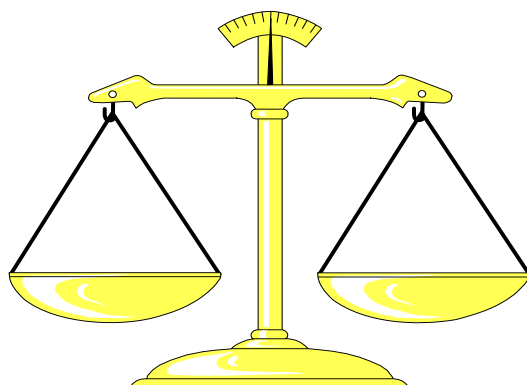


**FUTURE MECHANISMS TO ENHANCE STAKEHOLDER
INVOLVEMENT AND ENGAGEMENT TO ADDRESS
ENVIRONMENTAL JUSTICE**



August 2006

**A Letter Report
prepared by the**

National Environmental Justice Advisory Council

a Federal Advisory Committee to the U.S. Environmental Protection Agency

Disclaimer

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

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



**NATIONAL
ENVIRONMENTAL JUSTICE
ADVISORY COUNCIL**



August 10, 2006

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

SUBJECT: *National Environmental Justice Advisory Council (NEJAC) Advice and Recommendations on Future Mechanisms for Enhancing Stakeholder Involvement and Engagement to Address Environmental Justice*

Dear Administrator Johnson:

The National Environmental Justice Advisory Council (NEJAC) hereby transmits this letter as the consensus report on mechanisms to enhance future stakeholder involvement and engagement to achieve environmental justice for all communities.

The NEJAC is a formal federal advisory committee chartered pursuant to the Federal Advisory Committee Act (FACA) to provide advice and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice. This letter responds to EPA's request for advice and recommendations on the following questions:

- *What venues and other mechanisms would be most effective for EPA to continue to obtain public policy advice on specific environmental justice issues/concerns?*
- *What mechanisms would be most effective for EPA to receive timely advice on specific environmental justice issues/concerns that require action or decision on short notice?*
- *What are the best mechanisms to continue to build a collaborative problem-solving capacity to address environmental justice issues/concerns among EPA's regulatory partners and other environmental justice stakeholders?*

The NEJAC has worked earnestly to provide the advice you have requested. Since the inception of this term, the NEJAC has conducted monthly conference calls to understand EPA's expectations, develop an agenda and schedule, and prepare for the two meetings held in 2006. On January 5 and 6, 2006, the NEJAC conducted a business meeting in Arlington, Virginia to obtain background on and clarify EPA's charge. On June 20 through 22, 2006, the NEJAC conducted a public meeting in Washington, D.C. to receive public comment and deliberate on the draft recommendations it had developed through conference calls.

1. BACKGROUND

At the outset, the NEJAC wishes to applaud your November 4, 2005 Memorandum, "Reaffirming the U.S. Environmental Protection Agency's Commitment to Environmental Justice" (hereafter "2005 Memorandum"). EPA Administrators from William Reilly to yourself have stressed the importance of assuring justice and fair treatment for all, and each have supported the activities of an EPA office dedicated to this mission. With the 2005 Memorandum, you not only have signaled EPA's on-going commitment to ensure that environmental justice is integrated into the Agency's policies, programs, and activities, but you have taken the important further step of directing EPA offices to incorporate environmental justice considerations into their planning and budgeting processes. This commitment is evident in EPA's Fiscal Years 2006-2011 Strategic Plan, in which the Agency agrees to: "(1) establish, as appropriate, measurable environmental justice commitments (such as strategic targets) for eight environmental priorities¹ and other critical areas of focus; and (2) identify the means and strategies to achieve the commitments and measure outcomes to ensure that Agency resources reach disproportionately burdened communities, including disproportionately burdened minority and/or low-income communities."

Your 2005 Memorandum is pertinent to the NEJAC's charge questions because it postulates that "ensuring environmental justice means not only protecting human health and the environment for everyone, but also ensuring that all people are treated fairly and are given the opportunity to participate meaningfully in the development, implementation, and enforcement of environmental laws, regulations, and policies." To help you achieve these goals, the NEJAC must provide advice on how to engage stakeholders in collaborative problem-solving that represents meaningful, fully informed public participation. Your 2005 Memorandum also is notable in its directive that offices develop strategic targets for action to achieve environmental justice, and that these achievements be measurable and real. You have declared that EPA not only wants to develop policies that assure fair treatment for all, but you expect these policies to achieve justice. To meet your expectations, the NEJAC needs to operate in new and more efficient ways. As EPA's approach to programmatic environmental justice has matured, the NEJAC should be tasked to provide more targeted advice on programmatic, policy and implementation issues specific to particular programs.

¹ The EPA's eight national environmental justice priorities are: Reduce Asthma Attacks; Reduce Exposure to Air Toxics; Ensure Compliance; Reduced Incidence of Elevated Blood Lead Levels; Fish and Shellfish Safe to Eat; Water Safe to Drink; Revitalization of Brownfields and Contaminated Sites; Collaborative Problem-Solving.

