

EXECUTIVE SUMMARY Arlington, Virginia, July 25 and 26, 1995

The National Environmental Justice Advisory Council (NEJAC) is a federal advisory committee that was formed on April 11, 1994, to provide independent advice, consultation, and recommendations to the Administrator of the U.S. Environmental Protection Agency (EPA) on matters related to environmental justice (EJ). As a federal advisory committee, NEJAC is bound by all requirements under the Federal Advisory Committee Act (FACA) of October 6, 1972. NEJAC has 25 members and one designated federal officer (DFO) and comprises a parent council and four subcommittees, each formed to deal with specific topics and each having a DFO. In addition, NEJAC has established a Protocol Committee whose members are the NEJAC chairman and the chairperson of each subcommittee.

To date, NEJAC has held five meetings. Public transcripts and summary reports of the proceedings of the first four meetings are maintained in EPA's Office of Environmental Justice (OEJ) and are available to the public upon request. This executive summary provides highlights of the report of the proceedings of NEJAC's fifth meeting, held on July 25 and 26, 1995 in Arlington, Virginia.

Approximately 170 people attended the fifth meeting, including 18 members and two delegates sent by members who were unable to attend. During the two-day meeting, the various topics discussed in this summary were covered.

Opening Remarks

As the meeting opened, a videotape was shown that explained the purpose of federal advisory committees and how they are formed. Dr. Clarice Gaylord, Director, OEJ explained that steps have been initiated to extend NEJAC's charter, which expires in September 1995. Dr. Gaylord also defined EJ as the fair treatment of all people, regardless of race, color, national origin, or income. EJ is a relatively new issue, first introduced to EPA in 1990, she said, and NEJAC was formed to ensure that EPA receives a balanced point of view from all concerned parties.

Mr. Richard Moore, Chairman of NEJAC, then offered opening remarks. He commended NEJAC members for continuing to move forward on issues, while acknowledging differences of opinion among members. The chairman stated that the political climate, restructuring of affirmative action programs, and changing social policies acutely affect low-income populations and people of color.

Ms. Carol Browner, Administrator of EPA, also made opening remarks. Ms. Browner observed that NEJAC's work had greatly helped EPA and stated that Congress was scheduled to address an appropriations bill that proposed: (1) a 34 percent reduction across the board in funding for EPA; (2) 17 separate provisions that restrict EPA's activities; (3) a reduction of approximately 50 percent in funding for EPA's Office of Enforcement and Compliance Assurance (OECA); (4) the elimination of certain programs; and (5) "add-ons," or line items that require EPA to spend certain money on certain programs, although those programs are not the ones for which EPA requested funding. Ms. Browner then discussed the relocation of OEJ from the Office of Administration and Resource Management (OARM) to OECA. She concluded her remarks by stating that the EJ small grants program has been expanded and that a new program has been initiated for community and university partnership grants. In response to several questions, Ms. Browner stated that legislative riders have been used before, although to a lesser extent than they are being used in the current appropriations bill; OECA and OEJ are funded from two separate "pots" of money, and reductions in OECA's funding will not affect OEJ; and compliance with regulatory reform proposed by Senator Dole and in several House bills will cost regulatory agencies about \$1.3 billion annually. That, coupled with proposed budget cuts, will severely limit agencies' ability to set standards or make timely decisions, she stated.

The agenda included several presentations on the status of the EJ activities of various EPA offices, which are summarized below.

Mr. Steve Herman, Assistant Administrator (AA) of OECA, stated that OECA is attempting to ensure “equal enforcement opportunity.” In the past, he said, EPA has received complaints about its failure to enforce equally in all communities. He stated that, with the relocation of OEJ, OEJ and OECA will enhance each other’s efforts and said he looks forward to receiving comments, suggestions, and criticisms from NEJAC members. NEJAC members then expressed concern about the strength of enforcement at the regional level, and a request was made that OECA generate enforcement cases in minority and low-income communities as evidence of OECA’s commitment to EJ. Concern also was expressed about whether the relocation of OEJ in OECA would discourage partnerships with industry.

