National Environmental Justice Advisory Council Meeting

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M O R N I N G S E S S I O N

(8:42 a.m.)

CHAIRMAN SHEPARD: Good morning. Could everyone take their seats. Good morning. I would like to welcome you all on behalf of the NEJAC. We are going to begin our policy dialogue this morning, advancing environmental justice through pollution prevention.

I'm Peggy Shepard, chair of the NEJAC, and I am going to turn this over to Charles Lee who will introduce the moderator of our distinguished panel this morning.

MR. LEE: Good morning. Can everybody hear me? Hi. Good morning.

Today is going to be devoted to a discussion of the direct report from the NEJAC Pollution Prevention Workgroup on advancing environmental justice through pollution prevention, and Veronica Eady, from Tufts University, is going to moderate today's session.

Our panel is going to discuss this report with the Executive Council of NEJAC consisted of members of the Pollution Prevention Workgroup, which is chaired by Wilma Subra and Ken Warren. And the others who are joining them are Ken Geiser, from the Toxics Use Reduction Institute, University of Massachusetts, Lowell; Connie Tucker, from the Southern Organizing Committee; Tom Goldtooth, from the Indigenous Environment Network; Sue Briggum, from Waste Management, Incorporated and Andrew Sawyers, from the Maryland Department of the Environment.

So, with that, I will turn it over to Veronica.

OPENING REMARKS: GOALS AND GROUNDRULES
By Veronica Eady, Moderator

MS. EADY: Good morning. I just wanted to spend a couple of minutes going over, first of all, what we are going to be doing today; what the framework is for the day. Additionally, and maybe most importantly, what our goals are.

This morning we are going to have an overview of the process

and a synopsis of the report from the chairs, Wilma Subra and Ken Warren, and we are going to hear from the stakeholder panelists. This is just kind of a sampling of the people who worked so hard on this report on the workgroup.

After that we are going to be going through the consensus proposals, and that is where really the heart of today's discussion is going to be; talking about the 11 consensus proposals, getting input on that and trying to move forward with the report.

We have 11, as I said. So I think that it is kind of going to be a fast moving discussion. We want to cover them all, and so, throughout the day I am going to be sort of moving us along to make sure that we actually do get through each of them.

Our overarching goals for the day are to have an interactive discussion around the report to get input on particularly the consensus chapter, and then finally, as I said, to get input on the consensus proposals before the end of the day.

We have a number of ground rules, and I am sure that we are all familiar with them, but just to go through them briefly -- and I think that they were passed out to each of you. The first one is to use peaceful and respectful language. And as I go through these ground rules, I know that we are all familiar with them. We used them yesterday in a wonderful discussion on presentations around P2.

But, just as a reminder, number two, to be succinct and to the point; three, refrain from interrupting and listen until the prior speaker is finished; four, talk to each other rather than at each other; five, ask questions that come from genuine curiosity and avoid rhetorical questions; six, allow any participant who is not ready or willing to answer a question simply to decline responding to it with no explanation required; seven, cooperate with the facilitator -- and actually, that is me, the moderator -- to make sure that goals of the session are met.

And finally, number eight: Make constructive suggestions if one does not like the way the meeting is going. I think those are good ground rules, and sort of keep them in mind as we go through the

discussion today.

But let's start, as I said, with an overview of the process and the synopsis of the report. And so, I am going to call on Wilma Subra to give a presentation, and after that we will have some questions on her presentation.

Jana?

MS. WALKER: I have one question on clarification. We talked about the consensus chapter and the consensus recommendations. We also have chapters three through six, which are stakeholder perspectives, and those chapters did contain recommendations.

Are those part of this report? And what is the role of council with respect to commenting on those chapters? Will that become part of the final report?

MS. EADY: Charles will respond.

MR. LEE: We are going to get more into this on Thursday when we discuss how to move the process. I think on the -- as a way of discussing these today, timing on those, I think, would be appropriate. I think that is important to focus on the consensus part of the report, being that those are where the -- ultimately what will become the recommendations from the NEJAC as consensus recommendations of the council.

What are in the stakeholder perspectives as "recommendations" of those stakeholder perspectives are not recommendations to be acted upon by the council when the report has finally moved to the Executive Council. But I think at this point any comments or things that you think are important within those stakeholder perspectives you should be -- should be given.

I think the other thing that I want to note to the Executive Council in terms of context is that when Wilma gives an overview of the process, she will explain in detail the relationship between those chapters and the consensus part of the report.

MS. WALKER: So I guess I still have the question. Is it intended that those will remain in the final report?

MR. LEE: That is something that the Executive Council would

have to act upon when the report gets transmitted. But what we would like to see happen is that they be part of the final report, and what that means is that they are to be represented at that point, if the Executive Council wants them to be, as the views of the particular stakeholder groups respective positions.

And those don't have to be -- the things that are being put forward in there are important or things that are -- they seem to have acted upon; are not part of the recommendations, which are, by definition, recommendations that go to the agency.

MS. WALKER: So, I don't want to belabor this point, but I just want to get it clear. It seems like under our past precedent, and specifically the Fish Consumption Report, that was not permitted by the agency to include those items. So I just -- before we spend our day, if that is not going -- if that is going to be censored out in this one as well, it would be nice to know it now.

MR. LEE: I mean, I think the question that Jana is raising is something that I would like to spend time with the Executive Council to talk through on Thursday. Not to leave everybody in suspense about this, there has been a lot of tension around what constitutes the elements of the report and what constitutes the recommendations.

The issue of what constitutes recommendations is the thing that I think we need to talk through, and I think there needs to be enough time to have a good discussion so that there is a better understanding of that. I don't think that will become a problem once that discussion is had.

MS. NELSON: Because that is so important, can we ask that be agenda number one on Thursday morning?

MR. LEE: Yes.

MS. EADY: Wilma, are you ready?

MS. SUBRA: Good morning. Can everyone hear me? We had trouble yesterday hearing people.

OVERVIEW OF PROCESS AND SYNOPSIS OF REPORT
By Wilma Subra

MS. SUBRA: On behalf of Ken Warren and myself, we would both like to thank the members of the workgroup for all the effort and the staying power and the participation and the engagement that you have done over the year 2002 in bringing this product to this point for the NEJAC Council meeting.

We will go through the individual members of the workgroup later in the presentation, but we would really like to say thank you, because if it was not for the work that you did in making this report a reality, it would not be the report that it is.

Also, I would like to thank Connie Tucker and Marva King for the extra effort they went to to do outreach to the community and get the information, issues and concerns that the community had and bring it back into the workgroup.

And Nakia Waggoner, who was sort of the person in the background, but was making everything happen. She is an eco intern in the Office of Environmental Justice, and she is responsible for helping us keep our sanity through this whole process of memos and conference calls.

To the program offices, the Office of Prevention, Pesticides and Toxics, the Office of Air and Radiation and the Office of Solid Waste and Emergency Response; for the support, for the information, for briefings and for the documents that you provided.

To Samara Swanston, who was the contractor, for the work you did in putting the different portions of the different chapters together. For Charles Lee for his support and encouragement throughout this process; nights and weekends and everything else. To John Cross, for his valuable insight into what a user goes through in doing pollution prevention and his unfailing experience to tell us what he knew and what were the downfalls and the positives.

And most of all, Sharon Austin, our shining star and our angel who got us through this who worked so diligently on putting peoples' ideas into the report and changing the report around and making the corrections and engaging everyone and having everyone have an opportunity to vent their issues and make it all come out in the end.

Thank you, Sharon. And for the overheads that she so diligently did over the last two weeks, and here we go with the overheads.

(Slide)

The project is about advancing environmental justice through pollution prevention. The goal is to improve the quality of the environment for all people, but particularly the low-income, the minorities and the tribal communities who are usually the most impacted and the under represented in the process.

(Slide)

What we did was involve all of the stakeholders in the process. We involved the impacted communities. We involved the government at all levels: Federal, state, tribal and local from multiple agencies: Environment, health, natural resources, transportation, infrastructure and business and industry.

So the three stakeholders are known as community, government and business and industry, and you will hear that iterated over and over again. But understand that within each of these three stakeholder groups there are diverse representation.

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The issue was to promote innovation and implementation of pollution prevention, sustainable development and related areas in more effectively insuring a clean environment and a better quality of life for all people, including the low-income, the minorities and the tribal communities, and you heard examples of that in the two pilot projects that were presented yesterday afternoon.

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Pollution prevention for this report is defined as the mechanism focused on pollution reduction, elimination or prevention that in the end helps to protect the environment and improve the quality of life in environmental justice and tribal communities.

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We had a framework that we started off with, and it was used by the Pollution Prevention Workgroup to emphasize the strong nexus with health, environment and quality of life concerns of the impacted

communities, and the quality of life in the impacted community have to be the ones that have to be the drivers.

We recognized and respected the importance and value of community knowledge and community experience and the importance of including that in any process we moved forward with.

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We required full participation of the impacted communities, collaboration between all stakeholders, the need to build capacity, not only on behalf of the communities, but also on behalf of the business and industry sector, to focus on all sources of pollution, large and small, public and private, new and old and area and mobile sources.

And this is a lot bigger perspective than is usually dealt with when you hear communities complaining about one facility or one issue in their community.

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Another framework aspect was proactive, positive, solution oriented and holistic. We have to come up with solutions that are going to work. We have to be willing to do culture changes in institutions and management systems, we need to promote the use of new and emerging technologies, as well as build on the technologies that are already in existence, and we need to address the attributes of the at-risk community.

And you heard that over and over again yesterday when we heard the two very different pilot projects. It has to fit the community.

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So the workgroup consisted of six members from the community and NGO organizations, five members from academia, six members from the business and industry sector, three members from state and local governments and three members from tribes and indigenous peoples.

(Slide)

The academia, however, had extensive experience working with communities, tribes and indigenous peoples. So they brought that perspective to the table as well. And then the agency staff provided

background information, technical input and documents.

And again, the offices were the Office of Air and Radiation, the Office of Prevention, Pesticides and Toxics and the Office of Solid Waste and Emergency Response, and many divisions in each of those offices. And we say thank you for all of the participation by all of the above.

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So, what the process? The process started with interviews. The interviews were conducted of the individual members of the workgroup. We had 23 members of the workgroup. Twenty-one of them were interviewed.

Veronica was not interviewed, because she took Harold Mitchell's place. And Tirso Moreno was a new member, and he was not interviewed, but we did get input from him. But he didn't have a formal interview.

And the interviews were designed to gather information on the issues, concerns, expectations and ideas from the individual members of the workgroup. Now, these were their sort of initial impressions, and then, as we worked through the process, their input helped refine what you see in the report. But the interviews were their initial perspectives.

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We had a face-to-face meeting July 22nd through 25th in the Baltimore, D.C. and Sharon's House area, and it brought all of the members together. It helped the different members understand the different perspectives of where each person was coming from.

And one of the outcomes of the face-to-face meetings was the formation of small workgroups to develop specific topics, and these are the ones that were developed as a result of the face-to-face.

(Slide)

An introductory and background chapter with Samara Swanston was passed to start putting pen to paper. The community perspective; Connie was the team leader. Over here. Connie, would you stand up.

(Connie Tucker stands.)

And is Samara here? Oh, there she is. Back there. Okay. She is the one who did the introduction and background. And then Donele Wilkins, who couldn't make it today, was the other member of the community perspective chapter.

The tribal perspective was Tom Goldtooh. Tom, would you stand up.

(Tom Goldtooth stands.)

He and Dean Suagee. Is Dean here this morning? He was here yesterday. They were the co-team leaders. And then Coleen Poler and Robert Shimek, and neither one of them were able to attend; were the other members of the tribal.

Then we had business and industry. Sue Briggum was the team leader. Sue, would you stand up?

(Sue Briggum stands.)

Keith McCoy? Did he come? And Ken Warren? Ken, would you stand up. Stand up, Ken.

(Ken Warren stands.)

And they were the members of the business and industry. And then we had the government perspective. Andrew Sawyers was the team leader. Veronica Eady was on the team. Stand up, Veronica.

(Veronica Eady stands.)

Deb Jacobson, who couldn't make it, and then Dianne Wilkins. Is Dianne here? There you are.

(Dianne Wilkins stands.)

Those were the members of the government perspective chapter. And then the critical areas and emerging direction. Robin Morris Collin was the team leader. Is her husband, Bob, here? I know he is coming tomorrow for the workgroup. Nicholas Ashford, Charles Bennett, Ken Geiser. Ken, stand up, please.

(Ken Geiser stands.)

And Richard Wells made up the critical areas and emerging direction.

And then, the multi-stakeholder model. I was the team leader

and Emily Brown. Did Emily or Joanne Underwood make it today? And then LeAnn Herren was the other member of the multi-stakeholder model. So, you see, we had a large number of people with diverse backgrounds working on the process.

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As the small groups developed outlines, this was their first task, then they started putting tasks to it. They interacted via email and conference calls and then they had to report every other week to the larger workgroup on conference calls. So we kept up with their work, we made sure they were doing their work, but we made sure that they were all engaged and that this wasn't a one person effort; that it was a team effort.

As the individual text portions began to emerge two tracks started to develop, and I think this is going to go to some of the questions that Jana had this morning.

The two tracks were stakeholder track and consensus tracks. The stakeholder track you are going to hear about in each of these chapters, and they were put together by the members of that stakeholder. In those chapters is their perspective. Not censored, not filtered, not approved by other stakeholder groups. They are what that stakeholder felt was the issues that they had to deal with dealing with community and pollution prevention.

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In addition to that we developed a consensus track. The consensus track is a consensus of the issues that all of the stakeholders could bring to the table and agree on. No problem. The entire group agreed to the consensus chapter and the consensus proposals. So there are two different tracks with each one giving a unique perspective, but the consensus tracks and the consensus proposals are the ones that all of the stakeholders could agree on.

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Everyone did not get everything they wanted in the consensus chapter and the consensus proposals, but they did get what they wanted in their stakeholder chapter and everyone could agree on

what was in the consensus chapter, and I just can't emphasize that enough.

(Slide)

So the stakeholder track for each stakeholder group developed its own chapter, independent of anyone else. You have to remember independent of anyone else. And these chapters were the community perspectives, the tribal, the business and industry and the government.

(Slide)

Then the consensus workgroup was formed, with representatives of each of the stakeholder groups. The consensus group incorporated information from the introduction and background chapter that Samara had been tasked to start putting together, with input from all of the different stakeholder groups, the critical areas and emerging directions, which is the one that Robin Morris Collin was the team leader on, and those were all brought together to start developing the consensus chapter.

As the information for the consensus chapter was developed, all members of the pollution prevention workgroup, all members, were engaged, given numerous opportunities to comment and the chapter was developed as a total consensus document of all of the pollution prevention workgroup members.

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During the development the consensus chapter proposals began to emerge. The proposals were taken from, one, ideas that surfaced at those initial face-to-face meetings in July of 2002; two, recommendations presented in stakeholder chapters. The business chapter had recommendations and the community chapter had recommendations.

Those interviews. Remember the ones I told you were done in the very beginning to capture their initial perspectives? Information in the interviews with the P2 workgroup went into the consensus chapters and the consensus proposals, outreach to the broader base community members not on the P2 workgroup done by Marva King

and Connie Tucker, and documents developed by various P2 workgroup members and the consensus chapter discussions all went into the consensus proposals.

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The proposals were presented to the Pollution Prevention Workgroup through a large number of conference calls. The Pollution Prevention Workgroup reached agreement on the consensus proposals presented in the report. The report reflects the diverse views, interests, concerns and perspectives of the identified stakeholders, but it is a consensus document.

(Slide)

So now I think we are going to take questions before we move on to presentation of the individual stakeholder chapters. Veronica.

MS. EADY: Thank you. Thank you, Wilma. That was a great presentation, and it actually was entirely the process that we went through. I mean, you really preserved the integrity of the process. So, thank you very much.

Now is when we said we were going to open the floor to clarifying questions on the process that we went through. Then we will hear more from Ken and have questions on Ken's presentation. So right now, are there any clarifying questions on Wilma's presentation? Tseming.

MR. YANG: Thanks, Veronica. I guess there are a few things about the process. I saw five stakeholder groups, including academia. I was just curious why there wasn't any stakeholder perspective from the academic. Were they pulled in with the community groups?

MS. SUBRA: Try again. I can't hear you.

MR. YANG: I saw five stakeholder groups and, you know, that is all the business, local and state government, community and, of course, from the tribal. But the academia was sort of left out and obviously not in the final report. Could you maybe elaborate on why there wasn't a specific stakeholder perspective?

Because in some ways the academics are supposed to bring a

sort of "impassioned" perspective that sort of takes a step back, rather than being driven by the particular self-interest. I know where industry is going to come out, I know where the government is sort of coming and where the interest of the communities are, but I would have been specifically interested in where the academics came out.

MS. SUBRA: Okay. First, there are two separate answers. A lot of the academia people were put on the critical areas and emerging directions. Robin Morris Collin and Ken Geiser and then Nick Ashford, Charles Bennett and Richard Wells sort of identified the critical areas and emerging directions -- that perception that you are talking about.

Now, Dean Suagee was put on the tribal one because that is his strong point. So he was there to reiterate the tribal issues.

When we started moving from the initial chapters, which the critical areas and emerging trends were designed to be an initial chapter, and folded that into the consensus chapter, then those people were participating in the consensus chapter development. So it wasn't just separating them out.

MR. YANG: Oh, no. I wasn't trying to imply there was some sort of nefarious purpose behind it. But I guess my point is -- you know, being an academic -- it's not even an issue of having my views represented. That is not what it is even about.

As I said, I find it -- troubling is really too strong. But, you know, I find it -- that there is sort of an omission because, as I said, I do find -- or at least I would expect, and most people would expect, that if you talk to the academics, they could come to it with sort of a -- as I said, sort of less passionate and critical. You know, driven by what they think the right answer is based on principles and all of that and that is sort of missing. I guess I was just --

MS. SUBRA: It is not a separate like line item, but believe me, all of their perspectives were well heard and well incorporated into this. They weren't just in the corner just booing it and then bringing it back. But their issue are well heard in the consensus chapter, as well as where they participated, like Dean participated in the tribal one.

MR. YANG: I understand. I think I sort of got my answer. I guess I still find it somewhat -- well, it is sort of a comment for the future. I think it is important because there are other issues that I think we will come to later on today, which I think are -- I am somewhat troubled by it, in terms of the report.

I think it is an enormous -- it is a great product, it is a lot of work that has gone into this, and I think it is a terrific piece of work and accomplishment. But there are some issues with regard to it that I hope to raise later on, and not having that additional piece of that -- or that additional perspective I think is really something that leaves me at a little bit of a loss.

Because of these issues of how one -- how stakeholder groups interests themselves drives their perspective, and I have sort of that other --

MS. SUBRA: Are you volunteering?

MR. YANG: Not really. Anyway, I don't want to belabor it, but --

MS. SUBRA: No. If you want to make that a suggestion, we will discuss that this afternoon.

MR. YANG: Let me know if I am taking too much time, because I have two other sort of comments. One other question was in terms of the EPA and the state and local stakeholder group I don't think that all of the offices that you listed were all the programmatic offices. Right? There wasn't anybody from OECA within the -- from the EPA folks that participated?

MS. SUBRA: OECA gave us a briefing at the face-to-face.

MR. YANG: But nobody actually was involved in the drafting of the stakeholder perspective?

MS. SUBRA: They provided input, but they weren't part of the workgroup. Is that what you are asking? When we had the face-to-face, they gave presentations, including OECA, and if we wanted specific documents, we asked for them.

But they were available to give us advice and all. But they didn't sit down and hash it out as part of it. But they were also part of the consensus chapter when they started listening to what the issues

were.

MR. SAWYERS: There were staff from OECA who actually participated in the governmental perspective.

MR. YANG: In the formulation of the mental perspective. Really?

You know, I don't want to jump ahead, and, as I said, I was going to raise it later on. It is the issue of enforcement that I find to be quite lacking. That seems to be sort of this big hole within the report. That doesn't appear in the consensus, and it doesn't even appear in the governmental stakeholder issues.

Again, I am still jumping ahead. But probably the last one, and this is more of a comment than a specific question, and maybe you can elaborate on this, in formulation of the consensus portion of the report, how much time did the group spend sort of -- I don't know how to put it.

I mean, sort of like in a jury or locked out for 24 hours having to struggle through the different perspectives. And I preface that by saying I think there is a difference between a consensus perspective and the least common denominator perspective. I don't know sort of what the perspective was. So, in some ways, it is less a comment about this particular process, but more -- it is actually sort of forward looking in how maybe future consensus perspectives are developed.

I don't know how much of that was done, but I do think it is very important for different stakeholders to struggle with their views in opposition with those of others in order to come to some sort of compromise, otherwise, you know, it is nothing.

Maybe linguistically consensus is really the same as least common denominator, but I think from a process perspective I think it is different in that it tells me that people involved really struggle very hard to reconcile their differing interests and perspectives in such a fashion to find common ground and to sort of -- you know, the touchy-feely type of stuff; building bridges and all of those things that create a product that doesn't only encompass their, as I said, least common denominators, just the overlap, but also creates new areas

of agreement.

And I may have a different impression here, but my sense -- and, please, do correct me if I am wrong. My sense was that you sort of got together and then people sort of went apart and then everybody started working on their own projects in terms of their particular stakeholder perspectives.

You know, I don't want to come strong across in this because, as I said, I have not been involved in this. But it is sort of -- it is sort of an important process point.

MS. SUBRA: Okay. The initial -- when the stakeholders went off to do their initial chapters and they outlined and they sort of put it in text, that was a lot of work within your stakeholder group, and then we moved to the other track. The consensus.

I mean, I don't have an idea of how much time we spent on the conference calls. But all the clashes and the -- this is what we can agree on, that happened. I mean, we spent -- I mean, some weeks I know I spent 16 hours a week on conference calls, and some people could make it sometimes. Some couldn't. I mean, we spent huge quantities of time on conference calls.

MR. YANG: I'm sorry. I wasn't trying to imply that you guys didn't spent much time on this.

MS. SUBRA: On the consensus. Yes. So, we did all of the things that you are questioning. Was it the least common denominator? No. Was it the things we could all get together and do the different perspectives and then see where we could move forward? Yes.

That is what I am saying. The stakeholders provided huge quantities of time as we worked through this process. So this wasn't just a checklist of, oh, yeah, everybody can agree to this one; we can stick it in.

MR. WARREN: Veronica, may I comment briefly on that?

MS. EADY: Sure, Ken.

MR. WARREN: I think one of the things that each member of the executive council will hopefully do within the next few days is to

evaluate the usefulness of the consensus chapters and the proposals, because I think, when we use the term least common denominator, it has a connotation that the result is not particularly useful.

And if that is the conclusion that you reach after consideration and deliberation, then I think you have to conclude that this report is not, as currently constructed, the way to go. But if, as I hope, you will come to the conclusion that it is, in fact, a broad consensus and that it takes a major step forward for all stakeholder groups and the government as a whole in improving the health in environmental justice communities.

Then the focus will be how can we improve it, because, of course, it can be improved, but not where is it grossly deficient. So it really comes to a question of what the substance is, and I think, as we go through the next few hours, you will hopefully conclude that the substance is, in fact, very strong.

MS. EADY: Tseming, you touched on, obviously, some critical issues. Thank you very much.

As you know, we started a little bit late, and so, I am going to be pushing us along. But I wanted to get the last two questions that we had for Wilma. And I apologize, but I didn't see what order your cards came up. Okay. Jana and then Terry.

MS. WALKER: First, I just want to thank Wilma and Ken, as well as the workgroup, for all of the efforts. I can tell from the report how much time went into it, and I really appreciate that.

Just a quick comment. I actually found the stakeholder chapters very informative and useful. I do note, however, that when we are talking about environmental justice we choose stakeholder groups that are most often disproportionately affected by pollution; the communities and the tribes.

Together their stakeholder views numbered only 17 pages, while government, business and industry were 47 pages, and I had to kind of scratch my head on that. And I think it would be preferable if there were a little bit more balanced weight given to the pages offered for

those perspectives.

MS. SUBRA: And initially we had set a maximum number of pages, which soon went out the way. But I would really like, when Connie comes up to do that chapter, if she could respond to that.

MS. WALKER: Thank you.

MS. EADY: Thank you.

MR. WILLIAMS: Thank you. My question to the process is I think you --

MS. SUBRA: Could you get closer? My ear is stuffed up. I can't hear you.

MR. WILLIAMS: Okay. On the process I think you want to --

MS. SUBRA: I still can't hear you.

MR. WILLIAMS: It is not on yet?

MS. SUBRA: It is on. I think you just need to get a little bit closer.

MS. EADY: Wilma will come over and you can speak in her ear.

MR. WILLIAMS: Okay. On the process I appreciate the presentation and stakeholder involvement. One thing you didn't touch on though that I am interested in is the technical side, in terms of evaluations and assessments as the process moves forward. Proposals need to be evaluated somehow in terms of human health or environmental health.

Is there a place in this process for science teams to do assessments to, in the long run, to evaluate those proposals that are effective in protecting human health or environmental health?

MS. SUBRA: And this is to be part of the multi-stakeholder model that we are going to discuss later this morning and this afternoon, and that is where we are going to get into evaluation of human health and environmental impact and the scientific community involved in the process.

I mean, there were a lot of scientists involved in this process. But I think what you are asking is how do you engage them and how do you judge whether or not you are having an impact and whether or not you are doing the right thing to deal with the issues.

MR. WILLIAMS: Right. I am thinking of it in terms of processes I have participated in before. I mean, previously in different arenas. And it seems like you should have some form of a science team that is established to track and to be able to have access to by the participants.

MS. SUBRA: As it is being implemented you mean?

MR. WILLIAMS: In development.

MS. SUBRA: In the development?

MR. WILLIAMS: Right.

MS. SUBRA: I think that is the common model when we are going to develop how do we move forward, how do we implement this.

MS. EADY: And, Terry, if your concerns aren't addressed in that section, then we will take more of your comments on that at that time later today. Is that okay?

MR. WILLIAMS: (Nods.)

MS. EADY: Okay. Thank you, Wilma. And thank you, Sharon. That was great. Next we are going to hear from the stakeholder perspectives. I am just going to mention your names, and I am just going to ask you to go in the order that I have mentioned you.

First we have Ken Geiser, who is the director of the Toxic Use Reduction Institute in Massachusetts at the University of Massachusetts at Lowell. After Ken we are going to hear from Connie Tucker, who is the director of the Southern Organizing Committee.

She will be followed by Tom Goldtooth, who is the director of the Indigenous Environmental Network, Sue Briggum, from Waste Management and also a NEJAC alum, and finally, Andrew Sawyers, who we all know, from the Maryland Department of the Environment.

So, Ken. And then, if we could just reserve our comments on their presentations, because they are going to be very brief. But we will have more time on questions for them.

Stakeholder/Panelists Perspectives
By Kenneth Geiser

MR. GEISER: Thank you and good morning. My name is Ken Geiser. I am at the University of Massachusetts, Lowell. I am an academic. So I appreciate the credit given to academics. Sometimes we academics find ourselves being labeled as too academic. So, thank you.

It is my privilege to kick off the actual panel and the discussion of the consensus chapter. In this I want to describe what the chapter basically says and give a short overview of what I think is important about bringing environmental justice and pollution prevention together at this point.

In looking at this chapter, please, understand that this is our consensus chapter; so that it was affirmed by all of the workgroup members. It was a six-month process, a very engaging process and a process that I feel quite proud of, both for the engagement and also the learning that took place amongst us.

The chapters are an attempt to try to demonstrate the problems and the opportunities made together for pollution prevention and environmental justice. We laid out a framework that we believe lays out 10 assumptions that are important as we carry forward in this effort. I will not be going through all 10, but I just urge you to, please, pay attention to those.

Let me just start about 20 years ago, because I think it is important to try to see the confluence of these two significant initiatives in the environmental field. I know we are all steeped in the history of the environmental justice movement. I would just like to hit a couple of milestones to note how the pollution prevention movement has grown side by side and as a sibling to the movement.

In the fall of 1982 -- this is when the supervised leaders conveyed in Afton, North Carolina to attest the hazardous waste dumping in a small, rural African American community, and it was one of the first times, before the national perspective, we heard the issues of environmental racism and environmental justice.

We know that in 1984 the report done by the United Church of Christ came out. And in 1990, already noted, has been the University of Michigan Conference, in '91 the first national summit, also in that year the Environmental Equity Report from EPA and then later in 1994 President Clinton issued the executive order which moved the Federal Government directly into consideration of environmental justice.

Please, note how that history parallels the history of pollution prevention. 1982 is actually the year that the 3M Corporation put out its first report called "Pollution Prevention Pays," a stellar report that showed how one company was advancing not only its economic condition, but also its environmental condition by preventing pollution at the source.

The next year Michael Royalston, a French academic, produced a small book called "Pollution Prevention." In 1986 the EPA presented its report to Congress on waste minimization, and it was followed very shortly thereafter by the Office of Technological Assessment Congressional Office's report on the reduction of serious waste.

The reason why these two reports were so critical is that they set the definitional background for pollution prevention. The first defined for us what source reduction was and the second clarified the relationship between pollution control and end-of-pipe technologies and the enormous innovation that was possible to preventing pollution at the source; therefore, source reduction.

One movement has been about raising the issue of problems, identifying the fact that because of industrial chemicals and agricultural chemicals and mismanagement over the years the people in this country have been exposed to a barrage of toxic and hazardous materials, and in particular noting that the burden of that has fallen most directly on low income minorities and tribal communities.

The other movement has been about solutions, technical and managerial solutions that could be done directly in the firms to, in the

future, reduce the use of toxic chemicals and the management of those chemicals so that they did not enter the environment and then did not expose people. And secondly, to show that firms could actually make money and improve their economic condition by practicing pollution prevention activities.

As somebody who was involved in the early work on the pollution prevention movement, let me say a personal note on this. And that was that in the early 1980s we built the idea of pollution prevention deeply underneath and with the energy of the grassroots toxics movement in the United States, a movement that was inspired by people who had been living near dump sites and industrial facilities.

Over the decade we moved to a position where many states adopted pollution prevention laws, and by 1990 we had, finally, a federal statute, the Pollution Prevention Act. But over that period the pollution prevention movement began to lose its grassroots and popular base, and one of the errors, I think, in looking back at the pollution prevention activities, is that we lost the democratic, personal and political base of that movement.

Indeed, we have carried on with some outstanding examples of pollution prevention technologies and of changing production to reduce exposures to the environment and public health. But in so doing we have also lost that drive, and by 1997/98, those of us who have been active in this movement and have pushed this movement, could see that there was slackening in the development in the area.

And it is my firm belief that the reason for that is that we have not had the motivation of the people of the country demanding pollution prevention. So, it is with great pride that I see that the NEJAC task force is taking this up at this point.

Let me just note that I think that in taking it up we see some really wonderful examples of new partnerships and new ideas on how to really move forward with pollution prevention, recognizing the importance of community empowerment. We see, in Brooklyn, for instance, the communities working with the printers to find solutions

on the level around exposure from printing operations.

In Louisiana we see a wonderful opportunity pulled together by the environmental justice movement to think about creating a pollution prevention or clean production agenda for the whole state. And there is the excellent example of the California Basket Weavers Association dealing directly with the Forest Service to reduce the use of pesticides in the actual raw materials used in that association's work.

Of course, as we look ahead, it is not easy. Our country faces tough times in terms of economics and other conditions. But I think it makes it all the more important for us to see a convergence between pollution prevention and environmental justice.

The time has come for government to recognize that pollution prevention is the most efficient and most effective means of addressing and reducing current and future exposure to toxic and hazardous pollutants in low-income, minority and tribal communities. With all the wealth and ingenuity of our country we believe that it is possible to dramatically reduce, if not eliminate, many forms of pollution and waste.

We should and need not continue to tolerate high levels of environmental exposure in our poorest communities, in our tribal communities and in our communities of color.

We believe that there are many possibilities for government, support encouragement and regulation here. It will take a clear vision and a focused commitment to action, but we believe that the benefits far outweigh the effort. It is with this conviction and in the spirit of enthusiasm and hope that we present our findings to you. Thank you very much.

(Applause.)

MS. EADY: Thank you, Ken. Next, we are going to hear from Connie Tucker, and as Connie is making her way, I have an announcement.

Someone has a gold Mercedes with a Virginia license plate XYP-6992 that is parked illegal. So, if that is your car, please move it.

It is about to be towed, and you need to go and you should probably check with the front desk. I saw somebody get up, but I don't believe that is his car. Connie.

Stakeholder/Panelists Perspectives
By Connie Tucker

MS. TUCKER: Good morning. I guess I should start off by thanking Sharon Austin and Samara Swanston. Without them we would not have had community chapters. The issue of taxing was one of the major things that ran through all of the stakeholder groups, and it was also --- working group. Part of the problem we face, coming from low-income constituencies, is apathy, and although our chapter -- you all were not hearing me?

(Audio/visual representative turns on microphone.)

MS. TUCKER: All right. I am just going to say it very quickly again, because I intend to stay within the five minute time allocation.

I really want to particularly thank Sharon Austin and Samara Swanston for the hard work in assisting the community stakeholder group in developing this chapter. Someone raised the issue of volume, the size of our chapter compared to other chapters, and the bottom line is that it is an issue of capacity.

Without assistance provided through the Environmental Justice Office we would not have even had what we now have, and that is the challenge that we have. And we have some recommendations in the report that addresses the capacity issue.

I can tell you it was really a lot of hard work. Charles Lee and Barry Hill have an excellent talent of getting blood out of a turnip. When we finally finished this report, I didn't want to see it again, and I didn't even look at it, I can tell you, until we finished it.

We think, although short, that this chapter has the kitchen sink in it, and hopefully, if we did leave out a utensil or two, there will be an opportunity to make sure that those are included.

There was a lot of academic engagement, and at our sit down meeting particularly it was really amusing to see the environmental

justice folk be able to sit back and let the academic and the business sector go at it, and they did go at it.

And we are pretty happy with the consensus, except that, as someone has already observed, there was no mention of enforcement, and you will note that the business sector has some real serious concerns about enforcement. We didn't get it in.

We did not get the precautionary approach also into the consensus chapter. Those are two very, very strong components that the community wanted to see in. They were not in, and you will find that they are strongly commented on in the community chapter.

Now, just from a community perspective I need to mention that environmental justice communities have looked at P2 -- well, we've not really been that much involved in P2, because we have seen -- what we have noticed historically with P2 that it appears, at least at the local community level, to give industry a hook to maybe reduce a little bit of the toxins, but not really work toward eliminating toxins and toxins in our environment.

We saw the community chapter and the P2 report as an opportunity to redefine P2 from an environmental justice perspective. My predecessor presenter gave an excellent lesson to us around the P2 movement and when it was taken from the grassroots. When academics, in fact, began to be the leaders of the P2 movement, it kind of lost wind, and it is a lesson for us in the environmental justice community; that it is important for environmental justice to continue to be driven by impacted communities, and I think that our chapter speaks to that.

I won't go over all of the things in the report, but if you will note we have started off not addressing P2 particularly, but addressing the impacts of not having P2. We thought that was an opportunity to educate people about all of the adverse impacts, although we might have left some out. We got pretty much everything in there I think around pollution exposure.

And often times we see impact analyses that -- and I don't mean some sort of formal scientific approach, but analyses that address a

portion of impacts. Rarely do you see all of those impacts combined together, and we felt that doing that would actually provide an education for industry too and the business sector so that they can understand what their operations are doing to the public health and also to the environment.

So, we spent -- the first part of our chapter addresses those impacts, and then we go into more of the solution, more of the recommendation approach, and with that I would ask that you would take some time to read this community chapter in detail and maybe, I think after -- this afternoon we will have an opportunity to address specific questions. Thank you.

MS. EADY: Thank you, Connie.

(Applause.)

MS. EADY: Tom.

Stakeholder/Panelists Perspectives
By Tom Goldtooth

MR. GOLDTOOTH: Well, I appreciate Ken going back to the beginning of the P2 movement. I am going to start at 500-plus years.

Well, I just want to give a quick overview. Five minutes are going to really disappear pretty quick. I guess I really want to lay some context, especially to those who are here from tribes or work with tribes since it is very important in this report process that there is opportunity for input.

One of the things that definitely the three members of the working group had requested is that there be another tier of review with a number of other folks who are both representatives of tribal governments, as well as those from grassroots communities that are impacted communities, as well as inter-tribal organizations, like the National Tribal Environmental Council, to be involved in some level of reviewing this document so we can address all of the concerns from the tribal perspective.

It was pretty challenging for the three members. I also will mention Coleen Coler, who is a member of the -- vice chair of the

indigenous people subcommittee of NEJAC and a grassroots tribal member of the Skogogan Defense Committee at Mole Lake, a tribal nation in Wisconsin. And Dean Suagee that was mentioned, a member of the Cherokee Nation of Oklahoma and also director of the First Nation Environmental Law Center at Vermont.

And it was really difficult for us, as we participated in this, to find time, and someone mentioned capacity and also to try to find people that can also submit the comments to us. For myself it was Bob Shimick. Someone mentioned Bob Shimick, who is a staff person of IEN and also is a traditional practitioner of ricing maple sugar and is a farmer and very knowledgeable of the whole issues of organic pollutants and mercury contaminations. So I also want to recognize, who represented myself in the early months of this process to provide input.

I think the concern that we had is that we just don't have enough time to focus on the tribal chapter, and I would like for you to find some time to read that. And with the different stakeholder groups putting language, some of us tried as much as we can to proof the other section; from community to government. We stressed the importance of the inclusion of tribes as government in the government section, tribes as sovereign because of our legal and political relationship.

We made a lot of footnote references to some other documents to try to expound on the importance of self-determination, the importance of our political relationship to the United States and especially the fiduciary and trust relationship that the Federal Government has to tribes.

In the document we also stress the many different challenges we have as tribes, especially as we have become and are continuing to define environmental justice in Indian country. And one of the attached documents is very important, as we address our issues as tribal members, as we address our issues as tribal governments, is the concept of environmental justice.

It is difficult to apply, especially in Indian country. We have

many different layers of systems, from traditional systems, recognition of traditional knowledge, our elders, our spiritual teachings in a modern context that is forever changing. In most cases pollution prevention usually involves an impacted community, a people of color community.

It involves -- I have concern about environmental impacts in their communities. It involves the local government, whether it is county, parish or state and federal.

And with the tribes we have additional layers. Sometimes the business sector, the business activity is a tribal-governmental run operated facility. In some cases tribal members themselves often are involved with the business and are community members as well.

The paradigm for the past couple of decades with the Federal Government has been to develop Indian lands. We have rich natural resources. There is also concern of -- this brought forward a lot of concerns here to NEJAC of environmental impacts, cultural impacts, spiritual and religious site impacts involving natural resources, such as mining, other mineral extraction, water diversion, flooding of Indian lands, a lot of Department of Defense activities, like --- a lot of military toxics issues, and the list goes on.

And also, internally our own challenges to develop our own environmental infrastructures, which has been come an EJ issue, as far as developing programs at the tribal level that are on par with state governments.

Transboundary issues was also discussed, such as in the U.S./Mexico border, as well as our tribal nations along Canada and the U.S. So we tried to respect the many different challenges that we have in the brief document, and I think the vision of a lot of the stakeholders was that this would hopefully be an effort that would reflect all our stakeholder concerns.

And later in the process we were informed that it needs to be reduced, as far as the number of pages and the challenge to try to get as much language as we can to reflect our concerns.

There is a consensus in the consensus proposals that we are

going to talk about today. There are some action items. I don't have time. The five minutes is up. But those of you that have concerns about how to take action steps at implementing pollution prevention within tribal territories, tribal lands, at least our three member tribal constituency came up with some consensus on some different actions that we could take and implement.

We tried to be respectful of the diversity in our tribal communities, from tribal grassroots, our elders, our traditional people, our modern tribal governmental systems and the need for us, as tribes, to develop our programs.

And last, but not least, is that definitely the few of us, as we agreed to take part in this, all agreed that we don't represent the two million-plus American Indian and Latin Natives that are within the United States. But we do have experience and knowledge in this area and hopefully put down language that we can chew on, that we can discuss throughout today and hopefully make some recommendations. Thank you.

MS. EADY: Thank you, Tom.

(Applause.)

MS. EADY: As Sue makes her way up to the podium, I just want to remind us that we are now, well, 20 minutes behind. I know it is very late. We are going to make it up some way. I just wanted to give a time check. Sue.

Stakeholder/Panelists Perspectives
By Sue Briggum

MS. BRIGGUM: I will try to brief. I would like to give just a few comments on the business and industry participation in the group. First of all, there were basically four members that wrote the chapter and participated in all of the work and conference calls and meetings, and it is worth noting the base of industry which is committed to this work product.

Keith McCoy, from NAM, National Association of Manufacturers, represents most of the large, medium and small business in the

United States. So that is an enormous weight of corporate and small business American that was engaged in this process.

We also had the industries that were often most intimately involved with pollution prevention recycling efforts. We were very lucky to have Ken Warren with his perspective from a number of business sectors.

And we also reached out to additional business groups in order to get as many examples as possible, and in particular got a lot of different recommendations from the Business Roundtable and the American Chemistry Council. And I think there were benefits for this incredibly broad based business participation because, first of all, it means we had a pretty good database in terms of examples of the possibilities for pollution prevention.

But it also meant we had a very strong buy-in from these groups that we wanted to talk about pollution prevention, and in particular we wanted to acknowledge and look to the promise of pollution prevention in environmental justice communities. With Keith McCoy from the Business Network for Environmental Justice it was particularly important to see this opportunity where we thought about it.

And our chapter is long. I admit that. But it is partly because we were very excited about telling the kind of opportunities that could be leveraged in the environmental justice communities in order to reduce impacts and address community concerns. And we were excited about this opportunity to work very closely and collaboratively with community group members on individual projects, and so that is why we said a lot, because we see a lot of promise in this opportunity.

In terms of our thoughts about what would motivate pollution prevention from the business community, I probably ought to say it at the outset. One of the reasons we didn't talk about compliance was we assumed, as our premise, you must fully comply with every single obligation. No slacking. That is our premise. Pollution prevention is going beyond compliance; doing better than the regulations require.

And because it is beyond compliance, we spoke a lot on the

source of incentives that we saw for business to voluntarily go beyond what the government had told us was our obligation. We saw an enormous advantage in the collaborative model, the opportunity to engage on a constructive project with a community, learn to know each other better and see more opportunities for problem solving.

We thought of going beyond the pollution prevention project to a better way of being good neighbors in the communities in which we operate. We also thought that financial incentives always work with the business community, and so we mentioned a number of government subsidies which would incentivize (sic) markets that otherwise were kind of hard to jump start.

And finally, I wanted to acknowledge that public recognition can be really effective with the business community. And, in fact, thought that recognition from community groups who would say this particular project was quite helpful and really improved conditions would incentivize the business community to want to do more broad based projects.

And, I look forward to talking about the rest of the chapter later. Thank you.

(Applause.)

MS. EADY: Thank you, Sue. Sue, you mentioned Keith McCoy, who is here. Keith, I know we asked you stand up before, but could you stand up again. From the National Association of Manufacturers, and also, as Sue mentioned, the Business Network for Environmental Justice, which I hadn't head about. So, thank you, Keith. And thank you, Sue.

And finally, we have Andrew Sawyers from the Maryland Department of the Environment. After we hear from Andrew we are going to ask Ken Warren, who was our other co-chair of the workgroup, to talk about the consensus proposals and then that will be the last presentation before we start the full comment and dialogue on what we just heard. So, Andrew.

Stakeholder/Panelists Perspectives

By Andrew Sawyers

MR. SAWYERS: Thanks. Good morning. Welcome again to Baltimore, and I really appreciate NEJAC coming to Baltimore. And I suspect this will be a very positive meeting. We are excited about the opportunity.

We especially, at the Maryland Department of Environment, are very encouraged that EPA and NEJAC has taken a look at pollution prevention and environmental justice.

I would like to -- I know there is a limit here, but I would like to briefly sort of take a look at sort of the historical context in addressing pollution prevention and environmental justice. If we -- and I must also admit that my treatment, my historical treatment, is definitely not equipped. But I think it is very important to at least reference a historical context.

