

EXECUTIVE SUMMARY

INTRODUCTION

This executive summary presents highlights of the sixteenth meeting of the National Environmental Justice Advisory Council (NEJAC), held December 3 through 5, 2001 at the Renaissance Madison Hotel in Seattle, Washington. Each of the six subcommittees of the NEJAC met for a full day on December 5, 2001. On December 4, the NEJAC hosted a public comment period that focused on fish consumption and contamination of fish populations. Approximately 300 persons attended the meetings and the public comment period.

The NEJAC is a federal advisory committee that was established by charter on September 30, 1993 to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. Ms. Peggy Shepard, West Harlem Environmental Action, serves as the chair of the Executive Council of the NEJAC. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, EPA Office of Environmental Justice (OEJ), serves as the Designated Federal Officer (DFO) for the Executive Council. Exhibit ES-1 lists the chair, the vice-chair, and the DFO of the Executive Council, as well as the individuals who serve as chairs and vice-chairs of the six subcommittees of the NEJAC and the EPA staff appointed to serve as DFOs for those subcommittees.

OEJ maintains transcripts and summary reports of the proceedings of the meetings of the NEJAC. Those documents are available to the public upon request. The public also has access to the executive summaries of reports of previous meetings, as well as other publications of the NEJAC, through the World Wide Web at <http://www.epa.gov/oeca/main/ej/nejac/index.html> (click on the publications icon). The summaries are available in both English and Spanish.

REMARKS

Mr. Ron Kreizenbeck, Deputy Regional Administrator, EPA Region 10, welcomed the participants in the meeting of the NEJAC to Seattle. He stated that EPA Region 10 includes the states of Washington, Oregon, Idaho, and Alaska and is home to many diverse, low-income communities; communities of color; and more than 270 native tribes, the members of which subsist on fish, plants, and wildlife. The degradation of habitats and depletion of resources threatens the very way of life of those people, he continued. Mr. Kreizenbeck then stated that issues related to subsistence life styles must be addressed to ensure equal environmental protection, regardless of race, income, culture, or ethnicity.

Exhibit ES-1

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL CHAIRS AND DESIGNATED FEDERAL OFFICERS (DFO)

Executive Council:

Ms. Peggy Shepard, **Chair**
Mr. Charles Lee, **DFO**

Air and Water Subcommittee:

Ms. Annabelle Jaramillo, **Chair**
Ms. Eileen Guana, **Vice-Chair**
Ms. Alice Walker, **co-DFO**
Dr. Wil Wilson, **co-DFO**

Enforcement Subcommittee:

Ms. Savonala Horne, **Chair**
Mr. Robert Kuehn, **Vice-Chair**
Ms. Shirley Pate, **DFO**

Health and Research Subcommittee:

Ms. Rose Marie Augustine, **Chair**
Ms. Jane Stahl, **Vice-Chair**
Ms. Brenda Washington, **co-DFO**
Ms. Aretha Brockett, **co-DFO**

Indigenous Peoples Subcommittee:

Ms. Jennifer Hill-Kelly, **Chair**
Ms. Jana Walker, **Vice-Chair**
Mr. Daniel Gogal, **DFO**
Mr. Bob Smith, **alternate-DFO**

International Subcommittee:

Mr. Alberto Saldamando, **Chair**
Mr. Tseming Yang, **Vice-Chair**
Ms. Wendy Graham, **DFO**

Puerto Rico Subcommittee:

Dr. Graciela Ramirez-Toro, **Chair**
Ms. Teresita Rodriguez, **DFO**

Waste and Facility Siting Subcommittee:

Ms. Veronica Eady, **Chair**
Mr. Reiniero Rivera, **DFO**

Governor Gary Locke, (D), sent greetings to the members of the NEJAC, welcoming them to Seattle. In his letter, Governor Locke emphasized that the issues related to water quality and fish consumption were especially important to the residents of Washington. Exhibit 1-2 in Chapter One of this report contains a copy of that letter.

Ms. Rosa Franklin, State Senator, Washington State Legislature and former member of the NEJAC, commented on the timeliness of the current meeting of the NEJAC, held to discuss the relationship between among water quality, fish consumption, and environmental justice. While contaminated air and toxic streams affect all citizens, she continued, the changing demographics in the state of Washington and the Pacific Northwest have brought a new urgency to the issue of fish consumption. Therefore, she said, there is an urgent need in the region to further identify and quantify the types and magnitudes of risks to communities and tribes that subsist on wild fish, plants, and other wildlife. Ms. Franklin stressed that the activities of the NEJAC could have a long-term effect on the health of those communities.

Ms Velma Veloria, Washington State Representatives and former member of the NEJAC, explained that the state of Washington had worked over the past three years to ensure that water is clean and that fish populations continue to flourish in the state of Washington. She discussed environmental justice legislation passed in the state, including a bill that charged the state's Department of Ecology and Department of Health with jointly preparing a report on environmental risks faced by low-income and minority groups; legislation that reformed the way work at cleanup sites is taxed; and legislation that requires the Department of Health to examine the health effects of noise, particularly in the vicinity of the city of Seattle's international airport.

Ms. Yalonda Sinde, Community Coalition for Environmental Justice, stated that her organization had been the first non-profit environmental justice group in the Seattle area. She then expressed her excitement about the opportunity to bring issues related to fish consumption and water quality before the NEJAC during the current meeting.

Mr. Moses Squeochs, Yakima Nation and member of the Indigenous Peoples Subcommittee, stated his appreciation for the efforts of the NEJAC, but he also expressed concern that such a federal advisory committee is needed to carry out the laws related to environmental justice enacted by the Congress of the United States. Continuing, he said that the "hunter-gatherer" way of life continues to be practiced and that there is a strong intent to preserve that way of life. He then stated that the search for justice, fairness, and equality in relation to environmental issues must continue.

REPORTS AND PRESENTATIONS

The members of the Executive Council received the following presentations:

Members of the NEJAC Fish Consumption Work Group provided an update on the NEJAC's *Draft Fish Consumption Report*. During their presentation, the members of the work group reviewed the findings of the work group, as outlined in the *Draft Fish Consumption Report* that had been compiled in preparation for the December 2001 meeting of the NEJAC. The members of the Fish Consumption Work Group also presented a number of "overarching recommendations" based on the conclusions presented in the draft report. The members of the NEJAC then discussed the report and the recommendations at length, suggesting revisions in the draft report and identifying additional recommendations. Members of the NEJAC requested that final comments on the *Draft Fish Consumption Report* be submitted to OEJ by January 31, 2002. The anticipated date for completion of the report is March 15, 2002. Mr. Lee stated that a conference call was to be scheduled with affected communities, tribes, and stakeholders to discuss the report.

Ms. Shepard presented the NEJAC's *Strategic Plan* to the members of the Executive Council. The plan incorporates the issues raised and conclusions reached during the special business meeting of the Executive Council of the NEJAC, held in Washington, D.C. in August 2001, and outlines the strategy of the NEJAC for: (1) redesigning its activities to better fulfill its role as an advisor; (2) collaborating with EPA to provide alternative mechanisms through which communities can bring site-specific issues to the attention of EPA; and (3) developing, through a deliberative process that involves all stakeholders, an effective work product that addressed issues related to environmental justice that are of principal concern

to communities. The *strategic plan* will guide the work of the NEJAC through September 27, 2003, Ms. Shepard announced.

Mr. Lee identified a series of tasks and provided assignments to members of the NEJAC to assist in implementing the strategic plan. The tasks are:

- Finalization of the NEJAC Policy Advice Development Model
- Finalization of the NEJAC Model for incorporating community issues and concerns into the NEJAC policy dialogue
- Development of definitions of consensus and consensus-building
- Development of a scoping report from the Ad Hoc Scoping Work Group on Cumulative Risk Issues

WORK GROUP REPORTS AND COMMENTS

The members of the Executive Council of the NEJAC received reports and comments from the following individuals:

- Ms. Eileen Guana, Southwestern University School of Law and Vice-Chair of the Air and Water Subcommittee, made a presentation on the Interagency Environmental Justice Implementation Work Group.
- Mr. Brandon Carter, EPA Federal Facilities Restoration and Reuse Office (FFRRO), provided an update on the Federal Facilities Work Group.
- Ms. Wilma Subra, Louisiana Environmental Action Now, member of the Air and Water Subcommittee, and chair of the newly formed Pollution Prevention Work Group, presented an update on the status of the development of the work group.

Mr. Lee reported that the Federal Facilities Work Group will work in coordination with and report to the NEJAC Waste and Facility Siting Subcommittee because the primary support for this work group is being provided by the Office of Solid Waste and Emergency Response (OSWER), which also supports that subcommittee. OSWER has committed to adding another member to the subcommittee to provide interface with the work group, he said.

Other presentations received by the Executive Council of the NEJAC were:

- Mr. Barry Hill, Director, EPA OEJ, reported on the status of EPA's efforts to implement recommendations included in the report of the Environmental Law Institute (ELI) report titled *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities*. The ELI report reviews EPA's major environmental regulations that govern air and water quality, waste management, use of pesticides and other chemicals, and the public's right to know. The report identifies specific statutory authorities that can be used to promote environmental justice in the full range of EPA program functions, including the establishment of standards and the permitting process.
- Ms. Ann Goode, Senior Consultant, Center for the Economy and Environment, National Academy of Public Administration (NAPA), made a presentation on NAPA's research and evaluation of EPA's efforts to address the widely recognized fact that low-income communities and communities of people of color that are exposed to significantly greater environmental and public health hazards than other communities face. NAPA's research and associated recommendations, reported Ms. Goode, are presented in a report titled *Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities is Integral to the Agency's Mission.* In the report, she continued, NAPA recommends that EPA make changes in four distinct areas related to environmental justice: leadership, permitting procedures, setting of priorities, and public participation.

- Mr. Martin Halper, Senior Science Advisor, EPA OEJ, provided an overview of EPA's draft *Framework for Cumulative Risk Assessment* prepared by the Cumulative Risk Technical Panel of the EPA Risk Assessment Forum, a standing committee of senior EPA scientists. The purpose of this briefing is to help NEJAC prepare to address the issues of cumulative risk, which will be the policy issue area to be discussed in 2003.

VIRTUAL TOUR AND RELATED DIALOGUE

Members of the NEJAC participated in a "virtual tour" dialogue of selected communities that are affected by issues related to environmental justice, fish consumption, and water quality. Representatives of five community organizations presented information about the contamination of waterways on which Native Americans and impoverished people depend for survival and the loss of Native American heritage and culture, as well as issues related to the exposure of farm workers to pesticides and herbicides. The topics discussed are described briefly below.

Mr. Frank Roberts, Coeur d'Alene Tribe, Idaho, discussed the exposure of the Coeur d'Alene Tribe to contamination caused by strip mining practices carried out on properties located near tribal lands. Mr. Roberts explained that, although contamination currently is being cleaned up, preservation of tribal culture has been threatened because the tribe cannot use the land for traditional purposes.

Mr. Daniel Morfin, Granger, Washington, explained that the application of herbicides and pesticides for agriculture use is contaminating rivers and exposing farm workers to contaminants. The incidence of respiratory ailments in the Granger area is high, and existing regulations are not being enforced, said Mr. Morfin.

Ms. Jeri Sundvall, Environmental Justice Action Group of Portland, Portland, Oregon, pointed out the high rate of cancer among Native American fishermen. In addition, she charged, Native Americans are being robbed of their heritage and are expected to become assimilated into the broader culture.

Ms. Rosemary Ahtuanguak Inupiat Community of Arctic Slope, Barrow, Alaska, expressed concern that state agencies often "favor profit" over protection of the interests and concerns of tribes. Ms. Ahtuanguak explained that, although federal agencies have declared fish populations safe to eat, the methodology for assessing risk does not consider the higher-than-average rates of fish consumption among Native Americans.

Ms. Lee Tanuvasa, Korean Woman's Association, Tacoma, Washington, reported that her organization was conducting a study to determine the safety of shellfish consumed by communities of Asian Pacific Island people. She requested assistance in overcoming the language barrier and in determining how best to present the findings of the study to the communities affected by the issue.

PUBLIC COMMENT PERIOD

The Executive Council of the NEJAC hosted a public comment period on December 4, 2001, at which approximately 29 people participated. Described below are a summary of key concerns citizens expressed during the evening session.

- A majority of the public comments focused on the issue of contaminated waterways and the land on which Native Americans and other impoverished people depend for living a subsistence life style. Commenters pointed to rates of cancer and respiratory ailments among Native American populations that are higher than the rates among non-Native populations in the United States. The commenters stated that the inability of Native peoples to "live off the land" has led to a decline in the transfer of spiritual and cultural values from generation to generation. The best way to reduce contamination in waterways is to eliminate the source of the pollution, declared a number of commenters.
- Several commenters spoke about the ineffectiveness of risk assessments. Risk assessments, as currently conducted, do not account for the cumulative effect of numerous chemicals on the environment, they stated. Rather, those risk assessments examine only a single chemical, they

claimed. Risk assessments focus only on cancer and fail to consider other health issues, they added. Further, they do not account for the effect of chemicals on sensitive populations, several commenters noted.

- A number of commenters criticized EPA for failing to make an adequate effort to hold the U.S. Department of Defense (DoD) accountable for the contamination of communities located on or near military installations. EPA is not enforcing existing environmental regulations that govern DoD facilities, the commenters claimed.

OTHER CONCERNS AND COMMITMENTS OF THE NEJAC

During their meeting, the members of the Executive Council of the NEJAC recommended that a work group be established to address communications within the NEJAC and between the NEJAC and EPA program offices. In addition, the members agreed to review and provide comments on the *Framework for Cumulative Risk Assessment*. Formal development of the guidance will begin in 2002.

SUMMARIES OF THE SUBCOMMITTEE MEETINGS

Summarized below are the deliberations of the subcommittees of the NEJAC held on December 5, 2001.

Air and Water Subcommittee

The members of the Air and Water Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. James Hanlon, EPA Office of Science and Technology (OST), provided preliminary comment on the feasibility of implementing the recommendations presented in the NEJAC's *Draft Fish Consumption Report*. Mr. Hanlon commended the Fish Consumption Work Group for its efforts and emphasized that the availability of resources for the most part will determine what EPA can accomplish. Mr. Hanlon also reviewed the logistics associated with the completion of the report and its submittal to the EPA Administrator.

Mr. Lee presented an overview of and led discussions about the NEJAC *Strategic Plan*. He also discussed the meeting of the NEJAC scheduled for December 2002 that will focus on issues related to pollution prevention and environmental justice.

Mr. Jeff Bigler, EPA OST, provided to the Fish Consumption Work Group an update on plans to revise volume four of EPA's *Guidance Document for Assessing Chemical Contamination Data for Use in Fish Advisories* to incorporate awareness of issues related to environmental justice.

Mr. Peter Murchie, EPA Region 10 Office of Air Quality Planning and Standards (OAQPS), presented to the Air Toxics Work Group an overview of EPA's air toxics program.

The members of the subcommittee discussed the need to establish priorities among the recommendations presented in the *Draft Fish Consumption Report* to (1) help EPA focus its efforts and (2) avoid overwhelming the agency with numerous recommendations. The members agreed that, although the list of recommendations may appear lengthy, individual items can be grouped under a few overall themes.

The members of the subcommittee discussed the potential effect of the *NEJAC Strategic Plan* on the manner in which the subcommittee conducts its business. The members agreed that the subcommittee must focus its efforts on only a few key issues, rather than attempting to "cover the whole waterfront" as it had done in its early days. The members also agreed to explore methods of evaluating the effectiveness of the subcommittee's work groups on specific issues.

The members of the subcommittee emphasized that the work of the Fish Consumption Work Group must be used as a model to guide planning for the meeting of the NEJAC to be held in December 2002. The members also requested that, in preparation for that meeting, the newly formed Pollution Prevention Work

Group should examine issues related to (1) environmental restoration, (2) clean production, (3) low-impact development, and (3) the costs and benefits of pollution prevention.

Members of the Fish Consumption Work Group discussed the plans of EPA's Office of Water to revise volume four of its *Guidance Document for Assessing Chemical Contamination Data for Use in Fish Advisories*. The members of the work group agreed to (1) review the document and provide comment on it to EPA and (2) identify and recommend individuals to serve on various EPA stakeholder work groups and as technical consultants for the issuance of fish advisories. The members of the subcommittee also discussed the future of the Fish Consumption Work Group, once the *Draft Fish Consumption Report* has been completed. The members recommended that the work group expand its scope to explore other issues related to water quality, such as total maximum daily loads (TMDL), confined animal feeding operations (CAFO), and water permits.

The Permitting and Public Utilities work groups participated in a joint session, during which they agreed to combine the two groups into a single work group. The members of the work groups discussed EPA's White Paper No. 3 on flexible permitting, a report on a new source review study prepared by EPA's Office of Air and Radiation (OAR), and other issues related to the permitting process. The members of the newly combined work group agreed to develop a document that will describe "best practices" for permitting that are sensitive to environmental justice issues, as well as review and provide comment on the report on a new source review study the release of which is expected in January or February 2002. Members of the work group also expressed concern that staffing of the work group was inadequate, in light of the number of issues the group had taken under consideration.

The members of the Air Toxics Work Group discussed EPA's air toxics program. The members agreed to review and provide comment on EPA OAR's *Work Plan for the National Air Toxics and Integrated Air Toxics Strategy*.

Health and Research Subcommittee

The members of the Health and Research Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Patrick C. West, Emeritus Faculty, Environmental Sociology, School of Natural Resources and Environment, University of Michigan, commented on research needed in the realm of environmental justice and application of that research. Mr. West stated that lack of research should not be a barrier to action, that existing information can be used, and that current research must be investigated to identify the information to support action. Mr. West stressed that systematic and qualitative assessment of both cumulative effects and co-risk factors must be included in the assessment of risks for such sensitive groups as communities of color, low-income communities, and Native American tribes.

Ms. Tala Henry, Mid-Continent Ecology Division, EPA National Health and Environmental Effects Research Laboratory, provided information about the parameters that are factors in the calculation of risk. She emphasized that there is no specific procedure for the calculation of risk and that the default parameters are not applicable under certain circumstances, such as assessment of the risks to sensitive groups. Therefore, she explained, partnerships between experts and communities must be fostered so that defensible and appropriate risk parameters can be established.

Mr. Wardner G. Penberthy, EPA Chemical Control Division, presented an overview of Section 4 of the Toxic Substances and Control Act, which focuses on chemical testing. He provided detailed information about EPA's High Production Volume (HPV) Challenge program, a voluntary testing program for facilities that produce large volumes of chemicals. The goal of the program is to increase the availability to the public of baseline data on the effects on health and the environment for approximately 2,800 HPV chemicals, reported Mr. Penberthy.

Mr. Jeffrey Morris, EPA Office of Science Policy, Office of Research and Development (ORD), recommended a change in the structure of the subcommittees of the NEJAC. Citing EPA's goals related to the Government Performance and Results Act (GPRA), Mr. Morris explained that, because health and

research issues related to environmental justice cross boundaries among the various subcommittees, such issues should be handled by a special interest work group, rather than an individual subcommittee.

The members of the subcommittee conducted a number of discussions about the accurate calculation of risk for sensitive groups. The specific recommendations they agreed upon are:

- It is essential that various factors related to cultural and spiritual concerns be included in models for assessing risk. In addition, such factors as culture shock and cultural disintegration must be addressed.
- Parameters used in the calculation of risk must be specific to each particular community. Parameters that currently are not included in risk assessment models include peak exposure and consumption of whole fish, rather than the more widely used parameters of chronic exposure and consumption of only the fillet of a fish.
- The types of foods identified as components of a subsistence diet should include many more foods that are not consumed by the general population.
- Co-risk and cumulative risk factors should be used as a more accurate gauge of “true risk” because people are exposed to more than one chemical at a time.
- If the recommendations of the subcommittee on the subject of calculation of risk are to be adopted, the definitions of “health” for a community and of what is to be considered “normal” must be reconsidered.

The subcommittee recommended that the NEJAC consider the subsistence consumption needs of such groups as Native Hawaiians and people in the Virgin Islands who were not considered as the report was developed. The members of the subcommittee agreed that inclusion of those groups would help achieve recognition of cultural groups that traditionally have been ignored in research related to environmental justice.

The members of the subcommittee agreed that the need for research often is used as a barrier to action and acknowledged that the information available is adequate to support the initiation of work. There is an abundance of information that, although originally was not applied to issues of environmental justice, can be reevaluated for its significance in the field of environmental justice, they noted. In addition, the members recommended that extensive investigation of previous research be conducted to identify available resources.

The members of the subcommittee agreed that the evaluation of HPV chemicals and the distribution to the public of the baseline health data are crucial actions. Although some members expressed concern about whether industry could be trusted to report reliably on production, the members agreed that there are many safeguards related to testing and that the penalty for falsification is severe.

The subcommittee recommended increased cooperation between government agencies and local organizations in sharing data and calling upon the expertise of indigenous organizations. Noting that local people have first-hand knowledge and understanding of their communities and can gather information more efficiently than outsiders, the members recommended that research be best conducted by local groups, with the assistance and support of EPA.

Indigenous Peoples Subcommittee

The members of the Indigenous Peoples Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Merv George, Administrator, Klamath River Inter-Tribal Fish and Water Council and member of the Hupa Tribe, provided background information about the history of the council, outlined the five issues the council addresses, and submitted his recommendations for improving the *Draft Fish Consumption Report*.

He stressed that the Hupa and Yura tribes constantly must balance environmental and economic issues when developing standards for water quality.

Ms. Gillian Mittelsteadt, Environmental Policy Analyst, Tulalip Tribes Natural Resource Program, and Mr. Daryl Williams, Developer, Tulalip Tribes Natural Resource Program, presented the results of their study that examined the consumption by members of the Tulalip Tribe of fish taken from Puget Sound. Ms. Mittelsteadt described the statistical framework of the study and outlined the benefits and lessons learned through completion of the study. Mr. Williams discussed the problems that arise because, he said, programs allow the trading of pollution emissions credits. Mr. Williams emphasized the negative effects such programs have on tribal communities.

Mr. Tom Goldtooth, Executive Director, Indigenous Environmental Network and former chair of the Indigenous Peoples Subcommittee, presented his recommendations for improving the *Draft Fish Consumption Report*. He urged that the NEJAC consider the negative effects of radioactive contaminants on habitats and focus attention on precautionary actions, rather than traditional risk assessment. He also recommended that the NEJAC promote outreach to tribal communities to help those communities develop a better understanding of the mission and responsibilities of the NEJAC.

Dr. Roseanne Lorenzana, liaison between Region 10 and EPA ORD, presented a list of five specific recommendations for consideration by the subcommittee. She also presented the report *Comparative Dietary Risks: Balancing the Risks and Benefits of Fish Consumption*, for which a risk assessment model was used to define the conditions under which consumption of fish is a healthful dietary choice. She urged that the subcommittee advise EPA to work with tribes to develop guidelines on cumulative risk that are appropriate to the needs of tribes.

Ms. June Martin, Alaska Community Action on Toxics, began her presentation by telling the story of Annie Aloa, a health aide in her village who had spoken out on behalf of the tribal community and who had been awarded a grant by the National Institute for Environmental Health Sciences (NIEHS) to survey the health problems of members of the tribe. Ms. Martin then discussed the failure of the U.S. Army Corps of Engineers to clean up the military facility located near her village.

Ms. Ahtuanguaruak, who is a native of the village of Nuigant, Alaska, expressed her concern about and recommendations for improving the representation of Alaskan Natives on the Indigenous Peoples Subcommittee. She also urged that, in the *Draft Fish Consumption Report*, the subcommittee address the tribal lands of Alaskan Natives, such as Prudhoe Bay. Residents of those lands, she pointed out, rely on fishing and whaling for subsistence.

Ms. Pam Miller, Alaska Community Action on Toxics, expressed concern about the health of Alaskan Natives tribal communities that are located on or near sites that have been abandoned by DoD. She also voiced the concern of tribes about persistent organic pollutants (POP) that originate thousands of miles south of Alaska, travel northward, and accumulate over northern Alaska. She requested that the subcommittee advise EPA to hold DoD accountable for previous contamination and to focus on the phased elimination of POPs.

Mr. Enoch Sheidt, Subsistence Coordinator, Maniilaq Association, and Mr. Francis Chin, Environmental Justice Coordinator, Maniilaq Association, emphasized the importance of a subsistence lifestyle to Alaskan Natives who are nomadic and migrate to locations where food is available. Consequently, the presenters reported, tribes do not recognize the concept of "on reservation" and "off reservation." To an Alaskan Natives, fishing is not merely a method of obtaining food, but rather is a spiritual experience, they explained. In addition, Mr. Chin stated that the unemployment rate in the Indian community is 90 to 95 percent. Therefore, a subsistence lifestyle is an essential way of life that cannot be compromised, he said.

Mr. Art C. Ivanoff, Native Village of Unalakleet, expressed his concern about the effects of climate change on the health of Alaskan Natives. Mr. Ivanoff requested that the *Draft Fish Consumption Report* include climate change as a factor that affects the quality of fish. Climate change has depleted greatly the running stock of salmon, while the migration patterns of salmon and animals used for food have not been studied sufficiently, he explained.

Ms. Cheryl Steele, Elem Indian Colony, stated that fish advisories do not address issues related to the consumption of fish sufficiently. She urged that EPA provide indigenous peoples better guidance about contaminated fish populations and that the agency work with local communities to eliminate sources of contamination.

Mr. Kevin McKernan, Yurok Tribe, urged EPA to acknowledge those tribes that have developed and adopted water quality standards. He stated that the use of EPA core standards might direct resources away from tribes that have their own standards.

Ms. August Rozema, Swinomish Tribe, stated that the subcommittee and the NEJAC must “spread the word” about its future meetings. She also encouraged the subcommittee to clarify the definition of the word “fish” provided in the *Draft Fish Consumption Report* to include both fin- and shellfish.

The members of the subcommittee requested that the Alaskan Native community provide them more information about issues related to fish consumption and water quality standards. After listening to testimony offered by representatives of Alaskan Native communities, the members recognized that the concerns of all indigenous peoples throughout the world, including those of Hawaii and the Caribbean, also must be represented equally.

The members of the subcommittee discussed the effectiveness of risk assessment in adequately addressing issues related to fish consumption, noting that traditional risk assessment models currently do not include reference to pollution prevention and sustainability. The members recommended that a “precautionary principle” approach to risk assessment replace the traditional model to account for the benefits of preservation. The members also noted that risk assessment currently does not take into account the fact that the variable average grams per day (gpd) used in most models cannot be extrapolated to the lifestyle of members of indigenous communities, who consume many more fish in a much shorter period of time than do members of other groups, thereby increasing their risk to a level disproportionate to that affecting other groups.

The members expressed concern that fewer than 20 WQSs created by individual tribal communities have been approved. Additional discussion focused on the difficulties tribal communities encounter in their efforts to achieve the standards outlined in the WQSs because of economic setbacks.

The members of the subcommittee agreed to advise the NEJAC to urge EPA to augment its education programs for tribal communities by providing more information about the role of the NEJAC. In addition, the members recommended that tribes be included regularly in the deliberative process and that the subcommittee change its role from that of “consultation” to that of “collaboration,” a role that would include deliberative dialogue. Such a change would improve communication between the NEJAC and indigenous communities, they suggested.

International Subcommittee

The members of the International Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Goldtooth discussed the need to focus on issues of environmental justice related to transborder matters that affect the First Peoples of North America and indigenous tribes in the Great Lakes basin. He reported that First Nations and tribes in the Great Lakes basin suffer a disproportionate share of environmental problems associated with the transport of POPs. The effects of POPs are intensified among people who rely on a subsistence diet, he pointed out.

Ms. Katy Taylor, Assistant Director of Community Health Services, Alaska Native Tribal Health Services, presented an overview of recent studies of the effects of POPs on the health of Alaskan Native women and children who rely on subsistence consumption as the mainstay of their diets.

Ms. Miller provided information about the movement of POPs, facilitated by air and ocean currents, into Alaska and the Arctic region. She also discussed contamination of DoD sites in Alaska.

Ms. Amy Fraenkel, EPA Office of International Activities (OIA), addressed the transborder risks associated with exposure to POPs. She also presented information about progress toward completion of the Global Persistent Organic Pollutants Treaty (also known as the Stockholm POPs Convention). She emphasized that environmental justice groups must work to influence the process of planning how the United States will implement the provisions of the treaty.

Ms. Eileen Henninger, EPA OIA, stated that it is important that the NEJAC provide comment to OIA on issues related to biodiversity. Some of the work in that area will bring about major worldwide reductions in the use of key harmful chemicals in farming and industrial applications, she said.

Mr. Lionel L. Brown Jr., Senior Information Management Officer, EPA OIA, presented an update on the efforts of OIA to promote environmental awareness in Africa. Many areas in Africa are experiencing rapid urbanization, he reported, adding that OIA has been working to educate local communities about issues related to environmental justice. Mr. Brown also emphasized the heavy reliance on fish in the diets of African people.

Mr. Enrique Manzanilla, Director, Cross Media Division, EPA Region 9, provided background information about EPA's work related to the border areas of the United States and Mexico. He reviewed the activities undertaken by Region 9 during the two years since the Roundtable on Environmental Justice on the U.S.-Mexico Border was held in San Diego, California and reported on the success of outreach efforts conducted by the Region 9 Border Liaison Office, located in San Diego.

Ms. Olivia Balandran, Office of the Regional Administrator, EPA Region 6, presented an update on the outreach activities of the region's border office. She reported that the recent activities of that office included efforts to respond to the recommendations presented at the roundtable meeting on the U.S.-Mexico border.

Ms. Nelda Pérez, Small Grants Coordinator, EPA Region 6 OEJ, presented information about activities related to grants awarded to groups located in the U.S.-Mexico border area.

Mr. Richard Moore, Executive Director, Southwest Network for Environmental and Economic Justice, and former chair of the NEJAC, described letters his organization had written to EPA Administrator Christine Todd Whitman and President Bush. Mr. Moore discussed the effects of increased militarization along the U.S.-Mexico border that has taken place since the terrorist attacks of September 11, 2001. He also requested that the subcommittee complete the reports produced for the Roundtable on Environmental Justice on the U.S.-Mexico Border and prepared by the NEJAC Farm Worker Work Group.

Mr. Apichart Thongyou, Secretary General, Thailand Research and Action for Development Institute, discussed efforts undertaken in Thailand to reduce adverse effects on conditions of concern to the environmental justice community that are caused by modernization and the development of heavy industry. He and several other members of the delegation of visitors from Thailand discussed several studies that examined heavy contamination by industry and its effect on fishermen who rely on fishing for subsistence. Mr. Thongyou also described the work of EPA and its counterpart in Thailand to create a public participation process, reauthorize environmental laws, and create a new ministry for the environment.

The members of the subcommittee also participated in discussions related to various topics:

- The members of the subcommittee identified similarities in the shortcomings of enforcement and public participation efforts in Thailand and other nations. They discussed the value of, and the need for, an international environmental network to support the transfer of information and data.
- The members of the subcommittee concluded that the NEJAC and OIA should collaborate to build a strong relationship between the work of OIA in Africa and the environmental issues addressed by the NEJAC.
- The members of the subcommittee discussed OIA's strategy of deploying culturally diverse teams to represent EPA in international discussions. The members concluded that such a strategy is

essential in engaging communities in discussions of treaties and encouraging collaboration between the United States and other countries in the sharing of resources.

- The members agreed that practices that contaminate water in one country and thereby affect the health of residents of another country illustrate the “interconnectedness” of the global environment. The members noted the similarity of the predicaments of subsistence fisherman in the United States and other nations.
- The members of the subcommittee concluded that there is a significant opportunity for the NEJAC to participate in the development of the plan for the implementation by the United States of the Stockholm POPs Convention. They also agreed to provide comment to OIA about the level of implementation of the treaty. In addition, the members discussed the need to include in the treaty provisions for a system for tracking the movement of POPs across the borders of the United States.

Waste and Facility Siting Subcommittee

The members of the Waste and Facility Siting Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Michael Shapiro, Deputy Assistant Administrator, EPA Office of Solid Waste and Emergency Response (OSWER), and Ms. Linda Garczynski, EPA OSWER, provided an overview of the direction new senior managers plan for OSWER. They discussed the vision, mission, priorities, and values of the office, reviewed changes that are taking place, and identified several key priorities for OSWER:

- Pursuit of the One Cleanup Program Initiative, which is designed to make the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs more consistent with one another and to increase the right-to-know component of each.
- Establishment of revitalization and reuse as core issues of the OSWER action agenda.
- Implementation of recycling and pollution prevention programs to encourage partnerships and demonstration pilot projects in the area of reduction in source contamination.
- Implementation of the Retail Initiative, which is designed to increase focus on public involvement in the use of solid and hazardous waste and improve dialogue among communities.
- Implementation of work force development programs to strengthen the effort to train new staff of OSWER to meet its future challenges.

Mr. Samuel J. Coleman, EPA Region 6, provided an update on issues of environmental justice that affect the community of Mossville, Calcasieu Parish, Louisiana. Mr. Coleman identified several specific milestones:

- Installation of an enhanced air monitoring network sanctioned by the Lake Area Industrial Alliance and the Louisiana Department of Environmental Protection (LDEP).
- Achievement of overall compliance with the requirements of LDEP and establishment of parishwide dioxin screening as a standard procedure.
- Creation of an advisory council that works closely with the community, industry, and LDEP.
- Conduct a pilot health symposium designed to address health problems associated with exposure to environmental hazards and contaminants.

Ms. Sharon Beard, NIEHS, made a presentation on worker education and training.

Mr. Carter; Dr. Mildred McClain, Executive Director, Citizens for Environmental Justice; and Ms. Doris Bradshaw, Executive Director, Defense Depot Memphis Tennessee Concerned Citizens Committee, made a presentation on the role of FFRRO in working with communities affected by adverse environmental conditions. They explained that FFRRO plans to:

- Identify and evaluate key issues of concern to such communities.
- Provide a forum for dialogue between members of local communities and representatives of government agencies.
- Compile a list of resources available to communities and stakeholders that can help support increased public participation.
- Formulate a set of recommendations to the NEJAC, including the identification of "best practices" for improving environmental cleanups and ways in which the NEJAC can best address issues related to federal facilities.

The members of the subcommittee discussed the development of a strategic plan for the subcommittee. Key issues they identified included the creation of a work force development committee and examination of the role of the subcommittee on the Pollution Prevention Working Group. Additional themes they identified included exploration of EPA's role in fostering strategic planning by communities for the re-use and revitalization of contaminated sites, action to be taken after cleanup has been completed, and use of lessons learned through demonstration projects conducted by the Integrated Work Group on Environmental Justice and other outstanding projects.

The members of the subcommittee discussed at length three pending action items for 2002:

- Transfer of the Federal Facilities Work Group to the Waste and Facility Siting Subcommittee and addition of another member to that work group.
- Provision of assistance to FFRRO in its efforts to integrate issues related to land use, development, and redevelopment into the programs and procedures of EPA.
- Identification of models, such as the Washington Naval Yard and other sites, to be used as positive examples of OSWER's work with communities to achieve revitalization and reuse.

NEXT MEETING

The next meeting of the NEJAC is scheduled for December 9 through 12, 2002 in Baltimore, Maryland. The meeting will focus on pollution prevention. Planned activities include one opportunity for the public to offer comments. More information about the upcoming meeting will be available on the NEJAC's Internet home page at <http://www.epa.gov/compliance/environmentaljustice/index.html> (click on the link to the National Environmental Justice Advisory Council) or by telephone on EPA's toll-free environmental justice hotline at 1 (800) 962-6215.

MEETING SUMMARY

of the

EXECUTIVE COUNCIL

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 3, 4, and 6 2001
Seattle, Washington**

Meeting Summary Accepted By:



**Charles Lee
Designated Federal Officer**



**Peggy Shepard
Acting Chair**

United States
Environmental Protection
Agency

Enforcement and
Compliance Assurance
(2201A)

December 2001
<http://www.epa.gov/oeca/ej>

Office of Environmental Justice

To Obtain Copies

Copies of this report may be obtained by writing or calling:

U.S. Environmental Protection Agency
Office of Environmental Justice
1200 Pennsylvania Avenue (MC 2201A)
Washington, DC 20460
Telephone: (202) 564-2515

and requesting: NEJAC Meeting Summary December 2001

You may also review this report it, along with the previously published reports, on the web site:
<http://www.epa.gov/compliance/environmental_justice>

This report and recommendations has been written as a part of the activities of the National Environmental Justice Advisory Council (NEJAC), a public advisory committee providing extramural policy information and advice to the Administrator and other officials of the Environmental Protection Agency (EPA). The Council is structured to provide balanced, expert assessment of matters related to the Environmental Justice program. This report has not been reviewed for approval by the EPA and, hence, the contents of this report and recommendations do not necessarily represent the views and policies of the EPA, nor of other agencies in the Executive Branch of the federal government, nor does mention of trade names or commercial products constitute a recommendation for use.

PREFACE

The National Environmental Justice Advisory Council (NEJAC) is a federal advisory committee that was established by charter on September 30, 1993, to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. The NEJAC is made up of 24 members, and one DFO, who serve on a parent council that has six subcommittees. Along with the NEJAC members who fill subcommittee posts, an additional 32 individuals serve on the various subcommittees. To date, NEJAC has held seventeen meetings in the following locations:

- Washington, D.C., May 20, 1994
- Albuquerque, New Mexico, August 3 through 5, 1994
- Herndon, Virginia, October 25 through 27, 1994
- Atlanta, Georgia, January 17 and 18, 1995
- Arlington, Virginia, July 25 and 26, 1995
- Washington, D.C., December 12 through 14, 1995
- Detroit, Michigan, May 29 through 31, 1996
- Baltimore, Maryland, December 10 through 12, 1996
- Wabeno, Wisconsin, May 13 through 15, 1997
- Durham, North Carolina, December 8 through 10, 1997
- Arlington, Virginia, February 23 through 24, 1998 (Special Business Meeting)
- Oakland, California, May 31 through June 2, 1998
- Baton Rouge, Louisiana, December 7 through 10, 1998
- Arlington, Virginia, November 30 through December 2, 1999
- Atlanta, Georgia, May 23 through 26, 2000
- Arlington, Virginia, December 11 through 14, 2000
- Washington, DC, August 8 through 10, 2001
- Seattle, Washington, December 3 through 6, 2001

The NEJAC also has held other meetings which include:

- Public Dialogues on Urban Revitalization and Brownfields: Envisioning Healthy and Sustainable Communities, held in Boston, Massachusetts; Philadelphia, Pennsylvania; Detroit, Michigan; Oakland, California; and Atlanta, Georgia in the Summer 1995
- Relocation Roundtable, Pensacola, Florida, May 2 through 4, 1996

- Environmental Justice Enforcement and Compliance Assurance Roundtable, San Antonio, Texas, October 17 through 19, 1996
- Environmental Justice Enforcement Roundtable, Durham, North Carolina, December 11 through 13, 1997
- International Roundtable on Environmental Justice on the U.S./Mexico Border, San Diego, California, August 19 through 21, 1999

As a federal advisory committee, the NEJAC is governed by all provisions of the Federal Advisory Committee Act (FACA) of October 6, 1972. Those requirements include:

- Members must be selected and appointed by EPA
- Members must attend and participate fully in meetings of the NEJAC
- Meetings must be open to the public, except as specified by the EPA Administrator
- All meetings must be announced in the Federal Register
- Public participation must be allowed at all public meetings
- The public must be provided access to materials distributed during the meeting
- Meeting minutes must be kept and made available to the public
- A designated federal official (DFO) must be present at all meetings of the NEJAC (and its subcommittees)
- The NEJAC must provide independent judgment that is not influenced by special interest groups

Each subcommittee, formed to deal with a specific topic and to facilitate the conduct of the business of the NEJAC, has a DFO and is governed by the provisions of FACA. Subcommittees of the NEJAC meet independently of the full NEJAC and present their findings to the NEJAC for review. Subcommittees cannot make recommendations independently to EPA. In addition to the six subcommittees, the NEJAC has established a Protocol Committee, the members of which are the chair of the NEJAC and the chair of each subcommittee.

Members of the Executive Council of the NEJAC are presented in the table on the following page. A list of the members of each of the six subcommittees are presented in the appropriate chapters of the report.

EPA's Office of Environmental Justice (OEJ) maintains transcripts of, summary reports on the meetings of the NEJAC, and copies of material distributed during the meetings. Those documents are available to the public upon request.

Comments or questions can be directed to OEJ through the Internet. OEJ's e-mail address is:

environmental-justice-epa@epa.gov

Executive summaries of the reports on the meetings of the NEJAC are available in English and Spanish on the Internet at the NEJAC's World Wide Web home page:

<http://www.epa.gov/compliance/environmentaljustice/index.html> (click on the link to the National Environmental Justice Advisory Council)

**NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL
MEMBERS OF THE EXECUTIVE COUNCIL
(2001)**

Designated Federal Official:

Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, U.S. Environmental Protection Agency Office of Environmental Justice

Chair:

Ms. Peggy Shepard

Members

Ms. Rose Augustine
Mr. Larry Charles
Mr. Fernando Cuevas
Ms. Anna Frazier
Mr. Michel Gelobter
Ms. Eileen Guana
Mr. Richard Gragg
Ms. Savonala Horne
Ms. Jennifer Hill-Kelly
Mr. Robert Harris
Ms. Annabelle Jaramillo

Mr. Harold Mitchell
Mr. David Moore
Ms. Mary Nelson
Ms. Graciela Ramirez-Toro
Mr. Alberto Saldamando
Ms. Jane Stahl
Ms. Wilma Subra
Ms. Jana Walker
Mr. Kenneth Warren
Ms. Pat K. Wood
Mr. Tseming Yang

This page left intentionally blank

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
PREFACE	i
EXECUTIVE SUMMARY	ES-1
CHAPTER ONE: MEETING OF THE EXECUTIVE COUNCIL	
1.0 INTRODUCTION	1-1
2.0 REMARKS	1-2
2.1 Remarks of the Deputy Regional Administrator, U.S. Environmental Protection Agency Region 10	1-2
2.2 Remarks of Local Elected Officials, Community Members, and Tribal Leaders	1-2
3.0 POLICY DIALOGUE ABOUT THE RELATIONSHIP BETWEEN WATER QUALITY, FISH CONSUMPTION, AND ENVIRONMENTAL JUSTICE	1-5
3.1 Overview of the Fish Consumption Report	1-5
3.2 Fish Consumption, Research Methods, and Approaches to Risk Assessment	1-8
3.3 Fish Consumption and the Exercise of Existing Legal Authorities	1-9
3.4 Fish and Wildlife Consumption Advisories	1-10
3.5 Fish Consumption Concerns Among American Indian Tribes and Alaskan Native Villagers	1-10
4.0 DRAFT STRATEGIC PLAN OF THE NEJAC	1-11
4.1 Goals and Objectives	1-11
4.2 Implementation of the Strategic Plan	1-14
5.0 PRESENTATIONS AND REPORTS	1-16
5.1 Update on the Interagency Environmental Justice Implementation Work Group	1-16
5.2 Report on the Community-Based Health Research Model	1-17
5.3 Update on the Federal Facilities Work Group	1-17
5.4 Update on the Pollution Prevention Work Group	1-19
5.5 Briefing on the Cumulative Risk Technical Panel of the EPA Risk Assessment Forum	1-19
5.6 Update on the Implementation of Permitting Recommendations	1-21
6.0 MISCELLANEOUS BUSINESS	1-25
6.1 Acknowledgments	1-25
6.2 New Business	1-25

<u>Section</u>	<u>Page</u>
CHAPTER TWO: VIRTUAL TOUR AND PUBLIC COMMENT PERIOD	
1.0 INTRODUCTION	2-1
2.0 VIRTUAL TOUR HELD ON DECEMBER 3, 2001	2-1
2.1 Frank Roberts, Coeur d'Alene Tribe, Idaho	2-1
2.2 Daniel Morfin, Farm Worker, Granger, Washington	2-1
2.3 Jeri Sundvall, Environmental Justice Action Group, Portland, Oregon	2-2
2.4 Rosemary Ahtuanguaruak, Inupiat Community of Arctic Slope, Barrow, Alaska	2-2
2.5 Lee Tanuvasa, Korean Woman's Association, Tacoma, Washington	2-3
3.0 PUBLIC COMMENT PERIOD HELD ON DECEMBER 4, 2001	2-3
3.1 Dr. Mildred McClain, Citizens for Environmental Justice, Savannah, Georgia	2-3
3.2 Chief Johnny Jackson, Columbia EPED, Underwood, Washington	2-3
3.3 Barbara Harper, Tyakama Nation, Yakima, Washington	2-3
3.4 Marcia Henning, Washington Department of Health, Olympia, Washington	2-4
3.5 Tom Miller, Columbia River Inter-Tribal Fish Commission, Portland, Oregon	2-4
3.6 Joanne Bonnar Prado, Washington Department of Health, Olympia, Washington	2-4
3.7 Enoch E. Shiedt, Maniilaq Association, Kotzebue, Alaska	2-5
3.8 Art Invanoff, Native Village of Unalakleet, Unalakleet, Alaska	2-5
3.9 Rosemary Ahtuanguaruak, Inupiat Community of Arctic Slope, Barrow, Alaska	2-5
3.10 Wilbur Slockish Jr., Columbia River Education and Economic Development, The Dalles, Oregon	2-6
3.11 Tom Goldtooth, Indigenous Environmental Network, Bemidji, Minnesota	2-6
3.12 Kendra Zamzow, Alaska Community Action on Toxics, Anchorage, Alaska	2-6
3.13 Hilda Booth, Native Village of Noatak, Noatak, Alaska	2-7
3.14 Lincoln Loehr, Heller Ehrman, Seattle, Washington	2-7
3.15 Bill Doyle, Sierra Club, Seattle, Washington	2-7
3.16 Coleen Poler, Mole Lake Sakoagon Defense Committee, Crandon, Wisconsin	2-7
3.17 Cheryl Steele, Elem Indian Colony, Clearlake Oaks, California	2-8
3.18 Dottie Chamblin, Indigenous Women's Network	2-8
3.19 Jeffrey Thomas, Puyallup Tribal TFW Program, Puyallup, Washington	2-8
3.20 June Martin and Jesse Gologergen, Alaska Community Action on Toxics, Anchorage, Alaska	2-8
3.21 Doris Bradshaw, Defense Depot Memphis Tennessee Concerned Citizens Committee, Memphis, Tennessee	2-9
3.22 Richard Moore, Southwest Network for Environmental and Economic Justice, Albuquerque, New Mexico	2-9
3.23 Violet Yeaton, Port Graham Village Council, Port Graham, Alaska	2-9
3.24 Pamela K. Miller, Alaska Community Action on Toxics, Anchorage, Alaska	2-10
3.25 Jonathan Betz-Zall and Kristine Wong, Antioch University Seattle, Seattle, Washington	2-10
3.26 John Ridgeway, Washington Department of Ecology, Olympia, Washington	2-11
3.27 Holly Welles, Pacific Gas and Electric Company, San Francisco, California	2-11
3.28 Winona LaDuke, White Earth Land Recovery, Ponsford, Minnesota	2-11
3.29 Sara Koopman, Amazon Alliance, Seattle, Washington	2-11

<u>Section</u>	<u>Page</u>
----------------	-------------

CHAPTER THREE: MEETING OF THE AIR AND WATER SUBCOMMITTEE

1.0 INTRODUCTION 3-1

2.0 ACTIVITIES OF THE SUBCOMMITTEE 3-1

 2.1 NEJAC Strategic Plan 3-1

 2.2 Activities of the Work Groups 3-3

 2.2.1 Fish Consumption Work Group 3-3

 2.2.2 Permitting and Utilities Work Group 3-5

 2.2.3 Urban Air Toxics Work Group 3-5

 2.3 Staffing of Work Groups 3-6

3.0 PRESENTATIONS AND REPORTS 3-6

 3.1 Draft Fish Consumption Report 3-6

 3.2 December 2002 Meeting of the NEJAC 3-7

4.0 SIGNIFICANT ACTION ITEMS 3-8

<u>Section</u>	<u>Page</u>
CHAPTER FOUR: MEETING OF THE HEALTH AND RESEARCH SUBCOMMITTEE	
1.0 INTRODUCTION	4-1
2.0 REMARKS	4-1
3.0 PRESENTATIONS AND REPORTS	4-1
3.1 Presentation on the Status of Research	4-1
3.2 Presentation on Risk Assessment and Methodology	4-3
3.3 Presentation on the Toxic Substances Control Act and EPA's High Production Volume Challenge Program	4-4
3.4 Presentation on the Structure of the Subcommittees of the NEJAC	4-6
4.0 SUMMARY OF PUBLIC DIALOGUE	4-6
4.1 Mr. Walter Redmon, U.S. Environmental Protection Agency Region 5	4-6
4.2 Ms. Heather Halsey, State of California Governor's Office of Planning and Research ..	4-7
4.3 Written Comment Submitted by Ms. Kendra Zamzow, Alaska Community Action on Toxics	4-7
4.4 Written Comment Submitted by Mr. Wilbur Slockish, Jr., Columbia River Education and Economic Development	4-8
5.0 ACTION ITEMS	4-8

<u>Section</u>	<u>Page</u>
CHAPTER FIVE: MEETING OF THE INDIGENOUS PEOPLES SUBCOMMITTEE	
1.0 INTRODUCTION	5-1
2.0 REMARKS	5-1
3.0 PRESENTATIONS AND REPORTS	5-2
3.1 Klamath River Inter-Tribal Fish and Water Commission	5-2
3.2 Presentation on Survey of Fish Consumption by Tulalip Tribes	5-2
3.3 Mr. Tom Goldtooth, Indigenous Environmental Network	5-3
3.4 Presentations by Members of the Alaskan Native Community	5-4
3.5 Dr. Roseanne Lorenzana, EPA Region 10	5-5
3.6 Presentations by Other Tribal Representatives	5-5
4.0 ACTIVITIES OF THE SUBCOMMITTEE	5-6
4.1 Discussion of the Pre-Meeting Discussion Draft Fish Consumption Report	5-6
4.2 Discussion of the Indigenous Peoples Subcommittee Strategic Plan	5-7
5.0 OTHER CONCERNS OF THE SUBCOMMITTEE	5-7
5.1 Precautionary Principle	5-7
5.2 Regulatory Enforcement	5-7
5.3 Representation of Alaskan Native Peoples on the Indigenous Peoples Subcommittee	5-8
5.4 Tribal Sovereignty	5-8

<u>Section</u>	<u>Page</u>
CHAPTER SIX: MEETING OF THE INTERNATIONAL SUBCOMMITTEE	
1.0 INTRODUCTION	6-1
2.0 REMARKS	6-1
3.0 DISCUSSION OF THE RELATIONSHIPS AMONG WATER QUALITY, FISH CONSUMPTION, AND ENVIRONMENTAL JUSTICE	6-1
3.1 Environmental Justice and Indigenous Peoples in the Great Lakes Region	6-1
3.2 Transfrontier Risks Posed by POPs and the Global Treaty on POPs	6-2
3.3 Report on EPA OIA and Biodiversity	6-3
3.3 Overview of the Effects of POPs on the Indigenous Peoples of Alaska	6-4
3.4 Transportation of POPs in the Arctic Area and Contaminated Military Sites in Alaska ..	6-4
4.0 PRESENTATIONS AND REPORTS	6-5
4.1 Update on the Activities of EPA OIA in Africa	6-5
4.2 Cultural Diversity Within EPA OIA	6-6
4.3 Update on U.S.-Mexico Border Activities	6-6
4.3.1 EPA Region 9	6-6
4.3.2 EPA Region 6	6-7
4.3.3 Update on the Activities of Grassroots Organizations	6-7
5.0 PRESENTATION BY THE DELEGATION FROM THAILAND	6-8
6.0 ACTION ITEMS	6-9

<u>Section</u>	<u>Page</u>
CHAPTER SEVEN: MEETING OF THE WASTE AND FACILITY SITING SUBCOMMITTEE	
1.0 INTRODUCTION	7-1
2.0 ACTIVITIES OF THE SUBCOMMITTEE AND ITS WORK GROUPS	7-1
2.1 Year in Review	7-1
2.2 Subcommittee Historical Overview	7-2
2.3 Update on the Federal Facilities Work Group	7-3
3.0 PRESENTATIONS AND REPORTS	7-4
3.1 Update on the Activities of the Office of Solid Waste and Emergency Response	7-4
3.2 Update on Mossville, Calcasieu Parish, Louisiana	7-5
3.3 Brownfields Minority Worker Training Program	7-6
3.4 Update on Brownfields and Environmental Justice Pilot Programs	7-7
3.4.1 Update on Issues Related to Land Use	7-8
3.4.2 Update on Brownfields Legislation	7-9
4.0 SUMMARY OF DIALOGUE ABOUT THE STRATEGIC PLAN	7-9
5.0 ACTION ITEMS	7-10

EXECUTIVE SUMMARY

INTRODUCTION

This executive summary presents highlights of the sixteenth meeting of the National Environmental Justice Advisory Council (NEJAC), held December 3 through 5, 2001 at the Renaissance Madison Hotel in Seattle, Washington. Each of the six subcommittees of the NEJAC met for a full day on December 5, 2001. On December 4, the NEJAC hosted a public comment period that focused on fish consumption and contamination of fish populations. Approximately 300 persons attended the meetings and the public comment period.

