

MEETING SUMMARY

of the

INDIGENOUS PEOPLES SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 11, 2002
Baltimore, Maryland**

**Daniel Gogal
Designated Federal Official**

**Terry Williams
Acting Chair**

**CHAPTER SIX
MEETING OF THE
INDIGENOUS PEOPLES SUBCOMMITTEE**

1.0 INTRODUCTION

The Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Ms. Jana Walker, attorney at law, resigned as chair of the subcommittee, and Mr. Terry Williams, Fisheries and Natural Resources Commissioner for the Tulalip Tribes, had been asked by the subcommittee members to serve as the Acting chair of the subcommittee, pending appointment by the EPA Administrator. Mr. Daniel Gogal, U.S. Environmental Protection Agency (EPA) Office of Environmental Justice (OEJ), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Exhibit 6-1 identifies the subcommittee members who attended the one-day meeting and members who were unable to attend.

This chapter, which summarizes the deliberations of the Indigenous Peoples Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Activities of the Subcommittee*, summarizes the discussions of the activities of the subcommittee during the one-day meeting, including its discussion of the NEJAC Pre-Meeting Draft Report, "Advancing Environmental Justice through Pollution Prevention." Section 3.0, *Presentations and Reports*, provides an overview of each presentation and report as well as a summary of relevant questions and comments from the subcommittee members. Section 4.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

Mr. Don Aragon, Wind River Environmental Quality Commission and member of the subcommittee, led the participants in an invocation to begin the meeting. Following the invocation, Mr. Gogal reviewed the agenda for the meeting and explained that comments from observers would be welcome during the public dialogue session scheduled for that afternoon. Mr. Gogal then took the opportunity to allow observers to introduce themselves.

2.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, which included nomination of a new chair of the subcommittee, discussion of the NEJAC draft pollution prevention report *Advancing Environmental Justice Through Pollution Prevention*,

and an overview of the Indigenous Peoples Subcommittee Strategic Plan.

2.1 Nomination of a New Chair

Ms. Walker made a motion to nominate Mr. Williams to serve as acting chair of the subcommittee for the upcoming year. Mr. Dean Suagee, Vermont Law School and a member of the subcommittee, seconded the motion. Mr. Williams accepted the nomination and was unanimously selected by the members present to lead the subcommittee, pending appointment by the EPA Administrator. Mr. Williams agreed to serve as acting chair for the duration of the one-day meeting.

2.2 NEJAC Draft Pollution Prevention Report

The members of the subcommittee discussed the NEJAC draft report *Advancing Environmental Justice through Pollution Prevention* (pollution prevention report). Ms. Walker suggested that the subcommittee review recommendations 6, 8, and 10 described in chapter 2 of the that report which had not been discussed during the deliberations of the NEJAC Executive Council on Tuesday, December

Exhibit 6-1

INDIGENOUS PEOPLES SUBCOMMITTEE

**Members Who Attended the Meeting
December 11, 2002**

Mr. Terry Williams, **Acting Chair** *
Mr. Daniel Gogal, **DFO**

Ms. Jana Walker
Mr. Dean Suagee
Mr. Don Aragon
Mr. Tom Goldtooth

**Members
Who Were Unable To Attend**

Mr. Moses Squeochs
Ms. Karen Wilde Rogers
Ms. Coleen Poler
Mr. Jose Aguto, **Alternate DFO**
Ms. Anna Frazier

* Pending approval of EPA Administrator

10, 2002. The members of the subcommittee also agreed to discuss recommendation 9 because of its relevance to the issues of indigenous peoples. Exhibit 6-2 lists the recommendations discussed during the subcommittee meeting.

