



## 507 Avoiding Environmental Landmines in Real Estate Development

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## Faculty Biographies

### Melissa M. Allain

Melissa M. Allain is currently the vice president of environmental and real property law at AutoNation, Inc. in Fort Lauderdale, FL. Her responsibilities include day-to-day advice to corporate clients and to the district and field operations, on federal, state, and local environmental, health, and safety laws and regulations; and on transactional matters such as acquisitions, dispositions, relocations, and expansions. In addition, she provides legal oversight of AutoNation's real estate portfolio and the company's business ethics and corporate compliance program.

Prior to joining AutoNation, Ms. Allain was senior assistant counsel at Union Oil Company of California (dba Unocal), where she provided legal support for the Carbon and Minerals Division. Previously, Ms. Allain engaged in private practice, and was a principal at Parker, Milliken, Clark, O'Hara & Samuelian in Los Angeles. She advised major corporations concerning environmental regulatory compliance, and represented them in enforcement proceeding and litigation. Ms. Allain was also engaged in general business litigation and transactional matters. Upon graduation from law school, she served as a law clerk to the Honorable David S. Nelson in the U.S. District Court in Boston.

Ms. Allain is the coauthor of "An Overview of Regulatory Compliance and Legal Liability Issues," a chapter in the 2002 edition of *Safety, Health, and Asset Protection-Management Essentials*. She was a course director and instructor at University of California Berkeley Center for occupational and environmental health. She is a member of the State Bar of California, for which she served on the Resolutions Committee, the Task Force on Environmental Discrimination, and the Conference of Delegates.

Ms. Allain received a BS from Loyola Marymount University and a JD from Harvard Law School.

### Sue M. Briggum

Sue M. Briggum has been director of government and environmental affairs in the Washington, DC office of Waste Management for 15 years. She is responsible for issues arising in federal legislation, regulation, and policy initiatives affecting the Waste Management companies, focusing most recently on toxic site cleanup, urban redevelopment, environmental justice, and regulatory enforcement issues. In prior years, she has worked on issues involving federal environmental contracting and international trade.

Before joining Waste Management, Ms. Briggum was an environmental regulatory attorney and Superfund litigator with the environmental department of Piper & Marbury and its predecessor, Wald, Harkrader and Ross.

She is coauthor of the *Hazardous Waste Regulation Handbook: A Practical Guide to RCRA and Superfund*. She cochairs the National Environmental Policy Commission. She has served on the Environmental Protection Agency's NACEPT Superfund Advisory Committee, National Environmental Justice Advisory Committee, Title VI Advisory Committee, and Compliance Assistance Advisory Committee. She chairs the Superfund Action Alliance and serves on the steering

committee of the Business Network for Environmental Justice. She was staff to Waste Management's CEO on the President's Export Council, the National Commission on Superfund, and the Enterprise for the Environment. She is a member of the New York State Department of Environmental Conservation's Environmental Justice Advisory Group.

Ms. Briggum received her BA from the University of Pittsburgh; an MA and PhD in English Literature from the University of Wisconsin; and a JD from Harvard University.

### **Andrew D. Sawyers**

Dr. Andrew D. Sawyers has been working and teaching in the environmental field for more than 10 years. He currently coordinates Environmental Equity Research and Community Development Planning at the Maryland Department of the Environment (MDE). Dr. Sawyers is also an adjunct professor at Morgan State University where he currently teaches geography.

Prior to MDE, Dr. Sawyers was the director for environmental and transportation projects at the Baltimore Urban League for more than five years.

Dr. Sawyers received a bachelor's degree from the University of Technology in Jamaica where he worked as an urban planner with the Jamaican Government and lectured at the University of Technology, Jamaica. He received a master's degree in City and Regional Planning from Morgan State University. He has a PhD in Environmental Policy and Human Geography from Johns Hopkins University.

### **Nicholas Targ**

Nicholas Targ is counsel to the Office of Environmental Justice, United States Environmental Protection Agency. He is the principal legal/policy adviser to the Office, addressing a wide variety of environmental, civil rights, permitting, and regulatory issues.

Mr. Targ has written and lectured extensively on environmental and natural resources law and policy. He is chair of the ABA's Environmental Justice Committee, Individual Rights and Responsibilities Section, and past director of the Bar Association of the District of Columbia's Environmental Law Section.

Mr. Targ received his BA from the University of California, Santa Cruz. He also attended the Massachusetts Institute of Technology, Department of Urban Studies and Planning, and earned his JD from Boston College Law School.

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*Environmental Justice:  
Avoiding  
Environmental Landmines  
In  
Real Estate Development*

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## Environmental Justice<sup>1</sup>

Public concern began growing in the 1980s over the apparent concentration in predominantly low-income or minority communities of large-scale industrial facilities such as landfills, waste incinerators, sewage treatment plants, and bulk chemical factories.<sup>2</sup> For example, from 1986 to 1996, permits were issued to construct seven landfills in Delaware County, Pennsylvania, five of which were clustered in a single low-income, predominantly African-American community along the Delaware River.<sup>3</sup> Residents and others questioned whether decisions to construct such facilities in their communities were motivated by racial discrimination, giving rise to the concept of environmental racism.

The movement, also known as environmental justice or equity, gained significant recognition in 1994 with the execution of an Executive Order by former President Clinton. The order triggered the mandatory review by every federal agency of the effects of its policies, programs and activities, including proposed federal projects, on low-income or minority communities.<sup>4</sup>

In response, USEPA,<sup>5</sup> agencies in the U.S. Department of Transportation,<sup>6</sup> and the Council on Environmental Quality<sup>7</sup> have issued guidelines to address environmental justice concerns. USEPA defines "environmental justice" as the "fair treatment for people of all races, cultures, and incomes, regarding the development of environmental laws, regulations, and policies."<sup>8</sup> USEPA created the Office of Environmental Justice and a national council to advise the agency on environmental justice. The agency's Civil Rights Office also assists in evaluating the potential effects of a federally funded project, and its formal policy extends to state permits.<sup>9</sup> From New Jersey and Pennsylvania to California and Tennessee, task forces charged with policy development at the state level have been established; whose members include residents of the affected communities.<sup>10</sup>

Skeptics have questioned whether disproportionate concentrations or increased health problems have occurred, and whether development in low-income or minority communities was based improperly on racial discrimination.<sup>11</sup> Regardless of the debate, businesses would be well served to engage the local community early in the proposed development of an environmentally sensitive project, and to make reasonable accommodations.<sup>12</sup> Failure to do so could cause costly delays or worse, completely derail a project. Consider, for example, the ruling in 2000 of a federal appeals court that effectively suspended a 25-year, \$19 billion transportation plan for Atlanta, which USEPA had approved.<sup>13</sup> Many other development projects have been subjected to legal challenges under the civil rights laws.<sup>14</sup> While these challenges may not always succeed on the merits, settlement frequently has required the developer to modify the project and alleviate the impacts to the local community.

One unintended consequence of the environmental justice movement may be to stifle or hamper redevelopment of blighted inner cities and other urban areas. Longstanding federal, state and local government efforts to redevelop these areas, commonly known as brownfields,<sup>15</sup> may need modifications to take into account the potential for disproportionate concentrations of environmentally sensitive industrial facilities, as well as adverse health effects on surrounding minority and low-income communities. Another consequence has been increased governmental review of the compliance of operations of companies located in minority and low-income communities. For example, USEPA Region IX recently cited 36 of the 43 companies located in minority and low-income communities that were inspected pursuant to the Los Angeles Environmental Justice Initiative.<sup>16</sup>

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- <sup>1</sup> Melissa M. Allain and J. Michelle Hickey, An Overview of Regulatory Compliance and Legal Liability Issues, *Safety, Health, and Asset Protection—Management Essentials*, 509-10 (Richard W. Lack ed., 2002) [Reprinted with permission of CRC Press LLC].
  - <sup>2</sup> See, e.g., U.S. General Accounting Office, Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities, GAO/RCED-83-168 (1983); Dominique R. Shelton, *The Prevalent Exposure of Low Income and Minority Communities to Hazardous Materials*, 32 BEVERLY HILLS B. ASSOC. J. 1 (1997).
  - <sup>3</sup> See, e.g., *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925 (3<sup>rd</sup> Cir. 1997), cert. granted, 118 S. Ct. 2296 (1998), vacated, U.S. Lexis 4604 (1999).
  - <sup>4</sup> Executive Order No. 12898 directs federal agencies to collect, analyze, and assess data on environmental health risks in disadvantaged communities. 59 Fed. Reg. 7629 (Feb. 11, 1994). The order has had a substantial impact on the USEPA's regulatory programs for clean water, clean air, community right-to-know, and hazardous wastes control — as well as the exercise of its prosecutorial discretion. The order also has resulted in lawsuits challenging expansion of landfills and incinerator projects. See, e.g., *Chester Residents Concerned for Quality Living v. Seif*, 132 F.3d 925 (3<sup>rd</sup> Cir. 1997), cert. granted, 118 S. Ct. 2296 (1998), vacated, U.S. Lexis 4604 (1998).
  - <sup>5</sup> See, e.g., USEPA Office of Solid Waste and Emergency Response, Environmental Justice Action Agenda, May 1995; Elliott P. Laws, "Integration of Environmental Justice into OSWER Policy," memorandum dated Sept. 1994. Both documents are available at <http://www.epa.gov/swerosps/ej>.
  - <sup>6</sup> U.S. Dept. of Transportation Environmental Justice Strategy, 60 Fed. Reg. 33896, June 21, 1995; U.S. Dept. of Transportation Order on Environmental Justice to Address Environmental Justice in Minority Populations and Low-Income Populations, 62 Fed. Reg. 18377 (April 15, 1997). Both documents are available at <http://www.epa.gov/swerosps/ej>. See also U.S. Dept. of Transportation, Federal Highway Administration, FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (DOT Order 6640.23) (Dec. 2, 1998).
  - <sup>7</sup> See Council on Environmental Quality, Environmental Justice Guidance Under the National Environmental Policy Act (Dec. 1997).
  - <sup>8</sup> Office of Fed. Activities, U.S. Evtl. Protection Agency, Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses 1.1 (Apr. 1998).
  - <sup>9</sup> USEPA Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits, Feb. 1998.
  - <sup>10</sup> See, e.g., Hillary Gross, et al., ENVIRONMENTAL JUSTICE: A REVIEW OF STATE RESPONSES 2 (2000) (unpublished, U. Cal. Hastings College of Law) (on file with author) *Tennessee Receives an Environmental Justice Grant*, 10 TENNESSEE ENVTL. L. LETTER (Nov. 1998), available at <http://www.lexis.com>.
  - <sup>11</sup> See, e.g., Christopher J. Foreman, Jr., THE PROMISE AND PERIL OF ENVIRONMENTAL JUSTICE, Brookings Institute (1998); Jimmy White, *Environmental Justice: Is Disparate Impact Enough?*, 50 MERCER L. REV. 1155, 1159 n.16 (1999) (explaining that studies to determine whether the disproportionate distribution of waste treatment facilities in minority communities is a result of race-based siting decisions or "a result of minorities 'coming to' the hazard due to lower property values" have been less than conclusive) (citing Richard J. Lazarus, *Pursuing "Environmental Justice: The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787, 802 n.56) (critiquing 1987 United Church of Christ Commission Study on the distribution of waste facilities because it relies upon "present demographic data rather than the demographic data pertaining to the time that the initial siting decision may have been made").
  - <sup>12</sup> E.g., *Road Design and Design and Construction: Where Philosophy Meets the Road; Environmental Justice*, 2 PUBLIC WORKS (Feb. 1, 2001) (describing a successful highway

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- project in which public comment was solicited and key suggestions followed), available at <http://www.lexis.com>.
- <sup>13</sup> The U.S. Court of Appeals for the 11<sup>th</sup> Circuit issued a stay on July 18, 2000 prohibiting the U.S. Department of Transportation (“DOT”) from determining that the Atlanta metropolitan area was in conformity with Clean Air Act standards and approving Atlanta’s transportation improvement program and long-range transportation plan using a projected vehicle emissions budget. The DOT responded by making a conformity determination based on 1996 vehicle emissions figures.
- <sup>14</sup> *E.g., Rozar v. Mullis*, No. 95-8227 (11<sup>th</sup> Cir. June 17, 1996)(environmental justice claim dismissed because no discriminatory intent shown); *NAACP, et al. v. Engler*, (E.D. Mich. 1995).
- <sup>15</sup> U.S. Environmental Protection Agency, Brownfields Tax Incentive Economic Redevelopment Initiative, included in Taxpayer Relief Act, P.L. 1005-34, title IX, subtitle E (Aug. 5, 1997). *See also* <http://www.epa.gov/swerosps/bf/>. The EPA defines “brownfields” as “abandoned, idled, or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.” Office of Solid Waste and Emergency Response, U.S. Environmental Protection Agency, Brownfields Glossary of Terms, available at <http://www.epa.gov/swerosps/bf/glossary.htm> (last modified Sept. 30, 1997). *See also* U.S. ENVIRONMENTAL PROTECTION AGENCY, LIABILITY AND OTHER GUIDANCE FACT SHEET (April 1997) (defining a “brownfield” as a site, or portion thereof, that has actual or perceived contamination and an active potential for redevelopment or reuse”).
- <sup>16</sup> *See EPA Environmental Justice Program Results in Large Fines for 10 Los Angeles Facilities*, California Environmental Insider, April 16, 2001, Vol. 14, No. 21, at pg. 8, col. 1.

## STATE AND LOCAL GOVERNMENT ENVIRONMENTAL JUSTICE LAW &amp; PROGRAMS IN FLORIDA

<u>Subject (Including Permitting Media or Field)</u>	<u>Web Address</u>	<u>Statutory Authority</u>	<u>Administrative Regulations</u>	<u>EJ-Related Statutory Authority or Administrative Regulations (Y or N)</u>	<u>Other Environmental Justice Programs</u>	<u>Citizen Suit Provisions</u>	<u>Other Notes</u>
<b>STATE PROGRAMS</b>							
<b>STATE OF FLORIDA DEPARTMENTS &amp; AGENCIES</b>							
Air Permitting	<a href="http://www.dep.state.fl.us/air/">www.dep.state.fl.us/air/</a>	F.S. § 403.061, § 403.087, § 403.0872, § 403.0876	F.A.C. § 62-213	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
Brownfields Rehabilitation & Redevelopment	<a href="http://www.dep.state.fl.us/waste/categories/brownfields/default.htm">www.dep.state.fl.us/waste/categories/brownfields/default.htm</a>	F.S. §§ 376.77-.875. See F.S. § 376.80(4) (local advisory committees that review brownfield rehabilitation site agreements, site assessment reports, and other technical documents, and review and comment upon draft brownfield redevelopment agreements, must have expressed intention, <i>inter alia</i> , to receive comments regarding rehabilitation and redevelopment of brownfield area, future land use, local employment opportunities, community safety, and environmental justice; local governments or persons responsible for rehabilitation and redevelopment of brownfield areas must establish or use existing advisory committee).	F.A.C. § 62-785	Y	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	Brownfields designations exist in 49 areas in Florida, including Alachua County, Broward County, Miami-Dade County, Duval County, Hillsborough County, Leon County, Palm Beach County, and Pinellas County.
Florida Department of Health Community Health Pilot Projects	<a href="http://www.doh.state.fl.us">www.doh.state.fl.us</a>	F.S. § 381.1015, § 381.102, § 381.103	N/A	Y	N/A	N/A	Community health pilot projects in several Florida counties (i) study the relationship of environmental hazards to the health of minority populations and (ii) promote disease prevention and health promotion for low-income persons.
Comprehensive Development Plans	<a href="http://www.dca.state.fl.us/fdcp/DCP/programs/localcomp.htm">www.dca.state.fl.us/fdcp/DCP/programs/localcomp.htm</a>	F.S. §163.3167, §163.3177	N/A	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute	F.S. §120.56	

					resolution of environmental justice concerns.		
Drinking Water Systems	<a href="http://www.dep.state.fl.us/water/drinkingwater/index.htm">www.dep.state.fl.us/water/drinkingwater/index.htm</a>	F.S. § 403.861, § 403.867, § 403.872, § 403.875	F.A.C. § 62-524	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
Environmental Resource Permitting/Surface Water Management Permitting	<a href="http://www.dep.state.fl.us/water/surfacewater/index.htm">www.dep.state.fl.us/water/surfacewater/index.htm</a>	F.S. § 373.413, § 373.414, § 373.4141, § 373.4142, § 373.453, § 373.455, § 373.456	F.A.C. § 62-301	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
National Pollutant Discharge Elimination System Permitting	<a href="http://www.dep.state.fl.us/water/wastewater/index.htm">www.dep.state.fl.us/water/wastewater/index.htm</a>	F.S. § 403.0885	F.A.C. § 62-620	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
Solid Waste Management Facility Permitting	<a href="http://www.dep.state.fl.us/waste/categories/solid_waste/default.htm">www.dep.state.fl.us/waste/categories/solid_waste/default.htm</a>	F.S. § 403.705, § 403.707	F.A.C. § 62-701	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
Wastewater Facility Permitting	<a href="http://www.dep.state.fl.us/water/wastewater/index.htm">www.dep.state.fl.us/water/wastewater/index.htm</a>	F.S. § 403.087, § 403.0876, § 403.0867, § 403.869, § 403.850, § 403.854, § 403.872, § 403.875	F.A.C. § 62-620	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
Wetlands Permitting	<a href="http://www.dep.state.fl.us/water/wetlands/index.htm">www.dep.state.fl.us/water/wetlands/index.htm</a>	F.S. § 373.421	To be provided	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
Hazardous Waste Disposal	<a href="http://www.dep.state.fl.us/waste/categories/hazardous/default.htm">www.dep.state.fl.us/waste/categories/hazardous/default.htm</a>	F.S. § 403.721, § 403.722, § 403.7222, § 403.723	F.A.C. § 62-730, Part 4	N	Florida Department of Environmental Protection, Office of the Ombudsman, formerly facilitated informal dispute resolution of environmental justice concerns.	F.S. §120.56	
<b>ENVIRONMENTAL EQUITY AND JUSTICE COMMISSION (EEJC)</b>							
Environmental Equity and Justice	<a href="http://dhis.dos.state.fl.us/fgiis/agencies/envequity">http://dhis.dos.state.fl.us/fgiis/agencies/envequity</a>	F.S. § 760.854	N/A	Y	N/A	N/A	The EEJC submitted a report of its findings and recommendations to

Commission	<a href="#">html</a>					<p>the Florida Legislature in 1997, recommending that the State of Florida, among other things: (1) establish a Center for Environmental Equity and Justice; (2) develop public notice criteria for DEP enforcement actions regarding actual or likely off-site impacts; (3) develop outreach programs; (4) require local governments to consider environmental justice issues in local planning and zoning decisions; (5) utilize DEP fines to address environmental problems directly; and (6) integrate environmental justice into the functional plan of every state agency.</p> <p>(For complete recommendations, please see pages 122-130 of the EEJC report.)</p>
<b><u>VARIOUS LOCAL PROGRAMS</u></b>						
<b><u>FLORIDA COUNTIES</u></b>						
Alachua County	<a href="http://environment.alachua-county.org/">http://environment.alachua-county.org/</a>	N/A	N/A	N	N/A	Teleconference with Gus Olmos, Environmental Engineer, Alachua County Department of Environmental Protection (352-264-6806). He is not aware of any programs regarding environmental justice.
Broward County	<a href="http://www.broward.org/dpep.htm">www.broward.org/dpep.htm</a>	Broward County Code § 27-171 provides that Chapter 27, Article IV, in which the Broward County Board of County Commissioners adopts the National Ambient Air Quality Standards, establishes emissions standards, and requires permits for air pollution sources, provides that Broward County's air pollution ordinance	N/A	N	N/A	Teleconference with Martin Weigand, Environmental Permitting Supervisor, Division of Environmental Protection Land Use and Permitting (954-519-1251). He is not aware of any programs regarding environmental justice.

		is intended to promote pollution prevention and environmental justice.					
Dade County	<a href="http://www.co.miami-dade.fl.us/derm">www.co.miami-dade.fl.us/derm</a>	N/A	N/A	N	N/A		Teleconference with Nicole Hefty, Program Manager, Department of Environmental Resource Management, Division of Pollution Prevention (305-372-6825). She said that there are no Miami-Dade County environmental justice programs.
Hillsborough County	<a href="http://www.hillsboroughcountyy.org/pgm/home.html">www.hillsboroughcountyy.org/pgm/home.html</a>	N/A	N/A	N	N/A		Teleconference with Daniel Blood, Director, Administrative Services Division (813-276-8465). He is not aware of any environmental justice programs in Hillsborough County.
Leon County	<a href="http://www.leonpermits.org/">www.leonpermits.org/</a>	N/A	N/A	N	N/A		Teleconference with Grady Underwood, Environmental Resource Specialist, Department of Growth and Environmental Development (850-488-9300). He is not aware of any environmental justice programs in Leon County.
Orange County	<a href="http://www.orangecountyfl.net/Dept/CEsrvc/epd/default.htm?DL=4&amp;FL=7">www.orangecountyfl.net/Dept/CEsrvc/epd/default.htm?DL=4&amp;FL=7</a>	N/A	N/A	N	N/A		Teleconference with Jim McDonald, P.E. (407-836-1411), of the Orange County solid waste landfill permitting department. He stated that he is not aware of any environmental justice programs in the county. Teleconference with Dennis Weatherford, Interim-Assistant Manager for Orange County Environmental Protection Division (407-836-1400). He stated that he is not aware of any environmental justice programs in the county.
Palm Beach County	<a href="http://www.co.palm-beach.fl.us/erm/home.htm">http://www.co.palm-beach.fl.us/erm/home.htm</a>	N/A	N/A	N	The Metropolitan Planning Organization has created environmental justice maps which it takes into account in its long-range		Teleconference with William Whiteford, Palm Beach County Zoning Director (561-233-5034). He is not aware of any

					transportation planning efforts. Teleconference with Bob Deacy, Program Supervisor, Palm Beach County Department of Environmental Resources Management (561-233-2400). He stated that, while there is no formal process for considering environmental justice, considerations of disproportionate impact may play a small role in site selection for environmental restoration programs.		environmental justice programs in the county.
<b><u>FLORIDA MUNICIPALITIES</u></b>							
City of Clearwater	<a href="http://www.clearwater-fl.com/City_Department/econdev/brownfields.html">www.clearwater-fl.com/City_Department/econdev/brownfields.html</a>	City of Clearwater Ordinance, Chapter 2, Article III, Division 11, § 2.242	N/A	Y	The City of Clearwater's Brownfields Advisory Board considers (i) public comments regarding the rehabilitation and redevelopment of brownfield areas, future land use, local employment opportunities, community safety, and environmental justice and (ii) reviews and provides recommendations to the City Commission regarding proposed site rehabilitation agreements for brownfield areas. Teleconference with Diane Hufford, Economic Development Coordinator, Clearwater Department of Economic Development (727-562-4054), who stated that no environmental justice programs other than the brownfields project exist, but that outreach programs were being developed.		
City of Ft. Lauderdale	<a href="http://ci.ftlaud.fl.us/EconomicDevelopment/index.htm">http://ci.ftlaud.fl.us/EconomicDevelopment/index.htm</a>	N/A	N/A	N			Teleconference with Chris Barton, Senior Planner, Ft. Lauderdale Department of Planning and Zoning (954-828-5849). He stated that environmental justice is not specifically taken into account in zoning decisions. He stated that, if a proposal meets all of the zoning

							regulations, it would be approved regardless of whether it, in conjunction with other existing properties, would disproportionately affect a minority neighborhood.
City of Jacksonville	<a href="http://www.coj.net/pub/resd/default.htm">www.coj.net/pub/resd/default.htm</a>	Jacksonville Ordinances Chapter 380 addresses solid waste disposal facility permitting. _ 380.106 provides that all property owners located 300 feet from the proposed site must be contacted regarding the proposal.	N/A	N	N/A		Teleconference with Greg Radlinski, Chief of Environmental Law Division (904-630-1723), who stated that he is not aware of any environmental justice programs in the county.
City of Miami	<a href="http://www.ci.miami.fl.us/Community_Development/comm_devhome.htm">www.ci.miami.fl.us/Community_Development/comm_devhome.htm</a>	Miami Ordinance Chapter 2, Article XI, Division 9, _ 2-1121 establishes a Brownfields Advisory Board ("BAB"). _ 2-1122 provides that the BAB shall consider environmental justice in the planning, implementation, and annual assessment of rehabilitation and economic development activities within brownfields areas regarding future land use, local employment opportunities, community safety, and environmental justice.	N/A	Y			Teleconference with Bob Schwartzreich, Economic Development Department (305-416-1400). He stated that environmental justice is taken into account on an informal basis in brownfields redevelopment efforts. Teleconference with Sarah Eaton, Preservation Officer, City of Miami Planning Department (305-416-1400). She is not aware of any environmental justice programs regarding planning or permitting in the city.
City of Orlando	<a href="http://www.cityoforlando.net/Executive/eco_dev/index3.htm">www.cityoforlando.net/Executive/eco_dev/index3.htm</a>	N/A	N/A	N	Teleconference with D. Scott Baker, AICP, Economic Development Chief Planner, City of Orlando Economic Development Department (407-246-3145). He stated that there are no environmental justice programs currently, though some are being developed.		
City of Tampa	<a href="http://www.tampagov.net/dept_Public_Works/">www.tampagov.net/dept_Public_Works/</a>	N/A	N/A	N	Teleconference with Dan Fahey, P.E. of the Tampa Solid Waste Department (813-348-1094). Mr. Fahey is responsible for administering the brownfields program for the City of Tampa. He stated that		Teleconference with Gloria Moreda, Urban Planner, City of Tampa Land Development and Zoning (813-274-8274). She is not aware of any environmental justice programs related to planning or

					environmental justice is taken into account in both the brownfields designation process and through brownfields committees that are designed to obtain neighborhood involvement.		zoning.
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**REPORT TO THE  
CONGRESSIONAL BLACK CAUCUS  
& CONGRESSIONAL BLACK CAUCUS  
FOUNDATION ENVIRONMENTAL  
JUSTICE BRAINTRUST**

*September 28, 2001 ~ Washington, DC*

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**National  
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We acknowledge the commitment and effort of NEPC members. Long hours of effort and deliberation went into this publication, which we believe captures the spirit and content of the NEPC's five Listening Sessions.

Special thanks go to the hundreds of citizen-stakeholders whose comments and insights during and after the Listening Sessions provided a solid foundation for this publication.

Coordinating the many logistical and public involvement elements of Listening Sessions in five cities was a difficult task. Millie Freeman and Kaye Wood of the National Association for Equal Opportunity in Higher Education (NAFEO) and Christina Constable and Ragan DuBose Lusk of the Medical University of South Carolina completed it thoroughly and well.

At each of the five Listening Session sites, individuals and institutions worked with the NEPC to provide meeting rooms and facilities. We thank Dr. Glenda Glover (host) and Jean Walker of Jackson State University; Dr. Steven Diner (host) and Erica Grant of the State University of New Jersey, Rutgers-Newark; Professor Alan Ramo (host) and Lorri Ungaretti of Golden Gate University; Judy Walters (host) and Kennitta Roberts of Laney College; and Dr. Debra Blue (host), Angela Underwood and Ann Smith of University of Illinois at Chicago.

We acknowledge the involvement and insight of Carol Leftwich (Environmental Council of the States), Quentin Pair (US Department of Justice), Jewell Harper (US EPA, Region 4), Melinda Downing (US Department of Energy), Lindy Birch (Congressman Clyburn's office), Eddie Wright (US EPA, Region 4), Rosalind Brown (US EPA, Region 4), Caron Falconer (US EPA, Region 4) and Eileen Gauna (Southwestern University Law School).

Finally, we thank the staff of the Medical University of South Carolina Environmental Biosciences Program.

*~ The Editors*

## Preface

With delivery of this report to the Congressional Black Caucus during its September, 2001, meeting in Washington, DC, the National Environmental Policy Commission (NEPC) ended a year of programmatic activities designed to hear, consider and report on our nation's collective will regarding environmental policy.

The NEPC convened in response to recommendations by a Congressional Black Caucus Foundation Environmental Justice Braintrust, under the leadership of US Representative James E. Clyburn. Congressman Clyburn and many of his colleagues support the concept of a comprehensive national environmental policy. Such policy, and its social, economic, legislative and regulatory implications, would:

- Protect human health and safety;
- Promote a clean and safe environment;
- Assure environmental justice; and
- Encourage environmentally sound economic development.

Given this inclusive and comprehensive approach to environmental policy, it is not surprising that the Commission included representatives of business and industry, environmental justice communities, health care organizations, academic institutions, and tribal, state and local governments.

Commission members included: Clarence E. Anthony, Mayor of South Bay, FL; Carolyn Bell, Chief Executive Officer of Community Health Resources, Inc., in Memphis, TN; Sue Briggum, Director of Government Affairs for Waste Management, Inc., in Washington, DC; Wilma Delaney, Vice President of Federal Government Affairs for Dow Chemical Company in Washington, DC; Robert L. Harris, Vice President of Environmental Affairs for the Pacific Gas & Electric Company in San Francisco, CA; Joselito Laudencia, Executive Director of the Asian Pacific Environmental Network in Oakland, CA; Mildred McClain, Executive Director of Citizens for Environmental Justice in Savannah, GA; Armand Minthorn, Board of Trustees Member of the Confederated Tribes of the Umatilla Indian Reservation in Pendleton, OR; Lawrence C. Mohr, Jr., MD, Executive Director of the Medical University of South Carolina Environmental Biosciences Program in Charleston, SC; Richard Moore, Executive Director of the Southwest Network for Environmental and Economic Justice in Albuquerque, NM; Robert E. Roberts, Executive Director of the Environmental Council of the States in Washington, DC; and Patricia Wood, Manager of Regulatory Affairs for the Georgia-Pacific Corporation in Washington, DC. (Commission member biographical sketches appear in Appendix 3.2.)

The Commission's purpose was to identify environmental issues and articulate a range of alternatives for consideration by policy makers. To achieve these goals, Commission members participated in Listening Sessions in five cities (Jackson, MS; Newark, NJ; San Francisco, CA; Oakland, CA; and Chicago, IL), compiled and considered what they had heard, and authored this report. (Listening Session agendas appear in Appendix 3.8.)

The reporting process was complex and time-consuming. Briggum, McClain and Moore served as Commission Chairpersons. The Commission appointed a writing committee (Briggum, McClain, Roberts, Wood) and considered approaches and formats for this report. Commission members

determined that a “consensus” approach was the best way to report findings to the Congressional Black Caucus. For this reason, articles appearing in Section II of this report are consensus reports, rather than the attributed work of individual authors or writing teams.

Recommendations appearing in this report fall under one of three headings: NEPC consensus recommendations, based on themes running throughout the Listening Sessions; specific Listening Session “commenter” recommendations, supported by many Commission members; and a complete list of recommendations by commenters. (Recommendations appear throughout this report. For a complete listing of recommendations, see Appendices 3.5, 3.6 and 3.7.) Every recommendation in this report has some basis in Listening Session testimony – whether directly suggested by commenters, or derived from subject areas discussed by commenters.

This report contains recommendations relating to the following areas of concern:

- Incorporating health and science expertise into policy making, and improving community access to (and understanding of) health care information;
- Insuring effective enforcement of environmental laws and regulations;
- Integrating environmental protection and economic development;
- Integrating environmental justice considerations into policy decisions;
- Assuring meaningful public participation; and
- Improving federal facilities.

Subcommittees of Commission members, with leadership from an appropriately expert Commission member, authored reports on these areas of concern. The Commission’s writing committee reviewed the reports and combined them into a consensus vision. The full Commission met, July 27, 2001, in Washington, DC, to give final approval to the report before forwarding it to the Medical University of South Carolina for review and publication.

In reviewing these recommendations, it is clear that Commission members re-affirm the basic premise that concepts of human health, environmental protection, environmental justice and economic development are the foundation of the kind of comprehensive national environmental policy envisioned by Congressman Clyburn and his colleagues.

*~ The Editors*

## Statement of Purpose

The purpose of the National Environmental Policy Commission (NEPC) during its first year of activities was to identify critical issues and provide objective analysis and proposals to policy makers engaged in formulating a comprehensive national environmental policy.

This effort dates back to 1996-97, when the Congressional Black Caucus first identified environmental justice as an issue for consideration by one of its future Braintrusts. Since that time, environmental justice has evolved into one of the top three issues on the Congressional Black Caucus agenda, and is beginning to appear on the radar screen of the US Congress.

A growing number of my Congressional colleagues and I believe that environmental justice is central to a comprehensive national environmental policy. Forward thinking environmental policy will recognize and foster the unique relationship between environmental protection, environmental justice, human health and economic development. Ultimately, such policy will promote vibrant and sustainable communities, where people may live, raise families and prosper without fear for their health and well-being.

Achieving this goal will require broad-based input and support. This is consistent with the growing momentum in Congress to act in a cooperative, bipartisan manner where our national interest is concerned.

To the extent that this book contains numerous recommendations for consideration by our nation's policy makers, the first NEPC has fulfilled its mandate. I sincerely thank NEPC members, and urge our nation's policy makers to do their part by giving these recommendations due consideration.



*~ The Honorable James E. Clyburn  
United States House of Representatives  
District 6, South Carolina*

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# SECTION I

## *Executive Summary and Background*

## 1.1 Executive Summary

The introductory section of this report, containing a Preface and Statement of Purpose, successfully captures the mission, process and timeline of the National Environmental Policy Commission (NEPC). Our mandate was to hear and receive diverse public testimony, then use our collective experience in the environmental arena to synthesize that testimony into recommendations for consideration by the Congressional Black Caucus (CBC) and other policy makers. We fulfilled our mandate by participating in Listening Sessions in five cities across the United States, considering a range of testimony and suggestions, developing policy recommendations, authoring this report and presenting it to the Congressional Black Caucus.

None of this would have been possible without testimony from dozens of speakers at each Listening Session site. As a group, the speakers were well prepared, informative and passionate about the well-being of their communities and constituencies. Many traveled great distances, taking time out of busy schedules, to appear before the Commission.

Several common threads ran throughout Listening Session testimony. In many instances:

- The speaker represented a grassroots activity, usually centered on a community of color or community of concern,\* and
- The community was the location for a number of commercial, municipal or other facilities and activities perceived as potentially harmful and “undesirable,” and
- The community believed that it had been subject to a disproportionate incidence of cancer, birth defects, asthma – particularly childhood asthma – or other medical condition, and
- The community believed it lacked the access and wherewithal to participate effectively in environmental decision-making processes affecting its residents.

In reviewing these common threads, it's apparent that many of these concerns would be addressed by the kind of comprehensive national environmental policy envisioned by US Congressman James E. Clyburn<sup>1</sup> and many of his congressional colleagues. Such policy would assure human health and safety, environmental protection, environmental justice and economic development – all of which are integral components in addressing the complex issues described by those offering testimony before the Commission.

US EPA Administrator Christine Todd Whitman reaffirmed that Agency's commitment to environmental justice in a Memorandum dated August 9, 2001. (See Appendix 3.1)

Listening Session presentations and the Commission's subsequent deliberations suggested two general approaches for policy makers to consider. The first is to alter the activity of the agencies

\* Throughout this report, we use the term “community of concern” to encompass communities that are also described in various other ways, such as “environmental justice communities,” “communities of color,” or “low-income communities.” We mean by this term to include communities with substantial numbers of racial minorities or ethnic members, such as Asian-Pacific, Latino, Indigenous American, Alaskan Native or African American, or people of low-income or limited economic resources. Such communities often experience higher environmental risks and burdens, due in part to limited political influence, as well as limited resources to participate in environmental decision making.

and players whose action (or inaction) impacts the affected community, e.g., require community consultation by state permitting agencies, or create additional oversight of state or local officials by creating new levels or functions of government. The second is to extend help or empowerment to the impacted community to help citizens better argue their case; e.g., expanded technical assistance or funding for administrative or legal support of groups within these communities.

The Commission offers recommendations following each of these paths.

This report and its Appendices include three types of recommendations. The first are *themes and consensus recommendations of the full Commission*. These recommendations draw from the themes that recurred throughout the five Listening Sessions and the Commission's subsequent deliberation. We encourage Congress to address these themes and recommendations in any and all possible ways. These recommendations appear in this Executive Summary and in Appendix 3.5 of this report.

The second set of recommendations contains *specific recommendations offered in the Listening Sessions*. Many (but not all) members of the Commission support these recommendations, which appear at the ends of Sections 2.1 through 2.6 and in Appendix 3.6.

The third set of recommendations captures *all comments and suggestions offered during the Listening Sessions*. This list appears in Appendix 3.7.

## Themes and Consensus Recommendations

These themes recurred throughout the Listening Sessions. We urge Congress to address them in any and all possible ways. These issues may present themselves to Congress and other policy makers in a number of ways – as appropriations issues, federal agency oversight issues, legislative issues, or in some other forum. The Commission offers these themes as ways to promote the four elements of a comprehensive national environmental policy; i.e., human health and safety, environmental protection, environmental justice and economic development.

- **Federal, state and local government officials must work to restore trust in government on the part of communities of concern.** Trust in government of all levels and types is essential for the development of environmental policy. One of the most important issues expressed in the Listening Sessions was the questioning of that trust. Without a restoration of some level of trust in government, government efforts will necessarily be handicapped and, perhaps, ineffective. We do not claim to know how this should be done, but we believe this Commission and its diversity of interests was a model of listening that might profitably be adopted in a number of other areas. We believe the basis for restoration of trust is a collaborative approach between governments, communities and industry.
- **Medical care and tracking/surveillance in communities of concern must be significantly expanded.** Congress must find ways, through existing channels or through new approaches, to expand the quality of available medical care related to environmental health in communities of concern. This will serve two functions. First, it will provide some service to existing medical conditions. Second, and almost as important, it may provide a baseline of “community health,” which can validate the beliefs of community members or identify areas of misinformation, but in either case will provide data as a basis for further action. Where there is limited information about the health of the community, it is difficult if not impossible to determine what the impact

of new environmental stress agents might be. In many cases, communities of concern believe they are ill, that environmental discharges have caused their illness, and that appropriate levels of government have not provided them sufficient medical assistance. No element of these three beliefs can be evaluated without better health care information.

- **More meaningful community participation in the development of environmental decisions that will impact the community must be achieved.** A number of presenters argued that communities were not sufficiently involved in the decisions that impacted them. A variation was to argue that grassroots groups lacked sufficient technical expertise to participate meaningfully in discussions regarding new facilities or procedures. Community involvement beyond the basics – public meetings, presentations to the county council, etc. – must precede major projects, and community groups must have sufficient technical and administrative assistance to understand what actions are being proposed.
- **Technical and administrative assistance must be provided to grassroots groups in communities of concern.** Confrontations among communities of concern, industry and federal or state regulators are not carried out on an even playing field. Industry normally brings the greatest amount of resources to the confrontation, followed by federal, state and local governments, followed at a great distance by community grassroots organizations. Efforts must be made to better equip grassroots organizations with the necessary technical and administrative capacity to assure that their concerns have been heard and, where possible, addressed.
- **The cumulative impact of multiple environmental stressors must be measured and addressed in terms that are clear, workable and fair.** The Commission heard a number of presenters who argued that the cumulative impact of exposure to various environmental sources of stress caused serious illness. The information here was anecdotal, but moving. In this area, it is not only the grassroots organization that lacks technical capacity. Very few environmental regulatory agencies have the capacities to measure different impacts and measure the medical effect of combining them. This is part of a larger problem. We have developed a capacity for counting contributors to our level of effort – number of dollars spent, number of staff hours worked, etc. – but we have not yet developed environmental performance measures which tell us something about the environment. This research function is one that the federal government (including the Environmental Protection Agency, the National Institutes of Health, the Department of Health and Human Services, the Occupational Safety and Health Administration and other research-based entities) is uniquely capable of performing.
- **Funding of environmental programs must be sufficient.** While providing sufficient funding will not guarantee successful programs, *insufficient* funding will almost guarantee failure. Governmental programs at the federal, state and local levels must have sufficient resources. Grassroots and neighborhood groups must have sufficient technical, legal and administrative support, as previously noted, and some of this funding may have to come from taxpayer resources.
- **Better programs of environmental education, especially for our young people, must be developed and implemented.** Because the general public understanding of environmental issues may, in some instances, lead to misapprehension and conduct that is counter-productive environmentally, better environmental education will improve national environmental performance in the future. Such education should be firmly grounded in an understanding of the scientific principles involved, as well as the related economic, public health and environmental justice

issues. Community experts, government and the private sector all have important roles to play in developing and implementing this education.

- **The federal government must clean up its own facilities, acting with substantive community involvement.** Congress should lead federal agencies to become models of environmental protection. This will strengthen the country's position in international discussions, remove or reduce serious pollution sources, and eliminate impacts on neighboring communities. Equally important, it will demonstrate the federal government's commitment to a clean America.
- **The statutory basis of the nation's environmental protection system should be reexamined and strengthened.** Congress should consider for reauthorization the major pieces of environmental legislation that are overdue for such consideration. Congress should also consider the possibility of providing a statutory basis for the Environmental Protection Agency. Moreover, Congress and federal agencies must recognize in all actions the obligation to insure that all people's health and environment are protected.
- **Tribal issues and Alaskan Native issues pose particularly complex problems that must be addressed.** The Commission urges the CBC and other policy makers to consider and support the recommendations of the *Final Report of the American Indian and Alaskan Native Environmental Justice Roundtable*.<sup>2</sup> The report effectively captures the impact of environmental justice (and other) issues on tribal populations and sovereign nations.
- **A new Commission, with a broader charter and an expanded membership, should be established to explore additional issues.** The NEPC has been an excellent beginning to address a number of difficult issues. We propose the creation of an effort similar to the NEPC, supported by Congressional appropriation, with a wider membership, including, for example, labor representation, and a broader charter, to include, international environmental issues. This will allow more stakeholders to discuss their concerns, find common ground, and reach productive solutions.

## Overview of Sections 2.1 – 2.6

Generating the Themes and Consensus Recommendations presented here required a multi-layered effort: hearing a diverse group of speakers during the Listening Sessions; capturing and considering what had been heard; and synthesizing wide-ranging testimony into a "report" format.

Commission members discussed the cross-cutting impact the concept of environmental justice makes on all aspects of environmental policy. With this in mind, the Commission offers Section 1.2, entitled Environmental Justice: Background and Perspective.

Sections 2.1 through 2.6 evolved in response to a list of statements and questions that served as "starting points" in transitioning testimony into recommendations. These were:

### 2.1 *Incorporating Health and Science Expertise into Policy Making, and Improving Community Access to (and Understanding of) Health Care Information*

*Statement:* With their collective understanding of the biomedical and scientific aspects of environmental risk to human health, the healthcare and science communities are uniquely positioned to

play a leadership role in crafting a comprehensive national environmental policy. Residents of adversely impacted communities lack much needed access to the best and latest scientific and technical information on environmental risk issues. Even with access to this information, they often lack the resources necessary to understand and employ potentially beneficial information. These shortcomings reduce residents' ability to participate in the policy-making process.