Dr. Lynn Goldman, AA of the Office of Prevention, Pesticides, and Toxic Substances (OPPTS), then discussed the activities of OPPTS. The office determines acceptable levels of pesticides on foods and is examining the unique risks children face because their diets are different from those of adults, she said. Preliminary studies have indicated that regional and ethnic differences affect dietary risk, she pointed out. Dr. Goldman identified protection of farm workers as another serious issue. Dr. Goldman also stated that exposure to lead in homes and workplaces also is an issue of concern to OPPTS. In the United States, she noted, residents of poor minority communities bear the greatest burden of exposure.

During discussions following Ms. Goldman’s presentation, OPPTS was asked to work with the Bureau of Indian Affairs to address issues related to lead in the homes of Native Americans. Concern also was raised about the certification and training process for lead abatement. Recently, the number of required training hours was reduced, the main object of concern in this area. Another concern was whether OPPTS was addressing the issue of cumulative risk. Ms. Goldman responded that OPPTS typically reviews cumulative exposure in terms of areas under the control of OPPTS.

In his presentation, Dr. Robert Huggett, AA of the Office of Research and Development (ORD), stated that the goal of ORD’s research relative to EJ is to improve the scientific basis for informed decision making and to provide information that can be used to identify, verify, and set priorities among risks. ORD conducts in-house, intramural research and funds outside research. Dr. Huggett stated that ORD has been involved in a study of the effects of Native American cooking practices, a pilot project to assess exposure of populations living along the border of the U.S. and Mexico, and an investigation of the use of geographic information systems (GIS) in population studies.

During NEJAC members’ subsequent comments, ORD was commended for its work and was asked to ensure that peer review panels accurately reflect the communities they serve and to integrate “community-driven research” into its research and methodology. ORD also was asked to lead the Agency for Toxic Substances and Disease Registry (ATSDR) in addressing health risk issues.

Mr. John Cannon, of the Office of General Counsel (OGC) then reviewed the activities of OGC, which he said has received some 23 petitions for redress under the Title VI program, with 12 cases under investigation. OGC has a general obligation to provide legal advice to EPA and to ensure that EJ concerns are reflected properly in rulemaking. The office currently is participating in governmentwide review of affirmative action programs.

After Mr. Cannon’s presentation, NEJAC members stated that innovative legal approaches should be taken to bring justice to communities adversely affected by contamination; EPA’s practice of exempt-

ing itself from the requirements of the NEPA opens huge loopholes with respect to economic considerations; and OGC should distinguish its requirements to act under Title VI from its authority to act.

Ms. Mary Nichols, AA of the Office of Air and Radiation (OAR) discussed the role of OAR and the possible use of the clean air act (CAA) as a tool for obtaining EJ, since it allows EPA to consider health-based standards, siting of facilities, and effects on communities. OAR views activities from the perspective of decreasing air pollution in the communities most affected, she said, and is working to (1) improve methods of characterizing those communities most affected by pollutants, (2) expand outreach and communication efforts, and (3) support and enhance regional EJ activities.

Highlights of the discussions following Ms. Nichols' presentation included statements about open-market trading of emissions credits and the lack of information provided to communities about those programs. Concern was expressed about the potential unintended negative effects of such programs.

Mr. Tim Fields, Deputy AA of the Office of Solid Waste and Emergency Response (OSWER), then discussed OSWER's efforts to address EJ issues. He stated that OSWER has examined issues related to the Brownfields Initiative, health, community involvement, and facility siting, and has provided training for community representatives on becoming involved in EJ issues. The OSWER action agenda for EJ contains more than 78 recommendations and more than 200 action items, he said. Discussion that followed the presentation on OSWER focused on OSWER's ability to encourage the regions to consider environmental justice in the permitting process and to ensure that ATSDR spends its funds on the activities that are of greatest importance to communities.