Ms. Walker emphasized the importance of embracing in the draft report all indigenous populations, including Indian tribes, Pacific islanders and Alaskan Natives. To avoid cumbersome repetition throughout the report, she recommended incorporating in the pollution prevention report the language provided in the "Interpretive Notes" section of the NEJAC *Fish Consumption and Environmental Justice* report which had been revised and published in November 2002. She explained that a paragraph from that report explains which phrases should be substituted in the text of the pollution prevention report for a comprehensive list of indigenous communities. The members of the subcommittee agreed to advise the NEJAC to edit the fourth paragraph of the Executive Summary of the pollution prevention report to read as follows:

This draft report works to identify and discuss the particular issues that this question raises when - as is often the case - those negatively impacted by pollution are communities of color, low-income communities, tribes, and other indigenous peoples. This Report uses the phrase "communities of color, low-income communities, tribes, and other indigenous peoples" in an effort to capture, in shorthand form, all of the various groups and subgroups that are affected by environmental injustice. It is meant to include all people of color, low-income people, American Indians, Alaska Natives, Native Hawaiians and other Pacific Islanders, and other indigenous people located within the jurisdictional boundaries of the United States. In an effort to avoid cumbersome repetition of this phrase, the Report also substitutes the phrases "affected communities and tribes" and "affected groups;" these shorter phrases are meant to be similarly inclusive.

2.2.1 Comments to Recommendation 6

Recommendation No. 6 in Chapter 2 of the pollution prevention report discusses product and process substitution in areas that affect low-income, minority, and tribal communities. Mr. Aragon opened the discussion about that recommendation by discussing the transfer of federal facilities to tribal communities. Many of those facilities, he stated, are highly contaminated with lead and asbestos. Mr. Aragon argued that such facilities must be brought into

NEJAC DRAFT POLLUTION PREVENTION REPORT

Chapter 2 Recommendations

Recommendation 6: Promote Product Substitution and Process Substitution in Areas which Impact Low Income, Minority, and Tribal Communities

Recommendation 8: Promote Just and Sustainable Transportation Projects and Initiatives

Recommendation 9: Strengthen Implementation of Pollution Prevention Programs on Tribal Lands and Alaskan Native Villages

Recommendation 10: Promote Efforts to Institutionalize Pollution Prevention Internationally, Particularly in Developing Countries

compliance with environmental laws before they are transferred out of federal ownership so that tribes do not inherit facilities that pose health hazards. The members of the subcommittee agreed that facility transfer is an important issue affecting indigenous communities and proposed adding the following action item to the pollution prevention report:

Action Item E (new): In carrying out the federal trust response, work collaboratively with the U.S. Department of the Interior (DOI), the Bureau of Indian Affairs (BIA), and other federal agencies to ensure that all federal facilities and property transferred to tribes area safe, and in compliance with all applicable environmental laws

Ms. Walker acknowledged that indigenous communities must be afforded the same level of environmental protection that is given to other minority groups when communities containing those groups assume take possession of former federal facilities. The members of the subcommittee agreed that language for a new action item should be added that reads:

Action Item F (new): Work collaboratively, with other federal agencies to ensure that all federal facilities and property transferred to low income and minority communities are clean, safe and in compliance with all applicable environmental laws

Mr. Williams suggested the addition of a third action

item designed to promote model agreements to limit the types of pollutants entering and leaving a facility. He stated that these agreements would provide an opportunity for EPA and tribes to work collaboratively to develop and provide new opportunities for tribes to communicate with one another. The members of the subcommittee agreed that the language for such a new action item should read:

Action Item G (new): Develop and promote model agreements in pollution prevention in Indian lands and within Alaska Native villages.

2.2.2 Comments to Recommendation 8

Recommendation No. 8 in Chapter 2 of the draft pollution prevention report discusses efforts to promote just and sustainable transportation projects and initiatives. Mr. Tom Goldtooth, Indigenous Environmental Network and a member of the subcommittee, suggested that the subcommittee add language to the background text of that recommendation to address the transportation through native lands and reservations of hazardous and radioactive wastes, including mixed oxide (plutonium/uranium nuclear fuel) waste. He added that a discussion of sacred sites and cultural considerations should be added to the text as well. The members of the subcommittee agreed to recommend new language to address Mr. Goldtooth's concerns. The new language, which could appear after the phrase "land use issues" on page 32, line 26 of the draft pollution prevention report, would read as follows:

“ . . . , including but not limited to places that have religious and cultural importance to tribes (including Alaska native villages) and other indigenous peoples. . . . ”

Mr. Williams agreed with Mr. Goldtooth and suggested that the text on page 32, line 10 of the draft pollution prevention report be revised to add the words "urban and rural" after "low income and tribal." He explained that this addition would broaden the scope of the sentence to include those communities in rural settings through which hazardous wastes often are transported.