*Questions:* How do we most effectively incorporate the healthcare and science communities' expertise and perspectives in the policy-making process? What is the healthcare and science communities' role in assuring development of policy that best serves the community at large? How do we assure dissemination of technical and scientific information among residents of impacted communities in an efficient and effective manner?

## 2.2 *Insuring Effective Environmental Enforcement*

*Statement:* Enacting environmental laws and regulations does not assure their uniform enforcement. Residents of impacted communities nationwide speak of inconsistent enforcement of existing laws and regulations.

*Questions:* How do we assure effective and consistent enforcement of environmental laws and regulations? How would a comprehensive national environmental policy, incorporating a range of elements and interests, contribute to more uniform enforcement of existing and newly enacted laws and regulations?

## 2.3 *Integrating Environmental Protection and Economic Development*

*Statement:* Truly comprehensive national environmental policy will incorporate a range of interests, including the business and industry community.

*Questions:* How do business and industry interests participate in formulating and supporting an environmental policy that fosters truly healthy communities? How do we reconcile seemingly disparate economic development and environmental interests as part of a comprehensive policy?

## 2.4 *Integrating Environmental Justice Considerations into Policy Decisions*

*Statement:* The concept of environmental justice implies equal protection for all interests in policy development, legislative action and enforcement of environmental laws and regulations.

*Questions:* How do we incorporate the spirit of environmental justice promoted by Executive Order 12898 in policy discussions and decisions? How do we assure fair and equal distribution of the risks and benefits inherent in a comprehensive national environmental policy?

## 2.5 *Assuring Meaningful Public Participation*

*Statement:* By definition, comprehensive national environmental policy requires significant input from grassroots-level stakeholders in decision-making processes.

*Questions:* How do we assure meaningful public participation in decision-making processes? How

do we create appropriately inclusive and transparent processes, fostering productive public involvement in policy making?

## 2.6 *Improving Federal Facilities*

*Statement:* Many environmental justice communities border on or include significant federal facilities and installations.

*Questions:* What steps should federal facilities take to improve their operations, impact and image in environmental justice communities? How do we streamline and improve community involvement in federal facilities operations?

### **Endnotes**

<sup>1</sup> See Proceedings Document, entitled "Environmental Justice: Strengthening the Bridge Between Economic Development and Sustainable Communities", Medical University of South Carolina, 1999.

<sup>2</sup> See Final Report, entitled "American Indian & Alaskan Native Environmental Justice Roundtable", Medical University of South Carolina Press, 2001.

## 1.2 Environmental Justice: Background and Perspective

Environmental justice (EJ) is the fair treatment of people of all races, income and cultures with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of the negative environmental impacts resulting from the execution of this nation's domestic and foreign policy programs. Fair treatment implies that no industry be allowed to pollute marginalized, economically disadvantaged and people of color communities. These populations must be active players in all levels and types of environmental decision making and problem solving, including remediation and restoration activities and deciding on future land use.

The environmental justice movement seeks to remedy a legacy of environmental racism and economic disparity. Environmental racism is defined as any environmental policy, practice or directive that, intentionally or unintentionally, differentially impacts or disadvantages individuals, groups or communities based on race, color or ethnicity. It also refers to exclusionary or restrictive practices that limit the participation by people of color on decision-making boards, commissions and the staff of governmental agencies with responsibilities in the areas of environmental policies, programs and permits. Many believe environmental racism is a pervasive practice of polluting industries and businesses. Perceived environmental racism has spawned a movement of communities demanding environmental justice at home and abroad.

The first studies documenting the relationship between the geographic distribution of environmental pollution and people of color and low-income communities were published during the 1970s. As early as 1971, the President's Council on Environmental Quality acknowledged that racial discrimination adversely affected the ability of the urban poor to control the quality of their environments.<sup>1</sup> The environmental justice movement, however, did not become a national issue until a 1982 protest against the proposed siting of a landfill for polychlorinated biphenyls (PCBs) in a predominately African American county in North Carolina triggered national attention. At that time, the phrase "environmental racism" was coined to refer to policies and actions which, either intentionally or unintentionally, resulted in the disproportionate exposure of racial minorities to environmental hazards. A 1983 study published by the US General Accounting Office (GAO) found that, in the southeastern United States, three of the four commercial hazardous waste landfills were in communities with more African Americans than whites.<sup>2</sup>

The United Church of Christ Commission for Racial Justice expanded the 1983 GAO study to the national level and found similar results. In addition, the Commission determined that race, rather than socio-economic status, was the factor more strongly related to residence near a hazardous waste site.<sup>3</sup> Most evidence to date suggests that, although highly correlated with each other and difficult to disaggregate, race and class have independent effects, and race is the more important factor. On the other hand, economic status is also important to consider given that poorer communities may have less access to information and resources to help them influence decision-making processes. Both concerns were given substantial support in a 1992 US Environmental Protection Agency (EPA) report, "Environmental Equity: Reducing Risk for All Communities," finding that:

"Communities of color and low-income populations experience higher than average exposures to selected air pollutants, hazardous waste facilities, and other forms of environmental pollution."

The environmental justice movement has grown tremendously over the last 20 years, now comprising regional and constituency networks, increasing numbers of grassroots groups, and collaborations between grassroots groups, labor, academia, governmental institutions and others. These groups have distinguished themselves from environmental groups that focus primarily on issues such as conservation, wildlife and endangered species. It is important to note that the environmental justice and environmental movements do not always share the same concerns, goals, objectives and tactics.

When environmental justice first became a national issue in the late 1980s and early 1990s, government agencies tended to react by denying charges of environmental racism. Many environmental proceedings were marked by outright hostility towards community residents who questioned the practices of environmental agencies. When evidence of disparities made it hard for agencies to continue to deny charges of environmental injustice, agencies tended to respond by renaming existing programs as “environmental justice initiatives.” Subsequently, the Environmental Protection Agency (EPA) and other agencies began to fund discrete environmental justice projects; e.g., the National Environmental Justice Advisory Committee (NEJAC), established by EPA.

In response to growing concerns about and evidence of environmental injustices, President Bill Clinton in 1994 issued Executive Order 12898, which required federal agencies to develop strategies for ensuring compliance with EJ principles. Essentially, these principles held that:

- Significant adverse environmental and health effects should not fall disproportionately on low-income and communities of concern; and
- Members of those communities should be informed of and helped to participate in decision making that affects their health and environment.

The Executive Order relied on Title VI of the 1964 Civil Rights Act for its authority. For environmental justice matters, the most relevant passage of this statute is:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

EPA established its Office of Civil Rights to process Title VI administrative complaints alleging discriminatory intent or effect based on race, color or national origin resulting from issuance of pollution control permits by state and local government agencies that received EPA funding. In 1998, EPA issued interim guidance for investigations of such complaints. In July 2000, it issued a draft revision of that guidance, along with draft guidance for States on how to avoid creating “disparate adverse environmental impacts” and how to process complaints that allege such unfair treatment. Many parties commented on the guidance, which is currently undergoing revision.

Fundamentally, EJ is a civil rights issue. However, it differs from conventional civil rights issues in that it concerns communities, not individuals, and focuses on environmental impacts rather than lost job opportunities. Additionally, the analysis of EJ issues is based upon analytic tools traditionally used in the environmental arena. Currently the contrast between the implementation of EJ policy and major environmental statutes is significant. The process of implementing environmental statutes is now quite well defined, and the standards are codified in regulation, whereas the processes and standards for implementation of EJ policy have yet to be developed.

Determining whether existing or planned actions are having or will have disparate impacts that fall disproportionately on people of color or low-income communities is very complex. Both regulators and the courts are struggling with how to resolve these issues. The key concepts are likely to be defined largely through case law. However, in the interim, there are many steps that policy makers and regulators can take to help bring more attention and clarity to this issue.

Environmental justice will not become a reality as long as the issue remains an afterthought, a regulatory appendage to existing programs, or an abstract policy statement that does not change conditions in impacted communities. To make real and lasting changes, agencies must integrate environmental justice into the core design of their programs and, after an appropriate amount of time, undertake a rigorous evaluation of the programmatic changes in the real world. The Congressional Black Caucus (CBC), Congress and other policy makers can promote and support this process.

Although the EPA, within its relatively narrow regulatory mission, has come up with a working definition of environmental justice, in our view, the concept of environmental justice can be much broader in scope, encompassing a wide range of domestic and international concerns, including labor, worker safety, transportation and international trade issues. These issues, including those of international concern raised during National Environmental Policy Commission Listening Sessions, while important, are beyond the immediate scope of this report, which focuses on environmental protection, environmental justice, public health and economic development. The Commission urges the CBC, Congress and other policy makers to explore the relationships between and among such issues.

## Endnotes

<sup>1</sup>Council on Environmental Quality. Second Annual Report to the President, 1971, p. 190.

<sup>2</sup>US General Accounting Office. Siting of Hazardous Waste Landfills and Their Correlation with Racial and Economic Status of Surrounding Communities; Letter of June 1, 1983, RCED-83-168. Washington, 1983.

<sup>3</sup>Commission for Racial Justice, United Church of Christ. Toxic Wastes and Race in the United States: A National Report on the Racial and Socio-economic Characteristics of Communities with Hazardous Waste Sites. New York, Public Data Access, Inc., 1987.

## SECTION II

### *Issues and Recommendations*

## 2.1 Incorporating Health and Science Expertise into Policy Making, and Improving Community Access to (and Understanding of) Health Care Information

The impact of hazardous and potentially hazardous environmental pollutants on the health of exposed communities is a long-standing matter of public interest and concern. This was reflected in the testimony heard by the Commission. In each of the Commission's five Listening Sessions, approximately one-half of the testimony was related to public health interests and concerns.

Representatives of communities of concern voiced particular concern. It is an established fact that many such communities have been disproportionately exposed to environmental pollutants when compared to the general population. Scientific research has also shown that communities of concern have a disproportionate prevalence of certain diseases when compared to the general population. The possible relationship between a disproportionate exposure to environmental pollutants and disproportionate prevalence of certain diseases in communities of concern was a major concern in testimony heard by the Commission. Although such relationships have been established for several diseases, such as lead poisoning and asthma, clear relationships have not been established for other diseases of concern, such as cancer, diabetes and hypertension. The Commission heard repeated testimony about the need for additional community-based scientific research to develop a comprehensive understanding of the relationship between environmental pollutants and health risks in disproportionately exposed communities of concern. Testimony also cited the need for integral community involvement in all such community-based research projects.

The Commission heard considerable testimony related to three specific diseases: asthma (particularly childhood asthma), childhood lead poisoning and cancer. For each of these diseases, there is a need for additional community-based scientific research and networked community surveillance programs and disease registries, and a compelling need to encourage innovative, community-based preventive health programs to reduce their incidence, mitigate their severity and decrease their adverse societal impacts on individual functional capacity and quality of life.

The Commission also received testimony on the lack of environmental and occupational health services in community-based primary care clinics. The need for primary care physicians to receive additional training in environmental and occupational medicine was heard in the testimony of community representatives, as well as that of health care professionals. Many presenters argued that, after years of information about environmental health hazards, some health care providers still are not knowledgeable about health effects associated with exposures to toxic substances. This lack of understanding was thought to result in severe under-diagnosing and a failure of the health care delivery system to respond to the needs of affected residents. Similarly, some presenters acknowledged that residents are often not aware of the consequences of emissions or effluents from existing facilities or contamination from abandoned facilities.

Some presenters stated that physicians and other health care providers who practice near environmental contamination sites need training and technical assistance on hazardous substances and related health effects. Others felt that citizens' Right-To-Know laws are not far reaching enough to engage the interest or the action of the public until after a disaster occurs. Based on these presentations, more education, training and awareness about the effects of exposures to toxic substances

would be helpful for both professionals and laypersons. An important first step to improving community access to health care information is to provide more training for health care providers and for community members.

The Commission also heard testimony regarding the need for adequate reimbursement for obtaining and analyzing time-consuming environmental and occupational health histories in primary care practices. Adequate reimbursements for these services will facilitate the incorporation of environmental and occupational medicine services into community-based primary care practices. This, in turn, will help to insure that environmental and occupational contributions to the development of diseases are properly identified and reported.

Specific recommendations for each of the aforementioned issues are delineated in the sections that follow and at the end of this section.

### **Medical Surveillance Programs for Childhood Asthma**

Asthma is now the third-leading cause of hospitalization for children less than 15 years of age, and the leading cause of missed school days.<sup>1-3</sup> African American children are three-to-five times more likely to have more severe asthma attacks than other children,<sup>4-6</sup> and experience higher rates of asthma-related emergency department utilization and hospitalization compared to other children.<sup>7-10</sup> Although a *causative* relationship between childhood asthma and air pollution has not been identified, scientific data indicate that children who are predisposed to asthma will experience a greater incidence of asthma attacks when exposed to environmental air pollution. In order to ascertain the true relationship between environmental air pollution and childhood asthma, community-based medical and environmental surveillance systems, using state-of-the-art geographical information system (GIS) technology, should be established. The innovative and successful system being developed by the Chicago Board of Health is an excellent prototype for such systems. The Commission recommends that the federal government fund the development of such surveillance systems in areas known to have high levels of air pollution. The linkage of multiple surveillance systems from around the nation will provide a powerful database for epidemiological research and comparative health studies on the relationship between environmental air pollution and childhood asthma.

### **Innovative Programs for the Prevention of Childhood Lead Poisoning**

Childhood lead poisoning remains a major problem among inner city youth. African American children are three times as likely to have lead poisoning than other children. Nationwide, it is estimated that 22% of African American children living in older homes have lead poisoning.<sup>11</sup> The Commission recommends that the federal government provide expanded funding for community-based lead abatement programs. Such programs would include the training and licensing of community-based lead abatement workers, as well as grants to replace old windows, which have been shown to be a major source of lead ingested by children. Such programs have been shown to be effective in cities such as Charleston, SC, Chicago and New York. They should be expanded throughout the nation.

### **Cancer Risks Related to Industrial Chemicals and Environmental Chemical Pollutants**

There is considerable public concern about the relationship between environmental exposures and

the development of cancer. Among African Americans, cancer is the second-leading cause of death in adults and the seventh-leading cause of death in children. Additionally, cancer is the leading cause of death among Asian American women since 1980. Asian American females are the first American population to experience cancer as the leading cause of death.<sup>12</sup> Scientific data has also shown that African Americans have a disproportionately greater exposure to potentially hazardous environmental pollutants than other citizens. Although a clear relationship between exposure to known environmental carcinogens and the development of various cancers has been established, the carcinogenicity of many common industrial and environmental pollutants has not yet been determined. Indeed, at present, only 30 percent of the 70,000 chemicals registered with the Environmental Protection Agency have been tested for carcinogenicity.<sup>13,14</sup> Many of these untested chemicals are sources of environmental pollution. Millions of citizens may be regularly exposed to chemicals in the workplace or in the community where carcinogenic potential has not been determined. The Commission recommends that all chemicals registered with the EPA be tested for carcinogenicity, so that the cancer risk to exposed individuals and communities can be accurately assessed.

### **Community-Based Environmental Health Research**

Additional community-based scientific research is needed to fully understand the impact of environmental pollutants on the health of communities. Teams of scientists with the requisite education and credentials should conduct such research. It is essential, however, that there be active involvement of community members in the planning, conduct, analysis and publication of such research. It is particularly important that the concerns and priorities of the community be incorporated into the research design. Only through such community involvement can the concerns of the community be adequately addressed and the impact on the community fully understood. The Commission recommends that federal agencies provide funding for community-based environmental health research projects that include the *active participation* of community members in all stages of such projects.

### **Cumulative Impact Analysis and Risk Assessment**

It is becoming increasingly clear that environmental impact statements and environmental risk assessments that address the effect of a single pollutant or a single facility or activity on human health are inadequate. It is imperative that environmental impact statements address and assess the *cumulative effect* that a new environmentally polluting facility or activity will have on health risks in a given community. Such impact statements should include assessments of the cumulative risks related to air quality, water quality, soil contamination, sewage and food quality. Cumulative impact analyses should be an integral part of the permitting process for all industrial facilities. The Commission recommends that federal funds be appropriated to develop and implement scientifically sound methodology for cumulative impact analysis and risk assessment, so that the health effects of exposure to multiple pollutants from multiple sources can be accurately ascertained.

We have discussed the need for more training for medical providers and for members of the community, and the need for more technical, administrative and legal assistance to better prepare community groups to participate in decision-making processes. Access to better medical information is a major problem in the absence of baseline medical information necessary to measure the health of a particular community. As previously noted, the number one problem expressed by presenters at the listening sessions was lack of medical assistance in communities of concern.

## Environmental and Occupational Health Services by Primary Care Physicians

Most individuals with health problems related to environmental or occupational exposures are seen initially by primary care physicians. In many cases these physicians have not been adequately trained to identify and evaluate environmental and occupational health problems. This problem was addressed in a 1988 Institute of Medicare Report, entitled Role of the Primary Care Physician in Occupational and Environmental Medicine.<sup>15</sup> Unfortunately, little has changed since its publication more than a decade ago. Primary care physicians are also hampered by the lack of adequate reimbursement for the time-consuming process of performing and assessing a comprehensive environmental-occupational health evaluation. The Commission also recognizes the critical need for expanded occupational and environmental training for primary care physicians.

## Recommendations

The federal government should fund the development of community-based medical and environmental surveillance systems in areas known to have high levels of air pollution.

The federal government should provide expanded funding for community-based lead abatement programs, and these programs should be expanded throughout the nation.

All chemicals registered with the EPA should be tested for carcinogenicity, so that the cancer risk to exposed individuals and communities can be accurately assessed.

Federal agencies should provide funding for community-based environmental health research projects that include the *active participation* of community members in all stages of such projects.

Federal funds should be appropriated to develop and implement scientifically sound methodology for cumulative impact analysis and risk assessment, so that the health effects of exposure to multiple pollutants from multiple sources can be accurately ascertained.

Additional funding should be provided for the training of primary care physicians in occupational and environmental medicine. This training should be included in core curricula for primary care physicians.

The federal government should provide incentives for colleges, universities and community-based organizations serving minority communities to conduct continuing education and outreach activities to increase community awareness regarding environmental hazards.

Local health centers should be assisted in developing environmental medicine expertise.

Congress should allocate resources to engage historically black medical schools, tribal educational facilities and minority-supporting institutions to provide environmental health training for health care providers in local health centers.

Congress and the Congressional Black Caucus should support expanded availability of results of testing and medical research in communities of concern.

**Endnotes**

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<sup>11</sup> National Association of County and City Health Officials. Resolution on Lead Poisoning Prevention. Resolution 00-03. March 3, 2000.

<sup>12</sup> Health, United States, 1998, With Socioeconomic Status and Health Chartbook. National Center for Health Statistics. Hyattsville, MD.

<sup>13,14</sup> Landrigan PJ. The Prevention of Occupational Cancer. *CA: Cancer Journal for Clinicians*; 46 (2): 67-69 (1996).

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<sup>15</sup> Institute of Medicine. Role of the Primary Care Physician in Occupational and Environmental Medicine. Washington, DC: National Academy Press (1988).

## 2.2 Insuring Effective Environmental Enforcement

Members of grassroots groups, environmental organizations and all levels of government stressed the importance of increasing enforcement of existing environmental and civil rights laws as a basis for improving the protection of health and welfare in communities of concern. Speaker after speaker mentioned loopholes, inconsistencies and omissions in the fabric of environmental regulation that must be repaired before communities can truly be protected.

Although most speakers spoke of the need to enforce existing law in communities of concern as the immediate goal, some expressed the belief that environmental justice could not be achieved without uniform, consistent and protective standards, against which any source of pollution could be measured. In other words, environmentally just enforcement may require the kind of comprehensive, "loophole-proof" standard that would require an organic environmental protection statute to implement.

Speakers noted several fundamental challenges (*italicized here*):

*State and local governments are perceived as either lacking, or not committing, the resources necessary to implement their responsibilities as the first line of environmental enforcement.*

The Commission was advised to address the need for rigorous enforcement of environmental laws and regulations as a first order of business before turning to the community needs environmental laws have yet to address. As one speaker noted: "Why make recommendations for policies when we have policies up to the sky? The problem is nobody is enforcing these policies."

The US Environmental Protection Agency (EPA) has repeatedly identified fair treatment of the regulated community as a primary goal of its enforcement efforts. Yet, an equally important goal of EPA and state agencies should be ensuring that enforcement efforts do not discriminate against any community or class of persons. EPA and the states should consider specifically targeted enforcement and compliance efforts in communities where there are a disproportionate share of polluting facilities and activities, or where children are at greater risk from lead-based paint poisoning and other environmental hazards.

Congress should appropriate funding for specific investigations in communities of concern, including inter-agency initiatives such as the lead-based paint initiative. This program illustrates well that agencies, not just the EPA, must be actively involved in enforcement efforts oriented toward environmental justice.

Several local and state government officials noted the need for resources from EPA to meet delegated state and local government regulatory obligations. About 70 percent of all the major environmental programs that can be delegated have been so delegated, and about 90 percent of all environmental enforcement actions are carried out by the states.<sup>1</sup> The federal government must match its transfer of authority with a transfer of funding. Governmental speakers stated that grants for enforcement and technical training must be provided by the federal government. There also is profound need for compliance assistance, particularly with regard to non-point sources, merchants dealing with animal welfare policies, agricultural chemical use and many other small sources of pollution.

Representatives from the government stress that EPA has a prime role in facilitating compliance with programs delegated to state enforcement. States can enforce laws only if they are clear and achievable. In addition, EPA should seek state and local government input when developing rules and budgets, in order to assure sufficient resources for compliance. When EPA and state Performance Partnership Agreements are drafted, they should stipulate what is sufficient enforcement and how conflicts will be resolved when the parties disagree. Community representatives should demand that they also be part of this process, having raised so often the issue of sufficiency in enforcement staffs among the states. Since the great majority of day-to-day enforcement of federal laws is carried out by state environmental agencies, it is critical that EPA's program to delegate and oversee state implementation assure that state enforcement activities meet federal criteria, including enforcement in communities of concern. States should have comparable tools to insure compliance, such as the authority to recover the economic gains companies realize from violating pollution laws and the same ability to impose criminal sanctions for violations that endanger the public health. To assure that state performance in enforcement meets its obligation, states should meet specific milestones, such as a certain percentage of facilities in substantial compliance with federal laws.

It is extremely important that the federal delegation system be carried out as designed. States must enforce compliance with all federal laws; EPA must fulfill its obligation to assure all states meet these requirements; and Congress must oversee EPA's performance of its management function. Congress should also require that EPA respond more quickly and give citizens greater access to information when citizens file petitions with EPA challenging the adequacy of state implementation of federal environmental obligations.

The need to assure that the delegation procedure works will be particularly acute as EPA and the states respond to the "energy crisis." As actions are taken to respond to scarcity and the high cost of energy, it is vitally important that the energy sector remains in compliance with all standards protecting human health and the environment. In many instances, affected community residents may not even be aware of changes made that significantly increase emissions in their communities pursuant to enforcement settlements. Communities of concern must have input into agency enforcement policies on energy policy and permit proceedings responding to the current energy debate. In addition, review must continue of utility and oil refinery compliance with permit and permit modification requirements. One commenter recommended that permit compliance review be targeted particularly at older facilities lacking up-to-date pollution control equipment.

*The federal government is not fulfilling its obligation to assure that federal environmental and civil rights laws are followed.*

Speakers noted that Congress and EPA do not provide sufficient incentives and disincentives to assure compliance. Indeed, in some instances, Congress, with legislative riders, has suspended compliance efforts by curtailing funding for the resources needed to comply with Title VI and other environmental standards. Several areas were mentioned as needing particular attention: environmental compliance in environmental justice communities with clusters of permitted and other potentially polluting facilities; compliance along the US/Mexico border; the adequacy of site cleanups under federal, state and local authority; and compliance at newly regulated sources, such as salt piles and confined animal feeding lots.

Executive Order 12828 on environmental justice, which was intended to assure that agency regula-

tory and administrative actions incorporate the principles of environmental justice, was said to be toothless and not enforced in rulemaking proceedings and in enforcement of environmental laws. Either by providing a private right of action to enforce Title VI, codifying the Executive Order, or providing deadlines and line-item resources to resolve environmental justice disputes, Congress was urged to make environmental justice a reality in federal agency actions. As one environmental representative stated, "There needs to be specific enactment of environmental justice legislation that guarantees meaningful public participation and true cumulative impact analyses and explicit consideration of environmental justice issues in the permitting decisions and effective enforcement measures that go along with them."

Concern was often expressed about the rigor with which laws are enforced against large corporations, which are believed to wield inappropriate influence over the very agencies charged with regulatory oversight. Concern was also expressed with illegal dumping and illegal operation of facilities without required permits. In these instances, rigorous enforcement – including criminal prosecution where appropriate – is needed.

On the positive side, there was also support for real incentives to go beyond compliance. Public recognition programs were recommended for companies serving as compliance mentors and making progress toward improving environmental conditions in environmental justice communities.

*Federal law must be amended to assure all sources of potential environmental release are held to adequately protective standards.*

As one speaker summarized:

"Our children and people in our communities are already sick with serious illnesses, and people with serious illnesses and children are the most vulnerable to the various pollutants released. Compliance with existing state and federal air and water quality laws and regulations, which legally permit millions of pounds of air, water and land pollution, is meaningless. Especially when we are talking about the concentration of several polluting industries in a specific area. There are also a variety of nuisance issues to be factored into the emissions problems. More rail, river and road traffic in many communities, more accidents, more noise, more plant, ship and barge explosions, accidental releases, more so-called shelters in place, more emergency evacuations.

"Then there is the problem of property devaluation and the reluctance of new clean businesses to invest in heavily polluted areas. In short, the failure to effectively enforce our nation's appropriate civil rights law and environmental protection laws to achieve equal environmental protection is a recipe for additional environmental and economic and health disasters in poor communities and communities of color."

A governmental speaker saw the same challenge, and had this answer:

"My first suggestion to this Commission is that we need to move toward a national environmental protection law or a set of national laws. When you look back in time, you see that our environmental laws have developed in something of a piecemeal fashion, typically based upon the circumstances that needed to be dealt with at a given moment. It would be good to

get to a point in this country where we have what some people call an organic environmental law that covers all of the issues that we are covering today and perhaps covers issues that we are not covering.”

*One of the strongest components of an enforcement system is the deterrent effect of penalties.*

Enforcement of environmental laws is a matter of great concern to disadvantaged communities and one raised by a number of presenters. Some studies indicate that penalties assessed for violations of environmental laws are lower in low-income communities. Even assuming penalties are imposed evenly, there is still unequal enforcement. Environmental justice communities bear greater burdens from non-complying, polluting facilities and activities simply because more of these facilities and activities are located in their midst than elsewhere. There is considerable evidence that significant numbers of regulated facilities and activities do not comply with environmental requirements. This problem is particularly acute in some states that lack the resources to enforce the growing number of federal programs they have been given authority to implement.

A number of speakers mentioned the need to reform the penalty process to assure that communities receive prompt redress and violators appreciate the gravity of their actions. Some presenters expressed the view that penalties are often insufficient to deter violations, and that companies simply treat fines as another cost of doing business. Congress, EPA and the states should consider alternative sanctions and incentives to promote compliance. Among the suggestions were that part of the monies paid in penalties go to projects directly benefiting the impacted community (e.g., an expansion of Supplemental Environmental Projects), and that mechanisms be instituted to eliminate subjectivity in assessing penalties. Some presenters cited citizen suit provisions as a mechanism to improve compliance in disadvantaged communities. Also cited was the policy of disqualifying firms that repeatedly or intentionally violate environmental laws from receiving government contracts.

Conversely, as recommended by some presenters, the federal government should give contracting preferences to truly “green” facilities and activities, such as those that significantly reduce their use and release of toxic chemicals, particularly in heavily burdened communities. In these communities, the EPA and state agencies also should consider greater use of criminal sanctions, especially in the case of violators who repeatedly or intentionally fail to comply with environmental requirements. Congress should consider increased funding for criminal prosecutions. Presenters also suggested that companies that are chronic and recalcitrant violators should have their corporate charters revoked. Along these lines, Congress should direct that EPA and state agencies refuse to grant or renew permits to facilities with poor enforcement records, particularly in vulnerable communities.

Both the public and private sectors were criticized for lack of compliance. There was particular concern about government failure to enforce against other governments: “Governmental exemption from environmental regulation is devastating to communities. The federal and local governments are without a doubt the major polluters in Washington, DC, yet they are not subject to the same regulations as other polluting agencies.” As one government representative stated it, “The federal government should serve as a model of environmental protection by assuring that federal facilities are models of compliance and cleanliness. The Departments of Defense, Interior and Energy operate thousands of sites throughout the United States, and we think the federal government has a special responsibility to make its sites models of the kind of environmental protection that they are asking others to engage in.”

## Recommendations

### *Baseline Needs*

EPA, in consultation with states, local governments, community groups and business representatives, should develop a set of environmental indicators with which environmental and health quality can be defined in specific communities. These indicators would provide an understandable environmental baseline and a measure from which progress, or lack thereof, can be measured among communities and states.

EPA should promulgate a definition of an environmental justice community that delineates necessary demographic and environmental impact components. In this effort, EPA should consult with states, local governments, community groups and business representatives to assure that its definition assures that the most environmentally burdened communities of concern receive improved economic and environmental conditions, and that the potential for adverse consequences (e.g., redlining) is averted.

### *Resources*

EPA, in consultation with the states, should identify a portion of its grants to the states to be devoted to enforcement initiatives in environmental justice communities. These dedicated funds, and the way they are disbursed, should be made part of EPA/state memoranda of agreement.

EPA/State Performance Partnership Agreements should designate the resources that will be committed to compliance efforts, and there should be public comment on the adequacy of these agreements to assure compliance nationwide.

EPA should dedicate a portion of its budget to enforcement training for state and local regulatory officials.

EPA should initiate a work group of grassroots, business, state and local government staff to recommend mechanisms to enhance compliance assistance for small sources.

EPA should increase the budget for the Office of Civil Rights to assure adequate resources to investigate and decide pending and new cases.

### *Federal Oversight Role*

Congressional riders interfering with processing Title VI cases should be defeated.

Congress should direct EPA and the states to prepare a joint enforcement report annually, with particular emphasis on environmental justice issues, and should provide resources for this effort.

EPA should be directed to issue an annual report to Congress on its efforts to assure adequate enforcement in programs delegated to the states, as well as its own enforcement in environmental justice communities. The report should describe progress enforcing against both public and private sector facilities.

*Regulation of All Sources*

Congress, in consultation with EPA and stakeholder groups, should systematically review national legislation to identify and seek to eliminate all regulatory loopholes and exemptions that may adversely effect environmental and health conditions in environmental justice communities.

EPA should also report to Congress on the applicability of international treaties to US environmental requirements and the implications for environmental justice communities.

*Deterrence*

EPA should expand its Supplemental Environmental Projects policy to assure that impacted communities benefit from such projects through environmental or health enhancement.

EPA should review its penalty policies to enhance incentives for compliance and enhance penalties for willful, repeated non-compliance by any facility located in an environmental justice community.

EPA should report to Congress within six months on legislation needed to assure that all federal, state and local government facilities and activities are subject to the same environmental standards as the private sector.

**Endnotes**

<sup>1</sup> Brown, R. Steven and Valerie Green, *Report to Congress: State Environmental Agency Contributions to Enforcement and Compliance* (Environmental Council of the States: Washington) 2001. Also, see "The States Protect the Environment," by R. Steven Brown, *ECOStates*, Summer 1999.

## 2.3 Integrating Environmental Protection and Economic Development

Ignacio De La Fuente, City Council President of Oakland, CA, spoke for many of those who participated in the Listening Sessions when he said that he “represents a district that is primarily people of color and full of environmental injustices, but not the ones many of you may be thinking of... I’m a person that comes out of labor. I have been working with the environmental movement for over 25 years and in kind of different ways to try to preserve jobs, and at the same time as we’ve been cleaning industry...when we talk environmental justice, sometimes we forget that justice includes the ability for people to earn a living and feed a family. We talk of environmental justice, an incinerator comes to mind. The fact is that my district really has many other environmental injustices that they are more concerned with...creating a better environment for the children, to build their schools, to create open space and to have more parks.”

Mr. De La Fuente wants improvements in the health and quality of life for his community, and at the same time, he wants to insure that good jobs and opportunity for growth and progress are available to that community and its residents. Implicit in the voices the Commission heard was a call for healthy and sustainable communities where economic development is environmentally friendly and environmental justice is a sound economic practice.

Others participating in the Listening Sessions had a multitude of suggestions concerning their communities and the presence of industry and economic development. Many of these recommendations focused on information needs; providing more industry monitoring results and emissions system information; providing regular public service announcements about environmental impacts in highly burdened areas; offering multilingual announcement systems for toxic releases. Equal enforcement of the law in environmental justice communities was a frequent plea, as there was a strong sense that this was not the case in many areas.

Speakers urged that policy makers/project proponents should listen and respond to the concerns of community groups. However, listening alone is not enough. Both industry and government need to be more proactive and not only listen, but indicate that they are “hearing” what is being said, and responding, as appropriate. Speakers repeatedly stressed that while communities and other organizations, such as private entities or state and federal government, may differ on opinion, it is very important that all respect the values and objectives of community residents. Nothing frustrates community residents more than, after taking the time to try to participate, their concerns are not acknowledged or are dismissed as of no consequence.

Concerns were expressed about the potential impacts of adding additional industrial facilities in those areas that already are heavily concentrated industrial areas with massive transportation and manufacturing. Questions also were raised about the potential conflict between EPA’s goal to end environmental injustice while, at the same time, EPA has pledged to address environmental regulation in a more innovative fashion. The dual goals of environmental justice and innovation are not mutually exclusive. Commentators agreed that innovation and experimentation can occur, and industries may be given opportunities to show superior environmental performance. However, if the operations or pollution control approach is experimental and located in a vulnerable area, additional safeguards, such as continuous monitoring or real time review of performance, should be in place instead of evaluation after the fact.

The concept of streamlined permit proceedings also was viewed with caution for facilities in heavily impacted communities. An analysis of the proposed facility's impacts should be conducted in combination with existing sources of impact in the area, not in isolation. Further commentators urged that adequate resources be made available to the community in order to understand and evaluate permit terms. Pollution trading resulting in less pollution control in communities of concern should be prohibited, while pollution trading that results in a greater pollution reduction in the community should be encouraged.

Toxic products and chemicals were addressed by a number of speakers. Some presenters wanted a mandated phase-out of some toxic products, more extensive listing of pesticides and additional information from companies to insure that the chemicals used, and the manner in which they are used, is not harmful or threatening. Some suggested adherence to the precautionary principal by shifting the burden to industry to show that the chemicals they use, and the manner in which they use them, are safe. Some suggested that one way to further advance these types of protections might be to mandate a time schedule for testing particular chemicals. Currently the American Chemistry Council is voluntarily conducting a chemical testing program.

Much of the testimony focused on the need to encourage clean business and industry to locate in environmental justice areas. Communities want to contribute to the vision of area revitalization and to be part of the development process. Communities want to be notified of the kinds of businesses considering locating in their neighborhoods. In addition, speakers urged that more information be made available on pilot projects and the potential for community/business projects of mutual benefit. Throughout the listening sessions, there was a continuing theme of the importance of meaningful public participation and reliable, timely information.

In addition to these issues, concerns have arisen over the past decade in both metropolitan and rural areas regarding whether current development patterns are meeting the needs of communities. As a result, regionalism has emerged as a popular framework to explore how to create sustainable communities. "Smart growth," land use planning and transportation have become increasingly important community issues that recognize the need to connect environmental justice, economic development and human health. One listening session participant aptly noted, "This sprawling growth in the city not only increases the likelihood that environmental conditions will worsen, but also threatens to destroy the unique transit assets that help make our neighborhoods walkable and livable."

Although the politics of land use and transportation are largely local, listening session participants from different regions of the country touched upon similar trends impacting communities. Transportation, in particular, is an issue with crosscutting environmental, social and economic justice implications. One commentator noted that transportation of toxic chemicals to hazardous waste and nuclear facilities may affect communities of concern and communities of color more than the general population. As one environmental justice representative from Boston, MA, emphasized:

"There is a lot of federal talk now about livable communities, about smart growth, about fighting sprawl, and one of the things that we need to do when we talk about these types of measures is to talk about where is all this new development? If we're trying to bring the greenfields out in the rural areas back to the cities, what does it look like and who is it for? "In Boston, a lot of what we are seeing is that it's not for us. It's not for the communities that have been in place fighting, struggling to revitalize for the last many decades. And we have

to acknowledge that racism and race is a big part of what we are talking about when we are talking about sprawl. Why do people want to leave the cities in the first place? Who got left behind? We need to acknowledge this up front when we talk about redevelopment.”

Similarly, a student from the San Francisco Bay Area emphasized, “Too often, our region’s transportation and land use systems have benefited the wealthy, with the burdens disproportionately falling on low-income communities and communities of color.”

Development patterns and trends have had significant environmental and economic impacts in these regions over the last few decades. Federal housing, transportation and economic policies have encouraged and subsidized the growth of suburbs and promoted dependence on cars, which leaves older cities abandoned and easily targeted for unwanted and toxic land uses. Another concern is the social cost of the mismatch between new employment locations in these suburbs and the available work force in the city. In addition, open space and prime agricultural lands increasingly have been used in suburban and rural areas, and the increased traffic due to changing job locations has exacerbated congestion and air pollution.

Bethel New Life, a faith-based community development corporation on Chicago’s West Side, is reaching beyond its neighborhood boundaries to link public transportation to housing, commercial and industrial development, and employment opportunities for neighborhood residents. Through an evolving, sustainable approach to community development and partnerships with other community-based groups, technical-assistance groups and the city, Bethel has developed a strategy for smart growth in West Garfield Park, an urban neighborhood that has struggled with high rates of poverty, unemployment, abandonment and crime.

A number of individuals, corporations and communities who participated in the public listening sessions of the President’s Council on Sustainable Development (PCSD)<sup>1</sup> referenced the PCSD or spoke in support of sustainable development concepts in the course of their testimony and recommendations for the Council. As an example, representatives from the Bay Area Alliance for Sustainable Development (Bay Alliance) in Oakland, CA, testified in the public Listening Session in San Francisco, and presented the Draft Compact for a Sustainable Bay Area, a document designed to encourage and facilitate a regional conversation about a sustainable future for the Bay area.

The overall goal of the Bay Alliance is to reach consensus region-wide among a critical mass of stakeholder organizations and civic leaders regarding a new, shared vision rooted in common values about how the region can grow in a more sustainable manner. The overarching strategy is to develop a consensus, and adopt a “compact” that can become the foundation for implementation actions by both the private and public sectors at the local and regional levels. However, many challenges face the Bay area, including reaching a sustainable economy; housing supply; the transportation system; preserving habitats, farmland, open space and natural assets; improving the efficiency of resource use; neighborhood integrity; improving the educational system; community health and safety; local government finance and civic engagement.

The Commission believes healthy businesses and communities can be compatible by incorporating the concept of sustainable development in activities related to that community. The concept of “sustainable development” was endorsed by the United Nations’ World Commission on Environment and Development in 1987 to “meet the needs of the present without compromising the ability of

future generations to meet their own needs.” This concept is built around prosperous economy, quality environment and social equity.

Much of business and industry is undergoing a historical transformation in the way it will operate in the 21<sup>st</sup> century. There is an increasing convergence of business and societal issues; shifting demographics with an aging population of consumers and investors; awareness and greater appreciation of diversity as a result of merging global cultures; cross-border investments and growing recognition of the need for better community development, land-use planning and more efficient utilization and protection of natural and human resources. Communities are increasingly sensitive to the need for constructive planning and cooperation with companies that have incorporated sustainable environmental business practices as a fundamental aspect of day-to-day business operations. Community members are seeking forums for meaningful involvement with their local institutions, government and private, as well as at the state and national level.

San Francisco Mayor Willie Brown spoke eloquently, emphasizing the peculiar problems of the cities charged with implementing requirements imposed by state and federal governments. He urged that recommendations by the Commission must recognize the interdependence and need for cooperation among all levels of government, and stressed the importance of seeking the best solution for everyone.

Other organizations working with communities brought similar recommendations to the Commission for successful community restoration and development. EPA Region 9 has identified the elements essential to the success of its program to assist in building community capacity: 1) government accessible to all; 2) being more proactive; 3) Environmental justice training so fundamental principles are understood and fully integrated into all programs; 4) thinking “outside the box” and adopting less media specific, more holistic, innovative solutions; 5) diversity in the workforce; 6) collaboration and building community capacity; 7) providing access to information in an understandable way; and 8) continuing to look for innovative/alternative solutions, including alternative dispute resolution. Additional program elements include identification of the issues and concerns of a community, and definition of the action plan specific to that community.

Similarly, the Joint Center for Sustainable Communities, a partnership between the National Association of Counties and the United States Conference of Mayors, has identified six operating principles for a successful city/county effort, including: 1) diversifying membership; 2) promoting the concept of sustainability; 3) building consensus; 4) supporting existing efforts (enhancing rather than duplicating); 5) combining resources; and 6) setting up regional cooperation and communication.

The American Indian and Alaskan Native environmental justice Roundtable (Albuquerque, NM, August 3-4, 2000) in discussing the role of industrial development emphasized: 1) the critical need for capacity building (tribal, legal and financial capacities); 2) a paradigm shift based upon tribal values and beliefs, including building legal, political and economic alliances, education; and 3) instituting multigenerational equity through sustainable development.

From a business perspective, evidence of community interest in the quality of life and involvement in local land use planning and decision making is a critical element. No business or industry can undertake a community revitalization project without strong interest and participation by the community, no matter how oriented toward sustainable development and community outreach the corporation may be.

Invariably, when Listening Session participants described local communities and their efforts to revitalize areas, the issue of adequate transportation was identified as a key element for success. An academic representative of the University of California, Berkley, submitted testimony on the critical need for good public transportation, particularly in those communities where much of the population does not own or drive a vehicle. She emphasized that transportation investments should be tied to land use and development incentives. Transportation decisions should be contingent on insuring enhanced quality of life in the surrounding communities. Good transportation planning will encourage livable and walkable communities, provide real transportation choices, address social equity by eliminating transportation as a barrier to employment, childcare and other social needs.

With the increased attention to improving environmental quality and economic development through a regional lens, concepts such as “smart growth” are being used to develop policies to connect development with quality of life, and to leverage new growth to improve the community. Obviously, no one solution meets the needs of all regions. However, sustainable communities can be built where all sectors of communities, businesses and neighborhoods create a vision of where they want to go and a vision of what things they value in their community, and where plans for development, including land use planning and transportation, reflect these values.

