, would provide a way to work through this recommendation.

I do not frankly think it probably in the end will need to be deleted. I think it can be worked to a point where NEJAC could come to consensus on this but you have hit on the very points that surfaced in the discussion within the workgroup itself.

MR. BARLOW: Chuck Barlow, Entergy Corporation, I am sorry I have not been good about doing that. Simple question and you may, Terry and Shankar, just have answered it. But when I read this I did not see anything that limited it to air emissions. And so when I read it I was going off on all sorts of tangents of state, local, and federal environmental law. And I am just saying that if that is what we are talking about

here, then we need to say it. If not, then we also get into -- I at least from my legal viewpoint that I get into wetlands and I get into TMDLs and I get into water quality impacts, and I just get into a lot of other stuff and I am not sure which category I am suppose to be thinking about.

DR. PRASAD: The whole charge in the report is about air emissions so limits to the air.

MR. BARLOW: Okay, well maybe we need to just make that clear. And if it is just me, that is fine but I didn't ---.

MS. YEAMPIERRE: With all due respect to the level of the discussion, this is as sophisticated as I am going to get about this. I am loving it. I love the way that it is written. I really think it speaks to the heart of EJ and I completely understand the language that was used within the context of how we deal with these issues on the ground. So I just wanted to say that. I know that it is not talking about how you measure and how you mitigate, but I am loving this. That is it.

MR. RIDGWAY: Love, that is good. We want to spread that around here. Okay, I am putting on my Chair hat with a suggestion to address this so that we can approve this draft report as a full NEJAC act before we adjourn tomorrow. And here is what I am going to propose.

That after we adjourn this evening, I will volunteer

and I am going to ask for one or two others to volunteer to work with both Shankar and Terry to come up with some wording around this in a manner that seems to be workable, acceptable, retaining the essence of the need to mitigate whether it is an existing or new facility at a level that will meet the needs of the local community; something of this nature, and certainly not suggesting ignoring legal issues.

So my question is, is anybody willing to volunteer to work on this this evening and I am suggesting for not more than an hour. I think this is not to get into the detail. Lang are you volunteering?

MR. MARSH: (Nodding head)

MR. RIDGWAY: Anybody else?

DR. PRASAD: I want to, before we go down that path, I just want to -- I probably would not participate in that. We wrote this language, we have put it in front of you, and it is NEJAC's and I have some strong feelings of I do not want to compromise in that context of that but I would certainly be willing to participate in terms of approval process if that is the best way and so on. But I would not take part in that.

MR. RIDGWAY: Okay then let me offer a second follow-up to that. That after at least Lang and I and maybe Terry if you want to be involved or not -- Terry has a similar situation here, that we may have some questions and you have gone through this you know ad nauseam and I do not want to come

back with something that you already have a good reason that what we come up with may not work. So if not during the discussion, I need to review this with you two before we bring it back to the full Council and tomorrow morning before we start is a way to do that. Are you okay with that Shankar?

DR. PRASAD: Yes, I am okay with that.

MR. RIDGWAY: Terry?

MR. GOFF: I will not be here this evening so I would not be able to participate directly and even more so than Shankar as not as a member of NEJAC and at this point I really believe this is NEJAC working through what it wants to put ahead, I will be happy to provide insight, context, council, answer questions, history in any way to support that process but I really would at this point step back from NEJAC coming to a conclusion of what NEJAC believes what it should proceed with. So I would be happy to provide a resource. Cell phones are available, Blackberry emails, as long as I am not on the airplane and it must be turned off, I will be available to support you but not really to participate in actually coming up to whatever NEJAC's consensus might be.

MR. RIDGWAY: Okay, I can talk to you about that after.

MR. ROSENTHALL: John Rosenthal, National Small Town Alliance. Gentlemen I probably would be available to participate in this for a little while. I just need to get a

definition assistance here on "fully mitigate" versus "mitigate."

MR. RIDGWAY: Or we have to come up with some different wording that provides some flexibility around that. "Fully" implies everything is done. With that word "fully" it is much more open I think to extent, et cetera and that is as I understand the core of the issue here. So I will take your willingness to work with us after the meeting if I heard that correctly.

MR. ROSENTHALL: That is correct.

MR. RIDGWAY: Any other members?

DR. PRASAD: "Fully" was explained that all emissions that are coming out, toxics, all criteria. All air emissions that will be released related to the new facility or the expansion, remember that. That is the distinction.

MR. RIDGWAY: Okay. So Lang and John Rosenthal and I will meet after this meeting. We will come back to the Council tomorrow morning and make a recommendation to you. Otherwise I am checking here, unless I hear dissention, the rest of the draft report is ready to go. And I think it is very well done. Again thank you for your leadership but I do not think there are any other issues of contention that we need to deal with here, that is my qualifying question.

MS. YEAMPIERRE: Let me ask, let me now put on a Co-Chair hat and ask whether the members of the NEJAC have a

strong opinion about this and whether anyone feels that that language is something that they can support. And you know maybe you could raise your hands and we could see and get a sense of that.

MR. : --- (Away from microphone)

MS. YEAMPIERRE: The language as it appears right now in 19.

MS. : What is the question?

MS. YEAMPIERRE: I just want to know if the language, the way that it is written right now, is something you can support?

MR. : The NEJAC.

MS. YEAMPIERRE: The NEJAC members.

MS. ROBINSON: This is around Recommendation 19, the language in Recommendation 19.

(Show of hands)

MR. YEAMPIERRE: How many people is that? I just want to get a sense because if the majority of the NEJAC supports it, I am just trying to get a sense of whether or not it is even worth coming back with something different that we then have to engage in if a lot of us think this is actually a good recommendation.

MS. ROBINSON: I will add that one way or the other, unless there is a full consensus, the recommendation would have to be taken out because by law the NEJAC must provide

consensus advice. So that is something that -- even if the majority of you agree to the language, if it cannot be agreed by all then, as is, but I think that is the reason why this afternoon is the attempt to try to modify to reflect some of the concerns by those who cannot agree to the language as currently written. Yes Chuck?

MR. BARLOW: I just want to say my concern is that I think the language is confusing. My concern is not nearly so much with where I think we are trying to get. But I am concerned that the language that we have right now is confusing so I just wanted to cite that.

MR. YEAMPIERRE: I get worried because we lose our rights in the details oftentimes and I think the language really encompasses a lot of environmental justice concern.

MR. HOLMES: I misunderstood your question but I think it is the word "fully" that is really going to hang people up. And if there was some other word there when you do your work tonight you may find getting closer to consensus on that.

MS. YEAMPIERRE: So let me ask Chris why not "fully?"

MR. HOLMES: Well you know it is kind of like -- remember when I worked at EPA and you were testifying before Lottenberg and he said "are you going to be able to clean up this site to the last molecule?" You know and someone said

"Yes, we can do it to the last molecular." But no one ever really thought about the fact that that is almost an impossibility, technically, to get to "the last molecule." And I worry that people will take "fully" as being something that so far "to the last molecule" it might not be attainable and then we will have a really cool recommendation that might get weighted down with disputes over what "fully" meant.

MR. RIDGWAY: Patty and then Jody.

MS. SALKIN: While I have no problem with you guys being creative and seeing if you can come up with alternate language that is acceptable, the reason that the word "fully" does not bother me is because we are just advisory and we should be recommending the highest standards possible. I think that is our job. Then it becomes EPA's job and other people that might use the report to say we do not think that is practical but I still think we should advocate for it.

MR. RIDGWAY: I am taking note of the phrase "highest standards possible." Jody.

MS. HENNEKE: To me it is the same kind of argument of zero emissions. You want your emissions to be reduced as minimally as possible but if you have as a permit limit zero emissions that facility can never operate. And that is why I have a concern with "fully."

MR. RIDGWAY: Okay, I am going to suggest we wrap it up. Thank you very much Terry and Shankar and all of you for

your thoughts and comments. I will get to you just in a moment Omega. I will work with John and Lang and we will meet after we adjourn and figure out the details of how we will do that.

MS. ROBINSON: I was just going to add that I have already had written comments from two individuals, they are marked up copies. If anybody else has any other language changes, please see me so I can at least mark it up and consolidate them into the document and then we can get that out not necessarily for tomorrow but to be able to incorporate them and make sure that they are reflected.

MR. WILSON: I just wanted to point out that there have been some concerns expressed to me and of course all of these things, all of the inside discussion details have not necessarily come to the table for clarification for the people who are listening.

We know that there are port activities and marine activities that are not necessarily covered legally under the guidelines for goods movement. We know that there are private industries and private vehicles that -- what we are doing have no control over right. Certainly we might expect that the example placed by the port activities, the corridor activities, the diesel emission activities, the on-the-water vehicles, and that kind of thing create an example at the local community port areas, you understand what I am saying,

that creates the working model that helps get to the whole point where we have other kinds of industry that kind of go under the guidelines of what we are talking about at a much bigger and broader scale. Because we always have vehicles, we always have transportation concerns that are not necessarily regulated the way we would like them to be.

You know covering every dot would be great but we know -- and of course Sue could give a great elocution on this that we just cannot do it but hopefully the guidelines that are adopted and the motivation at the state level, regional level, will help bring other people to the table if that helps satisfy some of those concerns. Because they are probably in every community we will look at.

MR. RIDGWAY: Thank you and with that I am going to take a break for fifteen minutes. We will re-convene at 3:00 and that is promptly at 3:00 because we are cutting into time that other people need to deliver their presentation.

(Dinner reservation discussion)

(Whereupon a break was taken)

MS. ROBINSON: While we are waiting for everybody to make their way back to the table, you will find two new things sitting at your spot. There should be a manila envelope that has your name on it. That is an envelope that has I believe a voucher form -- not a voucher form but a travel reimbursement receipt form for you to log your expenses

related to your travel and for you to also put in all of your receipts, the applicable relevant receipts.

And we highly recommend that you have those completed and then given back to us tomorrow before you leave because if you remember if you mail anything to us it has to go through the central mailing facility in Peru, Indiana and it gets irradiated and things kind of get stuck to one another. So it is a nightmare and it takes an extra three weeks. So the sooner you get us your receipts the better.

You will also find a copy of the National Academy of Public Administration's report on the CARE program, that is from which the EJ showcase community is going to modeled, somewhat after that. I am not quite sure, is that correct Charles?

MR. LEE: In part.

MS. ROBINSON: In part. So they thought that you would like to have a copy of that particular report so that is why that is there for you.

