

CONFERENCE

U.S. ENVIRONMENTAL PROTECTION AGENCY OFFICE OF ENVIRONMENTAL JUSTICE IN THE MATTER OF THE FIFTH MEETING OF THE NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL*

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* The Fifth Meeting of the NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL (NEJAC) convened, pursuant to notice, at 9:00 a.m. on Tuesday, July 25, 1995 in the Washington Room of the Doubletree Hotel, 300 Army/Navy Drive, Arlington, Virginia.

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DAY ONE PROCEEDINGS

CHAIRMAN'S REMARKS

MR. RICHARD MOORE, CHAIRMAN:¹ I want to begin by welcoming those who will be joining us today, those who will be presenting testimony during the public comment period, the staff of the Environmental Protection Agency (EPA), Office of Environmental Justice (OEJ), and many other staff members not only from the EPA but throughout other agencies and institutions that have come here to Arlington to be with us, those who work here and live in this community and in the Greater Washington/Maryland area. As we prepare for this session, there are several issues at which we must look. This is the fifth meeting of the Advisory Council, and we are still faced with many of the realities of family, home, and the kinds of problems that many of our communities have had throughout all these years.

I was reminded of many who, unfortunately, are not here with us physically, but are here with us morally and spiritually: Patsy Oliver from Texarkana, Texas, the young African-American woman who dedicated much of her life to environmental and economic justice issues; and of

1. Coordinator of the Southwest Network for Environmental and Economic Justice, a multi-cultural, multi-national organization representing hundreds of organizations throughout the Southwestern United States and Mexico.

course, Cesar Chavez, who was a founding member of the United Farm Workers Union.²

We must remind ourselves that environmental groups are not alone in the struggle for environmental justice. Labor organizations and workers' rights organizations that have taken on the whole struggle of Dichloro-diphenyl-tuchloro-ethane (DDT)³ have also moved us closer toward achieving environmental justice.

Since our last meeting,⁴ I have had the opportunity to travel, not only throughout this country, but throughout Mexico; and I have the fortunate opportunity to spend the next week in Puerto Rico. I hope to see much of my family and the many friends from Puerto Rico who attended the first People of Color Leadership Summit,⁵ as well as our sisters and brothers who have been involved in the business of justice and the business of fighting injustice for many, many years. Their struggle reminds us of what brings us here to Arlington. We need to keep focused and to keep in mind that if there was not injustice, then there would be no NEJAC. If there was not injustice, then in fact, we would not be here talking about justice. When it comes to the question of environmentalism as defined by many of us in our communities, we define environmentalism as where we work, where we live, and where we play.

2. Cesar Chavez was a child of migrant workers who founded the United Farm Workers Union. Chavez fought for the civil rights of mistreated migrant workers. Chavez led the United Farm Workers Union for over 30 years. S.R. Skees, *15,000 Devotees Gather to Reflect on Life of Chavez: Chavez is Gone but His Deeds Live On*, SALT LAKE TRIBUNE, April 30, 1994, at D1.

3. DDT is a pesticide which was banned in the United States primarily because of its detrimental effects on the reproductive organs of the peregrine falcon and the bald eagle. Douglas A. Bell, *Once Destined for Extinction, Peregrine Falcons are Now Flourishing in Urban Canyon*, S.F. CHRON., May 22, 1994, at 13. DDT accumulates in the fatty tissues of the falcon and eagle and disrupts the birds' calcium metabolism. *Id.* Fragile, thin-shelled eggs that often break soon after they are laid result from calcium deficiency. *Id.*

4. The Atlanta NEJAC meeting was held from the 17th through 20th of January, 1995 in Atlanta, Georgia.

5. The United Church of Christ Commission for Racial Justice hosted the first National People of Color Environmental Leadership Summit in Washington, D.C. on October 24-27, 1991. The Summit's goals were to: 1) facilitate and strengthen the leadership abilities of people of color groups concerned with environmental justice; 2) provide an opportunity for discourse between the leaders of people of color groups and heads of national environmental organizations; 3) identify key environmental policy questions from the perspective of the people of color leadership; 4) impact the decision-making process on public policy at the federal, state, and municipal levels. More than 600 people of color from across the United States, Canada, Latin America, and the Marshall Islands attended the first meeting of the Summit.

I am reminded of the past meetings we have had in which the whole question of process and struggle tore us apart; despite this, we came back together today. We came back together again because environmental justice is not about us sitting around this table; it is about those who are in communities and work places throughout this country and outside the country—who should not have to be working and living in communities faced with the various kinds of environmental problems that many of us and many of those who are not here with us are encountering today. Therefore, we should not begin this meeting by denying our differences of opinion—we must continue this dialogue and debate; it is positive discussion helping us understand different environmental justice problems.

In fact, we have made an agreement with those who have been here before and those who will join us, that yes, we will continue moving forward with issues of community and environmental justice. We have had industry at NEJAC, and I think that has been very positive. We have had representatives from the academic community; that has been very, very positive. Today we have environmental organizations, environmental justice organizations, and many others here representing tribal governments, including Native Americans. During our discussions we have learned that environmentalism is where we work, where we live, and where we play. So with that in mind, we must consider the State of California—not to put anybody on the spot—but to say that the passing of Proposition 187⁶ in the State of California was not a positive move forward, but a step backward, not only for the state, but for people of color and others in the State and throughout the United States. Talking about Proposition 187 and the NEJAC is like talking about affirmative action and what recently happened in the State of California⁷—the setback of what many people have been involved in for many, many years—our grandparents and so on for many,

6. 1994 Cal. Leg. Serv. Prop. 187 (West). Proposition 187 denies state educational, welfare, and medical services to illegal immigrants. Larry Bumgardner and Shannon Rogers, *Proposition 187 and Equal Protection*, THE SAN DIEGO UNION-TRIBUNE, Aug. 11, 1995, at B7, B9. Proposition 187 will add §§ 113, 114, and 834(b) to the California Penal Code; § 10001.5 to the Welfare and Institutions Code; Chapter 1.3 to Part 1 of Division 1 of the Health and Safety Code; §§ 48215, 66010.8 to the Education Code; and § 53069.65 to the Government Code. 1994 Cal. Legis. Serv. Prop. 187 (West).

7. Two professors launched the California Civil Rights Initiative, which is slated to be included on the 1996 ballot in California. An identical measure now before the California legislature would amend the state Constitution and eliminate all but the most passive forms of government affirmative action for women and minorities. Ca. A. Con. Res. 23 Reg. Sess. (1995). The initiative specifically targets state and local minority hiring and admissions to California schools. Cathleen Decker, *Affirmative Action: A Bitter National Fight Begins in California*, L.A. TIMES, Feb. 19, 1995, at A1.

many years, in terms of all the good work that has taken place that brings us to Arlington, Virginia. As people of color, we have never asked for more than what we have deserved; everyone knows that. We are just as qualified as the next, and in fact, we would not accept anything if we did not think we were qualified to hold it. We know that as time goes on and on, linkages are made between environmental justice and affirmative action, and we have to watch that and root ourselves in the reality of what brings us here. Not too long ago, we congratulated our sister from Alaska and the sisters and brothers who participated in making that success happen. We also congratulated them for the fact that we now have partnership, I am proud to announce, in the Southwest Network.

In several weeks, the San Jose Awareness Council and others will be hosting the Superfund Summit on Environmental Justice, which will be held in Albuquerque, New Mexico on August 9, 10, and 11.⁸ It will bring together a partnership between grassroots organizations and the regional Environmental and Economic Justice Network, which is crucial to where we are going right now.

There have been other economic successes as well; for example, we know in the Asian-Pacific Island community that there have been successes. Much of what we have seen take place in Los Angeles, San Francisco, and other cities has been very positive. With respect to the African-American community, we would like to congratulate the Environmental Justice Research Center at Clark Atlanta University under the leadership and direction of Dr. Robert Bullard for a very successful conference on transportation.⁹ We should also commend the hard work and diligence of other grassroots individuals throughout the south and this country; without their assistance the conference would certainly not have been as successful.

So I say that it is not easy; it is a struggle, and you know that. Whether we talk about Proposition 187,¹⁰ affirmative action,¹¹ or the cutbacks that the new Congress¹² are consistently imposing on us, the rollbacks and the move forward in terms of the attacks on civil rights and human rights and

8. EPA administrators, Region IX personnel, Superfund site residents, and community organizations attended the Summit. The goal of the Summit was to increase the dialogue about cleanup solutions and allow more access for residents of Fund sites. Minority business contractors attend workshops on bidding for Superfund cleanup contracts in an effort to increase minority participation in environmental solutions.

9. Clark Atlanta University hosted The Environmental Justice Transportation Conference, coordinated by Dr. Bullard, on May 11-13, 1995.

10. *Supra* note 6 (defining Proposition 187).

11. *Supra* note 7.

12. This is in reference to the 104th Congress. *Infra* note 47.

liberties, and everything else that is taking place in this country right now. It is not a very positive time. As a result, the positiveness of what we bring to this table is crucial. We must keep the sisters and brothers who cannot be here to testify during the public comment period in mind as we continue over the next two days. We have to keep the spirit of what brought us here from the beginning alive—when it was said that we could not sit at the table, that industry would not sit at the table with the environmental justice activists and that environmental justice activists would not sit at the table with industry. The eyes of not only Washington, but of the United States, were on all of us, from the first day we came for the NEJAC, because many people said it was not possible. Look at the many successes that we have had thus far in this process.

I would like to ask us, as we begin this morning's session, to keep alive not just hope, but the fact that we have a job to do here—the job we were doing before we got here, we are going to do while we are here, and we are going to continue when we go back home again—wherever that may be. But I say that we have to keep the same spirit alive that brought us to this table initially.

We should remember that there would not be an Environmental Justice Council, I say, if there was not a grassroots movement. But then, as we take that a step further, there would not be an Environmental Justice Advisory Council either, if Administrator Browner had not agreed to have the NEJAC. That indeed needs to be said, and that credit is due. Therefore, in closing, I would like to thank the staff of the EPA Office of Environmental Justice for the hard work that has been not only put into this effort, but for the hard work that we know the staff there has been doing for quite a long period of time.

So I ask us then, as we again move forward to welcome old and new, and yes, whether it is the Contract with America¹³ or the Contract *on* America we are facing. Indeed our task and our job here will have challenges.

Over the next couple of days, we are going to go about the business of attempting to put processes in place and discussing issues that will hopefully come to some remedies. We would like to thank Administrator Browner for joining us this morning. As I said, there would not be a National Environmental Justice Advisory Council without the longstanding support of Administrator Browner.

We would like to welcome you, Administrator, to our fifth meeting.

13. See *infra* note 15 (describing and explaining Contract with America).

ADMINISTRATOR BROWNER'S REMARKS

ADMINISTRATOR CAROL BROWNER:¹⁴ Thank you, Mr. Moore. I want to begin by thanking all of the members of the Advisory Council and welcoming the new members. This is perhaps one of our most important Advisory Councils. You are looking at an issue that both the President and I believe is extremely important; one that we have worked hard to integrate into all of our decision-making. I think that the work of the Council has proved to be a great asset to the Environmental Protection Agency (EPA); you should be proud of what has been accomplished. But obviously, the problems are still quite acute and many challenges remain.

We come to this meeting today at a point in time that is perhaps the most important ever in the history of health and environmental protections. There are efforts in Congress—the Contract with America,¹⁵ then the Clean Water Act reform,¹⁶ Appropriations,¹⁷ and Mr. Dole's Regulatory Reform Bill¹⁸—that when taken together, I believe, represent a concerted, orchestrated effort to prevent the EPA from doing its job on behalf of all the people of this country.

I might say that we are literally in the midst of many of these arguments today. Tomorrow, we believe that our Appropriations Bill will be on the

14. Administrator, United States Environmental Protection Agency. Administrator Browner formerly served on the staff of then-Senator Albert Gore.

15. In February 1994, a special conference was held by House Republicans in which they outlined a vision for America and the role of government. This was presented to the American people as the "Contract with America" on September 27, 1994. The Republicans pledged to pass immediately major reforms (in criminal penalties, cuts in taxes, increases in defense), and introduce various bills to the House floor within the first 100 days (balanced budget amendment, line-item veto, and term limits, for example). Theo Francis, *GOP Candidates Sign Voter "Contract,"* CHI. TRIBUNE, Sept. 28, 1994 at 20. The overriding purpose of the "Contract" was to restore the faith and trust of Americans in their government. *Id.*

16. 33 U.S.C. § 1251 (1988) (restoring and maintaining chemical, physical, and biological integrity of nation's waters).

17. H.R. 2099, 104th Cong., 1st Sess. (1995). The diminished budget had the effect of limiting EPA's ability to promulgate, enforce, implement, or take certain actions authorized under environmental and food and safety laws for human protection.

18. S. 343, 104th Cong., 1st Sess. (1995). S. 343 appeared to be dead after its late-July defeat. The main supporter of the measure, Senate Majority Leader Bob Dole, however, maintains that he may reach an agreement with Democrats to revive the stalled legislation. William H. Miller, *Regulatory Reform; Dead . . . or Alive?*, INDUSTRY WEEK, Sept. 4, 1995 at 82.

House floor; it has already passed the subcommittee and the full committee.¹⁹

That bill includes a thirty-four percent reduction in the dollars necessary to do our job. It also contains several congressional riders with seventeen separate provisions. Those riders would prohibit us from taking certain actions in the coming year, from adopting certain standards, and from providing certain protections.²⁰

There are three riders directly aimed at the Clean Water Act. The effect of those, when strung together, is to effectively prevent us from implementing the existing Clean Water Act. There is a fifty-percent decrease in our Office of Enforcement, cutting what are referred to as "low-priority enforcement activities."²¹ One is left to wonder what is meant by "low-priority." Does that mean the child was only sick for three or four days, as opposed to seven or eight days? This is an assault on our ability to do our job, and people should make no mistake about it. In fact, I may have to leave early because of this; the Democrats are in the Senate right now, negotiating a regulatory reform bill.²² You may have noticed that last week, Mr. Dole's bill²³ did not secure enough votes to limit debate on three separate occasions. He probably has the votes to pass it, if he can get past a procedural vote, which he has thus far not been able to do.

There is some suggestion that the Democratic leadership may seek our advice at noon today on this very important piece of legislation, and so I apologize in advance if I have to leave to go speak to the democratic senators about what is responsible regulatory reform versus what is irresponsible regulatory reform, as we see embodied in the Dole Bill.²⁴ Having said that and spoken to what is happening in Congress, let me assure you that we will continue to speak out and to fight these efforts. The President has taken the unprecedented step of announcing that he will veto the Clean Water Bill passed by the House;²⁵ and that he will veto the

19. The bill, H.R. 2099, 104th Cong., 1st Sess. (1995), did in fact go to the House floor.

20. See *infra* notes 27-28 (discussing specific activities that budget cuts would affect).

21. The term "low-priority enforcement activities" was coined by the House Appropriations Subcommittee when it cut \$129 million from the EPA budget. *House Panel Votes 33% Budget Cut, Restricted Activities by EPA in FY 96*, 33 Air Water Pollution Report, July 17, 1995, n.29.

22. S. 343, 104th Cong., 1st Sess. (1995).

23. *Supra* note 18 (discussing Sen. Dole's bill).

24. See *supra* note 18 (explaining status of Sen. Dole's bill).

25. H.R. 961, 104th Cong., 1st Sess. (1995). H.R. REP. NO. 112, 104th Cong., 1st Sess. (1995) (referring to House amendments to Clean Water Act).

Appropriations Bill²⁶ if it contains the kinds of riders and reductions in dollars for the Agency. He will veto any bill which represents a roll-back of environmental and health protections, including the Dole Bill. So we will continue to fight, to speak out against these anti-environmental efforts to work with the Republicans, to do everything we can to implement fully the laws, to find solutions, to provide protections for all Americans, and most importantly, to do our job in the meantime.

Specifically as it relates to the issue of environmental justice, one of the discussions that we have all engaged in over the last year is where best to locate the Office of Environmental Justice (OEJ). There has been a good deal of discussion about this, and I would like to announce today that we have taken into account all of the various words of wisdom shared with us, and we have made a decision to locate the OEJ in our Office of Enforcement and Compliance Assurance (OECA). I want you to know that that office is headed by Steve Herman, who is here with us today. I am absolutely certain that under his leadership, environmental justice will receive the kind of attention and the kind of focus that is so essential for all of us. With Dr. Gaylord's and others' assistance, I have asked that we begin the effort to actually relocate the OEJ, and to do it in an expeditious manner so that we can have these issues up and running. So that everyone understands, this was not an easy decision. There were many good points as to why it should be other places. I came to believe that it was extremely important to have this office sit right underneath an assistant administrator, someone who could work with Dr. Gaylord on a day-to-day basis. It is similar to the arrangement with the Office of Indian Affairs, which is located in our Office of Water and works very closely with Bob Perciasepe but continues the relationship with the Office of the Administrator. There is never a perfect solution as to where to locate things; we did address the needs, the goals, and the responsibilities of that office. I came to believe that with Mr. Herman's leadership, locating the OEJ in the OECA was the best decision. Within the OECA, that Office could thrive, fulfill its responsibilities, and realize its opportunities.

Having said that, I also want to be honest with you about what is happening specifically in the Appropriations Bill²⁷ as it relates to environmental justice, because there is very specific language affecting the resources available to the Agency.

26. H.R. 2099, 104th Cong., 1st Sess. (1995).

27. See Jennifer Silverman, *Justice Department Official Blasts Superfund Reform Plans at Conference*, Daily Report for Executives (BNA), Sept. 15, 1995, § A, at 179 (discussing various cuts EPA will face with appropriations bill).

In addition to the thirty-four percent across-the-board cut, the funding base for the Office has been cut in the House by, we think, as much as fifty-percent.²⁸ There are also certain programs that are specifically eliminated or diminished; for example, the Partners in Protection Program²⁹ is essentially eliminated.

There are—and I have talked to you about this, and I think there has been some confusion—what are traditionally referred to as “add-ons,” which are specific line items requiring us to spend money. Add-ons is a kind word, when you are taking a thirty-four percent cut. I think it is more appropriate to refer to them as earmarks. It is not as though Congress gave us extra money to pay for these.

These may be very valuable programs; but they are not programs into which we have put money. I think given the kind of cuts the EPA is enduring, it is probably fair to say we would not have asked for these programs. In a different time, we might have been informed better on these programs; but at this point in time, these are not things we are asking for. The total of these “earmarks” is \$3.3 million.³⁰ So the appearance, just so you understand it, is that the money went up. But recognize that although it is \$3.3 million, we have no say as to how it is spent.

Dr. Gaylord, if you would please explain where it goes.

DR. GAYLORD:³¹ The earmarks were for \$2 million for our Small Grants Program³² to community groups dealing with local environmental problems; \$1 million for our community/university partnership grants,³³

28. *House Restores Restrictive Riders to EPA Funding Bill in Final Version*, 23 PESTICIDE AND TOXIC CHEMICAL NEWS, Aug. 2, 1995, n.40. The EPA's enforcement budget was cut by 51% in the House bill; \$130 million from “low-priority enforcement” and \$122 million from Superfund. *Id.*

29. The “Partner's in Protection” program was designed by the EPA to sponsor projects which analyze environmental information in economically depressed areas and neighborhoods. *Id.*

30. H.R. 2099, 104th Cong., 1st Sess. (1995). *See also supra* note 28 (noting percentage of cut in EPA's enforcement budget).

31. Designated Federal Official for the Conference; Director, Office of Environmental Justice, Environmental Protection Agency.

32. The OEJ established the “Environmental Justice Small Grants Program” with a \$500,000 allocation in 1994. Community-based organizations and tribal governments from ten regions were recipients of 71 small grants designated to address local environmental justice concerns. ENV'T'L PROTECTION AGENCY, OFFICE OF ENV'T'L JUSTICE, 1994 ANNUAL REPORT 9 (1995).

33. OEJ established an “Academic Relations Program” which formed partnerships with more than thirty colleges and universities in order to exchange ideas and resources. The EPA has established community-based federal agencies and city projects which train local unemployed residents and help empower the community to restore its own environment.

which was a new program that we implemented this year to give technical assistance to communities through universities; and \$300,000 dedicated to running this Advisory Council, which is almost the full cost of running this Advisory Council. So those earmarks cannot be used for other activities. They have to be used strictly for those three activities.

ADMINISTRATOR BROWNER: Again, I do not think we have the details yet; we still do not know if the congressional plan will have further restrictions. In many ways, these earmarks sound quite attractive. Obviously, on its face, two million for community grants sounds very attractive. Unfortunately, we do not know if there are any small-language details or restrictions within the earmark. As Dr. Gaylord said, this means that these dollars can only be used for these three things and nothing else.

In the past, where there has been a specific line item—for example, the \$300,000 for this Advisory Committee—Congress has subsequently interpreted that to mean not only that you have to spend the \$300,000, but that you cannot spend any more than the \$300,000. It works as both a floor and a ceiling. We would argue that flexibility—in terms of making sure that the Council can perform—would suggest not having some kind of ceiling. For example, it may be in the work plan for next year that we need to spend \$350,000 or \$375,000. This language could very likely have the effect of saying that we could not. So we want you to understand that there is an appearance of more monies being available; but the reality is that some of the efforts that we currently have underway, some of the work that we have all committed ourselves to, may in fact now be in jeopardy.

Again, the President has indicated that the EPA budget currently in the House is unacceptable, and that he would veto it. Of course, we still have to see the Senate version; the Senate has yet to give any details of what it will do. The House budget calls into question whether we will have adequate resources to do the work that we have committed ourselves to do. For those of you who are not in Washington on a day-to-day basis, these are very difficult times. The efforts underway are really quite significant. I think that ultimately we can prevail; we have the greatest ally in a fight like this—the American people. There are not too many people in this country who think their air is too safe, their water is too clean, and that we should stop what we are doing. Certainly, as we reach out to try and ensure that all are involved in these efforts, we see a growing effort to constrain the flow of information, particularly to community groups.

One of the programs that is probably under attack the most is our Toxic Release Inventory (TRI),³⁴ our community right-to-know program. Everywhere we turn, Congress is trying to prevent us from adding more chemicals and facilities to the TRI list, and to undo the 250 chemicals added in December. I think for many of you who come from local organizations, the TRI has been one of the most valuable tools available. It has allowed you to deal with facilities in your communities with a base of knowledge that you did not have prior to this Act.³⁵ Despite its success, there is a wholesale effort to essentially prevent it from ever growing in the future; worse yet, some are trying to roll back the information that you currently are receiving.

DR. BEVERLY WRIGHT:³⁶ When is a floor vote in the House anticipated on the Appropriations Bill? This week?

ADMINISTRATOR BROWNER: We think it could be tomorrow or Thursday. The Rules Committee met this morning, and we were very concerned last night when we heard that even more riders had been filed. So, in addition to the seventeen prohibitions,³⁷ in terms of "you cannot do this or you cannot do that," we anticipate there will be debate on the House floor either tomorrow or Thursday adding more of these kinds of prohibitions. There has never been anything like this before. I have been involved in the appropriations process from the congressional side or from the government side for over ten years now, and I have never seen this number of riders put on a bill. Specifically, the riders begin by saying you cannot spend money on this program or that program; they have to say "spend money" because it is an appropriations bill. Unfortunately, this language has the effect of not allowing us to do the work. You cannot spend money; in other words, you cannot pay someone, you cannot get a scientific study done, you cannot hold a public hearing, you cannot spend money to set standards for petroleum refining facilities for toxic air

34. The Emergency Planning and Community Right to Know Act (EPCRA) established the National Toxics Release Inventory in 1986. Emergency Planning and Community Right to Know Act, 42 U.S.C. § 313(a) (1988). Based on a list of approximately 300 chemicals, the inventory requires those plants using over a certain amount of the named chemicals to provide an annual output report. *Id.*

35. See *supra* note 34 (explaining reporting requirements of EPCRA).

36. Director, Deep South Center for Environmental Justice at Xavier University. Dr. Wright received her Ph.D in sociology from the State University of New York at Buffalo, and was a member of the National Advisory Committee of the National People of Color Environmental Leadership Summit.

37. *Supra* note 30.

emissions. It is that level of detail. So if they adhere to their current schedule, it will either be Wednesday or Thursday.

DR. WRIGHT: And Senate action is not anticipated until after the recess?

ADMINISTRATOR BROWNER: Correct, which—for those of you who do not know—would be the latter part of August, the beginning of September, 1995.

DR. MARY R. ENGLISH:³⁸ Is the constitutionality of some of these riders being investigated? Can you have a rider that prohibits you from spending money when you have a legislative mandate to do something?

ADMINISTRATOR BROWNER: Riders have been used before, not to this extent, but they have been legally challenged. I do not know that anyone has prevailed, because the appropriations is a subsequent act saying you cannot spend money. They override the underlying statute.

MR. ARTHUR RAY:³⁹ Administrator Browner, this is Arthur Ray from the State of Maryland.

I can appreciate all the consideration you did about where to place the Office of Environmental Justice, but with a prospect of a fifty-percent cut in enforcement, placing that office in the Office of Enforcement concerns me as to whether those issues that are of concern to the people in the communities are really going to get covered, especially when you cannot even do the normal business of enforcement.

ADMINISTRATOR BROWNER: First of all, it is two pots of money. Placing the OEJ in the OECA does not affect the Office of Environmental Justice's resources. They are in two separate pots. The other way to look at it is we are going to have a lot of people not able to take enforcement actions if this goes through. Their time might be freed up to work on environmental justice.

38. Associate Director, Energy, Environment, and Resources Center, The University of Tennessee, Knoxville, Tennessee. Dr. English is also the Senior Fellow of the Waste Management Research and Education Institute at the University of Tennessee, Knoxville, since 1988. Dr. English holds a Ph.D in sociology with a concentration in environmental sociology.

39. Arthur Wiley Ray, Esq. is the Deputy Secretary of the Maryland Department of the Environment. Mr. Ray was appointed Deputy Secretary in June 1995. He is currently responsible for directing all aspects of pollution control and environmental protection in Maryland. He has served as legal counsel for the EPA, and as the Senior Environmental attorney for Baltimore Gas and Electric Company. In addition, he worked as Permits and Licensing Division Manager for the Potomac Electric Power Company, Environmental Group.

MR. RAY: In the situation where they talk about risk assessment and cost/benefit analysis, I cannot help but think that if you looked at some of the actions that need to be taken in these communities, you could really demonstrate that there are some problems out there that need to be taken care of. If you could get some of the enforcement attorneys around D.C. to participate, that would be an accomplishment.

ADMINISTRATOR BROWNER: Thank you. Other questions?

PROFESSOR RICHARD LAZARUS:⁴⁰ Richard Lazarus. It strikes me that the appropriations issue is even more problematic than the regulatory reform⁴¹ and property rights⁴² debates, because it is the one place where you actually need to get Congress to pass something. The others you can veto, and given the way the votes are, one can actually prevail.

ADMINISTRATOR BROWNER: Hopefully.

PROFESSOR LAZARUS: In theory, at least.

ADMINISTRATOR BROWNER: Now, the House passed its Regulatory Reform Bill.⁴³ It is not a veto-proof margin.

PROFESSOR LAZARUS: But in the Senate, things look better.

ADMINISTRATOR BROWNER: Right.

PROFESSOR LAZARUS: But on the appropriations, you have to get something passed. And so there have to be compromises made along the way in different agencies. Have you identified who in the Senate are the key votes? Are there some key Senators on whom to focus in the Senate?

ADMINISTRATOR BROWNER: Let me just back up. Different people here have been more or less involved in the appropriations process previously, so let me just back up for a second to explain how we find ourselves in this current position. The budget committees make a decision

40. Professor Lazarus is a Professor of Law at Washington University School of Law, St. Louis, Missouri and the author of several law review articles concerning environmental justice, including *Pursuing "Environmental Justice": The Distributional Effects of Environmental Protection*, 87 NW. U. L. REV. 787 (1993). He is also a former Assistant to the Solicitor General at the Department of Justice, an attorney in the Lands and Natural Resources Division of the Department of Justice, and an active constitutional appellate lawyer.

41. *Supra* note 18 (discussing Sen. Dole's regulatory reform bill).

42. The property rights debate concerns the tension between the protection of private property rights and the government's need to regulate the environment. A vigorous debate on the subject took place on the campus of the American University on April 20, 1995. It was co-sponsored by this Journal, and can be found in Volume 9 of the Administrative Law Journal of The American University beginning at page 253.

43. The Regulatory Transition Act, H.R. 9, imposes a moratorium on almost all new regulations. Alan Charles Raul and Thomas Richichi, *Reconciling Nature and Industry: Developments in Environmental Law*, LEGAL TIMES, April 17, 1995 at 23.

about how much money is allocated to each of the appropriations subcommittees; there are thirteen subcommittees. We happen to be in the subcommittee with the National Aeronautical and Space Administration (NASA), Housing and Urban Development (HUD), Veterans Affairs (VA), and then a lot of little things that are not that relevant to this discussion. When the allocations were made, that subcommittee took a \$10 billion cut off of 1995 dollars. Only one other subcommittee took an equally large cut, and that was Labor, Health and Human Services, and Education. They are also in a pot together. All of the other subcommittees went up or took very modest cuts.

So you started the appropriations process with a huge problem. That problem exists because the Republican leadership has made a decision about when to balance the budget. That was a political decision; it was not based on any facts. If you take the President's commitment, a ten-year plan to balance the budget, EPA actually goes up slightly, and then its allocation is held flat. So there is a way to do this, which is: you make a different underlying decision that then allows the budget to allocate a different amount of money into the subcommittee and allows EPA not to experience those kinds of reductions. You start with these sorts of underlying problems: one is the budget issue about when do you balance the budget, and the second is how the allocations flow from that decision.

They then made a third decision, which is very hard to explain; I will try to do it as quickly and as simply as possible. There are two types of money in the federal government—budget authority and outlays. Outlays are things that you spend in the year in which you get the money, like salaries; you have to pay people the year they work. Budget authority speaks to outlays plus money that you spend over a longer period of time, like building a wastewater treatment facility.

They made a decision—which, to my memory, has never been done before—that the cuts had to come largely from outlays. Within our subcommittee, we happen to be what would be termed a more outlay-rich agency. HUD does not have a lot of outlays, right? They are building houses; they pay out over time. Similarly, NASA pays out over time; they are building large things. The Veterans' Administration does, but it did not take a cut. So that left EPA. We got hit for two reasons; (1) because of the underlying assumption in the budget, and (2) because of this outlay issue.

In the Senate, they made a different decision as it relates to allocations. Our subcommittee in the Senate will take a smaller cut in outlays than the House took, so there is some greater flexibility in the Senate. Obviously, we are talking to Senators on the committee right now to see what can be

done to secure some of that outlay relief, if you will, for EPA. But Mr. Lazarus is exactly right, and in fact, there is an article in the *Washington Post* about this today.⁴⁴ This is not a situation where the President can simply keep vetoing bills, because then you are faced with the government shutting down. There is a lot of discussion about a budget train wreck and when that train wreck is going to occur.

The underlying issue here is the assumption you made about when the budget has to be balanced and the impact that timing then has on specific communities, on people, and on government's responsibility to perform certain functions. You can solve this problem; you can say we accept the President's proposal of a ten-year path to a balanced budget, as opposed to a seven-year path.⁴⁵ Under that, EPA can have the resources necessary to do its job.

MS. DOLORES HERRERA:⁴⁶ Dolores Herrera. In our community in Albuquerque, one House and one Senate member have asked to come to visit with us on the 17th and the 19th of August. Would it be too late, then, to talk to them about this issue? Should we be talking to them right now? Are they going to come to try to mend fences?

ADMINISTRATOR BROWNER: Let me begin by saying something general. There is a federal law that prohibits me from suggesting to you that you speak to your member of Congress. And in fact, because I give speeches like the one I have given here today, because I speak out, I am being investigated as to whether I may have violated that statute. I think the investigation is an effort to intimidate me to chill my outspokenness during this crucial debate, and I am not going to stop speaking out. If I disagree with what Congress is doing, I am going to say so.

Having said that, I am not going to suggest to you what you should say to a member of Congress or whether you should say something to a member of Congress. That is your personal decision. I am more than happy, however, to give you the facts and to give you my impressions of what is occurring. You have to make a decision for yourself and for your organization in terms of what you do with the information. I cannot ask you to lobby a member of Congress; that part of the law is clear. Neither

44. Dan Morgan, *Defense, Energy Projects Fare Well in Hill Panels*, WASH. POST, July 26, 1995, at A4 (reaffirming congressional interest in big ticket programs, just shift in priorities).

45. Representative Kasich submitted Congress's budget for the next seven years in the summer of 1995. H.R. Con. Res. 67, 104th Cong., 1st Sess. (1995). Daily Report for Executives (BNA) June 28, 1995.

46. Director, San Jose Awareness Council, Albuquerque, New Mexico.

I nor any reasonable attorney believes that this law extends to giving speeches to educate the American public about just how dramatic these provisions are. But it has not stopped them from launching an investigation into this.

MS. HERRERA: I did not say whether they were Republicans or Democrats.

ADMINISTRATOR BROWNER: It does not matter, although it is not hard to figure out. You did give us the city and the state. Each of you needs to make whatever decision is appropriate for you in terms of the information that we are sharing with you.

Mr. Lazarus asked two questions, and I realize that I did not answer the prior one; that is, what is worse, appropriations or regulatory reform? Let me explain to you how they are interconnected. If you have a new regulatory reform process, a decision-making process for setting drinking water standards, air emission standards, or toxic air standards, we might be able to agree on changes in the process as long as the standards are guaranteed. But the process put forward by Mr. Dole will cost the large regulatory agencies, of which EPA is the primary one,⁴⁷ \$1.3 billion in order to reach compliance.

So if you take that requirement of expenditures and tie it back to the dramatic reduction in dollars, it seems fundamentally clear to me what is happening. They do not want us to set standards. They do not want us to make timely decisions. That is what this is all about. It is about taking away our authority to act in a meaningful and responsible manner in every possible place.

You have to string this stuff together, because that is how the damage will be done. It is a plan. I believe it was a plan from the beginning to harm the EPA. We have seen language in one bill become too controversial, it gets taken out, everyone says it is dead, and then it re-emerges in another bill, or as a rider, or later in the process. A lot of the riders in appropriations were provisions in other bills that became too controversial; and they re-emerged in appropriations, where it is much more difficult for

47. See generally *The Contract with America and Environmental Regulation: Some Unintended Consequences for Corporate America*, Nat'l Env't Daily (BNA), at A1 (Mar. 13, 1995) (explaining that regulatory reform may lead to increased burden on EPA and Food and Drug Administration (FDA)). See also *Hearings on S. 333, The Department of Energy Risk Management Act of 1995 Before the Senate Comm. on Energy*, 104th Cong., 1st Sess. (1995) (statement of Sally Katzen, Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget) (testifying that proposed risk assessment requirements in S. 333 would increase regulatory burdens on Department of Energy).

the public to see.⁴⁸ The American public does not even know what we are talking about when we get into things like allocations and outlays and budget authority; but that is the world within which we live; that is the world within which we do our job.

MS. CINDY THOMAS:⁴⁹ I have a quick question about the placement of the OEJ. I know with the Indian Office under Bob Perciasepe that the Director is involved in senior management. Would the Director of Environmental Justice also be as involved?

ADMINISTRATOR BROWNER: Certainly.

48. H.R. 2099, as reported from the House Committee on Appropriations on July 18, 1995, included legislative riders that would prohibit the EPA from using funds for: the National Oceanic and Atmospheric Administration (NOAA); enforcement or implementation of § 118(c)(2)(C) of the Federal Pollution Control Act (FPCA); implementation or enforcement of the Stormwater Permitting Program under § 402(p) of FPCA; enforcement of compliance with schedules for combined sewer overflows or sanitary sewer overflows under § 402 of the FPCA; enforcement of § 404 of the Federal Water Pollution Control Act (FWPCA); development or implementation of new or revised Effluent Limitation Guidelines (ELG), pretreatment standards, or new source performance standards under FWPCA; enforcement of requirements that a State implement trip reduction measures; assignment of less than full credit for automobile emissions inspection programs required under § 102(c), (d), or (e) of the Clean Air Act (CAA) on the basis of network design equipment based on data from at least two full program cycles; enforcement of Maximum Achievable Control Technology (MACT) standards pursuant to § 112(d) of the CAA; the extension of the risk management plan requirements under § 112(r) of the CAA to domestic oil and gas exploration and production; the signing and publishing of national primary drinking water regulations for radon and other radionuclei; the signing and publishing of any proposed national primary drinking water regulation for arsenic; the issuance or enforcement of any requirement not otherwise authorized with respect to combustion of hazardous waste prior to promulgation of final regulations under the Administrative Procedure Act (APA); the issuance or enforcement of any regulatory standard for maximum achievable control technology (MACT) for hazardous waste combustion, except under the CAA; promulgation, implementation, or enforcement of § 502(d)(2), 502(d)(3), or 502(i)(4) of the CAA against a state involved in litigation regarding provisions of Title V of the CAA; requiring facilities to submit any data pursuant to § 313(a) of the Emergency Planning and Community Right to Know Act (EPCRA), or § 8 of the Toxic Substances Control Act (TSCA), not specifically enumerated in those sections; revoke or require the issuance of a food additive regulation under § 409 of the Federal Food, Drug, and Cosmetic Act (FDCA) for a pesticide in a processed food; excessively regulating whole agricultural plants subject to regulation by another federal agency; and for the purposes of obtaining a voluntary environmental audit report. H.R. 2099, 104th Cong., 1st Sess. (1995).

However, after the NEJAC occurred, the Senate drastically reduced the number of riders in their reported version of the bill. On September 13, 1995, the Senate Committee on Appropriations reported its version of H.R. 2099, which struck all but six of the riders contained in the House version. S. REP. NO. 140, 104th Cong., 1st Sess. (1995).

49. Tlingit and Haida Indian Tribes of Alaska, on behalf of Jean Gamache.

MS. THOMAS: And also I just want to say—you cannot say it, but I can. I suggest we all talk to all our congresspeople as soon as possible. I also share your concerns about what is happening with the EPA and the target to remove your budget and some of your authority.

ADMINISTRATOR BROWNER: Thank you.

CHAIRMAN MOORE: Any other questions or comments?

MR. CHARLES LEE:⁵⁰ I was sitting here, Administrator Browner, wondering whether you crossed any lines here, in terms of how we pursue this discussion. Let me just say, I did not think there was any lobbying going on here.

ADMINISTRATOR BROWNER: I feel very confident that I have not lobbied.

MR. CHARLES LEE: When we made introductory remarks, I said that what was right before is still right, and what was wrong before is still wrong. I do not know what happened in Washington that would have changed it. I think that it is very clear to me that the last election did not represent a mandate. When two-thirds of the American people, the American electorate, did not vote, I do not think that represented a mandate.⁵¹ A lot of the issues that we are addressing here are issues that have been around and will remain. So I think that it is important that a statement is made, if only as an individual, that I am glad to hear that Administrator Browner is speaking up. I think it is important for people to know that you are going to fight for what you believe in and for what is right.

ADMINISTRATOR BROWNER: Thank you very much. I could not agree more, and I think now more than ever, we all have to stand up and speak out for what we believe in. The American people are on our side. There is not a poll that does not show a majority—in some instances, seventy or eighty percent—saying the American people want more

50. Director of Research, for the Commission for Racial Justice, for the United Church of Christ located in New York City; organizer, National People of Color Leadership Summit, Washington, D.C.; director and author, *Toxic Waste and Race in the United States: A National Report on the Racial and Socio-Economic Characteristics of Communities with Hazardous Waste Sites*.

51. Charles V. Zehren, *Political Heat: Analyzing GOP Victory*, NEWSDAY, Nov. 15, 1994, at A5 (reporting GOP victory is result of public dissatisfaction with politics rather than political mandate). See also E.J. Dionne, Jr., *A Shift, Not a Mandate*, WASH. POST, Nov. 22, 1994, at A21 (concluding that election results were not jump to political right, but adjustment in center).

environmental regulation.⁵² They know the job is not done; they want us to have the authority to be able to act to take an enforcement action when the law is violated; and that is what gives me the belief that ultimately we will prevail.

The next big debate within the arena of environmental and health protections is the issue of Superfund.⁵³ The first thing you should know is what happened in our appropriations bill. Generally, we have been appropriated about \$1.5 billion a year for Superfund.⁵⁴ It comes from a trust fund; it is a tax on oil and chemical companies that is paid into a special fund which we are able to spend. They did not take that money. The tax is there, but they did not take the money. Instead they are taking it from the general treasury this year, and they are reducing it by a third. We do not understand why; we do not think the American public generally should be asked to pay for these clean-ups. The money is in the fund; we think the fund should be used, but instead, they have taken it from the general treasury. And rather than \$1.5 billion, it has been reduced to about one billion.⁵⁵

The effect of that reduction does mean that clean-ups will not go forward on schedule. We will be forced to reduce the number of clean-up activities and to slow clean-up activities. This comes at a time when I really feel like we have made some significant strides in expediting clean-ups, and dealing with some of the more difficult parts of the program and the frustrations that we have all felt. We continue to think that Congress should change the law in keeping with the recommendations that we all made last year. Unfortunately, what we see right now are proposals in Congress that would in many instances delete the "polluter pay"⁵⁶ concept adopted in the original law.

52. Linda Kamane and Steve Marshall, *Poll: Don't Redo Environmental Laws*, USA TODAY, Dec. 22, 1994, at A3 (showing citizens unhappy with industries' lack of involvement in environmental protection).

53. Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 (1988) (creating industrial liability for environmental clean-up). *See also* Hazardous Substance Superfund, 26 U.S.C. § 9501 (1994) (creating fund to clean up environmental disasters).

54. The Superfund Program was appropriated \$1,435,000,000 in fiscal year 1995. S. REP. NO. 140, 104th Cong., 1st Sess. at 146 (1995).

55. For fiscal year 1996, the White House requested \$1,507,937,000, but the House and Senate authorized only \$1,003,400,000. *Id.* These figures are \$431,600,000 below the fiscal year 1995 appropriation, and \$504,537,000 below the White House's request. *Id.*

56. "Polluter pays" is defined as "the concept that whoever generated the pollution must bear the cost of removing it and remedying its bad effects." Susan J. Buck, UNDERSTANDING ENVIRONMENTAL ADMINISTRATION AND THE LAW 173 (1991).