These, or similar approaches used by other organizations, could serve as a guide for business and industry throughout the country. Speakers repeatedly touched on certain common themes – all focusing on the need for capacity building within communities, the need to recognize the interdependence within a community and the need for cooperation in order to find the best solution for everyone. While the specific needs of the community may vary (be it education, transportation, safety, adequate water and sewage systems, health care issues or job training) the necessary approach remains the same – the need for active engagement of all parties, consensus building and the vision to determine what that community can be.

Based on the testimony received during these public listening sessions the Commission is encouraged by the constructive developments we see throughout the country, and we urge the Congressional Black Caucus to promote activities to encourage programs that will bring responsible people working together to find the right balance between a community’s environmental, social and economic needs. While every partnership will have a different set of challenges, the common thread of success is the focus on working together in the spirit of partnership. We learn to talk each other’s language, and over time we also learn to respect and trust one another. Progress can be made when we keep the dialogue open and all citizens work together toward a common goal – a sustainable community.

## **Recommendations**

Encourage establishment of state and local interagency working groups patterned on the Federal Interagency Work Group, and encourage creative projects and initiatives that combine multiple community benefit components and involve the community of concern.

Dedicate a portion of enforcement penalties, fines and sale of air quality tax credit dollars received by the Federal treasury to communities of concern for redevelopment projects and education.

Increase representation of community leaders and organizations, such as the National Caucus of Black State Legislators, the National Urban League and the Coalition of Black Trade Unionists, on

relevant state and county planning boards and task forces.

Congress should explore tax incentives for private companies that go beyond compliance in communities of concern, or that conduct job-training programs in such communities. State governments should explore waiving state sales tax on pollution control equipment, or provide similar tax incentives.

Expand testing of particular chemicals of concern, including non-lethal, non-cancer health effects, neurological effects, as well as more extensive testing by companies registering pesticides.

Shift the burden of proof to industry to demonstrate that the chemicals it uses, and the manner in which they are used and disposed of, are safe.

Encourage involvement of non-traditional environmental organizations in communities of concern, such as the US Forest Service to foster urban reforestation and green space in non-attainment areas. Work with the state and federal prison systems to develop "green" job training programs.

Encourage non-polluting, safer, faster, more frequent and more reliable transit alternatives (e.g., replacing diesel buses) with increased investment to communities that rely on public transit.

Encourage livable and walkable communities that promote compact, mixed-use development, preserve open space and limit suburban expansion.

Encourage development of comprehensive plans for neighborhoods that include a strong community-oriented planning process in order to develop pedestrian-oriented places with a broad mix of land uses and public spaces, such as parks, as well as increased funds for affordable housing.

Encourage better information on the equity impacts of investments, in order to determine whether low-income and people of color communities bear a disproportionate burden or do not receive equal benefits from the region's transportation projects and land use.

## Endnotes

<sup>1</sup> The President's Council on Sustainable Development (PCSD) composed of leaders from government, business, environmental, civil rights, labor and Native American organizations, first commissioned in 1993, developed two reports based on 16 principles emphasizing the theme that a sustainable America can only be achieved by creating sustainable communities. The two reports: *Sustainable America: A New Consensus* (1996) and *Towards a Sustainable America: Advancing Prosperity, Opportunity and a Healthy Environment for the 21<sup>st</sup> Century* (1999) are being used by a number of businesses and communities as a guide in efforts to promote capacity building and local empowerment. Projects such as the Bay Alliance and Bethel New Life offer excellent templates of cooperation in community planning, recognizing that individual communities have differing needs and objectives, and that any such compact or agreement must be tailored to the specific priorities of that community.

## 2.4 Integrating Environmental Justice Considerations into Policy Decisions

The previous section addressed the relationship between environmental protection and economic development. A principal of environmental justice affirms the right of all workers to a safe and healthy work environment without being forced to choose between an unsafe livelihood and unemployment. The Commission sees no conflict between environmental justice and economic development. The Commission strongly believes that environmental justice is economically efficient, good for business and will lead to ecologically sustainable practices in the long term.

However, the Commission is aware that, at times, environmental justice activists have been unfairly characterized by some as anti-development. Experience with some of the EPA-sponsored Brownfield Pilot Projects has proven just the opposite. When communities are brought into the process early, when they are treated respectfully, and when they have the resources to independently evaluate the merits of the project sponsor's proposals (including a technical analysis of its processes), positive results occur. Issues get worked out, adequate mitigation measures are put in place, local job opportunities are enhanced, and the community supports the project.

Conversely, when the community hears nothing until bulldozers break ground, there are problems. The community rightfully suspects that an arrogant corporate intruder is in its midst instead of a responsible neighbor. However, protections, such as provisions for early participation, independent technical review and expressly stated priorities of health and environmental justice, can become familiar features of any amendments to permitting provisions under the specific, media-oriented environmental statutes and brownfields legislation. With respect to brownfields legislation in particular, the degree to which a brownfields redevelopment project provides jobs and tax revenue to the affected community can be an important criterion for favorable regulatory treatment, funding and evaluation. Conversely, brownfields projects that obtain hefty tax concessions and import workers from other areas should not be given any favorable treatment under federal law.

With a larger picture in mind, many presenters suggested legislation that would promote cleaner energy and transportation alternatives, such as wind and biomass. A legislative direction of this sort would directly affect environmental justice communities, which now bear the brunt of relaxed environmental requirements at existing power plants, and which will become the communities of choice for the thousands of power plants that are anticipated will be necessary to satisfy our collective demand for electricity. In addition, these large power plants will help contribute to the disparities caused by unrestricted market approaches to reduce pollution. In this respect, such unrestricted pollution trades should be prohibited; e.g., cross-pollutant trades, cross-media trades, mobile to stationary sources trades and trading regimes without a cap on emissions.

Consistent with the principle of environmental justice that mandates the right to ethical, balanced and responsible uses of land and renewable resources, presenters suggested a mandated reduction and reclamation of toxics, using as examples bottle bills and equipment take-back legislation. Specific contracting preferences for green business and recycling, as well as pollution prevention incentives, were additional suggestions. These measures also affect communities of concern, which are disproportionately located near landfills and hazardous waste sites. Along this line, although there should be incentives for recycling, these operations should be required to conduct operations

in an environmentally sound manner similar to other operations that handle and dispose of toxic products.

Members of the National Environmental Policy Commission believe that the NEPC has been an excellent beginning to address these difficult issues. There remain issues outside of our charter which must be reviewed. There are also other areas from which representation would be valuable. We propose the creation of an effort similar to the NEPC, supported by Congressional appropriation, with a wider membership, including labor representation, and a broader charter, to include international environmental justice issues.

This is a particularly critical time for many federal agencies like the EPA. At the same time that EPA has pledged to end environmental injustice, it has also pledged to reinvent environmental regulation. Proponents of reinvention have called for more regulatory flexibility for industry and more authority to the states. However, environmental justice was largely invisible in the proceedings where the conceptual groundwork was laid for "reinvention" to occur, with the possible exception of EPA-sponsored Brownfield Pilot Projects. The dual goals of reinvention and environmental justice have resulted in the perception of part of the public of an apparent conflict at the EPA. At a time when industry is pushing for more flexibility and streamlined permit proceedings, impacted communities are pressing for additional protections. For example, in the public dialogues you will find recommendations from environmental justice advocates requesting a shift of the evidentiary burden to the facility sponsor to show that its operations will do no harm, mandated buffer zones for facilities with explosion potential, and encouraging the use of factors such as cumulative exposures and community susceptibility in facility siting decisions. At a time when industry wants to establish markets to trade emission rights across a wide array of chemicals, impacted communities want permit moratoriums for facility-clustered communities, and the elimination of grandfathering and permit exemptions for certain modifications to existing facilities.

Impacted communities want better protection, and they fear that reinvention of environmental protection will undermine that protection. They are concerned that, without strong oversight by the federal government, states will not carry out their environmental justice responsibilities. The Commission urges all levels of government to pursue their environmental justice responsibilities faithfully, and supports whatever level of oversight is necessary to make that happen.

The goals of environmental justice advocates, industry and states may not be mutually exclusive, however. Experimentation and innovation can occur, but not at the expense of vulnerable communities or in places where there is no room for error because of bad ambient conditions. States may be given more autonomy, but the Congress can direct EPA to give more authority only to those states that have a strong record of performance measured by specific performance criteria, not vague promises. States that have a strong record of reducing impacts in overburdened communities should be particularly rewarded with the type of reduced oversight and flexibility that they desire. On the other hand, states that allow permits to lapse for years, that have poor enforcement records, that don't create and maintain an adequate baseline of important environmental indicators, or that don't report their activities with sufficient detail for honest evaluation, should be subject to greater degrees of oversight by the EPA. Proposals have been made that school systems, for example, need to show concrete results in exchange for continued federal funding; state environmental agencies should be subject to similar standards. In this regard, Congress should appropriate to EPA earmarked funds to create the capacity internally to be able to take over poor performing state programs if states fail to

live up to their obligations, including their obligations under Title VI of the Civil Rights Act.

Industrial project sponsors may be given opportunities to show that their processes can result in superior environmental performance. However, if their operations or pollution control approach is experimental, the project should not be placed in a vulnerable community. If there is no other alternative, these firms should be prepared, as a condition to granting them flexibility in their industrial processes, to have continuous monitoring and real time review of their performance (instead of evaluating after the fact and after the damage may be done). If they do not live up to their promise of superior environmental performance, they should be required to immediately fund an aggressive toxic reduction strategy to mitigate their environmentally failed project.

Concerning the Civil Rights Act in particular, presenters specifically expressed concern about legislative riders used to impede the processing of Title VI claims. Many communities have been waiting for years to have their claims investigated. This situation may have become more difficult in light of the Supreme Court decision ruling that there is no private right of action under Title VI disparate impact regulations. In this respect, the Congressional Black Caucus (CBC) should engage in consultation with the environmental justice and the civil rights communities, as well as government officials and business leaders, to consider amending the Civil Rights laws to provide for such a cause of action.

Beyond these suggestions, there were many comments in the public dialogues concerning toxic products and chemicals. Some presenters wanted a mandated phase out of select toxic products, more extensive testing by companies registering pesticides, and adherence to the precautionary principal by shifting the burden to industry to show that the chemicals they use, in the manner they use them, are safe. One way to further advance these types of protections might be to mandate a time schedule for testing particular chemicals of concern. This requirement could be designed to incorporate the voluntary testing program presently undertaken by the American Chemistry Council. We strongly recommend that the chemical testing include non-lethal, non-cancer health effects, such as birth defects, neurological effects, and other effects, like high blood lead levels and respiratory illnesses that are common in communities of concern. The testing of all chemicals and pesticides should consider the effect on small children, not just healthy adult males. Children live and play near polluting facilities, and farm workers often take their small children into the fields with them because of inadequate resources for day care services.

Along this line, a presenter noted that farm workers, in particular, face some of the greatest occupational risks, yet have the fewest legal protections and are exempt from major worker-safety laws. They are also overwhelmingly people of color. We urge the CBC to review and critically evaluate the current exemptions of safety regulations and environmental protections to farm works, as well as provide statutory deadlines for the promulgation of new farm worker protections.

The Congress can provide valuable direction in incorporating environmental justice into policy decisions at the highest levels of agency decision making. The EPA and the Office of Management and Budget undertake cost-benefit analysis to determine whether rules proposed by federal agencies are too expensive to implement. Although weighing costs and benefits is something we all do in our everyday lives, the Commission is concerned about the way in which these analyses are conducted. We urge the Congress to closely oversee OMB's implementation of cost-benefit analyses to assure that communities of concern receive full environmental health and safety protection.

Finally, another strategy to prompt EPA and its delegated agencies to address environmental justice may be the insertion, in each media-specific statute, of a policy statement that EPA and its delegated agencies have wide discretion, within general grants of authority, to address environmental inequities, and that such efforts should be afforded considerable deference by the courts. For committed personnel in EPA regions and state agencies, this will clarify the existing legal authority to aggressively tackle long standing disparities. This will also give the courts sorely needed direction in adjudicating environmental justice issues.

Another strategy would be to specifically mandate interagency cooperation in taking targeted action to reduce existing disparities in the worst areas, such as devising and implementing interagency toxic reduction strategies. Much has been done to create the infrastructure for this type of collaboration. The Interagency Working Group (IWG), created in response to the executive order on environmental justice, devised an action agenda that may provide a valuable framework for a legislative initiative. This group meets on a regular basis, has directed the preparation of an Environmental Justice Federal Interagency Directory to help citizens identify available governmental resources, and has initiated 15 geographically-based environmental justice demonstration projects. The IWG depends in part upon the groundwork laid by individual federal agencies in devising and implementing environmental justice strategies for their own missions and operations. In this respect, federal agencies should be legislatively encouraged to integrate environmental justice into their core programs and operations.

The IWG demonstration projects are particularly significant. They point to the potential to problem-solve across stakeholder groups in a constructive, collaborative manner, building relationships, avoiding duplicated efforts, and leveraging instead of wasting resources. This is not an easy task given the history of neglect and resistance, capacity problems, and fragmented agency jurisdiction. Nor is a collaborative approach appropriate for all situations. As the demonstration projects develop and test collaborative models to find out what strategies work and effect real environmental improvement in impacted communities, the CBC and policy makers should examine the lessons learned and resulting models to inform potential legislative proposals.

## Recommendations

Government agencies should expand incentives that encourage “green business,” including recycling and use of recycled materials.

Congress should appropriate to EPA earmarked funds to expand EPA’s capacity to rescind delegation of programs should poor performing state programs fail to live up to their obligations, and to States and EPA to institute and to oversee state programs under Title VI of the Civil Rights Act.

Experimental projects should not be placed in vulnerable communities unless no other alternative exists, in which case the minimum acceptable standard should be continuous monitoring and real time review of performance.

The cumulative risk of proposed facility impacts should be analyzed in combination with all other sources of impacts in the area.

Pollution trades that result in less pollution control in impacted communities should be prohibited,

while pollution trades that result in more pollution reduction in impacted communities should be encouraged.

The CBC should engage in consultation with the environmental justice and the civil rights communities, as well as government officials and business leaders, to consider amending the Civil Rights laws to provide for a cause of action whereby citizens could assure compliance with Title VI.

Either voluntarily through American Chemical Council programs or by legislative mandate, there should be established a timed testing of chemicals of major concern, including testing for non-lethal, non-cancer health effects, such as birth or neurological defects, high levels of lead in blood, and respiratory illnesses common in communities of concern.

The CBC should review and critically evaluate the current exemptions of safety regulations and environmental protections to farm works, as well as provide statutory deadlines for the promulgation of new farm worker protections.

Congress should closely oversee OMB's implementation of cost-benefit analyses to assure that communities of concern receive full environmental health and safety protection.

Federal agencies should be legislatively encouraged to integrate environmental justice into their core programs and operations.

## 2.5 Assuring Meaningful Public Participation

The National Environmental Policy Commission (NEPC) listened to story after story telling and retelling the experiences of community members disengaged from the environmental decision-making processes of local, state and federal government and industry. Community representatives from all parts of the country recounted descriptions of their community and its environmental problems, environmental hazards, environmental challenges and opportunities and the lack of community involvement in all of these areas. The collective voices of community, academia, government and business spoke both of the pitfalls and benefits of real public participation in building partnerships and bridges leading to environmental justice and economic growth.

A summary and analysis of the testimony heard by the Commission affords us some broad views on public participation and community involvement as related to environmental policy and practice. Environmental justice has emerged as a serious public concern among community leaders, grassroots organizations, academia, affected communities and others, as evidenced by the speakers from various sectors who came before the Commission.

A recurrent and persistent theme was the lack of community involvement and public participation in decision-making processes that significantly impact their neighborhood, family, health and environment. This theme is particularly salient because of the belief by communities of concern, including tribal governments, that they are victims of environmental racism.

According to some environmental justice leaders, government agencies, environmentally conscious business leaders and a few Congress members, community involvement efforts must cut across the myriad of environmental issues and problems facing “public stakeholders.” These efforts must include, but are not limited to:

- Establishing and maintaining information that provides an objective basis for assessment of risk by income and race;
- Identifying and targeting opportunities to reduce high concentration of risk to specific population groups;
- Considering equity and justice issues in matters of rulemaking, permitting, monitoring and enforcement, and cleanup activities; and
- Improving communication with communities of concern.<sup>1</sup>

A major victory for environmental justice communities occurred with the issuance of Executive Order 12898 on February 11, 1994, entitled, “Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations” which called for federal agencies to address “disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low income populations.” The Executive Order became a tool for environmental justice communities in forging their entry into the decision-making arena, where heretofore they had been disenfranchised. It provided communities another mechanism to use concomitant with the National Environmental Policy Act (NEPA) requirement of public participation, and encouraged community involvement in environmental decision making, in all areas, public or private, government or industry.

Under the leadership of the Honorable Hazel O'Leary, Secretary of Energy, the Department of Energy posited a progressive definition of public participation and attempted to support and justify its programs and activities using the NEPA. Through two policy statements on the National Environmental Policy Act (June 1994) and on public participation (July 1994), Secretary O'Leary made public participation a key component to the department's operations, planning activities, and decision making. The goals of the Secretary's Public Participation Policy were to:

- Actively seek and consider public comments and incorporate the views of stakeholders in making decisions;
- Inform the public in a timely manner about the opportunity to participate in DOE's decision-making processes, which was to be open, understandable, and consistently followed; and
- Incorporate credible, effective public participation processes into all of DOE's activities, at headquarters and in the field.<sup>2</sup>

These goals were developed as a response to needs and concerns identified by communities near federal facilities. The Savannah River Site, Los Alamos National Laboratory and Hanford communities cited NEPA as one of the most valuable tools in their quest for their voices to be heard and for opening doors to effective and substantive public participation.

Public participation requirements can be found throughout the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508). While the regulations describe specific requirements, they also state broad goals for public participation in the NEPA process. For example, the Council on Environmental Quality regulations note that public scrutiny is essential to implementing NEPA (40 CFR § 1500.1(b)). For this reason, federal agencies are required, to the fullest extent possible, to encourage and facilitate public participation in agency decisions that affect the quality of the human environment (40 CFR § 1500.2(d)). Agencies must also make diligent efforts to involve the public in preparing and implementing their NEPA procedures (40 CFR § 1506.6(a)).

The Secretary's public participation policy statement defines public participation as open, ongoing, two-way communication, both formal and informal, between DOE and its stakeholders (those interested in or affected by its actions). The purpose of such interactive communication was to enable both parties to learn about and better understand the views and positions of the other. O'Leary stated: "Public participation provides a means for government agencies and industries to gather the most diverse collection of options, perspectives, and values from the broadest spectrum of the public, allowing them to make better and more informed decisions. In addition, public participation benefits stakeholders by creating an opportunity to provide comment and influence decisions."<sup>3</sup>

President Bill Clinton stated upon the issuance of the Executive Order on environmental justice, "All Americans have the right to be protected from pollution – not just these who can afford to live in the cleanest, safest communities." Even though this was a noble thought, more importantly, Vice President Gore said, "Every community must be included in making decisions about their health and their environment." As head of EPA, Carol Browner supported the White House by affirming that all levels of government and industry must "develop strategies to ensure that low income and communities of concern have access to information about their environment and that they have an opportunity to participate in shaping governmental policies that affect their health and their environment."

In August 2001, EPA Administrator Christine Todd Whitman affirmed the current administration's "firm commitment to the issue of environmental justice and its integration into all programs, policies and activities." Administrator Whitman committed to ensure "greater public participation in the Agency's development and implementation of environmental regulations and policies." (See Appendix 3.1.)

The NEPC, through its public Listening Sessions, heard communities across the nation call for improved and enhanced community involvement in the making of decisions that impact their lives, health and environment.

Charles Chisolm, Executive Director of the Mississippi Department of Environmental Quality, stated, "I think that both of these recommended changes – funding electronic environmental information management systems and re-engineering the public participation process so most of the communication is early, not late – would have tremendous environmental justice impacts. They would empower citizens, business owners, developers, and regulators to collaboratively make better environmental decisions: decisions providing equal protection and benefits to all of our citizens."

The issues regarding environmental decision making and proposals should also generally be considered when evaluating projects, activities, initiatives and studies. Ideally, the issues should be considered during the plan development process. Historically, this has not been the case, due in large part to the fact that communities of concern have been left out of the planning process. For this reason, the involvement of these communities in environmental decision making has most often been reactive to specific projects and not proactive. Communities are asking government and businesses to break new ground in calling for increased public participation in environmental problem solving and planning.

Public participation is one of the cornerstones of environmental justice. Environmental justice demands the right to participate as equal partners at every level of decision making, including needs assessment, planning, implementation, enforcement and evaluation. Public participation and community involvement strategies must include a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and support early and continuing involvement of the public in developing plans, programs and research.

Despite the numerous laws, mandates and directives by the federal government to involve the public in decision making, communities repeatedly expressed their frustration over their continued lack of involvement in decisions that impact their daily lives and the lives of their future generations, a sentiment also often expressed by tribal leaders.

Independent researchers have found involvement of the public in permitting activities, health research, cleanup and restoration activities improves the quality and credibility in both research and implementation of projects and programs. Considerable consensus has emerged that public involvement activities must include community, labor and Native American representatives at all levels. However, a commitment to community involvement and public participation is required to insure that the voices of impacted communities, those who must live with the consequences of policy and practice, are considered as well as integrated in the final outcome.

Many people who gave testimony called for efforts to improve the methods for involving the public

and illustrated how their participation in fact influences the process and outcome. One business community response was: "Responsible Care initiatives have helped to increase communication with our neighbors, the environmental community and state and federal regulators. We have learned that it is our responsibility to keep our doors open and to initiate dialogue with our community in order to work together toward solutions."

The Commission reaffirms the importance of community involvement and public participation in decision making associated with economic development and environmental justice. Citizens must play a more active and substantial role in permitting, monitoring regulations and cleanup decisions supported by government and other policy makers. Involvement must include a diversity of interests and affected parties from impacted communities.

Several community representatives, as well as government officials, raised the issue of capacity to participate. Communities of concern must have the capacity to translate the information provided by federal agencies and industries that allows them to effectively participate in the decision-making process and activities. "Translate" may mean translation into a language that the community speaks, but it may also mean translation of scientific and technical language into an understandable explanation.

General public participation requirements should be reformed to promote more meaningful participation. Agencies should be directed to integrate education and public participation into all agency functions, such as permitting and enforcement. All public meetings should be made in a manner that is more accessible to the affected community (meeting times and places outside of normal working hours and worksites). The Commission recommends that resources be made available for culturally competent outreach workers and translation services when English is not the first or primary language in the affected community. Legislation can also specifically provide for increased public comment periods for major sources, technically complicated permit applications, and high-risk activities.

There are many different and viable mechanisms for effectively incorporating community concerns, issues and recommendations in environmental decision making. The efforts for community involvement and public participation must be transparent, open, interactive, inclusive and responsive. Agencies and industries must facilitate community and citizen input into all levels of the decision making process. One community group from Baltimore stated: "While the attempts of these agencies to address the woes of impacted communities are applaudable, the reality of these funding initiatives has been that large academic centers, such as hospitals and universities, usually receive the bulk of the funding to conduct research, without genuine participation of community residents and leaders in all-aspects of research development, including planning, development of proposal, implementation, and review or evaluation."

Through the Listening Sessions it became apparent that struggles for environmental justice have helped to build community organization, providing a springboard for efforts to address the broader issues of unequal access to economic opportunity and public decision making.

New institutional arrangements are possible and necessary. Community involvement in environmental decision making can help transform contaminated and idle lands into community assets, enhancing the power of communities to chart their own future. Poverty reduction, economic growth, community

development and environmental sustainability can be achieved. We can draw on the experience and expertise of communities, non-governmental organizations (NGOs) and environmental justice organizations that spent almost two decades empowering communities, protecting health and revitalizing neighborhoods. Across the country and around the world, communities are confronting challenges of economic development and environmental sustainability. In urban areas, jobs and companies have departed, leaving abandoned sites and toxic wastes in their wake. In rural areas, decades of environmental abuse have depleted the natural resources that could generate new opportunities and livelihoods. All of this has occurred without citizens' consent or input. They have been the victims of exclusion. Industries and agencies have conducted their business in a "decide, announce and defend" manner.

Community involvement can be a key element in the strategy to improve environmental conditions, because a mobilized and organized community is less vulnerable to the siting of polluting industries and environmental hazards, as well as economic coercion.

The right to a clean, safe healthy and sustainable environment is now being recognized as a universal human right to be protected.

Increasing citizens' access to environmental information including "Right-to-Know" laws can improve people's capacity to protect the environment and to challenge the job environment tradeoff. However, we are called to understand that the effectiveness of citizens' demands about the environment is likely to depend on the extent of political equality. Where inequalities are great, polluters will be less compelled to respond to the concerns of the citizenry.

Federal agencies, state and local governments and industries must be committed to open and substantive community, tribal and labor involvement in decision making, planning and health related activities, and therefore seek the interactive involvement of community members in the processes of work around cleanup, restoration and other critical activities. Community leaders and citizens alike believe this is an extraordinary national problem in which legitimate environmental concerns across America continue to worsen as a result of years of exclusion from the decision-making table.

The principles of community, tribal and labor involvement must be based on a two-way, open and honest communication. The community seeks to have some control in the decision-making processes of both government and industry associated with the goal of environmental clean up and restoration, as well as environmental justice. Community control means that people directly affected have a basic right to have a voice and vote in decision making, planning, monitoring, problem solving, implementation and evaluation of environmental policy and practice. Because the public wishes to participate in an organized manner that gives them power to make decisions, the entire process should work from the bottom/grassroots level up. The processes for community, tribal and labor involvement should be determined by those particular sectors. The process of involvement should be a site-specific decision.

The ability of the community to participate in environmental decision making may rest on providing more technical, administrative and legal assistance to community members. Community leaders, along with their expert technical assistants, must be brought into these discussions at the beginning and throughout the process. An example is the Superfund process. Too often, legal feuding between EPA and potential responsible parties over remedy and cost decisions keeps citizens out of the

decision-making process. Public participation adds an essential component that can be overlooked or ignored until too late in the process. Those citizens who live and work near a contaminated site not only may know more about the site because of their proximity; they also understand the needs and expectations of their communities. EPA experts and environmental consultants may understand the immediate technical threats posed by, for example, contaminated soil or groundwater at a site, but they are, in most cases, not able to bring the insight that citizen leaders have in terms of selecting one remedy over another to address specific community concerns.

For example, major reforms to the EPA Superfund Technical Assistance Grant (TAG) program must be enacted, including simplifying the grant application and accounting process, removing time restrictions on grants, making such grants available earlier in the process, eliminating the current cap on grants, providing advance funding (to be accounted for), and allowing flexibility in the use of TAG funds. A similar approach should be applied to Community Assistance Grants (CAGs).

The movement for environmental justice demonstrates the dynamics behind strategies to address what has been described as an institutionalized environmental decision-making process that often excludes communities of concern and places them at greater risk of experiencing adverse environmental conditions. Federal and state health and environmental laws and regulations are intended to provide safe, cost-effective and environmentally sound planning practices through a fair and democratic decision-making process. In keeping with standard practices in the US, the planning process must provide opportunities for participation, not only by project proponents and government administrators, but also by the public, especially the locally concerned and/or affected citizens. However, implementation of these laws and regulations has come under sharp criticism across the United States. Members of the public often raise concerns about health and environmental risks posed by development activities and question the equity of both the planning process and its outcomes.<sup>4</sup> Businesses and even some government officials criticize the uncertainty, costs, and cumbersomeness of regulatory requirements.

A substantial body of literature has been written critiquing these conventional decision-making institutions and approaches.<sup>5</sup> Much of the critique focuses on the ability or inability of our current governmental institutions for decision-making— i.e., the courts, the legislature and the administration – and the planning and decision procedures they traditionally support, including decisions by “experts,” mitigation, compensation, and incentives to efficiently and effectively address conflicts between the environment and development.<sup>6</sup> Several studies indicate that, in many respects, conventional planning approaches contribute to growing distrust in the process and outcomes leading to the prevention and delay of viable, long-term positive outcomes deserving of public support. One of the most common criticisms of the process is the lack of effective public involvement. This is often attributed to abstract planning processes and the lack of avenues for participation.

Much research demonstrates that attempts to resolve conflicts at project permitting levels do not work very well, largely due to constraints established earlier in the planning process. The focus is on mitigation and compensation rather than on more fundamental alternatives, which remain off the table. Engaging public participation early in the planning process – at higher more strategic/system levels – shows promise for resolving conflict and achieving longer-term solutions. For example, rather than informing a community that a landfill is needed and then seeking public input into where it should go, engage the community in the higher-level discussion about the challenges of waste

management and all possible alternatives for its reduction and disposal. In contrast to the local permitting level, where decisions are limited to the design features of a site-specific facility, system-level planning decisions involve the identification and selection of waste management alternatives and of potential sites for facilities. Both levels afford opportunities for public involvement, but the latter in particular is underutilized.

Communities across the country felt the opportunity to participate in the sphere of influence is lacking. Communities spoke both eloquently and passionately about their exclusion from decision making by both industry and government. Just as they described the problem, they equally made concrete recommendations to remedy the current state of affairs. The principles of public participation are applicable both in the private and public sector and their associated decision-making activities.

The word “public” broadly includes any and all interested or affected parties. The “public” includes: interested or affected private citizens; state, local, and tribal governments; environmental groups; civic and community organizations; business and labor groups; and independent experts from the scientific, technical and academic communities. There was no debate at any of the Listening Sessions about the benefits of public participation. The consensus seems to be that all benefit when the public is actively involved in decision-making processes.

Additionally, we should encourage government agencies to approach communities working together as a team rather than separately. According to Laura Yoshi, Acting Regional Administrator, EPA Region 9, speaking at the San Francisco Listening Session, the EPA and the Department of Health and Human Services have found such collaboration more effective than working in isolation.

The following is a subset of recommendations geared toward improving public participation in planning decision- and policy-making processes.

## **Recommendations**

Encourage government agencies to work together as a team when approaching communities.

Identify innovative ideas, programs and solutions in public participation and widely disseminate results.

Encourage mediation and dispute resolution where capacity issues won't impair the process. Participants must engage in the process with sufficient resources, such as technical assistance, to assure community participation.

Increase representation of affected/potentially affected community leaders on relevant state and county planning boards and task forces.

Federal and state environmental justice programs should emphasize the obligation to listen and respond; listening alone is not enough. If community recommendations are not appropriate or relevant, government representatives should say so; that's less frustrating to the community than saying nothing at all.

Incorporate environmental justice performance standards into government officials' job descriptions and make high-level officials accountable for effective program implementation.

Government agencies should identify priority policy and program decisions that affect communities of concern, and provide translation and technical explanations. Technical language should be easily understood, including legal and medical terminology, with sensitivity to the capacity of the community of concern.

Create more opportunities for community groups to partner with relevant government entities and businesses in research efforts and policy/program/project planning, implementation and review.

Major reforms to the Technical Assistance Grant (TAG) program need to be enacted, including simplifying the grant application and accounting process, removing time restrictions on grants, making such grants available earlier in the process, eliminating the current cap on grants, providing advance funding (to be accounted for), and allowing flexibility in the use of TAG funds. A similar approach should be applied to Community Assistance Grants (CAGs).

Resources should be made available for culturally competent outreach, including language translation and explanation of scientific and technical issues, meetings scheduled for times most available to the affected community, longer comment periods for major or high-risk or technically complicated sources, all with a goal of more meaningful public participation.

#### **Endnotes**

<sup>1</sup> Effective Public Participation, National Environmental Policy Act.

<sup>2,3</sup> Office of NEPA Policy and Assistance, US Department of Energy, December 1994.

<sup>4</sup> Bingham 1986; Susskind and Field 1996.

<sup>5</sup> Auerbach 1983; Beneveniste 1981; Neely 1982; Bardach and Kagan 1982; Kagan and Axelrad 1998.

<sup>6</sup> Bacow and Wheeler 1984; Ozawa 1991; Bingham 1986; Cormick 1980; Rabe 1992 and 1994; Susskind, Bacow, and Wheeler 1983.

## 2.6 Improving Federal Facilities

The federal government has a particularly strong responsibility with regard to proper environmental management and cleanup of its facilities. Improvement of the management of these facilities and improvement of procedures will result in both better environmental protection and stronger environmental justice.

Federal facilities have enormous impacts on public health and the environment. Federal facilities are often the largest dischargers in their communities, and they have been some of the most notorious violators of environmental laws. Cleanup of contamination at federal nuclear weapons facilities, for example, is likely to cost hundreds of billions of dollars. Presenters testified that exemptions from environmental requirements were devastating to their communities. Presenters from all stakeholder groups were unanimous in their recommendation that Congress should clarify that under all major federal environmental laws, federal facilities must comply with all requirements, and be subject to the same civil and criminal penalties, as are private companies. Congress should also require that federal agencies explicitly consider the impacts of siting federal facilities near communities of concern, and explore alternative sites that will have less environmental impact on these communities.

Here are some of the things the Commission heard in its listening sessions regarding federal management of facilities. One presenter said, "From my Washington, DC, point of view, governmental exemptions from environmental regulation is devastating to communities. The federal and local governments are without a doubt the major polluters in Washington, DC, yet they are not subject to the same regulations as other polluting agencies. ... Governmental, both federal and local, exemption is destroying neighborhoods across the nation and must end." Another presenter called for mandatory compliance with environmental requirements by military services. One argued for a plan that could be implemented for all federal facilities and surrounding communities, and recommended that the money saved from closing bases should be spent on the communities which had been affected by the presence of the bases. One simply argued that the military services had contributed to the high level of toxicity in cities.

The Commission also heard from a representative from the United States Navy, outlining the program he led to consolidate Navy activities in Southwest Washington, DC. This plan, which apparently is very sensitive to environmental and social considerations, may prove to be the economic motivator for much progress in that section of our nation's capital.

The Commission is aware of the extensive work being done by federal agencies to clean up facilities, and we believe that effort is the right thing to do and that it must be continued and expanded. We believe this is true for four reasons.

First, the federal government is a huge land owner and land manager. Some of this land forms the national parks and wildlife refuges of the nation; other portions comprise military and naval facilities, including formally used defense sites. The Bureau of Land Management (BLM), for example, is responsible for managing 264 million acres of land – about one-eighth of the land in the United States – and about 300 million additional acres of subsurface mineral resources.<sup>1</sup> According to the Bureau of the Census, the percent of each State owned by the federal government ranges from .394 percent of Connecticut to 82.922 percent of Nevada, with a national average federal ownership of 28.936 percent. This totals some 657,256,773 acres and does not include ownership of water. More

than 40 percent of the land is federally owned in eight States: Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah and Wyoming.<sup>2</sup>

Second, the nature of federal government responsibilities almost guarantees that its facilities will pose much greater environmental problems than other facilities might. The most obvious example of this is the management of nuclear resources by the Departments of Defense and Energy. That Rocky Flats and Hanford pose a peculiarly difficult cleanup issue is hardly news. Operation of military bases normally involves substantial use of toxic materials of various sorts, and some military bases in the United States have long histories, much of which took place before the era of environmental sensitivity.

However, the responsibility does not rest only with the Departments of Defense and Energy. A number of other federal facilities also must address the residue of government materials and decisions over the years. Abandoned mines, other facilities operated as part of national defense efforts, housing projects built in unsafe flood plains – these and others must be addressed. Additionally, some non-federal areas may have been impacted by federal decisions, such as Department of Agriculture's management of pesticides and fertilizers and Corps of Engineer decisions regarding river management. Some of the particular responsibilities of the federal government for environmental protection arise from the special nature of the land being managed. Mismanagement of an industrial site can cause serious problems, but mismanagement of a national park represents a different order of loss. Some of the responsibilities are for materials generated by others, but of a nature that the federal government has the obligation to provide permanent safe storage; this applies particularly to the storage of radioactive waste materials.

Third, if the federal government is to make a convincing international argument about environmental protection responsibilities, it should set an example in the management of its own facilities. Domestically, something of a similar argument can be made – if other elements of government are to be cited for their failure to meet environmental protection responsibilities, the government element issuing the citation should meet its own obligations. Simply stated, the federal government must demonstrate its own commitment to the accomplishment of these goals if it expects to exert any moral suasion with others. A number of individuals and organizations speaking with the Commission, as noted above, argued that, “government exemption from environmental regulation is devastating to the communities.” Often there are serious environmental issues, many of which could have been prevented if there had been opportunity for community involvement at the onset, such as the District of Columbia government's decision to dump trash incinerator ashes on the grounds of the Saint Elizabeth's Mental Hospital (once a beautiful site in the heart of an African American community).

One presenter to the Commission urged sensitivity training for military installations, and a need for military documents concerning proposed actions and public involvement to be written in a clear and simple format. Such actions might improve federal interaction with affected members of the community.

Fourth, the federal government's involvement in so many aspects of the daily lives of Americans presents an unequalled opportunity for environmental leadership. The government often can serve as the catalyst to bring a diverse group of individuals together; to reach out to other local, state or national organizations; to tap a critical mass of resources and interests to energize initiative/momentum for a project to generate enough zest and creativity to succeed.

We have learned during our Listening Sessions of many interesting examples where such an opportunity exists – including a number that, without this experience, might never have occurred to us. For example, it was argued that the training that takes place in prisons (both state and federal) is concentrated in activities with potentially major environmental impacts, such as automobile body repair, and that more environmentally sensitive training, such as more benign dry cleaning and other potential small business needs and interests, could be emphasized, resulting in new skills, increased employment and opportunities to return individuals to local communities with a greatly increased environmental awareness, which in turn could help as a catalyst for other new projects. This example suggests the reach of federal facilities of various kinds, and their environmental impact.

Federal actions that are not “environmental” may have major environmental impacts. For example, the Department of Defense’s recent proposal to sell its stockpile of mercury motivated a strong national concern and response. What was surprising was that the DOD did not appear to have given any consideration to what the public reaction would be. Another example, the location of government facilities, both federal and state, can play a major role in traffic and resulting air pollution. These issues can be as simple as whether public transportation serves the post office. Further, such a federal facility may significantly lower the quality of life by isolating the neighborhood from the larger community or denying access to local parks or waterways, and we heard testimony to that effect. In all these cases, federal activities that seemingly bear little relation to environmental protection actually may have substantial impacts on the quality of life in local communities.

Many federal agencies have strong environmental protection programs, and this report should not be read to dismiss the extensive efforts that have taken place, or to minimize the real accomplishments that have been made. United States military forces have a long record of leadership in striving for equal opportunity for personnel. While the record is not perfect, it is substantially better than a large number of other national institutions. As noted before, Rear Admiral Chris Weaver, US Navy, speaking at the New Jersey Listening Session, described the Navy Yard project, “Bridges to Friendship,” which has 27 partners of federal, non-governmental and city municipal organizations working in southeast Washington on four particular areas: 1) job training and career development; 2) youth outreach; 3) community development; and 4) small business development. Accordingly, the Department of Defense should be a leader in environmental justice, with regard to both the exposure of its own personnel to environmental dangers that might be prevented, and its ability to work with the many local communities in which it is located.

There are a number of other areas in which the federal government can be a driving force. Appendix 3.7 includes a list of all the steps that the federal government should be considering that were suggested during the listening sessions. Procurement is an example. The federal government is the 800-pound gorilla with regard to procurement. We commend the efforts that have been made to steer this massive procurement in environmentally sensitive ways, and we recommend Congress support and encourage this trend.

Like most environmental justice, environmental protection, public health and economic development issues, however, much remains to be done. For example, when relocations are made necessary because of contamination by federal facilities, there should be adequate compensation given to those needing to relocate to enable them to find alternative safe, affordable housing. Because relocation disrupts existing communities, special efforts should be taken to enhance public participation and give affected community residents decision-making authority over relocation implementation.

The Commission understands that Congress may consider legislation in this session that would require defense-related agencies to comply with Federal and State environmental laws. While we do not intend to endorse specific legislation, we note the testimony of persons concerned about this issue, and we call upon the Congress to assure that the federal government's house is in order with regard to environmental protection and environmental justice. We note that many of these same concepts may apply to state and local governments, and we propose that our report be made available to the governors of the States and to associations of state officials.

## Recommendations

Congress should assure that the federal government cleans up its own facilities as expeditiously as possible.

The federal government should meet the same standards, and be subject to the same civil and criminal penalties, as private industry with regard to environmental protection.

Congress should require that federal agencies explicitly consider the impacts of sitting federal facilities near communities of concern, and explore alternative sites that will have less environmental impact on these communities.

The federal government has a particular burden to assure that communities of concern are not adversely impacted from uniquely governmental facilities and activities, such as nuclear waste production and disposal, park land management, operation of military bases and disposition of munitions and military toxics.

Programs like the Navy Yard's "Bridges to Friendship" should be studied to identify templates for how federal agencies can become environmental justice leaders.

Federal agencies should have sufficient funding to meet these requirements.

## Endnotes

<sup>1</sup> *Bureau of Land Management's Facts: Public Lands Managed by the BLM*. Retrieved March 27<sup>th</sup>, 2001, from <http://www.blm.gov/nhp/facts/index.html>

<sup>2</sup> Table 1-3. US General Services Administration Table: Comparison of Federally Owned Land with Total Acreage by State as of September 30<sup>th</sup>, 1999. Retrieved July 30<sup>th</sup>, 2001, from <http://www.blm.gov/natacq/pls00/pdf/part1-3.pdf>

# SECTION III

## *Appendices*

## 3.1 US EPA's Commitment to Environmental Justice



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 9 2001

THE ADMINISTRATOR

### MEMORANDUM

**SUBJECT:** EPA's Commitment to Environmental Justice

**TO:** Assistant Administrators  
General Counsel  
Inspector General  
Chief Financial Officer  
Associate Administrators  
Regional Administrators  
Office Directors

The Environmental Protection Agency has a firm commitment to the issue of environmental justice and its integration into all programs, policies, and activities, consistent with existing environmental laws and their implementing regulations.

The Agency defines environmental justice to mean the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decisionmaking processes of the government. Among other things, this requires the following:

- (a) Conducting our programs, policies, and activities that substantially affect human health and the environment in a manner that ensures the fair treatment of all people, including minority populations and/or low-income populations;
- (b) Ensuring equal enforcement of protective environmental laws for all people, including minority populations and/or low-income populations;
- (c) Ensuring greater public participation in the Agency's development and implementation of environmental regulations and policies; and

-2-

(d) Improving research and data collection for Agency programs relating to the health of, and the environment of all people, including minority populations and/or low-income populations.

In sum, environmental justice is the goal to be achieved for all communities and persons across this Nation. Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

The purpose of this memorandum is to ensure your continued support and commitment in administering environmental laws and their implementing regulations to assure that environmental justice is, in fact, secured for all communities and persons. Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities. Application of these existing statutory provisions is an important part of this Agency's effort to prevent those communities from being subject to disproportionately high and adverse impacts, and environmental effects.

In the National Environmental Policy Act of 1969 (NEPA), Congress could not have been any clearer when it stated that it shall be the continuing responsibility of the Federal government to assure for all Americans "safe, healthful, productive and aesthetically and culturally pleasing surroundings."