Mr. Suagee suggested that the recommendation include a discussion about "walkable neighborhoods." He explained that walkable neighborhoods are planned communities in which roads are not necessary because all basic necessities are located within walking distance of a resident's home. He acknowledged that this concept may not apply in a rural setting but stated that it should be should considered as an alternative to

building roads. The members of the subcommittee agreed to revise the last sentence of action item B to read as follows:

“ . . . Transportation planning should emphasize the use of walkable neighborhoods.”

Mr. Aragon added that state agencies should be included among the organizations listed in Action Item A as working in partnership with the U.S. Department of Transportation (DOT). Mr. Williams agreed and suggested that two additional action items be added to recommendation 8. The first recommendation, he stated, would promote cooperating agency status for indigenous peoples and the second would better define the term "meaningful and early" within the National Environmental Policy Act (NEPA) to mean participation beginning at the point where "purpose and need" have been identified. He explained that two states, North Carolina and Washington, have adopted language that calls for early participation of indigenous peoples in their state NEPA processes; a similar approach should be referenced in the new action item, he stated. The members of the subcommittee agreed to recommend language for two new action items:

Action Item J (new): Promote cooperating agency status for tribes and Alaska Native villages with the U.S. Department of Transportation when transportation projects will or may affect tribal or village interests.

Action Item K (new): Define "meaningful and early" to mean participation beginning at "purpose and need." (within NEPA, see North Carolina and Washington state laws).

2.2.3 Comments to Recommendation 9

Recommendation No. 9 in Chapter 2 of the draft pollution prevention report focuses on activities to strengthen the implementation of pollution prevention programs on tribal lands and in Alaskan Native villages. Mr. Goldtooth proposed that the second paragraph of the background text for this recommendation be modified to discuss the impacts of pollution on the rights of native communities to practice their culture and maintain the integrity of sacred sites. He added that the language should clarify any misunderstandings that exist about the protections afforded to sacred sites and the cultural practices of indigenous communities. He emphasized the importance of properly representing in the draft report the needs of indigenous peoples and urged the subcommittee to further review the

text of this recommendation after the meeting.

Mr. Aragon pointed out that only three Indian organizations are named in the first paragraph of recommendation 9. He argued that the text either should be inclusive of all such organizations or exclude all references to specific organizations. Mr. Suagee, who said that he had participated in the development of that section of the draft pollution prevention report, responded that he had included the three organizations for which EPA provided funding but that he would edit the text to be more inclusive of other tribal organizations.

2.2.4 Comments to Recommendation 10

Recommendation No. 10 of the draft report discusses ways to promote internationally efforts to institutionalize pollution prevention, particularly in developing countries. Mr. Suagee suggested that the subcommittee devote some time to addressing international sustainable development and how they apply to indigenous communities. He stated his belief that less developed countries, in pursuing solutions to their environmental problems, want what they perceive to be “proper solutions” to environmental problems because more developed countries have adopted those solutions.. The members of the subcommittee agreed that such less developed countries, including countries with indigenous communities, must move beyond what developed countries have implemented and explore new and more innovative ways to solve environmental problems. Mr. Suagee advised the subcommittee to discuss whether Indian organizations can play an appropriate role in the transfer of technology from developed countries to undeveloped and rural countries around the world. Indigenous tribes may be willing to consider technology transfer, a topic, he added, that should not be considered beyond the scope of the mission of the Indigenous Peoples Subcommittee.