Ms. Dana Minerva, Deputy AA for the Office of Water (OW), began her presentation by noting that the U.S. House of Representatives recently passed legislation that prohibits OW from implementing certain components of the Clean Water Act (CWA). She explained, that under the legislation, EPA would be prohibited from using federal funds to take enforcement action on storm-water violations, a circumstance that would affect urban areas significantly. Ms. Minerva reported that OW is revising methodologies used by states to address the rates of consumption by communities that rely on fish for subsistence. She also cited a water quality initiative in the Great Lakes, wastewater grants for communities located in areas near the border with Mexico, and funding to address sanitation issues in Alaskan native villages. After the presentation, NEJAC members expressed concern about earmarking the funds to address issues in Alaska, with no resulting direct benefit to Alaskan native villages.

Presentations

Summarized below are presentations on various topics related to environmental justice that were made throughout the proceedings.

Ms. Kathleen McGinty, Director, White House Council on Environmental Quality (CEQ), discussed ongoing initiatives, including EPA's work to develop a model for addressing EJ issues at Superfund sites; CEQ's report to the President outlining specific action items to be undertaken by federal agencies to address EJ; and CEQ's work on a guidance document addressing the implications of NEPA with respect to EJ and Executive Order 12898.

Following Ms. McGinty's presentation, NEJAC members expressed concern about (1) the effect of guidance under NEPA on ongoing federal agency initiatives; (2) the White House's commitment to and leadership on EJ issues; and (3) a lack of understanding of what constitutes an EJ issue, evidenced by some individuals' attempts to "mesh" affirmative action with EJ.

Mr. Charles Lee, Waste and Facility Siting Subcommittee Chairman, and Mr. Tim Fields, Deputy AA of OSWER, reported the results of recent public dialogue sessions held around the country on urban revitalization and issues related to the Brownfields Initiative, mentioning also that EPA has announced the award of 50 Brownfields Initiative grants for 1995 and 1996. The subcommittee will develop a report on the issues raised during the public dialogues and will request that the information be archived at Clark Atlanta University.

Mr. Hale Hawbecker of EPA's OGC took the floor to summarize requirements that govern NEJAC as a federal advisory committee, including: balanced membership; timely public notice of meetings; written notes of meetings, available to the public; opportunity for public comment during meetings; attendance at all meetings by a DFO; and availability of all draft reports and working papers to the public. In answer to a question, Mr. Hawbecker explained that there are restrictions against lobbying by NEJAC as a body; however, he added, members are not prohibited from personal lobbying.

Mr. Rodney Cash, EPA Office of Civil Rights, discussed pertinent aspects of Title VI of the Civil Rights Act of 1964. Mentioning that the number of Title VI cases has increased since the Executive order was issued, Mr. Cash stated that Congress enacted Title VI to ensure that no discrimination would exist under programs funded by the federal government. After the Supreme Court's ruling that Title VI applied only to intentional discrimination, the "disparate effects" standard was adopted to address unintentional discrimination. Discussion prompted by Mr. Hawbecker's presentation focused on concerns about the ability of the Office of Civil Rights to cover the whole nation with a small staff, the lack of staff in the regional offices, and the number of complaints in regions 4 and 6.

Mr. Edward Hanley, EPA Office of Information and Resource Management (OIRM), discussed community-based environmental protection, stating that the goal of the effort is to bring about a fundamental change in the way that governments protect the environment. EPA will be providing assistance. EPA's challenge, he said, will be to reach the 80 percent of communities in which it will not be involved directly. Comments of NEJAC members that followed included a commendation of EPA for retaining leadership in some areas and a suggestion that EPA secure the services of neutral facilitators to make community meetings more equitable.

Mr. Peter Gattuso, Office of Information and Resources Management, demonstrated the LandView II Satellite Mapping System. LandView, a joint project of EPA, the Bureau of the Census, and the National Oceanic and Atmospheric Administration, is a system used to facilitate public access to environmental and demographic data. Copies of LandView II are available from the Bureau of the Census, he said.

Mr. Rick Martin of EPA's Information Resources Management (IRM) Program discussed that program. He said the IRM program focuses on (1) public access to information and flexibility to meet users' needs, (2) easy data retrieval through the Internet, and (3) reduction of the reporting burden borne by industry.