MS. YEAMPIERRE: So the following discussion is going to be facilitated by Mustafa Ali. I am assuming you are going to help with that in the way that Shankar did the last presentation which I thought was very helpful. So I guess we can get started now.

UPDATE: EJ Screening Approaches Work Group

by Mustafa Ali, Moderator

MR. ALI: Hello everyone. I am Mustafa Ali with the Office of Environmental Justice also the DFO for the Nationally Consistent Screening Approaches Workgroup and we have our Co-Chairs here today, Ms. Eileen Gauna and Ms. Sue Briggum. We will be giving an update on where our workgroup is and our next steps. So at this time I am going to turn it over to Eileen.

Comments

by Eileen Gauna

MS. GAUNA: Hello everybody, it is good to see everyone here as usual.

This is hopefully going to be a relatively short update and it will be even shorter still if you do not have any questions and put us on the spot so just keep that in mind after that last go around.

Nationally Consistent EJ Screening Approaches, I think there was some discussion in the last segment about the use of acronyms and getting everybody up to speed when you are talking about -- well notice that there are not really any acronyms here, it is quite a mouthful. But breaking it down into what it actually implies and says and does not say is almost as important as the tool itself.

So with that in mind what I want to do is refresh

your memory a little bit on the history of why this workgroup was convened and why its work is particularly important at this time.

In September of 2007 the NEJAC Council received a briefing on the Environmental Justice Strategic Enforcement Assessment Tool or EJSEAT that was being developed by the Office of Enforcement Compliance and Assistance, OECA for short.

The NEJAC had some concerns about this tool about what the intended use of it was, the appropriateness of it for certain applications, the adequacy of the data inputs that underlie the methodology, whether it was transparent enough, and other issues. They sent a letter to Granta Nakayama who was then the Assistant Administrator of OECA. And in February of 2008 he specifically requested advice and recommendations from NEJAC concerning ways to improve EJSEAT's "comprehensiveness, efficacy, and accuracy." And the reason I am putting this in quotations is because you know there is a little bit of -- there has needed to be a process of clarification of the workgroup's mission and charge as we move forward.

So in any event the workgroup convened. We were given a charge that was a little bit broader than looking at specifically at EJSEAT. We were given a charge that said look at Nationally Consistent EJ Screening Approaches. Now notice

what we are not saying, we are not saying EJ community identification approaches we are saying EJ screening approaches. The workgroup was given briefings on the EJSEAT particularly and as a result -- you know so we have a workgroup that is given a mission that is a little bit more broad than the briefings we in fact received on EJSEAT alone.

So the way that we resolved that was to look at EJSEAT as a lens from which to look at screening approaches generally and to develop some principles for their use and to look at EJSEAT in particular with that broader or potentially broader application in mind.

The workgroup also sought to understand EJSEAT in great depth so that we could make useful recommendations on it. We looked particularly at the policy and the technical issues that we saw arising from the current iteration of EJSEAT. And again I am going to emphasize here "current iteration" because this is a tool that is still under development, it is still evolving and so we are just looking at what we see now.

To date the workgroup has had two face-to-face meetings in June and October of 2008 and several conference calls. We have some strong technical people on the workgroup, Professors Mohai, Saad, Maantay and Lopez and Dr. Prasad. We have some people that work closely with impacted communities on the workgroup like Omega and Richard Moore and Jody Henneke

has been exceedingly helpful in providing a state perspective on the use of this.

What we did is again we took some time and effort to try to understand EJSEAT; the methodology, the data that underlie its use. The technical folks on the committee really educated the rest of us and they also compared EJSEAT with methodologies employed by research conducted by Professors Jim Saad, Manual Pastor, and Rachel Morelo-Frosch in California and compared results. Charles Lee, Andrew Showman*, Mustafa Ali and other EPA staffers have been enormously helpful in getting the workgroup the information it needed to understand EJSEAT and to conduct the inquiry within the confines of our charge.

There is not yet complete clarity concerning the potential applications of this approach. And so our workgroup has proceeded under the assumption that this approach might be used for any number of applications very broadly on a programmatic level, on a site specific level. So we undertook to look at the potential range of these applications whether it is used retrospectively to see how the EPA has done in certain areas, to be used prospectively on a programmatic level. So we are looking at various timeframes as well.

The issues fall into two broad categories. First there are technical issues concerning the indicators in the underlying datasets. In some instances, the data is strong

and reliable and in other areas the data is relatively more weak. In some areas we find the potential for overweighting of some indicators and underweighting of others. So these are the kinds of issues we are looking at.

The next set of issues concern the broader policy concerns that are arising from the use of a tool that carries with it a significant risk of misapplications. Within this set of issues you can imagine that language becomes extremely important and how you discuss this endeavor can really make a big difference.

Let me give you one small illustration. We discussed for example the population misconception that this is a tool to define an EJ community and by implication what is not an EJ community but that is not what this approach is designed to do and that has to be communicated in the most clearest possible terms. This is not an off-the-shelf, one size fits all method that can be employed broadly, programmatically as well as in a site specific context. There may be instances where this approach is helpful and other instances where it is not helpful. All of these things have to be very, very carefully delineated in our discussions.

Without getting into the substance of the findings of our recommendations because I think at this point it would be premature to do so, what we can tell you at this point is that the good news is that the workgroup is pretty close to

finalizing its report. After looking at this particular method at great length, I am happy to report that I think that the workgroup has surprisingly come to censuses as to what the weaknesses and the strengths of the tool were. But the precise recommendations and what to do in the phase and to actually improve the tool I think there is still some discussion that needs to occur along those lines. We do want to -- and again we have that tension between what is possible in an ideal world and what is possible in a second best world given the limitations of the data.

We were shooting for the end of summer to finish our work but it becomes apparent that with a change in the administration, maybe a go a little bit slower approach was more appropriate. We needed to discuss our work with new people that are moving into managerial and policy making positions within the agency. And we have had preliminary conversations with some of these individuals which have been helpful to clarify our approach to this issue and our overall mission and charge.

We are also looking forward to discussing the results of some pilot studies that are scheduled to be completed in September of this year within the regions. So we are hoping that will inform our advice and recommendations as well.

Again just sort of stepping back and looking at the

big picture, this is important to the agency, it is an important approach, it has significant implications in terms of resources and potential benefit to some communities but it carries with it a significant risk of misapplication. And so we are trying to be very careful with this and that is where we are at this point. We certainly hope to have something by the end of the year, maybe sooner.

At this point I am going to turn it over to Sue Briggum, my Co-Chair and she is going to talk a little bit about the inter-agency workgroup and how our work might be helpful as they consider developing a similar approach to an EJ analysis.

Comments

by Sue Briggum

MS. BRIGGUM: That was terrific Eileen. As we had our conversations, we had tended to think about the use of this kind of screening tool for example if you were trying to review enforcement efforts in order to make sure that you were really focusing your enforcement resources on communities that needed them most. And we also were thinking about if you had grant programs or showcase communities, could this be a helpful tool to make sure that you were capturing high-priority communities that really deserve this kind of benefit and attention. And that was our lens.

Then one of our workgroup members who is very

familiar with a number of the tools had applied kind of a very streamlined short-hand version of a screening approach to one of the rule makings that the inter-agency working group is going to look at, the definition of solid waste.

And we thought you know we have spent a lot of time thinking about the factors and helpful uses and ways in which the use might not be as helpful. We probably as a group have a lot of insights that might help them as they looked at how would you come up with kind of a nationally consistent and intellectually and analytically rigorous evaluation of environmental justice implications in the rule making process themselves.

That we had thought both in terms of the technical issues, how much time does it take to use a particular kind of tool and how many factors are appropriate under given circumstances and where are its shortcomings, where will you miss important environmental justice communities. As well as we talked a bit about process. Omega has been very eloquent about the communities that are unlikely to be picked up by standardized tools and ways that we might be able to structure a discussion that would assure that those communities got the attention that is clearly warranted. So we felt that that would be a good dialogue.

And then as we finalize our report I think we will kind of think about expanding our horizon of potential uses as

we kind of finesse those conclusions, when it makes sense to use it, what you should worry about, and what our general principles are in the way a screening approach should be used.

Questions and Answers

MS. YEAMPIERRE: Does anyone have any questions or comments?

MR. RIDGWAY: Just a little bit about the prototype testing or testing you referenced that some of the regions are doing and that is going to be completed in September. Is that something that is internal or will EPA produce something that the NEJAC or the public will see in regard to that testing?

MS. GAUNA: My understanding is it is internal at this point.

(Pause)

MS. GAUNA: I was only kidding about the no questions part.

(Laughter)

MS. HENNEKE: It was a great bluff Eileen, keep it up.

MS. YEAMPIERRE: The next speaker Dan Olson is coming in a little later so you may want to use the opportunity to explain what the screening tool looks like to the public. Maybe give an example of the criteria that you use in determining whether a community is an EJ community or it is an issue that has an EJ impact. Do you think that might

be helpful?

MS. GAUNA: Not really and let me explain way. We wanted to stay away from the substance of the discussion at this point because the indicators, the factors, and the datasets are pretty complicated so just to pick a few things out and discuss them in the abstract is not really helpful at this point. It takes a while to breakdown exactly what this tool is and then to go from there and do an analysis of it. So I would hate to leave any mis-impressions by just picking out a few things to discuss because they are very interrelated. They use various factors that are binned in various categories and at the end of the day you come out with a score; you know the higher the score the more likely it is a highly impacted community.

Let me say this, that what we are trying to communicate in the strongest possible terms is that at the end of the day if a community does not rank highly in this approach, it does not mean that this is not an environmental justice community. It is like a very coarse screen and it will identify areas of potential concern, kind of red flag where you need to look further. But because the approach uses national databases that do not have for example local land use data or other indicators of localized conditions, you could very well have, particularly in the rural areas, you could very well have an environmental justice community that does

not score highly using this approach.

Because of that -- and then on the other hand because of the great need out there for some sort of a tool that says, you know, we cannot just proceed on you know it when you see it kind of a thing, we need something with reliability and rigor to help us identify areas that we need to prioritize and ship some resources to. We understand that need but that need could actually potentially lead to misapplication of a tool that is not designed for that. So again we want to be very, very careful within the context of our advice and recommendations.

MS. YEAMPIERRE: That is honest and very helpful. I think Victoria has a few questions.

MS. ROBINSON: Well actually my questions were not about this. I was just going to try to fill some of the time. So if there are no questions from the members -- oh I'm sorry, I didn't see his hand.