Many of us worked hard to look at how to take certain parties out of the Superfund liability net—small parties, the homeowner who sent his or her garbage to a landfill. Clearly, there are people trapped in the program today that do not belong there. Having said that, those who cause the problems still have a responsibility to pay to clean up the problem, and right now, we see proposals that would remove that responsibility. Unfortunately, any effort to do that only results in solving one type of litigation. A new type of litigation results regarding different aspects of the same question. In other words, did you send your toxic waste there on this or that date? Litigation time and expense is not reduced. We really have not solved the underlying issue of how do we get the job done faster, fairer, more efficiently. I know that this is an issue of great interest to many of the people here, and it is one that we think will be hotly debated in the coming couple of months.

The appropriations bill says very specifically if the program is not reauthorized; in other words, if a bill is not passed outside of appropriations, we shut down December 31, 1995. The program ceases to exist. In one instance we will have to dramatically scale back because they did not give us enough dollars, and in the other instance, we will shut down the program because we have no legal authority to run the program.

CHAIRMAN MOORE: We are going to need to start moving forward in the public comment period; but Mr. Bullard, I think you had your hand up, and I think that was the only hand that I have seen come up.

DR. ROBERT BULLARD:⁵⁷ I just have a quick question for Administrator Browner, and it concerns the status of the Interagency Working Group activities.⁵⁸ Concerning Executive Order 12,898,⁵⁹ regarding the extent to which there is still activity going on in terms of the various task forces because the work is not done, and the extent to which environmental justice is still on the radar screen for some of the other agencies that, once they got their strategies in, they have done their thing—your impressions in terms of where it is.

57. Ware Professor of Sociology and Director, Clark Atlanta University, Atlanta, Georgia.

58. The President created Interagency Working Groups to (1) provide guidance to federal agencies in identifying disproportionately high and adverse human health or environmental effects on minority and low-income populations; (2) provide the agency guidance in the development of an environmental strategy; (3) coordinate research among the agencies; (4) collect data; (5) examine existing data; (6) hold public meetings; and (7) develop interagency model projects on environmental justice. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994).

59. *Id.*

ADMINISTRATOR BROWNER: I think that for the vast majority of the agencies, this is still a high priority. I think that across the administration at the political level, there is a continued desire to work through the interagency structure. There is a recognition that while some departments and agencies have greater responsibility, it is going to take all of the agencies and departments if we are to develop really responsible mechanisms for solving these problems. Having said that, I think it is fair to say that at this particular moment and for the next particular short period of time—through October 1, 1995 when the budget has to be done—a lot of energies are focused on retaining the authority and resources to participate in interagency efforts. I think that is where you will see people's energies.

We have been concerned from the beginning of the appropriations process, based on some things we were told, that other departments that have been working with us might see specific language in their appropriations bill saying they can no longer continue that association. Thus far, we have not seen it, but we continue to be concerned.

There are some Republicans who do not like this issue, who do not think it is an important issue, and particularly do not like the fact that some other agencies have been engaged in any way with this. So right now, I think that is sort of the day-to-day focus. There is a requirement for all of the agencies to complete their implementation plans, which are due in April of 1996, and the task force is still working on that. Though I think for all of us, we want to ensure that there are no restrictions on other agencies' ability to participate and to undertake the activities in the implementation of their work plan.

DR. BULLARD: So what you are saying, is that your impressions are that some of these other agencies are just paying lip service to environmental justice and that they have just turned in a piece of paper called a strategy, and now they are finished?

ADMINISTRATOR BROWNER: No, I am not saying that anyone is giving lip service.

DR. BULLARD: So you are saying that they are real?

ADMINISTRATOR BROWNER: Yes.

DR. BULLARD: Their strategies are real?

ADMINISTRATOR BROWNER: I think that there are within each of the agencies involved in this, within each of the departments, a group of people who take this very seriously and are absolutely committed to it. In the Domestic Policy Council,⁶⁰ this is an issue that has continued to come

60. In the past the Secretaries of Agriculture, the Interior, Housing and Urban Development, Health and Human Services, Energy, and the Director of Office of Management and

up as a priority for the President, as a priority for the Administration, and as something that the White House wants very much to see agencies work on and continue their commitment to.

CHAIRMAN MOORE: One last one, but it has got to be very, very brief because we are going to have to open up the public comments.

MS. NATHALIE WALKER:⁶¹ I will be very brief. I am Nathalie Walker, Sierra Club Legal Defense Fund.

Could you explain for me very briefly what happened with the draft environmental justice strategy statements from various agencies from the time they were in draft form to when they were in the final form, when they were submitted to the President? Because in the case, for example, of the Nuclear Regulatory Commission (NRC), there was very good, important language which was entirely cut out before final presentation to the President.

ADMINISTRATOR BROWNER: Staff, any comments?

EPA STAFFER: What happened is that they would send it back through. All the agencies had their own environmental justice committees for concurrences throughout the Agency, and then issues began to be raised and debates started. So then what happened was, rather than putting it into their draft strategies, they decided to look at it in terms of implementation, and those issues were not resolved. As you know, we were on a very short time line to prepare drafts and put it into final form to be submitted to the President. Most agencies are used to having several years to be able to do something that they had to turn around in less than sixty days.

MS. WALKER: So, is it fair to say that if a provision or if some language that you are concerned about is not in the strategy ultimately submitted, that does not necessarily mean it is gone.

EPA STAFFER: Right.

MS. WALKER: It is still a part of the discussion in terms of implementation?

EPA STAFFER: I would encourage you to contact the environmental justice lead for the NRC.

MS. WALKER: That would be a good idea.

ADMINISTRATOR BROWNER: We will also convey the question, but we would also encourage you to talk to them.

Budget comprised the Council. They advise the President on key domestic issues and act almost like a congressional committee. Carolyn Rinkus Thompson, *The Cabinet Member As Policy Entrepreneur*, 25 ADMIN. & SOC., Feb. 1994, at 395.

61. Managing Attorney, Sierra Club Legal Defense Fund, New Orleans, Louisiana.

CHAIRMAN MOORE: We would like to thank the Administrator for joining us. Are you going to stay with us during the public comment period?

ADMINISTRATOR BROWNER: Yes, I will stay.

CHAIRMAN MOORE: This, as you all know, is another very important part of the agenda here, the time when the public makes comments to the Council and expresses their opinion. I want to prepare the order in which we will proceed. We have five men and women that would like to speak during the public comment period.

ADMINISTRATOR BROWNER: While we are getting the first person to the microphone, we do have some good news that I should have shared with you all, and I apologize. We have been able to expand the Environmental Justice Small Grants Program,⁶² and this week we will award more than 170 grants to local communities. In addition to that, we have a new grant program, our Community/University Partnership Grants,⁶³ and seven universities will now receive one-year grants of \$300,000 each.⁶⁴ Those universities are in states such as New York, New Mexico, Louisiana, Wisconsin, and California. So—there is some good news amidst a lot of bad news.

PUBLIC COMMENT PERIOD

CHAIRMAN MOORE: Let us begin the Public Comment Period with Robin Boland from the Environmental Careers Organization. Welcome, Ms. Boland.

PRESENTATION OF MS. BOLAND

MS. BOLAND: Thank you. My name is Robin Boland. I am with the Environmental Careers Organization (ECO).⁶⁵ We are a national non-profit organization that was established in 1972. The backbone of our organization is to help young people get involved in the environment by offering internships that expose them to the environmental field. In fact,

62. *Supra* note 32 (describing Small Grants Program).

63. *Supra* note 33 (describing Academic Relations Program).

64. These include: Cornell University, State University of New York, Hostos Community College, University of California-Berkeley, University of Wisconsin-Stevens Point, Xavier University, and Northern New Mexico Community College.

65. ECO places job seekers in paid internships at a wide range of organizations and publishes a guide to environmental careers entitled, "New Complete Guide to Environmental Careers." Mark Harris, *Green Opportunities for Making Greenbacks Grow*, ROCKY MTN. NEWS, Jan. 28, 1994, at 46A.

many students have been involved in environmental justice projects through our organization.

We offer internships with federal, state, and local government, and also with non-profit and private industry. I am pleased as I look around the audience that we actually have a few of our interns here in the audience today.

I would also like to offer some good news and extend a big thank you to the Office of Environmental Justice (OEJ) and the U.S. Environmental Protection Agency (EPA), because they have been the driving force in helping us get involved with the EPA. To date, we have placed over 200 college students to work with the EPA.

I wanted to speak with NEJAC in order to encourage everyone to remember that it is our role to get young people involved so that we can develop the next generation of environmental professionals. They will continue the work that you are doing into the next generation so that we can continue to make an impact on environmental justice issues and on the environment as a whole.

Just to give you an idea of one of the placements, we have had a student working in Clinton, Michigan through our Great Lakes Diversity Initiative who worked with the Guild Law Center. The intern helped represent a predominantly African-American community to deal with the placement of a hazardous wood waste incinerator in their community.

I am always pleased and amazed to report some of the things that our associates and interns have done. This associate monitored the permitting process, interpreted scientific and demographic data, and worked with the community organization to develop long and short-term solutions to help the community combat this problem.

We also help students become aware of environmental issues through workshops and conferences. For example, we have over fifty students coming together in Detroit, Michigan to learn about environmental justice so that they can take a stand and work with communities and organizations to make an impact.

The workshop will teach the students about environmental justice issues and give them diversity training. One of the things that I am really proud that we are going to be able to do is to allow the students to travel into South Detroit to see some of the environmental injustices in this area. They can see for themselves what is happening, instead of just reading a textbook.

It is important that we all take action, get the students into the communities, and help them to understand the issues so they can make a difference in future generations.

I would like to thank you all for being here and allowing me to tell you about our program and to encourage all of you to participate in programs like ours. Thank you.

CHAIRMAN MOORE: Thank you, Ms. Boland. Take this message back to the leadership of the ECO. We had a meeting several years ago at the People of Color Summit with the Executive Director of ECO, and we talked about a relationship between environmental justice organizations and combining some of those efforts with which ECO was involved.

Please relay the message back to the leadership that we appreciate and look forward to a long-lasting relationship around environmental justice issues. The organization has been doing a great job. Actually, in the State of California, there are twenty to thirty interns working with community-based organizations, such as the Chinese Progressive Association and the Asian Women's Advocates.

The next speaker will be Michael Hancock. Mr. Hancock, we would like to welcome you to the public comment.

PRESENTATION OF MR. HANCOCK

MR. HANCOCK: Thank you, Mr. Moore, members of the Committee, Administrator Browner.

It is a real pleasure to appear before you today and discuss one particular NEJAC initiative, that is, EPA's policies and regulations designed to protect farm workers from the deadly risks that they face in the work place from pesticides.

My name is Michael Hancock. I work with the Farm Workers Justice Fund, a Washington, D.C. non-profit advocacy organization. We have long had an interest and involvement in pesticide-related health and safety issues.

Unfortunately, I am not here to praise the EPA, but to raise an issue that I think is of critical importance for those concerned with environmental justice. There are clear and unambiguous failings of the EPA to live-up to its mandate and its pledge to ensure environmental justice for people of color and for poor people.

Before coming here today, I reviewed the Executive Order,⁶⁶ and I was stirred by clear and unambiguous directions to the EPA regarding what the EPA's mandate is for people of color and for the poor.

Everyone, regardless of economic status, regardless of ethnicity or race, is entitled to environmental policies that protect their health, that allow them to raise their children with clean air, that give them the right to live on land that is not poisoned, and to drink water that will not make them sick. It also means, however, for farm workers, a work place that will not kill them because of unnecessary and unsafe exposures to deadly pesticides.

While it may well be true that EPA has fulfilled its mission for some or even most beneficiaries of its environmental justice initiative, for farm workers, the EPA has failed miserably in giving real meaning to the rhetoric of environmental justice.

Let me get specific about what I think are the problems. I am glad to see Administrator Browner here, because these are issues that we have raised with her and with others within her Agency without much success. I hope that a discussion of these issues may give us a better understanding of how decisions are made and hopefully will prevent these sorts of decisions from being pursued in the future.

First, I will address the Worker Protection Standard,⁶⁷ a critical issue for farm workers that has been in the works now for over a decade, and is finally coming to fruition. The Worker Protection Standards are the regulations that the EPA enacts that are designed to protect farm workers in the work place against pesticides. These standards include simple things, such as preventing workers from being placed back in the field right after pesticide application; providing them with protective equipment so that when they are in a pesticide-treated field, they are not poisoned; decontamination equipment and water so that in the event that somebody is made ill by or exposed to pesticides, there is some hope for first aid.

These protections resulted from an almost ten-year process initiated in the Reagan Administration and finally came to fruition in August, 1992 under President George Bush. When President Clinton and his team came to power, I think most farm worker advocates and farm workers thought that finally they were going to have real protections in the agricultural work place.

66. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994) (directing Federal agencies to develop environmental justice strategy identifying and addressing disproportional high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations).

67. 40 C.F.R. § 170 (1992).

What has happened instead, and I have to place some of the blame on vested agricultural industry interests who sought from the very beginning to weaken these regulations, is that this Administration and the EPA have allowed for dramatic and I think fatal rollbacks in the protections provided to farm workers.

Instead of hard-and-fast reentry rules forbidding growers from putting their workers back into the field, large loopholes have been created.⁶⁸ Instead of effective and meaningful training for farm workers so that they know with what they are faced and they know how to protect themselves, large loopholes continue in the regulation.⁶⁹

I think, by any fair measure, these changes have been terribly fatal to this regulation and drawing the question of its very viability. Additional concessions to the agricultural industry still are under consideration, and every indication that we have is that they are going to be made yet again, further weakening the amendments enacted. What really is troubling to the Farm Workers Justice Fund is that these decisions were made in spite of a clear and unambiguous factual record that said that these changes should not be made.

Despite the fact that the law, arguably, will ultimately find that these changes were made unlawfully, what is really troubling is the message this sends to others who are interested in environmental justice. The message is that if there is a vested, powerful political interest on one side, and powerless, poor people of color on the other side, the whole rhetoric of environmental justice goes out the window. I thought, naively perhaps, that the whole purpose of environmental justice is to level the playing field and to give people of color and poor people an opportunity to make a fair argument to this Agency. Somehow the result would be some balance given to these deliberations.

I have not seen environmental justice when it comes to farm worker protections. I have not seen environmental justice when it comes to decisions made about pesticides that are deadly to farm workers. Furthermore, I am deeply troubled by the disconnection between policies and the rhetoric of environmental justice.

68. Exceptions now exist which put farm workers back into the fields earlier after irrigation and certain low-contact tasks are performed. Originally, exceptions were made only under extraordinary circumstances. Telephone Interview with Michael Hancock, Executive Director of the Farm Workers Justice Fund (Oct. 5, 1995).

69. In some cases, farm workers receive no training on exposure risks until they have been working 15 days in the field. *Id.*

I hope that Administrator Browner will take another look at the whole process that leads to these decisions and try to restore some balance, which is what I thought environmental justice was about. Thank you very much.

CHAIRMAN MOORE: Thank you, Mr. Hancock.

MR. VELASQUEZ:⁷⁰ Mr. Hancock, I believe that your comments are accurate. Having started ten years ago with negotiated rulemaking under the EPA, it has been a constant barrage from the pesticide industry, chemical companies, the agricultural workers employers association, the American Farm Bureau Federation,⁷¹ and the various agricultural interests that continue to weaken and to delay implementation. It is not an easy struggle.

I have not heard any response from petitions, questions, resolutions, including one sent by this body, to the EPA in response to these questions about implementing these regulations. Negotiating with agricultural interests without the participation of the farm workers advocates have gone unanswered or ignored. I hope that there will be some speedy responses sometime soon from the official authorities in the EPA.

I think maybe your testimony here today might present an opportunity, so maybe we can get some kind of sign from Administrator Browner, who happens to be here, in terms of where we go from here. It is very difficult for us to be in the trenches and the front lines seeing how all of this is affecting people. I know there is a petition right now to allow early reentry by requests sent by some of the state agricultural officials, one particular in Delaware in terms of the cantaloupe industry.⁷²

It is difficult for us to see consideration of an exemption to be made in this case, because we know that other states are going to be asking the very same thing about other crops, whether it is irrigators, cantaloupe, tomatoes, and other things that use a lot of heavy pesticides, such as MANA⁷³ or BRAVO,⁷⁴ and all these things that have been under special review by the

70. Mr. Velasquez is President of the Farm Labor Organizing Committee, headquartered in Toledo, OH.

71. The American Farm Bureau Federation is headquartered in Park Ridge, Ill.

72. The request for exception from the Worker Protection Standards' 48-hour reentry interval for certain chlorothalonil-treated crops, such as cantaloupes, has drawn support and objections from state agriculture officials. *Chlorothalonil WPS Rei Exception Request Supported*, PESTICIDE TOXIC CHEM. NEWS, July 26, 1995.

73. MANA is an abbreviation for the chemical manufacturer Makhteshim-Agan of North America, Inc. *Tolerance Established for Quizalofop-p Ethyl Ester*, PESTICIDE & TOXIC CHEM. NEWS, Feb. 19, 1992.

74. BRAVO is the trade name for the fungicide chlorothalonil. *Id.*

EPA.⁷⁵ Farmers are using those things. They are dangerous fungicides that impact the lives of people because they work with the foliage, and it rubs off on their skin.

I think, in light of the recent CBS documentary⁷⁶ just a few days ago, that this nation would have a conscience and would respond. However, all we get are petitions like these exemptions from these cantaloupe growers.⁷⁷

The conditions of migrant farm workers in this country are not much different from those in Mexico, Central America, Latin America, and other developing and under-developed countries. This is supposed to be America. I do not care whether it is Republicans or Democrats. Who is going to have the courage to finally step up and say this is enough, that we have to protect and defend these people who are American citizens!

CHAIRMAN MOORE: Thank you, Mr. Velasquez.

ADMINISTRATOR BROWNER: Just very briefly, there is an opportunity with Dr. Lynn Goldman's presence here this afternoon to explore these issues. Each of you make reference to special exemptions that have been filed. No decision has been made, and no decision will be made without everyone who is involved in this issue having an opportunity to raise their point of view.

I appreciate the recognition on the part of Mr. Hancock that this issue has been around for more than ten years. It is absolutely outrageous that administration after administration prevented the rule from finally being adopted.⁷⁸ I am proud of the fact that in the Clinton Administration, not only did we get the rule adopted, but we have actually moved into an implementation phase.⁷⁹ That is not to say that every little piece of it is perfect and every little piece of it is exactly what each of us would have wanted. For the first time in this country, however, under this Adminis-

75. Special review is the formal process used by EPA to determine whether the use of a pesticide poses unreasonable risk to people or the environment taking both the benefits and risks of the pesticide into account. Telephone Interview with Jack Housenger, Chief of the Special Review Branch, EPA Office of Pesticide Programs (Oct. 6, 1995).

76. *The Legacy of Shame*, CBS Television Broadcast, June 20, 1995.

77. See *supra* note 72 (describing request for exemption from Worker Protection Standards' 48-hour reentry requirement).

78. The Migrant and Seasonal Agricultural Worker Protection Act, Pub. L. No. 97-470, § 2, 96 Stat. 2583 (1983) was originally passed by the House on Dec. 20, 1982 and by the Senate on Dec. 19, 1982. This Act amended the Farm Labor Contractor Registration Act of 1963.

79. See *supra* note 66 (directing Federal agencies to develop environmental justice strategy).

tration, we do have a framework for worker protection standards, in spite of the fact that there are a lot of forces aligned against this. We have never had that before.

Mr. Velasquez made reference to the fact that the state agricultural commissioners, with one exception of which I am aware, literally one out of all fifty, have routinely fought the EPA and opposed us on this. There was only one agricultural commissioner in the State of Florida who was willing to say that some standards should ultimately go forward.⁸⁰ We saw Congress tell us that the states would not be able to adopt these standards for more than a year, and we have finally prevailed in terms of getting past that and immediately moved to an adoption.⁸¹

As is true in any program, we will have to make corrections, we will have to make improvements, we will have to make refinements. What we want to do is work with those of you who represent the people in the field so that we can say to those people, we know we have a responsible set of standards that guarantee their protection, that guarantee their health and the health of their families who frequently are also affected by the exposures of the actual workers.

With Dr. Lynn Goldman here this afternoon, I would hope that this issue could be returned in a level of detail so that we can have the advantage, and I can have the advantage of your perspective on this. But please know that while petitions may be filed, it does not mean that decisions have been made at this point in time.

CHAIRMAN MOORE: Thank you, Administrator.

We are going to proceed then with our next presenter, Susan Hagler, from the Department of Health and Human Services (HHS), Migrant Health Program.

PRESENTATION OF MS. HAGLER⁸²

MS. HAGLER: Good morning, ladies and gentlemen of NEJAC and Administrator Browner. I thank you very much for this opportunity to be here to present some issues for you.

The Migrant Health Program provides funds to private, non-profit health centers to serve migrant and seasonal farm workers. We provide funds to 122 health centers around the country and Puerto Rico. We have

80. *An Act Relating to Environmental Equity and Justice*, FLA. STAT. No. 1369 (1994).

81. *Id.*

82. Ms. Hagler is a Public Health Analyst for the U.S. Department of Health and Human Services, Migrant Health Program.

designated environmental occupational health issues as a major issue for our population.

At the Department of Health and Human Services (HHS), I am personally responsible for our National Advisory Council,⁸³ and I am here to offer an invitation to provide some coordination and cooperation between HHS's Advisory Councils on environmental occupational health issues for farm workers and NEJAC's efforts. I briefly wanted to touch on the fact that CBS television recently televised the *Legacy of Shame*.⁸⁴ It was the thirty year anniversary of the *Harvest of Shame*⁸⁵ that was done by Edward R. Murrow 32 years ago.

One of the doctors, Dr. Salvadore Sandoval, featured prominently on the show, is one of our council members. He did not have much of a chance to talk about environmental occupational health issues. These issues, however, are very important, and we call upon you all to help us to do the best that we can for the population that feeds our country.

CHAIRMAN MOORE: Thank you, Ms. Hagler.

Are there any questions or comments?

MR. VELASQUEZ: In your migrant clinics, are the medical people offered any kind of specialized training to recognize pesticide poisonings?

MS. HAGLER: We have provided some training, but it is limited. This lack of training remains a very big problem in our health centers. Doctors are not always cognizant of the signs and symptoms of pesticide poisoning. We have some training available through our Migrant Clinicians' Network, a non-profit program for which we provide some funding. Primarily, the Network provides protocols. However, it is a matter of whether the doctors are given the time and are encouraged to take the time to study symptoms of pesticide poisoning and to become aware of treatment for these specific health problems.

MR. VELASQUEZ: Is it possible to tie some kind of requirement to your funding, particularly in states where pesticides are very heavily used, such as, California, Florida, and Texas? For example, in order for a physician to receive his license, he should be required to know certain things about medical treatment for people exhibiting symptoms of pesticide poisoning. Well, if a clinician will be treating farm workers, that would be one of the fundamental things that he should know.

83. Congress created the HHS National Advisory Council under § 329 of the Public Health Service Act (PHSA). 42 U.S.C. § 254(b) (1988).

84. See *supra* note 76.

85. CBS Television Broadcast, Nov. 25, 1960.

When a pesticide poisoning is diagnosed, or there is suspicion of pesticide poisoning, is there any kind of network or way in which to refer this problem so that the clinician can get full response and full justice? For example, the Fosdrin poisoning in Florida in 1992 hospitalized almost 100 workers. Clinicians worked through the Workers Compensation⁸⁶ program and with other social service organizations in order to ensure that the victims received the full measure of services and treatments that they deserved.

Paying for things is a big burden for the farm workers and Workers Compensation in the State of Florida could have provided something for them.⁸⁷ Health clinics are in a position to play a very vital role in obtaining the evidence and providing the information that is required to prove pesticide poisoning. One of the biggest problems of occupational diseases for agricultural workers is proving that it was caused by the conditions in the work site. If the clinics really want to see the workers served to the fullest extent, they should put themselves in a position to be a very key player.

MS. HAGLER: I think that is true. I have to remind you, however, that they are private, non-profit health centers. We have tried to create a new relationship with them, a partnership, and not to be an overbearing authority that tells them what to do and what not to do. These health centers are very conscientious and they work very hard just to meet the basic needs of the farmworker population.

We have been encouraging and providing through our three annual stream forums and a national meeting, clinical training on pesticide poisoning. We have also provided funding to get clinicians to attend meetings. We do not want to be ordering the clinics around saying, "you will do this or that" in order to get federal dollars. They are independent organizations. However, environmental/occupational health and safety is something that continues to be a critical issue for farmworkers. Migrant health centers should do all they can to address this.

MR. VELASQUEZ: I would think that as part of your policy-making, in terms of conditions for these grants, that perhaps a special task force could respond to these kinds of situations, and that the HHS could assist local providers to expand their response to treating workers.

86. 5 U.S.C. § 8103 (1994).

87. Many states have increased the level of medical benefits and expanded the amount of workers covered under the Workers Compensation provisions when these workers fall victim to pesticide poisoning. Emily A. Spiele, *Perpetuating Risk? Workers' Compensation and the Persistence of Occupational Injuries*, 31 HOUS. L. REV. 119, 150 (1994).

We have often seen workers come to the clinics to be treated for certain things over and over again, but no one ever goes out to deal with the problem that is causing the people to come to the clinics. Prevention is always a key word in the medical field, and I do not see why it should stop at migrant workers' health. I think it is essential to define, address, and coordinate programs that effectively and efficiently respond to these kinds of problems, especially in the light of cutbacks, attacks from agricultural interests, and the weakening of the reentry standards that are being pushed all over the country.⁸⁸

If a local clinic needs to be more aggressive in the community in combatting the social ills causing migrant health problems, maybe the funds should be allocated, and the clinicians should receive guidance from the HHS. The laissez-faire attitude that has historically been practiced by local providers who respond merely to the immediate-local health problem, has been ineffective in combatting the national-persistent problem of pesticide poisoning. Sometimes the local providers want to get along with everybody, including the growers, and it compromises their ability to respond effectively to deal with a serious and persistent problem. If local politics demands assistance from HHS, this would send a message that local providers have to do something, and this would be a relief to some of these people. If local providers can go into the community and question a practice that is poisoning people, and say "this came from above and I have to do it" there maybe some cooperation from agricultural interests. It would behoove the HHS to examine what you can do to strengthen the local response, and how to treat these poisonings and identify them.

MS. HAGLER: All migrant health centers and community health centers are required to have a community board. If they receive migrant dollars, they are required to have at least fifty-one percent of their board as migrants.⁸⁹

MR. VELASQUEZ: Yes. Now, let me tell you about that. I have been in this business for twenty-eight years, and I have been involved in these programs from the time President Lyndon Johnson started his war on poverty. I know about these "migrant participants" on these boards. Everybody brings their Mexicans to the meeting, including the growers. They are not hard to find. Not very often do you have a group of organized workers in a union or in a larger community organization that

88. See *supra* note 72 (requesting exemption to 48-hour reentry prohibition after chlorothalonil has been sprayed on cantaloupe crops).

89. 42 C.F.R. § 56.304 (1994).

independently advocates and tells these agencies how to direct their business.

Most boards are composed of "handpicked migrants" who are told what they need to decide and what they are not to decide. It is a rubber-stamp group in many cases, although there are exceptions. There are good service providers out there who have got a good heart and try to do their best to educate the workers to make decisions intelligently. For the most part, however, the boards remain rubber-stamp boards that follow the growers' interest.

I believe in the workers' grassroots organizations. The empowerment of these workers not to be just some Mexican migrants sitting on the board is essential. I appreciate the effort, but I question the level of education and effort that goes into allowing these workers to make independent decisions. Unfortunately, that has been the reality. We have seen federally funded boards get sick and tired of seeing policies being implemented with a claim that farm workers decided this. What farm workers? Later it is discovered that there was really some administrator that made the decision. I do not mean to discourage you, but it is important to be forceful about implementing something effective in terms of the pesticide poisoning. I was focusing on that issue in order to facilitate some response. No farm worker is going to make a decision that is going to harm his own family or her own family. They are not going to do that if they are really knowledgeable.

It is not enough to educate a person. Someone has got to give him the tools to do something about it. This is one of my criticisms of all these educational programs. A migrant worker can be educated that he is going to be poisoned when he goes into a field, but what is his choice? The only choice he is given is that he must go and get poisoned, and he knows that he is going to get poisoned. His alternative is not knowing anything at all, so it does not make any difference whether he knows or not.

A person has to be empowered to act on the information that he has. The clinics can assist and empower that worker to get some justice and to open up his options, including remedies through Workers Compensation or an independent lawsuit.

CHAIRMAN MOORE: Thank you, Mr. Velasquez. Our last speaker will be Mr. Jerome Smith from Blacks in Government (BIG).

PRESENTATION OF MR. SMITH

MR. SMITH: Thank you very much. My name is Jerome Smith. I am the Chairman of the Interagency Working Group for Blacks in Government (BIG) on environmental justice. I would like to briefly report some of the

things that we have been able to do since the last time when I met with this group and the last time I met with Administrator Browner.

First, we have been briefing the regions on the various environmental justice strategies. We have met with Region XI in Washington, D.C. which represents over fifty percent of BIG, in terms of its membership. We have taken the challenge to review and comment on most of the EPA's strategies. I have met personally with almost every one of the Federal coordinators dealing with the environmental justice strategy.

Next, we have met with various groups who share our concern dealing with effective neighborhoods and communities. We have met with the National Association for the Advancement of Colored People (NAACP), we met with the National Council of Negro Women, and we have met with the United Negro College Fund. We are also preparing for our National Training Conference.

I want to let you know that we think it is important that this group demonstrates commitment at the top to make sure that communities are represented at the table in decisionmaking. This is important when it comes to empowerment zones, enterprise zones, and other activities where the government is looking for solutions to problems. This group is expecting us to work with you, and we want you to work with us.

I have invited Administrator Browner to join our National Training Conference program, as well as other principals at the Departments of Health and Human Services, Housing and Urban Development, Energy, Defense, and the White House. I would like to extend an invitation to members of these organizations to look for ways of how we can work with you to develop an outreach effort utilizing our membership. Our chapter and our regions are in a unique position to work with your organization to come up with innovative ways to work with communities where many of our members are located and live. Furthermore, you should look at the goal of this year's conference: environmental justice and local leadership—the public policy perspective. We are looking at public policy participation, i.e., agenda setting. We are also looking at partnerships in contracts.

Our next major issue is environmental justice and local leadership. We are concerned with three areas: 1) economic security, employment and job opportunities, and how can we create jobs for our communities; 2) quality of life, education, health, human development, and how can we improve our communities, and 3) how can BIG help? With this final item, we are here to work with you, and we hope that you will be willing to work with us.

I have met or talked personally with everybody that is listed as a program participant. I have met with the National Association of Manufacturers, Assistant Department of Energy Secretary Grumbly, Mr. Brian Burke from the White House, and others in the federal government and the private sector. I am also going to see Ms. Kathleen McGinty, Director of the Council on Environmental Quality. I have spoken with Administrator Browner, and Mr. Robert Hood from Speaker Gingrich's office. BIG is serious about their agenda. I want to impress upon you that we have a strong membership that is willing to work with NEJAC. Our National President, Oscar Eason, has taken this initiative and has met with organizations as well.

MS. HERRERA: I am Dolores Herrera, and I am from the community of San Jose in Albuquerque, New Mexico, an enterprise zone.⁹⁰ I would encourage you to imitate our efforts in the City of Albuquerque and the County of Bernalillo with all local governments, including, the incorporation of long-term goals for community reinvestment with small business. That was a comment. My question, however, is you talk about the NAACP; we have a local NAACP chapter who much of the time does not agree 100 percent, or sometimes not even one percent, about what is going on nationally. Was it a local chapter of the NAACP or the national chapter?

MR. SMITH: We have met with Mr. John Rosenthal of the national chapter of the NAACP. He shared his ideas of how the BIG organization nationally, as well as the NAACP chapters, can work together effectively.

I briefed him last year during their national training meeting in terms of what BIG can accomplish; in terms of briefing the various chapters; in terms of what is available; and, in terms of possible government activities or government funds that can help them achieve their desired results. We have also met with some of the local groups, regarding particular problems in their regions and tried to think of ways that we can develop a partnership.

We do not want to reinvent the wheel. What we would rather do is work with established organizations and see where we can bring our strengths to the table regarding public policy, community organizations, and public participation. There are some ideas that we know we can bring to the table at all levels of government, in the support area, as well as in the administrative area that can be very helpful. There are some programs that

90. Enterprise zones are economically depressed areas within a city that receive tax breaks and incentives for businesses to invest. Suzanne Fields, *Campaign Staffs Call This a "Wedge Issue,"* WASH. TIMES, Aug. 11, 1995.

are taking place and many community groups are not very aware that we facilitate these programs, without a conflict of interest.

CHAIRMAN MOORE: Thank you, Mr. Smith.

MR. LEE: You had said before that you really look to NEJAC to work with BIG in terms of the community participation and outreach. I have a couple of questions related to this effort. First, in environmental justice, one of the principles is to maintain a multi-racial and multi-cultural character. I realize that you are being conscious of that, but you did note a place for a speaker from the Native American community and La Raza, even though there is no Pacific Asian American presence.

Second, in terms of what you would consider community groups and institutions, particularly with respect to environmental justice, I do not understand whether or not the Northwest/Midwest Institute understands what the principles of environmental justice are. I do not know whether or not Clean Sites⁹¹ really understands either. I believe there are many other organizations to which you could target your outreach programs.

MR. SMITH: What I am focusing on in terms of Clean Sites and Northend/Midwest Institute, is taking environmental justice one step further. We think the whole question of federal facilities and brownfields⁹² is very important in terms of how these facilities are handled, especially how they are handled relative to affected neighborhoods. We think it is important to clean up and revitalize these areas. I will also take your recommendation very seriously in terms of making sure that we have some Asian Americans participating in this forum.

We emphasized the question of brownfields to show how urban areas and rural areas are being developed. That is why we are looking to bring grassroots participants from the St. Louis community. This allows us to act as a focal point, a synergist, in that community. We are not just bringing people from the outside talking about a national training conference. We are trying to focus there and highlight the broader issues of federal facilities, brownfields, and how this reflects public policies.

91. Clean Sites, a national non-profit organization established in 1984, was created to address the problem of hazardous waste. Clean Sites offers alternative dispute resolution services to resolve hazardous waste issues. Christine Drayer, *Alternative Routes to Solutions for Environmental Law*, 38 RES GESTAE 38 (Sept. 1994).

92. "Brownfields" are industrial properties considered by investors to be a high risk for contamination. These properties, generally in low income urban areas, sit idle and abandoned. The EPA and Congress formally created these sites in the 1980s. Daniel Michel, Note, *The CERCLA Paradox and Ohio's Response to the Brownfield Problem: Senate Bill 221*, 26 U. TOL. L. REV., 435, 436 (1995); See also *infra* p. 722 (discussing Brownfield initiatives).

CHAIRMAN MOORE: I would like to congratulate BIG for the very good work that is being done. I also wanted to reinforce several of the comments that have been made.

Many times, what ends up happening is that, we confuse what environmental justice is really all about. There are many groups with various concerns. The concept of the environmental justice movement cannot be viewed through one focal point. With that in mind, I would hope that you take under consideration that there needs to be grassroots participation and grassroots people speaking on behalf of themselves, and not many organizations that claim to speak for grassroots people or for the environmental justice movement.

MR. SMITH: I emphasize that we are looking for grassroots participation. That is the whole purpose of NEJAC. We would like for grassroots organizations to say how we can work together in a partnership, and not in isolated parts operating in a vacuum. This is where we bring strengths to the table. That is what we think in terms of what we are trying to accomplish through NEJAC.

We are looking to work with the grassroots not only in St. Louis, but in other parts of the country as well. That is one of the things that we are actually looking at in those affected neighborhoods. And I would like to work with Ms. Herrera and Mr. Lee, to refine the program, and to make sure that we get their comments and their concerns as well as the comments from other members of the Committee.

CHAIRMAN MOORE: Thank you.

STATUS OF EJ ACTIVITIES IN EPA OFFICES

OFFICE OF ENFORCEMENT

MR. HERMAN:⁹³ I am pleased and excited about the Administrator's decision to put the Office of Environmental Justice (OEJ) in the Office of Enforcement and Compliance Assurance (OECA). It will come with some very serious responsibilities. We are going to have to ensure, during all of the fights and battles that will ensue over the next couple of months—maybe years—that in regard to appropriations for the EPA, the issue of environmental justice does not get lost and that we continue the progress that we have begun to achieve.

93. Steven A. Herman, Assistant Administrator of the EPA.

Since I came to the EPA approximately two-and-a-half years ago, we have been trying to ensure that we have an equal-opportunity enforcement program. Prior to my coming, there had been allegations that the EPA was not bringing enforcement actions in poor communities, and that when we did bring actions there, we did not collect fines or penalties that were comparable to those collected in other areas. I am proud of our record over the last two-and-a-half years in terms of the actions we have taken, in terms of the work we have done with the Superfund Office,⁹⁴ in terms of the levels of penalties assessed, but also in terms of some of the complex matters which we have addressed. It goes without saying that most of the work is not yet done, and I am hoping that having the OEJ housed in the OECA will enhance our work as much as I hope that being housed in our office will enhance the work of the OEJ.

I was informed of the Administrator's final decision just yesterday, so one of the first things that I intend to do is sit down with Dr. Gaylord and her staff at the Agency and discuss ongoing agency-wide matters. I will also sit down with Mr. Moore and other members of the NEJAC to discuss any ideas, suggestions, and improvements. Given the organizational change, this is a good time to raise such issues. We can all feel somewhat free to make moves where we think they should be made. Again, I think the environmental justice issue, like all the issues at the EPA is a complex one. However, unlike other issues, this one cuts across all offices. One of my tasks is to ensure that we have as integrated a program as possible. And, in order to achieve that goal, I look forward to developing a strong partnership with you all. In any case, I am very pleased that the Administrator made the decision to move the OEJ to the OECA. I look forward to working with you all. Thank you.

MR. RAY:⁹⁵ I have had a little expertise in working with the OECA and being in that office has always been a trial to try to get something done. I hope it is not going to be a trial to have Dr. Gaylord's very committed people to actually get some work done.

94. Superfund is the popular name for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-75 (1988). The name derives from the fund created by CERCLA to pay clean-up costs until the responsible parties can bear the burden. *Id.* See 26 U.S.C. § 9507 (1994) (creating trust fund); 42 U.S.C. § 9611 (1988) (describing uses of trust fund).

95. *Supra* note 39.

We have an enforcement subcommittee.⁹⁶ We intend to complete a report with many of our recommendations. That should be a clear starting point about where we feel some action is needed. No other area would lend itself more to an initiative than to actually take some actions and to show some signs to people in the communities that we are really concerned about their problems. I would like to see some cases generated in this area.

The other thing that concerns me is that any time I even talk with my boss, the Secretary of the Maryland Department of Environment, about enforcement, she says, "Oh no, we do not use the word 'enforcement' anymore. We say 'compliance and compliance assurance.'" I disagree. Some very heinous cases really do need some old-line "enforcement."⁹⁷ So in some sense, compliance will not hit what these communities need. So I hope you will pursue some old-line enforcement in some of these cases.

MR. HERMAN: Two years ago, the Administrator reorganized the OECA.⁹⁸ She tried to do a couple of things. One was to put back an office that had been taken apart by Ann Burford⁹⁹ at the beginning of the Reagan Administration. Secondly, she wanted to have an office that had the ability to target and take the appropriate action, whether it was enforcement or compliance assistance, depending on the particular situation. The key word for me in an enforcement program is one of "balance." Specifically, balance and appropriate response. I agree with you 100 percent that some matters require old-fashioned enforcement.

96. The enforcement subcommittee is part of the National Environmental Justice Advisory Council. This council was established by the Environmental Protection Agency in Notice of Establishment, 58 Fed. Reg. 59,723 (1993).

97. See *Bean v. Southwestern Waste Management Corp.*, 482 F. Supp. 673 (S.D. Tex. 1979), *aff'd without op.*, 782 F.2d 1038 (5th Cir. 1986) (rejecting challenge to permit for landfill in predominately minority community); *East Bibb Twiggs Neighborhood Ass'n v. Mason Bibb County Planning and Zoning Comm'n*, 706 F. Supp. 880 (M.D. GA. 1989), *aff'd*, 896 F.2d 1264 (11th Cir. 1990) (alleging site selection of solid waste facility was racially motivated).

98. On October 13, 1993, EPA Administrator Carol Browner announced a reorganization of the Office of Enforcement and Compliance Assurance. The purpose of the reorganization was to centralize the agency's enforcement functions and to target whole industries rather than individual companies.

99. Ann Burford Gorsuch was appointed the EPA Administrator in May 1981 by President Ronald Reagan. She faced criticism for alienation of environmentalists and Congress. She was removed from the EPA in March 1983. Under the Gorsuch regime the Office of Enforcement was split into legal and technical divisions. See Gary Lee, *EPA Enforcement Said Strengthened by Centralizing*, PESTICIDE & TOXIC CHEMICAL NEWS, July 28, 1993 (commenting such division weakened enforcement at agency).

For the two-and-a-half years that I have been there, our numbers—and numbers are not the best indication of the quality of the activity, but in terms of the one measurement that we have and the one measurement that Congress has accepted over the years—show that we have brought increasingly larger numbers of old-fashioned enforcement actions with comparable fines and injunctive relief also increasing.¹⁰⁰

One of the keys for myself and the Administrator is the improvement of our ability to target and to plan, so we do not only act when a violation develops in an egregious situation where you cannot help but see it or stumble upon it. We are also trying to have as effective a risk-based program as possible to go after national companies that cause problems across the country. We are trying to attack all of the problems that a particular facility might present; when possible, consolidating our resources so that we do not have water issues addressed at one time and air issues the next, but actually approach things on a multi-media basis where it is feasible, so that we resolve all the problems at once.

MR. RAY: One of the other important factors are contacts with the regional offices. From Washington, D.C. you really cannot do anything because the real problems are out in the regions. I believe the relationships exist. Some of those regional council offices are required to report to you,¹⁰¹ so I assume that you can fire them up to get out there and actually do some of these cases.

