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Office of Environmental Justice

Environmental Justice in The Permitting Process:

A Report from the Public Meeting on Environmental Permitting Convened by the National Environmental Justice Advisory Council, Arlington, Virginia – November 30-December 2, 1999

National Environmental Justice Advisory Council
A Federal Advisory Committee to the U.S. Environmental Protection Agency

TIPS FOR THE READER

The references referred to in this report are coded as follows:

TR **Refers to the transcript page of the NEJAC plenary sessions conducted on November 30 and December 2, 1999, which are attached with this report. Each report page contains 4 transcript pages; e.g. I-5 appears on the 2nd page of the attachment.**

R **Refers to the page number in the Pre-Meeting Report which is available as Appendix A on the EPA Web Site.**

Appendices referenced in this report are not included as part of the printed copy but are available from EPA's website:
http://www.epa.gov/oeca/main/ej/nejacpub.html

Appendix A - Pre-Meeting Report (includes Stakeholder Interviews)
Appendix B - December 1999 NEJAC Executive Meeting Summary
Appendix C - NEJAC Air & Water Subcommittee Comments on the Draft Urban Air Toxics Strategy April 6, 1999
Appendix D – Transcripts from NEJAC Meeting
I – November 30 Plenary Session is Attached
II – December 1 Public Comment Session on EPA Web Site
III – December 2 Plenary Session is Attached

Disclaimer

This report and recommendations have been written as a part of the activities of the National Environmental Justice Advisory Council, a public advisory committee providing external policy information and advice to the Administrator and other officials of the United States Environmental Protection Agency (EPA). The Council is structured to provide balanced, expert assessment of issues related to environmental justice.

This report has not been reviewed for approval by the EPA and, hence, its contents and recommendations do not necessarily represent the views and policies of the EPA, nor of other agencies in the Executive Branch of the federal government, nor does mention of trade names or commercial products constitute a recommendation for use.

TABLE OF CONTENTS

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I. BACKGROUND

EPA, through its Office of Environmental Justice, asked the National Environmental Justice Advisory Council (NEJAC) to provide advice and recommendations on the following question:

> In order to secure protection from environmental degradation for all citizens, what factors should be considered by a federal permitting authority, as well as state or local agencies with delegated permitting responsibilities, in the decision-making process prior to allowing a new pollution-generating facility to operate in a minority and/or low-income community that may already have a number of such facilities?

To address this question, NEJAC scheduled a three (3) day public meeting of industry, government (federal, tribal, state, and local), academic, and community stakeholders to explore whether and how the issue of environmental justice could be integrated into the permitting process. This gathering represented NEJAC's first public meeting to focus entirely on a single issue.

As a prelude to the meeting, the Office of Environmental Justice commissioned a report summarizing interviews with a representative sampling of stakeholders scheduled to participate in the public meeting. Twenty (20) stakeholders were interviewed: eight (8) representing EPA programs, three (3) representing industrial interests, three (3) representing academia, three (3) representing state or local governments, two (2) representing community organizations, and one (1) representing a Native American tribe. The pre-meeting report presented the responses of those stakeholders to a series of questions developed by the Office of Environmental Justice, identifying both potential areas of agreement as well as fundamental differences in perspective. (The Pre-Meeting Report, including a list of interviewed stakeholders and their organizational affiliations, can be found on the EPA Web Site as Appendix A.)

In general, stakeholders agreed on the need: (1) to address the issue of incorporating environmental justice concerns in permitting, (2) to define more clearly what the permit writer should do when confronted with disparate treatment, (3) to address cumulative impacts in some fashion (whether through permitting, regulation, or cooperation with land use agencies), and (4) to involve the community in permitting decisions. Stakeholders differed in their view: (1) of the appropriate overall Agency goal in permitting, and (2) of what now transpires in the permit process. R. 6-8, 10-16, 19-21.

For example, when asked whether the permit agency should address pre-existing conditions with potential health or environmental impacts in permitting, community stakeholders reply simply and emphatically *"Yes!"* They cited communities where *"shelter in place"* alarms are a regular feature of community life. *("Shelter in place"* refers to governmental strategies which seek to minimize human exposure to high air pollutant episodes by recommending residents go inside whenever an alarm whistle is sounded.) To community stakeholders, this signified that *"the system is broken…. There is no study which proves that "shelter in place" works, that [ordinary residential] structures adequately protect people…."* They stressed the need for meaningful planning and siting so that the number of people adversely affected in a worst-case pollution scenario is minimized or eliminated. R. 10.

State, local government, tribal, and academic stakeholders agreed that permit agencies should address pre-existing conditions. One emphasized these factors *"may be more important than sporadic permit issues."* Another added that such considerations "*should not be an afterthought, but should be raised early in the process and used as a guideline for determining whether any [siting] action should be taken at all."* A third concluded, *"A responsible agency looking out for the community's interests should relatively level the playing field."* R. 10.

Industry stakeholders approached this environmental justice goal more cautiously. They acknowledged *"agencies have to deal with cumulative risk in some fashion,"* but stressed the need for *"legal authority," "clear criteria for injustice," "enough information on emissions and health effects to make clear calls," "[and avoiding having] the system bog down."* They questioned whether *"agencies have the resources to have permit writers become fully conversant with these issues"* and emphasized that different perceptions on the issues may exist even within the local community, further complicating review. R. 11.