DR. PRASAD: Not a questions, more a comment. It has been a real nice experience learning about this EJSEAT and the other tools. And also I should comment at this point in time about EPA taking this bold step of developing this kind of a tool. And it fits so well into the context of that final slide of what Charles presented yesterday what the mission is and where we want to put the resources where we want.

While this group will make some specific

recommendations and so on which will happen, but at the same time I think EPA can take a step as to the next step of how this tool can be improvised in order to make that as an approach to identify the communities. That becomes the challenge but it has to happen.

And recognizing that in a bureaucratic process the resource allocation --- contract and so on maybe they should start thinking about it now as we finalize the report and my feeling is if we can get a chance as pointed out by the Co-Chairs we should be able to get it done in the next few months and be able to get that off to the NEJAC. And that way EPA can also take on to the next step of --- their overall plan and budgeting cycle.

MS. ROBINSON: I think that sounds good. And just to kind of confirm about the next steps, once that draft report is actually prepared and submitted to the Council for review and comment and deliberation then we are going to be scheduling a public teleconference call or it will be discussed at the next face-to-face meeting of the NEJAC depending on the timing. Both timing in terms of proximity to the next face-to-face meeting as well as timing in terms of when we want to get out our report, out to the Administrator.

So we are anticipating holding a public teleconference call sometime in September for -- August or September depending on what may be on our agenda of follow up

items from this meeting.

So we will talk with Sue and Eileen in terms of timing. If it means a second call, we will do a second call or whatever.

MR. LEE: yes I think it is important just to paint a little bit of a larger picture around this particularly at this time. You know not to get into the specific details around this but you know the idea that like Shankar said that for several years now EPA has undertaken a project of trying to find a nationally consistent approach towards identifying areas of EJ concern, is a really big step.

And it is really an important part of when Phyllis Harris who is the former Deputy Assistant Administrator said she wanted to find a way where she could tell a national story about what EPA is doing in terms of these unfortunate activities in areas in EJ communities and to be able to then of course translate that into all of the things we talked about yesterday in terms of long-term about what environmental justice is all about in terms of priority setting and allocation of resources.

I think that we all realize then for a long time within the EPA when this was being developed, the complexities, difficulties, and choices that are involved. And that it was really good in 2007 that EPA did this briefing for the NEJAC. And you have to understand contextually what

that was. It was the first time the EPA actually talked about this to an external group. And this was an issue -- this was a tool with a lot of issues that were very controversial that affected different stakeholders in different ways. And I thought that the workgroups really looking at this -- and also wrestling with the same issues I think is very helpful.

The one thing that came out of that in terms of the interaction between EPA staff and the workgroup was very positive I thought. And it certainly put us in a different place today where we can really talk candidly about the kinds of challenges that are involved here.

So having said that, we have to move forward around this in a certain way. You know taking into account all the kinds of issues that have been raised around this. There is a greater and greater demand on us not only to do this for OECA but for different offices across the whole agency. If we are going to really take -- Mathy talked the first day about environmental justice within the EPA strategic plan goals, all five goals in the strategic plan, and something like this is really important to make that happen. The same is true for any number of other things.

So we have to move forward on this and I think the same issue is going to get raised, or in fact is being raised, by other federal agencies as they are taking environmental justice more seriously.

So just not to get into a specific discussion yet but this is going to be teed up I think over the next several months in a very big way so we really want your input around this.

MR. RIDGWAY: Charles for clarity when you are talking about doing this across all programs, I may have missed something, but that means applying a screening tool of this nature across all programs not just in terms of OECA's activities or enforcement. Is that right?

MR. LEE: Well I think just like the issue is in Region 1 versus Region 5 you are using different approaches and somebody says "how come you are doing different approaches?" It would not be -- we would almost certainly want the same kind of thing to be said across if you are doing it in the enforcement context or the air context or the water context or the waste context, you have to have some kind of consistency.

I think the demand for that to happen is a good thing but we have to understand there are real challenges involved in that.

MS. ROBINSON: All right so we do not have anything else on that particular topic. We want to thank Eileen for making the trip down here just for this presentation; we appreciate it. And Sue and Mustafa, for all of your work as well as the other members of the workgroup who are here

present as members of the Council.

We are waiting now for Dan Olson to arrive. He is scheduled to give a presentation and discussion about the small drinking water systems variance equitable consideration issue.

So in the mean time I have a couple of questions to ask the members about the Goods Movement Report; I want to go back to that. It is more about process.

The next steps for this are that we have to get a sense of -- we have identified two or three recommendations that we need to make some modification language or possibly remove. I need to get a sense from the members that aside from those items, once we address those and address some basic grammatical issues or language issues in the Report, how do the members feel? Would they be considered that they are ready to vote on the Report with the modifications? I just need to get a sense so I can figure out where our next steps are. So any comments from the members about that in terms of where they feel comfortable with the Report as written? Also with the comments that we are talking about making some revisions to which are like two or three recommendations?

MS. SALKIN: I would like to see us vote on it tomorrow.

MR. WILSON: Absolutely.

MR. ROBINSON: I am in agreement. Anybody else?

(No response)

MR. ROBINSON: Okay wonderful. That means we will be working hard tonight to make sure we have some language for you to be able to vote on tomorrow. Do we have anything else that we can fill the time with? Right now we have about ten minutes before he is scheduled to start and I think he is racing over from headquarters from downtown and he said he would try to get here right at 3:45.

MR. WILSON: I have a logistics question and I know these questions usually come on the last day. It has to do with the next face-to-face because this face-to-face was later than the other face-to-faces for the summer, kind of June, so we are now a little past the middle of July.

MR. RIDGWAY: Why don't we talk about that now?

MR. WILSON: Because calendars based on what we are doing are really just packing and with all of the other stuff that is going on.

MR. LEE: Why don't we just talk about this? I want to really get your ideas about this and then we do have to make choices around this.

So the context for this question to you is what we said yesterday. We are really looking for ways to promote greater interaction between the NEJAC and impacted communities. And so the idea came up from the Office of Air Quality Policy and Standards, OAQPS -- I actually know the

acronym much better than the name now. And what they do is they do a very successful, well attended Air Toxics Workshop about every two years. The last one took place in San Francisco I think in 2008 and draws from a great number of EJ groups across the country. They were planning one for November of this year in New Orleans so the idea came that perhaps we could have the NEJAC meeting and this conference take place in the same location at the same time. Not necessarily have the same meeting but then the people that come to both could co-attend each others and we could coordinate it.

And certainly there were some issues that came up primarily that had to do with just the timing of things and the different scheduling issues and things. So this workshop is now going to be taking place in January.

MR. : Still in New Orleans?

MR. LEE: Still in New Orleans. And so we were wondering -- there is a two-part question. So we thought it would be a great idea to do this and certainly because a lot of the groups that you would normally want to come to the NEJAC or particular community groups just cannot afford it. This really helps them to have access to the NEJAC. And certainly it gives you access to a lot of other activities that are going to be going on. So if this is a good idea, this is something we can try to do more and more going into

the future.

The second one would be that this is going to take place in January which means that we will miss in the calendar year 2009, we will not have two meetings but what we would do is that in the calendar year 2010 we will have three meetings essentially. You know, we will just have the one a little later. And my own personal view on that is if you think about all of the trade-offs it might actually be a good idea to do.

But before we move forward on any of this, we are just thinking about it -- just talk it through with the members of the Council.

MR. RIDGWAY: I would like to comment relative to these logistics. Really last year I think is the first time this Council convened public meetings through teleconferencing. It is a relatively newer approach but boy it is so much more accessible to the public and it does not require travel.

So my recommendation is that we try to set a schedule maybe for the entire year of 2010 reflecting not only face meetings but the calls. I think the Council can be a little more productive and stay on top of many things, and changes, and issues that we have been hearing about if we have more frequency with these calls that the public can listen into understanding there are also business calls that would not be getting into policy issues.

So I would like to ask Charles or Victoria, any thoughts about that? Or the Council members, how many calls might be appropriate to start to think about on a yearly basis? And do you consider the conference calls as meeting the recommendations from Tim Fields yesterday, for meeting at least twice a year or is that in addition to two face-to-face meetings?

MS. ROBINSON: I do like the idea of being able to set up a schedule for the members and myself; actually to be able to anticipate what our needs are, when we need to be someplace. There will have to be -- acknowledging that there will have to be some kind of flexibility with some of the -- maybe a week off on some of the dates for the face-to-face meetings because of us being able to try to secure meeting space. That is one of the issues in terms of the timing in being able to get a specific spot; it has a lot to do with the availability.

But I think that if we do three meetings next year, do two or three calls, which is something where we try to plan that out and get a sense -- I think your willingness to do that would really help me.

MS. YEAMPIERRE: So we have been joined by Dan Olson. Thank you for joining us, we understand you had a little bit of a journey getting here. And Dan is from the EPA Office of Water. So if you could just step up? Thank you.

MR. KELLEY: Hilton Kelley, Community In-power and Development Association. There was a question raised by John I think concerning meetings and phone calls and what have you. I just wanted to make a recommendation; there is another tool that is out there. I was recently on a conference call from Port Arthur, Texas to Italy and we used the Skype system. And Skype works very well to where I was telecast on this television show concerning environmental contamination in the United States. And I was able to see them and they were able to see me.

I think this is a tool we can use in areas where there is a desire to have the Council come and participate but instead of having everybody try to go to all of these various areas, the activists in the community could possibly set up a banquet room in a nearby hotel and we can have a big screen and have the people come up to the mike which will have a camera aiming at them so that we can see them and the room and they can make their comments and ask their questions of the Council and of the EPA.

I know because it is difficult to go all over the United States but I think this would be a way in which we can impact a larger portion of the community and ask some more questions of Americans that have some dire strait questions and comments and suggestions and who are in need of help of this body.

So think about that as we plan meetings. And as we get more requests for the EPA to come and visit, let's look at ways in which we can incorporate the Skype system and visit more communities around the United States.

MS. YEAMPIERRE: Okay, I think Victoria has a comment about that.

MS. ROBINSON: I am glad you brought that up Hilton. And I may have mentioned -- one of the things that the agency is doing and that we are certainly doing in our office is exploring how to integrate and incorporate the new social networking technology that is out there; Twitter, pod casting, web casting, as well as use of Skype.

One of the things that the EPA is specifically looking at within the context of federal advisory committees is how to balance that use with the requirements of the Federal Advisory Committee Act. And we will be exploring some of these things and identifying what are the boundaries and limits we may have because of the Federal Advisory Committee Act and see how we can work around them.