MR. HERMAN: There are a couple of things. One, we do have relationships with the offices of regional counsel. But, because of the reorganizations that the Administrator ordered in the regions with regard to enforcement, we are also going to have a relationship with the enforcement coordinators if they are not the regional counsel in those areas. However, I quickly came to recognize the significance of the regional organization at the EPA, and what you say is exactly right. The program cannot work without the cooperation, participation and commitment of the regional offices. One of the things that I have tried to do is build a constructive relationship between our office and the regional offices so that we are all marching to the same drum and planning together, so that we are not

100. In 1993, the EPA brought 2,110 enforcement actions. In 1994, the agency brought 2,249 enforcement actions, and collected \$128.4 million in civil penalties and \$36.8 million in criminal fines, for a total of \$165.2 million in civil and criminal fines. *EPA Enforcement Efforts in 1994 Break Records for Actions, Fines*, CHEMICAL REG. DAILY (BNA), Dec. 1, 1994.

101. See U.S. ENVIRONMENTAL PROTECTION AGENCY, UNITED STATES ENFORCEMENT RESPONSE PROCESS (1991) (detailing enforcement system administered by agency).

surprised by the actions being brought or not being brought. I have visited the regional offices more than any other Assistant Administrator to try and build the kind of link that you have mentioned which is absolutely essential for an effective program.

MR. TURRENTINE:¹⁰² I would like to know what happens to the funds that are collected as a result of enforcement and fines being assessed. I say this in light of all the cutbacks that you are getting. What happens to those funds once they are collected if they are ever collected?

MR. HERMAN: They are collected. In fact, between Superfund and non-Superfund enforcement actions, our sum was over two billion dollars last year, and of that, \$740 million¹⁰³ were collected from companies.¹⁰⁴ It was part of relief in the form of injunctions from court orders where people had to correct the damage they had created.¹⁰⁵ By law, the money needed from penalties goes directly into the United States Treasury.¹⁰⁶ We do not get any part of it. The reason is the Agency does not go after people to fund itself, and also the Agency does not become an appropriator of money by deciding where money can be spent. We have a policy called the Supplemental Environmental Projects Policy (SEP),¹⁰⁷ which we do use in certain cases where it is appropriate. We get a penalty amount larger than we could otherwise get if it were just the fine and a portion is used to

102. Mr. Haywood Turrentine is a member of the NEJAC and represents the Laborers-AGC Education and Training Fund which is a training trust fund and an arm of the Laborers International Union of North America which represents approximately 750,000 workers throughout the country, many of whom are involved in environmental protection, mediation, and related matters.

103. U.S. ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, ENFORCEMENT AND COMPLIANCE ASSURANCE ACCOMPLISHMENTS REPORT, FY 1994, Document # EPA 300-R-95-004, May 1995.

104. See *supra* text accompanying note 54. In 1993, the EPA entered into Superfund settlements for \$910 million. *Superfund-EPA Has Opportunities to Increase Recoveries of Cost*, GAO REPORT, Oct. 28, 1994.

105. Requirement that the defendant or respondent do some positive or particular thing such as complying with certain requirements of a regulatory or statutory nature.

106. See, *eg.*, Clean Water Act § 505(a), 33 U.S.C. § 1365(a) (1988) (providing penalties from violations are put into U.S. Treasury); Resource Conservation and Recovery Act § 7002(a), 42 U.S.C. § 6972(a)(2) (1988) (providing penalties from violations are put into U.S. Treasury).

107. U.S. ENVIRONMENTAL PROTECTION AGENCY, POLICY ON THE USE OF SUPPLEMENTAL ENVIRONMENTAL PROJECTS IN EPA SETTLEMENTS (1991). This policy applies to settlements of all civil judicial and administrative actions filed after the effective date of the policy and to all pending cases in which the government has not reached agreement in principle with the alleged violator on the specific terms of the SEP. *Id.*

undertake an environmentally beneficial project.¹⁰⁸ We have to be very careful how we use that money because of legal restraints.¹⁰⁹ In the past, the Agency received criticism from Congress, the Office of Management and Budget (OMB) and the General Accounting Office (GAO) for misusing penalty funds.

Our policy requires that there be a close link to the violation or to the facility, or in other words, there be a close link to the situation.¹¹⁰ We have done some very imaginative and creative things under this policy to benefit communities where a violating facility is located by getting facilities to go beyond what the law requires them to do. And that, in some cases, has resulted in tremendous reductions of pollution, beyond what the law has required.¹¹¹

MR. HERMAN: We will not get any budget help from our fines, I am afraid. In fact, the specific cut that Congress proposed for the Office of Enforcement, which when you combine Superfund enforcement with non-Superfund, is fifty-seven percent. So it is actually more than a fifty percent cut.¹¹² It is clearly the hardest hit that anybody in the Agency or office has taken.

MS. ASHE:¹¹³ I mentioned earlier that I am here on behalf of AT&T. AT&T is committed to the improvement of human health in the environment. One of the concerns I have, however, is that if the whole idea is to encourage partnerships and encourage cooperation, that by housing the OEJ in the OECA, you perhaps discourage participation of companies like ours. Has any thought been given to how you might go about encouraging the participation of other corporations?

MR. HERMAN: Our program is a balanced one. In addition to having what I consider an extremely vigorous and effective traditional enforcement program, our office has also undertaken, for the first time in the Agency's

108. Interim Revised EPA Supplemental Environmental Projects Policy Issued, 60 Fed. Reg. 24,856, part B (1995).

109. *Id.* at part C.

110. *See supra* text accompanying note 100.

111. In *United States v. Eastman Kodak Co.*, 853 F. Supp. 1454 (W.D.N.Y. 1994), the EPA and DOJ announced the settlement of a RCRA case against Eastman Kodak in Rochester, NY. The consent decree included a cash penalty of \$5 million, a \$12 million investment in six SEPs to reduce hazardous wastes in its 2,200 acre Kodak Park, and a compliance schedule. Ronald Begley, *Kodak Takes a \$17-million Hit*, CHEMICAL WEEK, October 19, 1994, at 10. The aggregate reduction in hazardous wastes as a result of the SEPs is expected to exceed 2.3 million pounds of pollutants by the year 2001. *Id.*

112. *Id.*

113. Ms. Gina Ashe is a representative of AT&T, appearing on behalf of John Borum, Vice President of Environment, Health and Safety.

history, some very creative compliance measures. Two months ago, we launched a program called the Environmental Leadership Program in which twelve companies were closely screened for their compliance records. These companies were determined to be leaders because they did not have compliance problems. We are working with them and with the states to try to determine exactly what has made them so successful in the environmental area, and then in some cases, to share the information with others in the industry. This would be a mentoring program. We are working with these companies to develop environmental auditing programs and environmental management programs, so that the public will also have information on how the companies are doing. In addition, we are setting up, if the funding is not taken away, four small business technical assistance centers. They would provide one-stop shopping centers for addressing questions smaller members of the regulated community have. We are also working on several of the other projects that the Administrator has going.¹¹⁴

It is an appropriate office for the OEJ to be in, and if people take the time to look at the whole record of the Office, and if the company has a commitment to environmental protection, there should be no conflict.

MS. ASHE: To be perfectly honest, I am less concerned with those of us who are here and more concerned with those of us who are not here. If the idea is to truly develop something that could result in a cooperative effort at creating a solution, then perhaps we need more than the three companies present to do that.

MR. HERMAN: That may be the case. What I see in this area is that this is a two-way street. The companies also have to come forward and show that they are making a commitment. We have had a lot of discussion lately about regulatory reform, regulatory relief, and other things.¹¹⁵ A lot of that is very valid. But it would ring more true if industry said, "We are going to be responsible for what we do. We are going to let the public know what we are doing." It has to be more than, "Trust us." Rather it

114. U.S. ENVIRONMENTAL PROTECTION AGENCY, ENVIRONMENTAL EQUITY REDUCING RISK FOR ALL COMMUNITIES (1992). Current projects include the Urban Environmental Initiative, Boston, MA (establishing bidirectional communication strategy between regulated community and agency); Chesapeake Bay Program (establishing multimedia environmental risk profiles for socioeconomic subgroups within study areas); Radon and Asbestos Awareness Program (targeting racial minority communities for effective communication of health risks associated with radon and asbestos). *Id.*

115. Bills designed to reform the regulatory process have been introduced in both the House of Representatives and the Senate. Among these are S. 343, 104th Cong., 1st Sess. (1995); S. 291 104th Cong., 1st Sess. (1995); S. 333 104th Cong., 1st Sess. (1995); H.R. 1022, 104th Cong., 1st Sess. (1995).

should be what the Administrator has been saying for two-and-a-half years: "Meet us half way and come in."

One of the things that is very distressing now is that efforts are underway that basically call for an unilateral disarmament on the part of the government.¹¹⁶ This group has the potential for being very constructive in terms of having people hear each other, in addition to the concrete planning suggestions that are being made. I am confident that your suggestions will also be taken into account.

DR. BULLARD:¹¹⁷ I noticed in your opening remarks that you indicated some of the efforts you had undertaken were in response to allegations that lower income communities were somehow treated differently in terms of fines.¹¹⁸ I assume you are referring to the 1992 National Law Journal article.¹¹⁹ However, the correct reading of that article is that race was the most potent factor for determining differential fines and clean-up standards.¹²⁰ So it was not just low-income people.

The first part of my question is if we are to address the whole question of environmental justice and enforcement, I think we need to understand and get a clear feeling as to your goals. Specifically, what new efforts will your office make in relation to the OEJ, given that the OEJ is now under your shop? The second part is the extent to which your office will vigorously pursue equal protection of all communities and the extent to which it will use Title VI¹²¹ in terms of your enforcement effort, and in terms of NEPA,¹²² how it is applied differentially in certain communities, and also, in terms of how you will use targeted enforcement for those areas that have a history of racial discrimination. Again, I say racial discrimination in this context in terms of Title VI because my understanding of low-income communities is that poor communities can be discriminated against. It may be immoral, unethical, and unfair, but it may not necessarily be illegal.

116. See *supra* text accompanying note 18 (discussing regulatory reforms sponsored by Congress).

117. *Supra* note 57.

118. See *supra* text accompanying note 100 (discussing EPA enforcement actions).

119. Marianne Lavelle and Marcia Coyle, *Unequal Protection: The Racial Divide in Environmental Law*, NAT'L L.J. 51, Sept. 21, 1992 (discussing involvement of race in environmental fines and clean-up standards).

120. *Id.* at 51-52.

121. Civil Rights Act of 1964, tit. VI, 42 U.S.C. § 2000d (1988) (prohibiting discrimination in federal programs). See discussion *infra* Title VI of the Civil Rights Act of 1964 section.

122. National Environmental Policy Act, 42 U.S.C. § 4321 (1988).

The other thing is, the extent to which your office can develop, in collaboration with the Enforcement Subcommittee¹²³ and the full NEJAC, a strategy to work with the regions in terms of enforcement in a collaborative way, as well as a strategy to work with the Department of Justice, Environment, and Civil Rights; a strategy that is coherent, so that it does not leave the left hand not knowing what the right hand is doing, and so that regions operating autonomously cannot interpret environmental justice in terms of enforcement any way they want to. These are the concerns I have.

MR. HERMAN: What I would like to do is not respond to all the concerns now, but respond at the next meeting after I have had a chance to talk to you. What I will say is that when looked at in perspective, at this point, we have the best relationship with the Department of Justice, the Environment and Natural Resources Division that has existed in probably twenty years. We have an excellent working relationship, while not perfect, with the regions, and the cohesiveness amongst the regions is better than has been before. Those are both critical relationships, and it will be for naught if we are not working together.

One of the primary things that we have done as a result of the reorganization is to try and enhance our data management systems and our targeting. I cannot even tell you how many different data systems the Agency has that do not talk to each other. How it happened, I do not know. All I know is we are trying to come to grips with it because information is the key to everything we do. Because of the reorganization, we are in a much stronger position to take the OEJ and work effectively with it.

MR. McDERMOTT:¹²⁴ Following up on the discussion about the EPA and industry meeting half-way, I just want to make sure that you and the Administrator know there are several initiatives underway, both individually and collectively, to do just that. Since we last met, our company adopted a series of provisions that will obligate us to do certain things in siting, community outreach, use of vendors, et cetera. But also the Business Network for Environmental Justice¹²⁵ which was created in the last year

123. Enforcement Subcommittee, *supra* note 100.

124. Director of Government Affairs, Waste Management, Inc. (WMX), Washington, D.C. and Oak Park, IL.

125. The National Association of Manufacturers and the Chemical Manufacturers Association in January 1995 established the Business Network for Environmental Justice. This group is composed of one hundred corporate and trade group members including American Petroleum Institute and Edison Electric Institute. The group is an expansion of a two year joint environmental justice task force.

has over 100 industry members and trade associations. The spirit of that organization is to find areas of agreement, mutual concern, and opportunities in which we can all work together—government, community groups, and industry. A lot has happened in the last twelve to sixteen months in terms of attitudes in industry from getting away from a reflexive reaction in some circles to a more interested and cooperative point of view.

MR. HERMAN: I would agree. I would also say that it is important for all of us to look at the companies or the sectors of the economy separately and not just in a stereotypical fashion. Different industries are doing different things. I think that is true, and some of the efforts you mentioned are really good.

MS. HERRERA: The one comment I have is the OEJ answers back whenever we have a situation, problem, or concern. We appreciate that because many times in this work of environmental “injustice,” we do not get that. We have always received that from my community and anybody that I have ever referred to that office. I hope that is the continuum.

The comment first is that to locate the OEJ in OECA seems suicidal to me. My question that I want answered next time is hopefully, we will not be put on a line-item, that all of a sudden we hear that the office was eradicated. In other words, it does not exist. I want the assurance that we are not going to get just blitzed off of the budget. How can you assure us?

MR. HERMAN: One, I cannot assure you of that. It could happen. I could not give you that assurance no matter where the office was placed, in the EPA or wherever. They have wiped out all sorts of programs at the EPA. We are in for a fifty to fifty-seven percent cut. There were other specific programs going to the protection of the Great Lakes and the Gulf of Mexico that were wiped out. Not only has Congress cut the OECA by fifty-seven percent, but they have specifically stated that with particular areas, with the remaining fifty percent of the money, we cannot enforce against accidental oil spills.¹²⁶ I do not know who is going to pay for that.

The Air Office or Office of Solid Waste and Emergency Response (OSWER) cannot promulgate rules with regard to toxic emissions from petroleum refineries.¹²⁷ I cannot give you that assurance because that is with Congress. They will decide whether or not to do those things. With regard to the Administrator’s decision to put the OEJ in the OECA, I think she is relying on, first of all, most of the discussions and deliberations that

126. H.R. 2099, 104th Cong., 1st Sess. (1995).

127. *Id.*

were held before the House voted last week to these draconian cuts.¹²⁸ In other words, it was not decided to put them there after the cuts were made. The Administrator was already headed in that direction. Secondly, every other office at the EPA has also taken a tremendous hit. The Superfund Office, OSWER took a half-a-billion dollar cut. So we will do the best we can, and my hope is that we will prove our effectiveness. The Administrator said last night that we are going to put up a very big fight on the budget. That is what I am going to be doing this afternoon so that we will get some of this taken out of the bill. If not in the House, certainly in the Senate.

DR. GAYLORD:¹²⁹ I want to remind you that without these line items added, my office would have been wiped out.

MS. THOMAS: I want to remind you, now that you have taken on this office, the tribal people do not look at environmental justice purely as a low-income racial issue. It is also a trust responsibility. Creative initiatives with state governments that help develop environmental capacity need to be extended to tribes.

MR. HERMAN: One of the things that we did this year was to set up a State, Federal, Tribal Enforcement Forum.¹³⁰ It includes two attorney generals, five state commissioners of the environment, myself, Lois Schiffer¹³¹ from the Justice Department, and a representative from a tribe in Minnesota. In fact, our last meeting was supposed to be held there. We are trying to include tribal representatives in parity with ourselves and the state commissioners and others, so that this tribe, the MilleLacs Tribe in Minnesota, actually has a working environmental enforcement program. They are on it, and they are going to bring on some more participants.

CHAIRMAN MOORE: One of the comments I wanted to make as we close is that Mr. Herman has been very accessible. We have had difficulties in the past with access to the OECA, and Mr. Herman has been very accessible.

128. *Id.*

129. Dr. Clarice E. Gaylord is the Director of the Office of Environmental Equity, EPA.

130. The Senior Environmental Enforcement and Compliance Forum is a jointly run group of senior level officials from regulatory agencies that meet to discuss Federal/State/Tribal environmental enforcement and compliance issues. The fourteen members of the Forum include state environmental commissioners, state attorneys general, tribal officials, and representatives of the DOJ and EPA.

131. Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice.

AFTERNOON SESSION

DR. GAYLORD: This afternoon we have the fortune of having probably the largest number of Assistant Administrators (AAs) I have ever seen, at the Council meeting this morning, to come to address the Environmental Justice Advisory Council.

We are going to start. Each AA will speak and give an overview of environmental justice initiatives within their program, as was requested by your Protocol Committee. And after each presentation, Chairman Moore will monitor questions that will be directed to the specific AAs.

OFFICE OF PREVENTION, PESTICIDES AND TOXIC SUBSTANCES

DR. GOLDMAN: I first want to introduce Dr. Bill Sanders.¹³² The Office of Prevention, Pesticides and Toxic Substance (OPPTS) is responsible for addressing issues of risks from pesticides and toxic chemicals. I will begin with The Office of Pesticide Program (OPP), in OPPTS. OPP is taking the Executive Order on Environmental Justice¹³³ and EPA's role in assessing the exposures and hazards from pesticides very seriously. The program understands that minority and poor communities are most in need of addressing the risks from pesticides. For pesticides, I will discuss two areas: food safety and worker protection.

One of the jobs we have in the Pesticides Program is determining what constitutes an acceptable level of pesticide residue on food. In the past, these determinations were always done based on the diet for the average individual in the population, which was basically the adult white individual. In 1993, there was a report from the National Academy of Sciences that recommended that EPA assess risks for children because the diet for children can be very different than the diet for adults.¹³⁴ It is a well known fact that a one-year-old and a two-year-old have different diets than adults. When we began to incorporate the data for children, we realized that there were also regional and ethnic differences in diet that were also important for some of the foods that we regulate. Today, based on the data that is available from the Department of Agriculture, we can look specifically at diets of infants and one-year-olds, and also children between

132. William Sanders is the director of the Office of Prevention, Pesticides and Toxic Substances (OPPTS).

133. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994).

134. National Resources Council, *Pesticides: Diets of Infants and Children*, NAT'L ACAD. PRESS (1993) (providing information on diets of children and adults).

the ages of two and five. We can also look specifically by region: northeast, northwest, southeast, southwest. Furthermore, we can do a cut between diets for whites and diets for non-whites, which consists mostly of blacks. On our wish list for the future is more detailed data for children, as well as food consumption statistics for hispanics and asians, to take into account their unique dietary patterns.

A result of this new process is exemplified by the case of Ethylenedisithiocarbamate (EBDC), a pesticide used on leafy greens. EPA found that in looking at the dietary risk for the average person in the country, the risks were not remarkable, and the levels were safe. When we looked at the risks by region, however, we found that particularly blacks in the southeast, but also whites in the southeast, bore most of the cancer risk for the country. Based on this assessment, we did take action to lower the tolerance. It was the first time we have ever set a food safety standard based on protecting a subpopulation in the country—a minority population. I believe that was a good precedent for the future. This upgrade in our system means that when we do new tolerance studies in the future, we will automatically consider risks to children and minorities.

The second area in pesticides that I know is of great concern for environmental justice is the protection of agricultural workers, pesticide applicators and farm workers. The Pesticide Worker Protection Rule¹³⁵ was put into place in 1992, with the implementation of that rule between 1993 and 1995.

We take our obligation to protect farm workers and their families very seriously. We know that families are affected, as well as the workers. We want to be very careful to make sure that we get adequate input from the whole farm worker community in implementing the rule. There have been some difficult issues with implementing the Worker Protection Rule, but there are also difficult political issues. In 1994, some of the farmer groups and the National Association of State Departments of Agriculture pressured Congress for either a delay in implementation or a roll back in the rule. This resulted in changes in how we implement the rule. By and large, these were common sense changes. I was, however, struck by the need to ensure that the voices of farm workers are heard, not just by EPA, but also by Congress, as policies are made in this area.

We would like to hold meetings on how the implementation is proceeding in parts of the country where there have been problems or successes with the rule. This will allow not only the farmers, but also the farm worker groups to tell us what is working and what is not. It would

135. Pesticide Worker Protection Rule, 40 C.F.R. § 156, 170 (1992).

also encourage more dialogue between those groups. We need to bring the discussion back home to where we have the problems, instead of just fighting it out in Washington.

The second program in OPPTS is the Office of Pollution Prevention and Toxics (OPPT). First, like the Office of Pesticides, OPPT's responsibilities not only include the general environment, but also the workplace and products. For OPPT, I will address Right-to-Know, lead poisoning prevention, and our environmental justice initiative.

The Office of Pollution Prevention and Toxics is also the only place the federal government can require testing for toxic effects of chemicals. It is where we have repositories of information, like the Toxic Release Inventory (TRI),¹³⁶ where companies report information about chemical releases under EPCRA, and adverse effects of chemicals under TSCA.

OPPT and OPP together have a tremendous amount of information. We need to make all of this information available to the public, not only the Toxic Release Inventory, but also the toxicology information. This is the general direction in which we are heading with Right to Know.

Lead poisoning prevention is a priority for this Committee. In 1995, EPA views lead as a core environmental justice issue in the United States. There is still a lot of exposure to the general population internationally, but the United States has dealt with much of the exposure to the general population. In the United States, there are still many people at risk, but the highest risks are among poor and minority communities and in the workplace. Concerning poor and minority communities, our largest challenge is with lead in housing and how to eliminate it before children are exposed.

The important role we at the EPA play is educating the public about the problem, providing tools for targeting the areas of highest risk, and establishing an infrastructure for abatement. We are now funding studies to find lower-cost ways of getting the lead out of housing. We are also working on rules to provide the framework for training and certifying people who can do lead-abatement work.

Along with Health and Human Services (HHS) and Housing and Urban Development (HUD), EPA has put in place an environmental justice initiative which integrates health and housing issues with the need to address the environmental goal of eliminating lead from housing, and doing it in a way that provides expertise, jobs, and infrastructure in the affected communities.

136. *Supra* note 34.

There are several other environmental justice initiatives in OPPT. We are developing geographic information system tools that provide more information about neighborhoods. We have completed the New River project—where for the first time ever we used our subpoena authorities under the Toxic Substance Control Act¹³⁷ to find out about wastes that were being disposed of in the New River along the California/Mexico border. The Environmental Justice Community Partnership Pilot projects are new partnerships between the federal government and communities that have the potential to assist in identifying and prioritizing their environmental concerns, as well as developing more expertise. This is not about the federal government coming in and doing something for communities, but rather about providing tools and information that will empower communities. With that, I would like to hear from all of you about your concerns.

CHAIRMAN MOORE: Thank you for the presentation. I think we are ready to open it up to hear questions or comments from Council members.

MS. THOMAS: Hello. I am from Alaska and work with Alaskan Native Tribes.

In your work in getting lead out of the home, in partnership with HUD and the HHS, I think you should also bring in the Bureau of Indian Affairs (BIA), because what we are finding in a lot of our native communities is that the history of lead in the community systems provided by the federal government, and even though the communities may be able to identify the problem, there are no resources to remove the lead from the buildings.

DR. GOLDMAN: That is a good point.

PARTICIPANT #1: You are talking about the removal of lead from the paint. My concern is also about the pipes. The pipes that were built years ago were made of lead, and those pipes have been deteriorating, and particles of that lead have contaminated some people's water. I have witnessed that when those living in housing developments turn on their water, they can see particles of rust in the water. You have to run the water for a few minutes before you can even get clear water. Something should be done to address this problem.

DR. GOLDMAN: You should know, however, that the particles you see are not the lead. You cannot see the lead!

PARTICIPANT #1: Yes, I know it is the rust from the pipes.

DR. GOLDMAN: But it is a problem.

137. 15 U.S.C. § 2605 (1994). This Act allows the EPA to screen chemicals used in manufacturing and commerce to detect any potentially dangerous products which should be subject to federal regulation. *Id.*

EPA OFFICE OF WATER STAFFER: Actually, the Office of Water has been criticized very heavily by some parties—certainly not by this group—for basing their lead in drinking water rule not just on what the lead is at the plant, but actually testing for lead in people's homes throughout the drinking water system. Despite the fact that this is much more expensive and difficult for water treatment plants, we have been requiring testing in communities at the tap for lead, as opposed to testing it in the water plants. We are trying to address this, and we are trying to make it even better. We do address it by our drinking water rules¹³⁸ to some extent. Perhaps you know of a way we can do it better? If so, I would be happy to hear about it.

PARTICIPANT #1: It is not only a concern with housing, businesses have the same problem. In fact, anyone with pipes over 40 years old has that problem.

DR. GOLDMAN: You have given me a good idea because we are working closely with HUD on the paint issues, and that is something we could raise in our interagency task force. We could raise the plumbing issue as well. It is not just pipes; there are other things about plumbing that have to do with lead exposure.

MR. TURRENTINE: Lynn, I think another issue I want to focus on is the certification process for training and for the abatement work. I think we have to be careful because the certification process for training providers is certainly an environmental justice issue. What we are talking about is the requisite number of hours for training. There are efforts in place to decrease the number of hours that are necessary for workers to be trained and certified.

Most of the energy and attention is going to public housing developments and most of this training is now directed toward residents of public housing. Yet at the same time, we are saying we want you to participate in the abatement of the hazards that are in your dwellings, however, we think it probably only requires about eight to twenty-four hours of training. Heretofore, we were looking at thirty-two to forty hours of training. All of a sudden, it is now being promulgated in some circles, and being pushed quite heavily by some industry sources, to cut the number of hours that are required. I know that the EPA has not issued their final standards on that as it relates to training. I just caution you that this is an environmental justice issue because we need to look at the population who is going to receive that training, not at the contractors who are going to do the work, but at the workers. Who is the worker going to be? Is that worker going

138. Drinking Water Rules, 59 Fed. Reg. 62,456 (1994).

to be adequately trained in the prevention of unnecessary exposure to the hazards that will not only kill him or her but also be transported home to further affect and impact the members of the community?

I think any of us who have ever looked at a construction site see some things going on there that are horrendous in terms of safe practices. I just want to caution that I see this as an environmental justice issue, and I hope the EPA will look at it in this vein.

DR. GOLDMAN: I think what we are trying to develop is a training requirement that will make absolutely certain that lead workers will protect the household where the abatement work is being done as well as protect themselves. At the same time, we do not want to raise the standards so high that we are restricting the jobs to people who already have certain other training. We have had some commentators who recommended we use people who already have some kind of industrial hygiene certification. They want to make it a professional operation. We realize that if we go too far with requirements, that these jobs will not be available to people in the community. If there is not a good reason for restricting these jobs to a certain set of people, we do not want to do so.

MR. TURRENTINE: I agree with you. I think, on the other hand, if in promulgating your standards for training you assume that you should come to the lead and asbestos training already having construction training, then you shut people out of the construction industry, and as a result, they cannot qualify for the additional training.

DR. GOLDMAN: We do not want to shut those people out either.

MR. TURRENTINE: I have heard many of the arguments being put forth by industry. They have said that the EPA should not be involved in the training of a construction labor worker, a construction carpenter, or a construction painter because they should already be trained in that; and we should only be training them in the safe practices of the abatement or the remediation or restoration. If we are looking at the population that we are talking about, however, in many instances they have not had training in anything. To deny them the necessary time in the certification process that it would take to train them in the basic, rudimentary skills of construction work prior to getting into the actual abatement or the renovation or the remediation would be a restriction.

CHAIRMAN MOORE: Thank you.

PARTICIPANT #1: I think the biggest problem that we have is the contractors. The contractors do not provide safety garments for the people to wear while abating an apartment. I think that is very important that they do, because if they do not, then it brings all that back out to the community.

I had a training program, and we trained people hands-on. We went into the apartments and trained them how to remove lead. I think our program was very successful. We certified our students. In fact, we have two of our students that are city inspectors, and the city has just hired four more of our students. In my community, a lot of people need jobs and this program has given them jobs. I think this is beneficial; it enhanced the community and everything else. I think this is a good program, and I would not talk it down in any way.

DR. GOLDMAN: Thank you.

CHAIRMAN MOORE: Thank you. Charles?

MR. LEE: I just wanted to make sure, before I ask my question, to note that this morning during the public comment period there was a lot of discussion around the worker protection standard and agricultural chemicals. I think we need to make sure we get back to that when Baldemar gets here.

Is there a view in OPPTS about what is cumulative risk, and is there a view about the approach you would take to develop a policy and research framework to address the issue?

DR. GOLDMAN: Yes, there definitely is. I think we really got kicked into gear by the National Resources Council report on pesticides in the diets of infants and children because they identified two types of cumulative risks they asked us to look at.¹³⁹ The first is that there may be exposures in many different ways to the same chemicals, and that traditionally in the pesticide program when we make decisions, we have looked at exposures one at a time. We look at, for example, for a given pesticide, the levels in food that people might have. We have not been traditionally looking at what the Office of Water has control over, which would be the levels that might be in the drinking water or some other route of exposure. We have a task force between my office and the Office of Water to work on how do we, in a consistent way, account for the exposures that our two offices are responsible for. By doing this together, we can come to a consistent approach where we can stand together and say, "Here is how we are accounting for the drinking water exposure; here is how they are accounting for the food exposure."

The second issue is more difficult, and it is that some of the pesticides and other chemicals are related to each other and the way that they act is similar in terms of the mechanism of toxicity. We look at chemicals one at a time, instead of looking at those chemicals as a family. A couple of years ago, in the Pesticide Program, we were able to look at the EBDC's as a family, instead of one at a time. The Office of Research and

139. *Supra* note 134.

Development is doing that with the dioxins and the dioxin-related compounds. In pesticides, we are now looking at the triazines, three herbicides that are on the market that act the same way, and are carcinogenic. These are the first steps toward addressing cumulative risks. There are many other families of chemicals that we have not begun to address this way yet. This is not easy; often we lack the science base that we need. It is a policy that we will attempt to do this where we can, and to work with the Office of Research and Development (ORD),¹⁴⁰ to develop the fundamental science that we need with the chemical families that we are not ready to regulate this way yet.

CHAIRMAN MOORE: Thank you, Lynn.

Our next presentation will be from the Office of Research and Development.

OFFICE OF RESEARCH AND DEVELOPMENT

ORD REPRESENTATIVE:¹⁴¹ Thank you. I appreciate the opportunity to be here. I applaud your efforts. In the Office of Research and Development (ORD),¹⁴² we are undergoing some major changes in the way we do business, the way we prioritize and fund our work. I would like to tell you about our work and relate it to the issue of environmental justice.

Our environmental justice research goals in the ORD are, quite simply put, to improve the scientific basis for informed decisionmaking and to provide information that will clarify or verify and help us prioritize environmental health risk issues to disproportionately affected communities. In the process, we wish to identify ways to reduce and to manage expeditiously the health risks. We do this in several ways. First, we are committed to incorporating environmental justice principles into the selection and

140. This office conducts research to identify potential health risks which may impact communities. The goal is to improve the scientific basis for decision making through environmental justice research.

141. Dr. Robert Hugget, Assistant Administrator, the EPA Office of Research and Development.

142. The EPA Office of Research and Development (ORD) promotes informed decision making by federal, state, tribal, and local governments, communities and individuals through environmental justice research. The ORD's environmental justice priorities include: (1) encouraging the incorporation of environmental justice principles into research and related activities; (2) conducting intramural research on human exposure, cumulative risk, and pollution prevention; and (3) supporting and promoting extramural environmental justice research and communication between scientists, policymakers and various socioeconomically disadvantaged communities.

performance of our research and related activities. We conduct a lot of research intramurally. There are over 2,000 people in the ORD. Five hundred of them have doctorates and five hundred and seven of them have masters degrees. We have very capable people. Also, we have over twelve laboratories. We conduct a lot of research. While planning and conducting the research we do within the ORD, we make sure that environmental justice issues are incorporated at every step.

In addition to the work we do intramurally, or in-house, we fund a lot of research on the outside. Over half of our extramural research and development budget goes to the outside scientific community—either to academia, industries, consulting firms, or private organizations. We want to make sure that in everything we do we consider environmental justice. We prioritize based on environmental justice as one of the major issues, and we make sure that environmental justice research and training is brought forth when we conduct outside research. It is difficult to delineate whether some of our research is more environmental justice or more for the general population. I will mention some of these. One has already been mentioned, that is cumulative risk research. This was an important area identified by the NEJAC Health and Research Subcommittee and we believe that to be true. This is an issue of great importance to the environmental justice community, and it is also very important to the general community at large.

Another example that crosses the line is research on exposure and pollution prevention. We do realize that there are general research topics that are of interest to you; however, we conduct research which is quite specific to environmental justice as well. For instance, we sponsor the NEJAC Health and Research Subcommittee. We did so for the first year, and we intend to do so in 1996. The Subcommittee was a full partner in developing our research strategy, and we look forward to continued cooperation. Also, we fund multi-disciplinary environmental education policy and research activities by the Center for Environmental Policy, Education, and Research at Clark University in Atlanta. These activities improve the enhancement of the research community, minority participants, and environmental education. Furthermore, we are hoping to increase development of environmental technologies through this funding.

We also support research by the Institute for Environmental Issues and Policy Assessments under the Center for Energy and Environmental Studies at Southern University in Baton Rouge. We conduct research on environmental technologies at this center; and we are providing better training for the student body, thereby enabling advancement in environmental fields. We fund research by the Center for Environmental Resource Management

at the University of Texas, El Paso. There, we are examining environmental issues concerning hazardous industries and hazardous waste facilities.

In October of 1995, we will be co-sponsoring the Symposium on Research and Education Contributing to Urban Environmental Justice Issues in Baltimore. Here, we hope, through our funding, to bring scientists, educators, and state and local governments together to consider environmental justice issues. We have a joint effort with the National Institutes of Medicine to study environmental justice research and education and health needs.

As well as supporting research on the outside, we have a study on the effects of Native American cooking practices on mercury concentrations in various fish species, using Lake Superior as a model.¹⁴³ As many of you know, mercury as an element is quite volatile, as well as in the organic phase or speciation as methyl mercury or dimethyl mercury. It will partition to different parts of the fish, and depending on the particular food habits and cooking mechanisms, one may have more or less of an exposure than the general population. We feel this is very important because it allows us to better study and estimate exposure to mercury, at least in this case. We are also working on a project to study the fish ingestion rates, patterns, and habits of Native Americans consuming fish from the Columbia River. Again, it is the same logic behind this study.

We are working in partnership with other agencies, both state and federal, in identifying and addressing environmental health issues on the U.S.-Mexico border. We are conducting a pilot program to develop methods, databases, and communication strategies for population-based human exposure in the lower Rio Grand Valley. We are conducting a study to determine the utility of geographic information systems (GIS) to investigate the demographics of populations surrounding industries that report on the Toxics Release Inventory (TRI).

So we have many projects going on, but I think in the future we will have more related to environmental justice. The reason is that we are now devising a research strategy protocol within the ORD that prioritizes our work based on risk. It reduces the uncertainty in risk so that we manage the high-risk areas. As we prioritize, we are discovering that some of our

143. ORD is studying the effects of American Indian cooking practices on mercury concentrations in various fish species prepared for consumption. The study measures the amount of mercury concentration before and after cooking fish from Lake Superior. Results of the study will be used to calculate a "cooking factor" that will make data on mercury concentrations in raw fish more useful for dietary exposure assessments.

research did not add much value, as far as helping decrease exposures and effects of hazardous chemicals or other stresses on our environment and people. So I think you will see in the future that we will be doing more work.

I have personally been involved in environmental justice issues before coming to the EPA, with such issues as subsistence fishing and the impact of such things as PCBs and kepone¹⁴⁴ on populations that not only require but demand fishing from some of our more polluted harbors because they have no other food source. So I am very concerned about it. I also have a responsibility to the Agency to help coordinate our science among and between the various offices and the ORD. I am hoping that this risk-based prioritization that we have come up with will have a very positive effect by helping us focus on the very high-risk issues of which you are very concerned. So with that, I will close and again congratulate you on your efforts.

DR. BULLARD: I chair the Subcommittee on Health and Research. I wanted to make a comment that these particular initiatives that you just gave are to be commended. We would also like to see the projects become programs, and that there is an effort to integrate environmental justice principles into the research agenda. We want to make sure that we do not have isolated projects that are funded and somehow given the label of environmental justice. Just because a project is funded out of HBCU¹⁴⁵ does not make it an environmental justice project. For example, the CEPA grant given to Clark Atlanta University was, if I am not mistaken, actually funded before the NEJAC got started.

Another thing is the extent to which we can integrate those principles into, for example, impacted communities and environmental justice researchers in designing Requests for Proposals (RFP). For example, the extent to which the ORD integrates environmental justice principles into that process, and the extent to which the peer-review panels also reflect the

144. Kepone is a pesticide that was mainly sold in Eastern Europe. The pesticide was discharged into the public water supply through municipal sewer systems giving rise to what has been called the "kepone incident." See William H. Roberts, *Deception, Self-Destruction, and Myth: Evaluating Long-term Environmental Settlements*, 29 U. RICH. L. REV. 567 (1995). See also CHRISTOPHER D. STONE, A SLAP ON THE WRIST FOR THE KEPONE MOB, CORPORATE VIOLENCE 121, 125 (Stuart L. Hills ed., 1987).

145. Historically, black colleges and Universities are the public and private institutions that were established to provide higher education for black students who were formally excluded from southern segregated white colleges and universities during much of American history. See 48 INDUS. & LAB. REL. REV. 482, 484 (Apr. 1995) (discussing role of black colleges and universities in American history).

populations that are out there in the scientific community that historically have been under represented in terms of these peer-review panels.

Also, in terms of looking at, examining, and making sure we are really assessing cumulative risk (as opposed to adding up risks and not really looking at the cumulative effects), assisting in designing strategies that will promote the numerous research agendas can get those research agendas that are out there. There is more than one research agenda to really develop and design those protocols that can really make a difference. This should remain whether it is evaluation of the methodologies we are currently using or whether it is designing new methodologies and protocols to really assess the problems and the needs that are out there when it comes to health and disease prevention and pollution prevention and risk elimination, as opposed to management.

ORD REPRESENTATIVE: I cannot argue with anything you have said. Indeed, Clark University was funded before the NEJAC, but it was a good idea then, and it is still now. You did not invent environmental justice. It was here a long time ago.

We have just expanded our extramural grants program from a meager twenty-two million dollars a year to forty-four million dollars this year, and in the 1996 budget, it is at eighty-five million dollars. We have also expanded our peer review. We had a problem this year that was rather unique. We had such a great response to our RFP's that we had trouble finding reviewers that did not submit. All of your points are well taken, and we would like to work with you in any way we can. In the selection of areas for research, this is an area that we could very well work on with the subcommittee, or any other committee, in making recommendations. We take input from the other offices, our own scientists, as well as the Science Advisory Board, et cetera.

MR. McDERMOTT: I have a two-part question. I served on the Health and Research Subcommittee last year with Dr. Bullard. When we began our conversations about research priority recommendations to the EPA and the ORD, we began with a great deal of discussion on cumulative and synergistic risk. In the course of our conversations, we also elevated pollution prevention to at least a co-equal status with cumulative risk analysis as a research priority. First, can you comment on anything that might be underway in that regard?

Second, there is another important element that came up through the meetings of the subcommittee. It was the importance of community-driven research. I wonder if you could both share your definition of community-driven research and any efforts that are being made to integrate that into your research methodology?

ORD REPRESENTATIVE: The cumulative risk issue is one that we are trying to tackle within the ORD, like many other agencies. We have sent for review to the Science Advisory Board something called the Dioxin Reassessment. This is the first time that we have ever tackled, or tried to tackle, parts of cumulative risks. It is one of the areas where you have substances that have a similar or like mode of action. You should not treat them separately, but rather in some combination. You mentioned synergy. Whether it is synergy or additive, or whether it is antagonistic, you should still consider them as a group.

In the case of the Dioxin Reassessment, we are considering the chlorinated dioxins, the chlorinated dibenzofurans and the chlorinated biphenyls that act through the mode of the A-H receptor in the cell. We are catching a lot of flack. There are a lot of people on the outside that say, "No, no, no, you cannot do this." But this is to be expected. There are more that say, "Yes, this is the right way to go." So we are going ahead on the cumulative risk area as fast as we can. I would like to see us accelerate this. I think as we learn more about biochemistry and physiology, we will move forward because that is what it takes—a fundamental understanding of biochemistry and physiology.

On the issue of pollution prevention, we have reorganized our twelve laboratories around three major national laboratories and a couple of centers. One of the national laboratories is the National Risk Management Laboratory. A part of its function is to investigate means of managing risk by pollution prevention. Avoiding the risk is better than cleaning the problem up afterwards. It is cheaper and smarter.

On community-based research, we have an initiative within the Agency on community-based environmental protection. This is sometimes called ecosystem-based, sometimes watershed-based, and sometimes place-based. But fundamentally, it is getting all of the stakeholders involved and looking at the problem as a whole during the research stage. We are in the process, and I will deliver on Friday to the regional administrators a plan for incorporating better science into this operation.

Right now, it is very interesting when you go out and talk about risk assessment to the outside community because it means different things to different people. This is not because there is so much disagreement out there, rather, it is because we sometimes use different words for the same thing. If we can, first of all, solve this problem and make sure we have a format for incorporating the science and relative risk into it, then all of the stakeholders will be much better off.

MS. DEEOHN FERRIS:¹⁴⁶ I have a question about the Agency for Toxic Substances and Disease Registry (ATSDR).¹⁴⁷ I am sure you are familiar with the panoply of complaints the community people have about the ATSDR's mission, and how it pursues its mission. My question is what is the extent to which the ORD works with ATSDR in establishing priorities. In other words, is there any relationship or leadership that the ORD is providing to the ATSDR to move them forward progressively so that they address some of these exposures that we are talking about in terms of Superfund communities?

ORD REPRESENTATIVE: Well, I am probably not the correct one to ask. We utilize research from ATSDR, Centers for Disease Control (CDC), National Institutes of Health (NIH), or any place we can get human health information. I am not aware if there is, at the start of the year, some kind of road map of who does what, when, and where. I am not aware of it, but that does not mean it does not exist.

I have made an effort personally, which is starting to bear fruit, to work closer with NIH in coordinating our research efforts. And as a matter of fact, we are now talking about a joint solicitation to the outside scientific community in something called endocrine disruptors, which are hormone inhibitors or implementers. This is a step in the right direction in which we can start working together as agencies, rather than independently. I am not sure I answered your question.