We are mindful that resources for all environmental programs are limited. The desire for extended dialogue and interchange among stakeholders that marked the deliberations of the NEJAC in the past must be balanced with the competing need to husband resources in order to devote them to implementing environmental justice policies in the field. The development of policies impacting environmental justice must be well informed and robust, but resources also must be conserved to implement those policies in communities across the country.

We also realize that the rapid development of issues or urgent events may require more nimble forms of policy deliberation than were possible with the protocols of the prior NEJACs. We need to envision new, more efficient and robust mechanisms for stakeholder involvement, engagement, and resolution.

In this letter, we answer your questions directly, and we recommend mechanisms for collaborative, interactive policy development and workable means to obtain fast-tracked but informed advice on topical issues. It is important to appreciate that our consensus recommendations have, to a large extent, been made possible due to our collective engagement for over a decade in the discussions of prior NEJACs. Thus, before turning to ways in which the nature and effectiveness of environmental justice advice could be improved, it is important to reflect upon the accomplishments of the NEJAC to date.

Established in 1993 in response to overtures from representatives of impacted communities, the NEJAC has made significant contributions to carrying out EPA's mission on several levels. First, the NEJAC helped to educate EPA senior management and staff on environmental justice issues and concerns. By holding meetings in locations with environmental justice issues and providing a forum for affected community residents to present their concerns, the NEJAC helped to create a significant and abiding sensitivity to environmental justice within EPA. The NEJAC brought together, for the first time, representatives of diverse and divergent stakeholder groups, such as affected communities, business and industry, state and local government, and tribal/indigenous organizations, and created a forum to enable them to dialogue about difficult issues. The NEJAC's deliberations have had a significant impact on Agency policies, programs, and/or behavior. The NEJAC has provided a robust body of consensus advice and recommendations, many of which have led to significant actions by EPA.² Over the years, the NEJAC has become a model for state advisory committees on environmental justice.

The lessons learned from the work of the NEJAC from 1993 to the present have informed our deliberations. With appreciation for the NEJAC's major public policy accomplishments and its experience with successful (and less successful) efforts to shape EPA policy and regulatory implementation, we have agreed upon the following recommendations for future work on environmental justice issues.

² Areas include: Public Participation; Brownfields and Community Revitalization; Relocation; Waste Transfer Stations; Consultation with Tribes and Public Participation of Tribal Communities; Environmental Justice and Permitting; Community-Based Health Research; Interagency Integration of Environmental Justice; Fish Consumption; Pollution Prevention; Federal Facilities; Meaningful Involvement of Tribal Environmental Programs; and Cumulative Risks and Impacts.

2. CONSENSUS ADVICE AND RECOMMENDATIONS

Question #1: Venues for Continued Public Policy Advice on Environmental Justice

What venues and other mechanisms would be most effective for EPA to continue to obtain public policy advice on specific environmental justice issues/concerns?

The NEJAC finds that public policy advice and counsel will be critical to EPA's continued efforts to achieve environmental justice. EPA defines environmental justice as the "fair treatment and meaningful involvement of all peoples regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." In keeping with this definition, any venue or mechanism for EPA to obtain public policy advice must be premised on the principles of fair treatment and meaningful involvement.

There is a distinction between public participation and meaningful involvement. Meaningful involvement requires fully informed participants from all perspectives, all armed with the capacity to participate in policy development as full partners. Moreover, the point of meaningful involvement is not only to formulate policy advice, but it must lead the way to concrete results in achieving fair treatment.

If treatment is to be fair, it must reflect context and historical fact. The NEJAC is well aware that in the past, people of color and low-income community members have not had equal voice in public policy deliberations, and that these groups as a consequence have yet to realize fair treatment. If the goal is fair treatment for all, it must be acknowledged that some will need the support and resources necessary to finally participate as a full partner in the shaping and implementation of public policy.

To that end, the NEJAC wishes to provide the following recommendations in response to Question #1:

Recommendation #1.1: EPA should continue to support the NEJAC as the primary public policy advice mechanism on environmental justice issues and concerns. In light of resource constraints, however, the NEJAC should be streamlined. Specifically, rather than having multiple standing subcommittees, the NEJAC should rely upon limited-term, expert workgroups established for the purposes of providing advice for adoption by the NEJAC on focused and specific issues.

In addition, the NEJAC does not believe it advisable to relegate the NEJAC to subcommittee status within the National Advisory Council on Environmental Policy and Technology (NACEPT) for several reasons. First, it would add an intervening body between the environmental justice experts on the NEJAC and your office. Moreover, the subcommittee structure would be inefficient because it would require that the NEJAC educate the more technically-oriented NACEPT on environmental justice issues, which the NACEPT then would attempt to translate to the Administrator. You have spoken directly to the issues of

environmental justice in your 2005 Memorandum, and we believe you will get the best advice when your environmental justice council speaks directly to you.