So that is something to consider and I will put that on the agenda items when I discuss with our Committee Management Oversight group.

MR. KELLEY: I am just curious what would possibly be some of the restrictions on using Skype because I set it up on my laptop computer within ten minutes just with my little

camera here.

MS. ROBINSON: It is not a question of technology limitations it is a question of the Federal Advisory Committee Act requires that meetings be help open to the public but you also have the --- requirements and access to information and materials as well as notification of meetings and a whole series of requirements that must be -- logistical as well primarily that must be addressed. And it is not a question of can it be done but what we must do to make sure it gets done properly. That is what I am referring to. So that is what they are exploring right now, to make sure that any use of social networking technology does not violate those requirements of the law.

MS. YEAMPIERRE: Thank you. I think those requirements were probably put there to protect public interest, the kinds of interest that you might have. So it is probably a helpful thing.

DR. PRASAD: I would like -- it is more a comment than a question. I like the idea of having a required schedule. We seem to be kind of slipping on these meetings and so on. I am not saying that we should meet twice, that part, but it should be periodic and if it is set prior to that it helps us to block our calendars and prepare for it and it also puts an indirect pressure for the staff to be able to be ready for their presentation or whoever whether it is a

contractor who is preparing some report for you like Tim's report that needed to be presented to the NEJAC, it will put that kind of regularity into that especially with the new administration taking more interest in this subject and luckily you are also supported by an additional budget.

I like Charles' concept of need to go to New Orleans. We were there in 2004. But at the same time we should be cognizant of what Tim said yesterday, Tim Fields, that we are not --- in so many places, so many regions. So that priority I think it needs to be weighed much more than maybe in the later meeting we could then do the other one but be clear about that and how we as NEJAC can respond and make some recommendation to the EPA and EPA take that comment very seriously about where they should have the next meeting.

MS. YEAMPIERRE: Thank you Shankar, we are going to take the rest of the comments tomorrow in the interest of time and to give Dan Olson and his staff an opportunity to present. So thank you for joining us.

**DISCUSSION: Integrating EJ into the Equitable Consideration
of Small Drinking Water Systems**

by Dan Olson

MS. BARR: I thought I would just introduce the other two of us and then introduce Dan.

I am Pam Barr and I am the Director of the Standards and Risk Management Division in the Office of Ground Water and

Drinking Water.

This is Eric Burneson who is the Chief of the Targeting and Analysis Branch in this Division.

We are really pleased to be here today to consult with you all about this which is actually quite a difficult issue and to get your advice. So Dan Olson is our technical expert on this and he is going to give you the presentation and we are all here to listen to your advice. So with that I am going to turn it over to Dan. Thank you.

MR. OLSON: Thank you and Tioka* and I are going to be in eye contact because she is going to be operating the slides for me so let's cross our fingers.

(Slide)

Well the focus of this consultation is primarily to get your advice and it is the third bullet. Again as Pam mentioned we are here to listen to you, answer any questions you may have but in order to get to that we need to provide you with some background information, specifically the small system universe, small drinking water system universe and challenges that these drinking water systems face and then some of the tools that we have to address these issues.

But again today the focus is to get your advice on recommendations for integrating EJ considerations into our policy to ensure the equitable consideration of small drinking water system customers.

We are also looking for your advice on whether we should be revising our small system variance policy to provide equitable consideration and/or looking at additional changes to our policy which could be going beyond small system variances.

So again I plan on only skimming the tips of the waves as there is interest in getting into the discussions so I will try to be brief.

(Slide)

We are in front of you today not only for the consultation but because EPA committed during its budget process to work with the state and local governments to address the federal drinking water policy in order to provide, and this is the catch phrase, equitable consideration of small system customers.

(Slide)

And all of what we will be talking about today is in the framework of the Safe Drinking Water Act. I am just briefly going to go through this.

The Safe Drinking Water Act or SDWA is the key federal law for protecting public water systems from contaminants. It was enacted in 1974, amended in 1986 and again in 1996. It is administered through these programs, the regulation of contaminants, providing funding for infrastructure projects and I will be talking about the

Drinking Water State Revolving Fund a little bit, and then also promoting capacity of water systems to comply with the Safe Drinking Water Act amendments and I will be talking about that as a possible tool that we can be looking at.

The standards apply to all community water systems. And of course the states or tribes are the ones that are actually implementing these programs.

(Slide)

Well hopefully this slide will tell the story of the universe and some of the challenges that the small systems face. There are almost 48,000 small systems serving about 292 million people. And I should have mentioned that the Safe Drinking Water Act defines a small system as any system that serves less than 10,000.

In looking at the blue box on the left the numbers on the map represent the number and percentage of community water systems in each state serving less than 10,000 people; the point being that most of the systems in most of the states are small.

And overall if you go to the bar graph on the lower right hand side you will see that we have two different pairings. The first pairing on the left is the population; the second pairing is the systems. The blue being small systems, the red bar being the large. So overall you see about 92 percent of the systems are small. However, most of

the people are served by large systems and that is almost a mirror image of itself just flipped around.

Now if you cut this another way, and again I said that 10,000 people was the cut-off through the Safe Drinking Water Act, if you look at less than 500 you would find that about 56 percent of the systems would be considered small, that is about 29,000 systems serving a population of about 2 percent or about 5 million people.

So if you go down a couple orders of magnitude you still see pretty much the same picture where you have again most of the people are served by large systems, most of the systems are small.

If you look at the pie chart in the middle, this is the percent of systems by ownership type. And I think what jumps out is that most of these, the ownership types, do not provide water as a primary function. You see manufactured homes, and homeowners associations counting for about 40 percent. And of these systems, most do not have a full-time operator and because of that there is a lack of knowledge, training, and a time commitment to the issue.

MS. SALKIN: Can you explain the acronyms in the first pie chart on the left?

MR. OLSON: Yes I can. Again we are looking at the pie chart on the lower left hand side. This represents the total universe or total number of public water systems.

On the very left, TNCWS, Transient Non-Community Water Systems would be those systems that serve transitory customers such as camp grounds, gas stations, and that serves about 84 percent of the systems. NTNCWS, Non-Transient Non-Community Water Systems serve the same people, so it is non-transient more than six months out of the year but not year round and this would represent say schools or factories. And then Community Water Systems which you see which we will focus the remainder of our discussion on, the blue slice of the pie represents about 34 percent of the systems and that serves the residential population and SDWA definition is 15 service connections or 25 people or more. Does that help?

MR. WILSON: I would like a clarification too about what Community means in the context of what we are talking about here. Of course we have "community wells" that go back to the old system where you may have dozens of houses on one well. You are not talking about this in your definition of less than 3,000 as a part of this community system are you?

MR. OLSON: We are talking about community systems that serve a residential population that serve 25 people or more.

MR. WILSON: 25 people or 25 units?

MR. OLSON: 25 people or more. 15 service connections and/or 25 people or more. That is considered a community water system.

MS. YEAMPIERRE: I am going to ask that the Council wait until the presentation is completed for their questions. But I would suggest then in the future what might be helpful is if these maps have a legend on the side with some explanations to make following the presentation a little bit easier but thank you.

MR. OLSON: Yes, that is a great idea. It would save me some time as well.

(Slide)

So we just talked about the number of systems; a lot of small systems serving not too many customers.

Some of the challenges that they face, it is understandable that there would be a lack of financial resources due to the small customer base. That they cannot develop or have access to these resources.

We talked about the ownership type, again about 40 percent being that they do not provide water as their primary function.

And then we have three bullets that are talking about the system operation or the operators with having issues with operating and maintaining infrastructure.

Again we talked about the knowledge, training and time and the retention. And what we see is an aging workforce with low pay, high turnover, and where the operator could wear multiple hats meaning they have one, two, three jobs where

this would be a part-time job.

(Slide)

Why don't we skip to slide 8?

(Slide)

So knowing some of the challenges, these are some of the tools that the Safe Drinking Water Act provides that can play a significant role in helping these systems achieve compliance.

You have exemptions which provide for additional time to comply with a drinking water regulation. Only a few states use exemptions but many states provide additional time through bilateral compliance agreement where the state and the system work out a timeframe with milestones.

I briefly mentioned the Drinking Water State Revolving Fund which provides loans at or below market rates. Some states take advantage of what is called a "Disadvantaged Community" assistance where the state has the flexibility to define what constitutes a "disadvantaged community" and this would be even more affordable if you will where the systems within this program would be eligible for principal forgiveness or extended repayment terms.

Many states use set-asides which are part of the Drinking Water State Revolving Fund for technical assistance and training.

And then some states also encourage systems to

partner up, restructure, or consolidate where you bring together or you bind together either physically the systems or managerial aspects of the system to improve the economies of scale.

(Slide)

Continue with tools, the Safe Drinking Water Act requires that all states have a capacity development program. And the capacity development is the ability of the system to plan for, achieve and maintain managerial, financial, and technical capacity to comply with the standards.

Operator certification and training programs are required.

The Safe Drinking Water Act also provides for technical assistance and training.

(Slide)

So as a recap we have talked about the universe of small systems and their challenges. Where most systems are small and do not provide water as their primary function, do not have a full-time operator, they lack financial resources. We talked about tools that are available through the Safe Drinking Water Act, more time, funding assistance through the Drinking Water State Revolving Fund and then ways for systems to improve their technical ability and managerial skills and financial resource.

But what we have not talked about is the reason we

are here talking to you today and that is seeking your advice on another tool that is intended to help reduce the economic impact that certain new regs have on some small systems and that is the Small System Variance.

Now we did not mention it in the tool above because currently small system variances are not available. And we will talk about that in a minute. But we are considering revisions to this policy to make them available for future standards.

Now the small system variance is a construct of the Safe Drinking Water Act and this slide provides the mechanics of how a small system variance might be issued.

So first small system variance allows for the use of a variance technology that does not achieve compliance with the standard. In other words it is less stringent. It could go above the MCL or the drinking water standard but it requires that it achieves the maximum reduction of the contaminant in the water that is affordable and is protective of public health

Now protective of public health is somewhat of a catch phrase, at least to me it is, I don't know if my bosses would agree. It is a phrase that we will be perhaps spending more time with today. It is not defined in the statute how EPA makes a determination of what is protective of public health but it is clear that Congress allows the contaminant to

go above the MCL.

So small system variances are not allowed for microbial contaminants and they are only available if we determine that compliance technology during the rule making process is not available for small systems. So again, EPA makes the determination that compliance technology is not affordable and then we check to see if there are variance technologies that are available. If they are available, then the next step is for the states to go down this path and issue small system variances on a case-by-case basis.