If we take a look at the 1960s, that year was characterized by widespread demonstrations and concerns about environmental pollution. During that era there were publications from Rachel Carsons, several African American demonstrations, but I thought that year sort of laid the foundation for what happened in the 1970s.

Several legislation and policies were enacted, from the Clean Air Act in 1970 to the Clean Water Act in 1977, and those laws were actually enacted to manage pollution. There were fairly successful, but people wanted to develop more appropriate environmental management systems and new policies started to evolve.

These included the Pollution prevention Act of 1990, the Environmental Justice Executive Order of 1992 and the Community Right to Know Act.

If we had to define pollution prevention, I think it has been defined, and I will not go through that again. It essentially talks about the reduction and elimination of waste and pollutants at their source. This, in essence, is helping to protect human health, as well as economic well-being, and it is protecting our environment.

So, in general, pollution prevention by its general definition is striving to obtain the goals set forth by many of us in developing our

environmental justice mandates.

From a government perspective pollution prevention and environmental justice both share similar goals. We have learned, from several projects that we have participated in or have observed, that one of the key components for any project is that it has to be a collaborative multi-stakeholder process, and in Maryland we live by this.

Most projects that we are involved are collaborative, and it involves broad stakeholder input. We have also learned that when we are trying to address pollution prevention and environmental justice there are several considerations or several underpinnings, if you will, that we have to consider, and I will just mention a few.

We have to identify and promote successes, and yesterday you heard about one of the projects that we are developing here in Maryland. And I must admit that project literally came from the community. They came to the Maryland Department of the Environment, and they said, Dr. Sawyers, can you help us? And we did.

We approached EPA, we approached business, and that project is a symbol of this collaborative sort of broad multi-stakeholder process which the Maryland Department of Environment is engaged in and EPA is engaged in in their IWG Project. So this is sort of a very substantive way that we are trying to address environmental justice.

Another underpinning which I think is very important is that we have to listen to the community. We have to identify problems. We have to identify areas of compromise. We have to understand problems from their perspective.

One of the things that I particularly am doing in Maryland is taking community concerns and use it as a hypothesis for many of the work that we are trying to engage in, and we have used these underpinnings or these factors to help develop several approaches to address both P2 and environmental justice.

Among these, again, I must emphasize, or reemphasize, the

multi-stakeholder process. We have used agencies or entities like OECA to help get our message across, integrate environmental justice and pollution prevention concerns into the national environmental partnership performance systems or environmental partnership agreements with EPA.

We have offered technical assistance, pollution prevention incentives for states and outreach cooperative programs. So we are sort of engaged in a very broad perspective in trying to address environmental justice and pollution prevention.

Finally, I would like to reiterate that we have played a major role, government has played a major role, in protecting communities, particularly through management reduction and prevention of pollution, especially when we take our lead from communities.

From a government perspective we think P2 and environmental justice are mutually beneficial towards the revitalization of local communities. Governments, through P2 and EJ programs, can further build and strengthen infrastructure at all levels, including business, local communities.

We understand, we support and we will continue to take our lead from communities, from all of the stakeholders, including business, tribal communities, and we will continue in our efforts towards the revitalization, towards the economic vitality and towards the betterment of all local communities. Thanks.

(Applause.)

MS. EADY: Thank you, Andrew. I want to thank the panel, too. I know that you all have so much to say and so much input really, and five minutes does not do justice to the work that you put into your chapters.

The panel will be here for the day to engage in conversation and respond to questions. So, even though we did cut them short, they will be here to help us work through some of these issues.

Next we have Ken Warren, who I mentioned was the other co-chair of the workgroup, and Ken is going to give us a presentation on the consensus proposals, which will lead us into a discussion on all of

the people we have heard from since Wilma.

And then this afternoon -- or actually, not this afternoon. But after we take a break we will go into a conversation on each of the proposals. So we will have a detailed discussion on each of the proposals. Ken. By Ken Warren

Themes and Consensus Proposals
By Kenneth Warren

MR. WARREN: Thanks and good morning. It is my privilege to present these proposals to you today, and it has been my privilege to serve with Wilma Subra as the co-chair of the Pollution Prevention Workgroup.

I would like to reiterate the thank yous that Wilma gave. I won't be quite as lazy, because Wilma appropriately went through it all. But I would like thank the members of the workgroup for their creative ideas, their reasoned deliberation and the comradery through this entire process. Even though we came from very different stakeholder perspectives, we engaged in a deliberate and reasoned debate of those issues for which all of you have my gratitude.

I would like to thank particularly Charles Lee, from the Office of Environmental Justice, for shepherding us through this process. For Sharon Austin, who is, in fact, our guardian angel throughout all of this. To John Cross, from the Office of Pollution Prevention and Toxics, whose insight and advice was invaluable, to Samara Swanston for her efforts, particularly on the community chapter and to everybody for setting the tone for reasoned deliberation and discussion throughout the process.

Although I am privileged to present these consensus proposals, they are, in fact, a collective product of the entire workgroup and by no means the idea of any one individual. The proposals represent the consensus of the multiple stakeholders on the workgroup from the community, tribal, business and government.

When we say consensus, we mean that the proposals reflect the collective judgment of the workgroup and that where the consensus is

broad enough the workgroup concluded that it is best to proceed by consensus.

As Peggy Shepherd mentioned yesterday, the implementation of these ideas is as important as their creation, and it is our collective judgment that if there is enough substance to the consensus proposals, that the fact that they are proposed by a consensus is a significant advantage in accomplishing their implementation.

And that is one of the reasons why, although each stakeholder group had some elements that didn't work their way into the consensus proposals, we were all willing to arrive at the consensus proposals as a substantive advance of P2, of pollution prevention in environmental justice communities.

Not only the design of these proposals, but how they are carried out and practiced requires the participation of all of the stakeholder groups. For example, the community group need to provide their insight to have a vested interest in the process and to have engagement in the process for P2 to be successful in environmental justice communities.

The business community has certain advantages in pursuing this. Efficiency, cost savings, increased employment, but particularly the relationship with the communities and the protection of the communities in which the business is served is of paramount importance.

And finally, the government role in this is to facilitate these kinds of partnerships and to promote the innovation solutions that are necessary if environmental justice communities are to receive the full benefits of pollution prevention initiatives.

The proposals that I am going to put up on the screen in just a moment are designed to create tangible improvements in the environment for all people, including minority and low-income and tribal communities, and they do that by encouraging businesses not only to comply fully with existing laws, but, as Sue Briggum said, to go beyond compliance to address the environmental insults identified by the communities as of concern to them.

These proposals are submitted for the consideration and deliberation of the Executive Council and for public comment this evening in the public comment section. They are very much a work in progress that is subject to change, and we invite comments and improvements.

(Slide)

The consensus proposals fall very generally into three themes. These three themes I am advancing for purposes of description only. Most proposals are too robust to fit within only a single theme, but it helps me at least to conceptualize what we are trying to accomplish.

The first theme is community leadership and capacity. The second is using and expanding existing tools to improve conditions in communities, and the third is providing incentives to private markets, again with the goal of improving conditions in the communities.

I am going to introduce the consensus proposals by providing an overview of each of the proposals. But understand that following my presentation later this morning and into the afternoon there are other workgroup members that will discuss each of the proposals in greater detail, and my hope is that each member of the Executive Council will join in on that discussion.

(Slide)

Moving to the first category, community leadership and capacity, the first proposal is to develop and promote implementation of a multi-stakeholder collaborative model to advance environmental justice through pollution prevention that insures a meaningful role in designing implementation for impacted communities.

This, not coincidentally, is the first of our recommendations because we think it is of principal importance. Larry, as some of your comments yesterday demonstrated, it is something that is on the mind of the NEJAC executive council. What kind of model actually will work? And we think that developing a collaborative model should be of prime importance to this group.

The model, as will be presented, is community driven. It is a community based process that requires adequate resources to be

given to communities. It will have measurable results and outcomes. It involves capacity building for communities, innovative technology transfer to industry and leveraging the government programs.

This multi-faceted model is something that Wilma has devoted a lot of time and attention to, and you will be hearing more from her about that later.

The second of our proposals: Increase community and tribal participation in pollution prevention partnerships by promoting capacity building for pollution prevention in communities and tribes. This overlaps somewhat with the first of our recommendations, in that it emphasizes that certain communities need resources, educational materials and training to be provided to them in order for them to meaningfully participate in this collaborative model.

(Slide)

Moving on now to the next category, which is using and expanding existing tools to improve conditions in communities. Our third proposal: Identify and implement opportunities to advance environmental justice through pollution prevention in federal environmental statutes.

There have been numerous studies by EOI and others that show that existing statutes, such as the Clean Water Act, the Resource Conservation Recovery Act and others provide pollution prevention mechanisms and incentives. Of course, the Pollution Prevention Act of 1990 does that as well.

Existing statutes can be and should be better utilized, and the advantage of doing that is that EPA is largely structured around programmatic offices which are responsible for individual statutes, and if we manage to integrate pollution prevention into those individual statutes, we will have all of EPA working to the common goal of assisting environmental justice communities through pollution prevention efforts.

(Slide)

Item number four, or proposal number four, promote local area, multimedia, multi-hazard, reduction planning and implementation.

That is a mouthful. I think what it means is that there are multiple sources of pollution within certain communities, and through the multi-stakeholder collaborative model it is important to use pollution prevention techniques to deal with all of those sources.

It dovetails, to some extent, in our topic for next year, which is cumulative risk assessment. What we are trying to emphasize is there are, in fact, multiple sources that need to be addressed.

And finally for this category we have proposal number seven. Promote efforts to incorporate pollution prevention and environmental justice in supplemental environmental projects, otherwise known as SEPs.

We heard J.P. Suarez, the assistant administrator for OECA, talk about that briefly yesterday. A SEP is an environmentally friendly project not required by law, which is performed as part of the settlement of an enforcement action, and there are numerous opportunities, which will be described more in detail by Sue Briggum for SEPs to be used in a targeted way to assess minority and low-income communities.

(Slide)

Moving now to the final category, which is -- excuse me. Moving to the next two items in the second category of expanding existing tools. Number nine is to strengthen implementation of pollution prevention programs on tribal lands and Alaskan Native Villages.

There are multiple actions EPA can take under existing programs, including financial assistance, assistance in drafting project statutes and in conveying and promoting tribal educational programs on pollution prevention, just as examples, which will respond to some of the things that Tom Goldtooth has described to us that are the substance of the tribal chapter.

These items need to be addressed with some urgency I believe by EPA to make sure that our Native American populations are full participants in the collaborative model that we are proposing.

Proposal number 10 is to promote efforts to institutionalize pollution prevention internationally, particularly in developing

countries.

There is, I think, a market incentive now, given the regulations in the United States, for our pollution problems to be exported to developing countries, and it was the unanimous view, the consensus view, of all participants in the workgroup that we don't intend to solve problems in the United States by exporting them to developing countries. So, some initiative needs to be undertaken to make sure that our problems remain and are solved in the United States.

(Slide)

Finally, turning to the third category, incentives to private markets to improve conditions in minority and low-income communities. Item number five, which comes out of both the community chapter and some presentations that we had from Linda Garczinski and others in the workgroup, which are to encourage green buildings, green businesses and green industries through EPA's brownfields and smart growth programs.

Green buildings. We saw a great example yesterday of the new Maryland Department of Environmental Protection building. There are other uses for brownfields that can assist the communities in which the brownfields are located. Those would include recreational areas, green buildings and the like.

The new Brownfield Statute, which just went into effect this year, provides some financial assistance to communities and to local government groups to promote community friendly developments, and the grant programs and other incentives should be fully utilized.

Item number six is to promote product substitution and process substitution in areas which impact low-income, minority and tribal communities. This is really a recommendation that is devoted, or directed I should say, to a partnership among government, business and community.

There ought to be incentives for businesses to use those raw materials that are most environmentally friendly to create those products that create the lowest environmental impact to the community, and there are ways that the government can act to

facilitate business in reaching those objectives. And certainly, the community needs to be a full participant in identifying what the harms and risks are to the community that ought to be addressed by the businesses that operate within that community.

So, this is a traditional area of pollution prevention, but through our multi-stakeholder model perhaps it could be better utilized to make business a partner in working with communities.

(Slide)

Proposal number eight is to promote just and sustainable transportation projects and initiatives. This has primarily two facets to it. At least as I see it.

The first is that transportation within communities presents a pollution hazard. These are what we know as mobile sources, the trucks, the buses, the cars that disproportionately at times go through minority and low-income communities. We need environmentally friendly transportation within those communities.

And finally, those communities -- or secondly, these communities need to be serviced by public transportation, by trains and other environmentally friendly modes of transportation in the same way that the wealthier communities are serviced.

The last of our proposals to be discussed is proposal number 11, which is to provide incentives to promote the collaboration among communities, business and government on pollution prevention projects in environmental justice communities. I will be talking about that, and I hope Sue Briggum will as well, a little bit later.

But what I would say to you is that community, business and government can work as partners, that the government can provide the role as facilitator in order to assist communities through capacity building, to assist businesses through incentives in order for those environmental harms identified by the communities to be most properly addressed.

So, these are the proposals that the entire workgroup, by consensus, places before the NEJAC Executive Council for further discussion, and we look forward to hearing your counsel and advice.

Thank you.

(Applause.)

Questions and Comments

MS. EADY: Thank you, Ken. So, there you have it. That is sort of the meat of what we are going to be talking about the rest of the day. But before we get into the detail of that, and I know we are going to probably have a very rich and robust conversation about that, I wanted to open it up to comments on what you just heard.

And so, let's just sort of review those things or the presentations from the stakeholder groups, as well as, you know, just sort of general questions about Ken's overview. We have about a half an hour for that and then we have a break, and then at 11:00 we are going to come back and have the detailed discussion on each of the proposals, each of the 11 proposals. Larry.

MR. CHARLES: The first thing I want to say is congratulations and thank you to the workgroup for what I believe is outstanding as a starting point. It is just a great, great project.

The second thing that I want to say is that there are opportunities for integrating the work of this group with other projects and activities that are going on. I think that is necessary. The International Subcommittee has a workgroup to look at defining principles for environmental justice, the U.S. based multi-nationals and foreign countries.

A lot of the comments, observations, principles and standards that you reviewed here today I think would be relevant to that discussion. Some of the players from industry and other places might be interested in contribution to that work as well and making sure that we come up with something that can be integrated and not a different process from what you have defined here in the areas where the opportunities exist.

The third thing that I wanted to say is that a few years ago I wanted to write a poem, and the poem was going to be, if I published it, entitled "And Then We Die." But I couldn't think of anything more important after that statement to add to the body of the poem, and so

I decided that the poem would be its title.

And when the minutes of this meeting are done and distributed worldwide, I will be published with my poem "And Then We Die." I am saying that because it drives my involvement here, and I think it should drive all of our involvement; that in the brief moments that we have on this planet to make a change, a difference and improvement to man's existence here should be handled with great responsibility.

In light of that, I am saying I am looking for nice, sweet, impressive little statements of policy, principles and standards, but rather, for action and change. And so, the comments that I will be making in looking at the report that you have listed here will be driven by that motivation specifically.

I have got a couple of things that I want to try to see if I could start getting a hit record out of and have everybody singing. Number one: The first thing that I want to really push is to reduce emissions from existing facilities as a major work of NEJAC, and every opportunity I have to advocate that I am going to do it, and I won't miss that opportunity here.

With the application of zero emissions technology, which I do believe in and support, we may be able to impact substantially emissions from existing facilities as one of the first things that we can do to improve the environment in our country and other countries.

There should be incentives provided by all sources of government, and I think maybe with certain products that may come through this, the market as well. To encourage and facilitate business transformations of existing facilities that reek a tremendous harm on the communities where these facilities currently exist. And, of course, it is not surprise that these communities are environmental justice communities.

So, a strong set of words, statements of principles and standards and then specific recommendations for policy change to incent emissions reduction. Zero emissions technologies applied to existing facilities is something that you will hear a lot about me from through this process and through any other process I might have an

opportunity to enforce.

Second is regarding new facilities, siting of new facilities. You are going to hear me advocate policies that will approach almost the standard of moratoriums on siting of environmental -- of environmental risky projects in overly impacted communities to date as a major change that we need to advocate and have considered as a national standard in this country.

Then third you will be hearing me talk about providing resources for community capacity building through the application of a fee as part of the permit process. There are all kinds of costs that operators pay now, hundreds and millions in the permit process prior to gaining the permit, and this is one of the other costs that I think we need to advocate is that they provide a fee towards creating local community capacity building funds.

These are things that I really strongly believe in, and I hope that in the moments that we have on the planet in general and specifically here on NEJAC that we might be able to gain consensus on it as ways to have change occur and actions to occur beyond just our nice policy statements.

But again, I want to thank the committee for what I believe is tremendous work. You have made it clear in your publication that this is just a draft document. Even after this conference is over you will still consider it a draft document. We will provide our input now, and I am expecting that over time we will be able to continue to influence the final product through an open process that you appear to have. Thank you.

MS. EADY: I want to just interject for a moment. We heard a lot of references in the presentations to John Cross from the Pollution Prevention Office, who really played a critical role to the workgroup and in the development of the report. So, I wanted to ask John to stand. He is right over here. John Cross. Thank you, John.

(Applause.)

MS. EADY: Now, let me tell you what I think I have in terms of comments. Reverend Adora, I saw your card first, Tseming, I saw

you second, Jana and then Terry. And we have until 10:45 before we take our break. So I just want to remind you again to be succinct and to the point.

REVEREND IRIS-LEE: I have a pretty brief question. First of all, I am impressed with the process. I think it is an important process, and one of the things that was modeled, at least to me, is that it was a process that obviously involved consensus. So, a consensus document resulted from a process that we value.

And I know that that is what we are here for. I know why we are here, and I am not trying to take the focus off of consensus. Let me be clear about that.

However, I am concerned, as a matter of context for this discussion that we will be having today, concerning what are some of those key or the key elements that didn't make it to the consensus document, and I think that is important

MS. EADY: Tseming.

MR. YANG: I was going to raise one of those issues. I was looking at the agenda and I can't really think of sort of a more appropriate time. So I am just going to get to the issue that I alluded to earlier, and that is that of enforcement.

And I also want to echo what Adora Lee said about not wanting to diminish the work that has been done here. I think it is a tremendous work product, and it is very valuable. I think in terms of the consensus proposals that have been put forward I think it is impossible -- well, I don't want us to become the outsider. But I think a lot of those make a lot of sense.

I think my concern is more with exactly what was just pointed out: What didn't get into the report, into the consensus issues? And I just want to explain very briefly why I think enforcement is important and why it is a crucial component of pollution prevention

I think -- I appreciate the perspective that Sue Briggum said earlier in terms of explaining the -- a perspective of the stakeholder, a stakeholder perspective of the industry and emphasizing that pollution prevention is something that goes beyond compliance. I would not

disagree with any of that.

I think the issue that arises is how this squares with reality, and essentially, in the context of what we saw yesterday in the two models of pollution prevention that were presented. In either one of those there was -- the regulated community was not in compliance.

In Park Heights we are dealing with auto repair shops that never had -- you know, simply weren't regulated or simply weren't aware of what to do. That was part of the program, in trying to find out who was in compliance and who wasn't. The reality of the situation was that many of those shops were not in compliance.

With regard to the Houston ship channel the premise there was that they were in compliance. It turns out, of course, that during the process there the communities, only after FOIA requests, found that there were major violations by one of the facilities, and I don't know whether -- what the situation is with the others.

I think in that regard actually it would be very helpful to find out from Region 6, from their perspective, what the information is so that we can get a better context of these issues. But I think the issue is really more general than those specific instances, and that is that the reality is that many facilities are not in compliance.

The question I think we have to ask ourselves is when are we giving up? This is the same question that I asked yesterday. What are we giving up if we go this route?

And I think it is especially important in that context to think about the larger debate of pollution prevention and environmental auditing. I mean, there have been battles for years between EPA and the states, environmental communities and industry about auditing, cooperative approaches, deterrence, enforcement, and I am not sure we, all the members of the NEJAC, are --- in terms of the battle.

But there is a tremendous polarization about how much -- how cooperative this approach should be. Not so much about cooperation itself, but whether cooperation should replace or should have a greater priority over enforcement, and enforcement is not only important because it creates an opportunity to punish a violator after

the fact. Enforcement is important also because it is a form of deterrence.

Just as we may be able to use positives and economic incentives and profit revenue as a means to encourage industry to comply, deterrence is a negative incentive for industry to correct things. It seems to me to be a an omission not to address that in a report like this.

Now again, harking back to yesterday's models presented, especially with regard to Park Heights, I think what was particularly interesting is upon further questioning -- I don't recall the name of the person at the Maryland Environmental -- the -- Bernie Penner. Yes.

He made it very clear that this program was not a substitute for enforcement. In fact, as part of the program the Environmental Department reserved the right to take enforcement actions when there were serious and significant violations. I think that is always in the back of the regulator's mind.

I am not suggesting that this is intended to replace, but what I do suggest is that I think we have to think about how it is sort of perceived in the larger debate about auditing and enforcement approaches versus cooperative and voluntary approaches to compliance, and my concern is that this will be seen as the NEJAC enforcing essentially voluntary approaches over enforcement or that enforcement is not an important part of pollution prevention. Thanks.

MS. EADY: Tseming, both you and Adora raised some good questions. What was left out and questions about enforcement, and so I wanted to -- I see your hand up. I wanted to give the panel an opportunity to respond. So, Sue and Connie. And then, Ken and Wilma, if you have anything that you want to add. And don't fight over it. I am just going to let you govern yourselves in terms of order.

MS. BRIGGUM: Actually, you raise a very good issue that reveals one of the things that members of the business community had suggested and didn't get into the consensus report, which was the possibility to use P2 principles as a substitute for enforcement.

With regard to small businesses perhaps you do a pollution

prevention project instead of complying with what seemed to be overly cumbersome regulations. For larger business you mentioned, and you are absolutely correct, there is an area, a significant sector in the business community, that is very interested in re-invention and second generation and getting away from commanding, and we gave all of that up because of Connie's very strong position that that wasn't a way we wanted to go with regard to enforcement versus pollution prevention.

So we took, as our premise, that we weren't going to represent those views in an attempt to put those forward in a consensus effort, but instead would focus on the fact that we would only recognize as pollution prevention projects things that went beyond compliance. So, you are absolutely right about one of the things that didn't get in.

And one of the ways that -- although we didn't address it as clearly as we could, I think that even in our chapter reflects the positions we heard Connie taking with regard to where we should set our baseline in trying to make sure that we were coming forward with our positions; even in our chapter that we attempt to be as constructive.

MS. EADY: Connie.

MS. TUCKER: Not having enforcement in the consensus chapter was a major concern for the community stakeholder group.

MS. EADY: Connie, can you bring the microphone closer to you?

MS. TUCKER: Okay. Not having enforcement in the consensus chapter was a major concern for the community stakeholder group, and your comments bolster that position. We need to be reminded that the document is as to public comment and perhaps your eloquent explanation for the need to include enforcement in this document may help nudge along the stakeholder groups who are not supportive of having it in there.

So I am hoping that -- because I certainly want to see the NEJAC endorse not just the document, but the actions and recommendations. And if, in fact, the exclusion of enforcement in the

consensus report is a barrier to that, perhaps the other stakeholder groups will agree to include it.

I think that there is a concern about bureaucracy. We had concerns about bureaucracy too. We were willing to say that -- in getting away from some of bureaucracy would be beneficial, more efficient, we would go along with that. As long as it did not weaken enforcement. So, we were really willing to make compromises on it.

And I did mention in my presentation, Adora, that the failure to have enforcement in the consensus chapter was a major concern to us.

MS. EADY: I am going to ask Andrew to comment and then, if the panel doesn't mind, I am going to get back to the questions from the council.

MR. SAWYERS: I think ---

MS. EADY: Andrew, move the microphone closer.

MR. SAWYERS: Hello? That is better. I think the question is actually very important. I would like to offer a few comments concerning enforcement.

I don't think enforcement -- enforcement always remained an option. We understand, as state government, our obligation to the regulated community. But I think, based on some of the projects that we have been involved in over the past few years, we understand that we have to take a different approach, especially when we are dealing with "environmental justice communities."

You referenced the Park Heights project, and in particular, community members came to us. They wanted the issue of enforcement to be looked at, but they also wanted these companies to remain a viable business. Often one of the concerns they raised to us is when enforcement actions are taken, typically government is no longer in that community. But they wanted to have sort of a sustained presence.

And we thought sort of encouraging and embracing this collaborative approach, working with business and the community, we essentially -- and I think Bernie articulated it well yesterday; that

enforcement will always remain an option. But if we provided the assistance that this community needed, both to the regulated community and the community interest groups, we would be doing a great service to the community.

So, to a large extent one of the things -- one of the reasons why we are sort of stressing collaboration and compliance assistance is that we want to maintain a presence in some of these communities which have never had any regulatory oversight. Especially historically.

In Maryland we are very concerned that in most of the disenfranchised communities that once we decide to go in there, we must maintain, we must sustain the presence and we must offer all of the resources that we have at our disposal. So, I fully acknowledge and understand the concern; however, I think the efforts that we have engaged, especially in Park Heights and several other projects across the state, is that we are doing a great service to the community in helping sort of the economic interests of that community, as well as addressing some of the concerns raised by the communities.

MR. YANG: May I just quickly comment on --

MS. EADY: Very quickly and then we have to move on.

MR. YANG: I appreciate your comments, and my point wasn't to suggest that cooperation is -- that it is an either/or proposition, either cooperation or enforcement with a big stick. I pointed out the general point that there is noting in the report, and just sort of the secondary comment to that is that I hope that you keep in mind also that compliance happens in the shadow of enforcement.

When it comes down to it -- you know, I think people might disagree with this. But a lot of people in business would say, well, my primary motivation to be in business to make profit. Right? And if it doesn't make a profit, why should we be doing it?

Well, deterrence and financial penalties is one way to get companies to comply. Even though many people might say it is the morally right thing to do, unless we give them an additional push it often times is not. What I am really suggesting is that it is important

to keep that in mind as a compliment to any other cooperative approaches, and it sort of the lack that troubles me.

MS. EADY: Thank you. So, here is where we are. I think we should just go with the cards that are up right now and then go to break. So, the order that I believe we are in is Jana, Terry, Peggy I saw your card next, Eileen and Larry and then we get to take a break. So, Jana.

MS. WALKER: I would just note that I agree with Tseming's comments on enforcement, and I think this is particularly important where Indian country is involved. We have about 53 million acres of Indian lands in the United States. The state environmental regulatory laws almost never apply, and it is up to the tribes or EPA to administer the federal environmental laws and enforce them on reservations.

And while tribes can assume privacy under the Clean Water Act and the Clean Air Act, very, very few tribes have these programs up and running today. And so, until tribes do, EPA is responsible for implementing and enforcing these laws within Indian country, and so far I think it is safe to say that there is not a stunning track record by the agency with respect to enforcement.

Also, just generally in the consensus chapter I think it would be very helpful if we could clarify the references to tribes. I think it is inconsistent and sometimes I see references to communities, governments and business and the tribes are not in there. Other times I see communities and tribes linked together. So some clarification there, I think, is needed.

Back on page 107 in the government section of the report there is a good description, which I think should be -- it would be helpful to have that somehow incorporated in that consensus chapter. That description talks about the fact that tribes are governments, and I think that is key. It must be in there; sovereign governments and have a government-to-government relationship with the United States.

But for purposes of this report they also can be -- have business

interests where the tribes are actually running businesses on the reservation and sometimes they can also be viewed as tribal communities. And I think that description on page 107 does discuss that.

MS. EADY: Thank you. Terry.

MR. WILLIAMS: First I would like to just support what Jana and Tseming said on enforcement and then her comments on consistency with tribal language, which is very important. I have three comments to make.

The first one, in general, which I made earlier, is a clarification on science or technical information in this process. It was explained that academics have been participating, but I think the role of science in terms of assessments -- one of the comments made in the presentation was measurable actions.

Having a science based approach to measurable actions would be, I think, very helpful to the NEJAC, in terms of understanding what change was actually made by the consensus process. Included in the description I would like to also see the, for the tribes, inclusion of traditional knowledge, as well as science as part of that process and evaluation.

The second on the tribal issues is a clarification of off-reservation resources or reserve or trust resources. I think the document fairly well discusses the effects of off-reservation resources, but I think a clarification would be in order. There is a place on page 58, I think at line 16, where we talk about off-reservation resources.

And the third response I have is on international issues, and I certainly want to mention that tribes in New Mexico and Canada can be affective, as well as tribes in the U.S. and tribes certainly have those relationships transboundary. But also, there are issues that come into concerns of the tribes in participating in processes like that, and that is the protection of knowledge and protection of resources.

One of the ways that we could address that would be referencing the Convention of Biological Diversity's work in the UN where the

indigenous people, indigenous people in local communities, have already participated in the countries and have come to agreement on that participation and protection, and I think that is my comments for right now. Thank you.

MS. EADY: Thank you, Terry. Peggy.

MS. SHEPHERD: I would like to say that despite the great process that went into putting this report together, you know, my reading of it -- I just felt there was a screaming, glaring omission in talking about enforcement, and to me that is a fatal flaw in the report if it is not included.

I would also like to say that I think pollution prevention projects can be very helpful in some of the smaller businesses that are unregulated and self-reported. My personal experience in working with Region 2 EPA on the Dry Cleaners Project made me realize that, number one, regulatory agencies have no concept of how many of these small unregulated businesses were out there, had no accurate numbers.

Our report was able to demonstrate what those numbers actually were, and I believe that though that project we began to get the city and state to look more seriously at increasing inspections on some of these small businesses. So I do think that pollution prevention projects can arm communities with the kind of information they need to press the case for further enforcement.

But again, without the capacity to be able to carry out those projects, communities really cannot do that on their own. So again, I would recommend that capacity building and resources are very important in these kinds of projects and that if communities are given those resources to develop the capacity, that the information and data to really begin to reduce pollution from some of these small businesses will not happen.

MS. EADY: Thank you, Peggy. We have Eileen and then Larry Charles and then we take a break.

MS. GAUNA: I am glad you were so tenacious, Tseming. I would like to point out a couple more issues that I think are related to

enforcement that I think need to be addressed.

First of all, I noticed that one of the incentives is a flexible permit, and that is, I think, a really significant enforcement issue because permits with flexible operating scenarios and flexible monitoring protocols I think are much harder to monitor and inspect and enforcement. So that itself is an enforcement issue, as well as a permitting issue.

When you allow -- I notice another one of the incentives is emission reduction credits and higher trading ratios. When you get to use that as an incentive for pollution prevention, it becomes a substitute for compliance and it is no longer beyond compliance. But it is a substitute for compliance. So that itself becomes an enforcement issue as well.

Again, sort of along the lines that Tseming was saying, I think it is -- it is a concern to me and I think it is, frankly, a bit dangerous to discuss -- to allow these kinds of incentives and to not discuss this out of the context of the larger debates that are occurring in the environmental community and in the environmental justice community about things like cap and trade market programs, open market trading, what many consider to be the substantial weakening of new source review and these sorts of things.

I think it is very problematic. So we can't just say that this is beyond compliance and leave it at that, because it really isn't. And I will probably be addressing more of those issues in a little greater detail when we talk about incentives.

MS. EADY: Great. Larry.

MR. CHARLES: It intrigues my heritage, and I am really tempted to tell you a story, but I am not going to do that. I will just give you the moral of the story.

My old man told me a long time ago that people learn by either one of two ways: Either by seeing the light or feeling the heat, and I believe, building on comments made earlier, that it should be clear to the committee first that the position of the council probably could be established by consensus; that enforcement is an important

component of a complete product of the work that you are doing here and that should be added to the report.

The second point I wanted to make is that when it comes down to human health, when there is a clear and present threat to human health, then some of these other options and incentives that we're talking about would have to be set aside, and I think enforcement comes to the forefront.

Unless the project addresses clearly and completely the threat to human health there should be no discussions, negotiations, alternatives and other things to incent a softer, stronger approach to fixing the health problem almost immediately.

And then finally, in spite of all that, this report and this organization doesn't really the authority to overrule federal regulations or laws or state statutes or state regulations as well, and that notwithstanding, it does have the ability to influence practices of the U.S. EPA and state and local agencies as they prioritize strategies that they implement to address the issues.

Title VI is a federal law, and we all know very clearly the debate and the confusion that ensued for a very long time as EPA tried to figure out what to do with some of the Title VI complaints that came forth. So, we are concerned about it in terms of the message that it sends via NEJAC with respect to enforcement versus alternative approaches to resolving disputes.

MS. EADY: Great. Thank you, Larry. Thank you all. We are very close to being back on time. So what I am going to ask is that we take a 10-minute break instead of 15 and be back here at 11:00, at which time we will go into detail discussion of proposals one and two before lunch. So, 11:00.

(Whereupon, a brief recess was taken.)

MS. EADY: It would be great if you could get back to your seats. We are running 10 minutes late now.

MR. CHARLES: Hello. Can we reconvene?

MS. EADY: I have a couple of announcements. Somebody dropped his or her hotel key. If you are missing your hotel key, just

go to the registration desk and they will give you a new one.

For those of you who are either a presenter today or on the Executive Council, I have a request from our note takers. Some of us are -- I know I have been asking you to speak into the microphone, and I guess some of us are getting a little too close to the mike, so that when they try to hear, it is really fuzzy. So, it is a very delicate, technical operation. But if you can try to, those of you who are soft spoken, get close enough to the mike, but don't get too close to it. Just try to speak up a little bit. That would be wonderful.

Another announcement is that Dianne Wilkins, who worked on the government chapter, is going to be sitting in for the rest of the morning and afternoon for Andrew Sawyers who had to step away and go to a meeting. So, Dianne, you are right here next to Ken Geiser.

I think we have been having a really wonderful discussion. I think that council members have really honed in on some key issues in the report, including things like enforcement and Adora's inquiry into what exactly were the things that were left out of the report, and I do think that we need to touch on those things and try to reach consensus on some of those things.

Also, the input that we have gotten from Jana and Terry on the issues about Indian country I think are critically important. Tribes do play a number of different roles, and I think that the report needs to reflect all of those things.

What we would like to do now and for the rest of the day actually is to get into the detailed comments on each of the consensus proposals. I think that what we are looking for here is input on whether or not, in a broad sense, these proposals make sense. I am sure you will have other more detailed comments, but try to keep that in mind as you are giving us your comments.

We would kind of like to walk away from here, from this NEJAC meeting, with an idea about whether or not the workgroup has gone in the right direction with these consensus proposals; are there other consensus proposals that we need to have; are these consensus

proposals not good ones.

So, sort of keep that in mind. We are looking for that kind of feedback. So now, getting back to the agenda, proposal one, multi-stakeholder collaborative model, and Wilma is going to lead us through that proposal.

MR. HARRIS: Before we do, could I just indulge one moment. Robert Harris, from the business industry representative. I listened intently to the discussions concerning enforcement. I had read the report assuming enforcement was considered but not an option. But I do understand those comments, and I would suggest, so that we can move forward -- I would suggest, as a representative of the business industry that we ask staff to draft appropriate language to make it clear that enforcement is indeed a part of pollution prevention. And then I think we can move forward without this cloud.

MS. EADY: Thank you, Bob. And, Charles, is that good? Is that appropriate? Okay. Great. Thank you.

MR. LEE: Yeah, Bob. I think that that is a good starting point. I think that was an assumption that that was the case, but it needs to be articulated. Now, I think the other thing this raises is that issue of enforcement and its relationship is going to come up over and over again in different ways, and so I think you should be cognizant of that.

The other thing is with respect to Adora's question, in my opinion there are two questions that you need to deal with today squarely, and these were one that came up through the process.

One is the relationship of pollution prevention to enforcement. Okay. And the other is the idea of precaution. Okay? And those are ones I think that are -- we are going to try and make room on the agenda to see speak to it, either through the discussion of the specific proposals and maybe augmenting that when that is appropriate, or switching some of the agenda around to accommodate that.

The other one that surfaced this morning is the one that Eileen raised and the whole notion of the use of incentives and the intricacies of that, particularly as it relates to pollution training, emissions training and those kinds of issues.

MS. EADY: Okay. Great. So Wilma is going to guide us through the first consensus proposal.

Discussion of Consensus Proposals
Theme #1: Community Leadership and Capacity
By Wilma Subra

MS. SUBRA: In working on enforcement issues I do a lot of work with communities, and the message that usually comes from industry and business is we are totally in compliance. When the community starts evaluating the data and the industry actually submits to the agency, they often find out that the facility is reporting to the agency whether or not in compliance.

But whether or not they are in compliance or whether or not enough enforcement is going on, these community members are being impacted by the activities in their community. So this first proposal deals or attempts to deal with the impacts that are occurring, whether or not the facilities are in compliance or not.

You heard yesterday from Park Heights where a lot of these facilities have never been inspected. There are other things, like in Louisiana regarding the sugar cane, which for a third of the year blankets the whole southern half of the State of Louisiana. But it is not illegal it is not illegal to grow the sugar cane. It is not illegal to put these pollutants into the air.

So, this has to do with things that are impacting the community, whether or not they are in compliance or not. It is how we deal with the issues that the community has to deal with on a day-to-day basis.

(Slide)

So the first part of the proposal, the first action item is to develop a multi-stakeholder collaborative model in order to reduce pollution in environmental justice communities, and I think the issue is that if we don't work to reducing the pollution that is impacting environmental justice communities, we can argue forever on whether enforcement is there or not.

What this program is about is reducing pollution, improving the

quality of life and reducing the impacts to health of these EJ communities.

Now, other programs only engage some of the stakeholders. You have good neighbor agreements, you have Supplemental Environmental Projects. At the federal level you have beneficial Environmental Projects.

The one we heard yesterday from Neil involved the community and the industry. What we are looking at is we are involving all of the stakeholders. We are making it a multi-stakeholder pollution prevention collaborative model that involves all of the stakeholders. And again, the ones that I mentioned this morning and are overarching are the community, industry and business and government.

And this recommendation or proposal has received the strongest endorsement from all of the stakeholder groups involved in this environmental justice/pollution prevention workgroup.

(Slide)

The model is community based and community driven, identifies issues of concern from the community, as well as from the government agencies in the area and the business and industry, it sets measurable objectives, it yields real environmental benefits, it offers meaningful opportunities for constructive engagement between all of the stakeholders.

The multi-stakeholder collaborative model is a tool for communities, industry and government to build the capacity of communities, to build the capacity of the businesses, to incorporate pollution prevention methods and approaches already developed by EPA and other stakeholder groups, to implement new pollution prevention technologies and initiatives, to perform technology transfers to businesses and industries that otherwise would not have that, to leverage government programs -- and that was mentioned earlier, that there are number of other programs on there that should be used -- to effectively gauge the environmental impacts to the community and assess the results from a monetary and

environmental standpoint.

In order to implement -- and, Peggy, this was one of your questions on a conference call. What do we need to implement this? The multi-stakeholder collaborative needs EPA to secure adequate institutional, technical and financial resources, provide assistance and facilitation to build the community's capacity to meaningful provide direction to such efforts -- the same type of thing Neil Carman provided to the community -- to facilitate the development of multi-stakeholder partnerships, to identify clear pollution prevention opportunities and methods to achieve pollution prevention and EPA needs to link pollution protection efforts to community based health concerns, such as lead testing and lead abatement, brownfields re-development and revitalization, transportation and air emissions issues, local area multi-media hazards reduction, use of SEPs, promotion of clean energy and others.

And EPA needs to assist in developing measurable goals and clear environmental outcomes, and also, EPA needs to provide, where appropriate, the use of consensus building, facilitation, mediation and dispute resolution.

It is not easy, but in the end it will improve the quality of the environment and reduce the impacts to human health in these environmental justice communities.

The second action items is identify opportunities to integrate the multi-stakeholder collaborative model to advance environmental justice through pollution prevention. The third action is to provide opportunities involved in promoting multi-stakeholder participation and promoting pollution prevention initiatives; to provide incentives to manufacturing facilities, small businesses and communities.

The next action item is to initiate a new environmental justice/pollution prevention grants program utilizing the multi-stakeholder collaborative model.

The next action item is to build upon lessons learned from earlier related programs and approaches to environmental justice and pollution prevention, and the last action item is build on successful

programs and regional programs; transfer the implementation successes to other parts of the country and keep building the capacity of all three stakeholders.

And later this afternoon we will go into much more detail about how the multi-stakeholder model will work and how it will improve the quality of the environment in environmental justice communities. What we want you to look at now is the action items and comment on those; whether they are appropriate, whether we should add some or whether we should change them. Thank you.

MS. EADY: Thank you, Wilma. I think what we will do, in the interest of time, is, Connie, maybe ask you to walk through proposal number two and then we will have a discussion on both proposals before lunch.

Proposal #2: Building Community and Tribal Capacity
By Connie Tucker

MS. TUCKER: Well, of course, this is designed to address the resource divide in terms of community involvement, and basically that is what the background for number two is. And then we come up with the following specific action items. I am going to read those action items to you, and I want to let you know that it is clearly missing a lot of elements, if you are talking about building community capacity.

I will read them to you from the consensus report, but then I will ask you to refer to the community chapter where we have additional capacity recommendations that are strongly looked at the consensus report. However, even though it could use some additions.

So the action item A) Provide resources to facilitate community and tribal participation in pollution prevention projects; B) Utilize and widely disseminate pertinent educational materials already developed and translated into other languages; C) Develop a citizen primer for pollution prevention technologies and strategies accessible to the laymen. Utilize pertinent materials already developed.

D) Create a pollution prevention training academy for communities, including a mobile academy that uses a cooperative

approach between academic institutions and public and private training institutions and resources, especially those designed for the environmental justice communities.

E) Create a pollution prevention training academy for tribes, tribal colleges and Native organizations; F) Compile a collection of case studies with viable examples featuring community and tribal representation in pollution prevention. Collaborations would be useful as an example of successful pollution prevention partnerships. A clearinghouse with the case studies could be placed on a website. The multi-stakeholder collaborative model, once developed, should be provided to local governments and community organizations, which will detail the steps to an effective community involvement process in pollution prevention projects.

And G) and the final one: Where appropriate, compliance penalties in environmental justice communities should be directed to pollution prevention projects that benefit the health, environment and quality of life of community members, rather than directing these funds to state and local general funds or to the U.S. Treasury. Community members and facility employees should oversee these projects jointly in order to assure that community needs are met and improved collaboration between the penalized facility and its neighbors is facilitated.

Now, I have got to admit, and I am only going to address -- that there are pieces in the consensus report that we overlooked. At least from a community perspective. For example, the lack of -- on line G there, the last sentence in G. Community members and facility employees should oversee these projects jointly in order to assure that community needs are met and improved collaboration between the penalized facility and its neighbors are facilitated.

I am not sure if, from a community perspective, if we agree with that language, and we will work with some of the staff here to craft better language for that particular one. But I would like to call your attention to additional capacity recommendations that were made in the community chapter.

Recommendation number three -- and I think that that really should go in the consensus. That is on page 53. The environmental justice and pollution prevention grants should be made available again. Successful projects developed through that program should receive sustained funding and expanded to other environmental justice communities, thereby building on the success.

And the reason I point this out is because a lot of the recommendations in the consensus chapter is more -- really relates more to training than resources, and the capacity issue is not just training. It is also a group of resources.

Number nine on that same page. No. I'm sorry. Number four: Pollution prevention resources and funds should be directed primarily at impacted communities and their selected representatives which are addressing environmental justice and P2 issues, not other external bodies such as organizations set up by polluters.

I would like to add government to that because in our experience sometimes the government itself sets up organizations that are not representative of the impacted community or was set up by bodies that dilute the input of the impacted community.

I may be overlooking a few. I think there is another one in there and I didn't get it in. Number 10: Fines and penalties imposed for non-compliance should be set aside to fund environmental initiatives for the burdened community. There is precedent for this and it serves as a way to assure that the local benefits result from the imposition of fines.

These are just some examples of how we could address the resource divide, and there may be other recommendations that will come from the Executive Council, as well as the public comment period.