The NEJAC is a federal advisory committee that was established by charter on September 30, 1993 to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. Ms. Peggy Shepard, West Harlem Environmental Action, serves as the chair of the Executive Council of the NEJAC. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, EPA Office of Environmental Justice (OEJ), serves as the Designated Federal Officer (DFO) for the Executive Council. Exhibit ES-1 lists the chair, the vice-chair, and the DFO of the Executive Council, as well as the individuals who serve as chairs and vice-chairs of the six subcommittees of the NEJAC and the EPA staff appointed to serve as DFOs for those subcommittees.

OEJ maintains transcripts and summary reports of the proceedings of the meetings of the NEJAC. Those documents are available to the public upon request. The public also has access to the executive summaries of reports of previous meetings, as well as other publications of the NEJAC, through the World Wide Web at <http://www.epa.gov/oeca/main/ej/nejac/index.html> > (click on the publications icon). The summaries are available in both English and Spanish.

REMARKS

Mr. Ron Kreizenbeck, Deputy Regional Administrator, EPA Region 10, welcomed the participants in the meeting of the NEJAC to Seattle. He stated that EPA Region 10 includes the states of Washington, Oregon, Idaho, and Alaska and is home to many diverse, low-income communities; communities of color; and more than 270 native tribes, the members of which subsist on fish, plants, and wildlife. The degradation of habitats and depletion of resources threatens the very way of life of those people, he continued. Mr. Kreizenbeck then stated that issues related to subsistence life styles must be addressed to ensure equal environmental protection, regardless of race, income, culture, or ethnicity.

Exhibit ES-1

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL CHAIRS AND DESIGNATED FEDERAL OFFICERS (DFO)

Executive Council:

Ms. Peggy Shepard, **Chair**
Mr. Charles Lee, **DFO**

Air and Water Subcommittee:

Ms. Annabelle Jaramillo, **Chair**
Ms. Eileen Guana, **Vice-Chair**
Ms. Alice Walker, **co-DFO**
Dr. Wil Wilson, **co-DFO**

Enforcement Subcommittee:

Ms. Savonala Horne, **Chair**
Mr. Robert Kuehn, **Vice-Chair**
Ms. Shirley Pate, **DFO**

Health and Research Subcommittee:

Ms. Rose Marie Augustine, **Chair**
Ms. Jane Stahl, **Vice-Chair**
Ms. Brenda Washington, **co-DFO**
Ms. Aretha Brockett, **co-DFO**

Indigenous Peoples Subcommittee:

Ms. Jennifer Hill-Kelly, **Chair**
Ms. Jana Walker, **Vice-Chair**
Mr. Daniel Gogal, **DFO**
Mr. Bob Smith, **alternate-DFO**

International Subcommittee:

Mr. Alberto Saldamando, **Chair**
Mr. Tseming Yang, **Vice-Chair**
Ms. Wendy Graham, **DFO**

Puerto Rico Subcommittee:

Dr. Graciela Ramirez-Toro, **Chair**
Ms. Teresita Rodriguez, **DFO**

Waste and Facility Siting Subcommittee:

Ms. Veronica Eady, **Chair**
Mr. Reiniero Rivera, **DFO**

Governor Gary Locke, (D), sent greetings to the members of the NEJAC, welcoming them to Seattle. In his letter, Governor Locke emphasized that the issues related to water quality and fish consumption were especially important to the residents of Washington. Exhibit 1-2 in Chapter One of this report contains a copy of that letter.

Ms. Rosa Franklin, State Senator, Washington State Legislature and former member of the NEJAC, commented on the timeliness of the current meeting of the NEJAC, held to discuss the relationship between among water quality, fish consumption, and environmental justice. While contaminated air and toxic streams affect all citizens, she continued, the changing demographics in the state of Washington and the Pacific Northwest have brought a new urgency to the issue of fish consumption. Therefore, she said, there is an urgent need in the region to further identify and quantify the types and magnitudes of risks to communities and tribes that subsist on wild fish, plants, and other wildlife. Ms. Franklin stressed that the activities of the NEJAC could have a long-term effect on the health of those communities.

Ms Velma Veloria, Washington State Representatives and former member of the NEJAC, explained that the state of Washington had worked over the past three years to ensure that water is clean and that fish populations continue to flourish in the state of Washington. She discussed environmental justice legislation passed in the state, including a bill that charged the state's Department of Ecology and Department of Health with jointly preparing a report on environmental risks faced by low-income and minority groups; legislation that reformed the way work at cleanup sites is taxed; and legislation that requires the Department of Health to examine the health effects of noise, particularly in the vicinity of the city of Seattle's international airport.

Ms. Yalonda Sinde, Community Coalition for Environmental Justice, stated that her organization had been the first non-profit environmental justice group in the Seattle area. She then expressed her excitement about the opportunity to bring issues related to fish consumption and water quality before the NEJAC during the current meeting.

Mr. Moses Squeochs, Yakima Nation and member of the Indigenous Peoples Subcommittee, stated his appreciation for the efforts of the NEJAC, but he also expressed concern that such a federal advisory committee is needed to carry out the laws related to environmental justice enacted by the Congress of the United States. Continuing, he said that the "hunter-gatherer" way of life continues to be practiced and that there is a strong intent to preserve that way of life. He then stated that the search for justice, fairness, and equality in relation to environmental issues must continue.

REPORTS AND PRESENTATIONS

The members of the Executive Council received the following presentations:

Members of the NEJAC Fish Consumption Work Group provided an update on the NEJAC's *Draft Fish Consumption Report*. During their presentation, the members of the work group reviewed the findings of the work group, as outlined in the *Draft Fish Consumption Report* that had been compiled in preparation for the December 2001 meeting of the NEJAC. The members of the Fish Consumption Work Group also presented a number of "overarching recommendations" based on the conclusions presented in the draft report. The members of the NEJAC then discussed the report and the recommendations at length, suggesting revisions in the draft report and identifying additional recommendations. Members of the NEJAC requested that final comments on the *Draft Fish Consumption Report* be submitted to OEJ by January 31, 2002. The anticipated date for completion of the report is March 15, 2002. Mr. Lee stated that a conference call was to be scheduled with affected communities, tribes, and stakeholders to discuss the report.

Ms. Shepard presented the NEJAC's *Strategic Plan* to the members of the Executive Council. The plan incorporates the issues raised and conclusions reached during the special business meeting of the Executive Council of the NEJAC, held in Washington, D.C. in August 2001, and outlines the strategy of the NEJAC for: (1) redesigning its activities to better fulfill its role as an advisor; (2) collaborating with EPA to provide alternative mechanisms through which communities can bring site-specific issues to the attention of EPA; and (3) developing, through a deliberative process that involves all stakeholders, an effective work product that addressed issues related to environmental justice that are of principal concern

to communities. The *strategic plan* will guide the work of the NEJAC through September 27, 2003, Ms. Shepard announced.

Mr. Lee identified a series of tasks and provided assignments to members of the NEJAC to assist in implementing the strategic plan. The tasks are:

- Finalization of the NEJAC Policy Advice Development Model
- Finalization of the NEJAC Model for incorporating community issues and concerns into the NEJAC policy dialogue
- Development of definitions of consensus and consensus-building
- Development of a scoping report from the Ad Hoc Scoping Work Group on Cumulative Risk Issues

WORK GROUP REPORTS AND COMMENTS

The members of the Executive Council of the NEJAC received reports and comments from the following individuals:

- Ms. Eileen Guana, Southwestern University School of Law and Vice-Chair of the Air and Water Subcommittee, made a presentation on the Interagency Environmental Justice Implementation Work Group.
- Mr. Brandon Carter, EPA Federal Facilities Restoration and Reuse Office (FFRRO), provided an update on the Federal Facilities Work Group.
- Ms. Wilma Subra, Louisiana Environmental Action Now, member of the Air and Water Subcommittee, and chair of the newly formed Pollution Prevention Work Group, presented an update on the status of the development of the work group.

Mr. Lee reported that the Federal Facilities Work Group will work in coordination with and report to the NEJAC Waste and Facility Siting Subcommittee because the primary support for this work group is being provided by the Office of Solid Waste and Emergency Response (OSWER), which also supports that subcommittee. OSWER has committed to adding another member to the subcommittee to provide interface with the work group, he said.

Other presentations received by the Executive Council of the NEJAC were:

- Mr. Barry Hill, Director, EPA OEJ, reported on the status of EPA's efforts to implement recommendations included in the report of the Environmental Law Institute (ELI) report titled *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities*. The ELI report reviews EPA's major environmental regulations that govern air and water quality, waste management, use of pesticides and other chemicals, and the public's right to know. The report identifies specific statutory authorities that can be used to promote environmental justice in the full range of EPA program functions, including the establishment of standards and the permitting process.
- Ms. Ann Goode, Senior Consultant, Center for the Economy and Environment, National Academy of Public Administration (NAPA), made a presentation on NAPA's research and evaluation of EPA's efforts to address the widely recognized fact that low-income communities and communities of people of color that are exposed to significantly greater environmental and public health hazards than other communities face. NAPA's research and associated recommendations, reported Ms. Goode, are presented in a report titled *Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities is Integral to the Agency's Mission.* In the report, she continued, NAPA recommends that EPA make changes in four distinct areas related to environmental justice: leadership, permitting procedures, setting of priorities, and public participation.

- Mr. Martin Halper, Senior Science Advisor, EPA OEJ, provided an overview of EPA's draft *Framework for Cumulative Risk Assessment* prepared by the Cumulative Risk Technical Panel of the EPA Risk Assessment Forum, a standing committee of senior EPA scientists. The purpose of this briefing is to help NEJAC prepare to address the issues of cumulative risk, which will be the policy issue area to be discussed in 2003.

VIRTUAL TOUR AND RELATED DIALOGUE

Members of the NEJAC participated in a "virtual tour" dialogue of selected communities that are affected by issues related to environmental justice, fish consumption, and water quality. Representatives of five community organizations presented information about the contamination of waterways on which Native Americans and impoverished people depend for survival and the loss of Native American heritage and culture, as well as issues related to the exposure of farm workers to pesticides and herbicides. The topics discussed are described briefly below.

Mr. Frank Roberts, Coeur d'Alene Tribe, Idaho, discussed the exposure of the Coeur d'Alene Tribe to contamination caused by strip mining practices carried out on properties located near tribal lands. Mr. Roberts explained that, although contamination currently is being cleaned up, preservation of tribal culture has been threatened because the tribe cannot use the land for traditional purposes.

Mr. Daniel Morfin, Granger, Washington, explained that the application of herbicides and pesticides for agriculture use is contaminating rivers and exposing farm workers to contaminants. The incidence of respiratory ailments in the Granger area is high, and existing regulations are not being enforced, said Mr. Morfin.

Ms. Jeri Sundvall, Environmental Justice Action Group of Portland, Portland, Oregon, pointed out the high rate of cancer among Native American fishermen. In addition, she charged, Native Americans are being robbed of their heritage and are expected to become assimilated into the broader culture.

Ms. Rosemary Ahtuanguak Inupiat Community of Arctic Slope, Barrow, Alaska, expressed concern that state agencies often "favor profit" over protection of the interests and concerns of tribes. Ms. Ahtuanguak explained that, although federal agencies have declared fish populations safe to eat, the methodology for assessing risk does not consider the higher-than-average rates of fish consumption among Native Americans.

Ms. Lee Tanuvasa, Korean Woman's Association, Tacoma, Washington, reported that her organization was conducting a study to determine the safety of shellfish consumed by communities of Asian Pacific Island people. She requested assistance in overcoming the language barrier and in determining how best to present the findings of the study to the communities affected by the issue.

PUBLIC COMMENT PERIOD

The Executive Council of the NEJAC hosted a public comment period on December 4, 2001, at which approximately 29 people participated. Described below are a summary of key concerns citizens expressed during the evening session.

- A majority of the public comments focused on the issue of contaminated waterways and the land on which Native Americans and other impoverished people depend for living a subsistence life style. Commenters pointed to rates of cancer and respiratory ailments among Native American populations that are higher than the rates among non-Native populations in the United States. The commenters stated that the inability of Native peoples to "live off the land" has led to a decline in the transfer of spiritual and cultural values from generation to generation. The best way to reduce contamination in waterways is to eliminate the source of the pollution, declared a number of commenters.
- Several commenters spoke about the ineffectiveness of risk assessments. Risk assessments, as currently conducted, do not account for the cumulative effect of numerous chemicals on the environment, they stated. Rather, those risk assessments examine only a single chemical, they

claimed. Risk assessments focus only on cancer and fail to consider other health issues, they added. Further, they do not account for the effect of chemicals on sensitive populations, several commenters noted.

- A number of commenters criticized EPA for failing to make an adequate effort to hold the U.S. Department of Defense (DoD) accountable for the contamination of communities located on or near military installations. EPA is not enforcing existing environmental regulations that govern DoD facilities, the commenters claimed.

OTHER CONCERNS AND COMMITMENTS OF THE NEJAC

During their meeting, the members of the Executive Council of the NEJAC recommended that a work group be established to address communications within the NEJAC and between the NEJAC and EPA program offices. In addition, the members agreed to review and provide comments on the *Framework for Cumulative Risk Assessment*. Formal development of the guidance will begin in 2002.

SUMMARIES OF THE SUBCOMMITTEE MEETINGS

Summarized below are the deliberations of the subcommittees of the NEJAC held on December 5, 2001.

Air and Water Subcommittee

The members of the Air and Water Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. James Hanlon, EPA Office of Science and Technology (OST), provided preliminary comment on the feasibility of implementing the recommendations presented in the NEJAC's *Draft Fish Consumption Report*. Mr. Hanlon commended the Fish Consumption Work Group for its efforts and emphasized that the availability of resources for the most part will determine what EPA can accomplish. Mr. Hanlon also reviewed the logistics associated with the completion of the report and its submittal to the EPA Administrator.

Mr. Lee presented an overview of and led discussions about the NEJAC *Strategic Plan*. He also discussed the meeting of the NEJAC scheduled for December 2002 that will focus on issues related to pollution prevention and environmental justice.

Mr. Jeff Bigler, EPA OST, provided to the Fish Consumption Work Group an update on plans to revise volume four of EPA's *Guidance Document for Assessing Chemical Contamination Data for Use in Fish Advisories* to incorporate awareness of issues related to environmental justice.

Mr. Peter Murchie, EPA Region 10 Office of Air Quality Planning and Standards (OAQPS), presented to the Air Toxics Work Group an overview of EPA's air toxics program.

The members of the subcommittee discussed the need to establish priorities among the recommendations presented in the *Draft Fish Consumption Report* to (1) help EPA focus its efforts and (2) avoid overwhelming the agency with numerous recommendations. The members agreed that, although the list of recommendations may appear lengthy, individual items can be grouped under a few overall themes.

The members of the subcommittee discussed the potential effect of the *NEJAC Strategic Plan* on the manner in which the subcommittee conducts its business. The members agreed that the subcommittee must focus its efforts on only a few key issues, rather than attempting to "cover the whole waterfront" as it had done in its early days. The members also agreed to explore methods of evaluating the effectiveness of the subcommittee's work groups on specific issues.

The members of the subcommittee emphasized that the work of the Fish Consumption Work Group must be used as a model to guide planning for the meeting of the NEJAC to be held in December 2002. The members also requested that, in preparation for that meeting, the newly formed Pollution Prevention Work

Group should examine issues related to (1) environmental restoration, (2) clean production, (3) low-impact development, and (3) the costs and benefits of pollution prevention.

Members of the Fish Consumption Work Group discussed the plans of EPA's Office of Water to revise volume four of its *Guidance Document for Assessing Chemical Contamination Data for Use in Fish Advisories*. The members of the work group agreed to (1) review the document and provide comment on it to EPA and (2) identify and recommend individuals to serve on various EPA stakeholder work groups and as technical consultants for the issuance of fish advisories. The members of the subcommittee also discussed the future of the Fish Consumption Work Group, once the *Draft Fish Consumption Report* has been completed. The members recommended that the work group expand its scope to explore other issues related to water quality, such as total maximum daily loads (TMDL), confined animal feeding operations (CAFO), and water permits.

The Permitting and Public Utilities work groups participated in a joint session, during which they agreed to combine the two groups into a single work group. The members of the work groups discussed EPA's White Paper No. 3 on flexible permitting, a report on a new source review study prepared by EPA's Office of Air and Radiation (OAR), and other issues related to the permitting process. The members of the newly combined work group agreed to develop a document that will describe "best practices" for permitting that are sensitive to environmental justice issues, as well as review and provide comment on the report on a new source review study the release of which is expected in January or February 2002. Members of the work group also expressed concern that staffing of the work group was inadequate, in light of the number of issues the group had taken under consideration.

The members of the Air Toxics Work Group discussed EPA's air toxics program. The members agreed to review and provide comment on EPA OAR's *Work Plan for the National Air Toxics and Integrated Air Toxics Strategy*.

Health and Research Subcommittee

The members of the Health and Research Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Patrick C. West, Emeritus Faculty, Environmental Sociology, School of Natural Resources and Environment, University of Michigan, commented on research needed in the realm of environmental justice and application of that research. Mr. West stated that lack of research should not be a barrier to action, that existing information can be used, and that current research must be investigated to identify the information to support action. Mr. West stressed that systematic and qualitative assessment of both cumulative effects and co-risk factors must be included in the assessment of risks for such sensitive groups as communities of color, low-income communities, and Native American tribes.

Ms. Tala Henry, Mid-Continent Ecology Division, EPA National Health and Environmental Effects Research Laboratory, provided information about the parameters that are factors in the calculation of risk. She emphasized that there is no specific procedure for the calculation of risk and that the default parameters are not applicable under certain circumstances, such as assessment of the risks to sensitive groups. Therefore, she explained, partnerships between experts and communities must be fostered so that defensible and appropriate risk parameters can be established.

Mr. Wardner G. Penberthy, EPA Chemical Control Division, presented an overview of Section 4 of the Toxic Substances and Control Act, which focuses on chemical testing. He provided detailed information about EPA's High Production Volume (HPV) Challenge program, a voluntary testing program for facilities that produce large volumes of chemicals. The goal of the program is to increase the availability to the public of baseline data on the effects on health and the environment for approximately 2,800 HPV chemicals, reported Mr. Penberthy.

Mr. Jeffrey Morris, EPA Office of Science Policy, Office of Research and Development (ORD), recommended a change in the structure of the subcommittees of the NEJAC. Citing EPA's goals related to the Government Performance and Results Act (GPRA), Mr. Morris explained that, because health and

research issues related to environmental justice cross boundaries among the various subcommittees, such issues should be handled by a special interest work group, rather than an individual subcommittee.

The members of the subcommittee conducted a number of discussions about the accurate calculation of risk for sensitive groups. The specific recommendations they agreed upon are:

- It is essential that various factors related to cultural and spiritual concerns be included in models for assessing risk. In addition, such factors as culture shock and cultural disintegration must be addressed.
- Parameters used in the calculation of risk must be specific to each particular community. Parameters that currently are not included in risk assessment models include peak exposure and consumption of whole fish, rather than the more widely used parameters of chronic exposure and consumption of only the fillet of a fish.
- The types of foods identified as components of a subsistence diet should include many more foods that are not consumed by the general population.
- Co-risk and cumulative risk factors should be used as a more accurate gauge of “true risk” because people are exposed to more than one chemical at a time.
- If the recommendations of the subcommittee on the subject of calculation of risk are to be adopted, the definitions of “health” for a community and of what is to be considered “normal” must be reconsidered.

The subcommittee recommended that the NEJAC consider the subsistence consumption needs of such groups as Native Hawaiians and people in the Virgin Islands who were not considered as the report was developed. The members of the subcommittee agreed that inclusion of those groups would help achieve recognition of cultural groups that traditionally have been ignored in research related to environmental justice.

The members of the subcommittee agreed that the need for research often is used as a barrier to action and acknowledged that the information available is adequate to support the initiation of work. There is an abundance of information that, although originally was not applied to issues of environmental justice, can be reevaluated for its significance in the field of environmental justice, they noted. In addition, the members recommended that extensive investigation of previous research be conducted to identify available resources.

The members of the subcommittee agreed that the evaluation of HPV chemicals and the distribution to the public of the baseline health data are crucial actions. Although some members expressed concern about whether industry could be trusted to report reliably on production, the members agreed that there are many safeguards related to testing and that the penalty for falsification is severe.

The subcommittee recommended increased cooperation between government agencies and local organizations in sharing data and calling upon the expertise of indigenous organizations. Noting that local people have first-hand knowledge and understanding of their communities and can gather information more efficiently than outsiders, the members recommended that research be best conducted by local groups, with the assistance and support of EPA.

Indigenous Peoples Subcommittee

The members of the Indigenous Peoples Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Merv George, Administrator, Klamath River Inter-Tribal Fish and Water Council and member of the Hupa Tribe, provided background information about the history of the council, outlined the five issues the council addresses, and submitted his recommendations for improving the *Draft Fish Consumption Report*.

He stressed that the Hupa and Yura tribes constantly must balance environmental and economic issues when developing standards for water quality.

Ms. Gillian Mittelsteadt, Environmental Policy Analyst, Tulalip Tribes Natural Resource Program, and Mr. Daryl Williams, Developer, Tulalip Tribes Natural Resource Program, presented the results of their study that examined the consumption by members of the Tulalip Tribe of fish taken from Puget Sound. Ms. Mittelsteadt described the statistical framework of the study and outlined the benefits and lessons learned through completion of the study. Mr. Williams discussed the problems that arise because, he said, programs allow the trading of pollution emissions credits. Mr. Williams emphasized the negative effects such programs have on tribal communities.

Mr. Tom Goldtooth, Executive Director, Indigenous Environmental Network and former chair of the Indigenous Peoples Subcommittee, presented his recommendations for improving the *Draft Fish Consumption Report*. He urged that the NEJAC consider the negative effects of radioactive contaminants on habitats and focus attention on precautionary actions, rather than traditional risk assessment. He also recommended that the NEJAC promote outreach to tribal communities to help those communities develop a better understanding of the mission and responsibilities of the NEJAC.

Dr. Roseanne Lorenzana, liaison between Region 10 and EPA ORD, presented a list of five specific recommendations for consideration by the subcommittee. She also presented the report *Comparative Dietary Risks: Balancing the Risks and Benefits of Fish Consumption*, for which a risk assessment model was used to define the conditions under which consumption of fish is a healthful dietary choice. She urged that the subcommittee advise EPA to work with tribes to develop guidelines on cumulative risk that are appropriate to the needs of tribes.

Ms. June Martin, Alaska Community Action on Toxics, began her presentation by telling the story of Annie Aloa, a health aide in her village who had spoken out on behalf of the tribal community and who had been awarded a grant by the National Institute for Environmental Health Sciences (NIEHS) to survey the health problems of members of the tribe. Ms. Martin then discussed the failure of the U.S. Army Corps of Engineers to clean up the military facility located near her village.

Ms. Ahtuanguaruak, who is a native of the village of Nuigant, Alaska, expressed her concern about and recommendations for improving the representation of Alaskan Natives on the Indigenous Peoples Subcommittee. She also urged that, in the *Draft Fish Consumption Report*, the subcommittee address the tribal lands of Alaskan Natives, such as Prudhoe Bay. Residents of those lands, she pointed out, rely on fishing and whaling for subsistence.

Ms. Pam Miller, Alaska Community Action on Toxics, expressed concern about the health of Alaskan Natives tribal communities that are located on or near sites that have been abandoned by DoD. She also voiced the concern of tribes about persistent organic pollutants (POP) that originate thousands of miles south of Alaska, travel northward, and accumulate over northern Alaska. She requested that the subcommittee advise EPA to hold DoD accountable for previous contamination and to focus on the phased elimination of POPs.

Mr. Enoch Sheidt, Subsistence Coordinator, Maniilaq Association, and Mr. Francis Chin, Environmental Justice Coordinator, Maniilaq Association, emphasized the importance of a subsistence lifestyle to Alaskan Natives who are nomadic and migrate to locations where food is available. Consequently, the presenters reported, tribes do not recognize the concept of "on reservation" and "off reservation." To an Alaskan Natives, fishing is not merely a method of obtaining food, but rather is a spiritual experience, they explained. In addition, Mr. Chin stated that the unemployment rate in the Indian community is 90 to 95 percent. Therefore, a subsistence lifestyle is an essential way of life that cannot be compromised, he said.

Mr. Art C. Ivanoff, Native Village of Unalakleet, expressed his concern about the effects of climate change on the health of Alaskan Natives. Mr. Ivanoff requested that the *Draft Fish Consumption Report* include climate change as a factor that affects the quality of fish. Climate change has depleted greatly the running stock of salmon, while the migration patterns of salmon and animals used for food have not been studied sufficiently, he explained.

Ms. Cheryl Steele, Elem Indian Colony, stated that fish advisories do not address issues related to the consumption of fish sufficiently. She urged that EPA provide indigenous peoples better guidance about contaminated fish populations and that the agency work with local communities to eliminate sources of contamination.

Mr. Kevin McKernan, Yurok Tribe, urged EPA to acknowledge those tribes that have developed and adopted water quality standards. He stated that the use of EPA core standards might direct resources away from tribes that have their own standards.

Ms. August Rozema, Swinomish Tribe, stated that the subcommittee and the NEJAC must “spread the word” about its future meetings. She also encouraged the subcommittee to clarify the definition of the word “fish” provided in the *Draft Fish Consumption Report* to include both fin- and shellfish.

The members of the subcommittee requested that the Alaskan Native community provide them more information about issues related to fish consumption and water quality standards. After listening to testimony offered by representatives of Alaskan Native communities, the members recognized that the concerns of all indigenous peoples throughout the world, including those of Hawaii and the Caribbean, also must be represented equally.

The members of the subcommittee discussed the effectiveness of risk assessment in adequately addressing issues related to fish consumption, noting that traditional risk assessment models currently do not include reference to pollution prevention and sustainability. The members recommended that a “precautionary principle” approach to risk assessment replace the traditional model to account for the benefits of preservation. The members also noted that risk assessment currently does not take into account the fact that the variable average grams per day (gpd) used in most models cannot be extrapolated to the lifestyle of members of indigenous communities, who consume many more fish in a much shorter period of time than do members of other groups, thereby increasing their risk to a level disproportionate to that affecting other groups.

The members expressed concern that fewer than 20 WQSs created by individual tribal communities have been approved. Additional discussion focused on the difficulties tribal communities encounter in their efforts to achieve the standards outlined in the WQSs because of economic setbacks.

The members of the subcommittee agreed to advise the NEJAC to urge EPA to augment its education programs for tribal communities by providing more information about the role of the NEJAC. In addition, the members recommended that tribes be included regularly in the deliberative process and that the subcommittee change its role from that of “consultation” to that of “collaboration,” a role that would include deliberative dialogue. Such a change would improve communication between the NEJAC and indigenous communities, they suggested.

International Subcommittee

The members of the International Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Goldtooth discussed the need to focus on issues of environmental justice related to transborder matters that affect the First Peoples of North America and indigenous tribes in the Great Lakes basin. He reported that First Nations and tribes in the Great Lakes basin suffer a disproportionate share of environmental problems associated with the transport of POPs. The effects of POPs are intensified among people who rely on a subsistence diet, he pointed out.

Ms. Katy Taylor, Assistant Director of Community Health Services, Alaska Native Tribal Health Services, presented an overview of recent studies of the effects of POPs on the health of Alaskan Native women and children who rely on subsistence consumption as the mainstay of their diets.

Ms. Miller provided information about the movement of POPs, facilitated by air and ocean currents, into Alaska and the Arctic region. She also discussed contamination of DoD sites in Alaska.

Ms. Amy Fraenkel, EPA Office of International Activities (OIA), addressed the transborder risks associated with exposure to POPs. She also presented information about progress toward completion of the Global Persistent Organic Pollutants Treaty (also known as the Stockholm POPs Convention). She emphasized that environmental justice groups must work to influence the process of planning how the United States will implement the provisions of the treaty.

Ms. Eileen Henninger, EPA OIA, stated that it is important that the NEJAC provide comment to OIA on issues related to biodiversity. Some of the work in that area will bring about major worldwide reductions in the use of key harmful chemicals in farming and industrial applications, she said.

Mr. Lionel L. Brown Jr., Senior Information Management Officer, EPA OIA, presented an update on the efforts of OIA to promote environmental awareness in Africa. Many areas in Africa are experiencing rapid urbanization, he reported, adding that OIA has been working to educate local communities about issues related to environmental justice. Mr. Brown also emphasized the heavy reliance on fish in the diets of African people.

Mr. Enrique Manzanilla, Director, Cross Media Division, EPA Region 9, provided background information about EPA's work related to the border areas of the United States and Mexico. He reviewed the activities undertaken by Region 9 during the two years since the Roundtable on Environmental Justice on the U.S.-Mexico Border was held in San Diego, California and reported on the success of outreach efforts conducted by the Region 9 Border Liaison Office, located in San Diego.

Ms. Olivia Balandran, Office of the Regional Administrator, EPA Region 6, presented an update on the outreach activities of the region's border office. She reported that the recent activities of that office included efforts to respond to the recommendations presented at the roundtable meeting on the U.S.-Mexico border.

Ms. Nelda Pérez, Small Grants Coordinator, EPA Region 6 OEJ, presented information about activities related to grants awarded to groups located in the U.S.-Mexico border area.

Mr. Richard Moore, Executive Director, Southwest Network for Environmental and Economic Justice, and former chair of the NEJAC, described letters his organization had written to EPA Administrator Christine Todd Whitman and President Bush. Mr. Moore discussed the effects of increased militarization along the U.S.-Mexico border that has taken place since the terrorist attacks of September 11, 2001. He also requested that the subcommittee complete the reports produced for the Roundtable on Environmental Justice on the U.S.-Mexico Border and prepared by the NEJAC Farm Worker Work Group.

Mr. Apichart Thongyou, Secretary General, Thailand Research and Action for Development Institute, discussed efforts undertaken in Thailand to reduce adverse effects on conditions of concern to the environmental justice community that are caused by modernization and the development of heavy industry. He and several other members of the delegation of visitors from Thailand discussed several studies that examined heavy contamination by industry and its effect on fishermen who rely on fishing for subsistence. Mr. Thongyou also described the work of EPA and its counterpart in Thailand to create a public participation process, reauthorize environmental laws, and create a new ministry for the environment.

The members of the subcommittee also participated in discussions related to various topics:

- The members of the subcommittee identified similarities in the shortcomings of enforcement and public participation efforts in Thailand and other nations. They discussed the value of, and the need for, an international environmental network to support the transfer of information and data.
- The members of the subcommittee concluded that the NEJAC and OIA should collaborate to build a strong relationship between the work of OIA in Africa and the environmental issues addressed by the NEJAC.
- The members of the subcommittee discussed OIA's strategy of deploying culturally diverse teams to represent EPA in international discussions. The members concluded that such a strategy is

essential in engaging communities in discussions of treaties and encouraging collaboration between the United States and other countries in the sharing of resources.

- The members agreed that practices that contaminate water in one country and thereby affect the health of residents of another country illustrate the “interconnectedness” of the global environment. The members noted the similarity of the predicaments of subsistence fisherman in the United States and other nations.
- The members of the subcommittee concluded that there is a significant opportunity for the NEJAC to participate in the development of the plan for the implementation by the United States of the Stockholm POPs Convention. They also agreed to provide comment to OIA about the level of implementation of the treaty. In addition, the members discussed the need to include in the treaty provisions for a system for tracking the movement of POPs across the borders of the United States.

Waste and Facility Siting Subcommittee

The members of the Waste and Facility Siting Subcommittee of the NEJAC received the presentations and reports described below and discussed the topics summarized.

Mr. Michael Shapiro, Deputy Assistant Administrator, EPA Office of Solid Waste and Emergency Response (OSWER), and Ms. Linda Garczynski, EPA OSWER, provided an overview of the direction new senior managers plan for OSWER. They discussed the vision, mission, priorities, and values of the office, reviewed changes that are taking place, and identified several key priorities for OSWER:

- Pursuit of the One Cleanup Program Initiative, which is designed to make the Resource Conservation and Recovery Act (RCRA) and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs more consistent with one another and to increase the right-to-know component of each.
- Establishment of revitalization and reuse as core issues of the OSWER action agenda.
- Implementation of recycling and pollution prevention programs to encourage partnerships and demonstration pilot projects in the area of reduction in source contamination.
- Implementation of the Retail Initiative, which is designed to increase focus on public involvement in the use of solid and hazardous waste and improve dialogue among communities.
- Implementation of work force development programs to strengthen the effort to train new staff of OSWER to meet its future challenges.

Mr. Samuel J. Coleman, EPA Region 6, provided an update on issues of environmental justice that affect the community of Mossville, Calcasieu Parish, Louisiana. Mr. Coleman identified several specific milestones:

- Installation of an enhanced air monitoring network sanctioned by the Lake Area Industrial Alliance and the Louisiana Department of Environmental Protection (LDEP).
- Achievement of overall compliance with the requirements of LDEP and establishment of parishwide dioxin screening as a standard procedure.
- Creation of an advisory council that works closely with the community, industry, and LDEP.
- Conduct a pilot health symposium designed to address health problems associated with exposure to environmental hazards and contaminants.

Ms. Sharon Beard, NIEHS, made a presentation on worker education and training.

Mr. Carter; Dr. Mildred McClain, Executive Director, Citizens for Environmental Justice; and Ms. Doris Bradshaw, Executive Director, Defense Depot Memphis Tennessee Concerned Citizens Committee, made a presentation on the role of FFRRO in working with communities affected by adverse environmental conditions. They explained that FFRRO plans to:

- Identify and evaluate key issues of concern to such communities.
- Provide a forum for dialogue between members of local communities and representatives of government agencies.
- Compile a list of resources available to communities and stakeholders that can help support increased public participation.
- Formulate a set of recommendations to the NEJAC, including the identification of "best practices" for improving environmental cleanups and ways in which the NEJAC can best address issues related to federal facilities.

The members of the subcommittee discussed the development of a strategic plan for the subcommittee. Key issues they identified included the creation of a work force development committee and examination of the role of the subcommittee on the Pollution Prevention Working Group. Additional themes they identified included exploration of EPA's role in fostering strategic planning by communities for the re-use and revitalization of contaminated sites, action to be taken after cleanup has been completed, and use of lessons learned through demonstration projects conducted by the Integrated Work Group on Environmental Justice and other outstanding projects.

The members of the subcommittee discussed at length three pending action items for 2002:

- Transfer of the Federal Facilities Work Group to the Waste and Facility Siting Subcommittee and addition of another member to that work group.
- Provision of assistance to FFRRO in its efforts to integrate issues related to land use, development, and redevelopment into the programs and procedures of EPA.
- Identification of models, such as the Washington Naval Yard and other sites, to be used as positive examples of OSWER's work with communities to achieve revitalization and reuse.

NEXT MEETING

The next meeting of the NEJAC is scheduled for December 9 through 12, 2002 in Baltimore, Maryland. The meeting will focus on pollution prevention. Planned activities include one opportunity for the public to offer comments. More information about the upcoming meeting will be available on the NEJAC's Internet home page at <http://www.epa.gov/compliance/environmentaljustice/index.html> (click on the link to the National Environmental Justice Advisory Council) or by telephone on EPA's toll-free environmental justice hotline at 1 (800) 962-6215.

**CHAPTER ONE
MEETING
OF THE
EXECUTIVE COUNCIL**

1.0 INTRODUCTION

The sixteenth meeting of the Executive Council of the National Environmental Justice Advisory Council (NEJAC) took place Thursday, December 3 through 6, 2001, in Seattle, Washington. Ms. Peggy Shepard, West Harlem Environmental Action, serves as the newly appointed chair of the Executive Council. Mr. Charles Lee, Associate Director for Policy and Interagency Liaison, U.S., Environmental Protection Agency (EPA) Office of Environmental Justice (OEJ), continues to serve as the Designated Federal Officer (DFO) for the Executive Council. Exhibit 1-1 presents a list of members of the Executive Council who were present and identifies those members who were unable to attend. Approximately 300 people attended the meeting.

On December 5, 2001, each member of the Executive Council who was present on that day participated in the deliberations of the NEJAC subcommittees. Chapters Three through Seven of this meeting summary describe those deliberations. In addition, the Executive Council hosted one public comment period on the evening of December 4, 2001, as well as participated in a "virtual tour" of environmental justice sites in EPA Region 10 on December 3, 2001. Approximately 30 people offered comments during the public comment session. Chapter Two presents a summary of the public comments offered and the presentations made during the virtual tour.

This chapter, which provides a summary of the deliberations of the Executive Council, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the remarks offered by various speakers. Section 3.0, *Discussion of the Relationship Between Water Quality, Fish Consumption, and Environmental Justice*, provides a summary of the testimony provided by the Fish Consumption Work Group of the NEJAC and describes the recommendations discussed by the members of the work group and the members of the Executive Council. Section 4.0, *Draft Strategic Plan of the NEJAC*, presents a summary of the discussions of the members of the Executive Council about matters related to the NEJAC strategic plan. Section 5.0, *Presentations and Reports*, provides summaries of reports and presentations made to the Executive Council on various other topics. Section 6.0, *Miscellaneous Business*, presents summaries of

Exhibit 1-1

EXECUTIVE COUNCIL

**Members Who Attended the Meeting
December 3 through December 6, 2001**

**Ms. Peggy Shepard, Chair
Mr. Charles Lee, DFO**

Mr. Larry Charles
Ms. Veronica Eady
Ms. Anna Frazier**
Ms. Eileen Guana
Dr. Richard Gragg, III
Dr. Michael Gelobter*
Mr. Robert Harris*
Ms. Savonala "Savi" Horne
Ms. Annabelle Jaramillo
Ms. Mary Nelson
Dr. Graciela Ramirez-Toro
Ms. Jane Stahl
Mr. Dean Suagee
Ms. Wilma Subra
Ms. Jana Walker
Mr. Kenneth Warren

**List of Members
Who Were Unable To Attend**

Ms. Rose Augustine
Mr. Fernando Cuevas
Ms. Jennifer Hill-Kelley
Mr. Harold Mitchell
Mr. David Moore
Mr. Alberto Saldamondo
Ms. Pat Wood
Mr. Tseming Yang

*Attended December 3 and 4, 2001 only

**Attended December 4 and 6, 2001 only

discussions by the members of the Executive Council of other items before the council, including recognition of those members whose terms were soon to expire.

Chapter Two of this report presents a summary of the virtual tour and public comment sessions held December 3 and 4, 2001. Chapters Three through Seven of this report present summaries of the deliberations of each of the subcommittees that met

on December 5, 2001. Appendix A presents a list of the proposed revisions of the draft Fish Consumption Report and recommendations proposed for additions to it.

2.0 REMARKS

This section summarizes the remarks of the Deputy Regional Administrator of EPA Region 10 and representatives of local community organizations and the Washington State legislature. Exhibit 1-2 provides a copy of the letter sent by Washington Governor Gary Locke to the NEJAC.

2.1 Remarks of the Deputy Regional Administrator, U.S. Environmental Protection Agency Region 10

Mr. Ron Kreizenbeck, Deputy Regional Administrator, EPA Region 10, welcomed the members of the NEJAC, commenting on the appropriateness of the selection of Region 10 to host the current meeting, with its focus on subsistence fish consumption, water quality, and environmental justice. He explained that EPA Region 10, which includes the states of Washington, Oregon, Idaho, and Alaska, is home to many diverse, low-income communities, communities of color, and more than 270 Native American tribes and Alaskan Native villages. Many of those communities and tribes subsist on fish, plants, and wildlife, he said, and the harvesting, preparation, and consumption of wild species is prevalent, as well as fundamental to the heritage and traditions of their cultures. Mr. Kreizenbeck stressed that the degradation of habitats and the depletion of resources threatens the very way of life of those communities and tribes.

Mr. Kreizenbeck also pointed out that, for many such communities, there is no practicable alternative to the resources of the land. Therefore, he continued, it is not feasible to switch to or substitute other food resources if the resources of their land are contaminated. Moreover, he stated, for the communities of concern, to abstain from consumption of such resources is unimaginable for cultural, traditional, or religious reasons. A subsistence lifestyle, he stressed, is more than simply a tradition — it is fundamental to the very concept of self-determination.

Continuing, Mr. Kreizenbeck stated that issues of environmental justice arise during the everyday work at EPA Region 10, as the Agency issues and reviews permits, reviews and approves water quality standards, works on environmental impact statements, performs risk assessments, and

develops monitoring plans. Addressing subsistence issues as the Agency pursues those activities is necessary to ensure that all communities receive equal environmental protection, he said. Lacking equal environmental protection for all, regardless of race, income, culture, or ethnicity, he declared, there can be no environmental justice.

2.2 Remarks of Local Elected Officials, Community Members, and Tribal Leaders

Ms. Rosa Franklin, State Senator, Washington State Legislature and former member of the NEJAC, commented on the timeliness of the current meeting of the NEJAC, held to discuss the relationship between among water quality, fish consumption, and environmental justice. While contaminated air and toxic streams affect all citizens, she continued, the changing demographics in the state of Washington and the Pacific Northwest have brought a new urgency to the issue of fish consumption. Therefore, she said, there is an urgent need in the region to further identify and quantify the types and magnitudes of risks to communities and tribes that subsist on wild fish, plants, and other wildlife. Ms. Franklin stressed that the activities of the NEJAC could have a long-term effect on the health of those communities.

Ms. Velma Veloria, State Representative, Washington State Legislature and former member of the NEJAC, noted that the convening of the NEJAC in the state of Washington to discuss this issue of fish consumption and environmental justice reaffirmed that the quality of salmon and fish is a concern not only of the fishing industry, but also of tribes and other minority populations.

Ms. Veloria informed the members of the NEJAC that the state of Washington had done much to ensure that its water is clean and that fish remain healthy. She explained that, in 1994, she, Ms. Franklin, and several other legislators had introduced a bill before the state legislature that requested that the Washington Department of Ecology and the Washington Department of Health jointly prepare a report on the environmental risks that threaten low-income and minority groups. She noted that the initial funding to support the work had been obtained. Ms. Veloria commented that the victory had been “an incredible first step” in addressing the disproportionate adverse effects of hazardous and solid waste sites on low-income communities and peoples of color.

GARY LOCKE
Governor



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR
P.O. Box 40002 • Olympia, Washington 98504-0002 • (360) 753-6700 • www.governor.wa.gov

Greetings from the Governor

December 3, 2001

As governor of the state of Washington, I am pleased to welcome you to the 17th meeting of the National Environmental Justice Advisory Council (NEJAC).

Your visit will facilitate the exchange of valuable ideas and information among stakeholder groups represented on the NEJAC and the general public. The policy question being considered, "What is the relationship between water quality, fish consumption, and environmental justice?" is especially important to the citizens of Washington State.

While you are here, I hope you will take some time to enjoy the tremendous charm and beauty of the Evergreen State. You will find an extraordinary array of attractions in and around Seattle to help make your visit a memorable one.

Best wishes for a successful meeting and an enjoyable stay in Washington!

Sincerely,

A handwritten signature in cursive script that reads "Gary Locke".

Gary Locke
Governor

In 1997, Ms. Veloria continued, the legislature worked to incorporate environmental health into the state's overall public health improvement plan. That effort, she explained, had allowed the Washington Department of Health to consider environmental health risks to communities when performing assessments of public health. She added that, in that same year, legislation had been enacted that reformed the way in which the work at clean-up sites is taxed.

Ms. Veloria explained that, before the legislation was passed, the owner of a cleanup site was taxed at a particular rate if the owner cleaned up the site voluntarily, but was taxed at a lower rate if the owner waited until the Washington Department of Ecology formally placed the site on a list of sites that required cleanup. Such a tax system, she pointed out, encouraged owners to delay cleanup, thereby increasing the potential that contamination from the sites would spread. By changing the system to include a uniform tax for cleanups, she added, the legislature removed site owners' incentive to delay cleanup.

Continuing, Ms. Veloria stated that, in 1998, the Washington state legislature enacted legislation that requested that the Washington Department of Health investigate the health effects of noise, particularly in the vicinity of Washington's Seattle-Tacoma International Airport (SEATAC) and review existing studies of noise pollution to evaluate whether disadvantaged groups are subject to disproportionately high levels of exposure to unhealthy noise pollution. Further, she continued, in early 2001, the legislature's Agriculture and Ecology Committee conducted a hearing on proposed legislation that would require that the public be notified of releases of hazardous substances. Specifically, she explained, notices would be mailed to residents, land owners, and businesses located within one mile of a facility involved in such a release and would provide detailed information about the chemicals involved, the address of the facility, and the date of the release. While the legislation has not yet been enacted, she added, it is to be reintroduced in 2002.

Mr. Moses Squeochs, Yakama Nation and member of the NEJAC Indigenous Peoples Subcommittee, observed that, while he appreciates the responsibility and effort of the NEJAC, he is troubled that such an "extra effort" is necessary to enforce legislation that has been enacted by the Congress of the United States. For example, he pointed out, federal law requires that federal agencies identify the need to ensure the protection of populations that exhibit

patterns of subsistence consumption of fish and wildlife and to assist in providing such protection. Federal law also requires that federal agencies collect, maintain, and analyze information about the consumption patterns of populations that rely primarily on fish or wildlife for subsistence, added Mr. Squeochs. He stressed that EPA has been charged with implementation of federal environmental statutes. He asked why it has been so difficult for EPA to carry out that responsibility.

Continuing, Mr. Squeochs explained that he represents the 14 Confederated Tribes and Bands of the Yakama Nation that reside in the interior mid-Columbia River basin. After reciting the names of the 14 tribes and bands, he explained that each of those communities, along with many other indigenous communities, continue to maintain a subsistence, or "hunter-gatherer," way of life and sustain the customs and practices of their valuable and rich heritage. He also commented that there is a renewed and important effort among indigenous peoples to restore their language and preserve their culture, which reflects and maintains a deep connection to the Earth, "their Mother."

Mr. Squeochs shared his remembrance of the first time he had recited as a small child in school the words of the Pledge of Allegiance "...with liberty and justice for all." Ironically, he continued, more than 50 years later, he finds himself participating as a member of the Indigenous Peoples Subcommittee in an attempt to make such justice a reality for all and to achieve some sense of fairness and equality. In closing, Mr. Squeochs, stated his hope that the NEJAC would continue to make history in the search for justice.

Ms. Yolanda Sinda, Community Coalition for Environmental Justice, also welcomed the members of the NEJAC to the city of Seattle. She first noted that the Community Coalition for Environmental Justice, a multiracial organization, had been the first official nonprofit environmental justice group formed in the Seattle area. She then invited the members of the NEJAC to attend a community reception to be held that evening.

Ms. Sinda then briefly expressed her concern about rumors that the NEJAC might be dissolved. She stressed the importance of maintaining the connection the NEJAC provides between EPA and environmental justice communities and asked that representatives of EPA or members of the NEJAC address the concern during the meeting.

3.0 POLICY DIALOGUE ABOUT THE RELATIONSHIP BETWEEN WATER QUALITY, FISH CONSUMPTION, AND ENVIRONMENTAL JUSTICE

The NEJAC, in its continuing efforts to provide independent advice to the Administrator of EPA in areas related to environmental justice, focused its sixteenth meeting on the relationship between water quality, fish consumption, and environmental justice. On Tuesday, December 4, the members of the NEJAC heard a panel presentation by the members of the Fish Consumption Work Group of the NEJAC. The NEJAC had established the work group to assist in developing a report and recommendations on this issue.

Ms. Annabelle Jaramillo, Benton County Board of Commissioners and chair of the Air and Water Subcommittee, served as facilitator during the policy dialogue. She began the discussion by reminding the members of the NEJAC of the purpose of the current meeting of the NEJAC. She explained that the issue that the NEJAC had been asked to consider and provide recommendations on was:

“How should EPA improve the quality, quantity, and integrity of our Nation’s aquatic ecosystems in order to protect the health and safety of people consuming or using fish, aquatic plants, and wildlife?”

Ms. Jaramillo then stated that, in preparation for the meeting, a report, Fish Consumption Report: Pre-meeting Discussion Draft, had been developed to provide a context for the discussions. The Fish Consumption Work Group, she continued, had prepared the report, with the assistance of Ms. Catherine O’Neill, Associate Professor, Seattle University School of Law.

3.1 Overview of the Fish Consumption Report

Ms. Jana Walker, Law Offices of Jana Walker and vice-chair of the Indigenous Peoples Subcommittee, provided an overview of the fish consumption report. Ms. Walker first explained that the report is a discussion draft intended to promote open dialogue among the members of the NEJAC, as well as to encourage public comment on its content. She stated that the work group would welcome comments on the draft report through January 2002.

Ms. Walker reported that the draft report includes a background section and four chapters. The background section explores the reasons contamination of fish and aquatic ecosystems



Members of the NEJAC discuss presentations made by the members of the NEJAC Fish Consumption Work Group.

causes concern about environmental justice. It does so, she continued, through the perspectives of real people who have suffered the harmful effects of such contamination. She explained that, while there are important differences among affected groups, communities of color, low-income communities, and tribes generally consume greater quantities of fish than do other segments of the population and depend on healthy fish and aquatic ecosystems to a greater extent and in different ways than does the general population. Therefore, she continued, these communities and tribes are forced to bear a disproportionate share of the environmental effects that result from pollution of the waters.

Continuing, Ms. Walker explained that fish not caught commercially are a healthy, cheap, and readily available source of protein in the diet. Persons who subsist chiefly or solely on such fish therefore are more likely to be members of communities of color, low-income communities, or tribes. Affected groups also may consume or use fish, aquatic plants, and wildlife for cultural, traditional, or religious reasons. They also may eat different parts of the fish than do other segments of the population, and they may prepare the fish in different ways, as well. Conventional understandings about catching, harvesting, preparing, and eating fish do not capture such practices adequately.