Recommendation #1.2: As the size of the NEJAC contracts, the importance of expertise and representativeness increases. In this regard, EPA has a dilemma. The Agency rightly seeks to hear new voices in the discussion of environmental justice issues, but it also needs to have the steady advice of those schooled in these issues. The environmental, health and civil rights contexts for environmental justice challenges are complex. As it is with any advisory body in a complex area, some of the NEJAC's advice has been good, and some has not been easy to implement for practical reasons. EPA needs to have the benefit of the institutional memory of NEJAC members who have experienced the context in which advice has been given and implemented, as well as advice that has not worked. EPA will benefit by hearing from those who have seen both good and bad practices. The NEJAC therefore urges EPA, when appointing members to the next NEJAC, to assure that new participants for each stakeholder group are accompanied and mentored by experienced council members who have a history of participating in environmental justice forums, having heard and understood diverse perspectives, and reflecting the collaborative, problem-solving mentality that characterizes healthy and productive debate. This means that future councils should include those who have served on prior NEJACs or their equivalent, as well as new individuals who evidence commitment to and knowledge of environmental justice. In addition, EPA should utilize a process of staggered membership selection to ensure the participation of persons with appropriate experience and expertise.

Recommendation #1.3: EPA also should use, as appropriate, other mechanisms to enhance stakeholder involvement on environmental justice issues. These mechanisms could include: formal notice and comment; regulatory negotiations; citizen juries with access to experts; public meetings, listening sessions, focus groups for timely advice/focus groups to discuss certain issues; and roundtable dialogues.

On the whole, the NEJAC believes that mechanisms that are interactive and involve multi-stakeholders tend to have more value. Multi-stakeholder dialogue can lead to better decisions and greater public trust and support. Receiving input from varied perspectives insures that the EPA decision-maker will recognize the values of each stakeholder group and the benefits and burdens that possible alternative decisions may confer. Interactive dialogue among multiple stakeholders and government officials, particularly if it is deliberative, is likely to be more fruitful than separate input. Interaction may identify creative or overlooked decision-making options and alternatives acceptable to all participants that would not be apparent in the absence of communication among them. Involving multiple groups interactively also enhances the perception that the Agency's ultimate decision was reached in a transparent and fair manner, thereby raising public support for the decision and reducing the likelihood of challenges. In general, multi-stakeholder involvement and advice may be richer. However, targeted stakeholder involvement and advice, especially that of adversely impacted community representatives, can be invaluable to fully understand environmental problems, weaknesses, and failures of environmental policy and possible solutions. These mechanisms can be utilized, when appropriate, to complement existing federal advisory committee processes.

Recommendations #1.4: EPA should communicate to the NEJAC the Agency's actions in response to the NEJAC's advice and recommendations. The NEJAC increasingly has focused upon advice to the Agency in the form of extensive, well-considered and thoroughly researched policy recommendations. The NEJAC recognizes that it takes time and deliberation for EPA to formulate a response. In many cases, it takes additional research, communication among various EPA offices and with outside authorities such as impacted states. Because this process can be lengthy, it is particularly important that EPA respond formally to substantive NEJAC recommendations on federal policy. Such a formal, written response is quite common in EPA rulemakings; a Response to Comment document is the rule rather than the exception. Since NEJAC reports represent the consensus views of a broad spectrum of stakeholders after extensive fact gathering and discussion, it is particularly appropriate that EPA respond to its federal advisory committee in a formal and informative way. Because NEJAC membership is likely to transition from the time of a report's creation to EPA's response, EPA should communicate in writing in order to assure that all who participated in the process have access to the Agency's determinations. Where informal, interim progress reports are possible, it is useful to have the relevant Agency staff give such oral reports at NEJAC meetings or conference calls.

Question #2: Mechanisms for Advice Requiring Rapid Response

What mechanisms would be most effective for EPA to receive timely advice on specific environmental justice issues/concerns that require action or decision on short notice?

The NEJAC agrees that there will be situations where expedited advice on environmental justice issues/concerns will be beneficial to EPA. EPA program offices may encounter issues in the course of regulatory development or implementation needing shorter-term response in terms of environmental justice implications. Regional staff may encounter location-specific issues that would profit from a more national perspective on how to assure fair treatment and meaningful involvement for all. Because the NEJAC believes that environmental justice issues are important and must be confronted, we appreciate your request for suggestions about how to assure environmental justice is considered even when there is little time for lengthy planning and discussion of alternatives. We also believe it is critically important to develop workable mechanisms to provide advice on a fast-track basis.

Recommendation #2.1: One principle we hold dear is that the consensus opinion of diverse stakeholders is richer, better informed, and more reliable than the view of a single group. Therefore, we recommend that the new, smaller, and more efficient NEJAC be the preferred mechanism for providing expedited consensus advice. Reasons for our opinion are, as follows:

- (1) The NEJAC is an established forum, with substantial history and credibility, on environmental justice matters;
- (2) The NEJAC has identified leadership, structure, membership balance, and deliberative processes already in place; and
- (3) The NEJAC's rigor in selecting membership assures that there will be persons with genuine expertise on environmental justice matters.

We make this recommendation, however, with three caveats:

- (1) The charge to be evaluated by the NEJAC must be sufficiently focused and the questions to be addressed must be of a highly specific nature. It is very difficult to provide quality, expedited advice where issues are simply too broad, or the questions vaguely formulated;
- (2) As discussed above with regard to the composition of the future NEJAC, there must be enough individuals in the membership with sufficient expertise and knowledge of the questions/issues EPA is posing to be helpful under the pressure of attempting to provide quick and useful advice; and
- (3) The process to produce consensus advice and recommendations must conform to the requirements of FACA.