Status of EJ Activities in EPA Regions

Mr. James Younger stated that Region 1 has implemented a policy that governs methods of addressing EJ in everyday work. Region 1 has mapped communities in New England by race and income, positioning itself to implement a place-based approach to addressing issues related to urban ecosystems, he reported, but EPA has not yet achieved diversity in decision-making positions.

Ms. Melva Hayden stated that staff in Region 2 are committed to community-based environmental protection and mentioned specifically that, in Puerto Rico, comprehensive monitoring is in place and a special initiative coordinator recently was hired. Region 2 will host an EJ roundtable in August.

No presentation was made for Region 3.

Ms. Vivian Malone-Jones, Director of the Region 4 OEJ, stated that a proposed reorganization would relocate the region's OEJ under the auspices of the new regional Office of Accountability and Enforcement, providing OEJ with greater resources. Each division in Region 4 has an EJ coordinator, and the region has devised a guidance document for integrating EJ into all programs. The region is emphasizing public participation and outreach activities, she said. Region 4 has awarded several grants and established an interagency work group to address EJ issues.

Ms. Margaret Millard stated that Region 5 is focusing on geographic initiatives in southeast Chicago, northwest Indiana, southeast Michigan, east St. Louis, and Cleveland. The initiatives address such issues as solid waste, groundwater, air monitoring, targeted enforcement, and Title VI. Ms. Millard discussed a public dialogue session on the Brownfields Initiative, held in Detroit on June 9, 1995, during which illegal dumping was discussed, and stated that lead contamination and abatement are major issues in the region.

Ms. Lynda Carroll of Region 6 was unable to attend the meeting but submitted a written statement describing activities in the region, including work related to border issues; planning for an EJ forum in Albuquerque, New Mexico; and the denial of approval for a uranium enrichment facility that would have been located adjacent to African-American communities. Discussion that followed the statement focused on historical complaints about problems in the region.

Ms. Connie Thigpen noted that Region 7 established a regional EJ work group in 1993 and since has awarded 24 pollution prevention grants. The region will host its first EJ summit in September 1995.

Mr. Mel McCotry stated that Region 8 is emphasizing community involvement and has awarded more than 50 percent of its grants to Native Americans and tribal organizations. The regional EJ work group has emphasized multimedia EJ issues, and its efforts have resulted in a reinvestment of resources and more extensive community outreach, he said.

Ms. Lori Lewis described the four themes of Region 9's approach to EJ: identification of high-risk communities and pursuit of problem resolution in those areas; emphasis on public participation and increased opportunities for communities to participate in decision-making processes; the building of relationships and partnerships to address EJ issues, which is a priority of the Regional Administrator; and increased awareness of EJ issues. Ms. Lewis also urged NEJAC to consider the unique issues of native Hawaiians in its future discussions.

Finally, Ms. Joyce Kelly described Region 10's workshops to teach community groups how to apply for grants, as well as efforts to build partnerships with tribal governments in Native American communities in which mortality rates are high. She stated that a primary goal in the region is the education of EPA employees on EJ issues and that the region plans a community forum on environmental injustice. She also noted a lack of cultural diversity in key decision-making positions in the region and urged NEJAC to attempt to influence decision-making processes at the regional level.

Discussions of NEJAC members during and after the regional presentations centered on the lack of cultural diversity in key EPA decision-making positions and on the relocation of OEJ.

Executive Order Activities

NEJAC members discussed EPA's activities related to implementation of Executive Order 12898 and received reports on the status of the IWG and OEJ.

Ms. Kathy Aterno summarized EPA's obligation to comply with Executive Order 12898 and stated that the Domestic Policy Council recently issued a letter establishing deadlines for federal agencies to report their progress in meeting those requirements. NEJAC members agreed to assist EPA in establishing priorities among the issues included in EPA's draft implementation plan. Ms. Aterno also summarized the status of the IWG, noting that its Policy and Coordination Subcommittee had recommended that the IWG task forces on public participation and implementation be dissolved and that the IWG task force on enforcement and compliance continue its work.

Reviewing the status of OEJ, Dr. Gaylord said that OEJ has developed a tracking system for action items and recommendations that will be provided to NEJAC members. She also referred members to the environmental justice annual report for 1994, which describes OEJ's activities.