The members of the subcommittee agreed to propose two new action items focusing on biological diversity and resource management:

Action Item D (new): Add in parentheses: “Including the convention of biological diversity Article 8D”

Action Item E (new): Promote the use of traditional knowledge to focus on resource management with less disturbance with maintaining ecosystem structure.

Mr. Suagee suggested that the subcommittee compose a new action item to improve the tribal

consultation process, particularly when Alaskan and Hawaiian Natives participate in global treaties. He added that seldom has consultation been a formal process and that representation of tribal communities has not been adequate. The U.S. State Department has argued that it is not under any legal obligation to include tribes in the consultation process, he continued. The members of the subcommittee agreed to write a new action item addressing that issue.

Mr. Aragon proposed a new action item that addresses trans-boundary pollution prevention issues. The action item, he said, would address the issues of border tribes (those tribes living along the U.S. borders with Canada and Mexico) and coastal tribes (tribes living in the coastal regions of the United States). He added that in many cases, the contamination created in one country affects tribes residing in a neighboring country, forcing the tribe in the neighboring country to deal with the cleanup. He acknowledged that climate change also is an important issue with regard to international and trans-boundary pollution prevention. Mr. Williams responded that those issues historically have been addressed under the North American Free Trade Agreement (NAFTA). He added that some processes had been started to address those issues but that there has been minimal insight into which direction to go. Therefore, Mr. Williams continued, NAFTA may not be the appropriate means through which to address such issues but it is a place to start.

The members of the subcommittee agreed to compose an action item advocating a new, multi-prong approach to encourage discussion of issues that affect tribes internationally, such as climate change, water contamination, and species shift. Mr. Aragon suggested that the report include a discussion about treaty rights because some tribes possess treaty rights that extend beyond their tribal boundaries. He added that the International Joint Commission (IJC), an independent, joint Canada and U.S. agency that provides oversight of shared water resources, intends to fill two seats with a Canadian and a Native American because the commission now recognizes that it must include indigenous peoples in its discussions.

Mr. Williams and Mr. Goldtooth agreed to write a comprehensive list of action items within recommendation 10 to be submitted to the NEJAC for inclusion in the final pollution prevention report.

2.3 Review of the Strategic Plan

The members of the subcommittee briefly discussed the subcommittee's strategic plan, including the subcommittee's goals and objectives as well as the development of proposed activities and target completion dates. Mr. Williams and Ms. Walker reviewed the four goals of the subcommittee for 2003 as outlined in the strategic plan. Exhibit 6-3 presents the four goals of the subcommittee to be pursued during 2003 and 2004.

The members of the subcommittee agreed to meet in 2003 despite the fact that they would not be meeting with the NEJAC for a year and a half. The 2003 meeting would allow Mr. Williams and new subcommittee members to become familiar with the goals and operations of the subcommittee.

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the Indigenous Peoples Subcommittee.

3.1 Presentation About the Tribal Wind Power Demonstration Project Plan

Mr. Robert Gough, consultant with the Rosebud Sioux Tribe (RST) & the Intertribal Council on Utility Policy (COUP), provided background information about the Tribal Wind Power Demonstration Project, which advocates tribal development of wind resources on Indian reservations in the northern Great Plains. Mr. Gough explained that the demonstration project is the first phase of the Environmental Justice Revitalization Project, a grassroots initiative intended to realize tribal aspirations for community revitalization.

Mr. Gough stated that the Tribal Wind Power Demonstration Project encourages the development of wind energy generation on Indian reservations as a viable strategy for community revitalization through the development of sustainable tribal economies. He added that the project would address past and ongoing environmental injustices that he said have resulted from the building of mainstream dams on the Missouri River. Mr. Gough stated that the project is an opportunity for tribes to control the development of energy sources and benefit from the management of such sources.