Recommendation #2.2: The NEJAC believes consultation with individuals to provide expedited advice and recommendations on environmental justice issues/concerns may be appropriate in limited circumstances. Where the need for expert opinion is truly urgent, EPA may need to make individual calls, rather than convene a conference call. Obviously, individual calls to one of more NEJAC members assure access to persons with identified expertise. In this regard, EPA should utilize the expertise of both current and former NEJAC members. Because of the nature of environmental justice questions, the NEJAC cautions that such efforts to obtain expedited advice and recommendations should always include representatives of community-based environmental justice organizations and organizations in disproportionately burdened communities. Advice from those directly impacted by environmental injustices must be highly valued as they alone have a full appreciation, based upon experience, of reduced quality of life from environmental hazards, and challenges from private and public sectors to address adverse impacts. To plan for such communications, EPA Office of Environmental Justice (OEJ) should maintain an up-to-date list of persons who can serve in this capacity. Additionally, EPA should be sensitive to the lack of capacity on the part of the environmental justice community and provide technical assistance, where necessary, to enhance the capacity of the impacted environmental justice community. In keeping with the requirements of FACA, EPA must characterize the advice obtained from individuals as individual advice, rather than formal consensus advice.

Recommendation #2.3: EPA may wish to use other mechanisms, such as focus groups and/or expert opinions to provide expedited advice and recommendations on environmental justice issues. In making this recommendation, we urge EPA to be also mindful of the concerns articulated in Recommendation #2.2 above.

Question #3: Mechanisms to build collaborative problem-solving capacity among EPA's regulatory partners and environmental justice stakeholders

What are the best mechanisms to continue to build a collaborative problem-solving capacity to address environmental justice issues/concerns among EPA's regulatory partners and other environmental justice stakeholders?

Just as EPA's capacity to address environmental justice has increased greatly during the past decade, so has the capacity of EPA's regulatory partners and environmental justice stakeholders to address environmental justice issues. Thus, there exist possibilities for actions that simply did not exist a decade ago. EPA should pursue strategies to take advantage of these new possibilities by creating the best conditions for all stakeholders to build partnerships and work collaboratively to address environmental justice issues. It is in that light that the NEJAC offers the following recommendations to the above question.

Recommendation #3.1: EPA should promote the establishment of targeted geographic initiatives, such as Maryland's Environmental Benefits Districts (EBDs), Los Angeles' Sun Valley Environmental Justice Improvement Area, and the Brownfield Showcase Communities. Such efforts can designate areas where government and other stakeholders optimize outcomes by collectively focusing their financial, technical, regulatory, policy, and other appropriate resources to benefit targeted communities. In consultation with affected stakeholders and utilizing available assessment tools, areas in greatest need can be identified for these targeted efforts. These areas can be communities or groups of communities with common environmental challenges.

Targeted geographic initiatives offer benefits to government, businesses, and communities by providing a greater role in contributing to the betterment of neighborhoods through an integrated and proactive approach to remediate, rebuild and sustain communities. Such a strategy emphasizes quality of life, economic development, and environmental protection improvements, which can only be accomplished through proactive collaboration. These designated communities would receive priority attention, for example, in the form of additional compliance and enforcement activities, additional state funding and tax benefits, and/or special analyses of potential development benefits and impacts. Applicable incentives and strategies would be flexible, depending on the circumstances of the designated communities. Targeted geographic initiatives would also facilitate better analysis of problems and solutions. As a result, resources can be used more efficiently.

As reported by NEJAC Council Member Andrew Saywers, Environmental Policy Analyst for the Maryland Department of the Environment (MDE), Maryland's EBDs have resulted in a number of successes. In 2004, MDE and EPA provided financial support to install pollution control devices on school buses in Central Prince George's county, resulting in particulate emission reductions by 20 percent and hydrocarbon emission reductions by 50 percent. Also, in 2004, MDE and the Maryland Department of Transportation provided funds to purchase ultra-low sulfur diesel fuel for buses that serve East Baltimore.

Recommendation #3.2: EPA should address the critical need for community-driven technical assistance to community-based organizations. Community-based organizations play a central role in ensuring meaningful involvement of impacted community residents in environmental decision-making and to resolve community-based issues/concerns. To that end, EPA should:

- Conduct and/or support training in collaborative problem-solving, community-based participatory research and alternative dispute resolution for community-based organizations;
- Identify and support technical assistance providers identified by impacted communities who can provide community-based, community-driven technical assistance;
- Maintain and increase resources to support grant programs for community-based organizations and community-based efforts, and for larger local community-based networks and/or alliances that address regional air and water concerns; and
- Disseminate tools for better understanding of the use of environmental laws, dispute resolution, community-based participatory research, and collaborative problem-solving.