MS. FERRIS: You did not really answer my question. I suppose there was a spike to the question, which is to say that it might be useful for the EPA to provide some leadership in terms of ameliorating the lack of direction people perceive regarding Agency for Toxic Substances and Disease Registry (ATSDR) by getting the Agency on the right track and providing the sort of vanguard leadership that is necessary to address what is going on with communities.

CHAIRMAN MOORE: Thank you. Our next presenter will be Jon Cannon. Mr. Cannon is the General Counsel at the EPA.

146. Executive Director, Washington Office on Environmental Justice.

147. The ATSDR is responsible for: (1) compiling a ranked list of one hundred hazardous substances commonly found at Superfund sites, (2) creating toxicological profiles of those substances based on existing information, and (3) performing health assessments of all sites on the National Priorities List. For an overview of ATSDR's activities see Johnson, *Health Effects of Hazardous Waste: The Expanding Functions of the Agency for Toxic Substances and Disease Registry*, 18 ENVTL. L. REP. (Envtl. L. Inst.) 10,132 (1988) and Johnson, *Implementation of Superfund's Health-Related Provisions by the Agency for Toxic Substances and Disease Registry*, 20 ENVTL. L. REP. (Envtl. L. Inst.) 10,277 (1990).

OFFICE OF THE GENERAL COUNSEL

MR. CANNON:¹⁴⁸ Thank you very much. I know that Jeannie Nelson¹⁴⁹ was deeply involved in environmental justice activities, and I want to follow in her footsteps and carry on the tradition that she has established at the Office of the General Counsel. I will count on you all to help me along the way so that I can give you and the Agency the support needed to carry out the Environmental Justice Strategy.¹⁵⁰

I have been on the job about two weeks, so there is a lot I do not know. But I want to provide a brief outline of our major areas of activity, and then I am anxious to hear from you about what we are doing, what you expect from us, and how you think we can best help the Agency and the environmental justice community with the hard work ahead. There are three general areas that I have been made aware of in my early briefings and am anxious to be active in. One is obviously the Title VI program.¹⁵¹ I remember that, soon after the new administration came into office, there was a large meeting at the Department of Justice about where environmental justice might go. One of the points made was where is the Title VI program. There was not one, essentially, for environmental issues.

Since that time, we have made some progress in getting the Title VI program up and running. As I understand it, about twenty-three petitions have come in;¹⁵² twelve of those are under active investigation right now, which is, I think, a strong indication of where we hope to go with the program. And I would be interested in hearing your thoughts about that. Beyond assisting the Office of Civil Rights (OCR) and the Title VI program, the General Counsel's office has an obligation to the Agency to provide legal advice, and that extends to rulemakings, permit proceedings, and so forth. As the EPA's Environmental Justice Strategy indicates, we

148. Jonathon Z. Cannon, General Counsel, EPA. Previously, Mr. Cannon has served in many positions at EPA, including Assistant Administrator of the Office of Administration and Resource Management; Special Advisor to the Administrator; Acting Deputy Administrator; and Director of the Gulf of Mexico Program. He has also been a partner in the law firm of Beveridge & Diamond.

149. Jean C. Nelson was the General Counsel at EPA before Mr. Cannon. She currently is Special Projects Counselor to Administrator Carol Browner.

150. OFFICE OF ENVIRONMENTAL JUSTICE, U.S. ENVIRONMENTAL PROTECTION AGENCY, ENVIRONMENTAL JUSTICE STRATEGY: EXECUTIVE ORDER 12898, EPA-200-R-95-002 (EPA, Apr. 1995).

151. Civil Rights Act of 1964, 42 U.S.C. § 2000d (1988).

152. See *infra* note 296 (noting current number of petitions filed at EPA).

are committed to the task of ensuring that environmental justice concerns are properly reflected in the Agency's rulemakings and permit proceedings.

Finally, our role includes responding to the special legal events that occur, and those occur with some frequency. A good example is the Supreme Court's recent decision in the *Adarand* case.¹⁵³ Under the Court's analysis, affirmative action programs carried out by the government are now subject to stricter scrutiny. We are working with the Department of Justice to inventory the Agency's programs as part of a review of affirmative action programs that is being conducted government-wide. The review comes in the context of the President's very strong support for affirmative action,¹⁵⁴ which we welcomed. We are going to continue our affirmative action efforts within the Agency pending this further review.

So with that brief introduction, I invite your comments, questions, and thoughts about how we can be helpful to you.

CHAIRMAN MOORE: Thank you, Jon.

MR. RAY:¹⁵⁵ In this area, strict interpretations of the law will not foster this movement. To obtain justice for these communities, we need more innovative interpretations of the law and the regulations. I have seen a few examples of this during my time at the Agency. In many cases, the interpretations of the OGC have been a retardant factor for some of the things that we wanted done. I cannot forget how many times I have been told by an enforcement attorney that we could not do it one way. We went ahead and did it anyway, and we came up with a good result. So Jon, we have worked together before, and I would just urge you to light a fire under your office and get something done to help these communities.

MR. CANNON: This is very interesting. I would be interested in other people's responses. For example, recently in the *Chemical Waste Management* case,¹⁵⁶ the Environmental Appeals Board interpreted the Resource Conservation and Recovery Act (RCRA)¹⁵⁷ as contemplating consideration of environmental justice concerns, at least to the extent that they affected the environment and public health. The Appeals Board did not go as far as petitioners would have liked by including economic disparities as a required consideration under RCRA. It held that the RCRA

153. *Adarand Constructors, Inc. v. Peña*, 115 S. Ct. 2097 (1995) (holding that minority set aside program would be judged under strict scrutiny standard).

154. John F. Harris, *Clinton Avows Support for Affirmative Action*, WASH. POST, July 20, 1995, at A1.

155. *Supra* note 39.

156. *In re: Chemical Waste Management of Ind., Inc.*, RCRA Appeal Nos. 95-2 and 95-3, 1995 WL 395962 (E.A.B. June 29, 1995).

157. 42 U.S.C. §§ 6901-92 (1988).

authority stopped at the line where environment and public health were at issue.¹⁵⁸ The Board also held that the public participation procedures were an important component of addressing environmental justice concerns and that the regions, in reviewing permits for siting and facilities, should make special efforts, where environmental justice concerns were present, to ensure full participation and venting of issues within the community. That is a very modest step by some people's standards, but it is certainly a step forward as far as the Agency is concerned. I will work with the program offices to try to get this worked into the fabric of the Agency's permitting activity. That is a step forward, and maybe that is the kind of thing that Arthur is talking about.

MS. FERRIS: Is this one of the actions where the EPA exempted itself from the requirements of the National Environmental Policy Act of 1969 (NEPA)?¹⁵⁹ There was a determination by the Appeals Board that economic considerations could not necessarily be contemplated in this orbit.

If this was an instance where NEPA would have applied had the EPA not exempted itself, then economic considerations easily could have been evaluated as part of the decision-making process. We have pointed out in the Enforcement Subcommittee on innumerable occasions that the EPA's self-exemption from the requirements of NEPA opens a huge loophole, wherein ordinarily these kinds of considerations could be factored in, and hopefully determinations would result in more favorable outcomes to the communities.

MR. CANNON: The NEPA question is a very interesting one. I do not have a very good answer for you right now, but I will take that back and look at it. Generally, I know the EPA has contended and contended successfully that its permitting activities and so forth are exempt from the NEPA process because there is basically a substantial equivalence of process there. But that is an interesting question and worth taking a look at.

PROFESSOR LAZARUS:¹⁶⁰ I just have a couple of comments and then a question. First, you mentioned that you had received twenty-three Title VI petitions and twelve of them are under active consideration.¹⁶¹ Administrator Browner mentioned before you were here that EPA had received several petitions for relief from certain worker pesticide rules, and we should not judge the Agency until they had acted on those petitions. The same is true in this case. I do not think the fact that you have received

158. *Chemical Waste Management*, 1995 WL 395962 at 6 and 9.

159. 42 U.S.C. §§ 4331-35 (1988).

160. *Supra* note 40.

161. *See infra* note 296.

the petitions and are considering them means very much at all. Other people have filed petitions with you. Once you act on the petitions, then we can judge how the Agency is doing.

MR. CANNON: That is a fair point.

PROFESSOR LAZARUS: The second one has to do with obligations versus responsibilities. I have a copy of the Appeals Board decision you mentioned,¹⁶² and in some ways, it is a positive step. On the other hand, let me just quickly read one line from it so people will understand the limitations of the decision. The Appeals Board concludes that "if a permit applicant meets the requirements of RCRA and its implementing regulations, the Agency must issue the permit, regardless of the racial or socioeconomic composition of the surrounding community and regardless of the economic effect of the facility on the surrounding community."¹⁶³ In this decision, there may be something positive to read. However, the overall thrust of this opinion is not at all positive with respect to the work of this Advisory Council.

Another concern has to do with the role of the General Counsel's office in coming up with standards and definitions applicable to environmental justice. On the NEJAC Enforcement Subcommittee, we have often heard that the inability of the Agency to come to closure on some standards and definitions associated with environmental justice has really served as a logjam. This has prevented the Agency from implementing many of the programs that this Federal Advisory Committee¹⁶⁴ is concerned with. We have heard that the focal point of that logjam is the Office of the General Counsel.

I would like to know the status of the standards and definitions, and whether there is a timetable for when the OGC plans to release them.

MR. CANNON: Is there a subcommittee at work on the standards and definitions of the NEJAC?

DR. GAYLORD: You are referring to the Interagency Task Force.

EPA STAFFER: As a matter of fact, it is about to go through interagency review and public comment at the beginning of August, 1995.

PROFESSOR LAZARUS: My last comment concerns the Environmental Appeals Board. One thing I would urge the OGC to do is to distinguish between what is required by Title VI and what is authorized by Title VI. Sometimes the Agency takes a very defensive attitude and tends to read its abilities very narrowly, confusing the two inquiries. What the

162. *Chemical Waste Management*, 1995 WL 395962.

163. *Id.* at 5.

164. Federal Advisory Committee Act, 5 U.S.C. §§ 1-15 (1988).

Agency can do under Title VI may be far broader than what the Agency is required to do by Title VI.

MR. CANNON: That is a good point. I do not dispute your reading of the Environmental Appeals Board decision.¹⁶⁵ It is ambiguous on a lot of points, but it does create room for us to begin to work in. Hopefully, we will be able to take advantage of that.

MR. JOHN O'LEARY:¹⁶⁶ This comment is more for the future than it is for today, because I know that the decision we have just been talking about came down on June 29 of this year. But, I hope that for those who are not lawyers on the Advisory Council, the EPA will make a copy of that decision while we are here and make sure that all members of the Advisory Council have it. I have had a chance to read it and just want to make a couple of comments about it.

This is the first Environmental Appeals Board decision dealing with the Executive Order,¹⁶⁷ so this is worth noting. Although the Executive Order specifies that there is no right of judicial review of Agency decisions created by the Order, the Board was clear to point out that the Environmental Appeals Board in its ordinary functioning has the right to review decisions of the EPA regions. That was really the jurisdictional basis for this.

Jon, this point concerns your comment. Looking down the road, what kind of guidance will your office or others give to the regions about what the substantive issues are here? I tend to agree with Richard Lazarus;¹⁶⁸ I think this decision is less at one end of the spectrum than it is somewhere in the middle in terms of what its implications for the future are. As I read it, the omnibus clause of RCRA¹⁶⁹ is interpreted by this decision as including environmental justice issues in RCRA permitting insofar as they deal with health and environmental issues. I think the Board says something to the effect that the authority was there whether there was a disparate impact or not. But how that reasoning is going to apply to future RCRA permitting in terms of how applicants deal with permits and how the regions deal with them is very much an open question. I hope when we get

165. *See supra* note 156.

166. Attorney at Pierce, Atwood & Scribner in Portland, Maine. Mr. O'Leary is a member of the NEJAC Public Participation and Accountability Subcommittee. He is also Co-Chair of the American Bar Association Environmental Litigation Section.

167. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994).

168. *Supra* p. 689.

169. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-92 (1988).

together again next time, just as with Title VI petitions, we will have some ability to comment on what has happened.

I suppose, finally, it is possible that there may be further review in the courts or elsewhere of this decision. But it is an important decision; it comes down within a year or so of the Executive Order. I think it is worth our looking at, and your office is helping us think about what it means as a practical matter for environmental justice in the future.

MR. CANNON: I appreciate that.

CHAIRMAN MOORE: We appreciate your time.

MR. CANNON: Thank you.

CHAIRMAN MOORE: Our next presentation will be from the Office of Air and Radiation. Welcome.

OFFICE OF AIR AND RADIATION

EPA OAR REPRESENTATIVE: I am in charge of the Clean Air Act¹⁷⁰ and related activities for Air and Radiation at the EPA.¹⁷¹ The Office of Air and Radiation is one of the four main program offices of the EPA—Air, Water, Toxics and Pesticides, and Solid Waste.¹⁷²

The Air Program is in some respects in a different category than the other program offices because our statute was reauthorized in 1990.¹⁷³ This reauthorization gave us a number of new enforcement tools, as well as a number of very challenging deadlines and mandatory responsibilities to carry out. We believe the Clean Air Act¹⁷⁴ has good potential to be used as a tool for improving environmental justice in this country, not only because of its over arching goals of attaining healthy air for all Americans, but because of the ways in which it allows us to look at health-based

170. 42 U.S.C. §§ 7401-7706 (1988).

171. The Office of Air and Radiation is responsible for the management of the following programs: Program policy development and evaluation, environmental and pollution sources, standards development, enforcement of standards, program policy guidance and overview, technical support or conduct of compliance activities and evaluation of regional air and radiation program activities, development of programs for technical assistance and technology transfer, and selected demonstration programs. 40 C.F.R. § 1.41 (1995). The Office of Air and Radiation also oversees the Office of Mobile Sources, the Office of Air Quality Planning and Standards, and the Office of Radiation Programs. 40 C.F.R. § 1.41(a)-(c) (1995).

172. The four main program offices of the EPA are: the Office of Air and Radiation, the Office of Water, the Office of Prevention, Pesticides and Toxic Substances, and the Office of Solid Waste and Emergency Response. 40 C.F.R. §§ 1.41, 1.49, 1.43, 1.47 (1995).

173. 42 U.S.C. §§ 7401-7706 (1988).

174. 42 U.S.C. §§ 7401-7706 (1988).

standards in terms of risk. This gives us the opportunity to look at decisions about siting facilities with respect to the impact they will have on particular communities.

Our overall vision of how we are to carry out our mandate in this area, from the Executive Order¹⁷⁵ and from the Agency's policy,¹⁷⁶ is that we are to look at our activities from the point of view of actually working to decrease the overall burden of air pollution in communities that are most affected by it. Mainly, this means our urban areas. We have a number of specific projects, and we have submitted them in writing. I am not going to read them all to you because I think it would put you to sleep. I do want to portray them as the major areas that we believe we need to work on.

The first major area is improving the assessment methodology in this area so that we can better characterize which populations are being affected by pollutants. This can be accomplished through mapping, overlaying impacts of pollutants, and by developing a better understanding of how these pollutants interact in the real world. The second major area is expanding our outreach and communications efforts to include better interaction with the communities where major sites are involved. I think that this is primarily characterized by our work with our four cooperating educational institutions, but also by developing a risk communications model. Within a number of our programs, especially the voluntary programs such as the Radon and Indoor Air Program, better use of public information materials and public service advertising that is developed in cooperation with organizations that actually work in the communities where these programs are being undertaken, has proven successful.

We are, through Headquarters, trying to support and enhance regional activities that focus on environmental justice. Several other people have already mentioned the Mexico-border activities. We in the Air Program are not only involved in cooperative monitoring sites between the U.S. and Mexico that primarily collect data, but we are also supporting an effort, which we now have authorized by the State Department, to negotiate a joint air pollution control district for the El Paso/Ciudad Juárez area. This effort would be a bi-national effort to reduce the overall burden of air pollu-

175. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994).

176. See ENVIRONMENTAL JUSTICE, 1994 ANNUAL REPORT, FOCUSING ON ENVIRONMENT FOR ALL PEOPLE (1995) (highlighting EPA policy, programs and activities developed to address environmental justice issues).

tion.¹⁷⁷ Our support for the Mickey Leland Center in Texas,¹⁷⁸ which works on air toxics issues, is also subsumed under this activity.

The last of the four main areas that I would single out is the relationship between the Air Program and the four adopted educational institutions that we have.¹⁷⁹ Of those, the strongest and the most active relationships are with Northern Arizona University and North Carolina A&T. Because we have a large facility in North Carolina, we have been able to develop relationships with both faculty and students, and we have provided some career opportunities. We see this as critical for our long term efforts to improve the Agency's overall track record on environmental justice.

Finally, I would be remiss if I did not flag a couple of the major activities that I am currently involved with. I spend most of my time preparing for, responding to, and then following up on, congressional oversight hearings on the Clean Air Act, both in the efforts to amend the Clean Air Act and in activities on appropriations in Congress.¹⁸⁰ I would say that the largest single target, or single area of targets, of congressional budget cutting, are in the activities that we are involved in. These are the areas which are of most interest to low-income communities and communities of color. Particularly, I cite to the Air Toxics Program¹⁸¹ and the use of technology standards to reduce risk without regard to cost.

I do not know how many of you noticed the story in today's Times about the firing of Dave Freeman from the New York Power Authority,¹⁸² but Dave had worked with the Natural Resources Defense Council (NRDC)

177. See UNITED STATES DEPARTMENT OF STATE, Dispatch, Mar. 2, 1992 (outlining bi-national environmental efforts)(citing ENVIRONMENTAL PLAN FACT SHEET, Feb. 25, 1992, White House Press Office).

178. The Mickey Leland Center on World Hunger and Peace is located at Texas Southern University in Houston, Texas. The Center operates a National Urban Air Toxics Research Center.

179. Four main areas identified by the Office of Air and Radiation as essential for the enhancement of environmental justice are: (1) improving assessment methodology, (2) expanding outreach and communications efforts, (3) supporting and enhancing regional activities focusing on environmental justice, and (4) developing relationships with educational institutions.

180. H.R. 2099, 104th Cong., 1st Sess. (1995).

181. 40 C.F.R. § 372 (1995). Section 372 is entitled "Toxic Chemical Release Reporting: Community Right To Know." It sets forth the requirements for the submission of information to the EPA relating to the release of toxic chemicals from facilities that release such chemicals. *Id.* The information collected by the program is intended to inform the general public and the communities that are located near such facilities about the release of toxic chemicals. 40 C.F.R. § 372.1 (1995).

182. *State Power Agency to Name Leader*, N.Y. TIMES, July 25, 1995, at B4.

and others on a program in which the state was going to pay for the weatherization of homes and for the purchase of new refrigerators for installment in low-income, publicly-owned housing in New York City. This is a way of not only getting better refrigerators into the homes of people with low-incomes, but also of saving money for the utility companies and preventing emissions into the atmosphere.

This is a program in which the EPA has been directly involved through the green programs in the Agency. These are the kinds of programs that, for reasons I absolutely cannot understand, are being singled out for zeroing out by Congress under the guise that they are somehow corporate welfare, when in fact they are enabling companies to make money, while providing real services to people in communities who would not be getting them otherwise.

Another area which may be even more significant in terms of its long-term impact on air quality is the targeting in the highway legislation and in the Department of Transportation (DOT) funding of the CMAT Program. The CMAT Program is the sole source of funds targeted towards areas that are impacted by air pollution. It's funds have been used for things like the conversion of heavy-duty, dirty diesel buses in inner-city areas to buses burning natural gas or methanol. Those are the kinds of programs that Congress is going after in favor of so-called infrastructure, meaning building more highways.

A great deal of the time that I spend developing strategy and working in coalitions for the Air Program is dedicated to trying to find ways that we can save and restore some of these programs. I believe the cuts are directly anti-urban in their focus. Our program is one that—even though we also aim to protect visibility and vistas over the Grand Canyons as one of our programs—is primarily targeted at cities where we have the bulk of our low-income communities and communities of color.

That is a general overview of the initiatives that we are working on in the Air Program, and I, like all my predecessors, welcome your comments and questions right now and also extend an invitation to you to follow-up individually or as a group.

CHAIRMAN MOORE: Thank you. Art?

MR. RAY: I would like to say that there are a couple of things where I do not think the Agency, and even my state agency,¹⁸³ is doing a good job of getting the message out to the public. There are two areas that I would like to flag and get your comments on. Number one, and there have been a number of articles about this, is the use of these open-market trading

183. State of Maryland, Department of the Environment.

programs and whether those trading programs with allowances for SO₂ or NOX are really just placing some of the benefit to utilities on the backs of poorer and more urban communities.¹⁸⁴ I do not think there has been an effective effort to explain to those communities exactly why that is not the case, if in fact it is not the case.

The second area I would like to flag is the Vehicle Emissions Program. There is a lot of resentment among the public as to these emissions testing programs, because when you start interfering with the American public's love affair with cars in any way, shape, or form, regardless of where they are, these Americans are going to rebel. I think there is a need to get out there more to try and explain how these things fit into a comprehensive plan for a better environment.

EPA OAR REPRESENTATIVE: Thank you. Let me just say a couple of things, first of all, concerning trading programs. Trading programs can be designed in ways that take account of localized impacts or not, and the devil is really in the details. For example, in the Acid Rain Program, which is part of the Clean Air Act of 1990,¹⁸⁵ there was no attention paid to localized impacts. Each utility gets its allowances and they buy and sell them anywhere they want to, regardless of the impacts the sales will have on the environment.¹⁸⁶

MR. RAY: There is no public comment?

EPA OAR REPRESENTATIVE: There is no public comment. There is no public involvement. That is exactly right.

In developing a trading rule, this so-called "open-market rule," the concept was that people could create credits by making reductions over and above the levels that were required by the law, going beyond the law, and then, with a ten percent discount to the public, they could sell off the excess credits to people who needed them for temporary compliance purposes.

We wrote in a feature that required notification on toxics and we ran into a great deal of static on that issue from the Office of Management and Budget (OMB). Because this is a Proposed Rulemaking, it is going to be out for public comment, and we would welcome comment from the public and

184. George Lobsenz, *EPA Looks to Jump Start Emissions Trading System*, ENERGY DAILY, Aug. 10, 1995; *EPA Proposes Rule Allowing States to Trade Smog for Ozone Credits*, ENERGY REPORT, Aug. 7, 1995; *Rule Would Provide Template For States to Create Open-Market Trading Systems*, STATE ENVTL. DAILY (BNA), Mar. 7, 1995.

185. 42 U.S.C. § 7403(j) (1988).

186. 40 C.F.R. § 72 (1994). Section 72 outlines the Acid Rain Program generally. The specifics of the allowance trading system of the Acid Rain Program are contained in 40 C.F.R. § 73 (1995).

this group regarding the necessity of maintaining such a provision. The people on the economic side think it is a terrible idea because it will create what they call the "Scarlet A." That is, if you are forced to notify the public and the community that you have bought some toxics, that may interfere with the market. In response, we have said that we think that is a risk that we need to take.

CHAIRMAN MOORE: Thank you. Ms. Thomas?

MS. THOMAS: I did not hear any mention about your Indoor Air Program¹⁸⁷ and how it is growing. I would invite the EPA to join partnerships with HUD and BIA and the Indian Health Service to improve indoor air quality, because I know in Alaska we are seeing alarming increases in tuberculosis.¹⁸⁸ Again, we tried to address that issue with tight, energy-efficient homes, but then with large families living in one home, we also introduce a health risk.

EPA OAR REPRESENTATIVE: That is absolutely right, and as you well know, with most people spending more time indoors than they do outdoors, we are focusing larger amounts of our attention, from a research and public education point of view, on the issue of indoor air quality. We have no legal authority in this area whatsoever, other than the duty to educate the public. We are getting creamed right now in appropriations on spending any money in this area whatsoever.¹⁸⁹

It is mainly coming at us, we believe, as a result of the tobacco industry, which recently tried to block the publication of a document that we produced that was simply a review of the literature on environmental tobacco smoke. They actually sued us to try to prevent us from publishing the report.¹⁹⁰ That did not succeed, but they are now trying to prevent us from doing anything to build even purely voluntary programs based on that type of information. In any event, we are committed to moving forward

187. The Office of Indoor Air and Radiation (ORIA) is a sub-office within the EPA's Office of Air and Radiation (OAR). ENVIRONMENTAL JUSTICE, 1994 ANNUAL REPORT, FOCUSING ON ENVIRONMENTAL PROTECTION FOR ALL PEOPLE 32 (1995). ORIA works to develop national standards for the protection of public health and the environment during the clean-up of sites contaminated by radionuclides. *Id.* ORIA also develops waste management standards for Low Level Radioactive Waste (LLRW). *Id.*

188. See MORBIDITY AND MORTALITY WEEKLY REPORT, U.S. DEP'T OF HEALTH AND HUMAN SERVICES, Vol. 44, No. 20, May 26, 1995, at 387 (noting Alaska experienced 63.2% increase in reported cases of tuberculosis between 1992 and 1994).

189. H.R. 2099, 104th Cong., 1st Sess. (1995).

190. *Flue-Cured Tobacco Co-op. Stabilization Corp. v. EPA*, 857 F. Supp. 1137 (M.D.N.C. 1995).

to put out the information that we have. My only regret is we may be doing it by putting out stacks of publications.

CHAIRMAN MOORE: Thank you.

Do we have any closing comments or questions? Ms. Ferris?

MS. FERRIS: I would like to follow up on Mr. Ray's question¹⁹¹ regarding market incentives, permit trading, and emissions trading. At least seven or eight months ago at a NEJAC meeting, we talked about the issue of an emissions trading market. One of the questions that I recall was whether or not the EPA was doing any impact-related research on the consequences of trading in communities of color, particularly urban communities and low-income areas.

I do not ever remember getting a response from anyone, and you are probably not the right person to ask. It should have been the research and development person, but perhaps by serendipity you might know something about whether or not Research Triangle Park¹⁹² or some other EPA-affiliated entity is doing anything about the impact relationship of these types of trading programs.

EPA OAR REPRESENTATIVE: So far, what we have had in trading programs was the Lead Phase-down, which already happened, and that was for lead and fuel. There is the Acid Rain Trading Program.¹⁹³ Then there are new programs that are just getting underway, including the Reclaim Program at the South Coast Air Quality Management District (SCAQMD)—which at the moment is only trading in nitrogen oxides, which are primarily a concern as a precursor of ozone and as a regional air pollutant, as opposed to a local air pollutant. The other types of trading, such as that in Volatile Organic Compounds (VOC's) or organic compounds, which is where you get into toxic trading potential, are really just in the development phase right now. The SCAQMD is trying to expand the Reclaim Program to include VOC's, and there has also been discussion about whether the Open Market Trading Rule could be used for VOC's. Right now, however, it is primarily intended and designed for nitrogen oxides.

We are still a little bit in the theoretical stage, rather than the practical stage. In our dialogue with the SCAQMD and in Los Angeles with the District out there, however, we have been talking about what kind of research and assessment—not just long-term research, but ongoing

191. *Supra* p. 695.

192. Research Triangle Park is a major EPA research facility in North Carolina.

193. 40 C.F.R. § 73 (1995). *See* discussion *supra* p. 695 (discussing and defining Acid Rain Program).

assessment—would have to be built into that program if they do extend it to VOC's. We have not reached closure on it yet, but I think you are absolutely right to focus on it, because if we do not obtain actual information about what happens, we are just going to be debating back and forth and will not be in a position to reach any conclusions. It will just be the economists saying, "no, it will not," and other people saying, "yes, it will," without any real supportive data.

I guess in a sense, we are looking at some very limited potential experiments, but hopefully ones done in a carefully enough controlled way so that if you start to see a build-up in one area, there is the potential to cut it short. That is really what we are trying to design into the program.

MS. FERRIS: I believe some very noteworthy medical journals have recently issued new astonishing results related to particulate exposure and the high mortality rates that we, or at least certain scientists, have previously underestimated.

What I am really concerned about in the market incentives area, or this trading area, is that we do not create air Superfunds down along the line, and that we understand early on what is going on before we unleash these programs unabated. Furthermore, we need to implement a system with checks and balances.

EPA OAR REPRESENTATIVE: I agree with you about looking at any new program from the perspective of what the unintended consequences might be. We are increasingly finding that efforts that we made to control pollution in one area may have contributed to, or at least made it harder, to clean up pollution in some other area. One area that has just recently been brought to my attention is the issue about particle controls on heavy-duty diesel fuel, where some of the technology that has been designed to reduce the overall particles may have had the adverse effect of increasing the production of very fine sub-microscopic particles, not even light-scattering-type of particles. This is an area where we are going to try to do some very quick research to find out if that is true. The smoking gun is increasingly pointing towards the very fine particles, which are combustion created. If that is true, we are going to have to go back and look at some of the technology issues again.

MS. FERRIS: Thank you.

CHAIRMAN MOORE: Okay. Our next presenters will be Tim Fields, and Charles Lee, making a joint presentation.

OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

MR. LEE:¹⁹⁴ I want to begin by saying that this report is very indicative and very important due to the kind of partnership and commitment that the Office of Solid Waste and Emergency Response (OSWER) has been making to environmental justice and in the support of the NEJAC's work.¹⁹⁵

I begin by thanking Mr. Elliott Laws, who is the Assistant Administrator of OSWER; Mr. Timothy Fields, Deputy Assistant Administrator of OSWER; and, other OSWER staff. On June 13, 1995 in Washington, D.C., Mr. Fields invited me to participate with him in the unveiling of OSWER's Environmental Justice Action Agenda. I think you will see that this is actually the fourth document, which includes the Environmental Justice Action Agenda, Environmental Justice Accomplishments Report, Executive Summary, and a Waste Programs Environmental Justice Accomplishments Report.

I will let Mr. Fields speak to that, because this reflects a cataloguing of the environmental justice activities of OSWER. NEJAC has said that the process of developing an office-wide environmental justice strategy, which was started by Elliott Laws before the signing of the Executive Order on Environmental Justice by President Clinton, is part of a living process. We have seen all of these as part of living documents, and the implementation of the living strategy.

MR. FIELDS:¹⁹⁶ Thank you very much. It is a pleasure to be here today with the Council and members of the audience to talk about where we are in OSWER on environmental justice issues and their implementation.

We have established within OSWER, reporting to Mr. Laws, an environmental justice team. We have people in each of our six major offices who are devoting significant amounts of their time to address these issues in The Resource Conservation and Recovery Act (RCRA),¹⁹⁷

194. *Supra* note 50.

195. OSWER includes the Office of Solid Waste (focusing on solid and hazardous waste), the Office of Underground Storage Tanks, the Office of Emergency and Remedial Response (focusing on abandoned hazardous waste sites), and the Office of Waste Programs Enforcement.

196. Mr. Fields is the Deputy Assistant Administrator for the Office of Solid Waste and Emergency Response of the EPA.

197. 42 U.S.C. § 6901 (1988).

Superfund,¹⁹⁸ underground storage tanks in federal facilities, and emergency preparedness. These are virtually all the programs we administer. The Action Agenda that we finally developed has more than seventy major recommendations that we are implementing and are supported by the NEJAC Subcommittee and the Council. We can use this Action Agenda to better integrate and address environmental justice issues in fiscal years 1995 and 1996.

We have a true partnership with the Council, comprised of dedicated people within the EPA and on the Council's Subcommittee, working together to look at how we can better address environmental justice issues across the programs we administer. Pursuant to the Council recommendations, we have addressed: initiatives in the areas of brownfields redevelopment;¹⁹⁹ health concerns and issues around Superfund sites;²⁰⁰ and greater public involvement by forming community advisory groups around many of our Superfund sites in our regions. We have also addressed the concerns that people have about facility siting and provided for training of community representatives on how they can better participate in the process of clean-up around facilities that are in proximity to their communities. We gave specific grants to institutions to provide for the training of workers and the entire community on how to be more involved in our process.

One area of our Action Agenda that was not as complete as we wanted it to be was in the area of how we address environmental justice issues around tribal Native Alaskan/Native Hawaiian issues. To remedy this, a few months ago we sent out an overall Action Agenda to more than 950 individuals and organizations that have affiliation with indigenous people issues, including all the nationally recognized tribes in this country. We asked for comments by July 31, 1995. We intend to make sure that a portion of the Action Agenda is expanded to include initiatives and action items that will be placed in that area for the future.

We do not have time today to go into the specifics of the Action Agenda. It has more than seventy recommendations across all of our six major programs. The Accomplishments Report has more than 250 specific action items that we have taken over the last twelve months across our

198. The Hazardous Substance "Superfund" was codified as part of the Internal Revenue Code of 1986. 26 U.S.C. § 9507 (1994).

199. See *supra* note 92 (defining brownfields effects on neighborhoods).

200. 22 U.S.C. § 9507 (1994). Superfund sites are uncontrolled or abandoned hazardous waste sites including warehouses, manufacturing facilities, processing plants and landfills. *Id.*

programs to better incorporate environmental justice concerns into our programs.

While reading those documents, it is apparent that we have seriously addressed environmental justice issues in all of our programs and have made it a true integral part of what we do from day to day. We have not relegated this to a side activity, but have made a real commitment to make sure that on everything we do, we ask the question: "what are the environmental justice implications of this regulation, this policy, this clean-up decision that we are trying to make?" That is the kind of cultural change that we are trying to integrate at the EPA Headquarters and in the regional offices. To implement these recommendations, we have implementation plans from each of our ten regions. The waste programs in our regions are specifically designed to address these recommendations in the programs in each of the ten regions.

We also have an Environmental Justice Steering Committee that I chair that meets once a month with the EPA Headquarters and all of our Waste Program offices. We believe that we will make a difference. It is going to take some time, obviously, and that is what we are trying to do; change behavior at real sites in real communities around the country.

MR. LEE: I would like to comment on a couple of additional items relative to the items that the Subcommittee has contributed to the work of OSWER, and to the EPA as a whole, as well as the other agencies in the Federal Government, concerning environmental justice. There is actually a fourth document that I do not think was handed out yet, which was a Response to Comments by NEJAC.

We have made it clear to Mr. Fields and others, regarding the importance of the EPA, to respond to each and every single public comment. I think that is reflected in that Response to Comments document. In the Executive Summary of the Accomplishments Report there is a report card. I want to note this because I know for a fact that came directly out of a public comment suggestion by a person in the last NEJAC meeting in Atlanta, Georgia,²⁰¹ and that was immediately taken and put as part of the development.

I am not going to go over this ten-point Implementation Framework, which is included in Appendix B of the Action Agenda,²⁰² other than to note that there is an overall framework of what we believe is important: i.e., focusing on community driven training for EPA personnel; enlisting

201. The Atlanta NEJAC meeting was held from the 17th through 20th of January, 1995.

202. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL JUSTICE ACTION AGENDA B-1 (1995).

public participation, outreach, and communication; building the infrastructure, both within the Agency and outside; building partnerships; and, developing a holistic, integrated approach towards model project development in an environmental justice framework.

Another key point is the fact that the Subcommittee has felt the importance of the relocation issue, particularly in terms of people of color and other impacted communities. Having addressed this issue in January, 1995, we want to thank Mr. Laws for being responsive to this and basically initiating a process within OSWER to develop a policy around relocation. This is an ongoing policy and there have been several briefings that have been opened to the general public. We are looking towards, if at all possible, a round-table with environmental justice communities which have an interest in relocation.

There has been significant interaction on the review of the siting process, particularly moving beyond merely technical location standards. There has been a look at the issues related to health needs provisions and a provision of health care services in impacted communities. There has been a look at the need for developing tools around ensuring environmental justice, such as community-based planning. There has been a look at the dire situation related to worker training and the budget recession with respect to the threat to worker training programs. The EPA has been responsive.

The only personal comment I want to make is that our efforts are going to need people. Some of the key people that are involved are people who work at EPA in the Offices of Environmental Justice and OSWER. In the context of the present political discourse about the role of government, it is very important to note that many people who work in government are people who made a conscious career choice when they decided to commit their careers to public service. That is commendable.

CHAIRMAN MOORE: Thank you.

We are going to move right along, but before we do that, I wanted to mention that I received a call a couple of days ago from Ms. Rose Augustine²⁰³ in Tucson, Arizona. Mr. Laws made a visit months ago with the Regional Administrator, Felicia Marcus from Region IX, and several other staff people. That community has been in an intense struggle for many years in trying to get a health facility for many of those who were exposed to toxic chemicals in the groundwater. Ms. Augustine asked me

203. Rose Augustine, in addition to her affiliation with NEJAC, is an environmental activist with the Southwest Network for Environmental and Economic Justice, comprised of over 70 affiliates in seven states. She is also active in the international collaboration of grassroots environmental justice networks.

to mention to you that after all these years, a trip by the environmental justice movement, and a trip by Mr. Laws and Ms. Marcus, they have now received their first grant to open the health facility. I think this is a prime example of how something can be done when people come together.

Mr. Laws took the initiative to bring that back to Washington, D.C., and that initial grant now has been received.

MR. O'LEARY: Mr. Chairman, just one comment and one question. First, Mr. Fields, I want to say what probably does not need to be said, but let me say it anyway. I think no office of the government has done more to comply with both the letter and spirit of the Executive Order than OSWER. I am sure you represent what President Clinton had in mind when he signed the Order on Environmental Justice.

MR. FIELDS: Thank you.

MR. O'LEARY: All of us in the Council appreciate that and hope you will convey that appreciation to Mr. Laws. It goes without saying that all of us in the Council are very proud of the work that the Subcommittee has done.

Just a question, which falls within your office's responsibility, and is contained in the Action Agenda on RCRA. The very first phrase in your Agenda says, "In the area of hazardous waste management, OSWER is examining means to factor environmental justice into the permitting process."²⁰⁴ I believe this refers to the recent Environmental Appeals Board decision.²⁰⁵ Do you have any reflections at this point that you can share with us on what that decision does in terms of the means that are available or unavailable to your office to encourage regions to consider environmental justice matters in the RCRA permitting process?

MR. FIELDS: We are looking at a couple of mechanisms. One is obviously under RCRA,²⁰⁶ where we give grant dollars. Grant dollars used from the federal government must ensure that environmental justice considerations are addressed and that there can be no discrimination under Title VI²⁰⁷ in the administration of government funds. Some regions are looking at the option of tying the permission of funds from the federal

204. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL JUSTICE ACTION AGENDA B-1 (1995).

205. CWM Chemical Services, Inc., TSCA Appeal No. 93-1, slip op. at 17 (ENVTL. APP. BD. May 15, 1995) (holding that although landfill permitting process did not include environmental justice consideration, administrative agency can prescribe specific environmental justice considerations through rulemaking or adjudication).

206. 42 U.S.C. § 6901 (1988).

207. 42 U.S.C. § 2000d (1988).

government to the grant and putting some special conditions in the grants they give to states and to others.

We are also addressing this through our rulemaking.²⁰⁸ We are putting greater public participation requirements that address environmental justice concerns into our rulemakings. These public participation requirements include notification requirements to a community that you are going to apply for a permit. Thus, when the permit application comes in, the state has to call a public meeting.

Finally, because there is still the Environmental Appeals Board decision,²⁰⁹ some room is left. Part of our legislative amendments that we are proposing for RCRA, is to include environmental justice considerations in the law as we deal with the permitting of RCRA facilities. We think ultimately it is going to have to be settled in the statute through a legislative change.

CHAIRMAN MOORE: Thank you.

MS. HERRERA: The Agency for Toxic Substances and Disease Registry (ATSDR)²¹⁰ was mentioned. Who was the person that we were going to address the question about ATSDR to? I hear every day from people all over the country that ATSDR needs help.

MR. FIELDS: I want to make clear that there are people in ATSDR who are trying to direct a change to what has been going on in the past. I think they recognize the congressional debate in the 103d Congress, where the ATSDR, as you know, took quite a beating. The ATSDR recognizes they need to change the way they conduct health assessments and make sure that there is better data brought to the table in making those assessments. We have been trying to work with them and the EPA to make sure that the things they spend their limited dollars on are spent on those things that have the highest priority for communities.

That is why the clinic that Mr. Moore just referred to was one of the things that we re-prioritized.²¹¹ We said \$2.7 million of your budget is being set aside for four health clinics in communities. We need to do more to try to reach out to communities and make sure that the desires of the

208. Agency rulemaking procedures under the Administrative Procedure Act require proposed rulemakings to be published in Federal Register and the public must be given opportunity to comment on the proposed rules prior to their adoption in final form. 5 U.S.C. § 552(a)(1) (1994).

209. *Id.*

210. *Supra* p. 173.

211. *See supra* p. 703. (referring Ms. Augustine's efforts to secure funding for health facility in Tuscon, Arizona specializing in treatment for individuals exposed to toxic chemicals found in groundwater).

communities are considered as we are dealing with health assessments. We have got a long way to go, and the congressional debate has helped.

To address the research issue, we formed about nine months ago, at Mr. Laws' request, a Research Coordination Council, made up of Mr. Robert Hugget in the Office of Research and Development (ORD) and the EPA, Mr. Laws, Dr. Kenneth Olden at NIHS, and Mr. Barry Johnson in ATSDR, to look at ways to better coordinate our research among those four organizations. How can we make sure that we are not overlapping other agencies on how we do research and how we conduct it? Are we using the same procedures and the same methodologies in terms of how we conduct research around toxic substances and chemicals in communities? That is going to help in the long term.

I agree with the comment that was made by Ms. Ferris. We do need to exercise greater leadership and direction about how those dollars are spent. The ATSDR recognizes that, and we need to deal with that. One of the problems, and one of the unknowns that we have here, is the congressional role. Sometimes we have specifically made some recommendations about the future role of the ATSDR and directions about the budget and resources, only to discover that Congress has changed its policy. Congress is something that we have not had a great deal of control over. We agree, however, with the overall comment: ATSDR is trying to make some changes. We are going to work with Congress to assure that in these times of limited resources, when all of us in the federal government are going to have less resources with which to work, that the resources that are available are spent in the best ways to meet the needs of the communities and the people who are impacted by health impacts around the site.

CHAIRMAN MOORE: Thank you.

OFFICE OF WATER

EPA OFFICE OF WATER STAFFER: Hello. The Office of Water has been working on some of these issues despite difficult times for us. I am sure that you have heard already about some of the aspects of the debate currently in Congress. I would just say that, those deliberations fall particularly hard on the Office of Water. The House has passed H.R. 961,²¹² which substantially weakens the Clean Water Act,²¹³ and the President has vowed to veto the bill if it comes to him.

212. H.R. 961, 104th Cong., 1st Sess. (1995).

213. 33 U.S.C. § 1251 (1988).