Nonetheless, industrial stakeholders shared with other stakeholders a willingness to explore approaches to environmental justice in permitting. While not endorsing any particular solution, industry stakeholders raised the following possibilities:

(1) Permit agencies can examine, document, and help raise awareness of pre-existing conditions.
(2) There could be further public scrutiny of zoning and land use planning for environmental justice impacts.
(3) Agencies could publicize more information on what factors contribute to successful brownfields projects.
(4) Rather than subject all permits -- even minor permits -- to full- blown cumulative impact analysis, agencies could screen permits to determine which merit fuller scrutiny because of the size of the source, toxicity of the emissions, or degree of public interest in the outcome.
(5) Corporate policies on siting and acquisition could be changed so that environmental personnel are integrated into decision-making earlier in the process, before companies are so heavily invested in a particular site. (Under current practice, siting is primarily market-driven. Only after a lengthy analysis of non-environmental factors, such as access to supplies and transportation corridors, growth potential, etc., does a company look at the community, its environment and quality of life.)
(6) Where high risks exist due to prior land use planning errors, successful relocation efforts and voluntary buy-outs could be examined. In the Netherlands, for example, when cumulative risk analysis indicated that community exposure crossed a specified threshold, the government devised a 5-10 year community relocation plan. Voluntary buy-outs to expand buffer zones around industrial facilities have also occurred in the United States. R. 11-12.

In general, EPA stakeholders agreed with the goal of addressing cumulative environmental impacts in permitting (assuming legal authority to do so). Some, however, expressed interest in limiting such analysis to major permits, "cancer alleys," or "hot spots," while others appeared to embrace it for a broader universe of permits. Several recommended greater attention to the environmental impacts of zoning and planning decisions, and other stakeholders concurred. R. 12.

Stakeholders also shared differing views as to what now transpires in the permit process. Industry stakeholders saw the current process as largely centered on technical issues of compliance with federal and state discharge regulations. Government stakeholders saw themselves addressing a somewhat broader set of issues -- still largely centered on compliance with technology requirements, but also encompassing public participation, protection of health and the environment, interagency coordination, enforcement, and state oversight. In marked contrast, tribal and community stakeholders saw the process as exceedingly narrow, ignoring treaty rights and community views -- indeed, driven toward a distinctly (from their view) biased result. One cited situations where facility construction is underway while the permit application is purportedly still being considered: *"Companies wouldn't invest this money if they didn't feel they could get their permit."* Another put it: *"The process proceeds with an eye toward*

nothing but technical compliance with numbers and, if there is not compliance, then how can we help the facility get its permit?" At least one EPA stakeholder appeared to agree: *"If the objective [of the community] is to stop the permit altogether, … it is hard for EPA to share that goal. Our goal is to make sure these sources have permits, unless they don't comply [with applicable regulations]."* R. 13.

All stakeholders, however, agreed that, absent a stronger or more comprehensive state statute, the current permit process does not address the type of environmental justice concerns being raised by tribal and community organizations. R. 13.

With respect to potential changes in the current permit process, accord among stakeholders was greatest on issues related to better public outreach, expanded community participation in decision-making, greater assurances of industry compliance, and greater attention to cumulative risks. Stakeholders differed more sharply over a community's right to prevent siting of a facility which otherwise complies with applicable regulatory standards. However, stakeholders acknowledged that these situations represent a small percentage of permit applications and can frequently be avoided by changed industry and government behavior (such as early involvement of environmental personnel in internal corporate decision-making and community representatives in government decision-making.) In short, stakeholders were optimistic about the possibility of identifying opportunities for mutual stakeholder gain. R. 10-16, 19-24.

At the meeting itself, the Office of Environmental Justice asked NEJAC to engage in a "robust policy dialogue" aimed at identifying both deficiencies in the current permit process and remedies or alternative approaches to permitting. Tr. I-40. Participants responded by identifying eighty (80) policy recommendations for implementation by EPA, other federal agencies, states, tribes, community organizations, and permit applicants. (A complete list of policy recommendations is outlined below in Section III of this report.)

These recommendations received varying degrees of consideration by NEJAC. Some reflected extensive deliberation by NEJAC subcommittees. The recommendations for siting and operating waste transfer stations, for example, were the product of a two (2) year review by NEJAC's Waste and Facility Siting Subcommittee. The Subcommittee toured waste transfer stations in two (2) cities (New York and Washington, D.C.) and gathered public testimony from numerous stakeholders, including private sector witnesses, community groups, and federal, state, and local officials. Their review culminated in a nearly fifty (50) page technical report accompanying their policy recommendation. Tr. III-143-146. The urban air toxic strategy recommendations likewise had been amply debated. NEJAC's Air and Water Subcommittee had culled over 200 recommendations to EPA during the rulemaking process; many of the Subcommittee's final recommendations have yet to be addressed and remain relevant during the implementation stage of the strategy. Tr. III-116-118. The NEJAC public meeting offered the various subcommittees a forum to present such findings and recommendations to a larger audience.