Recommendation #3.3: Similar to Recommendation #3.2 above, EPA should address the critical need for community-driven technical assistance to community-based organizations and networks of federal and state recognized American Indian/Alaska Native tribes and villages. Tribal community-based organizations and networks play a central role in ensuring meaningful involvement of impact community tribal members in environmental decision-making and to resolve tribal community-based issues/concerns. To that end, EPA should:

- Conduct and/or support training in collaborative problem-solving and alternative dispute resolution for tribal community-based organizations and Alaska Native villages;
- Identify, train and support technical assistance providers who are knowledgeable of federal and state recognized tribal structures, legal and political status, tribal culture and can provide community-based, community-driven technical assistance to a tribal audience;
- Maintain and increase resources to support grant programs for tribal community-based organizations, networks and community-based efforts within American Indian/Alaska Native tribes and villages; and
- Develop and disseminate tools for better understanding of the use of federal and tribal environmental laws, tribal jurisdiction, regulatory and administrative procedures, culturally relevant dispute resolution, community-based participatory research, and collaborative problem-solving.

Recommendation #3.4: EPA should endeavor to educate business and industry on the ways they can go beyond compliance and better meet the needs of the communities in which they operate. The NEJAC is mindful that constraints on EPA's budget will always counsel the Agency to look for non-monetary ways to build partnerships and work collaboratively. Fortunately, responsible business and industry responds to and is educated by forms of recognition that are nearly cost-free for EPA. EPA already has seen the power of programs like Performance Track and Energy Star to incentivize business to go beyond compliance and strive for environmental and energy excellence. EPA should develop comparable opportunities in the environmental

justice arena by providing public recognition and good will to companies participating in partnerships that advance community health and environment.

It is important to appreciate the kinds of practices envisioned here, and the purpose of employing business-oriented environmental justice activities to assist communities. Clearly, EPA and communities expect and demand full compliance with applicable environmental standards. In most communities with environmental justice issues, however, full compliance will not suffice to address the burdens the community faces. The businesses and industries located in those communities should be urged to exercise good citizenship and leadership by going beyond compliance to hear, understand and respond to concerns raised by communities with actions that address those concerns and improve quality of life. A collaborative approach can facilitate development of practices beneficial to communities and businesses, but far too little is known about the optimum process for achieving these win/win results or the substantive accomplishments of prior collaborations. Much of business and industry takes seriously its responsibility to be a good neighbor, but many lack concrete information about how to fulfill that role in a manner that meets the community's needs. EPA can fill that informational void by recognizing good practices that benefit communities with environmental justice issues and disseminating information on how they came about. As we have seen in Performance Track, this education on good practices is more powerful when those employing the practices are publicly recognized for their efforts.

The reports of the NEJAC provide an excellent basis for designing recognition programs. The Pollution Prevention report devotes a chapter to ways in which business and industry can reduce emissions and lessen environmental and health impacts on communities.³ Employing methods such as clean production, recycling and reuse, and waste minimization can reduce community risks and also make good business sense. The Cumulative Risk report outlines community-based approaches whereby business and industry in an area can work collaboratively with government and community members to identify, prioritize, and find creative mechanisms to reduce cumulative burdens.⁴ The locations that collectively go beyond compliance and improve environment and health surely are worthy of praise on EPA's website. In addition, EPA should include, in its current recognition programs, a subset of the activities focusing on improvement of environment and quality of life in communities with environmental justice issues. There could be special recognition within Energy Star or brownfields development projects of those sites where a community with environmental justice issues was benefited. Moreover, as discussed later in Recommendation #3.7, EPA could annually recognize sites and activities throughout its programs where business and industry advanced environmental justice by improving environmental protection and community quality of life.

³ National Environmental Justice Advisory Council, *Advancing Environmental Justice through Pollution Prevention*, June 2003.

⁴ National Environmental Justice Advisory Council, *Ensuring Risk Reduction for Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impact*, December 2005.

EPA can also use its regulatory discretion to facilitate implementation of solutions reached through collaborative community and business efforts that go beyond compliance. For example, in some situations facility-wide permits may provide flexibility that makes it easier for business to implement the specific technologies and methods that communities request to reduce risk. Likewise, prompt government action to issue or modify permits as required to achieve collaborative goals would assist both communities and business. When working with communities, it is important that these host communities have sufficient independent technical resources to make independent decision. When a company working together with such a host community is prepared to go beyond compliance to achieve mutual goals, EPA should devote the necessary resources to promptly remove whatever regulatory impediments exist.

EPA should encourage business to voluntarily utilize existing systems and programs (*e.g.*, pollution prevention, Responsible Care, “Good Neighbor” agreements, environmental management systems, Supplemental Environmental Projects, community relations programs, sustainability initiatives) to promote environmental justice goals.

Recommendation #3.5: EPA should take proactive steps in working with state and local governments to address environmental justice issues. These could include:

- Provide leadership in working with state, local, and tribal governments as well as other stakeholders to identify and prioritize issues of environmental justice concern in a specified region;
- Establish Regional Priority Lists of Issues to be resolved and develop concrete mitigation plans within defined goals/outcomes and time frames to address them;
- Leverage resources across governmental agencies, non-government organizations (NGOs), and industries to fund mitigation projects;
- Coordinate with state and local governments to enhance/streamline the public participation process (*e.g.*, a multi-government public forum) to address area-specific issues; and
- Establish a training and education program to help state and local governments develop and implement environmental justice policy and programs, including local land use planning and emergency management.

Many environmental justice issues are not "isolated" to federal jurisdiction and require state, local, and tribal government input and action. It is critical that EPA take proactive steps in working with these governments as well as communities that are affected or seeking federal assistance. The growing complexity and number of environmental justice issues also require the Agency to work with these entities as well as other stakeholders to prioritize a set of actions or identify the communities that will be focused upon within a given time frame.