Following the presentation, Mr. Goldtooth pointed out that the draft pollution prevention report includes an unfinished section addressing energy issues to which the subcommittee can provide additional text advocating tribal energy management as part of pollution prevention efforts. Mr. Gough provided a written statement that he offered for use in completing that section.

Mr. Gogal noted that the wind power demonstration project is one of 15 projects identified for the second round of projects being considered by the Interagency Working Group on Environmental Justice (IWG) chaired by Mr. Charles Lee, EPA OEJ and DFO of the NEJAC Executive Council. If the project were to be selected as a finalist, Mr. Gogal explained, the project would be funded by EPA and the tribes would begin to implement the first phase of the project.

Mr. David Ullrich, EPA Region 5, stated that concern about climate change is worldwide, especially in the areas surrounding the Great Lakes. He asked Mr. Gough whether the demonstration project proposal had considered concerns about the aesthetics of

Exhibit 6-3

INDIGENOUS PEOPLES SUBCOMMITTEE STRATEGIC PLAN GOALS FOR 2002 THROUGH 2004

1. Assist the NEJAC in providing recommendations and advice to EPA on the development and implementation of EPA policy, guidance, activities, and protocol as well as environmental legislation and regulations to help achieve environmental justice for Tribes and other indigenous peoples
2. Provide opportunities for representatives of Tribes, other indigenous peoples, and national, regional, and local tribal and indigenous organizations to bring their environmental justice concerns to the NEJAC's attention as it develops policy advice and recommendations for EPA to address those concerns
3. Provide recommendations and advice to the NEJAC and its subcommittees to ensure that environmental justice issues affecting, involving, or of concern to Tribes are addressed by EPA in a manner that fulfills the trust responsibility, respects tribal sovereignty and the government-to-government relationship, upholds treaties, and promotes tribal self-determination
4. Coordinate and collaborate with EPA-supported tribal organizations and the NEJAC and its subcommittees and workgroups to identify priority environmental and public health concerns of Tribes and other indigenous peoples and determine ways that EPA can address these issues

large wind turbines, noise pollution, and hazards to bird populations. Mr. Gough answered that such potential problems arising from the project had been considered and addressed in the proposal. For example, he said, to address the aesthetic concerns, the project would include a screening process giving tribes the opportunity to oppose construction of the wind turbine near their villages. He added that results from a survey had shown that tribes are receptive to the construction of such equipment and any possible resultant noise because the project would give them a sense of ownership and independence. He acknowledged that birds could be at risk if the project were implemented but stated that the risk would be minimized by constructing in areas outside the migratory patterns of native birds.

3.2 Presentation by the Native Village of Selawik, Alaska

Mr. Benten Davis, water technician for the Native Village of Selawik, Alaska, provided information about the environmental impact of a new gravel road scheduled to be built that would lead from his village to a newly constructed landfill. He stated that the dust from the road would compound the problems that the village residents already have with silt deposits and melting permafrost, which can result in giant sinkholes and other damage to the local ecosystem. He argued that dust particulates from the road would pollute the air, causing health problems for the people in the village. Mr. Davis requested that the subcommittee speak on his behalf to the U.S. Department of Transportation (DOT) to advocate paving the road to minimize dust pollution. Mr. Williams asked whether anyone other than members of the village would use the road, and Mr. Davis replied that the residents of his village would be the only people using the road.

Clarifying why this issue is appropriate for consideration by the subcommittee, Mr. Gogal stated that building a gravel road rather than a paved one might cause adverse health effects such as asthma and other respiratory problems for the people in the village. He added that this issue is a pollution prevention issue and should be addressed by the members of the subcommittee.