Other recommendations illustrated substantial academic research. Professor Yale Rabin from the Massachusetts Institute of Technology reported observations gleaned from thirty-five (35) years of scrutinizing disparities in delivery of municipal services to low-income and minority communities in at least sixty (60) locations throughout the United States. Tr. I-165-169. Professor Richard Lazarus from Georgetown University Law Center appended a draft law review article to his recommendations on legal factors in permitting. Tr. I-42-59. Again, the meeting presented an opportunity to highlight the product of such scholarly investigation.

Still other recommendations emerged from Agency representatives or from other stakeholders addressing NEJAC with their ideas -- sometimes for the first time -- at this public policy meeting.

Participants had an opportunity to outline the contours of a debate on the merits of at least some of these additional recommendations;[1] others were merely noted for future reference.

The primary purpose of *this* public meeting was a creative, wide-ranging identification of policy options rather than a resolution of the relative merits and disadvantages of each proposal. The Office of Environmental Justice promised participants a follow-up report which would serve as an interim step in the formation of NEJAC's strategic policy advice to the Agency. Tr. III-8-16. This report, therefore, aims to cull the recommendations, identify the specific actions requested or implied of EPA or other stakeholders, and present a decision document for NEJAC's review and action.

To facilitate further review by both NEJAC and EPA, this report groups the eighty (80) policy recommendations by key themes. Five (5) key themes emerged continually in stakeholders' discussions. These themes, and the recommendations related to them, affect *all* federal permit programs, regardless of media, location, or implementing agency. Since these themes form the premise of many of the more media-specific, geographically-based, or Agency-directed policy recommendations, these proposals are presented in detail, along with background information, in Section II below.

At the public meeting, NEJAC approved several of the policy recommendations contained in this report; any such approval has been noted alongside the recommendation and a copy of the relevant NEJAC resolution can be found in the December 1999 NEJAC Executive Summary on the EPA Web Page as Appendix B. The bulk of the recommendations, however, have yet to be debated fully by NEJAC. **It is important to stress, therefore, that the policy recommendations identified in this report do not represent the views of the Office of Environmental Justice, the author, or NEJAC itself. They are merely interim (albeit often extensively researched) suggestions for NEJAC's review and approval.** Indeed, a few (primarily those pertaining to streamlined, expedited permitting and emissions trading) could, without further clarification, be interpreted as mutually exclusive.

Several recommendations pertained to a single site. For example, NEJAC heard pleas to clean up Metales y Derivados, an abandoned site in Tijuana, and Condado Prestos in Ciudad Juarez, Tr. III-89, and to conduct a site assessment of the El Gato Negro site in Matamoros Tamaulipas, bordering Brownsville, Texas. Tr. III-90. Recommendations pertaining to single sites have not been included here, although NEJAC subcommittees will address these issues separately.

Finally, for a full understanding of the policy recommendations outlined below, this report should be read in conjunction with the Pre-Meeting Report and the December 1999 Executive Meeting Summary, which are located on the EPA Web Site as Appendix A and B. The pre-meeting report outlines how important the issue of environmental justice in permitting is, defines key stakeholder goals, and critiques the current permit process. In short, it explains *why* stakeholders desire policy reforms and *what* the general nature of those reforms should be. With that backdrop, this report begins to tackle the thorny question of *how* to achieve stakeholders' shared permit goals, whatever they may be.

Several of these policy recommendations come directly from stakeholder presentations; that is, stakeholders identified problems, formulated solutions to those problems, and articulated a clear methodology for accomplishing those solutions. Others emerged in a less direct fashion; stakeholders, acting as the story-tellers for communities with little political clout, voiced their frustrations, leaving it to policy analysts to shape their experiences into recommendations for Agency action. Wherever possible, these experiences, too, have been outlined in the form of implied remedies, so that the recommendations before the Agency reflect the full range of stakeholder insights presented at the meeting.

[1] See, for example, the EPA Air Program's proposal for permit flexibility in communities with proactive emission reduction programs and some stakeholders' reservations. Cf. Tr. I-140-148, III-25, 29-46 with Tr. I-145-148, 227-228, 271-272, 318, 327-332, III-41-45, 59, 62-64, 113-114, 163, 167-178.

II. KEY POLICY RECOMMENDATIONS.

Five (5) key themes surfaced repeatedly in both stakeholder interviews and public testimony. These concerned: (1) the need to clarify what legal authority the permit writer has to address environmental justice issues in permitting; (2) substantive permit criteria (including cumulative impacts, degree of risk, community demographics, and disproportionality of risk); (3) community involvement in the decision-making process; (4) enforcement; and (5) the relationship between land use/zoning and environmental decisions. This section of this report discusses each in turn.

A. Legal Authority to Address Environmental Justice Issues in Permitting.

Background:

Because permit writers implement statutes and regulations, the need to clarify the permit writer's legal authority to address environmental justice issues in permitting emerged as a primary stakeholder concern in both pre-meeting interviews and in testimony at the public meeting. See R. 20-21 and Tr. I-234-240, 247-249, 264.

In pre-meeting interviews, government stakeholders frequently cited their lack of authority to reject projects on environmental justice grounds. R. 20. At the public meeting, too, NEJAC heard repeated testimony that many permit writers believe they lack any legal authority to address environmental justice concerns in permitting decisions. Tr. I-46-47. Others believe that environmental justice concerns may form a basis for more exacting technical scrutiny of a permit, but are insufficient to deny an application which otherwise complies with media-specific technical criteria. Tr.I-205-208.