Once these tasks are identified, it is necessary to allocate adequate resources (fiscal, personnel and time needed) to mitigate the problems. Initiated actions sometimes are not completed because allocated resources cannot be sustained, thus leading to lack of trust and credibility. Hence, it may be necessary to allow Regional Offices to have the flexibility in prioritizing the tasks and allocation of resources. However, the criteria for the selection and prioritization could still be decided by OEJ in consultation with the NEJAC. Because the

Agency's funding is usually limited, EPA should also collaborate with local stakeholders including state and local governments, NGOs, and industries to leverage and maximize other funding opportunities for mitigation projects.

In addition, it has been observed that most of the public do not have: a) an understanding of jurisdictional authorities of the federal, state, local and tribal governments and often view them as being hierarchical with the ability of overriding a decision; b) the interest or the time to attend multiple public forums to voice their concerns or provide comments on policy matters that are being debated at local, state, or federal levels, but may have community level impacts; and c) the confidence or trust that governmental structures and functions are committed to solving environmental justice-related problems faced by communities. Therefore, it will be mutually beneficial to have common public forums with the participation of all three levels of governments as well as elected officials.

These forums can fulfill the need for national forums, currently being accomplished through the NEJAC. In addition, they can identify cooperative and collaborative actions, to be implemented at the appropriate level of the government(s), to address citizen's concerns or resolve problems faced by communities. The Agency should also assist state and local governments to communicate clearly to the communities about the progress, results, and final closure of a mitigation project through these forums and/or other media (*e.g.*, EPA website).

For state and local governments that are new to the environmental justice area, EPA should develop a training and education program to assist these agencies. EPA should also serve as a resource for information exchange (*e.g.*, EPA website) between these agencies and other state and local governments regarding environmental justice policies and programs.

Recommendation #3.6: EPA should better use the academic sector and more systematically and effectively engage academics, in ways other than providing legal representation, through the following ways:

- Specifically and directly respond to comments raised by academics concerning environmental justice that arise in rulemakings and other participatory forums. This includes an explicit discussion of the environmental justice implications of the chosen regulatory course of action (*e.g.*, the environmental justice implications of market-based approaches to pollution control);
- Directly engage in a scholarly discourse with academics on cutting edge issues that arise in the environmental justice context (*e.g.*, the extent that EPA can directly consider race in regulatory decisions);
- Facilitate, through funding or institutional mechanisms (*e.g.*, workshops), the ability of impacted communities to access the technical resources of academic institutions; and
- Form partnerships with academic institutions to better leverage technical and intellectual resources to address social, legal, economic, and scientific issues related to environmental justice. This can be done at a programmatic level (*e.g.*, developing models for community-based research), or at a site-specific policy, empirical, or technical level (studying cumulative impacts of a particular area).

EPA can utilize academia more directly and more effectively in the future than the Agency has done in the past. Academics from a variety of disciplines have played an important role in promoting environmental law reforms for the purpose of promoting environmental justice. Sociologists, political scientists, and economists were primarily responsible for developing methodologies for examination of disparities in environmental protection and providing useful empirical studies that examined and largely supported many of the central claims of the environmental justice movement. Legal academics have examined laws, regulations and guidance documents, both to analyze the scope of legal authority to address environmental justice concerns, and to examine how regulatory programs and processes might tend to systematically generate racial and income inequities. These reviews of existing laws have included the environmental protection laws themselves, as well as the role of constitutional and civil rights law in environmental decision-making. Finally, environmental science and public health academics have contributed to a better understanding of the complex ecological and social dynamics that dramatically affect health and human services.

All of these areas of academic research have significantly enhanced the understanding of government regulators, regulated industry, and even the environmental justice communities themselves of the scope and causes of environmental injustices as well as the potential for competing legal and policy reforms for their redress. To that end, academics have often provided basic research, training, technical and policy analysis to communities with environmental justice concerns. They have helped to educate students, professional organizations and agencies about environmental justice issues, issues that can be particularly complex, fraught with social conflict and controversy, and, for all these reasons, not easily resolved.

What unfortunately also seems clear is that academic contributions, while valuable, have largely been ad hoc and uncoordinated. This is partly because the institutional support for academics to provide these services varies widely among institutions and fields of study. But, just as importantly, it is also because the relationship between EPA policymaking and academic research related to environmental justice issues has been uncertain at best, making it unclear how this research has been used by EPA. More often, the EPA's statements of policy, finalized rules and specific adjudications do not directly respond to the comments of academics or the larger environmental justice community.

In no manner, however, should the need for greater input from academics become an occasion for the diminishment of the voices that must be heard from the environmental justice communities themselves. Environmental justice can occur only with the direct participation of impacted communities. And no academic "expert" can speak for those in the community. There is nonetheless a risk that greater involvement by academics may have just that perverse result. Often, Agency personnel prefer to speak with academics instead of engaging affected communities directly. Both to anticipate and minimize that possibility, EPA should consider training or internal guidance to help personnel understand the appropriate role of academics in addressing environmental justice.