Ms. Walker then pointed out that communities of color, low-income communities, and tribes also may be exposed to different, and often numerous, types of exposures to environmental pollutants than is the case among the general population. Many toxins and toxic chemicals persist in the environment for very long periods of time and bioaccumulate in fish, plants, wildlife, and ultimately the people who eat them, she explained. Although the specific health risks posed by such multiple exposures are unknown, she said, it has been documented that

many of the chemicals of concern are highly toxic to humans. Such chemicals, continued Ms. Walker, can cause reproductive, neurological, and endocrine disorders; cancer; and negative developmental effects in children.

Ms. Walker stressed that "healthy waters and watersheds mean healthy people." She acknowledged that EPA has made progress in addressing water pollution over the past 30 years, but declared that much more must be done because, today, only 60 percent of the nation's lakes, rivers, and estuaries are clean enough to be used for fishing and swimming. Continuing, Ms. Walker pointed out that 40 percent of assessed waters are degraded to the point that they no longer support their designated uses. Further, some 300,000 miles of rivers and streams and more than 5 million acres of lakes do not meet water quality goals, she added. Many of those waters are not safe for swimming and cannot support healthy fish, she said.

Ms. Walker then reported that Chapter 1 of the draft fish consumption report evaluates the tools that EPA uses to define, evaluate, and respond to the adverse health effects of exposure to contaminated aquatic ecosystems. She explained that fish consumption is the primary route of exposure to many toxic contaminants. To establish environmental standards, EPA uses exposure data related to the ingestion of contaminated fish, she said. To develop those national water quality standards and criteria, she went on, certain assumptions must be made about how much fish people eat, which parts of the fish they eat, and which people are eating those fish. However, such exposure assumptions often reflect only the habits of the general population; the increased potential for exposure among populations that consume larger quantities of fish, such as communities of color, low-income communities, and tribes, are not considered.

Providing an example, Ms. Walker stated that, until recently, federal water quality standards were based on the exposure assumption that the average person consumes only 6.5 grams per day (g/day) of fish. However, studies of rates of consumption of fish in tribal, low-income, and minority communities have revealed rates that are more than 100 times the value assumed by EPA. Ms. Walker added that the draft report provides ample evidence that ethnic minorities and tribes are more likely to eat the whole fish, including the skin, head, and tail, and that those parts contain higher levels of pollutants than the filet, which is the part of the fish most likely to be consumed by individuals in the general population.

Continuing, Ms. Walker said that Chapter 1 of the report also discusses the issues related to aggregate or multiple exposures and cumulative risks, noting that current EPA methodologies proceed as if humans are exposed to only one contaminant at a time.

In summary, Chapter 1 of the fish consumption report addresses issues related to assumptions made by EPA about patterns of fish consumption, said Ms. Walker. Exposure assumptions must be revised to reflect the lives and circumstances of all people, including those subject to high levels of exposure, she emphasized.

Chapter 2 of the fish consumption report focuses on EPA's risk reduction strategies that require risk producers, usually the polluters, to clean up, reduce, or prevent environmental contamination, Ms. Walker then reported. The chapter also examines existing legal authorities under federal environmental statutes that might be exercised more effectively to address contaminants of concern and to protect the health of people who consume large quantities of fish, she added.

Chapter 3 of the fish consumption report, continued Ms. Walker, examines EPA's risk avoidance strategies, under which affected communities and tribes are asked to change their practices to avoid exposure to harmful contaminants. She explained that the chapter examines the role fish consumption advisories should play in protecting the health of people who consume or use fish and concludes that the role of such an advisory varies, depending on the community or tribe affected by it. Chapter 3 also identifies several significant concerns related to reliance on fish advisories, she said.

Ms. Walker then stated that Chapter 4 of the fish consumption report addresses considerations unique to the 556 federally recognized tribes, including 229 Alaskan Native villages. She explained that, while tribes share many of the concerns described in the preceding chapters, their unique political and legal status distinguishes them from all other affected groups in many ways and warrants separate treatment in the report. Unlike other affected groups, tribes also are government entities and regulators that exercise broad inherent sovereignty over their members, territories, and resources, she said. Chapter 4 also discusses the unique susceptibilities of tribes to the adverse effects of pollution on health.

In closing, Ms. Walker stressed that the fish consumption report is not intended to ignore or belittle the progress EPA has made in addressing

water pollution. However, she stated, it is clear that many obligations remain unfulfilled and much work remains to be done. As the members of the NEJAC continue their discussions over the coming months, she suggested, their challenge will be to develop meaningful advice about the approach EPA should take in the effort to improve the quality of aquatic ecosystems, thereby protecting the health of all people who consume fish, especially highly exposed communities and tribes.

In response to the overview of the fish consumption report provided by Ms. Walker, Mr. Jim Hanlon, EPA Office of Water (OW) Office of Science and Technology recognized the high quality of the work produced by the work group. He then expressed his belief that the report will be important to EPA as the Agency works to address issues related to fish contamination. He remarked that EPA had made great strides in improving water quality over the past 10 years, but acknowledged that much work remains to be done. Mr. Hanlon reminded the audience that the objectives of EPA OW are to ensure that water is safe to drink; that water resources are safe for aquatic recreation; that fish are safe to eat; and that our water resources provide a balanced, high-quality system that supports aquatic life.

Mr. Hanlon then stated that, only 10 years earlier, fewer than five states in the country used risk-based methodologies to develop fish consumption advisories. However, he continued, through cooperation with the states, EPA OW had developed a set of guidelines that states used in developing the fish consumption advisories that are now in place. The guidelines include guidance on sampling methodologies, analytical methodologies of laboratories, risk management, and risk communication. Mr. Hanlon then reported that more than 40 states now use risk-based methodologies to develop fish consumption advisories for their populations.

In conjunction with the Minnesota Department of Health, Mr. Hanlon continued, EPA recently had sponsored a conference in Chicago, Illinois, that was attended by more than 400 people, representing all 50 states and more than 50 tribal entities. The focus of the conference was risk communication related to fish consumption. The proceedings of that conference had been released, he said, and would be discussed during the meeting of the Air and Water Subcommittee to be held on December 5, 2001. Mr. Hanlon added that he also would discuss with the members of the Air and Water Subcommittee the further actions that the agency is considering. Those actions would focus on the

development of additional tools to assist states in improving their risk communication capabilities.

Responding to Ms. Walker's comments about outdated methodology for the development of human health criteria, Mr. Hanlon stated that EPA recently had replaced a document that had been in use since the early 1980s with updated information that is based on available statistical information about average consumption levels for general populations, sport fishers, and subsistence populations. He noted that the release of the updated information represented an important transition from the use of historical bioconcentration factors to the use of bioaccumulation factors in the derivation of water quality criteria. The new approach has the effect of lowering the acceptable criteria by a factor of as much as 100. Mr. Hanlon added that the new methodology also recognizes, for the first time, the concept of relative source contribution. That is, he explained, individuals do not receive their entire body burden of a particular toxic pollutant from consumption of fish tissue alone, but rather from a combination of exposure routes, all of which must be considered.

Continuing his discussion of the activities of EPA OW, Mr. Hanlon stated that the office, in cooperation with the U.S. Department of Health and Human Services (HHS), recently completed its second mailing to health care providers. Through the mailing, he explained, packages of information about the contamination of fish was disseminated to more than 135,000 health care providers across the United States, including pediatricians, obstetricians, gynecologists, family physicians, physician's assistants, and midwives. Mr. Hanlon then stated that EPA does not believe that consumption advisories are the solution to problems related to the contamination of fish. Rather, he said, such advisories are temporary measures taken to advise the public about health risks that may be associated with the consumption of contaminated fish.

Mr. Hanlon then reported that EPA's Total Maximum Daily Load (TMDL) Program is making "giant steps forward." Exhibit 1-3 presents the definition of TMDL. During 2002, he continued, some 2,000 TMDL projects will be underway nationwide. He added that approximately 33 states operate under consent agreements or court orders that require that the states and EPA step forward and complete development schedules reflecting the priority ranking of each pollutant.

Concluding his remarks, Mr. Hanlon emphasized that the "Achilles heel" of the national water program

continues to be the lack of robust information or data about watersheds throughout the United States. Referring to Ms. Walker's comment that 40 percent of assessed water bodies do not meet standards for their designated uses, Mr. Hanlon pointed out that only 20 to 25 percent of the nation's water bodies have been assessed.

Ms. Shepard also offered several comments about the information presented in the draft fish consumption report. She stated that in her own state, New York, many groups have been in consultation with the state Department of Environmental Conservation about fish advisories for the Hudson River, in which contamination has been known to exist for many years. However, she pointed out, authorities have posted no fish consumption advisories related to the river. Ms. Shepard said that, along the Hudson River, subsistence fishers are selling fish to local fish markets. EPA, she suggested, should find a way to mandate that fish advisories be posted. She suggested further that a public information campaign be mounted to reach affected communities. Ms. Shepard then stated that the glaring disparity between how water quality standards, enforcement, and cleanup are implemented confirms continuing unequal enforcement in communities that are among the most highly exposed to contaminants — communities of color, low-income communities, and tribes. She then stated her belief that the information presented in the draft report reinforces recognition of the need for accelerated investigation projects and protocols for determining the cumulative effects of multiple exposures.

Finally, Ms. Shepard commented that financial resources should be made available to affected groups so that they can educate their own communities in their own languages and in a manner that reflects their own cultures and customs.

3.2 Fish Consumption, Research Methods, and Approaches to Risk Assessment

Dr. Patrick West, Professor Emeritus, University of Michigan, provided a detailed summary of information about research methods and approaches to risk assessment that agencies use to define, evaluate, and respond to the adverse health effects caused by contamination of aquatic environments. Chapter 1 of the draft fish consumption report presents that information.

Dr. West stated that the contamination of fish, aquatic plants, and wildlife is an especially pressing concern for many communities of color, low-income

communities, and tribes, whose consumption and use practices differ, often profoundly so, from those of the general population. He explained that members of those communities often consume far greater quantities of fish, aquatic plants, and wildlife than does the general population. Further, they consume and use different species and parts than the general population, and they employ culturally different methods of procuring and preparing the fish, aquatic plants, and wildlife that they use. Therefore, continued Dr. West, communities of color, low-income communities, and tribes are among the segments of the population that are most highly exposed to contaminants in the fish, plants, wildlife, and aquatic environment. He explained that available literature documents that the 95th percentile fish consumption rates for various affected communities and tribes range from 225 g/day to 489 g/day. Yet, he pointed out, EPA regularly and routinely approves a human consumption rate of 6.5 g/day in risk assessment methodologies.

Dr. West then discussed policy related to fish consumption in a legal and cultural context. He stated that the contamination of fish, aquatic plants, and wildlife also is troubling to many communities of color, low-income communities, and tribes because such groups consume and use fish, aquatic plants, and wildlife in different cultural, traditional, religious, historical, economic, and legal contexts than what agencies have defined as the general population. For example, tribes have rights guaranteed by treaty to take fish. The unique legal obligations established under such treaties are relevant to EPA's decisions that affect the health of the fish and the fishery resource, he said.

Dr. West explained that fish consumption and use of fish often is prescribed by the culture and tied closely to the collective and individual identity of a community or tribe. The existence of such different contexts is demonstrated abundantly by both testimonial evidence and study in social science, he continued. For the reasons he had identified, said Dr. West, current fish consumption practices are, in an important sense, indispensable for many communities and tribes.

Dr. West then discussed the possibility of a "suppression effect" related to fish consumption. He explained that a suppression effect occurs when a fish consumption rate for a given group reflects a current level of consumption that is diminished artificially from the appropriate baseline level for the group. Suppression effects may occur because of contamination or fear of consuming contaminated items (members of a group consume fewer fish than

they naturally would because they fear that the fish are contaminated) or depletion of resources (members of a group consume fewer fish than they naturally would because fewer fish are available for consumption), he said. He explained that, when standards are based on fish consumption rates that are not adjusted for suppressed consumption, the standards initiate a “downward spiral,” with more contamination permitted, leading to a greater suppression effect, and so on.

Continuing, Dr. West stated that current risk assessment methods do not account adequately for susceptibilities and co-risk factors that affect individual responses to environmental contaminants. Co-risk factors include underlying health status, quality of diet, genetics, socioeconomic status, access to health care, and other factors. For example, he said, low-income socioeconomic status may combine with and intensify health effects of consuming contaminated fish in environmental justice communities.

Dr. West then stated that current risk assessment methods also evaluate risks as if humans were exposed to a single contaminant at a time by a single route of exposure. He explained that members of environmental justice communities, however, often are exposed to numerous contaminants, at a given time or in succession, often by more than one route of exposure. For example, he stated, the 13 Confederated Bands of the Yakama Nation fish in the Columbia River; more than 100 contaminants have been identified in the tissues of fish taken from that river.

Dr. West then observed that the efforts of affected communities and tribes are integral in producing relevant, accurate, scientifically defensible data. He said that affected communities and tribes therefore must be involved at every stage of research on the issues he had discussed, from identifying research needs to designing research methods; interpreting the policy implications of the finding of such research; and determining the importance of the research to the agency’s risk assessment, management, remediation, and emission permitting processes.

Continuing his remarks, Dr. West stated that environmental justice communities also have a broader policy role to play beyond the arena of research. He stated that tribal populations throughout the country have challenged the NEJAC and EPA to “walk in their moccasins” — to see and experience the importance of fish consumption and related use of subsistence resources taken from the

waters and the land and the harsh effects of pollution and pollution policy as the tribes themselves experience them. The same ideal, Dr. West added, holds true for other environmental justice communities and cultures.

Dr. West then stated that, at the recent conference in Chicago that Mr. Hanlon had mentioned, he had heard members of tribes and other environmental justice communities repeatedly urge EPA to take a broader, more holistic view that goes beyond the very important, but very short-term, narrow, and focused, policy of exclusive reliance on advisories.

Dr. West then asked the members of the NEJAC if they would be willing to “walk in the moccasins” of affected communities and, with renewed determination, take on the difficult issues of prevention and remediation.

3.3 Fish Consumption and the Exercise of Existing Legal Authorities

Ms. Walker provided a summary of the information presented in Chapter 2 of the fish consumption report. She stated that approximately 40 percent of assessed waters in the United States do not support use for fishing or swimming. She added that some 10 percent by volume of all sediments under waters in the United States are contaminated heavily; the list of sediments in surface waters that require cleanup is long, she said, and the number of fish consumption advisories rises each year. Ms. Walker explained that, because people of color, low-income people, and American Indians and Alaskan Natives are disproportionately among the populations that experience the greatest exposure to contamination, any lapses in the efforts of agencies to prevent, reduce, clean up, and restore contaminated aquatic environments will impose a disproportionate burden on those affected groups. Referring to the regulation of mercury emissions, Ms. Walker noted her understanding that, in the near future, EPA was to address rule-making for the regulation of mercury emissions from institutional, industrial, and commercial boilers. She stated that such regulation is needed.

Continuing, Ms. Walker stated that a rule regulating mercury emissions from coal-fired power plants might not be proposed until December 2003. Meanwhile, she pointed out, coal-fired power plants are the single largest source of air emissions of mercury in the country. She then stated that a rule regulating emissions of mercury from chloroalkaline plants is needed. Although only approximately one dozen such plants are located in the United States,

she explained, each plant is a very significant source of such emissions. In some cases, a plant may be the most significant local source of emissions of mercury. She then cited as an example two chloroalkaline plants in Louisiana that contribute more mercury emissions than all the coal-fired power plants in the state combined.

Continuing her presentation, Ms. Walker stated that EPA's guidance documents and standards consider a higher level of cancer risk to be "acceptable" for "more highly exposed subgroups" than for the general population. That standard is inequitable and deeply troubling, as a matter of environmental justice, because it is people of color, low-income people, and American Indians and Alaskan Natives who make up the "more highly exposed subgroups," she said.

3.4 Fish and Wildlife Consumption Advisories

Ms. Marianne Yamaguchi Santa Monica Bay Restoration Project provided a summary of the information about fish and wildlife consumption advisories that Chapter 3 of the fish consumption report presents. Ms. Yamaguchi pointed out that fish advisories are just one component of a comprehensive strategy for the management of health risks. She also noted that fish advisories are a strategy for risk avoidance rather than risk reduction. She explained that, typically, advisories are intended to provide information about the nature and the extent of contamination and its potential adverse effects on health. Their purpose, she noted, is to encourage consumers to avoid consuming contaminated species and to suggest alternative ways in which people could continue to eat fish. However, she added, fish advisories are not effective in many environmental justice communities because fish substitutes are not readily available or because changes in fish consumption practices may cause great anguish or cultural harm. Therefore, said Ms. Yamaguchi, a comprehensive strategy for the control of health risks should go beyond the issuance of fish advisories.

Continuing, Ms. Yamaguchi observed that, while advisories are useful, if they are to be effective, they must be tailored to the specific locations and communities of concern. She pointed out that there is no "one-size-fits-all" strategy and suggested that attempts to ensure consistency across broad regions or among population groups may not be useful or appropriate.

She stated that affected communities and tribes play an integral role in relevant, appropriate, and effective

risk communication efforts. Affected communities and tribes, she continued, therefore must be involved as partners, or in the case of tribal governments, as "co-managers," at every stage of the communication process — in identifying needs and priorities, in developing content for advisories that is appropriate for the groups of concern, in helping to prepare translations and communicate the message, and in helping to interpret communities' responses to risk management efforts.

3.5 Fish Consumption Concerns Among American Indian Tribes and Alaskan Native Villagers

Mr. Dean Suagee, Vermont Law School discussed information presented in Chapter 4 of the fish consumption report. Mr. Suagee stated that the political and legal status of tribes is unique among affected groups and so warrants separate treatment. As sovereign entities, federally recognized tribes maintain a government-to-government relationship with the federal government and its agencies, he explained. Continuing, Mr. Suagee stated that the unique legal status of tribes includes a trust responsibility on the part of the federal government and, for many tribes, treaty rights, as well. He then remarked that EPA must demonstrate respect for the unique status of Native American tribes and Alaskan Native villages.

Mr. Suagee explained further that, in general, there is no environmental protection infrastructure in Indian country because Indian country had been overlooked during the development of the first federal environmental laws. He stated that, because tribes do not have the same kinds of resources as states have to devote to program development, tribes are for the most part dependent on EPA and other federal agencies, such as the Bureau of Indian Affairs (BIA), the Indian Health Service (IHS), and the U.S. Department of Housing and Urban Development (HUD).

Turning to the role of tribes as regulators in protecting the environment, Mr. Suagee stated that, although tribal governments and EPA are responsible for implementing water quality standards in Indian Country and on Alaskan Native lands, only 16 of the 565 federally recognized tribes and Alaskan Native villages have water quality standards that have been promulgated or approved by EPA. Therefore, continued Mr. Suagee, there are considerable gaps in water quality standards in Indian country, as well as gaps related to other statutes.

Mr. Suagee then noted that EPA had been engaged for some two and one-half years in consultations with tribes related to EPA's proposal to promulgate core federal water quality standards for Indian country. The proposed rule finally was signed on January 19, 2001, he said. However, he continued, the rule became subject to the moratorium on new rules and was "passed back" to EPA by Office of Management and Budget (OMB). Mr. Suagee then explained that, during the November 2001 meeting of the Tribal Caucus of the Tribal Operations Committee (TOC) in Albuquerque, New Mexico, he had been told that OMB provided two suggested options when the rule was returned to EPA. He then noted that he was unsure of the current status of the rule. He remarked, however, that the Tribal Caucus was near consensus that EPA should move forward to promulgate the current rule as a proposed rule.

Mr. Suagee also stated that, because of the historical difference in the way Alaskan Natives have been treated, the implications of the Alaska Native Claims Settlement Act and case law interpreting that act, and the use of the term "reservation" in the provisions of the Clean Water Act and the Clear Air Act that authorize treatment of tribes like states, the solutions for Indian country that are available in the lower 48 states are not available in Alaska.

Mr. Suagee then stated that EPA also should explore the development of more appropriate designated uses for culturally important water bodies in Alaska than those currently in place. Although those issues had not yet been included in the draft fish consumption report, suggested Mr. Suagee, the work group and the NEJAC should revise the report to include a recommendation that is specific to Alaskan Natives.

The members of the Executive Council then discussed the draft fish consumption report and developed proposed revisions and additional recommendations. Appendix A presents a list of those proposed revisions and additional recommendations.

4.0 DRAFT STRATEGIC PLAN OF THE NEJAC

Ms. Shepard presented the strategic plan of the NEJAC to the members of the Executive Council. She explained that the strategic plan incorporates the issues raised and conclusions reached at the August 2001 meeting of the Executive Council, held in Washington, D.C. Ms. Shepard advised that the introduction section of the strategic plan will be revised to reflect the Executive Council's

appreciation for the efforts of past NEJAC members, especially the efforts of those who had served as founding members. In addition, these revisions will note the past contributions of NEJAC in advancing policy development within the EPA related to environmental justice.

4.1 Goals and Objectives

Over the previous year, Ms. Shephard noted, the NEJAC had been reviewing its role and discussing how the NEJAC could best promote environmental justice and fulfill the mission set forth in its charter. In general, said Ms. Shepard, the members of the NEJAC had concluded that they can better fulfill the mission of their charter by refocusing their own processes and work products, while redirecting the site-specific issues to the appropriate EPA regional offices that have both the responsibility to address such issues and the authority to do so. She stressed that, during its meetings, the NEJAC would continue to solicit public comment on policy issues before the NEJAC.

Ms. Shepard then read the revised mission statement for the NEJAC that is presented in the strategic plan. The mission statement reads as follows:

"The NEJAC is a federal advisory committee that provides timely, relevant, cogent, and independent advice to the EPA Administrator on matters of environmental justice to ensure the fair treatment of all peoples, including minority, low-income, and indigenous populations and federally recognized tribes, and often overlooked populations, such as agricultural workers."

Continuing, Ms. Shepard explained that the Strategic Plan outlines the strategy of the NEJAC to (1) redesign its activities to better perform the advisory role its charter establishes; (2) collaborate with EPA to provide regional and other alternative mechanisms other than meetings of the NEJAC, such as regional listening sessions, through which communities can bring site-specific issues to the attention of EPA; and (3) develop, through a deliberative process that involves all stakeholders, an effective work product grounded in issues of importance to environmental justice communities. She added that the strategic plan is to guide the work of the NEJAC through September 27, 2003.

Ms. Shepard stressed that disproportionate adverse effects on communities of color, low-income communities, and tribes are at the very heart of

environmental justice. They also, she continued, are the impetus of the grassroots activism that prompted the development of several key products, including President Clinton's Executive Order 12898 on Environmental Justice and the subsequent formation of the NEJAC, along with numerous other products over the years. The NEJAC, she declared, will continue to make strong recommendations to EPA on the conduct of regional listening sessions and other mechanisms that will take place in the coming year, as well as recommendations on follow-up to those sessions.

Ms. Shepard then briefly outlined the six goals for the Executive Council of the NEJAC and its subcommittees, which, she noted, are presented in the strategic plan. Those goals, she said, will guide the NEJAC in accomplishing its mission.

First, Ms. Shepard explained, a work product goal was developed to identify several methods of providing cogent, timely, relevant, and effective advice, both formal and informal, to the EPA Administrator. Second, the strategic plan sets forth a process goal aimed at developing and implementing a deliberative, consultative, and collaborative process on which the NEJAC can base its advice to the EPA Administrator, she said. A third goal is the public participation and public input goal that outlines how the NEJAC actively will employ mechanisms for soliciting the views of minority, low-income, indigenous, and agricultural worker populations and of federally recognized tribes, she continued. She explained that the third goal addresses (1) public participation at meetings of the NEJAC, (2) the incorporation of community concerns and issues into the policy dialogue of the NEJAC, and (3) public participation at the regional level.

Continuing, Ms. Shepard stated that a fourth goal included in the strategic plan is an organizational and procedural goal. She explained that, the purpose of the fourth goal is to obtain better briefings from EPA about its initiatives and activities and to become better able to communicate externally with the larger environmental justice movement, communities, other stakeholders, government and industry. The NEJAC, she said, would request that EPA initiate a review of the NEJAC organizational structure and procedures. Implementation of the initiative will enable the NEJAC to more effectively and efficiently develop advice and render it to the EPA Administrator, she said.

A fifth goal presented in the strategic plan, Ms. Shepard continued, is a communications goal that outlines a communication plan for improving the flow

of information from EPA to the NEJAC and for creating a listserv to enable members of the Executive Council and DFOs to discuss matters properly between meetings of the NEJAC. Last, she said, the strategic plan includes the goal of developing an effective orientation program for new members of the NEJAC and its subcommittees.

Ms. Shepard then publicly thanked Ms. Jaramillo, who chaired the committee that drafted the strategic plan, and the members of the drafting committee, Mr. Kenneth Warren, Wolf, Block, Schorr and Solis-Cohen and member of the Enforcement Subcommittee; Ms. Wilma Subra, Louisiana Environmental Action Now and member of the Health and Research Subcommittee; and Ms. Veronica Eady, Massachusetts Executive Office of Environmental Affairs and chair of the Waste and Facility Siting Subcommittee.

Ms. Jaramillo commented that the development and implementation of the plan would be a dynamic process. That is, she continued, the strategic plan will "grow and move with the times." She also echoed Ms. Shepard's praise for Ms. Subra, Mr. Warren, and Ms. Eady for their hard work in writing the strategic plan.

Ms. Jane Stahl, Connecticut Department of Environmental Protection, stated her belief that the strategic plan would set the stage for a wonderfully productive collaboration between the NEJAC, which was created to help give communities a voice in the world of environmental protection and environmental management, and the organizations and bureaucracies that are supposed to be doing that work on behalf of all communities and constituencies.

The importance of the plan, Ms. Stahl continued, is that it provides the NEJAC and communities with a structure through which they can move forward. Everyone is on the same side, she stressed, but different individuals bring different talents and different views to the table. She stated that all stakeholders must communicate and work with one another, but that they should do so in a structured fashion. In that way, she observed, they will achieve an end result, rather than bringing about increased division and controversy over issues that are important to all stakeholders.

In closing, Ms. Stahl expressed her belief that the organized process presented in the strategic plan would help not only the NEJAC as a group to achieve its goals, but also the communities that the NEJAC serves to accomplish the same outcome.

She added that implementation of the strategic plan also would help EPA move forward in addressing issues that are important to communities that have been “excluded from the table” in the past.

Dr. Graciela Ramirez-Toro, Interamerican University of Puerto Rico and chair of the Puerto Rico Subcommittee, applauded the work of the drafting and writing committee (that developed the draft strategic plan. She then offered several suggestions for revision or clarification of the plan. First, she suggested that the strategic plan include some discussion of the ways in which the work groups will include individuals, such as technical experts, who are not members of the NEJAC. She also suggested that the strategic plan outline at least a general time line and protocol for scheduling conference calls. Finally, Dr. Ramirez-Toro suggested that the strategic plan be revised to identify the role of members who live in a particular region during listening sessions held in that region.

Ms. Savonala “Savi” Horne, Land Loss Prevention Project and chair of the Enforcement Subcommittee, congratulated the members of the Executive Council for dealing with the reality that the NEJAC is a federal advisory committee and therefore must conform to the requirements of the act that governs such a body. She echoed the concern voiced by Dr. Ramirez-Toro that the strategy for and goals of the regional listening sessions should be defined more clearly in the draft strategic plan. In particular, she noted, the plan should describe clearly how comment and advice generated during regional listening sessions would be funneled to the Executive Council of the NEJAC.

Responding to Ms. Horne’s concerns, Ms. Stahl, while noting that she was pleased that the EPA regions have moved forward in accepting the notion of regional listening sessions, expressed agreement that a means of conveying information to the NEJAC should be included in the strategy developed for the regional listening sessions. Ms. Stahl added that the NEJAC must monitor the issues that arise during those sessions so that its members will be cognizant of such issues on a national level, rather than leaving them confined only to a regional level.

Expressing concern that EPA might find it necessary to secure state participation, Ms. Shepard asked Ms. Stahl to discuss her perspective on the role of state governments in the regional listening process. Ms. Stahl responded that she believed that the states would want to participate in the listening sessions. She pointed out that there are issues of environmental justice in all states. The states, she

said, cannot afford to withhold participation. Ms. Stahl then expressed her belief that the listening sessions would prove to be an effective way for EPA to engage the states on a regional basis. She stated further that she hoped that the regional sessions will be conducted in a manner that will be an opportunity for sharing of concerns and of information, rather than an avenue for the “demonization” of state bureaucracies or state environmental agencies.

Mr. Lee warned against the implementation of the regional listening sessions lacking an “action plan” or guidance on the format of the sessions, how the sessions will be evaluated, and how action taken in response to issues raised during the sessions will be measured. He stressed that it is the business of the NEJAC to encourage and advise EPA to ensure that the agency develops a standard operational and procedural process for the regional listening sessions. He suggested that, in the future, NEJAC may, if it chooses, to provide advice and recommendations on regional listening sessions.

Ms. Subra commented that each EPA regional office had provided the drafting and writing committee with a report on the status of the issues on which that region was working. She suggested that the information provided be disseminated to communities in each region so that members of the communities can review the actions of regional offices. Ms. Subra noted that, if repeated on at least an annual basis, such action also could serve as an effective mechanism by which the EPA regional offices can provide information to the NEJAC on the regional issues and initiatives.

Referring to the involvement of the states in the regional listening sessions, Ms. Subra commented that some state agencies perform at a “less-than-appropriate” level. Therefore, she continued, citizens look to the EPA regional office for assistance. Ms. Subra stressed that it is important that both the EPA regional offices and the states attend the listening sessions, so that tasks and responsibilities can be delegated. She added that it will be important that the NEJAC “keep its finger on the pulse,” continuing to be fully cognizant of what issues have been identified, what individual or entity has been assigned to address those issues, and whether the issues are being addressed.

Ms. Eileen Guana, Southwestern University School of Law and vice-chair of the Air and Water Subcommittee, pointed out that the NEJAC does not have oversight authority over the EPA regional offices. However, she added, the NEJAC can work to prompt the establishment of a standard of

accountability for the regions and a voluntary mechanism for informing the NEJAC of activities conducted by the regions.

Mr. Warren pointed out two important themes that he said were apparent in the strategic plan. First, the proposed deliberative process, which intends that the NEJAC focus on delivering work products to EPA that can be integrated into EPA policy and practice, is the most effective way the NEJAC can influence environmental justice, he said. Another key theme of the strategic plan, he continued, is that the proposed processes are collaborative — collaborative processes between the NEJAC and EPA and between the NEJAC and communities are envisioned in the strategic plan, he noted. Mr. Warren also stressed that the development of a communication plan is a key element of the strategic plan. He said that a communication plan that provides for a number of channels of communication with EPA will allow the members of the NEJAC to better understand EPA's actions, in turn allowing the NEJAC to act more effectively to accomplish the mission set forth under its charter.

Ms. Anna Frazier, DINE' CARE and member of the Indigenous Peoples Subcommittee, informed the members of the NEJAC that she had talked with several representatives of grassroots organizations who wish to comment on the draft strategic plan. Those individuals would offer their comments during the public comment period to be held in conjunction with the current meeting of the NEJAC, she reported.

Mr. Robert "Bob" Harris, Pacific Gas and Electric Company and member of the Waste and Facility Siting Subcommittee, stressed that the draft strategic plan establishes a foundation that will allow the NEJAC to have influence nationwide in resolving problems because the plan involves all stakeholders. Mr. Harris commended EPA's regional administrators for their understanding of the importance of the role that they must play in developing and implementing the strategic plan and for the role they will play in bringing together all stakeholders in their regions.

Ms. Shepard then turned to Mr. Lee for remarks about specific plans for implementation of the draft strategic plan.

4.2 Implementation of the Strategic Plan

Mr. Lee first pointed out that the decision to "refocus" the NEJAC did not arise from a discussion that had started six months earlier, but had resulted from discussions that began some five or six years ago.

He then emphasized that the draft strategic plan effectively incorporates community involvement and public participation. For example, he said, the draft fish consumption report is an excellent example of a work product of the NEJAC that was developed through a deliberative process and based on the views of communities about the issues and concerns of importance to those communities. Such processes and products have the potential to translate effectively into true improvements for communities, he stressed.

Mr. Lee then reviewed the NEJAC's schedule for 2002, as set forth on page 12 of the draft strategic plan. He first stated that the Pollution Prevention Work Group was to be established formally in January 2002. Mr. Lee added that Ms. Subra and Mr. Warren were to serve as co-chairs of the work group.

Continuing, Mr. Lee reported that the Fish Consumption Work Group was to make its report and the recommendations associated with it final by March or April 2002. Similarly, he added, the Interagency Environmental Justice Implementation Work Group was to complete its strategies report and recommendations on the same timetable.

Also in April 2002, Mr. Lee continued, OEJ was to provide a document that sets forth uniform procedures for the operation of subcommittees. He explained that the draft strategic plan of the NEJAC identifies five elements that are key to the successful operation of the subcommittees and work groups of the NEJAC: leadership; membership; the role of DFOs; support from and communication with EPA program offices; and development of strategic goals and plans. Recognizing that there are significant differences among the subcommittees of the NEJAC with respect to the five elements of success, OEJ, in consultation with the NEJAC, will develop procedures that will provide an operational baseline for all subcommittees and work groups, explained Mr. Lee. In developing the procedures, he added, the NEJAC, in consultation with the OEJ and relevant EPA program offices, was to develop a process for evaluating the effectiveness of the subcommittees of the NEJAC. Ms. Shepard would lead that initiative, said Mr. Lee.

Mr. Lee identified a series of tasks and provided assignments to members of the NEJAC to complete these tasks. The tasks are:

- Finalization of NEJAC Policy Advice Development Model

- Finalization of NEJAC Model for Incorporation Community Issues and Concerns into NEJAC Policy Dialogue
- Development of a definition of consensus and consensus-building
- Scoping report from Ad Hoc Scoping Work Group on Cumulative Risk Issue

Continuing, Mr. Lee stated that the NEJAC also would complete its work on the above tasks by June 30, 2002.

Mr. Lee explained that, as prescribed in the draft strategic plan of the NEJAC, the subcommittees of the NEJAC were to be asked to prepare annual strategic plans and progress reports to be submitted to the Executive Council of the NEJAC, OEJ, and the appropriate EPA program offices. He said that each subcommittee should submit a new or revised strategic plan to OEJ by September 30, 2002. Progress reports, he continued, would be due each year at least 30 days before each meeting of the NEJAC. The progress reports should describe in detail the subcommittee's progress in meeting the goals stated in its strategic plan, he noted.

Finally, Mr. Lee stated that the next meeting of the NEJAC was to be held in Baltimore, Maryland in December 2002. The issue that the NEJAC would be asked to consider and provide recommendations about during that meeting, he announced, was to be:

“How can EPA promote innovative pollution prevention approaches to ensure a clean and healthy environment and improve the quality of life for all people, including low-income communities, minority communities, and Tribes?”

Ms. Horne asked how the reports, procedures, and processes developed for implementation of the strategic plan were to be incorporated into the current document. She also noted some ambiguities in the language of the current version of the document, asking whether it would be possible to amend the current text. Mr. Lee responded that suggested revisions of the text and the products developed for implementation over the time period covered by the plan would be incorporated into a revised document after December 2002.

Returning his attention to the implementation of public participation at the regional level, Mr. Lee stated that OEJ is developing a process that EPA regional offices can implement in hosting listening

sessions. He stated that many questions must be considered during development of the process, including:

- Who should be invited to participate
- How the various regions can integrate the listening sessions into their regional plans
- Whether sub-regional meetings should be conducted, when appropriate

Mr. Lee then stated that, once a draft strategy for conducting the regional sessions has been formulated by OEJ, in conjunction with the EPA regional offices, OEJ was to provide a report to the NEJAC. He stated that the NEJAC then would advise EPA about the implementation of the strategy for the regional listening sessions and provide the agency recommendations about that effort.

Ms. Stahl suggested that members of the NEJAC should be able to work directly with the regional offices of EPA to engage in the regional listening sessions, noting that the Executive Council could glean many “lessons learned” from the public comment period process. She also commented that the members of the NEJAC perhaps could confer with EPA regional administrators during a meeting of the NEJAC.

Dr. Richard Gragg, III, Florida A&M University and member of the Health and Research Subcommittee, commented that the public also should have the opportunity to provide comments on the process for conducting regional listening sessions.

Ms. Eady expressed her belief that the listening sessions would be a useful addition to EPA's strategy for increasing public participation. However, she also expressed concern that the sessions would not lead to action by the EPA regional offices, pointing out that, in the past, citizens often had traveled to address the NEJAC only after regional authorities ignored them. She also expressed concern that the NEJAC would not be able to monitor the activities of 10 EPA regions. Ms. Shepard responded that communities still would have the opportunity to address the NEJAC during public comment periods. Ms. Shepard agreed, however, that reporting to the NEJAC about the progress of the listening sessions would be an important issue to be considered during the development of the process for those sessions.

5.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations and reports made to the Executive Council of the NEJAC.

5.1 Update on the Interagency Environmental Justice Implementation Work Group

Ms. Guana provided an overview of the draft document, The National Environmental Justice Advisory Council's Report on Integration of Environmental Justice in Federal Agency Programs. That document was developed by the Interagency Environmental Justice Implementation Work Group to present information about the progress of the federal government in integrating environmental justice into the policies, programs, and activities of its agencies in a manner consistent with the provisions of existing laws and Executive Order 12898. The draft report, she explained, provides an analysis of information presented during the December 2000 meeting of the NEJAC, which had been held in Arlington, Virginia.

Ms. Guana reported further that the work group faced particular challenges in developing recommendations for EPA about interagency implementation on the basis of the panel discussions heard during the December 2000 meeting. She said that the policy issue related to interagency implementation is broad. Many of the presentations, she continued, did not provide complete descriptions of the pertinent activities of agencies because the presentations, of necessity, were limited in length. Some individuals, Ms. Guana explained further, made very general presentations that failed to provide specific information. Although other presenters provided a few, very specific examples of an agency's activities, time limitations prevented them from providing details about those activities, she added.

The work group faced another challenge in organizing the report, continued Ms. Guana. Different agencies have different missions and work under completely different legal authorities, she explained. She pointed out that it was problematic for the work group to present the report in a way that could capture that diversity without inviting comparisons that may be unfair, given the differing activities and legal authorities of the various agencies of the federal government.

Continuing, Ms. Guana stated that a third challenge that the work group faced in developing the report was that they could not verify independently that agencies were doing what they said they would be

doing or to evaluate the effectiveness of the efforts of the agencies.

To meet those challenges, said Ms. Guana, the members of the work group drew on various additional sources in an attempt to obtain more complete information about the actions of federal agencies. Such sources, she noted, included the web sites of the various agencies. She pointed out that the sources were not independently verified sources, a circumstance that introduced yet another limitation on the information included in the report.

Discussing the structure of the report, Ms. Guana stated that, to provide a legal context for the discussion of the activities of the agencies, the report began with a discussion of legal authorities. She noted that the discussion of legal authorities was limited principally to those authorities granted the various agencies under environmental statutes. However, she noted, many agencies have authorities under other statutes. To her knowledge, she said, the agencies have not performed a systematic study of all their legal authorities within the context of environmental justice. Therefore, she reported, in its report, the work group had recommended to the NEJAC that the NEJAC advise EPA to request each federal agency to undertake a review of all its legal authorities.

Ms. Guana then pointed out that the report also included information about legal developments that had taken place since the December 2000 meeting and the potential implications of such developments for the environmental justice movement. She cited the Supreme Court decision in the Sandoval case in which a divided court said the Civil Rights Act of 1964 does not authorize private lawsuits that contend state government policies have a discriminatory effect. Title VI of the act allows a suit only if litigants can prove discrimination was intentional, the court ruled.

Continuing, Ms. Guana noted that the work group had organized the report in a manner that would alert the reader to the differences among agencies in terms of their potential for exerting influence on environmental issues and their varying levels of legal authority. The report includes a table that categorizes the agencies by the nature of their activities, she added. Continuing, she explained that the work group also made an effort to convey an understanding of the types of activities in which the various agencies are engaged, including an analysis of activities the various agencies have in common.

Concluding her remarks, Ms. Guana stated that the intent of the report was to provide the reader with a complete and fair picture, or “baseline snapshot,” of the actions in which the various agencies currently are engaged. The report, she suggested, therefore can be used in the future to measure progress in integrating environmental justice into the policies, programs, and activities of the agencies. She added that the report could be helpful to the agencies themselves by providing information about the activities of sister agencies in areas of common interest that may assist them in determining how they can address environmental concerns related to their own missions. Ms. Guana then stated that the work group welcomes suggestions and comments from the members of the NEJAC about strengthening the report and making it more useful to EPA and other federal agencies.

Ms. Walker suggested that a representative of the Indigenous Peoples Subcommittee be invited to participate in preparing the final report. She stated that the Indigenous Peoples Subcommittee had made several recommendations to the work group as the report was being drafted; she noted that those recommendations had not been included in the report. Ms. Guana responded that the work group had focused first on the organization of the information in the report. She added that the work group would be interested in reviewing the recommendations of the Indigenous Peoples Subcommittee and incorporating those suggestions into the final report.

Ms. Stahl expressed her understanding that all the subcommittees had provided recommendations during the planning stages of the report. She suggested that the recommendations of all the subcommittees be reviewed as the final report is prepared.

Ms. Walker then asked when the final report was expected to be available. Mr. Lee responded that the final report was to be completed and distributed in March or April 2002.

5.2 Report on the Community-Based Health Research Model

Mr. Lee provided an update on the status of the report on the community-based health research model that the NEJAC had undertaken to develop. He reminded the participants in the meeting that, in response to issues discussed during the meeting of the NEJAC in Atlanta, Georgia, in May 2000, a 20-member work group, made up of members of the NEJAC and representatives of HHS and EPA, had

been formed to develop such a model. The final report of that work group had been distributed to the Executive Council in early 2001, he added.

Mr. Lee explained that a primary theme of community-based health research models was the need for interagency collaboration. To provide a meaningful response to the recommendations set forth in the health report, EPA’s Office of Research and Development (ORD), in collaboration with OEJ and EPA’s Office of Prevention, Pesticides, and Toxic Substances (OPPTS), had developed a strategy for interagency collaboration in the area of community-based health research. The strategy, continued Mr. Lee, had been forwarded to the office of the EPA Administrator for review. He stated that he expected a response from the Administrator in the near future. That expectation expressed, Mr. Lee then tabled discussion of the proposed strategy, pending receipt of that response.

5.3 Update on the Federal Facilities Work Group

Mr. Brandon Carter, EPA Federal Facilities Restoration and Reuse Office and DFO of the Federal Facilities Work Group of the NEJAC, provided an update on the activities of the work group.

Mr. Carter explained that the task of the work group is to identify and evaluate key issues related to the activities and operations of federal facilities that are of concern to environmental justice communities. The objectives of the work group, he stated, are to:

- Formulate national policy recommendations to address such concerns
- Provide a forum for the conduct of dialogue communities
- Compile a list of resources available to communities and stakeholders
- Produce a written report that summarizes the findings and recommendations of the work group

Mr. Carter stated that the work group had begun reviewing case studies in January 2001 to identify the key issues related to federal facilities that are of concern to environmental justice communities and to gather information that could serve as a basis for the development of the work group’s policy recommendations. He noted that work group also evaluated the effectiveness of previous policy recommendations made by various other federal advisory committees. He also noted that, during the

meeting of the NEJAC in December 2000, the U.S. Department of Energy (DOE), the U.S. Department of Defense (DoD), and the U.S. Department of the Interior (DOI) had signed a memorandum of understanding (MOU) that ensured their cooperation with the Federal Facilities Work Group and assigned staff members to collaborate with the work group.

Mr. Carter then announced that the work group expects to submit a final report to the NEJAC before the December 2002 meeting of the NEJAC to be held in Baltimore, Maryland. Mr. Lee reported that the NEJAC Federal Facilities Work Group will work in coordination with and report to the NEJAC Waste and Facility Siting Subcommittee. This will improve coordination between EPA and the NEJAC because the primary support being provided to this work group is being provided by the OSWER, which also supports the NEJAC Waste and Facility Siting Subcommittee. OSWER has committed to adding another member to the subcommittee to provide interface with the work group, he said.

Ms. Subra asked whether the working group was to evaluate the level of consistency between cleanup efforts at federal facilities and those at other cleanup sites, such as Superfund sites. Mr. Carter responded that the work group was reviewing case studies from a representative sample of various types of sites, including a formerly used defense site (FUDS), a base realignment and closure (BRAC) site, and a DOE site. The work group, he stated, would compare the principles and recommendations that are being implemented by the various authorities. Mr. Carter added, however, that such a comparison is difficult because the authorities that regulate how and by whom sites are cleaned up differ significantly.

Mr. Subra then asked whether the work group had considered the possibility that inactive federal facilities currently undergoing cleanup will be reactivated in response to the terrorist attacks of September 11, 2001. She asked whether it would be necessary to complete cleanup at a site before new activities could begin. Mr. Carter responded that sites that have been identified by Congress under the BRAC Program would not reopen because those properties are to be transferred out of the ownership of the DoD. Other sites that are put on standby by the federal government could be reactivated, he noted. Many sites on the National Priority List (NPL), a list of national priorities for sites with known or threatened releases of hazardous substances, are active facilities that continue to operate while undergoing cleanup, explained Mr. Carter.

Ms. Stahl reminded Mr. Carter and the members of the Executive Council that the Environmental Council of States (ECOS) also had provided recommendations to the EPA Administrator through resolution. Ms. Stahl suggested that, as it develops its report, the work group draw on staff of ECOS as a resource.

Ms. Eady asked whether the work group was to address the recurring issue of the determination of the lead agency when more than one federal agency has legal authority over cleanup of a federal facility. Mr. Carter responded that the work group planned to address the issue, commenting that issues related to the authority of the lead agency and that of EPA authority under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and the National Contingency Plan (NCP) are "implicit in the issues related to federal facility sites."

Ms. Subra pointed out that one issue linked to federal facilities with increasing frequency over the past few years is contamination with perchlorate, a soluble oxidating agent used in the manufacture of explosives. Ms. Subra asked Mr. Carter whether, in its report, the work group would address specifically issues related to perchlorate. Mr. Carter responded that the report was not intended to address issues related to specific contaminants or implementation of measures to address such specific contaminants under cleanup programs. However, he continued, EPA currently is developing a new maximum concentration level (MCL) for perchlorate. He then agreed to provide the Executive Council of the NEJAC updates on the status of the development of the MCL.

Dr. Gragg asked whether the report would identify the number of communities that may be affected directly by environmental conditions at federal facilities and the status of cleanup efforts at the facilities identified. Mr. Carter responded that the work group had examined the possibility of cataloguing environmental justice communities that are located at or near federal facility sites but had discontinued the effort because of constraints imposed by limitations on resources. Instead, the work group decided to focus the report on the implementation of cleanup programs at federal facilities, he said. Mr. Carter added that the work group would be able to identify the total number of federal facility sites.

Ms. Mary Nelson, Bethel New Life and member of the Waste and Facility Siting Subcommittee, commented that, to ensure that contamination does

not reoccur at cleanup sites, standards for prevention should be included in the report.

Mr. Lee commented that lessons learned from several positive developments in the cleanup of federal facilities could be incorporated into the report. For example, he said, the cleanup and restoration of the Metlakatla Indian community of Metlakatla, Alaska, an environmental justice and national Brownfields showcase community, successfully involved DoD, the U.S. Coast Guard, and the U.S. Federal Aviation Administration (FAA). He also mentioned the success of Bridges to Friendship, an environmental justice demonstration project underway at the Washington Navy Yard in southeast Washington, D.C. Mr. Lee noted that the progress such efforts illustrate is significant.

5.4 Update on the Pollution Prevention Work Group

Ms. Subra, co-chair of the newly formed Pollution Prevention Work Group, provided a brief overview of the preliminary objectives of that work group.

Ms. Subra stated that the primary objective of the work group would be to evaluate how existing technologies, mechanisms, and programs for pollution prevention can be implemented in environmental justice communities to improve the quality of the environments of those communities. In light of information presented by the Fish Consumption Work Group, she said, her work group will consider how pollution prevention efforts can reduce contamination of aquatic environments. Continuing, Ms. Subra reported that the working group also would investigate mechanisms for measuring the effectiveness of pollution prevention measures.

Ms. Subra informed the members of the Executive Council that she and Mr. Warren, co-chairs of the working group, were to submit to EPA a list of potential members of the work group before the end of 2001. She requested that the members of the Executive Council submit names of suggested members of the work group to her and Mr. Warren. Mr. Barry E. Hill, Director, EPA OEJ, added that the members of the Executive Council also should recommend to EPA consultants that have experience in pollution prevention.

Ms. Walker requested that a representative of the Indigenous Peoples Subcommittee be appointed to serve on the work group. She also asked that the work group consider whether an evaluation of the issue of the "precautionary principle" would be

appropriate in light of the objectives of the work group.

Ms. Jaramillo suggested that the work group also evaluate the cost and benefits of environmental restoration, clean production, and low-impact development.

Mr. Suagee reported that his clinic currently is working with three tribes to develop tribal environmental policy and acts, specifically by creating an environmental review process for the tribes. The purpose of the effort, he explained, is to avoid pollution and other environmental degradation that might arise as a result of economic development. Mr. Suagee then volunteered to participate on the work group.

Ms. Eady noted that there are several valuable resources in the state of Massachusetts, including the Toxicities Reduction Institute and the Center for Sustainable Production. She volunteered to suggest some individuals representing those organizations as potential members of the Pollution Prevention Work Group.

Dr. Gragg suggested that the work group also consider pollution prevention at DOE and DoD facilities.

Mr. Larry Charles, ONE/CHANE and member of the International Subcommittee, specifically asked that Ms. Dianne Wilkins, Oklahoma Department of Environmental Quality be selected to represent the International Subcommittee on the Pollution Prevention Work Group.

5.5 Briefing on the Cumulative Risk Technical Panel of the EPA Risk Assessment Forum

Mr. Lee introduced Mr. Martin Halper, EPA OEJ, to provide an overview of the current draft Framework for Cumulative Risk Assessment prepared by the Cumulative Risk Technical Panel of the EPA Risk Assessment Forum, a standing committee of senior EPA scientists. The purpose of this briefing is to help NEJAC prepare to address the policy issue area for 2003, which is slated to be cumulative risk.

Mr. Halper explained that the framework document was developed to provide a basic structure and definition of key principles for EPA's cumulative risk assessments. In the future, he said, the framework document will be used as a foundation for comprehensive guidance for cumulative risk assessment. Mr. Halper noted that, in some cases, concepts introduced in the framework document

require the application and knowledge of methods that currently are not available. Therefore, he continued, the document also outlines research and development needs that must be met to support evaluation of cumulative risks.

Mr. Halper singled out two elements of the framework document that he considered particularly significant to the environmental justice movement. First, he said, the chapter on planning, scoping, and formulation of problems requires that public officials, experts on risk, community leaders, and interested and affected parties seek agreement on the purpose, scope, and approach for the risk assessment through extensive dialogue before the assessment begins. Second, he continued, the framework document addresses the concepts of the vulnerability, and specifically the susceptibility, of a population as important factors in the assessment of cumulative risk. Mr. Halper explained that a vulnerable population is a population at increased risk of adverse effect. The concept, he explained further, includes individuals or sensitive subgroups that may be highly susceptible to risk because of a number of possible factors, such as stage of life, prior exposure, or existing state of disease.