Confusion at the federal level is compounded in state and local permit agencies. When federal agencies fail to address environmental justice concerns, essential environmental decisions are left to states and local governments, which, in turn, fear tackling them because of potential "takings" lawsuits pursuant to the "just compensation" clause of the Fifth Amendment to the U.S. Constitution. Tr. I-182-183, 251-253. In addition, existing federal and/or state laws may preempt local authority to regulate. Tr. I-184. (Many states have laws prohibiting state agencies from issuing requirements more stringent than federal requirements.) Then too, in the absence of clear federal rules or guidelines, states fear being overturned in court for being “arbitrary and capricious” if they deny a permit on environmental justice grounds. Tr. I-204-208. As one state official explained: "*We are looking to EPA for the tools on how to do this.*" Tr. I-262-264, R. 8.

Industry stakeholders, too, are uncertain of their obligations (beyond the need to avoid intentional discrimination). An industry stakeholder summarized, *"On the substance, there is real intellectual bankruptcy. What are the rules of the road? What does the Executive Order forbid? What is the basis of a Title VI complaint? What is the right thing to do? Companies fear that projects will be abandoned or delayed without reason and that others will go forward where they shouldn't…. There is no coherent understanding of what we're trying to do."* R. 20-21. In short, stakeholders from government, the private sector, academia, and community groups agree that legal clarification is a high priority.

The issue is becoming ever more prominent as permitting provisions of federal environmental laws increase in practical significance; whereas once only the Clean Water Act depended primarily on individual facility permits for implementation, now the Clean Air Act, the Resource Conservation Recovery Act, and the Safe Drinking Water Act have matured into permitting statutes. Tr. I-47.

In 1996, EPA’s Office of General Counsel prepared a document identifying nine (9) federal statutes, including the Clean Air Act, Clean Water Act, Superfund, and RCRA, as providing opportunities

to incorporate environmental justice issues into permit decisions. Tr. I-48-51, 237-240 and 247-248. NEJAC responded by adopting a resolution calling upon EPA to utilize more systematically existing statutory authority to address environmental justice through permitting decisions. Tr. I-48-49. In response, EPA regional offices made sporadic efforts to reform permitting practices, but stakeholders saw little systematic effort by EPA Headquarters to develop a coherent set of guidelines promoting environmental justice permitting practices. Tr. I-49. Hence, three (3) years later, the status of the Office of General Counsel memorandum and the extent to which permit writers may honor its suggestions appears uncertain. Tr. I-247-249, 264.

Thus, permit writers face two (2) separate, seemingly unresolved questions: 1) under what circumstances, if any, does a permitting agency have a duty to deny or condition a permit on environmental justice grounds; and 2) if there is no mandatory duty, when, if ever, does an agency have discretion to act? On the latter point, several legal commentators noted that important Agency initiatives have often occurred in the statutory interstices, where EPA has discretion but no binding mandate. So not only is there precedent for such an approach, but, indeed, this is where EPA historically exerts its leadership in crafting an environmental agenda. Tr. I-50-55, 223-224, 249. Certainly, as Professor Lazarus noted, recent decisions of the EPA Environmental Appeals Board suggest there may be circumstances where EPA is called upon to exert similar leadership with respect to environmental justice concerns. Tr. I-55.

Community stakeholders criticized the Agency for not using existing statutory authority creatively. R. 20. Some also argued that the wording of EPA's question to NEJAC (i.e., "what factors should be considered … prior to allowing a new pollution-generating facility to operate") "*presumes the permitting agency will allow a new pollution-generating facility in an already burdened community*." Tr. I-234-235, 251-253. These advocates warned against recommendations limited solely to process (i.e., to the inclusion of community comment and consultation) rather than to substantive environmental remedies and argued that EPA's inquiry should be open to the possibility that environmental justice concerns constitute valid bases for *denying* a permit altogether. Indeed, one community representative pointed out that EPA, unlike the Nuclear Regulatory Commission, had never denied a permit on environmental justice grounds. Tr. I-235-236. The Nuclear Regulatory Commission, by contrast, found racial bias in the site selection process and reversed a staff licensing decision on that basis in the case of *In re* Louisiana Energy Services, L.P., 24 N.R.C. 77 (1998). Tr. I-256.

Industry stakeholders found this comparison imprecise, noting that EPA and States may advise an applicant not to apply for a permit or to stop an application mid-process, thereby avoiding the need for permit denial. Tr. I-254-256. Thus, the number of permit denials, by itself, may not reflect the true impact of environmental justice concerns in permitting.

Where the applicant still wants to proceed, however, the question is a key one because it goes to the weight to be given environmental justice concerns. Are environmental justice-related factors, on the one hand, merely factors to be studied, there to contribute to the quality of decision-making and, in appropriate circumstances, to dissuade a reasoned agency or permittee from proceeding? Or do environmental justice-related factors hold somewhat greater weight, increasing the scope of required mitigation but, again, lacking sufficient weight to delay or forestall a project? Or -- and this is the ultimate test of their import -- do environmental justice-related factors have the ability to stop a project altogether? In other words, can a project which otherwise complies with all applicable environmental criteria be denied a permit solely because the project would put undue strain on an already overburdened community? At the public meeting or in pre-meeting interviews, stakeholders from virtually every interest group recommended that EPA squarely address these questions, which are subsumed within the overarching question posed by EPA's Office of Environmental Justice.