Recommendation #3.7: EPA should establish a set of environmental justice best practices awards for individuals and/or organizations from the following stakeholder groups: (1) community-based organizations; (2) academia; (3) business and industry; (4) state government; (5) local government; and (6) tribal/indigenous groups.

As is evident by earlier discussion, environmental justice issues present some of the greatest challenges to environmental regulation. They are complex, persistent, and will not be resolved easily. Nevertheless, there have been individuals and organizations, from all stakeholder groups, that have remained committed to this process over many years. They have given their time and their best efforts to help fashion policy and frameworks for implementation that make a real difference to impacted communities. In our view, a set of well-crafted awards is an ideal way to identify and highlight some of these efforts, a way to recognize best practices and creative models that might be replicated in similar situations, and a way to promote values associated with environmental justice and provide incentives to continue this difficult work.

For example, an award to a community-based environmental justice organization, network or individual can be a means to recognize the long years of work expended – often with inadequate resources – to raise awareness of problems and craft workable solutions. An award to an industrial actor in a community with environmental justice issues might be a way to recognize a firm that has been willing to go beyond legal requirements and work collaboratively with impacted communities to improve environmental conditions. An award to a governmental agency or actor would be a way to recognize sub-federal and tribal governments that leverage resources and work collaboratively within a difficult framework of fractured legal jurisdiction. An award to institutions or individuals within the academic sector might be a way to recognize the intellectual contributions that frame the issues in ways that advance a constructive discourse. In this vein, we recommend the formation of a multi-stakeholder committee to formulate criteria for these awards, their terms, and in what manner they will be presented.

Recommendation #3.8: EPA should work with other organizations to support listening sessions, symposia, workshops, conferences, and other forums on environmental justice-related subjects. Such venues have the dual purpose of ensuring continued community and stakeholder input to EPA and other government agencies, and just as important, provide an opportunity for different groups to interact with each other. The latter outcome builds greater understanding of the complex issues involved and forms a basis for collaborations that address such issues. EPA and others can conduct these in the context of ongoing programmatic activities of EPA and in collaboration with other governmental and non-governmental organizations. The recent New Mexico Environmental Justice Listening Sessions, which resulted in a New Mexico Environmental Justice Executive Order is a prime example of such an effort. Also, EPA New England (Region 1) recently convened a “Science of Environmental Justice” Workshop.

In the past, the NEJAC has served a critical function by bringing together a wide range of persons, from impacted communities, EPA, state and local governments, academia, and business and industry, to dialogue about environmental justice. Semi-annual or annual NEJAC public meetings were often viewed as, and called, a “NEJAC conference.” They also were expected to address a wide range of site-specific issues. However, the NEJAC, as a federal advisory

committee, was never well suited to serve the functions either of convening broad groups to fully engage around multiple and varied environmental justice issues nor addressing site-specific issues. As more capacity and experience on environmental justice now exists among EPA, federal, state, tribal, and local government, community-based organizations, business and industry, academia, and civic organizations, EPA should explore the idea of supporting, in collaboration with other organizations, a biennial conference on environmental justice. The purpose of such a conference will be to provide a venue for providing information and dialogue regarding current and new initiatives, policy and program developments, new research, new collaborations, lessons learned, and best practices. It also can serve as an excellent venue to conduct training.

3. CONCLUSION

We hope that our consensus advice and recommendations on mechanisms to enhance future stakeholder involvement and engagement to address environmental justice will prove useful to EPA. Our recommendations resulted from an extremely vigorous, thoughtful, candid, and robust process of deliberation among representatives of all of NEJAC's stakeholder groups.

In conclusion, we wish to thank you for EPA's continued concern about environmental justice. We appreciate the opportunity to serve EPA as NEJAC members and hope sincerely that our recommendations will strengthen EPA's ongoing efforts to integrate environmental justice considerations into all of its policies, programs, and activities.

Sincerely,

Richard Moore /s/

Richard Moore
Chair

Attachments:

- A. List of NEJAC Members
- B. EPA Charge to the NEJAC
- C. Administrator Johnson's Memo

cc: NEJAC Members
Granta Nakayama, Assistant Administrator, OECA
Catherine McCabe, Deputy Assistant Administrator, OECA
Barry E. Hill, Director, OEJ
Charles Lee, Associate Director, OEJ and NEJAC Designated Federal Officer
Victoria Robinson, NEJAC Program Manager, OEJ

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APPENDIX A

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL MEMBERS

Richard Moore, Southwest Network for Environmental and Economic Justice (Chair)

Sue Briggum, Waste Management, Inc.

Charles "Chip" Collette, Florida Department of Environmental Protection

Stephen Etsitty, Navajo Nation Environmental Protection Agency

Tom Goldtooth, Indigenous Environmental Network

Eileen Guana, Southwestern Law School

Jodena Henneke, Texas Commission on Environmental Quality

Richard Lazarus, Georgetown University Law Center

Harold Mitchell, ReGenesis, Inc.

Juan Parras, De Madres a Madres, Inc.

Shankar Prasad, California Environmental Protection Agency

Andrew Sawyers, Maryland Department of the Environment

Wilma Subra, Southern Mutual Help Association

Connie Tucker, Southeast Community Research Center

Kenneth Warren, Wolf, Block, Schorr and Solis-Cohen

Benjamin Wilson, Beveridge & Diamond, P.C.