3.3 Presentation by the Ponca Tribe of Oklahoma

Mr. Ron Sherron, Ponca Tribe of Oklahoma, described the environmental impacts caused by leaking wastewater lagoons located near his tribe. He explained that the company that owns the lagoons had operated two years without permits,

after which it received permits for two of the four lagoons. However, Mr. Sherron stated, there is evidence to prove that the permits were fraudulently obtained. The permits state that groundwater at the site is located 80 feet below ground surface (bgs), but actually, he explained, groundwater is located at 20 feet bgs. Mr. Sherron further stated that the lagoons for which the permits were obtained were faulty and that contaminants from the lagoons have leaked into the groundwater and contaminated the drinking water wells of 14 homes adjacent to the company's plant. The tribe had taken this issue to the Oklahoma state attorney general, the Oklahoma Department of Environmental Quality (Oklahoma DEQ), and EPA, urging them to withdraw the permits, he reported. Mr. Sherron then explained that a visible kill zone is present where the groundwater from the lagoon area reaches the Arkansas River. According to Mr. Sherron, no sampling has been conducted at the lagoon site, although Oklahoma DEQ has sampled seeps, lagoons, and pools in the area and has identified hydrocarbons in the water.

Mr. Sherron urged the subcommittee to communicate with EPA about this situation. Specifically, he asked for a letter of support from the NEJAC to the EPA Administrator on behalf of his tribe. He also requested that the letter propose an independent assessment of the situation with EPA support.

Mr. Suagee asked whether the area where the groundwater enters the river is tribal land. Mr. Sherron responded that ownership of this area is disputed and that tribal land lies immediately adjacent to the impacted area. Mr. Williams asked Mr. Sherron to provide the subcommittee with a more detailed written historical summary about the lagoon site so that the NEJAC could include the information in a letter to EPA.

Mr. Aragon commented that EPA should step in on behalf of the tribe and enforce a cleanup under the Safe Drinking Water Act because the Agency has exhibited little tolerance at similar sites for the type of contamination involved at the site described by Mr. Sherron. Mr. Gogal and Mr. Williams provided Mr. Sherron with information for several points of contact within EPA who would be able to help with his request for assistance.

3.4 Presentation by the Inupiat Community of the Arctic Slope

Ms. Edith Tegoseak, Inupiat Community of the Arctic Slope, first spoke about language barriers between government agencies and tribal communities. She

asked the subcommittee to encourage the use of broad terms (such as “community” rather than “village”) when tribal communities are discussed or referred to in text. She also advocated that agencies should ask questions of Alaskan Native participants while they are at meetings rather than later, when agency representatives have returned home and are more likely to not remember the context of previous conversations.

Ms. Tegoseak then described some of the environmental problems faced by the native people of Alaska. She noted that, often, roads into and out of villages are not available. Where roads are built, she added, Alaskan Natives must deal with dust control and air quality issues. She stated that EPA would be wise to include Alaskan communities in its discussion about pollution prevention because native people know firsthand what environmental problems exist. Ms. Tegoseak urged that if Alaskan Natives are included in the discussion, the information must be presented in a manner that they can understand.

Mr. Williams asked Ms. Tegoseak, as an Alaskan Native, to explain the difference between a village and community. Ms. Tegoseak responded that lands in Alaska are not referred to as “reservations,” but as “communities.” She then explained that the term “community” is used most often and that “villages” typically refers to places that have populations of less than 500 people.

Mr. Suagee, agreeing with Ms. Tegoseak, added that EPA generally is aware that Alaska’s culture, institutions, and ecosystems are different from other states but few people within EPA specifically understand how the culture and language are different. He expressed his appreciation to the Alaskan Natives present at the meeting for traveling to Baltimore, Maryland to help the subcommittee understand the issues facing Alaskan Natives.

3.5 Presentation by the Tanana Tribal Council of Tanana, Alaska

Ms. Kathleen Peters-Zuray, Tanana Tribal Council of Tanana, Alaska, provided information about a tribal environmental agreement submitted by members of her community to EPA. The agreement involved enforcement of environmental assessments and cleanups in her community. She began by describing the lifestyle of the people living in Tanana. She explained that the residents rely on salmon for a large part of their subsistence. Unfortunately, she explained, the salmon population had been seriously diminished in recent years by metals contamination in the Yukon River, from which people in Tanana also receive their drinking water.