Questions and Comments

MS. EADY: Thanks, Connie. And I will just say that some of the things that you pointed out in the community chapter, some of your recommendations, seem to be -- you know, I may be confused. They do seem to be incorporated. Maybe not explicitly in the consensus

proposals.

Say, for example, number 10 seems to be supplemental environmental projects. Is that where you were going with that? Because in the consensus proposals there was a recommendation for supplemental environmental projects, although we didn't use that language. We said compliance penalties. So maybe there is a clarification that needs to be done in the --

MS. TUCKER: I don't recall reading that. Is that in the capacity building question?

MS. EADY: Yes. It is in that section. As I was reviewing this, I had sort of circled it and said SEPs and put a question mark. So we may need to do some clarification to make sure.

MS. TUCKER: And, of course, the P2 grant program I think definitely should be in the consensus portion.

MR. WARREN: Connie, if you take a look 1D, I think we could probably spruce up the language. But that was our intent: Initiate a new environmental pollution prevention grant program utilizing the multi-stakeholder collaborative model.

Perhaps we can adjust that language to meet your concerns, but the thought is there.

MS. TUCKER: Okay.

MS. EADY: So, we need to do some sprucing up. We are now open for questions and comments on consensus proposals number one and number two. And, Jana, I see your card is up. So, go right ahead.

MS. WALKER: Okay. On action item A of the first recommendation, where it says develop a multi-stakeholder, and in parenthesis, (community, industry and government) collaborative model. Again, tribes is not included there.

So I would presume that it is not intended to apply to them, and I would suggest adding that.

MS. SUBRA: And let me just respond. It wasn't an omission. In the beginning section we talked about when we said community, it included the tribes; so that we didn't every time have this long litany.

And we will take that under advisement, if you want all of them listed every time. That is fine.

MS. WALKER: I think it would be clearer and probably it is not appropriate to define communities as including tribes.

MS. SUBRA: Okay. Thanks.

MS. WALKER: Also, I guess I noticed that in the community stakeholder perspectives and the tribal stakeholder perspectives both of those groups did include good information on the precautionary principle, and on recommendation one, action item E, I would suggest -- my suggestion would be build upon lessons learned from earlier related programs and approaches and global experiences, including the precautionary principles relating to environmental justice and pollution prevention.

And then just on the second recommendation, the community one, there I guess that is just applicable to the communities. And as I recall, there wasn't a separate recommendation for tribal capacity building.

MS. TUCKER: There is one.

MS. WALKER: There is one? Okay. That's it for me right now.

MS. EADY: Okay. Thank you, Jana. So, I have, just to review, Graciela, Pamela, Terry and Larry. So, Graciela. MS. RAMIREZ-TORO: My question is related to the two proposals that were discussed and that also have to do with every time we mention in the report the issue of capacity development, that the discussion included a way of strategies to incorporate other governmental agencies in the strategies of capacity development, because in my experience with the workgroup communities sometimes they represent many different areas of government that could aid in the education, technical assistance and development of the human resources in the community, and sometimes we lose that.

So my question is if the strategy considered the multi -- that the -- agreement could ---

MS. EADY: Okay. Can anybody respond to that, whether or not if capacity development incorporated a role for governments.

MS. SUBRA: We had the various agencies at all levels included in the multi-stakeholder portion. We can insert it into the capacity building as well. But when you bring them into the multi-stakeholder, you are going to increase the capacity dealing specifically with the communities.

MS. RAMIREZ-TOTO: Yes. I think it is important that they get integrated into the education because my experience that we have is that sometimes different agencies can give different messages to the same group of people and make the capacity development more difficult.

MS. EADY: Okay. Thank you, Graciela. Pamela, Larry and then Bob.

MS. KINGFISHER: Excuse me for continuing the tired horse, but I appreciate Jana intersecting the tribal piece. And we are not just communities. Tribes are governments, and it completely takes away our sovereignty as tribal if we ignore that.

So again, on page 23C, but also on the last line on line 43, but also to the communities in the surrounding areas, I would again add tribes because tribes need to fall into that place. And part of my whole question is about the resources provided not only to build capacity, but to participate.

As we have heard about the people in Houston, the affected people, the unhealthy people, those are the ones that really have to give, you know, to attend these meetings and to participate. Government gets paid, industry gets paid; sometimes the tribal people get paid.

Community people don't get paid. So I am curious about the level of resources, not only in capacity building, but in assistance to actually participate because we are the ones. The burden of proof is on us to prove that it is bad or affecting our health or affecting our communities, and again, the burden of proof and economics fall on us to attend and fight and stay in there and be the community patrol people without being paid. So I am curious about that piece.

The other part would be on page 25D and E. I am very curious

about the creating, the training academies. It only says create. It doesn't then talk about how that is disseminated or how that is played out in the actuality. So I am curious about how that would unfold.

MS. EADY: Does anyone on the panel want to respond?

(No response.)

MS. EADY: Okay. So, if I don't have a response from the panel, I guess what that means is that we need to provide some clarification in the report when you go back to the workgroup.

MS. SUBRA: Right. It wasn't intended just to set it up and walk away. But we will clarify that.

MS. EADY: Okay. So, the comments were community assistance and participation, as well as clarification on the training academy.

Okay. Good. So, we have Terry, Larry and then Bob and then Tom.

MR. WILLIAMS: Thank you. My first comment refers to number one, I think on page 23, line 18 where it refers to assist in developing measurable goals and clear environmental outcomes. I think, being consistent with my earlier comments, we might look at adding to this bullet, after developing, with inclusion of a science based approach that includes traditional knowledge, measurable goals and clear environmental outcomes.

And my second comment --

MR. GRAGG: Excuse me. I didn't hear your comment.

MR. WILLIAMS: Going back to page 23, line 18, I will read it as I marked it up: Assist in developing, with the inclusion of a science based approach that includes traditional knowledge, measurable goals and clear environmental outcomes.

My second comment under the second proposal, referring to page 25, line 9 that was just under discussion in trying to address one of the other issues that I raised earlier about the protection of resources, rights and resources of the tribes and also protecting them nationally and internationally.

I would suggest, at the end of that sentence, adding a new

sentence referring to training inclusive of national and international laws that provides guidance and the protection of resources, rights and resources, and you can give an example of the Convention on Biological Diversity.

MS. EADY: Okay.

MS. : Could you say it again?

MR. LEE: Terry, could you write that down.

MS. EADY: Thank you, Terry. I have Larry Charles, Bob Harris, Tom Goldtooth and then Reverend Adora Iris-Lee.

MR. CHARLES: Okay. There are quite a few sections of the report that look like I wrote them myself, and I really support a lot of the language that I think is very progressive. And to all of those who participated, I appreciate it. Especially those from industry who agreed to support this type of language.

I want to get specific as well. Page 22, chapter two, consensus proposals. I think we have develop and promote implementation of a multi-stakeholder collaborative. I don't think we have enough definition in terms of especially the community representation in the stakeholder group.

We saw a model yesterday where there was community representation, but that representation was not reflective of the community that was impacted. And so, language that specifically states that community representation must be reflective of the community impacted and separate from that must include people of the impacted community, rather than folks who come as emissaries on behalf of the impacted communities, such as consultant groups who may be hired by industry to come in and help represent the thinking of the community, such as organizations created just shortly before the issue develops; very friendly to a position of industry and all of that.

Things like that happen, and I am saying to you that can cause a division in our community and especially during times of issues discussing health impacts. It is a very easy thing to do. And so, I think it is important to put language in that says, one, the

representation must be reflective of the population impacted, and secondly, that those representatives must primarily, and I use the word primarily, include people who are of the impacted community.

The reason I say primarily is because there are resources available to impacted communities; that if a community chooses to bring to the table to provide additional technical assistance in the discussion, I think it would be appropriate.

The other thing I wanted to is go to the community section, and I don't know exactly which page. But this is where I wanted to get in the point I made earlier. I actually do want us to recommend. Now, it is implemented is a different venue.

But the language that should be added into the report that says EPA should encourage. I think everybody should be able to agree with this because it is not binding up front. But it makes a statement. Should encourage all states to provide a mechanism for fees to all applicants requiring environmental permits and that those funds would be designated specifically for the purpose of capacity within the community to allow for effective community participation in environmental justice policies.

Not just disputes that makes this, but ongoing efforts to improve policies and practices for securing effective environmental protection for all people. I can put some language together and pass it on to the committee, but I certainly would like to ask for the support of the committee and the council on these two matters.

One more thing. In the model that we create I think there are certain standards that we should define and that these standards should be adhered to, regardless of what particular model a community chooses to implement. And as soon as I can kind of make sense of what I am thinking on that I would like to have the opportunity to come back and make specific recommendations.

MS. SUBRA: On the first and the third one, we will be discussing the model more this afternoon. If you come up with some standards or proposed standards, we will be glad to have those. Thanks.

MS. EADY: Thank you, Wilma. And, Larry, if you could just write up what you said about the permitting and the fees and get that to Marva, that would be great. Bob Harris.

MR. HARRIS: When Connie made her report a few minutes ago, she made reference to 2G, the last sentence there where she indicated she wasn't certain that the community agreed with the last sentence of 2G. So I am curious as to what may be the problem with that last sentence. That is on page 24, line 23.

MS. TUCKER: If a polluter has been flagrant, communities are not interested in developing good relationships with them, you know. They are angry, they see them as criminals, and so this does not fit the community's perspective.

Now, that is not always the case, but this language does not consider the other side of that coin, and that is when you have had egregious actions from a polluter and for the polluter to try to develop better relationships. We are not interested in that. We are more interested in better prevention practices. Non-toxic.

MS. EADY: Is that all you had, Bob?

MR. HARRIS: I just wanted her perspective as to what she meant by that. She has given it.

MS. EADY: Okay. I am going to go to Tom Goldtooth and then I have Richard Gragg.

MR. GOLDTOOTH: One of the things we need to consider as we look at proposal number one, as we talk about multi-stakeholder collaborative models, when you are dealing with tribal governments, since we have seen consistent comments, that when we talk about communities, we actually are talking about not only the tribal citizens, the tribal members as a community, but we are talking about the tribal as a sovereign. As a tribal governmental entity as a community. Okay?

So in this item we have to look for some language that addresses consultation as part of the collaboration process. Consultation is a very important term that we use in holding the federal government responsible to its government-to-government

policies.

I want to recognize one of the recommendations that Terry had made on page 25C, line nine. One of the importance that we felt in this section was availability of not only the creation, but also hopefully funding mechanisms. Of course, that is not put in there. But the assumption is that to create is you need funding. Okay?

Federal appropriations is a serious discussion in Indian country in any kind of initiative whether it is an agency, this agency or other agencies. But I wanted to emphasize one part in addition here that Terry mentioned of an inclusion of the national/international laws in the protection of natural resources.

He mentioned the Convention on Biological Diversity as an example, but I would like to use the word intellectual property rights in there. Or, IPR. This is a very important item in pollution prevention.

For example, as a mechanism to prevent the invasion of dangerous genetically modified organisms through agricultural industry that EPA approves. That involves the use of chemicals in our territory. So IPR has been a very important item that has been utilized in our concerns as indigenous peoples on a global level.

Northwest also has popped up in the discussion of fish and fisheries; species protection as an impact. Again, tied to P2. So, I just wanted to lend some support to that. Thank you.

MS. EADY: Thank you, Tom. I think it is really important that you raise those issue here, and I just also encourage you, as we go forward with the comments from this session, to make sure that those comments are incorporated into the next draft of this report.

Richard.

MR. GRAGG: Thank you. I would just like to suggest that in the notion of the collaborative model and multi-stakeholder model; that it may be apparent, but that we, I think in a sense define who these collaborators are. I guess what I am looking at is our role and the health and research subcommittee and our strategic plan.

Our first goal was to encourage research and programmatic agenda that addresses the relationship between environmental

stressors and health disparities in adverse communities. And I would like to see language to that effect appear somewhere here in our document, in the sene that I think that the report, which is very well written -- I think it needs to be in tune with some of the other activities that the EPA agency is doing.

For example, the cumulative risk assessment and report and projects that they are working on. I think pollution prevention and the whole aspect of pollution prevention needs to be tied to that, and it also needs to be tied in terms of the relationship between pollution and health disparities.

And I know we talked in some places here about health issues and health concerns, but I would like to see also it related to the issue of health disparities.

MS. EADY: Richard, did you have any -- you mentioned some words. Some specific words during your comments.

MR. GRAGG: Yes.

MS. EADY: Did you have any specific language that you wanted to suggest? Or --

MR. GRAGG: I will. I would like to talk about that with our members of the health subcommittee and then get that back.

MS. EADY: Okay. Wonderful.

(Pause.)

MR. LEE: Once you have that developed, make sure you submit it to Marva.

MR. GRAGG: Okay.

MS. TUCKER: Richard, would you pay particular attention to the community section? Perhaps you can make some recommendations for revision in that language as well.

MR. GRAGG: All right.

MS. EADY: Adora.

REVEREND IRIS-LEE: Larry spoke to the concern I had about the multi-stakeholder model and what that would look like. So, it will be good to have the conversation today, because I guess the questions that are in my mind are the standards or features or what

that might look like.

I guess what really throws me off a little bit is again I am looking at our role, and correct me, if we are sending this forward at some point to be recommendations to the agency. I don't know that we want to say to the EPA to develop such a model. I don't know that it is, in fact, their role to develop a model, whatever the features or the standards are. I think that is something that comes up from people who are most impacted. So that would be a concern that we can talk about a little later.

The other thing that I was looking at in going through this last night again was that so much of what we ask for here requires money and in some kind of way, as we do our work, those things that require resources that -- they will be kind of all over the place. If we can sort of group those.

When you talk about implementation -- and someone hit on that yesterday, Peggy -- that is something that you should really monitor and push for in our agencies or organizations outside of this table to advocate for whether or not resources are put in places, whether it is a new grant program or a P2 or whatever. There is a lot of stuff being asked for.

Some can be done administratively through existing staff. I know. But a bunch of it is through money, and it might be new money or old money. And the last time I looked at it, in the administration that we are in, I don't see a lot of new money; not going to this. I see it going to other things.

So I am just really hopeful that we will put the money things real clear so that some of us can, in our other hats, advocate that it happen.

MS. EADY: Thanks, Adora. And maybe one thing that we can do -- and we will talk more about this this afternoon when we get into the collaborative model discussion. But maybe we can -- one thing we can do with the language with respect to the collaborative model and who develops it is to talk more about EPA supporting the development of the collaborative model.

REVEREND IRIS-LEE: Providing resources for the development. Yes.

MS. EADY: Okay. Well, it looks like we have made it through everybody who had a question or a comment. What I think I will do is -- since Charles just told me to -- is to ask Wilma and Connie if they have any closing comments before we go to lunch on proposal number one and proposal number two that you presented, based on the dialogue.

MS. TUCKER: One brief comment; that the work was -- it was very intensive and there are some typos here and there and there are some things that we might have overlooked, and the whole notion of presenting this to the NEJAC and to the public for comment is so that we can improve the document, and I am hoping that that is what will happen; that in the end we will have a very, very strong document. That is one.

Two, around resources and what we are doing is that we are making the recommendations. Hopefully the NEJAC will be making recommendations based on this document to the EPA and, of course, that requires resources to implement this. And that is very, very clear.

So, I don't know whether or not it is our role to figure out the resource question. I think it is our role to provide guidance. Not our role, but the NEJAC's role to provide guidance and advice to the EPA and then, we have to position ourselves to be sure that the EPA will utilize, even if it requires using existing resources, shifting existing resources to accomplish this. Thank you.

MS. SUBRA: And I think it is important that we get the input of all the council members, and I think you all have done a really great job of giving us specifics on where you want things added and the tone in which you want them added.

And Jana's things about put in tribes. Don't just abbreviate it and call it communities throughout the document. These are the kinds of things that can make the document better. And it is only through this process, and this is what we have been going through on

every single phone call; is getting the council's input and then getting the public's input tonight.

It is really going to make it a better document, and we are trying to make sure all of the issues are addressed. And the bottom line is improve the quality of the environment in environmental justice communities, and that is what we are all here working towards. So, thank you all for your comments.

MS. EADY: I think the spirit of the dialogue this morning has been really great, and we have been dealing with some tough issues, which we will continue to deal with and hopefully make even more progress than we made this morning.

I just want to extend my thanks to everyone also and ask you to be back in your seats at 1:00. So, have a good lunch.

(Whereupon, at 12:00 p.m., a lunch recess was taken.)

A F T E R N O O N S E S S I O N

(1:16 p.m.)

MR. LEE: Hello. Can I call everyone to order. We are now 15 minutes late.

(Pause.)

MS. EADY: Okay. Those of you who are in the room, and I know a few of you were actually here at 1:00, and I want to thank you for making it back, what we are going to try and tackle this afternoon -- it is pretty ambitious, but I know we can do it.

When Ken Warren did his presentation, he broke the proposals down into themes, and so we have already covered the first theme. That was only two proposals though. For the next two themes, which are using and expanding existing tools to improve conditions and communities and incentives to private markets, under those two themes we have nine consensus proposals to cover.

And so, we would like to get through all of those. In addition to that, if we are really efficient with our time and can get through them a little bit earlier, before 3:30, then we will have more time to have a more lengthy discussion on enforcement and also on the precautionary principle. So, keep that in mind.

Before we get started I wanted to give Wilma and Ken an opportunity to share with the council observations that they may have had from the discussion this morning and a general sense of the things that they heard from all of us in our comments.

MR. WARREN: Wilma and I believe that the comments this morning were very helpful, and we think that there are some improvements that are warranted in the recommendations and in the consensus chapter. I just want to talk -- or just list I should say, because I don't think we have time right now to talk about them; certain themes and then give an impression of one.

I think that the first theme that was talked about is enforcement. The second would be science and how good science could assist the process. The third would be capacity building. The fourth would be flexibility and whether some cautions are needed in implementing it. The fifth would be the treatment of tribes, including the issue of tribal sovereignty and consultation.

The next would be the involvement of community and capacity building and how we define community, and the last would be funding. On the issue of enforcement, I wanted to sort of distinguish between enforcing existing statutes and using enforcement as a pollution prevention tool.

From my personal vantage point, as a member of the business community, I do not believe that there is any objection to the concept of enforcing existing statutes and that pollution prevention was not intended, by me at least in the context of working on this report, to be a substitute for enforcement.

Indeed the fact that enforcement is out there, as Ken Geiser has said, provides some incentives for pollution prevention activities to take place. I distinguish that, however, from enforcement being a pollution prevention tool.

And one of the goals that we had in putting this report together was to design pollution prevention programs in a way that would best assist minority and low-income communities. And in the confines of a pollution prevention program, enforcement does not seem to me to be

a tool that needs to be talked about.

So probably what we need to do in better drafting our report, and particularly in the consensus chapter, subject to whatever agreement or disagreement there might be among other members of the council, is to explain in a paragraph or two that we are not, by putting forth our suggestions on pollution prevention, attempting in any manner to undermine enforcement mechanisms that already exist in environmental statutes or enforcement programs that are under way at EPA.

So those were the subjects that I had identified, and that is the comment that I wanted to make.

MS. EADY: Okay. Thanks, Ken. Wilma, did you have anything that you wanted to share? Or --

MS. SUBRA: No. He did it.

MS. EADY: Okay. Thank you, both of you. So, let's see. Let's get into each of the remaining nine proposals, and what we are going to do is take them individually and try to get some discussion out of each one.

As I said, in order to get through all nine we are going to move pretty fast, but, of course, the whole goal here is to get input. So we are not going to sacrifice that either. Hopefully we will be able to have dinner before the public comment period. So, Ken, if you want to walk us through proposal number three.

Discussion of Consensus Proposals
Theme #2: Using/Expanding Existing Tools to Improve Conditions in Communities
By Ken Geiser

MR. GEISER: Thank you. Is this on? Can people hear me all right? Yes. Am I too close to it? No.

Let me introduce the third proposal to identify and implement opportunities to advance environmental justice through pollution prevention in federal environmental statutes. In doing this, let me offer some thoughts on the issue of enforcement as well.

What I bring is you the results of wrestling with this question a good deal over many years in the pollution prevention area movement. And what I would like to suggest is that -- Ken just said there are two. I would like to suggest there are three ways to think about enforcement, and I will kind of go through them.

The first has to do with enforcing existing statutes. The statutes that I think we are normally talking about here are what would be considered the old pollution control, command and control kind of statutes that were passed during the '70s and into the '80s, and I think that there is no question that they ought to be enforced.

But I want to add one additional piece to that, which is unless they are enforced, pollution prevention has a tough time achieving the ends that I think we want it to meet. In other words, by enforcing existing statutes, by enforcing having good, solid enforcement protocols, basically we keep the price of hazardous waste treatment, solid waste management and other things high enough that the actual cost advantages of pollution prevention become possible to achieve.

If you have weak enforcement -- and I have worked internationally in other countries where we have good laws, but weak enforcement -- it is much harder to get pollution prevention activities moved forward. So I think it is really important, and I think we have also already heard from representatives of the business community.

But the first kind of enforcement to think about should be strongly stated, and that is enforcement of existing laws, otherwise you are not going to succeed.

A second thing to say about enforcement, a second thing way to think about enforcement is part of the way in which government actually tries to carry out environmental policy, and in this case enforcement is part of what you might call a four-prong strategy, which has to do with standards setting, permitting, compliance and enforcement.

You can't think of enforcement alone. If you have poor permitting, enforcement doesn't matter that much. You have to have all four and they all have to work together, and I am going to say in a

minute a little bit about how pollution prevention can fit into that.

The last point is one that Ken mentions, which is enforcement of pollution prevention itself, and here, after many years of us working on pollution prevention, we have generally been reluctant to move very heavily into this. Why? Because pollution prevention is actually very specific to the kinds of facilities and the kinds of problems that you are dealing with in any one mode.

Whether it is one kind of plant in one kind of condition or one kind of economics trying to do one kind of product, the art of good pollution prevention is very, very specific and having broad enforcement capacity in that damages the ability to do it.

In my state, which is one of the most aggressive, Massachusetts, we have two enforcement issues. But you will see quickly that they are fairly, fairly -- they are constrained. One is firms have to report annually on the chemicals they use, not simply the chemicals they release, because that drives people to look at use rather than release, and use is where a lot of pollution prevention actually takes place.

The second thing is we require firms to periodically do plans on how they would do pollution prevention. We don't actually ask them to implement the plans because if you ask them to implement and you enforce against firms, you would get lousy plans.

If instead you try to get the best out of firms, which is to set up conditions which they can plan effectively, then I think you can actually induce changes. I am not going to go into a long argument about that, but let me come back to that middle ground.

How can you think about pollution prevention in existing statutes? And that -- just goes right down through what I suggested between standard setting, permitting, compliance and enforcement.

In standards setting, for instance, you need the standards set for best available technology. You can promote pollution prevention, as well as pollution control, if you look at the way the Clean Water Act is written, and the ELI document gives you a lot of good ideas on how to do that.

Again, in permitting, as many states have moved forward to try to get pollution prevention into those permits so that those who write permits actually are trying to promote pollution prevention and not just pollution control technologies, and this has been well developed in some of the states.

And the third has to do with compliance itself, and I think what we heard yesterday was such a good example. The very flexible compliance system of working with small enterprises where enforcement, overly dramatic enforcement can be too heavy handed, you need to have kind of an enforcement that pushes. But you really have got to have that flexibility there to allow small firms to continue to sustain themselves and at the same time come into compliance.

So that would be my thoughts about how to think about federal statutes and state statutes in regards to this. Let me read you the recommendations from the workgroup.

EPA should review existing federal environmental statutes to identify avenues to increase pollution prevention and should identify and explore impediments to integrating pollution prevention using existing regulatory directives, and I believe that is the way you do that second level. We need to really re-look at these and follow up on the recommendations that are made in things like the ELI document and also the EPA document, which was the pollution prevention solution during permitting, inspection and enforcement.

EPA should encourage the states to review existing source reduction opportunities in the context of state permit issuance, enforcement and inspection programs for increased opportunities for source reduction and identify impediments for incorporating source reduction at the state level.

And third, EPA should, in consultation with tribes, review the implementation of federal environmental statutes within Indian country to identify ways to integrate pollution prevention into aspects of federal statutes that EPA implements directly and to encourage tribes to integrate pollution prevention into those programs for which they have primary authority. Here I think we think about the tribal EIS

programs.

And lastly, EPA should instigate a review to catch duplicates and redundancies in the pollution prevention programs. That is the recommendation that our committee put forward. Thank you.

MS. EADY: Thank you, Ken. Do we have any comments or questions on this proposal. Okay. Jana and then Judith and Connie.

MS. WALKER: Just one quick comment, and that is on fee. That last sentence, EPA should also provide assistance to tribes. I would add financial and technical assistance.

MS. EADY: Thank you. *hre

MS. ESPINOSA: Can you hear me? I don't understand letter D, the letter D. Maybe you can help me and give me some background on that and kind of a little more detail.

MR. GEISER: Well, I can start. Under most of the delegated authorities, under Air and Water, states are actually charged with the implementation. And again, what we have tried to do at the state level is try to integrate by integrating pollution prevention into the permit writing and into the inspections.

The permitting writing, for instance, has required a lot of training and traditional permit writers to look for pollution prevention opportunities in the actual writing of the permits.

And in inspection, again it requires training, but it also requires the multimedia inspection programs so that -- we heard yesterday again; that when inspectors go out, they are attentive to the air, water and I would say also to the worker health and safety issues, because one of the things that doesn't get integrated effectively, unless you are really careful, is not shifting the risk out of the air and water to the workers themselves, and that is why pollution prevention, at its source and not at the end of the pipe is so critical. Is that helpful?

MS. ESPINOSA: I understand what you are saying and I agree with you, but that is not what I am reading D to say. What I am reading Number D to say is something totally different, which says that there somehow is duplication between federal and state pollution prevention measures and that EPA should instigate and investigate

and review this.

So, those might be eliminated, and I am trying to resolve A) Why you would need to do that, because many states take pollution prevention EPA regulations and laws and then some of them may be more stringent, as required by their state legislators and by their enforcement and regulatory agencies, and I don't know why you would want to eliminate them. I am not sure what kind of duplication the workgroup saw.

MR. GEISER: Let me just say I misunderstood you, and these are getting old.

MS. TUCKER: I think I recall that this statement -- maybe you need to improve it a bit. I recall that in our sit-down meeting the P2 workgroup, which -- that there were two different states that had pursued a P2 initiative that I think was federally funded, and each one of them had pursued parallel tracks when it was not necessary to do so.

None of those steps could have been cut out if EPA had made that information available during its grants process, and that is why that statement is here. I think we need to improve so that you will know what the heck we are talking about.

MS. ESPINOSA: Right. Because it sounds like you are wanting to eliminate state laws that might be over and above whatever federal laws there are. So, if that is more of a -- that is more of a communication process with EPA letting states and locals and communities know what they are doing on the pollution prevention end of it so that they don't go duplicate.

Or, better yet, so that EPA invites the states and the locals and communities to be involved in the process that they are doing, which would facilitate the entire process. I would imagine in P2, if they want to change that current status or they have new information, it would seem maybe that should be a communication recommendation.

MS. TUCKER: Yes. We should do that. We really wanted to save resources, but both of them were granted to do a part of the process. That could have been eliminated if it had been made --- the

other. That was not why I had my card up.
MR. LEE: Judy, can you take a crack at drafting something?
MS. ESPINOSA: I would be glad to, if I could work with Connie, because I don't know the background of what they are talking about.
MS. TUCKER: I think the person from the government, the government person from Maryland and -- who else was on the P2? That would be a better choice to help draft that language.
MR. LEE: But you would be glad to participate.
MS. TUCKER: I'll participate.
MS. EADY: Dianne, don't worry. Since Andrew is not here, we will just assign things to him. Connie.
MS. TUCKER: Back to the enforcement question. It was never intended for us to expect small businesses to have the same kind of enforcement requirements as larger industry. So I think you need to be clear so you don't have to revisit that again; to make that statement in the consensus chapter. But I am definitely in agreement that we should include that for larger businesses.
MS. EADY: Terry.
MR. WILLIAMS: Thank you. On the action items, page 26, line 35, number D, speaks to EPA should instigate a review of federal, state, and I think you should add tribal pollution prevention measures. I think, before entering the duplication, add share information and also discussions for duplication elimination.
I think one of the reasons for adding this is that I have seen a number of tribes
(Feedback interruption.)
MS. EADY: I was writing it down. You said share information and what else?
MR. WILLIAMS: Let me see. I was just thinking about -- and I haven't written it all yet. But prevention is also sharing information on activities before we get into duplicating or eliminating. The reason I wanted to bring this up -- I was just thinking about it as we were getting into the discussion here.
A number of the tribes across the country, because of looking at

protecting cultural resources as well as natural resources in that context, are coming up with new technologies that are actually more protective. One example of that was at Toledo Prime Firm we have imported a Japanese technology on waste water treatment. Basically the treatment provides for drinking quality output.
Also, other tribes have worked on landfills that have increased standards for EPA. But I think the sharing of information and doing this duplication is important to include tribes as well as states.
MS. ESPINOSA: Can I just -- based on your comments, maybe it would be prudent to have a separate recommendation on the tribal side of it versus the state and federal duplication process. Would that --
MR. WILLIAMS: You could. I don't know if it is necessary, but --
MS. EADY: I think, as we move forward with the comment and start to think about how we are going to change that, if it doesn't make sense to add the tribal language or if it makes it awkward in some way, then we can add a separate one.
MS. ESPINOSA: Because yours sounds different than what I was hearing before. I just wondered.
MS. EADY: We can put them all on the table for now.
MR. WILLIAMS: Yes. I would keep it open. One of the things that we are finding with tribes is that in many areas tribes are developing programs or developing new programs to fit with the federal or to be consistent with state because of the jurisdictional issues. Having an understanding of looking at whether or not we are duplicating while we are developing these programs or revamping programs or to eliminate inconsistencies I think is an important piece of the process.
MS. EADY: Okay. Thank you. And Lori.
MS. KAPLAN: Thank you. I recognize that this one is focused at the federal government, but as a representative of the state regulators --
MS. EADY: I heard somebody say closer.
MS. KAPLAN: Closer? I am afraid of being too close.

I recognize that this is directed to the federal government for them to review federal and state laws and perhaps tribal, if that gets put in there, and as a representative of the state regulated entities I have a little bit of a concern.
It looks like the Federal Government is being directed to look at state laws and perhaps eliminate state laws, and instead, if it could be worded more of looking at how we could leverage our resources in eliminating duplication and that might tie in with the tribal a little bit better. But there is already tension between state and federal government about who tells who what to do.
MS. EADY: Thank you. Very good point. Oh-oh. Terry is back. You had another --
MR. WILLIAMS: Oh, no.
MS. EADY: Okay, same one. Okay. Good. Okay. Great. Well, we moved through that one. Thank you very much.
The next proposal that we are going to consider is number four, local area planning, and we had scheduled Andrew Sawyers to walk us through that one. Andrew, as I said, had to excuse himself for a little while. So, Dianne, I will ask you to step in and walk us through proposal number four.

Proposal #4: Local Area Toxics Planning
By Dianne Wilkins

MS. WILKINS: Hopefully I can fill Andrew's shoes. When we look at pollutants to any community, the community is affected and the tribes not by a single pollutant at any one time. We don't know, in many instances, what the risk in exposure from any one pollutant is and we certainly don't know from the combination of pollutants that attack the community. We don't know.
But on the other hand, additionally the other things that we don't know is that there is no pollution prevention magic bullet. As Ken alluded to, pollution prevention can be very site specific. So why can't we come up with things for some sector of facilities? When you get to the facility, not only is the opportunity specific to that facility, it might

also be specific to a process at that facility. And works at one won't work at the other. There isn't a magic bullet for pollution prevention.
In my other life what I do is on-site technical assistance and also go -- I go about trying to put together compliance assistance and pollution prevention outreach, particularly to small to medium sized businesses.
When we go to do that, you find that the mechanisms that you use to get to them varies from sector to sector and from community to community, and it all depends on how you identify whose within that targeted sector how you go about getting to them. So there isn't really a mechanism to identify. You have to come up with a mechanism that works for where you are in identifying those facilities.
And, Peggy, you are very right. Often we don't know what those facilities are. They are not in anybody's database, and we have to use the people within the community to help us find and identify what those facilities might be. We heard a lot about that yesterday, and it is something that you can't get away from when you try to do this type of thing, because identifying them gets often times to be a big part of the problem. Who are they? Where they are and what they are doing.
There are also -- within the state we can use existing databases to look at finding facilities. But generally, what you find are those facilities that you capture in the enforcement umbrella, under the enforcement umbrella for the state, whether they are permitted or they are just large enough so that you do have something that you can control for them.
We do not, however, get to all of the facilities that fly below the radar, that are too small individually for us to capture, but cumulatively they have a very large impact. So it gets to be really important to how we distinguish those facilities and how we identify them, because as you identify them and distinguish them, how you approach them changes. How you approach them changes. There is no magic bullet.
It also very important to recognize that as you do this and you

identify them and you see the differences that are there, then you come to recognize what types of incentives can work and that, again, varies. We talk to businesses and some want an incentive that is an award that they can show off. I can put it in the front office and people can walk in and see that I do this.

Some want money. Many small businesses want access to funding to help. So, an incentive that provides loans or grants to small businesses works in those instances, and some just want recognition. And all that continually fluctuates.

I am glad to see this forum that, as someone who is often identified as a pollution prevention practitioner in the states, that you can try to bring it across to others that it is not at all a simple, straightforward task.

In the discussion that I hear pollution prevention always seems to be approached one nice little monolithic magic bullet. You know, we are going to do pollution prevention for this community or we are going to do pollution prevention here, and it doesn't work like that.

Not only is it so multi-layered and multi-dimensional, it is very, very under-resourced and these things are extremely important when we deal with the enforcement for many small businesses. If we went out and sent the inspectors out and started writing up violations and fining and enforcement, many of them would close their doors. They would have a choice.

Some others would go so far underground we would have to get a backhoe to find them. We won't be able to get them at all.

However, when we promote pollution prevention as a tool for compliance, as something to help make the businesses more profitable, something that can help them enhance their bottom line, then they start being much more receptive to what we try to do. Then we can hold their hands and bring them along instead of trying to beat them over the head.

Often times the problem is not large industry. Quite frankly, lots of times we have them exactly where we want them. We have them within the regulatory umbrella. We have them permitted and we can

go after them.

There are many methods and approaches that are developed across the states. I work with the National Pollution Prevention Roundtable, and we talk about it all of the time. And we learn from each other and we plagiarize each other and adapt. With permission. We are very intellectually generous in that organization.

And we try to make sure that we can use different approaches and adapt approaches as we move along, and I think that is really important for us to recognize. But most importantly for all of this to work we need this multi-stakeholder model.

We need the model that brings all of the players to the table, because I do my thing and Ken might do his and Sue might do hers and Connie might do hers, but if we don't get together to do our collective thing, the community is no better off. So this multi-stakeholder model is really important, and it is also really important when the tribes get in.

That too, I have found, varies from state to state; how you get the tribes involved, because the tribal situation in one state is different from the reaction between the -- the interaction between the tribes and the state government in another state and the federal government. It is all changes.

But we all have to get together to try to make a model that gets the best for what we all want, and what we all want is to reduce the risk, improve the health, enhance the economic viability in the communities, because we want small business, which is the backbone of the community, to remain in the community. We want them to be viable so they can provide jobs for the community, and I think pollution prevention can help that.

MS. EADY: I'm sorry to interrupt. Can you walk us through the action items?

MS. WILKINS: We went through each of them.

MS. EADY: The action items? Can you read through the action items on number four.

MS. WILKINS: Sure. Identify a mechanism to locate areas with

multiple sources of pollution. As I said, those are mechanisms and they change. Distinguish permitted and non-permitted sources and activities.

Determine opportunities to include pollution prevention in permitted facilities, and there has been some attempt to do that. We can look to a project that went on with EPA called the Pollution Prevention and Permitting Project, and that attempted to do that.

Report on and develop regulations, incentives and other initiatives to reduce pollution from permitted and non-permitted sources. Compile and utilize the myriad of EPA and other methods and approaches in multi-hazard reduction planning. Apply multi-stakeholder collaborative model to accomplish multi-hazard reduction.

MS. EADY: Thank you, Dianne. Now, we will take questions and comments on this proposal. I see Connie first and then Richard and then Judith.

MS. TUCKER: Really, just for the record, wonderful presentation. One little small problem. Large is a big problem. So I don't want -- I recommend that the NEJAC would not want any kind of message that goes out to say that the permitted industries are not a problem. They are a major problem.

In fact, of the almost 100 groups in the network that I work for not any of them are dealing with small polluters. They are all dealing with large polluters who are mostly in non-compliance. So the large is a real, real problem. Just for the record. I had to get that one in. Thank you.

MS. EADY: Richard.

MR. GRAGG: On the action item A, identify a mechanism to locate areas with multiple sources of pollution, if not substitution, I think we should also include communities. I don't know if this is the right place. Maybe we can discuss it later. But any report so far -- and I may have missed it.

But I don't see anything where we are doing or proposing any evaluation or assessment of the action items that we are asking EPA or anybody else to do.

MS. EADY: Okay. Thank you. I have Judith and then Adora and then Terry.

MS. ESPINOSA: Thank you. I just want to stress what Richard said about evaluation criteria in these action items. I think it is very important that somehow we build these into the report somewhere, and I don't know that they need to be done in each consensus area.

But I do think that there needs to be some kind of a part of the chapter that talks about that in a bit of detail, because when we are talking about non-permitted sources, I think it is most important, if we are going to provide pollution prevention techniques, that we be able to evaluate whether they are working or not. Particularly if you don't have an enforcement hammer.

And speaking of non-permitted sources, on action items B and D maybe you could tell me what the definition of that is. I am trying to -- to me a non-permitted source is some kind of business or industry that does not have to be permitted at all because it doesn't meet pollutant criteria that EPA or the state would require. Is that what I am hearing?

MS. WILKINS: No.

MS. ESPINOSA: I didn't think so. That is why I would like a definition.

MS. WILKINS: Non-permitted sources are sources that don't quite meet the bar that need to be permitted. For instance, under RCRA, dealing with hazardous waste for instance, the smallest required facility -- and it doesn't have to be permitted, but the smallest one that has to report -- has to have more than 220 pounds of hazardous waste per month. Okay? Anything under that is usually exempt.

MS. ESPINOSA: It doesn't have to have a permit?

MS. WILKINS: That is right.

MS. ESPINOSA: Correct.

MS. WILKINS: And you don't get to see those. Some other air sources may not meet the criteria to get a permit and they won't be permitted.

MS. ESPINOSA: That is what I'm trying to understand by your definition of non-permitted sources, because I am trying to figure what number B means. Non-permitted sources to me is exactly what you said.

They don't meet the criteria that is set by the standard regulatory process. They are under whatever pollution limits that is being done in that business or industry. So what I am trying to figure out is how you are -- I guess I find under B, to be honest, a little vague. I am not quite sure what it means.

MS. EADY: Judith, I am going to ask Sue Briggum to shed some light on that.

MS. BRIGGUM: Thank you. I think you helped us a lot here, because I think we are meaning two different things under non-permitted. One thing we are meaning is a facility that doesn't need to have a permit because it is grandfathered or exempt or too small or there is no regulatory system.

The other thing that we are also talking about I believe is the facility that doesn't have a permit but is illegally operating without one.

MS. ESPINOSA: Thank you.

MS. BRIGGUM: We need to clarify that.

MS. ESPINOSA: And I think that is the clarification we need to make in here, because the way you treat those entities are wholly and totally different. at least from my enforcement perspective.

If you have a non-permitted facility that says you do not meet the source pollutant criteria and you don't have to have a permit, then you are going to go in there and do pollution prevention in a wholly different manner probably than what you might otherwise.

If, on the other hand, you have a facility that should have permitted and that is emitting pollutants above and over whatever standards that the state and/or federal have, then you certainly treat them differently. Or at least I would as enforcer. Or a former enforcer; treat them differently on a pollution prevention standpoint.

Now, you may -- I like the model that they have in Maryland in the community where they have a lot of small businesses, but I am

not sure those businesses -- you know, there is a different treatment when it comes to pollution prevention. So I would rather not mush them into one definition. I think they are absolutely -- and thank you for the clarification -- two different definitions and need to be treated as such.

And I think that was my question on Number D as well with the non-permitted sources. If we can clarify that, I think that would be helpful to me. Particularly since I hope we can get back some time to the enforcement discussion that we were having earlier.

MS. EADY: Thank you, Judith. Okay. Here is where we are. We have Adora, Terry. Adora, did you put your card down?

REVEREND IRIS-LEE: Yeah. Well, just halfway down.

MS. EADY: Let me say Adora, Terry, Eileen and Jana.

REVEREND IRIS-LEE: The reason I took it down is maybe the issue of the evaluation part -- my answer -- I guess when I read this over again I wasn't sure how these action steps, short of F, permitted the local area planning and implementation. It seems like a list of things that need to be done, and that is going to --- places are to locate them and all that. But where is the teeth? Where is the action?

I wasn't getting that. Especially promote, when you are saying you want to promote local area management of these hazards, managed action. So I'm missing that part, unless that comes out later. I will just listen for it.

MS. EADY: Okay. So one of two things. Either we need to tighten what it is that we are saying in the action items, or it will come out in the evaluator tool that maybe we will develop?

REVEREND IRIS-LEE: Like, for example, when you look at the first one, it says identify areas where the sources existing. That is where I am going, because we do that a lot in government. Or, you know, they do it a lot. Or somebody does it a lot. I am trying to get there.

MR. LEE: Let me just add, for clarification. As I understood this there was a lot of discussion and concern in the workgroup

environmental justice and the land use planning issues.

REVEREND IRIS-LEE: I can't hear you, Charles.

MR. LEE: The land use planning issues.

REVEREND IRIS-LEE: Okay.

MR. LEE: And this is to promote; it is to link that to the issues of environmental justice and land use planning, and I think that the questions and the comments really point out that they need to really do some more work on that, because that doesn't come out clearly in either the presentation of this or in the writing of this, and that is why I think each of these action items don't hang together well.

And the idea of having a view of a lot of the issues related to environmental justice and the community area, in terms of the land use and planning kind of issues, and linking that to a longer term view of toxics reductions, that is the idea here.

MS. EADY: Thanks, Charles. So, moving along, I have Terry, Eileen, Jana, Tom, Connie and then Richard.

MR. WILLIAMS: Thank you. And again, I am wrestling with this evaluation as well, and I wanted to make a suggestion about that. But I want to first say I appreciate the presentation.

One thing in the presentation though I was having some trouble with was the hand holding, and my trouble comes from 20 years of planning and implementation of pollution problems in Peugeot Sound. Just this last month, in fact, within the last two weeks, *Post Intelligence*, a newspaper in Seattle, did their own investigation and report on pollution in Peugeot Sound and discovered about, annually, roughly around 7,000 violations of current regulations from large and small business of all forms, and some of those include plants.

We need a balance of planning and hand holding and regulation. I am trying to figure out how to capture that. One way -- with this particular language it may be a start, and that is on page 27, line 17, B, where we were discussing distinguishing permitting and non-permitting sources and activities. We could add and a compliance record on plans and regulations made available for evaluation. That gets it out into the open where you can discuss the issues.

MS. EADY: Thank you, Terry. I want to make a proposal, and I want to get a sense of how people feel. It seems like we need a bit more work on this proposal, and so, the people who have your cards up, do you feel that you need to give your input now? Or can we go back to the drawing board -- and I see everyone looking at me like I am crazy. Okay. That is fine.

If we can quickly go through this, then we will move on to the next item. So, Eileen, you are next.

MS. GAUNA: I have an objection to going back to the drawing board if you have a mind reader among you. I am just teasing. You know me, Veronica.

MS. EADY: I do.

MS. GAUNA: A friendly suggestion on Number A, just because it strikes me that that is maybe a little bit too vague. I would have something to the effect of identify mechanisms to locate areas with multiple sources of pollution, inventory the sources of activity and develop a baseline to measure progress over time, because if you are talking about a long-term evaluative process, I think that would be important.

And I would also like to suggest that maybe a particular focus be -- or a particular light be shined on the idea of community based ambient monitoring as part of this identification strategy, because I think that is an important component.