Charles Lee, Designated Federal Officer, U.S. EPA Office of Environmental Justice

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APPENDIX B

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL CHARGE December 29, 2005

In preparation for the upcoming meeting of the National Environmental Justice Advisory Council (NEJAC) on January 5 and 6, 2006, EPA provides this background summary of the current status of its environmental justice efforts and a charge for the NEJAC's upcoming meeting and its work in this annual cycle.

Background

EPA's continuing commitment to ensuring environmental justice was recently affirmed by the Administrator of EPA:

The U.S. Environmental Protection Agency maintains an ongoing commitment to ensure environmental justice for all people, regardless of race, color, national origin, or income. In recognizing that minority and/or low-income communities frequently may be exposed disproportionately to environmental harms and risks, EPA works to protect these and other burdened communities from adverse human health and environmental effects of its programs, consistent with existing environmental and civil rights laws, and their implementing regulations, as well as Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994). Ensuring environmental justice means not only protecting human health and the environment for everyone, but also ensuring that all people are treated fairly and are given the opportunity to participate meaningfully in the development, implementation, and enforcement of environmental laws, regulations, and policies.

Stephen L. Johnson, Administrator
Memorandum, "Reaffirming the U.S. Environmental Protection Agency's Commitment to Environmental Justice" (November 4, 2005)

Since the establishment of EPA's Office of Environmental Justice (OEJ) in 1992 and the NEJAC's original charter in 1993, EPA has made much progress in addressing environmental justice issues/concerns. The Agency's work has included:

- Issuing Agency policy on environmental justice (*Toolkit for Assessing Potential Allegations of Environmental Injustice*);
- Development and deployment of methodologies for conducting environmental justice assessments and priority setting (*Environmental Justice Geographic Assessment Tool*, and the *Environmental Justice Smart Enforcement Assessment Tool*);
- Utilization by Agency staff of environmental laws to address environmental justice issues;

- Providing Environmental Justice Collaborative Problem-Solving Grants and Environmental Justice Small Grants to grassroots organizations;
- Providing training in environmental laws and alternative dispute resolution for community-based organization representatives in each EPA region;
- Development and delivery of classroom environmental justice training and e-training for Agency staff;
- Development of Headquarters and Regional Office Environmental Justice Action Plans;
- Establishment of eight national environmental justice priorities for incorporation into the EPA Strategic Plan for Fiscal Years 2006-2011; and
- Increased partnerships with other Federal agencies, states and Tribes, community-based organizations, business and industry, universities, and other organizations.

In addition to EPA's work, many of EPA's regulatory partners (states and tribes) and other environmental justice stakeholders (community-based organizations, business and industry, academia, non-governmental organizations) have initiated efforts and/or acquired new capacities to address environmental justice issues/concerns. The NEJAC has made important contributions to EPA's environmental justice efforts, including its December 2004 report, *Ensuring Risk Reduction fro Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts*.

EPA is currently focused on efforts to integrate environmental justice considerations into the Agency's policies, programs, and activities. For example, the Environmental Justice Action Plans that were developed by EPA Headquarters and Regional offices provide a mechanism for planning and providing such integration on an ongoing basis. The Agency also seeks to continue to obtain advice from communities with respect to existing and new environmental justice issues as they arise, including advice regarding actions to be taken in crises or decisions on other issues that require resolution on an expedited basis.

The Charge

EPA requests that the NEJAC provide advice and recommendations on what mechanisms will most effectively: (1) ensure continuation of timely, relevant and cogent public policy advice on environmental justice issues/concerns; (2) enable impacted communities to continue to raise concerns to government agencies; (3) support continued partnership-building and problem-solving capacity among EPA's regulatory partners and other environmental justice stakeholders; and (4) promote opportunities for training and sharing lessons learned for all stakeholders involved in the environmental justice dialogue.

Some specific options to address these needs that have been suggested thus far include:

- Continued use of the current NEJAC mechanism;
- Modification of the current NEJAC mechanism to enable the committee or committee members to provide timely advice on issues requiring resolution in a short timeframe;
- Utilizing other existing vehicles for public policy advice on specific environmental justice issues/concerns (e.g., National Advisory Council on Environmental Policy and Technology);

- Promoting more effective use of existing forums for involving impacted communities and other stakeholders (e.g., Regional Environmental Justice Listening Sessions, the National Community Involvement Conference, and the National Brownfields Conference); and
- Examining the possible benefits of convening a National Environmental Justice Training Conference.

EPA requests the NEJAC to provide advice and recommendations on the following specific questions:

- What venues and other mechanisms would be most effective for EPA to continue to obtain public policy advice on specific environmental justice issues/concerns?
- What mechanisms would be most effective for EPA to receive timely advice on specific environmental justice issues/ concerns that require action or decision on short notice?
- What are the best mechanisms to continue to build a collaborative problem-solving capacity to address environmental justice issues/concerns among EPA's regulatory partners and other environmental justice stakeholders?

In sum, how can EPA enhance its stakeholder involvement and engagement mechanisms to achieve environmental justice for all communities?

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APPENDIX C

ADMINISTRATOR'S MEMO REAFFIRMING THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S COMMITMENT TO ENVIRONMENTAL JUSTICE

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