Ms. Peters-Zuray requested that the subcommittee make a statement to EPA on behalf of the people of Tanana with regard to a multi-agency project that she currently manages. As part of that project, she reported that she had submitted a tribal environmental agreement that affirmed the government-to-government relationship between the Tanana Tribal Council and eight federal agencies, including EPA, the Federal Aviation Administration (FAA), the U.S. Air Force, and the Bureau of Indian Affairs (BIA). The agreement outlined seven steps that described how the parties to the agreement would work collaboratively to address the environmental problems in Tanana. The steps included identifying problems, setting priorities among the problems, agreeing on strategies for solving the problems beginning with the highest-priority problem, and implementing the most feasible cleanup strategies.

Ms. Peters-Zuray stated that after submitting the tribal environmental agreement to the federal agencies, she invited them to Tanana to meet with the people and sign the agreement. She explained that to date, she has received verbal agreements but no commitments in writing. She then stated that she needs the NEJAC to influence EPA and the other agencies to sign the agreement. She also advocated holding an environmental justice listening session in Alaska because, she said, Alaskans often cannot afford to attend listening sessions elsewhere in the United States and, therefore their concerns often are not considered in the discussions at those sessions.

Ms. Walker asked whether individuals own the land in Tanana or whether it is owned communally. Ms. Peters-Zuray responded that the land is owned communally but that members of the tribe recognize and respect the hunting grounds and individual lands of individual residents. Mr. Suagee urged Ms. Peters-Zuray to bring her concerns to the NEJAC Enforcement Subcommittee because it would be better able to address the problems that she had described.

3.6 Presentation about Supplemental Environmental Projects

For this presentation, members of the NEJAC Enforcement Subcommittee joined the members of the Indigenous Peoples Subcommittee. Ms. Shirley Pate, EPA Office of Enforcement and Compliance Assurance and DFO of the Enforcement Subcommittee, facilitated the joint session about supplemental environmental projects (SEP).

Ms. Rosemarie Kelley, EPA Office of Regulatory

Enforcement, gave a brief overview about SEPs. She explained that in a SEP, in-kind services are performed for, or cash contributions made to, a project designed to advance environmental interests. For these projects, an organization agrees to perform the project in partial settlement of an enforcement action, but the organization is not otherwise legally required to perform the project and retains no monetary benefit from the project. Mr. Gogal asked Ms. Kelley to describe ways that tribes can get involved with SEPs. She responded that tribes should reference the community involvement guidance for SEPs that recently was issued by EPA. She also stated that guidance for tribal involvement with SEPs is scheduled to be issued in the near future. She went on to describe two situations in which SEPs can be applied in tribal communities: (1) when a tribe is a plaintiff and (2) when a tribe is affected by a person already being sued.

Mr. Gogal asked Ms. Kelley to explain how SEPs have been implemented in tribal communities. Ms. Kelley responded that one common situation in which a SEP is implemented is when a company that had been found in noncompliance hires a tribe as a contractor. She explained that there must be a relationship between the requirements of a SEP and the affected community. For example, she stated, a community could be located along an impacted river several hundred miles downstream from the source of contamination and still participate in the implementation of a SEP. Mr. Williams asked Ms. Kelley who initiates a SEP. She responded that a SEP can be initiated by any source, however she added, the defendant company decides whether to conduct a SEP or pay the full penalty.

Mr. Williams asked whether SEPs are implemented in criminal cases. Ms. Kelley responded that SEPs only are used in civil cases. However, a member of the audience stated that she had knowledge of a criminal case in which SEPs had been implemented as a form of punishment during settlement.

Ms. Kelley urged the members of the Indigenous Peoples Subcommittee to submit through the NEJAC comments to EPA about the tribal guidance on SEPs. She also suggested that the subcommittee advocate educating tribal communities about SEPs and obtain feedback about the types of projects tribes would like to see. Ms. Kelley explained that it is important to get tribes involved early in the SEP process because often, a community does not get an opportunity to comment on such remedies until after a SEP has been implemented.