MS. EADY: Thank you, Eileen. That was worth it.

MS. TUCKER: Could you help write that?

MS. GAUNA: Sure.

MS. EADY: Great. Jana.

MS. WALKER: Mine just kind of builds on what Eileen was saying. I like everything Eileen said. Just at the beginning I would modify it on A by saying in cooperation with communities and in consultation with tribes identify -- I think Eileen said mechanisms. I was looking at effective approaches for locating communities and tribes. And then continue on with what Eileen had said.

MS. EADY: I think that is great, and I just want to say -- you

know, obviously we have Tom and Coleen and other -- I can't remember the name of the other person representing tribal interests who worked on this. But as you can see, it is a huge document. So we really need the close reading and the fine tuning. So, thank you. Tom.

MR. GOLDTOOTH: I like the comments on A, and I just wanted to add an additional part to those recommendations that Eileen had made. I think there should be some targets that establish and part of the implementation plan that I call an action plan. It should have some targets in that that are feasible with all constituencies.

I have a question on the -- on number four. The wording is towards reduction, reductionism, and one of the sentences in here in the background part of it addresses elimination. And of the crux of the issue that we are dealing with in the U.S. concerns the releases of chemicals and environmental standards that are established.

And the last item there were three items that were mentioned of implementing opportunities around EJ, considering federal environmental statutes and standard setting. It seems like throughout the proposals we are really weak on providing language on how do we incorporate standard setting as an issue as a concern of the creation of the pollutants that were being released.

I remember that we participated in the International --- Treaty I heard many testimonies of scientists who worked on this issue, that a lot of the chemicals that we produce are not manageable, that we have to try to control them out of the smokestack or out of the pipe.

So, the whole paradigm of how we do environmental protection in the U.S. is controlling something that is unnatural. So I am wondering is this the section that we need to expand and more specific as we look at action item A of identification and the mechanism to locate areas with multiple sources of pollution.

And as we go further, in item D, report and develop regulations, and incentives, et cetera, how do we react to this concern of standard setting and who approving chemicals that are released into the environment? And also -- and this gets to the serious discussions on

two other words that were utilized earlier: Science based and precautionary principles.

Those are serious debates with the Chemical Association nationally and internationally, and those that promote precautionary principles do say it is science based. But there are debates around that. So I just wanted to bring that up. This does need additional work, not starting over. But do you expand the title from reductionism to include elimination as a goal in some of these solutions? Thank you.

MS. EADY: Thank you, Tom. I am sure more of that will come up, if we have time, when we discuss the precautionary principle later, along with enforcement.

Connie and then Richard and then we are going to move on to the next proposal.

MS. TUCKER: I would like to remind members of the workgroup who are present that we did have consensus on elimination and reduction. So, there should be no problem.

We were so busy and we had to look and all discuss the consensus document, but as time passes and you come back and you read it again, you say, well, maybe this can be improved, et cetera. And in this particular section I am looking for the proposal for source reduction in our consensus chapter. I don't see it anywhere in here.

So I think that is a glaring omission and we need to include a proposal for source reduction and elimination, and it should be perhaps in this area of proposal number four. That is where the rubber meets the road. If you don't have that, then you don't have a serious commitment to employing P2.

MS. EADY: Thank you, Connie.

MS. TUCKER: It is in that? It sounds like products. Substitution is not source reduction.

MS. EADY: So we need to fine tune either number four or number six.

MS. TUCKER: I think source reduction really has to have a

stand-alone proposal. It is perhaps the most important contribution that we can make to the P2 conversation.

MS. EADY: Okay. Richard. And then we are going to move on to proposal seven.

MR. GRAGG: Okay. Thank you. Part of what I have to say may be the part where you said it doesn't need to be said again.

The presentation on this number three brought me back to number one. I don't know if this has been said or not, this multi-stakeholder model I would like to suggest that we sort of -- we recommend some type of -- these multi-stakeholder models be developed on a regional basis. Not just an EPA model or just one model. I think it has to be broken down in order to get a grasp and different regions may have different issues, and even among the states. So I think it needs to be broken down.

The other thing is that what I am reading is that -- it is placed here as number one, but the multi-stakeholder model is being proposed as the basis for pollution prevention from an EJ perspective. And I am presuming that all of the other recommendations are all tied back to the model or flow from whatever this concept of model is or should be. And, if not, that is what it should be.

I think you would eliminate a lot of the questions that we have if you flow it from this notion of having this multi-stakeholder model as we get into the other recommendations.

And then specifically, on number four, which also goes back to the overview, I said this before about cumulative risk. But the other issue, as somebody mentioned, is science based.

I think we have to, somewhere in the document, sort of speak to the whole scientific basis for pollution prevention and the whole issue of risk, the whole issue of susceptible populations and the issue of the need to develop better risk models, because now the scientists are saying that it is not just -- well, you know, we have pollution, but that people are even more affected by low level repeated exposure.

So we can go through the whole process of pollution prevention

and reduction and still not solve the health impacts that are part of the problem. So, in summary, I would for us to take into account -- let's say the time frame or the space in time that we are talking about. When we talk about pollution prevention, are we basing our whole idea and notion on the current regulations and what exists or are we basing it on what the current science is saying and where the regulations and stuff may be in the future?

MS. SUBRA: Can I respond to that?

MS. EADY: Yes, Wilma.

MS. SUBRA: The multi-stakeholder process, and we will hopefully hear more about it this afternoon, is mechanism like communities that think they have a problem to petition EPA and to get all the stakeholders looking at what are the issues in their community and prioritizing which ones can be done first.

That is one part of this process. The other part is things like identifying and implementing opportunities to advance EJ through P2 and federal environmental statutes. That doesn't flow through the multi-stakeholder process, but that is something that happens outside of it. But it also supports it.

So I don't want you to think that all of it has to flow through the multi-holder. It is strengthening programs in the tribal nations and things like that. So there are things that happen within the various entities and then there are things that will flow through this multi-stakeholder model.

They will each support the other, but it is coming down from a little different perspective.

MR. GRAGG: We can talk about it when we talk about the model.

MS. EADY: Okay. Thank you. Moving right along, Sue, if you could walk us through proposal number seven, which is pertaining to supplemental environmental projects.

Proposal #7: SEPs
By Sue Briggum

MS. BRIGGUM: Sure. And I will say at the outset we are indebted to Nicholas Tarb, from the Office of Environmental Justice, who gave us a lot of the text to support the discussion of SEPs, on which he is more expert than certainly me and the rest of us.

Basically, a supplemental environmental project after you have the enforcement action, which is predicated on full compliance with all of the standards, and then you address the appropriate penalty. And the question is do the funds that are provided with regard to just the penalty; not the compliance cost, but just the penalty, do they go to the general Treasury or should they instead be dedicated to the community that was potentially impacted or aggrieved by the facilities out of compliance.

As a group we are very interested in the possibility of taking some of the concepts that are already in EPA's SEP proposals to really enrich their application in environmental justice communities. And so we came up with a number of action items that we thought would facilitate really focusing SEP opportunities on community benefit in the environmental justice communities.

First we started with a coordination mechanism just in order to understand better what is going on with regard to SEPs that are already being undertaken. So we recommended that you improve the coordination and efficiency of activities through programmatic integration in the audit policy, compliance assistance, pollution prevention SEPs and environmental justice activities. We want to get all of the people who are working in all of these programs together in order to look at the opportunities.

Second, we wanted to improve the quality of the SEPs, increase the community participation in them and reduce transaction costs. One of our observations was sometimes the SEPs really didn't sufficiently look to the needs of the community and real opportunities.

Sometimes, because of legal constraints, there might not be the community input that would be optimal. And sometimes, because SEPs necessarily involves attorneys on all sides, you can expand a

lot of resources simply doing the document that describes what it is that you are going to do, rather than devoting the resources to the community benefit.

So anything that could increase those efficiencies and focus them on tangible improvement to environmental quality would be a good.

Third we said we thought they should increase the number of pollution prevention SEPs by encouraging states, tribes and municipalities to establish their own policies, not just EPA's policy, establish a system of incentives within EPA and in other groups in order to reward the SEPs that are most beneficial to the community and increase communication between the EPA regional SEP coordinator and their EJ coordinators.

The EJ coordinators probably have a lot of information and valuable insight into SEP opportunities, and we wanted to institutionalize that coordination.

We talked about the possibility -- and this is getting a little more creative. About market based pollution prevention SEPs whereby an entity could go a bit beyond say that particular facility in order to get greater benefit to the impacted community by, for example -- a classic example would be at a site with a community that has multiple sources of pollution.

And the question is would it be possible for the facility that wants to participate in a SEP to pay, for example, for process or control changes at another facility in order to reduce pollution in that area. Would that be possible it if has, of course, the appropriate nexus because it is a requirement that there be a nexus to the impact of the violation itself.

And finally, what you have been telling us all morning. We also asked that they quantify the results of the pollution prevention environmental justice SEPs by tracking them specifically and monitoring them obviously hopefully to see trends whereby we see the focus of resources, we see more benefits put into the communities and more tangible results.

MS. EADY: Thank you, Sue. And if I could just say, you know, EPA Region 1, EPA New England, has a set bank, and communities can -- who have internet access can go on line to their website and they can actually put into the computer SEPs; submit SEPs by computer to the region. And then, when there is an enforcement action, the region can go that bank of SEPs and find something that is appropriate in benefitting the community and meeting all of the nexus requirements.

So that might be a model that other regions might use or maybe they have their own models. But I do suggest that we take a look at what EPA Region 1.

The other thing I will say about it is that there has been a move, and I don't know if it is moving forward. But I know that in Massachusetts there was some discussion of the state linking to EPA's SEP bank so that there weren't separate banks and violators could just sort of go to this one bank and find projects.

Eileen, again you are looking at me like I am crazy.

MS. GAUNA: No. I am just tired. Sorry.

MS. EADY: With that comment that I made, I will open it up now for the rest of the council to comment.

MS. GAUNA: Well, actually I was looking at you kind of crazy, because I have a question about that "D". I assume that these banked SEP credits are for the enforcement phase. They are not for providing any kind of appropriately related offsets, and I think that should be clear here.

MS. BRIGGUM: That is what was intended.

MS. GAUNA: And secondly, I am a little bit worried about benefitting the impacted low-income and minority communities or other communities with an appropriate nexus, and I guess I would just be concerned that the purchase of SEP credits benefit the community that was impacted by the violation, not another community. I think that should be made clear.

MS. BRIGGUM: I think that was intended by the nexus. But you are right. It is a good clarification.

MS. GAUNA: Because it said or other communities.

MS. EADY: And one question I would just have is that the next requirement -- I mean, this might be something that is in EPA's SEP policy that maybe we need to recommend is changed or updated.

MS. BRIGGUM: Actually I think in other community you are talking about there is if the facility isn't located in the environmental justice community, they will have to benefit whatever community that is, and I think that is why. We didn't want to say that if you were -- if you had a facility that had a SEP in an upper income community, for example, that you wouldn't be able to look at this possibility. We didn't want to rule it out and say it was exclusionary to environmental justice communities.

MS. EADY: Okay. Thank you. I don't see any other cards up.

MS. SUBRA: She doesn't have peripheral vision.

MS. EADY: I'm sorry. No. I don't have peripheral vision, Wilma. Okay. So Wilma and then Connie.

MS. SUBRA: We have had a lot SEPs and BEPs at the state level and the federal level, and we had a lot of discussion at the Region 6 listen session on that issue. And the proposal was put forth when the agencies doing enforcement -- they can't tell us who they are doing it against or what they are doing, but they are always looking for these beneficial environmental projects.

So they could sort of tell us through a local or statewide environmental group we are having an air enforcement in the general county of this. Do the community members in that area have any SEPs they would like to put forth for us to consider; so that you don't know what facility it is going against.

But I think that is real important because, as we go through this multi-stakeholder model, if the word comes down from the state or the feds that in this general area we have got enforcement coming up that we could do some SEPs, we can then build it into the model and go to the people who are working on the multi-stakeholder model and say what kind of issues in pollution prevention could be suggested to EPA or the state they could work in.

So I think it is tying all of the pieces together, whether you come in from the bottom or you come in from the top. I think it is really important, and this is one of the crucial things that, for the most part, the community has been omitted from until the public notice comes out and then you get a 30-day comment on the public notice.

I don't think that it is important that the community get in on the very early stages without hampering the enforcement sensitive nature of the negotiations over the enforcement.

MS. TUCKER: I want to go back to D again regarding that nexus statement. What about just having language that says benefitting the impacted community and just move everything else out? Because if the community is impacted then it should be able to. The only concern I have about SEPs is that.

In some experiences that I have had the agency who has been in non-compliance and is fined ultimately can determine and approve the SEP. There is something wrong with that. I am wondering if we could develop some sort of recommendation where the industry who has been non-compliant doesn't have any say-so other than to pay a fine.

MS. BRIGGUM: Actually what I am hearing with regard to the SEP banking process might address your issue, because you have the difficulty of it is an enforcement action, and therefore, it is confidential at that point, which means that the burden is placed either on EPA or the violator to come up with a SEP.

But you are right. What you want to do is build this into the community; so that if we put in a very strong recommendation with regard to the bank, that would give you the opportunity to have that there, and it would be, you know, predating the discussions on a particular facility and it would allow the agency to say this is what is needed and what the community wants to respond to.

And frankly, I think from the business community that would really be helpful, because they aren't intending to just come up with something useless. The whole point is do you want to do something that the community really finds desirable. So, that would be a big

benefit.

MS. TUCKER: Now I am concerned about this notion that you build a bank and then nobody knows who was in non-compliance, who was fined, et cetera. I have a problem with that. In fact, my understanding is that enforcement actions are public.

MS. BRIGGUM: Yes. When you get the 30-day notice. But there is this disjunct between the discussions and the announcement and the announcement includes the SEP. So what you want to do is have a database in the area perhaps in terms of these are the projects that we should be trying to select from, and then this wouldn't substitute for any of the public notice and participation and public availability information or enforcement. We wouldn't want to suggest that.

MS. EADY: Eileen, if you could be very fast.

MS. GAUNA: One thing I think we have to be careful with in the SEP section is that we don't create a scheme whereby polluters can think that they can just purchase SEP credits to violate willy-nilly, and so I think there has to be something in there that sort of reaffirms existing penalty policies that have a gravity based component to them, that this doesn't excuse the -- you know, that even though it is through a SEP, that you still have to capture the economic benefit gained from non-compliance and you have to add on to that a gravity based component to the -- what otherwise would be a penalty, because I don't want it understood that this somehow does away with that aspect of enforcement.

MS. BRIGGUM: That was not intended.

MS. GAUNA: Was that fast enough?

MS. EADY: Yes. That was an excellent point. So, what I am going to do here is, because we are running late, we have about an hour to cover six more proposals. So obviously we are going to have to do some moving around.

For the moment what I thought we would do is rearrange the order that we discuss them so that we are taking the ones that I think will be the most engaging and have the most discussion around them.

So, here is what, actually Charles and I are thinking.

Go ahead with number nine, tribal lands, Tom. Then move on to number 11, which is incentivize collaboration; number 10, international; number eight, transportation; number six, product and process substitution, and finally, number five, green development and brownfields.

MR. LEE: This is not order of importance, but in order of what the issues are. So this pretty much is our determination that that was not going to be one where there is not going to be a lot of disagreement. It doesn't mean it is not important.

MS. EADY: So we thought we would just give you 30 seconds for that one. So, Tom if you would go ahead and guide us through number nine, tribal lands.

Proposal #9: Tribal Lands
By Tom Goldtooth

MR. GOLDTOOTH: Okay. Thank you. I was having my personal wager here on whether or not we were going to get bumped. But thank you very much for this priority to come up.

I would like to also compliment Samara, one of the consultants that helped out on the project. With Dean, myself and Coleen she did a series of interviews, and a lot of the interviewing was very effective with putting the text together with this, especially on the tribal portion.

I am not going too much into the background. The comments that I made this morning, as far as the various comments from various members, I think everyone understands some of the uniqueness that we have and also some of the similarities and concerns that we have around environmental justice and pollution prevention in Indian country.

Those of you have that have questions about the background in this consensus proposal, now is also the opportunity to add those.

We felt that information is very important, and also, established programs by the agency that will help stimulate pollution prevention programs within Indian country. But that is very connected to EPA's

commitment to help provide technical assistance and funding to tribes to building the overall environmental protection infrastructure, and that is something that tribes are still tasked to do.

And one of the recent concerns that has been emerging now is the implementation of our programs. So that is something that is very important for consideration, is the implementation of pollution prevention programs in Indian country.

We also recognized three sectors in Indian country that have roles. The tribal government, and the tribal programs they implement, and within pollution prevention the recognition of the educational, the tribal educational institutions, especially our tribal colleges, as having a role in educating our tribal leaders in our community.

And also, the non-profit, the tribal organizations. With NEJAC you see a lot of representatives of tribal members who organize non-profit organizations. In fact, some of those are chartered by the tribe, versus getting it chartered by the state. So there are also tribal organizations that have a role to play in promoting environmental justice and pollution prevention in Indian country.

And also, the importance of culture and the values and valuation of how culture and our close relationship to the land, our spiritual relationship and spiritual values plays a part in not only formulating the standard setting, but a lot of the mechanisms for addressing pollution prevention. Indian country is closely tied to culture within our communities. So it is very important.

And the concept of establishing partnerships. Tribes are now developing -- are becoming very effective at developing our own research programs, our own health programs. So partnerships between multi-stakeholders at the tribal level is very important in this initiative.

I am going to jump right into the action items. Action item one is EPA should provide or offer assistance to tribal governments who need to fill the enforcement gap by DITCAs, Direct Implementation of Tribal Cooperative Agreements.

And that is a recent initiative that emerged during the past 10

years as we started to developing our own environmental programs; is working on mechanism in cooperation with the EPA where through these cooperative agreements the tribes are able to the inspection of the facilities and make a report to EPA. And, in turn, EPA has a responsibility to make sure that the facility is in compliance.

This is a very critical issue in Indian country and our tribes. It relieves our tribes of any liabilities and risk issues.

Number two, or B, EPA should offer assistance to tribal governments in the drafting and implementation of tribal and environmental policy acts. What we call TEPAs. That would be our version of NEPAs; that include pollution prevention requirements.

C) EPA should provide or offer assistance to tribal governments to engage in land use planning and economic development activities under tribal law to promote pollution prevention as another approach to advance pollution prevention activities on tribal lands.

Four, or D) EPA should provide or offer assistance to tribal governments to develop walkable neighborhoods, incorporating smart growth principles, using GIS systems technologies to assist in land use analysis and planning are strategies for incorporating pollution prevention in development projects.

E) EPA should provide or offer assistance to tribes, tribal education institutions and native organizations to institute educational programs to advance pollution prevention in and near tribal lands.

F) EPA should work with other federal agencies to provide or offer assistance to tribes to promote pollution prevention initiatives and industrial development, such as mining extraction operating within and near the lands of tribes and Alaska Native Villages.

G) EPA should provide or offer assistance to tribal governments to develop MOUs with adjoining governmental entities, such as states or municipalities. These MOUs can also be generally helpful to addressing pollution prevention issues and implementing pollution prevention programs. EPA should investigate to determine the extent to which such agreements already exist and whether such existing agreements can be used as a model. Those are our action items.

Thank you.

MS. EADY: Thank you, Tom. We are now open for questions and comments on number nine. Jana, I see your card.

MS. WALKER: Thank you, Tom. I believe those are very good action items, and my only comment would be again wherever the word assistance shows up in those items, to preface it with technical and financial. Oh. Also on E, where it says advance pollution prevention in and near tribal lands, I would add or Alaskan Native Villages.

MS. EADY: Thank you, Jana. Pam.

MS. KINGFISHER: Thanks a lot, and I really appreciate the work of Tom and other natives on this piece. I know how hard it probably was.

One thing that has come up for me, and I think I read mention of it in the community piece, is around sacred sites as needs of conservation or if there is a way that we could ask for -- or if you feel that is already in here, Tom, around that sort of respect around sacred sites and recognizing this is a part of the lack of capacity of government to realize these; the importance of those pieces of land.

MR. GOLDTOOTH: Yes. That is noted. In a discussion I had with Dean Suagee, who isn't here, but will be here later, we talked yesterday about the need to strengthen that paragraph about cultural and spiritual values, and I think that would be an appropriate place to enter sacred sites as one of the issues.

MS. EADY: Graciela.

MS. RAMIREZ-TORO: I would like to add that even though this section is -- for this proposal it is related to American Natives, there is many other areas and territories of the U.S. that some of these proposals would apply. I am working with the government in the territories where you have to apply federal environmental laws.

Some of these proposals should help. For example, E, EPA should provide or offer assistance to tribes and tribal governments. This also could apply to commonwealth governments and other governments on the U.S. --- where we apply the federal laws.

MS. EADY: So?

MS. RAMIREZ-TORO: I guess what I am saying is I know it doesn't go here, but I don't want that it gets lost in the whole document.

MS. EADY: So maybe there needs to be some separate way of addressing -- I mean, it seems like this, number nine, has provided a framework and maybe that framework can be applied so that we are not missing U.S. territories where these might also seem to make sense. Okay. Thank you. Terry.

MR. WILLIAMS: It just occurred to me, for the first time in reading through this again, that EPA could also assist the tribes in educating state and local governments on pollution impacts to tribes, that a lot of times, in dealing with these problems, jurisdictionally it is difficult for the tribes to deal with them alone and we have to be inclusive of other governments. So I think we need to capture that somehow here.

MS. EADY: Thank you. Okay. So, if we don't have anymore questions on this one or comments, then Ken Warren, I will ask you to walk us through proposal number 11.

Proposal #11: Incentivize Collaboration
By Ken Warren

MR. WARREN: Thanks. Let me see if I can get this close enough. Proposal Number 11 is to provide incentives to promote collaboration among communities, business and government on pollution prevention projects in environmental justice communities.

It really starts from the proposition that in many instances even full compliance with environmental laws by business does not adequately address community concerns, and so it tries to create a system of incentives working through the collaborative model that we discussed before for conditions in minority and low-income communities to be approved.

The role of government in this process is really as a facilitator to provide the resources and incentives that will cause businesses to do

what communities would like them to do in a collaborative way. The action items set forth what I call a buffet of resources and incentives.

They are the ones that we came up with when we thought about these issues. You all may decide that some of them are not appropriate. We can certainly talk about those. Or alternatively, you may have additional ones in mind that ought to be added to the list, and we would invite those additions as well.

So, action item A is primarily directed at incentives and resources to communities, and we all understood that the resources are for capacity building, for disseminating literature and written information. There is also what I consider to be a very important part of action item A, which is to consider input and environmental risks to communities when issuing permits and setting standards.

That essentially says that the communities ought to be partners with government and business in permitting and standard setting activities, which I think, in the long run, would lead to the kinds of environmental improvements that we all desire.

The EPA is being asked to establish, within its office of enforcement and compliance assistance, a knowledgeable and technical assistant staff to coordinate EPA outreach efforts and facilitate dialogue among the community, business and government to identify projects to identify projects and to educate communities, et cetera.

We thought it was important for certain individuals to specifically be tasked with these goals, because if it disseminates more broadly throughout either the office or throughout EPA, there might not be any responsible group that we could look to to say why is this happening or what ideas do you have.

It is not intended, however, to put sole responsibility for these efforts in the hands of these technical assistance people. They are the seeds of these ideas, but it really requires an agency-wide implementation.

In action item B we came up with the concept of a priority pollution prevention community, which would be a community that is

exposed to sources from which the conclusion is that that community is at a greater risk than most other communities. We would anticipate that the initiative would focus on communities of color and low-income communities, reflecting the commitment to environmental justice.

The term we think is important. We don't know if we came up with the best term. What we are trying to do is to channel resources to those communities without stigmatizing them, because if somehow they are viewed as communities that have potentially poor health in a way in which it stigmatizes the community, then you may have done more harm than good. So the question is can we identify communities in a positive way for resource purposes without negative connotations, and we invite you to comment on that.

Item C is sort of this buffet of possible incentives to encourage the business community to do more than simply comply with the law, and we started with the notion that historically statutes have been technology based. They are in the pipe, you put some sort of pollution control device at the end, you measure it and if you have satisfied that technology base standard, you are in compliance with the law.

That simply is not good enough to protect the health of many communities, and consequently, we have come up with incentives to go beyond that to, we hope, reduce pollution at its sort, not at the end of the pipe. And the buffet of incentives include special recognition of the business for its pollution prevention activities, a public pat on the back goes a long way, low interest loans and grants for research. I would assume that would primarily be directed to smaller businesses, but not necessarily exclusively.

Expedited permitting. The permitting process is often a big obstacle in accomplishing a change that business wants, and in exchange for expedited permitting businesses may be willing to do more than the law require, and that is a carrot that the agency can dispense.

Consolidated multimedia reporting. What that means is rather than have a stack of large duplicative forms, one for air, one for water and one for waste, consolidated reporting can ease the burden on

industry and in exchange industry could take those resources and expend them to the benefit of the community.

Flexible multimedia facility-wide permits with a single agent point of contact that is within the agency. It probably should say agency point of contact. The thought there is if one looks at these media based programs individually, you might be spending -- industry might be spending millions of dollars for a very small incremental benefit. For example, in water pollution. But could take that money and get a much larger benefit spending it to reduce air pollution beyond what it is already required to do.

In consultation with the community it might be identified that the biggest risk in this community is air pollution sources, not water pollution sources, and a facility-wide permit might channel the environmental compliance dollars in a way that the community wants them channeled and at the same time save money for industry, which would be its major point of interest.

Smart permits that authorize a range of operating scenarios contemplated by the company obtaining the permit. That would give operational flexibility to the company presumably, based on this proposal, in exchange for additional pollution prevention activities by the company.

Compliance options and permits based on pollution prevention technology or innovation are self-explanatory. Increased emissions reduction credits or higher trading ratios where pollution prevention is used in the context of an emissions trading program to reduce pollution in an environmental justice community.

What we meant by that is there are already pre-existing trading programs whereby one can purchase credits and thereby allow your business to continue to emit in exchange for stopping another business from emitting. And normally the environment gets some concession in that trade. In other words, if you get one pound of reduction in another location, you don't get one pound of increased emission in your location. You might get half a pound of increased emission.

What we are suggesting is that those trading ratios could be skewed to encourage industry to buy credits from industries or businesses that are emitting in environmental justice communities, and thereby accomplish the reductions in the environmental justice communities where we most need them.

EPA should communicate pollution prevention ideas to industry through trade associations or other mechanisms. That again is a way of saying, hey, there is a pollution prevention project that has worked in one business. Maybe it is transferrable to your business, for example, because you are in the same industry sector.

If you learn about it and you find out, for example, that there has been monetary savings by the business that is already implementing the project, you and a different business may also be inclined to implement it. So this kind of information dissemination is very important.

Item D is focused specifically on small businesses. They, more than anyone else, need technical assistance from EPA to be able to implement -- to know about and then be able to implement pollution prevention programs.

And then finally, the item E is designed to focus on recycling, and probably particular credit should go to Sue Briggum and her company for not only putting this idea in front of us, but also implementing it in their business practices.

But we think that if partnerships can be formed to recycle waste and EPA provides incentives for the use of the use of the recycled materials so that there is a market for it, that businesses will recycle, consumers will buy and the entire waste production/waste reuse system will operate more efficiently and effectively to the benefit of the communities in which these businesses operate.

So that is -- it is a mouthful. It is the buffet of different incentives, resources and options that we put out there for communities and for businesses, with government acting as a facilitator to accomplish the common goals that we all have.

MS. EADY: Thank you, Ken. Now, Terry. Okay. That was from

the last round. We are open for discussion on number 11. I see Eileen, Bob and then Larry.

MS. GAUNA: Okay. This comment is not going to be short. My first problem is with B, the priority pollution prevention communities. I just want to make an observation that the environmental justice communities worked long and hard for many years to speak for itself and find its own terminology, and one of the very early issues in the environmental justice community, as anybody with a little bit of institutional history within the EPA might remember, is this whole term between environmental equity and environmental justice.

I think that there is a lot of value to letting communities and the movement itself define its terms and not euphemize those terms out of existence. I personally do not know one community who has complained about being stigmatized as an environmental justice community. That issue, in my experience, seems to come directly from the industry/business sector. So, I would just make that comment and ask the committee to re-think that strategy.

In terms of number C, I think there are significant problems with flexible permitting, expedited permitting, facility-wide bubbles, inter-facility trading, and I will go through those one by one.

Flexible permits. Like I said, these permits are a big menu of potential operating scenarios and alternative compliance protocols. Those are really technical, difficult permits to analyze, from a technical standpoint, and I think it would be very hard for the community. I mean, it is hard for state officials, I think, to get a handle on these types of flexible permits, and to ask a community to do so, and in particular do so within an expedited time frame, I think is really problematic.

In terms of granting some sort of a favorable trading ratio or offsets for pollution reduction or pollution prevention strategy, as I mentioned earlier there you have pollution prevention that basically substitutes for compliance, and so that does become a compliance issue. And it is problematic from that standpoint.

Overall -- I mean, sort of to pull back a little bit away from the

technicalities, this whole area of -- I think this is where environmental justice has potentially a really big conflict with what was formerly called re-invention under the previous administration and what was promptly renamed innovation under the current administration, because these trading regimes are hard to -- the trades themselves are hard to measure.

They are hard to verify, they are hard to track and so there is very, very little room for -- when you consider the difficulty of these new innovative trading regimes and then you figure that this is taking place in the context of an environmental justice community that has little or no margin of error because the ambient conditions are so bad, that that is really problematic to promote these type of innovations within environmental justice communities until they are tested and proved to be more enforceable, more reliable, more verifiable in practice. And they haven't yet. They simply haven't.

Now, what I would suggest is possibly an alternative, in terms of incentives, would be to say for pollution prevention projects that operate to prevent pollution or further pollution in environmental justice communities to allow these types of regulatory carrots outside of environmental justice communities and to site shift away from these communities, because these communities already have too many facilities to begin with.

So, if we are talking about flexible permitting, expedited permitting, bubbles and inter-facility trades, why don't you say if you prevent pollution in environmental justice communities, you get these type of regulatory incentives for your facilities that lie outside of environmental justice communities and use that as a regulatory option in lieu of this, what I think is a pretty dangerous strategy to occur within environmental justice communities. That is it.

MS. EADY: Thank you, Eileen.

MR. WARREN: Let me try to respond to that, those thoughtful comments briefly. On the last point, that is probably the easiest, because we thought we had said that and perhaps I need to say it clearer.

In other words, we view the trading programs as providing incentives to trade the pollution out of the environmental justice community. So, I think we are all in agreement on that point.

With respect to flexible permits, I guess the opposite of a flexible permit is an inflexible permit and part of the difficulty with inflexible permits is that it encourages industry to do exactly what the permit requires, and therefore, nothing more. The idea of a flexible permit is that industry and the community can work in collaboration to try and identify these areas in which the community wants the reductions to occur and to channel the industry or business dollars into reducing the pollution in these community identified areas.

I understand that there is a monitoring advantage to saying, look, if you put this particular piece of technology at the end of your pipe, then you are in compliance. But I think there probably is agreement among communities, government and industry that it hasn't been enough to do that, and I am suggesting that with flexibility we can get the best bang for the industry dollar in addressing the community concerns.

MS. GAUNA: Can I respond?

MS. EADY: Go ahead.

MS. GAUNA: I really don't want to start a debate. I think you have made some good points. If that is the case, I personally really have my doubts as to whether a flexible permit, in terms of multiple operating scenarios and compliance protocols, because they are so heavily technical, would work. Maybe they would in certain context, but you can't couple that with an expedited permitting process.

MS. EADY: Thank you. We are going to have quite a bit of debate, I think, on this one and maybe a lot of work to do on it. One thing that I just want to say is that since these are in the consensus proposals, that -- I am just throwing it out there. These are the consensus proposals. So, if there isn't a consensus on it, we are going to have a problem. Let me just continue on. Bob Harris.

MR. HARRIS: Thank you very much. I have been quiet for a little while. I think these are some good recommendations. I have a

slightly different recommendation I would like to put in front of you.

In view of what I have heard so far about all of these alternatives that could be pursued, one I think that is rather obvious that I don't think is controversial at all is businesses often have a number of sites in the environmental justice communities, as well as outside of environmental justice communities that are brownfields.

One way you may want to think of incentives to have them prioritize those brownfield sites that are in environmental communities for clean up first; for addressing those sites first versus elsewhere, and I think that may have some significant impact.

MS. EADY: Thanks, Bob. Let me tell you where we are right now. I have Larry, Judith, Tom, Connie and then Tseming. So, Larry.

MR. CHARLES: Okay. This might be an appropriate place to talk about the standards I alluded to earlier, and I had an opportunity between that to make notes of some of those standards I would like to propose. And also, in this area of discussion this is that new frontier, that new area of environmental protection that overlaps the concerns over the years by environmental justice leaders that is a little stricter.

When we talk about alternatives to a one dimensional strategy, enforcement, and start looking at other possibilities and options, the first thing is you have got to answer in the question is what it is in for me in the perspective of all of the stakeholders around the table. And when you talk about what is in it for industry, it gets very sticky, in terms of what are their incentives for being at the table and a part of these alternative processes.

When you talk about what is in it for communities, it gets very broad because of the fact that, number one, what is in for us is an opportunity to address the existing polluting effects of the facility that is there and may have been there for generations and will continue to be there unless somebody finds a way to achieve the first goal. And that is to stop the polluting effect of the facility as we continue to confront, politically and technically and legally, all of the issues. But number one, we want to stop the polluting effects.

There are enough incentives around to bring people to the table.

The question now is what would, in my opinion, be an appropriate settlement or what are the elements of an appropriate settlement in addressing all of these concerns?

What I want to do is make an attempt to describe what I believe would be the elements of a successful agreement through conflict resolution, mediation, negotiation; whatever, and then have that included in this section of the report. If we are going to talk about incentives and in terms of possibly financial, tax breaks or of regulations and other things like that, then there have got to be some conditions, I think, under which that discussion can occur.

Number one, and above all else, the health issues must be addressed fully before discussing anything else, and the language I have in here -- all of this stuff is written. I will just ramble a little bit, but I am going to refer to the committee for the written statements I have.

Based on the abatement of the polluting effects of existing facilities through modernization of their operating facilities, through technology and operational procedures, completely addressing all known health issues. That should be the first thing.

If the operator cannot show that whatever plan is being developed or whatever alternative is being put on the table does not fully address the health issues, then the conversation is over right there and enforcement comes right to the front as the principal strategy from that point forward.

If, through this plan, the operator is able to develop, to the satisfaction of the community, a strategy to address the health concerns, then we can go to the next point, and that is independent testing. After the abatement, independent testing utilizing an entity selected by the community members and paid by the operator/applicant.

I think that the integrity of any agreement is compromised when the applicant selects the entity that comes in to do the testing to prove, yes, everything is clean and that all the stuff has been addressed fully and the water is drinkable and the air can be sold at

hospitals. I think that if we add it in community control over the selection and the management of the testing entity, it adds credibility to resolving and increase the opportunity for an agreement to be reached between the community and the operator.

The third element that I think should be in there is one that talks about ongoing compliance. You may reach a point where, through your efforts, you are able to achieve a state of compliance in the operation of facility and conduct a test to show that we are now in full compliance with the emissions in air and water and, you know, impacts, but that has to last on an ongoing basis.

So the next element, entities; sole and exclusive control to the community on ongoing testing and monitoring recommendations. I would think that no industry would propose a facility that it intends, at some subsequent point, to operate out of compliance and that it would not be threatened by an independent review by the community members utilizing entities selected by them to do ongoing testing and monitoring of the facility.

I like the change that I have seen, other than the voices from industry, that is coming out here now. That is very progressive and appears to be open and embracing community participation and involvement, and this is the proof in the pudding; that you would agree to allow independent community testing on an ongoing basis. Not annual or semi-annual at any period, but allow sporadic reviews by a community when it feels that the operation of a facility is threatened.

Then what is in it for industry is this fourth piece; is that there be some consensus agreed to up front regarding the economic liabilities of the implementation of an overall solution. If you spend $10 million to clean up this facility, then what? What does the operator or the industry get as part of that, other than one coming into compliance with the law in terms of regulations? That is one thing.

But I think there really should be something else in there that incents industry to be very generous in being a part of this process and putting forth substantial solutions. That again goes beyond

compliance and goes to the point of where are you looking at a facility that has been a burden of the same community for generations now becoming a safe economic engine possibly to drive the revitalization of the same community.

And so in it there has got to be something for industry inside of that and that is something that the community and that particular operator needs to negotiate at that point in terms of working out some type of settlement.

And finally, the last point in what I think would be a model for resolving environmental conflicts would be post-community benefits. You know, you have a facility that has been, as in the state laws of Connecticut, described as the burden of waste management and waste treatment and we have known. That is why we have this whole environmental justice movement; that the distribution of that burden has been despaired. It has been on communities of color for the most part.

I would think that after we have put in the -- first cleaned up the facility with implementation of all of the technologies and operating procedures and all of that stuff, that we might look at revenues generated by the facility in the community and look at rent or basically post-community benefits in sharing that revenue in some way to drive the revitalization or the rebuilding of the same community.

So I think, if you look at dealing with the dispute and an issue where there has been a huge impact and an environmental justice issue exists and there is a willingness on the part of all stakeholders to come around the table to come up with something that works for everybody, I think those, in my opinion, are the essential elements of what would be considered a just solution.

MS. EADY: So, Larry, you are going to provide that language?

MR. CHARLES: Yes.

MS. EADY: Thank you. Thank you very much.

MR. CHARLES: Response? Yes, yes, yes and yes. Right?

MS. EADY: Did you want to respond, Sue?

MS. BRIGGUM: Just one of the complications here I think, and

it has come through before, is the distinction between doing proposals with regard to permitting and where you get to compliance versus pollution prevention, which is --

MR. CHARLES: I didn't hear what you said. Could you get the mike closer, please.

MS. BRIGGUM: Oh, I'm sorry. One of the challenges we have here is making sure that we are distinguishing between new recommendations with regard to the permitting process and coming into compliance itself and pollution prevention, which is beyond compliance, and I think your model includes both elements.

So it goes farther than the report's premises, which is one of the challenges in terms of how we would incorporate the recommendations into what we are doing with the report.

MS. TUCKER: On Larry's comment, could I? You gave some good recommendations, Larry. But regarding the incentives for compliance -- and we had discussions in the workgroup about that, and we agreed that there should be no incentives for businesses to comply with the law. That -- they either comply or they should face the consequences of non-compliance.

All of your recommendations, except that one, I like. So we wouldn't have consensus, I don't think, on giving incentives for companies to come into compliance. That is one.

Two, while I am at it and in the essence of time, while we agree we have consensus that we ought to give incentives for P2 that is beyond compliance, we did not agree -- we did not have consensus on the sort of language. So really, what we are doing here is we may have wasted some time here because we don't not have consensus on this, as the chair indicated, and we have to go back to the drawing board on this, because there is no way that I am going to be tarred and feathered pollution trading.

You know, that I know is not something that the communities that I represent would agree to.

MS. EADY: Thank you, Connie. Was that a comment that I had you in the cue for?

MS. TUCKER: That was it.

MS. EADY: Okay. I am going to get back in the cue then.

MS. TUCKER: But the point I am making is that I want to propose now that we withdraw this item C and go back to the drawing table and come back with something where we have consensus.

(Pause.)

MS. EADY: Do people feel that is appropriate?

MS. TUCKER: As a consensus report it is. This is a consensus report.

MR. LEE: Yes. Let me, just as a point of clarification. Connie, what you are saying is that you are not in disagreement with the number 11 as consensus in terms of providing incentives, but rather, 11C?

MS. TUCKER: 11C.

MR. LEE: 11C. Okay.

MS. EADY: The other thing though is we can -- we can do that, but there is still a couple of people who have their cards up, and I wanted to make sure that if they had some advice for the workgroup, that they could go ahead and give that.

MS. TUCKER: That is fine.

MS. EADY: Okay. So, Judith passes. Tom, Tseming. Did you want to make your comment?

MR. GOLDTOOTH: We were looking at specific recommendations?

MS. EADY: Just to clarify, Connie suggested that we withdraw 11C. With Charles' clarification, it is 11C. So, I wanted to give you an opportunity, since you had your card up, to either comment on the one that we are withdrawing or --

MR. GOLDTOOTH: I do.

MS. EADY: Or any other part of 11.

MR. GOLDTOOTH: No. As a member of the working group I do have some concerns about 11C, and that is why, in the series of conference calls, if you miss one conference call, that may have been that one section.

In respect of a lot of the communities that a number of people here work with, I have not heard a consensus in even a majority of the communities that promote trading mechanisms. Okay? As well as supporting flexible conditions and many other alternatives.

I think industry has been more prone to introduce those as alternatives, and I think that because of the reason -- I can't feel that -- with our constituency we look that there hasn't been any support of trading mechanisms when it comes to toxics. Okay? So I think that I need to respect that.

We haven't had enough dialogue, if you could say, in the people of color and tribal communities about these discussions to feel that that is coming out of a body that promotes environmental justice and also promotes the bottom up principle. So I would be supportive in withdrawing 11C.

MS. EADY: Okay. And, Tseming, we are not forgetting you, but I see that Sue wants to respond directly to Tom.

MS. BRIGGUM: Just a point of clarification. The trading idea actually originated with Bernice Miller-Travis and was discussed in the enforcement discussion of the trading policy with regard to trading out of environmental justice communities. So you wouldn't be doing something flexible within it, but you would be eliminating, not just reducing; eliminating sources of pollution in an environmental justice community as part of a permitting process in a completely different community, and that is clearly not expressed as clearly as it could be.

But this wasn't just something weird. It was an attempt to see whether or not that idea that had been discussed in the NEJAC before had some usefulness with regard to P2.

MS. TUCKER: She was dead wrong on that.

MS. EADY: Are you on this point, Eileen?

MS. GAUNA: Yes.

MS. EADY: Okay. Tseming and Mary, if you will excuse me, Eileen just wants to respond to this and then, Tseming, you are on. I promise.

MS. GAUNA: Sorry, Tseming. Sue, was the discussion along

the lines that I -- the amendment that I proposed, that you allow these regulatory incentives outside of the environmental justice communities in exchange for P2 within environmental justice communities?

MS. BRIGGUM: Exactly.

MS. GAUNA: But it has to be very clear that these are not strategies that are appropriate in environmental justice communities without further testing.

MS. BRIGGUM: That was the intention, but it clearly didn't end up that way. I think one of the burdens is we kind of plunked a whole bunch together at the end in shorthand, and it is really communicating with the precision that would be appropriate.

MS. EADY: Okay. I am going to have to go to Tseming now. Connie, I saw your card go up, but we are going to get to you.

MR. TSEMING: This will actually be a very short comment. I was originally going to echo Eileen's comments in her concerns about the trading issues, but I was also going to point out that there are actually, I think, at least two different things going on here in terms of these incentives.

One is that I think sort of benefits in terms of eliminating what I think of as inefficiency. I mean, when we talk about expedited permitting or things such as recognition of business, those are really rather unobjectionable here. I think it is those things that -- the kinds of incentives that are, in fact, supposed to replace compliance with regulatory requirements.

I think that creates issues, and again, I think in that context it definitely raises the concern about enforcement again.

MS. EADY: Thank you. Mary and then Connie.

MS. NELSON: It seemed to me that in 11C that there is incentives, but there are also some other things here. And I am just wondering, Connie, if we could separate out the incentives thing, which I can understand why you are against, from the other pieces of C.

MS. TUCKER: Yes. Perhaps. I don't want to answer too readily

because I think we need to wrap our minds around it and rewrite and probably we will end up doing something like that. Is it my turn?

MS. EADY: Yes.

MS. TUCKER: Okay. Just for the record, I want to mention something. A principle of environmental justice is not -- it is not -- one of the principles is not, not in my backyard. The principle is not in anybody's backyard. So we cannot -- I would think an environmental justice body would be about trading off pollution to other people, even though they may not be disproportionately impacted.

In addition, consistent organic polluters don't stay in one place anyway. So, to play them out somewhere else doesn't mean we won't get them anyway.