And a couple of bullets that I want to point out are that a state must make a compliance -- I forgot the term, bullet number three. They need to make a determination that the system cannot afford compliance through treatment, alternative source, restructuring or consolidation. The state also needs to make a determination of protection of public health and then hold a public hearing to get the feedback from those that are obtaining their water from that small system.

(Slide)

So now that you have somewhat of an idea of what a small system variance is, this is our current policy and again it answers the questions why are they not available for states to issue?

So under our current policy, all the rules to date we have found to be affordable for small systems. The way the

policy works is that we compare the cumulative small system household cost and that is the cost of the current water bill plus the cost of the new rule or the new technology to a threshold of about \$1,100. And again we found all rules to be affordable.

(Slide)

In 2002 Congress asked us to reevaluate our small system variance methodology. In part we went to the Science Advisory Board and our advisory council the National Drinking Water Advisory Council for their advice and recommendations on technical issues related to this affordability methodology. Specifically what is an appropriate threshold for which we would find regulations to be affordable for small systems? Also household costs, cost basis, et cetera. These are the thresholds. The National Drinking Water Advisory Council recommended \$440 and the Science Advisory just told us that the threshold should be set lower.

However our advisory council provided us with their perspective that EPA should avoid issuing variances due to the practical, logistical and ethical issues that may be associated with the variances.

So the ethical issues that they are referring to is the possibility of having two standards based on both system size and the ability to pay and they wrote "the potential acceptance of lower water quality for disadvantaged

communities is ethically troublesome."

(Slide)

In March of 2006 EPA published a Federal Register Notice seeking comments on revisions to this policy and again it was a technical examination of first what was the maximum cost that is affordable to customers served by small systems or the affordability threshold. And in that Federal Register Notice we proposed about \$100, \$200, \$300 and in addition how to define protective of public health in the Notice.

We requested comments on the determination of whether variance technologies are protective of public health if the contaminant is generally no more than 3 times the MCL.

(Slide)

We received about 12,000 comment letters; that was the most that we had ever received on any Federal Register Notice to date. And about 95 percent of those opposed the options with the biggest single issue being our methodology for protective of public health being 3 times the MCL in so far as it would provide two levels of public health protection.

And we heard from our public comment that any protective of public health level over the MCL would invoke environmental justice issues, perhaps undercut our efforts to enforce the MCL where you have two different standards, undermine cleanup efforts with other EPA programs including

RCRA and Superfund, and perhaps open up the whole risk assessment methodology to scrutiny.

The second biggest issue was that we went to our advisory council and asked them for advice on a threshold but did not include it in our Federal Register Notice as an option.

(Slide)

So as you recall as part of the 2010 budget process, we committed to working with state and local governments to address the Federal Drinking Water Policy in order to provide equitable consideration of small system customers.

So based on the comments that we received on the 2006 Notice that was never finalized, the new Administration in the focus on environmental justice and transparency and also looking at a broader policy objective, in broadening our efforts we have held three meetings, had outreach meetings, with both the public in May. There were seven environmental justice reps.

Charles Lee provided the opening remarks to our stakeholder meeting and the outcome of that was that there were no silver bullets. This is a difficult, challenging, complex problem. Furthermore what we believe we heard from the stakeholders is that no one has changed their mind from 2006 based on the comments that we received. Those that supported it then support it now and those that were opposed

to it are opposed to it now and there is no single solution.

The Drinking Water State Revolving Fund cannot do it on its own and neither can capacity development.

We went back to our advisory council the National Drinking Water Advisory Council about a week after that and asked for their advice and they thought that providing more time to comply with drinking water standards was a good approach but do not allow the tiered standard based on ability to pay. A variety of strategies should be provided and that small systems need to be sustainable for long-term solutions.

Recently we consulted with the states and they were virtually united in their opposition to small system variances and supported our advisory council from 2009. They believe that there are tools out there if used properly and that we should not be looking at revisions to our small system variance policy.

(Slide)

This next slide is the last but most important. Again we are here to listen, discuss this issue with you, and these were the questions I asked at the beginning.

Do you have any advice or recommendations on integrating environmental justice considerations into our policy to ensure equitable consideration of small drinking water system customers?

Should we be looking at revisions to our small

system variance policy?

Or should we be looking at other tools such as the Drinking Water State Revolving Fund?

Thank you.

Questions and Answers

MS. YEAMPIERRE: Thank you. I am sure we have lots of questions.

MR. LEE: Elizabeth can I just say one word?

MS. YEAMPIERRE: Okay Charles.

MR. LEE: I just wanted to thank Pamela, Dan and Eric for coming down here. It was on their request that they be able to speak with the NEJAC to talk about this very important issue. And you know they searched out the Office of Environmental Justice because they perceived a lot of the EJ issues involved here. And as Dan said they invited me and others to participate in their listening session and we have had different discussions throughout the last couple of months. And this is an indication of the heightened awareness of environmental justice at the agency. I think you should take that as an example of this. This is as you can see a very, very important issue and so I really celebrate the fact that they have come here to talk with you about this and get your feedback.

DR. PRASAD: Before going to discussion I want to understand the crux here. First of all I want to thank you

guys for coming here. It is really a change and nice to see this change and the shift and I can see the brighter smiles on these faces with any of the EPA employees around. So it is such a pleasure to see that so welcome and thank you.

On one hand you see the opposition is so large, almost states are united. And you also said that we are almost --- in this proposed rule making, the MCL could be 3 times higher. So in essence it is not a need but can you explain to me a little more clearly as to why we need this? Is it if you don't give the variance will they be penalized? Do they ever go for the penalty reasons? Or is it the failure of the systems that we are in essence legalizing it?

MS. BARR: I will start and they can -- this is part of the Safe Drinking Water Act. The small system variances, it is a provision in the Act. It is a provision in the Act that we have never used. And we have gotten pressure from some places to start using it in particular after we promulgated our arsenic regulation in 2001 which had an impact on a lot of small systems.

We got a lot of pressure from Congress that we should be using this provision of the Act. So I guess that is the first thing I would say as to what is kind of driving this. It is in the law and it is something that we have not used. And we have been trying to use some of the other tools that Dan mentioned with varying levels of success.

A lot of the drinking water SRFs, it is at the discretion of the states. So they can do disadvantaged community grants but I think it is like 18 states that do them, the rest do not. And that is basically principal forgiveness. So that -- technically it is called a loan but if you forgive the principal it is really a grant. So they can do that but only about 18 states choose to because they are so concerned about keeping the money revolving in their fund.

And so there still are segments out there that think that we should be doing this because there are real issues with the small systems. A lot of them are very, very small and they do not tend to have to comply with many of our regulations particularly the groundwater systems. They do not even have to disinfect unless they have microbial issues.

But if all of a sudden as we issue new rules they all of a sudden have to comply with them, it can be extremely expensive on a per customer basis and that is where the pressure comes in from one of the groups in particular that represents the small systems and also from other parts of the Federal Government.

So does that begin to answer it?

DR. PRASAD: Partially. So there is a pressure from a part of the industry which maintains these systems. In order to comply with regulations they will have to spend more

money or the systems would have to be changed. And in order to buy that extra time, are we giving a variance or are you giving additional time? By changing these thresholds what are we losing?

MS. BARR: When Dan and I were out talking to the National Drinking Water Advisory Council one of the things that they got confused about was the term variances and the term exemptions. So why don't I start by explaining the two and we may want to just use the concepts rather than the terms if that is helpful.

A variance is a deviation from the standard. It means they get to comply with a less stringent standard. An exemption is more time. It means ultimately they have to comply with the standard but they get more time to do so.

And so what the National Drinking Water Advisory Council advised us is that if a small system really cannot comply, it was okay if we had to give more time on a case-by-case basis looking at their situation but they were not comfortable with the idea of them complying with a different, less stringent standard which is the variance.

DR. PRASAD: Correct. So essentially a variance is a permit condition at which they have to operate and variance is naturally a permit variation. So why would you not consider exemption?

MS. BARR: A lot of the states don't officially

offer them. It gets complicated but the variances and exemption rule are combined and a lot of the states do not want to go there so they have not adopted that rule.

Instead they will do bi-lateral compliance agreements which are agreements that they sign with the water system and that can allow more time. The system is out of compliance until it fulfills that compliance agreement. So it is kind of like the same idea.

MS. YEAMPIERRE: Thank you, Lang.

MR. MARSH: Lang Marsh, National Policy Consensus Center. I guess I have a question but I wanted to just give a little context.

First of all I really appreciate your coming to this body for some advice and secondly I understand the dilemma that you are in, caught between Congress and some groups' interest in having you issue variances or exemptions and the public as exemplified by the states' response as well.

The feeling as I have discovered over many years that people think that clean drinking water is a right and that the risk should be zero basically. I mean I think that is the public sense. And yet the contravening social issue that people are not willing to pay for this basic right, the appropriate cost, even though clean drinking water is still my understanding one of the cheapest things you can buy compared to what people pay for bottled water or sodas and that kind of

thing. It is a very small fraction of what people spend every year on those things. So that is the kind of difficult social context that we have here.

I guess my question is since I think everybody would like to make sure that the standards are met everywhere all the time and that there is no difference between people based on the size of the system, are there some other ways, tools, that you might explore to get there?

And a question I put to you is based on my membership on another FACA which is the Environmental Financial Advisory Board. And a few years ago we put out a report on affordability which I think was basically addressed to the waste water system but I think it has application here as well. And that is to consider the affordability issue not as a community-wide thing based on median income but on an actual affordability analysis based on who can and cannot pay and to consider the adjustment of rates within that service district, small system or large system, so that the rates in effect subsidize the people who can least afford it.

My question is have you considered that as an alternative regulatory or maybe non-regulatory tool because it may be difficult to do as a regulation? But it is something that we felt strongly was kind of a structural defect or a policy defect in the whole approach to affordability.

So I know some systems are so small and have so few

customers and they are all poor that this is not an issue and you really have to decide whether to give a variance or subsidize. But I think this is a way of getting communities to look at what affordability really means and how you can address it in the most efficient way possible.

MR. BURNESON: My name is Eric Burneson and I will give an attempt at trying to respond to your question.

To answer your question first and foremost, yes we are aware of the EFAB's recommendations from I believe the 2005 timeframe. And yes we did spend a lot of time contemplating those recommendations and I think you have done a nice job characterizing them.