Mr. Halper then stated that the framework document, which includes traditional quantitative considerations, as well as qualitative considerations, has the potential to affect the ways in which EPA and other federal agencies operate.

Continuing, Mr. Halper stated that, in general, the framework document has been applauded universally. He then said that a full peer review of the document was to be conducted in the fall of 2002. After the framework document is final, he continued, the first steps in the development of a formal guidance document will include the development of new studies and the evaluation of existing studies that can be used as case studies and the testing of some of the concepts of cumulative risk assessment identified in the case studies. He added that the development of the guidance document would take approximately two years.

Ms. Guana asked whether the framework document addresses the concept of peak periods of exposure as a qualitative consideration in cumulative risk assessment. She also asked whether the framework document identifies an optimal geographic scale at which to assess cumulative risk, noting that an assessment of only large-scale exposures might mask the effects of a number of small sources of exposure.

Mr. Halper reminded the members of the NEJAC that the framework document is not a guidance document. Therefore, specific methods for evaluating peak-period exposures and determining the optimal geographic scale for a risk assessment are not included in the document, he said. However, he continued, the framework document does point out that the duration and geographic scale of exposure are important considerations that should be included in a cumulative risk assessment. He added that such considerations can be site-specific and should be discussed by all stakeholders during the planning and scoping phase of a cumulative risk assessment.

Calling attention to the preface of the framework document, Mr. Suagee pointed out that tribes had not been included in the extensive peer review of the document. He stressed that tribal peoples should be involved in the review process. Dr. Gragg noted that the list of reviewers in the preface did not appear to include representatives of environmental justice communities or other affected groups. Mr. Halper responded that those groups would be included in the formal peer review process. Mr. Lee also stressed to Mr. Halper that the experiences and expertise of the members of the NEJAC and their relationships with tribes, environmental justice communities, states, and other entities make the members important and valuable resources for the panel in developing the framework document and future guidance documents on cumulative risk assessment.

Mr. Lee noted that the NEJAC Ad Hoc Scoping Work Group is being asked to address two questions in preparation for addressing the cumulative risk issue. The questions will address:

- What are some focused approaches (specific definitions, conceptual frameworks, questions, methodologies, areas, etc.) to the issue of cumulative risks (and impacts) that will make a significant contribution at this time to addressing environmental justice concerns related to the issue?
- How can the NEJAC make best use of its own capacities (membership, constituencies, outreach and deliberative processes, knowledge base, etc.) to address the issue of cumulative risks (and impacts)?

Dr. Gragg asked whether the framework document addresses the issue of the “precautionary principle” as a strategy for risk management. Mr. Halper responded that the document does not discuss

principles of risk management, but rather addresses issues and considerations that are important in evaluating cumulative risk.

Ms. Shepard asked about the implications of the document for state permitting programs. She asked whether state environmental quality review acts or new legislation that specifically identifies cumulative risk as a required consideration would be necessary before the concepts presented in the framework document could influence state permitting processes. In response, Mr. Halper expressed his belief that the document will provide an impetus to the adoption of the concept of cumulative risk in the approach to assessment.

5.6 Update on the Implementation of Permitting Recommendations

Mr. Hill made a presentation on the status of EPA's implementation of recommendations made in the report of the Environmental Law Institute (ELI) "Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authorities." The ELI report reviews the principal environmental regulations of EPA that govern maintenance of air and water quality, management of waste, regulation of the use of pesticides and chemicals, and fulfillment of public right-to-know legislation, reported Mr. Hill. The report also identifies specific statutory authorities for promoting environmental justice in the full range of EPA program functions, including permitting and the setting of standards, he said.

Mr. Hill then described the context in which the ELI report was developed. He first shared an observation of one of the framers of the Constitution of the United States, "This is a government of laws and not of men". Therefore, observed Mr. Hill, if there is no law, there can be no regulations. Because there is no stand-alone federal environmental justice statute, he continued, supporters of the environmental justice movement must look at the existing laws and implementing regulations to determine whether and how environmental justice is in fact embedded in those laws.

Continuing, Mr. Hill noted that, to integrate the concept of environmental justice into the regulatory process, supporters of environmental justice must answer two questions:

- "What is the legal authority?"

- "Assuming the legal authority exists, how can environmental justice be incorporated administratively into permitting programs?"

Mr. Hill then presented the five steps necessary to incorporate environmental justice into EPA's regulatory process. The starting point, he said, is the advice and recommendations of the NEJAC. In response to discussions that took place at its 1999 meeting, he continued, the NEJAC had issued a report in July 2000 that focused on permitting authorities under the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), and the Clean Water Act (CWA). In that report, he said, the NEJAC had recommended that EPA examine all the statutes under which it exercises regulatory authority to determine whether the legal authority to incorporate environmental justice into the agency's regulations is embedded in those statutes.

Continuing, Mr. Hill stated that the next step in incorporating environmental justice into EPA's regulatory process is legal analysis of existing statutes, as recommended by the NEJAC, and evaluation of how environmental justice can be incorporated in EPA's regulatory process from an administrative point of view. At the request of OEJ, ELI had performed a legal analysis, Mr. Hill explained, examining every statute under which EPA exercises authority, to identify opportunities to use **existing statutory authorities to advance environmental justice**. He also noted that, in December 2000, Mr. Gary Guzzi, EPA Office of General Counsel, had issued a memorandum that stated that environmental justice indeed is embedded in existing laws and implementing regulations. Therefore, there is no need for a stand-alone environmental justice statute, declared Mr. Hill.

With regard to the incorporation of environmental justice from an administrative point of view, Mr. Hill stated that OEJ had asked **the National Academy of Public Administrators (NAPA) to evaluate how environmental justice might be incorporated into the permitting process under RCRA, the CWA, and the CAA**. Mr. Hill then announced that, after his presentation, Ms. Ann Goode, senior consultant for NAPA, was to discuss the findings of that organization's evaluation.

The third step, Mr. Hill continued, is training. A training collaborative made up of representatives of EPA headquarters, EPA regional offices, industry, and community groups has been convened to develop a basic course on environmental justice that reflects recommendations made in the ELI and NAPA reports, he said. Further, EPA will develop

CAA and CWA training modules targeted to federal and state permit writers. The modules will train those individuals in integrating considerations of environmental justice into state and federal permits.

Mr. Hill then said that, after training has been provided, the next step is implementation. EPA OEJ would work with senior managers at EPA and EPA's Environmental Justice Steering Committee to implement environmental justice, as recommended in the ELI and NAPA reports, into their daily work under the authority provided by existing laws, he said.

Mr. Hill stated that the last step is evaluation. The EPA Inspector General will be asked to evaluate all programs for success in integrating environmental justice, as outlined in the NAPA and ELI reports, he said.

Ms. Ann Goode then gave a presentation on NAPA's research and evaluation of EPA's efforts to address the widely recognized fact that some communities of low-income people and people of color are exposed to significantly greater environmental and public health hazards than other communities. NAPA's research and associated recommendations are presented in the report "Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities is Integral to the Agency's Mission," she said.

Ms. Goode then explained that NAPA, an independent nonprofit organization that was chartered by Congress in 1967, is made up of some 500 fellows, including former members of Congress, leaders of nonprofit organizations and local government officials. Specifically, she said, NAPA was asked to prepare a report that would help the public better understand how considerations of environmental justice can be incorporated into the permitting process under RCRA, the CWA, and the CAA.

Ms. Goode stated that, in the report, NAPA recommended to EPA that changes be made in four distinct areas related to environmental justice: leadership, permitting procedures, setting of priorities, and public participation.

In the area of EPA's leadership in integrating environmental justice into permitting processes, Ms. Goode stated that President Clinton's Executive Order 12898 on environmental justice, as well as the policy statement Administrator Christine Todd Whitman issued to EPA assistant administrators on August 9, 2001 and statements made by former EPA

administrators, clearly articulated a commitment to environmental justice. However, despite the commitment of senior EPA leadership and, in many cases, allocation of substantial resources to the effort, Ms. Goode said, environmental justice has not yet been integrated fully into the agency's core mission or staff functions. There remains a "disconnect" between policy pronouncements and program realities, she added, although EPA has significant statutory and regulatory authority, as well as numerous opportunities to exercise discretion to incorporate considerations of environmental justice into its permitting processes, she added. Specific expectations for outcomes have not accompanied the commitments made, she continued, nor has EPA adopted methods of measuring progress in achieving outcomes or accountability to ensure that EPA managers and staff work to implement policies related to environmental justice.

Ms. Goode stated that NAPA's recommendations for EPA leadership in the area of integrating considerations of environmental justice into the agency's permitting processes are:

- Building on the EPA Administrator's recent environmental justice memorandum, EPA's assistant administrators for air, water, and waste and EPA's regional administrators should reinforce the importance of the policy on the incorporation of considerations of environmental justice, the role of that policy in the accomplishment of EPA's core mission, and the expectation that managers and staff will implement consideration of environmental justice in their projects and activities.
- EPA should complete its draft national guidance on environmental justice and develop practical tools that permit writers can use to identify and address issues of environmental justice related to air, water, and waste permits.
- EPA's offices of Air and Radiation, Water, and Solid Waste and Emergency Response should develop strategic plans that demonstrate how environmental justice is to be integrated into the substance and procedures of their permitting programs. Further, they should explore carefully ways in which they can use the authorities set forth in the General Counsel's legal opinion dated December 1, 2001 to incorporate considerations of environmental justice into permits for new and ongoing projects.
- Each strategic plan for incorporating environmental justice into a permitting program

should specify goals, measures of performance, expected outcomes, mechanisms for measuring accountability, and time frames for meeting the goals set forth in the plan.

- EPA should establish an accountability process that includes clear measures of performance for evaluating the success of EPA managers and staff in incorporating considerations of environmental justice into air, water, and waste permits.
- EPA should identify disproportionately affected and other adversely affected communities and establish explicit goals for reducing the risks posed to such communities. Further, EPA should set clear expectations for producing results that are linked directly to the agency's mission and give staff an important measure of performance that the staff can support wholeheartedly. Such tasks also could provide measures of EPA's progress in implementing environmental justice and could be reinforced by agency wide reporting that tracks such progress.
- EPA should develop a communication mechanism for agency wide sharing of information about tools that are effective in addressing environmental justice, including descriptions of best practices and lessons that all media programs, regional offices, and states can learn. The mechanism should coordinate EPA's activities in incorporating considerations of environmental justice into permitting processes, so that permit writers in all EPA's media programs and EPA regional offices can become more effective and efficient in responding to concerns related to environmental justice.
- EPA should evaluate the effectiveness of its national workshop on Fundamentals of Environmental Justice to determine how well the workshop meets its intended objectives, including the effective implementation of environmental justice in permitting.
- EPA should develop a program for rewarding the extra efforts of employees in addressing environmental justice in permitting through recognition under existing national awards programs and through the development of additional recognition programs.

Turning to a discussion of opportunities for integrating considerations of environmental justice

into individual permitting programs, Ms. Goode explained that a recent legal opinion issued by EPA's Office of General Counsel (OGC) made it clear that the CAA, the CWA, and RCRA provide permitting staff ample authority to address the concerns of high-risk communities when developing the terms and conditions of individual permits. The EPA Administrator reaffirmed that opinion in her August 9, 2001, memorandum to senior EPA officials, she said. However, EPA managers have not made it routine procedure to provide their permitting staff with straightforward, practical tools and procedures for incorporating community concerns into permits, nor have they directed that staff to ensure that concerns related to environmental justice are considered systematically in the conduct of EPA's permitting programs, continued Ms. Goode. Further, many EPA permit writers have not been provided the opportunity to learn how they can contribute to the resolution of issues related to environmental justice through an increased awareness of the community that may be affected by a proposed permit. Such awareness, said Ms. Goode, would include consideration of the nature of the risks the community faces; the concerns of the community about the activity related to the proposed permit, the capacity of the community to participate in the permitting process, and the best methods of communicating with the community.

Continuing, Ms. Goode pointed out that, because EPA's legal authority to issue permits is based on the provisions of RCRA, the CAA, and the CWA, EPA's ability to address other common concerns among high-risk communities, such as noise pollution, traffic concerns, and odor, is limited. She also explained that, in the area of permitting programs, EPA's credibility in high-risk communities depends upon its ability to visibly use opportunities for enforcing permit conditions, including more frequent inspections, local monitoring of environmental conditions, and reductions in backlogs of permit renewals for existing facilities.

Ms. Goode stated that NAPA's recommendations to EPA in the area of integrating considerations of environmental justice into individual permitting programs are:

- Senior program managers of EPA's air, water, and waste programs should take prompt steps to use their authorities, as outlined in the legal opinion issued by OGC, to prepare guidance documents for staff on how to fully incorporate considerations of environmental justice into their permitting programs. The managers should develop these documents after consulting with

representatives of affected communities and regulated entities. The programs also should use legal mandates and discretionary authorities to the fullest extent possible to expand opportunities for public participation in permitting programs; increase monitoring and public reporting; and impose in new, revised, and renewed permits conditions designed to reduce the burdens of pollution and public health hazards on disproportionately affected communities.

- In the short term, EPA should determine whether it can provide communities with earlier notice of permit applications so that the public will have a better opportunity to interact directly with EPA's permit writers and the community's concerns can be considered during the drafting and negotiating stages of the permitting process.
- Over the long term, EPA should revise its permitting regulations to ensure that nearby communities are notified of a permit application as early as possible.
- EPA should revise its public notification practices to ensure that public notices are provided in languages commonly spoken in the affected communities and placed in libraries, churches, community centers, and other locations accessible to members of those communities.
- EPA managers should provide permit writers with check lists or similar tools the permit writers can use in identifying and considering concerns related to environmental justice.
- EPA budget and administrative staff should recognize the additional time and effort that permit writers must devote to developing permit conditions that take into account issues of environmental justice and to working more closely with community groups. The agency's workload models should be adjusted as appropriate to indicate the average number of permits to be handled by a permit writer in light of such additional effort.

Continuing her overview of the NAPA evaluation, Ms. Goode discussed NAPA's findings related to EPA's use of permitting as a strategic element in pollution prevention and risk reduction. She stated that EPA had undertaken efforts to improve the science of cumulative risk assessment so that more tools are available to better assess disproportionate and

adverse effects on communities. However, while waiting for advances in the science of cumulative risk assessment, she explained, EPA and states currently have several tools available to support analysis of exposures of disproportionately affected communities to actual or potential multiple pollutants. She also said that EPA could perform more frequent and comprehensive environmental monitoring in communities to determine whether those communities should be given priority attention.

Ms. Goode stated that NAPA's recommendations to EPA in the area of the use of permitting as a strategic element in pollution prevention and risk reduction are:

- EPA should consult with state and local health and environmental officials to address concerns related to environmental justice and identify high-priority communities in which residents are exposed to disproportionately high levels of pollution.
- EPA should evaluate tools that have been developed by its regional and program offices, such as the Office of Policy, the Office of Civil Rights, and OEJ. EPA should identify among those tools potential best practices the Agency can recommend when it develops practical guidance documents to assist permitting staff in incorporating considerations of environmental justice into EPA permits nationwide.

Referring to improvement by EPA in increasing public participation in the permitting process, Ms. Goode stated that the Agency had experimented with various techniques for enhancing public participation. The techniques, however, she noted, have not yet been made standard operating procedure for EPA's permitting processes in the air, water, and waste programs. Ms. Goode then stated that NAPA's recommendations to EPA in the area of the use of permitting as a strategic element in pollution prevention are:

- EPA should expand its Technical Assistance Grant (TAG) and Technical Outreach Services for Communities (TOSC) programs to offer more timely and accessible technical assistance to communities that need such support.
- Using its discretionary authority, EPA should adopt procedures for providing early notice to communities once permit applications have been completed. Such notices should provide the name of an Agency community liaison and solicit comments from the community before the

Agency negotiates the terms and conditions of a permit.

Concluding her remarks, Ms. Goode stated that OEJ also had asked NAPA to next evaluate three state permitting programs. She commented that, while EPA itself performs relatively little permitting compared with the states, EPA could serve as a model for state permitting programs.

Mr. Hill added that the states selected for NAPA's evaluation would fall into the following categories: (1) a state that has passed or enacted environmental justice legislation; (2) a state that has issued an official statement that environmental justice is a policy issue; and (3) a state that has established an environmental justice commission or a body similar to the NEJAC. He explained that the purpose of evaluating states that fall into those categories is to demonstrate how such states can serve as models for their sister states.

Ms. Stahl expressed her belief that the next step should be development of the guidelines and standards to be applied through the appropriate authorities. She explained that, until standards have been developed, permitting and enforcement programs would not have the tools necessary to apply the principles.

Ms. Subra commented that, in the area of public participation, it is not sufficient to give communities

Exhibit 1-3

**RETIRING MEMBERS OF THE
NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL**

Ms. Rose Augustine
 Ms. Elaine Barron
 Ms. Daisy Carter
 Mr. Fernando Cuevas
 Ms. Denise Feiber
 Dr. Michel Gelobter
 Mr. Dan Greenbaum
 Ms. Rita Harris
 Ms. A. Caroline Hotaling
 Ms. Jennifer Hill-Kelley
 Ms. Savi Horne
 Ms. Annabelle Jaramillo
 Mr. Philip Lewis
 Mr. Neftali Garcia Martinez
 Ms. Zulene Mayfield
 Mr. David Moore
 Mr Carlos Porras
 Mr. Leonard Robinson
 Mr. Alberto Saldamando
 Mr. Mervyn Tano
 Mr. Michael Taylor
 Ms. Marianne Yamaguchi



Ms. Shephard presents Ms. Horne with a certificate of appreciation for her years of service on the NEJAC.

the opportunity to comment. She stressed that there is a real need, particularly in environmental justice communities, for capacity building and access to technical assistance. Ms. Subra said that the community must understand what the rules are, where the application violates the rule, and how a community can ensure that such information is entered into the record. Ms. Goode responded that the NAPA report includes explicit recommendations about increasing support for technical assistance for communities.

6.0 MISCELLANEOUS BUSINESS

6.1 Acknowledgments

Mr. Lee announced that OEJ would recognize and honor members of the NEJAC whose terms were to expire on December 31, 2001. Exhibit 1-3 presents the names of the retiring members of the NEJAC.

Mr. Lee also commended the efforts of the DFOs of the various subcommittees and work groups of the NEJAC: Ms. Wendy Graham, Ms. Shirley Pate, Mr. Will Wilson, Ms. Alice Walker, Mr. Rey Rivera, Mr. Brandon Carter, Ms. Brenda Washington, Ms. Aretha Brockett, Ms. Teresita Rodriguez, and Mr. Daniel Gogal. He also thanked the staff of EPA Region 10, including Ms. Joyce Kelly, Mr. Michael Letourneau,

Dr. Gragg suggested that the membership of the Puerto Rico Subcommittee of the NEJAC be expanded to include representatives from the Virgin Islands. Dr. Gragg pointed out that other dependencies of the United States, particularly those that are islands, are faced with issues of environmental justice. Ms. Horne commented that she strongly agreed with Dr. Gragg's suggestion. Dr. Ramirez-Toro suggested that the recommendation be communicated to EPA Region 2 office and the Caribbean Field Office, noting that those offices provide financial support for the Puerto Rico Subcommittee.

Ms. Shepard stated that she would like to compile a year-end report on the accomplishments of the NEJAC during 2001. She asked that the chair of each subcommittees e-mail a list of that subcommittee's accomplishments to herself and Ms. Marva King, NEJAC Program Manager, EPA OEJ, by January 15, 2002.

Ms. Victoria Plata, and Ms. Ony Okorna, for their support in coordination of the planning of the meeting of the NEJAC with community groups in the region.

Continuing, Mr. Lee recognized the efforts of the staff of OEJ, especially Mr. Hill, Director of OEJ; Ms. Linda K. Smith, Associate Director for Resources Management, EPA OEJ; Marva E. King, NEJAC Program Manager; and Ms. Jaime Song, OEJ Intern, and thanked them for their hard work.

Ms. Jaramillo personally thanked Mr. Lee for his efforts, stating that the meetings of the NEJAC "could not happen" without his guidance. She then thanked Ms. Shepard for her hard work and for her leadership during the meeting of the NEJAC.

6.2 New Business

This section summarizes items of new business discussed during the closing remarks of the members of the Executive Council of the NEJAC. Ms. Shepard stated that the items should be noted in the record and would be discussed by the members of the Executive Council in the future.

MEETING SUMMARY

of the

AIR AND WATER SUBCOMMITTEE

of the

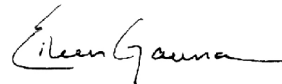
NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 5, 2001
Seattle, Washington**

Meeting Summary Accepted By:



**Alice Walker
Co-Designated Federal Official**



**Eileen Guana
Vice Chair**

**Wil Wilson
Co-Designated Federal Official**

**CHAPTER THREE
MEETING OF THE
AIR AND WATER SUBCOMMITTEE**

1.0 INTRODUCTION

The Air and Water Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 5, 2001, during a four-day meeting of the NEJAC in Seattle, Washington. Ms. Annabelle Jaramillo, Benton County Board of Commissioners, continues to serve as chair of the subcommittee. Ms. Alice Walker, U.S. Environmental Protection Agency (EPA) Office of Water (OW), and Dr. Wil Wilson, EPA Office of Air and Radiation (OAR), continue to serve jointly as the Designated Federal Officials (DFO) for the subcommittee. Exhibit 3-1 presents a list of the members who attended the meeting and identifies the member who was unable to attend.

This chapter, which provides a summary of the deliberations of the Air and Water Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Activities of the Subcommittee*, summarizes the discussions about the NEJAC strategic plan and the activities of the work groups of the Air and Water Subcommittee. Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report delivered during the subcommittee meeting, as well as a summary of relevant questions and comments of members of the subcommittee. This section also includes a summary of the discussions about the draft fish consumption report prepared by the Fish Consumption Work Group. Section 4.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee.

2.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, including discussions about the NEJAC strategic plan and the activities of the work groups of the Air and Water Subcommittee. Members of the subcommittee also discussed concerns associated with the adequacy of the staffing of the work groups of the subcommittee.

2.1 NEJAC Strategic Plan

Ms. Jaramillo commended the lead authors of the NEJAC strategic plan – Ms. Wilma Subra, Louisiana Environmental Action Network; Mr. Kenneth Warren, Wolf Block Schorr and Solis-Cohan LLP; and Ms. Veronica Eady, Commonwealth of Massachusetts – for their efforts. She suggested that the members of the subcommittee review Section VII, *Organization*

Exhibit 3-1

AIR AND WATER SUBCOMMITTEE

**Members Who Attended the Meeting
December 5, 2001**

Ms. Annabelle Jaramillo, **Chair**
Ms. Eileen Gauna, **Vice-Chair**
Ms. Alice Walker, **Co-DFO**
Dr. Wil Wilson, **Co-DFO**

Dr. Elaine Barron
Ms. Daisy Carter
Mr. Daniel Greenbaum
Mr. Kenneth Manaster
Mr. Leonard Robinson
Ms. Wilma Subra
Mr. Damon Whitehead
Ms. Marianne Yamaguchi

**Member
Who Was Unable To Attend**

Dr. Michel Gelobter

and *Procedure Goal*, of the report which sets forth the framework for the responsibilities of the NEJAC subcommittees. She noted that recent meetings of the Executive Council of the NEJAC had evolved from a meeting at which a broad range of subjects was discussed to a meeting at which the members focused on a specific theme. The use of a “roundtable” discussion format that was designed to promote dialogue among the members of the Executive Council about the issues being discussed, reflected continued improvements to the process, she continued.

Ms. Jaramillo commented that the new approach to conducting meetings had enhanced the productivity of the Executive Council. She added that the strategic plan also had established an expectation that each of the subcommittees would develop a work plan for its activities. Since its inception, the Air and Water Subcommittee had been attempting to cover “the whole waterfront” of issues, from permitting to urban air toxics to fish consumption, she observed. In light of the requirement for work plans, Ms. Jaramillo asked that the work groups conduct similar planning during their meetings. She encouraged the work groups to focus on several key issues and propose schedules for their work.

Dr. Elaine Barron, Paso del Norte Air Quality Task Force, stated that it is important that the NEJAC continue to evaluate its effectiveness in increasing the

influence of the public on EPA's policies and procedures. She asked that the members of the NEJAC identify successes and failures so that lessons are learned.

Mr. Damon Whitehead, Earth Conservation Corps, recalled that, several years ago, the Executive Council had considered the issue of self-evaluation. He asked whether the details of the process had been completed and, if not, whether the process could be "jump-started" again. He added that after the Public Participation and Accountability Subcommittee had disbanded several years earlier, it was not clear how considerations related to public participation were to be incorporated into the discussions of each of the remaining subcommittees.

Mr. Charles Lee, EPA Office of Environmental Justice (OEJ) and DFO of the NEJAC, responded that, in 1998, the NEJAC had established an Assessment Work Group to address the issue of evaluating the effectiveness of the NEJAC. He stated that the work group had been established to ensure that all stakeholder groups were involved, including such representatives of EPA as Mr. Rob Brenner, EPA OAR, and Ms. Laura Yoshii, EPA Region 9. Mr. Lee said that the work group had prepared a report that served as the basis of the discussions conducted during the facilitated dialogue meeting of the Executive Council of the NEJAC that took place in August 2001.

Mr. Lee reported that one of the findings of the work group was that the NEJAC appears to represent "many things to many people." For example, he said, the NEJAC is regarded as a platform through which the public could gain access to the government. Continuing, Mr. Lee reported that every comment made at meetings of the NEJAC, had received a response, such as referral of the issue to the appropriate EPA office. He acknowledged, however, that there was a question about whether a number of such actions had brought about real, meaningful progress. Mr. Lee commented that many people think of a meeting of the NEJAC as a conference at which the audience makes presentations rather than a meeting at which the members discuss issues. He emphasized the importance of recognizing that the purpose of NEJAC meetings is to provide recommendations to EPA, with planned follow-up on the implementation and evaluation of those recommendations.

Mr. Lee said that the key issue to be considered in 2002 is how the subcommittees of the NEJAC can be most effective. He stated that, until that issue has been clarified, it would be difficult to begin evaluating

the work of the subcommittees. He observed that the assignment to each meeting of a specific theme would improve opportunities for discussion and collaboration among the members of the NEJAC. Mr. Lee emphasized the importance of establishing a collaborative framework among:

- OEJ and the program offices
- NEJAC and EPA (including OEJ and the program offices)
- Members of the NEJAC
- NEJAC and environmental justice communities

Mr. Lee also stated that members participating in the August 2001 facilitated dialogue meeting of the NEJAC had identified five elements of a successful subcommittee:

- A strong, committed, and knowledgeable DFO appointed by the sponsoring program office
- High-quality leadership that encourages participation
- High-quality membership that eagerly participates and is knowledgeable about the subject matter
- Support from the sponsoring program office
- A strategic plan to guide the activities of the subcommittee

Mr. Lee said that the NEJAC Assessment Work Group planned to establish a set of guidelines for the strategic plans of the subcommittee. Pointing to the National Advisory Council for Environmental Policy and Technology (NACEPT), of which Ms. Subra is a member, he noted that the NACEPT has been designed as a standing committee with ad hoc work groups that are established to address a single issue. Continuing, Mr. Lee stated that, by December 31, 2002, he expected that the NEJAC will have adopted a modified version of that structure. He added that he and Mr. Barry E. Hill, director of EPA OEJ, had been meeting with the assistant administrators of EPA, emphasizing that each program office must provide leadership and direction to the subcommittees its sponsors. Mr. Lee said that he and Mr. Hill had stressed that the NEJAC exists to serve the EPA program offices and that those offices should provide guidance to help the subcommittees retain focus and be productive.

Mr. Lee stated that, during the coming year, one goal of the NEJAC would be to strive to make the work groups more efficient. He acknowledged that the members of the subcommittees and work groups

were conducting their work for the NEJAC on their own time. He added that his goal was to allay fears that serving on the NEJAC was an “all-consuming commitment.”

Ms. Daisy Carter, Project AWAKE, emphasized that members of community groups appear before the NEJAC to voice their concerns directly to representatives of EPA. She added that such individuals expect EPA to help solve their problems. She asked whether that was indeed the case. Mr. Lee responded that the Federal Advisory Committee Act (FACA) requires that a public comment period be held during each meeting of the NEJAC. He confirmed that any person can attend a meeting to voice his or her concerns during the public comment period. However, he observed, because so many issues are raised during any given public comment period, it has become evident that another forum is needed in which people can voice their concerns and receive direct responses from agency representatives. Mr. Lee pointed to the proposed idea of conducting regional clinics or listening sessions at which members of communities can speak out fully about their concerns. Mr. Kenneth Manaster, Santa Clara University School of Law, asked that EPA inform members of the NEJAC about the dates and locations of the regional listening sessions, so that those members can attend the sessions.

Pointing to the many committees formed by federal agencies under the FACA legislation, Dr. Barron suggested that they also should be examined for effectiveness, so that the NEJAC can identify the lessons learned and, in turn, advise communities about how to be more effective in interacting with local governments. She explained that members of communities must be empowered locally because their concerns should be sent “to the top” (for example, to EPA) as well as “to the bottom” (for example, to local municipalities). She added that public officials tend to listen to their constituents rather than to those above them.

Ms. Gauna recalled the comments made on the previous day by Mr. Richard Moore, Southwest Network for Environmental and Economic Justice and former chair of NEJAC. He had observed, she said, there is a pervading perception that the NEJAC is not fulfilling its mission. Ms. Gauna stressed that the NEJAC always offers advice to EPA, as it has been charged to do. If EPA does not accept the recommendations of the NEJAC, that circumstance is a failure of EPA rather than the NEJAC, she continued, adding that EPA must provide assurance that it is taking the recommendations of the NEJAC seriously.

Mr. Lee acknowledged that there is a perception that the NEJAC is ineffective, as well as concerns that the process of developing the strategic plan had been closed. He explained that the views of the public were solicited to the broadest extent possible, but that many community members who were invited to comment were not available or did not wish to do so. Mr. Lee added that public participation will be encouraged during the implementation of the plan over the coming years.

2.2 Activities of the Work Groups

This section discusses the activities of the work groups of the Air and Water Subcommittee. The Permitting and Public Utilities Work Groups held a joint breakout session, during which the two bodies were merged permanently into a single work group.

2.2.1 Fish Consumption Work Group

Mr. Leonard Robinson, TAMCO, provided an update on the activities of the Fish Consumption Work Group. He stated that the Fish Consumption Work Group plans to (1) review the document and provide comment on it and (2) identify and recommend individuals to serve on various EPA stakeholder work groups and as technical consultants for the issuance of fish advisories. Those goals, he added, are to be accomplished by December 2002.

Mr. Robinson also reported that Mr. Jeff Bigler, EPA Office of Science and Technology (OST), had made a presentation to the work group about the plans of EPA OW to revise Volume IV of EPA’s *Guidance Document for Assessing Chemical Contamination Data for Use in Fish Advisories*. That volume, which focuses on risk communication, will be revised to incorporate awareness of issues of environmental justice, he said. Mr. Bigler explained that EPA is developing a second edition of the document because comments the received by the agency have suggested that the existing guidance could be improved by incorporating an awareness of environmental justice. Comments also suggested the report should acknowledge that contaminated fish exist in many areas of the United States.

During his presentation, Mr. Bigler also had described three technical groups that will be coordinated by EPA OW:

- The Stakeholder Work Group would be tasked to provide technical input, project leadership, and decisions regarding recommendations of the guidance document. Members will include tribal

leaders and representatives of cultural and ethnic groups and state government agencies.

- The National Stakeholder Work Group would be tasked to address issues related to EPA's national Fish and Wildlife Contamination Program (NFWCP). Membership would consist of representatives of federal, state, and tribal agencies who would serve in an advisory capacity to the NFWCP. Exhibit 3-2 describes the activities of the NFWCP.

Exhibit 3-2

NATIONAL FISH AND WILDLIFE CONTAMINATION PROGRAM

The U.S. Environmental Protection Agency's (EPA) National Fish and Wildlife Contamination Program (NFWCP) provides technical assistance to states, tribes, and federal agencies for matters related to the assessment of health risks associated with exposure to chemical contaminants in fish and other wildlife. Specifically, the NFWCP conducts the following ongoing activities:

- Issues national guidance documents, including the *Guidance Document for Assessing Chemical Contamination Data for Use in Fish Advisories*
- Conducts national forums, workshops, and conferences, such as the 2001 National Risk Communication Conference in Chicago
- Conducts national outreach to medical communities in conjunction with the U.S. Department of Health and Human Services
- Conducts special studies, such as the studies of Cook Inlet in Alaska and the Mississippi delta
- Provides assistance in preparing federal advisories
- Issues the online *News Service on Contaminants in Fish*

Products prepared by NFWCP are available electronically at: <www.epa.gov/ost/fish>.

A group of technical consultants who will provide technical advice, project management, and logistical support to EPA and develop and revise new materials under the direction of the Stakeholder Work Group.

Mr. Bigler presented the following process by which the revised guidance will be developed: (1) consultants and stakeholder groups develop outlines, (2) consultants and stakeholder groups develop

drafts, and (3) EPA reviews and publishes the revised document.

During its deliberations, the Fish and Consumption Work Group had developed a preliminary list of recommendations:

- Both EPA proposed work groups should review the Fish Consumption Report before asking the NEJAC for comments related to fish consumption and water quality\
- Guidance on fish consumption advisories should:
 - Convey to communities the relevant criteria used to develop fish consumption advisories
 - Consider making guidance on fish consumption advisories mandatory
 - Involve the target audience in the design and goal-setting stages
 - Target the message to ethnic health groups and healthcare providers
 - Help affected communities become empowered to affect the situation
 - Condense the recommendations in the guidance to avoid repetition and overlap, striving for "simplicity"
 - Explore and discuss comparative dietary risks
 - Offer alternatives or options for affected communities
 - Explore best practices through research on international entities
 - Maintain sensitivity to sovereignty and the cultural way of life of tribal populations
 - Include the temporal component of advisories and their effects on communities
- Membership of the proposed EPA stakeholder work groups should:
 - Include on the Stakeholder Work Group representatives of the environmental justice team of the U.S. Fish and Wildlife Service, the Latino community, the Seattle Public Utilities, and the Air and Water Subcommittee of the NEJAC
 - Include on the National Stakeholder Work Group a member of the NEJAC

Mr. Robinson noted that the terms of three members of the Air and Water Subcommittee who also serve on the Fish Consumption Work Group would expire December 31, 2001. Dr. Barron asked how the institutional knowledge of the current members of the work group would be passed along to new work group members. She asked whether the departing

members could be called upon in the future to provide advice. Ms. Jaramillo responded that the NEJAC could decide whether to appoint them to serve as members of a work group. Ms. Marianne Yamaguchi, Santa Monica Bay Restoration Project, explained that, even after the Fish Consumption Work Group has ceased functioning, the former members can be asked to serve in a different capacity. Ms. Jaramillo commented that, once a person becomes a resource, he or she always will remain a resource.

Ms. Yamaguchi asked that the work group consider water permitting issues in the future given that the Permitting Work Group primarily was addressing permitting issues from a perspective of air quality. She suggested that another work group be created to address permitting issues from the perspective of water quality. Ms. Jaramillo agreed, adding that total maximum daily loads (TMDL) and confined animal feeding operations (CAFO) are issues the new work group should consider. She said that, when the Fish Consumption Work Group completes its work on the report, it could turn its attention to general issues related to water quality. Ms. Gauna asked that the subcommittee consider changing the name of the work group if it is to take on such additional issues.

Dr. Barron expressed concern that EPA has no program office that addresses the issue of water supply. She stressed that water supply is an important issue in arid tribal areas.

2.2.2 Permitting and Utilities Work Group

Mr. Daniel Greenbaum, Health Effects Institute, reported that the Permitting Work Group, which had merged with the Public Utilities Work Group, would continue focusing on three issues: (1) reviewing EPA's White Paper No. 3 on flexible permitting, (2) reviewing EPA OAR's new source review study report that is expected to be issued in January or February 2002 and that will present recommendations for changing the protocol for conducting new source reviews, and (3) developing a document on "best practices" for permitting that are sensitive to issues of environmental justice.

Mr. Greenbaum explained that EPA's new source review study report consisted of a 90-day study described in President George W. Bush's energy plan. He observed that the report originally had been due on August 15, 2001, but that its issuance had been delayed to coincide with the promulgation of stringent emissions reductions requirements for electrical utilities.

Ms. Gauna stated that the "best practices" guide would include a discussion of alternative site analysis and alternative production processes. She added that the report also would examine EPA's statutory authority to require measures and incentives in the permitting process that encourage facilities to "go above and beyond" the regulatory requirements. The document also would provide information about public participation strategies and empowering communities to monitor the activities of facilities in their vicinity. She stated that she anticipated the potential for collaborative efforts with other work groups of the NEJAC, the Clean Air Act FACA committee, or other groups addressing permitting issues.

Mr. Greenbaum added that Mr. Manaster had agreed to serve as vice-chair of the new Permitting and Public Utilities Work Group. He added that another issue on the work group's agenda is upcoming legislation related to mercury. Expected in January 2002, the legislation would include a proposal for reducing the amounts of mercury used in power plants, he said.

Ms. Gauna then repeated her concern that the work group was not staffed adequately to deal with all the issues it has under consideration.

2.2.3 Urban Air Toxics Work Group

Mr. Whitehead informed the subcommittee that Mr. Peter Murchie, EPA Office of Air Quality Planning and Standards (OAQPS), had presented to the Urban Air Toxics Work Group an overview of EPA's air toxics program. Mr. Whitehead said that Mr. Murchie had described EPA OAR's *Work Plan for the National Air Toxics and Integrated Air Toxics Strategy*, a major document that was to provide the framework for the activities of the program. Mr. Whitehead reported that the work plan had been completed at the end of October 2001 and that EPA plans to implement the work plan by 2003.

Mr. Whitehead stated that Dr. Barron; Dr. Michel Gelobter, Redefining Progress and former chair of the Air and Water Subcommittee; and Mr. Bunyan Bryan, University of Michigan, serve on the Clean Air Act FACA committee. Continuing, Mr. Whitehead said that the work plan would have a significant effect on the way in which EPA deals with the issue of "hot spots" under its urban air toxics strategy. He reported that, during the public comment period of the previous day, it had been revealed that EPA had been examining local-scale assessments of "hot spots." Mr. Whitehead explained that EPA had said it would use local data and provide incentives and support for conducting such assessments. Mr. Whitehead

added that he would like the Urban Air Toxics Work Group to prepare comprehensive comments to the work plan, before the next meeting of the NEJAC.

2.3 Staffing of Work Groups

Ms. Gauna expressed concern that subcommittees and work groups may not be staffed adequately to accomplish their goals. Specifically, she commented that the Permitting Work Group was understaffed severely. Dr. Wilson explained that the EPA program offices that sponsor the subcommittees decide how to staff a subcommittee. He added that, while there is no limit on the number of members who serve on a subcommittee, the amount of resources available from the program office could be a limiting factor.

Mr. Whitehead called the attention of the members to page 9 of the NEJAC strategic plan, which states that work groups can seek resources outside the agency. Ms. Gauna acknowledged that fact, but added that those individuals who are working with, but not assigned to, a subcommittee must pay for their own travel expenses. She commented further that resources are insufficient to allow the NEJAC to deal with the regulatory initiatives which she described as "daunting." She acknowledged that it is difficult to identify people who are familiar with air and water issues, as well as environmental justice. She stressed the importance of assigning to work groups individuals who can spend time reviewing regulations and guidance documents.

Mr. Lee acknowledged that, nationally, only three to six people are knowledgeable of issues related to environmental justice, as well as the technical issues of air permitting. He said that Ms. Gauna's concern point to a more extensive structural problem than merely that facing the NEJAC. It is, he noted, difficult to identify people who have the necessary expertise. Mr. Lee then said that the same individuals always are suggested. Mr. Bob Kellam, EPA OAQPS, agreed with Mr. Lee that only a handful of people in the country understand the complexities of several of EPA's programs and understand issues of environmental justice, as well. He encouraged the work groups to explore academic institutions as resources that can provide expertise.

Dr. Barron added that the subcommittee could "gather all the experts in the world" on any topic. However, she continued, if the subcommittee fails to include diverse opinions the NEJAC would fail in its charge. She pointed out that "it is not always the brains who have the expertise, but those people who can think outside the box."

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations and reports made to the Air and Water Subcommittee on the draft Fish Consumption Report and the role of the subcommittee in planning for the meeting of the NEJAC to be held in December 2002.

3.1 Draft Fish Consumption Report

Ms. Jaramillo congratulated the members of the Fish Consumption Work Group for its extensive efforts in preparing the draft report. She reported that the document is the product of 18 months of planning and development. She explained that a 30-day comment period had been held after the Fish Consumption Work Group had completed consideration of the focused recommendations that supported the recommendations that already had been presented to the Executive Council of the NEJAC. Ms. Jaramillo added that, after comments on the report have been addressed, the Executive Council of the NEJAC would vote to determine whether the document was ready for submission to the EPA Administrator. Ms. Jaramillo expressed her hope that the final recommendations would be sent to the Administrator by March 2002.

Mr. Robinson commented that the process of developing the report had been "very interesting and synergistic." He commended Ms. Walker and Ms. Yamaguchi for their contributions and efforts to coordinate activities with members of the Indigenous Peoples Subcommittee in developing the report.

Ms. Yamaguchi emphasized the importance of using the work of the Fish Consumption Work Group as a segue into planning for the December 2002 meeting of the NEJAC to be held in Baltimore, Maryland, so that the work that already has been completed will not be lost, she said. She expressed the hope that the "take-home" question raised by the report would be "Where is the regulatory or clean-up side of the fish consumption equation?"

Ms. Jaramillo then stated her belief that the current theme of fish consumption could bring about a smooth transition to the pollution prevention theme of the December 2002 meeting. Ms. Jaramillo then commented that the current meeting was focusing on the advisory aspect of the fish consumption issue and stated her expectation that the focus of the December 2002 meeting would examine the regulatory aspect of the issue.

Mr. Jim Hanlon, EPA OST, also commended the Fish Consumption Work Group for its efforts. He observed

that much thought had gone into the recommendations developed by the work group. However, he asked that members of the work group realize that some of their recommendations were “easier said than done.” He commented that several recommendations, such as those for the elimination of sources and the selection of priority compounds, are relatively far-reaching. Mr. Hanlon asked that the work group assign priorities to each recommendation – for example, short-term or long-term or Tier 1 or Tier 2. He stated that it otherwise would be difficult for EPA to know where to begin. He also stated that most of what EPA could accomplish in implementing the recommendations would depend on available resources. He stated that he looked forward to working with the Air and Water Subcommittee to refine and implement the recommendations.

Ms. Subra, commented that other initiatives in progress could be useful as resources for EPA as it implements the recommendations of the NEJAC. For example, she said, in terms of phasing out chemicals and eliminating exposure to certain sources, EPA could look to the work of a tri-lateral trade council on which representatives of Mexico, the United States, and Canada had developed regional action plans for a select list of chemicals. Mr. Hanlon added that EPA also is involved in a bilateral agreement with Canada that deals with environmental issues in the Great Lakes region.

Ms. Gauna expressed her concern that EPA would focus on broad principles that could not be implemented under the current statutory circumstances, rather than turning its attention to specific recommendations that could be implemented. Mr. Greenbaum encouraged EPA and the work group to avoid “getting lost in the details.” He suggested that EPA examine less detail in the recommendations, but instead focus on the more general comments.

Dr. Barron stated that she recognized that EPA would have great difficulty following up on every single recommendation. She asked, however, that the agency be aware that many affected populations would not change their practices, even though the health risks posed by the contaminants are known. She urged that EPA “see the bigger picture,” that there is a need for clean ecosystems everywhere. Dr. Barron stressed that it had been shown repeatedly that the killing or contamination of animals and plants ultimately will harm humans. She stressed that EPA must work with other agencies that may have money to work with communities at high risk.

3.2 December 2002 Meeting of the NEJAC

The subcommittee discussed the meeting of the NEJAC scheduled for December 2002 that will focus on pollution prevention and environmental justice. Mr. Lee presented the policy issue and question that would be the theme of the December 2002 meeting:

How can EPA promote innovative approaches to pollution prevention to ensure a clean and healthy environment and improve the quality of life for all people, including low-income communities, minority communities, and tribes?

Mr. Lee stated that one goal of the meeting would be to present environmental justice and pollution prevention as a “win-win” strategy for all stakeholders. He provided one example topic, how EPA can promote innovative approaches to pollution prevention to address the concerns of environmental justice communities. Continuing, Mr. Lee said that the participants in the meeting would discuss the need to integrate pollution prevention into EPA’s various programs, such as air, water, and solid waste management. He then stated that the participants also would explore obstacles to the integration of pollution prevention and environmental justice.

Mr. Lee referred to a background paper developed by EPA’s Office of Pollution Prevention and Toxics (OPPT) for the December 2002 meeting. The background paper opened with a quote of U.S. Representative John Conyers (D-Ohio): “Communities of color and low-income Americans seek not to redistribute pollution, from dirtier and overexposed areas to cleaner and underexposed areas. They instead seek to prevent pollution at the source so that all Americans can breathe clean air, drink clean water, and eat clean food” (April 1993).

Mr. Lee noted that examples of pollution prevention include diesel reduction in the amounts of diesel fuel used, product replacement, tribal solid waste cleanup plans, and energy efficiency. He referred to a group known as Janitors for Justice that deals with environmental products that such workers must use. He also referred to the success of EPA’s Pollution Prevention for Environmental Justice program, which has allocated \$14 million in grants. Mr. Lee added that innovative approaches also include partnerships, citing the Houston Ship Channel Source Reduction Model and the Dow-Midland Model as examples.

Mr. Lee then announced that the NEJAC would like the Air and Water Subcommittee to play a role in organizing the December 2002 meeting. He said that

the Waste and Facility Siting Subcommittee, the Health and Research Subcommittee, and the Indigenous Peoples Subcommittee also would be represented in the planning process. He added that OEJ and the other program offices would provide staff support.

Ms. Subra reported that she and Mr. Warren, co-chair of the work group would work together to develop a strategy for planning the meeting. She said they would focus on exploring available opportunities for pollution prevention and share such information with environmental justice communities. Ms. Subra added that, with the help of the DFO of the Pollution Prevention Work Group, she and Mr. Warren would prepare a report on their findings. Members of the subcommittee requested that, in preparation for the next meeting, the newly formed Pollution Prevention Work Group examine issues related to (1) environmental restoration, (2) clean production, (3) low-impact development, and (3) the costs and benefits of pollution prevention.

Mr. Whitehead acknowledged that integrating the topics of "pollution prevention" and "environmental justice" would be a timely exercise. He asked for clarification of whether the term "pollution prevention" included the concept of clean production. He added that the subcommittee should consider an analysis of the economic benefit of pollution prevention and low-impact or retro-development. He encouraged the work group not to think of pollution prevention in a "limited box," which usually is thought of in the context of air and waste issues, he explained. Mr. Whitehead also asked that the work group consider issues related to water, as well. Ms. Jaramillo added that pollution prevention also includes environmental restoration.

Ms. Carter asked that EPA comment on the overlap and duplication of programs at EPA. She observed that several offices appear to deal with the same issues. She asked that EPA consider eliminating some of the overlap and allocating more resources to the offices that address a problem directly.

Mr. Greenbaum expressed concern about the efforts of the other work groups during the next meeting. Ms. Yamaguchi agreed that the issue should be discussed and expressed concern that participation in the meeting by subcommittee members who are not involved in planning the meeting may be limited. She stated that the goal should be to link existing work groups to the pollution prevention theme, as well.

4.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the subcommittee.

- T Recommend that EPA OEJ coordinate with the various EPA program offices that sponsor NEJAC subcommittees efforts to adequately staff the work groups of the subcommittees, specifically the Permitting and Public Utilities Work Group.
- T Recommend that EPA consider ways to eliminate redundancy in programs that address the same issues, so that fewer resources will be spent on duplicate efforts and more resources can be allocated to the primary office or agency that addresses each issue.
- T Review and provide comment on the following documents:
 - EPA's Work Plan for the National Air Toxics and Integrated Air Toxics Strategy
 - Volume IV: "Risk Communication" of EPA's Guidance Document for Assessing Chemical Contamination Data for Use in Fish Advisories
- T Identify individuals to recommend for service on various EPA stakeholder work groups and for service as technical consultants to provide advice about the issuance of fish advisories.
- T Develop a document on "best practices" for permitting that are sensitive to issues of environmental justice and review and provide comment on EPA OAR's new source review study report that is to be issued in January or February 2002.
- T Encourage state and local governments to incorporate into their strategic plans a philosophy of awareness of environmental justice similar to that expressed in EPA Administrator Christine Todd Whitman's August 2001 letter that states EPA's commitment to environmental justice.
- T Recommend that, after completion of the fish consumption report, the Fish Consumption Work Group expand its scope to explore other issues related to water quality (such as TMDLs, CAFOs, and permitting related to water).
- T Recommended that EPA establish an organizational division to address issues related to water supply.

MEETING SUMMARY

of the

HEALTH AND RESEARCH SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 5, 2001
Seattle, Washington**

Meeting Summary Accepted By:

Bre



nda Washington

Co-Designated Federal Officer

**J
S**



Vice-Chair

**ane
ahl**

Aret



ha Brockett

Co-Designated Federal Officer

**CHAPTER FOUR
MEETING**

**OF THE
HEALTH AND RESEARCH SUBCOMMITTEE**

Exhibit 4-2

1.0 INTRODUCTION

The Health and Research Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 5, 2001, during a four-day meeting of the NEJAC in Seattle, Washington. Ms. Jane Stahl, Connecticut Department of Environmental Protection, continues to serve as vice-chair of the subcommittee. Ms. Brenda Washington, Office of Research and Development, U.S. Environmental Protection Agency (EPA), and Aretha Brockett, EPA Office of Pollution Prevention and Toxics, continue to serve as the co-Designated Federal Officers (DFO) for the subcommittee. Exhibit 4-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Health and Research Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the vice-chair and the co-DFO. Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report, as well as a summary of relevant questions and comments offered by the members of the subcommittee and the speakers. Section 4.0, *Summary of Public Dialogue*, summarizes discussions that took place during the public dialogue period provided by the subcommittee. Section 5.0, *Action Items*, summarizes the action items agreed upon by the members of the subcommittee.

2.0 REMARKS

Ms. Jane Stahl, vice-chair of the Health and Research Subcommittee, opened the subcommittee meeting by welcoming the members present and Ms. Brenda Washington, the co-DFO. She encouraged the speakers and members of the audience to introduce themselves, and they did so. Mr. Martin Halper, Senior Science Advisor, EPA Office of Environmental Justice, also was present and participated extensively in the discussions.

Continuing, Ms. Stahl provided background information about the NEJAC and the function of the Health and Research Subcommittee. She stated that the issue of fish consumption currently is the principal concern of the subcommittee. She then identified four aspects of the issue:

DEFINITIONS	Exhibit 4-
OF CO-RISK AND CUMULATIVE RISK HEALTH AND RESEARCH SUBCOMMITTEE	
<p>Co-Risk: Risk associated with an individual's responses to environmental contaminants, not specifically related to toxic exposure, such as, but not limited to, underlying health status, baseline quality of diet, genetics, and socioeconomic status.</p> <p style="text-align: center;"><i>Members Who Attended the Meeting December 5, 2001</i></p> <p style="text-align: center;">Ms. Jane Stahl, Vice-Chair Ms. Brenda Washington, co-DFO</p> <p>Cumulative Risk: Risk associated with multiple pollutants by multiple pathways that cumulatively may cause a variety of adverse effects on humans, plants, or animals or even effects on ecological systems and their processes and functions.</p> <p style="text-align: center;"><i>Members Who Were Unable To Attend</i></p> <p style="text-align: center;">Ms. Rose Marie Augustine, Chair Mr. Lawrence Dark Mr. Carlos Porras Mr. Philip Lewis Ms. Aretha Brockett, co-DFO</p>	

- What is known
- What is not known
- What knowledge must be gathered
- Whether the current risk assessment strategy adequately addresses issues of environmental justice issues related to the issue.