In addition to many other weakening aspects, H.R. 961 would remove from federal protection about half of the wetlands in the country. Last week the House Appropriations Committee also passed a bill to cut the Agency's budget by thirty-four percent.²¹⁴ I should mention what that bill also contains is a series of riders which prohibit the EPA, particularly the Office of Water, from using federal funds to implement many parts of the Clean Water Act. Moreover, the budget cuts would fall hard on urban areas. For example, the EPA is prohibited from using federal funds for enforcement against combined sewer overflows.²¹⁵ The EPA is prohibited from using federal funds for implementing or enforcing against storm water violations.²¹⁶ The EPA is prohibited from setting new water quality criteria, new effluent guidelines, which are of some interest to you because these are the guidelines we use to protect against industrial water pollution.²¹⁷ So we are working on understanding these impacts, and they would be quite severe.

The Office of Water has several projects with regard to environmental justice. We are about to release, and we would like to share with this group as soon as it is available, the latest information on the location and types of fish consumption advisories. This information will be available to over 2,000 sources, including libraries and county health officials.

We are continuing other efforts to protect people from eating contaminated fish, including revising the methodology that states use so they would consider the consumption rates of subsistence fishermen. This is an activity that would also be prohibited under the House Appropriations Bill²¹⁸ on the budget. It prohibits the EPA from using any federal funds for setting new water quality standards.²¹⁹

The Office of Water recently issued the Great Lakes Water Quality Initiative.²²⁰ This is the first water quality standard in the nation to consider the bio-accumulation of toxics, so that was a very important first step.

214. H.R. 2099, 104th Cong., 1st Sess. (1995).

215. H.R. REP. NO. 201, 104th Cong., 1st Sess. 60 (1995).

216. *Id.*

217. *Id.*; see 141 CONG. REC. S14,377 (daily ed. Sept. 27, 1995) (statement of Sen. Kerry) (discussing legislative riders to H.R. 2099 which eliminate needed environmental protections provided in Safe Drinking Water Act and Clean Air Act).

218. H.R. 2099.

219. H.R. REP. NO. 201 at 60.

220. See 60 Fed. Reg. 15,336 (1995) (describing Great Lakes Water Quality Initiative which sets tolerance levels for twenty-nine different pollutants, including mercury, heavy metals, and dioxins, for eight Great Lake states).

We are working very hard in improving additions along the Mexican border. We included \$15 million for these activities in our budget. We requested an additional \$15 million in 1996. The House budget only contains the \$15 million originally allocated, without the increase that the President requested.²²¹

We have been providing \$100 million in wastewater grants for other communities along the borders, in addition to the colonias.²²² So it is \$15 million for the colonias and \$100 million for other border areas.

We have provided about \$15 million this year, and the President allocated \$15 million in his 1996 budget for Alaskan village activities to address the problems in 195 Alaskan native villages, where 20,000 people live without basic sanitation. We have been trying to work on a demonstration project for operation and maintenance in Alaskan native villages, but the cold conditions make it very difficult.

The EPA's American Indian Environmental Office is located—for just practical reasons—in the Office of Water, but we have taken that office under our wings, and we have provided some funds for travel and have loaned some staff to them as they are getting started.

In addition, I should say, on behalf of the entire Agency, that we have continued to increase the general assistance grant programs for the American Indian tribes.

That is a short summary of the most important things the Office of Water is doing. I would be happy to answer any questions.

MS. THOMAS: I just want to acknowledge the funding that the EPA has earmarked for real sanitation issues in Alaska, but I think it is very important to add that it is not necessarily Alaskan native villages that benefit from that. I am a little bit concerned about how the EPA has thrown that money into their Indian Program, calling it Indian Program money, when tribes formally do not have any access to how those monies are spent. The money goes directly to the State of Alaska, and therefore, we are dealing with the politics of the State of Alaska. I do not want to minimize, however, the need for that funding to address rural sanitation issues. You could inform Bob Perciasepe²²³ that introducing the funds as Alaska native community money is incorrect, and you could do the same

221. H.R. REP. NO. 201 at 49-50.

222. See 7 U.S.C. § 1926c(c)(1) (1994) (describing "colonias" as rural communities that are characterized by substandard housing, inadequate roads and drainage, and lack of adequate water or waste systems).

223. Robert Perciasepe is Assistant Administrator for the Office of Water, EPA.

with the O&M demonstration project. I could talk with you more about it if you want.

EPA OFFICE OF WATER STAFFER: I would like to hear from you as to any problems you may be having.

CHAIRMAN MOORE: Thank you. At the next meeting we really would like to be able to discuss further these issues with you.

EPA OFFICE OF WATER STAFFER: I would be happy to.

PRESENTATIONS

CHAIRMAN MOORE: We would like to welcome Katie McGinty and Brad Campbell.²²⁴

IMPLEMENTATION OF EXECUTIVE ORDER 12898 ENVIRONMENTAL JUSTICE GUIDANCE FOR THE NATIONAL ENVIRONMENTAL POLICY ACT, AND OTHER ISSUES

MS. MCGINTY:²²⁵ Thank you. Let me start with something very controversial. I truly think the Administration is making tremendous progress. Many of you may be thinking that our effort has been, in many respects, a bit cumbersome, a bit lumbering at times, and despite our best efforts, a bit inelegant. What I am talking about is the progress that we have made in developing and implementing the Executive Order.²²⁶ I think the meetings that Richard spoke of predated that Executive Order and predated a lot of the involvement of this Administration and how we have tried to work and walk our way through to where we find ourselves today.

You all have met on many occasions and have helped us work through the major issues. You have all played an instrumental role in this process. Due to this proximity, I think sometimes the idea that we are making great progress seems a little far-fetched. At times, progress has been slow and frustrations have been great. I do, however, want to point to some of the things that have happened, that are working, and that are now moving. I do not want to brag about what we have done, but instead point to the reality of the successes that we have achieved because of your dedication to these issues.

224. Bradley M. Campbell is the Associate Director of Toxics and Environmental Protection for CEQ.

225. Kathleen McGinty, J.D. Columbia University 1988, Deputy Assistant to the President, and Director of the White House Council on Environmental Quality.

226. Exec. Order No. 12,898, 59 Fed. Reg. 7,629 (1994).

Many of you have worked on initiatives that we are now counting toward in a very rigorous way. Bob was instrumental in putting together the recent Atlanta meeting that DOT held. The results of that meeting will enable DOT to work with HUD and others on our Livable Communities Initiative.²²⁷ In addition, EPA is now working with Health and Human Services (HHS) on a model program to assess the human health impacts around Superfund sites.²²⁸

We were not doing these things before. They are new. They reflect your tireless efforts to keep us focused on this issue and to keep it part of our agenda. There are many other initiatives I could mention, to show where progress has been made specifically focusing on the President's Executive Order, but in the interest of time I will refrain from doing so.

Many of you were also instrumental in commenting on, and participating in, the original Atlanta meeting.²²⁹ As a result of that meeting, each agency now has its own strategy, trying not only to endorse to environmental justice as a concept, but instead making it an integral part of their mission. These strategies are now out there. They are just a start. In many respects they are inelegant, but they reflect a determined effort to venture into what is really new territory. I will not hesitate to say that some of the progress here is slow because of the uncertainty of this territory. What do we mean when we say that we are going to make a determination that environmental injustice is a reality and that we are determined to change that fact? This is a scary task for a political entity

227. In accordance with Executive Order 12,898, the Department of Transportation, Federal Transit Administration announced the "Livable Communities" Initiative. Department of Transportation Proposed Environmental Justice Strategy, 60 Fed. Reg. 9,710 (1995) (proposed Feb. 21, 1995). The goal of the initiative is to "instill principles in transit programs that support the development of vibrant and healthy communities within the transit service area." *Id.* at 9,714. The "Livable Communities" Initiative stresses five aims: (1) careful coordination of transit planning with community development planning leading to communities where housing, schools and parks are within walking distance of transit systems; (2) alternative home to transit transportation which encourages and facilitates the use of mass transit systems; (3) the location of transit stations in multi-purpose areas where residential, corporate, and retail actors co-exist providing services useful to mass transit riders; (4) safe, secure, and customer-friendly stations and surrounding neighborhoods; and (5) community participation in the transit decisionmaking process. Notice of FTA Fiscal Year 1995 Apportionments and Allocations, 59 Fed. Reg. 51,759 (1994).

228. See Office of Environmental Justice, Environmental Protection Agency, Pub. No. EPA-200-R-95-002, Environmental Justice Strategy: Executive Order 12,898, 19 (1995) (describing Public Health Pilot Activities and establishing Superfund Medical Assistance Work Group (SMAWG) to respond to health concerns of communities living near hazardous waste sites).

229. The Atlanta NEJAC meeting was held from the 17th through 20th of January, 1995.

to take on, because we know that in the process of our work, some boats are going to get rocked. It is because of this that we have proceeded with deliberation, yet with a determined effort to move forward. We travel a rocky course, because the issues are difficult, and the terrain is uncertain.

With so much uncertainty and difficulty, many may ask: "Why are we in this game to begin with?" The answer lies in all of the progress we have made. Let me go through and tick off some of the initiatives that we have undertaken which show the real progress that we are making. In April, pursuant to the Executive Order, we forwarded our first report²³⁰ to the President itemizing the action and the progress we have made to date. We provided the President with further detail deadlines and milestones that he expects the agencies to meet. Not only does the President want agencies to refine their procedures and develop ways to involve new voices and decision-making, he also wants agencies to outline concrete and specific action items that they will take over the next year.

In addition, by the end of August, the Council on Environmental Quality (CEQ),²³¹ expects to issue guidelines on how the National Environmental Policy Act (NEPA)²³² can be used as an effective tool to bring environmental justice considerations to bear. Finally, by the end of July, the overall Environmental Justice Working Group will issue its own guidance on how Executive Order 12,898 should be implemented.

The work of the Environmental Justice Working Group turned out to be quite an undertaking. Progress was made in difficult, yet seemingly trivial areas, such as, what is the definition of a cumulative impact or a disproportionate impact. You may think that is just lawyerly squabbling and that we should have been able to move that through much more quickly. The

230. Assistant to the President for Domestic Policy and Deputy Assistant to the President for Environmental Policy, Report to the President on Executive Order 12,898 (Apr. 11, 1995).

231. CEQ was established in 1970 in furtherance of the policy of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. No. 91-190, approved January 1, 1970). Exec. Order No. 11,514, 35 Fed. Reg. 4,247 (1970). CEQ's responsibilities include: (1) the evaluation of existing and proposed policies and activities of the federal government designed to control pollution and enhance the quality of the environment, (2) the recommendation of policies and programs to achieve more effective protection and enhancement of environmental quality, (3) the provision of advice and assistance on international environmental matters, and (4) the coordination of federal programs related to environmental quality. *Id.*

232. Pub. L. 91-190, 83 Stat. 852 (1970) (codified as amended at 42 U.S.C. § 4321 (1988)). NEPA requires federal agencies, in their federal decision-making processes, to "assure for all Americans safe, healthy, productive, and aesthetically and culturally pleasing surroundings." *Id.* § 4370d.

positive part of the group's work, however, was that at the highest levels of the agencies, people were seized with the idea that there are areas in this country and in all of our communities where there has been a disproportionate impact. We are finally trying to get our arms around that whole concept.

If I reflect on why this issue has been important to us and why it remains important to us, over and above the specific things that I can tick off the checklist that we are trying to fulfill, there really are two things that come to mind. The first one, which is obvious, is that despite twenty-five years of progress on environmental issues in this country, there is much more work to be done. Two years ago, this supposedly last great superpower on earth had over 100 people dying in Milwaukee from drinking dirty water.²³³ We know there is more work to be done, that our citizens do deserve and must be delivered a better alternative and better option than to fear what kind of water is coming out of their taps. Similarly, when scientists tell us that in the last forty years we have had a fifteen percent increase in the incidence of asthma among our children,²³⁴ then clearly there is much more work for us to do. That is the obvious reason why we are committed to working on the environmental justice issue-the progress that remains to be made in cleaning up and protecting our environment.

There is a second reason, which in many ways is more compelling to me and which inspires and gives me hope as we now face some very difficult times in Washington. The greatest hope and greatest vitality I have seen, not only in the environmental movement, but in terms of the vitality of our democracy, is these communities that have decided they were going to seize their environment back.

I remember the first time I met Charles Lee. He came in to talk to me about the legislation that he and Ben Chavis had been working on, concerning environmental justice and trying to identify high impact areas. I remember the story that Ben Chavis told me about South Central Los Angeles and the war zone he had seen there. In the midst of all the division, there was one issue that was pulling black, hispanic, asian, and

233. Marilyn Marchione, *Tiny Parasite Still Afflicts 16 People: Compromised Immune Systems are too Weak to Defeat the Infection*, MILWAUKEE J., Apr. 4, 1995, at B2. This article recounts a *Cryptosporidium* outbreak in the City of Milwaukee's drinking water; it sickened more than 400,000 people and killed over 100. *Id.*

234. Dr. Genevieve Matanoski, *Incidence of Asthma is Rising, Especially in Inner Cities*, BALTIMORE SUN, Sept. 28, 1993, at 4D (detailing recent rises in asthma rates, especially among minority, inner-city children).

white populations together. That issue was the effort to seize back their parks, to clean-up the environment, to pull those communities together, to pull back the areas from the drug dealers and those who were just dumping on the community, and to make it a community that was whole and wholesome again. There is great hope and great vitality when people become inspired to take back the environment that is theirs. That hope is what has inspired, more than anything else, our involvement and our commitment to environmental justice issues. I would say that the seeds of that are found not only in our Executive Order on Environmental Justice, but at the heart of everything we have done under the name of reinventing government.

Your work has inspired that larger effort making clear that government cannot just be about bureaucrats in Washington anymore. Government must instead be about getting out there, working with, and empowering people and communities. I dwell on this for two reasons: one is to give you a larger sense of why this is important to the President and why it is not just an issue that concerns the environment. It is much more fundamental than that. It is about the strength, the vitality, the energy of our communities, and it is about our communities coming together as one nation. The second reason I dwell on it is because I think that, more than anything else, the things that are happening on Capitol Hill today are a threat to all the programs that Tim was mentioning.²³⁵ Yes, many of the extreme bills now pending in Congress would have a direct impact on this EPA program or that EPA program, and that is bad. But the larger, more insidious effort that I think is afoot is an effort to disempower the people. It is the effort that says, "Superfund, you are worried about it? We are just going to end the program after three years." Is that decision made on the basis of information that says after three years we are going to know where all the Superfund sites are and have them cleaned-up? No. It is instead caused by a desire simply not to let the people know that these problems exist in their communities.

The Toxic Releases Inventory (TRI), is a model of reinventing environmental protection.²³⁶ It is not about regulations. It is not about command and control. It is about letting people know the kinds of things that are happening in their communities. This knowledge, in turn, lets people sit at the table with industries in their communities and come up

235. *Supra* p. 699 (referring to comments of Mr. Tim Fields).

236. *See supra* note 34 (explaining facets of TRI).

with a plan for how they want those industries to behave as citizens of their communities. No wonder the TRI is on the target list.²³⁷

So much of what we have done has been the antithesis of that kind of effort. One of the first things that seized our attention was working with Charles Lee and Ben Chavis on their bill. It was the first and foremost effort to identify environmental high-impact areas and then to provide the citizens of the affected communities with that information and the technical resources to do something about it.

It is this kind of empowerment that, to me, is the future and the hope of environmental progress in this country. It is also the hope of a live and vital democracy in this country. What I worry about, in addition to the obvious programs that we will miss, is the larger effort that may undermine, and be acidic to our ability to be civil to one another.

As you know, and as Carol Browner must have made clear today,²³⁸ we will fight against these efforts. I promise we will continue to make our sometimes lumbering, often inelegant attempts to work through the milestones in the Executive Order and to begin to change the bulwarks of these agencies so that we are truly getting at the environmental justice issue. In addition to that, we will keep this larger picture in front of us and make sure we are working to keep that opportunity for all the citizens that you represent and that you are here to speak for. This is the larger goal that we face and that we are very much engaged in right now. Thanks.

CHAIRMAN MOORE: Bob?

DR. BULLARD: I just have a couple of questions. First, I would like to say that I am really elated that the CEQ will soon issue guidance for integrating EJ into the National Environmental Policy Act.²³⁹ We have all been waiting for it, and it seems like we will get a Christmas present in August. I do have one comment in terms of the extent to which waiting for guidance from the CEQ has by default allowed some agencies, for example, some of the thirteen agencies that have developed EJ strategies,²⁴⁰ to sit back and say that it can be business as usual when it comes to EJ. Unfortunately, in many instances, the status quo means nothing but waiting for the CEQ to come up with guidance.

237. Appropriation riders proposed in the House of Representatives in the 104th Congress would have limited EPA's ability to require TRI information.

238. *Supra* p. 629.

239. *Supra* note 122.

240. Some of these agencies include the Departments of Agriculture, Commerce, Defense, Health and Human Services, Housing and Urban Development, Interior, Labor, Transportation, Energy, the Environmental Protection Agency, and the Nuclear Regulatory Commission.

On the other hand, there are agencies that have said we do not have guidance, but we need to initiate a strategy for integrating environmental justice principles into the NEPA process. I know DOE, DOD, DOT, and EPA have done that and have involved some of us that are sitting around the table to try to get public involvement, public input, public participation, and involvement from impacted communities in terms of what needs to go into that guidance. My question is, for those agencies who have developed strategies for integrating environmental justice principles into NEPA, to what extent will the guidance that CEQ has developed somehow parallel these strategies and some of the progress that has been made in terms of public participation, involvement of stakeholders, et cetera?

MS. MCGINTY: That is a good question. I would agree that some agencies have been more active than others. For those agencies that have been less enamored of this pursuit and less engaged, for them the pattern has been to wait and see. I do have to say that these agencies have been in the minority. I think that you give a good list of agencies—DOT, EPA, DOE on their clean-up facilities, and DOD at their clean-up facilities—that have been leading the way towards implementing environmental justice strategies.

The CEQ guidance will very much reflect the wisdom that we have received from working in the forefront. It is a bit of a push and pull relationship. I would say there is more pulling in terms of agencies that are taking the lead, and you know, there are a couple of them. There are also a couple of agencies that will be pushed once guidance from CEQ is out there.

CHAIRMAN MOORE: Are there any other comments or questions? Charles?

MR. LEE: Kathleen, I want to thank you for being here. I think when we were planning this protocol, and when the Protocol Committee was planning the agenda, there was a real question about whether or not you were going to be here. I take it as a reflection of the importance that your office places on environmental justice issues. We really want to thank you. I just want to say, personally, there is a lot of questioning going on out there as to whether or not the CEQ and the White House are really committed to the issue of environmental justice. There are real questions about whether or not some see it fit to trade environmental justice for political expediency. There are some people that do not have the backbone to stand up for what is right. I am not saying you, but I am saying that there are indications of this. There are some that constantly equate affirmative action with environmental justice. I think part of that is motivated by a total misunderstanding of the issues involved, and, like I

said, some of it is motivated by a total lack of backbone in terms of standing up for what is right and standing up against what is wrong.

The question that Dr. Bullard raised about environmental justice guidance for NEPA²⁴¹ was supposed to have been addressed in Atlanta in May and somehow, Bob has been quite nice about this. There was an opportunity for that to be presented, and it was missed.

What I felt we got was somebody berating the audience about the need to stand up and address members of Congress. Now, you know the fact of the matter is if this Administration does not show commitment and real leadership, then you have absolutely no reason to expect anybody to stand up and stand with you, in terms of some of these issues. I remember that this goes back about nine months when members of the CEQ asked me and others about implementation of the Executive Order. One of the things which I said was that it is important to have some issues which would coalesce the work. When something is as big and as complicated as environmental justice, it is important that we have something which really coalesces the work of all the various agencies. There could be several things involved in this.

I think that somehow this was not understood and what we have now is—with all due respect to all the good things you are talking about, and I am not disputing—a lot of questions about even why the Inter-agency Working Group on Environmental Justice should be meeting. I believe, and I have heard, that there are many people sitting around looking at each other in that Interagency Working Group, asking each other why should we be meeting? I think that is disgraceful. I think we have to get to the bottom of this question in terms of what kind of leadership the White House is providing around environmental justice in this Executive Order.

I think many of us have very good ideas, and it is time to start talking about them. I think that up until now you have been skirting the issues. Like you said, it is difficult. There are lots of different cultures and different ways of doing things, there are lots of biases involved, and there is the possibility that we are going to step on a lot of toes. This is nothing new to us, and this is not something that should hold us back from doing what is right.

I look forward to this as a real discussion. I am not interested in having someone come down to Atlanta who fails to see the opportunity to really engage these issues and make some real progress. Like I have said, and like Richard has said, how many more opportunities do you have? How many more opportunities do we have?

241. *Supra* note 122.

MS. MCGINTY: Yes, there is tremendous work to be done, and we have only begun to scratch the surface of it. I think that your idea about the specific projects that we should work on is an excellent one. As you were speaking, I was reflecting on two things. First, that we need to seize the initiatives that we have. I think, however, we have failed to articulate the relevance and importance of environmental justice in these initiatives.

A specific example is your work with us on the brownfields question.²⁴² That is certainly an issue where we are talking about recognizing those parts of our cities that have borne a disproportionate burden of environmental waste. These cities then bear a social and economic burden because no one wants to come in and be part of the affected parts of the city. The brownfields issue is also one where we have sought to engage communities, give them decisionmaking power, and mobilize funds to be used for environmental and health assessments and also for economic redevelopment.

Second, I was also thinking about our Project XL, which is a Project about Excellence and Leadership. It is one of our major reinvention efforts. Our determination was that this would not just be for industries to come in and be able to have more flexible procedures for meeting environmental requirements. In the next two months we will issue our proposal. Under it, communities will be able to come in and gain the benefit of sustainable development grants. We will seed those efforts with money to empower the communities to sit with the EPA and our other agencies, and put together their vision of sustainable economic development in their own communities. The specific guidance will come out in two months.

I am reflecting on things that we have done that I think are very relevant and that are certainly inspired by the work and the message that you all have brought to government. I simply think we need to articulate that better. With regard to the CEQ guidance, as you know, the CEQ has had a bit of a rocky history in the last couple of years. In fact, we are on the

242. Brownfields are usually urban areas previously occupied by some type of industry and now contaminated. Assistant to the President for Domestic Policy and Deputy Assistant to the President for Environmental Policy, Report to the President on Executive Order 12,898, 6 (Apr. 11, 1995). Currently, EPA and HUD are engaged in a Brownfields Initiative. This initiative involves fifty pilot programs, whereby federal resources are being used to speed environmental clean-ups and economic development in distressed urban cores. *Id.* See Office of Environmental Justice, Environmental Protection Agency, Pub. No. EPA-200-R-95-002, Environmental Justice Strategy: Executive Order 12,898, 18 (1995) (detailing Brownfields Economic Redevelopment Pilots); see *infra* p. 248 (providing presentation of Charles Lee).

up-slope of another big roller coaster ride, since the Appropriations Committees have just decided to zero us out.²⁴³ While this is not an excuse, it is an explanation. The fact is, for a large part of our Administration, there was not really a White House presence at home at the CEQ.

As soon as we took CEQ back over in February of this year, the NEPA guidance was one of the first things we wrestled with. We have made a lot of progress with it, which is why I can say to you with confidence that it will be out in the next several weeks. There was a hiatus when no one was trying to give guidance or leadership and when no one was really fostering the NEPA process that needed to be undertaken. I think, however, we are catching back up.

CHAIRMAN MOORE: Thank you, Katie. We only have time for a couple more comments, but first, I would like to make a comment. We appreciate the work that you and your office have done. I think it is very, very important to understand the general concepts of environmental justice and what we have talked about throughout all these years in our initial meetings, and with the Administrator earlier today.

The question of affirmative action and environmental justice is something that will not be taken lightly by our communities. It has to be stated fairly bluntly. It cannot be stated any other way. There has been some concern over the back pedaling of the Administration. Where exactly is it going to stand as we move forward here? We all know that we are not a special interest group. Pesticides issues are not about special interest groups. Neither are incinerators, landfills, dumps, dog food companies, slaughter houses, railroad tracks, or whatever all those things were that brought us to the table from the beginning. We are talking about real life issues. These are issues which concern life and death.

I just wanted to take this moment, as we close out, to express my hope that you will take the message back to the Administration and the President and Vice-President that someone has to stand up for the right thing, and that those that stand up for the right thing will be supported and that those that do not will not be supported. That has nothing to do with how business as usual runs in Washington. It is more about the realities that we live under. I want to thank you for the support that you have given us throughout this time period. There are a lot of very important things that we have still have on the agenda.

MR. LONNIE HURST:²⁴⁴ I am representing Business Network for Environmental Justice (BNEJ) and Motorola. One of the issues that has

243. H.R. 2099, 104th Cong., 1st Sess. (1995).

244. Director, Communications of Motorola, Inc., Scottsdale, Arizona.

come up on the business side is how to get people to the table. This is an issue that Charles Lee and others have talked about. There are already some individuals at the table from the business community working on this issue and out in front, but getting them to the table is another story. When we met with White House staff a few months ago, one of the issues mentioned was what is being done through commerce and other areas to help increase knowledge of the issue, to work with it, to get people to the table, and to work with business and others to explore solutions. We are going to work through the enforcement parts of the EPA. We are going to work through the DOJ and other areas. One of the issues is getting them to the table, and the second issue has always been defining it. The DOJ has continually said we are not going to define it; in fact, the last word we heard out of the DOJ was that we are better off not defining it.

MS. MCGINTY: This is a definitional challenge, but we are about to become definitionally unchallenged.

MR. HURST: It is an issue for the business community that is not here at the table, not involved yet, or not involved with BNEJ, because they do not understand the issue and it is hard to put their arms around it. There are a lot of definitions that have been written. Robert and others here have put together information, but for them to grapple with it and with what it means in their business context is really important. That is an area in which I think the White House could have an impact in helping get them to the table.

MS. MCGINTY: I think that is an excellent suggestion. This is an area where what seems to be a tremendous challenge also offers tremendous opportunity. For those companies that have tried to work with communities and understand, even if not by definition, in practice what this means, many of them have found much greater ease and receptivity to their plants, to expanding their businesses, and to doing whatever is in their economic interest due to their forthrightness at the outset of a project.

There are a couple of ways that we have been trying to take those examples of success and get them out there so other businesses have an idea of what this involves. The DOT, working on transportation-related industrial initiatives, held a very successful conference in the Midwest, where a lot of these stories—rather than just talking around definitions—offered concrete examples of where various industries had opened their doors, created councils, and brought people in. We have had a lot of feedback from many industries in the Midwest about just how helpful that was to them. As a result, many have started their own programs.

Secretary Ron Brown has spent time with the President's Council on Sustainable Development (PCSD) and the many businesses that are part of that group, working with them on the environmental justice issue. For those of you who are familiar with the PCSD's proceedings, you will see that they have broadened their charter so that they are not only looking at two "E's" now; they are looking at three.

The two "E's" before were the environment and the economy. Now, they are looking at the environment, the economy, and equity. There is a whole social agenda that they are trying to work into their framework. I think that they understand the breadth of the sustainable development challenge much more now and, as a result, are working through some of the specifics. I think that will be an effective avenue for us.

CHAIRMAN MOORE: I think there were three additional people that wanted to make a comment or ask a question.

MR. McDERMOTT: This will be quick. Kathleen, I had a question. It is not about Superfund, but it starts with Superfund. Last year and leading up to it for a period before that, a number of people in this room were tired of the Administration and the EPA on the Superfund reauthorization proposal that got to the one yard-line and did not make it over the goal-line. A part of that, because of some hard work that Mr. Lee and others did, were various EJ initiatives spread throughout the bill having to do with job training and creation and some other things like that. Remembering that and turning to another major environmental program that will probably bleed heavily under the budget, are the Federal Facility Clean-Up Projects at the DOD and the DOE facilities. Though they will be cut back, we assume, they will still be somewhat ongoing. My question is, do you see an opportunity there to implement some of the ideas that were crafted as a part of the Superfund reauthorization effort that could be imposed by executive fiat; or is there an opportunity to impose them by executive action in the Federal Facilities Clean-Up Program through the use of vendors, women and minority vendors, job training, et cetera?

MS. MCGINTY: I guess the easy answer is, yes, absolutely. In fact, many of you have also commented on, and worked with us on, our overall Federal Facilities Policy Group and its forthcoming report on Federal Facilities clean-up.²⁴⁵ You will see reflected in that a commitment to all the principles that we outlined in our Superfund initiative last year. In fact,

245. IMPROVING FEDERAL FACILITIES CLEAN-UP: REPORT OF THE FEDERAL FACILITIES POLICY GROUP (October 1995). This report, co-authored by the CEQ and the Office of Management and Budget, specifically identifies environmental justice as a principle to guide federal facilities clean-up.

we are working now administratively to implement as many of those things as we possibly can. I have no information that we cannot do this part of our Superfund initiative administratively, at least a major portion of it. In the event that we do not have Superfund legislative action completed, we will move aggressively, as we have been doing, to implement those pieces of our package administratively.

We also see opportunity under RCRA²⁴⁶ for environmental justice initiatives. We are still working through them, but hopefully in the near future, we will have something to say about that. The only reason I hesitate is because I would be out of my league to get into the affirmative action discussions. I think the President has been absolutely clear in what he has had to say about it. I know the DOJ is still working through the ramifications of the recent Supreme Court decision which addressed affirmative action.²⁴⁷ I am not qualified to say if that will have any impact on what we proposed under Superfund last year. The indications I have gotten to date are that the decision will not impact our proposals and that we can go forward. I do not, however, have the definitive word, so I do not want to say for sure.

CHAIRMAN MOORE: Thanks. Bob?

DR. BULLARD: Yes. Let me make a suggestion. A lot of the concerns that are out there in the community, the fears and anxieties, could be alleviated if we just communicate. We always say in the environmental justice movement that we are the strongest when we communicate. During this brief hiatus that you talked about, there was no information coming from you or the White House or any policy arena concerning this guidance for NEPA, in terms of environmental justice. We were getting whispers and rumors, and we were getting impressions. In the absence of getting some information from you or your office, there is this idea, this perception, that somehow the issue has dropped off of the radar screen. If I may make a request, we must somehow either formalize or we must just agree to keep the channels of communication open. If the channels are open, progress reports can be made to keep us abreast of what is going on in the

246. Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94-580, 90 Stat. 2795 (codified as amended at 42 U.S.C. § 6901 (1988)). RCRA establishes a program for the management of hazardous waste from its origin to its ultimate disposal to ensure that the means of disposal of hazardous waste will prevent escape of those wastes into the environment and provides an enforcement mechanism to ensure compliance with the program. *Id.*

247. *See Adarand Constructors, Inc., v. Peña*, 115 S. Ct. 2097 (1995) (holding all racial classifications, whether imposed by federal, state or local government actors must be reviewed using strict scrutiny).

CEQ. Are you staffing back up? Are you under attack? Are there special persons involved? Are you really going to get zeroed out?

MS. MCGINTY: I hope not.

DR. BULLARD: Our thing is we need to know so that we can act.

MS. MCGINTY: Yes.

DR. BULLARD: We would like to act using the best information available so that we are informed, because the people that we work with are your friends. If we can at least get progress and status reports, I think it would be very helpful and beneficial for all concerned.

MS. MCGINTY: Good. I think that is good advice.

We should really talk about that, because some of our earlier forays in trying to make exactly what you suggest happen ran into some buzz saws. We tried to conference call and that ran into some legal buzz saws, and we tried a couple of other things. This is an idea well worth pursuing, and we really need to find some way that meets all the legal "I's" and "T's", so we can keep a chain of communication open.

CHAIRMAN MOORE: Thank you, Kathleen.

MR. RAY: I just want to thank you for being here, and to reflect and follow-up on what Charles Lee had to say. I think the point to which we have gotten, and you have just missed the Office of Solid Waste and Emergency Response (OSWER) presentation, which I think this council recognizes as a superb achievement and, as I said earlier, the very model of what the President must have had in mind—that the idea that the Administration showed in forming this Council and taking on this difficult issue and bringing to this table the people it brought to this table, as diverse as we are, I think is leadership. There are other models of how to make decisions. There are other models of how to move things forward other than the one you have shown here. I think the idea of bringing together the community, the stakeholders, and to work with you, giving us time to think is an area where I would encourage you to go out and show in other areas as an example of the kind of leadership that I think is very, very important.

We all recognize that this is an issue which would not have been on the agenda but for the Executive Order. Additionally, I think we all recognize that there has been some very real progress made in the last year, and I think your comments this afternoon about where this is going are heartening and encouraging.

MS. MCGINTY: Thank you, and I mean it sincerely. I think there is tremendous opportunity for us, not just for those concerned about the environment, but for those concerned about the future of this country. This process offers a model by which we will reinvigorate civic dialogue in this

country. I think it is long past due, but the seeds of it are well represented here.

CHAIRMAN MOORE: Well, thank you, Katie. We appreciate the time you have taken out of your schedule to be with us today. It was good seeing you again.

USING ENVIRONMENTAL JUSTICE TO ADDRESS THE CRISIS IN THE
URBAN ENVIRONMENT BROWNFIELD INITIATIVE TRIPS

MR. LEE:²⁴⁸ Thank you, Richard. I want to present a little bit of information and a brief report from the recent series of public dialogues on Urban Revitalization, Brownfields and Envisioning Healthy and Sustainable Communities, that were conducted by the Waste and Facility Siting Subcommittee and co-sponsored by the Environmental Protection Agency (EPA) over the past two months.²⁴⁹

At the January meeting,²⁵⁰ the NEJAC agreed to a resolution to ask that the Waste Subcommittee undertake this effort. Towards the latter part of last year, the EPA announced that it would give a series of fifty grants around Brownfields Economic Redevelopment Initiatives over the years 1995 and 1996.

Ms. McGinty just alluded to this in our discussion,²⁵¹ and I wanted to conclude our report with a request on behalf of the NEJAC to ask you to adopt a motion regarding this issue. I do not believe that Ms. McGinty had it absolutely right, because the issues that we wanted addressed were not merely issues of a Brownfields Initiative. Rather, they concerned the title of these public dialogues: Urban Revitalization and Brownfields.

It is very important to understand from the perspective of the Subcommittee what is the dog and what is the tail. I believe that the larger issue is that of urban revitalization, which environmental justice is uniquely capable of addressing. I want to make sure that we recognize that for far too long there has been a very serious crisis in this nation's urban centers and that we can ill afford to ignore this crisis. Therefore, I believe that this is the framework that we want to use to address the Brownfields Initia-

248. Director of Research, Commission for Racial Justice, United Church of Christ, New York City.

249. *EPA and the National Environmental Justice Advisory Council to Co-Sponsor Public Dialogue on Urban Revitalization and Brownfields*, BUSINESS WIRE, July 19, 1995.

250. The Atlanta NEJAC meeting was held from the 17th through 20th of January, 1995.

251. *Supra* p. 721.

tive.²⁵² I really want to thank Mr. Fields and the Office of Solid Waste & Energy Response (OSWER) for spending the time in Atlanta not only for going over these issues with the Subcommittee, but also for holding an informal meeting with the public in Atlanta. That meeting bore out what we have known for a long time: the Brownfields Initiative, as envisioned, is not a product of Environmental Justice; it is not a product of the several communities that we deal with regarding environmental justice issues.

When the Brownfields locomotive left the train station it left a whole lot of people behind. The fact of the matter is that for most people of color living in urban, highly impacted communities, the word "Brownfields" is something that most people have never heard. The concept of a Brownfields is not something that they would necessarily ascribe to. Certainly, if they were involved in the process of envisioning what Brownfields will be or has been, I think they would have come up with something different than what is presently involved in the initiative.

It is also very important to note that the kinds of issues that the Brownfields Initiatives speak to are issues of extraordinary importance, and those issues are related to the existence of the very serious crisis in America's urban areas. It is a crisis that is fundamentally environmental and ecological in nature.

We can safely say that the most polluted environment is the urban environment. This nation must come to grips with the real vision of environmental justice, which, I believe, is the goal of achieving healthy and sustainable communities. We had a very successful series of public meetings in Boston, Massachusetts; in Philadelphia, Pennsylvania; in Detroit, Michigan; in Oakland, California; and in Atlanta, Georgia. These meetings were modeled after elements of the Public Participation Subcommittee's model for public participation meetings. They were done in a community-driven way with outreach and organizing; done with community activists and environmental justice activists on the ground in partnerships with the EPA Regional Offices, including Region I, Region III, Region IV, Region V, and Region IX.

The initiative was borne out in much of the testimony that came from the community. These communities were asked what they would envision healthy and sustainable communities to be. It was very poignantly

252. "Brownfields" refer to underdeveloped industrial sites, or sites which once served industrial purposes, but now have been abandoned. The initiatives are important as they serve the dual purpose of revitalizing the land, and providing jobs and capital to the communities in which the land rests. Judy A. England-Joseph, *Community Development - Reuse of Urban Industrial Sites*, GAO REPORTS, GAO/RCED-95-122, June 30, 1995.

answered in Detroit. Detroit actually looks like Dresden or any of the cities after the end of the Second World War. For every house that is standing, two other houses are gutted. This goes on for miles and miles. Somebody there said that the issues related to the future of our urban areas are actually the issues related to the future of our civilization. These are not issues we can easily evade. Anecdotally, if we were to look to 1992 and what happened in South Central L.A.,²⁵³ the real question in my mind is why it did not happen sooner and why it has not happened more often given the situation as it stands? What kind of message is being sent out if we do not actually address these issues in the way they need to be addressed?

Certainly, as we look to the 21st century, I will ask the question of what endeavor will possibly be more worthy, necessary, logical, and demanding of our national attention and resources and meaningful than that of addressing America's urban areas and their revitalization by developing a holistic, community-driven, integrated strategy for achieving healthy and sustainable communities? A challenge so great as this, we believe, cannot be met without a compelling vision. Where would such a compelling vision come from but from the community? I think that is something we have really learned.

I am not going to go into a lot of concrete things, other than to say that the Subcommittee is beginning to develop a report regarding this. This has been very thoroughly documented with videotapes, audiotapes and a transcript. We want to find ways in which the report can be made available and put to its best use. One thing that the Subcommittee will ask is that all this be archived at some point. We believe that the most logical place is the Environmental Justice Resource Center at Clark Atlanta University. Parenthetically, we are going to archive the materials from the First National People of Color Environmental Leadership Summit at the Commission for Racial Justice.

The importance of these issues and the development of a unified, cohesive strategy is the question that confronts us. There are a lot of questions around the Brownfields development process that are very troubling. The present kind of paradigm which guides Brownfields redevelopment is a developer-driven one. In fact, no issues of development even come to the floor until a developer decides to bring it to the floor. Too much public policy is geared around making things easy for that developer, without looking at some of the other issues.

253. Seth Mydams, *The Police Verdict; Los Angeles Policemen Acquitted in Taped Beating*, N.Y. TIMES, April 30, 1992 at A1 (the city of Los Angeles erupted in civil unrest after members of the L.A. police force were acquitted of beating motorist Rodney King).

A lot of these other issues related to the larger issue of urban revitalization and of developing healthy and sustainable urban communities, cannot be addressed without a community-based planning paradigm; a paradigm which really begins and ends with the communities.

In Boston, one of the questions was, "What are some of the special environmental health and safety characteristics of urban ecosystems which must be addressed?"²⁵⁴ Is there a public and environmental health baseline that we need to better understand before we embark on a wholesale strategy of revitalization? Are the Brownfields Initiatives no more than a smoke screen for the wholesale elimination of environmental protection standards? In some people's minds it is nothing more than a smoke screen. I am not saying that this is what the EPA has in mind, but a lot of people do have that in mind.

Another question is the role of informed and empowered public participation. This is an issue that came up very vociferously in Philadelphia. To EPA's credit, because of grants that were going to be given without any knowledge on the part of impacted communities as to even the existence of such a grant process, OSWER has begun a process of defining a protocol for verifying community participation in existing partnerships as part of a grant review process.

The issues here relate to developing a holistic, integrated strategy on the part of all of the federal agencies. We will pose a question as to whether urban revitalization or the challenge of addressing the crisis in America's urban areas will be one thing that can coalesce the work of the Environmental Justice Executive Order²⁵⁵ and the Interagency Working Group.²⁵⁶ We need to talk about reinventing government²⁵⁷ in the context of where the reinvention of government needs to begin, which is in the community.

Lastly, I think we brought to the table many representatives of other social institutions, faith groups, philanthropies, universities, labor, businesses and so on, to talk about the role that they will play in making the community's vision a reality. These are clearly some of the things

254. See England-Joseph, *supra* note 252 at 255.

255. See *supra* note 167.

256. Availability of the Presidential Memorandum for the Heads of Executive Departments and Agencies on Environmental and Economically Beneficial Practices on Federal Landscaped Grounds, 59 Fed. Reg. 43,122 (1994).

257. AL GORE, REPORT OF THE NATIONAL PERFORMANCE REVIEW, CREATING A GOVERNMENT THAT WORKS BETTER TO COST LESS (1993).

which we need to go through and of which we must begin to have a better understanding. We address one of the greatest challenges of our day.

This is not a question that we should take lightly. This is a question that has a lot of sensitivities to it. We need to address this for what it really is and we need to talk about this in terms of what environmental justice is really speaking to. When we talk about urban areas and the development of urban areas, we really are talking about areas which have been defined by racism.

The ecology and the structure of cities is one which has been very well defined by housing patterns, segregation and redlining. To move forward without a real consideration of what this means is foolhardy. One thing that I want to leave here, in terms of what direction we are going to take when we revitalize, is whether we are going to revitalize urban areas in a way that is going to be truly wholesome, healthy and sustainable, or whether it is going to be some front for people to gentrify.

There is a rumor that we are going to take and relax all the liability restrictions as a way of inducing reinvestment. That is merely a untested theory, since there is nothing which says that just because you happen to get rid of the liability impediment, there is going to be reinvestment. Therefore, we need to look at these issues for what they really are.

There is going to be a conference later this year in California regarding the brownfields. To illustrate what I am talking about, I am going to leave you with the name of this conference. This conference is to be called "Buying and Selling Brownfields for Fun and Profit."

Keep in mind, most people and people-of-color communities do not even like the word "brownfields." If one were to construe, correctly or incorrectly, brownfields to be communities where people of color live, then we are talking about buying and selling communities where people of color live for fun and profit. I venture to say that there are some people who have exactly that in mind. This is something that this Council needs to address. We need to address it in the context of the opportunities involved, but also in terms of the grave kind of issues that we need to address.