Integration of environmental justice into the programs, policies, and activities via Headquarters/Regional Office Memoranda of Agreements and Regional Office/State Performance Partnership Agreements is an Agency priority. The Director of the Office of Environmental Justice, Barry E. Hill, and his staff are available to assist you. Barry Hill can be reached at (202)564-2515.

I am positive that each of you will join me in working to secure environmental justice for all communities.



Christine Todd Whitman

## 3.2 Commission Member Biographical Sketches



### **Clarence E. Anthony**

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Mayor Clarence Anthony of South Bay, FL, was elected 1999 President of the National League of Cities at the 75th Annual NLC Congress of Cities in December, 1998. He is the chief spokesperson of the oldest and largest organization of municipal officials in the United States, representing more than 1,500 cities and towns, as well as 49 state municipal associations that are members of NLC. He is the third Florida official to hold NLC's top leadership post. Mayor Glenda Hood of Orlando served as NLC president in 1992, and Hans Tanzler served as NLC president while mayor of Jacksonville in 1976.

Mayor Anthony is the sixth black leader to serve as NLC president and is only the second municipal leader from a small city to lead NLC. He has served as mayor of South Bay (population 4,056) since 1984. His election to municipal office came two years after Mayor Fred Harrison of Scotland Neck, NC, (population 2,575) became NLC's first president from a small city in 1982.

A creative and thoughtful leader in his community, Mayor Anthony has brought a wealth of experience and personal energy into his work with the National League of Cities. He has served on the League's board of directors, the NLC Election '96 Task Force, the League's Policy and Legislative Committee, Community and Economic Development Policy Steering Committee, and the NLC Committee on Localism. He is a member of the National Black Caucus of Local Elected Officials (NBC/LEO) and serves on the board of directors of the National Conference of Black Mayors.

Mayor Anthony also served as President of the Florida League of Cities in 1995. He is a vice chair of the state league's Federal Action Strike Team, has chaired the Legislative Committee and Finance and Taxation Committee, and has served on the executive board since 1992. He is the only municipal official serving on the Florida Constitution Revision Commission, a special panel required to convene every 20 years to examine and make recommendations on the state constitution. He is also a member of the Federal Judicial Nomination Commission, the Florida Environmental Land Management Study Commission and the Federal Government Everglades Ecosystem Task Force.

A lifelong resident of the South Bay area bordering Lake Okeechobee, Mayor Anthony completed his undergraduate studies and earned a Masters Degree in Public Administration at Florida Atlantic University. He is president of Emerge Consulting Corporation and active in many professional and service organizations in South Bay and Palm Beach County. His community service has earned him honors including the Florida Jaycees Mayor of the Year Award for 1989-90, distinguished alumnus awards from Florida Atlantic University and Palm Beach Community College, Ebony Magazine Future Leader Award, Outstanding Young Men in America Award and Outstanding Community Leaders in America Award.



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Carolyn Bell is the Chief Executive Officer of Community Health Resources, Inc., a community based organization in Memphis, TN.

She is a health planner and developer of health resources and has over 20 years of experience in both occupational/environmental health and primary health care services. As an industrial hygienist for the United Rubber Workers International Union, it was her primary responsibility to conduct inspections of work places and to convey findings to local union health and safety committees; to help administer research studies designed to identify health effects associated with workplace exposures; and to make recommendations to Congress and OSHA on Occupational Health Legislation. At the University of Tennessee, along with labor organizations and the Urban Environment Conference, she was the primary organizer of one of the first minority conferences on Occupational Health. Her book entitled, *The Environment in Small Doses: A Lay Person's Guide to Understanding Toxic Substances*, was chosen as a member of the OCAW Occupational Health Bookset, a list of books recommended by the Oil Chemical and Atomic Workers Union to be a part of the library collection for all local union health and safety committees. Presently she serves as the National Program Coordinator for the Coalition of Black Trade Unionists Community Action and Response Against Toxics Team. The primary mission of the CBTU CARAT Team is to establish Labor-Community Environmental Health Alliances in urban and rural minority communities. For her work as a member of the EPA Common Sense Initiative Council, Ms. Bell is a recent recipient of Vice President Al Gore's Hammer Award for Reinventing America. She has Masters of Science Degrees in Biology from Purdue University and Environmental Health Sciences



## Sue Briggum

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Sue Briggum has been Director of Government and Environmental Affairs in the Washington, D.C. office of Waste Management since 1987. She is responsible for issues arising in federal legislation, regulation and policy initiatives affecting the Waste Management companies, focusing most recently on toxic site cleanup, urban redevelopment, environmental justice and regulatory enforcement issues. Before joining Waste Management, Ms. Briggum was an environmental regulatory counselor and Superfund litigator with a law firm, where she co-authored

the Hazardous Waste Regulation Handbook: A Practical Guide to RCRA and Superfund (Executive Enterprises, Inc., 1982; revised 1986).

She has served on the Environmental Protection Agency's NACEPT Superfund Advisory Committee, National Environmental Justice Advisory Committee, Title VI Advisory Committee, and Compliance Assistance Advisory Committee. She chairs the Superfund Action Alliance and serves on the steering committee of the Business Network for Environmental Justice. She was also a staff representative on the President's Export Council, the National Commission on Superfund, and the Enterprise for the Environment and is a member of the New York State Department of Environmental Conservation's Environmental Justice Advisory Group.

Sue received her B.A. from the University of Pittsburgh; an M.A. and Ph.D. in English Literature from the University of Wisconsin; and a J.D. from Harvard University. While at the University of Wisconsin, she received a Distinguished Teaching Award in 1977 and co-authored three textbooks.



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Wilma Delaney is Vice President, Federal Government Affairs for The Dow Chemical Company. She was named to this position in November of 1998 after serving as Vice President of Environmental and Regulatory Issues in the company's Washington, DC, office. As head of the Washington office, Delaney is responsible for supervision of federal government affairs professionals, advocacy management and maintaining relationships with national political and governmental organizations.

Delaney joined Dow in 1975 as an analytical chemist at company headquarters in Midland, MI. After holding several positions in Dow laboratories, she became manager of the Inorganic Analytical Section. In 1985, following three years managing major production units, Delaney was appointed technical manager of Environmental Control for the Michigan Division with responsibility for Dow 5 compliance with all federal, state and local environmental laws and regulations. Delaney also held the positions of director of Environmental Quality for Dow North America and Global Environmental Technology Center manager. She was named Vice President of Environmental and Regulatory Issues in 1995.

While in the Michigan Division, Delaney was active in state environmental initiatives. She was a member of the Michigan Natural Resources and Environmental Leadership Institute, and the State of Michigan Delegation Study Tour for Solid Waste Management in Europe. She also participated in the Science Group of the Michigan-relative Risk Assessment Project. She presently serves as a member of Dow's North American Public Policy and Issues Leadership Team and the North American Public Affairs Leadership Team.



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Robert L. Harris currently serves as Vice President of Environmental Affairs at Pacific Gas & Electric Company (PG&E) in San Francisco. He began his career as an attorney with PG&E, and in 1985 argued and won a major corporate free speech case for PG&E in the US Supreme Court. He is a graduate of San Francisco State University and Boalt Hall School of Law at the University of California at Berkeley. Mr. Harris has also completed advanced management programs at Harvard and Duke Universities Business Schools. A former President of the National Bar Association and of Kappa Alpha Psi Fraternity (Grand Polemarch), he currently serves on the Board of Directors of the Council on Legal Education Opportunity. He is also a member of the Board of Directors of the American Association of Blacks in Energy and currently serves as its General Counsel. Mr. Harris was selected as one of the 100 Most Influential Black Americans by Ebony Magazine in 1980, 1992, 1993, 1994 and 1995. Mr. Harris is a member of the National Environmental Justice Advisory Council.



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Joselito Laudencia is the Executive Director of the Asian Pacific Environmental Network (APEN). Based in Oakland, CA, APEN was founded in 1993 to bring together a collective voice among the diverse and unique histories and cultures of native-born, immigrant, and refugee Asian and Pacific Islander (API) communities in the United States. Through a strategy which combines grassroots community organizing, building a network among communities, and collaborating with other Environmental Justice networks, APEN works to strengthen the capacity of communities to protect and shape through democratic participation. APEN is part of a broad, multi-racial movement for environmental, social and economic justice.

Mr. Laudencia has over 13 years experience in community organizing and electoral campaigns

based primarily in low-income communities and communities of color on such issues as universal health care, immigrant rights, affirmative action, bilingual education, living wage public job creation and environmental justice. Before joining APEN, Mr. Laudencia served as the founding Executive Director of Californians for Justice, a grassroots statewide multiracial organization that involved thousands of individuals primarily from communities of color to actively participate in statewide initiative and grassroots lobbying campaigns. Mr. Laudencia also served as the Director of the San Francisco Chapter of Neighbor to Neighbor and founder and Chair of Pilipinos Organized to Work for Educational Rights (POWER). Mr. Laudencia has served as a Board member of the California Association of Human Relations Organizations and currently serves as a Board member of the Environmental Justice Fund (a coalition of environmental justice networks) and of the Just Transition Alliance (a coalition that includes environmental justice networks and labor). Mr. Laudencia is an honors graduate in Asian American Studies and Ethnic Studies from the University of California, Berkeley.

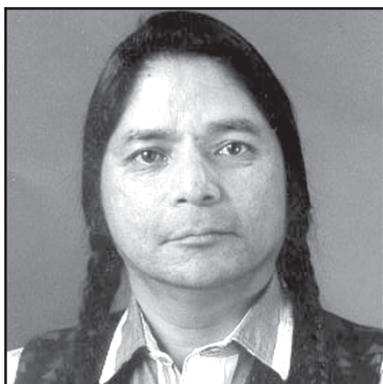


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Dr. McClain has presented papers and served as keynote speaker on a variety of topics, including Education for Blacks in Development Issues of Incarcerated Women; Urban Development Empowerment of the Poor; Family Building; Critical Issues Facing Black America; Third World Development; Racism; Southern Politics; Nicaragua and the Atlantic Coast; Black Women Leaders; The Role of Women in Development; and Youth Advocacy and Apartheid. Her education includes Ed.D. and M.A. degrees from Harvard Graduate School of Education and an M.A. from Antioch Graduate School of Education Administration.



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Dr. Lawrence C. Mohr, Jr. is Professor of Medicine and Executive Director of the Environmental Biosciences Program at the Medical University of South Carolina. From 1987 to 1993 he served as White House Physician on the staffs of President Ronald Reagan, President George Bush and President Bill Clinton.

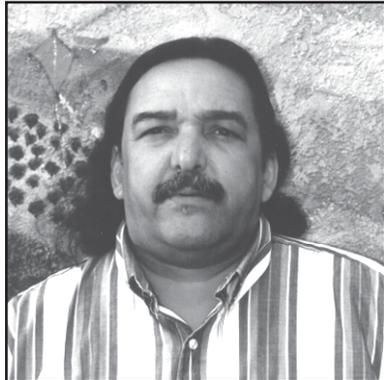
Dr. Mohr was born on July 8, 1947, on Staten Island New York. He received an A.B. degree with highest honors from the University of North Carolina where he was elected to Phi Beta Kappa and was presented the Merck Award for excellence in chemistry. He received his M.D. degree from the University of North Carolina School of Medicine. His postdoctoral training includes a medical internship, a residency in internal medicine and fellowship training in pulmonary medicine, all at Walter Reed Army Medical Center, Washington, D.C.

From 1982 to 1983, Dr. Mohr served as Chief Resident in the Department of Medicine at Walter Reed. He was then assigned to Fort Lewis, Washington, where he served as Command Surgeon in the 9th Infantry Division. He returned to Walter Reed in 1984 as Attending Physician in the Department of Medicine and Assistant Professor of Medicine at the Uniformed Services University of the Health Sciences.

Prior to attending medical school, Dr. Mohr served as a field artillery officer in the US Army. He completed Officer Candidate School at Fort Sill, Oklahoma, training at Fort Benning, Georgia,

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Dr. Mohr remains active in patient care, medical education and clinical investigation. During his tenure at the White House he held academic appointments as Associate Clinical Professor of Medicine and Emergency Medicine at the Uniformed Services University of the Health Sciences and at George Washington University. Dr. Mohr is a Diplomate of the American Board of Internal Medicine and has been elected as a Fellow of both the American College of Physicians and the American College of Chest Physicians. In addition to the practice of internal medicine, he has special interests in diseases of the chest, environmental medicine, clinical epidemiology and international health. He serves on the Board of Directors of the International Lung Foundation, the Advisory Board of the National Museum of Health and Medicine and the Medical Advisory Board to the Department of Defense of the Society of Medical Consultants to the Armed Forces.



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Richard Moore is a key leader of the national environmental justice movement with over 25 years of experience as a community activist and organizer. Of Puerto Rican descent, Richard Moore has resided in New Mexico since 1965. Mr. Moore has worked with a variety of community-based organizations around such issues as welfare rights, police brutality, street gang activities, drug abuse, low cost healthcare, child nutrition and the fight against racism, including the struggle for environmental and economic justice. Mr. Moore was the founder and Director of the Bobby Garcia Memorial Clinic in Albuquerque; a founding member of the Southwest Organizing Project (SWOP); and a founding member of the Southwest Network for Environmental and Economic Justice. Richard is presently the coordinator of the Southwest Network, a regional organization which comprises over 80 community based grassroots organizations working in communities of color in six southwestern states and Mexico. Mr. Moore's commitment to multi-racial and multi-issue community organizing - and recognition of the interconnectedness of local, regional, national and international issues - made him an important member of the planning committee for the First National People of Color Environmental Leadership Summit, which took place in October 1991. Mr. Moore serves on the Environmental Support Center Board of Directors and recently completed a three year term as the chair of the National Environmental Justice Advisory Council to the EPA. In addition, he played a significant role in establishing the Environmental Justice Fund—a coalition of Environmental Justice Networks. In recognition of his lifelong work, He was the recipient of the 1991 Banner Award, the 1995 Albuquerque Human Rights Award, and the 1997 Tides Foundation Jane Bagley Lehman Award for public policy.



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From August 1990 to January 1995, Roberts was secretary of the South Dakota Department of Environment and Natural Resources, a cabinet-level position appointed by the governor and confirmed by the state senate. During that period, he accepted the first-ever EPA award of excellence made to an entire state environmental department. He led the campaign that resulted in the most comprehensive environmental protection act in South Dakota history and the first-ever permanent, recurring funding source for major water projects.

Roberts is an honors graduate in history from the University of Alabama, has a Masters in Public Administration from Auburn University, is a Distinguished Graduate of the Air Command and Staff College, and has completed training at the Governors' Center at Duke University. In 1992, the Council of State Governments selected him as a Henry Toll Fellow. In 1999, *Governing* magazine named him a "Public Official of the Year," one of ten such designations nation-wide.

His last assignment before retiring from the Air Force was as the base commander for the largest operational base in the Strategic Air Command. From September 1970 to September 1971, he was Executive Officer, Air Force Advisory Team #3, Bien Hoa Air Base, Republic of Vietnam.



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**Richard Jablonski** is a Research Associate in the Medical University of South Carolina's Department of Library Sciences and Informatics. He currently serves in a program development capacity for the Public Policy initiative of the Medical University's Environmental Biosciences Program. Mr. Jablonski joined the Medical University in 1993. He previously worked for daily newspapers in New York and South Carolina.

**Glenn Fleming, Ed.D.**, has been a member of the Environmental Biosciences Program staff at the Medical University of South Carolina since its inception in 1992. He currently serves as the program's Deputy Director. Previously, Dr. Fleming served as Chairman of the Department of Educational Services for the Medical University. In both positions, he has been directly involved in public involvement and outreach activities.

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**The Environmental Biosciences Program (EBP)** is an integrated, multidisciplinary effort, employing a unique combination of scientific research and public policy initiatives to identify, study and resolve environmental health risk issues. EBP initiatives are consistent with the Medical University of South Carolina's mission as a comprehensive, state-supported health sciences institution, and the nation's need for new and better approaches to environment-related health problems.

The EBP Public Policy Initiative facilitates productive linkages between the best science available and those elected and appointed officials who shape this nation's environmental health policy. Ultimately, Public Policy projects provide credible information and guidance to decision makers at all levels of the policy-making process.

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### 3.5 Themes and Consensus Recommendations

These themes recurred throughout the Listening Sessions. We urge Congress to address them in any and all possible ways. These issues may present themselves to Congress and other policy makers in a number of ways – as appropriations issues, federal agency oversight issues, legislative issues, or in some other forum. The Commission does not attempt here to offer specific recommendations, but instead offers these themes as ways to promote the four elements of a comprehensive national environmental policy; i.e., human health and safety, environmental protection, environmental justice and economic development.

- **Federal, state and local government officials must work to restore trust in government on the part of communities of concern.** Trust in government of all levels and types is essential for the development of environmental policy. One of the most important issues expressed in the Listening Sessions was the questioning of that trust. Without a restoration of some level of trust in government, government efforts will necessarily be handicapped and, perhaps, ineffective. We do not claim to know how this should be done, but we believe this Commission and its diversity of interests was a model of listening that might profitably be adopted in a number of other areas. We believe the basis for restoration of trust is a collaborative approach between governments, communities and industry.
- **Medical care and tracking/surveillance in communities of concern must be significantly expanded.** Congress must find ways, through existing channels or through new approaches, to expand the quality of available medical care related to environmental health in communities of concern. This will serve two functions. First, it will provide some service to existing medical conditions. Second, and almost as important, it may provide a baseline of “community health,” which can validate the beliefs of community members or identify areas of misinformation, but in either case will provide data as a basis for further action. Where there is limited information about the health of the community, it is difficult if not impossible to determine what the impact of new environmental stress agents might be. In many cases, communities of concern believe they are ill, that environmental discharges have caused their illness, and that appropriate levels of government have not provided them sufficient medical assistance. No element of these three beliefs can be evaluated without better health care information.
- **More meaningful community participation in the development of environmental decisions that will impact the community must be achieved.** A number of presenters argued that communities were not sufficiently involved in the decisions that impacted them. A variation was to argue that grassroots groups lacked sufficient technical expertise to participate meaningfully in discussions regarding new facilities or procedures. Community involvement beyond the basics – public meetings, presentations to the county council, etc. – must precede major projects, and community groups must have sufficient technical and administrative assistance to understand what actions are being proposed.
- **Technical and administrative assistance must be provided to grassroots groups in communities of concern.** Confrontations among communities of concern, industry and federal or state regulators are not carried out on an even playing field. Industry normally brings the greatest amount of resources to the confrontation, followed by federal, state and local governments, followed at a great distance by community grassroots organizations. Efforts must be made to better equip

grassroots organizations with the necessary technical and administrative capacity to assure that their concerns have been heard and, where possible, addressed.

- **The cumulative impact of multiple environmental stressors must be measured and addressed in terms that are clear, workable and fair.** The Commission heard a number of presenters who argued that the cumulative impact of exposure to various environmental sources of stress caused serious illness. The information here was anecdotal, but moving. In this area, it is not only the grassroots organization that lacks technical capacity. Very few environmental regulatory agencies have the capacities to measure different impacts and measure the medical effect of combining them. This is part of a larger problem. We have developed a capacity for counting contributors to our level of effort – number of dollars spent, number of staff hours worked, etc. – but we have not yet developed environmental performance measures which tell us something about the environment. This research function is one that the federal government (including the Environmental Protection Agency, the National Institutes of Health, the Department of Health and Human Services, the Occupational Safety and Health Administration and other research-based entities) is uniquely capable of performing.
- **Funding of environmental programs must be sufficient.** While providing sufficient funding will not guarantee successful programs, insufficient funding will almost guarantee failure. Governmental programs at the federal, state and local levels must have sufficient resources. Grassroots and neighborhood groups must have sufficient technical, legal and administrative support, as previously noted, and some of this funding may have to come from taxpayer resources.
- **Better programs of environmental education, especially for our young people, must be developed and implemented.** Because the general public understanding of environmental issues may, in some instances, lead to misapprehension and conduct that is counter-productive environmentally, better environmental education will improve national environmental performance in the future. Such education should be firmly grounded in an understanding of the scientific principles involved, as well as the related economic, public health and environmental justice issues. Community experts, government and the private sector all have important roles to play in developing and implementing this education.
- **The federal government must clean up its own facilities, acting with substantive community involvement.** Congress should lead federal agencies to become models of environmental protection. This will strengthen the country's position in international discussions, remove or reduce serious pollution sources, and eliminate impacts on neighboring communities. Equally important, it will demonstrate the federal government's commitment to a clean America.
- **The statutory basis of the nation's environmental protection system should be reexamined and strengthened.** Congress should consider for reauthorization the major pieces of environmental legislation that are overdue for such consideration. Congress should also consider the possibility of providing a statutory basis for the Environmental Protection Agency. Moreover, Congress and federal agencies must recognize in all actions the obligation to insure that all people's health and environment are protected.
- **Tribal issues and Alaskan Native issues pose particularly complex problems that must be addressed.** The Commission urges the CBC and other policy makers to consider and support the

recommendations of the *Final Report of the American Indian and Alaskan Native Environmental Justice Roundtable*.<sup>2</sup> The report effectively captures the impact of environmental justice (and other) issues on tribal populations and sovereign nations.

- **A new Commission, with a broader charter and an expanded membership, should be established to explore additional issues.** The NEPC has been an excellent beginning to address a number of difficult issues. We propose the creation of an effort similar to the NEPC, supported by Congressional appropriation, with a wider membership, including, for example, labor representation, and a broader charter, to include, international environmental issues. This will allow more stakeholders to discuss their concerns, find common ground, and reach productive solutions.

#### Endnote

<sup>1</sup> See Final Report, entitled "American Indian & Alaskan Native Environmental Justice Roundtable", Medical University of South Carolina Press, 2001.

### 3.6 Specific Recommendations Presented to the Commission

(Note: These recommendations are numbered for ease of reference, and are in the order in which they are presented in sections 2.1-2.6 of this report - not in priority order.)

1. The federal government should fund the development of community-based medical and environmental surveillance systems in areas known to have high levels of air pollution.
2. The federal government should provide expanded funding for community-based lead abatement programs, and these programs should be expanded throughout the nation.
3. All chemicals registered with the EPA should be tested for carcinogenicity, so that the cancer risk to exposed individuals and communities can be accurately assessed.
4. Federal agencies should provide funding for community-based environmental health research projects that include the *active participation* of community members in all stages of such projects.
5. Federal funds should be appropriated to develop and implement scientifically sound methodology for cumulative impact analysis and risk assessment, so that the health effects of exposure to multiple pollutants from multiple sources can be accurately ascertained.
6. Additional funding should be provided for the training of primary care physicians in occupational and environmental medicine. This training should be included in core curricula for primary care physicians.
7. The federal government should provide incentives for colleges, universities and community-based organizations serving minority communities to conduct continuing education and outreach activities to increase community awareness regarding environmental hazards.
8. Local health centers should be assisted in developing environmental medicine expertise.
9. Congress should allocate resources to engage historically black medical schools, tribal educational facilities and minority-supporting institutions to provide environmental health training for health care providers in local health centers.
10. Congress and the Congressional Black Caucus should support expanded availability of results of testing and medical research in communities of concern .
11. EPA, in consultation with states, local governments, community groups and business representatives, should develop a set of environmental indicators with which environmental and health quality can be defined in specific communities. These indicators would provide an understandable environmental baseline and a measure from which progress, or lack thereof, can be measured among communities and states.
12. EPA should promulgate a definition of an environmental justice community that delineates necessary demographic and environmental impact components. In this effort, EPA should

consult with states, local governments, community groups and business representatives to assure that its definition assures that the most environmentally burdened communities of concern receive improved economic and environmental conditions, and that the potential for adverse consequences (e.g., redlining) is averted.

13. EPA, in consultation with the states, should identify a portion of its grants to the states to be devoted to enforcement initiatives in environmental justice communities. These dedicated funds, and the way they are disbursed, should be made part of EPA/state memoranda of agreement.
14. EPA/State Performance Partnership Agreements should designate the resources that will be committed to compliance efforts, and there should be public comment on the adequacy of these agreements to assure compliance nationwide.
15. EPA should dedicate a portion of its budget to enforcement training for state and local regulatory officials.
16. EPA should initiate a work group of grassroots, business, state and local government staff to recommend mechanisms to enhance compliance assistance for small sources.
17. EPA should increase the budget for the Office of Civil Rights to assure adequate resources to investigate and decide pending and new cases.
18. Congressional riders interfering with processing Title VI cases should be defeated.
19. Congress should direct EPA and the states to prepare a joint enforcement report annually, with particular emphasis on environmental justice issues, and should provide resources for this effort.
20. EPA should be directed to issue an annual report to Congress on its efforts to assure adequate enforcement in programs delegated to the states, as well as its own enforcement in environmental justice communities. The report should describe progress enforcing against both public and private sector facilities.
21. Congress, in consultation with EPA and stakeholder groups, should systematically review national legislation to identify and seek to eliminate all regulatory loopholes and exemptions that may adversely effect environmental and health conditions in environmental justice communities.
22. EPA should also report to Congress on the applicability of international treaties to US environmental requirements and the implications for environmental justice communities.
23. EPA should expand its Supplemental Environmental Projects policy to assure that impacted communities benefit from such projects through environmental or health enhancement.
24. EPA should review its penalty policies to enhance incentives for compliance and enhance penalties for willful, repeated non-compliance by any facility located in an environmental justice community.
25. EPA should report to Congress within six months on legislation needed to assure that all

- federal, state and local government facilities and activities are subject to the same environmental standards as the private sector.
26. Encourage establishment of state and local interagency working groups patterned on the Federal Interagency Work Group, and encourage creative projects and initiatives that combine multiple community benefit components and involve the community of concern.
  27. Dedicate a portion of enforcement penalties, fines and sale of air quality tax credit dollars received by the Federal treasury to communities of concern for redevelopment projects and education.
  28. Increase representation of community leaders and organizations, such as the National Caucus of Black State Legislators, the National Urban League and the Coalition of Black Trade Unionists, on relevant state and county planning boards and task forces.
  29. Congress should explore tax incentives for private companies that go beyond compliance in communities of concern, or that conduct job-training programs in such communities. State governments should explore waiving state sales tax on pollution control equipment, or provide similar tax incentives.
  30. Expand testing of particular chemicals of concern, including non-lethal, non-cancer health effects, neurological effects, as well as more extensive testing by companies registering pesticides.
  31. Shift the burden of proof to industry to demonstrate that the chemicals it uses, and the manner in which they are used and disposed of, are safe.
  32. Encourage involvement of non-traditional environmental organizations in communities of concern, such as the US Forest Service to foster urban reforestation and green space in non-attainment areas. Work with the state and federal prison systems to develop "green" job training programs.
  33. Encourage non-polluting, safer, faster, more frequent and more reliable transit alternatives (e.g., replacing diesel buses) with increased investment to communities that rely on public transit.
  34. Encourage livable and walkable communities that promote compact, mixed-use development, preserve open space and limit suburban expansion.
  35. Encourage development of comprehensive plans for neighborhoods that include a strong community-oriented planning process in order to develop pedestrian-oriented places with a broad mix of land uses and public spaces, such as parks, as well as increased funds for affordable housing.
  36. Encourage better information on the equity impacts of investments, in order to determine whether low-income and people of color communities bear a disproportionate burden or do not receive equal benefits from the region's transportation projects and land use.
  37. Government agencies should expand incentives that encourage "green business," including recycling and use of recycled materials.

38. Congress should appropriate to EPA earmarked funds to expand EPA's capacity to rescind delegation of programs should poor performing state programs fail to live up to their obligations, and to States and EPA to institute and to oversee state programs under Title VI of the Civil Rights Act.
39. Experimental projects should not be placed in vulnerable communities unless no other alternative exists, in which case the minimum acceptable standard should be continuous monitoring and real time review of performance.
40. The cumulative risk of proposed facility impacts should be analyzed in combination with all other sources of impacts in the area.
41. Pollution trades that result in less pollution control in impacted communities should be prohibited, while pollution trades that result in more pollution reduction in impacted communities should be encouraged.
42. The CBC should engage in consultation with the environmental justice and the civil rights communities, as well as government officials and business leaders, to consider amending the Civil Rights laws to provide for a cause of action whereby citizens could assure compliance with Title VI.
43. Either voluntarily through American Chemical Council programs or by legislative mandate, there should be established a timed testing of chemicals of major concern, including testing for non-lethal, non-cancer health effects, such as birth or neurological defects, high levels of lead in blood, and respiratory illnesses common in communities of concern.
44. The CBC should review and critically evaluate the current exemptions of safety regulations and environmental protections to farm works, as well as provide statutory deadlines for the promulgation of new farm worker protections.
45. Congress should closely oversee OMB's implementation of cost-benefit analyses to assure that communities of concern receive full environmental health and safety protection.
46. Federal agencies should be legislatively encouraged to integrate environmental justice into their core programs and operations.
47. Encourage government agencies to work together as a team when approaching communities.
48. Identify innovative ideas, programs and solutions in public participation and widely disseminate results.
49. Encourage mediation and dispute resolution where capacity issues won't impair the process. Participants must engage in the process with sufficient resources, such as technical assistance, to assure community participation.
50. Increase representation of affected/potentially affected community leaders on relevant state and county planning boards and task forces.

51. Federal and state environmental justice programs should emphasize the obligation to listen and respond; listening alone is not enough. If community recommendations are not appropriate or relevant, government representatives should say so; that's less frustrating to the community than saying nothing at all.
52. Incorporate environmental justice performance standards into government officials' job descriptions and make high-level officials accountable for effective program implementation.
53. Government agencies should identify priority policy and program decisions that affect communities of concern, and provide translation and technical explanations. Technical language should be easily understood, including legal and medical terminology, with sensitivity to the capacity of the community of concern.
54. Create more opportunities for community groups to partner with relevant government entities and businesses in research efforts and policy/program/project planning, implementation and review.
55. Major reforms to the Technical Assistance Grant (TAG) program need to be enacted, including simplifying the grant application and accounting process, removing time restrictions on grants, making such grants available earlier in the process, eliminating the current cap on grants, providing advance funding (to be accounted for), and allowing flexibility in the use of TAG funds. A similar approach should be applied to Community Assistance Grants (CAGs).
56. Resources should be made available for culturally competent outreach, including language translation and explanation of scientific and technical issues, meetings scheduled for times most available to the affected community, longer comment periods for major or high-risk or technically complicated sources, all with a goal of more meaningful public participation.
57. Congress should assure that the federal government cleans up its own facilities as expeditiously as possible.
58. The federal government should meet the same standards, and be subject to the same civil and criminal penalties, as private industry with regard to environmental protection.
59. Congress should require that federal agencies explicitly consider the impacts of siting federal facilities near communities of concern, and explore alternative sites that will have less environmental impact on these communities.
60. The federal government has a particular burden to assure that communities of concern are not adversely impacted from uniquely governmental facilities and activities, such as nuclear waste production and disposal, park land management, operation of military bases and disposition of munitions and military toxics.
61. Programs like the Navy Yard's "Bridges to Friendship" should be studied to identify templates for how federal agencies can become environmental justice leaders.
62. Federal agencies should have sufficient funding to meet these requirements.

## 3.7 Listing of All Recommendations Presented to the Commission

### Recommendations Submitted to the National Environmental Policy Commission

\*Key to issue classifications:

<b>\$</b>	Appropriations required
<b>No \$</b>	Existing funding terminated
<b>L</b>	Legislative change requested or needed to implement recommendation
<b>R</b>	Change in regulations, policy or practice could accomplish goal
<b>In</b>	Information needed

Note that nearly all **R**, **L** and **In** recommendations also will require resources ( **\$** ) in the form of new funding if re-allocation of existing resources is not possible. Some recommendations have two classifications because they could be implemented in two ways (e.g., within current regulatory authority or by legislative fiat), or there are two steps recommended (e.g., information collection and then regulation).

<i>Role of health care and scientific communities</i>	Class	Recommendation by stakeholder type
Community	\$	Lead screening and therapy must be provided in environmental justice communities, particularly to Medicaid recipients.
	L/R	The health impacts of chemical, oil processing and other facility clustering must be addressed.
	\$	Experts on toxics and epidemiology should be funded for the community at toxic sites.
	\$	Clinics should be provided at toxic sites, funded by the government and responsible parties.
	\$	Regional health clinics, with mobile capacity, should be available.
	\$	Environmental health impact services should be provided in clinics in all areas impacted, including all districts through which railroad tracks run.
	L/R	Cluster communities should be evaluated with socio-economic factors taken into consideration.
	L/R	Community members should be part of all health research, including research development, planning, proposal writing, implementation and evaluation. A congressional task force should be directed to study the experience of the Youth Warriors in Baltimore, MD, to identify problems.
	\$	Environmental funding for research should be matched by equal funding for community-based organizations.
	L	Legislators need to review research findings on maximum lead thresholds for children.

R/\$	Asthma should be declared a reportable disease, requiring the state to intervene as it does with lead poisoning. Municipalities would then have to assess the outdoor/indoor conditions of the residence of the sufferer and develop a control plan.
L/R	New chemicals should not be sold or released into the environment until proven safe. Chemicals in use before a certain date (1970) should be exempted from review unless there is reason to believe they are toxic.
L/R	Disposal methods should be regulated for chemicals based on their environmental and human health effects.
L/\$	Legislation should promote community-based participatory research as an effective means of enhancing the health of disadvantaged communities and of working to eliminate health disparities. Federal agencies should be required to invest in community-based research, as well as provide funds to support it.
\$	EPA and NIH budgets should be increased and specify that a percentage of appropriations be used to develop community-based research infrastructure within EPA and NIH.
L	Congressional hearings should be convened on the benefits, ethics and best practices of community-based research, as well as ethical implications of the Human Genome Project.
\$	The Black and Hispanic caucus should collaborate on the development of a budget line item dedicated to a large-scale community-based research project spanning multiple geographic regions – e.g., a five-city study of environmental exposure to asthma.
L	Educational funding should be tied to attendance so asthma would have an impact on school resources such that prevention and control would become a priority.
\$	The federal government should fund community-based asthma research, focusing on unexamined issues like multiple family dwellings and deteriorating housing stock.
In	The impact of lead poisoning on criminal activity should be studied.
L	A Congressional panel should research use of community-based research in university grants. Such grants must take into consideration citizen time constraints in their community-based component.
\$	Unbiased health clinics should be funded where there's toxics exposure, and the amounts should balance funding for natural threats like West Nile virus and terrorist attacks.
L/R	Risk assessments should reflect Native Americans' zero tolerance for pollution.
R	Regulatory standards should take into account dioxin accumulation on Indian lands, particularly Alaska.
\$	Money is needed for community-created health clinics.

	R	Phthalates in toys should be addressed.
	In	Medical training should be provided on health conditions stemming from environmental pollutants, including how to detect and respond to chronic low level exposure.
	In	The health impacts of the semiconductor industry should be studied.
	\$	ATSDR has insufficient funds to provide needed study of the health effects of refineries.
	\$	Medicare should be provided to residents impacted by refineries.
Government	R	Lead poisoning prevention is needed.
	\$	More money is needed for the CDC Environmental Health Project, for an environmental health lab, for the minority health initiative, and for lead abatement.
	\$	When priorities are set under budgetary constraints, essential health services must never be compromised.
	In	The environmental factors aggravating asthma must be recognized. The disparity in mortality for blacks must be addressed.
	\$	Urban asthma control and treatment must be increased.
	In	Unmet health needs to be addressed include training primary care physicians on environmental diseases.
	\$	A task force of property managers, insurers, economic developers, public health officials, community members, physicians, and tenant groups need to collaborate to address lead in housing.
	\$	HUD has an important role in addressing lead in housing.
	\$	Further grants are needed to address lead poisoning to providing training to community members, pay for repairs and window replacement, certify contractors, and provide loans and insurance to low-income tenants.
	\$	Lead screening should be provided to all who have government vouchers, not just Medicaid recipients.
Business		
Academic	\$	Funding for community-based research should not take the form of line items for particular universities.
Environmentalist	L	Causation should be presumed where there are multiple facilities causing pollution.

<i>Information needs</i>		
Community	In	Industry monitoring system results should be disclosed to the community, and environmental emissions information should not be suppressed as business confidential
	In	Better data on emissions is needed.
	In	Individuals need to be educated on the consequences of and need to correct their own polluting practices, including littering.
	In	Surrounding citizens' health must be monitored as closely as workers'.
	R	The paperwork required of TAG grantees should be streamlined and the grantee's recommendations should be taken seriously when remedial decisions are made.
	In	Communities should be notified in advance of the kinds of businesses attempting to locate in their area.
	In	The federal government should identify seriously endangered communities and the communities most in need of help.
	\$	EJ education in schools and in worker training programs should be funded.
	In	Tainted fishing waters should be posted.
	In	Medical monitoring should be available to communities with polluting industries.
	In	There should be more accurate public records of how transportation dollars are spent.
	R	Sewage sludge incinerators and trash incinerators should be included in the Toxic Release Inventory. A multilingual alert system is needed to warn of toxic releases.
	In	Full public disclosure is needed on chemical byproduct production and facility upsets.
	In	Research, with community input, is needed on cumulative impacts.
	In	The public needs clear, accessible information on what polluting activities are regulated and by whom.
	In	There should be regular public service announcements on environmental impacts in highly burdened areas, and a community hotline to receive complaints.
	In	Public participation requires consideration of community members' time constraints.
L/R	All federal and state agencies must have public participation.	
L/R	The public needs to make decisions, not just serve as advisors.	

	In	Better information is needed on new mining projects and all mining impacts.
	In	Curriculum on environmental health issues should be created in multiple languages.
	In	More information is needed on federal facility cleanup progress.
	In	More information is needed on the energy use, worker safety and environmental impacts of internet companies.
	L/R	Products should have labeling for toxics.
	L/R	All TRI exemptions should be eliminated.
	In	Public education is needed on such topics as nuclear fuel disposal, toxic waste disposal, and steps the individual can take to reduce waste.
	In	Communities need better information on site conditions and how to contact the relevant regulators.
Government	In	Better information on environmental emissions needs to be exchanged, and government must have the resources to make this information available.
	In	A national health registry is needed.
	In	Communities need education on the availability of Interagency Working Group pilot projects and about the potential for community/business projects of mutual benefit.
	In	Continued enhanced public information needs to be assured.
	In	Health advisories should be used to deter development in already burdened areas and to encourage mitigation for new facilities.
	In	A nationwide tracking system is needed for chronic disease and its environmental causation.
	In	The federal government needs to help local governments access resources for community development.
	In	Success stories need to be widely disseminated in order to show other communities what is possible.
	In	Victims of environmentally caused or aggravated disease must be tracked more consistently and accurately. Local information needs to be linked into a national surveillance network.
	In	Public health agencies need to provide more information to community groups.
	In	Chronic diseases potentially aggravated by environmental factors like hyperthyroidism must be tracked.
	\$	Federal and state data management must be updated and integrated – which takes funding.

	In	A national monitoring system must be established to evaluate the existence and impact of pollution and overall environmental quality.
Business	In	Local governments should provide communities with information on newly proposed facilities.
	In	To increase use of pollution prevention, better life cycle information should be disseminated showing cost savings.
	In	Public service announcements encouraging use of green products should be produced.
Academic		
Environmentalist	In	A directory of EJ consultants should be made available.
	In	Information must be compiled on the indirect costs of polluting development. Rep. Pelosi's bill requiring economic cost/benefit analysis of facilities would accomplish this.
	In	Cumulative impact analyses should include not just permits but public health status, all potential toxins, assessment of the impact of an additional source, and assurance that the area evaluated is sufficiently large.
<i>Effective enforcement</i>		
Community	L/R	Mechanisms are needed to guarantee aggressive enforcement in EJ communities, either in the form of mandates or incentives.
	R	Where agency personnel do not enforce compliance and fail to provide protection in EJ communities, personnel sanctions should be taken.
	\$	EPA should withdraw funding to states without adequate enforcement of environmental laws. Companies cannot be allowed to evade regulatory compliance and enforcement on the basis of employees' personal relationships with regulators.
	\$	More enforcement is needed on cleanups in EJ communities.
	L	EJ must be enforceable through legislation, not just Executive Order.
	L/R	There should be federal oversight of state cleanups in EJ communities.
	R	The federal oversight role in state salt pile regulations should be investigated.
	R	The 1994 farmworker rules need to be enforced, and the rules should be modified to eliminate exemptions, provide enforcement rather than employer certification, and extend buffer areas.
	R	U.S. and Mexico must cooperate fully to enforce controls on the transport of hazardous waste.
\$	Manpower is needed to enforce animal welfare laws.	

	R	EPA should include community groups in its discussions on Supplemental Environmental Projects.
	In/R	Inadequate state enforcement should be publicized and corrected.
	R	Regulatory loopholes like RCRA's "empty drum" standard should be closed.
Government	L/R	Equal enforcement of regulations in EJ communities must be assured.
	L	Our patchwork of media-specific environmental laws should be replaced with an organic statute.
	R	Objectivity is needed in EJ regulatory standards.
	R	The money from environmental penalties should go to the community rather than the federal Treasury and be used for such purposes as environmental education.
	\$	Small states need resources to address EJ, including money for training staff on EJ issues.
	R	EPA/state grants need to include EJ activities, including resources to process Title VI guidance and EPA's EJ guidance.
	R	When setting standards, the federal government must assure that regulatory compliance is in fact possible. Flexibility is needed in implementing regulations.
	R	New energy efficiency mandates can be met, but new construction techniques will be needed.
	R	Federal EJ analyses under the Executive Order are toothless; they must be revised and implementation of this requirement reviewed for agency compliance.
	R	An effective regulatory program focuses on enforcement first, and includes assuring all city functions include recycling and energy efficiency.
	R	Enforcement action against illegal dumping is a priority. This includes criminal prosecution and action against the owners of illegal sites.
	R	The fact that development saluted by the minority community in which it is located may still be subject to a Title VI complaint by a resident must be addressed in EPA policy. The public participation process required must work.
	\$	Moneys from SEPs and emissions trading should be directed to affected EJ communities.
	R	State and local governments should be involved in developing all EPA rules, policies and budgets.
	L	Splintered Congressional oversight of agencies should be consolidated.
	R	Rather than relying on exemptions, federal facilities should be models of

		compliance and cleanliness.
	§	If Congress wants environmental protection, it must fund it.
	R	EPA/state performance partnership agreements should stipulate what is sufficient enforcement and how conflicts will be resolved when the parties disagree.
	R	State enforcement of national standards is impossible if the regulatory standards are not clear.
Business	R	Amnesty from penalties should be provided for small POTWs if they are making progress toward compliance.
	In	There should be public recognition programs for companies which serve as mentors and make progress in achieving targets to improve communities.
Academic		
Environmentalist	L	National "bad boy" legislation, with revocation of corporate charter for a chronic offender, should be enacted.
	L	Since environmental penalties have become simply a "cost of doing business," penalty actions should be moved into the criminal courts.
	L/R	Loopholes in the environmental regulatory system must be closed.
	R	Particularly in light of Alexander v. Sandoval, EPA must process its Title VI case backlog expeditiously.
	L	Enforcement of Title VI must be guaranteed either by a private right of action or legislative mandates to assure expeditious processing of cases.
	§	Resources in the form of qualified staff, investigative capacity, technical evaluation and quality control must be given to EPA's Office of Civil Rights. OCR should seek independent scientific analyses of its decisions with input from all sectors.
	L	Effective enforcement of Title VI cannot cure the fundamental problem that EJ must be a component in all regulatory statutes. In addition, it should be a factor in delegated state programs.
<b><i>Business participation</i></b>		
Community	L	The Brownfields Revitalization Act should be enacted.
	L/R	Brownfields sites should have EJ and health improvement as a priority.
	§	Incentives should be created to encourage new business in EJ communities, and they should take an area approach to communities suffering poverty and disenfranchisement.
	§	EPA's brownfields pilot program needs additional funding, and a mechanism established to assist communities in identifying available funds.