Ms. Stahl stated that the goal for the subcommittee meeting was to develop a better understanding of research on fish consumption, so that the subcommittee will be able to comment more knowledgeably on the recommendations currently before the NEJAC Executive Council or develop new recommendations that include a "specific bent" on health and research needs.

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made to the Health and Research Subcommittee.

3.1 Presentation on the Status of Research

Mr. Patrick West, Emeritus Faculty, Environmental Sociology, School of Natural Resources and Environment, University of Michigan, presented an overview about the status of research on the

consumption of fish. Mr. West made three major points. First, he said, the need for research should not be a barrier to action. Continuing, Mr. West stated that there is no area in which perfect research has been completed; however, he said, there often has been sufficient data collected to support action. He stated that strong recommendations related to point source discharges could be made on the basis of the results of studies that have identified consumption limits based on comparative grams per day (gpd). Strong recommendations for remediation of point source and non-point source discharges can be made when human consumption is 60 to 90 gpd, continued Mr. West. The studies, he said, provide a scientific basis for taking action related to a sensitive group when the gpd consumption in that community is known, even when no specific study of that community has been performed.

Second, said Mr. West, a concerted effort should be made to investigate existing research so that the scientific community can expand its knowledge base. Information exchange is weak, he noted, especially in the area of fish consumption; such exchange of information should be strengthened, he suggested. Mr. West then noted that a number of useful studies have been conducted by local communities, but are unknown to the greater scientific community. He added that a great deal of information has been gathered through studies of other subjects that may be helpful in the area of environmental justice. For example, he said, a study may have considered race as a factor, but may not have considered the amounts of fish consumed by race. Such data can be reassessed for correlations with race without requiring significant additional effort, Mr. West pointed out.

Finally, Mr. West identified the issues of co-risk and cumulative risk as areas in which additional research is needed. Exhibit 4-2 presents definitions of those two concepts. Mr. West pinpointed co-risk and cumulative risk as the most important topics of discussion. Exposure to toxic contaminants in fish can pose increased risk when an individual also is subject to such co-risk factors as the adverse health effects associated with low-income status, he said. Therefore, co-risk factors are an essential part of accurate risk assessment, he declared. On the other hand, he pointed out, many of the studies that have evaluated co-risk have attributed poor health after exposure to contaminants only to co-risk factors, rather than to the toxicity of the contaminants. He said that such attribution to co-risk factors is incorrect. Such findings, he said, are a means of “getting toxins off the hook” as a cause of adverse health effects. Such adverse effects, he

concluded, instead are caused by the interaction of co-risk factors and toxicity.

Mr. Halper then clarified Mr. West’s definition of co-risk by classifying biological effects in terms of susceptibility and non-biological effects in terms of vulnerability. The non-biological effects or vulnerability would be co-risk factors, he said. Examples of vulnerability, continued Mr. Halper, would include asthma in children and effects associated with religious practices. For example, Mr. Halper described a scenario under which increased vulnerability as a result of asthma may lead to a greater susceptibility to the toxicity of certain contaminants. Mr. Halper then discussed religious and cultural practices that require the eating of fish. The psychological effects associated with not eating the fish or eating fish that are contaminated increase the susceptibility of the individual and the culture to the effects of toxins, said Mr. Halper. Mr. West then expressed agreement with Mr. Halper’s comments.

Cultural health is a co-risk factor, stated Mr. West. The study of co-risk factors has led the scientific community to reconsider the definition of what health is -- whether it is only physical or whether it is cultural, as well. Mr. West described loss of culture as a loss of individual identity that can lead to a number of physiological ailments, such as substance abuse, homicide, and suicide. Such physiological effects in turn are related directly to human health.

Most of the research available, said Mr. West, consists of testimonials from affected groups about such factors as peak exposure and consumption of all parts of the fish. However, he continued, to obtain useful information about co-risk factors, he stated, “systematic qualitative” and “systematic testimonial” research must be done. The research, he continued, should meet a number of requirements. First, it should focus equally on sensitive groups, rather than favoring one group over another, he explained. Currently, most studies of co-risk factors focus on Native Americans and ignore other sensitive groups, he said. For example, continued Mr. West, African-American fishermen along the Detroit River who eat large amounts of contaminated fish for subsistence are one group that has not been studied. Further, he continued, the work should not equate low-income populations with minority populations because many low-income communities at risk are not minority communities. He pointed to low-income communities in Minnesota of which the residents overwhelmingly are white.

Research, said Mr. West, should be conducted in a manner that fosters partnerships between

communities and experts by inviting communities to complete their own research with the guidance of experts. Finally, he added, the results should be presented in a manner that is readily communicable to the community. Often, he said in conclusion, members of communities do not understand such terms as “grams per day,” and fish advisories therefore are ignored.

3.2 Presentation on Risk Assessment and Methodology

Ms. Tala Henry, EPA National Health and Environmental Effects Laboratory, made a presentation that included comments related to Mr. West's remarks, as well as information about her work in hazardous waste risk assessment. She expressed agreement with Mr. West that the lack of perfect data should not be an impediment to action. Continuing, she stated that EPA ORD often encounters that problem when the agency creates rules and completes risk assessments for pesticide registrations and hazardous waste sites. The approach EPA ORD has taken is to quantify risk as accurately as possible, she said, and to carefully describe the assumptions made in developing the results, as well as the uncertainties associated with those results.

Ms. Henry also stated agreement that co-risk is an area in which research is needed and that it is a very intangible area to define. She noted that EPA currently is working to define cumulative risk more clearly. That effort, she noted, takes an ecosystem-based approach that considers both human and ecological health. Continuing, she discussed susceptibility and vulnerability, stating that “within susceptibility lies exposure and effect.”

EPA has created default values and methods for risk assessment; however, there is no definitive rule for the conduct of assessment, said Ms. Henry. It is typical and acceptable to adjust default values to reflect site-specific circumstances, she continued. She explained that such adjustments typically are made for sites that affect sensitive groups, such as members of tribes who consume larger than average amounts of fish, Superfund sites, and sites addressed under the provisions of the Resource Conservation and Recovery Act (RCRA). In addition, she noted, many scenarios use a variety of values for parameters, thereby increasing the accuracy of the risk assessment.

Ms. Pamela Kingfisher, Indigenous Women's Network, asked for clarification of the phrase “move off the default values,” which Ms. Henry had used in her discussion of adjustments to values used in risk

assessment. Ms. Henry replied that certain numerical values are considered typical for parameters in risk assessment equations. Such values include weight, duration of exposure, and exposure rates, she continued. Choosing different values for the parameters that apply to a specific site or group would constitute “moving off the default,” she explained.

Participants in the meeting engaged in much discussion related to Ms. Henry's presentation. Mr. Wardner G. Penberthy, EPA Chemical Control Division, commented that, to increase the accuracy of risk assessment, a broader variety of tissues of animals used as subsistence foods must be evaluated. Ms. Henry added that experts should be aware of new chemicals that may be present and that may have adverse health effects. Mr. West suggested that both prevention and remediation of contamination should be instituted after risk has been quantified. Ms. Stahl agreed that remediation is not effective if the source of contamination is not removed.

The participants conducted much discussion of the various presentations that had been made. Ms. Kingfisher pointed out that Hawaiians, people in the Caribbean, and those inhabitants of other island groups had been omitted from consideration in evaluations of fish consumption. She recommended that those groups be included in such efforts. Mr. Halper recommended that other subsistence food not eaten by the broader population be included in risk assessment models. Ms. Kingfisher then stated that cultural and spiritual aspects had not been included to the extent desirable in consideration of the risk assessment issue. To encompass more cultural aspects, it is necessary to include other pathways in addition to food when assessing exposure to sensitive communities, added Mr. Halper, noting that such pathways might include religious practices and dermal exposure.

3.3 Presentation on the Toxic Substances Control Act and EPA's High Production Volume Challenge Program

Mr. Penberthy presented both an overview of Section 4 of the Toxic Substances Control Act (TSCA) and information about EPA's High Production Volume (HPV) Challenge program. He distributed a handout that described both programs. Mr. Penberthy stated that TSCA had become effective on January 1, 1977. The legislation does not supersede the Clean Water Act, the Clean Air Act, or Superfund, he added. Its original purpose, he explained, was to fill gaps in previous legislation.

TSCA gives EPA the authority to gather information about exposures that affect health and safety and to require testing and control exposures related to “new” and “existing” industrial chemicals. An

Exhibit 4-3

**HIGH PRODUCTION VOLUME
CHALLENGE PROGRAM**

The U.S. Environmental Protection Agency’s (EPA) High Production Volume (HPV) Challenge Program is a program through which chemical companies voluntarily provide basic information about the toxicity of their HPV chemicals. HPV chemicals are those chemicals that are produced in or imported to the United States amounts that exceed one million pounds per year. The program uses the standard tests, procedures, and formatting of results used in the Screening Information Data Set (SIDS) program, a cooperative, international effort to secure basic toxicity information on HPV chemicals worldwide.

Detailed Information about EPA’s HPV Challenge Program can be found on the Internet at:
<<http://www.hpvchallenge.com>>, as well as at
<<http://www.epa.gov/chemrtk>>.

“existing” chemical is defined as one that is listed on TSCA’s 1977 inventory of chemicals in the United States market and “new” chemicals as those not included on that list. Currently, he continued, 74,000 chemicals in use in that market are recorded in the inventory. Substances that are not covered by TSCA include pesticides, tobacco, tobacco products, firearms, ammunition, nuclear materials (source, special, or byproducts), foods, food additives, drugs, medical devices, and cosmetics, he continued.

Mr. Penberthy then stated that Section 4 of TSCA addresses chemical testing. The policy, he explained, states that adequate data on the health effects of chemicals is to be the responsibility of those entities that manufacture and process the chemicals. To ensure that such responsibility is met, EPA constructed test rules and negotiated testing agreements and enforceable consent agreements. Creation of an enforceable consent agreement is a great deal cheaper, easier, and less time-consuming than creating new regulations, he observed.

Four findings must be made about a chemical before a rule governing it can be developed, Mr. Penberthy continued. They are: a hazard or “A” finding, an exposure or “B” finding, a “data adequacy” finding, and a “testing is necessary” finding. An “A” finding is

made when existing data show that the chemical presents an unreasonable risk to human health or the environment and that there is a probability of exposure, he explained. A “B” finding is made when a chemical is produced or imported in large quantities and is released into the environment or causes significant or substantial human exposure. A “data adequacy” finding indicates that current data are inadequate to support the conduct of a risk assessment. Finally, he said, a “testing is necessary” finding indicates that testing is required to conduct a risk assessment.

Ms. Stahl then asked Mr. Penberthy to define the term “unreasonable risk” as he had used that term. She also asked how a finding can be made if the data available are not adequate, especially, she noted, in the case of an “A” finding. Mr. Penberthy replied that an “A” finding is the most difficult finding to make. A “B” finding is much easier to make, he continued; for such a finding, four items are necessary. A substantial production or importation is defined as one million pounds or more per year. Next, there must be a substantial release of the chemical that at least 1 million pounds or 10 percent of the volume, continued Mr. Penberthy. Third, substantial exposure is defined as exposure of 1,000 workers, 10,000 consumers, or 100,000 members of the general population. For a “B” finding, the first item and one of the three other items must be applicable, he said. Finally, human exposure must be significant, he added.

Mr. Penberthy then discussed EPA’s new voluntary testing program, the High Production Volume Challenge program, more commonly known as the HPV Challenge. The purpose of the HPV Challenge program is to make available to the public by 2005 a baseline set of data on health and environmental effects for approximately 2,800 HPV chemicals. The program is necessary, said Mr. Penberthy because there are no publicly available studies on 43 percent of HPV chemicals in use in the United States. Further, he added, for seven percent of such chemicals, there are no full sets of publicly available studies. Exhibit 4-3 presents information about the HPV Challenge program.

Data being developed for the effort include information about solubility in water, vapor pressure, biodegradation, acute toxicity, toxicity of repeated doses, genetic toxicity, and reproductive toxicity, said Mr. Penberthy. Concepts that are stressed under the program, he continued, include public involvement in each step of the process and consideration of animal welfare.

In response to the question of a member of the audience about whether the program considers the

cumulative and synergistic effects of chemicals, Mr. Penberthy stated that the HPV program provides information about individual chemicals only. Continuing, he noted that the program would allow experts to more accurately identify those chemicals that require more detailed study to address such issues as cumulative and synergistic effects.

Mr. Penberthy stated that the testing program had produced the following results for 470 companies participating: 120 chemicals covered by test rules; 70 chemicals covered by negotiated testing agreements and enforceable testing agreements; 400 chemicals covered by voluntary testing agreements; 2,155 chemicals being secured for basic hazard data by the HPV Challenge; and 250 chemicals covered by formal decisions not to test.

In response to a question posed by Ms. Kingfisher, Mr. Penberthy stated that the health information about the chemicals studied would be available to the public through the Internet. Additional methods of disseminating the information would be created by each state and could include such methods as fact sheets, he added.

Mr. Penberthy then stated that companies had begun to submit plans that set forth their methods and timetables for obtaining health information about the chemicals they manufacture and providing that information to EPA. Those plans will be published on the Internet and will be made available for public comment. In addition, EPA will attempt to fill data gaps left by companies that have not volunteered to provide information about the chemicals they produce, he said.

The participants discussed Mr. Penberthy's presentation at length. All members of the subcommittee and speakers agreed that it is both helpful and necessary to have baseline health information on a broad range of chemicals. However, there was some debate about how financially feasible the task of developing such information might be. Mr. Halper stated that the cost of analytical testing for chemicals in fish could be hundreds of thousands of dollars for each chemical. Such tests would be used to develop parameters for risk assessment, he noted. Ms. Henry then suggested that, on the other hand, current knowledge of chemical fate, lipid content, and bioaccumulation would allow performance of some of the analyses mathematically.

Ms. Kingfisher stated that she would find it difficult to trust chemical companies to do their own reporting, adding that the program involves a great deal of trust in the chemical companies on the part of EPA and that tribal communities are not shown such trust in

the case of work that they have done or are willing to do. Mr. Penberthy replied that the standard protocol for assessing basic health data for the chemicals ensure some safeguard against falsification and increase accuracy on a technical level. In support of Mr. Penberthy's position, Mr. Halper added that the EPA Office of Enforcement investigates, in detail, the record keeping of the laboratories that perform the analyses. Problems identified have resulted in prosecution, added Mr. Halper.

3.4 Presentation on the Structure of the Subcommittees of the NEJAC

Mr. Jeffrey Morris, EPA ORD, Office of Science Policy, recommended a change in the structure of the subcommittees of the NEJAC. He distributed a handout that outlined the evolution of the Health and Research Subcommittee and the changes that his agency was proposing. The handout stated that EPA ORD and EPA Office of Prevention, Pesticides, and Toxic Substances (OPPTS) had been providing financial and administrative support to the NEJAC since 1993. Recently, it continued, the director of the Office of Environmental Justice (OEJ) had begun to develop a new vision of the structure and function of the NEJAC and its subcommittees. OEJ had asked ORD and OPPTS to discuss changes in the NEJAC and in the Health and Research Subcommittee that would enhance their interaction with EPA and their ability to provide sound advice and recommendations that are appropriate in light of EPA's priorities.

Mr. Morris then discussed the outcome of that discussion. The proposal that was developed, he continued, is that each subcommittee of the NEJAC align itself with EPA's goals related to the Government Performance and Results Act (GPRA). The purpose of the GPRA is to improve public confidence in the performance of federal agencies by holding each agency responsible for achieving the goals of its programs, he continued. EPA has 10 goals, Mr. Morris explained, stating that they relate to air, water, safe food, safe communities, hazardous waste, enforcement, information, sound science, and effective management.

The NEJAC Air and Water subcommittee addresses the first two goals, he continued. Health and research issues related to environmental justice cross the boundaries among subcommittees, he said; therefore, specific issues should be handled by the applicable subcommittee, rather than by a separate subcommittee. Mr. Morris added that the other eight goals could be considered by the NEJAC as a whole. He then stated that the Health and Research Subcommittee should be redefined to

address the goal of safe communities and should work with ORD and OPPTS; those two offices, he noted, already have focused on that goal as issues of environmental justice affect it. Other sources of assistance might include the Interagency Working Group on Environmental Justice (IWG), EPA's new Tribal Science Council, and regional science councils, suggested Mr. Morris. He added that much of the work on cumulative risk could be based on the Superfund program.

Ms. Stahl then referred to questions about reworking the NEJAC that had been raised recently. She stated that the NEJAC meeting in August 2001 was an effort on the part of the NEJAC to "save itself." The NEJAC sought to determine whether the council was meeting its goals and whether it was worth the resources devoted to it, she continued. Ms. Stahl said that only subcommittees, such as the Air and Water Subcommittee, which address issues related to media, were producing tangible results. She stated that the Health and Research Subcommittee played a supporting role in the NEJAC. The products the subcommittee produced were valuable in and of themselves, she observed, but were not aligned with the strategic goals of the NEJAC. She then stated her belief that the fate of the subcommittee should be brought up first by the Health and Research Subcommittee itself. The position of ORD and OPPTS should be considered, said Ms. Stahl, but it should not be the only factor considered in the evaluation. Mr. Morris responded that ORD and OPPTS intended the proposal to facilitate discussion of possible changes in the NEJAC.

4.0 SUMMARY OF PUBLIC DIALOGUE

Ms. Stahl encouraged public dialogue on topics that had been discussed by the members of the subcommittee during its meeting. This section summarizes dialogue among members of the subcommittee, speakers, and other individuals. In addition, two written comments on topics discussed during the meeting that were submitted by members of the audience are included in the summary below.

4.1 Mr. Walter Redmon, U.S. Environmental Protection Agency Region 5

Mr. Walter Redmon, EPA Region 5, discussed contaminants in fish as they are related to his work on the Great Lakes. He recalled that mercury first was found in sediments of the Saint Clair River in 1969 and 1970. Before that time, he continued, it had been assumed that mercury would not bioaccumulate because it was inert and that it

therefore would not create a problem. Next, continued Mr. Redmon, DDT was found in the river. Monitoring of the lakes began at that time, he said, adding that levels of contaminants were tracked in lake trout approximately 7 to 8 pounds in size. The monitoring has continued since 1970 and has provided a trend line of contaminants in fish that is more thorough than any other currently available, he stated.

Mr. Redmon explained that the trend-monitoring program, which was designed by a statistician, required the collection of 100 fish, equaling 10 fish composites. The large sample number allows sensitivity to small changes in contaminant levels in fish tissue, he pointed out. The trend line identified through the monitoring effort has shown that levels of every pollutant except mercury have declined dramatically, by more than 90 percent, over the time frame of the sampling, stated Mr. Redmon.

Mr. Redmon then referred to another study conducted by EPA in the 1980s under which various species of fish from throughout the United States were sampled. The study considered 65 contaminants, one of which was dioxin, which had not been considered in any prior study, he stated. Technology had advanced to a point that made it possible to detect dioxin at the levels being observed in fish he added. Mr. Redmon then explained that the results showed approximately the levels of contaminants predicted, except in the case of mercury. Mercury was found in areas where it was not expected to be. Mercury, he declared, is tied to certain circumstances, such as air pollution, which are present over a wide range of areas. For several years, the Great Lakes had been thought to be the only area where mercury would be found, he continued, because that region was the only one for which data were available. However, elevated levels of mercury were identified in other regions, as well, although those regions had not been evaluated previously, said Mr. Redmon. Therefore, he stated in conclusion, it is not appropriate to assume that there are no elevated levels of contaminants in a certain area simply because that area has not been evaluated.

Currently, Mr. Redmon continued, there is a new study on contaminants in fish tissue that also is statistically designed and that uses randomly selected sampling sites. The list of contaminants being considered has been expanded further to include previously unevaluated chemicals, such as new pesticides. The Great Lakes was excluded from the study because there is a great deal of sample data on that region, he noted. Mr. Redmon then stated that he expects to find the same

contaminants that were found in the previous Great Lakes study because he has found conditions to be similar throughout the country, except in areas in the immediate vicinity of sources.

Mr. Redmon then described another study conducted by EPA Region 5 from 1970 through 1980. That study, he explained, had evaluated streams as a collection system for contaminants. The study analyzed whole fish collected at 80 to 90 sites in the five-state region that were in the downstream sections of larger basins. The agency conducted scans of the contaminants present in the fish, reported Mr. Redmon, adding that the results of the study had been published in 1980.

4.2 Ms. Heather Halsey, State of California Governor's Office of Planning and Research

Ms. Heather Halsey, State of California Governor's Office of Planning and Research, first commented on Mr. Penberthy's presentation. She clarified the difference between rules and statutes, stating that the NEJAC can make recommendations to EPA about rulemaking, but that only Congress can enact statutes. Ms. Halsey refuted the notion that EPA merely implement statutes enacted by Congress. She referred to the first slide Mr. Penberthy's presentation that read TSCA "gives EPA broad authority to gather information on health/safety and exposure for, require testing of, and control exposure to 'new' and 'existing' industrial chemicals." That statement, said Ms. Halsey, seems to suggest that EPA has the authority to create its own rules in fulfilling its purpose. Turning to the subject of parameters for risk assessment, Ms. Halsey stated that it is important to include small numbers as significant. For example, she explained, there may be a tribe that has only a small number of members; however, if each of the members is experiencing adverse effects caused by contaminants in fish, that fact should be considered significant.

4.3 Written Comment Submitted by Ms. Kendra Zamzow, Alaska Community Action on Toxics

Ms. Kendra Zamzow, Alaska Community Action on Toxics, submitted written comments on several issues discussed by the members of the subcommittee. Discussing the issue of risk assessment, Ms. Zamzow suggested that analysis of risk to fetuses, infants, and pregnant women, rather than determination of site-specific or culture-specific risk would be more cost effective and useful. She noted that such an approach would cross cultural and national boundaries and address all groups. In

addition, she stated, action would be taken more quickly if policymakers were to consider risk that affects their children. In her statement, Ms. Zamzow recommended that the subcommittee and the NEJAC address biomagnification. In many Alaskan communities, she wrote, "a fish is eaten by a seal, which is eaten by a walrus, which is eaten by a human." Therefore, she concluded, a level of a contaminant that is safe in a fish may be unsafe level once it has biomagnified through the food chain and eaten by a human.

Turning to the topic of research, Ms. Zamzow's statement expressed her belief that the conduct of research on previously completed studies would be productive. In addition, she suggested, literature from other countries, such as Canada and European nations, should be researched, as well. Ms. Zamzow cited the Arctic Monitoring and Assessment Program as a good resource for information about bio-accumulative and persistent organic chemicals.

Ms. Zamzow also endorsed the fostering of partnerships between tribes and scientists. She mentioned in particular Mr. Ron Serudato of the State University of New York. She stated that Mr. Serudato had worked successfully with the Mohawk Nation to resolve issues related to water quality. He currently is working with the Village of Savoonga and Alaska Community Action on Toxics to raise issues of environmental justice related to contamination at an abandoned military site, she wrote. The Alaska Sea Otter and Sea Lion Commission is working with a research group from the University of Alaska to provide Alaskan communities the knowledge necessary to conduct a broad range of monitoring, she continued. Ms. Zamzow suggested that local listening groups could serve as links with local communities and scientists to bring recommendations to EPA.

In her written statement, Ms. Zamzow then questioned why companies still are permitted to manufacture chlorinated hydrocarbons. She wrote that it is "insane" to allow the chemical industry to be responsible for its own research.

4.4 Written Comment Submitted by Mr. Wilbur Slockish, Jr., Columbia River Education and Economic Development

Ms. Zamzow presented the written comments of Mr. Wilbur Slockish, Jr., Columbia River Education and Economic Development, related to the activities of the Health and Research Subcommittee. In his statement, Mr. Slockish stated his belief that the scientific method of risk assessment is wrong; he

expressed his objection to the inclusion of his culture in risk assessment. Risk assessment is based substantially on the physiology and physical characteristics of white populations, he wrote. Mr. Slockish stated that the physiology of his people differs from that of white people; his people therefore interact with chemicals in ways that differs from the way in which white people interact with such substances, he wrote. In his statement, he pointed out as illustration that it was highly probable that several of the white men present in the subcommittee meeting were bald or balding, but that no man in his tribe had ever lost his hair.

Continuing, Mr. Slockish expressed in his statement his belief that the NEJAC and EPA had not dealt appropriately with the problem of risks posed by the consumption of fish. He stated that EPA should stop the release of chemicals into the environment, rather than determine what levels of chemicals are safe. He then stated that such an approach to contamination could be accomplished only through a change in mind set and in the consumer lifestyle of the American culture.

5.0 ACTION ITEMS

This section summarizes the action items adopted by the subcommittee. Those action items are:

- Request that EPA OPPTS identify HPV chemicals that are potentially toxic and that can enter into the aquatic environment. Further, request that EPA OW work with OPPTS to identify a higher level of testing for HPV chemicals in fish. Request that additional testing and rulemaking be expedited when a pathway is identified.
- Request collaboration between and among federal agencies in sharing data about contaminant levels identified in fish and other aquatic resources. EPA should determine whether the Interagency Working Group on Environmental Justice should be assigned responsibility for the issue.

MEETING SUMMARY

of the

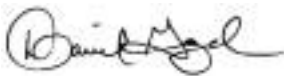
INDIGENOUS PEOPLES SUBCOMMITTEE

of the

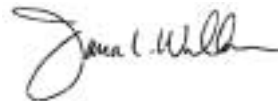
NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 5, 2001
Seattle, Washington**

Meeting Summary Accepted By:



**Daniel Gogal
Designated Federal Official**



**Jana Walker
Vice Chair**

**CHAPTER FIVE
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 5, 2000, during a four-day meeting of the NEJAC in Seattle, Washington. In the absence of Ms. Jennifer Hill-Kelly, (Oneida Environmental Health & Safety Department, Ms. Jana Walker, attorney at law, holding the position of vice chair of the subcommittee, served as acting chair during the meeting. Mr. Daniel Gogal, U.S. Environmental Protection Agency (EPA) Office of Environmental Justice (OEJ), serves as the Designated Federal Officer (DFO) for the subcommittee. Exhibit 5-1 presents a list of the members who attended the meeting and identifies the member who was unable to attend.

This chapter, which provides a summary of the deliberations of the Indigenous Peoples Subcommittee, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the acting chair and the DFO, as well as any administrative remarks made throughout the meeting. Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report received by the subcommittee during its meeting, as well as a summary of questions asked and comments offered by the members of the subcommittee. Section 4, *Activities of the Subcommittee*, summarizes the discussions of the members of the subcommittee about the activities of the subcommittee, including their discussion of the NEJAC's Pre-Meeting Discussion Draft of the Fish Consumption Report (fish consumption report) and the Indigenous Peoples Subcommittee Strategic Plan for 2001 - 2003. Section 5.0, *Other Concerns of the Subcommittee*, summarizes the members' deliberations related to four issues relevant to indigenous communities.

2.0 REMARKS

As acting chair of the Indigenous Peoples Subcommittee, Ms. Walker opened the meeting by welcoming the members present and Mr. Gogal, the DFO. Ms. Walker explained that she was serving as the acting chair of the subcommittee, replacing Ms. Hill-Kelly who was unable to attend.

Mr. Gogal stated that the participants in the meeting represented a "most diverse group of people." He added that, although the meeting was conducted for

Exhibit 5-1

INDIGENOUS PEOPLES SUBCOMMITTEE

**Members Who Attended the Meeting
December 5, 2001**

Ms. Jana Walker, **Vice Chair**
Mr. Daniel Gogal, **DFO**
Mr. Bob Smith, **Alternate DFO**

Ms. Anna Frazier
Ms. Coleen Poler
Mr. Moses Squeochs
Mr. Dean B. Suagee

**Members
Who Were Unable To Attend**

Ms. Jennifer Hill-Kelly, **Chair**
Ms. Barbara Warner

the members of the Indigenous Peoples Subcommittee, the comments of observers would be welcome during the dialogue session scheduled for that afternoon.

Mr. Gogal requested that Mr. Moses Squeochs, Yakama Nation Environmental Program, Confederated Tribes and Bands of the Yakama Nation and member of the subcommittee, lead the subcommittee in an invocation "in the manner of his people." Mr. Squeochs first led the invocation in the form of a song-prayer and then interpreted the meaning of the song for those present.

In his interpretation, Mr. Squeochs stated that the song of invocation spoke of Mother Earth and the connection between the environment and every person on Earth. The song, he continued, is one way in which tribal elders teach Native peoples to always respect Mother Earth; making such an invocation appropriate for beginning a meeting of the Indigenous Peoples Subcommittee, he concluded.

During lunch, the members of the Indigenous Peoples Subcommittee watched the documentary film "In the Light of Reverence." Mr. Dean B. Suagee, Vermont Law School First Nations Environmental Law Program and member of the subcommittee, briefly introduced the film, stating that indigenous people around the world face many challenges as they work to preserve their sacred places. The need for such preservation was the motivation of filmmaker Toby Macleod, he explained,

adding that the film tells stories from three tribes, the Lakota, the Hopi, and the Wintu. The stories describe the struggles of the three tribes to preserve what remains of their sacred places. The film, Mr. Suagee continued, explores the relationship of American culture to nature in three places considered sacred by native peoples.

After the participants viewed the film, Ms. Walker stepped down as acting chair because she had been taken ill. Mr. Don Aragon, Wind River Environmental Quality Commission, served as acting chair for the remainder of the meeting.

3.0 PRESENTATIONS AND REPORTS

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

3.1 Klamath River Inter-Tribal Fish and Water Commission

Mr. Merv George, Administrator, Klamath River Inter-Tribal Fish and Water Commission and member of the Hupa Tribe, first provided information about the history of the commission on which he serves. The commission was founded in 1995, he explained, and has focused on a number of issues related to water quality. Mr. George stated that four tribes living in northern California make up the current membership of the commission. Continuing, he explained that the tribes and the state government have developed a cooperative working relationship, and that the majority of the tribes reside on tribal reservations.

The five issues of greatest importance to the member tribes of the commission, he continued, are:

- Habitat restoration, particularly in the case of the salmon population
- Hydroelectric dams and their effects on the salmon population
- Agricultural issues related to water quality
- Economic issues and the balancing of economic needs with environmental rights
- Maintenance of tribal sovereignty

Turning to the issue of hydroelectric dams, Mr. George explained that the salmon population on which the Hupa and Yura tribes subsist can not reach pristine habitat because their paths are blocked by hydroelectric dams. Mr. George then

stressed that the Hupa and Yura tribes constantly must balance environmental and economic issues when developing standards for water quality. He stated that a “political jujitsu” forces tribes to struggle to maintain their cultural practices, while at the same time incorporating modern politics and economics into their lifestyles.

In conclusion, Mr. George presented his recommendations to the subcommittee. First, he suggested that the subcommittee urge EPA to provide resources to the tribes so that the tribes will be able to conduct studies (such as testing of tissue samples). He also recommended that the subcommittee add language to the NEJAC fish consumption report that recognizes the importance and necessity of subsistence living to indigenous peoples. “Fish are not less important than the blood that flows through our veins,” he stated. He also added that he would submit formal written testimony to the subcommittee and the NEJAC by the January 31, 2002 deadline that had been established for such submittals.

Mr. Suagee expressed interest in obtaining written comments on disruptions in water flow and their effects on the lifestyles of the Hupa and Yura peoples.

3.2 Presentation on Survey of Fish Consumption by Tulalip Tribes

Ms. Gillian Mittelsteadt, environmental policy analyst, Tulalip Tribes Natural Resource Program, and Mr. Daryl Williams, Tulalip Tribes Natural Resource Program, presented the results of a study of consumption of fish among members of the Tulalip tribe. Ms. Mittelsteadt described the statistical framework of the study, as well as the benefits it produced and lessons learned. The study took place in 1993 and 1994, she explained, and was a non-random survey of the two Tulalip tribes that reside in the Puget Sound area. The survey, she added, was a joint effort of EPA Region 10 and U.S. Ecology Inc., the objective of which was to quantify the rates and patterns of fish consumption of the members of the two tribes. The study analyzed the rates of consumption of both shellfish and finfish and reported a median consumption rate of 58 grams per day (gpd), she explained. That rate, Ms. Mittelsteadt pointed out, is 10 times the national average that has been documented by EPA.

Ms. Mittelsteadt then stated that, although the survey served as a catalyst for follow-up studies, much remains to be accomplished. One benefit of the study, she said, was that the state of Washington

now has modified its human health standard to a value higher than the median value identified through the survey. Ms. Mittelsteadt then described some lessons her team learned by conducting the survey. She stressed the importance of educating the Tulalip tribal communities about issues of environmental justice.

Mr. Williams first added a footnote to Ms. Mittelsteadt's presentation, reporting that male members of the tribes surveyed consumed more fish than the female population. He also stated that, because the Tulalip tribes do not have off-reservation fishing rights, they must fish areas in which the highest levels of contamination are present. Mr. Williams then discussed problems caused by pollution credit programs and the negative effects such programs have on native tribal communities. After describing a pollution credit program designed to promote the trading of such credits, he stated that such programs provide those groups that can afford to buy pollution credits the "right to pollute." However, he continued, tribes that reside along the Puget Sound are limited in what they can discharge because they do not have the resources to purchase pollution credits. Consequently, he explained, the tribes have no impact on the other sources of pollution that affect their local fish populations.

Mr. Williams expressed concern that the NEJAC fish consumption report recommends that tribal communities alter their diets to incorporate non-traditional food sources. He explained that it is not healthy for tribal communities to do so. The Tulalip survey supported his position, he added, by identifying increased rates of cancer and diabetes among members of the two tribes who had altered their diets in response to fish advisories.

Continuing, Mr. Williams suggested additional revisions of the NEJAC fish consumption report. First, he stated that the two Tulalip tribes have adopted their own water quality standards; however, EPA had not approved those standards. However, the tribes continue to enforce the standards themselves, he added. Mr. Williams then urged that the subcommittee recommend that the NEJAC request that EPA approve the water quality standards of both tribes.

In response to the suggestions offered by Mr. Williams, Mr. Aragon stated that EPA had made some progress in recognizing tribal water quality standards. He then stated that tribal water quality standards must be as stringent as federal standards, or more so; tribes therefore encounter economic

difficulties when they attempt to enforce and maintain the standards they have implemented, he said. Mr. Squeochs asked Mr. Williams whether the two tribes had developed their water quality standards independently of one another. Mr. Williams responded that the Tulalip tribes had received funding from EPA to develop the standards together, noting again that the standards have not been approved by the Agency.

Continuing, Mr. Aragon asked Mr. Williams whether the activities of the U.S. Navy have had adverse effects on the Tulalip tribes. Mr. Williams answered that the tribes are not affected directly, noting that the Navy base located near the tribal communities actually is "a good neighbor" to those communities.

Ms. Anna Frazier, DINE' CARE, asked Mr. Williams whether the Tulalip tribes are recognized by the federal government. Mr. Williams responded that several tribes banded together to form the federally recognized Tulalip Tribes, which has 3,200 members.

3.3 Mr. Tom Goldtooth, Indigenous Environmental Network

Mr. Tom Goldtooth, Indigenous Environmental Network and former chair of the Indigenous Peoples Subcommittee, presented his recommendations for improving the NEJAC fish consumption report. He urged that the subcommittee:

- Promote outreach to tribal communities to communicate information about the responsibilities and activities of the NEJAC
- Include in the fish consumption report the negative effects of radioactive contaminants on native habitats
- Focus attention not on traditional risk assessment but on precautionary actions

Mr. Goldtooth then distributed packets of handouts, including "Environmental Injustice in the Great Lakes Water Quality Agreement," "Preventing Mercury Contamination for Native Peoples of the Great Lakes," and a pamphlet that provided background information about the Indigenous Environmental Network.

Mr. Goldtooth then summarized the written testimony he had read during the public comment period held on the previous evening. It is essential, he said to analyze the effects of all toxics and chemicals when applying a risk assessment model to the issues of

environmental justice that affect indigenous people. Mr. Goldtooth also urged that the subcommittee adopt a focus on precautionary actions, rather than the traditional risk assessment approach. See Section 3.11 of Chapter Two of this report for a summary of that statement.

Mr. Goldtooth then submitted another document, "Tracking Dioxins," and summarized the principal points set forth in it. The document, said Mr. Goldtooth, describes a groundbreaking study performed by the North American Commission for Environmental Cooperation (NACEC) that linked dioxins accumulating in the new polar territory of Nunavut to source regions thousands of kilometers away. Mr. Goldtooth also stated that the scientists who conducted the study used a model to track "puffs" of dioxin-containing air pollution released at various locations in North America and deposited in eight regions in the polar territory of Nunavut.

Finally, Mr. Goldtooth suggested two objectives for the consideration of the subcommittee. First, he urged that the subcommittee develop a guide for environmental justice, noting as well that it is important to reach out to tribal leaders. Second, Mr. Goldtooth recommended that the subcommittee review the precautionary principle approach to risk assessment and recommend the NEJAC urge EPA to consider using such an approach. In conjunction with that second recommendation, he added the subcommittee should promote active outreach related to its document "Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups and Tribal Members in Environmental Decision Making."

Mr. Aragon then expressed agreement with the recommendations that Mr. Goldtooth had offered, citing a need for more studies that perform risk assessment, rather than needs assessment. Continuing, he stated that there is a need to analyze the long-term effects of persistent pollutants throughout the world because such contamination crosses national as well as international boundaries.

3.4 Presentations by Members of the Alaskan Native Community

Representatives of the Alaskan Native community presented their concerns and recommendations to the subcommittee.

Ms. Rosemary Ahtuanguak, Inupiat Community of Arctic Slope and native of the Village of Nuiqsut, Alaska, expressed her concerns about and recommendations for improving the representation of

Alaskan Natives on the Indigenous Peoples Subcommittee. She also urged that, in the NEJAC fish consumption report, the subcommittee address Alaskan tribal land, such as Prudhoe Bay, where residents rely on fishing and whaling for subsistence. See sections 2.4 and 3.9 of Chapter Two of this report for a summary of her comments during the public comment period.

After Ms. Ahtuanguak's presentation, Ms. June Martin, Alaska Community Action on Toxics, presented a story about a health aide in her village who had spoken out on behalf of the tribal community and had been awarded a grant from the National Institute for Environmental Health Sciences (NIEHS) to support a survey of the health problems of members of the tribe. Ms. Martin then discussed the failure of the U.S. Army Corps of Engineers (USACE) to take action to clean up the military facility located near her village. She urged that the subcommittee assist Alaskan Native communities to hold the federal government accountable for contamination left by military actions. See section 3.20 of Chapter Two of this report for a summary of her comments during the public comment period.

Ms. Pam Miller, Alaska Community Action on Toxics, expressed her concern about the health of Alaskan Native tribal communities residing on or near abandoned U.S. Department of Defense (DoD) sites. She reported that there are five military Superfund sites and approximately 700 formerly used defense sites (FUDS) in Alaska. She added that many of the sites are contaminated with polychlorinated biphenyls (PCB) and dioxins, in addition to solvents, fuels, radioactive waste, and chemical munitions. Historically, continued Ms. Miller, DoD has preferred remedies such as institutional controls, landfills, and natural attenuation, which, she declared, are not adequate to protect the health of the Alaskan Native people. The native people who reside near the DoD sites are deeply concerned about health problems that could be linked to chemical exposures, including cancer, diabetes, miscarriages, and low birth weight in babies, she said.

Ms. Miller insisted that federal agencies, especially EPA, must hold DoD accountable for the cleanup of hazardous waste sites in Alaska, including FUDS. Additional sites merit inclusion on the National Priorities List, she added. She then discussed tribal concerns about persistent organic pollutants (POP), such as dichlorodiphenyltrichloroethane (DDT), toxaphene, mirex, and lindane, which originate thousands of miles south of Alaska, travel northward, and accumulate over northern Alaska. Contaminants from the long-range transport of POPs

and military sites in Alaska pose a serious threat to the health of people who rely on traditional diets of fish and marine mammals, she stated.

In addition, Ms. Miller reported that the method of risk assessment EPA uses fails to consider major pathways of exposure, including pharmaceutical uses, residues in food from previous uses of lindane, breast milk, and residues in water. Ms. Miller stated that the signing in May 2001 of the international treaty on POPs, known as the Stockholm Convention, was an important first step toward the long-term protection of the health of all people. Ms. Miller requested that the subcommittee and the NEJAC take a leadership role in advising the United States Senate to ratify the Stockholm Convention.

3.5 Dr. Roseanne Lorenzana, EPA Region 10

Dr. Roseanne Lorenzana, EPA Region 10, presented a list of five specific recommendations to be made to EPA, which she suggested the subcommittee consider: (1) study and document the tribal health effects on tribes of mixtures of contaminants in fish and shellfish; (2) develop cumulative risk guidelines that are appropriate to the needs of tribes; (3) complete EPA's assessment of non-cancer health effects of PCBs and characterize the health risks posed by methyl mercury at exposure levels higher than the EPA reference dose (RfD); (4) allow informed decision-making about contaminants in fish and shellfish in the categories of comparative dietary risk, benefits data, and peer review comments; and (5) use understandable language in discussions of mixtures and cumulative risk. Dr. Lorenzana, who serves as science liaison between EPA Region 10 and the EPA Office of Research and Development (ORD), also recommended that the Indigenous Peoples Subcommittee provide enhanced support for meaningful participation in EPA's Tribal Science Council.

Dr. Lorenzana also presented the report "Comparative Dietary Risks: Balancing the Risks and Benefits of Fish Consumption," for which a risk assessment model was used to define the conditions under which consumption of fish is a healthy choice. She urged the subcommittee to advise EPA to work with tribes to develop cumulative risk guidelines that are appropriate to the needs of the tribes. In conclusion, Dr. Lorenzana recommended that the subcommittee advise EPA to specifically identify adequate and ongoing research funds to address tribal issues related to subsistence, including risk to children, and provide an annual report on the agency's efforts.

3.6 Presentations by Other Tribal Representatives

After the presentations by those individuals who had been scheduled to appear, the floor was opened to presentations by members of the audience.

Ms. Cheryl Steele, Elem Indian Colony, stated that fish advisories do not sufficiently address issues related to the consumption of fish. She urged that EPA provide more guidance to indigenous peoples and that EPA work with the people to eliminate sources of contamination, especially contamination from mercury mine tailings. See section 3.17 of Chapter Two of this report for a summary of her comments during the public comment period.

Mr. Kevin McKernan, Yurok Tribe, offered specific recommendations for improving the NEJAC fish consumption report. He suggested that EPA acknowledge those tribes that have adopted their own water quality standards. Specifically, he said, the report should be expanded to include discussion of: (1) the number of tribes that had developed their own water quality standards; (2) how many tribes have standards that are pending approval; and (3) why so few tribes have done so. In addition, Mr. McKernan recommended that Chapter 4 of that report include a discussion of the resources available to tribes for use in establishing approved water quality standards.

Mr. McKernan added that the use of core standards might direct resources away from tribes that have their own water quality standards. He suggested the subcommittee add the following text to chapters 2 and 4 of the fish consumption report:

"NEJAC strongly urges the EPA administrator to make tribal water quality standards a priority. This recommendation is consistent with and embraces EPA's Indian Policy."

Mr. McKernan also stated that EPA, by limiting the amounts of fish that the tribal members may consume, the agency is reducing the rate of consumption and having a direct suppression effect on the diets and subsequently the subsistent lifestyles of tribal communities. Mr. McKernan urged that the subcommittee add to Chapter 4 of the report text that describes the issues related to the effect of suppression and discusses the effects related to statutory limitations. Finally, Mr. McKernan emphasized the importance of addressing the quality and quantity of fish when conducting scientific surveys because the quality of the fish, he pointed

out, has direct implications for tribal consumption rates. EPA also should address quantity and quality of fish in the review of permits and National Environmental Policy Act documents that assess fish populations for contamination from non-point sources.

After Mr. McKernan's presentation, Mr. Bill Doyle, Sierra Club, discussed the adverse effect the dams along the lower Snake River in southeastern Washington are having on the salmon populations. Mr. Doyle stated that several dams along the river are not in compliance with federal clean water standards; the conditions such dams cause are fatal to salmon populations. USACE is responsible for the cleanup of many of the sites and bringing them into compliance, he added, but no action had yet been taken, he pointed out. Mr. Doyle stated that the situation is another example of a federal agency that is out of compliance and that has a negative effect on the tribes in the Columbia River basin area.

Ms. Augusta Rozema, Swinomish Tribe, stated that the subcommittee and the NEJAC must "spread the word" about future meetings of the NEJAC. She also offered specific comments to the NEJAC fish consumption report and encouraged the subcommittee to make specific changes in the language of the report that, she suggested, would clarify the definition of the word "fish" to include both fin- and shell fish. Ms. Rozema urged the subcommittee to use numbers from the 2000 census in Chapter 4, rather than the 1990 census numbers that the report currently contains.

4.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, which included discussion of the NEJAC's Pre-Meeting Discussion Draft of the Fish Consumption Report and the Indigenous Peoples Subcommittee Strategic Plan for 2001 - 2003.

4.1 Discussion of the Pre-Meeting Discussion Draft Fish Consumption Report

Ms. Coleen Poler, Mole Lake Sokoagon Defense Committee, began the discussion by providing an overview of the of the draft fish consumption report. Ms. Poler highlighted several recommendations made by the NEJAC during the first two days of Executive Council sessions, specifically the recommendations that more emphasis be placed on prevention, enforcement, and protection and that the NEJAC as well as its subcommittees, promote more participation on the part of the EPA regional offices. Ms. Poler added other recommendations, such as

adding bioaccumulation to the risk assessment portion of the report and ensuring that every indigenous community is represented equally in the report. Exhibit 5-2 summarizes the recommendations of the subcommittee for revising the NEJAC draft fish consumption report.

Ms. Walker added two more recommendations that had been addressed by the NEJAC to be referred to EPA for consideration. The NEJAC, she said, had recommended that the draft fish consumption report include discussion of the suppression and peak effects on members of indigenous communities. She explained that peak effects occur when tribes suffer more severe effects than other populations from contaminated water because they consume peak amounts of fish during short periods of time, rather than an average amount of fish consistently throughout the year. The fish consumption work group will address all the recommendations made by the NEJAC, as well as the information provided during the public comment period, she added.

Continuing, Ms. Walker stated that the way subsistence activities are viewed and how they should be valued need to be addressed adequately in the fish consumption report. She asked that the subcommittee add more insight into those issues and submit recommendations to the NEJAC. Particularly in Chapter 4, she said, the concept of subsistence living should be examined more thoroughly, she explained.

Ms. Poler then stated that the text in the draft fish consumption report also should include all indigenous people around the world, including Alaskan, Hawaiian, and Caribbean natives, as well as low-income people and people of color. Ms. Poler expressed concern about the time scale over which such changes will take place. She stated that, because she comes from a grassroots background, she is not content to wait for action to take place. She stated that she rather would see concrete modifications of the document. She urged that the subcommittee continue to search for a mechanism that would increase local involvement and provide recommendations to the NEJAC.

Ms. **Ahtuanguaruak** then recommended that the issues related to Alaskan tribal land, such as the Village of Oltiklik near Prudhoe Bay where the people subsist on fishing and whaling, be incorporated into Chapter 4 of the fish consumption report. Ms. Martin expanded on Ms. **Ahtuanguaruak**'s point by recommending that the text of the chapter discuss the role of non-profit organizations and clarify that all Alaskan Native peoples do not reside on reservations. Therefore, she said, it is not

relevant to distinguish between “on- and off-” reservation. Ms. **Ahtuanguak then stated that** EPA should consult with the tribes at an early stage, rather than after contamination has become a problem. She added that, although there is a recommendation for tribal consultation in the report, there must be stronger language in the report that supports enforcement of that recommendation.

Mr. Enoch Shiedt, Subsistence Coordinator, Maniilaq Association, explained that the native people of Alaska are nomadic and therefore move to locations at which food is available. Consequently, he continued, there are few boundaries between tribes when there is no concept of “on- and off-” reservation.

Mr. Francis Chin, environmental justice coordinator, Maniilaq Association, then emphasized the importance of a subsistence lifestyle to Alaskan Native communities. In the opinion of an Alaskan Native, he pointed out, fishing is not just a method of obtaining food, but is rather a spiritual experience. Continuing, Mr. Chin stated that, in the Indian community, the unemployment rate is 90 to 95 percent. Therefore, he said, a subsistence lifestyle is essential for survival and cannot be compromised.

Concluding the discussion, Mr. Art C. Ivanoff, Native Village of Unalakleet, expressed his concern about the effects of climate change on the health of Alaskan natives. He requested that the fish consumption report include climate change as a factor that affects the quality of fish. Climate change has depleted the running stock of salmon, he said, adding that the migration patterns of salmon and other animals used for food have not been sufficiently studied.

Ms. Poler also suggested that a list of points of contact for Alaskan Native organizations, as well as grassroots organizations, be included in Appendix A to the fish consumption report.

4.2 Discussion of the Indigenous Peoples Subcommittee Strategic Plan

The members of the subcommittee reviewed the seven objectives outlined in the subcommittee’s strategic plan for 2001 through 2003. Mr. Suagee reviewed the objectives and provided insight on several necessary changes. Objective one, Mr. Suagee stated, has been completed for the most part, and objective two will be completed in the coming year when the next NEJAC meeting takes place. He added that the subcommittee was meeting its schedule for completing the next five

objectives, with minor modifications to be made. Specifically, he stated that Mr. Goldtooth’s recommendations should be made available to the members of the subcommittee and added to the text of objective five. Mr. Suagee also stated that the subcommittee must give more attention to objective seven and that the subcommittee must work on institutionalizing its role as an advisory body to EPA.

Ms. Poler then offered her recommendations for changing the strategic plan. She first reminded the members of the subcommittee that the needs of Alaskan Native people must be considered an objective of the subcommittee in the upcoming year.

Concluding the discussion, Mr. Aragon recommended that the subcommittee add another objective to the strategic plan that would address his concern that the Indian community is “getting too fragmented.” The objective, he stated, would be to advise EPA to provide funds to the Office of Environmental Information (OEI) to support a network through which tribes could share data.

5.0 OTHER CONCERNS OF THE SUBCOMMITTEE

This section summarizes the members’ deliberations related to four issues relevant to indigenous communities: the precautionary principle, regulatory enforcement, the representation of Alaskan Natives on the subcommittee, and tribal sovereignty.

5.1 Precautionary Principle

Mr. Squeochs expressed his interest in learning more about the precautionary principle discussed by Mr. Goldtooth during the public comment period. Mr. Squeochs stated that he would like the subcommittee to obtain more information from Mr. Goldtooth and present any recommendations about the principle to the NEJAC. In response, Mr. Suagee stated that the precautionary principle is a basic idea in the study of ecology; “if there is not enough information, don’t upset the system,” he said. If EPA errs, he continued, the Agency should err on the side of protection. The precautionary method of risk assessment embodies such an approach, he pointed out.