MR. LEE: Let me say something. I think that it has been mentioned and that -- you know, that it is a really a very positive thing that members of industry have saw it fit to become engaged in this process, such as they are really putting forward some ideas and proposals. And I think that the -- that should be taken note of.

However, the issues that are arising out of this discussion are on many different levels, and it isn't just a question of responding to whether or not one particular item in here, but how do they fit into a larger set of issues, some of which are philosophically based, some of which are communication issues, meaning -- you know, the understandings and perceptions of what is being put forward on the part of many different groups.

In particular I think the concern here are the EJ communities. So I would suggest that this whole -- you know, have some really concerted look at it. And I would suggest that not only members of the workgroup, but those of you on the council that wants to participate in a small group and really kind of talk through these kinds of questions do so.

Okay. So -- and that is not something that you may want to -- I just want to throw it out to think about, and when we go through the next step of the process, that could be added on as another item.

MR. WARREN: Let me respond to it. I think that since what we

are trying to do is to come up with a set of consensus proposals, and it is pretty obvious that we don't have consensus on this one, that we do need, in some respects, to go back to the drawing board, and the question I think is on various levels.

The first is if one assumes compliance, because this is not intended to be a substitute for compliance, it is intended to go beyond compliance, is there some collective judgment by the NEJAC that appropriate incentives will define the workgroup with what appropriate means, but that appropriate incentives ought to be offered to industry as well as to communities, because if there is a philosophical view that incentives should only go to communities and not the industry, then working on the details isn't going to help.

If, in fact, we think there is a benefit to providing appropriate incentives to get business to be engaged in the multi-stakeholder process, I suggest that there is a reason to have all stakeholder groups involved in that process. Then we need to figure out what incentives will actually provide a benefit to communities and not raise the kinds of problems that community members are voicing today.

So I think we should at least find out whether or not it is worth going to step two. I hope it is. But if it is not, we ought to know that.

MR. LEE: Yes. This is complicated, because -- you know, one of the really important elements in these discussions is you need to understand where Sue and Ken and Keith McCoy and others are coming from. I mean, they are trying to figure out a way to engage, in a positive way, members of a group that is going to be very important for reaching solutions.

And so that is why I think it is important that they are arguing for the things that they think are important. And so, the question that you are asking, Ken, I think is a very important question. But I think it needs -- I don't think you -- I think putting it on the table is very important. I think a considered discussion of it is going to be even more important, and I don't think that we should -- or I don't think that it is wise to expect that there should be an immediate response to that.

I think that all of you should think about this and do so from a whole lot of different perspectives, because -- I mean, the other side of this is, of course, the NEJAC or anybody advancing a set of views as perceived on the communities' part to be negative is also not going to get anywhere. So this is not simple.

MS. EADY: Okay. It is 3:30. So, what we are going to do now is take our scheduled break from 3:30 to 3:45. And then, when we come back, we will tell you what we are going to talk about.

MR. LEE: I think -- I mean, Veronica and I talked about it. It was very important that we talked through the tribal one and the last one. I think it is also more important that -- the issues that came up around enforcement and kind of putting a cap on it so that you all understand what you are doing. This issue of precaution and the multi-stakeholder was positive, which means that you are not going to be able to talk, as a group, around the other proposals.

I think that what is going to be required is that you re-submit your own comments about that. But I think that that is the wiser way to go.

MS. EADY: And let me just review what proposals they were that we didn't talk about. Number five, green development and brownfields. Sorry, Sue. Number six, product and process substitution. Number eight, transportation. And number 10, international. That is cross-boundary issues, and I know, Terry, you mentioned that a couple of times. Several times.

So, those are the ones that we are not going to get to. Okay. So, let's take a break and come back at 3:45.

(Whereupon, a brief recess was taken.)

MR. LEE: Hello. Can I ask that we reconvene?

(Pause.)

MS. EADY: Okay. What we agreed that we were going to do is next take the multi-stakeholder collaborative model. We are going to have a presentation from Wilma to sort of set the stage for the discussion, and I know we have a lot of questions about it. In particular Richard, who was just in the room a moment ago, and hopefully he will come back soon, because I know he wants to

engage in that conversation.

That is going to be followed by the more extensive conversation on enforcement and the precautionary principles. So, from 4:15 to 5:00, where we have the synopsis of discussion and next steps, we are actually going to take the discussion of enforcement and precautionary principles.

But right now I am going to ask Wilma to set us off on the course of the multi-stakeholder collaborative model discussion.

Multi-stakeholder Collaborative Model
By Wilma Subra and Andrew Sawyers

MS. SUBRA: Okay. We have sort of been talking around the multi-stakeholder process. You have heard a lot of the principles leading up to it. Now I would like to give you a snapshot of what we envision as this process.

(Slide)

First of all, all stakeholders must be engaged in the process and willing to actively participate, and that is crucial because you can just start off and then, after a little while, fade off into the background and come back a year later and go like, what do you mean? That is what you are doing? I didn't agree to that.

Every step of the process has to involve the multi-stakeholders. The process cannot move forward if it doesn't have the involvement of the multi-stakeholders, and there has to be opportunity for public education and public input provided throughout the process and particularly at key points where decisions are to be made.

The process must be community based and designed to consider environmental issues impacting the specific community. The involvement of communities and tribes is critical to the process and just as important as the involvement of government, business and industry.

And, Jana, when I say community, I mean the tribes as well. This is our abbreviation. We are going to fix that in the document.

Community and tribal commitment for long-term monitoring of

the success of the process is important, and I know a lot of times communities and tribes lack the resources to actually do the long-term monitoring. But there has to be a process where you can set it up and they are watching the long-term progress.

(Slide)

This process is started when the affected community or tribe actually petitions to initiate the multi-stakeholder process. The only way it can be initiated is if the community or tribe petitions for it.

(Slide)

After the petition occurs there is a mechanism for identifying and engaging all the local affected stakeholders. These are community groups, tribal organizations, NGO organizations, civic organizations, local governing authorities.

(Slide)

You have to identify and engage all local affected stakeholders. That includes state and federal government agencies and authorities, and here is where it is more than just the environmental agencies. It is the environmental agencies, natural resources agencies, agriculture, health, economic development, emergency response and any others that have jurisdiction over things that go in the community.

Business and industries that operate facilities in the community and that actually service the community area need to be engaged and business and industry organizations need to be engaged.

(Slide)

You convene a process involving representatives of all of these stakeholder groups that you have identified, then you research and compile the environmental issues within the designated or the designated community. Once you have researched and compiled these environmental issues you set priorities based on the issues and then you develop a multi-stakeholder approach to addressing the issues.

Now, at each one of these steps you have a public education and a public involvement that involves a larger part of the public than the stakeholders you have working the process.

(Slide)

And finally, you do the implementation of pollution prevention initiatives, with the involvement of the appropriate stakeholders to address these priority issues.

(Slide)

In the long term you review, monitor and track the pollution prevention initiatives, you measure the successes and failures and you evaluate the need for any additional pollution prevention initiatives that need to be down that may have been lower down in the priorities or may have arisen as you attended to one or more of the issues another issue; may have arisen or you may have caused something else to occur. Not intentionally.

So you evaluate the need for initial pollution prevention initiatives to improve unaddressed pollution issues. And Andrew is going to add a few more issues and concerns.

MR. SAWYERS: I want to just add a few points. I would like to re-emphasize the statement that Wilma mentioned. Communities are extremely important in developing collaborative models, but also are very inclusive in terms of looking at other stakeholders. The point that I will re-emphasize is that all stakeholder inputs are necessary to develop collaborative models.

I think this process that developed this report has been very -- has been a collaborative process. I want to go back to one of the comments made this morning by Mr. Yang. You know, how much time we spent doing this. I spent practically at least four hours for like two weeks every day working on this, getting feedback from communities across Maryland to find out what some of their concerns were.

So the model itself is very much sort of indicative of an approach which we think has a lot promise, and I encourage us, as we start to think about forming this model to be more effective, we should at least think about the process that went into creating this.

I think Wilma said it all, but I would just like to re-emphasize that the collaborative model is very important; that we have broad

stakeholder inputs. Communities are very essential to that, businesses, government; all sectors of government. So that is the sole point that I would like to make, that stakeholder inputs are extremely important as we start to develop collaborative models.

MS. EADY: Thank you, Wilma and Andrew and also Sharon who put the work into the PowerPoint presentation. So we now have the framework for the collaborative model that we have been discussing in the pollution prevention report, and I want to open it up now for comments and discussion on that model. Mary Nelson, I see your card is up.

MS. NELSON: Thank you. Just like the gentleman yesterday, in talking about that collaborative model, when we talked about the six people and they got tired, I think if we want the community and we know we need the community at the table and we need it beyond coming to some agreement, we need it in the monitoring and all the rest of it, we have got to figure out a way to fund that.

I think that in Baltimore with the cars worked because they got a little grant and that helped to support a staff position with that community organization. So I just think that there has got to be -- we really want a collaborative model. Other people are working on their time. But folks in the community to come to these block meetings and to hang with it for a year and two years and be involved in the monitoring, we have got to figure out a way to put some dollars into that to make that possible.

MS. SUBRA: And if you remember the earlier presentation that I gave when I was doing proposal number one, it was that EPA has to provide and it was resources and -- building capacity and resources for the community to participate in this process.

MS. EADY: Any other comments on the model?

(No response.)

MS. EADY: Great. Okay. Well, what that means then is that -- and thank you for that comment, Mary. What that means then is we actually have a little bit more time to go ahead and get started on the conversation about enforcement and about the precautionary

principle. But, before we do that, Charles has a comment.

MR. LEE: I just want to ask -- and this came up, and I just want to make sure that we don't lose it. John Cross, from the Pollution Prevention Office, asked me get a read from you on the proposal number five, which has to do with green development in brownfields and smart programs, and that is not -- I don't think that we need to go into any discussion around it, but I think it would be very helpful for him is -- and -- some sense of an affirmation from you that this is an important area to look into, without going into any details.

And, Sue, if you want to say anything, you know, you can do that.

MS. BRIGGUM: I just want to say, in 30 seconds, most of the ideas came from the NEJAC waste and facility siting subcommittee, which did a series of hearings and reports on brownfields revitalization, as well as staff the ASTM standard that changed the brownfields clean up standard to be based on dialogue with the communities. So it is intended to track materials that you have seen already and to further encourage that kind of collaborative effort in brownfields.

MS. EADY: Larry.

MR. CHARLES: Just a quick comment to add. I do support what is there. There is just two things that I wanted to ask that we expand on maybe in this section. One is that there have been discussions of environmental justice being in the way of urban revitalization. In fact, I believe environmental justice is the way towards urban revitalization.

Inside of markets that exist in the United States there are no stronger markets than the urban communities. In many of these suburban towns you can't squeeze another McDonald's into the similar sites where gas stations are now. But now our urban communities have been abandoned and neglected for retail and commercial development, and as a result of that they now represent the strongest markets left in America.

And so, with that I am asking that we look at adding, even in

here, a discussion about level of remediation as part of the solution for urban revitalization. In our community now we are going through a project where possibly one of the obstacles to implementing a revitalization project in our community was the cost of remediating the impacts of an underground storage tank.

The stuff traveled under the parking lot area, and we were able to come up with a remediation plan that allow us to build on the site without having to do 100 percent remediation. In the case where we can address clearly the fact of health impact, human health impact, I think that in this section there might be some discussion about that.

Now, I don't know where we all are. I know it is a kind of sensitive thing, especially from a community perspective, but I believe we really need to take a look at the obstacle of providing development opportunities in urban communities and how 100 percent remediation may, in effect, be a deal breaker.

So in the case where we can address levels of remediation without compromising human health, I think somewhere that discussion needs to be raised.

MS. EADY: Thank you. I just want to say again, just to be clear, that the consensus proposals that we did not cover in discussion were five, six, eight and 10, and I want to reiterate to the council -- not just the council, but also to the audience, that we encourage you to look very closely at these proposals and submit your written comments on that so that we do get the full breadth of not just the council's input on these proposals, but also the audience.

The workgroup does need some guidance. We do need a fresh eye to take a look at these issues that we have been looking at for months now as a group. So I just want to reiterate again to have a look at those and submit your written comments. Ken Geiser.

MR. GEISER: I think, as I have talked to people over the afternoon, I have heard a couple of other pieces that didn't seem to appear in some of the proposals that we are making, and I speak of Connie's concern about source reduction and I talked to some other people about energy issues.

I might suggest that a friendly amendment to this might include another proposal that deals more with technologies and production, cleaner forms of production, which does include the energy and source reduction, and I might be interested in seeing whether people think that that might be an effort to move forward as well.

MS. EADY: And Ken volunteers to write that. I am kidding, but it would be nice if you did. We have a couple of comments, Ken, based on your comments. So let me take Mary and then Eileen.

MS. NELSON: I just wanted to add a quick note. Another thing that seems to me that could be included in the five is the encouragement of the other agencies to also emphasize the green building kinds of initiative. So it seems to be promoting that a value for Department of Energy, for, you know, a whole variety of them in ranking their proposals and all these ---

MS. GAUNA: I agree that the energy issues is a really big omission, but is obviously an area where we need to tread lightly. Particularly in light of the new proposals coming out and the potential of mercury trading and all those sorts of things. I am wondering how you think that might fit with pollution prevention. I'm not clear on that.

MS. BRIGGUM: We actually have some discussion in here of green energy. You know, alternative fuels, sustainable energy practices, green buildings. And so it is not as prominent as it might be, but we do encourage those kinds of kind of boutique energy alternatives.

MS. GAUNA: So that was the link that you were talking about?

MS. GEISER: I think I would just add to that energy efficiency as well. Yes.

MS. EADY: Jana.

MS. WALKER: I noticed on five that again I think it would benefit from mentioning tribes in that discussion, because they do participate in the brownfields programs and grants and they do share the interest in returning properties that have been contaminated to safe and productive use. And I think this is particularly important for tribes because those are their permanent homelands, and if those lands

become contaminated, they are not going to leave.

Discussion on Enforcement and Precautionary Principles

MS. EADY: Thank you. So, if there aren't anymore comments on number five or the general encouragement to look at those four closely and provide input, I think that we should go ahead and move on to the discussion on enforcement and the precautionary principle.

And I wanted to just sort of maybe kick that off by looking once again at the definition of pollution prevention that we included in the report on page seven.

"Pollution Prevention, or P2, is the reduction or elimination of wastes and pollutants at the source. By reducing the use and production of hazardous substances, and by operating more efficiently, we protect human health, strengthen our economic well-being and preserve the environment."

One thing that I wanted to mention, one clarifying thing, because it is sort of implicit in here, but we don't really say it, is that pollution prevention generally -- and, please, correct me if I am wrong, John or anyone else -- is something that is done beyond compliance.

So, as we sort of kick of this discussion, I think that we should be thinking that industries are in compliance and this pollution prevention is something that is going to be on top of that.

So, that being said, let's open it for discussion. And again, the topic is enforcement. Ken Warren, did you want to open with any comments to frame the discussion for us?

MR. WARREN: Sure. I think that the sense of many members of the executive council was that there might be an implication of the report, that because enforcement is not discussed, that pollution prevention was being used as either a substitute for or a way of precluding enforcement. So, that being said, I am in favor of bolstering the report in some way to make it clear that that is not our intention.

And in my view the sort of conventional enforcement authority under the existing environmental statutes is independent of and

actually supportive of pollution prevention in many of the ways that Ken Geiser mentioned, and I think that the report can reflect that.

Having said that, I would be very reluctant to include language in the report that says a vigorous enforcement program needs to be implemented by EPA as part of a pollution prevention strategy, because I think, for the reasons you said, Veronica, we intended pollution prevention to be implemented by companies and businesses that are already in compliance. And if they are not in compliance, they are certainly subject to whatever enforcement authorities that EPA has.

So that the balance that I come out of this with, but with an understanding that something more needs to be said in the consensus chapter than already exists.

MS. EADY: Good. I was surprised by the silence.

(Laughter.)

MS. EADY: Tseming.

MR. YANG: I was going to jump in first, but you turned to Ken.

MS. EADY: Give us your wisdom.

MR. YANG: I think what you just said actually -- I think clarifies a lot and at least for me actually addresses many of the concerns that I initially had in raising this issue. I mean, to the extent that there wasn't any intention by the workgroup to suggest that this ought to take the place of a vigorous enforcement program, this alleviates a lot of the concerns that I brought to this, because I think you can't -- you know, what is the incentive for a company to do something voluntary if it doesn't even have to do sort of what it is required to under the law already?

Let me just say -- and I think this goes back to some of the things that Ken Geiser mentioned in thinking about how enforcement fits into all this and to clarify, at least from my perspective, what I think is -- why I think enforcement is or is or isn't a concern and I think -- because there are a couple of different ways in which enforcement creeps into these issues.

If we are talking about pollution prevention activity as something

that truly goes above and beyond what the law requires, given -- and again, assuming that companies are, in fact, already in compliance and they are doing something that will bring pollution levels even further down, my tendency would be to agree with what you said; what has been said already.

I think enforcement is probably not an appropriate mechanism I think with regard to those type of activities. But I think -- but the reason why I raised these issues around enforcement is that there is a reality out there that many companies are, in fact, not in compliance.

And so I think the question arises of how do we deal with that, because as I mentioned earlier already, the models that were discussed yesterday -- in fact, those were the business entities that were not in compliance.

I suppose I should qualify that with regard to the Houston Ship Channel plants, because we don't really have a lot of information. But on the other hand, I think given all of the issues that arose for the community, I am sort of doubtful that they were in full compliance and that assumption is really justified. So I think the question arises of what are giving up then?

And that comes down to the two other ways I think in which enforcement sort of rises, which is if enforcement is intended to replace compliance when a company is already in compliance -- I think part of what you mentioned in the context of pollution trading.

I think that raises again issues, but not as severe issues in the sense that if you create other mechanisms that are more difficult to monitor, that create ways for companies to wriggle out of their regulatory obligation, I think it -- that can be troubling.

I am not trying to impugn your motivation for suggesting this. You and your clients or Sue Briggum's. I mean, I assume that everybody is here in good faith. But at the same time I think there is a reality out there; that many companies driven by business consideration, profit considerations, even if they come to this was a good faith expectation of trying to comply with -- not just with the letter

but also the spirit of these mechanisms.

So I think you really got into significant problems that need to be thought through in significant part.

And the third way in which enforcement -- and again, it is an issue with regard to compliance, and I think that is the most troubling context; is when the company is, in fact, not compliance. So again, harking back to this example yesterday, I would not still be -- I wouldn't reject offhand the ideas about alternative mechanisms for compliance.

But certainly one has to look those kind of alternative mechanisms with a very, very careful eye. You know, whether it is appropriate to let a company off the hook. In the context, for instance, the car repair shops where you have many other considerations about whether they regulatory entities would get to bringing enforcement action against a small shop, I think, it seems to me, maybe not to be a very powerful consideration.

But a practical and necessary consideration in figure out whether sort of an alternative compliance methodology is appropriate.

But I think those are the kinds of things that have to be thought through before one jumps into alternatives to traditional enforcement and traditional use of deterrence as a means of inducing compliance by business.

MS. EADY: Thank you, Tseming. And just to review or clarify, one of your questions might be how do we know that a facility is in compliance before these P2 incentives are offered? Or do you see what I'm saying? Do we have to do like a voluntary audit of a facility before we know that they are eligible for incentives?

MR. YANG: My comments about enforcement aren't really -- I think enforcement is a separate issue from all of the consensus proposals that have been put forward, in the sense that you can't look at the -- you know, -- enforcement is an issue that has to -- that can be given up in order to address these other proposals.

And it needs to be considered in the context of this report because there is a larger debate going on about cooperation versus

deterrence based mechanisms to reduce compliance, and I wouldn't -- I would be troubled if this report was used down the line to suggest somehow that the NEJAC had taken a position that cooperation is better than sort of traditional enforcement measurements.

I think my point largely is there has to be some sort of discussion that regulators shouldn't be using this an endorsement of -- you know, enforce traditional enforcement methodologies and just go with an incentive and cooperative approaches.

MR. WARREN: Could I reply briefly? I fully agree with you. I don't -- we, on the business side, did not intend this report to be a report about how best to achieve compliance and then to suggest that a non-enforcement mechanism was the best way to get there.

And so, to the extent -- and I think your point is very valid. To the extent that someone might read that report in that vein, we need to have language that will dissuade them from that interpretation. But the slant or the viewpoint set that I approach this was is that traditional environmental regulation and control has gotten us part of the way to where we need to go.

It has not been successful in fully resolving the environmental problems, particularly in minority and low-income communities and that part of the innovative way to get that extra mile is to come up with ways to encourage innovation, innovation that will lead to source reduction, not the traditional end of the pipe controls.

And so, if we start from the premise that enforcement or however is -- all of the tools are available to insure compliance and then ask ourselves what more can we recommend to EPA to get us beyond compliance in order to help the health of the communities that we are viewing, then I think we get to questions like source reduction and other ways of looking at it that can be supplementary to existing controls.

MS. EADY: Sue, did you want to add to that?

MS. BRIGGUM: If I could just add one more thing, because he said something that was mostly helpful to me to understand this debate.

What I heard you saying was, moreover, in order to do what Ken is talking about, which is look at mechanisms to get further reductions that may change some of the operating standards, we have to be mindful that there is the opportunity to appear to be reducing pollution overall, but be substituting practices that are less easy to monitor and assure are satisfied.

And as a consequence, we may think that we are getting improved standards, but, as a matter of fact, we are ending up with less because we have something that, you know, at the end of the pipe it is 12 or it is not. Something as source reduction; maybe it works. But suppose you have a different can.

And I think, if we put that in -- I had never really thought about that. It is an important part of the debate. That would really help clarify as well. But we need to make sure that these are easily monitored, understandable and enforceable positions to insure that the pollution reduction is real and not just apparent. That is very helpful to improving the chapter.

MS. EADY: Thank you, Tseming, Ken and Sue. Let me just review where we are because we have a -- Ken, you weren't -- were you going to speak to this issue? Ken Geiser? Okay. I am going to let Ken Geiser hop in on this issue or this conversation that was going on with Tseming, and then I am going to get into the cue.

Let me tell you what the cue is before I let you go. I have Lori, Larry, Pam, Terry and now I see Eileen. So, Ken, let me let you go ahead and respond to that and then Lori next.

MR. GEISER: I would just reiterate one thing you said, but expand it a little bit, and that is it seems to me that this report or this statement can be very strong about enforcement and the importance of enforcement and not rob the sense of innovation and creativity and flexibility that pollution prevention really needs.

I think I tried to say earlier that solid enforcement creates the costs that can be reduced by better management of materials and energy, such that you don't end up with pollution and waste, and I think that is one strong reason for doing it. But at least there are two

additional reasons why strong enforcement is important to anyone of us who care about pollution prevention.

And that is that strong enforcement also creates what you would call a level playing field for firms, such that those who are less than in compliance aren't, in some way, set at a competitive advantage above others who aren't. So it seems to me, from that perspective, we also can say that strong enforcement is important.

The other reason is that strong enforcement creates the legitimacy that any of us need in order to trust firms at all because if, in fact, we don't trust, if we can't see what is going on, then the only thing we have is enforcement to know that somebody is on the beat making sure it happens. And so, for three reasons I think we can say that for good public reputation, for a level playing field and for basically raising the costs that make pollution prevention sort of attractive that we can say really we need strong enforcement that does not rob of any of the other things that we are trying to do here.

MS. EADY: Lori.

MS. KAPLAN: Thank you. I saw Ken put his name tag up and down a few times, and I thought about doing the same thing myself as the conversation went on, but I will chime in.

First, I am a little troubled by the conversation. I almost feel like we are talking about whether a company is in compliance or not as an all or nothing thing. Some of the companies we are talking about are very large and they might be in compliance in 99 percent of their operations and one percent they are not. It almost sounds like we are saying that pollution prevention programs shouldn't be available to them if they have -- if they are not in compliance at all.

I don't think that should be the case, and I don't think pollution prevention is always about incentives. As I read this report, it is about making sure there are programs out there, getting communities involved and getting programs going without even necessarily looking at enforcement or incentives. I think that if you are looking at incentives, then you should look at compliance, but I would hate to see that turned into an all or nothing thing.

And the other part that I see with the pollution prevention programs and why I want to get away from that all or nothing idea is that we can have companies that are in full compliance with the standards that we have established. Are the standards that we have established fully protective of health? We don't know that. We have reason to believe that perhaps they are not, and I think that is another big reason why we want to encourage those programs and even for those companies that aren't perhaps in 100 percent compliance.

I think I have heard around this table that we are all in agreement that there has to be some language in this document saying enforcement is a foregone conclusion. The regulatory agencies have the ability to enforce regardless, and if we are going to put that in that document, I would like to recommend that at the opening of the public comment session tonight we do make that clear; that that will be added to that report, because it has taken up so much of our conversation here.

I suspect that will be a lot of the comments that we hear tonight, and I think it would be a disservice to not let people know that we will be adding language to that effect. Thank you.

MS. EADY: Thank you, Lori. Larry.

MR. CHARLES: I think we all are violently agreeing that the report needs to be amended to include, in the general section, comments of the importance of enforcement as a part of the soup that we are making here. Right?

I think that perception has the same weight as fact, and when you look at the document in its current state and it gave the perception to us that enforcement was not a priority, that these alternatives approaches to addressing non-compliance was the main thrust of the recommendation of the committee. And I think it would be helpful to put this section in and avoid a rerun of the same kind of discussion when this document goes out for public comment.

The other thing that I want to add to this, you know, at the same time, is that I do believe that there are possibilities and there are conditions under which enforcement may not be the first step in

1 addressing the issue. The decision on that should be in the hand of
2 the local community and the folks who are involved in that issue at
3 that time.
4 We had a situation in Hartford where we applied enforcement,
5 Title VI, to make a change occur in an operator who had been running
6 a facility, a facility that has been there for over 60 years polluting and
7 impacting our community. We used enforcement as a threat to drive
8 them to the table so that we could work out an agreement to fix the
9 problem. So the goal is to get the problem fixed.
10 And sometimes, when you look at some of the mechanisms of
11 enforcement that are available to use, enforcement may not be the
12 best strategy. Number one, how do you connect the impact to a
13 polluted facility to a direct health effect on an individual or even a
14 group of individuals in our community? The technology doesn't exist
15 to say that this facility caused the cancer that I have or the asthma
16 that I have.
17 And when you look at the difficulties in using enforcement as
18 "the strategy", you quickly find out that it may not be the best thing in
19 every particular instance. So I am just suggesting to you that -- I am
20 glad Connie is back in the room, because I want to make sure she
21 understands that I never intended, in any of my comments, to say that
22 we should incent people to comply with the law. That is not the intent
23 of the comments.
24 But I am saying, which is a low flying shadow of that, that we
25 should allow, at the local community level, opportunities for the
26 communities to engage the operators, to develop strategies to get the
27 problem fixed and if that can be done through mediation, negotiation,
28 then that, to me, would be the best things. Especially, also, that when
29 you pursue a track of enforcement, it may take years to get a legal
30 resolution on the issue. If it is legal. It may take years, and during
31 that period of time you may have people continuing to suffer the
32 health effects.
33 So all I am saying to you is that I really believe that it should be a
34 case by case situation, that we take a look at alternatives for getting a

1 problem fixed and that is all I am saying. We can meet at the bar.
2 MS. EADY: Okay. Thank you, Larry. I just want to say we have
3 a lot of issues that are coming out. I don't think we are talking
4 through all of them entirely, and as these issues come out on the
5 table, our note takers are taking notes. And I just want to remind
6 everyone that a lot of these issues will be debated on the workgroup.
7 You know, rest assured that they are not -- you know, your
8 comments aren't just going into the air and nothing is going to happen
9 with them. So, I have next Pam.
10 MS. KINGFISHER: Thank you. I am going to be quick because
11 I am going to echo a lot of things that have been said. I think there is
12 a real disconnect that we are really bridging by this discussion
13 because what you have explained, and it was very helpful -- thank
14 you.
15 But P2 is basically a quantum leap for environmental justice
16 affected folks, and I hope that you all can understand. It is similar to
17 we are eating cake instead of beans and rice and the whole
18 compliance and low standards, the disconnect. But the burden of
19 proof of the health effects is on the effected people.
20 You know, all of those things generate a mind set for us, and it is
21 really hard to make this quantum leap up to this sort of fantasy of
22 everyone is in compliance and now they will reduce it by these other
23 things. So I just want to insert that as the fact that we can get there,
24 but it wasn't easy from reading this report.
25 And so, I think we are going to hear it a lot, and it is a disconnect
26 of affected people making that leap up to the higher level of being
27 very creative and innovation, and so I would like to suggest that as
28 NEJAC we don't lose this threat of tension that is going to continue to
29 be here. And maybe we can continue to address this in other reports
30 and in the cumulative risk.
31 There could be a lot of opportunities for that where -- because
32 we are going to feel like, jeez, we are still being killed by everybody
33 on the street, and yet, we are supposed to be fantasizing about these
34 innovative and creative new things. And it is really an exciting

1 opportunity and honor to be a part of this conversation, but to
2 remember the level at which the community people are at.
3 MR. LEE: You know, I thank you for that comment, Pam
4 because one of the things that I think that this report could benefit
5 from and one of the things that I really had said I wanted to
6 encourage is really providing an understanding of why P2 is
7 important, especially for environmental justice and disproportionate
8 impacted, people of color, low-income and tribal communities.
9 There is an art of trying to convey that, and the art of trying to
10 convey that in a sense of what Connie talked about is making sure
11 that we understand the realities of the impacts as a starting point.
12 There is an art of creating that and there is a pretty extensive public
13 comment on the public input period of reaching out to the
14 communities trying to make sure that that is brought in.
15 Whether or not that travels well, you know, I think is something
16 that I think can be worked on. But I think the intent is there, and the
17 reason why what you are saying is so important is because for us, for
18 these -- for what we know to be very important positive solution
19 oriented approaches to work, the community has to understand that
20 they are going to be the beneficiaries.
21 And the education process, both with the community and also
22 with business and industry and others around achieving a common
23 vocabulary, because this is -- all this is a discussion that is emerging
24 a common vocabulary. This is really important.
25 So, just to say that this is a good attempt. This is a good start,
26 but we have got a long way to go as well.
27 MS. EADY: Two more cards I see up. Terry and Eileen. Terry.
28 MR. WILLIAMS: Thank you. And this is going to be hard not to
29 be redundant at this point, but I will try to add a little different twist.
30 First, I appreciate industry's comments and concerns on enforcement.
31 But some of the apprehension you have already, and I will express
32 some of my own.
33 One obviously has already been said. We are not 100 percent
34 compliance, and we know that. The second is in facilities we have

1 upsets and over time of these upsets get to be just accepted as part
2 of doing business. To some extent you can plan on them happening,
3 and that is the problem.
4 Also in the meeting of standards and regulations there are some
5 accepted tolerances, plus or minus, and generally we find more
6 minuses than pluses. Although we like to see more pluses.
7 But standards, regulations, thresholds in this process we know
8 generally are negotiated to begin with. So we are starting from a
9 point of negotiation and then saying beyond that we may be able to
10 look at a way to do that where there are benefits. That is a little
11 frustrating for people who know how the structure began. So that is
12 part of the apprehension of how do you start evaluating going beyond
13 the current models.
14 Given that though I think it is important to have that discussion to
15 look at how to go beyond that. With that though I think there needs to
16 be a discussion similar to what Larry said before; that if we are going
17 beyond, there has got to be a clear reason, and part of that reason is
18 health based. Particularly with the tribal communities that I am
19 familiar with and not as much with some of the other communities.
20 Communities I should be familiar with.
21 Like my own tribal community. Our community is dependent
22 upon access and consuming different species, whether it is plants,
23 animals, birds or fish. We also know that because of all of these
24 reasons that I have just said that we are exposed to a lot of pollutants.
25 And we also know, like myself, I attend each month about one to two
26 funerals a month.
27 We know we have a significant problem, and we are trying to
28 figure out what is the process for reducing those impacts to human
29 health. And if this is one of them, then I think it should be addressed
30 straight on and look at a health based process that you can measure
31 and quantify and say that we are actually getting results. Thank you.
32 MS. EADY: Thank you, Terry. Eileen, I am going to ask you to
33 give the final comment on this discussion of enforcement, and then
34 we are going to move on to a discussion of precautionary principles.

MS. GAUNA: Can I give my comment like I wanted to? I don't know if this is helpful, but I am sort of thinking off of the top of my feet here and personally; that part of our conceptual problem is we are jumping around within a long chain of regulatory functions. And so I just want to sort of submit this for thought.

You know, you have P2 at the very beginning, like product substitution, resource reduction where you are really using P2 not to trigger some sort of regulatory action, like a need to get a permit. Then you might have P2 activities with a facility that has its permits and is completely in compliance, but sees opportunities to prevent pollution in off-permitted activities.

Then you have facilities that may have a need to have permits that are not in compliance, but see only P2 reductions, potential P2 reductions, either to come into compliance with their requirements or off-permit requirements. And then you have another P2 context that I don't think we have discussed, and that is the context where you have completely unregulated activity. Like land use; like the land use context where you have potential P2 activities when there is no regulatory regime in place.

And I think that the obstacles and incentives for P2 along those different contexts are going to very significantly, and what we might want to do in the report is recognize that explicitly; that we think P2 is appropriate throughout all of these different contexts, but that there are particular areas where P2 may be problematic.

And one of those areas, as Tseming has identified, is where you have a facility that is out of compliance, but does see P2 potential. And we have to make it clear that P2 doesn't substitute for compliance.

There is another area I think also as well, and this comes from the California experience with the recent ostensible energy crisis where we have to recognize that facilities are operating in a very difficult context and some of them are scrambling for offsets. You know, they are out of compliance, they are triggering a need to go to some sort of permit review and it becomes very tempting at that point

for regulatory agencies to look for any kind of a non-permitted or non-point reduction and use that as an offset.

And what I would hate to see is a P2 regime put in place where the community gets on board and spends an awful lot of time and energy reducing pollutants for public health reasons and then, all of a sudden, those reductions are being used as offsets to allow more emission releases within the facility because of some energy crisis or other reason. And that is kind of what happened in California. They were grabbing at anything that looked like an offset.

You have this whole move towards point/non-point reductions to be used as offsets. So I think that is another area where we have to be clear that P2 is for health gains and for environment gains and not for emission increases when firms need them.

As difficult and sympathetic as I am to firms who sometimes need them and can't find them, that is an area where I think the report has to be clear; that it is not a substitute for compliance and it is not a substitute for enforcement.

MS. EADY: Thanks, Eileen.

MS. GAUNA: I ended on enforcement.

MS. EADY: Yes, you did. Thank you very much. As we move on to the precautionary principles, Ken Geiser, if I can put you on the spot. So much adequacy and scholarship around the precautionary principle comes out of your team at Umass/Lowell. So, if I could just ask you to say a few words about the precautionary principles to frame the discussion, it would be great.

MS. GEISER: Thank you. I can't say that I am not aware that I am on the spot. This discussion about the precautionary principle is a pretty sensitized and political discussion and I am aware of that. I think many of us area aware of it.

But there is, at the root of it, some really important principles and some important aspects, and I just want to say a few things about it. I think, first of all, I will just start with the report.

I think in both the community section and the tribal section both refer to the precautionary principle or the precautionary approach,

and I think both have refined and elegant statements on why it is important to involve or think about it in regards to this agenda around prevention. I really like both of the statements that are in these two parts of the report.

I know it has been difficult to get into the consensus part of it, the main chapter, and this has to do with this politicized view of it. But if you step back from where we are at in the highly charged discussion about the precautionary principles, one of the things that is very noticeable.

And that is that within the U.S. over the past 25 years we have done many things and we have many federal statutes which advance precaution. This is not that new an idea. Indeed, some of the things like the Clean Air Act charged the health base alone and not considered economics to be seen as a precautionary approach.

The approach a we take to new chemicals under TOSCA is pretty much a precautionary approach. The approach that we take to drug licensing is also fairly precautionary. But perhaps the most noteworthy and in some ways a struggled area is in OSHA itself. The general duty clause is generally a precautionary approach.

So I think that it is wrong for those who are critical of the precautionary approach to see it as something new brought in from Europe or something that has no place in our culture or our form of government. I think that if you look at what are the fears about the precautionary approach, you can find at least three different kinds of fears.

One is a legal fear; that really because you never can define something as truly safe, it opens up many firms and many operations to be challenged legally around exposing people. There is a second kind of fear that I think is a science fear, which is that it opens up our understanding that really large amounts of things that we are exposed to in industry and in products, really we have very large amounts of uncertainty in the science that these things are built on.

We simply don't have enough science to support the technological advance in society that we have, and it is hard for us to

face how uncertain we are in many cases. And so, when you talk about precaution, it raises this whole limit of science.

And the third one is it brings up a question of challenge or a fear from those who are concerned about economic development, that somehow a principle like this will stop our innovativeness and stop our capacity to develop new technologies and open up new materials because we will always have to try to figure out whether they are purely and perfectly safe.

In those three different kind of critiques, a legal critique, a scientific critique and what I would call a scientific critique, tend to mean that there is a lot of resistance to an idea which before we really named it very sharply was fairly accepted in a general kind of juris prudence and in our policy work.

Now, I think a way through this is not necessarily to just pick a fight about a term, but really to try to figure out what we mean by this term. And if you go into the definition, there are several definitions. Many of them have some of the same themes to them.

One is acting in the face of uncertainty. Trying to ask ourselves, our firms and our government, to basically move, even if we don't have full science, to prove something is dangerous. And the other is to ask the proponents of the technology, the proponents of a new source or whatever, to actually carry the burden of trying to show what they can about what we need to know in order to set policy.

I think my suggestion to use here is that we find a way to try to get those two ideas into what we are doing without necessarily fighting over the term itself, because I think it just would be very, very difficult for us to go forward because of the level of non-consensus that wouldn't be achieved by trying to do that.

But if you back off of the term and come to try to figure out what it really means, my assumption, my guess is that there is a basis for us to form a consensus. So, if that is at all helpful to you, I would urge us to really try to speak not about just the principle, but really what we are trying to get done here. What are we really trying to get our report and our work to do?

MS. EADY: I think that is a great suggestion. I want to encourage you all to have kind of a brief discussion about it, if you have any comments. But I will just say that one suggestion that came up today -- and I think it was Terry who suggested it in the first consensus proposal.

This was actually on page 24, letter E, where we say: Build upon lessons learned from related programs and approaches relating to environmental justice and pollution prevention. Terry, forgive me because this is based on my notes, which I can hardly read myself. But I think what you said, or maybe part of what you said, was inserting after programs and global experiences, including the precautionary principles.

And so I guess in raising this my question here is, first of all, is there going to be objection to the use of that term. And if there is, can we figure out what we mean by that. Or if we are talking about the definition in Agenda 21, then say Agenda 21.

So can I ask -- I don't know. Jana, if you want to comment on it or maybe Ken or Sue. Oh, Terry. Did you have your card up? Okay. I'm sorry. Let me take Terry's comments and then I come back to the panel.

MR. WILLIAMS: Okay. I appreciate what Ken just said. One of my other duties is I sit on another process, the Pacific Salmon Commission under the Pacific Salmon Treaty between the United States and Canada over the management of salmon in the Pacific Ocean.

Through that process we have adopted the precautionary principle, and basically, as Ken was saying, we are dealing with management of the unknown. And what we have tried to do in that process is after decades of investing tens of millions of dollars into methodologies for monitoring and actually tracking salmon and salmon abundance we discovered that annually our predictions of run size were wrong.

And so with that we have developed a methodology that allows us to look at the range of error, and from that range of error we have

been able to do some analysis to say how much of an error are we looking at and how do we deal with that in terms of precaution. So that error range is annually put into our equation; so that when we do our assessment of run size, we have some expectation that we are trying to buffer the impacts of our frailties.

MS. EADY: Sue, I am going to let you -- did you want to comment now?

MS. BRIGGUM: Sure. I can.

MS. EADY: Okay. Let me just review, because I like to do that. So we will take you, Sue, and then I see Richard has his card up and now Tom.

MS. BRIGGUM: I just want to say at the outset I thought that Ken's discussion was, by several orders of magnitude, the most precise and sophisticated and accurate account of the debate I have ever heard. So I would like to thank you, because I found it enormously illuminating.

And it was particularly illuminating because it captured both the reasons why this is so controversial and the reasons why -- why are we getting caught up with the words when there are common sense phrases that will convey the same thing without the baggage.

You mentioned about that we need to act cautionary in the face of uncertainty. I think that that is, in many ways, synonymous with the group, but it doesn't have all of the old debates, and I think that was an enormous contribution and it is certainly something that I think makes sense in terms of addressing the issue in the report.

MS. EADY: Thanks, Sue, and thank you, Ken. Richard.

MR. GRAGG: Yes. I would like to thank Ken also because I think the point that I attached on to is how he explained that we are doing -- are using this concept or principle behind the concept in a lot of things we do, especially in all of these risk levels and end points that we set every day in things.

But I also think the reason to integrate that concept into the report is based on the final comment that Eileen made, and that is that this should -- and, Terry -- we should couch this report I think

more strongly in terms of why we need the pollution prevention term, from the environmental justice perspective, from the health impacts issue.

And again, we have some science, but we don't have all of the science to substantiate cause and effect. But we have enough science to substantiate linkage and relationships between exposure and impacts on health. In fact, we have some definitive science for certain compounds and class of compounds. So I think, again, that that is the reason why we should incorporate the concept of precautionary principle, because I think the report should be based on the -- why we need pollution prevention and it should be configured more strongly in terms of health impacts and pollution and health disparities.

And one other things -- since I have my -- that is that I don't want to say that I read the report thoroughly, but I have read it. But I would like to just make sure that as we go through and revise the report and improve the report, that when we talk about pollution prevention, that we are also talking in terms of where the EPA is going with pollution prevention, as long as it is consistent with where we, as a committee, want to go, meaning the current issue where EPA is going.

And I just wanted us to be current with that in the course, as I said before, with the science that is out there.

MS. EADY: Thank you, Richard. I see Tom and then, Jana, I am going to ask you to have the last comment on this topic and then Charles is going to make a few comments. So, Tom.

MR. GOLDTOOTH: Thank you. I too appreciate the brief that we got on this issue. Our network promotes strongly the language of precautionary principle. In fact, there is some discussion of the use out there. There is discussion of whether we use principle or approach. I know that in his presentation he talked about approach, and I would like to also talk about a lot of uncertainties and then assumptions that come out of risk assessment that really impact our communities.

So that is why it is very important as we address this issue.

Somehow we need to take the consideration of this language. In fact, as we looked at the precautionary principle, in fact, it enhances the decision making process by really looking at analyzing the impacts rather than limiting their analysis, like some risk assessment does.

Of course, that statement right there is open from debate from the people who support the precautionary principle and those that are against it. Okay? But I would hopefully see that we utilize that language and there are people here at the table that can provide text to that. Thank you.

MS. EADY: Thank you, Tom.

MS. WALKER: Besides the instances that Tom and Terry noted with groups using the precautionary principle, this fall -- I wish I could remember the specific details, but it was a school district in California. Perhaps Los Angeles. I am not sure.

And I think a community group that put together or came together and developed a policy for pesticide and other chemical use in and around the public schools, and they specifically adopted the precautionary principle.

MS. EADY: Okay. Thank you. It is about three minutes to 5:00. So we are pretty much on schedule. Charles is going to give us a few words to sort of close out this discussion and then -- well, I guess I get to retire from the microphone. So, Charles, take it away.

Synopsis of Discussion/Next Steps
By Charles Lee, DFO

MR. LEE: Thank you, Veronica. Let me just talk about next steps, and I will just be very brief. You know, there are -- this, I think, was a real wonderful discussion, and I don't anyone would disagree with me on that.

And I would encourage that any of you that have any thoughts, comments and whatever, to write them up and get them to Marva as quickly as possible, and that is because I don't want you to lose your thoughts on this. However, in terms of the process, formally speaking, we are going to hold a formal public comment until January

31st. So members of the public can submit comments until January 31st, 2003.

Of course, that is -- as distinguished from NEJAC, it is for council members who can enter into comments at any time. What I am suggesting and encouraging is for you to do that as quickly as possible.