	R	The community vision for area revitalization must be part of the development process.
	In/\$	The Interagency Working Group provides a model of how multi-agency participation and business participation can be stimulated in brownfields development.
	L/R	Federal policy should promote development of cleaner energy and transportation alternatives, including wind and non-combustion biomass.
	L/R	Federal policy needs to promote develop cleaner trash disposal methods, including reduction and reclamation of toxics in waste, requiring electronic equipment take-back, and a national bottle deposit bill.
	R	Federal policy should promote tele-commuting and multi-functional neighborhood office space.
	\$	The CBC should monitor distribution of an increased Commerce Department budget to develop green business. Green business should be targeted for EJ communities.
	R/\$	Tribal wind projects need to be part of federal energy policy. The federal government should consult with tribes, provide technical assistance and enter into long-term energy contracts.
	\$	Tax incentives should be created for renewable energy sources like solar, wind and biomass. The current efforts by some energy companies are inadequate.
	R	Private nuclear waste disposal and treatment facilities should not be sited without the agreement of tribal members, not just tribal government.
Government	R	Economic development initiatives should include such best practices as maintaining a clean appearance at facilities.
	R	The schedules in EPA's brownfields grant program should be revised to coincide with local governmental budgeting.
	No \$	States should not charge for their oversight of brownfields projects.
	In	The PG & E plant closure should be studied as an example of responsible business leadership.
	\$	Subsidies are needed to encourage use of solar power.
	R	Tree planting should be encouraged to reduce pollution.
	L/R	Minority and women-owned businesses should be used in cleanup and recycling programs. There should be incentives to start "green businesses" like solar panel production and use and urban landscaping conducted by the long-term unemployed.
	\$	Housing developers can make a positive contribution by committing to energy efficiency and provision of low-cost energy, "green" mortgages, pocket parks, and safe places for children.

Business	\$	Subsidies should be available for the poorest counties to stimulate job development at companies going “beyond compliance.”
	\$	Companies should be encouraged to exceed compliance standards by, for example, repealing the tax on pollution control equipment in all 50 states (30 exempt such equipment now).
	\$	Businesses should be encouraged to contribute to schools (for example, the chemical industry’s Process Technology Program sponsors local students for a two-year degree and its “HIRE education” program provides information to local schools). HBCU’s should be part of these programs.
	R/In	Businesses should be encouraged to hire and buy locally.
	R/In	Businesses should be encouraged to respect their environmental, economic and social responsibilities to the communities in which they are located.
	\$	The hiring of a community care coordinator can facilitate good business/community communication.
	\$	Tax credits will encourage pollution prevention.
	L/R	The federal government should have preferences for contracting with and supporting development of green businesses. There should be preferences for EJ, recycling and pollution prevention in federal contracts.
	\$	Prisons should receive federal grant money to create clean jobs.
Academic	R	To deal with brownfields in slow markets, property owners should be required to be more responsible in property disposition.
	R	The issue of “brownlining” – no lending in communities where properties lie dormant – must be addressed.
Environmentalist	R	Clean technology and pollution prevention must be encouraged.
	R	Market approaches to reduce pollution are opposed by some environmentalists.
<b><i>Equal protection</i></b>		
Community	R	EPA should take management initiatives to inculcate EJ principles into its middle management.
	L/R	The UN Declaration on Human Rights should be part of the US EJ program.
	L/R	Facilities impacting communities should have buffer zones (for example, one mile for new facilities with explosion potential).
	L	New permits should be refused in areas that already have multiple sites impacting the community.
	L/R	Landfills should be prohibited from impacting historic black heritage areas, and the adequacy of the National Historic Register with regard to African American areas should be evaluated.

	L	A national mandatory recycling law is needed.
	L	EPA should list toxic products that should be phased out.
	\$	Federal resources should address EJ needs rather than be squandered on flood control projects that benefit a few landowners.
	\$	Redress/reparations must be made available for those who have experienced environmental injustice.
	\$	HUD should compensate and move residents whose federally assisted homes were built on top of toxics.
	\$	Worker pensions should be paid where EJ communities are disenfranchised when businesses close.
	R	Army Corps funding should go to EJ infrastructure projects (like needed services, remediation) rather than amenities like golf courses.
	\$	Funding is needed for lead abatement in EJ communities.
	\$	HUD-funded housing residents should be relocated away from toxic sites, with fair market value for their homes.
	\$	EPA's small grants program should be expanded to assure HBCUs receive their fair share.
	R	Power plant siting must be revised to avoid use of modification process to avoid doing an EIS.
	\$	There needs to be an EJ youth service initiative.
	R	Candidates from Puerto Rico and the Virgin Islands should be considered for EPA Region II Administrator.
	R	EJ cannot be realized until there is better representation of people of color in government, private and not-for-profit sectors.
	R	EPA's Title VI guidance should be revised to address the concentration of waste and toxic sites, change the standard to proof to eliminate its bias in favor of state agencies, limit the concept of justification, allow citizens to appeal cases and include communities in the complaint process.
	L	Federal legislation is needed to provide enforceable equal protection in environmental siting.
	L	There should be a moratorium on certain types of facilities in already overburdened communities.
	\$	Lead needs not only to be disclosed; it needs to be removed.
	\$	The excise fee on lead should be raised to create a trust fund to provide benefits to low-income families, abate hazards with properly trained and licensed contractors, and to provide jobs.

	\$	Funding must be provided for infrastructure and staff resource needs at urban parks.
	R	States should follow New York State in including urban reforestation of non-attainment areas as part of their state air quality implementation plans.
	L	Population density should be a siting factor for the largest and most toxic facilities (e.g., power plants, chemical companies) to limit exposure to the fewest people.
	L/R	Susceptibility of the population to environmentally related diseases should be a factor in regulation and siting (as estimated by current rates of diseases such as asthma and lead poisoning).
	R	Census tracts with high levels of air toxins must be addressed by limiting sources of pollution in those areas.
	R	Air pollution should be regulated on the basis of smaller geographic units.
	R	Schools should not be built on contaminated sites or near dry cleaners or sources of lead, asbestos, pesticides or unsafe construction activities.
	\$/L	Vieques must be decontaminated, demilitarized, and returned to a Land Trust for the people. Health studies must be done. Similar activities must be undertaken in all former US military installations.
	L	States should not be allowed to permit waste facilities in communities already disproportionately impacted by them.
	\$	The federal government should fund waste prevention programs.
	\$	Federal assistance should be given to municipal and county waste incinerators to retire debt and shut them down.
	R	Clean Water Act funding should be made contingent on an environmental equity program for sewage waste processing, made available for development of more natural filtration programs.
	R	The federal government should conduct a waste audit of its properties and prevent federal waste transfer to multiply impacted communities. Incineration of federal waste should end, and low-impact vehicles should remove waste.
	R	Emissions reductions, not just research, should be mandated for power plants.
	R	Sewage plants should be placed equitably.
	\$	Home ownership should be facilitated by brownfields redevelopment.
	R	African American sites should be part of the National Historic Register.
	\$	Federal grant money must be available for African American site preservation, and African Americans should be consulted on its expenditure. Education is needed to improve public understanding of such sites.
	R	Restrictions on listing Native American sites on the National Historic

		Register should be reviewed.
	L	Mixed-use zoning must be reformed.
	L/R	The precautionary principle should apply to development; developers should bear the burden of showing the safety of their proposals.
	L/R	Pollution prevention should be mandatory.
	L	EJ should be incorporated into trade agreements.
	No \$	Corporate subsidies should be eliminated.
	R	Mercury regulations are needed to eliminate the substance from the environment. Use of mercury in dental procedures should be banned.
	R/\$	Persistent organic pollutants and dioxins should be phased out, with just transition for affected workers.
	L	Regulations should follow the precautionary principle, rather than risk assessment.
	\$	An EJ fund should be created for harmed farmworkers.
	L/R	Pesticide registration testing must be more extensive and should not be done by the producing company.
	L/R	New mining regulations are needed to ban mining under the water table and to create a moratorium on mining in areas already impacted by pollution from mining.
	No \$	Subsidies for gold mining should be eliminated.
	\$	A trust fund should be created to restore Indigenous People's lands impaired by mining.
	R	Regulations should assure that water pollution does not affect subsistence fishing.
	R	Regulations are needed to control pesticide drift and reduce water use for dust suppression.
	\$	More funding is needed for tribal environmental programs.
	R	New protections are needed for sacred sites.
	\$	Schools located in toxic hot spots need health care.
	\$/R	Schools located near facilities with potential for explosion or chemical releases need to be retrofitted to withstand impact. Elementary schools should not be located near such facilities.
	R	Both legal and illegal transportation of hazardous waste from Mexico to the U.S. must be controlled and its regulation enforced.
	L	Legislation must assure that U.S. companies cannot set up sham Mexican

		corporations to evade accountability for cleanup.
	R	Regulation of cross-border pollution (U.S./Mexico) is needed.
	R	Live animal market conditions must be regulated by the federal government.
	L	Interstate, intrastate and foreign animal exports should be banned.
	R	Regulation of wastes from animal in port waters is needed.
	\$	Tax abatements should be provided to those living in polluted areas and brownfields.
	R	Utility construction regulations should not be streamlined.
	\$	A community that has been burdened with pollution must benefit from redevelopment by, among other things, local hiring, government-sponsored skills training, government-funded projects, incentives for use of minority and women-owned businesses, contracting policy that allows small business to compete.
	\$	Funding should be provided for technical assistance to create "good neighbor" dialogues. Regulatory agencies should facilitate such dialogues.
	R	The EJ Executive Order should be retained and expanded to support the IWG demonstration projects.
	\$	Universities need to be more responsive to community needs, recognizing community heritage and preserving housing for low-income groups.
Government	R	The processing of Title VI claims should be accelerated.
	R	Historically black colleges and universities, tribal and Hispanic schools must have fair access to Federal research dollars.
	\$	An EJ agency should be established in every state, with sufficient staff and federal oversight to assure the agencies are effective, perhaps by means of a panel composed of community, business and governmental representatives.
	\$	There should be area-wide restoration projects, like a small-scale Everglades restoration, using federal/state agency partnerships.
	\$	Communities should receive the economic benefits of restoration activity; for example, supporting alternative fuels entrepreneurs in EJ communities.
	\$	The Interagency Working Group pilot program should be institutionalized and funded in federal legislation.
	L	Legislation may be needed to assure federal interagency cooperation on EJ pilots.
	R	There needs to be a job preference for residents in EJ communities.
	\$	Green space is needed in EJ communities for recreation and access to the waterfront.

	In/R	Multimedia impacts and the influence of health and employment factors in EJ areas must be studied and addressed.
	R	EJ needs to be integrated into all environmental programs. The Executive Order gives states little guidance; they need to be partners in developing EJ policy and have the resources to make EJ part of their mission.
	R	Bond recipients need green building training.
	L	Mixed use zoning should be encouraged so residents can live near their work.
	R	EJ must include the primary need of low-income people for good jobs. EJ should be redefined to include the needs of working people for green space in urban areas and should not focus just on opposing large facilities.
	R	The EJ movement should be led by people of color and by people representing their own communities, not outsiders.
	R	EJ should focus on urban green space, recreation, jobs, good schools, congestion and the welfare of people of color, not building preservation and wildlife conservation. When resources are limited, the health and welfare of community members should come first.
	L/R	Regulatory grandfathering should end. Modifications should not be allowed without environmental upgrading.
	\$	Funding is needed for sanitation on the U.S./Mexico border.
	R	New power plants should have to conduct an EJ analysis.
	L	Congress needs to respond to the high cost of energy and the pollution that could be generated from new sources.
	R	EJ means building a positive future, not just saying "no" to pollution.
	\$	The lack of environmental infrastructure must be addressed on tribal lands.
	L/R	EPA must confront the fact that state permitting programs cannot determine the zoning component of siting and by law must issue permits if regulatory standards are met.
	\$	Greater empowerment zone funding is needed for EJ communities.
	\$	Local IWG-like projects should be funded.
	\$	There should be personnel loans to local government to work on community projects.
	\$	Faith-based groups can play a role in community development, and more funds are needed.
Business	R	To increase EJ, the federal government should increase use of stakeholder forums on issues.
	\$	Funding is needed to incentivize pollution prevention.

	R	TAGs need to undertake pollution prevention, not just disseminate information.
Academic	R	EJ communities should not be used as proving grounds for educational innovation but should benefit from proven educational successes.
	R	EJ in education should include fairness in school discipline, enhanced early training, incorporation of EJ into training programs, and evaluation of the impacts of school age cutoffs.
	L	Schooling should begin earlier, when children learn best.
	\$	Compensation from government and business should be considered for reduced life span in EJ communities.
Environmentalist	L	Congressional riders impeding progress on Title VI cases should be rejected. Civil rights laws must be enforced and enhanced.
	R	Every permit should have an EJ component, evaluating pre-existing conditions. EPA should have override authority for all permits.
	L	Governmental decisions should be based upon the precautionary principle.
	R	The concentrations of TRI reports and sources of nuisance in a community should be addressed.
	L	Local "snob" zoning must be eliminated to assure fair share allocation in facilities for garbage collection and disposal.
	L	Global warming disproportionately impacts the poor. Signing the Kyoto treaty is a needed first step.
	L	Congress should legislate carbon dioxide emission reductions.
	L	Drilling should not be allowed in ANWR.
	No \$	All subsidies to oil, gas and coal industries should be eliminated, with just transition payments to affected workers.
R/In	Cumulative risks should be assessed before new sites are approved.	
<b><i>Public participation</i></b>		
Community	R	The public comment period for power plant siting is too short. There should be federal requirements assuring adequate public input.
	\$	Funding should be provided for grants for youth environmental leadership development in communities.
	R	Follow up is needed after public participation.
	In	Redevelopment plans should have public notice and input.
	In	Information needs to be translated and interpreted. Community members should not bear the burden of providing translation.

	\$	Citizen stakeholders are disadvantaged in "stakeholder groups" because they lack resources.
	In	Public input should be solicited on the U.S.'s new energy policy.
	In	Tribes must be consulted on the regulation of genetically altered organisms.
Government	R	All EJ initiatives should assure all parties are at the table – relevant government agencies, citizens and businesses.
	R	All levels of government need to engage on EJ issues, particularly local government with regard to land use.
	In	EPA must be easily accessible to residents.
	R	Early alternative dispute resolution should be encouraged.
	In	States need training in how to do early public participation.
	In	Mayors' roles in implementing EJ policy must be recognized and their views solicited.
	\$	Cities and public health departments need resources for public participation.
	R	In determining how clean is clean, discussions must include residents who want jobs from redevelopment, not just environmental groups.
	R	Government should give priority to projects that include the community in planning and benefits.
Business		
Academic		
Environmentalist	In	Public participation is required during pre-application negotiations.
	L	Public participation, cumulative risk assessment and stringent enforcement must be guaranteed in legislation.
<b><i>Federal facilities</i></b>		
Community	L/R	EJ should be a specific land use factor in DOD siting and operational decisions.
	L	DOD and DOE must be accountable for damaging residents' health in communities in which they operate. Relocation should be provided where needed to protect health.
	R	A panel including grassroots representatives and other experts should be established and funded to oversee implementation of the results of the Federal Facility Stakeholder Dialogue.
	R	There need to be community notification for spills and releases from DOD facilities. There must be adequate monitoring and maintenance of equipment.
	In	Federal facilities must have publicly available emergency response plans, with review of their effectiveness.

	L	DOD cannot oversee its own health and safety compliance.
	In	The impacts of Navy offshore dumping must be evaluated.
	L	Federal facilities must be fully covered by environmental laws.
	L/R	A federal advisory board should be established with citizen members to recommend a new regulatory system for federal facilities.
	R	The 1996 Federal Facilities EJ Implementation plan needs to be enforced with sufficient resources at federal facility sites.
	\$	The cost savings at closed DOD facilities should benefit impacted EJ communities.
	R	Government employees need sensitivity training.
	\$	Resources are needed to fund DOD and DOE cleanup plans.
<b>Government</b>		
<b>Business</b>		
<b>Academic</b>		
<b>Environmentalist</b>	L	Federal facilities are major polluters and must be subject to the same laws and the same regulatory oversight applicable to the private sector.
	\$	The federal government needs to pay its "fair share" for the use of DC resources – taxes, recycling obligations, funding of DC hospital, upgrade to Blue Plains sewer system.
<b><i>Transportation</i></b>		
<b>Community</b>	R	EJ must be part of mass transit planning.
	\$	Diesel buses must be replaced.
	R	Federal transit dollars must be allocated more equitably and should reflect riders transported.
	\$	Title VI should be used to provide regular oversight of Metropolitan Planning Organization (MPO) decisions, and DOT should increase its resources for investigating and handling civil rights and EJ complaints.
	\$	Northeast urban transit systems should be expanded.
	R	All MPOs should have transit rider and low income and EJ community voting representation.
	R	Federal transit aid should include pedestrian and bicyclist-friendly development.
	\$	Alternative fuel transit buses, especially those using renewables and with zero emissions, should be promoted.
	\$	Smart Growth initiatives, particularly those using federal dollars, must assure

	No \$	EJ by expanding urban transit systems and expanding affordable housing. Economic development incentives such as Empowerment and Enterprise Zones should be ended because they add to the environmental burden faced by EJ communities.
	In	Congress should examine the impact of transportation, economic development, and air pollution on public health. It also should examine the EJ implications of affordable housing and gentrification with regard to smart growth.
	L	Defense spending should be shifted to mass transit.
	L/R	Mass transit funding must be distributed equitably, assuring that low-income residents get priority.
	\$	Transit stops must be retained in low income communities, and transit-oriented development encouraged.
Government	L/R	Federal highway funds should be used to purchase alternative fuel vehicles.
	R	Affordable housing funds should go to the truly poor.
	R	A mitigation plan is needed for the Oakland port.
Business	In	The Bay Area Alliance for Sustainable Development is a good template for cooperation in planning.
Academic		
Environmentalist		

## 3.8 Listening Session Agendas

### National Environmental Policy Commission

Building and Sustaining Partnerships that Promote Human Health,  
Environmental Justice and Economic Development

Jackson State University  
Charles F. Moore Building, Room 101  
1400 JR Lynch Street  
Jackson, MS

August 29, 2000

**9:00 a.m. Welcome**

**Host:**

*Dr. Glenda Glover*, Dean, School of Business, Jackson State University, Jackson, MS

**Speakers:**

*The Honorable James Clyburn*, Representative, 6<sup>th</sup> District, South Carolina

*The Honorable Bennie Thompson*, Representative, 2<sup>nd</sup> District, Mississippi

*The Honorable Harvey Johnson, Jr.*, Mayor, City of Jackson, MS

*Dr. Ronald Mason, Jr.*, President, Jackson State University, Jackson, MS

*Mr. Charles Chisolm*, Executive Director, Mississippi Department of  
Environmental Quality, Jackson, MS

**9:30 a.m. Listening Session Conducted by Commission Members**

**NEPC Co-Chairpersons**

*Mr. Richard Moore*, Executive Director, Southwest Network for Environmental and Economic Justice,  
Albuquerque, NM

*Ms. Sue Briggum*, Director of Government Affairs, Waste Management, Washington, DC

**Participation**

Those attending the listening session may submit written remarks to the Commission for the record. Participants are encouraged to focus on issue identification and recommendations for action. Session participants may speak for four minutes, summarizing their statements. A sign-up sheet will determine the order of those who address the Commission.

**12:30 p.m. Lunch**

**1:30 p.m. Listening Session Continued**

**2:45 p.m. Closing Remarks**

## National Environmental Policy Commission

Building and Sustaining Partnerships that Promote Human Health,  
Environmental Justice and Economic Development

The State University of New Jersey, Rutgers-Newark  
Multi-Purpose Room #231, Robeson Campus Center  
350 Dr. Martin Luther King, Jr. Boulevard  
Newark, NJ

December 15, 2000

### 9:00 a.m. *Welcome*

#### *Host:*

*Dr. Steven Diner*, Dean, College of Arts and Sciences, Rutgers-Newark, NJ

#### *Speakers:*

*The Honorable James Clyburn*, Representative, 6th District, SC

*The Honorable Donald Payne*, Representative, 10th District, NJ

*The Honorable Robert Menendez*, Representative, 13<sup>th</sup> District, NJ

*The Honorable Sharpe James*, Mayor, City of Newark, NJ

*Ms. Gayle Chaneyfield-Jenkins*, Council Member At-Large, City of Newark, NJ

*Mr. Luis Quintana*, Council Member At-Large, City of Newark, NJ

*Mr. Robert Shinn*, Commissioner, NJ Department of Environmental Protection, Trenton, NJ

*Ms. Jeanne Fox*, Regional Administrator, US Environmental Protection Agency, Region 2, NY

### 9:30 a.m. *Listening Session Conducted by Commission Members*

#### *NEPC Chairpersons*

*Dr. Mildred McClain*, Executive Director, Citizens for Environmental Justice, Savannah, GA

*Mr. Richard Moore*, Executive Director, Southwest Network for Environmental and Economic Justice, Albuquerque, NM

*Ms. Sue Briggum*, Director of Government Affairs, Waste Management, Washington, DC

#### *Federal Interagency Working Group Briefing*

*Mr. Timothy Fields*, Assistant Administrator, Office of Solid Waste and Emergency Response, US Environmental Protection Agency, Washington, DC

*Mr. Charles Lee*, Associate Director for Policy and Interagency Liaison, Office of Environmental Justice, US Environmental Agency, Washington, DC

#### *Participation*

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### 12:30 p.m. *Lunch*

### 1:30 p.m. *Listening Session Continued*

### 2:45 p.m. *Closing Remarks*

## National Environmental Policy Commission

Building and Sustaining Partnerships that Promote Human Health,  
Environmental Justice and Economic Development

Golden Gate University  
536 Mission Street  
San Francisco, CA

**March 23, 2001**

### 10:30 a.m. *Welcome*

**Host:**

*Professor Alan Ramo*, Director of the LL.M. Program in the Environmental Law and Justice Center, Golden Gate University, San Francisco, CA

**Speakers:**

*The Honorable James Clyburn*, Representative, 6th District, SC

*The Honorable Nancy Pelosi*, Representative, 8th District, CA

*The Honorable Willie Brown*, Mayor, San Francisco, CA

*The Honorable Mark Leno*, Supervisor, District 8, San Francisco, CA

*Ms. Laura Yoshii*, Acting Regional Administrator, US EPA, Region 9, San Francisco, CA

*Mr. Winston Hickox*, Secretary, California Environmental Protection Agency, Sacramento, CA

*Ms. Nancy Sutley*, Deputy Secretary for Policy and Intergovernmental Relations, California Environmental Protection Agency, Sacramento, CA

### 11:00 a.m. *Listening Session Conducted by Commission Members*

#### **NEPC Chairpersons**

*Dr. Mildred McClain*, Executive Director, Citizens for Environmental Justice, Savannah, GA

*Mr. Richard Moore*, Executive Director, Southwest Network for Environmental and Economic Justice, Albuquerque, NM

*Ms. Sue Briggum*, Director of Government Affairs, Waste Management, Washington, DC

#### **Participation**

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1:00 p.m. *Lunch*

2:00 p.m. *Listening Session Continued*

6:45 p.m. *Closing Remarks*

## National Environmental Policy Commission

Building and Sustaining Partnerships that Promote Human Health,  
Environmental Justice and Economic Development

Laney College  
900 Fallon Street  
Oakland, CA

**March 24, 2001**

**9:00 a.m. Welcome**

**Host:**

Ms. Judy Walters, Senior Vice Chancellor for Educational Services, Laney College,  
Oakland, CA

**Speakers:**

*The Honorable James Clyburn*, Representative, 6th District, SC

*The Honorable Barbara Lee*, Representative, 9th District, CA

*The Honorable Jane Brunner*, Vice Mayor, Oakland, CA

*The Honorable Ignacio De La Fuente*, Council President, District 5, Oakland, CA

*Mr. Robert Bobb*, City Manager, Oakland, CA

*The Honorable Nancy Nadel*, Councilmember, District 3, Oakland, CA

*The Honorable Larry Reid*, Councilmember, District 7, Oakland, CA

*Mr. Michael Schulz*, Acting Deputy Regional Administrator, US EPA, Region 9, San  
Francisco, CA

*Ms. Nancy Sutley*, Deputy Secretary for Policy and Intergovernmental Relations,  
California Environmental Protection Agency, Sacramento, CA

**9:30 a.m. Listening Session Conducted by Commission Members**

**NEPC Chairpersons**

*Dr. Mildred McClain*, Executive Director, Citizens for Environmental Justice, Savannah, GA

*Mr. Richard Moore*, Executive Director, Southwest Network for Environmental and Economic  
Justice, Albuquerque, NM

*Ms. Sue Briggum*, Director of Government Affairs, Waste Management, Washington, DC

**Participation**

Those attending the listening session may submit written remarks to the Commission for the record. Participants are encouraged to focus on issue identification and recommendations for action. Session participants may speak for four minutes, summarizing their statements. A sign-up sheet will determine the order of those who address the Commission.

**12:00 p.m. Lunch**

**1:00 p.m. Listening Session Continued**

**2:45 p.m. Closing Remarks**

## National Environmental Policy Commission

Building and Sustaining Partnerships that Promote Human Health,  
Environmental Justice and Economic Development

University of Illinois at Chicago  
Chicago Circle Center Building, Room 605  
750 South Halsted  
Chicago, Illinois 60607

April 27, 2001

### 9:00 a.m. *Welcome*

#### *Host:*

Dr. Arthur Savage, Associate Chancellor, University of Illinois at Chicago, Chicago, IL

#### *Speakers:*

*The Honorable James Clyburn*, Representative, 6th District, SC

*The Honorable Danny Davis*, Representative, 7th District, IL

*The Honorable Jan Schakowsky*, Representative, 9th District, IL

*Mr. William Abolt*, Commissioner, City of Chicago, Department of Environment, Chicago, IL (Representing Chicago Mayor Richard Daley)

*The Honorable Leonard DeVille*, Alderman, Ward 21, Chicago, IL

*Mr. David Ullrich*, Acting Regional Administrator, US EPA Region 5, Chicago, IL

*Mr. Joseph E. Svoboda*, General Counsel, Illinois Environmental Protection Agency, Springfield, IL

### 9:30 a.m. *Listening Session Conducted by Commission Members*

#### *NEPC Chairpersons*

*Dr. Mildred McClain*, Executive Director, Citizens for Environmental Justice, Savannah, GA

*Mr. Richard Moore*, Executive Director, Southwest Network for Environmental and Economic Justice, Albuquerque, NM

*Ms. Sue Briggum*, Director of Government Affairs, Waste Management, Washington, DC

#### *Participation*

Those attending the listening session may submit written remarks to the Commission for the record. Participants are encouraged to focus on issue identification and recommendations for action. Session participants may speak for four minutes, summarizing their statements. A sign-up sheet will determine the order of those who address the Commission.

1:00 p.m. *Lunch*

2:00 p.m. *Listening Session Continued*

3:45 p.m. *Closing Remarks*

**BEYOND REGULATORY PARADIGMS:  
THE NEED FOR COLLABORATIVE FRAMEWORKS TO RESOLVE  
ENVIRONMENTAL CONTESTATIONS IN LOCAL COMMUNITIES.**

*A CLOSER LOOK AT THE WAGNER'S POINT STORY*

By  
Andrew D. Sawyers, Ph.D.

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**ABSTRACT**

*“If the current rhetoric about handing on a decent living environment to future generations is to have even one iota of meaning, we owe it to subsequent generations to invest now in a collective and very public search for some way to understand the possibilities of achieving a just and ecologically sensitive urbanization process under contemporary conditions. That discussion cannot trust in dead dreams resurrected from the past. It has to construct its own language – its own poetry-with which to discuss possible futures in a rapidly urbanizing world of uneven geographical development. Only in that way can the possibilities for a civilizing mode of urbanization be thought and imagined.”*

*David Harvey: Justice, Nature & the Geography of Difference, p. 438*

**Introduction and Background**

Ever since the foundations of growth that was created by visions adopted as Maryland State policy in the 1992 Growth Act and the enactment of Governor Glendening's Smart Growth and Neighborhood Revitalization Act of 1997, it has been widely accepted that solutions to key environmental problems will only work if they simultaneously address questions of economic and social justice and if ways are found to incorporate impoverished and marginalized populations into environmental decision-making. Since then, more and more attention has been paid, locally as well as nationally, to the problems of urban sprawl, community and environmental degradation and the need for collaborative partnerships. Key public policy considerations have been how to make communities more ecologically, socially and economically sustainable. Many neighborhoods in major U.S cities have continued to decay, unemployment has risen and many social problems have

intensified. In Maryland, increasing perception of pollution in some disenfranchised communities, environmental injustice, suburban sprawl, and habitat destruction, etc., with negative consequences for marginalized communities, parallels this situation.

There is a clear need to identify ways to make communities more sustainable. Particularly in impoverished inner-city neighborhoods, we need to know how community regeneration, community decision-making, and ecologically sustainable issues might be so shaped as to contribute to the solution of regional as well as local urban, rural, and environmental issues. In particular, we should seek to investigate and evaluate the effectiveness and possibilities of environmental laws in collaboration with other approaches to highlight, educate, and develop understanding among communities concerned with environmental issues.

At a micro level, in Maryland, we should therefore seek ways to realize the macro objectives long ago laid out in laws and policies such as the enactment of Maryland's Growth Act of 1992 and the Smart Growth Areas Act of 1997, the 1994 Clinton Executive Order on Environmental Justice and the Maryland Advisory Council on Environmental Justice's (1999) recommendations and made more concrete in the Governor's Glendening's 2001 Executive Order establishing the Commission on Environmental Justice and Sustainable Communities and Executive Orders 01.01.1998.04 (Neighborhood Conservation), 01.01.2001.01 (Commission on Sustainable Communities), and 01.01.2001.08 (Commission on Poverty), etc.

Achieving sustainable communities, while not impossible, tantamount to their attainment, is surmounting conflicts, harnessing challenges and transforming obscure concerns into articulable

opportunities. Historically, for example, ideas of environmental justice and unsustainable communities have embodied definitions ranging from widespread poverty and crime to disengagement from decision-making processes, and feelings of disempowerment in marginalized communities that inhibit community-based environmental decision-making. Some of these ideas have evolved from obscurity and abstract perception to realistic and often problematically compounded problems in some communities. Our treatments of these problems are now paralleled by advancements in policies and to a lesser extent regulatory advancements.

Across the United States, Maryland has become a champion for these causes through innovative policy advancements. The state's policy-makers should be credited with making significant inroads toward developing policies and approaches aimed at creating sustainable communities and reducing the contestations that often plague these communities. Maryland's legacy in this area, notwithstanding the enormity and almost unrealistic possibilities of creating sustainable communities from those that are poor, marginalized and far removed from decision-making processes, can be summed up as successful. The state's policies and executive orders that are aimed at reducing poverty, promoting infill development, and encouraging smart growth are paralleled by policies toward inclusivity, promoting best and smart regulatory practices, and protecting communities at risk and their health.

Nevertheless, best practices, regulatory practices and the like, that are geared toward creating sustainable communities and reducing community contestations are sometimes fraught with legal constraints and obstacles and limited guidelines. For example, the Maryland Department of Environment (MDE) cannot unilaterally address environmental justice issues raised by any

community. Often these issues have resonance in local zoning and are at times tangentially and even more than marginally associated with a diversity of concerns. Another example, highlights a seminal pronouncement in America's collective consciousness concerning the limits of regulatory approaches to address public health and community concerns: The passage of the Resource Conservation and Recovery Act (RCRA) and Toxic Substances Control Acts (TSCA) in late 1976 extended environmental policies into wastes and hazards area. The limits of these new laws, which were intended to protect human lives, were exposed by the dramatic events at Love Canal. The Love Canal community was exposed to casual dumping by Hooker Chemical industry over several decades and there was widespread discovery of health impacts on local citizens. Unfortunately, then, the recently constructed laws could not prevent the invidious assault experienced by the community. In recent times, those limits are often exposed when communities with environmental concerns only see regulatory redress as a way to pursue fixing problems – not preventing them. The evolution of these events and issues in addition to regulatory advancements, increased community sophistication and so forth, has led such crude intersections and overlaps to require collaborative and holistic partnerships to resolve environmental questions in local communities.

In this context, it is becoming increasingly clear that the much-used approaches of command and control or traditional regulatory practices are often inadequate to resolve community contestations. One way to counteract this situation is to develop approaches and policies that can assist with decision-making, communicating concerns and streamline approaches that when coalesced can potentially and dramatically improve the chances of residents within some communities to see their concerns addressed. In turn, the examination of legal ideologies,

policies and technical policy solutions in marginalized communities under the aegis of collaborative frameworks, could then work because they would treat the problems experienced in these communities as part of a larger process in which education, awareness building and decision support systems also has a role. The framework of collaborative planning for communities therefore provides an appropriate and useful departure for bringing marginalized and impoverished communities into the mainstream of environmental decision-making as participants and partners.

Collaborative planning can also assist in focusing efforts in marginalized, at risk communities, and those far removed from decision-making processes, that invariably, can help these communities to move from the margins of society to places of proactive possibilities. In many of these communities, the separation from decision-making coupled with poverty, potential environmental ills, and disenfranchisement, can all give rise to fears and perceived discriminatory practices, unfair treatment and access, and further aggravate the separation from decision-making processes. In the environmental field and study, such fears are often known as environmental injustice and have lead to the field and study of environmental justice. Whether these concerns amount to injustice when ultimately analyzed, or not, solutions will require a collaborative framework that implicitly recognizes historical and contemporary laws, socio-economic issues, and a host of other approaches.

This paper recognizes the importance of collaborative approaches to resolving community contestations based on several case studies in Maryland. One such case study focuses in a cursory way on the inherent polemics and a veritable cacophony of ideals, ideas, and approaches

that ultimately evolved into a collaborative approach to resolve the fears and concerns raised by the Wagner's Point Community, in Baltimore Maryland. The paper also tangentially traces the historical character of the Wagner's Point community and implicitly alludes to the laws that gave rise to its prominence and ultimately to the disintegration of the residential community. While the story being told will chronicle the community, government and industry coming together in spite of significant hurdles to avoid further languishment in an environment where the community no longer wanted to live, it is also as much about the laws that permitted residential development but ultimately could not prevent the concerns that were raised in subsequent years.

### **Wagner's Point, Baltimore, Maryland<sup>1</sup>**

The ideas of collaborative partnerships and community empowerment were never more evident than in Wagner's Point Maryland. Wagner's Point is a highly industrialized peninsula located in the Southeast portion of Baltimore on the Patapsco River. Located on the "Point" are 14 facilities including fuel transfer terminals as well as chemical manufacturers. What makes this industrial area unique is the inclusion of a residential low-income neighborhood of approximately 90 homes in the middle of the industrial complex. The residents contended that they were subjected to all sorts of environmental insults 24 hours a day. A predominately African American housing project was relocated out of the Point several years ago, however, a small pocket of mainly low-income working class residents remained wedged between the industrial facilities. A small pocket of African American residents remained in the Fairfield section of Wagner's Point as well.

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<sup>1</sup> Unless noted otherwise, most of the information, factual background, and quotes contained in this section concerning Wagner's Point was derived from discussions with State Del. Mary M. Rosso (Delegate for Northern Anne Arundel County and Southern Baltimore) and Bernard Penner from the Maryland Department of the Environment. Other information was gathered from various Baltimore Sun articles.

Wagner's Point began as a residential neighborhood built for workers at Mr. Wagner's peach cannery in the 1920s and 30s. The location was ideal in that it was located at the mouth of Baltimore's Harbor and fruit and other produce could be barged across the Chesapeake Bay and canned on site. From there, the canned fruit was shipped all across the country by rail. The community evolved from a dormitory type environment, hosting workers to one with a kindred spirit and character with churches, stores, restaurant, and even schools.

Unfortunately, in the 1950s, the cannery operation was closed and the same circumstances that made the community attractive to Mr. Wagner appealed to other industrial uses. Wagner's Point's ideal location and other corresponding attractive characteristics, for example, unparalleled sea and ground transportation accessibility, resulted in the Fairfield area becoming home to more chemical plants, petroleum storage facilities and other industrial uses. Importantly, the area was zoned for industrial use and thus the new uses were in compliance with local zoning ordinance

A compelling story to be told here, evolved from a community that was built to serve a small industrial facility and how that community grew concerned as industrial interest continued to grow. The chicken and egg story becomes particularly intriguing in this case. Who came first? Certainly, the cannery came first – but historical laws accommodated the residents that came along to support the facility. However, regulatory and planning efforts did not parallel the growth of industrial use in the community. That in itself partially explains the story of the last residents of Wagner's Point and assists in inferring the consequences of planning that did not happen. Wagner's Point became a model in Maryland for how not to create a residential community. The

story traces a community transitioning from a comfortable living environment to the resulting consternations such as reduce home values and potential health concerns. The transition, however, was as complex as the processes that ultimately lead to the relocation of residents.

When the Baltimore Beltway was completed in the 1950s, the southern part of the Harbor Tunnel hinged unto the Fairfield Peninsula. There was also a substantial rail yard and with readily accessible and increased transportation available coupled with relatively cheap real estate, more and more, the larger Fairfield area that encompasses the Wagner's Point community, became home to industrial entities.

As Baltimore's industrial base grew, industries located around the area until, eventually, the small community began to lose residents. However, several blocks of tiny row homes had remain in the community. After World War II, over time, those row homes were virtually surrounded by heavy industry. Those who remained did so for many reasons but one common reason was that, ironically, their isolation preserved a small town way of life in a big City.

The influx of more industrial neighbors prompted more residents to move out of the community. However, for those who were unable to do so, or for some who had fully paid for their homes, coexisting with their industrial neighbors became the only viable option. In retrospect, this sometimes tempestuous coexistence was facilitated by the limits of regulatory resources, planning ordinances, economics, social dynamics such as affordability and community cohesiveness, transportation growth and improvements, and finally, informational divide.

These facilitating circumstances became more pronounced and tempestuous as things started to go wrong and accidents started to happen. Mishaps with cars carrying dangerous chemicals in the 1970s led to the relocation of the large Section 8 Housing Development (primarily African American residents). When those residents were relocated, most of the supporting infrastructure started to decline. The churches left, schools were closed, apprehension grew, and information concerning the identified problems was sought. School aged children still living in the area were bused to Curtis Bay and Brooklyn on the other side of the railroad tract. These problems became more compelling to residents as governmental services sought were often difficult attain. In part, the issue of limited governmental services was complicated by boundaries of the community that was a part of three different jurisdictions (Baltimore City, Baltimore County and Anne Arundel County).

Community concerns and contestations continued to grow and the issue of limited service was only one the many “ills” voiced. Issues such as poor planning, limited regulatory authority of governing agencies, truck traffic, marginalization and disenfranchisement of community and their concerns, inaccessible egress and ingress to and from community, increase vulnerability to environmental pollution and potential catastrophes were starting to resonate more frequently among concerns raised by residents.

To address these issues, the South Baltimore Industrial Mutual Aid Plan was formed between the industries in the area to share resources to respond to chemical spills. Several incidents, including explosions illustrated the need for effective communication with residential communities. Rapid and effective communication was needed not only to protect their safety in

the event of an emergency but also to calm their fears in the event of a non-threatening incident and to make sure they were immediately apprised of the nature of the event. The industries in the Plan provided funds and equipment to the communities so that they could receive rapid notification of spills. One Company, which has a manufacturing facility for agricultural chemicals in South Baltimore, provided radio receivers to community leaders so that they could immediately be notified of industrial accidents and spills.

In addition to emergency planning, industries also included communities in the permit application process. A leading manufacturer of specialty chemicals, which has been operating in the Baltimore City, in close proximity to this community, since 1909, also provided assistance. They participated in a Citizen Advisory Panel and invited community representatives to discuss and review permit applications and to tour its facilities. This process, allowed the company an opportunity to explain its plans for expansion as well as its emission reductions. That process resulted in a more informed public, less citizen opposition, and a smoother review process.

All of these efforts helped the community. However, that was not enough for the Wagner's Point community. Three explosions occurred in Wagner' Point from December 1997 to October 1998. The last explosion brought residential concerns to the forefront. In May 1998, an expected release of a gas from one facility blew over the community and created a state of panic among the residents. That panic, was exacerbated by the inability of residents to leave the community because of incoming fire trucks (one escape route).

Nevertheless, by the end of 1998, residents acknowledged that while they were vulnerable to toxic assaults, simultaneously, they could be successful in stopping those assaults, which suggest a paradoxical combination of socially oppressive constraints and self-determining capacities. The residents in Wagner's point banded together to address what they viewed as a threat to their quality of life and health. Residents convened several meetings, which drew representatives from the EPA, MDE, and several local and state elected officials and new collaborations were formed. According to community residents, the initial meetings with industry and government officials foreshadowed a pattern of improvisation and innovations that continued to emerge and evolve as information and solutions were sought collaboratively.

During some of the initial meetings, community residents suggested that industrial pollution was to be blamed for the high levels of health concerns within the community. They also suggested that industrial traffic, pollution, and other assaults were the primary reasons for some of the other 'ailments' suffered by the community. They also became intensely at odds with other stakeholders when published and or other information was released that suggested otherwise. Eventually, their concerns peaked and they got fed up with trying to resolve the environmental claims and decided they wanted out of the community. Also, during these meetings, collaborative planning and negotiations, it was acknowledged that resources were limited as well as regulatory authority and the best way to resolve the concerns was to collaboratively work together.

As the concerns peaked, relocation became a priority to the residents. They held several meetings to get state and federal officials to relocate them from Wagner's Point. After additional meetings

and active collaboration, negotiation efforts lead by the City of Baltimore and industries in collaboration with the State of Maryland, and HUD, located resources that became instrumental in the relocation of the residents. The residents view the relocation as a success because they no longer had the resources to support 'good community development' in Wagner's Point. They also received reasonable purchase prices for their homes and some were promised or allocated lots and/or homes in Maryland suburbs. Because the city, state and other governmental agencies handled the bulk of the relocation investment, the Wagner's Point scenario became a national rarity -- an instance when a collaborative government and industrial approach with tangible community input relocated residents from a neighborhood that was rendered unlivable due to environmental pollution and corresponding protests from residents.