5.2 Regulatory Enforcement

Ms. Frazier expressed her concern about the enforcement of EPA regulations. It seems, she said, that the only way for a grassroots organization to be heard is through a lawsuit, adding that the politics involved might block progress in many situations.

Ms. Frazier then expressed her concern that, although the purpose of the Indigenous Peoples Subcommittee is to advise the EPA, she is frustrated at the lack of action taking place and believes that the subcommittee should help “put more teeth” into its recommendations and provide more support to organizations at the grassroots level.

Mr. Aragon then commented on the public comment period that took place on the previous evening; he asked to hear more from Alaskan Native communities in the future. He added that he had been troubled to hear that, in some cases, federal agencies are the perpetrators that contaminate the water on which such communities depend for subsistence. The fish consumption work group, he said, should analyze the actions of federal agencies in the local area and address issues related to their presence, such as leaking underground storage tanks and lead paint, he stated. Mr. Aragon then stated his concern about contamination left behind by military activities in northern Alaska and expressed his desire that affected communities in Alaska develop remedies for such problems, or be provided the opportunity to identify such remedies.

5.3 Representation of Alaskan Native Peoples on the Indigenous Peoples Subcommittee

In response to the concern expressed by representatives of Alaskan Native peoples that such peoples are not represented on the Indigenous Peoples Subcommittee, Mr. Squeochs stated that such an individual had held a seat on the subcommittee and that the subcommittee currently was searching for new representation of Alaskan Native communities. Mr. Squeochs added that tribes should be included regularly in the deliberative process and that the subcommittee should change its role from that of “consultation” to that of “collaboration,” a role that would include deliberative dialogue and improvement of communication between the NEJAC and indigenous communities.

5.4 Tribal Sovereignty

Mr. Aragon stated that the government must clarify the distinction between on-and off-reservation fishing rights and must determine to what degree tribes have authority over individuals who are not members of the tribe but who live on the reservation. Mr. Suagee cited *Atkinson v Shirley* and *Nevada v Hicks*, two Supreme Court cases decided in May and June 2001 that had resulted in rulings in which Indian tribes asserted their inherent sovereignty. In both cases, he explained, the Supreme Court had applied the “general proposition” that the Court had

announced in 1981 in *Montana v United States* – that “the inherent sovereign powers of an Indian tribe do not extend to the activities of nonmembers of the tribe.” The Court’s decision in *Montana* has been criticized heavily because it marked a profound departure from the established principles of federal Indian law. In fact, said Mr. Suagee, the Court had to acknowledge that there were a number of cases upholding inherent tribal sovereignty over non-Indians, and so the Court said that there are two exceptions to the “general proposition:”

- “A tribe may regulate, through taxation, licensing . . . the activities of nonmembers who enter into consensual relationships with the tribe,”
- “A tribe may also retain inherent power to exercise civil authority over conduct of non-Indians on fee lands within its reservation when that conduct threatens . . . the political integrity, the economic security, or the health or welfare of the tribe.”

Mr. Suagee stated that in the two cases decided in May and June 2001, the Supreme Court has once again changed the rules and has made it that much harder for tribal governments to regulate the activities of nonmembers residing on the reservation.

TABLE OF CONTENTS

<u>Section</u>	<u>Page</u>
CHAPTER FIVE MEETING OF THE INDIGENOUS PEOPLES SUBCOMMITTEE	5-1
1.0 INTRODUCTION	5-1
2.0 REMARKS	5-1
3.0 PRESENTATIONS AND REPORTS	5-2
3.1 Klamath River Inter-Tribal Fish and Water Commission	5-2
3.2 Presentation on Survey of Fish Consumption by Tulalip Tribes	5-2
3.3 Mr. Tom Goldtooth, Indigenous Environmental Network	5-3
3.4 Presentations by Members of the Alaskan Native Community	5-4
3.5 Dr. Roseanne Lorenzana, EPA Region 10	5-5
3.6 Presentations by Other Tribal Representatives	5-5
4.0 ACTIVITIES OF THE SUBCOMMITTEE	5-6
4.1 Discussion of the Pre-Meeting Discussion Draft Fish Consumption Report	5-6
4.2 Discussion of the Indigenous Peoples Subcommittee Strategic Plan	5-7
5.0 OTHER CONCERNS OF THE SUBCOMMITTEE	5-7
5.1 Precautionary Principle	5-7
5.2 Regulatory Enforcement	5-7
5.3 Representation of Alaskan Native Peoples on the Indigenous Peoples Subcommittee	5-8
5.4 Tribal Sovereignty	5-8

MEETING SUMMARY

of the

INTERNATIONAL SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 5, 2001
Seattle, Washington**

Meeting Summary Accepted By:



**Wendy Graham
Designated Federal Official**



**Larry Charles
Acting Chair**

**CHAPTER SIX
MEETING
OF THE
INTERNATIONAL SUBCOMMITTEE**

1.0 INTRODUCTION

Exhibit 6-1

The International Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 5, 2001, during a four-day meeting of the NEJAC in Seattle, Washington. Mr. Larry Charles, Sr., O.N.E./C.H.A.N.E., Inc., served as acting chair of the subcommittee in the absence of Mr. Alberto Saldamando, International Indian Treaty Council, who is the current chair of the subcommittee. Ms. Wendy Graham, U.S. Environmental Protection Agency (EPA) Office of International Activities (OIA), continues to serve as the Designated Federal Officer (DFO) for the subcommittee. Exhibit 6-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the International Subcommittee, is organized in six sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the acting chair and the DFO. Section 3.0, *Theme Discussion: The Relationships Among Water Quality, Fish Consumption, and Environmental Justice*, summarizes presentations about and discussions of the topic of water quality and fish consumption. Section 4.0, *Presentations and Reports*, presents an overview of other presentations and reports received by the subcommittee, as well as discussions carried out and comments offered by members of the subcommittee. Section 5.0, *Presentation by the Thailand Delegation*, summarizes the presentation made by representatives of Thailand to the subcommittee. Section 6.0, *Action Items*, summarizes action items adopted by the subcommittee.

2.0 REMARKS

Mr. Charles, acting chair of the International Subcommittee, opened the meeting by welcoming the members and Ms. Graham, the DFO. Mr. Saldamando, chair of the International Subcommittee, was unable to attend because he had accepted an opportunity to work with the United Nations to organize a conference on human rights. Mr. Tseming Yang, Vermont School of Law and vice-chair of the International Subcommittee, was unable to attend because of conflicts in his schedule.

Mr. Charles described the new deliberative format for meetings of the NEJAC that, he said, is intended to allow collaborative work between the NEJAC and

**MEETING
OF THE
INTERNATIONAL SUBCOMMITTEE**

Members Who Attended the Meeting
December 5, 2001

Mr. Larry Charles, Sr., **Acting Chair**
Ms. Wendy Graham, **DFO**

Mr. Philip L. Hillman
Mr. Jose Matus
Ms. Dianne Wilkins

**Members
Who Were Unable To Attend**

Mr. Alberto Saldamando, **Chair**
Mr. Tseming Yang, **Vice-Chair**
Mr. Fernando Cuevas
Ms. Caroline Hotaling
Mr. Cesar Luna

EPA. He emphasized that one of the principle goals of the new format is to influence the policies of EPA, with the intention to increase the influence of the NEJAC and integrate environmental justice into all decisions formulated by EPA. Mr. Charles stated that he welcomed comments and suggestions from members of the subcommittee about further improvements to the format.

**3.0 DISCUSSION OF THE RELATIONSHIPS
AMONG WATER QUALITY, FISH
CONSUMPTION, AND
ENVIRONMENTAL JUSTICE**

This section summarizes the discussion by the members about the theme for the meeting: the relationships among water quality, fish consumption, and environmental justice. That discussion included the presentations to the subcommittee that are described below.

3.1 Environmental Justice and Indigenous Peoples in the Great Lakes Region

Mr. Tom Goldtooth, Indigenous Environmental Network, provided information about the connection between environmental justice, indigenous peoples, and transboundary issues in the Great Lakes region. Mr. Goldtooth, former member of the NEJAC, explained that affected tribes include indigenous

peoples who reside in both the United States and Canada. In the early colonial time, he continued, a political boundary established an “invisible border” between Canada and the United States. The indigenous peoples, however, continued to function socially, economically, culturally, and spiritually as one nation despite the political boundary, he pointed out. Therefore, said Mr. Goldtooth, many issues of environmental justice of concern to indigenous peoples living in that area are international issues. He emphasized that pollution, especially persistent organic pollutants (POP), does not respect political boundaries. POPs, he said, tend to migrate from warmer climates to colder climates; as a result, they accumulate in the northern Great Lakes region.

Mr. Goldtooth explained that environmental protection and the health of indigenous people are tied to treaties. Treaties address the rights of indigenous peoples to land and resources and their rights to hunt, fish, and gather, he pointed out. For that reason, he said, indigenous peoples differ from other people of color who are affected by issues of environmental justice. Mr. Goldtooth emphasized as well that indigenous peoples have a strong spiritual connection to the land. He added that testimony offered during the public comment session held on December 4, 2001 demonstrated that there is a lack of communication and collaboration with Canada’s First Nations and the indigenous tribes of the United States. Such problems, he continued, create complications in efforts to protect their environment.

Mr. Goldtooth distributed to the members of the subcommittee copies of a report titled “Environmental Justice in the Great Lakes Water Quality Agreement” that had been presented to the International Joint Commission. He explained that the United States and Canada had formed that commission to assist governments in resolving water quality issues in the Great Lakes region. The commission was established under the 1909 Boundary Waters Treaty in recognition that each country is affected by the other’s actions, he said. The report distributed by Mr. Goldtooth addressed contamination that affects human populations and the ecosystem and biodiversity in the Great Lakes region. Mr. Goldtooth stated that the report raises the question of who is responsible for protecting the environment of the Great Lakes region. He questioned whether environmental protection is the responsibility of the federal governments of the United States and Canada or of the state and provincial governments of the two countries.

Mr. Goldtooth stated that indigenous people have demanded an opportunity to hold a seat on the board

of directors of the International Joint Commission. Currently, he pointed out, indigenous peoples are not represented on that board. He urged that indigenous peoples should have a role in that decision-making body, which influences the future of their people, the protection of habitat and biodiversity, and environmental policies.

Mr. Goldtooth then encouraged the members of the subcommittee to discuss issues related to climate change during future meetings. He stated that climate change is an international issue about which consultation with indigenous peoples has been lacking in the United States. Climate change causes changes in the environment that in turn affect the relationship of indigenous peoples with the land, as well as the hunting and fishing rights granted to them under treaties, he explained. Mr. Goldtooth also stated that indigenous peoples are affected disproportionately by the effects of climate change, noting in particular increases in the cost of electricity.

The members of the subcommittee endorsed Mr. Goldtooth’s call for the inclusion of the voice of indigenous peoples in discussions of environmental issues, both in the United States and internationally.

Ms. Dianne Wilkins, Oklahoma Department of Environmental Quality Pollution Prevention Program, then spoke about obstacles that prevent collaboration between government agencies at the state level and indigenous peoples. She emphasized the need to identify a process for ensuring tribal participation in decision making. Mr. Charles then pointed out that existing collaborations between tribal groups and state governments are based on personal contacts and networking. Continuing, he stated that there is difficulty in identifying individuals from indigenous tribes to interact with state and federal governments, suggesting that there is a need for a mechanism, such as a database, that can be used to identify such individuals. Mr. Jose Matus, Indigenous Alliance Without Borders, stated that the indigenous peoples of his tribe historically have had no voice in the development of legislation related to various issues. In addition, the Yaqui Nation, he said, has no representative or organization that addresses environmental issues.

3.2 Transfrontier Risks Posed by POPs and the Global Treaty on POPs

Ms. Amy Fraenkel, EPA OIA, addressed transfrontier risks posed by POPs and reported on the content of the global treaty on POPs completed under the United Nations Environmental Programme, as well

as the treaty's progress toward adoption. Ms. Fraenkel pointed out the connection between the treaty and the theme of the current meeting of the NEJAC, noting that four of the five contaminants that cause the issuance of fish advisories are POPs, she stated.

Ms. Fraenkel first explained that POPs generally are a group of chemicals that have four characteristics in common:

- They persist in the environment.
- They bioaccumulate in the food chain.
- They are toxic.
- They are capable of traveling long distances.

The potential impacts of POPs include links to reproductive, developmental, behavioral, endocrine, and other health effects, continued Ms. Fraenkel. Humans are exposed to POPs primarily through consumption of food, she said. Populations exposed to potentially higher than average risks, she added, include indigenous groups who rely on subsistence diets that include large amounts of fish.

The treaty initially addresses 12 chemicals, known as the "dirty dozen," and includes a mechanism for considering additional chemicals that may be POPs, continued Ms. Fraenkel. The United States has taken significant steps to regulate the initial 12 POPs addressed by the treaty, she added. She then stated that international action would be necessary to address the problem fully because the use and manufacture of the chemicals in other countries will affect people and the environment in the United States.

Ms. Fraenkel then described an effort underway to identify the effects on the United States of the transportation of such chemicals by air currents. Noting that air modeling is not an exact science, she then presented a chart that illustrated the transport by air of POPs from Russia to the Pacific Northwest region of the United States. She stated that there is a need to examine how the rest of the world affects air systems in the United States.

The global treaty on POPs, said Ms. Fraenkel, has been endorsed by the President and was signed by EPA Administrator Christine Todd Whitman on May 23, 2001. The treaty currently is awaiting ratification by the United States Senate, she added. The treaty requires that each signatory country develop a national action plan. EPA OIA plans to ask the

NEJAC to provide to EPA its views on the implementation plan for the United States, which is in early draft stage at EPA OIA, continued Ms. Fraenkel. The members of the subcommittee expressed general agreement that commenting on the development of the plan would be an opportunity for groups concerned about environmental justice to influence implementation of the treaty. Ms. Fraenkel pointed out that the POPs treaty obliges the federal government to consult with indigenous groups and involve them in its implementation.

Ms. Fraenkel then stated that some countries do not have the resources necessary to meet all their obligations under the treaty. A capacity-building and financial provision of the treaty states that the United States will assist other countries in meeting those obligations, she said, adding that OIA hopes to obtain financial support from Congress to assist countries that need such assistance.

The members of the subcommittee members acknowledged that air and ocean currents cause an international connection between contamination produced in one country and health effects in communities in another country. The members of the subcommittee also acknowledged that the NEJAC's fish consumption report does not address this international link. The members then agreed that there is a need to revise the report to recognize international sources of contamination of water and fish.

Ms. Marva King, EPA Office of Environmental Justice and Program Manager for the NEJAC, suggested that the members of the subcommittee form an informal work group to work with members of the Indigenous Peoples Subcommittee to prepare comments to EPA's implementation plan for the proposed treaty on POPs and present that plan to the Executive Council of the NEJAC.

3.3 Report on EPA OIA and Biodiversity

Ms. Eileen Henninger, EPA OIA, whose work involves international issues related to biodiversity, reported that OIA has been working with international agencies to protect biological diversity and resources. She explained that her work involves the Convention on Biological Diversity, an agreement signed at the United Nations Conference on Environment and Development in Rio de Janeiro, Brazil in 1992. The ongoing convention, she continued, is the first global agreement on the conservation and sustainable use of biological diversity. She added that EPA OIA is working increasingly frequently with the World Conservation

Union, an international body that assists societies throughout the world in conserving the integrity and diversity of nature and in ensuring that the use of natural resources is equitable and ecologically sustainable. She then requested that the members of the subcommittee provide comment on issues of biodiversity.

Ms. Henninger also reported that EPA OIA is recruiting culturally diverse individuals and is providing opportunities for upward mobility within the agency.

3.3 Overview of the Effects of POPs on the Indigenous Peoples of Alaska

Ms. Katy Taylor, Community Health Service, Alaska Native Tribal Health Services, presented an overview of that organization's study of POPs and their effects on indigenous peoples of Alaska. Alaska Native Tribal Health Services is an organization of the indigenous tribes in Alaska, she noted. The group, she continued, is studying the presence of industrial organic pollutants and the effects of POPS on indigenous peoples in the populations of the arctic regions of Alaska, Canada, and Greenland. The problems identified through the study are international issues of environmental justice, she pointed out. Migratory species carry contaminants as they move throughout the oceans; contaminants are distributed by air currents, as well, she reported.

Ms. Taylor explained that Alaska Native Tribal Health Services attempts to demonstrate the health benefits of the traditional subsistence-based diet, while examining the possible exposure of indigenous peoples to pollutants through their diet. She explained that her group currently was studying the indigenous people of the northern slope of the Aleutian Chain in the Arctic Ocean. She stated that EPA funds a major portion of the study, which focuses on organic pollutants and heavy metals accumulated in the bodies of indigenous women and children.

Ms. Taylor then presented a chart that illustrated the various types of subsistence foods consumed in areas of Alaska. Such foods, she said, include birds, plants, shellfish, fish, and marine mammals. The chart demonstrated that the percentage of each type of food consumed varies by region. Ms. Taylor then presented a graph that illustrated the movement of ocean currents. Because of the pattern of the oceanic current, she pointed out, warmer oceanic waters pick up pollutants and deposit them in the colder Arctic Ocean. Once the pollutants have been deposited in the Arctic Ocean, they persist for an

extended period in marine mammals and fish, she explained. Eventually, those mammals and fish are consumed by the people in the area, she said.

Ms. Taylor then demonstrated how the distribution of pollutants is biomagnified throughout the food chain, beginning with krill and plankton, which are in turn consumed by fish and shellfish. Seabirds and marine mammals then consume the fish and shellfish, she continued. The contaminants eventually accumulate in people who rely on a subsistence diet. The study, she stated, has concluded that, among the population groups affected, unborn babies pick up the highest concentrations of contaminants consumed.

Alaska Native Tribal Health Services encourages the traditional diet, Ms. Taylor declared, adding that the organization presents the results of the study to participants in the study and allows those participants to make decisions about their dietary intake. Weighing the benefits of the traditional diet against the suspected, but not yet fully understood, risks posed by contaminants, continued Ms. Taylor, the group recommends continuation of traditional diets, while recognizing that there is a need to provide dietary advice that supports informed choices. The group also highly recommends a traditional diet because of the cost-effectiveness of the practice, she said. Ms. Taylor also explained that, when indigenous people consume a nontraditional diet, the incidence of diabetes and cancer increases. The positive effects of the traditional subsistence diet include the consumption of essential fatty acids that help ensure the proper development of unborn babies and prevent some neurological problems, she said. The study concluded that fatty acids are higher in concentration in areas of Alaska in which the levels of consumption of fish are higher than the average for the state, she added.

3.4 Transportation of POPs in the Arctic Area and Contaminated Military Sites in Alaska

Ms. Pam Miller, Executive Director, Alaska Community Action on Toxics, provided to the subcommittee information about the significance of long-range air and oceanic transportation of POPs in the Arctic and contamination present at U.S. Department of Defense (DoD) sites in Alaska. Alaska Community Action on Toxics is a statewide grassroots organization dedicated to achieving environmental health and justice, explained Ms. Miller. The group works with indigenous tribes to resolve environmental issues ranging from POPs to contaminants originating from military sites, she said.

Ms. Miller explained that contamination resulting from the long-range transportation of POPs and the contamination originating from military sites pose a threat to the health of people who include significant amounts of fish and marine mammals in their diets.

The Arctic area has become an atmospheric sink for POPs, including industrial chemicals and pesticides, Ms. Miller pointed out. Many of those POPs originate thousands of miles distant from the Arctic; they travel northward in air and ocean currents and are captured in the cold Arctic environment, she explained. Some industrial chemicals and pesticides have been banned in the United States, but no such action has been taken in other countries, she added. Those contaminants also end up in the Arctic region, she said. Ms. Miller cited a study conducted by Dr. Barry Commoner, Center for the Biology of Natural Systems, that used atmospheric transport models to link sources of dioxin in the United States, Mexico, and Canada with deposition of dioxin in the Arctic region. The study, said Ms. Miller, concluded that facilities in the United States contributed 70 to 82 percent of the dioxin deposited in the Arctic region.

Continuing, Ms. Miller stated that adoption of the global POPs treaty is essential to protect the health of Alaska's indigenous people and that of future generations of those people. Ms. Miller urged that the subcommittee work to ensure that the Senate ratifies the treaty and to encourage the addition of other chemicals to the initial list of 12 currently addressed by the treaty. She also urged that EPA release its final dioxin reassessment and that the United States implement regulations that eliminate exposure to dioxin. She urged further that the subcommittee encourage the NEJAC and EPA to support limitations on the production of dioxin to reduce levels of exposure to the contaminant. She added that evidence is sufficient to support the taking of the precautionary approach that will eliminate sources of pollution and therefore future adverse effects.

Ms. Miller then explained that the effects of DoD sites in Alaska have international implications because of their geographic locations and the transport of contaminants through air and ocean currents. She stated that, in Alaska, there are five Superfund sites and approximately 700 formerly used defense sites (FUDS), many of which are located on the Arctic coast. Many of those sites are located in close proximity to other countries, she continued. For example, she said, St. Lawrence Island, a heavily contaminated DoD site, is located only 40 miles from Russia. Contaminants from those sites include polychlorinated biphenyls (PCB), heavy

metals, fuel, radioactive material, and solvents, she reported. She added that there are a number of weapons testing sites in Alaska, one of which is the size of the state of Kansas. Ms. Miller then suggested that EPA should hold DoD responsible for the cleanup of FUDS, rather than merely the identification of such sites, as is currently the case. For example, she said, the world's largest underground nuclear test site is located in Alaska. Radioactive waste had been injected into a fractured underground cavity in an area in which levels of seismic activity are high. Despite evidence of the leaking of radioactive material into the Bering Sea, she charged, the U.S. Department of Energy refuses to implement monitoring or address the implications of the problem.

The members of the subcommittee agreed to draft a letter to EPA OIA to express the subcommittee's support for the global POPs treaty and to express support for ratification of the treaty by the Senate.

4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and the reports submitted to the International Subcommittee about other issues.

4.1 Update on the Activities of EPA OIA in Africa

Mr. Lionel Brown, EPA OIA, discussed various activities EPA OIA is conducting in Africa. Those activities focus on public health issues related to rapid urbanization and industrialization, he reported. During the past two years, he continued, the Agency had addressed two concerns: safe drinking water and the phasing out of leaded gasoline. Mr. Brown stated that EPA OIA also had been working to promote environmental awareness in Africa. The office initiated an information access program that provides training and computer education related to hazardous chemicals and climate change. The office conducted training in the areas of access to information, basic computer skills, and the use of electronic mail and the Internet to teach people in Africa how to obtain access to environmental information.

Continuing, Mr. Brown stated that the training program also involves bringing participants together with mentors who assist the participants in learning how to work with both government and industry entities to resolve issues of environmental justice. Participants prepare projects for environmental fairs during which they compete for the opportunity to travel to the United States to work with counterparts working to achieve environmental justice. During the

December 2000 meeting of the NEJAC, Mr. Brown noted, EPA OIA had presented to the International Subcommittee a proposed program that would use environmental justice to promote environmental awareness. The program presented at that meeting has been funded by EPA and currently is educating African women of high school age, he announced.

Mr. Brown then stated that, in parts of Africa, fish makes up a significant portion of the diet of the population. As they experience rapid industrialization and urbanization, he explained, African countries are beginning to encounter issues related to water quality and consumption of fish that are similar to issues discussed during the NEJAC meeting. Mr. Brown stated his support for the addition of consideration of international issues to the fish consumption report. He emphasized that EPA OIA places a high priority on environmental justice and wishes to work with the NEJAC to link issues of environmental justice that affect Africa with such issues that affect the United States.

The members of the subcommittee then recommended that EPA OIA circulate the fish consumption report in countries in which OIA is engaged to encourage the development of strategies for communities in other countries.

4.2 Cultural Diversity Within EPA OIA

Mr. Brown provided some insight into the action EPA OIA is taking to address the lack of cultural diversity among the staff of EOA OIA. Mr. Brown expressed concern that most of the people with whom staff of the office deal, are people of color, but the staff does not include an appropriate number of people of color. In his experience in working with international groups, Mr. Brown said, he had observed that individuals readily identify with EPA staff with whom they share a cultural link.

Mr. Charles suggested that the subcommittee encourage EPA OIA to deploy culturally diverse teams to represent EPA in international discussions. He stated that the United States can take advantage of its cultural diversity to form relationships with other countries, adding that EPA OIA should make cultural diversity a priority. Mr. Charles then proposed that the subcommittee draft a letter to EPA OIA to encourage the use of culturally diverse teams in international discussions.

4.3 Update on U.S.-Mexico Border Activities

This section provides updates from various EPA regional offices and the Southwest Network for

Environmental and Economic Justice (SNEEJ) related to activities underway in the border areas of the United States and Mexico.

4.3.1 EPA Region 9

Mr. Enrique Manzanilla, Director, Cross-Media Division, EPA Region 9, first distributed materials that presented background information about the activities of EPA Region 9 related to border issues. For the benefit of the new members of the subcommittee, he presented a brief overview of those activities, including those related to hazardous waste, water and air quality, and response to emergency situations. He stated that the presence of the political boundary between the United States and Mexico creates obstacles to environmental protection.

Continuing, Mr. Manzanilla explained that, during the development of the North American Free Trade Agreement (NAFTA) in the early 1990s, specific institutions were created along the border to examine such infrastructure issues as drinking water, wastewater, and solid waste. One such institution, he continued, is the Border Environmental Cooperation Commission (BECC), which deals with infrastructure projects on both sides of the border. The North American Development (NAD) Bank is a funding institution designed to leverage and fund infrastructure development through loans, he added. In addition, he said, the International Boundary Water Commission deals with wastewater sanitation issues along the border. With the creation of such institutions, said Mr. Manzanilla, the need for outreach to communities along the border became apparent to EPA. EPA Region 6 and Region 9 established offices in locations near the border; the primary role of those offices is community outreach, he added. The outreach offices attempt to improve EPA's ability to interact with the communities and communicate the agency's activities to communities, he noted.

In 1999, at the request of the International Subcommittee, EPA held a Border Roundtable meeting in San Diego, California, Mr. Manzanilla then explained. During that meeting, participants expressed concern about hazardous waste; lack of cleanup; and other problems that are not strictly environmental issues, such as issues related to labor policies and patterns of migration. Mr. Manzanilla stated that the proceedings of the roundtable demonstrated the complexity of environmental and socioeconomic issues and the interplay among them. The agency has continued dialog with individuals who participated in the roundtable, he said, adding

that both regional offices have developed border environmental justice plans.

Mr. Manzanilla stated that there is a need in border communities for a more deliberative process of engagement for examining issues of disproportionate and adverse environmental effects. There are issues in the border areas that are not encountered in other places, he pointed out. That circumstance, he declared, indicates environmental injustices affect the border areas. EPA, he continued, is attempting to engage and support environmental justice communities on the border. He added that the agency had made a special effort to reach out to the indigenous tribal communities in border areas because EPA recognizes that the political border ignores family and community connections among members of indigenous tribes.

4.3.2 EPA Region 6

Ms. Olivia Balandran, Environmental Justice Coordinator, EPA Region 6, presented an update on the activities of the Region 6 border outreach office in El Paso, Texas. She stated that, as a follow-up to the roundtable meeting held in San Diego in 1999, stakeholders wished to participate in another roundtable meeting to discuss how the issues confronting EPA Region 6 were being addressed. The follow-up roundtable meeting was held in January 2001, she reported; 25 stakeholders participated in it. The issues brought up at that meeting include the need to create an environmental justice commission that would foster binational participation, as well as issues of concern to indigenous populations, such as lack of funding to support the participation of tribal members in discussions of border issues.

Ms. Nelda Pérez, Small Grants Coordinator, EPA Region 6 Office of Environmental Justice, presented information about grant activities in the border area. The grants awarded in the border area are intended to increase participation by members of environmental justice communities located in the border area, she said. She reported that, of the 12 total grants awarded by EPA Region 6, 2 were awarded to programs underway in the border area:

- Project Bravo focuses on environmental justice in neighborhoods. Its primary mission is to increase knowledge and capacity in low-income communities to foster effective problem-solving and involvement in issues of environmental justice that affect those neighborhoods. The project also provides training related to

environmental justice and tactics for “fighting city hall.”

- Casa de Colores in Brownsville, Texas addresses the needs of the primarily Hispanic low-income youth in the Brownsville area. The grant focuses on problems related to water quality and quantity in the lower Rio Grande region. The grant also trains young people in environmental issues and leadership.

To address the issue of a lack of funding for individuals to travel to and participate in community meetings, she reported, the BECC had awarded \$30,000 to pay the travel expenses for representatives of environmental justice community groups who otherwise could not afford to attend such meetings.

4.3.3 Update on the Activities of Grassroots Organizations

Mr. Richard Moore, Executive Director, SNEEJ and former chair of the NEJAC, discussed the concerns of grassroots organizations about issues pertinent to the border areas of the United States and Mexico. SNEEJ is a collection of grassroots organizations in six states located in the southwestern United States and in Mexico. He emphasized that the members of the subcommittee have a great responsibility to ensure that issues of environment justice pertinent to the border areas are addressed. Mr. Moore praised the commitment of the staff of the EPA Region 6 border outreach office, stating that the members of the staff are highly qualified and experienced in addressing issues of environmental justice.

Mr. Moore presented letters written to EPA Administrator Whitman to request that a meeting, be held in the Southwest, between Administrator Whitman and representatives of SNEEJ. He stated that the organization had not received a response to the letter by the date by which such a response had been requested. Mr. Moore reported that SNEEJ also sent a letter to President Bush about NAFTA, the FTAA, and issues of environmental justice that affect the border areas. He also discussed the effects of increased militarization along the border since the September 11 terrorist attacks. Before September 11, explained Mr. Moore, President Bush and Mexico’s President Vicente Fox had met to discuss border and trade issues. Mr. Moore then expressed concern about the lower priority status of issues related to immigration and environmental problems along the border.

Mr. Moore informed the members of the subcommittee that the recommendations developed during the 1999 roundtable meeting in San Diego had been provided to the International Subcommittee, along with a request for a response within 30 days. He then reported that the subcommittee had not completed its response. Ms. Graham stated that the vice-chair of the subcommittee, Mr. Yang, who had been unable to attend the current meeting, had spearheaded the work on the report. She stated that the subcommittee expects that work to be completed by January 31, 2002.

Mr. Moore then requested that the subcommittee also complete its work on the report of the Farm Worker Work Group. The subcommittee expects to complete that work by January 31, 2002, as well, said Ms. Graham.

Concluding his presentation, Mr. Moore suggested that the NEJAC fish consumption report should address areas of the Rio Grande River, the New River in California, and the Colorado River that are affected by issues related to water quality and fish consumption. Mr. Charles requested that Mr. Moore put in writing his recommendations and comments on the report. Mr. Charles also requested a meeting with Mr. Moore to discuss his specific concerns related to environmental justice in the border regions of the United States and Mexico.

5.0 PRESENTATION BY THE DELEGATION FROM THAILAND

EPA's United States-Asia Environmental Partnership sponsored the participation of four delegates from Thailand in the current meeting of the NEJAC. EPA is working with Thailand as that country reauthorizes its environmental laws, develops an administrative court, decentralizes its their authorities, creates a process for public participation, and establishes a new environmental ministry.

Mr. Apichart Thongyou, Secretary General, Thailand Research and Action for Development Institute, discussed efforts undertaken in Thailand to reduce effects on environmental justice caused by modernization and the development of heavy industry. Mr. Thongyou explained the structure of the government of Thailand: the population is 63 million, and the country is divided into four regions; north, south, east, and west. There are three levels of government: central, provincial, and local municipal administrations. The central and provincial leaders are appointed, and municipal leaders are elected, he continued.

Mr. Thongyou then presented general information about Thailand. Modernization began in the 1950s, he said, and, as that process progressed, the gap between rich and poor widened. In approximately 1990, Thailand adopted a new industrial policy and became "the fifth tiger" in the Asia economy. In 1997, he continued, the country experienced an economic crisis, and environmental problems increased throughout Thailand, especially in the eastern portion of the country where the heavy industries are located. The government, he reported further, has experienced problems with management of the industries; such poor management unfortunately has included human exposure to contaminants, he said. Mr. Thongyou also stated that several shortfalls and limitations affect the public participation process. Government procedures do not encourage public participation, he observed.

Mr. Thongyou enumerated the following examples of environmental injustice in Thailand:

- There is unfairness in the use of natural resources. Industry, he charged, has taken natural resources from communities for its own use.
- Forests, rivers, oceans, and other pristine habitats are becoming dumping grounds for industrial waste. Mr. Thongyou stated that he had been working on a study with the fisherman of the eastern seaboard area of Thailand, an area in which the government has encouraged extensive industrial activities. Since 1990, more than 60 species of fish and marine organisms reportedly have disappeared from the area. The shrinking of the marine population has had an adverse effect on the way of life of the fishermen. Through his research, Mr. Thongyou reported, he was attempting to map the marine resources and investigate why the species have disappeared. Those involved in the study also train the younger generations by linking them with the fisherman. Mr. Thongyou also noted that an artificial coral reef has been created to improve the marine environment.
- To reduce operating costs, industries have forgone protective environmental measures. For example, releases from petrochemical factories cause water pollution. Refineries, some of which are facilities owned by American companies, produce harmful emissions. The government gives foreign investors such privileges as tax incentives. The introduction of industrialization in a manner that does not

address issues related to environmental justice has brought “disharmony” to communities and their way of life, observed Mr. Thongyou.

- In some areas, the diversity of small local industries has been diminished. Farmers and fisherman have been replaced by low-wage factory workers. The oceans have become polluted, and local landowners have sold their land to large industries. During the economic collapse in 1997, many people were left without jobs or the resources necessary to farm and fish, he said.

Mr. Thongyou then stated that, to develop an acceptable environmental justice model, Thailand must have more cooperation and exchange of information.

The members of the subcommittee discussed whether members of the communities in Thailand can make their voices heard with regard to issues of environmental justice. Mr. Amnat Wongbandit, faculty of law, Thammasat, Thailand, responded that residents can voice their opinions to the lower level of government, but their voice often goes unheard at the higher levels of government. He said that, in recent years, the public increasingly has demanded the opportunity to comment on development projects and issues of environmental justice.

The members of the subcommittee then discussed whether EPA could bring pressure on the government of Thailand to influence that government to consider public opinion. Mr. Burt Akkaraporn, Thailand Pollution Control Department, stated that, when the government does consider public opinion, environmental regulators in Thailand do not have enforcement authority. He added that EPA currently is supporting 20 projects in Thailand, many of which are operated through his pollution control department. Some, he added, are operated through local authorities, and others through non-government organizations. He stated that EPA provides training to people in Thailand and supports the elimination of use of leaded gasoline by providing subsidies to reduce the cost of unleaded gasoline.

The members of the subcommittee also discussed other activities that EPA could undertake to provide assistance to Thailand. The delegates from Thailand stated that, in the future, increased environmental education for communities about protection of natural resources would be helpful. People often are unaware of the harmful effects of their actions on the environment, they pointed out. The delegates also suggested that a system of information networks

would help give Thailand access to the information resources the country needs.

Mr. Charles asked about the types and sources of contamination of water that Mr. Thongyou had identified through his study. In response, Mr. Thongyou reported that the study had identified heavy metals, nitric acid, and mercury. He added that, from a legal perspective, it is difficult to identify the sources of such pollution. Ms. Wilkins then observed that, when she traveled to Bangkok, Thailand, she had noted that heavy industry is located in the communities, characterizing the situation as “a conglomeration of life and industry.” Ms. Wilkins also suggested that the subcommittee explore avenues of collaboration with participants in other international roundtable discussions sponsored by EPA OIA, such as the Pollution Prevention Roundtable that facilitated discussion of issues related to pollution prevention and international environmental justice.

6.0 ACTION ITEMS

This section summarizes the action items adopted by the subcommittee. The members of the International Subcommittee agreed to adopt the following action items:

- T Recommend to the Executive Council of the NEJAC that the draft fish consumption report be revised to acknowledge the international consequences of the pollution of water in a given country that affects human health in communities in other countries.
- T Encourage EPA OIA to circulate the final fish consumption report to the members of the NEJAC, stakeholders, and representatives of countries in which EPA OIA is engaged.
- T Draft a letter to EPA OIA that expresses pride in the volume and breadth of the accomplishments of OIA. Some of that work, the members of the subcommittee agreed, will bring about major worldwide reductions in the amounts of key harmful chemicals (POPs) in use in farming and industry.
- T Endorse the deployment of culturally diverse teams to represent EPA in international discussions by encouraging EPA OIA to continue and increase the use of that strategy for field teams to engage members of communities in treaty discussions and to work with other countries to share resources.

- T Collaborate with the Indigenous Peoples Subcommittee to provide to EPA OIA information about the planning process for implementation of the global POPs treaty.
- T Prepare a draft document that outlines principles of environmental justice for multinational corporations based in the United States.
- T Complete by January 31, 2002 the subcommittee's response to recommendations developed at the 1999 Roundtable on Environmental Justice on the U.S.-Mexico Border and the report of the Farm Worker Work Group.
- T Explore avenues the subcommittee might use to collaborate with participants in other international roundtable discussions sponsored by EPA OIA to facilitate discussion of issues related to international environmental justice.

MEETING SUMMARY

of the

WASTE AND FACILITY SITING SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 5, 2001
Seattle, Washington**

Meeting Summary Accepted By:



**Reiniero Rivera
Designated Federal Officer**



**Veronica Eady
Acting Chair**

**CHAPTER SEVEN
MEETING
OF THE
WASTE AND FACILITY SITING SUBCOMMITTEE**

1.0 INTRODUCTION

Exhibit 8-1

The Waste and Facility Siting Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Wednesday, December 5, 2001, during a three-day meeting of the NEJAC in Seattle, Washington. Ms. Veronica Eady, Executive Office of Environmental Affairs, Commonwealth of Massachusetts, served at that time as the acting chair of the subcommittee. Mr. Reiniero "Rey" Rivera, U.S. Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER), serves as the Designated Federal Officer (DFO) for the subcommittee. Table 8-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the Waste and Facility Siting Subcommittee meeting, is organized in five sections, including this *Introduction*. Section 2.0, *Activities of the Subcommittee and Its Work Groups*, provides updates on the activities of the subcommittee's work groups. Section 3.0, *Presentations and Reports*, provides an overview of each report and presentation made to the subcommittee during the meeting. That section also presents a summary of questions and comments made by participants in the subcommittee meeting. Section 4.0, *Summary of Dialogue about the Strategic Plan*, sets forth a summary of the suggested preliminary projects to be considered by the subcommittee for its strategic plan. Section 5.0, *Action Items*, lists the action items agreed upon by the subcommittee members.

2.0 ACTIVITIES OF THE SUBCOMMITTEE AND ITS WORK GROUPS

This section summarizes the discussion of the accomplishments of the Waste and Facility Siting Subcommittee in 2001 and describes the activities of the various work groups of the subcommittee.

2.1 Year in Review

Ms. Eady presented a synopsis of the accomplishments of the Waste and Facility Siting Subcommittee during 2001. During fiscal year 2001, she reported, the members of the subcommittee met at least monthly by conference call. The calls were intended to provide a venue for the subcommittee to

**WASTE AND FACILITY SITING
SUBCOMMITTEE**

Members

**Who Attended the Meeting
December 5, 2001**

Ms. Veronica Eady, **Acting Chair**
Mr. Reiniero "Rey" Rivera, **DFO**

Ms. Denise Feiber
Mr. Robert Harris
Mr. Melvin "Kip" Holden
Ms. Donna Gross McDaniel
Ms. Mary Nelson

Members

Who Were Unable to Attend

Ms. Katherine McGlooin
Mr. Harold Mitchell
Mr. David Moore
Mr. Mervyn Tano
Mr. Michael Taylor
Mr. Neftali Garcia Martinez

conduct its regular business and to develop a plan for addressing the several topics on which it had chosen to focus during the fiscal year. Those issues, she said, included Brownfields revitalization, relocation under the Superfund program, and land use. Initially, she explained, each of those issues had been addressed by a separate subcommittee work group. It was decided later in the year that a single work group would address the broader issue of land use because the subcommittee had terminated that land use is a comprehensive issue that encompasses most of the work of the subcommittee.

Since the meeting of the NEJAC in December 2000, Ms. Eady reported further, the subcommittee had made much progress in becoming more efficient in its pursuit of goals related to land use. Brownfields revitalization and Superfund sites, as well as issues related to solid and hazardous waste, she pointed out, present issues related to environmental justice in large part because of their proximity to minority communities and low-income communities. Ms Eady then stated that under the direction of the previous chair, Ms. Vernice Miller-Travis, member of the

Partnership for Sustainable Brownfields Development, the subcommittee had made progress in redefining its work to address the central issue – land use. In Spring 2001, she continued, the subcommittee had completed a detailed work plan that would enable the subcommittee to make the most effective use possible of its existing products, while providing advice to EPA about decisions related to siting that make use of institutional controls governing land use. Crucial to that progress, Ms. Eady pointed out, was the understanding and support of the senior management of OSWER, including former Assistant Administrator Timothy Fields, Jr. At the end of the fiscal year, said Ms. Eady, the members of the subcommittee had decided to reassess its priorities and develop other topics on which to focus their attention.

Since the transition into the new administration in OSWER, the departure of Ms. Miller-Travis from the NEJAC, and the appointment of a new DFO, continued Ms. Eady, the subcommittee had begun to engage the new Assistant Administrator and other senior managers of OSWER and to re-examine the direction of the subcommittee. Ms. Eady also briefly discussed the meeting that took place in November 2001 between her, OSWER senior managers, and representatives of the EPA Office of Environmental Justice (OEJ) to discuss the new directions of the subcommittee and the expectations from OSWER.

Closing her discussion, Ms. Eady expressed the hope that the members of the subcommittee would meet fairly soon after the new year to acquaint new and standing members and to take up the work of the subcommittee. She added that the Waste and Facility Siting Subcommittee welcomes the transition as a turning point and an opportunity to continue to provide pivotal documents as those it had prepared in the first six years of the subcommittee. Such works include the reports, *A Regulatory Strategy for Siting and Operating Waste Transfer Stations*, published in March 2000; and *Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope - A report on the "Public Dialogues on Urban Revitalization and Brownfields: Envisioning Healthy and Sustainable Communities,"* published in December 1996.

Ms. Eady stated that one of the goals for the current meeting was to develop a subcommittee progress report to be submitted to the NEJAC Executive Council during its meeting on the following day. Ms. Nelson suggested that the subcommittee recommend that the NEJAC adopt the topic of federal facilities as the focus of its meeting in 2003. It was explained to Ms. Nelson that the federal

facilities issue will be addressed by the NEJAC Federal Facilities Working Group, and that the topic for the 2003 National Meeting would be pollution prevention.

2.2 Subcommittee Historical Overview

Ms. Linda Garczynski, Director, Outreach and Special Projects Staff (OSPS), EPA OSWER, presented a historical overview of the role played by the NEJAC Waste and Facility Siting Subcommittee during the past five years. Reporting about the collaborative efforts of that work group, Ms. Garczynski lauded the productive history of the subcommittee, noting that it had produced several influential documents. She pointed out that the subcommittee historically has served as a sounding board for new OSWER policy. That effort, she observed, had produced new policy on environmental justice in OSWER's waste programs. OSWER also had instituted an action agenda for addressing environmental justice in OSWER's programs, both at the headquarters level and in the EPA regions. Public dialogue meetings conducted by the NEJAC facilitated EPA's initial work under the Brownfields program, she continued. After holding five meetings in various areas of the country, with more than 500 people attending, she said, the subcommittee had produced a report that documents the comments the subcommittee had received about the redevelopment and revitalization of brownfields properties.

In addition, Ms. Garczynski continued, the dialogue had brought attention to and action on several significant issues, including:

- The development, under the Brownfields National Action Agenda and Showcase Community effort, of models of coordination and collaboration for communities in which brownfields properties are located; to date, that effort has garnered more than \$900 million in investments for 28 communities
- Social aspects of the siting of waste facilities, with EPA advising state and local governments about social issues related to the siting of such facilities, rather than focusing solely on geophysical and structural issues
- The locations of waste transfer stations, an extremely controversial issue in New York City and many other large cities; the work group had prepared a report on EPA's work in concert with the National Solid Waste Management Association that described guidelines for best-

practices to be used by the waste management industry when siting, building, and developing waste transfer facilities

Continuing, Ms. Garczynski stated that the work group had addressed the issues she mentioned in an effort to advise EPA about the general direction of its policy. Among other issues that had been raised, she added, was compliance by federal facilities with environmental statutes. Mr. Brandon Carter, Federal Facilities Restoration and Reuse Office (FFRRO), EPA OSWER, she noted, leads the Federal Facilities Work Group that addresses federal facilities and compliance issues related to such facilities. See section 2.3 of this chapter for a summary of the activities of that work group.

Ms. Garczynski then stated that the subcommittee and EPA had reached “a turning point.” In the Agency, she explained, there is new sense of direction related to the future efforts of the waste program. The Agency, she continued, is developing a new agenda in response to that new sense of direction. Ms. Marianne Horinko, newly appointed Assistant Administrator for OSWER has a very clear sense of the mission of OSWER and its new direction, said Ms. Garczynski.

2.3 Update on the Federal Facilities Work Group

The subcommittee was briefed by Mr. Brandon Carter, DFO for the NEJAC Federal Facilities Work Group, which had been created by the NEJAC Executive Council to specifically address issues related to federal facilities that had been raised at previous meetings of the NEJAC. Following Mr. Carter’s presentation, the members agreed that, due to the close correlation between the work of the subcommittee and the Federal Facilities Work Group, both should develop a closer working relationship. Mr. Carter began his presentation by posing the question “What are federal facilities?” Federal facilities, he then explained, are properties currently or formerly owned, managed, or controlled by an agency or department of the federal government. Such facilities include military installations that house firing ranges; weapons production, storage, and disposal operations; nuclear laboratories and facilities; and formerly used defense sites, he said. The contaminants that are typical of such sites are radioactive waste; chlorinated or brominated solvents, such as trichloroethylene (TCE); JP-8 jet fuel; other jet fuels; diesel fuel; heavy metals, such as lead and mercury; and PCBs, he added.

Issues related to federal facilities are complicated, continued Mr. Carter, because of varying responsibilities of different lead-agencies, implications that affect national defense, components related to economic development, and the large size of many of the facilities. The Federal Facilities Work Group was formed, he said, in response to ongoing substantive comments offered during NEJAC meetings by citizens and members of communities who have expressed concern about the scope of cleanups at federal facilities and the activities associated with such cleanups.

The objectives of the work group, said Mr. Carter, are to:

- Identify and evaluate key issues of concern
- Provide a forum for dialogue between members of communities and representatives of government agencies
- Compile a list of resources available to communities and stakeholders to support public participation
- Formulate a set of recommendations to the NEJAC.

The recommendations, he added, should include the development of a best-practices document that will improve cleanups from the point of view of the community and suggestions for ways in which the NEJAC can address issues related to federal facilities.

Continuing, Mr. Carter stated that the work group plans to achieve its objectives through the substantial involvement of EPA’s partner agencies, such as the U.S. Department of Defense (DoD), the U.S. Department of the Interior (DOI), the U.S. Department of Agriculture (USDA), the U.S. General Services Administration (GSA), and the U.S. Department of Housing and Urban Development (HUD). In addition, he said, the work group was to evaluate five case studies, develop general principles based on examples from actual sites, and prepare a final report for submission to the NEJAC. The case studies would exhibit geographical diversity and ethnic, cultural, and racial diversity, added Mr. Carter, noting that the studies also would spotlight the roles of federal agencies, community groups, and grassroots organizations and will be selected for universality among the issues they involve.

Mr. Carter then listed the specific steps the work group had taken and would take to accomplish its objectives:

- Organized its membership
- Convened a meeting in January 2001 to scope issues
- Assisted EPA in getting a memorandum of understanding signed with partner agencies
- Develop a case study methodology
- Select sites to be included in the case studies
- Reconvene by conference call according to a regular schedule
- Begin gathering data
- Conduct two face-to-face meetings, including a business meeting in Washington, D.C. and a meeting at a selected facility or community

A draft report of the results of the case studies should be ready for distribution at the next meeting of the NEJAC, added Mr. Carter. Mr. Charles Lee, Associate Director of Policy and Interagency Liaison, Office of Environmental Justice, EPA, DFO for the Executive Council of the NEJAC, and former chair of the Waste and Facility Siting Subcommittee, will assist the work group in developing its strategic plan.

In closing, Mr. Carter, along with Dr. Mildred McClain, Executive Director, Citizens for Environmental Justice and a former member of the International subcommittee, and Ms. Doris Bradshaw, Executive Director, Defense Depot Memphis TN Concerned Citizens Committee, offered a presentation about how they view the role of EPA Federal Facilities Restoration and Reuse Office (FFRRO) in affected communities.

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and the reports submitted to the Waste and Facility Siting Subcommittee of the NEJAC.

3.1 Update on the Activities of the Office of Solid Waste and Emergency Response

Mr. Michael Shapiro, Principal Deputy Assistant Administrator, EPA OSWER, discussed the mission of OSWER and described the vision Ms. Horinko had brought to the office about how its programs were to

move into the future. Ms. Horinko, he explained, had originally identified five priorities or initiatives that she intends to implement. A sixth initiative recently had been added to the agenda, he noted. The initiatives, in no order of priority, he continued, are:

- *One Cleanup Program to Better Integrate Cleanup Information:* The next generation of cleanup programs will be increasingly consistent and transparent to the public, said Mr. Shapiro. He explained those goals would be accomplished by using a common terminology, data, and information that will be available through the Internet to the public at any time. Such information will include the status of the site, the entity that is responsible for the cleanup, the entity that is responsible for overseeing the cleanup, and sources of additional information.
- *Expanding the Brownfields Revitalization Concept:* Revitalization and reuse should be a core component of all cleanup programs conducted by EPA, stated Mr. Shapiro. The results of lessons learned under the Brownfields program are being adopted by other programs, including the Resource Conservation and Recovery Act (RCRA) program, the underground storage tank program, and federal facility programs, he said. In addition, they are being incorporated into both private and public programs, he added. Mr. Shapiro then announced that Mr. Stephen Luftig, former Director of the Superfund Program, would manage the effort under the new administration.
- *Recycling and Waste Minimization:* The efforts of programs under which both hazardous and non-hazardous waste streams are managed will focus on energy recovery, recycling and waste minimization, declared Mr. Shapiro.
- *Retail Initiative:* As part of this initiative to encourage the consumers to make environmentally sound purchasing decisions, EPA will endeavor to increase awareness of the environment among the public, said Mr. Shapiro. In addition, he said, EPA will examine ways to build partnerships and conduct pilot activities designed to reduce source contamination and encourage environmental stewardship.
- *Workforce Development and Succession Planning:* To meet the challenges of the future, EPA will address issues related to diversity in the workforce and will prepare current staff to take on emerging issues, said Mr. Shapiro. It is

estimated, he pointed out, that 50 percent of the current leadership of EPA will retire over the next five years. It imperative, he stated, that EPA train current staff and hire new staff.

- *Enhancing Counter-Terrorism Program:* In the future, Mr. Shapiro continued, EPA will face the challenge of combating the biological and chemical threats that, he noted, are becoming increasingly frequent.

In closing, Mr. Shapiro said that the initiatives he had described, while not new, are broad themes on which Ms. Horinko wishes the OSWER program to focus. Those themes, he added, had been “percolating” within OSWER for some time.