Recommendation:

The EPA Administrator should request the Office of General Counsel to provide legal guidance to federal, as well as delegated state, tribal, and local government permit writers on whether they have either a mandatory duty or discretionary authority to deny a permit, condition a permit, or require additional permit procedures on environmental justice grounds. Specifically, the Office of General Counsel should address the following questions posed, either in remarks or in prepared material, to NEJAC at the public meeting by academicians and lawyers representing community groups:

1. Does the Rio Declaration on the Environment and Development, which the United States adopted in 1992, impose a mandatory duty on EPA, or provide discretionary authority, to address the potential effects of long-term exposure to multiple low-level toxins in permitting facilities in close proximity to environmental justice communities?

   Principle 15 of the Rio Declaration commits signatory governments to adopt a precautionary approach toward environmental hazards:

   "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation." Tr. I-239-240 and attachments.

2. Does the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994 and made applicable to executive agencies, including EPA, by Executive Order 13107 in 1998, impose a mandatory duty on EPA, or provide discretionary authority, to address environmental justice concerns in permitting?

   The International Convention requires signatory governments to:

   "take effective measures to review governmental, national, and local policies, and to amend, rescind, or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists."

   Executive Order 13107 directs *"all executive departments and agencies [such as EPA] …shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions as to respect and implement those obligations fully."*
   Tr. I-239-240 and attachments.

3. Does the National Environmental Policy Act (NEPA) require or authorize EPA to undertake a comprehensive environmental impact review of permits in environmental justice communities? Tr. I-170-171.

   NEPA and its implementing regulations require federal agencies to explain the need for any proposed project which significantly affects the quality of the human environment, analyze all reasonable alternatives to the proposal, evaluate the "no action" alternative, and assess all impacts, including cumulative, indirect, and socioeconomic impacts. Ordinarily, federal permitting must comply with NEPA, but courts have exempted most EPA permits by the "functional equivalent doctrine" (i.e., the notion that, since EPA is primarily an

environmental agency, EPA accomplishes the same analysis as NEPA-type environmental impact assessments).

The distinction is significant. The Nuclear Regulatory Commission remanded a nuclear material license where it found inadequate consideration of environmental justice concerns. In re Louisiana Energy Services, L.P., 47 N.R.C. 77 (1998) Tr. I-256. Some states, such as California, require similar NEPA-type analysis of major permit applications and these analyses can elicit information about significant health and environmental issues. Tr. I-195.

4. Does the Clean Air Act authorize or require EPA (and states administering EPA-delegated programs) to take environmental justice concerns into consideration in the permitting process? Relevant provisions cited in a law review article presented to NEJAC include:

   - National ambient air quality standards (and revisions to the standards) must protect the public health of *especially sensitive subpopulations*. *See, e.g.*, American Lung Assn. v. EPA, 134 F.3d 388, 389 (D.C. Cir. 1998). (Environmental justice communities frequently include many individuals with heightened sensitivity to pollutants due to pre-existing physical conditions or environmental stresses from multiple sources.)

   - State implementation plans to attain and maintain national ambient air quality standards must not conflict with any provision of federal law, including, presumably, *Title VI* of the Civil Rights Act. *See* section 110(a)(2)(E), 42 U.S.C. 7410(a)(2)(E).

   - Permits in attainment areas must follow "careful evaluation of *all* the consequences of such a decision." Section 160, 42 U.S.C. 7470(5) (emphasis added).

   - Permits in attainment areas must follow "adequate procedural opportunities for informed public participation in the decision-making process," including a public hearing offering interested parties an opportunity to appear and comment on "*alternatives*" and "*other appropriate considerations*" in addition to air quality impacts and emission controls. Sections 160 and 165A2, 42 U.S.C. 7470 and 7475(emphasis added). Tr. I-237.

   - Sanctions for failure to attain national air quality standards include "all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any *nonair quality* and other air quality-related health and environmental impacts." Section 179(d)(2), 42 U.S.C. 7509(d)(2)(emphasis added).

   - Permits for sources in nonattainment areas may only be issued if "an analysis of alternative sites, sizes production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental *and social costs imposed as a result of its location*, construction, or modification." Section 173(a)(5), 42 U.S.C. 7503(a)(5)(emphasis added).

- Section 112(r)(7) also authorizes the EPA Administrator to consider *location and response capabilities* in establishing requirements to prevent accidental releases of hazardous air pollutants. 42 U.S.C. 7412(r)(7).

- Requirements for the siting of solid waste incinerators must "minimize, on a *site specific* basis, to the maximum extent practicable, *potential risks* to public health or the environment." Section 129(a)(3), 42 U.S.C. 7429(a)(3)(emphasis added).

- Penalties for noncompliance with applicable Clean Air Act provisions must reflect "such other factors as *justice* may require," including, presumably, the potentially *greater need for deterrence* in communities which have historically lacked the resources to oversee facility compliance. *See* section 113(e)(1), 42 U.S.C. 7413(e)(1)(emphasis added).