### **Conclusion**

It has been four years since the last explosion that rocked the Wagner's Point neighborhood on the Fairfield Peninsula that projects out into the beautiful southwest bank of Baltimore's Harbor. No one lives there anymore since Baltimore City or one of the large companies in the area purchased all the homes. In the end, the residents got what they considered a fair price for their properties and were happy to leave the community. The relocation efforts that embodied a collaborative approach and saw a community evolved from relative tranquility in the earlier part of the century to one embroiled in contestations around zoning ordinances, economics, social dynamics and so on, has become a platform for future resolutions of community contestations.

The overall goal of developing collaborative partnerships and planning is to strengthen local democratic governance through citizen empowerment. There is considerable talk these days

about joining with our neighbors to fight the decay of urban and other marginalized areas. We can fight community decay and reduce contestations, not just by following our regulatory guidelines, but also by addressing the often condescending conditions that exist in many communities that are incubation grounds for creating communities where living and working conditions are often inappropriate. I argue that it is our duty, or moral obligation, to do everything in our power to prevent suffering and continued downward spiraling of poverty and the attendant lack of adequate living and working conditions in less affluent communities.

Such assistance includes, but goes far beyond, regulatory paradigms. For example, the Wagner's Point example highlights that not just economic interests influence what communities can possibly achieve, but also partnerships with state, local, federal, and non-profit organizations assistance, political commitments, social powers, and the enabling conditions of community empowerment, reduce information disparity, education, and adequate health conditions. The very sustenance of communities across the Maryland requires that the ordinary people should feel that they actually do enjoy the right to determine their destiny. That right should be guaranteed through legal frameworks working in concert with collaborative approaches.

The events within Wagner's Point highlights, in part, lesson's learned and in part, reflections on the experience gained from (1) the limits of governmental resources including regulatory resources and (2) the importance of collaborations and partnerships and other intervention mechanisms to address the contestations. The collaborative approach employed to resolve the problems engaged active interventions into community revitalization and at the same time, it provided a way to reflect upon what such interventions accomplished. Undoubtedly, the

problems in Wagner's Point extended well beyond immediate threats. Rather than being viewed in isolation, community problems should be viewed in the larger context of the effects environmental, economic, regulatory, and other conditions. That is, the risks, while undeniably real, may be considered an effect of the larger cause of inadequate decision-making. Therefore, attempts to redress these concerns must address the sustenance of communities, especially, where those on the margins of society reside.

Finally, the need for collaborative approaches in concert with legal interventions becomes particularly compelling to address the multifaceted concerns associated with community concerns. There will not be one size fits all solutions. The solutions will come in the form of many efforts like pollution prevention, improved public participation, true partnerships with communities, improved and informed siting decisions, reporting requirements, ADR, screening models, community characterizations and analyses, permitting guidance, improve risk assessment, and better integration into programmatic efforts of governmental agencies.

Wagner's Point embodied regulatory resources, alliances and partnerships, etc., to resolve a seemingly intractable five-decade old problem. I believe that some environmental problems can be successfully addressed through community-based planning and activities under a set of defined conditions that embraces collaborations and recognizes the rights of all involved stakeholders.

# THE MARYLAND COMMISSION ON ENVIRONMENTAL JUSTICE AND SUSTAINABLE COMMUNITIES

## ANNUAL REPORT

December 2001

*Governor Parris N. Glendening*

*Lieutenant Governor Kathleen Kennedy Townsend*

This document is not official and does not reflect the views of any state agencies or governmental infrastructure in Maryland. It only contains the views of an independent Commission

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## EXECUTIVE SUMMARY

### Purpose

The Maryland Commission on Environmental Justice and Sustainable Communities has completed its first annual report. At Maryland's annual Environmental Legislative Summit on January 21, 2002, Mr. Scot T. Spencer, the Commission's Chairman, presented an official report to Maryland's Governor, Parris Glendening for his review and consideration. The report contains the Commission's findings and recommendations in accordance with an Executive Order issued by the Governor on January 1, 2001.

### Background

The Commission held its inaugural meeting on May 11, 2001. The Maryland Department of the Environment's Secretary, Jane Nishida, Assistant Secretary Denise Ferguson-Southard and the Commission's Chair, Scot T. Spencer, presented the charge and goals to the Commission. The Commission has had seven (7) meetings since its first meeting in addition to the first community forum, which was held on December 21, 2001. The Commission's meetings have identified several problematic areas of concern across the state of Maryland. There is significant concern about the full integration of stakeholder-based/community involvement and planning within the framework of the regulatory mandates, processes, and procedures. General concerns articulated by Marylanders during the 2001 meetings include inequities in research practices associated with lead paint studies, power plant siting, landfill siting, the provision of wastewater and sewer infrastructure, permitting, hearing processes, public outreach, and involvement, and protection of public health.

The Commission has made several recommendations that could result in the development of more sustainable communities. One concept that is intriguing to the Commission is the development of a comprehensive framework to respond to environmental inequities in targeted communities. This concept builds on the foundations of Maryland's Smart Growth paradigm and those created by the visions adopted as State policy in the 1992 Growth Act.

This concept embodies the development of policies with the use of State resources that support communities and influence the location of specific development. It will attempt to use the authority of state government in communities designated by counties and local government as environmentally challenged or higher risk communities. These designated communities would receive priority attention that could manifest in several forms: additional compliance and enforcement activities, additional state funding and tax benefits, and special analyses of potential developmental benefits and impacts, with the idea of steering away environmentally detrimental activities while encouraging environmentally and economically beneficial ones.

The Commission is looking at mechanisms to identify high-risk communities so that state agencies can focus their limited resources on the highest priority areas. To facilitate this identification, the Commission has started to develop criteria to better define high risk or environmentally challenged communities.

## Recommendations

This initial Commission report recognizes the unique challenges faced by many Maryland communities and is recommending the integration of an environmental justice and sustainable communities ethic within all state agencies. In this context, the Commission is recommending that state agencies develop plans using MDE's Strategic Environmental Justice Plan as a guideline for developing a comparable approach in achieving their own agency missions.

The Commission recommends the use of alternative dispute resolution (ADR) as a response mechanism to community-based environmental disputes. We are striving to develop innovative practices and approaches that can better lead to resolving environmental disputes before executive branch agencies in Maryland.

The Commission also recommends continued education of state agencies on environmental justice and sustainable communities, with special attention given to marginalized and disenfranchised communities; the creation of state-wide community forums to discuss these issues; the development of environmental justice related guidance for state agencies; focused effort to improve public participation before agencies; and, the building and strengthening government "infrastructure" at local levels to support marginalized communities.

Finally, the Commission applauds Governor Glendening for his vision and foresight to innovate in this area. The members have recognized the enormity of the Commission's tasks. They do not see these tasks as challenges, but as opportunities to build upon and strengthen all of Maryland communities, consistent with the state's legacy of inclusion and sustainable communities.

## INTRODUCTION

**On March 9, 2001**, Governor Parris N. Glendening formally announced the establishment of Maryland's Commission on Environmental Justice and Sustainable Communities in accordance with an executive order issued on January 1, 2001. State lawmakers joined the Governor and environmental justice advocates who fully supported the initiation of this worthy effort.

The Maryland Commission on Environmental Justice and Sustainable Communities (CEJSC) Executive Order is the *first* one ever to be issued by a state. It marks a bold gesture by Maryland in fulfilling its commitment to enhance the quality of life in all of Maryland's communities and for all residents. It is consistent with the approach taken by the federal government in Executive Order 12898 issued by President Clinton on February 11, 1994.

Environmental justice seeks equal protection from environmental and public health hazards for all people regardless of race, income, culture, and socio-economic class. Additionally, environmental justice means that no one group of people should bear a disproportionate share of the negative environmental consequences resulting from land-use, planning or zoning decisions, governmental or commercial operations or as a result of any inequities in the application of governmental regulatory programs and related policies.

## MISSION

The mission of the Commission is concerned about developing strategies to enhance the quality of life in all Maryland communities through a vision of superior environmental protection and intelligent economic development that eliminates sprawl and supports the optimal use of existing infrastructure while protecting our unique natural resources. At its foundation is the tenet that, regardless of race, national origin, age, or income, no segment of our population should bear disproportionately high and adverse effects of environmental pollution. Finally, the Commission endeavors to address environmental concerns within communities and provide new economic opportunities, while enhancing and preserving the ecological integrity of the environment and protecting human health. In this aspect, the Commission strives to identify sustainable economic opportunities for Maryland communities while identifying opportunities for state agencies to protect human health. The Commission will also attempt to identify opportunities for state regulatory programs to improve quality of life for all Marylanders and ensure fair treatment of all citizens in those programs.

## COMMISSION'S MANDATES

Under the directions highlighted in Executive Order **01.01.2001.01** (*Appendix A*), the Commission shall perform the following duties:

- (1) Advise State agencies on environmental justice and related community issues;
- (2) Review and analyze the impact of, including determining whether a causal relationship exists between, current State policy, laws and regulations on the issue of environmental justice and sustainable communities;

- (3) Assess the adequacy of State and local government laws and regulations to address the issue of environmental justice and sustainable communities;
- (4) Coordinate with the Children's Environmental Health and Protection Advisory Council on recommendations related to environmental justice and sustainable communities;
- (5) Develop criteria to assess whether communities of the State may be experiencing environmental justice issues; and
- (6) Recommend options to the Governor for addressing issues, concerns, or problems surfacing through the review process, prioritizing areas of the State, which are targets for immediate attention.

**MEMBERSHIP** *(see appendix A for Commission's composition)*

MEMBER	AFFILIATION
<b>Scot T. Spencer, <i>Chair</i></b>	Environmental Defense
<b>Senator Ulysses Currie</b>	State Senate Appointment
<b>Mary Rosso</b>	House of Delegates Appointment
<b>Jane Nishida</b>	Maryland Department of the Environment
<b>Georges Benjamin</b>	Maryland Department of Health and Mental Hygiene
<b>Roy Kienitz</b>	Maryland Department of Planning
<b>Sherilynn Ifill</b>	Professor, University of Maryland
<b>Tracey D. Newsome</b>	Center for Poverty Solutions
<b>Stephanie Proestel</b>	Housing Initiative Partnership
<b>Timothy Pula</b>	Struever Bros. Eccles & Rouse
<b>Bill Stack</b>	Baltimore City Department of Public Works
<b>Barrie P. Tilghman</b>	Mayor of Salisbury
<b>Bonnie Wilson</b>	Safety Kleen
<b>Jean Yarborough</b>	Community Association
<b>Andrew Sawyers</b>	Staff

## ACTIVITIES OF THE COMMISSION

### Leadership

Mr. Scot. T. Spencer has ably served as the Commission's first Chair, as designated by Governor Parris Glendening. Andrew Sawyers, Coordinator for Environmental Justice and Community Planning with the Department of the Environment, provides staff support to the Commission.

### Work Groups Formation

In order to facilitate a comprehensive work plan, for the Commission established four work groups to target its efforts in achieving the mandates of the Executive Order (*see appendix B for workgroup members*). Those workgroups are:

- **Community Index Workgroup**, Acting Co-Chairs, Jim Richmond and Mary Rosso
- **Regulatory Workgroup**, Co-Chairs, Mary Rosso and Andrew Sawyers
- **Siting and Zoning and Economic Development**, Acting Chair, Tim Pula
- **Community Health and Protection**, Acting Chair, Dawn MC Cleary.

The community index workgroup has been charged with the responsibility of developing a basic framework for the Commission to identify communities that may be disproportionately affected by regulatory and private activities in a manner that may create environmental justice concerns. A preliminary draft report incorporating integral components of that framework is contained in Appendix C. The other workgroups will develop their frameworks and work plans in 2002. *See appendix C for Community Index's Work Group draft plan.*

### Summary of 2001 Commission Meetings

#### **General Overview**

The Commission held its inaugural meeting on May 11, 2001. Secretary Nishida, Assistant Secretary Denise Ferguson-Southard and Chairman, Scot T. Spencer, presented the charge and goals to the Commission. The Commission has had seven (7) meetings since its first meeting in addition to the first community forum, which was held on December 21, 2001.

The Commission has discussed a variety of topics and issues since its inaugural meeting. One of the noteworthy events that occurred during the 2001 meetings was the review and approval of the Maryland Department of the Environment's Strategic Plan on Environmental Justice and Sustainable Communities (Strategic Plan). The Commission deliberated for several meetings and ultimately adopted the Department's Strategic Plan as a model approach that should be embraced by other state agencies. The Commission is recommending in this first report that all state agencies develop similar plans using MDE's Strategic Plan as a tool and guideline for developing comparable approach for use in their achieving their own regulatory missions. *See Appendix D for MDE's Plan.*

The Commission's meetings have also identified several problematic areas of concern across the state of Maryland. There is significant concern about stakeholder-based/community planning and environmental issues within the framework of the regulatory mandates, processes and procedures. General concerns include inequities in research practices associated with lead paint studies and outcomes, power plant siting, landfill siting, wastewater and sewer infrastructure, permitting, and hearing processes. There is recognition among many citizens that the issues of environmental justice and sustainable communities should be elevated within regulatory agencies and provided appropriate resources and response mechanisms to resolve these concerns.

Citizens have deemed the following additional areas as needing immediate attention. These include (1) protection from environmental and public health hazards for all people regardless of race, income, culture and social class; (2) engagement with stakeholders – particularly community interest groups to improve outreach efforts, environmental education, and community planning efforts that can inform and improve environmental decision-making processes; (3) examining demographic and other socio-economic information to mitigate potentially disproportionate impacts and negative environmental consequences resulting from private or public operations or the execution of federal, state, local and municipal program and policies; (4) developing permitting standards and regulatory authority to consider and resolve environmental justice and community sustenance concerns; and, (5) actively engaging efforts to improve children's health and support research efforts that can improve knowledge and operationalization in all the topical areas.

Finally, the meetings have yielded some initial strategies, formulated in the context of the Commission's mandate that may serve to enhance the quality of life in Maryland communities through a vision of collaborative partnerships with government. These include enabling proactive community and other stakeholder planning and outreach efforts to go hand in hand with environmental protection and economic development. To facilitate these efforts, the Commission will initiate workshops and forums to solicit information from stakeholders across the State in an effort to develop and recommend appropriate paradigms which may help create sustainable and engaged communities. Additionally, several other efforts have been recommended that ultimately could result in the development of sustainable community development strategies. These include:

- Identifying high-risk communities so that state agencies can focus their limited resources on the highest priority problems;
- Developing criteria to better define high risk or environmentally challenged communities;
- Creating a database of high risk or environmentally challenged communities;
- Developing a comprehensive framework that builds on the Maryland's Smart Growth paradigm. This paradigm would engage different tools and strategies that would not only identify challenged communities but be responsive when and where appropriate with state resources;
- Developing alternative dispute resolution (ADR) strategies as response mechanisms for environmental disputes;
- Using neutral third parties more frequently, where appropriate and financially feasible to facilitate dialogues and ADR processes;

- Integrating environmental justice into the core mission of state agencies;
- Improving the training and tools made available to permit writers and increase permit writers' awareness of environmental justice concerns and what can be done about them;
- Improving community-based monitoring to identify emissions that cause the most concern;
- Increasing the resources available for communities to participate in the permitting process; and,
- Working more closely with communities

### **Coordination with related Councils:**

The Commission's mandate requires it to collaborate with the Children's Environmental Health Policy Advisory Council (CEHPAC) to better achieve environmental justice and sustainable communities. CEHPAC and the Commission achieve that goal through the exchange of minutes and materials, as well as through the attendance of Ms. Tracey Newsome-Smith, who is a member of both groups. Additionally, the Commission will work closely with the Lead Commission, as well as the Sewer Task Force and other Commissions or Council's to the extent that there are common interests and issues that those entities are addressing and will enhance its work.

### **Participation from the U.S. Environmental Protection Agency**

One of the many opportunities that the Commission has availed itself of is obtaining input from interested parties that can bring experience and expertise to bear on achieving its mandates and mission. One of the entities, which has valuable experience and insight into environmental justice issues locally and nationally, is the U.S. Environmental Protection Agency (EPA). Representatives from both the national headquarters and the Region III Office, which includes Maryland within its jurisdiction, have brought interesting and unique perspectives to the discussions. Two prominent individuals within the EPA hierarchy who have made presentations to the Commission this year are Mr. Charles Lee, the Director of Policy and Research in the Office of Environmental Justice and Mr. Barry Hill, the Director of the Office of Environmental Justice. Summarized below are the presentations provided by the EPA representatives.

Mr. Hill discussed EPA's environmental justice program by highlighting its core responsibility, which is to promote and oversee the full integration of environmental justice into all Agency programs, policies, and activities, consistent with existing environmental laws and their implementing regulations. Currently, the Office of Environmental Justice (OEJ) is focusing its efforts upon integrating environmental justice into the Resource Conservation and Recovery Act (RCRA), the Clean Air Act (CAA), and the Clean Water Act (CWA) permitting programs nationally.

Mr. Hill described the capabilities of EPA's recently introduced Environmental Justice Mapper, which is a tool for investigation, evaluation, and assessment of environmental justice complaints and communities at risk. The Mapper will provide the following tools for use in researching environmental justice issues:

- Links to the health-related database of the Department of Health and Human Services;
- Links to demographic data provided by the Bureau of the Census;
- Links to the database system of the Department of Labor's Occupation Safety and Health Administration; and,
- Links to OECA's database system regarding a facility's compliance information.

Mr. Hill also emphasized the importance training in environmental justice for state agencies and the need to develop guidance for state officials. He also highlighted the need for Alternative Dispute Resolution (ADR) and discussed EPA's commitment to the issue of environmental justice. This was made particularly clear with the issuance of EPA's Administrator's memorandum on EPA's commitment to integrating environmental justice in all its programs. *See Appendix E for EPA's memorandum on Environmental Justice.*

Mr. Charles Lee's presentation focused on broadening the view of environmental justice and sustainable communities by suggesting the need for all state and local agencies to incorporate environmental equity and community sustainability plans within their operational activities. The presentation further identified the need for collaborative strategies as the most optimal methodologies for sustaining communities. Mr. Lee provided information on a pilot project that his office has developed to identify and nurture opportunities, in certain communities, for developing these collaborative strategies which integrate a community-visioning process with development of a action plan to implement that vision. It involves an inclusive process with a variety of constituents, ranging from community leaders and residents, to business and governmental representatives.

Aside from these EPA representatives, each Commission meeting has been attended by at least one member of EPA's Region III Office of Environmental Justice from Philadelphia, Pennsylvania. Although they have not been involved in providing formal presentation, their involvement and input into many discussions, which has occurred during Commission meetings has been supportive, informative, and welcome. Those individuals are Mr. Reginald Harris and Mr. Harold Yates.

### **CEJSC First Public Forum**

**On December 12, 2001**, the Commission held its first public reporting and briefing session concerning environmental justice and sustainable communities. The meeting went very well and achieved its main objective, which was to allow Maryland citizens to meet state legislators and Commission members and voice their positions and concerns regarding environmental justice issues within their communities. Several legislators, notably, Senator Neal, Currie, Delegates Rosso, and Boschert were in attendance. The community participants were appreciative of the opportunity and made several important recommendations to the Commission.

The briefing, which was held in the Joint Hearing Room, Legislative Services Building, 90 State Circle, Annapolis Maryland, focused on issues and concerns that included the development of

Chesapeake Terrace Landfill proposal; lead poisoning research, expansion or reopening of a landfill in the Shipley Hill/Carroll area of Baltimore City; industrial activities and inappropriate zoning near communities of color in Central Prince Georges County; and the potential permitting of multiple power plants in the Point of Rocks Community. In addition, residents from Oxon Hill, Maryland, wrote a letter for distribution at the forum discussing their concerns with the proposed National Harbor Project in Prince Georges County.

The landfill issue in both Central Prince Georges County and Baltimore County involved concerns that the communities' rights were violated based upon limited opportunity to provide public input. It was also articulated by residents that public health hazards and impacts would result from any development or expansion of landfills in the three identified communities. All of the speakers felt that their communities would bear a disproportionate share of the negative environmental consequences resulting from the industrial, land-use planning and zoning, municipal and commercial operations within the Prince Georges and Baltimore communities with respect to these landfills. They also indicated that the projects would not work to enhance the quality of life in their communities. ***See appendix F. for full briefing to CEJSC on December 12, 2001 concerning landfills.***

The Point of Rocks community member who testified represented that the community is opposed to the siting of five or six power plants within that area. It was suggested that the lands targeted for industrial development are clearly zoned as agricultural lands, and the placement of these plants would circumvent a carefully crafted, integrated zoning plan for the Point of Rocks area, although it appears that a state agency may have the ability to legally override local planning in these circumstances. Other problems identified during the testimony included the disruption of historical artifacts and heritage; the over use of water from the Potomac; air pollution; and excessive nitrogen pollution. ***See appendix F. for full briefing to CEJSC on December 12, 2001 concerning power plants.***

The Commission was briefed on concerns related to lead research undertaken by Kennedy Krieger Institute (KKI) in 1993-1995. The representatives acknowledged that while KKI's intentions were good, there might have been inappropriate communication with the children and parents who were involved in these studies. ***See appendix E. for full briefing to CEJSC on December 12, 2001 concerning KKI lead research.***

Residents in Oxon Hill Maryland are concerned about the proposed National Harbor project and the potential impacts upon their community. They suggested that a more appropriate project should be sited in the heart and downtown of Oxon Hill. ***See appendix E. for full briefing to CEJSC on December 12, 2001 concerning Oxon Hill Residents concerns.***

## FOCUS AND PRIORITIES FOR CEJSC

The Commission will strive to develop innovative practices and approaches that can better lead to resolving environmental contestations before executive level regulatory agencies in Maryland. In so far, as the Commission's mandate and regulatory instruments will allow, the following areas will be the primary focus of the Commission in the next calendar year;

- Continue to heighten awareness of environmental justice and sustainable communities among State regulators, with special attention to marginalized and disenfranchised communities;
- State-wide community forums to discuss E.J. and sustainable community issues;
- Continue discussions and meetings to solicit best practices and innovative recommendations that may be important in the context of improving sustainability of communities;
- Resolve the challenges of ensuring that all appointed members regularly attend the meetings: at least three members have not attended any meetings;
- Develop community characterizations projects and analyses;
- Develop E.J. related permitting review guidance for MDE and other state agencies;
- Build alliances and relationships with various stakeholders via meetings, MOUs and other forms of agreement;
- Coordinate and recommend efforts to improve public participation before regulatory agencies;
- Build and strengthen government "infrastructure" at local/community levels;
- Identify governmental public policy themes and relationships to environmental justice and sustainable communities;
- Actively encouraging existing and new agency demonstration projects;
- Work with governmental policy makers to consider proactive and preventative approaches;
- Integrate the environmental justice and sustainable community approaches into state agency practices and also community planning;
- Create opportunities with assistance from regulators and state agencies to stabilize administrative support for Council;
- Develop more coordinated regulatory approaches to environmental justice;
- Create beneficial relationships in the areas of Smart Growth, Children Youth and Families (environmental health issue, etc.), Environmental Crime and Safety and Brownfields;
- Develop a sustainable community index in the context of key focus areas;
- Encourage all state agencies to develop E.J. and sustainable communities plan; and,
- Develop livable communities' indicators.

**APPENDIX A: EXECUTIVE ORDER****01.01.2001.01**Commission on Environmental Justice and Sustainable Communities

WHEREAS, Environmental justice is based on the principle that regardless of race, national origin, age or income, no segment of our population should bear disproportionately high and adverse effects of environmental pollution;

WHEREAS, The State of Maryland supports and is committed to the principle of environmental justice and equal protection of all citizens of the State in a manner that fully complies with Title VI of the Civil Rights Act of 1964;

WHEREAS, Major statewide revitalization initiatives for reducing sprawl, encouraging redevelopment, and enhancing community life address environmental conditions of our communities and provide new economic opportunities in these communities, while preserving more pristine areas from sprawl and additional pollution;

WHEREAS, This Administration firmly believes that economic development and environmental protection are interdependent, and equal treatment and opportunities must be afforded to all citizens of the State by involving affected communities;

WHEREAS, Chapter 741 of the Acts of 1997 established the Maryland Advisory Council on Environmental Justice, which made recommendations for assessing and implementing environmental protection to communities in a fair and equitable manner throughout the State;

WHEREAS, Chapter 585 of the Acts of 2000 established the Children's Environmental Health and Protection Advisory Council, to recommend, in part, solutions to environmental justice issues affecting the health of children;

WHEREAS, Certain communities in the State may suffer disproportionately from environmental hazards related to programs and policies designed to encourage industrial, municipal or commercial revitalization;

WHEREAS, Fair treatment suggests that no community should disproportionately suffer the negative environmental impacts resulting from industrial, municipal, and commercial operations or the execution of State, local and municipal programs and policies;

WHEREAS, Environmental justice considerations should be integrated into the State's revitalization initiatives for reducing sprawl, encouraging redevelopment and enhancing community life; and

WHEREAS, Environmental justice need not hinder economic development, and economic development and environmental equity in the State can and should be effectively balanced.

NOW, THEREFORE, I, PARRIS N. GLENDENING, GOVERNOR OF THE STATE OF MARYLAND, BY VIRTUE OF THE AUTHORITY VESTED IN ME BY THE

CONSTITUTION AND THE LAWS OF MARYLAND, HEREBY PROCLAIM THE FOLLOWING EXECUTIVE ORDER, EFFECTIVE IMMEDIATELY:

A. Established. There is a Commission on Environmental Justice and Sustainable Communities.

B. Membership.

(1) The Commission shall be comprised of the following members:

(a) The Secretary of the Environment, or the Secretary's designee;

(b) The Secretary of Health and Mental Hygiene, or the Secretary's designee;

(c) The Secretary of Planning, or the Secretary's designee;

(d) One member of the Senate of Maryland, appointed by the President of the Senate;

(e) One member of the Maryland House of Delegates, appointed by the Speaker of the House; and

(f) Up to ten members appointed by the Governor to represent affected communities concerned with environmental justice, business and environmental organizations, health experts, local government and the general public with relevant interest or expertise.

(2) Members appointed by the Governor shall serve 3-year terms, and may be reappointed subject to the Governor's decision to extend the operation of the Commission for a new 3-year term.

(3) The Governor shall designate a Chair from among the members.

(4) The Commission may establish working committees on specific environmental justice issues, and invite individuals to participate from both the public and private sector, including experts from research institutions, and other State and Federal agencies with relevant jurisdiction.

C. Duties. The Commission shall perform the following duties:

(1) Advise State agencies on environmental justice and related community issues;

(2) Review and analyze the impact of, including determining whether a causal relationship exists between, current State policy, laws and regulations on the issue of environmental justice and sustainable communities;

(3) Assess the adequacy of State and local government laws and regulations to address the issue of environmental justice and sustainable communities;

(4) Coordinate with the Children's Environmental Health and Protection Advisory Council on recommendations related to environmental justice and sustainable communities;

(5) Develop criteria to assess whether communities of the State may be experiencing environmental justice issues; and,

(6) Recommend options to the Governor for addressing issues, concerns or problems surfacing through the review process, prioritizing areas of the State which are targets for immediate attention.

D. Staffing. The Department of the Environment shall provide primary staff support to the Commission. The Department shall seek additional staff support as appropriate from the Maryland Department of Health and Mental Hygiene, and other State agencies and institutions which have a role or expertise in environmental justice issues.

E. Procedures.

(1) The Commission shall meet at the times and places to be determined by the Chair.

(2) A majority of members shall constitute a quorum for the transaction of any business before the Commission.

(3) Members of the Commission may not receive any compensation for services, but may receive reimbursement for reasonable travel expenses in accordance with the Standard State Travel Regulations and as provided in the State budget.

F. Reports. The Commission shall report annually to the Governor through December 31, 2003, at which time the provisions of this Executive Order concerning the Commission may be extended for an additional 3 years.

GIVEN Under My Hand and the Great Seal of the State of Maryland in the City of Annapolis, this 9th Day of March, 2001.

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Parris N. Glendening  
Governor

ATTEST:

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John T. Willis  
Secretary of State

**APPENDIX B: WORKGROUPS**

<b>COMMUNITY INDEX</b>	<b>AFFILIATION</b>
• Stephanie Proestel	Housing Initiatives Partnership
• Jim Richmond	MDE
• Bill Paul	MDE
• Mary Rosso	Maryland State Delegate
• Bonnie Wilson	Safety Kleen
• Bob Amey	University of Baltimore
• William Stack	Baltimore City Water Quality Sect.
<b>REGULATORY</b>	<b>AFFILIATION</b>
• Phillina Toote	NASA
• Mary Rosso	Maryland State Delegate
• Stephanie Cobb-Williams	MDE
• Andrew Sawyers	MDE
• Heather Woods	MDE
• Denise Ferguson-Southard	MDE
• Gary Kelman	MDE
<b>SITING AND ZONING AND ECONOMIC DEVELOPMENT</b>	<b>AFFILIATION</b>
• Tim Pula	Struever Bros.
• Eric Linzey	MDE/Towson University
• Don Jackson	MDE
• Dawn McCleary	DNR
• Feng Lui	MDP
• Bob Amey	University of Maryland, Baltimore County
• George Hudnet	
• Paul Oberly	MDOT
<b>COMMUNITY HEALTH AND PROTECTION</b>	<b>AFFILIATION</b>
• Dorothy Morrison	ICMA
• Sharon Reichlyn	MDP
• Brenda Afzal	University of Maryland, School of Nursing
• Maureen Edwards	DHMH
• Dawn McCleary	Department of Natural Resources
• Phil Heard	MDE
• Scot Spencer	Environmental Defense

## APPENDIX C: COMMUNITY INDEX DRAFT REPORT

### Mission of the Community Index Workgroup

The mission of the community index workgroup is to define an affected community as it relates to Environmental Justice for the purpose of developing guidelines in advising State agencies on Environmental Justice and Sustainable Community issues. These efforts will be accomplished by developing sample criteria as a basis for determining if a community is disproportionately environmentally stressed and using the results of this analysis as a means to better understand and communicate potential health and environmental risk to stakeholders.

The proposed purpose of the environmental justice framework is:

1. To provide a review mechanism that can be incorporated into the current regulatory and permitting process of the State in order to address environmental justice concerns as they relate to future projects and permit applications, and,
2. To provide a common procedure by which to assess potential ongoing environmental justice concerns in communities of the State.

### Definitions of Environmental Justice

To implement this framework, state and national comparative indices of appropriate indicators are included. These measures are the basis for the determination of disproportionate environmental stress on communities in the State, and are in keeping with the State and Federal environmental justice missions.

1. ***Maryland Advisory Council on Environmental Justice and the Maryland Department of Environment:*** Environmental Justice (EJ) means equal protection from environmental and public health hazards for all people regardless of race, income, culture and social class. Environmental justice also means equal access to socio-economic resources so that all people can provide for their livelihood and health. Additionally, environmental justice means the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people including racial, ethnic or socioeconomic groups should bear a disproportionate share of the negative environmental consequences resulting from industrial, land-use planning and zoning, municipal and commercial operations or the execution of federal, state, local and municipal program and policies.

2. ***United States Environmental Protection Agency:*** Environmental Justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies.

These definitions are markedly similar. However, the Maryland definition specifically notes that all citizens of the State should expect (1) to be protected from public health hazards, and (2) to have access to the socioeconomic resources necessary to address concerns about their livelihood and health. The following framework lays out the procedure through which any citizen, organization or community may begin communicating to the State any present or proposed environmental justice concern.

This framework is consistent with the proposed periods for Strategic Interagency Coordination in the Maryland Department of Environment's Draft Environmental Justice and Public Participation plan.

1. First, the proposed indices will be and must be developed through interagency cooperation.
2. Second, these recommendations are meaningless if not readily incorporated into the compliance mechanisms of the other state regulatory agencies.
3. Third, in the short term, this framework can be developed concurrently with suggested demonstration projects, both to test the appropriateness of the suggested indicators and to modify or supplement them.
4. Fourth, in the long term, tested and accepted indicators can be applied not only to proposed projects in the State that citizens, organizations or communities question on the grounds of environmental justice but also to broader characterizations of the environmental state of the State.

## **Framework for Evaluating Environmental Justice Issues**

### **I. Project Initiation: Community Environmental Justice Issue/Concern**

#### A. Summary

#### B. Data

1. Dialogue with community
  - a. Define community boundaries through dialogue
  - b. Document real and perceived impacts
  - c. Public participation (e.g., hearings/comment period)
2. Project relationship to local zoning/land use
3. Project relationship to State law or planning - Smart Growth
4. Related and/or concurrent local, state, federal agency involvement

#### C. Data sources

### **II. Community Assessment**

#### A. Summary

#### B. Data

##### **1. Community Environmental Assessment**

- a. Report card on current status of land, air, and water resources
- b. Proposed environmental impacts (utilize existing regulatory numbers as guidance)
- c. Cumulative impacts (i.e., "aggregate burden")

##### **2. Community Demographics Assessment**

- a. Economic dynamics (e.g., income, poverty, employment)
- b. Population dynamics (e.g., race, age, language, education)

##### **3. Community Health Assessment**

- a. Report card on current status of health in the community
- b. Attributable health impacts related to issue/concern (e.g., exposure modeling, risk assessment)

#### **4. Quality of Life Assessment**

- a. Social dynamics (e.g., faith communities, community activism)
- b. Community resources (e.g., nonprofits, service organizations, access to legal advice)

C. Data sources

### **III. Community Comparisons**

A. Summary

B. Data

#### **1. Comparisons to state, national indicators**

- a. Economic dynamics
- b. Population dynamics
- c. Health comparisons
- d. Environmental comparisons
- e. Project comparisons

C. Data sources

### **IV. Findings**

A. Finding of Significant Environmental Justice Impact

1. "Harm" imposed on the community (see page 42 MACEJ) –with some minor changes

- a. Increased risk of bodily harm, infirmity, illness, birth defects, or death
- b. Increase in air, water, land, and/or noise pollution
- c. Destruction of or disruption of natural resources
- d. Destruction of or disruption of cultural values
- e. Impacts to social aspects of the community
- f. Displacement of persons, businesses, farms, or communities

2. Recommendations

- a. Refuse or modify permits
- b. Designate community as a "priority community"

B. Finding of No Significant Impact –FONSI

**ADDENDUM:** The Community Index Workgroup has the following unfinished thoughts that they currently exploring:

Incorporating the EJ review mechanism into the permitting process.

1. Does the Commission envision this to be a guideline policy or will the review process be a regulatory requirement?
2. If it is a guideline policy then what will be a triggering mechanism to begin the EJ review process?

**APPENDIX D: MDE's DRAFT ENVIRONMENTAL JUSTICE AND STRATEGIC PLAN**

**Prepared by  
The Coordinating Offices  
Maryland Department of the Environment  
2500 Broening Highway  
Baltimore Maryland 21224  
(410) 631-4187**

**MDE' DRAFT STRATEGIC PLAN FOR ENVIRONMENTAL  
EQUITY AND PUBLIC PARTICIPATION****INTRODUCTION**

The primary goal of this draft is to demonstrate MDE's commitment to ensure that adverse environmental, related socio-economic and health effects experienced by any population are addressed, as appropriate, in the programs of the MDE, and that these programs encourage the involvement of affected parties. In the context of MDE's programs and available resources, the plan attempts to broaden environmental justice to mean stakeholder/community-based planning and the relationship to environmental concerns. This plan intends to foster the agency's commitment to enabling fair, equitable, early, and often-public participation. It also intends to foster a more acute understanding of inequities and processes/policies/regulations, etc., which produce and reproduce such inequities. The plan builds on several goals contained within MDE's Managing Maryland For Results (MFR) strategic workplan, and builds on the goals set forth in Maryland's Executive Order on Environmental Justice and Sustainable Communities.

The plan focuses on the sustainability of communities in the context of MDE's mission and mandate and will serve as a tool of reference and guidance concerning sustainability and inequities. Environmental Justice (E.J) as defined by the previously empanelled Maryland Advisory Council on Environmental Justice (MACEJ), comprising of citizens representing all sectors and diversity in Maryland, means equal protection from environmental and public health hazards for all people regardless of race, income, culture and social class. It also means equal access to socio-economic resources so that all people can provide for their livelihood and health. Environmental justice in Maryland is one component toward developing sustainable and economically viable communities.

As MDE moves toward streamlining, measuring and promoting quality environmental planning, the goals of this plan echo concerns raised by citizens: It intends to offer advice and guidance toward more sustainable regulatory practices, economic development (*working closely with business and community groups*), public participation and the protection of human health in Maryland. Environmental Justice in the context of this plan adopts MACEJ's definition and advocates a stronger focus on ***potential negative impact*** (to be defined by MDE's Environmental Equity Network and the Governor's Commission on Environmental Justice and Sustainable Communities) on any population.

The objectives and strategies outlined in this plan are based on current MDE activities and programs in place. The strategic plan organizes these programs so as to address key environmental justice and public participation goals within existing resources and authorities. One key to the success of this strategy will lie in the leadership provided by MDE's senior management or programs. Another critical key to the success of this strategy will lie in fostering partnerships with members of the *public*, especially residents of affected and *potentially affected communities*, and in promoting collaboration and coordination with MDE's programs, so that MDE can be as effective as possible in addressing negative impacts in communities and improving public participation.

The goals of the plan are embedded in a philosophy that embraces sustainability for all communities and collaborative models and frameworks as premises for environmental decision-making. They strongly recommend partnerships, understanding impacts, operations in beyond compliance mode, where appropriate, and demystifying the relationships between and among public health, public involvement, regulations and environmental pollution.

This Draft Strategy relies heavily on the sound use of discretion by MDE's senior management, although always with a bias in favor of public involvement. Opportunities for involvement should not be judged solely by their quantity; but also by whether they are designed to improve the quality of MDE's decisions. MDE should always provide opportunity for public involvement in decision-making that requires public notice and comment, but not every document or decision requires public involvement. Every involvement opportunity does not call for the inclusion of all potentially interested persons; including legitimate representatives of the various interests may be sufficient.

MDE's senior management must have the flexibility to determine appropriate public involvement, and should be accountable for those decisions. Officials must recognize that agreement among all parties, while valuable, is not always needed, and that MDE must retain the discretion to make decisions or take actions to preserve and protect the environment and public health. The Draft Strategy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public or MDE. It is, however, MDE's statement of its strong commitment to full and meaningful public involvement and environmental equity in MDE's activities.

### **BACKGROUND TO DRAFT STRATEGIC PLAN**

On February 11, 1994, President Clinton signed executive order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*. This Executive Order requires each federal agency to make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions. Under the terms of the executive order, each federal agency is required to develop an agency-wide environmental justice strategy.

On March 9, 2001, Governor Parris Glendening, acting on recommendations from a previously empanelled environmental justice council, created and signed a new Executive Order requiring state agencies to make achieving environmental justice and public participation into environmental decision-making a part of their mission by identifying and addressing, as appropriate, adverse human health, environmental, social and economic effects of their programs, policies, and activities on any populations within the state of Maryland. Under the terms of the executive order, MDE is required to staff a newly created Commission on Environmental Justice and Sustainable Communities. MDE's strategic plan is one component of the State's effort to address environmental justice and lack of public participation in all communities. The executive order establishes a commission on environmental justice and sustainable communities. The commission shall perform the following duties:

1. Advise state Agencies on E.J. and relationship to community issues;
2. Examine current state regulations and policies and evaluate the adequacies and impacts related to environmental justices and public participation;
3. Coordinate with children's Environmental Health Protection Council and related commissions on recommendations about environmental justices;
4. Develop criteria to determine environmental injustices and assess casual relationships between E.J. and industrial/municipal/agricultural/commercial projects; and,
5. Recommend options to MDE and other state agencies for addressing concerns or problems.

This plan is divided into seven sections: (I) Interagency Coordination; (II), Public Partnerships and Participation; (III) Public Education and Training; (IV) Developing Public Policy; (V) Services; (VI) Data Collection and Analysis; and, (VII) Environmental Research. Policy oversight mechanisms within MDE will be maintained to assure ongoing attention of MDE programs to advancing the agenda of environmental justice and improved public participation and to safeguarding against unintended environmental consequences of their activities.

Oversight and coordination for implementation of this strategy will be the responsibility of MDE's Environmental Equity Network (current liaisons or newly designated) and the Governor's CEJSC. The MDE's network (under the auspices of senior management) will serve as the primary focal point within the Department for promoting the exchange of environmental information and for providing review, advice, and consensus facilitation where necessary on public participation, environmental justice and community development research, exposure assessments, risk assessments, and risk management procedures. Programs will be encouraged to prepare evaluation plans to measure progress on their objectives related to reducing *negative impacts* on communities and on improving public participation in MDE's decision-making processes. The performance targets as outlined by MDE's MFR will be developed at such time.<sup>1</sup>

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<sup>1</sup> *Measurements will be determined once the network is formed.*

## **PUBLIC PARTICIPATION/ENVIRONMENTAL JUSTICE AND MANAGING MARYLAND FOR RESULTS (MFR)**

In the context of the MDE's mission and mandate under the rubric of Managing Maryland for Results (MFR), this strategic plan strives to attain specific performance measures targeted in goals 8 and 9 of MDE's MFR:

**GOAL 1:** *Protecting and Maintaining Maryland's Natural Resource Land Base and Encouraging Smart Growth and Community Revitalization:* The strategic plan illustrates complementary interests among smart growth, brownfields, public participation and environmental equity. The plan advocates more proactive planning to minimize the adverse environmental impacts of unplanned growth and development. Planned growth and development can be enhanced by:

1. Proactive public participation and community planning;
2. Community-based planning: Working closely with local governments, this form of planning would give residents a seat at the table with stakeholders such as state agencies and businesses to decide what types of development best serve their needs;
3. Inter-agency coordination and partnerships: Internal and external to MDE. This lets the stakeholders present a single face to the community, and helps state agencies develop unified solutions to problems; and,
4. Brownfields redevelopment: This targets contaminated sites for new projects, preserving existing open space and creating new economic opportunities in disadvantaged communities.

**Goal 9:** *Ensuring Excellent Customer Service to Achieve Environmental Protection:* This strategic plan acknowledges that while working to protect the environmental health of the State, an indisputable recognition for public involvement/participation and customer service is essential. This recognition rudimentarily embraces community involvement, business groups, environmental groups and other stakeholders.

## **DISCLAIMERS**

The Draft Plan advocates that MDE uses its legal authority to the fullest extent possible to resolve community environmental concerns. And in the event that some activities cannot be circumscribed within MDE's legal authority, the plan encourages the department to promote anticipatory processes that are engaging and conciliatory that can result in open and constructive solutions. However, while the department may wish to arrive at engaging and conciliatory decisions, in some instances, regulatory constraints and other factors may handcuff the department's efforts.