After thanking Mr. Shapiro for his briefing, Ms. Eady discussed the “enormity” of the challenge facing the subcommittee, noting that the members of the subcommittee were fortunate to have OSWER as a member of their team. Referring to testimony offered during the public comment period of the previous evening, Ms. Eady stated that the issue of federal facilities was a recurring one. She then suggested that a subcommittee work group be formed to consider how the subcommittee might assist the Federal Facilities Work Group on that controversial issue.

3.2 Update on Mossville, Calcasieu Parish, Louisiana

Mr. Samuel Coleman, Director, Compliance and Enforcement Division, EPA Region 6, reported on the progress made in Mossville, Calcasieu Parish, Louisiana. Mossville, said Mr. Coleman, is a “very small and disproportionately industrialized town” in the suburbs of Lake Charles, Louisiana that, until recently, had not been enumerated separately on the census rolls of the state of Louisiana. Yet, the community has been affected adversely by the industrial complexes located in its midst, Mr. Coleman stated. He then provided an overview of the events that had transpired in the three years since residents of Calcasieu Parish had approached Mr. Jerry Clifford, Deputy Regional Administrator, EPA Region 6, with data on blood dioxin levels.

The data, Mr. Coleman reported, had included information on pooled samples and samples taken from 11 individuals living in Calcasieu Parish. He stated that, at Mr. Clifford’s request, the Agency for Toxic Substances and Disease Registry (ATSDR) had prepared a health consultation on the basis of the data. EPA then followed the activities of ATSDR closely as that agency began a dioxin exposure

investigation in Mossville, he said, adding that ATSDR, EPA, the Louisiana Department of Health and Hospitals (LDHH), and the Louisiana Department of Environmental Quality (LDEQ) held a public meeting in the Lake Charles area to discuss the results of the exposure investigation. Louisiana Governor Mike Foster (D) then announced the formation of a joint task force made up of representatives of the four agencies and the community that was to report to the Governor within 90 days, he stated.

EPA and LDEQ are taking an active role in assisting residents of Mossville and Calcasieu Parish, continued Mr. Coleman. Because of the close proximity of many residences to major petrochemical facilities, EPA, along with other state, local and federal agencies, is investigating air quality, as well as the quality of ground- and surface-water. He stated that environmental data indicate exceedances of the state’s ambient air quality standards for 1,2-dichloroethane, as well as elevated levels of 1,3-butadiene and benzene. In addition, LDEQ considers the Lower Calcasieu watershed a priority concern, said Mr. Coleman. Fishing advisories are in effect in portions of the watershed because of elevated levels of toxins, including hexachlorobutadiene, he added. According to data in EPA’s Emergency Response Notification System (ERNS), industries in Calcasieu Parish every year report “emergency releases” to the air, land, and water that exceed a total of 500,000 pounds.

Because of potential public health threats in the area, continued Mr. Coleman, EPA is engaged actively in a broad multi-program, multi-agency initiative to address not only the concerns of the residents of Mossville, but also the concerns of the larger community of Calcasieu Parish.

Mr. Coleman then stated that, since the issues surfaced in 1996, several significant accomplishments related to the community and the industrial complex had been achieved. Through an industry association, the Lake Area Industrial Alliance, and the LDEQ, the community, he reported, have been able to accomplish four major goals:

- To significantly increase and enhance air monitoring efforts in the area. Specifically, the community has secured local, state, and federal monies for the installation of four additional monitoring stations, three of which monitor for the presence of dioxins.
- To secure the performance of follow-up screening and interviews by ATSDR. ATSDR

returned to the community on November 26 through 29, 2001 to conduct the screening, along with private interviews to discuss any health issues that might be of concern to individuals. ATSDR also had agreed to conduct a parish-wide dioxin screening study that will begin in 2002.

- To secure a voice for the community in dealing with industry. Concern about that issue has been expressed among members of the community and a community advisory council has been established to deal with issues specific to Calcasieu Parish. The council held its first meeting in November 2001, and has been successful in raising a number of issues related to hazardous waste, including the incineration of hazardous waste and the remediation of groundwater contamination that each of the facilities in the area was undertaking.
- To secure the presentation of a health symposium for the medical community and health providers. The symposium, which is scheduled for February 2002, will help health care providers learn to adequately diagnose and treat adverse effects of environmental hazards or ailments caused by environmental exposure. The symposium will be closed to the general public so that emphasis can be placed on the medical and health care community.

In closing, Mr. Coleman stated his view that EPA and LDEQ believe that community involvement and meaningful public participation in the decision-making process are integral parts of any effort to deal with environmental concerns. The multi-agency work group, he said, has made every effort to involve the entire community of Calcasieu Parish in efforts to resolve environmental problems. EPA has met on numerous occasions with members of the community and representatives of environmental groups, including Mossville Environmental Action Now, Inc. (M.E.A.N.), to discuss the Agency's direction and activities. The multi-agency work group also is attempting to schedule a public meeting and will continue to meet throughout 2002 to identify and carry out any follow-up action items, said Mr. Coleman. The effort will include investigations of air, surface water and sediment, groundwater, soil, and food pathways in an effort to identify the source of the dioxin exposure, and, if it is a current source, to eliminate it.

Mr. Kip Holden, Representative, Louisiana Legislature and a member of the subcommittee, thanked Mr. Coleman for the work that Region 6 had

been doing in Calcasieu Parish, stating that the successes cited by Mr. Coleman proved that the involvement of members of the community with local, state, and federal agencies had brought about a positive and meaningful dialogue. Mr. Holden added that such a positive result had occurred at a time at which historical mistrust had marred the relationships among the community, LDEQ, and the Louisiana Office of Public Health.

Ms. Mary Nelson, Bethel New Life, Inc. and a member of the subcommittee, added that the experience of the Calcasieu Parish community is an excellent example of good happening in a community. She then asked Mr. Coleman to identify the factors that had helped change the sense of hopelessness the residents of Mossville had experienced. Mr. Coleman identified four factors that had helped empower the community, as follows:

- The federal government came to the community
- Quarterly meetings were held to give the community a voice
- The community was provided with the sampling data when those data became available and was given a "whole-picture-scenario" explanation of the data
- EPA headquarters assisted actively with funding and direction

Mr. Coleman then stated that the atmosphere in Mossville is positive, but noted that the community continues to face serious issues. Overall, he noted, the community is very pleased with the level of communication that has been established with local, state, and federal government agencies.

3.3 Brownfields Minority Worker Training Program

Ms. Sharon Beard, National Institute of Environmental Health Sciences (NIEHS), provided an update on the accomplishments of her agency's Brownfields Minority Worker Training Program (MWTP). Ms. Beard announced that, to date, NIEHS' Brownfields MWTP had provided training at more than 20 sites in 11 of 16 Brownfields showcase communities. During the first year of the program, reported Ms. Beard, 405 students were trained, and approximately 225 students have been placed in jobs. The job placement rate, she noted, is 64 percent, adding that the gender breakdown among trainees is 86 percent male and 14 percent female. NIEHS had received \$3 million from EPA to

implement the Brownfields MWTP, reported Ms. Beard. Exhibit 8-2 describes the MWTP.

Exhibit 8-2

**BROWNFIELDS MINORITY
WORKER TRAINING PROGRAM**

The Brownfields Minority Worker Training Program (MWTP) was established in September 1995 by the National Institute of Environmental Health Science (NIEHS) to provide a series of national pilot programs to test a range of strategies for the recruitment and training of young persons. The targeted young people are individuals who live near hazardous waste sites or those in the community who are at risk of exposure to contaminated properties, with the specific focus of preparing such individuals to work in the environmental field. The program encompasses a broad geographic area and reaches several urban populations in high-risk contaminated areas.

The projects, all focused on environmental careers, are developed within the context of other social and health needs of the community. The various programs provide pre-employment job training, including training in literacy and life skills, environmental preparation, and courses in construction skills; environmental worker training, including training in abatement of hazardous waste, asbestos, lead, and safety and health training. Some training also includes enrollment in apprenticeship programs for construction and environmental remediation workers. In addition, particular emphasis is placed on establishing a mentoring program designed to enhance the participants' problem-solving skills and understanding of individual self-esteem and teamwork in the application of technical knowledge to environmental and related problems.

The program promotes partnerships with academic and other institutions, with a particular focus on historically black colleges and universities, and with public schools and community-based organizations located in or near the affected area to provide pre-mathematics, science or other education to participants in the program before or as they enter the training program. The first cooperative agreements provided funding for seven programs for training minority inner-city youth to enter the environmental field.

NIEHS' Worker Education and Training Program (WETP), of which the MWTP is a part, has provided training to targeted populations in all regions of the country, continued Ms. Beard. During fiscal year 2001, that program had delivered 4,806 courses,

reaching 78,665 workers. That training, she said, represents more than 1 million hours of health and safety training. An initiative has been added, continued Ms. Beard, to provide training to individuals working at the site of the World Trade Center disaster.

Ms. Beard then stated that the WETP had established a successful pre-apprenticeship program for minority communities. Since 1995, she said, approximately 2,000 young minority adults have been successfully trained, with 9,000 hours of training and 122,000 contact hours last year. The overall job placement rate was approximately 63 percent, she added.

In addition, said Ms. Beard, a training program was initiated in the Houston, Texas metropolitan area in 2000. The program has become established quickly in the communities it serves, she noted, and has garnered recognition from elected officials, community residents, and social service agencies. In total, 30 trainees have completed their training, and 21 graduates (70 percent of the graduates) currently are employed. Salaries earned by the graduates range from \$16,640 to \$39,462, well above the average salary for the Houston area, she added.

3.4 Update on Brownfields and Environmental Justice Pilot Programs

Ms. Garczynski reported on the current status of brownfields pilot programs conducted by OSWER. OSWER maintains three pilot programs for supporting the assessment of property and contamination, providing low-interest loans for cleanup, and providing job training, she said, adding that those job training programs are coordinated closely with the NIEHS program. Currently, she continued, 399 communities have received funds from OSWER to conduct site assessments of Brownfields properties. Of those, 126 communities and consortiums organized by states, have established revolving loan funds for their programs. Because of the current economic situation, continued Ms. Garczynski, the loans have become of great interest to many organizations who want to borrow money for similar programs. Ms. Garczynski then pointed out that, in response to recommendations offered by the NEJAC, nonprofit organizations receive a 30 percent discount on the principal, and government borrowers receive a 20 percent discount.

OSWER also currently maintains 46 job training programs, said Ms. Garczynski; statistics for the

programs are very similar to those reported earlier for the NIEHS program, she added, emphasizing that the two programs are coordinated carefully to avoid duplication of efforts. The programs actually complement each other, and the selection panels are very similar, she added. Ms. Garczynski then reported that the average job placement rates for the OSWER programs range from 70 to 75 percent and that average salaries range from \$13 to \$15 per hour. Some individuals, she added, have achieved remarkable success by becoming supervisors or starting their own businesses.

The results of the brownfields cleanup assessment pilot programs are equally astonishing, Ms. Garczynski continued. As a result of the 2,700 site assessments conducted under the program, more than three billion dollars have been invested in properties, she explained. Approximately 15,000 jobs have been generated through efforts made to date, she said, adding that the seed money provided by EPA for the \$200,000 assessment grants is yielding an average return of from 2.5 to 10 times on the investment dollar. Few agencies, Ms. Garczynski pointed out, can claim such an extraordinary rate of return.

3.4.1 Update on Issues Related to Land Use

Ms. Garczynski reported that, in December 2001, Congress had passed the Brownfields tax incentive. The tax deductions provided for under the legislation are extremely important in attracting private investment, she said. As EPA's thinking about Brownfields revitalization evolves, land use has become a central issue, she continued, adding that Ms. Eady earlier had identified land life-cycle management as a principal theme for discussion by the subcommittee. Ms. Garczynski explained that life-cycle management is the concept that the use of property evolves over time and that a given property usually undergoes a number of uses during its lifetime. The fact remains, she said, that property is becoming increasingly valuable as fewer properties are available for development. Because of the need to preserve green spaces, farm land, and other resources, she explained, a property may be used for one purpose for 20 years and subsequently may be used for another purpose. Thinking about property in terms of life cycle management, rather than as the single use of an individual property, said Ms. Garczynski, is a new element in EPA's thinking.

In light of that thinking, she continued, the Agency had worked with the Environmental Law Institute to develop a guidebook for the redevelopment of private property. EPA, she continued, also had

worked with a number of entities, including the International City/County Management Association (ICMA), to examine the issue of institutional controls governing land use, an increasingly significant issue in the Superfund and RCRA programs, as well as a number of other programs. ICMA is developing a web site on institutional controls, said Ms. Garczynski. The web site, <<http://lucs.org>>, which ICMA will maintain, will be a resource that will provide the most current information about institutional controls on land use, she added.

Continuing, Ms. Garczynski identified a number of innovative land use programs currently under development, including:

- The U.S. Department of Energy program for the long-term stewardship of its properties
- An information management system under development by the Department of the Navy is to be used in tracking institutional controls governing land use
- Guardian Trust, a program being developed by the state of Pennsylvania as an underwriting process through which a nonprofit trust will guarantee the enforcement of institutional controls

Ms. Garczynski then explained that a number of stakeholder meetings had been held during the summer of 2001 to consider the Brownfields program and the issues that should be the focus of the new action agenda for the program. Among the issues examined, she continued, was the need to unify planning and redevelopment. Local, state, and federal agencies lack long-term planning and reuse efforts, she observed, and local redevelopment and planning authorities do not work together effectively. Federal regulations require that HUD, the U.S. Department of Commerce's Economic Development Administration, and the U.S. Department of Transportation (DOT) execute comprehensive planning, she pointed out. Most communities, said Ms. Garczynski, have comprehensive plans developed to meet federal requirements; it is important to determine how individual properties fit within such plans and how redevelopment affects those properties, she said. EPA, she then noted, is working with the American Planning Association, the National Association of Home Builders, and a number of other groups to determine how long-term planning and actual redevelopment can complement one another. A number of design models have been developed to support the integration of redevelopment into the planning process, she said.

Last, said Ms. Garczynski, OSWER had revised its grant requirements so that grantees under pilot programs would be permitted to enter into subgrant arrangements with nonprofit organizations. Therefore, community relations and outreach efforts now are being carried out by nonprofit entities, she said, adding that subgrants to nonprofit organizations have begun to play a larger role in OSWER pilot programs than had been the case in the past. OSWER, she stated, hopes to expand such efforts to five or six communities in the coming year.

Ms. Garczynski then stated that OSWER also has begun to work with the EPA Green Buildings program to examine the issue of sustainable design for Brownfields redevelopment. OSWER, she continued, also was working with the EPA Office of Water to address the issue of adverse effects of development on watersheds. OSWER also is working with the U.S. Army Corps of Engineers (USACE) and the National Oceanic and Atmospheric Administration (NOAA) and other federal entities to resolve issues related to the co-location of most Brownfields communities with waterfront real estate. Such co-location, said Ms. Garczynski, provides an opportunity to improve control of non-point source pollution as Brownfields properties are redeveloped. OSWER also is working with NOAA and various port authorities to address the lack of deep-water ports in the country, she continued. Dredging, she said, is becoming a major issue, one that involves destabilization of fish populations and disposal of dredged sludge. In 2002, she added, OSWER will continue to pursue these issues.

3.4.2 Update on Brownfields Legislation

Ms. Garczynski then reported that OSWER continued to work on the Brownfields legislation that was passed by the United States Senate on April 25, 2001 and introduced in the United States House of Representatives on September 10, 2001. In the wake of the events of September 11, she said, the legislation had not come to a vote. However, she noted, OSWER anticipates that the House would take up the legislation in January 2002. The Brownfields legislation, added Ms. Garczynski, includes several provisions that are significant to environmental justice concerns. Among those provisions are:

- For the first time, the legislation would allow for cleanup grants, rather than loans, of as much as \$200,000 that would be available to nonprofit organizations, as well as to city governments.

- The legislation would provide a prospective purchaser protection from exposure to liability under federal regulations.
- The legislation would expand the role of state programs significantly. Currently, 44 states have voluntary cleanup programs in place; for many of those programs, demand far exceeds capacity to respond. The legislation would triple the amount of funding available for such programs.
- For the first time, the legislation would allow states to use such funding to oversee cleanup of properties.

Ms. Garczynski then reemphasized OSWER's commitment to keeping the members of the subcommittee updated on the progress of the legislation and on the efforts of OSWER.

Ms. Eady asked about funding mechanisms for public housing being demolished and at which elevated pH levels and elevated concentrations of asbestos, lead, and other contaminants have been found to be present. Ms. Garczynski responded that, currently, under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) program, a response by EPA to releases from a structure is prohibited. However, she stated, OSWER's interpretation of that prohibition has been fairly liberal because of "the broken window syndrome" – that is, once asbestos, lead-based paint, polychlorinated biphenyls (PCB), or other pollutants have been released from a structure, such pollutants clearly are being released into the environment. OSWER currently is using money funded under the CERCLA program, she continued, to respond to and address such releases that occur outside a structure. The issue then remains, she pointed out, whether the exclusion under section 104J of CERCLA is applicable, observing that the legislation is "more than vague." Ms. Garczynski then stated that HUD conducts programs that address such issues.

4.0 SUMMARY OF DIALOGUE ABOUT THE STRATEGIC PLAN

During the one-day meeting, the members of the subcommittee discussed the issues described below. They focused on potential ideas to start the development of a strategic plan for the subcommittee. The preliminary plan addresses four major issues: the creation of a workforce development committee, the addition of a subcommittee member to co-chair the NEJAC Federal Facilities Work Group, land use and

revitalization, and the role of the subcommittee in the pollution prevention policy issue for the December 2002 meeting of the NEJAC. Additional issues addressed in the preliminary strategic plan are the role of EPA in fostering strategic planning by communities for the reuse and revitalization of contaminated sites, planning for post-cleanup uses, and applications of lessons learned through the demonstration projects conducted by the federal Interagency Working Group on Environmental Justice (IWG), and other outstanding projects.

The subcommittee recommended that the NEJAC explore EPA's role in fostering strategic planning by communities for the reuse and revitalization of contaminated sites, planning for post-cleanup uses, and using lessons learned through the demonstration projects of the Interagency Working Group on Environmental Justice (IWG) and other outstanding projects. Further, the subcommittee recommended that the NEJAC respond to the following issues to be considered for the development of the subcommittee's strategic plan:

- Creation of a workforce development work group
- Addition of one subcommittee member to the Federal Facilities Work Group
- Incorporation of a focus on land use – that is, revitalization and reuse – and development of planning and reuse case studies and a list of tools and resources
- Examination of the role of the Waste and Facility Siting Subcommittee on the Pollution Prevention Work Group

After some discussion, the members of the subcommittee agreed to clarify for the Executive Council of the NEJAC the goals that had been identified for project idea number 3, which would explore how EPA can have a role in fostering community strategic planning for the re-use of contaminated sites after cleanup. See Exhibit 8-3 for a description of that project, as well as two other potential projects for inclusion in the strategic plan of the Waste and Facility Siting Subcommittee for 2002.

Specific goals for proposed project idea number 3 include:

- Provide tools and incentives to foster revitalization, reuse, and life-cycle management of property

- Determine whether the target audience is community groups or EPA and other federal agencies
- Showcase five to six case studies and highlight the challenges faced by and achievements accomplished by the parties; specific questions include:
 - What were the factors in the success of each?
 - Did the project identify and use key tools for community planning?
 - What additional tools might EPA provide to communities?

5.0 ACTION ITEMS

This section summarizes the action items adopted by the Waste and Facility Siting Subcommittee of the NEJAC.

The members of the subcommittee discussed at length three pending action items for 2002. Those action items were moving oversight of the Federal Facilities Work Group to the Waste and Facility Siting Subcommittee and expanding the membership of that group; long-term planning through which federal facilities will integrate issues related to land use, development, and redevelopment into their procedures; and identifying useful models, such as the Washington Navy Yard and other sites, that serve as positive examples of the ways in which OSWER works with communities to achieve revitalization and reuse. The members of the subcommittee adopted the following action items:

- T Compile names of potential candidates to be nominated as the new member of the Federal Facilities Work Group, in light of the core qualifications determined by the subcommittee.
- T Conduct a conference call to discuss the candidates with Ms. Garczynski, Ms. Eady, Dr. McClain, and Mr. Rivera.
- T Locate and distribute to the members of the subcommittee a copy of "Community Planning," developed by the American Planning Association.

STRATEGIC PLAN FOR THE WASTE AND FACILITY SITING SUBCOMMITTEE SUGGESTED PROJECTS

The central theme of the strategic planning for the Waste and Facility Siting Subcommittee is to address a variety of issues identified as priorities for the U.S. Environmental Protection Agency (EPA) Office of Solid Waste and Emergency Response (OSWER). Among those priorities are workforce diversity and development, an initiative to encourage environmentally sound purchasing decisions, recycling and waste minimization, revitalization and sustainability, and consistency of cleanup programs. During a meeting with OSWER on November 19, 2001, members of the subcommittee had identified possible projects through which to advise the Agency about environmental justice and land re-use and Revitalization. Possible projects include:

- **Idea 1:** The subcommittee could advise about underground storage tanks (UST), addressing in particular the problem of abandoned gas stations as a precursor to land re-use. Questions to consider include, “how well is the risk-based decision-making model being used?” “How well have requirements under OSWER Directive 9610.17 (which suggests that cumulative health risks to people living in low-income and minority neighborhoods be considered when evaluating risk and prioritizing cleanups) worked?” and “How can it work better?” The subcommittee could evaluate a sample of low-income communities and communities of color where USTs are key environmental justice issues. Other questions include: “Have cumulative health risks been taken into account using risk-based corrective action?” “What are the pitfalls, surprises, etc.?” “How else can environmental justice be incorporated into EPA’s emerging UST-field program?” and “Does “streamlining” of corrective action process negatively impact communities at risk?” The subcommittee would issue a report on the use of OSWER Directive 9610.17 and the use of cumulative health risk factors in risk-based decision-making, making recommendations for improvement.
- **Idea 2:** The subcommittee could advise OSWER about how to achieve consistent cleanup standards and the use of institutional controls. This advice would be in coordination with the new Superfund Committee of the National Advisory Council on Environmental Policy and Technology (NACEPT). The subcommittee’s efforts would focus on institutional controls at Superfund sites and other contaminated sites in those communities of color and low-income communities, which often host the largest number of contaminated sites. The project could evaluate not just the efficacy and consistency on institutional controls across OSWER programs, but also the long-term stewardship of wastes left in place. Finally, the project would identify any violation of institution controls and any flaws in institutional controls.
- **Idea 3:** Using lessons learned from the Interagency Working Group on Environmental Justice (IWG) Demonstration Projects, as well as other successful projects, the subcommittee can explore how EPA can have a role in fostering community strategic planning for the re-use of contaminated sites after cleanup. The subcommittee could identify model projects where contaminated properties, Superfund sites, Brownfields properties, or RCRA sites, have been reused for environmentally sound and sustainable projects. Questions to address include: “Are there incentives EPA can use to engage communities and industry around sustainability and waste minimization?” and “Is there a way EPA can better promote innovative technologies for cleanup and assessment in low-income and minority communities?” The subcommittee would issue a report on models for engaging communities and fostering community planning. This report would incorporate an evaluation of the impacts on social and cultural values by environmental decision-making, including discussions about gentrification, whether sustainable enterprises on re-used land promotes gentrification, and how communities and EPA can avoid gentrification.

MEETING SUMMARY

of the

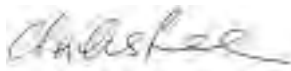
VIRTUAL TOUR AND PUBLIC COMMENT SESSIONS

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 3 and 4, 2001
Seattle, Washington**

Meeting Summary Accepted By:



**Charles Lee
Designated Federal Officer**



**Peggy Shepard
Acting Chair**

**CHAPTER TWO
VIRTUAL TOUR AND
PUBLIC COMMENT PERIOD**

1.0 INTRODUCTION

On December 3rd, 2001, a “virtual” tour of local sites with environmental justice concerns was presented to the members of the National Environmental Justice Advisory Council’s (NEJAC) Executive Council. The tour was intended to provide to the NEJAC information that is representative of the environmental concerns of local communities in the Seattle region. Individuals representing communities in Washington, Oregon, Idaho, and Alaska discussed their concerns about fish consumption and contamination.

The Executive Council of the NEJAC also held one public comment period on December 4, 2001. During the session, 29 individuals offered comments.

This chapter presents summaries of the testimony the Executive Council of the NEJAC received during the virtual tour, the public comment period, and the comments and questions that the testimony prompted on the part of the members of the Executive Council. Section 2.0, *Virtual Tour Held on December 3, 2001*, summarizes presentations made on fish consumption and contamination. Section 3.0, *Public Comment Period Held on December 4th, 2001*, summarizes the testimony offered on that date related to fish consumption and water quality. It also summarizes the dialogues between presenters and members of the Council that followed those presentations.

**2.0 VIRTUAL TOUR HELD ON
DECEMBER 3, 2001**

Five individuals presented information during the virtual tour; their presentations are summarized below.

2.1 Frank Roberts, Coeur d’Alene Tribe, Idaho

Mr. Frank Roberts, Coeur d’Alene Tribe, Idaho, explained to the members of the Executive Council that he had worked with the Coeur d’Alene tribe for 10 years, performing GIS work and developing baseline information about the contamination and consumption of fish in the tribal region. Waterways on which members of the tribe depend for subsistence living are being contaminated with heavy metals and lead from strip mining operations, he said. The elders are passing away, he explained, and, because members of the tribe cannot live off the land’s resources, the tribe’s traditions and culture are disappearing with the elders. Fewer than five remaining members of the tribe speak the native

language, and the tribe’s legacy soon will be lost, declared Mr. Roberts. In closing, Mr. Roberts pointed out that the government protects endangered species and plants, but is not doing anything to preserve the well-being of the “endangered” Coeur d’Alene tribe.

Ms. Savonala Horne, North Carolina Association of Black Lawyers and chair of the Enforcement Subcommittee of the NEJAC, asked Mr. Roberts about the loss of heritage and culture among the Coeur d’Alene people. Mr. Roberts replied that, since the advisories tell people not to eat fish, the people must purchase their food in stores. That practice adversely affects the culture, he explained, because people are not exposed to nature and tribal heritage. It also creates a “generational disconnect,” he stated. Mr. Roberts then pointed out that it is not difficult to obtain money for performing studies of contamination, but it is difficult to obtain money for studying cultures and for preserving those cultures.

2.2 Daniel Morfin, Farm Worker, Granger, Washington

Daniel Morfin, farm worker, Granger, Washington, who reported that he has worked in the agriculture industry for more than 20 years, stated that many farm workers suffer from ailments caused by exposure to pesticides. The water quality in Washington is poor, he continued, and many canals in the Aquemine Valley are polluted. Thousands of gallons of herbicides and pesticides are applied to the land, he stated; those materials can travel for miles and pollute rivers far from the source of contamination, he pointed out. Orchards often are located near towns and cities, he added, where population density is high. A recent medical study conducted among residents in the valley had revealed that the rates of respiratory ailments among those residents are among the highest in the nation, continued Mr. Morfin. Laws that are intended to protect farm workers are not enforced, he declared. Farm workers have tried to alert agencies about the harmful pesticides that are being used, he continued, but the agencies have not taken action.

Mr. Morfin stated that in Oregon and Washington, more chemicals are used for agriculture than any other states in the nation. Farm workers are the only people who know exactly which illegal chemicals and mixtures of chemicals are being used and stored, he claimed. Those farm workers are the only people who will tell agencies the truth, he emphasized, because they have no reason to lie. Mr. Morfin said

reiterated that regulatory agencies continue to neglect to take action.

Ms. Wilma Subra, Louisiana Environmental Action Network and member of the Air and Water Subcommittee of the NEJAC, asked Mr. Morfin whether the pesticides that farm workers are using are illegal or whether it is the mixing of the pesticides that is illegal. Mr. Morfin replied that some of the pesticides in use have been banned by the federal government, and the mixing of the pesticides is illegal, as well. In addition, he asserted, families are being exposed to the chemicals, and many communities are located along fields that are treated by aerial spraying. Children living in those rural areas exhibit high levels of exposure, he declared, and asthma rates are elevated. Salmon in the Columbia River are contaminated with DDT, he stated. Mr. Morfin then said that farm workers often have advance notice of inspections, so they remove labels from the tanks in which chemicals are stored so that inspectors will not be able to determine what chemicals are present. Mr. Larry Charles, ONE/CHANE Inc. and member of the International Subcommittee of the NEJAC, pointed out that there are similar cases throughout the country. The NEJAC should make an effort to influence EPA to address such issues, declared Mr. Charles. He then suggested that Mr. Morfin attempt to contact the regional administrator of EPA to solicit the agency's assistance.

2.3 Jeri Sundvall, Environmental Justice Action Group, Portland, Oregon

Explaining that when her tribe lost its status as a federally-recognized Indian tribe in 1954, Ms. Jeri Sundvall, Environmental Justice Action Group, Portland, Oregon, stated that it's members were expected to assimilate into the general population. Although the tribe's status was reinstated in 1986, she continued, it had been "robbed of its heritage." Portland is affected by issues related to water, she explained, and contamination has created a Superfund site on the banks of the Willamette river. Fishermen are developing cancers, she stated, and Native American fishermen are more susceptible because their rate of consumption of fish is high. There is a "large disconnect" between Native Americans and regulatory agencies, she pointed out.

Ms. Sundvall informed the members of the NEJAC that her tribe currently is fighting a proposal for the development of a highway through their community. The issue is an environmental justice issue, she stated, explaining that air quality in the community already is poor. The rate of asthma in her

community is much higher than the national average, she continued, but the asthma rates are much lower in the affluent section of southwest Portland. The U.S. Federal Highway Administration currently is examining models prepared by the state that predict that air quality will improve by 40 percent in the future, she explained, noting that those data are being used to generate support for the new highway. The problem with the models, she claimed, is that the models assume that nonexistent, efficient technologies will be implemented in the future. It is not logical to base data on such assumptions, she stated.

2.4 Rosemary Ahtuanguak, Inupiat Community of Arctic Slope, Barrow, Alaska

Speaking on behalf of the Native Village of Nuiqsut of Barrow, Alaska, Ms. Rosemary Ahtuanguak, Inupiat Community of Arctic Slope, Barrow, Alaska, explained to the NEJAC that contamination of water caused by the operations of the oil industry is a serious problem in rural Alaska. There are 229 federally recognized tribes in the state, she pointed out, and issues related to environmental justice just recently have begun to be addressed. State agencies often value profit over tribal beliefs and views, she asserted. Only 500 people live in her village, she explained, and their views often are overlooked. Industry representatives typically have the resources to perform studies and analyses, she emphasized, and the results often are misconstrued. For example, she stated, federal agencies say that fish taken from local waters are safe to eat, but those agencies do not account for the high consumption rates of fish among Native Americans. She explained that Native Americans consume parts of the fish that are more contaminated than other parts; the studies do not account for that practice, she noted.

Ms. Jana Walker, Law Office of Jana L. Walker and member of the Indigenous Peoples Subcommittee of the NEJAC, asked Ms. Ahtuanguak about the status of fish advisories in Alaska and what recommendations have been made about cod. The advisories recommend the consumption of no more than six cod per year, she replied, adding that fish advisories are announced in relation to the actions of the U.S. Department of Defense (DOD). The quantity and quality of fish are declining, she continued, and their fat content is lower than it was in the past.

Mr. Charles then pointed out that the NEJAC would be much more effective if it could influence the way EPA acts, as opposed to focusing on the small

issues brought before it. Ms. Ahtuanguaruak asked the NEJAC how she can gain access to the resources that the NEJAC has at its disposal. Ms. Annabelle Jaramillo, Benton County Board of Commission and chair of the Air and Water Subcommittee of the NEJAC, replied that the NEJAC does not necessarily have resources. She explained that the NEJAC can advise EPA to enforce existing laws, because the laws should have an equal effect on all communities.

2.5 Lee Tanuvasa, Korean Woman's Association, Tacoma, Washington

Mr. Lee Tanuvasa, Korean Woman's Association, Tacoma, Washington, informed the council that, with the assistance of funding from EPA, his organization is conducting a study to determine whether it is safe for Asian Pacific Islander communities to consume shellfish. In such communities, consumption of fish is part of the everyday diet, he added. Mercury contamination in fish is the principal problem. The language barrier poses a significant problem to informing residents about the dangers of consuming some shellfish, he pointed out, adding that there is a need to provide more education to the communities. Mr. Tanuvasa requested advice about the most effective way to present the findings of the study to communities.

3.0 PUBLIC COMMENT PERIOD HELD ON DECEMBER 4, 2001

This section summarizes the comments presented to the Executive Council during the public comment period held on December 4, 2001, along with the questions and observations those comments prompted among members of the Executive Council.

Comments are summarized below in the order in which they were offered.

3.1 Dr. Mildred McClain, Citizens for Environmental Justice, Savannah, Georgia

Dr. Mildred McClain, executive director of Citizens for Environmental Justice, Savannah, Georgia, submitted a written statement to the members of the Executive Council. In that statement, Dr. McClain stated that, despite numerous revisions, the fish advisory that was issued for Georgia and South Carolina several years earlier remains at a "disconnect" from citizens who frequently fish in waterways in Georgia and South Carolina. The outreach activities of the South Carolina Department of Health and Environmental Control, the Georgia Environmental Protection Division, and the

Savannah River Community Advisory Board, have "failed to substantially inform economically challenged individuals," the statement continued. Advisories often are written only in English, the statement pointed out, and signs are not posted in many of the popular fishing locations. When fact sheets and guides are written, community involvement is not encouraged, wrote Dr. McClain; such documents therefore often present information in a way that is ineffective.

Dr. McClain's statement also pointed out that African Americans in Georgia and South Carolina are concerned about the cumulative effect of the consumption of contaminated fish with other vulnerabilities. She explained that citizens are concerned about the close proximity of water bodies to industrial operations and federal facilities. A more aggressive educational and outreach program must be implemented, wrote Dr. McClain. In summation, Dr. McClain recommended in her statement that the pollution of water bodies by industry and military entities be reduced and that communication of risk to the public be enhanced. In addition, minority communities should be involved in research, and easy to understand toxicological profiles of contamination in water bodies should be developed, the statement suggested.

3.2 Chief Johnny Jackson, Columbia EPED, Underwood, Washington

Chief Johnny Jackson, Columbia EPED, Underwood, Washington, explained to the members of the Executive Council that he lives along the Columbia River and that all the members of his family are fishermen. He stated that, 15 years earlier, he had taken from that river a fish that had no eyes. People today are dying of cancer and diabetes, he continued. The soil, water, and air along the river must be cleaned, he declared, because the residents are suffering. People in the region have been unable to obtain from state agencies information about the source of the problems, he stated. Fishing is an integral part of life for his community, Chief Jackson emphasized, and the issues of contamination are an environmental injustice, he declared.

3.3 Barbara Harper, Tyakama Nation, Yakima, Washington

Ms. Barbara Harper, toxicologist and environmental health scientist for the Tyakama Nation, Yakima, Washington, submitted to the members of the Executive Council a written statement about the water quality of the Columbia River. In the

statement, Ms. Harper explained that she has been evaluating the health consequences of consumption of fish taken from the polluted Columbia River.

Tribes living along the Columbia River have lived in the Columbia Basin for more than 10,000 years, and salmon always have been a part of the diet, culture, and religion of those tribes, the statement pointed out. Tribal members historically ate two to three pounds of fish per day, and treaties between federal and tribal governments were intended to ensure that tribes could continue to live their cultural lifestyle, she explained. Today, maintenance of a traditional diet of fish would be lethal, she pointed out, because data collected recently indicate that there are high levels of contaminants in those fish. Ms. Harper's statement asserted that the issue is one of environmental justice, as well as a matter of treaty rights and federal trust responsibility.

The statement then pointed out that a lack of technical knowledge among tribal members causes the misinterpretation of risk assessments and fish advisories. When evaluating the health effects of contamination, it continued, existing health disparities must be considered. For example, Ms. Harper's statement continued, tribal members eat more fish than non-Native Americans. Consequently, tribal members may be more sensitive to contamination physiologically, the statement emphasized. Fish advisories do nothing to address the problem, the statement declared; the burden of point and non-point source pollution therefore must be reduced. Ms. Harper pointed out that contamination is not a necessary part of progress or global economic expansion, and tribal people regard contamination as an attack on their cultural resolve. In conclusion, the statement pointed out that tribal members will continue to eat contaminated fish because doing so is an element of their culture and religion.

3.4 Marcia Henning, Washington Department of Health, Olympia, Washington

In September 2001, a section of the Duwamish River in Seattle was declared an EPA Superfund site, Ms. Marcia Henning, Washington Department of Health, Olympia, Washington, reported. The Agency for Toxic Substances and Disease Registry (ATSDR) currently is preparing a public health assessment of the river, she continued. To determine how people are exposed to toxins in the river, community members were contacted about fish consumption habits, she explained. Initial outreach efforts indicated that many immigrant and refugee people eat fish and crabs from the river, she continued.

Those residents often fish without obtaining a license, she said, and agencies must reach out to such communities to educate community members about environmental health issues. However, such individuals often distrust government agencies, she explained. Training members of the community to conduct interviews and translate materials therefore is an effective way to gather information, she said.

Ms. Henning added that when working with immigrant groups, Mr. Alan Rammer, aquatic and marine educator for the Washington Department of Fish and Wildlife, offers several strategies for success. The strategies involve identifying a respectful approach to sharing crucial information with communities, knowing the resource limitations of the agency involved, keeping promises and fulfilling commitments, asking for the views of communities, and building honest relationships, she explained. In closing, Ms. Henning emphasized that community outreach and education are essential components of the health assessment process.

3.5 Tom Miller, Columbia River Inter-Tribal Fish Commission, Portland, Oregon

Stating that his organization provides legal assistance to four Native American tribes, Mr. Tom Miller, Columbia River Inter-Tribal Fish Commission, Portland, Oregon, explained to the members of the Executive Council that, 146 years earlier, the tribes ceded most of their land in the Pacific Northwest to the federal government. The government has not honored the agreement, he stated. Because of contamination of waterways, he pointed out, tribes today are harvesting less than one percent of their historical salmon take. If tribal members continue to eat salmon at the historical rate of two to three pounds per day, they would die because of the hundreds of contaminants in the rivers, he asserted. Tribes bear a disproportionate share of the conservation burden, he added. Mr. Miller concluded his statement by pointing out that the federal government recently had authorized a \$500 million effort to remediate polychlorinated biphenyls (PCB) in the Hudson River. He expressed the hope that a similar effort will be undertaken in the Pacific Northwest.

3.6 Joanne Bonnar Prado, Washington Department of Health, Olympia, Washington

Ms. Joanne Bonnar Prado, Washington Department of Health, Olympia, Washington, explained to the members of the Executive Council that she currently was assisting in the development of a communication strategy for fish advisories. She

explained that the goal of the effort was to identify and understand communities predominantly affected by the issuance of advisories. It also is imperative to promote the reduction of sources of pollution to ensure the health of communities, she added. In addition, she continued, dietary considerations should be taken into account when the need for an advisory is assessed.

3.7 Enoch E. Shiedt, Maniilaq Association, Kotzebue, Alaska

Stating that he was speaking for the northwest arctic region, Mr. Enoch E. Shiedt, Maniilaq Association, Kotzebue, Alaska, explained that the people of Kivalina, Alaska, are concerned about the health of the Wiluk River because of contamination from a nearby mine. Trout in the river have become increasingly scarce, he said, and levels of mercury are rising. Contaminated water and the decline of fish populations in the river forces community members to supplement their source of food, he continued, and people are unable to rely on their subsistence lifestyle. Food sources that once were plentiful are becoming delicacies, he said. As a result, he explained, people are becoming malnourished because they must rely on sources of food that originate in the Western world.

Mr. Shiedt declared that the culture and heritage of Eskimos is disappearing. Eskimos kill, hunt, and trap only the wildlife they need, he explained, and all parts of an animal are used. Inability to harvest game from the natural environment makes it difficult to pass along traditions, he added. Elders are willing to pass along information about the life they historically led, as well as about what they have learned from past generations, he added, but many young people do not wish to learn about their past history. With the decline in water quality and fish populations, the people of the northwest arctic region can be considered an endangered species themselves, Mr. Shiedt stated.

3.8 Art Invanoff, Native Village of Unalakleet, Unalakleet, Alaska

Mr. Art Invanoff, Native Village of Unalakleet, Unalakleet, Alaska, stated that the contamination of subsistence food is a primary concern among tribal members. Subsistence lifestyle is not a derogatory term, he explained, and should not be associated with the poor. It is a spiritual and social lifestyle, he pointed out, and harvesting involves a sharing of tribal heritage with elders. Improving the integrity of aquatic ecosystems is a daunting task, he said, but tribes must work together with the EPA.

Climate change is negatively impacting people who live in the Arctic, he stated. Mr. Invanoff pointed out that the instability of ice in rivers due to warming temperatures makes fishing conditions much more hazardous. With regards to risk assessments, he continued, the best approach is to prevent contaminants from being released into the environment. Persistent organic pollutants (POPs) are accumulating in the Arctic Region, he explained, because they don't degrade in the cold weather.

In addition, he added, fish farms in the United States have accidentally released unwanted parasites and pathogens into waterways. This biological pollution has irreversible and unpredictable ecological impacts, he stated. Mr. Invanoff concluded by declaring that a conservative approach should be taken when considering the impact of pollution on the environment.

3.9 Rosemary Ahtuanguak, Inupiat Community of Arctic Slope, Barrow, Alaska

Stating that she is from the native village of Nuiqsut, Ms. Rosemary Ahtuanguak, Inupiat Community of Arctic Slope, Barrow, Alaska, explained that her village relies on subsistence resources for survival. Villagers harvest only what they consume, meaning they never waste, she said, and resources are left in pristine condition. Few villagers work jobs in oil and gas exploration or development, she stated, because food is too expensive for paychecks to cover. Without a safe supply of food for consumption, there is concern about surviving through the cold winter months, she explained.

Ms. Ahtuanguak emphasized that increasing development around the village has diminished the integrity of the natural resources on which they depend for survival. They are suffering because resources are impacted by the the development of resources the Nation needs to grow, she asserted, adding that the village's complaints are ignored during public meetings. The benefits of living a subsistence lifestyle also have been overlooked, she stated. In closing, Ms. Ahtuanguak reiterated that the quantity and quality of fish in the waterways surrounding her community have declined. Over the past decade, incidences of asthma, thyroid disease, and other health disorders have increased rapidly, but no research for a cause has been pursued, she said.

3.10 Wilbur Slockish Jr., Columbia River Education and Economic Development, The Dalles, Oregon

Telling the members of the Executive Council that he lives along the Columbia River, Mr. Wilbur Slockish Jr., Columbia River Education and Economic Development, The Dalles, Oregon, explained that he is practicing his ancestors' way of life. He has no formal education, he declared, but he has the knowledge that has been passed down from his ancestors. The climate is changing, he pointed out, and the water temperature is rising. In addition, he continued, dams, nuclear materials, and transportation routes are contaminating riverways.

Mr. Slockish emphasized that the absorption of contamination by natural resources should be studied. People are being harmed, he asserted, yet current studies are biased to allow the release of contaminants to continue. The environment should be protected, he said, so that people can continue to gain knowledge and experience by living from the land. His people have been affected since the 1850s, and they now suffer from diabetes and cancer, he added. Mr. Slockish pointed out that people can harvest fish only March through October and therefore cannot gather enough food to survive through the winter months.

3.11 Tom Goldtooth, Indigenous Environmental Network, Bemidji, Minnesota

Pointing out that too often in history humans have waited for damage to occur before taking precautionary action, Mr. Tom Goldtooth, Indigenous Environmental Network and former member of the Indigenous Peoples Subcommittee of the NEJAC, Bemidji, Minnesota, stated that POPs and persistent bioaccumulative toxics (PBT) have been documented in wildlife and plants in the Minnesota area. Problems associated with releases of those chemicals into the environment could be averted if EPA were to incorporate precautionary measures when assessing risk, he asserted. Uncertainty has plagued environmental regulations, he acknowledged. Regulatory agencies are required to develop safe standards for toxic chemicals, he explained, but science cannot determine what is actually a safe level of a chemical. Native Americans and minority communities have no faith in science, he declared.

Mr. Goldtooth stated that current actions of business and government allow harmful practices to continue until damages occur. Risk assessments designate arbitrarily what is acceptable, he stated, and they

focus on only one chemical at a time, ignoring the facts that most exposures are caused by numerous chemicals and that effects from cumulative exposure occur. In addition, he continued, risk assessments do not account for sensitive populations, such as children, the elderly, or the chronically ill, and they evaluate only cancer risks while ignoring other health problems.

Mr. Goldtooth emphasized that, to avoid irreparable harm in the future, whenever it is acknowledged that a practice could cause harm, the precautionary principle should be implemented. That principle mandates that practices should be prevented and eliminated if the possibility of harm exists, he said, stating that the precautionary principle is intended to prevent harm before it occurs. The principle has been embraced in international agreements that deal with environmental concerns of limited scientific certainty, he pointed out.

POPs and persistent and bioaccumulative and toxic (PBT) chemicals pose a threat of serious and irreversible damage, stated Mr. Goldtooth; the precautionary approach provides the ideal framework through which to address concerns associated with such chemicals, he urged. He emphasized that the lack of scientific certainty should not be cited as a reason for postponing measures that can prevent harm. The Indigenous Environmental Network has recommended that EPA and the NEJAC recognize the precautionary approach as an emerging principle in the environmental decision-making process, he said. In closing, Mr. Goldtooth read Principle 15 of the Rio Declaration on Environment and Development, which states, "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

3.12 Kendra Zamzow, Alaska Community Action on Toxics, Anchorage, Alaska

Ms. Kendra Zamzow, Alaska Community Action on Toxics, Anchorage, Alaska, explained to the members of the Executive Council that, every summer, people from the Village of Zamuda, Alaska go to subsistence camps located on Saint Barnes Island. The Suqi River, which runs through the island, once was a productive source of plants and fish and other wildlife, she said. However, she continued, recent contamination of the river had an extraordinary effect on the quantity and quality of

fish. Samples have been taken from the river since 1994, and every sample has shown elevated concentrations of PCBs, she stated. In addition, said Ms. Zamzow, many samples have contained hydrocarbons and heavy metals, and pockets of oil are being found in sediments taken from the river. The source for the contaminants is a nearby military site that currently is being remediated, but the job being done is not a thorough one, she charged. Ms. Zamzow requested that EPA investigate the site, because, she said, villagers have been dying from cancer. The site should be listed under Superfund, she asserted, and people should be able to revert to their subsistence lifestyle.

3.13 Hilda Booth, Native Village of Noatak, Noatak, Alaska

Ms. Hilda Booth, Native Village of Noatak, Noatak, Alaska, stated that her village in northwest Alaska depends on the consumption of fish throughout the year for survival. She stated her concern that her village does not have the resources to take samples from rivers. Ms. Booth told the members of the Executive Council that there is chemical contamination in the river; she urged that the council help her identify a way to have the river tested.

3.14 Lincoln Loehr, Heller Ehrman, Seattle, Washington

Mr. Lincoln Loehr, Heller Ehrman, Seattle, Washington, explained that, in many cases, fish consumption advisories have recommended the reduction or elimination of the amount of fish people consume. Choosing an acceptable risk level is questioned by many, he stated, and, in the absence of relevant information, the elimination of risk is always the preferred goal. However, he continued, it is highly relevant when advising people to eat less fish, because they may substitute a more risky product for the fish. A comparison with the risks associated with a diet that includes red meat is appropriate to help people make an informed decision when faced with a fish consumption advisory, he added.

People should be provided with risk-based information related to methods of preparing foods that add risk, such as smoking fish, which adds combustion polycyclic aromatic hydrocarbons (PAH), said Mr. Loehr. In summation, he pointed out that the rates of colon cancer are much higher among consumers of red meat, compared with consumers of fish. Risks associated with eating smoked fish and fish that has not been smoked and red meat should be quantified, he urged.

3.15 Bill Doyle, Sierra Club, Seattle, Washington

Pointing out that most of the evening's discussions had focused on environmental justice issues related to chemical pollution, Mr. Bill Doyle, Sierra Club, Seattle, Washington, stated that, in the Pacific Northwest, environmental justice also is being denied because of the vast number of dams on rivers. That injustice primarily affects Native Americans, he stated. Salmon are protected by treaty right for Native Americans, he explained, and the nation has a moral and legal obligation to honor that treaty obligation.

Environmental justice is also denied to low-income residents of fishing communities in southwest Washington and northwest Oregon, stated Mr. Doyle. As fisheries have declined in those regions, so have the local economies of those communities, he said. Mr. Doyle explained that the bulk of the salmon on which people in those areas depend comes from the Columbia River Basin, including the Snake River, but some salmon runs on the river already are extinct, he pointed out.

For years, continued Mr. Doyle, independent scientists have insisted that the only way to save remaining salmon runs is to remove four federally-owned dams on the river, he said. The four dams were built in the 1960s and 1970s, he added, when there were healthy, sustainable salmon runs in the river. Since construction of the dams, salmon runs on the river have declined by 90 percent, he stated.

Mr. Doyle emphasized that a statutory objective of the Clean Water Act is to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." A river can be considered clean only if it is supporting the life and the people that it always has supported, he asserted. We cannot continue to rely on failed technologies to move salmon around the dams, he stated. Environmental justice demands that we preserve the salmon, he declared; to do so, all that is necessary is to enforce existing laws. Mr. Doyle then called for the NEJAC to recommend that existing laws be enforced.

3.16 Coleen Poler, Mole Lake Sakoagon Defense Committee, Crandon, Wisconsin

Ms. Coleen Poler, Mole Lake Sakoagon Defense Committee, Crandon, Wisconsin, pointed out that the introduction of foreign species into riverways in northern Wisconsin is creating harmful competition with native species. Species that are not native to the area must not be introduced, she emphasized. In addition, she continued, water treatment is not

effective. To pollute and then treat, she continued, contradicts the premise of the Clean Water Act. All the earth is sacred, she declared.

Ms. Poler also explained that the members of her community rely heavily on clean water because of their subsistence lifestyle. She stated that she is very concerned about the health of her people. The integrity of the water in the Great Lakes must be preserved, she said, because it is the last great mass of fresh water on the planet. People must stand together to fight negative political agendas, she asserted.

3.17 Cheryl Steele, Elem Indian Colony, Clearlake Oaks, California

Explaining that the Elem Indian Colony is located near a Superfund site, Ms. Cheryl Steele, Elem Indian Colony, Clearlake Oaks, California, told the members of the Executive Council that her organization would like to apply for a grant to perform a study of fish consumption by tribal members. The colony is located approximately 750 yards from a large mercury tailing pit, she continued, and many villages have been built on top of old pits. Fish advisories are posted along waterways throughout the colony, she said, and people are not eating the fish. She explained that her organization would like to conduct a survey to determine how people have been affected by the advisories. Ms. Steele requested practical advice from the NEJAC about what actions the communities can take, given that the fish are inedible.