- EPA has broad discretion to impose whatever permit conditions "are necessary to assure compliance." Section 504, 42 U.S.C. 7661c. Conceivably, permit conditions could include provisions to enhance a community's ability to oversee facility compliance.

- Finally, state boards with responsibility for permitting and enforcement of the Act must have "at least a majority of members who represent the *public interest*." Section 128, 42 U.S.C. 7428(emphasis added). The "public interest" standard may allow EPA to require that such boards include representatives of environmental justice communities.

5. Does section 112(k) of the Clean Air Act, 42 U.S.C. 7412(k), require or authorize EPA (and delegated permit authorities) to address environmental justice concerns about cumulative burdens and their associated health risks in urban areas?

   Section 112(k) addresses hazardous air pollutants from “area sources” (i.e., stationary sources that are not major) that individually *or collectively* present significant risks to public health in urban areas. The section directs EPA to monitor for a broad range of hazardous air pollutants, analyze contributing sources, and assess the public health risks they pose. EPA also must develop a comprehensive national emission control strategy, encourage and support State and local emission control strategies, and report to Congress on specific metropolitan areas that continue to experience high risks to public health from area source emissions. *See also* section 112(c)(3), 42 U.S.C. 7412(c)(3) and Tr. I-294-295.

6. Does the Resource Conservation and Recovery Act ("RCRA") require or authorize EPA (and delegated permit authorities) to address such environmental justice concerns as cumulative risk, unique exposure pathways, and sensitive populations? Tr. I-238. Relevant provisions cited in a law review article presented to NEJAC include:

   - Standards applicable to generators and transporters of hazardous waste as well as hazardous waste treatment, storage, and disposal facilities must incorporate such protective requirements "*as may be necessary to protect human health and the environment*," language broad enough to encompass consideration of cumulative impacts. *See* sections 3002(a), 3003(a), and 3004(a), 42 U.S.C. 6922(a), 6923(a), and 6924(a)(emphasis added).

- Permits for hazardous waste treatment, storage, or disposal facilities "shall contain such terms and conditions as the Administrator (or the State) determines *necessary to protect human health and the environment.*" Section 3005(c)(3), 42 U.S.C. 6925(c)(3)(emphasis added). EPA's own Environmental Appeals Board has read this language to allow the Agency to "tak[e] a more refined look" at health and environmental impacts which disproportionately affect a low-income or minority population. *See In re* Chemical Waste Management, Inc., 1995 WL 395962 (E.P.A. June 29, 1995).

- Standards applicable to hazardous waste treatment, storage, and disposal facilities "shall specify criteria for the *acceptable location* of new and existing treatment, storage, and disposal facilities as necessary to protect human health and the environment." Section 3004(o)(7), 42 U.S.C. 6924(o)(7)(emphasis added). *See also* section 3004(a)(4), 42 U.S.C. 6924(a)(4). Defining an "acceptable location" from a human health perspective presumably permits the Agency to account for environmental justice concerns regarding risk aggregation.

- Enforcement penalties must take into account the "*seriousness* of the violation." Section 3008(a)(3), 42 U.S.C. 6928(a)(3)(emphasis added). Violations can be more serious when risks are aggregated, disproportionate, or inequitable, or when risks impact an especially sensitive community.

- Guidelines for state solid waste management plans must consider "*the political, economic, organizational, financial, and management problems* affecting comprehensive solid waste management." Section 4002 (c)(9), 42 U.S.C. 6942(c)(9) (emphasis added). These factors are sufficiently broad to encompass many environmental justice concerns.

7. Does the Clean Water Act authorize or require EPA (and delegated states) to assess cumulative risk? Relevant provisions cited in a law review article presented to NEJAC include:

    - Water quality standards under the Act must protect both public health and the "designated use" of each individual waterbody. Sections 302, 303, and 304, 33 U.S.C. 1312, 1313, and 1314. "Designated uses" could include economic or cultural uses (such as subsistence fishing or uses reflecting tribal traditions).

    - The statute requires watershed protection, which, in turn, requires gathering loading data and evaluating pre-existing environmental stressors. *See* section 303(d), 33 U.S.C. 1313(d), and Tr. I-237, 243-244.

    - Until all implementing actions have been taken under the statute, the Act gives EPA broad authority to condition discharge permits on "*such conditions as the Administrator determines are necessary* to carry out the provisions of this chapter." *See* section 402(a), 33 U.S.C.

1342(a)(emphasis added). These permit conditions could include provisions promoting environmental justice.

- Finally, civil and administrative penalties for violations of the Act must be based on the seriousness of the violation and "such other matters as *justice* may require." Section 309(d) and (g), 33 U.S.C. 1319(d) and (g)(emphasis added).

8. Do the Safe Drinking Water Act, Toxic Substances Control Act, and Federal Insecticide, Fungicide, and Rodenticide Act require or authorize EPA to address environmental justice concerns in permitting? Relevant provisions cited in a law review article presented to NEJAC include:

- The Safe Drinking Water Act directs EPA to set national primary drinking water regulations after considering, among other things, "*other factors relevant* to protection of health." Section 300g-1(b)(7)(C)(1), 42 U.S.C. 1412 (b)(7)(C)(1)(emphasis added). Cumulative impacts in environmental justice communities would seem to be such a relevant factor.