Therefore, I want to ask that we do consider a resolution for this Council to point to the gravity and the urgency of addressing a serious crisis in America's urban areas. The use of environmental justice as a holistic and integrated strategy is necessary to address that and put this front and center in the work of the Environmental Justice Executive Order and the Interagency Working Group on Environmental Justice.²⁵⁸

I want to ask Mr. Fields if he wants to add a few words to that.

258. See *supra* note 167.

MR. FIELDS: Thanks, Charles. I think that type of resolution is well worth the Council considering. Brownfields is a topic that we got involved in at OSWER in June of 1994. We went to a U.S. Conference of Mayors Meeting in Portland, Oregon,²⁵⁹ and they made at that meeting, through a resolution of 300-plus mayors, Brownfields the number one environmental topic that they will be dealing with over the next year.

We began to go around to a lot of cities, Pittsburgh, for example, where you can stand inside of a 900,000 square feet building and look around and see nothing but vast brick abandoned building. You walk and you see acres and acres of a former steel mill. There is nothing there now but proximity to people of color and low-income communities that are living next to vast wastelands of properties. You can go to other cities and see similar situations.

We said we needed to do something, and therefore, agreed that we need to put forward some initiatives to deal with this problem of trying to restore communities. I agree with Charles that urban revitalization is not just trying to clean-up the environment. But what we are trying to deal with in this problem called brownfields redevelopment is how to restore an entire community. We are talking about abandoned, formerly used industrial property that is not utilized now for any useful purpose, but sitting there fallow. We are trying to find ways to reuse that property for some benefit.

I agree with Charles that our primary initiative that was announced January 25th, 1995²⁶⁰ was largely a city government-driven, developer-driven type of initiative. We did not get adequate input from the community, from people who live in proximity to these properties as to what types of reforms we ought to put in place. Our heart was in the right place, but our mind was not there, and now we are trying to fix that.

We have learned from the reforms that we have put into place as we have gone along. The public dialogues that Charles suggested, and we carried out together over the last couple of months, have given us a lot of insight into the concerns of communities that we would normally take for granted. For example, we think that it is okay to clean-up a particular piece of property and bring in a particular new business into that community. The community will say:

259. Jeff Fletner, *U.S. Mayors Gather in Portland*, NATION'S CITIES WEEKLY, June 20, 1994 at 1.

260. *EPA Environmental Justice Strategy Called Too Vague*, PESTICIDE & TOXIC CHEMICAL NEWS, Jan. 25, 1995.

"We do not necessarily want that business; we want a clean business. We do not want you to clean up that property and bring in a business that is not acceptable to the community."

"We want to be involved in assuring that the business that is brought into the community is going to hire community residents as part of their work force, for both the clean-up as well as jobs after that business is established."

"We do not want you to provide relief for liability for certain businesses in your community just because you can issue new perspective-purchaser guidance of the EPA to help facilitate redevelopment. Those businesses may have a bad track record, and you need to check them out and make sure you want to loan money to those businesses to redevelop."

There are questions that we have heard time and time again in these dialogues in the various cities we visited that we had not thought about. The report that the NEJAC Subcommittee on Waste and Facility Siting is going to present to us in the next few months is going to be quite helpful in revising our Brownfields Action Agenda. The agenda will make it better and make it more community-driven, and give us the input of people who live in proximity to these properties. What are their desires? What are their interests? What are their recommendations about how we redevelop property and how we get the community involved in jobs and clean-up and ultimate reuse of those properties and businesses that they want in those communities? Some of us take for granted that if you are going to clean-up a piece of property, for instance, an old abandoned mill, and make it a parking lot, that it is great. Well, the community says, "No, that is not necessarily true." Therefore, you really must talk to the folks who live there because the folks who live in proximity to these properties may think a different way than we do about the same issue.

The set of meetings that Charles and the Subcommittee put on over the last couple of months have given us some unique insight into how we can develop an overall brownfields redevelopment agenda that is responsive to the community, meets the needs of businesses, addresses the needs of the mayors of cities who want these properties to be redeveloped, as well as assure protection of human health in the environment as these clean-ups are done.

So with that, as Charles said, we are going forward with our plan to put in place fifty brownfields pilot projects by the summer of 1996. The Administrator of the EPA, Carol Browner, will be announcing fifteen more of those cities tomorrow to add to Bridgeport, Connecticut; Richmond, Virginia; and Cleveland, Ohio. Those pilots are already under way. We

will be announcing some more in the fall and some more next summer to get to a total of fifty.

We have removed 25,000 sites from the Inventory of Superfund Sites that we have addressed.²⁶¹ We spent \$500 million over the last fifteen years assessing 25,000 sites.²⁶² Those are the sites that we are dropping from the Superfund Inventory,²⁶³ and we are saying that they no longer have federal interest. Many of them never had a problem to begin with, but we are saying that those are candidates for redevelopment. We are issuing new policies on relief from liability for perspective purchasers and lenders. Fourthly, we are issuing new clean-up policies on soil screening levels for 107 chemicals commonly found on contaminated property.²⁶⁴ We are issuing new guidance on how we make land use considerations and decisions in making clean-up and reuse decisions at sites and properties around the country. All those are part of our brownfields redevelopment agenda that we have been operating and implementing.

The special community involvement that was facilitated by the NEJAC Subcommittee over the last couple of months at these five public dialogues has given us new data, new information, and new insight in terms of how that agenda ought to be modified. We await the recommendations of the NEJAC Subcommittee over the next several months, and we believe that we will develop an agenda for redevelopment of contaminated properties that will help be a force in urban revitalization across the country.

As Charles pointed out, there are many other government agencies besides EPA that need to be a player in this agenda. We need to have the Economic Development Administration and the Department of Housing and Urban Development involved. We need to have the Labor Department involved in job creation and Health and Human Services in addressing health issues in these communities.

All of us in the government need to play a major role in looking at not only how we clean up the environment, but also at how we work together to restore the community and address jobs, health, environment, and economic issues in order to really have urban revitalization in our cities and towns across the country. We look forward to working with you on this.

261. *Reinventing Environmental Regulation: Clinton Administration Regulatory Reform Initiatives Released March 16, 1995*, 1995 DER 52d127 BNA, March 17, 1995.

262. *EPA System of Environmental Protections Needs Reform, Not Repeal*, Browner Says, BNA NAT'L ENVTL. DAILY, Feb. 15, 1985.

263. Neal R. Pierce, *Cooperation is the Way to Make Superfund Work*, HOUSTON CHRON., March 12, 1995, at 3.

264. *Superfund Soil Screening Draft Sets Level for 107 Chemicals*, PESTICIDE & TOXIC CHEMICAL NEWS, Dec. 7, 1994.

We have made some major steps forward. There are still some limitations and changes that need to be made, but I know that with Charles and other people keeping our feet to the fire, we will make sure that we develop an agenda that we, the NEJAC, the EPA, and the rest of the federal government can support and implement and meet the needs of people who live in these communities. Thank you and I look forward to any feedback or comments on this agenda.

DR. GAYLORD: Charles, I need clarification on the resolution that you would like to propose for this committee.

MR. LEE: First, the NEJAC needs to speak to and make a statement about the fact that there is a very serious crisis in America's urban areas, and a very serious environmental justice crisis in America's urban areas. Second, environmental justice needs to pull together a whole set of issues and articulate a vision for how to develop healthy and sustainable urban communities in a cohesive, integrated, community-driven, rooted environmental justice urban strategy. This should be recommended to be used by the Interagency Working Group on Environmental Justice on the Executive Order for Environmental Justice as one major issue which will coalesce the work of that working group.

CHAIRMAN MOORE: I thank you, Charles and Tim. Are there any comments, questions or discussion?

DR. ENGLISH: Tim, I am Mary English of the University of Tennessee. I wondered whether in your work at OSWER, and particularly with respect to the Brownfields Initiative, do you have a working definition of "community," or are you defining it on a case by case basis?

MR. FIELDS: We do not have a precise definition that everybody has agreed to as to what constitutes the "community." Various definitions have been utilized in terms of how we define "people of color" and "low-income communities" that are impacted by the Brownfields Initiative, but we have been using various definitions in various parts of the country in terms of how we define that.

For example, in the Dallas region, they define various types of communities on how that community stacks up as compared to the average state population of that particular constituency within the state. If the population within that particular community, for instance, a Hispanic-American population, exceeds the average state population, then it becomes defined as a Hispanic-American community where certain initiatives need to be put in place or addressed by that particular people-of-color community. It varies from place to place. Therefore, at the current time, there are various definitions being utilized across the country in terms of how we

define a particular type of community. It varies from region to region and state to state at the current time.

MS. HERRERA: I would just advise you to make sure that people work with the general community, whether it is planners from the city, people from the university, or the people that live, work, and play within the community.

When we talk about jobs, giving jobs to people or training programs, one of the things that we say in the community is that these jobs are not menial, dead-end jobs but jobs with a future, managerial-type jobs. Also, we take into consideration the transportation routes and, if indeed the infrastructure can sustain that particular business. This is because there are a lot of overarching issues when you are talking about locating a business that is accepted in the community.

MR. FIELDS: Right. That is a good comment. I did not mention that in our remarks as part of our agenda. But in our Brownfields Redevelopment Pilot Projects, we are awarding in each of those pilot projects \$200,000 grants to three cities: Cleveland, Ohio; Richmond, Virginia; and Bridgeport, Connecticut. We have also established a training component. We have given grants to local universities to provide training for the work force in that community, to give them some training in environmental restoration, in management of clean-up, so we can try to establish a training connection to benefit community residents from the Brownfields redevelopment, the site-assessment activity, the clean-up, and the ultimate reuse of that property. And that will be done for the fifteen grants that we will be awarding tomorrow as well.

We will be providing not only a component to assess the site and deal with the clean-up and restoration of the property, but there will also be a training component to train community residents so they can be involved in all aspects of the activity. I think I agree with you. I think it is critical that local residents benefit from this effort and that companies do provide meaningful jobs for people who live in those communities. People from outside the community should not be brought in to be beneficiaries of the efforts.

MS. HERRERA: If you build the capacity of community-based organizations to work with the universities, the technical/vocational institutes, the high schools, mid-schools, elementary schools; training institutes could be created with actual community members teaching their fellow community members whatever training is needed. Then you truly have a community-driven effort.

MR. FIELDS: Thank you.

MR. TURRENTINE: Tim, on the Brownfields Initiative and the one you mentioned in Cleveland, are you aware of the problem that they had with the residents of that program finding jobs after they had received the training, actually doing the clean-up? I bring that up because, unless we kid ourselves, just because an individual of an environmentally-impacted community has been trained, it does not mean we have begun to focus on those blocks, those prejudices that have kept them out of the work force up to this point. What happened in Cleveland was a classic example with the people of the Cuyahoga Community. They did not have iron-clad access to the job market once the community trained these people. I want to caution any of us who want to get involved in training that if you train people and you do not provide them with any kind of assurances that they will have a lock on at least some of those jobs, then you create a monster far greater than the one you had before you trained them. I do not mean a monster in a negative sense. I am talking about anger. I am talking about built-up frustrations of people who have been passed over for whatever reason. They had been told that they did not have the skills and that they did not have the training to get those jobs. Now you have trained them and they are still being passed over for the jobs. You have a very angry group of people. As Charles suggested about why South Central did not happen earlier and why it has not happened more often,²⁶⁵ if you train people and then do not offer them access to those jobs, you will not have to ask that question ever again because things will blow up and spill out onto the streets.

If you are going to allow contractors to come in and do that work, whoever controls the purse strings for the granting of those contracts will have a real opportunity to ensure access to the jobs by the people of the impacted community.

MR. FIELDS: I think your point is well taken. Last week there was a meeting hosted by Congressman Stokes,²⁶⁶ here in town, where we had members of the Cleveland business community, including Sandy Crawford, who heads up the program at Cuyahoga Community College (Tri-C).²⁶⁷ In those meetings, that issue was brought to our attention.

The commitment the EPA made at that meeting with HUD and others was that we really need to get more outreach to the local contract community in the Cleveland area. We are going to be hosting a meeting. We are going to be funding a grant to Tri-C to bring together the business

265. See *supra* note 253 and accompanying text.

266. Louis Stokes, (D. Ohio).

267. Located in Cleveland, Ohio.

community, the local clean-up contractors, and people who are being trained to talk about partnerships so that we can assure that the people who are being trained at Tri-C do have jobs when the training is done.

Let us not train people and have no jobs waiting for them once their training is completed. We are going to work with Cuyahoga Community College, the Cuyahoga Planning Commission, and other leaders in Cleveland to try to fix that problem.

MR. LEE: I want to address Haywood's point. You are absolutely right. This issue comes up over and over again and really speaks to the fact that we cannot look at one aspect of the problem and do some admittedly good work in it. All that does is add to greater alienation and a greater sense of despair. We really need to look at this not just merely from the point of view of job training, but also from job creation. We must look at the overall market. We have to look at our perspective around job training as not just developing jobs, but developing careers. We have to address issues of developing an infrastructure. The infrastructure development within these areas is important so that this all fits together. Short of that, you are going to create the situation. We have to be truly innovative. This is an opportunity to come up with new innovative ideas to whole issues in terms of leveraging and linking, say, a federal facilities clean-up and non-federal facilities clean-up. It has been a major issue we have to see how we make use of, and that is being raised only as one example.

So having said all that, I have been personally more hopeful the last couple of months than I have been for a long, long time. I am hopeful from coming in contact with many communities. There are a lot of success stories out there. There are a lot of really wonderful victories. We have to talk about entrepreneurship because it is out there.

CHAIRMAN MOORE: Thank you, Charles. Our next presenter will be Hale Hawbecker. Hale has been working on the new Federal Advisory Committee Act (FACA)²⁶⁸ policies out of the General Counsel's Office. From what I understand, Hale is one of the primary people working on that.

NEW LEGAL GUIDELINES FOR THE NEJAC

MR. HAWBECKER: Thank you for inviting me to come and speak about some of the legal issues that concern the Council. NEJAC is an advisory committee, subject to the Federal Advisory Committee Act

268. Federal Advisory Committee Act, 5 U.S.C. app. II, § 1 (1994).

(FACA).²⁶⁹ The main requirements for FACA are as follows. First of all, advisory committees have to be balanced in membership.²⁷⁰ Also, timely notice of each advisory committee has to be published in the Federal Register.²⁷¹ We give fifteen days notice before meetings. Minutes must be kept of all advisory committee meetings.²⁷² Interested persons can file written statements or make public comments.²⁷³ FACA also requires that advisory committees be chartered subject to approval by the Office of Management and Budget. Hopefully, we will get to that segment of this FACA meeting for interested persons who may want to make comments today.

Each member is attended by a Designated Federal Official (DFO), and Ms. Clarice Gaylord is serving that role very admirably today. Draft reports, working papers, and other documents that are prepared by an advisory committee have to be made available for public inspection and copying. These are all types of basic FACA requirements.

One thing, as we have had our growing pains with NEJAC, is the issue of working group meetings. Obviously, every time the members get together for lunch, a notice does not have to be published in the Federal Register. There is a volume of work that the members can do in working groups outside of these public meetings. Those are perfectly legal and exempt from FACA.

The one important thing I want to say about working group meetings is to watch out that they do not become stealth advisory committees. The working groups really are for your purpose, as advisory committee members, to formulate draft ideas and then to get back to the EPA. The members should hold an open meeting like this, before the recommendations are sent to the EPA.

Other questions have arisen about invitational travel, i.e., when can the EPA pay for invitational travel for advisory committee members. One limitation that the EPA has is a statutory limitation. EPA cannot pay for invitational travel for people to attend merely as an audience member.²⁷⁴ We are limited to pay only for people who are actually participating in an

269. Federal Advisory Committee Act, Pub. L. No. 92-463 § 5(b)(2), 86 Stat. 770, 771 (1972) (codified as amended at 5 U.S.C. app. §§ 1-10 (1994)).

270. "Balanced membership" means balanced in terms of the points of view represented and the functions to be performed by the advisory committee. *Id.*

271. 5 U.S.C. app. II § 10(a)(2) (1994).

272. 5 U.S.C. app. II § 10(c) (1994).

273. 5 U.S.C. app. II § 10(a)(3) (1994).

274. 5 U.S.C. § 5703 (1994).

advisory committee and performing some type of direct benefit or service for the EPA.

Another issue that has arisen is removal of advisory committee members. The advisory committee members serve at the pleasure of the EPA Administrator, the person who appoints them. The Administrator can remove an advisory committee at his/her discretion. That might be good news for some members. There is a way out of the NEJAC. (Laughter) Of course, this is not done very often. Generally, removal is only done at the request of the advisory committee member. Removal, however, is something to keep in mind. One does not serve on NEJAC for life. Even if one does have a term for a year, it may be cut short for a variety of reasons. A member may cut it short, in fact, for personal reasons.²⁷⁵

Anti-lobbying issues have become a concern also. There has been an anti-lobbying cloud hanging over the EPA now for several months. There are restrictions against grassroots lobbying, and it is important to remember for NEJAC that the only official function of NEJAC is to give advice or recommendations to the EPA. There is nothing in the charter that permits NEJAC, while acting as NEJAC members, to lobby Congress. However, that does not prohibit you in any way from lobbying Congress in a personal capacity. Lobbying is good. I know I am not supposed to say that, but I mean, you certainly can lobby in your own personal capacity. It would be inappropriate for EPA to explicitly encourage you to lobby Congress for any specific statute. Likewise, NEJAC funds or official NEJAC meetings cannot be used to develop a strategy for lobbying Congress.

We also recommend, if members receive travel and per diem funds from EPA to travel to Washington, D.C. and the members are on the EPA's dime, so to speak, that the members do not contact Congress on the days that they are performing duties as a NEJAC member. If the members receive money to be here to serve the EPA, do not use that money to go and also lobby Congress. We are being conservative in our advice on this issue. Some might even say paranoid in our advice.

Finally, I would like to comment on conflicts of interest. The most important thing to know is that members of NEJAC are representatives, not federal employees or officers of the federal government, therefore, the members are not subject to the conflict of interest laws, as are government employees. There are, however, some case-by-case restrictions that are put on all the EPA advisory committees at EPA. For instance, if the members were participating as NEJAC members in a specific party matter, and by that I mean giving advice to the EPA on a contract or a grant or a license

275. 5 U.S.C. app. II § 1 (1994).

or a permit or litigation, then the members should recuse themselves from those discussions. Other than that, there are no ethical restrictions on participation as advisory committee members.

Finally, if members are required to register as a foreign agent under the Foreign Agents Registration Act (FARA),²⁷⁶ there is a peculiar Department of Justice (DOJ) legal opinion that says that you cannot serve as an advisory committee member. We do not necessarily agree with this opinion. However, the DOJ is the one that sends people to jail. So, if any member is required to register under FARA, please contact us and we will work it out.

DR. GAYLORD: During our public comment period, we have had some members, council members, who take off their hat and make a public comment during our comment period and then come back and return to the Council. Now, ever since we have been doing that, we have had some folks complain about that practice. Is that a practice that we should continue?

MR. HAWBECKER: It is not illegal to do that. There is nothing in FACA that addresses that, and my recommendation would be for the Council to decide if they want to continue that practice.

However, lawyers cannot shut up without giving their own personal opinions about such things. In my opinion, members have plenty of time to confer during the day. There is such limited time for other people to speak that I would leave that time totally devoted to the public. However, that is merely a personal decision that advisory committee members have to make in consultation with the DFO.

PROFESSOR LAZARUS: On at least one occasion, the NEJAC wanted to give Congress advice on pending legislation. We handled this situation by writing a letter to Administrator Browner and asked the Administrator, in turn, to distribute that to Congress. My question is twofold. Did we violate our mandate by doing that, and did Administrator Browner violate the anti-lobbying restriction?

MR. HAWBECKER: The answer to both questions is no. You guys did great. We saw the memo in the Office and the letter that you sent. It was on letterhead from your group. It was perfectly appropriate for you to raise concerns to the Administrator, which is what you did, about legislation pending on the Hill.

In turn, we sent a letter back to your organization saying thank you very much for raising those concerns and then we forwarded both documents to

276. 22 U.S.C. §§ 611-21 (1994).

the Hill. That is a perfectly correct way to address the "anti-lobbying problem."

CHAIRMAN MOORE: Thank you very much, Mr. Hawbecker. We appreciate your presentation.

Our next presenter will be Mr. Rodney Cash. Mr. Cash is from the Office of Civil Rights and will be discussing the Agency's initiatives around the Civil Rights Office. Welcome.

TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

MR. CASH:²⁷⁷ Thank you very much. We have noticed that since President Clinton issued his Executive Order on Environmental Justice,²⁷⁸ there has been a significant increase in the number of Title VI²⁷⁹ complaints filed with EPA's office of Civil Rights. Individuals and organizations perceive Title VI as a prime enforcement tool. At the Office of Civil Rights (OCR), we see it as an important tool, but a tool that perhaps has some limitations.

Before addressing our Title VI Program, I thought it would be of interest to you to know something about the Office of Civil Rights, its authority, its organization, and its resources.

The OCR is located in the Office of the Administrator. Our director, Dan Rondeau, reports to the Chief of Staff. He has access to the Administrator. We are organized basically into two parts. We have an Affirmative Employment and Special Emphasis Unit, and a Discrimination Complaints and External Compliance Unit. At headquarters, we have seventeen full-time, non-support staff members. In the Discrimination Complaints and External Compliance Unit, we have eleven individuals, and one of those is a supervisory Equal Employment Opportunity (EEO) manager. We also have on loan from the Department of Justice a senior Title VI attorney. The External Compliance Section, which is the section responsible for processing the Title VI environmental justice complaints, has four attorneys and one support person on permanent staff. The OCR has no personnel in the regions. There are EEO officers in each of the regional offices who carry out some of our programs. They have no Title VI environmental justice responsibilities. Each major laboratory has an Area Director of Civil Rights. These individuals are organizationally a part

277. Rodney Cash, Associate Director for Discrimination Complaints and External Compliance, EPA, Office of Civil Rights.

278. *See supra* note 167.

279. *See* 42 U.S.C. § 1983 (1988); 40 C.F.R. § 7.120 (1995) (explaining complaint investigation procedures).

of the Office.²⁸⁰ They have no external compliance responsibilities. The current staffing level in our External Compliance Section reflects a significant increase in resources by the Browner Administration. Between 1989 and 1994, there was one person in the External Compliance area. This person had responsibility for Title VI, for section 504,²⁸¹ and several other statutes.

The impetus for the infusion of these resources was, of course, the Administrator's commitment to environmental justice and the volume of Title VI environmental justice complaints that were being filed. In October 1994, the Civil Rights Division of the Department of Justice made available to us, on a reimbursable basis, a senior Title VI attorney, and his detail has been extended several times. We were hopeful of having him join our staff permanently; however, the current freeze on hiring and promotions stemming from the budget impasse, precludes such action. In the midst of these staffing acquisitions, however, we suffered a very critical blow when our Deputy Director, the person who had significant Title VI experience, was very knowledgeable and was going to head up the Title VI Environmental Justice Complaint effort, passed away very suddenly.

In the next part of my presentation, I would like to review some fundamental information about Title VI. This will come as somewhat elementary information to some of you, although to others it may not be. For those who are new to the committee, this review provides a basic level of understanding.

Congress enacted Title VI of the Civil Rights of 1964 to ensure that there was no discrimination in programs and activities receiving federal financial assistance.²⁸² Section 601 of the Act reads, "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."²⁸³ It should be noted Title VI does not cover sex, nor does it cover socio-economic status. Sometimes this is a problem because individuals having read the Executive Order²⁸⁴ draw the conclusion that

280. There are laboratories at Cincinnati, Research Triangle Park and Las Vegas.

281. 29 U.S.C. § 794 (1994) (non-discrimination under Federal grants and programs; promulgation of rules and regulations). *See also* 42 U.S.C. § 2000d (1988) (prohibiting discrimination in federal programs).

282. *See id.* (prohibiting "exclusion from participation in denial of benefits of and discrimination under federally assisted programs on grounds of race, color, or national origin.").

283. *Supra* note 281.

284. *Supra* note 167.

they can file a Title VI complaint under the latter areas. We have had one such complaint and we had to reject it.

A good example of the leverage available under Title VI is the school desegregation movement of the late 1960s and '70s, where the Department of Health, Education, and Welfare used the hook or the carrot, however you care to characterize it, of federal financial assistance to prod and to push public school systems into desegregating students and faculty for the purpose of equalizing services and facilities.²⁸⁵ In the *Guardians* case,²⁸⁶ the U.S. Supreme Court ruled that Title VI only prohibits intentional discrimination. But, federal agencies through their regulations could adopt a disparate effects standard to prohibit unintentional discrimination.²⁸⁷

In 1984, the EPA published a consolidated regulation, which included Title VI, and adopted the disparate effects standard in two places.²⁸⁸ The EPA applies the disparate effects standard to methods by which a recipient administers its programs and to the methods it uses in choosing a facility's site or location.²⁸⁹

The regulations also impose an affirmative obligation to remedy intentional discrimination.²⁹⁰ The EPA regulations provide for an external compliance review procedure,²⁹¹ which can be invoked when the Agency has reason to believe that there is discrimination occurring in a federally funded program. The regulations also provide for an administrative complaint mechanism,²⁹² which will be the subject of the next part of my discussion.

A Title VI complaint begins with a written complaint. It can be filed with any office of the EPA, but must be referred to the OCR for processing. Our intake procedures have undergone some revision since the fall of

285. See *supra* note 281 (prohibiting discrimination in any program or activity receiving federal financial assistance).

286. *Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 584 (1983).

287. *Id.* at 584 (holding that there is no need to prove discriminatory intent to establish Title VI violation).

288. 40 C.F.R. §§ 7.35(b), 7.35(c) (1995).

289. 40 C.F.R. § 7.35(b) (prohibiting use of criteria or methods of administration that have a discriminatory effect); 40 C.F.R. § 7.35(c) (prohibiting recipients from using site or locations that has "purpose or effect of excluding individuals from, denying them benefit of, or subjecting them to discrimination under any program . . . on the ground of race, color or national origin or sex.").

290. 40 C.F.R. § 7.35(a)(7) (stating "the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.").

291. See *supra* note 279.

292. 40 C.F.R. § 7.130 (1995) (describing actions available to EPA to obtain compliance).

1993 when the first Title VI environmental justice complaints were filed. Early on, we were less critical of the complaints; we looked only to see whether the timeliness and jurisdictional requirements were met. However, since acquiring additional resources, we now conduct a preliminary inquiry into the complaint before accepting or rejecting it. We take the position that a complaint's allegations need to state a *prima facie* case of discrimination.²⁹³ We want to be sure that our finite resources are used to investigate allegations that are clear and substantial. A complaint will be accepted if it provides the identity of the persons, protected under Title VI, who are injured by the alleged discrimination, the identity of the persons in the institution receiving the EPA funds who are allegedly responsible for the discriminatory conduct, and a description of the alleged discriminatory acts occurring within 180 days of the filing of the complaint.²⁹⁴ The description should also include sufficient information, so as to indicate how the persons protected by Title VI are adversely affected by the alleged discriminatory conduct.

Upon receipt of a Title VI environmental justice complaint, we provide a copy to the respondent(s). Internally, we provide a copy to the Office of General Counsel, to the Office of Environmental Justice, to the relevant program office, and to the appropriate regional office. This is all part of our preliminary inquiry. We offer these entities an opportunity to provide any information that they may have on the matters referred to in the allegations.

In conducting our preliminary inquiry, our staff verifies the facts by applying LandView II,²⁹⁵ our new geographic information system. They then contact the respondents, the complainants and others who may be knowledgeable about the matters raised in the allegations. Sometimes this process takes a while. Last week, for example, we accepted a complaint which actually had been filed in December, 1994. The complaint was complex and raised some novel issues. Also, it was directed against multiple respondents. It took that much time to clarify some of the allegations. When the staff is satisfied that its determination can be defended, we share a copy of that preliminary determination with the Office of General Counsel for its review.

293. 40 C.F.R. § 7.110 (1995).

294. 40 C.F.R. § 7.120(b)(2) (1995).

295. LandView II offers geographic and demographic information from five EPA databases. Based on 1990 Census Data, the system displays detailed maps which include roads, rivers, landmarks, tribal designations, congressional districts and more. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY LANDVIEW FACT SHEET, Apr. 1995.

An acceptance letter does not limit the scope of our investigation, even though it may not accept all of the allegations filed. If, during the course of an investigation, we uncover additional allegations and they meet the jurisdictional and timeliness requirements, we will expand the scope of the inquiry.

I am going to briefly touch on some of the trends concerning Title VI complaints. Historically, we have received very few Title VI complaints. The first two Title VI environmental justice complaints were filed in September of 1993. Since then, we have received a total of twenty-one additional such complaints, for a total of twenty-three.²⁹⁶ Eleven have been accepted for investigation; ten are under active investigation. The Pennsylvania case was dismissed for mootness because the permit applicant did not go forward with the second part of the permit application.²⁹⁷

Most of the complaints are from states in the Southeast and the Southwest. Those are our Regions IV and VI. As far as the respondents are concerned, most are state environmental agencies, several were land use authorities, and in a couple of instances, we have respondents who are private corporations. We do not, however, have an active complaint in which a private corporation is a respondent.

At the beginning of the presentation, I suggested that Title VI has some limitations as an environmental justice enforcement tool. One of these is the jurisdictional and timeliness requirements.²⁹⁸ Obviously, Title VI cannot be applied to each and every environmental justice situation that is identified.

Another limitation is found in the area of remedies. The goal of Title VI, as we indicated earlier, is to ensure that there is no discrimination in federally assisted programs. If the funding agency makes a preliminary determination of noncompliance, there ensues an effort to bring the recipient into voluntary compliance. If this is accomplished, the funding continues and the identified noncompliance is corrected. If, however, compliance efforts fail, there is a lengthy procedure that leads possibly to funding termination. This is the ultimate sanction of Title VI, but it is a sanction that rarely occurs.

296. As of October 17, 1995, a total of 27 complaints have been filed.

297. *Lewisburg Prison Project v. Pennsylvania Dept. of Env't'l Resources*, Case No. 2R-94-R3 (1994) (dismissing as moot case alleging Pennsylvania Department of Environmental Resources violated Title VI in administration of hazardous waste management program with respect to incinerator to be located near Lewisburg Federal Corrections Complex).

298. 42 U.S.C. § 2000e - 5(f)(1) (1988) (describing time requirements and jurisdiction in which Equal Employment Opportunity Commission may bring civil action).

Some complainants have the view that Title VI promises a panoply of remedies, including make whole relief and compensatory damages. While such relief may be obtainable in some instances, complainants should not routinely expect it. The purpose of the administrative redress procedures is to identify and eliminate illegal discrimination so as to continue the benefits afforded by federal assistance. In one instance, for example, complainants are seeking to have their property bought and to be resettled; they are even requesting a teenage pregnancy program. We have had difficulty making them understand some of the limitations afforded by the Act.

The OCR consults with different program offices in the Agency in an effort to sort of cross-fertilize. They are learning about Title VI, and we have to learn about the environmental programs authorized by the organic statutes. We are working with the Department of Justice and the Department of Housing and Urban Development. We have scheduled a series of meetings with state environmental agencies in an effort to promote compliance and hasten the processing of our complaints.

Any questions?

PROFESSOR LAZARUS: I have a couple of questions. First, although termination of federal funding is the ultimate sanction, agencies under Title VI generally do not do that. Instead, they use the threat of termination to settle for other kinds of in-between remedies. Could those in-between remedies include things which are the kind of remedies that the plaintiffs in those cases seek?²⁹⁹ Those remedies would include all different kinds of funding.

MR. CASH: Yes, it is conceivable that the remedies could be broader, but the facts in this particular situation, to which I referred, do not lend themselves to that kind of action.

PROFESSOR LAZARUS: I do not know the facts, but some of the remedies that people get under Title VI are often very creative, because they get them through the threat of a termination. All kinds of remedies are actually available by using the threat of termination of federal funds.

Second, in looking at the list of different kinds of Title VI complaints that you have received, some of them include a possible Title VI violation because of the theory that the state environmental protection department had been unequal in its enforcement efforts. Has the EPA concluded

299. National Environmental Justice Advisory Council, Summary of Public Comment Period, Jan. 18, 1995. Typically complainants seek relief such as relocation, educational campaigns, government accountability, increased enforcement of existing environmental laws and additional regulations.

whether those allegations are true, and whether the complainant has a valid Title VI cause of action?

MR. CASH: No, I do not think we have made that conclusion. We were taking the allegations and the complaints that we have and trying to apply them against legal theories.

PROFESSOR LAZARUS: I did not know whether or not you had concluded that, because that is one thing which has been an important recommendation by some of the people in the environmental justice community, which is that a state agency can violate Title VI not just by an individual siting determination, but also by a whole program of allocation enforcement resources. I did not know whether the Agency had ever come to a formal view on that or not.

MR. CASH: We can talk about that.

CHAIRMAN MOORE: Any other questions or comments?

DR. BULLARD: Yes, I have a question. How do you cover the whole nation with just four people in your office when you have ten regions? What is the interaction of the OCR and the efforts that are going on in the regions, in terms of relationship with the Environmental Justice coordinators? And are there some people in the regions that work on civil rights?

Right now it seems the thrust of the OCR is to handle Title VI, but at the same time, there are a lot of activities and initiatives that are going on within the region. To what extent are the regions themselves taking a serious step by at least assigning one person to Title VI claims? I believe this makes sense because the regions are closer to the ground; you can only do so much at Headquarters.

MR. CASH: Well, we have had significant communication with the regional offices. More in some, for example Regions IV, V and VI, than in others. There are several on-going meetings that bring people together on these issues which take place periodically. There is an Environmental Justice Coordinators Meeting that is coordinated by the Office of Environmental Justice where information is exchanged. Also, there is an Office of Regional Counsels' Meeting that occurs monthly and there are other opportunities for the exchange of information.

I think that idea is worth exploring. We have had in our office someone from a Resource Conservation and Recovery Act (RCRA)³⁰⁰ program office, and the purpose for having her in the office was for her to understand Title VI and for us to understand RCRA. Together we worked on an issue, and that matter is working its way up through the organization

300. Resource Conservation and Recovery Act, 42 U.S.C. § 6901 (1988).

now. We want to do that in other offices as well. It is logical to me that we consider having such an exchange with the regional offices.

DR. BULLARD: Just to piggyback that point, the reason I was saying that is because it is not just a random, isolated incident that you have two regions that have an outbreak of complaints.³⁰¹ If you look at the demographics of Regions IV and VI, there is a substantially large concentration of people of color and industry as well as states that have a poor record. We have thirty years of the Civil Rights Movement to show that there is something going on. So, if we could try to persuade some activity to go on within the regions that would really show that there needs to be a concentrated effort, and some targeting of personnel to piggyback what you are doing at Headquarters.

MR. CASH: Let me just follow up on that. When the first Title VI Environmental Justice complaints were filed, we realized that there were lots of questions to which we did not have the answers. There is still a significant number of unanswered questions. In order to speak with one voice and not to have one region doing one thing and another region doing something else, the decision was made that these complaints should be processed at Headquarters. At some point in the future, maybe these decisions will be decentralized again.

DR. ENGLISH: This is somewhat related to what Bob Bullard was just talking about, but it is slightly different. I am interested in cumulative effects of different activities, not necessarily just within the EPA, but other types of federal programs, for example, transportation and housing, as well as environmental programs and federally funded programs. Also, I am interested in finding a pattern of cumulative discrimination: for example, where a highway is located, how a housing project is or is not carried out, where a landfill or an incinerator is located, and whether you interact with other agencies within the federal government to look for patterns of discrimination across federal programs.³⁰²

MR. CASH: We have not gotten quite that sophisticated yet, but what we have done is to share complaints with other agencies. These complaints were not jurisdictional for us, but were jurisdictional for other agencies.

301. Region IV and Region VI.

302. *Guardians*, 463 U.S. at 586. In Title VI violations, plaintiffs do not need to establish discriminatory purpose or intent as long as they can show a discriminatory effect or impact. The Supreme Court held that in a private action the same remedies available under Title VII would also be available under Title VI.

That was the case with regard to the California complaint.³⁰³ We are not there yet.

CHAIRMAN MOORE: Thank you.

MR. RAY: First, has your office defined what constitutes a continuing violation? Second, is there a time frame within which a violation must occur for you to review the case? You could have had violative activity that might have occurred thirty times, but if the violations have not occurred within ninety days or forty-five days since issuance of complaint, does that make a difference in your determination?

MR. CASH: We have not settled on a definition for a continuing violation. We may look to the Title VII of the Civil Rights Act of 1964's definition and apply a couple of its tenets.³⁰⁴ Of course, the timeliness standard under Title VI is 180 days under private sector; under federal sector, it is forty-five. Under Title VII, if you had a series of related acts perpetrated by the same alleged discriminatory official, and one of those is timely, then all of those acts would be reachable under a continuing violation theory. Applying that reasoning to Title VI, if you had one discriminatory act that was timely and a series of related acts that may have not have been timely, then you could conceivably accept those untimely actions.

MR. RAY: And what is that time frame again?

MR. CASH: 180 days.

EPA STAFFER: I was just going to make a point of clarification. The Task Force on Enforcement and Compliance had for the first time about two months ago brought together over 150 representatives from all of the federal agencies for two days to talk about common issues. Department of Justice has the lead on this.

And in addition to that, basically agencies like EPA have been working with HUD and others to look at what they are doing, so we are not reinventing the wheel. We are starting to share more information. This is being examined.

PARTICIPANT #1: I want to ask a question concerning Chicago. This group is looking at Chicago because we have a lot of industry on the

303. *Padres Hacia Una Vida Mejor v. Laidlaw, Inc.*, Case No. 1R-95-R9 (1994) (cited in Title VI Complaint Summary 12 (July 7, 1995)).

304. See 42 U.S.C. § 2000E-5(G)(1) (1988). See *Also Lloyd v. NABC-TV*, 879 F. Supp. 394 (S.D.N.Y. 1995) (stating "[t]o establish continuing violation, plaintiff must demonstrate series of related acts where at least one act occurred within limitations period, or, alternatively, plaintiff may demonstrate that defendant had established discriminatory system prior to and during limitations period.").

southeast side of Chicago. There is a proposal for a transferring station for waste. We are bombarded with waste on the southeast side of Chicago, and we continue to get it.

EPA STAFFER: We are looking at the policy and guidance issues. EPA is not looking right now at Chicago. I know there is a lot of work with you and with sister agencies to help with some of the issues in the south side, but not in terms of this particular task force on Enforcement and Compliance.

CHAIRMAN MOORE: Thank you.

PROFESSOR LAZARUS: I wanted to point out that the way the Title VI program is currently described, it seems to be exclusively a reactive program responding to complaints that are filed. The EPA's Title VI obligations should be far broader. It should not be the Department of Justice's sole obligation to investigate a complaint that is filed, but the federal agency's obligation should be on its own initiative to ensure that there is nondiscrimination in the use of federal funds. For that reason, although you may not have the resources, the Agency should be contemplating ways in which it can itself search out Title VI violations. Perhaps after you receive a series of complaints in a certain geographic area and realize that there is a pattern, you can, as Bob Bullard suggested, put some people in the region to do a more broad-based examination.

MR. CASH: The meetings with state officials that I mentioned, which will begin in two days, are designed to do just that.

CHAIRMAN MOORE: Thank you for your presentation, Mr. Cash.

MR. CASH: Thank you very much.

CHAIRMAN MOORE: Edward Hanley has been with the Agency for quite a long period of time and he is someone that I have an incredible amount of respect for, as I am sure do the other Council members.

EPA STAFFER: I want to add that Edward Hanley is the one that found the FTE³⁰⁵ when it all began at the Office of Environmental Justice. This occurred because of his really strong commitment towards it. One of the reasons why it was housed in the Office of Administration and Resource Management is because he found a place for them there.

COMMUNITY-BASED ENVIRONMENTAL PROTECTION

MR. HANLEY:³⁰⁶ I have heard many of you say "community-based." I actually like that better because it emphasizes the fact that the action is

305. Full-time Equivalent Workers, *see infra* p. 749.

306. Assistant Administrator, Office for Administration and Resource Management, EPA.

based in the community, not in the federal government. What we are about here really is responding to reality, and I am not talking about the political reality on the Hill. Whether we recognize it or not, I am talking about the reality of the incredible energy that goes on in communities.

A federal regulatory agency like the EPA is accustomed to identifying problems on a national scale and working out solutions through a process which is sometimes participatory, sometimes based on science, but always attenuated and ends-up with sort of a "one size fits all" approach. It works pretty well for some problems, but it does not work at all for other problems. Many of the community-based problems that face this nation do not lend themselves to that approach.

I am a career bureaucrat, so I am going to talk about what this is all about in bureaucratic terms. We do have a goal, and it is important to understand that what we are talking about here is fundamental change in how the federal government goes about protecting the environment. It does not necessarily have a lot of effect on how we develop regulations in Washington. Yet, I am personally hopeful that we are going to create a kind of a demand function for different forms of regulations. It is not just another initiative. It is not a program. It does not have an office. We are talking about not so much what we do, but how we go about it. By the way, it is also not an effort to escape responsibility for ensuring compliance with federal standards and regulations. Basically, the concept is that it is based in a place. A place is, from the federal government's point of view, where environmental protection begins.

We do have a responsibility to provide to you information that allows you to see the connection between your block and your neighborhood, your town and other things. We also have a responsibility to bring to bear whatever good offices that we might have to provide a minimum level of protection to all people and places. Your point about planners, for example, is very important. Here is a group of people and local officials who we typically have very little business with, and yet, day in and day out, they are developing the plans and influencing the decisions that probably have more effect on the environment than any other single thing we do.

Community-based environmental protection is not simply a water or air program, or even an EPA program. We recognize the things that influence the quality of life, the environment in the broadest sense, and the things that have to deal explicitly with the economy. They have to deal with social issues. They have to deal with human health. They have to deal with natural systems and housing. They have to deal with a whole range

of things because that is the way people in communities try to manage their quality of life.

In the past, we would come into town and hear people say, "I want to talk to you about abandoned housing, rats and coke dealers." And we would reply, "Sorry, we do not do that. We do hazardous waste sites." Then we would leave. That is not productive. We do not do rats, and we do not do abandoned housing, and we do not do coke dealers. But we know people who do, and we have learned in many places that quite often the next thing on the agenda will be something environmental where we can be of more direct assistance.