There are two ways that we could look at the affordability issue. From the community level, can this community collectively find the resources to install, operate and maintain the new technology that is needed to come into compliance with the standard which is primarily the way we view the statutory construct we have for small system variances at least in the context of promulgating a drinking water standard. We have to make a general determination for all the small systems across the United States whether or not certain categories of systems can afford what we believe is needed to comply with the standard.

We were not able to divine a way to approach the other viewpoint which I think is the EFAB's recommendation

which is affordability really is an individual household issue. Even within communities that collectively can afford the compliance technologies or whatever it takes to produce the drinking water, there will always be households that cannot. And what the communities need to do is set up rate structures such that those households that cannot afford it are not asked to pay more than they can afford and then thereby some of the households are.

Our dilemma in applying that on this national test is just that, we think that is excellent advice to provide to the communities, to the systems as they make their decisions as to how they are going to set up their rate structures.

So I guess what I am saying is our difficulty is sort of a statutory constraint, we do not have the authority to tell small water systems how to bill their customers number one, and then number two the tests that we have been mandated by the law to apply do not really account for an individual household consideration. We view it as a system-wide decision or actually a national decision that we have to make and then the state then has to make the system-wide determination.

MS. BRIGGUM: Yes thank you very much. I am trying to understand how this would work in a larger context because I am thinking not so much about the MCLs with regard to the specific situation with your small systems. But MCLs set at a level become the health-based benchmark for all remedial

programs.

And so has anyone thought about what this would mean because if you set this kind of national variance level for the small systems at 3 times MCL, it would be hard in a clean-up context not to say that as long as you were at the 3 times MCL you probably were fine within ARRR and these are always complicated. But there would be this trickle down affect and it is very different than what we see now where MCLs will be your target and then you can get a variance but it is very site specific and it tends to try to be as protective as possible. You will make sure that no one is drinking anything above MCL. So you will have a funding source and you will provide water and you will say no one should be bathing over ---. And maybe the groundwater is already so degraded and you kind of look through this.

But I am just wondering whether or not -- I am going crazy or would there be an implication for the remedial programs that you would want to think through as you approached something that established a new national number and what that might mean above and beyond the number of systems already covered.

MR. BURNESON: I will go ahead and try and answer the question. I think you raise an excellent question and it is one that we have continued to contemplate. And you framed it very well. And what you have pointed out is that there are

other uses for the maximum contaminate levels that we impose regulatorily on the community water systems by other enforcement and you have highlighted the example of the ARRR, the Appropriate, Reasonable and Relevant Requirement. And so often our MCLs and sometimes or sometimes our MCLGs get adopted as the ARRRs that guide our colleagues in the SuperFund and the RCRA programs and their clean-up levels.

The degree to which we know what the impacts upon -- if we were to determine and when we promulgated a future standard, that a variance technology that produced a concentration of contaminant above the MCL, let's say as high as 3 times above the MCL, what the implications on that decision would be on the ARRR, the use of that value, the MCLs and ARRR. We do not know exactly.

We know that certainly Congress intended the variance to apply within the definition of the small community water system. They did not really give us any legislative history to say that there would not be any other implications. I think you raise a good point and to be real honest we do not know exactly what the implications would be for ARRR standards at clean-ups and we can tell you that our colleagues in the SuperFund Program are very interested in what we have to say and do about this.

MR. ROSENTHALL: Thank you, John Rosenthal, National Small Town Alliance. Did you do any analysis on the

water systems that serve 600 or less residents because systems of that nature tend to have greater problems than those with 10,000 and more.

MR. BURNESON: The statute actually gives us very definite -- they do not actually have a group everybody 10,000 or less, they are very specific about how they want us to do this analysis.

So it actually has us break up the affordability decision into three smaller categories of small systems. The smallest being systems 25 to 500 in population, 500 to 3,300, and then 3,300 to 10,000. And our analysis to date basically reinforces the point you just made. If there are affordability issues within all those subcategories, they are going to be in that smallest category that is the system serving 25 to 500. That is where the economies to scale just really work against any system. There are so few customers over which to spread the costs of whatever that new treatment is that it becomes very expensive for them and it is also the reason why they have very limited operational ability to begin with because they do not have the revenue to pay the salary of the operator.

MS. YEAMPIERRE: Thank you, Hilton.

MR. KELLEY: Yes Hilton Kelley with the Community In-power and Development Association located in Port Arthur, Texas on the Gulf Coast. This is very disturbing to me. I

have never really had to deal with a lot of water issues and as I serve here on the NEJAC and hear these types of reports, it is very disturbing. And some of the questions that kind of resonate in my mind is we should not deviate at all from some of the standards because I am pretty sure the standards are already set at the bare minimum. If we deviate and allow people to drink contaminated water, what could be the costs of a large number of people becoming ill due to the contaminants that they have consumed and how would that weigh on our medical system? Can we afford that? I think that is one of the questions that we have to ask ourselves.

I think that at some point the Federal Government is going to have to step in on this because we cannot afford not one person in the United States, the greatest country in the world, to be in this place where we cannot afford to give Americans that are asked to go to war and sacrifice their lives, but yet we cannot find a way to provide safe drinking water because of money. So we are going to allow thousands of people to possibly be contaminated by bacteria from unsafe drinking water.

This is unsatisfactory and we have to find a way to make this happen and we cannot let money be the issue for kids, babies that need water, Enfamil that needs to be mixed with water, and yet we are going to allow these folks because they are few in numbers to suffer the indignity of drinking

unsafe water.

We send thousands of troops over to Iraq to fight. I served in the United States Navy; there is technology out there to where you can clean water. We even cleaned sea water and made it drinkable. I think that it is time for the United States Government to step up and alleviate this problem as soon as possible and I would urge the EPA to get heavily involved with this. We know that on reservations they are suffering with this same problem. 2009 we are still dealing with the issue of unsafe water in the United States of America.

MS. YEAMPIERRE: Thank you Hilton. I have to say that this is a new issue for me and I found the information that you provided really troubling. I even have questions about what the impact of climate change is going to be on these small water systems and I would like you to address that but first we are going to go around to the folks that have their cards up. Chris?

MR. HOLMES: Chris Holmes, how do you do? I know how complicated this is. I had to live with RCRA for a year and I am still getting over that.

So to follow up on what Hilton was saying for a second, could you have a scenario where you have a plant and the plant has a water purification treatment facility and the plant is providing water to a community and in so doing it

gets a small system variance but it turns out that after it has gotten the variance that there are compounds in there that affect the community. How long could they hold on to the variance? Or could they actually go after the variance as a way in which to quasi-exempt themselves from dealing with certain organics and inorganics that might be so exotic they would not even be listed on the registry?

MR. BURNESON: Of course this has not been tested because the variances have never been available to implement but my understanding of the way the law would work would be first of all the variance would only be issued for a specific contaminant so it would not be an across the board variance for all regulations. So if we regulated compound X in the future, we determined that it was unaffordable for small systems and the variances were available, then that system would only get the variance for compound X and not necessarily the other 91 or whatever portion of the contaminants that they are subject to.

But lets say it is compound X you are worried about, how long would that be? Well the provision in the statute says every five years the state has to reevaluate that variance and reach the same conclusion about the fact the system still cannot afford to comply, it still has a variance technology that is operating in a way that is protective of public health, so there would be an opportunity or there would

at least be an interval at which the state would have to reaffirm its decision that the variance is appropriate.

So I am not saying that they would necessarily revoke the variance at that point in time but that would be the mechanism that the law provides.

MR. RIDGWAY: Thank you. A couple of points of context here leading up to this. In talking with our Chair Richard about this, one of his comments was "its pretty hard for this group to get into an issue of complication and substance on a flash speed here" which is in essence we are hearing about this for the first time. However there has been sent to the Council the recommendations that came from the National Drinking Water Advisory Council for you.

So his comment was to all of us, the ability to get into the details and substance is really not practical given the timeframe here.

Another comment is recognizing that the National Drinking Water Advisory Council has gotten into this and they not once but twice sent recommendations to EPA saying they do not support this variance and specific to the slide number 12 under them they say avoid this due to the practical, logistical, and ethical issues. They have already looked at this and that was one of their comments.

Third, putting on my hat of state and local government, many states have come out, specifically my own

state Washington along with others have said we do not support a variance.

We do not have time to get into this a lot so to the Council I want to suggest one approach is that we, rather than get into the detail here, we could consider a very short recommendation to say we do not support a variance either for a lot of good reasons that have come up. And let EPA have that initial recognition with a parenthetical statement to the extent that we do not have the capacity to get into any greater detail than just to recognize there are many reasons to not support a variance at this time.

If EPA wants to ask us for more detailed consideration, then we need to consider that. We can do that in part tomorrow because we are going to be looking at upcoming issues. But that may be one way to at least recognize what already has been recognized without reinventing the wheel here. Because I have not heard really any reason to support a variance other than recognizing there are huge economic implications absolutely but that is not this Council's charge, to figure out economical issues because they apply to all sort of things that we talk about here and that is not what we are here to advise on.

MS. HENNEKE: John I would like to ask my question first.

MR. RIDGWAY: That is fine, I am just throwing that

out and other questions are most welcome. That is my perspective so I will leave it at that.

MS. YEAMPIERRE: Jody you are next on the list but I wanted to ask if Charles wanted to add something here.

MR. LEE: Why don't you ask your question and then I just want to say a few words to make sure everybody understands the context here.

MS. HENNEKE: I am from Texas. I am Jody Henneke and I am with the Texas General Land Office and a former lifetime in environmental regulatory and I grew up on a water well and I have a lot of history with regulated drinking water.

And I wanted to make clear that the state that I come from, we do through the TCEQ, do regulate water rates, but this has nothing to do with water rates, I think I heard you say that.

Then the next thing is rate structures. The experience that I had sitting through about 20 years of enforcement and permitting meetings is that it is those systems that are under 500, certainly under 1,000.

And when you look at many of the Western states, with very few exceptions, that are by leaps and bounds the preponderance as your slide showed of the water systems.

And some of the most heartbreaking issues we have had to work through is when you have no supply and in many of

the Western states we are beginning to struggle with supply. It is everything from supply to can you afford it, do you have the infrastructure? The infrastructure was put in decades ago and it is now no longer fixable to the point they are leaking, they are losing more water than they are serving, et cetera, et cetera.

But one of the things that I was just trying to pick my way through here, I understand this would not be available for any microbial. What would it be available for? Can you give us some examples that would make this more meaningful to us?