- State variances from national primary drinking water regulations for public water systems "shall be conditioned on such *monitoring and other requirements* as the Administrator may prescribe," including, presumably, enhanced public participation opportunities and resource assistance where appropriate in environmental justice communities. *See* section 300g-4(a)(1)(B), 42 U.S.C. 1415(a)(1)(B)(emphasis added).

- Civil penalties for violations of the Safe Drinking Water Act shall consider "the seriousness of the violation" and "such other matters as *justice* may require." Section 300h-2(c)(4)(B), 42 U.S.C. 1423 (c)(4)(B)(emphasis added).

- The Toxic Substances Control Act directs EPA to consider "*cumulative or synergistic effects*" in setting testing requirements for chemical substances and mixtures -- precisely the effects environmental justice advocates contend have been too often overlooked in considering the risks posed by toxic substances in low-income and minority communities. *See* section 4(b)(2)(A), 15 U.S.C. 2603(b)(2)(A).

- The Toxic Substances Control Act further directs EPA to consider the "environmental, economic, and *social impact* of any action" taken under the Act. Section 2(c), 15 U.S.C. 2601(c)(emphasis added).

- Finally, the Toxic Substances Control Act targets "*low-income persons*" for technical and grant assistance in State radon programs. Sections 305(a)(6) and 306(i)(2), 15 U.S.C. 2665(a)(6) and 2666(i)(2).

- The Federal Insecticide, Fungicide, and Rodenticide Act gives EPA broad authority to prevent "unreasonable adverse effects" on the environment, including effects on farmworkers. *See* section 3(a), 7 U.S.C. 136a(a).

9. Finally, to what extent must states, tribes, and local governments administering delegated programs adhere to the same restrictions and, to the extent that they must, should these requirements be embodied in rulemaking? This question of rulemaking is important, not only to bind states, tribes, and local governments, but also to protect them from suits alleging that they are "arbitrary and capricious" when they deny a permit on environmental justice grounds. Tr. I-204-208.

B. Substantive permit criteria.

Background:

EPA's 1997 Strategic Plan commits the Agency to ensure that "all Americans are protected from significant risk to human health and the environment where they live, learn, and work." The same Strategic Plan binds the Agency to enforce all federal laws protecting human health and the environment "fairly and effectively." Finally, the Plan guarantees that all segments of society have access to information sufficient to participate effectively in managing health and environmental risk." Tr. I-16-17.

Despite these assurances, NEJAC heard repeated and compelling testimony from a multiplicity of low-income and minority communities that
polluting sources are being located in sufficient proximity to residential areas and/or to each other to form cancer alleys, cancer hotspots, or other health risks. As Professor Lazarus explained, "*Risks that may seem acceptable in isolation may properly be seen as presenting unacceptably high risks when the broader social context, including associated health and environmental risks, is accounted for in total aggregation.*" Tr. I-45.

Where such conditions exist, permit writers remain confused as to whether they can address such risks, how to address them (assuming they have legal authority to do so), and even which of many different types of aggregate risks to consider.

Recommendation:

The EPA Administrator should direct permit writers to issue only permits consistent with EPA's mission; namely, protecting the health of all citizens. Specifically, permit writers should ensure that any permit: a) complies with all applicable provisions of law, including state and local health, environmental, and zoning laws (where such laws are not preempted), and b) adequately protects health and the environment. Specific factors which academicians and community groups believe the Agency should consider in determining the bases for modifying or denying permits in low-income or minority communities include:

(1) negative health risks;
(2) racially disproportionate burdens;
(3) cumulative and synergistic adverse impacts on human health and the environment;
(4) high aggregation of risk from multiple sources;
(5) community vulnerability based on the number of children, elderly, or asthmatics;
(6) cultural practices, including Tribal and indigenous cultures and cultural reliance on land and water that may become pathways of toxic exposure;
(7) proximity to residential areas and adequacy of buffer zones;
(8) health and ecological risk assessment;
(9) the economic burden of medical costs and lost productivity;
(10) access to health care;
(11) psychological impacts;

(12) the risk of chemical accidents;
(13) emergency preparedness;
(14) community right-to-know in permitting;
(15) the impact on the quality of life in the surrounding community; and
(16) an applicant's compliance history. Tr. I-45-46, 195, 225-227, 234-237, 240-246, 250-251, 268, 271-272, 281-282, 293-296, 301, 318, III-20-23, 50-59, 77-85, R. 10-11, 13-14.

Business and state stakeholders emphasized that, if EPA decides to incorporate such factors in the permitting process, it must do so through rulemaking in order to ensure that the terms are clearly understood and uniformly employed. Tr. I-206-208, 218-219, R. 11, 18, and 20-21. Community groups and some academicians, by contrast, stress that EPA could use existing regulatory authority more creatively to accomplish this end. Tr. I-46-51, 169-173, 181, 187, 237, and 247-249. At least one business representative also suggested that, if EPA incorporates such factors in permitting, it screen permits to determine which merit fuller scrutiny because of the size of the source, toxicity of the emissions, or degree of public interest in the outcome. R. 12.

(Additional recommendations on appropriate substantive permit standards and siting criteria are contained in Section III below.)