Obviously there are a lot of issues that got raised and Ken and Wilma and the workgroup is going to have to go back and work with Samara Swanston to figure out how to best approach the rewrite of this, and I foresee in the month of February and March that that takes place. And, of course, there are going to be specific items that are going to be added onto that process.

For example, the notion of -- rather, an ad hoc nature to talk about this issue of incentives, and there will be some focused attention that I would really like you, with the benefit of your incites in this discussion, to take part in.

And probably some time in April, of course, the latter part of April, I foresee the draft report being ready and being transmitted to the executive council for your discussion and action.

Now, if resources permit, there will probably be a second face-to-face meeting of the pollution prevention workgroups. So that, generally speaking, is the process that we foresee this going into next year, and it is our hope that these -- that this report and these recommendations will be very timely.

So, some time in the middle of next year this process will come to a close and transmittal of the report and its recommendations to the administrator at EPA.

There are some issues here that have to be clarified in terms of process as to what is the meaning and the way that the stakeholder chapters will be handled. Underneath that has been a discussion that I -- pertaining to Jana's question this morning in terms of a maturing process of the NEJAC as far as this understanding of what constitutes the elements of a report and what is the meaning of the word "recommendations" when you use it; so that it is being used in all

different kinds of context and is the underlying issue behind a lot of the tension around this.

If you listened carefully today, you will hear it all of the time. But I don't want to get into that. I just wanted to note that.

So, I think it is time to bring this session to a close, and I want to, first of all, ask you to applaud Veronica Eady for her moderation of this discussion.

(Applause.)

MR. LEE: And then I want to make sure that you note and applaud the people that did the case study presentations. Neil Carman, if he is still here, with the Houston Ship Channel Presentation.

(Applause.)

MR. LEE: I know that the people that the people that were here to do the presentation, Mr. Thompson, Tom Vottaglio and Bernie Penner are not here now, but I just want to make sure we recognize them. And Andrew Sawyers worked hard with them, as well as Reggie Harris, in that. So, I just want to make sure that they are recognized.

(Applause.)

MR. LEE: I want to make sure we recognize the Maryland Department of the Environment for being a partner in all of this with us and a lot of things that happened behind the scenes that they worked on, including the four hours every day that Andrew talked about. And the reception last night and many other things. So, the Maryland Department of the Environment.

(Applause.)

MR. LEE: Another partner in this is EPA Region 3, Tom Vottaglio, the Deputy Region Administrator, Samantha Fairchild, Reggie Harris and the EJ coordinator, Allen Yates, if they are in the room.

(Applause.)

MR. LEE: Then, the Office of Pollution Prevention, whatever. John Cross and Bill Sanders.

(Applause.)

MR. LEE: The did really significant resource commitments in all different kinds of ways, including the resources to fund a face-to-face meeting, which was extraordinarily important to this process and contributed greatly to the confusion and the understanding that you witnessed among the different stakeholders groups, and let me tell you it wasn't easy to get to this point here. So I just wanted to make they were recognized.

In addition, others from different EPA offices: Linda Garcinzski, Rob Brenner, J.P. Suarez who have all been committed to making sure that they are part and parcel of the process to make sure your recommendations become meaningfully implemented.

And then next a couple of people who really labored very hard to provide support to the workgroup and the NEJAC process. You have heard about some of them before. First is Samara Swanston, the NEJAC report consultant.

(Applause.)

MR. LEE: And then you have heard all kinds of wonderful things about the role of Sharon Austin. Sharon, would you stand.

(Applause.)

MR. LEE: And she was the designated officer for the NEJAC Pollution Prevention Workgroup. The next one is another person who you all know and love dearly. Marva King. Marva always plays an important part in everything we do.

(Applause.)

MR. LEE: And lastly, a ECO environmental justice intern with the Office of Environmental Justice group who has put tremendous numbers of hours to this process, Nakia Waggoner.

(Applause.)

MR. LEE: And, of course, the Pollution Prevention Workgroup, the members of whom you see here. Connie, Tom, Sue, Ken Geiser and Andrew Sawyers, as well as Dianne Wilkins and I don't know who else back there. Dean Suagee and, of course, the other persons who are listed in the appendix of the draft report.

And, of course, a very, very special note of thanks to Ken Warren and Wilma Subra for being the co-chairs of this workgroup. It has been a real pleasure to work with them, and you can just see the kind of dedication they have put into this process.

(Applause.)

MR. LEE: You know, many of you might have known that Wilma Subra is a McCarthy fellow, and that is otherwise known as a genius award. And so, we have a verifiable -- certifiable -- a certified genius.

(Laughter.)

MR. LEE: Okay. So, with that, Peggy, I guess we can adjourn, and 7:00 is when the public comment period starts.

(Whereupon, at 5:09 p.m., the meeting was recessed, to reconvene at 7:00 p.m.)

E V E N I N G S E S S I O N

(7:21 p.m.)

PUBLIC COMMENT PERIOD

MS. SHEPARD: Good evening. Would you please take your seats.

(Pause.)

MS. SHEPARD: Please take your seats. We are about to begin the public comment period. Our first testimony will come from Don Norwood, Sadie Harris and Cleopas Eaton, of the Urban Community Environmental Resource Center here in Baltimore. Are they present? Please, come forward. Yes. Please, take a seat and, please, take notice of the time limit, which is shown here.

By Don Norwood

MR. NORWOOD: I'm Don Norwood, and I am Urban Community Environment Resource, and we are located here in East Baltimore. We have an issue with a company that does gravel crushing in our area. It is called the Baltimore Aggregate Recycling Company, and this is our particular issue; with the fact that there is a potential of pollution from the particulates that are spewed from this company at times when they are in a high level of operation.

Also, there is a time when there are trucks that leave the facility and drop gravel and sand on the road, and that gets spewed into the air and that also, of course, is an environmental issue for us; the people that walk down that street and also travel into that area. And then we have winds that maybe carry these particulates as much as maybe two miles from that facility.

We have some residents in the community who have made the complaints and are doing dust testing, and we have some results from our dust tests, which show that there are some fairly large particulates. And as of yet, we have not substantiated or been able to substantiate that they come specifically from that particular source.

In talking about prevention measures that we have taken as an organization and also a community and individuals within the

community, we have joined together as a group to form a community based environmental advocate group. We have circulated petitions within our community to gather support for our issue, and we have educated the people in the community about what particulates are and what some of the environmental concerns are in terms of size and how much can be in the air, and also, that there are some air monitoring facilities from MDE and so forth.

And we are trying to get that data back to find out exactly what our air quality has been like in our particular community.

Let's see. Under the area of how we would like for it to be, in terms of a suggestion for our future, we have several alternatives and one of them is that the polluter be shut down and the facility and we understand that the same company, this Baltimore Aggregate Recycling Company had an office that was in Washington, D.C. some years ago. And they also were chased from a particular community because of the same type of environmental issue.

We have a recommendation that this site could be used as a park or a business park and potentially a train station, inasmuch as it is very close to our railroad which comes into town and a commuter change. And we understand that there is some expansion that is happening with the Johns Hopkins facility and a biotech research facility where there will be a new train depot for that facility and within that development of that project.

So one of our suggestions is that maybe it could move as much as a half a mile away and take care of the environmental issue, as well as provide some business opportunities and also rid ourselves of the pollutant.

And the last part is that as an organization and a community based organization we have made some strides in effecting the pollutant, as much as we have made contact with them and they have changed some of their operation, now which is about 25 percent of a decrease from what it was last August. So they have complied with some of our requests in decreasing the operation.

But we also understand that the company has now changed their

name to Alternative Aggregate Recycling Company, and so we anticipate that they will be applying for another permit within some short period of time under a new name. So that would mean that we would need to submit new protests against their operation, and we are prepared to do this. And, I am finished.

MS. SHEPARD: Thank you. Are there any questions or comments from the members?

MS. NELSON: Have you involved the regional EPA Office?

MR. NORWOOD: To answer the question, no. Not that I am aware of.

MS. NELSON: Or the State office?

MR. NORWOOD: Yes, we have. We have been in touch with Mr. Andrew Sawyers and had him come to a couple of our community forums.

MS. SHEPARD: Thank you very much.

MR. NORWOOD: All right. Thank you very much.

MS. SHEPARD: The next speaker is Elroy Christopher, from the Rose Street Community Center in Baltimore. Elroy Christopher?

(No response.)

MS. SHEPARD: Okay. Russell Stewart, Kenwood Community Association.

(No response.)

MS. SHEPARD: Glenn Ross, McElderly Community Association.

(No response.)

MS. SHEPARD: Francis Chin, Maniilaq Association, Alaska. Good evening.

By Francis Chin

MR. CHIN: Good evening. My name is Francis Chin. I am the environmental manager for the Maniilaq Association, a consortium of 11 tribes in northwest Alaska.

MS. SHEPARD: Could you speak a little closer to the microphone, please.

MR. CHIN: I came here tonight to expand a little on some of the things I heard earlier this morning similar to what I think quite a few people had mentioned about compliance; as a personal example from our region, which brought a lot of uncomfortable feelings among tribal members.

To bring it a little closer home, I think there are reasons for things like the SEC and there are reasons why things like Enron happens and things like Microsoft. What I am getting to that is that those things assure that there needs to be regulatory bodies behind a lot of stuff.

And a lot of self-monitoring people are not doing what they are supposed to do, even though there are profits or, what I should say, incentives to these so-called green companies.

Up in my neck of the woods we have a company called Kominko. It is the largest lead and zinc mine in the U.S. right now. Recently that company was fined for a lot of infractions on regulatory things that they're supposed to be doing. It is one of those companies that are --- a SEP was imposed on them, and during that process we found out, late in the game, that again this company are going to do the SEP on their own. They are going to monitor again on themselves.

It behooves me to think there is a saying, like you set a thief to catch a thief. It kind of makes me wonder about that. I also why the communities were not involved. If you are talking about tribal capacity building, why aren't the tribes that are being affected by this being involved in the monitoring process. At least not compensatory, but at least give them the ability to monitor their area so that it will be acceptable to them.

And last, but not least, I think in doing so they will build the trust of the tribes. If they are doing what they say they are doing, then it should be transparent and by allowing the tribes in the region that is being affected to be involved, then it shows you are doing what you are saying you are doing. Thank you.

(Applause.)

MS. SHEPARD: Thank you. Dr. Rueben Warren, ATSDR.
(No response.)
MS. SHEPARD: Chavel Lopez, southwest Workers Union.

By Chavel Lopez

MR. LOPEZ: Good evening. Can you hear me? My name is Chavel Lopez. I'm with the Southwest Workers Union out of San Antonio, Texas. We are also co-founders and affiliates of the Southwest Network for Environmental and Economic Justice.

On pollution prevention our statement is that our communities bare the burden of pollution and lack of cleanup every day; that we have lost loved ones to illnesses, such as cancer, ALS, nervous system disorders and in San Antonio we have been struggling for the clean up of the contamination caused by Kelly Air Force Base.

The efforts of the Air Force and the City of San Antonio have solely concentrated inside the base and the communities that surround the base, which have been impacted for decades have not received any type of remediation of the contamination or answers to the health problems that affect them.

The prevention of pollution we feel needs to start with the involvement of the fence line communities in the decision making process and that affected communities demand to be at the table where the decisions that are being made that directly affect them and their families.

The clean up of Kelly Air Force Base contaminated sites needs to be done with aggressive technologies that will alleviate the problem as fast as possible. Natural attenuation must not be considered to be a clean up technology. These types of passive approaches continue to damage our neighborhoods, and the issue of transportation surrounding the base include a two-mile long runway that is jointly used by the Air Force and private industry, such Boeing and Lockheed Martin.

The railroad has a large exchange station and many lines passing through the communities and the freeway arteries that

surround the communities, plus the proposed Kelly Parkway that would cut through adding to the cumulative effect of all of these air pollutants. We must have no more rollbacks on the environmental and enforcement laws from the Bush Administration, and we feel that the military must be held to the same laws and standards as any other industry or polluter.

Also, I would like to add that we support pollution prevention EJ grants, but that they must driven by environmental justice grassroots organizations, not university institutions and that grassroots organizations have to be equal decision makers at all levels of these grants.

Also, I want to state that we support the interagency concept, that our organization has applied as a demonstration site and submitted a proposal, and we are supported by elected officials. For example, Congressman Cesar Rodriguez and others. We are supported also by the Region 6 of EPA, ATSDRs that support the interagency working group concept, you know, that San Antonio be a demonstration site. Also, the San Antonio Metro Health and other grassroots groups in San Antonio.

And I just want to say that the Southwest Network for Environmental and Economic Justice affiliates have been long time supporters of the interagency working group concept, and today we ask for the support -- for your support of our project. Thank you.
(Applause.)
MS. SHEPARD: Thank you. The next speaker is Hilda Booth, Native Village of Noatak. Hilda Booth.

By Hilda Booth

MS. BOOTH: Hi. My name is Hilda Booth. I'm from the Native Village of Noatak, Alaska, which is the northwest part of Alaska. Excuse me. I came for our people, and because I care for our people I am here for them.

But we have a -- in our areas we have an open dump problem. Our problem is we've got lack of equipment to maintain and operate.

We've got homes that are close by the village. Or, excuse me. Close by the dump sites, and because of that I can't find ways to where we can close the dump and move to another site.

And I am here asking to find ways to find solutions to help move the dump site, and because of that I'm concerned of the birds and the animals that are close to the dump site, because we live mostly on subsistence. We eat the fish and the -- we hunt -- we --
(Microphone dies.)
MR. SHEPARD: Try the other one.
MS. BOOTH: Hello?
MS. SHEPARD: That is good.
MS. BOOTH: About 75 percent of our people live on subsistence, and because of that we've got pollution problems from the dump site. And I'm concerned from the health of our people from the dump site that's so close to our village, and I'm concerned because we've got erosion problems, which is forcing us to move further up.

And from that, with the erosion problems that I stated last year, we've got -- it's beginning -- grave sites are beginning to show up and fall in our river, and since we fish a lot, we're afraid to start fishing down river. And I'm afraid for animals or anything that drink from that water down river. I'm afraid they might get contaminated and kill some of the wildlife there. So, with this I'll close. Thank you.
(Applause.)
MS. SHEPARD: Just a minute, please. Please, come back. Larry.
MR. CHARLES: Who owns the land where the dump exists and who operates that dump?
MS. BOOTH: It's on the Native Village of Noatak. We're unincorporated and we -- the Noatak Village.
MR. CHARLES: The village owns the land and the village also operates the site?
MS. BOOTH: Yes.
MR. CHARLES: There is no private company?

MS. BOOTH: No. We don't have a city office. We just have just the IRA office, and we just have volunteers to operate whenever they can. So the village themselves, you know, we try to help each other to maintain this dump site.
MR. CHARLES: Did you ask EPA or anyone else for assistance directly in structuring and managing a landfill?
MS. BOOTH: Yeah. I asked for assistance and what should we do to maintain and operate. Can you help us? Can you at least fund something to help us operate, because all we have is volunteers?
MR. CHARLES: They basically said no?
MS. BOOTH: They didn't respond.
MS. SHEPARD: Excuse me, Judith. Tom was next, then Terry and then you.
MR. GOLDTOOTH: Thank you. On the open dump question, is there a revenue base the village has for solid waste management?
MS. BOOTH: What we have just only funds from like the federal funds that we get. Those are the only revenues that we get, and since we are unincorporated and we don't have any -- we're not as first or second class. We just try our best to use the funds or volunteer from the village to help us out.
MR. GOLDTOOTH: And on the erosion, what is causing the erosion right now?
MS. BOOTH: Every spring we have the river that goes through the village. It erodes like about maybe five feet every year. So it's -- that's what it looked like. Now it's just all erosion, and we try to help -- tell the people to stay away from that area.
MR. GOLDTOOTH: Is that an area that has permafrost?
MS. BOOTH: Yes.
MR. GOLDTOOTH: Is there global warming concerns?
MS. BOOTH: Yes. This year. This year we started noticing that the weather is real warm and we're just kind of concerned with what's going on.
MR. GOLDTOOTH: I just want -- for the record, a lot of the villages in Alaska are experiencing severe issues with sanitation of

waste; what to do with waste water and also sewage and disposal, solid waste disposal. They are in isolated communities. There is no revenue base.

The conditions geographically -- it is a perma frost area, which limits landfill construction. In fact, one of the alternatives that the Indian Health Service, in cooperation with EPA, has been proposing for the villages is to build what is batch incinerators. They are not high temp. They are just basically these old steel drums that the military has left behind up in those isolated villages; and burn your garbage, which is -- those of you that looked into the concerns of persistent organic pollutants where they already have a severe toxic burden, a toxic burden from the sinkholes of these toxics that has been documented that is going into the subsistence and into their bodies as well.

Having to make those choices to have incinerators, all of things. But it is a serious issue that has been brought to this body, and they are continuing to come down from Alaska to offer testimony and they want some action taken by the administration to address these issues of not only sanitation, solid waste issues and climate change issues as a factor.

And pollution prevention is unique up in these villages. I just wanted to say that. Thank you.

MS. SHEPARD: Thank you. Terry.

MR. WILLIAMS: Yes. Thank you. My understanding with these villages is that within the process that they went through in recognition as tribes they did not retain land. The State of Alaska retains land ownership, thus they accept federal funds for management of the lands, not the tribes.

The tribes received some funding through EPA for certain programs, but I think we need to better understand this process with the states and the tribes. The state does have an obligation. You are receiving federal funds to deal with those types of problems.

EPA has been a band-aid to the problems, in terms of, as Tom mentioned, providing things with Indian Health. But that is not

sufficient in itself to some of the problems. And I think, for the record, we need to acknowledge that there is an obligation here by the state to have some part of the solution and to research the problems and work with the tribes to better understand how they themselves interpret the state's obligation and what actions need to be taken.

MS. SHEPARD: Okay. And Richard.

MR. GRAGG: Well, two things. I agree with Terry and I would like to -- I hope that we could use this testimony to augment action item number nine, strengthening implementation of pollution prevention program on tribal lands and Alaskan Native Villages, which Terry mentioned in terms of the state roles in all of the action items. There is no mention of the state or working with the state or having EPA work with the state to deal with pollution prevention in these areas.

And also, I think the testimony brings to mind what we were talking about before in terms of pollution prevention and health in the need to make sure that we link the pollution prevention report to our recently submitted report on Fish Consumption. And I think that that is important and that the testimony brings out.

MS. SHEPARD: Thank you very much. Next is Torri Estrada, Environmental Justice Coalition for Water.

(No response.)

MS. SHEPARD: And next will be Michele Brown, Urban Community Environmental Resource Center.

(No response.)

MS. SHEPARD: Susana Almanza, Southwest Network for Economic and Environmental Justice/ PODER.

By Ron Sherron (On behalf of Susana Almanza)

MR. SHERRON: Good evening, Madam Chair and council members. My name is Susana Almanza.

(Laughter.)

MS. ALMANZA: Susana, for whatever reasons, flight delay, whatever it is, was unable to here during this session. So, with your

permission, I would like to read some of the testimony that she was about to give. Before I do that I would like to make recognition, since my family are from Albuquerque, New Mexico.

I would like to give recognition to Judy Espinosa, a council member from Albuquerque, New Mexico, the recent Secretary of State for the Environment for the State of New Mexico. We would have hoped to see that Judy be reappointed to Secretary of State under the new administration in January, but we understand that Judy may be tired of driving back and forth from Albuquerque to Sante Fe.

I also would like to bring recognition to Eileen Gauna, who is sent a resident of the State of New Mexico, of Albuquerque, who is presently working -- we have lent her to Southwestern University in southern California. But she is a New Mexican, and we would like to bring recognition to her too. She has done an outstanding job on this council and we are looking forward to continuing working together.

There is three actual pieces of testimony that we would like to be able to present in this short period of time. Since I was giving recognition, I think that one minute should go towards the recognition and not towards my testimony.

One, I would like to just read into the record a letter that was sent on behalf of the Southwest Network for Environmental and Economic Justice, Communities for a Better Environment and also CRPE, the California Rural Legal Assistance Program. This is a letter that was sent to President George Bush, Administrator Todd Whitman and also to the EPA Air Docket Section.

This is in the specific issue of pollution prevention and it is around particularly the Clean Air Act, and I am just going to read very quickly several paragraphs from the letter that was sent.

On behalf of the Communities for a Better Environment, the Southwest Network for Economic and Environmental Justice, the Center on Race Poverty and the Environment and the undersigned organizations, we write to object to your proposed changes to the Clean Air Act's New Source Review provisions.

In the past decade environmental justice has transformed from a

controversial movement to an established fact, with federal and state agencies recognizing that low-income communities and communities of color bear a disproportionate share of environmental pollution and suffer also from inadequate enforcement of environmental protections.

Unfortunately, rather than developing strategies on how we can enhance the environment in our low-income communities and communities of color, your administration has proposed to eliminate some of the few environmental protections that our communities have benefitted from.

On June 13th of the year 2002 your administration announced the single largest rollback of the Clean Air Act in the 30 years of history. This Administration has proposed to eliminate the heart of the Clean Air Act - a provision known as "new source review" or NSR and to replace it with voluntary free market measures.

As we have seen with electric utility deregulation, this kind of "Enron-environmentalism" is almost certain to fail. Worse yet, just as low-income people were hit the hardest by electric power price gauging, such deregulation is certain to have its worst impacts on low-income communities and communities of color who do not have the economic ability to purchase clean air.

The organizations and individuals listed below are writing to express our commitment to resist this unjust, unwise and unlawful action by any means necessary, whether it be in the courts or in the streets. The health and safety of low-income communities and communities of color where our members live, work and play hands in the balance.

NSR requires old power plants, refineries and other major sources of pollution to install the best available control technology when they undergo major modifications. When the Clean Air Act was enacted in the 1970s, its drafters struck a compromise. Rather than requiring all existing plants to install modern pollution controls immediately, old facilities would be allowed to phase-in modern controls over time when they engaged in major plant modifications.

Congress believed that the most efficient time to retrofit a facility was when the plant was already undergoing construction activity, and it assumed that many existing sources would soon be retired and replaced anyway.

Communities of color and low-income communities are home to a disproportionately large share of these old, highly polluting facilities, some of which have technology that is literally 50 to 100 years old. These communities not only suffer from being located near chronically polluting facilities, but also bear the related risks of non-compliance by the facilities and subsequent contamination. Every day these facilities release thousands of pounds of toxic chemicals that our members and other communities are forced to breathe.

These dinosaur facilities have an unacceptable rate of accidents and explosions that expose residents and workers alike to severe health and safety risks. Older facilities that do not meet modern air pollution standards continue to be a large pollution problem for this nation. Seventy to eight percent of all power plant emissions come from facilities that were built before 1977 and virtually all refinery pollution comes from pre-1977 facilities.

Compared to the modern and updated power plants, old plants emit four to ten times more pollution for every megawatt -- and I am starting to use words that were written by other people, and you know we have had this discussion before, and big words are not quite my thing. I'm staying within my time. I was taking a minute away for making the earlier comments. I am going to stay within the time, but I think I have one more minute left.

Indeed, at the end of the Clinton Administration -- okay. I am skipping now because I understand the committee has been in a long meeting all day.

Indeed, at the end of the Clinton Administration the United States Environmental Protection Agency embarked on an ambitious campaign to enforce NSR at some of the worst polluting facilities in the country. The EPA investigators found that almost without exception major power plants and refineries were in violation of NSR

requirements since they had modified their facilities, but had failed to install the required best available pollution control technology.

As a result, EPA's Office of Enforcement filed dozens of complaints across the country to force these polluters to install the required equipment. The results were dramatic. In the process facilities across the country agreed to install billions of dollars worth of modern pollution control and safety equipment.

In some cases emissions were cut by more than half. Shockingly, rather than building on this successful campaign to modernize our nation's energy infrastructure, this administration has proposed to eliminate NSR entirely. The result of your voluntary free market proposals will be that our communities will be forced to continue to suffer from unacceptable high levels of toxic chemical pollution. This we cannot allow.

So I am going to leave it actually there and say, in regards to this letter, that the Administration proposed changes would allow thousands of major polluters to increase their emissions. In many cases over 100 percent. Weakening the law as proposed would increase public exposure to a wide range of toxic chemicals, including chemicals known to cause asthma, cancer and other chemicals that you all know our communities are being impacted by.

Ironically, some of the provisions at issue were signed into law by your father -- because this letter went to President Bush. Ironically, some of the provisions at issue were signed into law by your father who wanted to be known as the environmental president. It appears that you have no desire to have a similar title.

So, I would like to be able to submit this letter in its entirety to the commission, I thank you very much for the time and I would like to stop there. But before I do, I have just two more comments to make. And, Madam Chair, I really do.

One is that what we have noticed in the Southwest is that several of the Title VI complaints that are very highly impacted by pollution prevention thus far have been either thrown out completely within the Title VI process or whatever, two of those being a Title VI

complaint that was filed in Austin, Texas by Susana Almanza's organization PODER in Austin, and then similarly in the City of San Antonio, Texas, where Chavel Lopez and the Southwest Workers Union reside and support and work with those communities there.

I have to be able to put that on the record to tell you that when we are talking about pollution prevention, Title VI is one of the mechanisms that grassroots groups have under the Civil Rights Act for legal protection of our communities.

I ask the council to continue to take up Title VI issues and we appreciate the opportunity, on behalf of the Southwest Network, to be here with you and to have this opportunity to testify in front of this council this evening.

MS. SHEPARD: Thank you. Larry.

MR. CHARLES: In recognizing people, I want to recognize Dr. Mark Mitchell in the audience, who currently lives in Connecticut and has led statewide efforts to talk about the impact of old power plants in its contribution to particulates in the air triggering asthma throughout our communities where rates of asthma are off the chart.

In severe cases chronic asthma throughout our community in numbers that are alarming. But what I wanted to do was ask you, based on -- also out of respect for your history in the environmental justice movement, foresight and courage. But if you could take the report that we are looking at now and draft changes that could address some of the concerns and issues that you have raised, and specifically, what can NEJAC do through the pollution prevention report.

And separate from that any other actions that you believe, based on your understanding of the charge of NEJAC, that we could do as an organization to be helpful and impact, really impact the issues that you discussed. So, two documents. If you don't mind, to try to add your voice to this document, and second, to direction setting for NEJAC. Thank you.

MR. : I should say, Madam Chair, that we are very much in support of the work of this advisory committee and the subcommittee

that was put together to develop this report. We support it, and we will do exactly what you are saying. We will take the report back and have the membership of our organizations participate in reviewing it. Thank you very much, and we appreciate the time.

MS. SHEPARD: Thank you.

(Applause.)

MS. SHEPARD: Doris Bradshaw, Defense Depot Memphis Concerned Citizens Committee, Memphis, Tennessee. And after Doris will be Edith Tegoseak, the Community of Arctic Slope.

By Doris Bradshaw

MS. BRADSHAW: I notice on the agenda we were supposed to --

MS. SHEPARD: We can't hear you.

MS. BRADSHAW: Well, can you hear me now?

MS. SHEPARD: Yes.

MS. BRADSHAW: Okay. I'm Doris Bradshaw. I'm from Memphis, Tennessee. I'm the President of the Defense Depot Memphis Concerned Citizens Committee and affiliate with a lot of networks throughout this country.

Most of you know my story and just like Chavel Lopez in dealing with federal facilities, it has been a very, very hard experience for communities living around these type of sites, because we have multi types of pollution; from radiation to chemical weapons. Anything and everything you could name is located on this site. So we are not like normal communities.

And EPA has a limited amount of jurisdiction on the site because most of the time the Federal Government is the lead agency. But we look at EPA as the agency that is supposed to do enforcement when things are wrong, because EPA are -- they are at those meetings.

In Memphis the land is being turned over to the city. So I don't know if that makes it different with dirty land going to the city and how EPA can enforce, now, the clean up of this site. I know on the agenda you talk about prevention, but the majority of our communities

-- we have toxics there, and we don't live in Beverly Hills, otherwise we could talk about not putting a factory next to our elaborate homes and everything. We come from poor communities.

I guess in a futuristic type I could think about how we could do prevention in our communities if they wasn't contaminated, but they are. In Memphis things have been happening over and over again, and I feel like I don't have the support of the agency that is sitting in these meetings that is supposed to be giving advice to the government about different issues and things that are happening.

This spring there was a flood, and the floor come from the -- because the depot is a watershed and by so much concrete it caused the water to run off of this watershed that's supposed to be like a sponge. It sounds like I got cut off again.

So, when it rained, instead of the ground absorbing this water, it's running off of this hill and it slopes down into the communities. There's three ponds on the depot and they have lots of radiation. The land that I'm talking about is the golf course, and this land is supposed to be given to the city for the little underprivileged children to learn how to play golf. On Mondays only.

So, it is still racist USA in Memphis because they got so many dollars, this group, the Golf Association, got so many dollars to redo the golf course and they really raised money to teach underprivileged children about golf. And the millions of dollars that they raised, they're only going to give the kids, the black children in this community, from 9:00 to 4:00 on Mondays only, and the other days will be for the executives to go over and play golf.

So, this is a serious matter. I know it has nothing to do with EPA. But the picnic grounds on the golf course flooded. The ponds are radioactive. And I just found this out a week ago. So I'm wondering why I have not seen this in the reports from the local EPA in Region 4.

The person that works in our area has not been supportive, as far as turning information as he finds it. I don't know if he still has to check through the federal agencies to give us this information or not,

but as this land is turned over to the city and it is not clean, will EPA have jurisdiction on these sites to clean up?

What can a community do to make sure that enforcement is done inside the city? And I really need this question answered because I know the answer for federal facilities, but I don't know if another government takes charge of this land, if they will be held accountable to clean this land up. And even if this land is still polluting our community, who will be responsible? Who do we talk to or go after, after then? Do EPA still have the enforcement responsibility for this land?

And I think went over my time, but I want to say one more thing about the federal facility working group. We haven't met in a year. It was supposed to have been a good thing, but I want you all to know at this board that we haven't met in a -- yeah. About a year. And we just got a conference call in the last of November, and I think we had one in December. The first part of December.

Everyone said that it was going to, you know, get back working, but we -- you know, for five to six years I worked trying to make sure that we had a platform that would address federal facilities. And throughout all of the areas that we dealt with it always came back to the issues around federal facilities and what EPA was supposed to be doing; what were their responsibilities in dealing with federal facilities.

So, if we don't have a platform, we will stop coming to EPA and we will make sure that our voices get heard somewhere else, because we're getting kind of fed up just talking to the wall. We thought that EPA was ready to be receptive for us. There are two or three things that we really need in dealing with federal facilities.

We need a person on this board and we need representatives from DOD sitting here on this board also; so that as resolutions come up -- because this is where the people are going to come. We have no platform at DOD, and until that platform comes, it's going to be right here in EPA's face. Thank you.

(Applause.)

MS. SHEPARD: Okay. Please remain. Richard.

MR. GRAGG: Yes. Thanks for that testimony. And again, I would just like to go back to our report on pollution prevention, and I don't recall where we discussed in the report pollution prevention in federal facilities and how EPA can address that in environmental justice communities. So I think that is another issue in terms of our revision or editing of the report that we could include in the pollution prevention. And thank you for pointing it out.

MS. SHEPARD: Hold on, Doris. Veronica.

MS. EADY: Thank you. I just want to address the Federal Facilities Working Group. For those of you who don't have the institutional memory that workgroup came out of the executive council and last year it was adopted b y my subcommittee, Waste and Facility Siting. In the last year, as Doris said, her workgroup has stalled, and it hasn't been the fault of the workgroup.

The designated federal official for that workgroup left EPA recently and has just been replaced by Trina Martinowitz. And so, Doris, I want to -- I understand your frustration and I have been hearing a lot from Dr. Mildred McClane, who is the chair of your workgroup, the Federal Facilities Workgroup.

And so, I hope you are going to come to our subcommittee meeting tomorrow. Trina will be there and I don't know if you have had an opportunity to ask Trina the question that you have that is still hanging in the air.

MS. BRADSHAW: I realize that she's new. I'm not blaming it on her, but the person that was there just haven't been too long left and it's no excuse. And, you know, that for it to have a time lapse like that and even before then it was a great time lapse before we met.

No conference call. We didn't know if he was dead or alive. So, you know, we were supposed to be working on a particular thing and we are ready to get it started because there are communities out there that are suffering. And I feel like if you are going to set up something, follow through with it.

We have time to do other things, but if we are giving our time here then, you know, we should be respected. And, on top of that, no

one -- I guess you cut me off. I guess no one realized that we worked for this and the communities is upset about this. Its other communities that have gain input that thought we were doing something, and that makes us look bad fighting for something that doesn't work.

And I hope I have outlook that maybe, you know, I only can go by the past experience. I hope that it does better into next year, but we had a limited time. And so, are you going to add more time? And other thing. You didn't even bring the people that was on the federal facilities here to NEJAC. We had to come on our own dime.

MS. EADY: Just to respond -- I can't even remember what I was going to say. But anyway, we had a face-to-face meeting. The subcommittee had a face-to-face meeting last month and we talked about the topic of extending the charter of that workgroup.

So, when you come to the -- if you come to the subcommittee meeting tomorrow, we will review all of those issues. But we did work through them and I don't think that there is going to be a problem with having it extended, and we will try to get through some of those other issues, such as the funding to bring people to the NEJAC as well.

Oh. And the other thing that I wanted to mention is that we hadn't talked about the topic. Or at least to my knowledge, and I don't work directly on that workgroup. The issue of pollution prevention. But I definitely just sort of echo, Richard, what you said; that it should be addressed in the P2 report as well as coordinated through the work that workgroup is going to be continuing in the next year.

MS. SHEPARD: Larry.

MS. TUCKER: Could I just note it's not an oversight. If you would note in the consensus chapter there are four points at the end that we want to develop recommendations for, and one of those is federal facilities.

MS. SHEPARD: Okay. Thank you for that clarification. Larry.

MR. CHARLES: Just briefly to Doris. I have had some disappointments in the past in looking at how NEJAC was structured and how communities would turn to NEJAC as their last resort. You

know, if we could just make it here to NEJAC, whether it was on our own dime or not, that we would find justice on the issues that we faced.

And I thought it was unfair to many of the community members who came here to have the expectation that NEJAC had the power to actually change operational issues inside EPA or address justice issues in terms of resource and staff and authority and all of that.

And I think it is clear -- it should be made clear -- that NEJAC really isn't that place. Unfortunately, it is not that place with the power to attack specific issues in terms of what is happening in local communities. But rather, to look at broad policies and all of that. But at the same time there is value I believe in having the public meetings to get detailed cases like this so that we might be able to identify trends and opportunities for policy improvements.

But while I have the mike, let me just step up and say also that your situation may have improved by becoming a locally owned facility. Now you are tasked, instead of trying to impact the national structures, EPA and other political structures, it is now within your reach to influence the local city council or the local governing authority to make this a problem for them.

But again, I am saying too that EPA still has a responsibility, which is a question you raised. Does it transfer it to the city and the EPA is now off the hook? EPA is not off the hook, and the state has responsibilities. The local government has responsibilities as well, but at the same time the community -- you know, it looks like you guys are doing all the right things to keep the issue hot and to continue pursuing it until you get justice. Thank you.

MS. SHEPARD: Could we just take a break for some technical time.

MS. EADY: He did it.

MR. LEE: He did it. It is fine.

MS. SHEPARD: Okay. So we are going to take Richard, Tom and Greg.

MR. GRAGG: I just wanted to say I didn't hear the community

group come in asking specifically -- or the whole talk is about the NEJAC doing something for the group. I think the most important part of the testimony was that the -- that she was saying that she has participated and tried to get involved in the process that we set up through the workgroup to address policy issues on federal facilities and that the workgroup has not been functional.

And so, I think if we -- we have gone through this transition about trying to be more streamline and more efficient, and I think if we made the declaration that we were not a place "for communities to come and we could solve your problem as NEJAC," but that we could help communities through policy issues by their participation in these subcommittees, then we need to have the subcommittees functional.

And I agree also, and I don't know all of the ins and outs at all, but I think that if there is a subcommittee and there is a DFO and the DFO is not functional, then they need to be replaced. I mean, if anywhere it should be in NEJAC that we understand the urgency that the communities have and the problems that they have, and so to the degree that we can help them, and that is through this subcommittee and this whole structure that we have, I think we should.

I am sure there is some valid reason, but hopefully it won't happen again.

MS. BRADSHAW: I just want to say we are not a subcommittee. We are a workgroup.

MR. GRAGG: No. A workgroup. I'm sorry.

MS. BRADSHAW: We didn't even get the respect to become a subcommittee.

MS. SHEPARD: Veronica, did you want to --

MS. EADY: Yes. I just want to clarify and defend my subcommittee, because the waste and facility siting subcommittee is functional, Richard.

MR. GRAGG: No. I'm specifically referring to the workgroup that she said was formed and hasn't met for a year.

MS. EADY: Okay. I was confused because you said subcommittee.

MR. GRAGG: I did. But I correct myself. I am referring to the workgroup.

MS. EADY: Her workgroup has a separate DFO and they function separately. But her chair, Dr. Mildred McLane, is a member of the subcommittee as a liaison, and earlier last year they had had problems with their DFO who did not have any meetings, et cetera, and then left; left them hanging high and dry.

And I just wanted to -- since I have the microphone, my card was up because I wanted to clarify something that you said, Larry. I think that Doris' issue is different in terms of funding to come here, because since she is part of a work group I could understand that there would be an expectation. It is not unreasonable to think that you would be funded to work on your workgroup issue.

And so I think that what I was hearing, Doris, when you were making your comment is that you had to come on your own and you are part of a workgroup that is part of NEJAC and you would think that that would be funded. So, one thing that I want to say is the latest I had heard from the Office of Federal Facilities is that there is going to be support, including financial support, for your workgroup.

So, when we meet tomorrow and talk to those issues, I do invite you to sit at the table with the subcommittee as we work through the issue of the federal facility workgroup, and we will try to get some firm commitments from the Office of Federal Facilities and try to get your questions answered.

MS. SHEPARD: Thanks, Veronica. Tom and then Mary.

MR. GOLDTOOTH: I just wanted to support Doris' positions and her concerns and a lot of the other people that have come here throughout the past years. This isn't the first time that we have heard from community people that have concerns with federal facilities, and it is something that I think the leadership of NEJAC, the executive committee and the Office of -- that has authority with NEJAC. It needs to really prioritize this issue.

There is a whole paper trail of testimonies. It also brings the tears of the struggles of people who have died out there dealing with

the contamination. So I think we just owe it to those people that have these concerns to put some priority to this issue. It really means that the leadership needs to step forward and demand this.

There has been many times in the past with NEJAC where we have had strong grassroots participation sitting here and we threaten to walk out of this process. So I am here as a proxy to --- with the NACARE. It is good to be back here. But also, I find it surprising that we are still dealing with this issue of priority.

MS. NELSON: I just want to say amen to what my colleague there said and just to say that this whole issue of the federal facilities is we have been banging our heads on this wall for as long as I have been involved in this. And it would seem to me that, yes, we need to get the committee going, we need to prioritize this issue; we need to figure out if there are some creative ways.

I know EPA has to do a dance because it is a colleague to the Department of Defense. You know, we don't have the same authority and control regulatory-wise. But maybe we need to ask them to be open to having some hearings for effective communities around their sites. Maybe we need to find some new venues to help move their hearts to see that something needs to be done, and sooner, not later.

MS. SHEPARD: Thank you, Mary. Thank you, Doris.

(Applause.)

MS. SHEPARD: Michele Brown.

By Michele Brown

MS. BROWN: I am here to talk about the Urban Community Resource Center. It is a grassroots initiative to effect change to reduce exposure to environmental hazards through pollution prevention in East Baltimore. Our targeted area is eliminating environmental hazards that effect the health of neighborhoods, such as toxic construction materials that pollute the environment from demolition, rehab and recycling.

This concept is like the idea behind the public library system. Giving you access to many different books and services. This is what

we envision for the Urban Community Resource Center; to have one in every community focused primarily on environmental concerns. We want it to supply resources and a hotline number directly to the agencies that can and will be of help, as well as a complaint line, articles in journals that the community will be able to access to better help them to make concrete and compelling arguments in support of their issues, as well as training, discussions in outdoor air quality, ozone monitoring, drinking water quality and lead dust exposure.

And the importance that nutrition plays in combating exposure to the toxics in the environment. We have an additional component in that we teach and train in nutrition for a holistic approach to total well-being. Thank you.

(Applause.)

MS. SHEPARD: Thank you. Edith Tegoseak.

By Edith Tegoseak

MS. TEGOSEAK: Good evening. My name is Edith Tegoseak, and I am from Barrow, Alaska. I work with the Arctic IRA Regional Corporation. I'm sorry. Tribal government. And my topic is on permitting and other resources that are available.

I am here tonight because I have heard many/ cries throughout our arctic village about pollution that is preventable. Earlier this evening one of the topics that you had heard was from Mr. Francis Chin, and he had talked about regulations, monitoring and how that could be implemented in different communities.

My concern is specifically on oil and fuel permitting processes. I am from an area that services seven villages that does not receive proper or adequate -- what do you call it? I'm sorry. I'm going to give you an example of what has just happened recently back in Barrow.

I am from a corporation which receives yearly dividends, and I am also -- I also come from a borough. With these two entities that are in my community there are profit organizations. I work for a non-profit office, and the problems that we receive in our office are oil

permitting processes.

Those processes that have a series of development and which should include communities, interaction with community comment, that is not enforced. By the time my office receives any notice of permits, the process has already been done and closed.

And on pollution prevention plans I am seeking to this board to assist with enforcing those kinds of policies and procedures that should have been done in a proper manner. Now, when permitting processes are complete and closed to the public, I am put in a position where I have to then find other means to communicate with the agencies; the oil companies that have already processed this work.

And there are just a few number of ways that I can do that. One, I can approach the government that should have been involved in this process. Second, I can go to the profit entities that were involved at the time. But because of their personal interest for their pockets, for their budgets, they will not hear a community member or somebody like who is from a non-profit office.

So the next step that I look at or look for is tribal courts, state court and there isn't a process that tribal courts can appeal. In state courts there are processes, but as a government we -- they will have hands off.

Let me kind of jump into something that a lot of people will say. Stupidity is a bliss and because tribal courts, tribal organizations don't receive direct funding through those tribal courts, according to EJ, according to EPA, then we don't know how to put those structures in. And it isn't a bliss for the tribal governments. It is a bliss for those profit entities.

So I am here tonight to ask for your assistance to get those venues, to get those fundings, to get those advises for all key players to build those infrastructures so that we can, as tribal organizations, enforce those according to EPA, according to EJ, according to NEJAC.

(Applause.)

MR. GOLDTOOTH: I think that her concerns are reflected in some of the action items that come out of the consensus document, especially in the areas where there is mention of creation of training initiatives for tribes in Alaska villages around pollution prevention. And we are talking about also the infrastructure that tribes have and villages have to develop their own environmental programs.

I think it was mentioned earlier today that it impacts the ability of native village such as this to implement pollution prevention. It has to have an overall environmental infrastructure to incorporate that development. As you probably heard, Indian country is very complex with the various jurisdictions and various structures.

She is talking about profit and non-profit, she is talking about a native corporation. It goes into the history of Alaska with the Alaskan Native Land Claim Settlement. It involves the Indian Reorganization Act and tribal governmental system that they have. It involves the State of Alaska. Very complex, but these are the challenges.

I think Edith is -- it wasn't mentioned, but she is the environmental director for her village and also provides support for the other villages that she works with as well. So these are challenges that they have out there in the field in implementing pollution prevention as one of the programs.

MS. SHEPARD: Thank you very much.

MS. TEGOSEAK: Can I just make a quick comment to that? Tom is right. I am kind of ratting on myself as a tribal organization. Regulations and ordinances and any means of measures that are set by state, EPA or EJ or NEJAC is not parallel to our tribal organization because of the differences between state and government.

We call for sovereignty, which is -- I am not against that, but I looking for formed ways that we can make those two parallels so that I can go back to my villages and ask them or tell them that there are ways that we can assist ourselves by implementing some of the suggestions that are given by this committee.