MS. BARR: It would only apply to future rules at least according to the way -- we have gotten pressure that we should apply it to past rules too. So it would be future rules that we would either write or potentially if we re-wrote our existing regulations. Let's say there was new health information that indicated that we should change our existing standard, potentially then that could -- the revised rule would be potentially eligible for this.

So it would be chemicals. For example we are right now -- we have not made any decision but one of the chemicals that you may have heard of that we are considering is perchlorine. We have got a contaminant candidate list of over 100 contaminants that may require regulation that we are looking at further; about 90 of those are chemicals. If we

decided to regulate any of those then those would potentially be impacted by this if we change the policy.

MR. LEE: Can I just say a few words? You know I think -- I am not sure if we are having the same conversation. So I just want to make sure unless I am misunderstanding it.

Our guests are here and they are not trying to advocate for a variance okay. They are forced into a position by virtue of the legislation to consider a variance. So I think that needs to be understood. This has partly to do with Pam's answer to Shankar's question. So there has been a long history here and there has been a lot of different groups including the NDWAC, the drinking water advisory committee, around this issue. And in fact what they said is that most have not agreed or have recommended that EPA does not go the route of a variance for a number of reasons one of which is that it would set up a two-tiered system in terms of public health or water safety.

And so what they are here for is to get your feedback on that. And your feedback on that particular question has a lot of importance because this is coming to a head in terms of decisions. Okay so that is the first set of issues I think.

The second set which I wanted to comment on John's comment before to Richard Moore's point about this being a very complicated issue and this is an issue that really does

deserve some more interaction particularly with the communities involved and particularly from your standpoint.

You know where that discussion ended up with Richard I think is that there are a lot of questions in terms of what kinds of solutions are the ones that really would apply in going forward in some of the things that we talked about, consolidation and other kinds of things. That really does require I think if you wanted to look into it, a lot of interaction and feedback from the communities. But that is a future thing right. I think the recognition of that, if you want to make a statement to that affect in terms of recognition of that in a forward thinking way in terms of how to approach these issues, I think it is important and it would be to the spirit of what Richard has said.

But there is an immediate question that has to do with this issue of if you wish what would your view be on this issue of the variance?

MS. YEAMPIERRE: Thank you for that clarification. I find that helpful and I hope you do as well. I think what you are hearing is really a response from people on the ground who hear the startling information and cannot help but react because they understand on a very cellular level how that affects the base that we represent.

So given the guidance that Charles has just provided us with and a reminder of what Richard's wishes are, next on

the list is Don.

MR. ARAGON: Thank you. My name is Don Aragon and I am the Executive Director for the Wind River Environmental program for Shoshone and Arapaho tribes in Fort Washakie, Wyoming.

Wyoming is one of the states or the only state I believe out of all of the states that does not have primacy; the EPA still retains that.

I appreciate what Charles said and I respect the fact that you have a tough job ahead of you. A lot of the infrastructures that were put into Indian reservations were put there long before EPA came along. Some of these systems were put in in the 1940s and 1950s and into the 1960s. Then of course they are old and falling apart and really in need of building up.

But I think that I would oppose a variance and I would really hope that the Agency can push for the highest standards possible. And I know that a lot of our Indian communities and Reservations have been on boil orders. And I think there has been one up in Montana, up in Browning Montana, they have been on a boil order for almost seven years.

I think that when we look at those types of things it is -- you take a look at the elements that are in the water itself, the bacteria stuff is easy to boil but when you get

into the other elements like uranium and stuff boiling is not going to do you any good. And on our Reservation we have the remnants of an old Uranium mill tailing site and it is what we call an UMTRA site. UMTRA stands for Uranium Mill Tailings Remedial Action and the Department of Energy is in there trying to clean this up but of course one of the tribal water lines runs right through this contaminated area. And so we have picked up Uranium radioactive particles in that line because we understand that the line is permeable to these kinds of elements.

You know when you come up with the different kinds of water samples, water tests, and those types of things we know that they don't test for Uranium. You look for your bacteria and those types of things when there are other things that are in the water.

We have a lot of oil and gas industries on our Reservation and we know that also interferes with the community water systems.

So there are so many things that when we take a look at small water community systems and stuff like that it really has to be a much lengthier meeting than what we are putting on here today.

And I think that this morning the Environmental Justice Executive Steering Committee brought in a paper here that is very encouraging about what they see as the needs with

the water infrastructure papers and I believe it was Laura Yoshii and Nancy Gelb who presented this and maybe if you can get in touch with them and talk to them and see what there thoughts are on some of these small water systems and what that committee is working on, I think it would be really beneficial for all of us.

And of course we talked about collaboration, this is one of the situations where you are developing something in your silo, they are in their silo, and no one is looking over the rim to see what the other guy is doing. I hope that there is some communication there so that everybody can get on the same page and maybe we can really develop something that is highly beneficial for these small drinking water systems.

One final thing that I really appreciate you bringing to our attention is the fact that a lot of our small Reservation water systems, the operators are not very well trained if trained at all. And I know of some cases where it is almost a family affair, where well my dad was the operator so the son becomes the operator and so on and they are handed down in a situation like that. Those individuals need the water treatment training.

We also not only need the water Technician Level I, Level II, Level III training type of people but we also need waste water treatment people to also be trained because it is a real problem with the management of septic systems as well

as lagoons. And then you are discharging these waters into the same waters that downstream somebody is extracting it for drinking water and these things happen in our Western areas; I am from Region 8 and water flows downhill.

And likewise if it is treated or untreated, water still flows down. So I think I would like to see greater training and something done so that we can retain those operators and that is the only way that we are going to solve some of the problems with our drinking water. It is the retention of good qualified people running those plants. Thank you.

MS. BARR: I was just going to say we do very much sit in our silos but the paper that Nancy Gelb and Laura Yoshii are working on, I saw it about a month ago. I think it was on its way to here. So we do try to talk and try to build bridges but thank you.

MR. LEE: All of this is good. The larger question is popping up in different ways part of which has to do with the discussion here this morning about water infrastructure for tribal disadvantaged and rural communities and this issue is important in water infrastructure issues I mean as a whole.

So at some point looking forward we might want to try to connect these together.

MS. YEAMPIERRE: And we have been talking a lot about inter-agency coordination and how important that is to

our communities so we would urge you to make sure that is a priority in terms of how you roll out the work. Did you want to make any other comments or respond to Don's remarks? Can we move on to the next commentator? Okay.

DR. PRASAD: If I understand this right this has been crafted or at least been part of our model because of the Congressional pressure but not necessarily staff derived. And you are here; I know that you are kind of pushed against the wall and probably here just following the orders as opposed to saying that this is something that needs to be done. Am I right or am I reading in between the lines?

MS. BARR: Keep reading.

DR. PRASAD: And I just want to say that I am one of those privileged ones who came here 25 years back, went on to the California Education System, had the privilege of working for California EPA, becoming a Deputy Secretary over the course of 25 years. And being from California and EPA and other things and also looking at it, in 30 years we have made such a tremendous progress be it water quality, be it air quality, be it the waste management, be it the recycling and we may not have reached the target that we want to be at but we have certainly made tremendous progress in each of the states maybe to a varying degree.

When we see these kinds of things where the progress has been made and the places where it is written "not for

drinking purposes" we all take it for granted and we drink that. And when we see these kinds of things happening that we want to go backward, being one of the largest economies, being one of the foremost countries in the world, it is really bothering.

And I have made that statement as a privileged one and for me it is really bothering to see that an agency like this is being pushed to go in this direction.

MS. YEAMPIERRE: Thank you Shankar. I was thinking that last week my organization, I am the Executive Director of UPROSE in Brooklyn and New York and the President of the New York City Environmental Justice Alliance. And last week we met with the Brazilian Environmental Justice Network and it was really interesting to us that they were talking about how wonderful the work that we were doing in the United States was and as they started to describe a lot of the work that they are doing at a grassroots level with indigenous people and people of African ancestry that it really made us look not so good. I was really, really impressed.

The reason I am sharing that Shankar is because often times the expectation is that our bar is going to be higher. On the list I have, next is Omega.

MR. WILSON: Yes Omega Wilson, West End Revitalization Association, Mebane, North Carolina. I am familiar to some extent with small water systems and the

contamination and things that are related to it.

I think I can say some of the work that we have done at a community-based research level has actually brought me, representing the West End Revitalization, to this room very much so.

There is a series of concerns I have. The first thing is no I do not support the variance or allowing another kind of standard as Charles said to make things more relaxed or leaner or less compliant. What we found out is of course it devaluates property, it devaluates health and of course it creates a question of safety. Clearly if somebody is moving into an area that may not already live there, I mean it raises a whole lot of questions about the level of somebody's safety from a public health standpoint. This has been approved and allowed. It is bothering.

The other part of this that is not clear to me is where your information identifies the environmental justice part of it. How many of these systems that you have talked about -- what is the demographic makeup? What is the population? What is the income? What is the Title VI? What percentage of these service people are disabled, low income, minority, women, children, et cetera under the Title VI piece?

I am not sure that you do not have that but I do not see it in here. That is one concern I have because we are asking an EJ question here for this group.

The other part of it is in our area, I am talking about North Carolina, we know that a lot of these systems are right on the ETJ, extraterritorial jurisdiction, or right outside the city limits of municipalities and some of these community-type systems that Don Aragon talked about and John Rosenthal talked about are systems that actually came out of slavery. Where low income, minority and Native American communities were put after slavery ended. And a facet of these systems still exist, these community wells that somebody literally dug by hand. And some of the families and residents who move in really do not even know where their water is coming from.

In some of the areas that we are talking about we have these community wells like we are talking about or community systems as you call them, we have systems that are not municipal systems that provide only water, and we have individual wells and you have municipal water on the same streets that run right beside each other literally door to door to door and nobody knows which one is which except the residents. I mean it is an absolutely crazy system.

So we have actually found residents who were ordered by their doctors to stop drinking their community well water not because of pathogens but because of particulate matter from the rust that was actually causing health problems. We had never heard of anything like that where a doctor says we

want you to drink bottled water not because of fecal coliform or anything like that but because you have so much junk, physical matter in your water, it is causing a health problem so I am prescribing bottled water. That happened as a part of our research.

And I don't think what you are talking about covers that level of problem with systems that are old and rusted out that Don talked about; I don't think that is a part.

I go back to what Charles said and what John Ridgway has said, we need more information about what it is we are talking about. And we do not want to create another level of marginalized communities in and around cities. Because in our case it created an opportunity to have less infrastructure, it created an opportunity for the municipality to take the property for less value for expansion and growth because they did not have the services. It created a political and economic opportunity to be taken advantage of. And that is a part of the discussion, of course it is more detailed than what we are going to talk about here, but that is something I can personally talk about and it is going to take more than five minutes.