Subcommittees of NEJAC

The four subcommittees of NEJAC reported on their activities.

Dr. Robert Bullard reported that the Health and Research Subcommittee has made recommendations to (1) change the way efforts under the Research Act are carried out, (2) change policy regarding the design of requests for proposals, (3) define community-driven research, (4) develop an assessment tool for cumulative risk, and (5) develop research protocols that use an interagency model. He added that the interagency task force on health and research is seeking guidance from the NEJAC subcommittee on developing and implementing a comprehensive health and research plan.

Reporting on the Enforcement Subcommittee, Mr. Arthur Ray stated that the many issues affecting Indian tribes and Native Americans are not being addressed. He noted that NEJAC members could provide help in those areas. Mr. Ray reported further that the subcommittee has reviewed planning documents and work plans provided by OECA staff and has prepared recommendations about items to include in future work plans.

The report on the activities of the Waste and Facility Siting Subcommittee was combined with Mr. Lee's presentation, "Using Environmental Justice to Address the Crisis in the Urban Environment: Brownfields Initiative Trips." The subcommittee is developing a report on the issues raised at the public dialogues held in Boston, Philadelphia, Detroit, Oakland, and Atlanta.

Ms. Beverly Wright reviewed the actions of the Public Participation and Accountability Subcommittee, stating that its goal is to develop a model public participation process for use by all agencies. The subcommittee hosted a public meeting at Clark Atlanta University on the Executive order; the meeting was broadcast by satellite downlink.

Ms. Wright's remarks completed the subcommittee presentations, and the members then discussed the future focus of NEJAC subcommittees. After discussion of needs and resources, a motion was made to

continue the four existing subcommittees and to add two, one to address issues of concern to Native Americans and the other to address international border issues. The motion was seconded and carried unanimously.

Public Comments

When the floor was opened to public comment, nine individuals made statements. The topics of the comments included efforts by the Environmental Careers Organization to encourage young people to pursue environmental careers; EPA's policies to protect farm workers from health threats; the Migrant Health Program of the the Department of Health and Human Services (HHS); and ongoing EJ efforts by the organization Blacks in Government to ensure community involvement in decision-making processes. Comments also were made about efforts by the Colorado People's Environmental and Economic Network to correct environmental injustices in communities in the Denver area; EPA's Government Information Locator Service, an initiative to improve the public's access to government information; and efforts by the D.C. Coalition for Environmental Justice to bring together stakeholders who have various interests in a common pursuit of EJ. A written statement was read requesting that NEJAC investigate the possibility of using speaker telephones or satellite downlinks to provide greater public access to NEJAC meetings. Finally, the executive director of the Health Committee of the Senate of Puerto Rico commented about the severity of environmental and health problems in Puerto Rico.

The meeting ended with a discussion of action items for the next meeting and a discussion of possible dates and logistics for the next NEJAC meeting. OEJ, with advice from NEJAC's Protocol Committee, will determine the date and location of NEJAC's next meeting.

Action Items

During the meeting, NEJAC members adopted the following major action items and recommendations:

- OEJ will solicit from members comment on the draft implementation plan.
- OEJ will develop and distribute a status report on action items.
- NEJAC will establish new subcommittees on issues of concern to Native Americans and international issues.
- Ms. Deeohn Ferris will complete and distribute a report outlining recommendations for enforcement.
- NEJAC will examine staffing decisions and strategies to assess efforts to achieve cultural diversity within EPA.
- NEJAC will invite Blacks in Government to join in an effort to devise innovative ways to conduct outreach efforts.
- The NEJAC Enforcement Subcommittee will provide comment on the proposed rule governing open-market trading of emissions credits.
- NEJAC recommends a coordinated effort with the advisory council of HHS to consider environmental occupational health issues of migrant workers.
- NEJAC recommends a meeting with the Region 6 Regional Administrator to discuss ongoing EJ problems in the region.
- NEJAC recommends that the IWG develop a strategy to address urban revitalization.
- NEJAC recommends that the CEQ submit periodic progress reports.