## MAJOR STRATEGIC AREAS

### I. Interagency Coordination

**Goal 1:** Foster interagency coordination (both within MDE and between MDE and other agencies) in all activities related to addressing environmental impacts in affected or potentially affected communities, including public participation, education, training, and the provision of services, regulatory activities, data collection, and research.

<i>Time Frame</i>	<b>Objectives</b>
<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li>• <i>Develop a coordinated system that encourages public information officers and outreach coordinators from MDE's administrations and other state agencies to jointly approach and undertake outreach activities and environmental problem solving where appropriate.</i><sup>2</sup></li> <li>• Engage and enhance the <i>Environmental Equity Network (EEN) and the Governor's Commission on Environmental Justice and Sustainable Communities (CEJSC)</i>. The network and commission will become the foundation for decisions concerning environmental justice and public participation. Initial work for the network and commission could focus on defining "<i>risks,</i>" "<i>potential negative impact,</i>" "<i>public, potentially affected communities,</i>" and "<i>potentially at risk community</i>" (<i>PARC</i>) in the context of MDE's mission and mandate;<sup>3</sup></li> <li>• Ensure that MDE equity network and the Governor's commission review environmental justice and public participation related activities and agency plans for implementation. We anticipate that the network will expand to include liaisons from other key agencies (long term);</li> <li>• Foster more in-depth coordination across agencies and commissions (e.g. Children's Health Commission) through the MDE's EEN and the Governor's CEJSC; and,</li> <li>• <i>Evaluate and adopt where appropriate components of EPA's draft public involvement strategy (2001).</i><sup>5</sup> The purposes of EPA's strategy are to:             <ol style="list-style-type: none"> <li>1. Strengthen commitment to early and meaningful public involvement</li> <li>2. Ensure that environmental decisions are made with an understanding of the interest and concerns of affected people and entities</li> <li>3. Promote the use of a wide variety of techniques to create opportunities for public involvement in agency decisions</li> <li>4. Establish clear and effective procedures for conducting public involvement activities in decision-making processes</li> </ol> </li> </ul>
<b>Long Term</b>	<ul style="list-style-type: none"> <li>• Examine ways that other key agencies are handling regulatory actions to</li> </ul>

<sup>2</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

<sup>3</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

<sup>4</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

<sup>5</sup> EPA's Draft Policy contains requisite public participation information, protocol and operational procedures: definitions; additional goals; laws and executive orders requiring public participation; functions of public involvement; meeting and notification procedures; and the provision of information to the public.

<p>(&gt;18mths)</p>	<p>ensure compliance toward the goals of improving the quality of life in all communities. For instance, Maryland Department of Planning (MDP) recently got interpretation and guidance from the State's Attorney General's office concerning intervention, discretionary and explicit authority to aid planning in local jurisdictions. MDE could work through MOP to implement specific actions that would achieve MDE's goal of protecting populations while advancing the goals of MOP;</p> <ul style="list-style-type: none"> <li>• Incorporate environmental justice into Maryland/EPA Environmental Performance Partnership Agreement. Several of EPA's identified activities are in support of the goals set forth in this strategic plan.</li> <li>• Coordinate plans and activities between federal, state and local agencies and community organizations through regional officials and offices of fair practice and equal opportunity, etc;</li> <li>• Foster collaboration by conducting a regular conference of high-level scientists – private, academia, state, federal and other experts. Such collaboration is essential in order to generate data needed for key activities (regulation, risk assessment and avoidance, public education, pollution prevention and mitigation, etc.) and to communities to improve their environmental quality of life and assurance of environmental equity and meaningful public participation; and,</li> <li>• Promote multi-agency representation on working groups, steering committees, and other bodies addressing issues germane to environmental justice and public participation.</li> </ul>
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**Goal 2:** In the context of MDE's programs and available resources, develop, identify, and implement interagency projects aimed at reducing adverse impact that can both exemplify and test interagency coordination processes. And within this context, also highlight MDE's successes in fostering improved public participation and quality of life in all communities.

<i>Time Frame</i>	<i>Objectives</i>
<p><b>Short Term (0-18mths)</b></p>	<ul style="list-style-type: none"> <li>• <i>Develop demonstration projects. The overall goal of any project is to understand community dynamics, identify key environmental hazards (and barriers to this identification), promote environmental quality and equity, reduce and where possible prevent these hazards from impacting on health and the environment with emphasis on persons in underserved communities. State and local agencies, local community groups, and institutions of higher education should pursue this goal jointly. By joining the interests, authorities, and resources of the relevant stakeholders, a more comprehensive and effective effort can be implemented to reduce and, where possible, prevent environmental impacts and improve public participation;</i></li> <li>• <i>Develop an environmental justice effort with the Chesapeake Bay Program; and,</i></li> <li>• <i>Develop an environmental justice module with the Chesapeake Bay</i></li> </ul>

	<p>Foundation to be incorporated into their urban and state-wide middle school curriculums</p>
<p><b>Long Term</b> <b>(&gt;18mths)</b></p>	<ul style="list-style-type: none"> <li>• Develop community characterization projects to better understand community issues.<sup>6</sup> Because of the demographic and economic specificity inherent to some affected communities, special emphasis should be given to improving public participation and identifying and reducing the disparities of environmental hazards experienced within such communities, particularly among low-income and disenfranchised group. Illustrative community characterizations projects will typically aid MDE's efforts in;             <ol style="list-style-type: none"> <li>1. Identifying key environmental hazards and barriers to recognizing hazards that may affect the health and quality of life of people who live in communities believed to be at risk.<sup>7</sup> Where necessary, based on assessments of hazards and exposure, conduct testing of individuals believed to be exposed [partnering agencies]. This effort may result in the development and implementation of appropriate actions, based on demonstrated need, including actions recommended to prevent or reduce current exposures to toxic substances;</li> <li>2. Assessing the potentially harmful impact on high-risk populations of exposure to key environmental hazards where possible; Undertaking pollution prevention and compliance assistance efforts where appropriate;</li> <li>3. Facilitating business interests and understanding of community issues and concerns;</li> <li>4. Empowering and educating the community about environmental hazards. Evaluate impact of educational efforts to ensure that health care providers familiar with the recognition and treatment of illness associated with exposure to environmental hazards;</li> <li>5. Enhancing capacity building in state agencies, environmental departments, academic institutions, and community non-profit groups to address environmental public health issues associated with minority health;</li> <li>6. Fostering collaborative efforts with state regulatory agencies and other federal agencies and increasing the awareness of the importance of environmental public health among students at Head Start Centers, other preschools, and primary through college-level institutions in project areas;</li> <li>7. Providing pollution prevention and health promotion education regarding environmental and other hazards;</li> <li>8. Ensuring that efforts occur that lead to enhanced community empowerment and involvement in addressing environmental issues;</li> <li>9. Identifying and coordinating state, local and federal actions to address environmental issues in project area; and,</li> </ol> </li> </ul>

<sup>6</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

<sup>7</sup> Identification of hazards and barriers - often times will be based on CCPs, pollution prevention and compliance assistance projects

	<ul style="list-style-type: none"> <li>• Evaluating and disseminating the effectiveness of strategies to prevent environmental impacts of key environmental and other hazards</li> <li>• Continue to develop demonstration projects to achieve the above goals and demonstrative objectives</li> </ul>
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**II. Public Partnerships and Participation**

**Goal 1:** In the context of MDE’s programs and available resources, ensure that members of the public are meaningful partners in all appropriate departmental activities to address the impacts of environmental hazards in communities, including education, training, and provision of services, data collection, and research.

<i>Time Frame</i>	<i>Objectives</i>
<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li>• <i>Develop memorandum of agreements and understanding with local governments, non-profits, universities, and businesses, etc.;</i><sup>8</sup></li> <li>• <i>Work with affected communities and potentially affected communities to enhance their capacity to participate in partnerships;</i><sup>9</sup></li> <li>• Work with the business community to enhance their capacity to participate and develop proactive community partnerships/agreements;</li> <li>• Engage the public's involvement in identifying a full range of alternative approaches to developing a broad-based consensus on what the objectives should be to address negative environmental hazards in low-income and minority communities, and on how to achieve those objectives;<sup>10</sup></li> <li>• Encourage each MDE administration to continue providing opportunities for meaningful participation by interested members of the public, including residents of minority and low-income communities, before making decisions that will affect the public; and,</li> <li>• Perform proactive outreach (business and community) to increase active involvement and compliance.</li> </ul>
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>• Perform long-term proactive outreach to increase active involvement and compliance.</li> </ul>

**Goal 2:** In the context of MDE’s programs and available resources, provide mechanisms by which each relevant MDE’s administration can develop public participation plans emblematic of this larger plan.

<i>Time Frame</i>	<i>Objectives</i>

<sup>8</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon.

<sup>9</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon.

<sup>10</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon.

<p><b>Short Term (0-18mths)</b></p>	<ul style="list-style-type: none"> <li>• <b>Revise MDE “values” to embrace EJ/PP principles;</b></li> <li>• <b>Review each MFR goal and explore interrelationships;</b><sup>11</sup></li> <li>• Work with programs to integrate EJ/PP into their objectives;<sup>12</sup></li> <li>• Assist programs with identifying EJ/PP opportunities;<sup>13</sup></li> <li>• Build on the working relationships within and among MDE’s administrations and between MDE’s administrations and the public in order to facilitate and maintain open decision-making processes and to coordinate and integrate public participation activities;</li> <li>• Build on proactive business engagement strategies between MDE and contractors in identifying and resolving major issues that are relevant to the objectives of developing sustainable communities;</li> <li>• Educate communities about MDE’s public participation objectives (through open meetings, brochures, flyers, notification procedures, etc.); and,</li> </ul>
<p><b>Long Term (&gt;18mths)</b></p>	<ul style="list-style-type: none"> <li>• Develop multimedia tools/personnel to educate and solicit community participation.</li> </ul>

**III. Public Education and Training**

**Goal 1:** In the context of MDE’s programs and available resources provide opportunities to broaden environmental justice to mean stakeholder/community-based planning and the relationship to environmental concerns. Also, in the context of MDE’s programs and available resources, educate residents and workers in affected communities through effective outreach, education, and risk communication.

<b>Time Frame</b>	<b>Objectives</b>
<p><b>Short Term (0-18mths)</b></p>	<ul style="list-style-type: none"> <li>• <b>Engage stakeholders including communities to create opportunities that can improve project efficacy and community planning efforts and interests related to environmental concerns;</b></li> <li>• <b>Seek grants and collaborate with communities and academia to develop demonstration projects, illustrative of MDE’s mission and mandate [P2/Compliance project proposed].</b><sup>14</sup></li> <li>• Develop a plan of action in collaboration with potentially affected communities that include appropriate educational information to educate populations about environmental and occupational hazards [need to work with partners since these activities are outside MDE’s authority]: Educational materials should be appropriate, understandable, and efficacious (including preparation in languages other than English where needed).<sup>15</sup></li> </ul>

<sup>11</sup> This task has been accomplished

<sup>12</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon.

<sup>13</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon.

<sup>14</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon.

<sup>15</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon.

<p><b>Long Term</b> -*- (&gt;18mths)</p>	<ul style="list-style-type: none"> <li>• Conduct direct training to business leadership (sector specific) in environmental-risk and pollution prevention communication and education;<sup>16</sup></li> <li>• Encourage good neighbor agreements between businesses, communities and governmental agencies;</li> <li>• Conduct training workshops in environmental-risk and pollution prevention communication and education for community members and workers; teach business, workers and members of communities about the relationship between pollution and negative impacts and about the importance of various prevention approaches, including pollution prevention, hazard abatement and proactive community involvement (working with partnering agencies and MDE's administrations).</li> <li>• Engage children and youth and their families in activities to address negative impacts from environmental activities through schools and other programs.</li> </ul>
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**Goal 2:** In the context of MDE's programs and available resources, establish strong ties with community-based organizations, workers' groups, public health agencies, and educational and religious institutions that may be able to help increase awareness of environmental impacts among those at risk or potentially at risk.

<b>Time Frame</b>	<b>Objectives</b>
<p><b>Short Term</b> (0-18mths)</p>	<ul style="list-style-type: none"> <li>• <b>Identify barriers that may inhibit MDE from developing positive working relationships with these organizations.</b><sup>17</sup></li> <li>• Build on MDE's processes for capacity building by providing additional information to staff about the negative impacts in potentially affected communities.</li> </ul>
<p><b>Long Term</b> (&gt;18mths)</p>	<ul style="list-style-type: none"> <li>• Identify a mechanism for conducting ongoing relations with community-based organizations and leaders, public health agencies, and educational institutions within potentially affected communities and with those interacting with these communities: MDE's has started such activities - MDE and Morgan State University Memorandum of Understanding is one mechanism that could be implemented elsewhere;<sup>18</sup></li> <li>• Involve partner agencies such as the Department of Mental Health and Hygiene (DHMH) and MOSH to participate in environmental and occupational health education workshops, scientific meetings, seminars, and other forums designed to enhance their knowledge of possible adverse health outcomes associated with exposure to environmental and occupational hazards; and,</li> </ul>

<sup>16</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

<sup>17</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon (will be ongoing).

<sup>18</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon (will be ongoing).

	<ul style="list-style-type: none"> <li>At the request of community organizations, conduct seminars on the possible negative impacts of exposure to environmental and occupational hazards.</li> </ul>
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**Goal 3:** In the context of MDE’s programs and available resources, make data more available to the public and inform the public of how to gain access to this data.

<i>Time Frame</i>	<i>Objectives</i>
<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li>Collaborate and consult with members of potentially at-risk communities, workers, and national minority organizations to determine the most effective methods of translating and disseminating environmental information.</li> </ul>
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>Develop community-based directories of organizations and individuals that promote environmental awareness among underserved and low-income and minority populations to identify partners for collaborative educational and information-sharing activities;</li> <li>Establish repositories of environmental data in public schools, public libraries, community colleges and universities, community organizations, and State Offices of Minority Health; and,</li> <li>Continue MDE’s efforts to expand the amount and scope of environmental information that is made available to the public; for example, undertake surveys and research and make data available on CD-ROM and in computer micro data tape format and on Internet.</li> </ul>

**Goals 4:** In the context of MDE’s programs and available resources, focus training efforts to enhance the availability of specific skills and services needed by communities affected or potentially affected by MDE activities or activities by those regulated by MDE.

<i>Time Frame</i>	<i>Objectives</i>
<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li><b>Discern from stakeholder meetings potential</b> training and <b>service needs</b>.</li> </ul>
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>Coordinate with MOSH, OSHA and others to protect communities disproportionately represented in highly industrialized and commercialized settings. Evaluate claims of discrimination based on recommendations from the internal equity network and the Governor’s newly empanelled commission. Claims that have been mentioned include (1) infrastructural inadequacies - sewer, water, and siting of facilities, (2) highly hazardous occupations and living conditions;</li> <li>Coordinate with MOSH, OSHA and others to expand existing environmental training opportunities, including professional training, for environmental providers and public personnel who serve a significant number of the populations potentially at risk, and work with the professional organizations and societies of these providers continue to build an adequate</li> </ul>

	<p>environmental expertise that can help address the environmental needs of affected and potentially affected communities; and,</p> <ul style="list-style-type: none"> <li>• Coordinate with MOSH, OSHA and others to train residents of communities for certification in cleanup and remediation of environmental hazards and in areas of lead and asbestos abatement, etc.</li> </ul>
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**IV. Develop Public Policy and Guidance**

**Goal 1:** In the context of MDE’s programs and available resources, identify potential projects, resources, and linkages that can become foundation for more proactive public policy related to environmental equity and public participation.

<i>Time Frame</i>	<i>Objectives</i>
<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li>• <b>Develop MDE related permitting review guidance;</b></li> <li>• In lieu of direct regulatory actions, explore in the context of current programs and available resources an expanded <i>alternative dispute resolution (ADR) strategy</i>;<sup>19</sup></li> <li>• Develop working papers and ideas concerned with understanding the linkages between MFR in general and E.J. and more specifically; for examples, E.J. and Smart Growth and E.J. and Brownfields, etc. [<b>Smart growth and E.J. paper completed. Draft of E.J. and brownsfields will be available</b>];<sup>20</sup> and,</li> <li>• Explore the express mission of each administration and evaluate their purview to contain environmental equity and public participation considerations.</li> </ul>
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>• Examine existing policies, strategies and regulation and evaluate inadequacies, impacts, discretionary or explicit authority related to environmental justice and public participation.</li> <li>• Further development of ADR strategies.</li> </ul>

**V. Services**

**Goal 1:** In the context of MDE’s programs and available resources, identify adverse environmental hazards affecting workers and people in communities, identify the problems associated with these hazards, and identify the needs and concerns of the people affected (*identification will be based on recommendations from the internal equity network and the Governor’s commission*).

<i>Time Frame</i>	<i>Objectives</i>

<sup>19</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon (working closely with MDE’s Office of Enforcement and Compliance).

<sup>20</sup> In the context of MDE’s programs and available resources, this objective can be accomplished relatively soon (has started).

<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li>• Design an expanded alternative dispute resolution strategy.</li> </ul>
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>• Actively solicit information on specific environmental hazards and on people's needs;</li> <li>• Develop a method by which to assess local problems; use the assessment method as a basis for community education and involvement. Where appropriate, work through existing local groups and networks;</li> <li>• Target existing MDE's programs to train residents of minority and low-income communities to carry out community and residential audits of environmental hazards (coordination with MOSH); and,</li> <li>• Design interventions to address the problems identified (ADR – one responsibility).</li> </ul>

**Goal 2:** In the context of MDE's partner organizations, programs and available resources, assess the capacity of communities affected by adverse environmental hazards to diagnose, treat, and prevent environmentally sensitive problems, and as appropriate, seek to remedy any deficiencies.<sup>21</sup>

<b>Time Frame</b>	<b>Objectives (working with partners)</b>
<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li>• Identify community resources and barriers to care in order to promote access to primary care services in disproportionately affected communities (<i>working with partners such as DHMH</i>).</li> </ul>
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>• Provide technical assistance to communities impacted by environmental hazards to develop primary and preventive programs aimed at specific environmental and occupational hazards (target E.J. and other grants to do this);</li> <li>• Provide as necessary for the medical testing (partners) of communities and workers with disproportionately high and adverse environmental exposures to determine the extent of exposure to hazardous substances;</li> <li>• Consider translation and outreach services, transportation, evening hours, and types of health services available (working with partners); and,</li> <li>• Work with state primary care associations and other state and local agencies to assure access to quality environmental and occupational medical care in affected communities.</li> </ul>

**Goal 3:** In the context of MDE's programs and available resources, take advantage of existing MDE's programs that promote the economic potential of individuals and communities and provide opportunities for meaningful career development; use these programs as appropriate to advance the goals of the MDE's MFR by promoting the development of necessary environmental measurements, remediation and related services within disproportionately affected communities so as to provide them with an economic return.

<sup>21</sup> Typical measurement will include how partners have embraced our strategy and are involved

## VI. Data Collection and Analysis

**Goal 1:** In the context of MDE's programs and available resources, improve the collection of monitoring and surveillance data on existing and potential hazards in minority and low-income communities and on the environmental quality status (including health) of residents.

<i>Time Frame</i>	<i>Objectives</i>
<b><i>Short Term (0-18mths)</i></b>	<ul style="list-style-type: none"> <li>• <b><i>Develop Community Characterization projects. Such projects will build on MDE's ability to identify Potentially At Risks Communities (PARCs) [ongoing]. Such identification could lead to increased scrutiny by MDE programs when reviewing permits or engaged in environmental decisions in PARCs;</i></b></li> <li>• Develop specific MDE administration projects that can assist in prioritizing MDE's actions which invariably result in more informed environmental decision-making. For example, MDE's office of Environmental Justice and the Water Management Administration could work collaboratively with county health departments to map all failing wells and septic systems in state of Maryland. This data set could be then overlaid with demographics and surrounding municipalities with existing water and sewer systems. The results from this data gathering process would allow MDE to update its old "wells, septic and other failing sewer systems needs survey" (1997). The data could also assist in identifying clusters or areas where pollution loadings may be at critical stages. Similarly, it could be used to identify if there are systematic processes associated with water and sewer system access and connections and correlations between failing systems and demographic indicators.</li> </ul>
<b><i>Long Term (&gt;18mths)</i></b>	<ul style="list-style-type: none"> <li>• Wherever possible and appropriate, ensure that the data collected is sufficient to permit analysis of any linkages between state, local, business and other activities and negative outcomes;</li> <li>• Work with state, local, environmental officials, regional officials, and federal agencies to improve environmental surveillance and monitoring activities in at risk communities [e.g. enhance current relationship with Baltimore City environmental crimes group]. One critical activity here is to develop substantive relationships between the community and local government to ensure that MDE's role is less reactionary. Often times, critical decisions are made at the local level (zoning and permits, for examples), that result in MDE's involvement; and,</li> <li>• Continue to improve MDE efforts to collect, maintain, and analyze data on understanding and determining communities at risk or potentially at risk communities. In this context, MDE should continue to develop indicators and criteria to determine risk and/or potential risks (based on recommendations from internal equity network and Governor's commission).</li> </ul>

**Goal 2:** In affected or potentially affected communities,<sup>22</sup> and in the context of MDE's programs and available resources, focus studies so as to provide residents with effective surveillance, monitoring, treatment, and prevention of adverse health effects (real time data if possible).

<i>Time Frame</i>	<i>Objectives</i> <sup>23</sup>
<b>Short Term (0-18mths)</b>	<ul style="list-style-type: none"> <li>• Use existing and new data to identify and target communities adversely impacted from environmental and other activities;</li> <li>• Foster active partnerships and collaborations within MDE administrations and across state, local, and other governments, with private and voluntary sector groups, and with affected populations;<sup>24</sup> and,</li> <li>• Involve members of the public in activities to collect data in affected communities wherever feasible and appropriate.</li> </ul>
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>• Develop a coordinated, comprehensive program capable of addressing multiple environmental, health and social problems in communities affected or potentially affected.</li> </ul>

**Goal 3:** In the context of MDE programs and available resources, use information from State birth and other registries, census information (socio-economic) to investigate the effects of disproportionate impacts from industrial, environmental, commercial and other activities (strong involvement by partnering agencies will be required).

<i>Time Frame</i>	<i>Objectives</i>
<b>Short Term (0-18mths)</b>	
<b>Long Term (&gt;18mths)</b>	<ul style="list-style-type: none"> <li>• Evaluate existing registries and data sets and make recommendations regarding the methodologies they use;</li> <li>• Consult with and assist agencies as appropriate to improve the capacity of their registries and other needed data sets; and,</li> <li>• Undertake research to examine information contained within registries such as death and potential correlation to specific diseases such as asthma or lead poisoning.<sup>25</sup></li> </ul>

## VII. Environmental Research

**Goal 1:** Design environmental research programs within MDE in partnership with affected or potentially affected communities.<sup>26</sup>

<sup>22</sup> Measurement could include amount of CCPs undertaken

<sup>23</sup> Additional measurement indicators could include number of multimedia projects undertaken, number of additional communities, sectors and or new facilities participating in MDE's compliance programs, etc.

<sup>24</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

<sup>25</sup> One form of measurement here is the amount of studies undertaken. One such study has been completed – asthma mortality rates and socio-economic factors (DHMH & Urban League). In terms of actual measurement and project development, MDE does not have to undertake project. Once we are involved in the development and planning, it can be viewed as a MDE related project.

<i>Time Frame</i>	<i>Objectives (active collaboration from partnership agencies required)</i>
<i>Short Term (0-18mths)</i>	<ul style="list-style-type: none"> <li>• <b>Identify mechanisms such as regional meetings, register notices and advisory and review bodies that can be used to engage the participation of communities and workers in the assessment, design, and conduct of environmental research;</b><sup>27</sup></li> <li>• Incorporate information from communities and workers on their perception of negative impacts when devising any environmental research agenda; and,</li> <li>• Collaborate and coordinate with community-based organizations, business and industry, academia, labor, and health professionals concerned about negative impacts in marginalized communities to develop new and relevant models for research.<sup>28</sup></li> </ul>
<i>Long Term (&gt;18mths)</i>	<ul style="list-style-type: none"> <li>• Promote and institutionalize public participation in all phases of research through focus groups and peer review procedures.</li> </ul>

**Goal 2:** In the context of MDE's programs and available resources, identify and characterize environmental factors that have the greatest adverse impact on communities.<sup>29</sup>

<i>Time Frame</i>	<i>Objectives</i>
<i>Short Term (0-18mths)</i>	<ul style="list-style-type: none"> <li>• <b>Keep community members informed of the results of studies (ongoing).</b></li> </ul>
<i>Long Term (&gt;18mths)</i>	<ul style="list-style-type: none"> <li>• Compile and document the extent of the problem by analyzing available data; document gaps in critical information;</li> <li>• Identify high-risk populations, communities, industries, and occupations and document the environmental factors that have the greatest adverse impact;</li> <li>• Work with other state, local, and federal agencies to conduct epidemiological research and surveillance on illnesses and injuries that disproportionately affect communities;</li> <li>• Where appropriate, have studies take into account additional factors such as race, income, community quality of life, diet, and existing health problems, etc; and,</li> <li>• As appropriate in the analysis of adverse impacts in communities, use and develop new models for environmental science research that can be used in population – community-, and industry-based studies. For example coordinate with DHMH to 1) understand exposures and diseases among small numbers of people; 2) understand human exposures to low levels of a</li> </ul>

<sup>26</sup> Measurement will be similar to those previously mentioned. The involvement of communities will be crucial however, to derive this target.

<sup>27</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

<sup>28</sup> The Chesapeake Bay Program has commissioned a comprehensive public perception and attitudes survey concerning watershed and stewardship in the Chesapeake Bay Program. Several questions related to environmental equity are recommended to be added to the survey (2001-2002).

<sup>29</sup> Characterization of factors will be based on CCP's findings

	known environmental or occupational hazard (especially chronic, low-level exposures); and 3) understand human exposures to combinations and mixtures of hazards at low levels for extended periods and at acute levels for short periods; and 4) understand new markers that can be used in identifying risk factors
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**Goal 3:** In the context of MDE's programs and available resources, establish a coordinated program of environmental research among MDE departments that is consistent with an overall departmental strategy for addressing negative impacts in certain communities.

<i>Time Frame</i>	<i>Objectives</i>
<i>Short Term (0-18mths)</i>	<ul style="list-style-type: none"> <li>• <b><i>Maintain a structure within the MDE's internal equity network that will provide ongoing monitoring and evaluation of research activities relevant to addressing stakeholder planning efforts and interest and negative impacts in affected or potentially affected communities.</i></b><sup>30</sup></li> <li>• Establish and document specific coordination processes that address emerging issues in environmental research.</li> </ul>
<i>Long Term (&gt;18mths)</i>	<ul style="list-style-type: none"> <li>• Establish MDE's research priorities, including issues of adverse environmental impacts in communities, through regular conferences.</li> <li>• Design and support collaborative interagency environmental research projects to address adverse impacts that fall on affected or potentially affected communities.</li> </ul>

### **GENERAL STRATEGIC PRINCIPLES IN THE CONTEXT OF OUR MISSION AND MANDATES**

- Build on and support environmental justice within MDE as a policy that is concerned about stakeholder/community based planning, interests and environmental concerns;
- Build on and support integrative methodologies, collaborative partnerships/problem solving, leveraging resources and stakeholder-based capacity building as the frameworks for engaging stakeholder-based planning and environmental concerns;
- Build on and support MDE's public outreach and public information programs by coordinating joint efforts, where appropriate;
- Build on and support MDE's programmatic handling of environmental injustice/public participation claims from the public with informed data. Where possible and appropriate, staff should visit the community. Staff should hold public meetings or hearings at a location and time convenient for community stakeholders and in a language or languages that members of the community are able to understand, where appropriate;
- Build on and support MDE's efforts to ensure that environmental justice and *PARCs* (Potentially at Risk Communities) are considered in the development and implementation of all policies, regulations, and programs;

<sup>30</sup> In the context of MDE's programs and available resources, this objective can be accomplished relatively soon.

- Build on, support environmental reviews, and permit decisions by MDE's administrations and programs concerning projects, facilities, and activities located or directly affecting an identified *PARC*. Encourage beyond compliance mode activities and good neighbor agreements, where appropriate;
- Build on MDE's tracking of progress related to reducing environmental disparities. Strong oversight, monitoring and enforcement of regulations will be critical in *PARCs* (e.g., where sources of pollution or waste sites are clustered);
- Environmental burdens know no political boundaries. Therefore, we should build on MDE's programs' efforts to seek broader and more proactive approaches to environmental protection and allocation of resources. Provide notices as early as possible to communities potentially impacted by a decision and not merely the municipality where the site is located. Appropriate, where applicable, components of EPA's Draft Public Involvement Plan;
- Support MDE's programs' efforts to seek out opportunities to work inter-agency within MDE or with other relevant agencies beyond the MDE secretariat to maximize state resources, research, and technical assistance;
- Support and build on MDE programs' efforts to create collaborative partnerships for problem solving, provide technical assistance and promote sustainable practices and sustainable businesses for all communities especially those designated as *PARCs*. MDE should also work with the Maryland Department of Planning, Maryland Department of Natural Resources, Department of Revenue Department of Budget and Management, the Department of Business and Economic Development, and/or other appropriate agencies to explore the possibility of incentives to attract sustainable or "clean" businesses in the most environmentally over-burdened and economically strapped communities in the state. These agencies will also form the basic foundation for joint responses to environmental problem solving in Maryland;
- Strongly support and build on MDE's programs' effort to be available to respond to community groups, businesses, and agricultural operations located in *PARCs* with questions about environmental regulations to assist them with compliance and sustainability;
- Build on MDE's programs' efforts whenever possible to seek input from community-based organizations (CBOs) to identify *PARCs*;
- Build on and support MDE's administrations' efforts whenever possible to seek input from CBOs to identify communities or populations that may not be proficient in English so that MDE entities can perform public outreach in the appropriate language and through the appropriate communication outlet;
- When determining whether a public notice should be in a language other than English, Support MDE's programs to not limit their evaluation of the percentage of non-English speaking population to the percentages relevant to a municipality. Rather, consider neighborhood level analysis whenever possible;
- During implementation of programs that explicitly allow public hearings at the agency's discretion, an MDE program should hold a public hearing if requested to do so in writing by 20 or more residents who reside in an identified *PARC*;
- When considering a "supplemental environmental project" for the settlement of an enforcement action or other legal proceeding concerning a *PARC*, MDE's senior management/programs may seek input from CBOs and community stakeholders to develop settlement based as much as possible on community priorities, especially when the community priorities can be determined; and,

- This list of principles is not exhaustive. As a matter of policy, MDE programs and staff should attempt whenever possible to facilitate meaningful public involvement in decision-making processes and to be sensitive to a community's environmental priorities.

### NEAR TERM NEXT STEPS

- Undertake the development of community characterizations projects and analyses;
- Develop E.J. related permitting review guidance for MDE;
- Continue to build alliances and relationships with various stakeholders via meetings, MOUs and other forms of agreement;
- Build and strengthen government "infrastructure" at local/community level;
- Identify public policy themes and relationships to environmental justice and sustainable communities; and,
- Actively nurture existing and new demonstration projects.

### REQUIRED ACTIONS WITHIN MDE

- The Secretary for MDE has designated an Environmental Justice Coordinator (EJC). The EJC is the contact point for Environmental Justice Communities and other communities who believe they are at risk of an imminent environmental injustice. Based on criteria to be developed, if the EJC determines that the community may bear a disproportionate environmental burden due to a state environmental decision, the EJC will serve as a liaison between the community and the relevant MDE personnel to seek a just resolution of the action (with additional staff and support). The EJC through staff should do proactive public outreach to publicize services and to distribute contact information to communities at risk of bearing a disproportionate environmental burden or receiving a less than equitable share of environmental benefits. The EJC and staff may review proposed permits, plans, and policies for consistency with this policy. The EJC shall also serve as the MDE staff responsible for advising the Secretary on the development of further environmental justice guidance or policy;
- MDE's Environmental Equity Network (*EEN*) shall meet to, among other things, develop environmental justice strategies tailored to the mission of MDE;
- Each MDE program is encouraged to utilize the current E.J. liaison or appoint a new point of contact to work with the *EEN*;
- Administrations will be encouraged to identify at least one project; funding decision, rulemaking, or other action intended to reduce environmental disparities in the state;
- The Environmental Justice contact in each program will be encouraged to undertake a brief review of the regulations and guidance to ensure that they are compatible with this policy (in the context of permitting review guidance developed by EJC). The Environmental Justice Coordinator must prepare and submit to the Secretary a summary of the review; and,
- The EJC will propose to the Secretary further guidance, with guidance and direction from the internal E.J. network and other stakeholders, pertaining to further identification of environmental injustices and lack of public participation using the Social/Economic/Physical, Sensitivity/Vulnerability, and Environmental Indicators set forth above.

**APPENDIX E: EPA'S COMMITMENT TO ENVIRONMENTAL JUSTICE****August 9, 2001**

MEMORANDUM EPA MAIL

SUBJECT: EPA's Commitment to Environmental Justice

TO: Assistant Administrators  
General Counsel  
Inspector General  
Chief Financial Officer  
Associate Administrators  
Regional Administrators  
Office Directors

The Environmental Protection Agency has a firm commitment to the issue of environmental justice and its integration into all programs, policies, and activities, consistent with existing environmental laws and their implementing regulations.

The Agency defines environmental justice to mean the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision-making processes of the government. Among other things, this requires the following:

- (a) Conducting our programs, policies, and activities that substantially affect human health and the environment in a manner that ensures the fair treatment of all people, including minority populations and/or low-income populations;
- (b) Ensuring equal enforcement of protective environmental laws for all people, including minority populations and/or low-income populations;
- (c) Ensuring greater public participation in the Agency's development and implementation of environmental regulations and policies; and
- (d) Improving research and data collection for Agency programs relating to the health of, and the environment of all people, including minority populations and/or low-income populations.

In sum, environmental justice is the goal to be achieved for all communities and persons across this Nation. Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal

access to the decision-making process to have a healthy environment in which to live, learn, and work.

The purpose of this memorandum is to ensure your continued support and commitment in administering environmental laws and their implementing regulations to assure that environmental justice is, in fact, secured for all communities and persons. Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities. Application of these existing statutory provisions is an important part of this Agency's effort to prevent those communities from being subject to disproportionately high and adverse impacts, and environmental effects.

In the National Environmental Policy Act of 1969 (NEPA), Congress could not have been any clearer when it stated that it shall be the continuing responsibility of the Federal government to assure for all Americans A safe, healthful, productive and aesthetically and culturally pleasing surroundings.

Integration of environmental justice into the programs, policies, and activities via Headquarters/Regional Office Memoranda of Agreements and Regional Office/State Performance Partnership Agreements is an Agency priority. The Director of the Office of Environmental Justice, Barry E. Hill, and his staff are available to assist you. Barry Hill can be reached at (202) 564-2515.

I am positive that each of you will join me in working to secure environmental justice for all communities.

/signed/

Christine Todd Whitman

**August 9, 2001**  
**MEMORANDUM**

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/signed/

Christine Todd Whitman

Dec. 1, 2000

MEMORANDUM

SUBJECT: EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting

FROM: Gary S. Guzy //signed//  
General Counsel  
Office of General Counsel (2310A)

TO: Steven A. Herman  
Assistant Administrator  
Office of Enforcement and Compliance Assistance (2201A)

Robert Perciasepe  
Assistant Administrator  
Office of Air and Radiation (6101A)

Timothy Fields, Jr.  
Assistant Administrator  
Office of Solid Waste and Emergency Response (5101)

J. Charles Fox  
Assistant Administrator  
Office of Water (4101)

This memorandum analyzes a significant number of statutory and regulatory authorities under the Resource Conservation and Recovery Act, the Clean Water Act, the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act, and the Clean Air Act that the Office of General Counsel believes are available to address environmental justice issues during permitting. The use of EPA's statutory authorities, as discussed herein, may in some cases involve new legal and policy interpretations that could require further Agency regulatory or interpretive action. Although the memorandum presents interpretations of EPA's statutory authority and regulations that we believe are legally permissible, it does not suggest that such actions would be uniformly practical or feasible given policy or resource considerations or that there are not important considerations of legal risk that would need to be evaluated. Nor do we assess the relative priority among these various avenues for addressing environmental justice concerns. We look forward to working with all your offices to explore these matters in greater detail.

**I. Resource Conservation and Recovery Act (RCRA)**

RCRA authorizes EPA to regulate the generation, transportation, treatment, storage, and disposal of hazardous wastes and the management and disposal of solid waste. EPA issues

guidelines and recommendations to State solid waste permitting programs under RCRA sections 1008(a), 4002, or 4004 and may employ this vehicle to address environmental justice concerns. The primary area where environmental justice issues have surfaced, however, is in the permitting of hazardous waste treatment, storage, and disposal facilities (e.g., incinerators, fuel blenders, landfills). Pursuant to RCRA section 3005, EPA is authorized to grant permits to such facilities if they demonstrate compliance with EPA regulations.

Upon application by a State, EPA may authorize a State's hazardous waste program to operate in lieu of the Federal program, and to issue and enforce permits. The State's program must be equivalent to the Federal program to obtain and retain authorization. When EPA adopts more stringent RCRA regulations (including permit requirements), authorized States are required to revise their programs within one year after the change in the Federal program or within two years if the change will necessitate a State statutory amendment. 40 CFR § 271.21(e). EPA and most authorized States have so-called "permit shield" regulations, providing that, once a facility obtains a hazardous waste permit, it generally cannot be compelled to comply with additional requirements during the permit's term.

The scope of EPA's authority to address environmental justice issues in RCRA hazardous waste permits was directly addressed by the Environmental Appeals Board (EAB) in Chemical Waste Management, Inc., 6 E.A.D. 66, 1995 WL 395962 (1995) <<http://www.epa.gov/eab/disk11/cwmii.pdf>>. The Board found "that when the Region has a basis to believe that operation of the facility may have a disproportionate impact on a minority or low-income segment of the affected community, the Region should, as a matter of policy, exercise its discretion to assure early and ongoing opportunities for public involvement in the permitting process." Id. at 73. It also found that RCRA allows the Agency to "tak[e] a more refined look at its health and environmental impacts assessment in light of allegations that operation of the facility would have a disproportionately adverse effect on the health or environment of low-income or minority populations." Id. at 74. Such a close evaluation could, in turn, justify permit conditions or denials based on disproportionately high and adverse human health or environmental effects, while "a broad analysis might mask the effects of the facility on a disparately affected minority or low-income segment of the community." Id. However, while acknowledging the relevance of disparities in health and environmental impacts, the Board also cautioned that "there is no legal basis for rejecting a RCRA permit application based solely upon alleged social or economic impacts upon the community." Id. at 73.

Consistent with this interpretation, there are several RCRA authorities under which EPA could address environmental justice issues in permitting:

#### **A. Hazardous Waste Treatment, Storage and Disposal**

1. RCRA section 3005(c)(3) provides that "[e]ach permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment." EPA has interpreted this provision to authorize denial of a permit to a facility if EPA determines that operation of the facility would pose an unacceptable risk to human health and the environment and that there are no additional permit terms or conditions that would address such risk. This

"omnibus" authority may be applicable on a permit-by-permit basis where appropriate to address the following health concerns in connection with hazardous waste management facilities that may affect low-income communities or minority communities:

- a. Cumulative risks due to exposure from pollution sources in addition to the applicant facility;
  - b. Unique exposure pathways and scenarios (e.g., subsistence fishers, farming communities); or
  - c. Sensitive populations (e.g., children with levels of lead in their blood, individuals with poor diets).
2. RCRA section 3013 provides that if the Administrator determines that "the presence of any hazardous waste at a facility or site at which hazardous waste is, or has been, stored, treated, or disposed of, or the release of any such waste from such facility or site may present a substantial hazard to human health or the environment," she may order a facility owner or operator to conduct reasonable monitoring, testing, analysis, and reporting to ascertain the nature and extent of such hazard. EPA may require a permittee or an applicant to submit information to establish permit conditions necessary to protect human health and the environment. 40 CFR § 270.10(k). In appropriate circumstances, EPA could use the authority under section 3013 or 40 CFR § 270.10(k) to compel a facility owner or operator to carry out necessary studies, so that, pursuant to the "omnibus" authority, EPA can establish permit terms or conditions necessary to protect human health and the environment.
  3. RCRA provides EPA with authority to consider environmental justice issues in establishing priorities for facilities under RCRA section 3005(e), and for facilities engaged in cleaning up contaminated areas under the RCRA corrective action program, RCRA sections 3004(u), 3004(v), and 3008(h). For example, EPA could consider factors such as cumulative risk, unique exposure pathways, or sensitive populations in establishing permitting or clean-up priorities.
  4. EPA adopted the "RCRA Expanded Public Participation" rule on December 11, 1995. See 60 Fed. Reg. 63417. RCRA authorizes EPA to explore further whether the RCRA permit public participation process could better address environmental justice concerns by expanding public participation in the permitting process (including at hazardous waste management facilities to be located in or near low-income communities or minority communities).
  5. In expanding the public participation procedures applicable to RCRA facilities, EPA also would have authority to expand the application of those procedures to the permitting of: (a) publicly owned treatment works, which are regulated under the Clean Water Act; (b) underground injection wells, which are regulated under the Safe Drinking Water Act; and (c) ocean disposal barges or vessels, which are regulated under the Marine Protection Research and Sanctuaries Act. These facilities are subject to RCRA's permit by rule

regulations, 40 CFR § 270.60, and are deemed to have a RCRA permit if they meet certain conditions set out in the regulations. 40 CFR § 270.60.

6. EPA's review of State-issued permits provides additional opportunities for consideration of environmental justice concerns. Where the process for a State-issued permit does not adequately address sensitive population risks or other factors in violation of the authorized State program, under the regulations EPA could provide comments on these factors (in appropriate cases) during the comment period on the State's proposed permit on a facility-by-facility basis. 40 CFR § 271.19(a). Where the State itself is authorized for RCRA "omnibus" authority and does not address factors identified in EPA comments as necessary to protect human health and the environment, EPA may seek to enforce the authorized State program requirement. 40 CFR § 271.19(e). Alternatively, if the State is not authorized for "omnibus" authority, EPA may superimpose any necessary additional conditions under the "omnibus" authority in the federal portion of the permit. These conditions become part of the facility's RCRA permit and are enforceable by the United States under RCRA section 3008 and citizens through RCRA section 7002.
7. RCRA section 3019 provides EPA with authority to increase requirements for applicants for land disposal permits to provide exposure information and to request that the Agency for Toxic Substances and Disease Registry conduct health assessments at such land disposal facilities.
8. RCRA section 3004(o)(7) provides EPA with authority to issue location standards as necessary to protect human health and the environment. Using this authority, EPA could, for example, establish minimum buffer zones between hazardous waste management facilities and sensitive areas (e.g., schools, areas already with several hazardous waste management facilities, residential areas). Facilities seeking permits would need to comply with these requirements to receive a permit.
9. RCRA-permitted facilities are required under RCRA section 3004(a) to maintain "contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of . . . hazardous waste." Under this authority, EPA could require facilities to prepare and/or modify their contingency plans to reflect the needs of environmental justice communities that have limited resources to prepare and/or respond to emergency situations.
10. RCRA additionally provides EPA with authority to amend its regulations to incorporate some of the options described in 1 through 6 above so they become part of the more stringent federal program that authorized States must adopt.