That is alarming to me that those kinds of issues have not been addressed and have not been a part of a bigger discussion.

MS. YEAMPIERRE: Thank you Omega. I would have to

echo what Omega is saying. We are really grateful that you are before us and that you are talking about an issue that is so important for our communities, but we would hope that when you come before the NEJAC your presentation would include some demographic information, some information about the disparate impact on our communities that is very specific that really lays out what the impact is on communities of color and low income communities.

That information is essential for us to even move forward in even making recommendations and decisions. So in addition to the legend and laying it out so that we can accurately read the map, please try to tailor your comments to the audience and in this particular audience that is our priority.

So Chris I have you next.

MR. HOLMES: So my first question, I was looking at the problem from having worked at EPA doing enforcement work. So the next question, I will look at it from the perspective of having been here doing emergency response work. And during that period what I learned is that sometimes it is important to think through the scenarios under which you will have to grant a variance.

So for an example, when Exxon Valdez occurred people decided the best thing they could was bioremediate the coast except neither the Coast Guard nor EPA had gone through the

scenarios so there was no authority to be able to grant a variance; they had not thought it through.

So what I worry about are the scenarios that occur which are the obverse of the one I just laid out and that is the drought scenario and particularly in California because there are scenarios in California where that water system is going to break in the next four or five years. It is not going to be the people in San Francisco who are going to be suffering because they have the Hetch Hetchy. It is going to be people in Los Banos and all sorts of other place that are going to have a problem.

So then the communities and you will come together suddenly over what kind of variance will permit them to be able to use these water systems and it will probably be a debate over salinity I suspect but maybe other things.

So I think what would be really cool would be if you came back here and you thought about the scenarios that go ahead that affect the communities that as you put it Elizabeth which I thought was the greatest way possible defining what we do, which is we are here to protect these communities; that is what we do. If you were able to come back and think through some of these scenarios that are kind of both sides of the coin, I think the engagement would be terrific.

The only other comment is I think it is terrific that you came here today because it is kind of a Socratic

process. I mean you know you do not know necessarily what all the questions are to ask and nor do we but it is great that we have the beginnings of this dialogue going with you. So please don't go back and say "never again. this is it."

MS. YEAMPIERRE: Thank you, we are going to try to wrap up but I just wanted to say some things that I think are really important.

A lot of us are talking about climate adaptation and we are talking about how that is going to impact our communities and a lot of cities are putting together sustainability plans. I would like to see what this means 10 years out, 20 years out, 30 years out, for our communities because I think we need to look at what the impacts of climate change are going to mean particularly for our communities. And given how old a lot of this infrastructure is and some of the challenges that you have already raised, we need to sort of have an assessment of what that means within that time period.

I know John my Co-Chair has a proposal that he wants to put on the table which I think will be very useful so I am just going to defer to him. Oh, is there another card, I am sorry, okay go ahead.

MS. FISHER: Wynecta Fisher, City of New Orleans. Thank you for the information and actually thank you for coming and please come back again. This was very enlightening

for me.

One thing I would ask that you consider is there are communities in a city, for example, we have one. The City of New Orleans has a sewer system yet the individuals that are part of Orleans Parrish which is our county that live outside the levee protection system are not part of that system.

So sometimes -- and their biggest concern is when people look at a water system and a sewer system, they just assume that because you are City of New Orleans that you have it but their piece does not. So when you are looking at major cities, please don't assume that everyone that is a part of that city has access to those services.

MR. ROSENTHALL: Elizabeth may I chip in one more thing too please before we move forward?

I want to thank you guys for coming out as well and talking about the small towns. I represent a number of small towns. And when we look at the smaller jurisdictions with populations of 600 and below, for a lot of those guys a variance is going to be the only way we can go if we are going to provide any type of water for those residents at all. And we can sit here and we can talk about it is 2009 and everybody should have clean water, that is very correct. Everybody should have food as well but we have people who are starving everyday. And we do need to take a look at how we deal with these real small systems.

And I appreciate you guys coming out here and letting us know that this is something that is on your agenda. And even though you didn't bring all of the data that you need for us to make a decision, you came here looking for help and hopefully we can provide you that assistance and it is great that you did not just bypass us altogether as some rule making authorities do. And you did seek our help and I want to say that we appreciate that and we would like to work with you and help you out certainly.

In some of those small jurisdictions, the water bill is the largest source of income for the town. And to shut them down, you literally shut down the town. And so we need to balance the need for protection with the need for keeping the town going. And I do not think that is a decision that we can make but I think that is a decision that the communities and the towns themselves can make with informed consent, with informed knowledge. They can make those decisions. And that is the help we need to give which is to help the small jurisdictions understand the science, the health, and the risk and then let them make some decisions about how much risk they are willing to accept not what level of risk that we are forcing on them in order for them to survive.

MR. LEE: Just a point of clarification. I may not be understanding all of this but I think they made a point, a clarification, between variance and exemption so you know I

think you need to keep that in mind.

MS. YEAMPIERRE: I know that there are other members that want to talk about this a little further but I do want to remind everyone that the message has been sent from the top down that environmental justice has to be a priority to all the agencies so we are really grateful that you are here but we do understand that is the day that we are living and that everyone is going to be coming before us to talk about how to incorporate environmental justice into their work because it is a priority.

So there is going to be an opportunity I think later for those of you who did not have an opportunity to weigh in further. I know Hilton had a burning question and I asked the brother to wait. But John is going to make a proposal.

MR. RIDGWAY: It is pretty much -- John Ridgway, Washington State. That would be to come back to the Council with a second volunteered assignment to myself and that is just with a very brief statement that would be given to you tomorrow and in essence to say that we are not recommending a two-tiered system here. We do not have reason to change the recommendations that you have had at this point until we have, if it gets to that, a chance to get into this. So it would be in essence to encourage you to not pursue or use the variance.

And then ask the Council to consider language and it would have to be short and very general but given what we have

to work with right now, that is what I am suggesting. I would certainly welcome any volunteers to work on that with me but I am guess a few sentences here and not much more and that is in essence what I would try to convey respectfully.

MS. YEAMPIERRE: I would like to thank you on behalf of the NEJAC for joining us and for being so patient and listening to all of our comments and questions.

And tomorrow should I go over tomorrow for a second --

(Asides)

MS. YEAMPIERRE: So tomorrow I just want to bring to your attention that we have in addition to the two issue areas which are the definition of solid waste rule and the school air toxics and new urban waters, that is three I am sorry, that we are also going to be talking about new business and we are going to have a discussion about emerging issues.

To the extent that you could provide us with a list in case we have not covered everything so we can give some thought to it in advance that would be really useful. Do you want to add anything Victoria?

MS. ROBINSON: Yes I was wondering if there was any feedback or response to what John had just suggested about putting together some language for a letter that would come from the Council and that the letter would be prepared for your review tomorrow during the new business discussion. Any

comments or suggestions?

MS. SALKIN: Patty Salkin, Albany Law School. I think that it is a good idea to go on record with something even if it is very short because the staff is going to have to report in their report that they met with us and I would rather that we craft what our feedback is as opposed to leaving it vague and letting staff do that. No offense but it is better that it come from us and that it says as little or as much as we want.

And just to Elizabeth's comment about getting a list of issues, should we email that to somebody tonight?

MS. YEAMPIERRE: I think you can give them to Victoria. We already have a number of things that we know the community wants to discuss; everything from green jobs, cap-and-trade, the letter that was sent by the EJ groups. In new business we have school siting, we have a laundry list, but I just want to make sure that we do not leave anything out and that we can organize the time properly. I would just suggest that you forward that to Victoria.

MS. ROBINSON: Right, I will also make sure that the contractor gets it out to you, probably we will figure out a way to get it to you tonight. There are some materials; it is like a discussion worksheet on a couple of items that Charles prepared. He and I are going to kind of revise that based on some of the things that we have already talked about and some

background material like one or two pages that we will get to you guys tonight for the afternoon discussion, early afternoon discussion.

MR. KELLEY: And I would like, if I could John get with you on that letter that you want to write so that I can put maybe a paragraph in there because I do not believe that we should have the variances. We should do everything we can for communities that even have to consider that. To do what we can to help upgrade their water systems.

MR. RIDGWAY: I will talk with you after the meeting, thank you.

MR. HOLMES: The reason I was asking for the scenarios is that if you are going to be pushed in a crisis situation into a variance, then now is the time to think about those situations so that if you have to swallow one it is as effective and responsible as possible and is protective.

MS. HENNEKE: Thank you, Jody Henneke, Texas General Land Office. I personally am not in favor of a tiered system but I think we need to include something in this letter that recognizes what John Rosenthal was talking about; about the ever increasing plight of these small systems because that is a real deal for a lot of the Western part of the United States.

MS. FISHER: Before the individuals came to speak, we were talking about the meeting schedule and I just wanted

to make sure that was going to be on the agenda for tomorrow. When is the next time we would meet and where we would meet?

MS. YEAMPIEERE: Thank you, that is useful.

MS. BARR: We just want to thank you for taking time. You clearly have a very, very busy agenda and for taking the time to put us on it and to hear our presentation and to be patient when we did not have all of the information that would have probably been most helpful to you in your deliberations as we kind of learned through this process too and for giving us your advice. Thank you very much for that.

MS. YEAMPIERRE: Thank you so much for coming, that is how we build relationships.

MR. ARAGON: Just one question. On tomorrow's agenda I see at 10:45 you have the New Urban Waters Initiative. What is that?

MS. ROBINSON: It is a different initiative. It is an initiative that is so brand new it is still under development and it is an EPA initiative. And they are coming here to talk with the NEJAC to get some input about the development of the initiative. It is an initiative that was started from the Administrator, that she wanted to reconnect people to the water and she is asking the Office of Water to develop an initiative. So it is separate from this, this is strictly small drinking water systems variances. This other one is just dealing with urban waters and it is more of a

positive approach to reconnecting people to the water. So tomorrow that is what the presentation will be about. To discuss how EJ communities are not going to be left out of that initiative or how better to integrate EJ into that process.

MR. ARAGON: So you don't drink urban waters?

(Laughter)

MR. RIDGWAY: So we are adjourned. Thank you everybody for sticking around, listening and contributing. We will see you tomorrow morning at 8:30.

(Whereupon the meeting was adjourned at 5:19 p.m.)