It is a very complex situation that I am in. I am a shareholder, but by getting those shareholders, by getting -- by receiving monies

from those corporations we have to sell out our land, and a lot of our tribal organizations don't -- are up against that. At the same time I am also a tribal member. So it makes it a very difficult situation for me to come here tonight and to say that my tribal organization needs your assistance so that I can start implementing those policies and procedures in my villages.

(Applause.)

MS. SHEPARD: Terry.

MR. WILLIAMS: I think what she just mentioned, as well as Tom said, the Alaskan Native Settlement is not only complex, it is left the native tribes of Alaska in a terrible position. They have no jurisdiction to deal with the problems that they face or funding to deal with that.

I think that if there is a review -- you know, we need the review in terms of something that can be realistic in terms of health. But there has to be some solutions here. Part of this isn't just EPA continuing to bring band-aids to the Alaskan natives.

MS. SHEPARD: Thank you very much.

MS. TEGOSEAK: Thank you.

MS. SHEPARD: Next is Eugene Smary, the American Bar Association, and then next will be Cleo Holmes.

By Mr. Smary

MR. SMARY: Good evening and thank you very much. My name is Gene Smary, and I am, as you indicated, from Warren Norcross in Grand Rapids, Michigan. I am here primarily because I am chair of the American Bar Association section of environment, energy and resources, which is the American Bar Association's home for environmental energy and resource lawyers in the country. We have in excess of 11,000 members who practice in those three related areas.

But I am here also to speak on the report on advancing environmental justice through pollution prevention. Just very briefly, I have been a practicing lawyer in the environmental arena for almost 25 years. I was a member of the Michigan Environmental Justice

Task force and co-chair of its disparate impact workgroup and represented one of my municipal clients, the City of Grand Rapids in that process.

I am also an adjunct associate professor of law at the University of Notre Dame Law School where I teach environmental law. So the -- my focus really is since we have representation in our section, our ABA section, from every constituent community of the environmental legal community, I am not here to take a position on any of the stakeholder comments in the draft report on pollution prevention.

Those stakeholders are all represented within our section, and I am sure they each have their own individual points of view on it. However, as to the consensus chapter and the consensus recommendations, I wanted you to know that that chapter and its recommendations are very consistent with official American Bar Association policy that has been approved by the House of Delegates of the ABA.

There are differing aspects to it, but it is important, I think, for this organization to recognize that the American Bar Association is supportive of these principles, and I will leave with you, for the record, a resolution passed in 1993 by the American Bar Association dealing with environmental justice. And I think you would not be surprised that it patterns very carefully what you are talking about here.

I will also leave behind a resolution passed in 1995 that addresses public participation in environmental decision making, another very important aspect of this consensus chapter and of the approach that you have been attempting to move forward. The collaborative model, as the report refers to it, is viewed simply as community decision making and involving all of the important stakeholder groups. So I think you will find a great deal of support there.

I want you to know that the section is a resource for information, because we do have contacts at so many of the elements of the organized environmental bar. I also do want to make a point of nothing that we are very proud of the fact that one of your members,

Ken Warren, is the current officer of our section. Ken is the chair-elect of our section and will be replacing me next August.

We are also very proud of the fact that Jana Walker has been an officer of our section in the past, and we have a very strong commitment to the issues. In particular we have published a nearly 900-page compendium of environmental law and environmental justice that I hope some of you are at least familiar with. And our website also has on it updates on the law of environmental justice.

Now, if I could very briefly take off my ABA hat and my section hat and just address you as a practicing lawyer who has represented municipalities, industry and even citizen groups, although I must say not environmental justice citizen groups, but neighborhood citizens groups on environmental issues for 25 years.

I wanted you to know that in reading the consensus chapter I took great heart in the emphasis on the practical solution, on the emphasis on how it is really truly highly ethical to emphasize pollution prevention in achieving the goals in the environmental justice movement. Personally, I see this approach as really placing the community as one of the stakeholders in the process of achieving good for the entire community, a broad based community objective.

Even though clearly your proper focus is on the environmental justice community, what we are saying is really this is a public health issue and a public need for pollution prevention. The collaborative model that is emphasized strikes me as simply good human and community relations.

The final point -- and I know I have just seen my zero minutes flash up on the screen here. The final point I would like to make is that in my role as a municipal and also representing the industrial community I would like to see in if not just the industrial and business chapter, but also perhaps the community chapter, the local and state government chapter, recognition of the fact that among the incentives that are available for pollution prevention, including, for example, environmental management systems, is another form of management that has been the source of some political controversy I must admit,

but one that is recognized and adopted in at least 25 of the 50 states.

And that is the environmental audit privilege and immunity approach to incentives. There is no question, as the consensus chapter indicates, that a significant amount of pollution prevention can be achieved by focusing on small businesses within the urban core, and I can tell you from personal experience.

I know of at least one instance where an environmental justice community neighborhood organization, once the Michigan Environmental Audit Privilege and Immunity law was passed, teamed up with a small firm of environmental lawyers and helped advance environmental auditing within the small industrial community in their area.

They felt as though they were making significant advances in pollution prevention reduction, a significant aspect of pollution prevention, until the law in Michigan was changed because of the tension between EPA and the state, and the law was amended to require notice to the public if someone was going to seek immunity. Personally, I think that makes sense.

But it was perceived as, in a way, ratting in what you are going to be doing and the process dried up. But my point to you is that it was working in that environmental justice community. I urge you to consider that, recognizing its political sensitivity. But consider it as an important tool at least in those states in which such a law is on the books. Thank you very much.

(Applause.)

MS. SHEPARD: Thank you. Jana.

MS. WALKER: I just want to thank Gene for giving that testimony, and just a matter of trivia, the environmental justice resolution that was presented to the ABA that Gene mentioned, Barry Hill, the director of OEJ, actually was instrumental in getting that passed.

MS. SHEPARD: Larry.

MR. CHARLES: I was tempted to smile and be gracious and thank you for your comments. But would you, please, take a minute

and explain this immunity thing again. I believe your assumption was correct, that it would be quite controversial.

MR. SMARY: Yes. The audit privilege and immunity laws around the country; they vary from state to state, as you might imagine. They have two essential elements to it. One, there is a confidentiality privilege that is created if you undertake an environmental audit under certain circumstances, carefully defined circumstances.

And by privilege it is similar to, in scope, the doctor/patient privilege or the attorney/client privilege where it really is confidential and cannot be used in a civil setting. It can be used, generally, in a criminal setting though.

The other aspect of it is immunity from civil penalties. If you find a violation of environmental law, report that violation, always it requires reporting to governmental authorities. And final, you correct the problem. By the way, I should back and say the privilege only exists too if you correct the problem. It is not something you can find and then sweep under the rug.

The controversy was one of fair intensity between the former administration and in particular OECA and the Department of Justice and the states that were pushing it. It took on, from my personal perspective watching it in Michigan play out anyhow, almost an etiological battle.

What we found fascinating in Michigan, if I might add, is that our law was supported by a very broad consensus of industry and municipalities. The City of Detroit, for example, was among the strongest advocates of our law when Mayor Archer was Mayor. t was passed by an overwhelming majority of our state legislature, at the same time that the EPA was opposed to it.

So I hope I have answered at least the focal point of it. It is not without controversy, but it does exist in 25 states, and I guess my point was in those states where it does exist take advantage of it to achieve the objective of pollution prevention.

MR. CHARLES: Except in the case where an operator is just

about ready to go to jail or to be levied a heavy fine for violations. What is the incentive for an operator to voluntarily, assuming it is voluntary, participate in this confession?

MR. SMARY: The incentive is to, frankly, come clean. No pun intended. The incentive is to find out if you have problems, take care of the problems and avoid a punishment that might otherwise be levied on you if you waited for someone to find it for you.

MR. CHARLES: Public embarrassment as well. But the fines that would be placed upon you would be one of those penalties?

MR. SMARY: It's the civil penalties that typically are a great concern, and that was where the states and the federal government differed significantly on whether there should be complete forgiveness of penalties in order to induce people to go out and fine problems and correct the problems.

In a very simple sense, like returning it an overdue library book. Get it done. Get it taken care of.

MS. SHEPARD: Tseming.

MR. YANG: I thought we wouldn't really get into this, but that there has been discussion, I thought I would at least put it on the record that this is exactly the type of issue that I thought we shouldn't try to address in this pollution prevention report.

It is extremely controversial, as has been pointed out, and I would suggest -- actually, I am not a particularly enthusiastic supporter of --- precisely because in the end the baseline has to be compliance. In essence, one of the issues that arises is that whether you are basically forgiving companies for not having been compliant in the first place.

You are giving them a positive incentive just to comply with the law, and I think that is sort of troubling. So anyway, I thought we wouldn't get into this, but I wanted to just put on the table also I don't think they are, in general, good ideas. But I recognize that there are maybe instances when it may be useful to talk about them. It is just there is a much larger national debate about these issues going on.

MS. SHEPARD: Ken. Then Eileen.

MR. WARREN: Gene, audits are sometimes part of environmental management systems, which you did mention. I am wondering whether you think that environmental management systems might have some application for pollution prevention, for example, by including source reduction and other kinds of reviews in the context of an environmental management system.

MR. SMARY: Oh, absolutely. And, in fact, my comment, which I want to emphasize again comes from me as a private citizen, not wearing any official hat. My comment was generated by the reference to environmental management systems in the report and the support for environmental management systems.

And indeed a function of an EMS, as well as, I think anyhow, a properly constructed environmental audit, a compliance audit, is to not only find out if you have been violating the law, but to identify ways in which you can help eliminate any potential for violations of the law by such things as waste minimization or elimination of certain systems that place you into a position of getting into non-compliance.

MS. SHEPARD: Okay. Eileen.

MS. GAUNA: I just quickly want to agree with Tseming's point, that this is a huge issue that I think has to be graded a lot more carefully. But I do want to point out as well that you can sort of see where audit or auditing immunity laws may seem to provide some incentives for pollution prevention issues and the companies that I would point out that issue EPA penalty policies provide the same sort of incentives as well. So I don't think we are losing anything by not specifically addressing the issue.

MR. SMARY: May I respond to that?

MS. SHEPARD: Quickly, please.

MR. SMARY: Very quickly. The only point of disagreement I would have with what you said, from my own personal experience, is that I do not think -- while I respect and admire the EPA policy and, quite honestly, had a role in helping formulate it through our section activities, I do not believe that it operates with the same degree of incentive.

It has strikingly good statistics because of an enforcement statistics approach. I think in some of the states that it actively pursued this, Texas is one -- I know they have had 2,000 notices of beginning audits and 600 reported instances of non-compliance that resulted in immunity or penalty.

But I did not mean to suggest that it doesn't need to be fully vetted. It should be. I was urging that this group consider it in its wisdom of whether to include it in the report as one of a series of incentives for pollution prevention, in light of the fact that you have also included environmental management systems approaches and the fact that these laws are found in 25 states.

As long as they are on the books in those states and are not likely to be taken off, it seems to me appropriate to utilize them to achieve your objectives. I am not suggesting you advocate for those laws in the states that don't have them. It is more of a pragmatic approach.

MS. SHEPARD: Thank you.

(Applause.)

MS. SHEPARD: Cleo Holmes, Concerned Citizens of Eastern Avenue. Then, Audry Hadley.

By Cleo Holmes

MS. HOLMES: Good evening. Our story is a little different than most. We are affected by an underground storage tank leak that right now is causing toxic air around our properties and is affecting our properties and chemicals. And we are about to go through a clean up stage. Hopefully a clean up stage that will get this cleaned up here.

We have gone through over a year of testing. To date, we have had over some 1,5000 geo-probe points drilled in our neighborhoods. We are now at the most critical stage of testing.

Prior to this stage now we have had the blessings and the help of having our own independent consultant that was paid for by the responsible party. We are now at the most critical stage of testing and our consultant was removed. Now, we are in Region 3. This is

Region 3. As a matter of fact, we are on -- the polluter is in Maryland and our properties are in D.C.

Now, as I said, we lost our -- what we call our first line of attack; was our independent consultant. At this stage here, when we are doing soil sampling down gradient, we requested to Region 3 that they allow us to bring in our own. They brought in the Army Corps of Engineers, and they insist that we trust the government.

Well, right now we have had -- we have enjoyed this situation for over a year; validating information to make sure that our homes were protected, and we were denied that. We got the Army Corps of Engineers, so we asked for a triple split sample. The first answer was and the answer then, lastly, turned out to be no.

Our situation is that it is a trust issue here. Our communities are affected by a 13-year-old gasoline spill that we just found out about last year. It is very detrimental to us. To us we feel it is very disconcerting. We are very nervous about this.

We would like for EPA, especially Region 3, to understand that we are major stakeholders in this problem here, and we should be at the table. We would like to be at the table during all negotiations, even when it comes down to negotiating the consent order. Those things that we feel we should be a part of, we were not. The consent order phase we were left out of.

The most critical phase of this testing; we are not allowed to get our triple split. That right now -- we are a community of probably maybe 175 affected homes. As I have said, we have had this testing going on for about a year. We know that about 175 homes are affected over the limit of 354 set by EPA.

But we have a daycare center in our area. It is a 24-hour daycare. We have got some issues that we feel need to be addressed. We would like to have the government look at these issues as trust issues and allow communities the ability to self-police; to know what is going on on their properties. The responsible party knows before the community does. We should be there when the results are out.

We understand that the consent order comes out tomorrow. Will we have any way to talk about it? No. It is done. We should be at the table. Communities should be there because we are a major stakeholder.

I would just like for the committee to know that is a major concern. It should be a concern for all of the country because, you see, we are down gradient and they make their statements saying that there is no risk to human health. That is a redacted statement. That is true. That is based on information that was gained from properties that are 35 feet from the water table.

Now, you get to the most critical now where the homes are 11 feet for the water table, and you don't want us to have our own independent consulting or way of analysising (sic) this thing. It is not fair. It is not fair.

I think most communities in the country should be able to have a venue so that they can have some way to oversee the process to make sure that everything -- that everything is everything. The results you see are correct; our own independent labs. Our person pay for that. Our responsible party pay for that. We put it in the agreement, in our negotiation initially.

So we should have that all the way through. Don't wait until the most critical phase and stop, because if you want -- we have trust issues. If you want us to have trust in the government, you should have said, Chevron, you are going to use your equipment and we are going to let you get -- these people get their sample just to comfortably to know that we are on their side. Thank you.

(Applause.)

MS. SHEPARD: Wilma and Larry.

MS. SUBRA: Have any samples of air been taken in the homes and in the structures over the contamination area?

MR. HOLMES: No samples of air and no samples in the structures. No. All of the samples that have been taken so far are soil vapor samples under the homes. Under the slabs.

MS. SUBRA: And you say the document is coming out

tomorrow?

MR. HOLMES: Well, no. The consent order comes out tomorrow, but the consent order is based on the information that was gathered on Eastern Avenue, which is the water table 35 feet from the surface. The consent order that is coming out tomorrow. But all of the testing isn't done yet because the most critical street down gradient is being tested as we speak.

MS. SUBRA: I would suggest that you request that some samplings be done in the homes and the structures and the daycare to see if you are getting an off-gassing that is captured in the homes and whether or not high levels of the contaminate in the air.

MR. CHARLES: Earlier today I listed a set of five statements that I thought would be standards or elements of a model approach for addressing community -- effective participation in this process. A question was the fact that what I described was not really directly related to pollution prevention.

So we have kind of re-worded that a bit and I want to hand it in and add items G, H, I and J on the consensus section. In the re-wording one of the elements that I have put in here is that environmental testing done at environment justice communities should be done in partnership with the environmental justice communities.

I think this is the perfect confirmation to the correctness of that observation and the need for it to be included in the document. I would like to just hand it across to the committee and ask that it be included.

A couple of questions. Who decided to cancel the consultant that you had? Was it paid for by the community and you ran out of money? Or what?

MR. HOLMES: No. The payment was provided by Chevron. EPA brought up an issue of being an outlier lab result, and they decided at that particular point that -- Chevron said though that some of the results were duplicative, and I will grant you the water sampling, a lot of that was duplicative. But the air sampling was not.

The one that they threw out, the MTBE sample, was in the air sample, and on that Chevron decided there was no reason to continue with our independent consultant and EPA and they substituted the Army Corps of Engineers.

MR. CHARLES: So Chevron decided to stop the funding and EPA had no role in that decision and EPA then came with what resources it could and that was the Army of Corps of Engineers? Is that the way it went?

MR. HOLMES: Yes. And we've asked them -- we said okay to that, but we would like to get a triple sample so that we could send it off to our own independent lab.

MR. CHARLES: And do you have the results of the testing that were done by the Army Corps of Engineers?

MR. HOLMES: No. Not to date. No, we have not.

MR. CHARLES: Does anybody have the results of those tests. I mean, if they are going to do a consent to clean the water, somebody knows what the test results are.

MR. HOLMES: Well, they would have gotten the -- the consent decree is going to be published tomorrow. It is finished.

MR. CHARLES: So somebody has the test results.

MR. HOLMES: Not for this stage. No. The consent order is not based on this stage of testing. It is based on the first stage of testing.

MR. CHARLES: The only point I was really going after was one that was made by another former member of NEJAC and that is the community right to know. As part of the document that we are talking about in pollution prevention is that information that is discovered along the way, that it is the community's right to have access to the same information that the operator at EPA may have. Thank you.

MS. SHEPARD: Reverend Adora Lee.

REVEREND IRIS-LEE: I would like to, first of all, commend Mr. Holmes and the concerned citizens of Eastern Avenue for the monumental work they have done in a short time. I live and work -- actually, my church is near the area that they are talking about, and you all have done a lot in little time with little resources to raise this

issue. So you are truly to be commended on just your persistence and the way that you have done community organizing.

One of the things that I would like to just lift up that I think is important here is you all are fairly a new group and you have done great things. But one of the things that I think that this NEJAC offers -- it is not in our goals and it is not in our objectives and all that, but one of the things about the environmental justice movement, perhaps I should say, is the way that it is organized through networks.

There are networks that you and your organization or all of you just ought to be a part of. Not just so much that you can share your experiences, but then you can also learn from folks that have dealt with Chevron, Exxon and the rest of them. So, I wanted to just lift that up for you all.

This is an important time for people to see and know you all, but it is also an important time to get linked with the networks that are there. And you saw from the Southwest Network that came forward, you have heard from the Indigenous Environmental Network. There are other networks that represented in this room. There are environmental justice resource centers that exist in this country.

I know what you are doing has made a difference in D.C., but I think that there is an opportunity here. So, don't miss it and thank you all for just your witness. I can say that. Right?

MS. SHEPARD: Larry.

MR. CHARLES: I just want to add some additional information that may be helpful to you. EPA is currently funding a set of colleges and universities to provide research capacity to environmental justice impacted communities. Morgan State University is one of those institutions, and I would suggest that maybe you contact them and see if you can get back to independent verification of the test results that may be brought to you.

In issues like this most communities -- and I know when we went through it in our own community we rejected five different studies that were done to prove to a community that the issues had been completing resolved. The operators spent over a half a million dollars

in conducting that testing. But the bottom line is if the community has established a political position to be able to impact the issue and still holds out its rejection of test results that were conducted without you being present to witness sample collections, without confidence in conducting the testing and the analysis.

But it has zero value, and eventually it became known and understood by the operator that it was in his best interest to comply with independent verification if there was ever going to be any progress on the matter. So, you know, I think there are some people here who can help you get in touch with Morgan State or whoever else is out there, but there are other resources that can be made available to you.

MS. SHEPARD: Terry.

MR. WILLIAMS: Thank you. Larry just raised my issue that I raised this morning and that is having a science based approach. Part of that means that the process includes protocols and standards that everybody understands and accepts as part of the process. So there is no guess work as to what one party is looking at compared to another.

MS. SHEPARD: And Lori

MS. KAPLAN: Thank you. I just had a question about process based on something that Mr. Holmes said at the very end. You said that the consent decree was going to be published tomorrow?

MR. HOLMES: Yes. It is going to be published tomorrow.

MS. KAPLAN: So, will there be a public comment period on that consent decree?

MR. HOLMES: I believe. You know, I just heard about it today. I asked the question, are we going to be able to put in comments. They have said no. They will have meetings and tell us all about it. We can talk about it, but that's it. It's done.

MS. KAPLAN: Okay. Well, sometimes there are comment periods on consent decrees, and if there is I would encourage you. And I have no doubt that you will continue to make your voice be heard. It makes a difference.

MR. HOLMES: Our thing was we asked to be at the table when they were drawing the consent order up. I mean, we are not lawyers, but we do understand what is happening in our neighborhood. So we asked that we would be a part of that and that we were told we could not be. That isn't fair. It's our property. It's our homes. We have a right to say what happens or at least know what is going on; how they are going to fix it.

MS. SHEPARD: Thank you very much.

MR. HOLMES: Thank you very much.

(Applause.)

MS. SHEPARD: Audrey Hadley, Native Village of Buckland and then John Ridway and then Ron Sherron.

By Audrey Hadley

MS. HADLEY: Hello. My name is Audrey Hadley, and I am environmental coordinator for the Native Village of Buckland in Buckland, Alaska. And our -- we have a lot of environmental concerns up there. One of our issues is we don't have water and sewer, and Governor --- said that the honey bucket should be put in a museum, and it's not yet.

In many of our villages in rural Alaska still don't have water and sewer, and we're very much concerned about our community's health. We have had hepatitis epidemics. In our communities we lost a few young people, which we didn't have to have, and we would like to ask for funds and resources to prevent that from happening.

Another thing that I had is we are concerned about the military site that was abandoned 40 miles south from our village, and it's contaminating our subsistence foods. Our main subsistence food is caribou, and we get a lot of sick caribou lately, and some of our people in our community -- when they work on the sick caribou, they get rash on their skin and that's one of our main foods. So we're concerned about our subsistence way of life. Thank you.

MS. SHEPARD: All right. Thank you. Tom.

MR. GOLDTOOTH: I'm just wondering if you can tell the

advisory council here what kind of contaminants that you are aware of that is contaminating the people on the military -- abandoned military facilities. Are these formerly used defense funds? Is that what these are?

MS. HADLEY: These are asbestos and PCBs.

MR. GOLDTOOTH: PCBs. Stockpiles of Department of Defense chemicals that were used.

MS. HADLEY: Yes.

MR. GOLDTOOTH: Well, not chemicals. Chemicals and hot electrical -- other equipment. Okay. Thank you.

MR. WILLIAMS: Again, this is an issue that (microphone fades out) -- tribes in Alaska are facing and have been for a long time. In 1996 --- hepatitis in these areas --- 50 percent of the population in one form or another of hepatitis --- sewage --- mixing with the drinking water.

Again, EPA and the Indian Health Service have made --- looking at how to solve -- are still looking at how to solve it. But to me --- (Remaining comments not audible.)

MS. SHEPARD: Veronica.

MS. EADY: I don't know if you were in the room earlier when Doris Bradshaw was here from Memphis. There was a whole dialogue that went on about the federal facilities workgroup, which originally was -- well, it is a workgroup of the NEJAC, but right now it is working with the waste and facilities siting subcommittee, which is my subcommittee, and we are going to be meeting tomorrow.

One of the things that that workgroup is going to do is it is looking for case studies for federal facilities, and if the workgroup were to work on the federal facilities that you are referring to, we will immediately address that the issues that you are having with it.

But I think that it might be helpful -- that workgroup was compiling a report, which eventually will come to the executive council for forwarding to the administrator, and the federal facility that you are dealing with might be a good one to be included in that case study.

So I suggest one of the following: a few things that you can do.

I don't know what your plans are for tomorrow, but you could stop by the waste and facility siting subcommittee tomorrow and either give to me or Doris Bradshaw, who was in the room earlier, or Mildred McLane. See that one of the three of us get information on that facility.

And if you can't come to our meeting tomorrow, you can certainly give it to one of us after this meeting or later and we can exchange contact information.

MS. HADLEY: Thank you.

MS. SHEPARD: Thank you very much.

(Applause.)

MS. SHEPARD: John Ridway, Washington State Department of Ecology.

By John Ridway

MR. RIDWAY: Good evening, Madam Chair and council members. I am the environmental justice coordinator for our Department of Ecology in Washington State, and I am here to comment very briefly on some of the recommendations, the consensus recommendations, and these are just my initial comments. I will submit comments in writing to Ms. Marva King when I have a chance to flush them out.

The first is in regards to number six and product process substitution. One of the things that is not in there that I think is ready to put in is references to integrated pest management. You describe it in the test, but that phrase, which is a buzz word in the government jargon, is something that may provide a lot of resources and support for what you are stating in there.

Regarding comment number eight, or recommendation number eight regarding sustain transport, I would advise EPA and the federal agencies to obtain, as soon as possible, low emission vehicles for their vehicle fleets. Again, this is something that is available now in the market, and as the federal agencies changes over their vehicles this should definitely be something that should receive priority,

particularly for vehicles that are going to be in environmental justice communities and/or where there is already a lot of urban density and auto pollution.

Regarding recommendation number 10, P2 in developing countries and international implications, just recently, as in last week, Hewlett Packard announced, as the largest computer manufacturer in the world, that they are voluntarily going to adopt a take-back program for all their electronic computer related gear. This is something that you might want to include.

Also, the European Union has legislated this kind of requirement for all manufacturers within the European Union. It is doable and it is happening right now. This is something that might add a little bit of credibility and guidance in that regard so that we don't see the problems that have been well documented in China, as well as in other parts of the world.

We need to encourage businesses in this country to provide mechanisms in the way they design their products, the way they market them and the way they take them back to recycle and reduce the amount of waste that is created. Particularly if it is toxic, as in the case of lead in computer monitors.

Regarding my next comments, these are -- I am not sure which recommendation they would be included in, and I will try to provide some comments to that later in writing. But it was mentioned earlier that measuring success; this is something that you clearly want to do.

You have to establish a baseline here, and one of the problems that we have experienced in our state -- and I am in the hazardous waste toxics reduction program. It is like educating somebody on how to prevent house fires. You don't necessarily have a measurement of how many fires are avoided when you do the right thing, and it is the same thing with pollution. It is hard to measure what has not been generated.

The best thing that we have come up with, and this has been provided in prior work to EPA, is to do everything possible to get source use data from the facilities so that you know what they are

using, and therefore, how they are going to reduce the releases of these products. You heard earlier today that Massachusetts has that. To the extent that you could support that nationwide, that would certainly help us at the state level and the communities in knowing what they are dealing with.

Regarding inspection and compliance history, this is something that our state has done and I think EPA is working on this, but it can be supported more. And that is make it public when facilities are visited; when they receive inspections, as well as what their compliance history to the public so that the public can see whether or not a facility has been visited for the first time or at all. Especially the kinds of businesses that you were talking about earlier that are regulated, but they don't have a permit because they don't generate very much.

These kinds of businesses need to be visited and the community would like to know if they are even on the radar screen.

Regarding some incentives for funding, we have, in our state, incremental waste fees that were implemented through the Nuclear Waste Policy Act. Washington State has one of the largest nuclear waste facilities in the world, and one of the ways that we were able to provide an incentive not to receive more waste is to charge incrementally over time businesses by the pound to pay more for the waste. If the business has to pay more, maybe they will have an incentive to create less.

I think I will just wrap it up due to time now. I will get more comments to you. The last comment I do want to make is that I heard that it may be some time, more than a year, before NEJAC meets again. I don't know what the schedule is, but it is my observation in four plus years of coming to NEJAC meetings, that this may be the one venue for the kinds of comments you are hearing tonight.

You used to meet twice a year. It has now gone down to once a year, and if you extend to more at a time in between you are reducing the opportunity for people to come and provide comments when they don't know where else to go. So, I will just wrap it up with saying

thank you for your time in a long day and the capacity for comments to be provided to you, in some cases as the last resort for people who don't know where else to go. Thank you.

(Applause.)

MS. SHEPARD: Just a second. Eileen.

MS. GAUNA: Thank you, Mr. Ridway. I really appreciate your comments, and I want to urge you, in your written comments, because as specific as you can. It sounds like you have a wealth of information, which would be helpful through the action items.

I do want to highlight one particular area that you touched on that I think is critical for this committee, and that is the integrated pest management strategy. That is where you have, you know, low hanging fruit on the regulatory vine that could really help to do something about the communities that are often the most overlooked, and that is the farm worker communities that are suffering not only chronic, but really acute pesticide poisoning because of insufficient worker protection standards.

Those reentry levels are based upon assumption of healthy white males, and there are little kids in the fields and there are sometimes infants in the field because farm worker families can't provide daycare. So, anything you can do to be very specific in that area in terms of action items I think would be really, really helpful to those communities and to this committee.

MR. RIDWAY: We have a large population of migrant farm workers in Washington State, and not only due to the issues of children, but lack of worker protections because they are not full-time, they are not covered under the worker protection laws; it's pretty bad.

MS. SHEPARD: Tom.

MR. GOLDTOOTH: I just wanted to compliment Mr. Ridway for coming. For those who don't know, at least in my opinion, Washington State is one of the leading states in work that they have done around P2, pollution prevention in many different levels. So I just wanted to recognize his state for the fine work that you are doing in this area. I wasn't aware that it had an EJ coordinator. I just

wanted to recognize that.

MS. SHEPARD: Judith.

MS. GAUNA: Yes. Thank you. Thank you for your comments and for being here, and I think your last comments are very well taken. I am just new on the NEJAC, and I think sometimes we all tend to forget, or at least I do in other forums, how people look to this body to get their message across, because it is an official body and because it does have a public record.

I appreciate you saying that because I think we ought to be aware of that over the next couple of days as we continue with a lot of the work that we have to do, and I think that a lot of the comments that we heard -- and every time I come to a public session it always strikes me that people will take their time and travel long distances as well to come and do this. So I really appreciate everyone being here and the fact that you continue to remind us about what our deliberative efforts are about.

MR. RIDWAY: I might add that this is the only national forum I know of for my counterparts. Whether or not they have the title of environmental justice within their job or job description, this is the best resource I have to find out what the issues are and the resources to help deal with them at the state level because, as you know, so many of these issues are passed directly on to the state and they need to have some venue to coordinate and share lessons. So, I am grateful for that as well. Thank you again.

MS. SHEPARD: Thank you. Mary.

MS. NELSON: I don't want to beleaguer it, but I thought one of strategies to help give more venues for comment was to have regional listening sessions and to have the regional EPA people be there because local solutions can happen better when the folks in that region understand what the problems are and can make that happen.

So I think our intent was to have more opportunities, but to make them regional as opposed to simply just this national gathering.

MR. RIDWAY: Absolutely. That would be better. Thank you.

MS. SHEPARD: Thank you. Next is Ron Sherron, Ponca Tribe

of Oklahoma.

By Ron Sherron

MR. SHERRON: Hello and thank you. I am the environmental director for the Ponca Tribe of Oklahoma and also a member, and the Ponca Tribe has several issues of environmental injustice, but because of the time I am going to just pick out one case in particular.

It is with a Taiwanese owned company, Continental Carbon. It is a carbon black facility that is located on tribal land through -- or actually, within the treatied reservation of the tribal land. For pollution prevention this ties in with compliance and how compliance, ultimately the enforcement needs to be stepped up.

With this company we have issues with the air, ground water and solid waste. The main issue with air is particulates. This company what it basically does is it takes bottom of the barrel oil, burns it and then the ashes becomes the products that they turn into rubber to make tires with. Now, the stuff that they are burning off is coming out, and we have a community, a HUD housing community, within 150 feet of this plant.

So, they are living with this stuff. They are buried with it. They can't grow gardens in their yards. The trees around there are all dead or have retarded growth. They can't hang their clothes out to dry because it becomes completely black. They can't have pets around there.

And when the state agency and EPA has been called in, they always say this is -- that it is product. It's not fugitive emissions. This is actual product coming out and they're not breaking any regulations by that because it is product.

We have -- in 100 percent of the families within that housing there is asthma and other respiratory ailments within 100 percent of that housing, and that is some of the air issues. We have a particulate monitor up, but the particulates are too big and the monitor is located in a place that it is not going to pick up as well as it should.

Ground water. The company has built waste water -- total retention waste water lagoons on the facility. They operated those lagoons for two and a half years without them being permitted. When they finally did turn in a permit to the state agency, we have records and even on the permit they submitted, where the ground water was at 20 feet.

But when it came time to list the ground water table, they listed it at 80 feet. Documents and their own permits that they turned into the state agency said the ground water was at 20 feet, and that doesn't allow for the 15 foot of head room that there has to be between the ground water table and the bottom of the lagoons.

So since that -- we feel it is because of that that there is seepage coming out behind the facility of this black water with hydrocarbons, betex compounds and other constituents that come from this facility. And we have families in that immediate area that are drinking ground water that the ground water table is at 11 feet there, and they drink shallow ground water from shallow wells.

The state agency has look over this and passed that off as, well, the hydrocarbons that we see, that kind of stuff could have been from a truck that leaked out its oil. This is the kind of issues that we face working with the state agency and with EPA.

solid waste issues that we have with this same company: While we were investigating these black seepages coming out from their land, we stumbled over 22 barrels, waste barrels where the labels were pulled off or painted over. Some of the barrels were rusted through and were laying in streams of water that led to the Arkansas River.

Where they were rusted through you could see solidified waste and the streams were pooling out of fluorescent colors into the water, and there was a definite sheen over the water body. When this brought to the state agency's attention, they came out without notifying us. We are the ones that turned in the complaint.

They came out and tested it on their own without having us present. They tested two of the barrels and found hazardous

constituents, but they weren't at action levels. So they told the company it was all right to go ahead and pull all of that out of there and clean it up. So the company pulled out those barrels and then dumped -- I can't remember the number of truckloads, but they dumped truckloads of dirt over the site so we couldn't come back in.

Notice of violation was handed down, but the company SEP-ed out of it. And by SEP-ing out of it they built a fence around their own property to keep people out of there. And the other part of the SEP they took down to the north side of town where the heads of these companies, Conoco and this carbon black company live, and put trees up. They planted trees in the park. That was the other part of their SEP, completing ignoring the Indian community that lays around there.

It is these kinds of issues that I see on a daily matter with our tribe, the state agency and going through EPA, and it is this stuff that is looked over. When you are looking at pollution prevention, why not enforce the laws that are already there and look through it and compliance. And that is just one of several instances that we have, but because of time, that is the case that I will lay down.

MS. SHEPARD: Thank you. Wilma.

MS. SUBRA: You are in Region 6 of EPA?

MR. SHERRON: Yes.

MS. SUBRA: Have you gone to EPA?

MR. SHERRON: We set up a formal meeting with Region 6 and went and met with them, and they assured us that they would look into the matters. A couple of months had went by and we hadn't seen any action. So we FOIA-ed the records on this complaint, and there were no records. There were no letters that anything was happening; nothing at all.

So then we FOIA-ed the State Department, and when we FOIA-ed the State Department, we pulled out a letter from the regional administrator assuring the state agency that they were doing a good job and telling them to keep up the good work.

MS. SUBRA: Okay. Because last month EPA Region 6 had

their local listening session, and it would have been great if you had been able to be there. However, Greg Cooke, who is the administrator, and Larry Starfield, who is the assistant, and Sam Coleman, who is head of enforcement, are all here and will be here tomorrow. Will you be here tomorrow?

MR. SHERRON: Yes.

MS. SUBRA: Perhaps we can set him with EPA people so he could tell his issues directly to EPA and hopefully have them do that.

MR. SHERRON: That would be great.

MS. SUBRA: So, Charles, can you arrange that? Can Marva arrange that?

MR. LEE: Yes. That is no problem.

MS. SUBRA: Okay. We will arrange it. Thank you.

(Applause.)

MS. SHEPARD: Just one second. Terry.

MR. WILLIAMS: Has the tribe made any attempts to contact the Indian Office at EPA?

MR. SHERRON: Yes. That's who -- whenever we deal with Region 6, that's how we basically got things done. I go through my GAP coordinator, the general assistance program coordinator, and then he has to go through his director and he kind of works his way through there, and we eventually get a call back later on. But it's after several attempts, and that's finally been the way we go through things.

But the problem is in Oklahoma -- and this is kind of what I see whenever we have these Oklahoma regional meetings where all of the tribes come together in Oklahoma and they speak; is Oklahoma is considered a checkerboard state because the tribes weren't given reservations. And through Daws Act it busted up the land even worse. So there are a lot of disputed land issues there.

And in order for regulation and compliance to work through that stuff, EPA has to make a determination on how jurisdiction is going to be handled and EPA has really dragged their feet on that issue because there's going to be a lot of upset people one way or the

other. And that is kind of the problem we have seen going through EPA on issues happening in Oklahoma.

MR. WILLIAMS: You did say you --- tribes though?

MR. SHERRON: Yes.

MR. WILLIAMS: This is like in Alaska. You are in a similar position of being landless and lack of jurisdiction, but EPA does have the ability to deal with this for you under the definitions of the treaty, and I appreciate the comments you made about ---

MR. SHERRON: That's the way we felt, and we have gone to them with those same things and they have -- especially with the water stuff. Since Oklahoma -- they've turned to water stuff. Oklahoma has a permits to discharge elimination systems department. That's where they have allowed Oklahoma to handle this stuff, and that's where we initially we saw the problems. It was within the Oklahoma State Agency where they were really dragging their feet to handle any kind of issues that involved tribal people.

MR. WILLIAMS: Again, the frustrating thing here is that as a treaty tribe you have the right to access EPA programs and EPA funding. Because of being landless, the state is going to apply for funds as well. As a former director of the Indian Office I get extremely frustrated when I hear about states that accepting funds, federal funds to deal with issues like that and then is putting that off and is not dealing with the issue and leaving you with a problem.

MR. SHERRON: One of the other issues that really makes this hard, being a tribal member, as well as environmental director for the tribe, is tribal people are exposed to the environment in more ways than the normal person. As I heard somebody say earlier, the standards were set on the average white male.

But when you take into account tribal people and how they deal with the land, they are constantly in the environment. They look to the environment. The environment is held sacred to them. So ceremonies that are held, firewood that is gathered, all this leads to more ways that tribal individuals can be exposed to toxins and different contamination.

MS. SHEPARD: Richard.

MR. GRAGG: I would just like to thank the gentleman for his testimony because, one, it demonstrates what an excellent job that I think the workgroup did on isolating and identifying the needs to work with tribal communities in a bunch of different capacities.

But also, I think when we previously -- when we discussed the report and we discussed pollution prevention, one of the things that went through my mind -- you know, when you talk about pollution prevention, which pollutants do we try to -- not using the same EPA in the same way, but which are the priority pollutants that we -- should we have a priority list of specific pollutants that we need to reduce?

And I think that just takes me back to this whole issue of pollution and health disparities and it is particularly important in what the gentleman just said in terms of how tribal communities interact with the environment versus other groups, because that lends to the notion, as it was said earlier, in terms of science based information of what we call this issue of susceptibility of vulnerable groups when we talk about the impact of environmental pollution, and what he said just pointed to that.

But also, again on my little pet peeve of environmental pollution and health disparities, I saw an excellent program a couple of weeks ago on diabetes, which is, according to them, a pandemic now across the country. In one of the susceptible communities for that health disparity is some of the Native or tribal groups.

So, when you have those types of situations -- you mentioned asthma and stuff also. When you have existing health conditions and then you have the impact and exposure to environmental pollution, those existing health conditions even make you more susceptible to the impacts.

And I just would emphasize it again, and I know I said it before, that we really need to make sure that the report emphasizes the real need for pollution prevention is about eliminating or integrating this whole issue of relationship between environmental pollution and health impacts and health disparities.

MS. SHEPARD: Pam.

MS. KINGFISHER: Thank you, Ron, for this presentation. You have a long struggle, and it is one that I fully understand what you have been facing. Some of the things that we need did that was real helpful, and I am not sure if you all are looking at this. But I didn't hear you talking too much about the health effects, and that is going to be starting to happen beyond the asthma.

So health surveys, community impact surveys, maps, photos, documenting these stories, I would encourage all of that to go on, even though it is kitchen table science, because one of these days you will be able to use it and it will make a difference. And you said it was Continental Carbon. And did you say that was a Japanese owned company?

MR. SHERRON: Taiwanese.

MS. KINGFISHER: And that they are tribal land? But is that checkerboarded land so that it is right in the middle of you?

MR. SHERRON: Yes.

MS. KINGFISHER: And that is on state land? Or how did they get in there?

MR. SHERRON: What it was, was it was an allotment land and the last heir on the land died. So, when the land was turned over, they were able to buy the land cheap.

MS. KINGFISHER: Oh, okay. So they actually own it?

MR. SHERRON: Yes.

MS. KINGFISHER: And you mentioned Conoco. I know there are other issues with Conoco on long standing problems. Are they connected to this company?

MR. SHERRON: I believe they are the ones that founded the company and then had sold it off, and that's an entire different thing when you mention Conoco down in that land. As a lot of people that are familiar with environmental stuff back in the early '90s with the buy-out and all the gross ground water contamination and stuff there, that's another one of our issues; is all the monitoring and all that went to Highway 60.

And that is what we commonly say around there: From Highway 60 south is invisible because that's where you get into the treatied land of the tribe. So all the monitoring, anything that happened from that buy-out area, stops right at Highway 60 and that's the end of city limits. And then you start getting into the checkerboarded tribal land, and nothing has ever been done past that.

MS. KINGFISHER: I think what this speaks is the sacrifice zones and that any of us are sacrifice people and that this is state supported racism. This is really a big issue, and throughout Indian country. I know it is big in Oklahoma.

MS. SHEPARD: Thank you very much.

(Applause.)

MS. SHEPARD: Tom.

MR. GOLDTOOTH: Kim mentioned racism and Oklahoma has a long history of practicing racism against the First Nation People and the tribes. In the Oklahoma Land Rush, in fact, the opening up of Oklahoma once this government satisfied Oklahoma as a territory for Native American tribes especially those that were relocated as a federal policy; all relocated to Oklahoma.

Then they reneged on those agreements and opened up to settlers. So, there is a long issue of racism, and that's why it in environmental justice it is very important we don't lose sight that racism always needs to be mentioned. But it is very important. Racism is there with African American, Mexican Americans, Asian Americans and Native Americans. Racism needs to be mentioned.

One thing that is interesting about this case is that involves just transition. It involves working with the union --- which used to be OCA, and they are standing side by side. They are the fence line communities and the workers are supporting that and there is a lock down right now.

MR. SHERRON: One last comment that brings up the environmental racism, and that's the thing that sticks in my mind. When I came back to my land and started working for my tribe, when we were first removed and put in that area that we're at now, one of

the first things of our elders and our chiefs was to get together and find the most sacred of our land to put our cemetery so we could bury our fallen ancestors as they were removed.

So they picked out the highest point at that land, which happened to be within about 100 to 200 feet of our river. And they put that as our land to bury our people.

So since then the state has approved landfills and now that is no longer the highest point of that land. We are surrounded on three sides by landfills, and they have just bought the land to extend it across the street. That will put the landfill within 50 to 75 feet of the river. So we will be surrounded on four sides by landfills.

So, when we go out to our people and we bury another one of our people and we go out there, we have the trash that blows off because of the wind, and we have to clear that off the headstones and we have to clear that off our crosses and what we have out there. And we are constantly picking that out of our cemetery, our sacred land; the little piece that we set up for ourselves because everything else was taken away.

And if that were any other cemetery, there wouldn't be these things around there. There was plenty of land to the south of Ponca City, to the west, to the east that were non-tribal lands. But the land that was picked out, because of how cheap it was, because they could buy it from the BIA at cheaper prices, was the land directly around our cemetery, and that's what we deal with on a daily basis. Thank you.

MS. SHEPARD: Thank you.

(Applause.)

MS. SHEPARD: Robert Gough, Native Peoples and Native Homelands. Then we will have David Wise.

By Robert Gough

MR. GOUGH: Good evening and thank you very much for this opportunity. My name is Bob Gough. I'm an attorney with the Rosebud Sioux Tribe Utility Commission and I am the secretary of the

Inter-tribal Council on Utility Policy. I did serve as the co-chair for the Native Peoples Native Homelands Climate workshop held in Albuquerque, and I am very glad to have the opportunity to address the committee here tonight.

What I would like to bring up are the issues in terms of pollution prevention; some of the work that the tribes in the Dakotas in particular are looking at in terms of becoming proactive with regard to pollution. And particularly with regard to pollution of carbon dioxide of the atmosphere, a principal global warming gas.