3.7 Presentation about the EPA Criminal

Investigation Division

Mr. Nick Swanston, Director of the EPA Criminal Investigation Division, made a presentation about the role of criminal enforcement in environmental justice. See Chapter 3 of this report for a summary of that presentation.

3.8 Presentation by the Native Village of Nowatak, Alaska

Ms. Hilda Booth, Native Village of Nowatak, Alaska, described the problems that her village has experienced with erosion. She explained that every year, the riverbank near her village erodes approximately five additional feet. When erosion first became a problem, she explained, the people in the village used logs and sandbags to control it. She reported that EPA had assured the tribe that the U.S. Army Corps of Engineers (USACE) would control the erosion by implementing a \$2 million project to block part of the river to divert the water in another direction. However, in the spring, the structure blocking the riverbank was washed away, she said, and now the tribe is back where it started, still looking for ways to get funding to control the erosion.

Ms. Booth and Mr. Francis Chin, Maniilaq Association, then described the problems that the village has faced as a result of the erosion. They explained that the dump site for the village used to be located next to the river. Over time, however, the erosion of the riverbank caused the contaminants at the dump site to leach into the river and to move toward nearby homes, she said. Ms. Booth went on to explain that a new dump site was built farther away from the river and that, in response to concerns about erosion, the U.S. Department of Housing and Urban Development has built new houses farther away from the river but closer to the new dump site. Ms. Booth added that the residents living in the new houses close to the dump site are beginning to develop health problems caused by the burning of wastes at the site.

Mr. Williams asked Ms. Booth what the USACE had done since the water diversion project failed. She responded that people in the village had asked the USACE to return to Alaska in the Spring but that USACE personnel had not. Mr. Gogal asked whether representatives of the EPA office in Alaska had made any contact with her tribe about the situation. Ms. Booth replied that EPA representatives had observed the dump site during the Spring and had been informed of the situation since then. Mr. Chin added that EPA now has said that it could offer no assistance because no funding currently is available.

Mr. Gogal asked about the size of the original dump site. Mr. Chin responded that the dump site occupies about 100 square feet but that the problem is the content of the site, not its size. Mr. Gogal replied that it might not cost much to remove the original and new dump sites and build a new one far away from the homes and the river. He added that EPA should conduct a cost analysis for that action and that the site might qualify for Brownfields redevelopment grants. Mr. Gogal assured Ms. Booth and Mr. Chin that he would contact EPA representatives in Region 10 to explain the situation and ask those representatives to contact Ms. Booth or Mr. Chin discuss the next plan of action.

Mr. Williams added that federal agencies, not tribes, are responsible for obtaining grants. He advised the tribe to begin by identifying which government agency is responsible for addressing the issue. Mr. Gogal cautioned that the tribe should not rely on government agencies to do the work to address the situation. He stated that the tribe should do what it could to make the situation better while and should also seeking help. There must be a commitment from the tribe, he added, to manage the situation so that it does not happen again.

4.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the Indigenous Peoples Subcommittee.

- ✓ Departing members of the subcommittee will provide pertinent contact information to new members
- ✓ Prepare a comprehensive list of new action items for the NEJAC to consider when it reviews the draft pollution prevention report
- ✓ Prepare a letter to the chair of the NEJAC urging that the council (1) consider holding an environmental justice listening session in Alaska and (2) get a response from the EPA Indian Coordinator for that area
- ✓ Encourage more interaction between the Enforcement Subcommittee and the Indigenous Peoples Subcommittee. Ms. Pate and Mr. Williams will develop questions to be addressed in a joint conference call between the two subcommittees.
- ✓ Consider establishing a new organization composed of tribal law enforcement officers
- ✓ Develop a list of experts within indigenous communities to encourage the involvement of such communities in international issues
- ✓ Track points of contacts so that members of the community can be quickly directed to the appropriate person. During the next conference call, the subcommittee will discuss ways to implement this new policy.