We do have a strategy, and it has two points. First, it sounds kind of trite, but every place is a place. We think that the community-based approach works everywhere, and it is our goal to be helpful in having this happen everywhere. We do not, however, believe that the EPA should directly create it everywhere. You are not going to see an EPA person arrive in every town in America selling community environmental protection. We do expect to do some things that will be helpful to people everywhere who are, in fact, managing their own communities and attempting to achieve a higher quality of life. The EPA will focus on some selected places, and we will tailor the roles we play in those places to those places. The action plan we have started is going to be expanded in 1996 and expand some more in 1997.

As I mentioned, we started with the premise that every place is a place, but we also recognize that for any one of a variety of reasons, not the least of which is limits on our resources, we are not going to every place. We do not belong there. We have learned that there are important limits on what is appropriate and effective for the federal government to do directly.

The EPA will, according to limits set by our Administrator Browner,³⁰⁷ be directly involved in approximately twenty percent of the places in America in some capacity. The Administrator's real point is to limit our direct involvement. In other words, she has instructed us, "not to go out there planning to go everywhere. You are just going to waste your time and diffuse your effort; instead focus on very carefully selected places and roles."

Ms. Browner also said that in perhaps ten percent of all places, the EPA should be and will be in a leadership role.³⁰⁸ And in another ten percent, we will have a direct role, but we are going to be supporting somebody

307. See discussion *supra* Administrator Browner's Remarks section.

308. *Id.*

else. The leadership in these cases may come from the community, or it might be a state or a tribe, or it might be a coalition of federal agencies.

The big challenge, particularly for an institution such as the EPA that is oriented towards direct action, is how do we get to the eighty percent of America that we are not going to deal with directly? How can we do something other than get out of their way? We have a few plans, and I am hoping that perhaps you will have some suggestions.

Clearly, in transboundary areas, places on our borders with other countries, places that cut across political jurisdictions where no single governmental entity can act effectively, there is a federal stake. The EPA has to be prepared to be involved directly where there are very high-risk or very high-value natural areas, and where other values are at stake that have national significance. I suppose one of the easiest examples is the Grand Canyon. Environmental justice is also a federal stake, and the EPA intends to pursue it in communities where that is a particular issue. You can expect to see us active in such communities.

Local capacity and added value are kinds of modifiers. We have to respond where we can bring something that the locals do not have, and after assuring ourselves that we are going to bring real value, not just show-up and be one of thirty people around a table. We are particularly concerned about local capacity in those communities that are so short of resources of their own and so affected by a series of historic environmental insults, that neither they themselves, the state, nor the tribe has the capacity for useful action. We do think that we have a catalytic role, at least, in those places.

I mentioned the issue of "roles." It took a lot of talking for federal bureaucrats to get used to the idea that you can be a partner, and that you can be an enabler, and that you do not have to be directly in control on all occasions. I am not sure that any of us are completely satisfied that, over time, we can get funding for indirect roles, either within the Executive Branch or on the Hill, but we do think those are the right things to be doing.

Finally, what are we doing? Resources have been allocated. In one of the fastest and most direct decision processes I have witnessed in fifteen years at the EPA, at the end of a one-day discussion of these concepts, the boss stood-up and said, "Okay, starting right now, every region will devote a minimum of ten percent of their dollars and FTE's (full-time equivalent workers) to community-based environmental protection. Raise that to twenty percent in 1996, and the number for 1997 is now under discussion. All the numbers being considered are higher than twenty percent." Regions and National Program Managers had to submit plans to the Deputy

Administrator on May 15th. That was roughly ninety days from the decision meeting. Those plans are in, and they have been reviewed. They are about as good or bad as one might expect. I will not go into the details. The one thing that everybody left out is the eighty percent of places without direct EPA action. The various units of the EPA, based on the plans at least, have no clue on how to reach out and be helpful, unless we go there. So we are working on that one. There is a Regional Administrators Meeting this week on Thursday. The emphasis is on action, action in time to make some fundamental changes beginning in Fiscal Year 1996.

DR. ENGLISH:³⁰⁹ I think it is a really interesting and a good initiative. I was pleased to see that you do plan to retain a leadership role in certain areas. There is a possibility of getting tipped, in some cases, too far towards simply being responsive to immediate short-term concerns.

I know that Oakridge, in particular, is an example of occasional, shortsighted environmental protection concerns. There, the EPA has a role to play in terms of the long-term community interest and environmental interest. So I am glad to see that you are preserving that with this approach.

MR. HANLEY: There is nothing I can say that will completely reassure everyone that at some point, the EPA will fail to be as aggressive as we might be. Over the time I have been associated with the Agency, we have had our good years and our bad years. But it is important to understand that this new approach, community-based environmental protection, is not in any sense a backing away from a leadership role. In fact, it is a response to a concern that we diffuse our leadership efforts because we want to be everywhere, trying to do everything, without a sense of the pace at which regions, communities, tribes and states make decisions. We are there to make the quick regulatory fix, and we are not dealing with the long-term trends.

For example, in urban revitalization, if we look at patterns of this country and ask ourselves what is the single most disastrous trend that is affecting the environment, it is urban sprawl. Why are our cities sprawling? The population is not growing fast enough to justify it. One of the reasons is because our cities have become unlivable in a lot of important respects. So when you are trying to get parts per million right for a new chemical, or process permit applications, sometimes we do not spend enough time looking at these broad trends that you and others have been bringing to our attention.

309. *Supra* note 38.

Among the things that we hope to do is make a lot of free information available over the Internet in a form that is very useful. The federal government spends lot of money getting data. The EPA is actually a kind of piker in that field. But we do not do much to make that data accessible to and useful to communities. In other words, we do it for sophisticated federal bureaucracies, but not for tribes and states, never mind local communities.

We think that is a role the EPA can play so that people can look at these trends in their own communities and regions and start to form ideas whether you are talking about urban sprawl or Title VI³¹⁰ violations or the differential effects of various activities on populations. The data is everywhere. The key is to put them in the hands of people who live, work and play in places, and let them start wrestling with these problems.

MR. LEE: I think this is one of the real lasting legacies of this Administration and Administrator Browner. This whole approach towards community-based, place-based, ecosystem-wide, or community-wide environmental protection represents a fundamental shift away from looking at the environment as merely something to be regulated towards looking at the environment as the foundation of all life, human and non-human, so that it will sustain all activity, economic, social, cultural, spiritual, and otherwise. That is something that really needs to be very much married with a community-driven approach because there is an intuitive and intrinsic awareness of knowledge of what this is all about that is already resident in many communities.

I do want to say that there are a lot of good things happening within the EPA. This is a hub around which we can talk about integrated federal policies. In other words, there are counterparts, or there are variations that are emerging in different federal departments, such as the Department of Transportation.

If you go through every department, you will find a version of this. The real trick is not getting great minds to think alike, but it is to get them all to do the same thing at the same time. And that is the thing we have to do in terms of coordinating this. There are models of this that already exist. I want to bring to your attention a Community Planning Guide for Toxic-Free Neighborhoods that was developed by the Environmental Health Coalition in San Diego. It is a community planning guide for toxic-free neighborhoods. It embodies most of the things in terms of the kinds of

310. Civil Rights Act of 1964, tit. VI, 42 U.S.C. § 2000d (1988) (prohibiting discrimination in federal programs). See discussion *supra* Title VI of the Civil Rights Act of 1964 section.

concepts and goals that you are presenting here. There are many other examples of this throughout the country, some of which are not documented as of yet. But clearly, I personally have found to be a vibrant discussion of this kind of concept throughout the country.

MR. HANLEY: I could not agree more with the idea that these things are going on. In fact, one of the issues debated by the leadership and the bureaucracy is, "Do we need to do some pilots and demonstrations so that we can try this out and learn from it?" Fortunately, common sense won out, and they said, "Look, this is, in fact, what communities do." They manage their lives, they pursue quality, and they make decisions. The fact that we may not know about it or might not have our name on the letterhead does not mean that we have to do pilots to teach Americans how to manage their communities.

What we must do, to start being helpful, is to get out of the way in some cases, and to be supportive of the process. So fortunately, the decision was made to do a few pilot projects so that we can learn some very specific things, but mostly, we are just going to go out and begin. So I absolutely agree. The trick is how do we get smart enough, fast enough, to do this well.

DR. BULLARD:³¹¹ In terms of allocations and the regions, have any analyses been done to determine ten percent in 1995 and twenty percent in 1996? I am assuming that this is existing dollars, done as to where the regions are finding the monies to pool to do this, which means that this would give an indication to the extent to where they pull the money from. This would give an indication as to the extent to which this is considered important versus something else.

MR. HANLEY: The simple answer is no, not yet. We have not gotten that kind of detail, but we are pressing on the same point. Their answer to you and to me would be, "I am working it out."

DR. BULLARD: So we are not robbing Peter to pay Paul, or are we?

MR. HANLEY: Yes, there is going to be some give. The theory is we will take resources from those for whom we now spend on nonproductive oversight. Of course, regions say they have not been doing oversight, so this is a tough one. It is a resource-tight environment in which we operate.

The final answer that the leadership gave to this is that we are not quite sure how the math works out, but the experience we have and our intuition tell us this will work a whole lot better. This will get more environmental results a lot faster, including some areas that we cannot touch with traditional regulatory approaches because nobody in their right mind would

311. *Supra* note 57.

ever give us regulatory authority over some of the most important issues such as land use. So there is a risk.

MR. HURST: I appreciate where you are going with this. One of the things that we seem to have seen in some areas where the EPA might be able to provide leadership is helping the broader base of the community. When you start to try to get business there, the proper government officials there, doctors there, and so on, so that the community panels are representative of the community, that is where the EPA could really be of some help. Because a lot of times, you end up with two or three of five parts there. One of the things that does not happen is that you do not end up with a resolution to the problems. You are getting a place to vent, but not always an opportunity to come up with solutions. From a business community standpoint, helping this community understand that you have to get out there and understand what can be done to help the process by either facilitation or being there, would be really helpful.

MR. HANLEY: We are finding that sometimes the most important thing we can do is to come up with \$500 for a meeting hall which the community group may not have. I have learned the hard way, in the last year, that there are parts of the country where the effort of our presence is exactly the opposite of what you described. For example, large segments of the stakeholder community, including portions of the local and county government, will not attend any meeting the EPA is attending. So it cuts in both directions. One of the tools we bring in many situations, if at all, is who we are, our authority, and our status. We have to use it sparingly and appropriately.

MR. HURST: One of the things that I think has been very helpful and has worked well, at least at the community meetings that I have been to, is finding neutral facilitators. That is a process some of the communities have had a hard time doing. When that happens, it seems like the meetings go better, and a lot more results come out of them.

MR. HANLEY: I agree, and I hope that some of you will stand up when Congress asks us why we took water permit money to hire facilitators, and to get watershed organizations, instead of enforcing the time requirements on the permits. We did this so that we would end up with permits and watershed-wide plans that will protect water rather than just issue permits. We are doing it. We are a little bit shaky about whether it will receive political support at the national level.

STATUS OF ENVIRONMENTAL JUSTICE ACTIVITIES IN THE EPA REGIONS

EPA REGION I STAFFER: First of all, on behalf of all the regions, I would like to thank the Council for allowing us to talk about some of the

things that we are doing. I thought that in this whole process we were kind of forgotten, but we are the people on the front lines, so to speak. We are also the people who are dealing with this internal change that the federal government and our own agency is attempting to implement. I think that it is important to recognize that.

Region I was one of the first regions in the country to issue a policy on environmental justice,³¹² a sort of guidance for our staff in terms of how to address environmental justice and apply environmental justice to our everyday work. We also mapped out all the communities in New England by race and income. One of the first things our staff asked us was what were the communities we were talking about and what were the populations that we were talking about.

One of the things I would like to focus on that we are doing in Region I is the issue of a place-based approach. One of our newer initiatives is an Urban Ecosystems Initiative,³¹³ where we are targeting and directing our resources to urban communities, recognizing that there are a set of issues in the urban areas with which the EPA has not traditionally dealt.

In doing so, it is very important from my perspective that we listen to the community and we understand that the community has the ability and the capacity to make their own informed decisions as to the kinds of degradation and pollutants that are affecting their own communities. I think again, that is extremely important. Based on our past experience working with the community outreach efforts, having them define what issues affect them and what kinds of strategies they would like to have in place—as well as our establishing an Office of Ecosystems Protection and a team to address urban ecosystem protection—is very important. We have also dedicated full-time resources in terms of a full-time manager, a team leader, and staff from various program areas who will work full time on this issue. So I think we are well positioned to address the place-based approach.

It is true that we have made a great deal of progress, considering the fact that we have gone from a work group in 1990 to the issuance of a Federal Executive Order on Environmental Justice³¹⁴ in 1994. I would caution

312. Region I developed and issued an Environmental Justice Policy and a Regional Action Agenda to address environmental risks to low-income communities, communities of color, and to foster innovative partnerships with community groups and other stakeholders. OFFICE OF ENVTL. JUSTICE, ENVTL. PROTECTION AGENCY, 200-R-95-003, 1994 ANNUAL REPORT: FOCUSING ON ENVIRONMENTAL PROTECTION FOR ALL PEOPLE 41 (1995).

313. The Initiative seeks to maximize resources and adopt a holistic multimedia approach to the urban environment.

314. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994).

everyone that we have a long way to go. In particular, as we get into the implementation phase and as we make a fundamental shift in how we do business, we must become more customer oriented; we must take the blinders off and not have tunnel vision; and we must recognize that there is a community and a population that we need to be serving. The challenge is that we still have technical types that simply do not get it. It is going to require some additional training for our staff. It is going to require continued leadership and commitment if we are going to make this change.

I would be remiss in my duties and responsibilities if I did not continue to address the issue of diversity. We are still not there. We still do not have the people inside this organization in key positions and decision-making positions. We do not have those people in the communities around the country who we need to have at the table participating and making decisions that affect their daily lives and their living space.

Again, I thank you for the opportunity to speak with you tonight.

MS. MELVA HAYDEN:³¹⁵ I, too, want to echo Region I's sentiments. My name is Melva Hayden. I am the Environmental Justice Coordinator of EPA Region II.

I just want briefly to tell you some of the things we are doing at EPA Region II; but I cannot underscore enough what Region I said to you about not forgetting the regional perspective when it comes to implementing the environmental justice strategy, because it is in the region where the rubber meets the road.³¹⁶ I think Deoohn Ferris also said that to you earlier.³¹⁷

Sometimes, I think Headquarters has a top-down perspective, but the issues cannot be handled exclusively from the top. You have got to think about implementing this in the regions and keep us in the loop.

Having said that, let me tell you that Ms. Jean Fox, our Administrator at Region II, is extremely committed to environmental justice—so much so that I report directly to her. Given her interest, Ms. Fox was curious as to what is the structure of the other environmental justice coordinator positions in the other nine regions and how it may change after the reorganization; so I conducted an informal survey as to the structure of the region.

Region II has been doing a number of things. We, too, are committed to the place-based or community-based program and approach that the Agency has undertaken. We are looking specifically at an area in Puerto Rico. As you know, Region II is responsible for the U.S. Virgin Islands,

315. Regional Environmental Justice Coordinator, Region II, Environmental Protection Agency.

316. *Supra* p. 754 (referring to Region I's comments).

317. *Supra* p. 685.

Puerto Rico, New York State, and New Jersey. There were a number of concerns about higher incidences of asthma due to air conditions and problems of particulate matter.³¹⁸ We are doing comprehensive monitoring there. We have taken on and hired a special initiatives coordinator. We are working with the community, the Environmental Quality Board, and the Governor of the Commonwealth. So we are undertaking that project, and we are very, very proud of that.

Also, as a follow-up to the January 20, 1995 public meeting, we have planned two roundtables on environmental justice, and some of you who are in New York will be invited to the second if you are able to make it. The first will be held in August, 1995 in our Caribbean Field Office in San Juan, Puerto Rico. The second will be August 30, 1995, in our New York Office. We will talk more about the Region's Environmental Justice Strategy Plan, go into break-out groups, and ask for your recommendations on how we might go about implementing the region's Environmental Justice Operation Plan.

I want to underscore the importance to all of you at Headquarters and NEJAC about coming up with a consistent policy or guidance on how we designate, define, delineate, and target environmental justice areas. To address this issue, we have formed sub-working groups in Region II. We are not going to do anything inconsistent with Headquarters, but since there is nothing out yet, I do not know that we can be inconsistent. We are going to look at how we can possibly come up with some consistent environmental justice factors in our program divisions.

I cannot underscore enough for you that it is crucial that some kind of guidance comes out of Headquarters to assist us and enable us to do that. It is a little foolhardy to try to implement a strategy without some kind of consistent policy or guidance as to exactly what is an environmental justice area. Consider, for example, Puerto Rico. We have a homogenous cultural population there. Well, we cannot just say all of Puerto Rico is an environmental justice area. But we can look at other factors, such as socio-economic factors. Perhaps an area in Arecibo is very affluent, but in Ponce or other areas it may not be as affluent. These are things that we are asking you to work with us on and consider.

318. OFFICE OF ENVTL. JUSTICE, ENVTL. PROTECTION AGENCY, 200-R-95-003, 1994 ANNUAL REPORT: FOCUSING ON ENVIRONMENTAL PROTECTION FOR ALL PEOPLE 41 (1995) (providing highlights of Region II activities).

I wanted to respond, I think, to Mr. Cash's presentation with respect to the Office of Civil Rights and Title VI.³¹⁹ I can tell you about one particular Title VI complaint that came into Region II where we demonstrated a pretty good model for other regions. The Environmental Justice Coordinator was immediately brought into the loop on that particular complaint. I worked very closely with the site attorney. I think Mr. Alvarez was the assigned Office of Civil Rights attorney. I am glad to say that through close coordination, I was kept in the loop with respect to that particular complaint. Today, I am proud to say, we are almost at some kind of resolution. So that might be one particular model we might consider with respect to the Title VI complaint process.

Region II is doing more than I can tell you about, but because of the lateness of the hour, I can certainly make our update report available to you. I thank you for this time.

MR. MEL McCOTTRY:³²⁰ Good evening. I am not known for brevity, but I am going to make an effort tonight and not go through these several pages. I am very proud of what we have done in Region VIII in terms of environmental justice.

The first thing I would like to bring to your attention is that you cannot do anything without the proper tools. I would like to compliment my regional management first and foremost. They have been extremely supportive of environmental justice in Region VIII, in terms of providing the time and resources for us to begin to make some inroads into the environmental justice issues in our region. They have made it possible for us to meet with community groups.

One of the main issues that we have been pushing is community involvement in what we do. We started with that last year, and this year, we received a travel budget of \$10,000 to be able to go out and do environmental justice grants, training, and environmental justice with pollution prevention grants training in all of our states. We even had a special trip to a meeting in South Dakota, with seventeen tribes; we spent two days working individually with tribal representatives going over the grant process, how to apply for federal grants, and specifically, the environmental justice and the Pollution Prevention Environmental Justice grants.

319. Civil Rights Act of 1964, 42 U.S.C. § 2000(d) (1988) (prohibiting federal government from funding any program or activity that intentionally discriminates on grounds of race, color, or national origin).

320. Regional Environmental Justice Coordinator, Region VIII, Environmental Protection Agency.

Needless to say, we had several applicants, many of whom were successful in the announcement that the Administrator talked about this morning. More than fifty percent of our Environmental Justice grants went to Native American tribal entities.

We have had great support from regional management to come up with a regional work group to keep a multimedia emphasis on environmental justice. The last thing we wanted was for Environmental Justice to be considered as a name-only, lip-service type of activity. As a result, we have had access to senior top management at virtually any time and special meetings with regional senior staff, which have, in turn, produced a reinvestment of existing resources.

You know, hard decisions had to be made in the regions, especially in this time of cutbacks. Certain things had to go off the plate; and everything that goes off the plate has a particular political constituency, so you cannot please everyone all the time.

Still, regional management was willing to make certain choices so that the regional work group could devote the time to start doing community outreach and training programs in the various communities. These efforts were not only about what we do, but how communities can participate and clarify what we are involved in.

I wish to make you aware of a second decision made showing the level of our commitment. Region VIII has been going through a process of reorganization, as most of the regions have, and we are probably considered the most radical. In our pending reorganization, which I hope will be formally approved by the time I get back home, we have decided that the Office of Environmental Justice (OEJ) will be incorporated into a new division called the Regional Enforcement, Compliance, and Environmental Justice Division. That is its formal name. That division will be headed by an Assistant Regional Administrator (ARA) in Region VIII. The division has section-level staffing of at least five full-time employees. These are not new bodies in hard times. These are the results of disinvestment and reinvestment decisions which make sure that the environmental justice activities that we are initiating do not get lost.

Hopefully, this will allow us to implement both the national strategy, as well as a regional strategy, which has been distributed to about 1,000 members on our regional mailing list alone, where we are constantly seeking input. Hopefully, this staff in the new Office of Enforcement, Compliance, and Environmental Justice will be successful.

The last thing I would like to mention is that, oddly enough, in terms of a follow-up for the NEJAC in the Atlanta, the Pond sisters, Wanda and Alisa Pond, came to talk to you about the Turtle Mountain Chippewa

Reservation in North Dakota. Subsequent to that, I met with the Ponds in Montana. Wanda has come to meet with us in the region. We pulled together a multimedia, cross-discipline team to meet with her. We are still working to try to respond to some of the issues she raised, including the fact that she had not been successful in receiving approximately 100 pounds of documents, which we were able to send her. We are trying to do continuous follow-up work with her. We have commitments from the region to send up some staff to test wells around the subject landfill on the reservation and also to work with the main tribal government in terms of her family's problems and the high cancer rates that she described to you in Atlanta. You will receive a detailed report on that. We were hesitant to send it in because we had not completely closed the loop. Depending on resource decisions, we do have a commitment to send a team to check the water wells and to follow up on a couple of other issues.

Second, three of our main issues, only one of which I am going to talk about, happen to deal with enforcement. We tend to want to get right into those activities in Denver. Our Regional Administrator had asked us for specific projects where he could show tangible, credible results, not just lip service, a paper, or a report. One recent action involved the Pillow Kingdom in Denver. This particular facility produces bedding and pillows and other products, the type of things you see in Big Sur waterbeds. Well, it is located in two basically heavy people-of-color, Hispanic communities, and kids were observed playing with rags and other contaminated refuse from around the plants. This was brought up in the January meeting, and since that time, we sent some special targeted inspections out, and found nine violations of the Emergency Planning and Community Right to Know Act (EPCRA).³²¹ They were assessed a total penalty of \$153,000 for section 313, non-reporting violations.³²²

Furthermore, we have an out-of-pocket cash fine of \$29,000, a commitment for a supplementary environment project, \$300,000, and an agreement that they will cease using oil-based paints in their products and go to water-based, which will reduce 29,000 pounds of volatile compounds down to 1,000 pounds a year. That is just one of the three.

These are the kinds of activities that the region is focusing on. We hope that the NEJAC, the Agency, and Congress will see that environmental

321. 42 U.S.C. § 11001 (1988).

322. See 42 U.S.C. § 11022(f)(g) (1988) (noting reporting requirements) and 42 U.S.C. § 11045(c) (1988) (providing civil and administrative penalties for violation of § 11022 reporting requirements).

justice is not going to go away. It is very important, and the communities that are affected need to be involved in the process. Thank you.

EPA REGION I STAFFER: For the record, I would like to say that my distinguished colleague to my left is honest, and he did say that he could not be brief. And also for the record, I would like all of you to know that we are all doing much more than we have related to you this evening.

DR. GAYLORD: I just wanted to note that when our Office was established at Headquarters three years ago, we realized very early that we could not do this job from Washington, D.C. We had to have regional coordinators. You have only met three of the ten. We do have monthly conference calls with them. These are our front-line people.

CHAIRMAN MOORE: Okay. If we could have some response from the Council.

MR. ARTHUR RAY:³²³ Given the relationship—and I use the term loosely—between OECA, Headquarters Enforcement and Compliance Assurance, and the regional offices, what impact do you feel that the recent announcement of the placement of Dr. Gaylord's office in the OECA will have on your efforts?

MR. McCOTTRY: I think it is absolutely excellent. In fact, without causing problems, I would like to point out that during our reorganization proposed back in April, we included environmental justice in Enforcement to make sure that it did not become subsumed in a less regarded program. We feel that the move is key and critical to being able to maintain the multimedia/cross-media nature of environmental justice and still combining community involvement. We feel very strongly about that.

We have not been successful, and that has been one of the things I have tried to explain to community groups when I go out. Yes, we have been part of the problem, but with help we can change that image now. In Enforcement, we have even had requests from certain community groups where we do targeted enforcement to bring about some results right now instead of some long-drawn paper idea.

There are very credible things that people are effective with in communities right now, and right now let us be very honest—we need enforcement, as well as compliance.³²⁴

EPA REGION I STAFFER: Let me offer a different view. We had a reaction to that. My colleague to my left discussed this earlier. We have

323. *Supra* note 39.

324. *Supra* p. 664 (referring to comment regarding enforcement).

some reservations about it, particularly in a climate when you are talking about a fifty-percent cut in enforcement, whether it is real or perceived.³²⁵

We have some concern about whether or not the enforcement aspects will dominate over other environmental justice issues; this is, as you all know, a very, very broad issue covering many areas.

We have some concern about whether or not Dr. Gaylord's office or her efforts will be diminished by this merger, or whether her staff will remain intact. We have many concerns about it. We are not sure if it is the best possible placement for this office at this particular time.

MS. HAYDEN: I just want to add to what Region I has said, that if there is *close* coordination between the Office of Regional Counsel in the regions and the Environmental Justice coordinators, then I think that the marriage is a good one and a workable one. But there has got to be that *close* coordination between those particular offices.

MR. McCOTTRY: We will have close coordination because those attorneys, as well as the head of the Environmental Justice unit, will report to the same ARA in Region VIII. We hope to show that this is the way of the future; and we hope that the sister regions will follow us for consistency's sake, because it is, in our opinion, the most effective way right now to keep the emphasis on environmental justice. Sometimes we have to fix some of the things right now, as well as prevent further things from happening. Unfortunately, this is not a nice world. To make an omelet, you have got to break some eggs. That is why some people think that enforcement has a negative, punitive connotation, but that is not really the situation. What we are trying to do is redress this at this point.

HONORABLE SALOMON RONDÓN-TOLLÉNS:³²⁶ It is a pleasure to say hello to all of you. Puerto Rico has a field office in the Caribbean for the EPA, and it has a lot of environmental problems. In fact, I think it has the most issues for Region II. Would it be possible to open an Office of Environmental Justice in the Caribbean field office that includes all the islands and that would have its own environmental justice coordinator on the island?

MS. HAYDEN: Thank you, Honorable Tolléns. I want to respond to that since it does affect Region II.

I think it would be confusing to have more than one environmental justice coordinator per region. Our Caribbean field office is a division of the region, and we echo your concern and your sentiments to the extent that

325. *Supra* note 28 and accompanying text (discussing proposed cuts).

326. House of Representatives, San Juan, Puerto Rico; District Number Six Representative. President, Puerto Rico Natural Resources and Environmental Quality Commission.

I believe Mr. Carl Solderberg, who is the Director of the Caribbean field office, has recently hired one person, and there will be another one if the budget cuts permit. That person is a community relations person who will be located exclusively in the Caribbean field office. I believe that individual's name is Rafael Miorel. He is going to work closely with me on environmental justice issues, and he is the community relations specialist for all of the islands, Puerto Rico and the U.S. Virgin Islands. A second person will come on board who will be the community relations person for the Virgin Islands. So we echo your sentiments and your concern, and we are working on better representation within the existing regional framework.

Also, unlike my colleague, I failed to tell you that on August 22, 1995, Ms. Jean Fox and I will be down in San Toredas. We will have an environmental justice roundtable on August 22, 1995, and community groups and environmental justice groups are going to be invited to meet with us and discuss the environmental justice issues of concern to them.

DR. BULLARD: Just a quick point. Maybe this is in your report, in terms of how the reorganization of the regions has impacted the environmental justice office in terms of where they are located, their budgets, and also in terms of the reporting. I think the Region II Coordinator mentioned that she reports directly to the Regional Administrator, and I think the Region VIII Coordinator said that his is located in the Office of Enforcement.

EPA REGION I STAFFER: I am also reporting to the Office of the Regional Administrator in Region I.

DR. BULLARD: It would be interesting to see for all ten regions where environmental justice is located and the extent to which the reorganization, reinventing government, will enhance the environmental justice efforts or somehow take away from them. I do not know if that is in your report.

MS. HAYDEN: Dr. Bullard, I am so glad you asked that question or made that comment. Being the wise attorney that I am, I did not draw any conclusions in the informal survey I conducted. Of course, it can be used to draw those kinds of conclusions with respect to the reinventions.

Certainly the data in there will reflect where the environmental justice coordinator position is and to whom that individual reports and what it will look like. The information is accurate, to the extent that the environmental justice coordinator knew at the time that the random phone calls and discussions were conducted. Some of their reorganization plans have yet to be approved, so they do not have a clue.

DR. BULLARD: Is there a time frame by which all of these things are supposed to be done?

MS. HAYDEN: Certainly. I believe by October, 1995. Is that right?

EPA STAFFER: All the reorganization plans must be submitted to the Office of Administration and Resource Management by July 31, 1995. They are in the process of being reviewed for continuity and consistency. There were criteria set out in all the reorganization plans. The Deputy Administrator and the Administrator will make a decision as to whether those plans are approved over the next two months, prior to us getting into the fiscal year 1997 appropriations planning process.

So probably right now only one plan has been approved totally for the Agency in terms of a region. One of the things that we are finding through this process is that diversity is a strong criterion as well. There are a number of criteria I could go through—at some later point if you wanted to—all the things going up, because in one area, it might be the Water Program; but you could not find where water was any more because it is in Region VIII, right, Mr. McCottry? You did not call it water, did you?

MR. McCOTTRY: You know where water is.

EPA STAFFER: So, Mr. Perciasepe could not find his water people any more. That is the kind of thing and the very creative way that we are doing things.

MR. McCOTTRY: That was what we tried to do to break up some of the old stovepipe, twenty-year-old, "This is the way we have always done things" mentality. We have not lost any of the media, but we are still focusing on a multimedia approach, trying to change the whole concept, their focus. This is what we get from our customers out on the street, not necessarily from inside the Beltway, but from the people we have to live with every day. This is what we get.

I would hope that you would follow-up on that question, Mr. McCottry, because most of us have been doing this on collateral duty basis in addition to other jobs, and we are just now coming to the window of a true commitment of legitimate resources through reinvestment and disinvestment.

We are not talking about costing someone a job. We are not talking about putting anybody on the street. We are talking about recycling internal staff because it happens to be a significant priority, and it will be very easy for you to look at those who did rank-and-file functions who were denied access to the Regional Administrator (RA).

Fortunately, my two colleagues and I have enjoyed that direct access to the RA, the Deputy Regional Administrator (DRA), and the ARA, whatever it took to be able to get resources and commitment. It will be interesting to see just where we are located once all the regional reorganization plans are approved in a subsequent meeting. It will speak volumes as to the sincerity of the mission and the issue.

MS. HAYDEN: If the NEJAC is interested, when you see the informal survey, you will see footnotes which explain certain types of contingencies, for example, where a particular region did not yet know what their structure would look like under the reorganization and that kind of thing, in fairness to any region.

Again, no conclusions are drawn; it is just reporting the data.

CHAIRMAN MOORE: I think very definitely we would like to have a copy of that if we could, Ms. Hayden.

Now, I know there have been some other hands, but we must seize this moment to end today's meeting. Before our Regional Justice Coordinators leave, we really appreciate the presentation. We obviously are very aware of the good work that many of you and many other staff in the regional offices are doing. We want to make sure that we continue the kind of relations that many of us have established through our community organizations and others.

The only closing comment I would make to that is, if there is an orientation that is given to Regional Justice Coordinators (we have talked a bit about this in the past) it would be very important to have an environmental justice movement person also participate in the briefing, particularly focusing on the history of how the environmental justice movement began in the EPA and how the position of environmental justice coordinators came to be.

Not that we do not have any confidence in the OEJ, but I think it is very important that history speak for itself, and that history is well documented as to why we got such titles as Environmental Justice Coordinators. We are a grassroots effort that came from the bottom up. Environmental Justice coordinators should know this. With all due respect to those who have improved it and encouraged the environmental justice process, we need to keep its origins in mind.

MS. HAYDEN: Chairman Moore, we are trying to do that with external community groups, and we are trying to figure out ways in which we will not run afoul of the Federal Advisory Committee Act (FACA) so that we can involve some of the grassroots groups. I want to say toward that end, that when Dr. Gaylord came to Region II, we had a wonderful and effective all-hands Environmental Justice meeting, where she talked about the background and the grassroots movement and beginnings to let us know that the Agency did not create the movement, but, in fact, the movement moved the Agency.

CHAIRMAN MOORE: We appreciate that.

MS. HAYDEN: We are grateful for that, too.

DR. GAYLORD: We will now proceed with the rest of the Environmental Justice coordinators to come. We are going to start with Vivian.

MS. VIVIAN MALONE-JONES:³²⁷ The Atlanta Regional Office established the first Office of Environmental Justice in July 1993, and I was named as the first director of that office. At that time, it was comprised of a secretary and myself. Since that time, we have added an environmental scientist. We currently are recruiting an administrative officer. And one of the issues discussed yesterday was where the office will be moved. We are proposed to go into the new Office of Environmental Accountability, which would include the Region's enforcement functions. In that office, we will have additional resources, which would include a GIS coordinator, an attorney, as well as the existing staff. So, we do expect to have more resources in the Office of Environmental Accountability.

We also have, within the region, Environmental Justice coordinators in each of our major divisions. Each media program has a coordinator. There is only one full-time coordinator, and that person is in the Waste Management Division. The others are collateral duty assignments. In the Office of Regional Counsel, there are two attorneys who work on environmental justice issues. Under the present system, we initially put together a work group to determine how to handle environmental justice issues and how they would be integrated into the way we do business in Region IV.

We did develop a draft environmental justice strategy. In May 1994, we met with community groups from throughout the region. We had a roundtable, and we presented to the community representatives how we planned to carry out those functions. It is sometimes difficult to keep track of all of the issues, particularly whether or not they are environmental justice issues. But we do have a GIS tracking system³²⁸ that we have put in place, and we do make that available to members of the community, universities, state agencies, and other organizations.

327. Director of the Office of Environmental Justice and Environmental Justice Coordinator for Region IV.

328. The EPA uses the geographic information system (GIS) to analyze population demographics around facilities; the GIS serves as an effective tool in assessing populations at environmental risk and potential disproportionate impacts to communities around federal installations. 1994 EPA ENVIRONMENTAL JUSTICE ANN. REP., at 23.

One of the complaints that came up in our Atlanta meeting³²⁹ was that the states did not have access to this information.³³⁰ Therefore, we are trying to make that available to all of our states, as well as any organization that desires it.

We really have beefed-up our public participation and outreach programs because we received numerous complaints that we were not reaching out to the community enough. Consequently, we have improved in this area significantly. We have community-relations coordinators, but we do not have them in every major program. We are trying to provide training to those people who have to go out so that they can understand what is involved in outreach and public participation. In addition, we have our new Regional Administrator, John Hakinson. When he came on board, he made a public statement that he planned to get out to the communities. So, we have been scheduling trips for him to meet with community groups. Moreover, our division directors and staff meet regularly with communities. We have had meetings, of course, in Warren County, North Carolina; New Town, Georgia; Tifton, Georgia; Fort Valley, Georgia; Augusta, Georgia; Pensacola, Florida; and a number of other places.

Essentially, the purpose of these meetings is to keep the communities informed and to provide the community an opportunity to express their views with us. We are in the process of awarding a grant under the Partners in Protection Program to either a community organization or a historically black college to work with our outreach in our enforcement program.

We have given some regional grants in addition to the Small Grants Program³³¹ that comes from OEJ headquarters. We have provided grants regionally to the City of Atlanta for its Comparative Risk Project. We provided a grant to Jackson State University as part of its comparative risk

329. During this meeting, which was held on January 17-20, 1995, members of a national advisory committee complained that the EPA's environmental justice plans were too vague and insubstantial. *EPA Environmental Justice Strategy Called Too Vague*, PESTICIDE & TOXIC CHEMICAL NEWS, Jan. 25, 1995, at 50. In addition, NEJAC members complained that they had been given too little time to review the strategy. *Id.*

330. Representatives from the Department of Interior, the Department of Energy, the Department of Defense, and the EPA emphasized that public participation and community involvement were primary goals toward implementing Executive Order No. 12, 898. *Environmental Justice Strategies Moving Slowly Federal Agencies Report*, PESTICIDE & TOXIC CHEMICAL NEWS, Feb. 15, 1995, at 12. These four agencies are attempting to better coordinate their efforts to provide environmental justice reports that identify and respond to health and safe community issues, such as: waste recycling; pollution prevention; waste minimization; and spent nuclear fuel management activities. *Id.*

331. See *supra* note 32.

analysis. What was happening in the State of Mississippi was that it was developing a comparative risk assessment, but had not included the environmental justice components. We required the State of Mississippi to cooperate and work closely with Jackson State on that project. We have provided grants to Clark Atlanta University for a series of public seminars, and to Florida A&M and Alabama A&M for small farmers in those areas. In addition, we have the Teachers Institute funded through Clark Atlanta University, where we bring in teachers from around the region who teach in and around Superfund Sites.³³²

One of the other things that we have done in the region is that we have set up the InterAgency Work Group, comprised of many of the agencies that were cited in the Executive Order.³³³ We have included them on our mailing list, and we have involved them and a number of spin-off groups. For instance, the Public Health Service has a group which deals with minority health. We have met with the Federal Aviation Administration and the Department of Transportation. So, there have been a number of spin-offs from that.

Essentially, we aim to integrate environmental justice and the way we do business in our region. We have done it through outreach, grants, and other types of programs to ensure that environmental justice is accomplished in the region. We recognize that there is a lot to be done, and we are just beginning this process. We are hoping that we will be able to accomplish environmental justice in my lifetime with the EPA.

EPA REGION V STAFFER: I want to thank you for inviting me to your fifth and my very first NEJAC meeting. I was selected as the Environmental Justice Coordinator this past May. Prior to my selection, I had spent nine years in the region's RCRA Program;³³⁴ this last year I acted as RCRA's EJ Coordinator. Prior to that, all my experience has been in the Native American Program.

Region V is a large region. It covers six states: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin. It is diverse, both in population and in environmental problems. We have industrial areas, major

332. The Clark Atlanta University sponsors the Hazardous Substance Research Center which focuses on promoting participation of minority groups in Superfund research. *Senate Appropriations See Flat Superfund*, SUPERFUND WEEK, Aug. 7, 1995. Region IV also awarded a grant to Clark Atlanta University to develop an environmental lecture module to enhance community awareness of environmental issues and to inform citizens about how they can become involved by working with universities, governmental agencies, and industries within their communities. 1994 EPA ENVIRONMENTAL JUSTICE ANN. REP., at 17.

333. Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994).

334. Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901-6992 (1988).

urban areas, farm country, and the Great Lakes. So, basically, there is no way I could tell you everything we are doing in environmental justice in five minutes. To compensate for that, I am going to pass around a report that highlights some of the primary activities that are going on, not everything, but some of the major projects. If you want detailed information, see me after the meeting.

In Region V, we are focusing our environmental justice efforts in three primary areas: (1) redressing environmental injustices in hot spots; (2) proactively identifying environmental justice communities of concern; and (3) incorporating the value of environmental justice in our work practices to ensure fairness in our decisionmaking.

In Dr. Bullard's book entitled, *Confronting Environmental Racism: Voices from the Grass Roots*,³³⁵ we followed his suggestion and identified some of the hot-spots in our region. In our region, we have six of these hot-spots, which we prefer to call geographic initiatives. These are Southeast Chicago, Northwest Indiana, Southeast Michigan, Mississippi Gateway, East St. Louis, and Cleveland. I cannot tell you everything that is going on in these areas. In effect, it would be foolish, especially with Hazel Johnson and Charles Lee present; both know more about these issues than I do. But I will briefly highlight a few key activities in each geographic area. In Southeast Chicago, there is some focus on fly dumping and solid waste issues, ground water issues, air monitoring, targeted enforcement, compliance assurance, and health assessments. And in response to Hazel Johnson's request through the Chicago Legal Clinic, there was a Title VI analysis of municipal solid waste and medical waste incinerators on the south side. Also, Ms. Johnson is going to take the lead, and we are in the process of awarding a grant.

The paperwork is complete for Ms. Johnson to lead a consortium of environmental justice activists in the regions to hold a public forum on environmental justice to identify more concerns. Also, there are lead issues, as indicated, in brownfields redevelopment.³³⁶

335. CONFRONTING ENVIRONMENTAL RACISM: VOICES FROM THE GRASS ROOTS, (Robert D. Bullard ed., 1992).

336. The Brownfields Economic Redevelopment Pilot encourages the safe and appropriate cleanup and revitalization of abandoned commercial facilities where redevelopment is inhibited by real or perceived environmental contamination. 59 Fed. Reg. 60,012 (1994). The brownfields project grants are one EPA response to hazardous waste. *Id.* The purpose of brownfields project is to decontaminate urban industrial sites so they can be redeveloped, thus enhancing job opportunity in economically-distressed areas. *Id.* See *supra* p. 722.

In addition, our geographic areas are interconnected in Southeast Chicago, Northwest Indiana, and the west side of Chicago. We are moving toward a more holistic approach in linking these areas into a greater Chicago land effort. In Northwest Indiana, some of the issues we are focusing on are water quality monitoring, dredging sediment from the Indiana Harbor, targeted enforcement, petroleum contamination, and pollution prevention. In Southeast Michigan, there is an incredible illegal dumping problem. Charles Lee could tell you this from our recent Brownfields meeting in Detroit. The day before we got there, they removed two tons of solid waste that was dumped illegally, and that was not even the tip of the iceberg. The construction debris was a mile high. Everywhere we went, we saw a lot of illegal dumping. We are focusing on target enforcement and compliance assurance. We also are concerned with hazardous waste contamination, remedial action plans and sediments, and Brownfields redevelopment. In East St. Louis, primary focuses are on lead abatement, health issues including asthma management, sewer system problems, and air pollution problems. And then finally, Cleveland is the primary focus in our Brownfields Pilot project.