The tribes in the Dakotas and the northern great plains live in probably the richest wind regime in the world, and there is an ocean of wind energy that crosses the Dakotas every day. Basically we tap a small river for about 25 percent of our energy, the Missouri River, and the building of those damns have had tremendous impacts on the Lakota People, including loss of land, removal from the river lands, loss of medicine plants.

And these are things that did not stop 50 years ago when the damns were built, but continue today as erosion causes cemeteries to wash out and graves of people who are grandparents to the generation sitting around the table here, people who were not tribal members, but uncles and aunts and grandparents to be brought up to the surface with the way the damns are operated.

The other 75 percent of our power comes from coal, and it is coal that is lignite coal. A very young coal. Fifty to 70 million years old. Most of the coal burnt around here goes back 200 million years.

As a young coal it doesn't have all of the sulphur that the older coal does. So it is called clean coal. But when they burn it, they have to burn more of it, and it is the most carbon dioxide intensive energy in the country. Most CO2 per megawatt hour.

The issue that I want to bring before this group is what the federal government's participation in how tribes can be able to move forward and build sustainable homeland economies based on wind energy, renewable energy in the Great Plains.

Getting onto the grid system that is owned, operated and paid for

through the federal government and operated through the Western Area Power Administration, they just distribute the power that is generated under the damns. Under the current global warming scenarios, the predictions for the future -- we are predicted to have less snow pack in the Rockies and more precipitation happening further east below the damns along the Missouri River.

We are seeing that now. You needn't wait for global warming to -- you needn't study it much further to know the predictions -- we are seeing these predictions right now. And the issue is the federal government, EPA, right now is currently being sued for not moving forward on global warming gas control.

But the practices in the federal government when there are shortfalls in hydro power because of the lack of snow pack in the watershed and holding back water where flooding takes place down river, produces less electricity from hydro. It moves the federal government, with long-term energy contracts, to buy more of the most carbon intensive coal in the country.

And what we are asking is for the federal government to assist the tribes in building renewable energy to insert that into the system and quit the positive feedback or break the positive feedback loop that is going on right now. We can build sustainable homeland economic development based on the renewable resources the tribes have. We have got a sustained transmission grid. We need the federal government to step up to the plate and meets its green power purchase requirements, and we would ask that you encourage the various federal agencies to purchase the environmental attributes, so-called green tags, that renewable energy can generate.

We are looking at private markets where the green tags can be sold to private individuals as well. Not necessarily to utilities, but can be sold and marketed in a way that they can be retired so that they are environmentally -- environmental justice friendly.

We are working with the EJ groups around the country to develop a model that looks at a clean bill of health for these projects from the siting, respecting cultural resources and moving on through

clean generation and moving on to clean tags, if you will, so that they don't foster environmental hot spots that cap and trade programs do.

So I just want to ask this committee to consider the opportunities that communities in the Northern Plains have for becoming proactive in coming up to pollution prevention strategies that also build upon our sustainable homeland economics. Thank you very much.

(Applause.)

MS. SHEPARD: Thank you. Eileen.

MS. GAUNA: Thank you. That was wonderful. I was wondering, given your familiarity with these issues and the technicalities, if you would comment on the draft report and give us some specific action items.

MR. GOUGH: I would be happy to. I just say that Rosebud has got a wind project that the first utility scale turbine that will be going in the latter part of January, and it is part of a phased in process that would work -- 50 to 80 megawatts.

I looked over some of the topics that were listed in the proposals for some of those chapters, and it meets quite a few of those in terms of building on what we do have and also looking to the federal agencies to live up to their/ trust responsibility. Even in the SEP context for EPA.

MS. GAUNA: I might add that that would be a wonderful alternative to the planned expansion of hundreds, if not thousands, of electric power plants that are going up over the next few years.

MS. SHEPARD: Terry.

MR. WILLIAMS: I just want to say that I really appreciate the comments. Just prior to this new administration in Washington some of the tribes in our area were working on very similar proposals and some federal funding identified to set up just what you are talking about.

The effects on tribal resources and tribal culture as a result of all of this is going to horrendous. I don't know if there is any opportunity here to -- guidance on how to structure that. I would really appreciate that.

MR. GOUGH: Sure. Just to comment on that. Environmental justice plus global warming equals climate justice issues, and it is indigenous people around the world who are suffering from basically something that the United States is the largest exporter of, which is carbon dioxide. Twenty-five percent of the world's CO2 comes from this country right here.

MR. WILLIAMS: Just as an added comment on that. After the --- protocols in 1999 the U.S. said it would reduce the --- levels. Since that the U.S. impact --- 13 percent and about 50 percent --- global impacts ---

MR. GOUGH: To give you an idea of the resources in the Great Plains, the wind resources simply on Pine Ridge and Rosebud, those two reservations alone, the wind energy potential there, if developed, if a portion of that is developed, we could meet the Kyoto targets for North American just on those two reservations. Just to give you an idea.

MS. SHEPARD: Yes, Wilma.

MS. SUBRA: The young coal that you described, do you have any idea how much mercury content it has? And also, are you watching whether or not the power plants are putting on the appropriate mercury scrubbers to make sure there is not huge quantities of mercury being released into the air?

MR. GOUGH: I suspect that there is considerable -- most of the plants that are -- many of the plants in operation in our region were there before the Clean Air Act. So they were in full compliance, having been grandfathered. It is sort of that issue.

We are looking at -- there's plans right now to build an additional 5,700 megawatts of coal plants. So we think wind is appropriate alternative to reduce mercury. Mercury produced in our region falls in Minnesota on the Chipawa Tribes in those lakes in that western wind lakes area. We recognize that, and we are really trying to move towards a vision of organizing the wind shed.

Folks here in Maryland, you are in the southern reach of our wind shed. Two days after we do with the air what we will, you get it.

Virginia to Maryland to Newfoundland. That is the region. It is also the largest energy using area in the world.

MS. SHEPARD: Pam.

MS. KINGFISHER: Thanks a lot. I really appreciate this, and I would just like to add something to it that I understand is happening. I know there are just really issues around medicinal plants that are starting to disappear on Pine Ridge and Rosebud, which were some of our really greatest resources.

Some of the women there are a little concerned about the railroad spurs being built to go in Wyoming for methane gas, and that methane gas extraction is going to completely de-water the aquifers that go underneath South Dakota at both of these reservations. So there are just some huge energy things going on in Indian country out there that is really going to impact the people there.

MR. GOUGH: I would say that the northeast has a special role. Right now there is a rail line plan to take -- dig up coal in Wyoming, because it is low sulphur, train it across the Dakotas and Minnesota and then deliver it to the Ohio River Valley because it will reduce the acid rain problem. But it will only make the carbon dioxide problem worse.

MS. SHEPARD: Thank you very much. Next would be David Wise. Sir, if you would come forward.

MR. GOLDTOOTH: Peggy, one small comment. I think it is good to know for the advisory committee here that there are people of color who have come together to work on climate issues, and that is the Environmental Justice Climate Change Initiative. As well, there has been the launching of a global people's movement on climate justice. People of color and Native organizations are part of that.

And we do have a section in the pollution prevention draft on energy. That was mentioned by Eileen. In addition to your participation, there are people working on this. We need to put P2/EJ spin to energy, and I am glad that there is discussion on this, because the Chaney/Bush Energy Plan does have a negative impact to the communities that we are all working with.

MR. GOUGH: Thank you.

MS. SHEPARD: Thank you, Tom.

(Applause.)

MS. NELSON: I just wanted to say that the energy bill is being re-authorized next year, and some of us are working on trying to get added into the energy authorization to do some pilot demonstrations of alternative energy in communities that will help build up communities. So that would be kind of an example of something that could utilize that kind of pilot demonstration. Maybe we can all advocate for those inclusions.

MS. SHEPARD: Thank you. David Wise.

By David Wise
(On Behalf of Marylee Orr)

MR. WISE: Thank you, Madam Chairwoman. My name is David Wise. I'm a plant manager for Shintec Louisiana, and I'm also a member of the community in which my facility resides.

I have to be very candid with you. I had not intended on speaking to the NEJAC. I came to this conference to listen and learn. I have always admired the collaborative and consensus building efforts of the NEJAC, and I try to implement them as much as possible in my interactions with my community.

The young lady that had intended on speaking was Marylee Orr of the Louisiana Environmental Action Network. She could not be with us tonight, so I have ben honored with having been asked to read her statement into the record, and I also have a written copy of that I would like to submit also.

So, if you would indulge me and allow me to read this into the record for Ms. Marylee. The Louisiana Environmental Action Network, or LEAN, was founded in 1986 as an umbrella organization for grassroots environmental groups and individuals throughout the State of Louisiana. LEAN consists of 100 member organizations representing a broad diversity of ethnic, cultural and social perspectives.

The environmental justice member communities consist of African American, Hispanic, Native American, Asian Nationalities as well as the very poor, disadvantaged and disenfranchised.

The environmental justice communities in Louisiana are the recipients of excessive pollutant loading which result sin impacts to their human health, as well as the environment in which they live, work, recreate, subsistence hunt, fish and gather and attempt to survive on a daily basis.

The excessive pollution burdens in Louisiana are associated with volatile and semi-volatile organics, dioxins and furads, toxic heavy metals, pesticides, criterial pollutants, nutrients, bacteria and viruses. These pollutants impact air quality, water quality, ground water, surface water and drinking water, sediments, soils, aquatic and terrestrial animals, agricultural crops and domestic animal production.

The pollutant loading is a result of ongoing facility operations as well as sins of the past; historical facility operation methods and inappropriate waste disposal techniques. The ongoing facility operations release excess pollutants as a result of non-compliance with permit conditions, accidental releases, upset conditions, bypassing of treatment systems due to lack of sufficient treatment capacity and the lack of appropriate treatment technologies.

Environmental justice communities living, working, recreating and going to school in close proximity to sources of pollution, on top of waste sites and in contaminated eco systems are exposed to excessive levels of pollution. As you can see, there is a desperate need to improve the quality of the environment and reduce human health impacts in environmental justice communities in Louisiana.

LEAN supports the efforts of NEJAC's Pollution Prevention Initiative in environmental justice communities. LEAN would be extremely interested in proposing environmentally impacted EJ communities as pilots for the multi-stakeholder collaborative pollution prevention model. LEAN is also willing to assist EPA and the EJ communities in the implementation of the pilot programs in communities in Louisiana. Duly executed, Marylee Orr.

(Applause.)
MS. SHEPARD: Thank you very much. Sonia Dueno.

By Sonia Ivette Dueno

MS. DUENO: Madam Chair, Mr. Lee, members of NEJAC, staff of EPA and members of the audience, greetings. My name is Sonia Ivette Dueno, and I am the coordinator of the Fellowship of Reconciliation's Washington Office on Vieques.

FOR is the oldest and largest pacifist, interfaith group in the United States. Established in 1915, FOR is an international movement with a branch in every continent and in over 40 countries.

The situation of Vieques today. Please look in your packets for both the FOR Health Issue Brief and the Puerto Rico Update.

Data from the Puerto Rico Cancer Registry show that residents of Vieques had a 27 percent higher rate of cancer than residents of the rest of Puerto Rico from 1985 to 1989 and that the cancer rate shows an increasing tendency since, while cancer mortality in Vieques is more than 50 percent higher than the rest of Puerto Rico.

Vegetation and soils in Vieques show elevated rates of heavy metals such as lead and cadmium. With more than two thirds of the island controlled by the U.S. Navy beginning in 1940, there is no other significant source of contamination on the island.

The EPA found the Navy in violation of the Clean Water Act because of metals and compounds from live fire bombing contaminating waters in eastern Vieques. Now EPA is in a Phase I investigation of 12 RCRA sites in eastern Vieques. Yet, although the community cares deeply about the island environment and its contamination, they are poorly informed about this investigation.

The theme of this NEJAC meeting is how can EPA better promote innovation in the field of pollution prevention, and I answer: Innovation includes appropriate technology and technology involves tools. Communicating in a timely fashion is a critical tool. When we look at impacted communities in the environmental justice framework, we must look at communicating key information in the native

languages of the impacted communities.

At the present time the EPA, in my opinion, is not fully this tool to the benefit of the aforementioned communities. According to the 2000 Census, Latin America and Asia account for as many as nine of the 10 leading countries of birth for the U.S. foreign-born. Mexico alone accounted for more than one quarter of this population, and the numbers are only going to increase.

Language access is an issue in the environmental justice communities, because it is the lack of information in the native languages that hinders the communities from exercising their right to due process and to reply effectively to matters affecting their daily lives. In the Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Section 5-5(b) addresses the need to translate crucial public documents for limited English-speaking populations.

An example of a drop of rain falling in the ocean is the small grants programs sponsored by EPA which provides approximately $10 to $15,000 grants to community based organizations to provide education, and some of those programs include educating in the native languages. This program assists in community outreach, but is not a replacement for a system-wide availability of information in the major languages spoken in the USA today.

NEJAC is a crucially important player in ensuring the language access to the impacted communities. The role of NEJAC, according to what I have read in its Objectives and Scope of Activities in number 3, Section (e) states that NEJAC shall provide on how the EPA and others, participate, cooperate, and importantly, communicate within agency and between other federal agencies, state and local governments -- in the case of Puerto Rico it is a Spanish language government -- federally recognized tribes, environmental justice leaders, interest groups and the public, which in Puerto Rico is a Spanish speaking public. And in other border states and so forth in the United States.

Section (g) of that same area states that NEJAC shall provide

advice regarding EPA's awareness, and I stress education, training and other outreach activities involving environmental justice.

A strong recommendation by NEJAC and perhaps even the establishment of a working group on this subject would bring the issue to the forefront and guarantee that the voices and needs of the language minorities, those who don't speak English, are heard.

In Vieques EPA recently conducted a community outreach effort, but no documents were provided for the community to comment on. And I ask, what good is it to convene a public meeting and the expenditure of public dollars involved in that effort if the documents are not provided? Period. They weren't provided in English and they weren't provided in Spanish. They just weren't there. What was the community supposed to comment on?

The language access is not going away. The EPA has an opportunity to address it responding to the request that FOR is putting forth. And I must say, in reading the minutes of the prior NEJAC meetings, I know that this issue was also raised. I believe in the year 2000.

To finalize, the Fellow of Reconciliation respectfully asks for NEJAC to: 1) Request the EPA administrator to include funding in the FY 03/04 budget and in subsequent years for creating a translation department to provide all draft, preliminary and final documents inclusive of electronic media, in languages besides English that are relevant to the impacted community.

And secondly, we ask that NEJAC convene a meeting of NEJAC in Vieques, Puerto Rico. I see that the office of Region 2 is in agreement since they are working to have NEJAC in Puerto Rico in their reporting of their listening sessions. But I ask that it not only be in Puerto Rico, but that it be in the island of Vieques, Puerto Rico.

And in addition, FOR is organizing a health delegation to Vieques of the weekend of February 2003, and I ask that you please look at the flyer in your packets that I have provided. Thank you for the opportunity to speak, and I look forward to a productive relationship with NEJAC. Thank you.

(Applause.)
MS. SHEPARD: Graciela.
MS. RAMIREZ-TORO: It's nice to see that there is another Puerto Rican in the audience. I'm on the chair for the Puerto Rico subcommittee for the NEJAC. I don't know if you were aware that Region 2, recognizing that the problems of Puerto Rico are environmental problems and the demographics are a little bit different than the whole nation, established this committee.

And we finally had all of the members appointed last October. So we are working on the agenda. One of the things that I have been doing at this meeting is gathering information that I will bring back to other members in the subcommittee on different issues and how to incorporate Puerto Rico in national issues.

You mentioned a couple of things that I had to bring back. For example, we should be discussing in the Puerto Rico Subcommittee the issues of the federal facilities, which is what you are bringing up in terms of Vieques. We not only have Vieques, but we have five other bases in the island.

Also, there is a big push to incorporate the issues of Puerto Rico through Region 2 in the national agenda, and there is going to be a listening session in Puerto Rico. Hopefully pretty soon; next year. I was talking earlier with the coordinator. Puerto Rico probably will have to have the same type of listening sessions as in the states because of the topography of the island and the difficulties in moving around of the different groups.

But I would like also to have what you are presenting to bring back to Puerto Rico.

MS. DUENO: Absolutely. I would be more than happy to provide more copies. Thank you.
(Applause.)
MS. SHEPARD: Thank you. Munabi Mike Gesa, from Tororo Young Environmentalists.
(No response.)
MS. SHEPARD: Bill Burns, Environmental Awareness

Foundation.
(No response.)
MS. SHEPARD: Gilbert Sanchez, Tribal Environmental Watch Alliance.
(No response.)
MS. SHEPARD: Jerome Balter, Public Interest Law Center of Philadelphia. And is Kathleen Peters Zuray or Laura Luster here? You will be next.

By Jerome Balter

MR. BALTER: Thank you very much. This has been a long day for an octogenarian. At 10:00 this morning I was at the Liberty Pole in Philadelphia at a rally to see what we could do to stop the war in the Middle East, because if there is a war in the Middle East everything we have been talking about here is down the drain. There and here as well.

At any rate, my talk is -- I have put a title to it: "It is Time for a Change." My Jerome Balter. I'm an attorney with the Public Interest Law Center of Philadelphia where I have specialized in environmental law, representing minority and low-income communities.

Over the past 10 years I have represented minority communities in Chester, Pennsylvania and Camden, New Jersey in their efforts to prevent the proliferation of unwanted polluting facilities in their waste overburdened communities. The years 2001-2002 have been the defining years for the environmental justice movement. We all had hopes that the environmental justice movement could produce relief for minority and low-income communities. But the years 2001-2002 we have learned that the existing civil rights laws and regulations are incapable of providing relief to these communities.

In the past two years the U.S. Supreme Court, directly and indirectly, declared that victims of environmental injustice have no right to enforce EPA's environmental justice regulations and that they have no right, no right or power, to prevent state environmental protection agencies from issuing operational permits for additional

polluting facilities. In the past two years the EPA maintained its perfect record for never finding a single instance of environmental racism, and the EPA maintained its administrative policy that refuses to accept an environmental justice complaint until after a state has issued an operating permit.

The EPA even refused to investigate the New Jersey permit system that allows a permit applicant to construct its facility before any public hearing and before the issuance of a permit.

It must be admitted, however, that the EPA in the past two years did improve its previous performance record regarding the completion of investigations of civil rights complaints. Before 2002 EPA had issued only one decision, but in 2002 EPA issued three decisions. Of course, we all know that all four decisions denied the complaint.

EPA'S failure to even find a single case of environmental injustice in the 130 complaints received by EPA's Office of Civil Rights over the past 10 years should make us question whether there is really any environmental injustice in the United States. But that question will be quickly answered by a visit to Chester or to Camden or the hundreds of others of Chesters or Camdens.

Such a visit will make us all realize that if these communities cannot find relief from environmental racism under the present laws and regulations, they and we must demand new laws and new regulations. And new laws and regulations are needed to provide meaningful relief to communities suffering from environmental injustice.

Title VI permits the EPA to withhold federal funds if the recipients, that is the states in general, are found to have violated the civil rights laws. But that penalty requires the approval of both houses of Congress. The victimized community, nevertheless, under this scheme continues to be victimized because the unwanted facility is allowed to continue its operation even when the state has found it in violation.

In past years I have urged NEJAC to support a change in EPA guidance, which would replace EPA's unworkable, complex, disparate

cumulative analysis by a protocol based upon comparative public health. But a change in EPA's regulations and guidance based on Title VI cannot provide relief for victims of environmental discrimination.

It is time for a change. I urge NEJAC to support legislation which would provide for citizen lawsuits, enforcement of civil rights regulations and to incorporate existing community health as a necessary criteria for granting or denying permits. It is time. It is time for a change. Thank you.
(Applause.)
MS. SHEPARD: Thank you. Tseming and Ken.
MR. YANG: Thanks, Mr. Balter. I think that raises -- your testimony here raises an important issue about the status of Title VI. It is not something that is on the agenda. Even at the risk of opening a can of worms, this is something that NEJAC has spent quite a bit of time in the past and has really sort of submarined over the last couple of years.

It is always -- it has been something that the enforcement subcommittee has dealt with, and I don't know if -- I know that -- I don't know whether Bob Kearnon is around, but instead, I was going to maybe throw -- Ken has his card up. So maybe I can throw it over to him and see if there is any -- what is sort of happening.

MR. WARREN: I wanted to thank Jerry for appearing. As a fellow Philadelphian I can tell you that Jerry's organization have an illustrious history of unwavering support for environmental justice. Thank you for your continuing efforts as an octogenarian.
MR. BALTER: Thank you.
MR. WARREN: The comments that you raise I think, in some respects, are somewhat pessimistic. I think that legitimately you talk about the restrictions that have occurred as a result of a recent U.S. Supreme Court decision and how that decision has been interpreted. Particularly by the Third Circuit.

I am wondering whether in light of your sort of long involvement with environmental justice you still see litigation as being the way for

environmental justice to be achieved, either exclusively or in part, and whether you see sort of a cooperative multi-stakeholder model, which is something that we have talked a lot about today, as a fruitful model for us to be pursuing.

MR. BALTER: There are other models. Yesterday the Pennsylvania Department of Environmental Protection issued a press release which declared that they denied a permit to Kimberly Clarke for burning tire derived tires or tire derived fuel in their boilers, and that came about partly by the technology that was inadequate.

But I would say greatly by the fact that the laborers union of 1,000 people got more than 1,000 signatures and told DEP we don't want tire derived fuel in the boilers at Kimberly Clarke in our neighborhood.

And so the question of whether or not the legal path is a meaningful path, it is not under Title VI because you just can't get relief. Or whether or not community action -- my choice would be community action. By and large after we had the courts turns us down on our environmental justice lawsuit in Chester, there hasn't been a single permit granted. None have been denied, but none have granted.

So the force of the community is most important, and I believe that where the community becomes involved and demonstrates its opposition is better than any laws. But that's not always possible. So you want some laws to fall back on, and Title VI just doesn't provide for it.
MS. SHEPARD: Pam and then Sue.
MS. KINGFISHER: Thanks. I would just really like to recognize you for a stable model for most of us activists that are starting to feel tired. Thanks.

The one thing that you said is real interesting, and I don't have the brain to think about it right now, but I would like to flag it, is the piece that the piece that you say about incorporating existing community health as a necessary criteria for granting or denying permits. I really like that idea, and I would like to tease that out and

really think about it in the health and research subcommittee.

MR. BALTER: I have represented NEJAC and most of the people in this room with a proposal for a protocol for the City of Pennsylvania. That's all based upon the idea of comparative health. We were able to do a full analysis on a census track basis to demonstrate the difference in the health of various census tracks.

One of the things that we did find, which I am sure everybody in this room would understand and appreciate, is that if you took the 20 percent of the population of Philadelphia -- and Philadelphia roughly 50/50 black/white. If you took the 20 percent at the lowest, poorest health, 94 percent of those people are black.

That tells you something because it is not necessary to deal with the question of race. All you have to deal with is the question of health. Whether it is black people, white people, Indian it doesn't matter. Sick people have to be protected from pollution.

MS. SHEPARD: Tseming.

MR. YANG: I'm sorry. I don't mean to put Ken on the spot, but I think it would be appropriate for the council to get some sort of update about EPA's Title VI efforts.

MR. BALTER: I was struck -- just one word. I was struck, listening to all of the previous speakers, that all of them were talking about the problem of pollution control and clearly controlling pollution, if it is a minority community, is part of environmental justice. No question about that.

But it is essentially being dealt with as an environmental problem, not a racism problem. Not racial discrimination. And there are things obviously that can be done.

For instance, we were able to get the commissioner of the Department of Environmental Protection in New Jersey to come with a staff of 50 people and go through Camden, New Jersey with 50 people going through every facility and handing out notices of violation where they found them. And now what the community has to do is get on the commissioner and say, hey, come again.

MS. SHEPARD: Yes. I heard about that. Larry, Eileen and

Tom.

MR. CHARLES: I guess I am the only one that didn't have sense enough to go to dinner during the previous break. It is after 10:00. So I am going to make these comments. Back to Tom's point that racism permeates almost every decision making process in this country. You are underscoring that as part of your testimony --

MR. BALTER: I am having a difficult time hearing you.

MR. CHARLES: That racism permeates almost every decision making process in this country.

MR. BALTER: Sure. Absolutely.

MR. CHARLES: And we are dealing with this thing as if we are dealing with a perfect environment and that reason and logic has something to do with the decision or final conclusions that we might reach. And I appreciate Tom bringing that point up.

And when we launch our issues on environmental racism, it would just urk the folks that we were tackling. Why do you have to use the term racism? So I applaud and congratulate you constantly referring to this issue of environmental racism throughout your testimony.

The point I am making is that as long as we followed the process and pursue the procedures, you know, we were at a disadvantage. When we redefined the issue as a political issue and brought it into our briar patch and then we launched a very public attack against the elected officials regarding an environmental injustice in our community, we started making tremendous progress.

It became a priority and people started scrambling to try to find a way to solve this problem. The moment we turned this thing over to a Title VI process it came to a screeching halt, and we waited and waited for some kind of a solution to come.

That is kind of the basis of the comment I made earlier that may have been confused a bit; that legal may not be the best strategy approach in every single issue and the alternative to that in the rest of that sentence is political action by a community may be the best strategy.

So I am not saying we do not look at legal, because I don't think there is enough of a body of law that is out there to help achieve the justice that we want in the face of racism system and a racist process. Now, at the same time I do think it could be the 2x4 to bring folks to the table to then start a dialogue and a negotiating process to reach an agreement to address the interests of the various stakeholders.

That is the process that I am trying to get out on the table and that I endorse and support because through that negotiated process, in our case at least, we were able to gain things that the court never could have. So I am just strike another comment in that area.

Then finally, I want to say that I want to salute -- though I have not been involved with you directly, I have heard about your life work and I have looked at your testimony -- the life work that you have done in this area and say thank you on behalf of the communities that you fought for and thank you for the statements and testimony. God bless you.

MR. BALTER: I just want to tell you everything is politics. The basis of the Camden lawsuit is the construction of the St. Lawrence Cement Company. I have a photograph in my office of a big celebration for St. Lawrence coming to Camden. And who was the leader of that celebration? She is now the administrator of the EPA. Thank you.

(Laughter.)

MS. SHEPARD: Eileen.

MS. GAUNA: Tseming mentioned that the enforcement subcommittee was interested in following the progress of Title VI, and I just wanted to note to the council that the air and water subcommittee has also been interested in following the progress of Title VI because of its obvious relationship to permitting, and I imagine the waste and facility subcommittee is also -- and a few other committees have also been interested in following the progress of Title VI.

I was on the Title VI FACA and my perspective -- and this is one of a complete outsider, but I will offer this somewhat cynical view. A

jaded view maybe.

In the beginning there was a great deal of attention placed upon Title VI because industry was interested in the issue, and industry's primary concern in the industry sector was we want certainty in terms of these investigations. We want to know what the methodology is about and we want to know how the agency is going to resolve those issues, and that is a fair criticism.

The interim guidance was not clear on that point, but then again neither is the draft guidance and the agency still is not clear on how it is going to resolve these cases and what sorts of methodologies it is going to use. But the issue of Title VI has fallen completely off the radar screen. There still is no certainty, but it is off of the radar screen because industry isn't interested in it.

The environmental justice communities are very interested in it, but it is off the radar screen because industry isn't interested in the issue. Industry isn't interested in the issue because we have no private right of action because of recent Supreme Court decisions.

If the agency were truly committed to environmental justice, it would do something about these types of complaints, it would provide some certainty to the EJ community, as well as the business community and, at minimum, it would let the NEJAC know what is happening with these suits in greater detail and with greater specificity than it has in the past.

This is an important issue to the environmental justice communities. These cases haven't gone away in their minds and the agency needs to do something about it.

MS. SHEPARD: Judith.

MR. CHARLES: Let me just tell you one of the -- oh, I'm sorry.

MS. ESPINOSA: That is okay.

MR. CHARLES: One of the complaints included our organization in Hartford, Connecticut, and the complaint was resolved through negotiations. As a result of that, --- cleaning up the facility, testing, $9.7 million in post-community benefits to our group and then supplemented another $11 million for any other non-profit in the city.

But I think the smartest thing that we did is we left Title VI at the table and settled the agreement with a signed contract, and then the basis for our legal actions was old and mature contract laws versus civil rights and Title VI.

I am not sure what happened in the other cases, but then the local parties simply made a public announcement after the fact, that the contract was null and void. That is the way you void contracts I guess. But we now have the largest law firm in town representing us pro bono to enforce the contract signed between the parties.

MS. ESPINOSA: When was the contract?

MR. CHARLES: About a year ago.

MS. ESPINOSA: Well, I want to thank all of the NEJAC members and Mr. Balter for bringing this issue forth. I think it -- I would like, as a new member, to be able to see in the work products next year in the working groups and through the deliberations with the NEJAC -- although we are not having a meeting I guess.

But through whatever types of conferences that we have during the year, to be able to look at how each of the working groups is going to deal with the Title VI issues. And I want to support what Tseming said and what Eileen said, that we need to come to some conclusions I think, and we can do it next year.

We have got working groups, as Eileen said, have been interested and have dealt with it and I think it is practical for each of the working groups to be able to take up the issue and to be able to have some conclusion for public comment and review by the end of next year.

I certainly hope we can discuss that Thursday at our business meeting and see if we can make that kind of a -- I don't know how the system works here, but a resolution or a motion or some kind of work product before we leave here.

MS. SHEPARD: Well, certainly I am sure Barry Hill could make a report on this on Thursday.

MS. GAUNA: As an agenda item.

MS. SHEPARD: As an agenda item.

MS. GAUNA: I move it be an agenda item.

MS. SHEPARD: And let people in EPA know what the disposition of some of these cases are. I am sure we can make it an agenda item at the business meeting.

Before we adjourn, are there any other -- oh, I'm sorry. Laura Luster.

MS. ZURAY: My name is Kathleen.

MS. SHEPARD: Kathleen Peters Zuray.

By Kathleen Peters Zuray

MS. ZURAY: Good evening. I know you are all tired, so I will try to speak fast and get my point across. I had a map and some pictures I wanted to share. My name is Kathleen Peters Zuray, and I am a tribal member of the native village of Tanana, which is in the interior of Alaska. I'm a Kayaquan Athabaskan Indian. We are one of 43 villages in the interior of Alaska.

I am here to speak to the concerns that we have due to the impacts of the federal and state facilities that are in Tanana. Excuse me. Specifically, the Indian Health Service Hospital had a regional hospital for the State of Alaska in Tanana. That was close din 1981 and basically was left as-is.

The Federal Aviation Administration also has a site there, which they basically left as-is. DOD impacts are forgiven and the lend/lease airport that they used for the World War II efforts. There is also the Air Force -- there was a White Alice site set up all over Alaska. Tanana was one of the sites.

Since 1997 the tribe has been working under IGAP funds to start addressing these environmental concerns. Prior to that we basically didn't have a say. The agencies didn't recognize individual tribal members voices. We are a low-income, low minority where there is 400 people in our community. It is easy to just be left alone there and everything can be ignored.

Our main concern is the health impacts. Due to these sites our

water -- the main well has been contaminated with benzene. We weren't told for one year that we were drinking benzene water.

When I came on board two years ago and started working for the EPA tribal office, I became aware of all of these. I'm born and raised in Tanana and I just didn't know the extent of the problems. So we've been educating our tribal members, our council members.

We had a problem with soil remediation. Tanana has several piles of contaminated soil piles, and they're just left in various locations. We had some money to do soil remediation, but Indian Health Services wanted to do between the Tanana elders residents, which is where interior elders go to live, and between the school. We have a school there for kindergarten through 12th grade.

That was unacceptable to us. We do not agree on spreading contaminated soil in between these two places within the village. So, they told us that our -- we had to just reject the money. So we did on the basis that we would reapply.

But because we have been having these types of problems with each agency, we decided to and take a collaborative effort and try to work with the agencies, avoid litigation and so that's what we started doing a year ago. We started out with presenting each agency with an MOA; with a history of what -- the issues in Tanana.

The main concern being health because we also have a little -- a lagoon right in the middle of Tanana which twice a year they dump into the Yukon River. We're right along the Yukon River, which is the largest watershed in the United States. You know, the people down river are the ones we are concerned about, but they're doing it according to EPA levels and Alaska Department of Environmental Conservation levels, and it is not the tribal level that we agree with.

The cooperative effort has been slow, but I've had two meetings. One in June and one in September. I invited all of these agencies to Tanana. I met once in Anchorage. And there are a lot of glitches. We do have a jurisdictional issue, but we're not totally landless.

The thing is that under the Alaskan Native Land Claims Settlement Act our traditional homelands were -- everything was

divided up, and so I have an MOA with our local corporation. The corporation is a native corporation. Me, as a shareholder to that, I have access to land and am a land owner.

The tribe and the corporation have signed an MOA. Basically they're backing up the tribe. We're on the same level, because it isn't about anything about our concerns of what is out there. Each test that was taken by each agency says, "does not exceed the level." But we don't trust these test results.

There's been -- as everyone knows, at every site -- I mean, the environmental impacts of PCBs, putting oil on the roads, telegraph wires everywhere, carbon -- you know, I can go on and on. Asbestos. There was a lot of DDTs used, and basically we're being ignored.

The tribe is -- but we're working towards -- we're trying to work with the process, the government-to-government consultation process. That is something that needs work. You know, we demand respect, equity and empowerment when it comes to tribal issues. We're not getting that.

So I've come like over 2,000 miles to speak to you and, you know, I really thank you for your time. There was one more thing that I wanted to add, and it was on the action number nine. When in regards to tribal lands, that there has to be a special insert regarding the lands in Alaska because only Metalcatle is a reservation in Alaska. We are under a special land status. So it is going to have to be something involving the corporations, and it's a little bit more complex. So, I think that is all I have. Thank you.

MS. SHEPARD: Thank you.

(Applause.)

MS. SHEPARD: And is Laura Luster or Shirley Brown here? Okay. Thank you.

MS. ZURAY: I was concerned about my pictures /

MS. SHEPARD: Judith, did you --

MS. ESPINOSA: I just wanted to say thank you for coming 2000 miles, and I know that some of the other people have also come from very far away, and I think that the words have not been lost on the

committee. I probably will go back and look at some of the provisions that I probably just skimmed over based on some of what I have heard so we can be a lot more careful what it is that we are saying and to include a lot of the comments that we have gotten here tonight.

MS. ZURAY: All right. Thank you.

MS. KINGFISHER: And can I just really quickly say that I am not sure if everybody understands that they are welcome to visit the subcommittees tomorrow, and I would encourage all of you to participate.

MS. SHEPARD: Yes. Thank you.

By Laura Luster

MS. LUSTER: Good evening. I'm Laura Luster. I'm from Oakland, California, and I'm a member of the health and research subcommittee. I really just have a comment this evening on meeting process, and I want to really thank all of you for being really so dedicated too. It has been a very long day; it has been a very long couple of days.

And just like you have, everyone in the audience has been attempting to maintain focus, extract meeting and make a contribution in some particular way, and as evidenced by the testimony or by the public testimony, the work of NEJAC is really so very important. So my comment really is to encourage you to look for even better ways of meeting process.

There are ways to help a group like NEJAC makes sure that you are always in context, you are always asking yourselves why are we here, you are establishing what do we want to accomplish today. You are looking at are we set up to really accomplish the goals that we set out and deciding how indeed do we know that we have even accomplished it when we have accomplished it.

I think that if as a group you are able to work with your organizers to be mindful of that, to be creative; to think about information you want to share with the public; what are the different ways you can share it. We don't even have any visuals up.

You can use the skills of a facilitator. Not necessarily someone to facilitate your meeting, but the organizers to work with people who do this all of the time to really help you so that you are fresh when you are listening to that public testimony. Your dialogue is even richer and perhaps even more productive than it was today.

And your audience feels more a part of your process or understands what their role is or what it can be, as well as where do we go from here now that it is 11:00. What happens? What happens to all the public testimony? What happens to all of the dialogue and all of the handouts and so forth and all of the stuff that has taken place today?

So, that is really my comment. I just really encourage you to work with your liaisons to keep improving this process. A whole lot could be done, because again, your work is just so very important. Thank you.

(Applause.)

MS. SHEPARD: Richard.

MR. GRAGG: Yes, Peggy and Mr. Chairman, I want to thank you for those comments. But we have made several references and people have prior said about talking about things at a business meetings, and I just want to make note that there is no business meeting on the agenda for the NEJAC.

I mean, people are making assumptions that we are going to have time to discuss these issues, and right now, as the agenda set, that is not provided for.

MS. SHEPARD: This is on Thursday.

MR. GRAGG: Where? It is not on -- unless I don't see it.

(Pause.)

MS. SHEPARD: Can't it be raised on Thursday?

MR. LEE: You know, let me just say that a lot of issues were raised here tonight and each and every one of them are very complicated issues, and I think we should figure out how best to address those, but we are not going to get to all of them on Thursday.

I think that that is one of the things that we need to be clear

about or else there is going to be a lot of frustration. I will talk to Barry about the issue of some kind of update about Title VI, but I don't think you are going to get one that is really adequate by Thursday.

Underneath that there is a whole discussion around issues of Title VI and use of environmental laws and everything else that swirls around that, and I think that would be a very productive discussion. One of the things that we need to say, from the point of view of the Office of Environmental Justice and as the conveners of the council, is this council is advisory committee to EPA on matters related to environmental justice.

There are -- we have to be strategic in terms of what kind of advice is going to make the most difference at any given point, and that is a discussion that we could have and should be had both in a setting like this. But I think that a lot of that is much more productive done in individual small group settings so that there can be a really frank, honest discussion about all of those.

All of that is to say that I have been sitting here and I have heard everything that is going on and having taken it very seriously and I think some of it we can get to it on Thursday. There are other issues that are going to come up that we are going to get to, such as the issue that Jana Walker raised that has to go on the agenda and really has to be fully discussed because that is central to the process of NEJAC as an advisory committee.

So, you know, I think one thing that we all need to do is have a certain amount of patience around many of the issues that got raised, and that is not to say that any of them are not important. And if you want to have a discussion about what we are going to do on Thursday, I will be glad to have it with you.

MR. GAUNA: I just want to make a quick comment. I appreciate the complexities of the Title VI issue and a lot of people do. But I do want to note that a lot of people have put an awful lot of time into Title VI. Free, gratis on behalf of the agency or communities that have put their personal time in.

And I think those communities in particular need more than just,

you know, it is a complicated issue so we can't deal with it right now. I understand that we have a lot of stuff on Thursday, but if we could at least get some response from the agency even if it is a quick update. I think that we are asking is fair.

MR. LEE: I understand. I agree with you. That is why I said, you know, I heard what you said. I don't know what will happen by Thursday, but I do want you to know that I have heard you and it is taken very seriously.

MS. SHEPARD: Ken.

MR. WARREN: Just a brief comment. I think part of the process issue that we are having comes from the fact that our strategic plan calls for there to be a communication plan that would involve a flow of information. Not just at our NEJAC meetings, but between NEJAC meetings.

I don't think that we have yet written that plan and part of the last minute, if I can use that word, requests for information may be coming from the fact that there isn't an ongoing protocol for that information to be fed to us. And perhaps in the next several months we ought to devote some attention to developing that plan.

MR. LEE: I'm looking for volunteers. Seriously.

MS. SHEPARD: I didn't hear you.

MR. LEE: I said I am looking for volunteers.

MR. SHEPARD: Well, one of those communication vehicles is supposed to have been a newsletters that the Office of Environmental Justice was supposed to publish and that was to been a communications vehicle, but key EPA news that we would not have to read in our local newspapers. And I guess we are waiting for that to happen.

MR. LEE: Well, that has -- I guess we should communicate about the newsletter, which is to say it is here. It has been published.

MS. NELSON: Yes. We got a copy of it.

MS. SHEPARD: That wasn't quite the newsletter communication tool we were talking about. We were really talking about EPA news, policy initiatives and what is going on.

MR. LEE: Well, I think that if there is any comments about what you think a good newsletter should consist of -- I mean, I think that it would be really helpful if you provided those. The first edition of the newsletter from the Office of Environmental Justice has been published.

I don't think, by any means, that that is a -- that that can't be improved. So, you know, whatever ideas that you have for improving it would be greatly appreciated.

MS. SHEPARD: I think some of those comments and suggestions were made at the August strategic meeting about the kinds of communications we needed, about the kinds of information that we would like to have.

MS. NELSON: I was going to say that it goes back to this point, is that we need a subcommittee to help us flush out with the -- a communications plan.

MS. SHEPARD: Judith.

MS. ESPINOSA: I guess, as a new member, what I am looking at is the year ahead and some of the other meetings or committees that I have been on what typically happens is a business meeting sets out what we are going to do for the public to know between now and the next meeting.

And since we are not going to have a meeting -- or, you know, it seems to me that my business would be -- I don't know if you all adopt minutes. Then usually get a schedule out so the public can see what is going to happen this next year on conference calls, what you anticipate, what the working groups are going to be doing, how many times they usually meet.

That kind of open process where people have a business. That is your business plan. You know what you are going to be doing to reserve your time and the public knows who they can contact or how they can contact you. So, if they are not on a conference call, at least they can know to call the EPA or the NEJAC member that they are comfortable with and find out what is happening.

So that is kind of what I was anticipating doing on Thursday.

Also, setting up things like do we need a subcommittee or something on a communications plan? If we do, who is going to be on that? You know, that kind of structure. And if there is not that, then in an open meeting like this I find it difficult for people to be able to follow our process.

MR. LEE: I don't know how much -- you know, how productive a discussion around a whole set of issues that just got raised right now is -- I mean, I think that, Judy, your questions are good questions and they are fair questions, just like other people's questions.

To the best that we can, I think as a group I believe there is a commitment to try to work all of these things through. It may be helpful to have a quick update on all of the different activities that are going on related to the NEJAC. Not just at the executive council, but also the strategic plans of all of the subcommittees as well, which consists of seven subcommittees, as well as a number of the workgroups.

And there is a history to this and there is an evolution of these so that -- you know, something that happened today, which I think is very positive as an emergence of evolution of the NEJAC becoming more focused or more productive. I mean, it has not been easy to come by on the part of a lot of people.

And I think we can get into the discussions of some of this on Thursday, which means that if we were to do that, there would be some things to be sacrificed, because you only have six hours on Thursday to really discuss all of this. I think six or seven hours.

But, you know, we will get these worked through. But these are not -- I think the one thing you should know is that these are not -- none of this are things that we haven't been thinking about.

MS. ESPINOSA: And I appreciate that, and I would say for myself I would leave it to the chair and to the designated federal officer to see if they can work the agenda to maybe just go through some of these things. I don't think my issues are real big. I just kind of wanted to say I for one want to see what the plan is for next year for the whole committee.

MR. LEE: Just as a quick informational note, that is why we are going to have on the agenda a discussion on the strategic plan and the major item on the NEJAC agenda for the next year and a half after the issue of pollution prevention is cumulative risk. And it is important to put that in perspective not just for the council, both in terms of process and substance, but also for the public that is going to be here.

MS. SHEPARD: Tom.

MR. GOLDTOOTH: Back to this discussion of Title VI, I like the idea of just having an update. I mean, you can work out this list of all the things that you want to re-work on Thursday, but I heard tonight the importance of at least getting an update of where we are on Title VI from someone in the agency.

I think -- was it Ann who did something like that two years ago? But the chair working with the DFO, make it happen. You know, if it can't happen, at least we will find out Thursday morning that it wasn't possible. Someone is on vacation, someone is on leave or some statement. But at least try to make it happen. You have done magic before.

MR. LEE: Well, don't say that too often. Okay? I think you should hear me. We are going to explore this tomorrow, but I am not going to say right now what is going to happen on Thursday. I don't know. The one thing I realized when I came to work for the Federal Government is never promise anything.

MS. SHEPARD: Okay. Are there any other comments?

MS. NELSON: We're adjourned!

MS. SHEPARD: We are then adjourning. We are adjourned.

(Whereupon, at 11:17 p.m., the meeting was recessed, to reconvene, Thursday, December 12, 2002.)