## II. Clean Water Act (CWA)

The CWA was adopted "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters." To achieve this goal, Congress prohibited the discharge from a point source of any pollutant into a water of the United States unless that discharge complies with specific requirements of the Act. Compliance is achieved by obtaining and adhering to the

terms of an NPDES permit issued by EPA or an authorized State pursuant to section 402, or a dredge and fill permit issued by the Army Corps of Engineers or an authorized State pursuant to section 404.

NPDES permits must contain: (1) technology-based limitations that reflect the pollution reduction achieved through particular equipment or process changes, without reference to the effect on the receiving water and (2) where necessary, more stringent limitations representing that level of control necessary to ensure that the receiving waters achieve water quality standards. Water quality standards consist of (1) designated uses of the water (e.g., public water supply, propagation of fish, or recreation); (2) criteria to protect those uses including criteria based on protecting human health and aquatic life; and (3) an antidegradation policy. EPA requires that States designate all waters for "fishable/swimmable" uses unless such uses are not attainable. EPA issues water quality criteria guidance to the States pursuant to CWA section 304(a).

Permits issued under CWA section 404 authorize the discharge of "dredged or fill material" to waters of the United States. The types of activities regulated under section 404 include filling of wetlands to create dry land for development, construction of berms or dams to create water impoundments, and discharges of material dredged from waterways to maintain or improve navigation. Section 404 permits issued by the Corps of Engineers must satisfy two sets of standards: the Corps' "public interest review" and the section 404(b)(1) guidelines promulgated by EPA. The public interest review is a balancing test that requires the Corps to consider a number of factors, including economics, fish and wildlife values, safety, food and fiber production and, public needs and welfare in general. 33 CFR § 320.4(a). The section 404(b)(1) guidelines provide that no permit shall issue if: (1) there are practicable, environmentally less damaging alternatives, (2) the discharge would violate water quality standards or jeopardize threatened or endangered species, (3) the discharge would cause significant degradation to the aquatic ecosystem, or (4) if all reasonable steps have not been taken to minimize adverse effects of the discharge. 40 CFR § 230.10.

There are several CWA authorities under which EPA could address environmental justice issues in permitting:

#### **A. State Water Quality Standards**

States are required to review their water quality standards every three years and to submit the results of their review to EPA. CWA section 303(c)(1). EPA Regional offices must approve or disapprove all new or revised State water quality standards pursuant to section 303(c)(3). EPA will approve State standards if they are scientifically defensible and protective of designated uses. 40 CFR § 131.11. If a State does not revise a disapproved standard, EPA is required to propose and promulgate a revised standard for the State. Section 303(c)(4)(A). The Administrator is also required to propose and promulgate a new or revised standard for a State whenever she determines that such a standard is necessary to meet the requirements of the Act and the State does not act to adopt an appropriate standard. CWA section 303(c)(4)(B).

1. State water quality standards currently are required to provide for the protection of "existing uses." 40 CFR § 131.12(a)(1). These are defined as uses actually attained in the water body on or after November 28, 1975. 40 CFR § 131.3(e). To the extent that minority or low-income populations are, or at any time since 1975 have been, using the waters for recreational or subsistence fishing, EPA could reinterpret the current regulations to require that such uses, if actually attained, must be maintained and protected. The CWA provides EPA with authority to require, through appropriate means, that high rates of fish consumption by these populations be considered an "existing use" to be protected by State water quality standards. Under the current regulations, existing uses cannot be removed.
2. EPA regulations provide that all waters must be designated for the protection and propagation of fish, shellfish, and wildlife and for recreation in and on the water ("fishable/swimmable") unless the State documents to EPA's satisfaction that such uses are not attainable. 40 CFR §§ 131.6(a), 131.10(j).

EPA interprets "fishable" uses under section 101(a) of the CWA to include, at a minimum, designated uses providing for the protection of aquatic communities and human health related to consumption of fish and shellfish. In other words, EPA views "fishable" to mean that not only can fish and shellfish thrive in a waterbody, but when caught, can also be safely eaten by humans (stated in 10/24/00 "Dear Colleague" letter from Geoffrey H. Grubbs, Director Office of Science and Technology, and Robert H. Wayland, III, Director Office of Wetlands, Oceans and Watersheds). Therefore, EPA currently recommends that in setting criteria to protect "fishable" uses, that the State/Tribe adjust the fish consumption values used to develop criteria to protect the "fishable" use, including fish consumption by subsistence fishers (USEPA 2000, Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health, EPA-822-B-00-004, Chapter 2.1). For example, in deriving such criteria, states or tribes could select their fish consumption value based on site-specific information or a national default value for subsistence fishing (Chapter 4).

In the future, EPA could reinterpret its regulations to mean that any human health use must have a criterion that would protect consumption by subsistence fishers unless there is a showing that water is not used for subsistence fishing.

3. The CWA provides EPA with authority to recommend that State CWA section 303(c)(1) triennial reviews of water quality standards consider the extent to which State criteria provide for protection of human health where there exists subsistence fishing. EPA Regional offices may disapprove a criterion that does not provide protection to highly-exposed populations. The Administrator further has the discretionary authority to determine that such criteria are necessary to meet the requirements of the CWA and then must promptly propose and promulgate such criteria.
4. Consistent with CWA section 101(e), EPA could encourage States to improve public participation processes in the development of State water quality standards through

greater outreach and by translating notices for limited English speaking populations consistent with Executive Order 12898 on environmental justice.

## **B. Issuance of NPDES Permits**

1. Assuming EPA adopts the interpretation described in paragraph A.1., above, NPDES permits issued for discharge to waters where a high level of fish consumption is an "existing use" should contain limitations appropriate to protect that use. The CWA provides EPA authority to take this approach when it issues NPDES permits in States not authorized to run the NPDES program, and to object to or ultimately veto State-issued permits that are not based on these considerations. CWA section 402(d).
2. Consistent with CWA section 101(e), where EPA issues NPDES permits, environmental justice concerns can also be taken into account in setting permitting priorities and improving public participation in the permitting process (greater outreach to minority communities and low-income communities including translating notices for limited English speaking populations consistent with Executive Order 12898 on environmental justice).
3. CWA section 302 authorizes EPA to propose and adopt effluent limitations for one or more point sources if the applicable technology-based or water quality-based requirements will not assure protection of public health and other concerns. This determination requires findings of economic capability and a reasonable relationship between costs and benefits. The Agency has never used this authority, but could evaluate whether this authority could be used with respect to pollutants of concern to minorities or low-income communities. Prior to adopting such limitations by regulation, EPA could use its authority under CWA section 402(a)(1) to incorporate such limitations in specific NPDES permits issued by EPA. The Clean Water Act does not appear to provide any general authority to impose conditions on or deny permits based on environmental justice considerations that are unconnected to water quality impacts or technology-based limitations.
4. Pursuant to CWA section 104 and other authorities, EPA may provide technical assistance to Indian Tribes, where appropriate, in the development of water quality standards and the issuance of NPDES permits.

## **C. CWA Section 404**

1. The broadest potential authority to consider environmental justice concerns in the CWA section 404 program rests with the Corps of Engineers, which conducts a broad "public interest review" in determining whether to issue a section 404 permit. In evaluating the "probable impacts . . . of the proposed activity and its intended use on the public interest," the Corps is authorized to consider, among other things, aesthetics, general environmental concerns, safety, and the needs and welfare of the people. 33 CFR § 320.4(a). This public interest review could include environmental justice concerns.

2. EPA has discretionary oversight authority over the Corps' administration of the section 404 program (i.e., EPA comments on permit applications, can elevate Corps permit decisions to the Washington, D.C. level, and can "veto" Corps permit decisions under section 404(c) that would have an unacceptable adverse effect on "municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas"). The CWA thus authorizes EPA to use these authorities to prevent degradation of these public resources that may have a disproportionately high and adverse health or environmental effect on a minority community or low-income community. Such effects can be addressed when they result directly from a discharge of dredged or fill material (e.g., the filling of a waterbody), or are the indirect result of the permitted activity (e.g., the fill will allow construction of an industrial facility that will cause water pollution due to runoff).

### III. Safe Drinking Water Act (SDWA)

The SDWA includes two separate regulatory programs. The Public Water Supply program establishes requirements for the quality of drinking water supplied by public water systems. This program contains no federal permitting. The Underground Injection Control (UIC) program establishes controls on the underground injection of fluids to protect underground sources of drinking water.

Under the UIC program, the Administrator must establish requirements for State UIC programs that will prevent the endangerment of drinking water sources by underground injection. EPA has promulgated a series of such requirements beginning in 1980. The SDWA also provides that States may apply to EPA for primary responsibility to administer the UIC program. EPA must establish a UIC permitting program in States that do not seek this responsibility or that fail to meet the minimum requirements established by EPA.

There are several SDWA authorities under which EPA could address environmental justice issues in UIC permitting:

#### A. EPA-issued Permits

Underground injection must be authorized by permit or rule. The SDWA provides that EPA can deny or establish permit limits where such injection may "endanger" public health. "Endangerment" is defined to include any injection that may result in the presence of a contaminant in a drinking water supply that "may...adversely affect the health of persons." 40 CFR § 144.52(b)(1). As a result, in those States where EPA issues permits and an injection activity poses a special health risk to minority or low-income populations, the SDWA provides EPA with authority to establish special permit requirements to address the endangerment or deny the permit if the endangerment cannot otherwise be eliminated. As in its Chemical Waste Management RCRA permit appeal decision discussed in Part I above, the EAB has addressed EPA's authority to expand public participation and to consider disproportionate impacts in the UIC permitting program. Envotech, 6 E.A.D. 260, 281, 1996 WL 66307 (1996) <<http://www.epa.gov/eab/disk10/envotech.pdf>>.

**B. Pending regulatory action**

The Office of Water is currently revising the regulations under this program governing "Class V" injection wells (i.e., shallow wells where nonhazardous waste is injected). In determining which wells to regulate and the standards for those where EPA determines regulations are necessary to prevent "endangerment," the SDWA provides EPA with authority to take into account environmental justice issues such as cumulative risk and sensitive populations.

**C. Other regulatory actions**

Likewise, the SDWA provides EPA with authority to address environmental justice issues related to potential endangerment of drinking water supplies by injection for all types of wells. For example, EPA could revise its regulatory requirements for siting Class 1 (hazardous waste) wells to address cumulative risk and other risk-related environmental justice issues.

**IV. Marine Protection, Research, and Sanctuaries Act (MPRSA)**

The MPRSA, commonly known as the Ocean Dumping Act, 33 USC § 1401 ff., establishes a permitting program that covers the dumping of material into ocean waters. The ocean disposal of a variety of materials, including sewage sludge, industrial waste, chemical and biological warfare agents, and high level radioactive waste, is expressly prohibited.

EPA issues permits for the dumping of all material other than dredged material. 33 U.S.C. § 1412(a). The Army Corps of Engineers issues permits for the dumping of dredged material, subject to EPA review and concurrence. 33 U.S.C. § 1413(a). (As a practical matter, EPA issues very few ocean dumping permits because the vast majority of material disposed of at sea is dredged material.) EPA also is charged with designating sites at which permitted disposal may take place; these sites are to be located wherever feasible beyond the edge of the Continental Shelf. 33 U.S.C. § 1412(c)(1).

When issuing MPRSA permits and designating ocean dumping sites, EPA is to determine whether the proposed dumping will "unreasonably degrade or endanger human health, welfare, amenities, or the marine environment, ecological systems, or economic potentialities." 33 USC § 1412(a), (c)(1). EPA also is to take into account "the effect of... dumping on human health and welfare, including economic, esthetic, and recreational values." 33 U.S.C. § 1412(a)(B), (c)(1). Thus, in permitting and site designation, EPA has ample authority to consider such factors as impacts on minority or low-income communities and on subsistence consumers of sea food that would result from the proposed dumping. In addition, the MPRSA provides specifically that EPA is to consider land-based alternatives to ocean dumping and the probable impact of requiring use of these alternatives "upon considerations affecting the public interest." 33 U.S.C. § 1412(a)(G). This authorizes EPA to take impacts on minority populations or low-income

populations into account in evaluating alternative locations and methods of disposal of the material that is proposed to be dumped at sea.

## V. Clean Air Act (CAA)

There are several CAA authorities under which EPA could address environmental justice issues in permitting:

### A. New Source Review (NSR)

NSR is a preconstruction permitting program. If new construction or making a major modification will increase emissions by an amount large enough to trigger NSR requirements, then the source must obtain a permit before it can begin construction. The NSR provisions are set forth in sections 110(a)(2)(C), 165(a) (PSD permits), 172(c)(5) and 173 (NSR permits) of the Clean Air Act.

Under the Clean Air Act, states have primary responsibility for issuing permits, and they can customize their NSR programs within the limits of EPA regulations. EPA's role is to approve State programs, to review, comment on, and take any other necessary actions on draft permits, and to assure consistency with EPA's rules, the state's implementation plan, and the Clean Air Act. Citizens also play a role in the permitting decision, and must be afforded an opportunity to comment on each construction permit before it is issued.

The NSR permit program for major sources has two different components—one for areas where the air is dirty or unhealthy, and the other for areas where the air is cleaner. Under the Clean Air Act, geographic areas (e.g., counties or metropolitan statistical areas) are designated as “attainment” or “nonattainment” with the National Ambient Air Quality Standards (NAAQS)—the air quality standards which are set to protect human health and the environment. Permits for sources located in attainment (or unclassifiable) areas are called Prevention of Significant Deterioration (PSD) permits and those for sources located in nonattainment areas are called NSR permits.

A major difference in the two programs is that the control technology requirement is more stringent in nonattainment areas and is called the Lowest Achievable Emission Rate (LAER). On the other hand, in attainment or PSD areas, a source must apply Best Available Control Technology (BACT) and the statute allows the consideration of cost in weighing BACT options. Also, in keeping with the goal of progress toward attaining the national air quality standards, sources in nonattainment areas must always provide or purchase “offsets”—decreases in emissions which compensate for the increases from the new source or modification. In attainment areas, PSD sources typically do not need to obtain offsets. However, PSD does require an air quality modeling analysis of pollution that exceeds allowable levels; this impact must be mitigated. Sometimes, these mitigation measures can include offsets in PSD areas.

1. Under the Clean Air Act, section 173(a)(5) provides that a nonattainment NSR permit may be issued only if: "an analysis of alternative sites, sizes, production processes, and

environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification." For example, this provision authorizes consideration of siting issues. Section 165(a)(2) provides that a PSD permit may be issued only after an opportunity for a public hearing at which the public can appear and provide comment on the proposed source, including "alternatives thereto" and "other appropriate considerations." This authority could allow EPA to take action to address the proper role of environmental justice considerations in PSD/NSR permitting.

2. In addition to these statutory provisions, EPA directly issues PSD/NSR permits in certain situations (e.g., in Indian country and Outer Continental Shelf areas) and, through the EAB, adjudicates appeals of PSD permits issued by States and local districts with delegated federal programs. In such permit and appeal decisions, it is possible to consider environmental justice issues on a case-by-case basis, without waiting to issue a generally applicable rule or guidance document. EPA already considers environmental justice issues on a case-by-case basis in issuing PSD permits consistent with its legal authority.
3. The EPA Environmental Appeals Board (EAB) has addressed environmental justice issues in connection with PSD permit appeals on several occasions. The EAB first addressed environmental justice issues under the CAA in the original decision in Genessee Power (September 8, 1993). In that decision the EAB stated that the CAA did not allow for consideration of environmental justice and siting issues in air permitting decisions. In response, the Office of General Counsel filed a motion for clarification on behalf of the Office of Air and Radiation (OAR) and Region V. OGC pointed out, among other things, that the CAA requirement to consider alternatives to the proposed source, and the broad statutory definition of "best available control technology" (BACT), provided ample opportunity for consideration of environmental justice in PSD permitting. In an amended opinion and order issued on October 22, 1993, the EAB deleted the controversial language but did not decide whether it is permissible to address environmental justice concerns under the PSD program. 4 E.A.D. 832, 1993 WL 484880, <<http://www.epa.gov/eab/disk4/genessee.pdf>>. However, in subsequent decisions, Ecoeléctrica, 7 E.A.D. 56, 1997 WL 160751 (1997) <<http://www.epa.gov/eab/disk11/ecoelect.pdf>>, and Puerto Rico Electric Power Authority, 6 E.A.D. 253, 1995 WL 794466 (1995) <<http://www.epa.gov/eab/disk9/prepa.pdf>>, the EAB stated that notwithstanding the lack of formal rules or guidance on environmental justice, EPA could address environmental justice issues. In 1999 in Knauf Fiber Glass, 8 E.A.D. PSD Appeal Nos. 98-3 through 98-20, 1999 WL 64235 (Feb. 4, 1999) <<http://www.epa.gov/eab/disk11/knauf.pdf>>, the EAB remanded a PSD permit to the delegated permitting authority (the Shasta County Air Quality Management District) for failure to provide an environmental justice analysis in the administrative record in response to comments raising the issue.
4. In the 1990 CAA Amendments, Congress provided that the PSD provisions of the Act do not apply to hazardous air pollutants (HAPs), see CAA section 112(b)(6), so the role of hazardous air pollutant impacts as environmental justice issues in PSD permitting is not

straightforward. Thus, BACT limits are not required to be set for HAPs in PSD permits. However, the Administrator ruled prior to the 1990 Amendments that in establishing BACT for criteria pollutants, alternative technologies for criteria pollutants could be analyzed based on their relative ability to control emissions of pollutants not directly regulated under PSD. EPA believes that the 1990 Amendments did not change this limited authority, and EPA believes it could be a basis for addressing environmental justice concerns. In addition, EPA may have authority to take into account – and to require States to do so in their PSD permitting – effects of HAPs that are also criteria pollutants, such as VOCs.

## **B. Title V**

Title V of the CAA requires operating permits for stationary sources of air pollutants and prescribes public participation procedures for the issuance, significant modification, and renewal of Title V operating permits. Unlike PSD/NSR permitting, Title V generally does not impose substantive emission control requirements, but rather requires all applicable requirements to be included in the Title V operating permit. Other permitting programs may co-exist under the authority of the CAA, such as those in State implementation plans (SIPs) approved by EPA.

1. Because Title V does not directly impose substantive emission control requirements, it is not clear whether or how EPA could take environmental justice issues into account in Title V permitting – other than to allow public participation to serve as a motivating factor for applying closer scrutiny to a Title V permit's compliance with applicable CAA requirements. EPA believes, however, that in this indirect way, Title V can, by providing significant public participation opportunities, serve as a vehicle by which citizens can address environmental justice concerns that arise under other provisions of the CAA.
2. Under the 40 CFR Part 70/71 permitting process, EPA has exercised its CAA authority to require extensive opportunities for public participation in permitting actions. State permitting authorities also have the flexibility to provide additional public participation.
3. Other permitting processes under the CAA such as SIP permitting programs can include appropriate public participation measures, and these can be used to promote consideration of environmental justice issues. For example, EPA regulations require that "minor NSR programs" in SIPs provide an opportunity for public comment prior to issuance of a permit (40 CFR § 51.161(b)(2)). (Note, however, that many state programs do not at present meet this requirement.)

## **C. Solid Waste Incinerator Siting Requirements**

The CAA provides specific authority to EPA to establish siting requirements for solid waste incinerators that could include consideration of environmental justice issues. CAA section 129(a)(3) provides that standards for new solid waste incinerators include "siting requirements that minimize, on a site specific basis, to the maximum extent practicable, potential risks to public health or the environment." These would be applicable

requirements for Title V purposes. The new source performance standards (NSPS) for large municipal waste combustors (40 CFR part 60, subpart Eb) and hospital/medical/infectious waste incinerators (40 CFR part 60, subpart Ec) both currently contain such requirements. In the large municipal waste combustor NSPS, the specific requirement in section 129(a)(3) was incorporated and requirements for public notice, a public meeting and consideration of and response to public comments were added. However, to reduce the burden on the much smaller entities which typically own and operate hospital/medical/infectious waste incinerators, that NSPS only incorporates the specific section 129(a)(3) requirement. EPA is subject to a court ordered deadline for taking final action on NSPS for commercial/industrial waste incinerators, and has proposed to follow the approach to the siting analysis adopted in the hospital/medical/infectious waste NSPS in that rule.

**D. 40 CFR Part 71 Tribal Air Rule**

The Part 71 federal operating permit rule establishes EPA's Title V operating permits program in Indian country. Where sources are operating within Indian country, and Tribes do not seek authorization to implement Title V programs, the Part 71 rule clarifies that EPA will continue to implement federal operating permit programs. These Title V permit programs are limited to Title V and other applicable federal CAA requirements and are not comprehensive air pollution control programs. Thus, the opportunities for addressing environmental justice issues may be similar to those discussed in section B above.

cc: Michael McCabe  
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Lisa Friedman  
Susan Lepow  
Alan Eckert  
James Nelson

## Basic EPA Environmental Justice Resources at a Glance

Office of Environmental Justice Website, EPA <<http://www.epa.gov/compliance/environmentaljustice/index.html>>.

EPA Administrator, Memorandum, *EPA's Commitment to Environmental Justice* (Aug. 2001) <<http://www.epa.gov/compliance/resources/policies/ej/index.html>>.

EPA General Counsel, Memorandum, *EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting* (Dec. 2000) <<http://www.epa.gov/compliance/resources/policies/ej/index.html>>.

Presidential Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (Feb. 1994) <<http://www.epa.gov/compliance/resources/policies/ej/index.html>>.

EPA-Federal Interagency Working Group on Environmental Justice: Environmental Justice Collaborative Model: A Framework to Ensure Local Problem-Solving, Status Report (Feb 2002) <[http://www.epa.gov/compliance/resources/publications/ej/ej\\_annual\\_project\\_reports.html](http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html)>.

### National Environmental Policy Act-Environmental Justice Guidance Documents

Council on Environment Quality, *Environmental Justice: Guidance under the National Environmental Policy Act* (Dec. 10, 1997) <<http://ceq.eh.doe.gov/nepa/regs/guidance.html>>.

U.S. EPA Office of Federal Activities, *Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses* (April 1998) <<http://www.epa.gov/compliance/resources/policies/ej/index.html>>.

U.S. EPA Office of Federal Activities, EPA, *Guidance for Consideration of Environmental Justice in Clean Air Act Section 309 Reviews* (July 1999) <<http://www.epa.gov/compliance/resources/policies/ej/index.html>>.

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### **Geographical Information System**

Office of Environmental Justice, *EPA EnviroJustice Mapper* <<http://www.epa.gov/compliance/whereyoulive.html>>.

The Environmental Justice Query Mapper (EnviroJustice Mapper) was developed as an information resource for the general public. Access to the EnviroJustice Mapper application is being provided via the Internet to provide the general public with easy access to information on EPA permitted facilities and their surrounding communities. EnviroJustice Mapper through a combination of facility and Geographic Information System (GIS) data, creates a facility profile which is then illustrated through the use of GIS maps, in three easy steps. Query, Verify and Go!

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**Recent Environmental Justice Publication<sup>1</sup>**

Environmental Law Institute, *Opportunities for Advancing Environmental Justice: An Analysis of U.S. EPA Statutory Authority* (Nov. 2001)

<[http://www.epa.gov/compliance/resources/publications/ej/ej\\_annual\\_project\\_reports.html](http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html)>.

Environmental Law Institute, *A Citizen's Guide to Using Environmental Laws to Advance Environmental Justice* (2002) <[http://www.epa.gov/compliance/resources/publications/ej/ej\\_annual\\_project\\_reports.html](http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html)>.

National Academy of Public Administration, *Environmental Justice in EPA Permitting: Reducing Pollution in High-Risk Communities is Integral to the Agency's Mission*, (Dec. 2001)

<[http://www.epa.gov/compliance/resources/publications/ej/ej\\_annual\\_project\\_reports.html](http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html)>.

National Academy of Public Administration, *Models for Change: Efforts by Four States to Address Environmental Justice* (June 2002) <[www.napawash.org](http://www.napawash.org)>.

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<sup>1</sup> The listed publications were produced under a cooperative agreement with the Office of Environmental Justice and the designated entity. The views expressed in the publications should not be attributed to EPA nor should any official endorsement be inferred.

## ENVIRONMENTAL JUSTICE ISSUES UNDER EXISTING STATUTORY AUTHORITY\*

Nicholas Targ\*\*

Many of the statutes that the U.S. EPA (EPA or Agency) implements provide the Agency with the authority to consider and address environmental justice concerns.<sup>1/</sup> These laws encompass the breadth of the Agency's activities including setting standards;<sup>2/</sup> permitting facilities;<sup>3/</sup> awarding grants;<sup>4/</sup> enforcing standards and permits; and reviewing actions taken by other federal agencies, states, and tribal authorities.<sup>5/</sup> These laws often require the Agency to consider a variety of factors, which generally include one or more of the following: public health;<sup>6/</sup> cumulative impacts;<sup>7/</sup> social costs;<sup>8/</sup> and welfare;<sup>9/</sup> and general environmental or human health impacts.<sup>10/</sup> Moreover, some statutory provisions direct the Agency and other executive branch departments and agencies to consider special risks posed to vulnerable populations in setting standards.<sup>11/</sup> In all cases, how the Agency chooses to implement and enforce its authority (whether on a case-by-case basis or through more general policy) can have substantial effects on the natural and environmental resources and the health of communities.

### I. Integrating Environmental Justice into Environmental Decision Making

Attention to minority and/or low-income communities and the natural resources upon which they depend is necessary because actions that adequately protect the general population may not always protect discrete segments of the population.<sup>12/</sup> A host of race-neutral factors, and, in some cases, the legacy of historical discrimination, can lead to disproportionate impacts on minority and/or low-income communities and/or their surrounding environment. Some of these factors, among others, include:

- cumulative risks due to exposure from the aggregation of risks from multiple sources of pollution in addition to the applicant (or any specific) facility (e.g., high blood lead levels from lead paint, and impacts from other existing permitted or unregulated sources);<sup>13/</sup>
- unique exposure pathways and scenarios (e.g., reliance on land or water resources that may become pathways of toxic exposure, such as may be the case with subsistence fishing and farming communities);<sup>14/</sup>
- vulnerability of built infrastructure (e.g., proximity of residences to industrial areas, overburdened roads, limited emergency evacuation routes, capital disinvestment);<sup>15/</sup>
- vulnerability of populations (e.g., high levels of asthma, inadequate nutrition, low birth weight, lack of available medical care);<sup>16/</sup> or
- lack of meaningful participation in the decision-making process (e.g., lack of literacy or fluency in English, lack of technical or financial resources, inability to attend meetings scheduled during the working day, historical noninclusion or negative experience in deliberative decision-making process; or lack of political or social capital).<sup>17/</sup>

Unless the environmental regulatory authority and other stakeholders consider such factors, communities having these attributes may be disproportionately exposed to environmental risks or harms.

### II. Executive Order 12898

Executive Order 12898/<sup>18/</sup> and the accompanying Presidential Memorandum/<sup>19/</sup> recognize that existing

\* Copyright 2001, Nicholas Targ. Reprinted with permission. All rights reserved. This article is based, in part, on "The Link between Protecting Natural Resources and the Issue of Environmental Justice," 28 *Env'tl. Aff.* 1 (Jan. 2001). Mr. Targ expresses his appreciation to Barry E. Hill who coauthored the original article. An earlier version of this article appeared in ALI-ABA's course study handbook entitled "Environmental Law."

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"[e]nvironmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities."/20/ Among other things, the Executive Order directs the EPA and other federal agencies "[t]o the greatest extent practicable and permitted by law ... [to] make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."/21/ Thus, the Executive Order both affirms the applicability of existing laws to issues of environmental justice and directs federal executive branch agencies to pursue those issues with the authority entrusted to them.

### III. Integration of Environmental Justice Concerns into the Review of the Agency's Permitting Decisions

While the Executive Order directs EPA to address environmental justice in the implementation of its environmental programs, the Executive Order makes clear that it does not provide a "right of judicial review against the United States."/22/ Therefore, no federal court has overturned a federal action based solely upon a faulty environmental justice analysis performed to meet the Executive Order's requirements./23/ The administrative tribunals, however, are beginning to use the authority inherent in the statutes and regulations, which their agencies implement, to address environmental justice issues consistent with the Executive Order./24/

For example, the Environmental Appeals Board (EAB), an administrative panel within EPA, reviews EPA actions to determine whether the Agency has made its decisions in accordance with law and Agency policy. Among other issues, if petitioned (and assuming no jurisdictional issues), the EAB will consider whether the Agency has adequately addressed environmental justice issues under the applicable statute during the permitting process./25/

The EAB review of a Resource Conservation and Recovery Act (RCRA) permit issued by Region V in *In re: Chemical Waste Management of Indiana* is typical of the EAB's consideration of environmental justice concerns. That case emphasizes the important point that

environmental justice concerns, through the lens of environmental statutes, relate in the first instance not to a community's demographic characteristics (e.g., racial composition or income status),/26/ but rather to human health and environmental conditions frequently associated with low-income and/or minority communities that may place such communities at special risk./27/ Because environmental risk factors in minority and/or low-income communities may differ from the general population, the EAB noted in *In re: Chemical Waste* that, an assessment of effects that looks only at "a broad analysis might mask the effects of the facility on a disparately affected minority or low-income segment of the community."/28/ Following this reasoning, the EAB made two basic rulings:

#### 1. Public Participation

When the Region has a basis to believe that operation of the facility may have a disproportionate impact on a minority or low-income segment of the affected community, the Region should, as a matter of policy, exercise its discretion to assure early and ongoing opportunities for public involvement in the permitting process./29/

#### 2. Environmental Justice Review

When a commentator submits at least a superficially plausible claim that operation of the facility will have a disproportionate impact on a minority or low-income segment of the affected community, the Region should, as a matter of policy, exercise its discretion under § 3005(c)(3)/30/ to include within its health and environmental impacts assessment an analysis focusing particularly on the minority or low-income community whose health or environment is alleged to be threatened by the facility./31/

In addition to consideration of environmental justice issues pursuant to RCRA, the EAB has analyzed a broad range of environmental justice concerns raised under a number of other statutes, including the Clean Air Act/32/ and Safe Drinking Water Act./33/ While the EAB has remanded one permit based on environmental justice concerns./34/ to date, the tribunal has not overturned a permit based on a finding of disproportionate impacts.

#### IV. Conclusion

Agencies can address environmental justice issues through existing statutory authority because laws require protection of all communities and the environmental resources upon which they depend. Use of national averages and general assumptions when applied to site-specific conditions and particular communities may create or exacerbate environmental injustices. Therefore, as the analysis of the EAB decision indicates, in some cases a more particularized review and action are required.

#### ENDNOTES

- /1/ See Memorandum from: Christine Todd Witman, Office of the Administrator, to Assistant Administrators, *et al.*, "EPA's Commitment to Environmental Justice" (Aug. 9, 2001) (stating that "[e]nvironmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities") <[www.epa.gov/oeca/ej/epacommitt.pdf](http://www.epa.gov/oeca/ej/epacommitt.pdf)>; Memorandum from Gary S. Guzy, Office of General Counsel, to EPA Assistant Administrators Steven A. Herman, Robert Perciasepe, Timothy Fields, Jr., and J. Charles Fox (Dec. 2000); Memorandum from Paul Tao, Department of Justice to Bob Berman, Barbara Burr, Kirsten Levingston, Department of Justice (July 25, 1994) (concluding that the federal government can play an active role in eliminating a broad array of environmental justice problems); see also Richard Lazarus and Stephanie Tai, "Integrating Environmental Justice into EPA Permitting Authority," 26 *Ecology L.J.* 67 (Winter 1999) (reviewing EPA authority to consider environmental justice concerns).
- /2/ See, e.g., Clean Water Act § 304(a)(1), 33 U.S.C. § 1314(a)(1).
- /3/ See, e.g., Resource Conservation and Recovery Act, RCRA § 3005(c)(3).
- /4/ See, e.g., CERCLA § 117(e). This provision authorizes EPA to make Technical Assistance Grants of up to \$50,000 to groups of citizens affected by Superfund sites.
- /5/ See, e.g., Clean Air Act, § 309, directing EPA to review and comment on the environmental impacts of actions of other federal agencies, including proposals for legislation, proposed regulations, and projects subject to § 102(2)(C) of NEPA.
- /6/ The National Ambient Air Quality standards (NAAQS), for example, are set to protect public health with an adequate margin of safety. Clean Air Act (CAA), 42 U.S.C. § 7409(b)(1). This authority requires the Agency to consider sensitive populations in the establishment of these standards. See, e.g., *American Lung Ass'n v. EPA*, 134 F.3d 388, 389 (D.C. Cir. 1998) (quoting S. Rep. No. 91-1196, at 10 (1970)) ("Congress defined public health broadly. NAAQS must protect not only average healthy individuals, but also 'sensitive citizens' — children, for example, or people with asthma, emphysema, or other conditions rendering them particularly vulnerable to air pollution."); *Lead Indus. Ass'n v. EPA*, 647 F.2d 1130, 1152 (D.C. Cir. 1980) (circuit court finding that "[the Senate] report is particularly careful to note that especially sensitive persons such as asthmatics and emphysematics are included within the group that must be protected").
- /7/ See, e.g., Toxic Substance Control Act, 15 U.S.C. § 2603(b)(2)(A).
- /8/ See, e.g., CAA, 42 U.S.C. § 7503(a)(5).
- /9/ See, e.g., CAA, 42 U.S.C. § 7408(a)(2).
- /10/ See, e.g., regulations implementing the National Environmental Policy Act, 42 U.S.C. § 4321, at 40 C.F.R. § 1408.8.
- /11/ See, e.g., Federal Food, Drug, and Cosmetic Act, 21 U.S.C. § 346a; see also Safe Drinking Water Act, 42 U.S.C. § 300(g)-1.
- /12/ See generally Samara F. Swanston, "Race, Gender, Age, and Disproportionate Impact: What We Can Do about the Failure to Protect the Most Vulnerable," 21 *Fordham Urb. L.J.* 577 (Spring 1994) (hereinafter Swanston).
- /13/ Cumulative risks, synergistic effects, and multiple pathways that affect the health of individuals may be the result of exposures to single or multiple contaminants from one or more sources. While cumulative impacts may have a significant impact on a community's well being, "[a]gency programs have generally considered site-specific risks without considering current exposure to other (nonsite specific) pollution sources." <[www.epa.gov/swerosps/ej/html-doc/execsum.htm#HEALTH](http://www.epa.gov/swerosps/ej/html-doc/execsum.htm#HEALTH)>.
- /14/ Minority and/or low-income communities may experience exposure to hazardous substances through a variety of pathways not typical of the general population. Among others, these may include (1) consumption of plants and animals from sources near contaminated sites or polluted rivers and streams; (2) occupational exposure to pesticides; and (3) ingestion of lead paint from dwellings. See Robert D. Bullard, "Building Just, Safe, and Healthy Communities," 12 *Tul. Env'tl. L.J.* 373, 376-77 (Spring 1999).
- /15/ Failure to make infrastructure investments in minority and/or low income areas, for whatever reason, can contribute to environmental hazards, such as brown-field formation, unsanitary conditions, and can also

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contribute to the magnitude of harm caused by industrial accidents. Infrastructure deficits can include, among others, (1) transportation systems; (2) drainage, sewage, and water distribution systems; (3) medical facilities; and (4) parks and open space. *See id.* at 85; William W. Buzbee, "Urban Sprawl, Federalism, and the Problem of Institutional Complexity," 68 *Fordham L. Rev.* 57, 67-77 (Oct. 1999). Courts have found that failure to make such investments or the failure to ensure the equal delivery of municipal services can lead to civil rights violations. *See Kessler v. Grand Cent. Dist. Management Ass'n, Inc.*, 158 F.3d 92, 130 (2d Cir. 1998) citing, *Hawkins v. Town of Shaw*, 437 F.2d 1286, 1288 (5th Cir. 1971), *aff'd on reh'g*, 461 F.2d 1171 (5th Cir. 1972) (*en banc*) (finding 99 percent of the town's Caucasian population had access to sanitary sewers compared to only 80 percent of the town's African American population and that 98 percent of the town's homes that fronted on unpaved streets belonged to African Americans); *Dowdell v. City of Apopka*, 698 F.2d 1181, 1185 (11th Cir. 1983) (finding discrimination in street paving, water distribution, and storm drainage); *United Farmworkers of Fla. Hous. Project, Inc. v. City of Delray Beach*, 493 F.2d 799, 811 (5th Cir. 1974) (finding violation of farmworkers' civil rights by city officials); *Baker v. City of Kissimmee*, 645 F. Supp. 571, 588 (M.D. Fla. 1986) (finding discrimination against African Americans based on disparate access to street paving, resurfacing, and maintenance); *Ammons v. Dade City*, 594 F. Supp. 1274, 1301 (M.D. Fla. 1984), *aff'd*, 783 F.2d 982, 987-88 (11th Cir. 1986) (concluding that there was a civil rights violation based on a finding of disparate access to municipal services of street paving, street resurfacing and maintenance, and storm water drainage facilities on the basis of race); *Johnson v. City of Arcadia*, 450 F. Supp. 1363, 1379 (M.D. Fla. 1978) (finding discrimination in street paving, parks, and water supply); *Selmont Improvement Ass'n v. Dallas County Comm'n*, 339 F. Supp. 477, 481 (S.D. Ala. 1972) (finding discriminatory treatment because of the failure to pave roads in African American communities).

- /16/ EPA has found that "several population groups identified as being sensitive to health effects of air pollution seem to be disproportionately comprised of low-income or racial minority individuals. These groups include asthmatics, people with certain cardiovascular diseases or anemia, and women at risk of delivering low-birth-weight fetuses." 2 "Environmental Equity: Reducing Risk for All Communities" (EPA230-R-92-008A June 1992). *See generally* Swanston, *supra* 13.
- /17/ Communities may have difficulties participating in

existing environmental decision-making processes for many reasons, including, among others, (1) language; (2) culture; (3) lack of technical resources; (4) historical noninclusion; (5) time constraints; and (6) financial constraints. *See generally* John C. Duncan, Jr., "Multicultural Participation in the Public Hearing Process: Some Theoretical, Pragmatical, and Analeptical Considerations," 24 *Colum. J. Envtl. L.* 169 (1999). A sense of disenfranchisement and/or legal or political clout within communities can also lead to disproportionate environmental risks. *See* James Hamilton, "Exercising Property Rights to Pollute: Do Cancer Risks and Politics Affect Plant Emission Reductions?" 18 *J. Risk & Uncertainty* 105 (Aug. 1999) (Statistical evidence that rate of reduction in toxic releases in a given area is correlated with local voter turnout, a proxy for collective action).

- /18/ Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 59 Fed. Reg. 7629 (1994), 3 C.F.R. § 859, reprinted in 42 U.S.C. § 4321 (hereinafter Executive Order 12898 or Environmental Justice Executive Order).
- /19/ Presidential Memorandum Accompanying Executive Order 12,898, 30 *Weekly Comp. Pres. Doc.* 279, 280 (Feb. 11, 1994).
- /20/ *Id.*
- /21/ Executive Order 12898, § 1-101.
- /22/ *Id.*, § 6-609.
- /23/ *See, e.g., Sur Contra La Contaminacion v. EPA*, 202 F.3d 443 (1st Cir. 2000), 2000 WL 132655 (1st Cir. 2000); *see also Morongo Band of Mission Indians v. FAA*, 161 F.3d 569, 575 (9th Cir. 1998); *Air Trans. Ass'n of Am. v. FAA*, 169 F.3d 1, 8-9 (D.C. Cir. 1999).
- /24/ Among others the Department of the Interior, Nuclear Regulatory Commission, Department of Transportation, Army Corps of Engineers have explicitly made environmental justice analysis part of their decision-making process under the National Environmental Policy Act and the other statutes which they implement. *See, e.g., San Carlos Apache Tribe, et al.*, 149 IBLA 29 (May 21, 1999); *In re: Louisiana Energy Services (Claiborne Enrichment Center)*, No. 70-3070-ML (May 3, 1998); Letter Stating Position to Deny from Col. Allan B. Carroll, District Engineer, U.S. Army to R.W. Hildbrant, Assistant City Manager of Newport News (June 4, 1999). In addition, more than thirty states have statutes, regulations, or Performance Partnership Agreements with the EPA specifically addressing issues of environmental justice. *See, e.g., Cal. Gov't Code* 65040.12 and *Cal. Pub. Res. Code* 72001.5, 72002, 72003, and 72004 (West 2000) (California statute providing comprehensive approach to environmental justice issues); *Ark. Code ann.*

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8-6-1501 *et seq.* (Michie 2000) (Arkansas legislative provision enacted to prevent communities from becoming involuntary hosts of high impact solid waste management facilities, noting special impact to low-income and minority communities); R.I. Gen. Laws 23-19.13-14 (2000) (Rhode Island statute requiring Department of Environmental Management to involve community and consider quality of life type issues in siting and remediation decisions). *See also In the Matter of American Marin Rail, LLC*, 2000 N.Y. Env. LEXIS 63, 193-201 (Aug. 25, 2000) (New York State administrative law judge finding an adjudicable claim exists where petitioner alleges permit issued by State Department of Environmental Conservation failed to consider environmental justice issues).

- /25/ *In re: Chemical Waste Management of Ind., Inc.*, RCRA Appeal Nos. 95-2, 95-3 6 E.A.D. 66 (June 29, 1995).  
/26/ *In re: Chemical Waste Management*, 1995 WL 395962, at \*5.  
/27/ *Id.* at \*6. Some of the factors that could place commu-

nities at risk include those described in the text accompanying footnotes 15-19.

- /28/ *In re: Chemical Waste Management*, 1995 WL 395962, at \*6.  
/29/ *Id.* at \*5.  
/30/ RCRA § 3005(c)(3) (hereinafter Omnibus clause), provides that "[e]ach permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment." The provision allows the permitting authority to establish conditions, beyond any preestablished environmental standard, necessary to protect the community. *Id.*  
/31/ *In re: Chemical Waste Management*, 1995 WL 395962, at \*6, internal footnote added.  
/32/ *See, e.g., In re: Knauf Fiber Glass*, 1999 EPA App. LEXIS 2 (Feb. 4, 1999).  
/33/ *See, e.g., In re: Environmental Disposal Sys., Inc.*, 1998 EPA App. LEXIS 105 (Oct. 15, 1998).  
/34/ *In re: Knauf Fiber Glass*, 1999 EPA App. LEXIS 2. ■