Our second focus area is identifying environmental justice communities of concern in addition to our hot spots, and trying to proactively address environmental justice by working in partnership with these communities to develop environmental strategies for the communities. We will do this through a GIS study of our region, which is underway, and identify the top areas in the region that have the highest pollution and correlation between race and income. We anticipate preliminary identification to be completed in October. One example of a community that we have already identified and begun work with is Cincinnati, Ohio. And, basically, we have been working with Reverend Lundy in the community, also in partnership with the Ohio EPA, HUD, Fire Marshall, and other federal, state and local governments.

Some of our recent accomplishments in this area include working with HUD to have thirty heating tanks removed from public housing, and working with the Ohio EPA to have an expansion permit for a municipal solid waste landfill, which was less than one hundred feet from public housing. That permit recently was denied. In addition, methane gas explosions have occurred there.³³⁷ Furthermore, we are developing in the region a pilot risk analysis of three hazardous waste treatment, storage, and

337. See Lynn Wasnak, *Dump It Somewhere Else*, OHIO BUS., Aug. 1986, at 38 (explaining how decomposing refuse forms potentially dangerous methane gas that causes explosions).

disposal facilities. We expect that they potentially will affect the operating conditions of those permits. In addition, in the next couple of weeks, I will be going to Cincinnati with a multi-media team to work with the community to develop a comprehensive strategy. We hope to do this in other areas of the region as well.

Our third and final environmental justice focus area is incorporating environmental justice into all of our decisions and work practices in the region. And as Region I was saying, this is really tough. Cases occur in communities that necessarily may not have the most pollution. They may not be disproportionately at risk. There are, however, environmental justice implications to these cases and to the way we work in these communities. Often these have to do with translation issues, where there is an economic impact of our environmental decisions. One good example in our region is in Lorain County, Ohio, where we had a pesticide case. There was a methyl parathion case where over 500 homes were affected in a low-income area in Ohio.³³⁸ There was an unlicensed, uncertified, pesticide applicator who misused a highly-toxic pesticide. These homes were so contaminated that the blood levels of these people were very dangerous. We had to have an emergency response and evacuation.

The community was primarily African-American and Puerto Rican, so there were translation issues, cultural issues, and, in addition, economic issues that we have had to address. It is important that we develop methodologies on how to deal with these issues. One example is when our Superfund people evacuated these communities and put the people in hotels. We had to negotiate issues regarding their public assistance because they were receiving subsistence from the EPA.³³⁹

Furthermore, three landlords tried to increase the rents because they considered the remediated homes and new carpeting as property improvements. Therefore, the effect of our environmental remediation could have been putting people out of their homes. We revised the access agreements and made the landlords agree that they will not derive any rent increases due to property improvements that EPA has made. These are just some of the tough issues that are coming up that we are trying to address.

338. See *EPA To Continue Cleanup of Lorain County Pesticide Site*, PR NEWswire, Jan. 6, 1995 (describing methyl parathion contamination in Elyria and Lorain, Ohio).

339. The success of a Superfund cleanup depends not only on the technical aspects of the remediation process and compensatory issues of the legal process but also the social aspects of the rehabilitation process. See generally Andrew J. Hoffman, *An Uneasy Rebirth at Love Canal*, ENVIRONMENT, Mar. 1995, at 4 (discussing Superfund rehabilitation of New York State's Love Canal and complex issues involved in this process affecting residents temporarily housed in hotels).

Changes in the way we do business do not occur without education and training. We have to change the way we think, and this is one of the most difficult things to do. In our region, we have had a lot of training, beginning with awareness. We invited the Underground Railroad Theater to come and perform the *Echo Cabaret* this past fall. We have held comprehensive environmental justice and Title VI training in our RCRA,³⁴⁰ Superfund, Office of Regional Counsel, and National Opinion Research Center (NORC) offices. In addition, we are hosting monthly brown-bags on environmental justice, where we invite community activists, environmental health specialists, and professionals to come to the region and speak to people.

We recently had Dorreen Carey, Executive Director of the Grand Calumet Task Force,³⁴¹ a grassroots environmental organization; Jim Schwab, author of *Deeper Shades of Green*;³⁴² and a panel of female environmental and health professionals.

Finally, I would just like to say that we need to reach out more to communities. Everyone knows that sharing information forges partnerships. Thanks.

MS. CONNIE THIGPEN:³⁴³ Our regional headquarters is located in the great state of Kansas. Need I say more? In the Midwest, the attitude is that we have no environmental justice issues and concerns. Therefore, we have been somewhat slower in our process of getting started.

In 1993, we established our environmental justice regional work group. Two months ago, our reorganizational structure changed, and I now assist the Council as a liaison out of the Regional Administrator's Office to jump-start our program. In our first year, since our restructuring of environmental justice responsibilities, we awarded six environmental justice small business grants, and in our second year, we awarded grants to two states that now have voluntary clean-up programs. Thus far, our focus has been educating our states and other partners, and now our focus is on the community. We will host our first environmental justice information summit on September 26th and 27th, 1995. And that will be our opportunity to really get the word out.

340. In 1987, Congress issued a directive that provided an add-on appropriation of \$3 million dollars to the EPA "to undertake a concerted RCRA training initiative." 53 Fed. Reg. 1863 (1988).

341. The Task Force has roots in the labor movement and was originally founded by steelworkers concerned about the contamination of Lake Michigan.

342. JIM SCHWAB, *DEEPER SHADES OF GREEN: THE RISE OF BLUE-COLLAR AND MINORITY ENVIRONMENTALISM IN AMERICA* (1995).

343. Environmental Justice Coordinator of Region VII.

Although we have been working with communities, this is the first time that communities will be sitting at the bargaining table and seeing what we are doing with our state partners, our enterprise zone industry members, and our local planning and zoning officials. We have worked with the American Planning Association. Our focus has been different because of the mindset of our region, and we are evolving to the point where community is now the focus. Thank you.

DR. GAYLORD: Lynda Carroll from our Region VI Office could not come at the last minute. Mr. Robert Knox will read her written report.

MR. ROBERT KNOX:³⁴⁴ First, she has her regional reorganization. In compliance with the National Performance Review,³⁴⁵ the regional office was recently restructured for the purpose of becoming more customer-oriented. In addition to forming new program divisions and doing away with some of the old divisions, one of the most significant changes was the placement of the Environmental Justice Coordinator.

Based on comments received from many grass-roots community representatives, the Coordinator's position was placed closer to the Regional Administrator's office. The Environmental Justice Coordinator position now resides in the Office of External Affairs, along with the coordinators of the Common Sense Initiative, the United States and Mexico border issue and others.

The next item is United States and Mexico border activities. The United States/Mexico border program director was selected and the supervisory selections associated with the region's reorganization were made. The new director had been with the Agency for a number of years and will be an asset to improving relationships between Mexico, the United States, the EPA, and residents. The program director will be permanently located in the El Paso office and will also spend time at the office soon to be opened in Nogales, Texas.

The next issue is Superfund and the Environmental Justice Forum in Albuquerque. The Superfund Outreach Program³⁴⁶ has been working with

344. Robert Knox is Deputy Director of the Office of Environmental Justice at the EPA Headquarters.

345. VICE PRESIDENT'S REPORT OF THE NATIONAL PERFORMANCE REVIEW, Sept. 7, 1993.

346. Outreach Programs are the means by which an agency interacts with communities to be affected by proposed actions. The programs allow the agency to describe its plans directly to members of the community and get their feedback. See Rodolfo Mata, *Hazardous Waste Facilities and Environmental Equity: A Proposed Siting Model*, 13 VA. ENVTL. L.J. 375, 440-41 n. 389 (1994) (giving examples of outreach programs in ethnic communities in Region I and Region III).

several community groups and state and local officials in planning a three-day seminar in Albuquerque. The seminar will offer stakeholders at all levels the opportunity to learn more about each other's viewpoints, the Federal Superfund Program,³⁴⁷ and how citizens and state and local governments are involved in the overall process of hazardous waste site clean-up. The seminar will also provide the attendees with an array of tools needed to become eligible to bid on contracts.

The next issue is the Claiborne Uranium Enrichment facility.³⁴⁸ In our January 1994 comments on a Nuclear Regulatory Commission (NRC)³⁴⁹ draft environmental impact statement (EIS)³⁵⁰ for the proposed licensing and operation of the Claiborne Uranium Enrichment Facility near Homer, Louisiana, EPA Region VI expressed some environmental concerns regarding the proposed project.

Specifically, we recommend consideration of environmental justice as a relevant issue in this proposal. The proposed facility would be located adjacent to African-American communities.³⁵¹ Subsequently, our October 1994 comments on the final EIS determined that although the document briefly discussed the issue, there was no specific analysis to support the NRC's conclusion that the proposed facility is not an example of environmental injustice. Executive Order 12,898 and the accompanying Presidential memorandum calls for the EPA to comment on environmental justice

347. Superfund is the popular name for the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601-75 (1988). The name derives from the fund created by CERCLA to pay clean-up costs until the responsible parties can bear the burden. *Id.* See 26 U.S.C. § 9507 (1994) (creating trust fund); 42 U.S.C. § 9611 (1988) (describing uses of trust fund).

348. See *Draft EIS Issued on LES Centrifuge Plant*, NUCLEAR NEWS, Jan. 1994, at 67 (stating that draft environmental impact statement concludes that Claiborne Uranium Enrichment facility can be built and operated safely).

349. See Angel Manuel Moreno, *Presidential Coordination of the Independent Regulatory Process*, 8 ADMIN. L.J. AM. U. 461, 478 n. 75 (1994) (stating that Nuclear Regulatory Commission oversees construction and operation of nuclear reactors, disposes of nuclear materials, and grants licensing of nuclear power plants).

350. See 42 U.S.C. § 4332(2)(c) (1988) (requiring preparation of environmental impact statement when federal action could significantly affect environment). Section 4332(2)(c) also enumerates what the statement must include. *Id.*

351. The Claiborne facility is located between Center Springs and Forest Grove; both communities are predominantly African-American. Rupert Richardson, President of the NAACP believes the site was chosen because African-Americans would presumably offer little resistance. Peter Shinkle, *NAACP Chief Charges Race Factor in Plant's Siting*, BATON ROUGE ADVOC., Sept. 29, 1993, at 9A.

issues as part of our responsibilities under Section 309 of the Clean Air Act.³⁵²

The NRC also provides the public the opportunity to address outstanding or unresolved issues related to proposed licenses through their Atomic Safety and Licensing Board hearings. This Licensing Board presides over the licensing proceedings and ultimately considers whether a proponent's licensing application satisfies the standards outlined by the NRC.

With regard to the proposed Claiborne facility, representatives of the NRC, Citizens Against Nuclear Trash (CANT),³⁵³ and Louisiana Energy Services (LES)³⁵⁴ presented testimony and independent analysis related to safety and environmental justice concerns at the Licensing Board's hearing held from March 13 to March 17, 1995 in Shreveport, Louisiana.

Representatives from the region and the Headquarters Office of Federal Activities³⁵⁵ attended the NRC hearing. Through the hearing process, the EPA believes that the NRC and the LES have provided sufficient information in the administrative record and to the public to demonstrate that safety and environmental justice have been considered thoroughly and evaluated in the decision-making process. Therefore, with the additional information provided and the analysis completed, the region considers those issues raised during our review of both the draft and the final EIS to have been addressed adequately. The EPA feels confident that any final decisions issued by the Licensing Board on issuance of licenses for the Claiborne facility to the LES will be based on technical merit related to any safety and operational concerns with the proposed facility. Thank you.

352. Clean Air Act Amendments of 1977 § 309, 42 U.S.C. § 7619 (1988). Section 309 added § 319 to the Clean Air Act, Pub. L. No. 84-159, 69 Stat. 322 (1955) (current version at 42 U.S.C. §§ 7401-7619 (1988)). Section 319 required the Administrator of the EPA to promulgate regulations creating a system for maintaining air quality in the United States. 42 U.S.C. § 7619. Those regulations are located at 40 C.F.R. § 58 (1995).

353. CANT is a group of Claiborne Parish residents opposed to the construction of the Claiborne Enrichment Center. CANT is represented by the Sierra Club Legal Defense Fund. *See generally Uranium Plant Put on Trial . . . Group Tells NRC Louisiana Wrong*, BATON ROUGE ADVOC., March 15, 1995, at 5B (reporting on hearings before NRC officials on granting of license to developers of Claiborne Enrichment Center).

354. LES is a consortium of Graystone Corp.; Louisiana Power and Light Co.; a subsidiary of Duke Power Co. of North Carolina; a California construction and engineering firm; and a European company called Urenco, Inc. Tom Meersman, *NSP Unit is Banking on Future Need for Nuclear Fuel*, MINNEAPOLIS-ST. PAUL STAR TRIB., March 19, 1994, at 1A. LES is the group attempting to build the Claiborne Enrichment Center. *Id.*

355. *See* 40 C.F.R. § 1.37(a) (1995) (enumerating responsibilities of Office of Federal Activities including review of other agency environmental impact statements and actions under § 309 of Clean Air Act).

EPA REGION V STAFFER: I would like to comment on Region VI's report. There is an issue that this Council needs to look at, and that is that they are using an excuse in that community because it is homogeneously Hispanic. Therefore, it is not unjust environmentally to have those pollution sources there, thus, there is no environmental injustice. However, the whole state of Texas is not Hispanic, and the fact that those facilities are locating there is unfair. In addition, Melva Hayden raised this issue with regard to Puerto Rico and predatory siting in Puerto Rico.³⁵⁶ Although, the whole country of Puerto Rico is Puerto Rican, does that mean that there is no injustice there?

The reality is that there is injustice, and we need to come up with some way to address these issues. Melva suggested socio-economic factors in Puerto Rico. I think that we need to find some way to address this so that we do not let these cases fall through the cracks like they have in Texas.

DR. GAYLORD: I think a copy of the Region VI report should go with Charles Lee and the committee which is meeting during lunchtime to decide what the next step should be. Questions for the coordinators?

MR. ARTHUR RAY:³⁵⁷ I had a question yesterday to your soldiers on the front line. It was kind of odd, afterwards. I was pulled aside and asked, "Well, why did you put us on the spot like that?" And I said, "Well, I did it because that's what I always do."³⁵⁸

Another thing, I felt that there was no way, considering the placement of the OEJ, that the headquarters people took all the considerations into play. Even though it has been a few years since I have worked at that Agency, I know that the relationship between the OECA and the regional offices has always been a shotgun wedding of sorts. So I know there are some special things that come into play when you make a decision like this. I know that people who work with OECA have some ideas about whether this is right, how this is going to work out, and how this will affect the relationship that you may have forged already with the OEJ.

So I would like to have someone speak who might know a little something about the ramifications of this decision; hopefully, someone other than the pointy-headed bureaucrats who make the decisions. Given where they made the decision, what do you think? How is it going to work, and what will its impact be on your jobs?

MS. THIGPEN: I would like to address that from my regional perspective. Organizationally, we have had an Environmental Justice

356. *See supra* pp. 756-52.

357. *See supra* note 39.

358. *See supra* p. 635.

Regional Council since 1993. When there was a decision to link me as a liaison between the Regional Administrator and the Environmental Justice Council, we dramatically jumped ahead of the learning curve.

We are unique in that so many regions have done so many things before us that we had a wealth of knowledge and information already available to us. We were able to make sure that we got some fundamental things done in a hurry. The bottom line is that they listen to us when we request something. I know that the Regional Administrator is behind me. What we have seen is a tremendous amount of progress since June 6th of this year in our official organization and formation of our Council in 1993.

EPA REGION V STAFFER: First of all, Dr. Gaylord is a national treasure, and it is very important that we maintain her work, support it, and keep it going. We all know that there are those who would not like to see her work continue, and that this reorganization is a compromise in order to keep the OEJ in business. I was just glad to hear that there is going to be an Environmental Justice Grants Program next year and that she was able to save that for us. OECA is obviously not the ideal place for environmental justice to be located, but it is better than eliminating the OEJ.

We are lucky in the sense of our region that, although we also do not have an optimal situation in our reorganization for environmental justice, we will not be located in our Office of Enforcement. We will be in our Water Division. I personally think that it sends a bad message because we need to be forming partnerships and we need to be including all the stakeholders. When we have a case, we are working with the community, the activists, and the industry because we want to negotiate solutions for those communities.

If you have that hammer in your office, it is very, very difficult. Not to say that enforcement cannot be a key tool in environmental justice, because sometimes that is the only way you can achieve it. But if I am sitting at the table with Mr. McDermott and trying to negotiate a situation for a community, if I am in the Office of Enforcement, he is going to be seeing that hammer, and it is going to make it far more difficult for us to work together.

Now, we actually have worked together on a case where we had a positive resolution. I do not know if that had anything to do with where I was located or not. I hope not. The most important thing is to preserve Dr. Gaylord's good work, the resources, and the work of the OEJ. I know if anybody can do it, she can do it. Unfortunately, she is going to be in the Office of Enforcement.

MS. MALONE-JONES: Well, our region made the decision to locate the Office of Environmental Justice within the Office of Environmental

Accountability. The reasons for this decision were that there would be more resources available, that it would be in the office where there was "clout," and that the office was not to be thought of simply as an enforcement office, but more or less as an office where there is accountability in all forms, which includes the outreach component, the education component, and any kinds of negotiations that would take place.

I am currently located in the Office of the Regional Administrator and the Deputy Regional Administrator. When we were asked for our opinion, we pulled together a team and our number one choice was to remain there. Our second choice, however, was to go with the new office, and, of course, that was the one that our senior counsel chose to place us under.

Personally, I did appreciate and like the idea of sitting on the Senior Management Team, and being in a position to speak out and listen and know what was going on firsthand. It was very important. Whenever there was an issue that was brought up, to be there at the table and to say, "Wait a minute," was very important. Now, whoever is selected to head up this new office is going to have to take on the environmental justice issue as a significant portion of his or her duties. Since that person has not been selected yet, we have to make that point very clear. I think our Regional Administrator has mentioned that. Insofar as the Headquarters operation, I would think that, that is going to have to be made very clear. Environmental justice is so very crucial that it cannot be given a second or back seat.

MR. HAYWOOD TURRENTINE:³⁵⁹ I just want to comment on an observation that I made yesterday as we had all of the Assistant Administrators (AAs) march in here and make presentations before us. It relates to the issue that is being raised now, and that is whether Dr. Gaylord will have the clout, and what must be done so that environmental justice remains a viable activity.

I think it is ironic that we sit here and talk about environmental justice and equity, and there are no people of color at the senior level positions. I looked at the AAs that marched through here yesterday, and I did not see a single member from a community of color. I think Tim Fields³⁶⁰ was the only one, and I am not sure if he was an AA or not. If he is, he is only a deputy.

DR. GAYLORD: He is a deputy.

359. Program Director of Laborers-AGC Education and Training Fund at Pomfret Center, East Killingly, Connecticut.

360. Timothy Fields is Deputy Assistant Administrator of the Office of Solid Waste and Remedial Response at the EPA.

MR. TURRENTINE: As the AAs talked about people who were going to be responsible for activities, I got the impression that you still did not identify people of color as holding those key positions. We had better be extremely alert. Otherwise, we are fighting a good fight, but we may not be fighting it with the total support of those individuals who ultimately are going to make the decisions that have to be made as to whether this goes forward.

CHAIRMAN MOORE: Thank you. Charles, and then John.

MR. CHARLES LEE: I want to thank Haywood for those comments because they relate to the question I wanted to ask yesterday. It was regarding a point that Region I made, I believe in the first report from the regional coordinators, which had to do with this question of how to truly integrate environmental justice in all facets of the work of the different programs on an everyday basis, and all the decisions that are going to be made.

I think one of you mentioned that this whole issue of cultural diversity is very difficult. I think there are a lot of good things, and I think all of you should be congratulated and commended for the kind of effort put forward and the work that has been done. But we barely are scratching the surface. The fact of the matter is that there is a lot of resistance, even within the Agency, by many people who are very well entrenched, especially in the regions. So I would like you to address this question in the context of what is going to happen in terms of reorganization. If environmental justice is really going to be integrated, cultural diversity must be addressed.

DR. GAYLORD: Could I make a general remark? The remarks that you are making are fine and supportive, but the decision to move my office has already been made. I am willing to sit down with Steve Herman,³⁶¹ and I think Steve has offered to sit down with you. He is giving us no indication that business as usual will change. I am willing to give it a try. I think that until we have something a little more concrete as to how much support I am going to get, it is premature to put the cap on this right now. The place that we are now in, Office of Administration and Resource Management (OARM), is just a misfit. We were talked to, and we made a number of decisions about where we needed to go. All I am saying is the decision is made. They listened to our options and they listened to your options. We need to move forward and I am willing to see how this is going to work out.

361. Steve Herman is Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance.

CHAIRMAN MOORE: One of the things I mentioned early this morning was that I felt there was a need to have a meeting with Mr. Herman and the other responsible people within OECA, including Dr. Gaylord.

I think that there had been several discussions for the new members of NEJAC. Being listened to is something that you look for in the process. At the end, if you have fifteen issues and you have responded to those fifteen, and those fifteen are different from any advice or recommendations that were made, then you wonder whether in fact you were listened to. I would encourage this committee to take a look at the scoreboard and then we can decide whether our recommendations are being taken seriously by the EPA.

We have had discussions with the Administrator in the past about the the lack of diversity among AAs and all that goes along with it. I think the environmental justice coordinators are aware that workplace diversity always has been an issue that has come up at NEJAC.

MR. O'LEARY:³⁶² I think it is important that whether it is at the headquarters level or at the regional level, environmental justice has become nothing but an adjunct of enforcement. As important as enforcement is in cases of environmental injustice, it would send the wrong message in the wrong way generally because I think, as Charles articulately described yesterday afternoon and in his resolution, that the essence of this issue is enforcement. That is political, cultural, and social, and I think it fits within compliance assurance as Steve Herman described it yesterday. My observation is, whether it is in Washington or in the regions, if that is the spirit in which environmental justice is approached, it will work.

Putting the OEJ in the OECA and simultaneously recognizing the balanced task that office has involving both enforcement of cases in environmental justice, and more generally, compliance assurance from an organizational chart, makes sense to me. I do think that the point several people have made this morning about diversity at the Agency at all levels is very important.

I do not think it is an accident, or that it is coincidental, that the very best performance that I have seen by this Agency on this issue is in Elliott Laws' branch of the EPA. Therefore, I think the Chairman's points are very important.

CHAIRMAN MOORE: Thank you, John. Are there specific comments or questions?

362. *Supra* note 166.

MS. WALKER: Yes, I have a brief comment. I want to thank all the coordinators for their reports. In particular, Region V, some of the things that you said were really impressive and raised a flag in my mind about a threshold issue that I do not think is being properly addressed in many of the regions when it comes to their environmental justice programs.

What triggered this for me was a reference in your report to informal listening sessions that were conducted by your region. We are not seeing enough of that in our regions. We are still seeing too much of the EPA deciding what infrastructure will be imposed and what the process will be for them to deal with environmental justice issues in their regions. That is absolutely the wrong way to go about it.

These informal listening sessions make a lot of sense. What we have got to see more of is the EPA regions going to the various communities. They have to go to the affected communities, and when they get there, they have got to listen. These have to be listening sessions. At these sessions, the communities must be the ones to say that these are the issues, this is how we want the issues addressed, and this is how we want to discuss the process that we think is most appropriate for addressing the issues.

The bottom line is that this is not happening enough. There are too many top-down EPA concepts about what the process will look like and what the program will be for addressing environmental justice issues. Until we get the bottom-up approach into all these communities and start having listening sessions, we are not going to make a lot of progress.

CHAIRMAN MOORE: Thank you.

PARTICIPANT #2: I do not expect an answer to this question from the regional people, but I think it would capture what we want to know. Administrator Browner said it at our first meeting a year ago that this was one of her top four or five priorities. I think what could crystalize this conversation would be if we understand what objectives are articulated within the Regional Administrators', the Assistant Administrators', and Administrator Browner's performance documents, and to what extent their personal evaluation and performance depends upon this issue. If we can see some sense of that from this committee, I think we would have a better sense of the ability of this issue to move throughout the whole of the EPA.

CHAIRMAN MOORE: That is really important. Beverly.

DR. BEVERLY WRIGHT:³⁶³ I am still not clear on what Region VI is saying about the situation in Claiborne Parish with LES. The only thing that I am clear on is that they are saying that what has been done is good;

363. See *supra* note 36.

communities are saying that what has been done is bad in terms of the EIS.³⁶⁴

How they got from asking the questions as they relate to the EIS to the conclusion that they are now satisfied, is very unclear. I hate to sit here and say that these people are demons or something when they come up with these things. I am very concerned about it. It is like they take us for a ride and they make us think that they are going to deal with it, and then they do something weird and come out with the same answer—everything is fine. I am really tired of this. I notice on my sheet that I got a one-year appointment. I want to make the comment that all African-Americans got one year appointments. Charles, you should be happy to know that all Asians got two-year appointments.

(Laughter.)

We are getting the same run-around. So, I want this comment on the record: Beverly Wright is disturbed by the process. I am beginning to feel that the people in Region VI have come up with unique ways to torture us.

CHAIRMAN MOORE: There has been a long history of serious complications in Region VI, and I do believe, in interaction with Region VI over the last couple of years, that some staff members within that region have attempted to rectify some of it. It is pretty clear that ongoing problems exist within Region VI, and you are hearing that. There needs to be a meeting with the Regional Administrator to try to clarify some of these points.

Many of you may not know, but I participated in a series of sit-ins and demonstrations that took place in Region VI, and if there is ever a need, I will participate again.

DR. GAYLORD: We have two more coordinators, Regions IX and X, Lori Lewis and Joyce Kelly, respectively. Region IX headquarters is in San Francisco, California. Region X headquarters is in Seattle, Washington.

MS. LORI LEWIS:³⁶⁵ I am here on behalf of everybody in Region IX who works on environmental justice issues. We, as a region, have been working on environmental justice issues since the early 1990s when many people referred to it as environmental equity.

There are several regional specific questions that have come up during the meeting, and I want to try to address those as I give you an update. In answer to one of your questions, those of us in the region working on

364. See *supra* note 348.

365. Lori Lewis is Environmental Justice Coordinator for Region IX, which includes California, Arizona, Nevada, Hawaii, and the Pacific Islands.

environmental justice have a strong relationship with the Office of Civil Rights (OCR),³⁶⁶ the Title VI people,³⁶⁷ and our regional enforcement team.

When I first took the position in 1993, the Region IX senior managers made it very clear that their goal was not to have an isolated environmental justice program, *per se*, but to integrate environmental justice into what we in the region did every day. Environmental justice would be a filter through which everything was seen. Although sometimes, I think one of the reasons management felt it needed to have a coordinator was to have someone respond to the environmental justice-related phone calls. And for those of you who have tried to get in touch with me, you know that I have been on the phone non-stop now for two years. I see that as a positive sign for our region because I get calls from all over the country regarding a variety of issues and concerns. The goal of our environmental justice efforts was to be a filter.

Specifically, I would like to talk today about four general issues in Region IX. First, one of the region's goals is to identify communities that are at high risk for environmental problems, and make these communities' concerns a priority. Senior managers have asked how we could better allocate our resources in order to better address environmental issues and concerns. While we knew about some of the affected communities that had come forward, we felt there were probably many more concerned communities out there that were unaware of who to call or who handled their environmental problems.

One of the things that I have included in your packet is information on our Regional Environmental Justice Assessment project. We, like many other regions, are using GIS³⁶⁸ to map communities within our region. In addition to mapping, one of the key components of this assessment project is to actually go out and talk with people. However, it is more than just listening to communities. The assessment project is designed to identify ways of bringing communities to the table, not only to identify issues, but also to address them and to find solutions. The assessment project also brings in state and local governments, industries, policy-making

366. The OCR is responsible for developing and administering the EPA's compliance programs under Title VI of the Civil Rights Act of 1964. 40 C.F.R. § 7 (1995).

367. See 42 U.S.C. § 2000(d) (1988) (stating Title VI of Civil Rights Act of 1964 provides that "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").

368. See *supra* note 328.

institutions, and others so that all stakeholders and decisionmakers can be involved in the community from the beginning.

The other issue that came up yesterday was Title VI and the relationship between the regions and headquarters. While headquarters is overseeing the Title VI complaints, Region IX wants to take, and has taken, a more proactive role. We have a team composed of people from the regional RCRA³⁶⁹ program because that is where our Title VI complaints rest. One of the things that we hope is that the complaint will help us identify Title VI issues that are out there. We know that these particular groups have specific concerns, and we hope to work with the state to address those concerns on a long-term basis.

Second, we want to increase opportunities for low-income communities and communities of color to speak for themselves and to participate in environmental decisionmaking at local, regional, and national levels. Under the National Environmental Justice Small Grants Program, we have awarded grants in 1994 and 1995, and these awards reflect the diverse nature of our region.

Like Region VIII, we conducted several grant informational workshops in Region IX communities. This gave us an opportunity to work one-on-one with groups to help them figure out how they could get funding to address some of the environmental problems in their communities. We also use the environmental justice granting authority to target grants for specific communities. Right now in Bayview Hunters Point, which is located in San Francisco, we are targeting \$50,000 for community Environmental Justice grants. The money is provided by the Superfund Program because there is a Superfund site there. The Region has also targeted money for groups that work specifically on environmental issues located near the border.

Third, we are building relationships and partnerships which serve to address environmental justice concerns. This is one of Region IX Regional Administrator Felicia Marcus's main goals. She strongly believes that we should not be "pointy-headed" bureaucrats and that staff and management should work with all stakeholders on environmental issues. She has worked with regional senior managers and staff alike and has also visited with the communities. We are also very fortunate to have Richard Moore, head of the Southwest Network for Environmental and Economic Justice, in our

369. Resource Conservation and Recovery Act (RCRA) is a cradle-to-grave regulatory program which tracks treatment, storage, disposal facilities, generators, and transporters of hazardous waste. 42 U.S.C. §§ 6901 (1988).

region. He has worked with me and the rest of the people in the region to set up several visits in which Felicia Marcus has participated.

Also, by relationships and partnerships, I do not mean just the communities, because it is one thing to build a relationship with a community and to identify the issues, and another thing when specific issues arise where the EPA has no regulatory authority to make changes. When this occurs, I think that many people feel frustrated. Often, regulatory authority is held by other federal agencies and state and local governments. So, in the next year, we will be working with other federal agencies and our state and local governments to work on partnerships in order to address these types of issues.

Lastly, we are working to increase internal and external awareness of environmental justice. Every region is unique in some way. For instance, there are special issues which arise for native Hawaiians. It is important to recognize these issues because, unlike Native American Indians, Hawaiians do not have a trust relationship with the federal government. And I would like to ask the Council and the subcommittees, when they are talking about issues, to make sure to include native Hawaiian concerns because at present there is no one here who is aligned closely with the native Hawaiian communities. This is something that we are trying to rectify in the region. Thank you.

CHAIRMAN MOORE: Thanks.

MS. JOYCE KELLY:³⁷⁰ Our region is sometimes known as the "forgotten region." First, concerning the organization and the reorganization, I will take a few seconds to let you know how we are organized now and what the changes will be. Right now, I am a manager of a group that works on policy and planning, and I also have the lead responsibility for environmental justice.

In the new reorganization, the reinvention of the EPA, we are creating an office called Emerging Issues and Innovative Studies. That office is where environmental justice will be. My group will no longer exist, and many of the responsibilities in my group will be transferred to this other office. In a way, it is being elevated because my group is a branch now, but it will be an office or the equivalent of a division. So, on paper, it may look like it is being elevated, and I hope that will actually be the case.

We have done some things that the other regions have done. We have put on grant workshops to instruct how to apply for grants. But our goal was really to help people understand environmental justice a little bit more. In Region X, I think some of our issues are different from issues in other

370. Environmental Justice Coordinator of Region X.

parts of the country. We do not have the older cities like Chicago. Seattle is the largest city in the region. But we did put on the grant training workshop, and we hope to do that two more times this year. We provided grants to the Department of Health for blood lead testing, targeting communities of color, and also testing children of migrant farm workers because we are concerned about migrant farm worker issues in the region. We have also focused on a couple of tribal governments that have had high infant mortality rates in the region. We have provided grants from regional dollars and have had intensive sampling efforts to investigate and determine what the problems are.

And we have used some regional funds to hire local high school and college students. We also participate in the Environmental Careers Organization.³⁷¹ But students come to the Seattle area and then leave, and we do not end up creating a pool that we can tap in the future. So, what we have decided to do is to focus on hiring local students of color and hopefully having a long-term relationship with those students, so that they will want to stay in EPA Region X.

I should say that one of my main goals is to focus on educating regional employees so that they understand environmental justice, and that it means that we, the EPA, need to do business differently. So, what I am going to share with you in the next minute or so will focus on that education. On June 29th, we had an extremely successful all-employees meeting, where we had different people from our program offices talk about what environmental justice means to them. And the reason I went with this approach is because people in Region X will say, "Well, we do not have a Baltimore. We do not have the issues that are in Louisiana. We do not have high percentages of African Americans. We only have tribal issues." So, one of my goals was to bring in people who focus on local issues in Seattle so that the EPA employees would realize what the issues are.

There were two representatives from community groups, the existence of which most EPA employees were not even aware. They talked about what they saw as environmental justice issues and what they were doing to address those issues. Then we had EPA employees talk about what environmental justice means to them. Some people were really candid, and said things like, "Well, when I first heard about environmental justice, I said, 'Yes, I accept that. I can relate to it.' But I really don't know what it means to me and my program or how I do business in Region X."

What happened at the June 29th workshop is that people said, "This is what it means to me. Four years ago, I didn't know, and now this is how

371. *See supra* p. 646.

it is making a difference.” That was really successful and I think it showed how we are taking steps to integrate environmental justice into the day-to-day activities.

We plan to hold our first community forum on August 9, 1995. This community forum is being designed based on input from a group we have in Seattle called the Community Coalition for Environmental Justice. Actually, the first time I went to someone on the board of that group with my idea for what this forum could be, she told me, “No, Joyce. I do not think that’s what the community needs. That’s probably step two or three down the road.”

So, what we are going to do based on the input from this community group, is to have people who work on environmental justice come in and talk to local residents, share their experiences, and discuss what has worked, how they have organized, and any other information they can pass on. We will have a representative from the Asian-Pacific Islander Network in Oakland; a representative who works with migrant farm workers in eastern Washington; and a representative who focuses on Alaskan issues. I have found that this is a much more successful way to educate EPA employees than I or anyone from the EPA can accomplish by lecturing on environmental justice. People get to hear firsthand what some of the issues are. And I say this because on August 10, 1995, we are having basically the same panel come in and talk to EPA employees once again. From the feedback that I received from the June 29th meeting, holding workshops with community groups is really much more effective and it gets the dialogue going. It eliminates some of the barriers that people have with the EPA, and it helps people in the region learn firsthand what some of the issues are. Moreover, relationships and contacts are being formed at these workshops.

On June 29th, we had a workshop where we had some community groups come in and we had EPA employees talk about what environmental justice means to them. On August 9th, we are having a community forum, where someone from Oakland, representing the Asian-Pacific Islander Network, as well as representatives of other groups will come in to speak with local residents. Then we will also hold a session for the EPA employees who will share some of their experiences as well.

We have been focusing on education and awareness. Every two months there is a different event, where we go to a community, invite someone to come in, or show a videotape of some information.

My request is to focus on what is happening at the regional level, because that is really where the work gets done, and to see how the members of NEJAC and the federal agencies can affect that process.

For example, three years ago in the region, we reorganized as well, but not to the same level that we are doing now. Then, the real push was to get white women in key management positions. People were clear: "We want white women in these positions." And that is what they did. They got white women and they actually moved out the only person of color we had in a senior management position. If people really want to do something, I think now is the opportunity and the time for the NEJAC to have an impact on what is happening at the regional level.

CHAIRMAN MOORE: Thank you very much. Are there any questions?

DR. WRIGHT: The new name of your office will be Emerging Issues and Innovative Projects?

MS. KELLY: Innovative Studies. Well, I would say a plus is that the group is being elevated. Many of the responsibilities that I currently manage will be in that group. I am at the branch level now, and it will be basically the equivalent of a division level. So, in a way it is being elevated. At the same time, from my experiences, and each region may be different, there is always the challenge of how we deal with new issues, like sustainable development³⁷² and, to some degree, pollution prevention, some of the new initiatives that originate from headquarters. To be honest, I do not think they get the same kind of support in the region because we do not get the same kind of dollars. And there may not be a regulatory base that people can really identify with.

CHAIRMAN MOORE: Thank you. Lawrence?

MR. LAWRENCE HURST:³⁷³ Earlier, Nathalie Walker mentioned more listening sessions. I am somewhat familiar with Region IX. But I guess the question goes to all the regions. Are you coordinating any of what you are doing on these listening and community outreach sessions with the state agencies that are doing the same thing, or do you have diverse efforts going on in coordination with state agencies that have their own environmental justice committees and outreach?

MS. LEWIS: I am sure that there are parallel efforts going on at many different levels. Often when we are working with communities, we discover that other state or local agencies, community groups, or umbrella

372. See Marla Williams, *Missing Forest For The Tree—Sustainable-Development Panel Avoids Tough Stuff*, THE SEATTLE TIMES, Jan. 15, 1994, at A10 (explaining that "sustainable development" is idea of achieving economic growth while preserving environment).

373. Director of Communications for Motorola, Inc., and Chairperson of the Motorola Environmental Equity Team.

environmental justice organizations are involved as well. There are many people trying to address these issues.

I think that one of the things, at least for Region IX, that we want to work on over time, is being able to bring all those people together when necessary. Sometimes it is appropriate to have different people talking to different people at different times. There are different needs. But it is something of which I think we are all aware. It is just trying to coordinate it.

CHAIRMAN MOORE: Cindy?

MS. THOMAS: I wanted to share with people that the Indian offices within regions are going through the same struggle where reorganization is an issue. I do not know what kind of alliances each region has, but I know that in Region X, our Indian office is in a different office than where you are located, Joyce. So, I think it would be interesting to keep track of that and all this coordination. I ask that all regional and Environmental Justice Coordinators contact your counterpart tribal coordinators and build a relationship in some way.

CHAIRMAN MOORE: That is very important.

MS. LEWIS: I think that historically, every region has done things differently. So, this is no different than what has been done throughout history. None of the regions have ever mimicked headquarters' organizational structure. And none of the regions resembles another in structure. Much of that is because there are different problems in different regions.

PARTICIPANT #2: I have three questions for the group. One is to what extent is there an adequate network that exists among and within the offices? And if there is no network, are you prepared to make recommendations on how to increase the networking among offices such that the best practices and successes are exchanged?

Question number two is whether there is anything inherent in the selection process that you see now that would get in the way of the best qualified people being placed in the best positions? And is there anything there that is of concern to you?

The third question is whether the environmental justice subject is integrated into the larger "Sustainable Seattle" effort that is underway?

MS. KELLY: Well, I want to be sure I understand the first question. When you say "network among offices," do you mean regional offices or offices within the region?

PARTICIPANT #2: One of the questions that is going around is where is this matter discussed, executed, and implemented within the Agency? And the reality is, I suspect, it is going to be in many different places. It is similar to what we do within our companies. The establishment of

networks, supported by communication systems information technology, allows the free flow of information and practices. Therefore results do happen because people who are working on the issue have the ability to communicate and to move forward. So, networking exists throughout the EPA, throughout the states, and throughout the relations with the tribes. Can people who are trying to make progress on this issue communicate with one another quickly, share successes, and therefore advance the ball faster than on an individual basis?

MS. KELLY: Well, I can certainly see some progress in that area at headquarters, the OEJ, and the OSWER.

Actually, it is sometimes overwhelming for one person to deal with all of these different networks from headquarters. I have fourteen contacts within the programs that are designated environmental justice contacts. And that has helped to move environmental justice into the programs and to spread some of the work around. I see that as a real plus. I work with some of the regions more than others. I tend to work more with Region IX. And I see an opportunity to really learn from the other regions even though Region X is a different place.

We do not have some of the groups pounding at the door. We have groups saying they want to establish a relationship, and I think we can learn from some of the other regions. However, our relations with states vary. Idaho is not focusing on environmental justice. We have a pretty good working relationship with Alaska, though it could be better. Washington really is focusing on one project. We have a pretty good network with Oregon. So, it exists, but of course, I think it could be better.

As far as your second point, I think that we have the best qualified people in the region, and I do not see any reason why the best qualified would not be selected. I guess my concern is that sometimes people do not see the value of diversity. I worked quite a bit with Sustainable Seattle, and they asked me to be on their board. I think Sustainable Seattle is trying to focus on environmental justice and on bringing in more people of color. That is a positive working relationship.

PARTICIPANT #2: Thank you.

MS. LEWIS: I want to make one quick comment about the diversity issue. Our environmental justice work group, which represents a diverse range of people from the program, is making an effort to work with what we call our "special interest groups," which include the Latino group, the African-American group, and the Asian-Pacific Islanders group.

CHAIRMAN MOORE: Thank you very much. I just wanted to make a comment, before we move into the public comment period.³⁷⁴ I have to make a statement regarding Region IX. Regional Administrator Marcus has been extremely supportive of environmental justice activities in that region.

The other thing that should be mentioned is that Region IX also plays a major role, as does Region VI, in terms of the Mexican-United States border. We requested Ms. Marcus to go on a tour led by grass-roots community organizations, both in Mexico and on the United States side of the border. On this tour she could see the very serious complications that exist along the border. She has agreed to take a tour.

So, we are in a scheduling phase. And Ms. Marcus has also agreed to participate in scheduling with Region VI because we overlap up and down the Mexican-United States border within those two regions.

CONCLUSION

MR. TURRENTINE: Mr. Chair, in light of the hour and in light of the fact that you said that was all on the agenda, would the Chair entertain a motion for adjournment?

CHAIRMAN MOORE: Yes, I will.

MR. McDERMOTT: Second.

CHAIRMAN MOORE: I hope that, in fact, the Council members would agree, that again we have obtained a lot of good discussion and accomplished concrete work.

I would like to thank the new and veteran members of NEJAC. Of course, the new members are no longer new. In closing, I would like to thank again the staff of the OEJ, those from the EPA who have participated in coordinating or organizing this meeting, and those who have given us presentations. I would also like to particularly thank those Environmental Justice Coordinators with whom we work very closely in the regions, and all those who came from other institutions, agencies, and organizations from around the country.

Thank you all. And have a very peaceful, safe flight home.

374. To obtain the official record of day two of NEJAC, contact the EPA Office of Environmental Justice, Washington, D.C.