3.18 Dottie Chamblin, Indigenous Women's Network

Pointing out that the Makah tribe owns land that adjoins the Pacific Ocean, Ms. Dottie Chamblin, Indigenous Women's Network, noted that tribal members rely on seafood for subsistence. She recounted a story that originated in 1968, when a fisherman near her village caught a large halibut, but would not allow the tribal members to eat the fish because he believed it was contaminated with mercury. Recently, overfishing and contamination has depleted the number of fish in the waterways, she said. The members of the tribe must eat fish, she emphasized, because it is a spiritual part of their culture. Because the tribe is unable to practice a subsistence lifestyle, tribal spirituality is declining, she added. Many villagers still eat contaminated fish, she pointed out, because there is nothing else to eat. People are dying of cancer, she continued, and the tribe has no money to fight the polluting entities. Environmental justice has been discussed

since 1968, she stated, but the situation only worsens. Ms. Chamblin concluded her statement by emphasizing that humans are part of the food chain, as well, and that all life must be respected.

3.19 Jeffrey Thomas, Puyallup Tribal TFW Program, Puyallup, Washington

Explaining that the land of the Puyallup Tribe is located south of Seattle, Mr. Jeffrey Thomas, Puyallup Tribal TFW Program, Puyallup, Washington, stated that the tribe has reserved fishing, hunting, and gathering rights on the reservation, as well as some distributed throughout the ceded lands of the tribe. The commitment relies on the natural resources to fulfill the physical and cultural needs of its members, he said. The health and integrity of the waters in the Puyallup watershed are integral to the members of the Puyallup tribe, he added.

Salmon are the symbol of the Puyallup tribal government, Mr. Thomas declared, and the tribe's concerns about the plight of the salmon are evident in the numerous federal court proceedings and decisions associated with decisions related to fishery management. The diminishing condition of the salmon stocks and their habitats are an environmental injustice, he declared. He stated further that zero fish contamination must be the standard, rather than total maximum daily limits. Tribal social and cultural concerns should be incorporated into the NEJAC's fish consumption report, he said. In closing, Mr. Thomas stated that the tribe recommends that the NEJAC fish consumption report be used as the framework upon which additional work and development of the topic are founded.

3.20 June Martin and Jesse Gologergen, Alaska Community Action on Toxics, Anchorage, Alaska

Ms. June Martin, Alaska Community Action on Toxics, Anchorage, Alaska, stated that she lives in the Alaskan community of Zamuda, where, every summer, the villagers attend subsistence camp to hunt walrus, seal, whales, and fish and to harvest plants. The villagers recently have been told to consume less fish, she said, because of the increasing contamination of waterways. Elders are dying of cancer, she explained; military sites nearby are the suspected sources of pollution, she added. Ms. Martin emphasized that, if the wildlife are contaminated and inedible, the community's spirit and culture will disappear. The government should protect people from contamination, she declared,

and the NEJAC should recommend that the military site on St. Lawrence Island be listed on the National Priorities List under Superfund. In addition, she continued, a framework should be established so that the rural community can take action on issues of environmental justice.

Ms. Jesse Gologergen, Alaska Community Action on Toxics, Anchorage, Alaska, also stated that people in the community are dying of cancer and that birth weights of children are declining. In addition, marine animals suffer from lesions and other health defects, she said. Members of the community know the military site on St. Lawrence Island is the cause of those problems, she asserted. Ms. Gologergen stated that she would like to speak with organizations or agencies that can provide assistance to the community.

3.21 Doris Bradshaw, Defense Depot Memphis Tennessee Concerned Citizens Committee, Memphis, Tennessee

Stating that she had made earlier presentations before the members of the Executive Council, Ms. Doris Bradshaw, Defense Depot Memphis Tennessee Concerned Citizens Committee, Memphis, Tennessee, voiced concerns about federal facilities. Ms. Bradshaw emphasized that EPA is not the regulatory agency that should deal with the DoD. She questioned the progress the federal facilities working group of the NEJAC had made and stated that communities are willing to wait to see what the results will be.

Ms. Bradshaw stated that, in September 2000, while cleaning chemical warfare out of her community, several U.S. Army Corps of Engineers workers who had been suited in full gear were hospitalized because of exposure to contaminants. On January 18, 2001, mustard gas was being cleaned from soil and taken to an unregulated dump, she alleged. She pointed out that there is no regulated dump in Tennessee that can accept such material. It seems that the representatives of federal government are terrorists, she charged. EPA is supposed to be an enforcer and a regulator, she emphasized. She then asked what are EPA's regulatory capabilities when the agency deals with federal facilities. She pointed out that there are agencies that are supposed to help, but stated that "nothing is getting done."

3.22 Richard Moore, Southwest Network for Environmental and Economic Justice, Albuquerque, New Mexico

Expressing concern about environmental justice and the NEJAC, Mr. Richard Moore, Southwest Network for Environmental and Economic Justice, Albuquerque, New Mexico, and former chair of the Executive Council of the NEJAC, stated that he had been involved in environmental justice issues in EPA Regions 6, 8, and 9. Results of meetings with the Deputy Regional Administrator in Region 6 have been productive, he said. In addition, he said, he had been engaged in dialogue with EPA representatives in regions 8 and 9, and that activity will continue.

Mr. Moore stated that he recently had sent a letter to the new Administrator of the EPA, to initiate a dialogue about EPA and its commitment to integrating environmental justice into its programs and policies.

Mr. Moore expressed dissatisfaction with the NEJAC strategic plan. He took issue with the statement of the NEJAC strategic plan that NEJAC's previous concentration on site specific issues distracted the NEJAC from its original mission as an advisory council. He stated that this was an "insult" to people who bring issues of a site-specific nature before the NEJAC. In addition, he continued, the council should be made up of a majority of "grassroots people." He also questioned why the NEJAC was the only federal advisory council that includes members of grassroots organizations on its Executive Council. All federal advisory councils should have such members, he declared. If the NEJAC is to be respected, the council should encourage other federal advisory councils to follow its lead.

3.23 Violet Yeaton, Port Graham Village Council, Port Graham, Alaska

Ms. Zamzow presented a written statement prepared by Ms. Violet Yeaton, Port Graham Village Council, Port Graham, Alaska. The Port Graham tribe is a federally-recognized tribe, whose village is located southwest of Anchorage, the statement read. Port Graham is heavily dependent on a traditional way of life, which always has been a part of the people's heritage, the statement continued. Knowledge of natural resources has been passed from generation to generation, and the tribal culture is dependent on the health of the traditional resources, Ms. Yeaton said in her statement.

Contamination of food sources has become an emerging concern in rural Alaska, especially among Alaskan natives who consume large amounts of wild food each year, the statement pointed out. An EPA study conducted in 1996 in the lower Cook Inlet found evidence of significant levels of contamination, the statement continued. Over the past five years, the tribes have struggled to have meaningful collaboration with EPA, Ms. Yeaton's statement charged. The tribes that participated in the study do not believe that EPA supports tribal sovereignty, the statement asserted. It is very important that EPA and other federal agencies place tribal concerns above political sensitivity so that actual health risks can be determined, the statement said.

Data on contaminants warn of a global pollution crisis, Ms. Yeaton's statement continued, and the long-term practice of allowing industry to discharge pollution is detrimental to native culture. Contamination that appears in native foods are discharged from the local oil and gas industry, the statement read. EPA currently allows the oil and gas industry in Cook Inlet to operate under a National Pollution Discharge Elimination System (NPDES) waiver from the national zero discharge law under the Clean Water Act, Ms. Yeaton said in the statement. The zero discharge waiver should be repealed immediately, the statement declared.

3.24 Pamela K. Miller, Alaska Community Action on Toxics, Anchorage, Alaska

Ms. Pamela K. Miller, Director of the Alaska Community Action on Toxics, Anchorage, Alaska, explained to the members of the Executive Council that her organization works to stop the production, proliferation, and release of toxic chemicals that may harm human health or the environment. Contaminants from military sites in Alaska pose a serious threat to people who rely on traditional diets of fish and marine mammals, she said. She pointed out that the arctic has become a "sink" for POPs, industrial chemicals such as PCBs, and chemical by-products. Many persistent pollutants originate from thousands of miles away and travel north by wind and ocean currents, she explained, and they accumulate in the cold environment.

The signing of the international treaty on persistent pollutants at the Stockholm Convention in May 2001 is an important first step toward the protection of all people's health, Ms. Miller said. The Alaska Community Action on Toxics, she continued, requests that the NEJAC help ratify the treaty of the Stockholm Convention by the United States Senate, implement regulations to eliminate exposure to

dioxin, and expedite the inclusion of persistent chemicals that merit phase-out and elimination. Ms. Miller emphasized that the harmful use of pesticides that damage the health of people where they are produced and used must be prevented. For example, she continued, the pesticide lindane is toxic and persistent, but it is not included in the current list of 12 chemicals targeted for phase-out through the Stockholm Convention or under EPA's Persistent and Bioaccumulative Toxic Chemicals Initiative. Lindane is banned in numerous countries, she pointed out, and EPA currently is reviewing through a risk assessment process allowable uses for lindane in the United States. Her organization is concerned about the inadequacy and oversimplification of the risk assessment for Alaskan native peoples, she asserted.

In addition, there are five military Superfund sites and approximately 700 formerly used defense sites in Alaska. Many of those sites are contaminated with PCBs and dioxins, she added, and the people who live near those sites are concerned about health problems potentially linked to exposure to chemicals. Many of the sites that are considered remote are actually in close proximity to Alaskan native communities or the traditional fishing and hunting areas of the tribes, she pointed out. Ms. Miller emphasized that EPA must hold DoD accountable for the responsible cleanup of hazardous waste sites in Alaska.

3.25 Jonathan Betz-Zall and Kristine Wong, Antioch University Seattle, Seattle, Washington

Stating that Antioch University in Seattle, Washington, requires that students take a course that deals with environmental justice, Mr. Jonathan Betz-Zall, Antioch University Seattle, Seattle, Washington, introduced Kristine Wong, Antioch University Seattle, Seattle, Washington. Ms. Wong explained to the members of the Executive Council that she had worked from 1995 through 1997 as the project director for the Seafood Consumption Information Project. The project focused on conducting community-based research and education on the issue of consumption of contaminated fish from San Francisco Bay, she stated. Thousands of people regularly fish in the bay, she pointed out, and most of those individuals are people of color who typically eat what they catch. Among Asian Pacific Islanders and Native Americans, fish is a dietary staple, as well as an integral part of cultural tradition, she explained. In 1994, a study conducted by the San Francisco Bay Area Regional Water Quality Control Board indicated

that fish in the bay are contaminated with dioxin, mercury, PCBs, and other harmful chemicals, she stated.

In 1995, the Seafood Consumption Information Project conducted a survey to document who was fishing in the bay, she explained. The study revealed that people of color are affected disproportionately by contaminated fish. Minority populations are more likely to eat the most contaminated parts of the fish, she stated, as well as to be less aware of health warnings associated with that consumption. In addition, she continued, many people exceed the consumption rates recommended by California's Office of Environmental Health Hazard Assessment. Ms. Wong emphasized that many terms frequently used in health warnings should be modified to reflect the language commonly used by those who fish for food.

Ms. Wong recommended that health risk assessments account for people who eat the most contaminated parts of the fish and that health agencies study the synergistic effects of chemicals. In addition, she continued, federal, state, and local governments should enforce strict regulations that work to phase out the production of PBTs.

3.26 John Ridgeway, Washington Department of Ecology, Olympia, Washington

Mr. John Ridgeway, Washington Department of Ecology, Olympia, Washington, commended the NEJAC for developing its fish consumption report. He emphasized that the report provides relevant advice for EPA, community groups, and educators. The report helped him educate his management, he added, and helped his managers understand that the issues of fish consumption and contamination are important and warrant attention.

Mr. Ridgeway encouraged the NEJAC to continue holding meetings in locations around the county and to continue bringing pertinent issues to the attention of policymakers. He also suggested that the NEJAC Council change the unit "grams per day" used in the report to "pounds per day" or "number of fish per day" because most people do not understand grams.

3.27 Holly Welles, Pacific Gas and Electric Company, San Francisco, California

Stating that Pacific Gas and Electric is committed to the fair treatment of all people, Ms. Holly Wells, Pacific Gas and Electric Company, San Francisco, California, reported that her company had adopted a formal environmental justice policy. The company

maintains a training program for employees, she continued, and is working closely with EPA's environmental justice working group to develop a high-quality approach to training in environmental justice.

3.28 Winona LaDuke, White Earth Land Recovery, Ponsford, Minnesota

Pointing out that there are 47 lakes on her reservation in northwestern Minnesota, Ms. Winona LaDuke, White Earth Land Recovery, Ponsford, Minnesota, explained that treaty rights have secured the tribe's right to "harvest and sustain." Under the treaties, the members of the tribe have a right to eat fish and rely on them to feed their bodies and souls, she stated. Because more than half the people on the reservation live below the poverty level, she pointed out; subsistence fishing sustains the community. Increasing levels of mercury, heavy metals, and PCBs in the waterways must be addressed, she declared. However, many fish advisories limit consumption to one fish per week, she said. In addition, she continued, contaminated water is affecting wild rice in the region, pointing out that frogs that have extra legs have been found. Ms. LaDuke expressed concern about the effects contamination will have on her community and the economic effects resulting from the community's inability to harvest food.

3.29 Sara Koopman, Amazon Alliance, Seattle, Washington

Ms. Sara Koopman, Amazon Alliance, Seattle, Washington, submitted to the members of the Executive Council a written statement about the effects of fumigation of coca in Columbia, which is funded by the United States. On July 19, 2001, the NEJAC drafted a letter to EPA Administrator Christine Todd Whitman that requested increased scrutiny and public disclosure of the fumigation and its effects, she stated. The reply received from staff of EPA was inadequate, she declared. Ms. Koopman requested that the NEJAC follow up on the letter with another request for Administrator Whitman.

Ms. Koopman noted in her statement that, on a recent visit to Putumayo, Columbia, where most of the fumigation occurs, she was alarmed to see children with skin sores that had appeared shortly after the spraying was carried out and which have persisted for more than six months. People also suffer from constant headaches after the spraying, she pointed out in the statement. When representatives of the United States embassy in

Written Statements Submitted During the Public Comment
Period of the NEJAC Meeting Dec. 3-4, 2001

"Columbia River Water Quality, Contaminated Fish, and Tribal Health"

Barbara Harper, PhD, DABT
Toxicologist, Yakama Nation Fisheries Program¹
509-967-5174; bharper@nwinfo.net

A Written Statement to the NEJAC at the meeting on
"Relationship between water quality, fish consumption and environmental justice."
December 3, 2001, Seattle, WA.

Note: This statement is a revision of a talk recently given at the 8th Annual Joint Conference on Health. Sponsors: Washington State Public Health Association, WA Department of Health, and Yakima Health District, Monday, October 8, 2001, Yakima Convention Center, Yakima WA. This and similar talks and papers were written with Stuart Harris, Confederated Tribes of the Umatilla Indian Reservation; 541/966-2408; stuartharris@ctuir.com.

Introduction. I am the toxicologist, risk assessor, and environmental health scientist for the Yakama Nation Fisheries program, with 25 years of professional experience. I am evaluating the health and cultural consequences of contaminated Columbia River fish. This talk tries to explain the consequences of fish and water contamination in tribal communities. It is formatted as lessons for health professionals, regulators, and risk communicators who need to work in Indian Country, specifically in areas of subsistence foods contamination, fish advisories, Superfund, and environmental justice.

Background. Columbia River Tribes have been in the Columbia Basin for over 10,000 years, and salmon have always been a mainstay of the diet, culture, and religion. It is well documented that they ate 2-3 pounds of fish per day, predominantly salmon. The Treaties between tribal and federal governments were intended to ensure that tribal members could continue to live their cultural lifestyle if they chose to do so, so the Treaties reserved (or protected) the pre-existing rights of tribal members to fish stemming from their original ownership and inherent sovereignty. The full exercise of Treaty-reserved fishing rights would result in eating a traditional amount of fish, or 2-3 pounds per day. Recent data on fish contamination indicates high levels of a wide variety of chemicals in fish. If people fully exercised their Treaty rights for very long, it would probably be lethal. So, we are facing a situation where exercising Treaty rights and living a spiritual cultural lifestyle are not safe. We call this chemical assimilation. We are just beginning to develop a response to this information, both in terms of educating tribal members about health effects, and educating regulators on why revisions to water quality standards are needed. This is an enormous Environmental Justice issue and, more importantly, a matter of Treaty rights and federal Trust responsibility.

Lesson 1: Know the technical details of what you are communicating very thoroughly. Lack of technical understanding can cause misinterpretation or misstatements, particularly when it implies a degree of safety that really isn't there. Risk assessment is

¹ While this text has been circulated among tribal staff, it reflects the views of the author should not be taken as official tribal policy. The Yakama Nation has received a NIEHS EJ grant to analyze and respond to the fish contamination; Lynn Hatcher, Principal Investigator.

full of vague value words, like threat, harm, safe, danger, etc.. It is easy to misuse words and convey a technically inaccurate message. For instance, people have a hard time understanding why fish can be both contaminated and safe to eat, or why a fish advisory applies to them but not to suburban households.

Lesson 2: We always look for a cumulative and integrated approach, and we always resist looking at fragments of problems. In the case of fish contamination, we need to evaluate contaminants from all sources, not just the fish, and we need to evaluate whether some people are more sensitive to the health effects of contamination. There are existing health disparities that must be considered. There are a disproportionate number of co-risk factors that cluster in tribal communities that could affect how they respond to environmental contaminants. Tribal members not only eat more fish, they may be more sensitive physiologically, as well. We have a method for evaluating disproportionate impacts (or an Equity Assessment) that we are offering to explain at some other time.

Lesson 3: We need data about contaminants. But we also need to see action to address the problem, and we need to see both happening at the same time. We should not have to impose another restriction (the restriction of fish consumption) on people who already bear a disproportionate health and cultural burden, no matter how well-meaning an agency is. Fish advisories are only an unfortunate interim necessity, but do nothing to address the problem itself, so issuing an advisory without also addressing the root problem is unsatisfactory. At least two actions are needed from state and federal agencies: (1) revise the water quality standards to specifically protect tribal members, and (2) decrease the watershed burden of point source and nonpoint source discharges. The initiatives on persistent bioaccumulative toxics are a step in the right direction, but we have children at risk now. Water quality standards need to include Treaty-reserved levels of fish consumption, and they also need to recognize that drinking water intake is higher for these active lifestyles. Water is also used for cultural purposes, and must also be clean enough for these uses as well. A tribal cultural approach to water quality standards might be based on a broader set of criteria and principles than the federal government uses, although we don't have time to discuss them here. We offer to make a presentation on these criteria and metrics to NEJAC and/or EPA at a more convenient time.

What is risk communication in a tribal context? It is not simply a matter of communicating the same message in a different language, or using tribal images on pamphlets, or dumbing it down to the point that is condescending or inaccurate. If anything, the communication with tribes needs to be *more* sophisticated, even if it is less numerical. Tribes can't just focus on a number and forget all the cultural, nutritional, religious, economic and other consequences. In the case of fish contamination, the goal is not necessarily trying to influence people to reduce a risky behavior like smoking or eating too much fish. And it is not about balancing risks of contaminants with the benefits of eating fish. A better goal may be to understand and provide the health care that will be necessary when people *cannot* follow a fish advisory. Why is this?

Lesson 4: Know the culture of the affected people. Know their history and the current adversities that they face. The attempts to annihilate the original indigenous inhabitants

have not stopped. This history is not just water under the bridge; it is a living history. It cannot be set aside so we can 'start over' or 'go on from here' with piecemeal actions. I would advise learning something about wartime psychology, and grief and trauma counseling. Counseling is provided for victims of Oklahoma City, Columbine, the World Trade Center, and airplane crashes because society recognizes the intense psychological consequences of experiencing such an event – shock, denial, anger, grief, depression, anxiety, post traumatic stress disorder, self-abuse, domestic violence, divorce, suicide, substance abuse, and on and on. But there are many tribal members who have to cope with the same thing due to the daily attacks on their rights, health, religion, resources, bodies, and even lives. PTSD is common, and few people are unaffected, to a greater or lesser degree. But FEMA and the Red Cross are not there. The rest of the country does not rally around them, but instead often takes advantage of their vulnerability to get rid of the "Indian problem." Tribes have little or no mental health counseling, no disaster relief, or legal help, technical help, insurance, loans, infrastructure, advanced health care, educational assistance, or even the simple recognition by the American people that there is a problem at all. The Tribes are not getting billions of dollars of aid, and what little they have been getting is likely to be reduced even further now. Since September 11, the American people are saying how stressful it is to live with anxiety and pain and fear and inner turmoil. But I see the same effects on tribal members who have been living under duress for generations. They know and have come to expect that the federal government and their neighbors will continue to break promises and attack every advance they make. If not physically violent, this attack is waged on legal and political grounds.

Lesson 5: Tribes will not say "thanks for telling us that we need to give up another part of our culture in order to be safe." There are many angry and disenfranchised people who do not regard fish contamination as a necessary part of progress or global economic expansion or industrial agribusiness. They do not think they should give up more of their religion so someone else can make a buck. They resent risk communicators who try to explain why white male politicians say that some amount of contamination and risk is economically necessary and medically tolerable for indigenous people. These false "facts" were determined without the Tribal peoples' knowledge, input, or consent. I have talked to Tribal members who regard contamination as an attack on the food supply in order to weaken their cultural resolve, which was an official federal policy in the past. Their food supply has again been poisoned. Contamination can be thought of as a form of abuse, a chemical violence. Some people believe that the contamination and the associated government communication is a deliberate strategy where brute force has failed to exterminate them. Some people believe that risks are deliberately hidden and they are not being told the truth so that they will eat contaminated fish and poison themselves. Other people do not believe the information about contamination, and regard the information itself as propaganda, an attempt to trick them into giving up more of their culture and religion. Health Departments may say this all of is not in their scope of work, that it is not under their control, and that they merely want people to be safer while another agency addresses the root problems. This is why I always ask how the agencies are working together at the state or federal level, and I seldom get a satisfactory answer.

Lesson 6: Tribal members will knowingly continue to eat the fish anyway. It is an inseparable part of who they are, what they do, and how God the Creator told them to behave. Fishing is not just a social preference or a nutritional choice. When fish are contaminated, there are many consequences, and they are inter-linked and inseparable. There are not some 'health' concerns that are isolated from culture and economics and other consequences. Health is the whole thing, including quality of life, eco-cultural health, and spiritual health. The river is like a church with all the parishioners inside, or a spiritual health care facility, and fish are co-participants in the shared history and ceremonies. This is absolutely required by the Creator.

- You might as well tell the Pope to give up the sacrament and baptism because his wine and holy water are contaminated;
- Or tell an Orthodox Jew that following kosher practices is simply an optional lifestyle choice that might be quaint but is standing in the way of progress;
- Or tell a soccer mom to limit driving her children to soccer games and piano lessons because the tires on her Explorer are unsafe, and her children really don't need to go to college anyway; a minimum wage job is just fine;
- Or tell a health professional to limit her internet access because there are computer viruses and she doesn't need CME credits or the latest health information, in order to take a blood pressure or give a vaccination.
- Some of these examples are religious and some are secular, but in each case I made a judgement about the value of each practice, and imposed my values on them without their consent, and regardless of the cost to them or to their children.

Eating fish is also a form of resistance and defiance. It expresses solidarity in the face of federal policies that allowed the contamination to occur. It may also be a demonstration of spirituality to knowingly ingest contaminants and accept the health consequences in the course of practicing their religion. A high body burden of persistent bioaccumulative toxics might be a mark of a spiritual person, or a chemical badge of courage.

We can't talk about how many fish meals are recommended, without considering how many ceremonial meals are affected, or how the fish are an extension of the human people. They say "We are the fish and the fish are us." Think about molecules in the body of a person who has eaten even a few fish from the Columbia River. Some of those molecules have been in the Columbia Basin for eons, circulating from water to fish to people to soil to plants to animals and back to water.² Those same molecules may have nourished many generations of human and animal children, in an endless cycle of sharing. Eating salmon represents ingestion of molecules that have been in human and/or animal ancestors, a gift from those ancestors and from the fish themselves. A successful risk communication program might be a cultural disaster if it works as intended.

Risk/benefit evaluation is also different. We can't just try to balance the benefits of eating fish with the risk of experiencing an adverse health outcome from contamination. This is illustrated by the attached figure. It is a bar graph with two bars. The left side

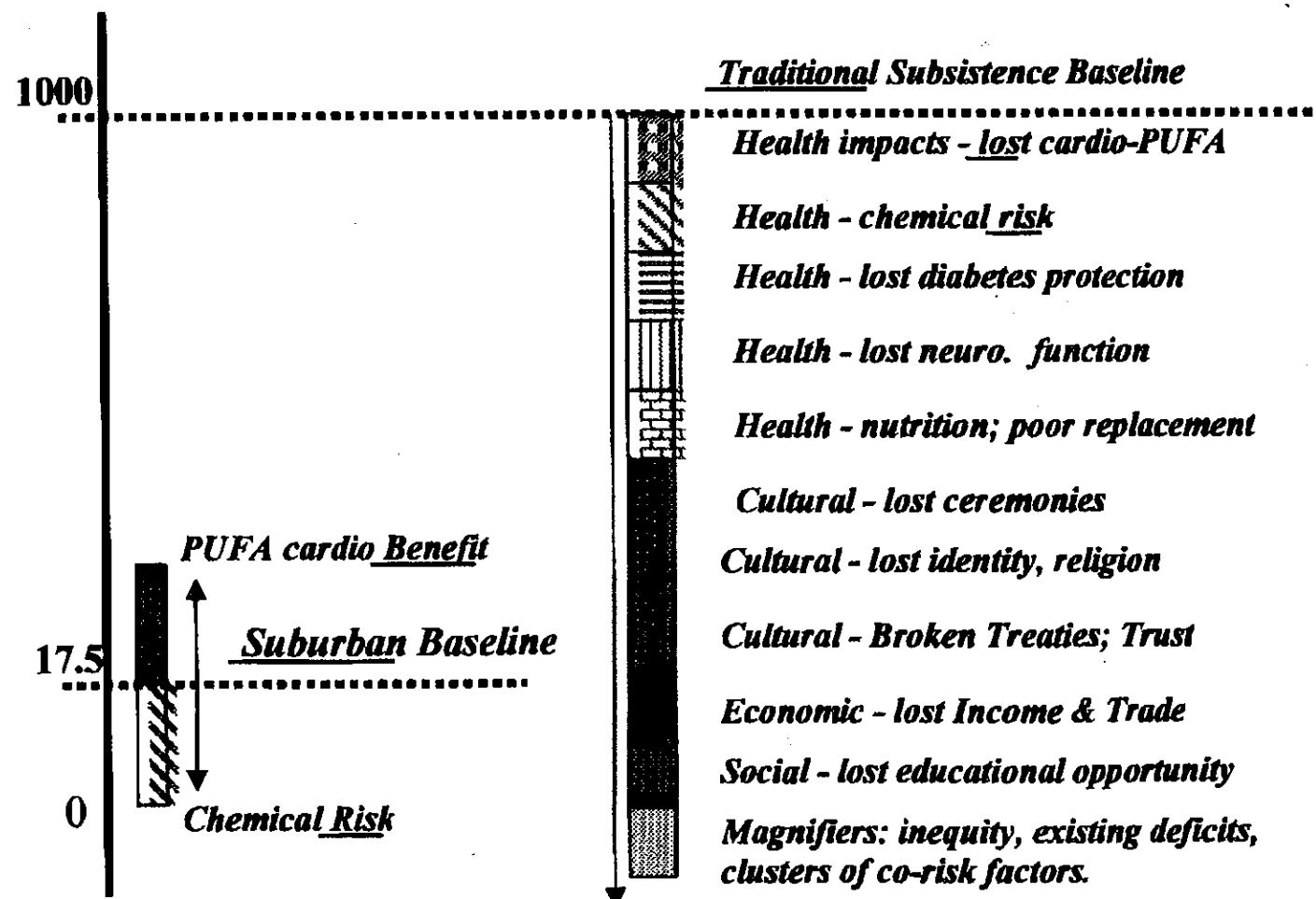
² For example, at least 20% of the nitrogen and other minerals in the needles of Sitka spruce and other plants near salmon spawning sites comes from the ocean via salmon carcasses. *Science*, 294:479 (2001); *Ecology* 82:2403 (2001).

shows a short bar with two segments for suburban situations, one segment for the health benefits of eating fish and the other for health deficits of contaminants. If the segments are the same length, the benefits would be cancelled out by the contaminants, or the adverse impacts of contamination are canceled out by the benefits. Both segments are short, and are centered around a low rate of fish consumption (17.8 grams per day, or a half an ounce, or one bite per day, according to EPA data) or no fish consumption at all, because suburban Anglo communities have a choice of eating a little fish or eating no fish. The ancient Tribes from the Columbia River Basin **do not have that choice**. They ate 2-3 pounds of fish per day, and would still do so if the fish were there. People still try to catch and eat as much fish as they can, up to several meals and snacks per day of fresh, frozen, smoked, canned, or dried salmon. It is also well documented that salmon (the omega fatty acids) protect against diabetes and are good for neurological development and cardiac function. These benefits have already been placed at risk or lost entirely by tribes as the salmon runs have been decimated. The mainstay of the diet has been lost, and the replacement foods are of lower quality. The economic aspects, including commerce and trade and sharing, have largely been harmed. The ceremonial and religious practices have been harmed. Treaty rights have been further eroded. Distrust of federal policies has increased (or remained extremely high). The social and educational roles of fishing have been harmed. Fishing sites and the place names and local knowledge for them have been lost. Fishing skills have been lost. The weaning of infants onto fish, which is or was customary, has been lost. Breast milk is probably also contaminated. And on top of all that, the few fish that remain are contaminated to such a degree by dozens of contaminants that the Tribal people and their families and communities who eat a lot of fish are probably experiencing health effects.³ If they ate as much as their Treaty reserves the right for them to catch and eat, it would be lethal.

So, providing information about contaminants in fish advisories may be given in the spirit of trying to help people make healthy choices, but Tribal members may hear just another chemical attack on Indian people. If biological warfare, soldiers, economic policies, land theft, boarding schools, missionaries, assimilation policies, and downright attempts of genocide couldn't exterminate them and their culture, or make them into Anglo-Americans, then chemicals and the law may do the job. You have to realize that on top of all the other attacks or encroachment on their culture and lives, now they have to listen to federal and state people tell them that they will be eating unsafe levels of chemical contaminants. And they will continue eating the fish. Furthermore, the way our American society is structured, Tribal people are the ones who are blamed and maligned if they continue to live their lives as spiritual people with ancient religious and cultural practices, once they have been told about the risks. Any consequence after that point in time is now their own fault. After being told it is their own fault often enough, they come to believe that they deserve to be poor and sick. I have personally observed the sense of resignation and martyrdom and despair, as health professionals or regulators visit and dump another load of negative information on them and then silently turn away, leaving them to dry their tears once more and deal with the aftermath however they can.

³ This statement is supported by the database on fish contaminants in the lower Columbia River developed by EPA (Region 10) and the Columbia River Intertribal Fish Consortium. For database access contact Pat Cirone, EPA Region 10. Technical questions about tribal risks may be addressed to Dr. Harper.

Figure. The left hand panel reflects a suburban baseline fish consumption rate of 17.5 grams per day. The cardiac benefits of eating more fish can be weighed against the health risks from any chemical contaminants in the fish. The right hand panel reflects the traditional subsistence fish consumption baseline rate of 2-3 pounds per day. That ingestion rate, and all the health and cultural benefits it provided has already been lost, and chemical contaminants merely add another negative health burden in addition to the health burden posed by loss of the traditional healthy diet.



NEJAC meeting Public Comment period December 4, '01

written comments from Sara Koopman,
activist with Witness for Peace and the Amazon Alliance

Please forgive the handwritten nature of these notes. I had hoped to speak to you but did not arrive in time to get on the speaking list and so am writing my request to you, impromptu.

I thank all of you on the NEJAC for hearing testimony on the impact of US funded coca fumigation in Colombia at previous meetings and for drafting a powerful letter to Christie Whitman dated July 19th, '01 in which you requested greater scrutiny and public disclosure of the fumigation and its effects.

The reply you received from an EPA staffer, dated Oct. 1st, was sorely inadequate and did not address your specific requests.

I am here to ask you to please follow up on your previous letter with another request for specific responses from Ms. Whitman's direct office.

I was recently in Colombia, in the area of Putumayo where most of this fumigation is being done, on a Witness for Peace delegation (July '01). I was alarmed to see kids there with very strange skin sores that appeared immediately after the spraying and which they were still suffering from 6 months later. They also told me that many of them have suffered from constant headaches since

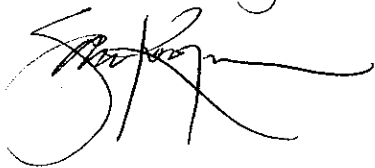
the spraying. As a headache sufferer this really seemed hellish to me.

As part of the Witness for Peace delegation we spoke about the effects that we had seen with the officials at the US embassy in Colombia. We were told that there was no proof that these sores and headaches (and many other effects too numerous to mention) were a result of the fumigation.

I was flabbergasted! If my middle class white neighborhood was sprayed and I and my neighbors were suffering from this kind of mysterious health problems immediately afterwards I believe that the government would stop the spraying until it was proven that it wasn't because of the spray, I don't think that I would be asked to prove that it was.

I am sad to say that the communities I visited in Colombia have been sprayed again in the last month. I dread to think what the health of those kids is now.

This is an ongoing environmental & health disaster paid for by US funds and I thank you again for your past concern and wonderful letter and very much appreciate any follow up you can do on this issue.



Sara Koopman
Seattle, WA

spanish@drizzle.com

PUBLIC COMMENT
By: Dr. Mildred McClain
NEJAC
SEATTLE, WA
December 4, 2001

The Fish Advisory for Georgia/South Carolina was issued several years ago and has undergone changes and revisions -- yet the advisory is still elusive to sectors of the population who frequently fish in the rivers and streams for both recreation and food consumption.

Economically challenged African Americans, whites, senior citizens and new arrivals from Mexico have not benefited from the issuance of the Fishing/Consumption Advisory. When an informal survey was conducted assessing the extent to which local people had seen or heard of the fish advisory, the results indicated the outreach activities of South Carolina Department of Health and Environmental Control, the Georgia Environmental Protection Division and the Savannah River Site Community Advisory Board had failed to substantially inform these stakeholders.

Several editors of the advisory fact sheet and the guide were designed and written in a manner unsuitable for a diverse audience which includes illiterate people and those who only read at a 3rd grade level. Signs posted were in English only and placed at places with big names. The siting of signs often did not include "favorite spots" that existed as a part of the river/stream network. Review of the guide for Georgia/South Carolina by lay people who fish regularly suggest the current version is still complex and does not help people heed the advisory's recommendation.

One person pointed out that the names of the fish are confusing because they do not coincide with the local indigenous names, i.e. the guide talks of the bow fish -- which people know as mullet.

The fact sheets and guides appear to not have the involvement of communities who both know the best way to get information out and the best language and images to use. Therefore, the primary recommendation from the communities of Augusta, Keysville, Guyton and Savannah, Georgia and Blackville, Aiken, New Ellenton

and St. Helena, South Carolina is to involve communities who fish in the design and distribution of fact sheets and guide. The communities should provide assistance in identifying the sites for signage and the content of the signage.

A major issue for African Americans in South Carolina and Georgia is related to health. The question is "what are the health effects of eating contaminated fish combined with other vulnerabilities. For people who are suffering from various illnesses and disease, how does eating certain amounts of contaminated fish impact existing health conditions? Are we currently carrying toxins in our bodies because of our consumption of fish? How are we impacted when we swim and bathe in these bodies of water where advisories exist? If fish is contaminated, what about other life forms in the water?

The source points of the contamination in the water and the fish are highly questioned when both industries and a federal facility like Savannah River Site are in close geographical proximity. Citizens most want to know where the contamination is coming from; in what amounts of consumed fish is harmful; how people can tell they have been exposed and what to do. The citizens we work with want a more aggressive educational and outreach campaign specifically targeting those groups of people out of the ordinary loop of information dissemination.

Signs are needed in Spanish and in some areas of South Carolina, in Gullah, a language spoken by African Americans in the Beaufort-Jasper County area. Local fishermen and women need to be integrated in the activities related to providing information to those who may be at risk of consuming fish beyond the acceptable levels.

Much can be done in our region through existing collaborative partnerships to insure an effective implementation strategy of the fish advisory. There are many distribution outlets that have not been touched, e.g. churches, schools, PTA's, civic organizations, veteran and Masonic groups. If we are serious about getting the word out so that we can prevent the resulting negative outcomes from the consumption of contaminated fish, it is critical that communities are involved at every junction, from beginning to end. The National Fish Advisory effort provides us a very easy win/win scenario for government and community.

Dr. Lynn Waishell of Rutgers University, Dr. Richard Gragg of Florida A&M University and Citizens For Environmental Justice have gathered important data on

fish consumption patterns in Georgia and South Carolina levels of knowledge about the fish advisory, methods people prefer receiving information and most trusted sources of information – this data could be used to further the work being done on the fish advisory in EPA's Region IV.

What are the environmental justice concerns? Very simply, those who are being left out of the information cycle are primarily poor African Americans. The quality of water and the quality of the seafood goes hand in hand. We are concerned about the care of our lakes, streams, rivers and our ocean – yet our voice is not being heard.

Through diligent efforts, we have made some progress in changing how things are being done – but we still have questions about the water quality analysis, contaminant profiles and community involvement efforts that directly relate to environmental justice communities. We need to be involved in all research and outreach efforts to distribute findings and recommendations.

Recommendations

- Clean up water bodies to a standard set by community – in collaboration with scientists and other experts
- Insure that communities of color are involved in research, standard setting and scientific processes
- Inform communities of the real risk that is involved with current fish advisories
- Work closer with industries and the military to stop polluting our waters
- Assume a zero tolerance of water contamination
- Create easy to understand toxilogical profiles of the contamination found in the water bodies, fish and shellfish (in collaboration with health agencies)
- Strengthen and enforce regulations on the use/emissions of Mercury (the cleanup of Mercury should be a priority)
- Identify and describe all radionuclides found in the water bodies near military/nuclear production weapon sites, including nuclear power plants. The description should include the health impacts of all identified radionuclides
- Tailor and design risk communication strategies for differing populations based on culture and community values



NETWORK
For Environmental and Economic Justice

Southwest Network for Environmental & Economic Justice

P.O. Box 7399 Albuquerque, New Mexico 87194 (505) 242-0416 FAX (505) 242-5609

November 1, 2001

Staff

Richard Moore,
Executive Director
Rosa Cruz-Samudio
Joaquin Lujan
Bianca Encinias
Roberto Contreras
Alma G. Vizcaino
Aditi Vaidya

The Honorable Christine Todd Whitman
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave. N.W.
Washington D.C. 20460

**Coordinating Council
Representatives**

Arizona:

Teresa Leal
Nogales

California:

Geri Almanza
San Francisco
Robin Cannon
Los Angeles

New Mexico:

Daniel Fuentes
Sunland Park

Texas:

Susana Almanza
Austin
Brenda Moore
Dallas

Youth:

Chc Lopez
San Antonio, TX

**Native American
Representatives:**

Carletta Tilousi
Havasupai Tribe
Jose Matus
Yaqui Tribe

Mexico:

Enrique Hernandez
Coahuila
Jesus Emiliano
Chihuahua
Carmen Valadez
Baja California

Dear Governor/Administrator Todd Whitman,

On behalf of the Southwest Network for Environmental and Economic Justice (SW Network), this letter is to initiate a dialogue with you concerning the commitment of the Environmental Protection Agency to environmental justice and its integration into all programs, policies, and activities of the United States Environmental Protection Agency. Also on behalf of the Southwest Network, we would like to congratulate you on your position as the Administrator of the Environmental Protection Agency.

The Southwest Network for Environmental and Economic Justice is a multi-cultural, multi-national organization comprising over 60 community based, student, native and labor organizations throughout the Southwest and Western United States and the Northern border states of Mexico. The SW Network formed to address environmental degradation and other social, racial and economic injustices that threaten our communities and workplaces.

It has been well documented that people of color and working class people in the United States suffer from environmental racism. Children, the elderly, and women (especially women of color) are the poorest of the poor and are paying the highest price from pollution with increased health problems and economic devastation. As Administrator, your role is critical in terms of implementing immediate solutions to address the adverse health and environmental effects that disproportionately affect people of color and the poor of this nation.

In your Memorandum (dated August 9, 2001) you reaffirm the agency's commitment to environmental justice as well as its pursuance in seeking that all communities and persons across the nation are guaranteed equal access to the decision-making process to have a healthy environment in which to live, work and play and for this we congratulate you. In spite of the progress that has been made and even with the best of intentions, grassroots communities remain left out at all levels of the discussion, development, and implementation of policies. The Southwest Network sees the development of strong grassroots organizations as essential for the inclusion of people

of color and working class people in the building of a truly democratic process in this country and throughout the world.

In this regard, we respectfully request a meeting, to take place in the Southwest, between you and representatives of the SW Network and we invite you to tour our communities. In taking this initiative, we believe that we speak to concerns that are shared by millions of people throughout the United States and Northern Mexico. We look forward to meeting with you. We would greatly appreciate a response from you by November 29, 2001. If you have any questions or concerns please contact Richard Moore at the SW Network Regional office in Albuquerque, New Mexico at (505) 242-0416.

Sincerely,

Rich Moore

Richard Moore
Executive Director
SW Network

Susana Almanza

Susana Almanza
Co-Chair EPA Accountability Campaign
Austin, Texas

Henry Clark

Henry Clark
Co-Chair EPA Accountability Campaign
Richmond, California

CC:

Gregg Cook, Regional Administrator, EPA Region 6
Jack McGraw, Acting Regional Administrator, EPA Region 8
Wayne Nastri, Regional Administrator, EPA Region 9
Charles Lee, Associate Director, EPA Office of Environmental Justice

**Contaminated Fish Consumption, People of Color,
and Environmental Justice**

A Written Statement to the NEJAC Meeting in Seattle, WA, Dec. 3-6, 2001

Submitted by Kristine Wong, MPH
Correspondence: PO Box 80082, Seattle, WA 98108
kristinewong@yahoo.com

Good evening, and thank you for taking my testimony. My name is Kristine Wong. From 1995 - 1997, I worked as the Project Director for the Seafood Consumption Information Project, which focused on conducting community-based research, education, outreach, and advocacy on the issue of contaminated fish consumption in San Francisco Bay.

My testimony will focus on what we learned from our community-based research and outreach efforts, and what can be done to address these problems.

Thousands of people regularly fish San Francisco Bay. Most of those out on the piers and shorelines are people of color, and many eat what they catch. Among Asian Pacific Islanders and Native Americans, fish is not only a dietary staple, but a strong part of their cultural traditions as well. At the same time, a 1994 study by the San Francisco Bay Area Regional Water Quality Control Board has shown that Bay fish are contaminated with dioxin, mercury, dieldrin, PCBs, DDT, and chlordane.¹ These chemicals have been linked to serious health problems such as cancer, birth defects, and dysfunction of the immune, nervous, and reproductive systems.

In 1995, the Seafood Consumption Information Project conducted a survey of 228 people fishing from San Francisco Bay piers and shorelines.² The purpose of the survey was to find out who was fishing from the Bay, what their fishing and fish consumption habits were, how aware they were of the health advisories, and whether or not they reduced their consumption, based on the advisories.

Our survey results concluded that:

- People of color, many who are limited or non-English speaking, are disproportionately affected by contaminated fish. They are the majority of people fishing from the piers and shorelines, are more likely to eat the most contaminated parts of the fish, and are less likely to be aware of the health warnings about the consumption of seafood from San Francisco Bay. This makes the consumption of contaminated fish a major environmental justice issue in the San Francisco Bay Area.

¹ San Francisco Bay Regional Water Quality Control Board (1995). *Contaminant Levels in Fish Tissue from San Francisco Bay*, Oakland, CA.

² Wong, K (1997). *Fishing For Food In San Francisco Bay: Part II*, The Seafood Consumption Project at Save San Francisco Bay Association, Oakland, CA.

- When calculated at a monthly rate, 90% of those who ate fish in the last week exceeded the consumption limits recommended by California's Office of Environmental Health Hazard Assessment (OEHHA). The median of all respondents ate fish at a rate that was 2 times more than OEHHA's recommended amounts. The consumption rate of Caucasians was about the same as OEHHA's limits. At the high end, some individuals reported eating Bay fish at least once a day.
- Current health risk assessments underestimate the risk because they (a) do not take into account the consumption of fish organs, guts, and eggs which contain higher concentrations of contaminants than the fillet, and (b) do not take into account synergistic effects of multiple chemicals.
- Government-issued health warnings are not reaching the most affected populations. Forty-two percent of those surveyed were unaware of health warnings. Latinos and non-English speakers were less likely to have heard the warnings, compared to all other groups.

Other points:

- The majority of respondents were people of color (70%), with Asian Pacific Islanders making up 36% of the total respondent group
- Fishing activity increased with age
- 40% of the survey respondents ate Bay fish in the past month, with Asian Pacific Islanders eating fish the most frequently
- Non-fillet parts, some of the most contaminated parts of the fish, were eaten at a high rate, especially in some of the mid-sized and larger fish, such as perch (98%), striped bass (84%), and white croaker (77%)
This is especially significant, considering that white croaker was among the most contaminated of all fish studied, considering their bottom-feeding habits and high percentage of body fat.
- 42% had not heard of the health warnings about eating fish in the Bay. Latinos and non-English speakers were the less likely to have heard the warnings compared to all other groups.

The Seafood Consumption Information Project also conducted over 40 community education and outreach presentations at health clinics, community centers, English as a Second Language classes. Our emphasis respected cultural traditions by encouraging people to continue to eat the fish, but make small changes to their cooking techniques. After demonstrating ways with which

Public Testimony
Tribal Native Village of Port Graham, Alaska
November 27, 2001
National Environmental Justice Advisory Council
Renaissance Madison Hotel, Seattle Washington

On behalf of the Port Graham Traditional Village Council, I would like to thank the National Environmental Justice Advisory Council for taking the time to hear our testimony.

Port Graham, a Sovereign Federally recognized Tribe, is a rural predominately Native village. Located 225 miles southwest of Anchorage, the village is located close to the southern tip of the Kenai Peninsula, nestled off the Cook Inlet, which is accessibly by air or by boat. Most of the "Sugpiat" or "real people" of the Chugach region trace their roots and heritage to the Prince William Sound and Gulf of Alaska.

Port Graham, as many rural villages in Alaska is heavily dependent on our traditional way of life, which has always been an integral part of our heritage. This vast knowledge of the natural resources and its environment has been passed from generation to generation and is a major component of the Native culture. Our traditional way of life is ingrained in our very existence, our lives and culture literally depend on the health of our traditional resources.

Wild food contamination is an emerging concern in rural Alaska, especially for Alaska Natives who consume large amounts of wild food annually. Nowhere in the United States is wild food consumption greater than in Alaska's rural communities. In 1996, the native villages of Port Graham and Nanwalek joined forces in requesting that our traditional foods be tested for contaminants. What resulted was the EPA study on contaminants of our traditional resources in the Lower Cook Inlet. The study results found evidence of significant levels of contaminants.

Port Graham, Nanwalek, Seldovia and Tyonek have been meeting with EPA since the preliminary findings report came out in 1999, and met with EPA to discuss the final draft just a couple of weeks ago. None of the contaminant work done so far has been easy, in fact it has been far from it. The villages have been meeting with EPA's Region X and Anchorage area office since 1999. Meetings were scheduled to insure that the final report would clearly define the potential risk and concerns regarding the contaminants found. It would also include Tribal recommendations on specific areas needing more work. However, our relationship with EPA regarding the Tribal Consultation process falls short as described in Executive Order 13175 "Consultation and Coordination With Indian Tribal Governments."

Over these last 5 years, the Tribes have struggled to have meaningful consultation and collaboration to strengthen the government-to-government relationship with EPA. But consistently, time and again, the Tribes have had to prompt EPA to initiate this consultation process to ensure meaningful and timely input by Tribes. The Tribes involved in this study, do not feel that EPA recognizes the right of Indian Tribes to self-government nor do we feel that EPA supports Tribal Sovereignty and self-determination. We feel that EPA and other agencies are very concerned about the information getting out about the levels and types of contaminants found, which could be politically sensitive. While we understand the political sensitivity of this information, it is very important that EPA and other federal agencies place the Tribal concerns above the political sensitivity so that we can figure out what the actual health risk may or may not be. It is absolutely essential that these issues are clarified and communicated truthfully to us in regards to any potential health risks from these contaminants based on the data available.

We have seen many disturbing aspects of the study results, which appear to have potential health concerns for our people. We need everyone to understand that regardless of any actual health risk from consuming our traditional foods that may or may not be present, significant levels of contaminants in our

foods is simply unacceptable. We deserve and expect our traditional foods to be free of contaminants. The very fact that our traditional foods are contaminated, is an affront to our culture and our heritage.

We view this contaminant data at the very least as a huge red flag, warning us of what seems to be a global, national, state and local pollution crises. The long-term practice of agencies allowing industry and others to dump and discharge huge amounts of pollutants is obviously severely detrimental to our long-term existence on this earth. Our Native culture finds these practices very disturbing. It is difficult to understand how a shortsighted pollution dilemma could have ever been allowed to reach its present condition. After all that has been revealed about significant external costs of this pollution friendly practices, we are perplexed, disappointed and angry that the EPA continue to permit billions of gallons of contaminated water to be regularly discharge into the Cook Inlet.

The fact that EPA allows the Cook Inlet Oil and Gas industry an NPDES waiver from the national zero discharge law under the Clean Water Act, which is one of two such waivers', allowed in the entire United States, is truly outrageous and inexcusable. We recognize that much more work is necessary to get more information about what risk may be present from consuming our traditional foods. It is very clear that some of the contaminants showing up in our foods are discharged from the local Oil and Gas industry. This fact alone yields consideration that the zero discharge waiver should be immediately repealed. The very fact that many of the chemicals used by this industry are present in levels of concern in Cook Inlet is enough to support the zero discharge requirement of industry under the Clean Water Act. When the NPDES permit is next up for review, Tribes that are impacted by the permitted discharge in Cook Inlet should be directly involved, sitting at the table with EPA for the evaluation and formulation of the permit.

In closing, the Port Graham Village Council would like to urge the following recommendations to the National Environmental Justice Advisory Council to begin to address our concerns mentioned in our testimony:

- **When agency is consulting with Tribes, the objective of building a “meaningful relationship” with Tribes should be upheld in its fullest intent. Recognizing Tribal governments in a sensitive manner and respectful of Tribal Sovereignty is essential. Truthful, timely and concise communication throughout the process of consultation is critical.**
- **When a situation potential impacts Tribes, Tribes should be involved and participating from initial planning to the final completion of a project, working towards consensus reflecting the concerns of the Tribes**
- **Incorporating Tribal Scientist in research & planning and implementing is imperative**

Our health and safety of these traditional resources is at stake. As caretakers of our land and environment, we will not stand by and watch as our traditional foods and the natural ecosystem that they depend on are continually degraded and threatened. We are no strangers to struggles and difficult times. We will work hard to join forces in this battle to help protect to insure the future of our children, our culture, our traditional resources and the environment. We want nothing more than to restore our traditional foods to the truly pristine state they once were for our ancestors before us and for the seven generations to come. Thank you.

Sincerely,

Violet Yeaton/Environmental Planner
Port Graham Village Council

Columbia were informed about the side effects, those officials claimed that there was no proof that the problems were a result of the fumigation, she stated. If such problems were occurring in a middle-class, white neighborhood, the government would stop the spraying immediately, the statement asserted. The situation is an ongoing environmental injustice, Ms. Koopman's statement declared. She urged that the NEJAC follow up on the issue.