C. Community involvement/public participation.

Background:

Non-Agency stakeholders agree that one of the most serious -- and easily remedied flaws -- in current permitting is the way environmental agencies fail to engage the public in permit decision-making. Tr. III-13, 22, R. 14-16. The issue is a key one because inadequate public comment processes generate community mistrust, delay or disrupt industry plans, and impair agency decision-making. Indeed, EPA Administrator Carol M. Browner stressed to NEJAC that when permit agencies succeed in engaging a local community in a meaningful manner, the quality of the Agency's environmental decision-making is dramatically improved. Tr. I-106. Stakeholders generated a wealth of suggestions for improving the public participation process, most of which centered on the concept that consultation with potentially affected communities should occur "early and often."

Recommendation:

The EPA Administrator should adopt binding public participation requirements which ensure that permit writers will consult with affected communities "early and often." Tr. I-87-88, 91-99, 129-130, 198-199, R. 14-16, 19-20. Specifically, these requirements should direct permit agencies to:

a. Contact potentially affected communities as soon as an agency is aware that a permit application may be filed or that emissions from a facility may increase, but in no event later than immediately upon receipt of the permit application or notice that emissions could increase. Tr. I-91-92, 129-130, 132-133, 198-199, R. 19.

b. Hold an initial hearing or informal meeting with the potentially affected communities immediately after receipt of a permit application. This will afford an early opportunity to apprise the community of the pendency of the application, identify community concerns, avoid the mistrust created by prolonged agency and industry negotiations outside the public eye, and establish a basis for an ongoing, credible dialogue. R. 14-16, 19-22.

c. Identify community leaders accurately; do not rely on local government to represent environmental justice communities, because many low-income and/or minority communities do not have local visibility or political influence. Tr. I-129-130.

d. Develop a plan for community involvement in conjunction with the community. Tr. I-91-92.

e. Require a community outreach plan modelled on those used with success in the brownfields grants program; follow up to ensure that the plan is implemented. Tr. I-131-132, R. 12.

f. Use broadcast media and other effective forms of communication to advertise the public participation process. Tr. I-94-95, R. 19.

g. Require permit notices in newspapers to be printed in legible print and to be placed in spots likely to attract the attention of affected residents. Tr. I-82-83, 355. (Community stakeholders persistently criticized notices which are printed: solely in the Federal Register or state equivalent, in publications not read by the community, or in obscure legal notices and other fine print. R. 14.)

h. In public notices of proposed permits, describe what the discharge/emission means to the community in lay, rather than technical, terms. Otherwise, comment periods end before communities learn about potential impacts. Tr. I-87-88, 101-103, 132-133, III-20, R. 14.

i. Utilize local government resources as well by bringing local government into the process as early as possible. Tr. I-95-97, 187-189.

j. Make technical reports accessible to the community as soon as they are available, rather than holding them internally until commencement of a 30-day comment period. Community stakeholders criticized the 30-day comment period as an inadequate time in which to obtain independent technical advice on the complicated issues involved in permitting. (Presumably, this recommendation would require agencies to establish a publicly accessible permit docket.) Tr. I-132-133, R. 14.

k. Extend the 30-day public comment period for complicated permits. Tr. I-132-135.

(Additional recommendations on community involvement are outlined in Section III below.)

D. Enforcement.

Stakeholders recognized an integral relationship between permitting and enforcement. As several stakeholders repeatedly emphasized, permit writers need to think about how enforceable their permits will be, while enforcers need to rely on the permits to ground their prosecutions. Tr. I-359, III-25-26, 62-63.

Recommendation:

The EPA Administrator should ensure that environmental justice guidance and requirements are effectively enforced in federally adopted, approved, or required environmental programs. Specifically, the Administrator should:

1. Ensure that EPA guidance on environmental justice reaches beyond the headquarters level to each of the regional offices and, in particular, regional permit writers. Tr. I-155-160, 277.

2. Ensure that EPA guidance on environmental justice reaches beyond to state personnel, especially permit writers, administering federally approved or required programs. Tr. I-160.

3. Assess all delegated state permit programs for compliance with federal legal requirements and withdraw federal program delegation in states which fail to implement the requirements. Tr. I-84, 102.

4. Address unpermitted or underpermitted activity, since this is a major problem. Tr. I-144, III-62-63.

5. Be more assertive in exercising regulatory authority to reopen permits for grandfathered facilities, many of which would not have been approved under modern standards. Tr. I-169-170.

6. Use enforcement programs to capture the economic benefits of permit violations so that corporations cannot profit from pollution. (See the NEJAC Enforcement Subcommittee's resolution and report on "Credible Deterrence," which can be found in Appendix B on the EPA Web Site) . Tr. III-164-165.

(Additional recommendations concerning enforcement are outlined in Section III of this report.)

E. Land use/zoning.

Background:

The relationship of land use and zoning to environmental justice was highlighted by the presentation of Professor Yale Rabin from the Massachusetts Institute of Technology. Professor Rabin reported observations gleaned from thirty-five (35) years of scrutinizing disparities in delivery of municipal services to low income and minority communities in at least sixty (60) locations throughout the United States. He noted that many pre-existing environmental injustices in minority and low-income communities can be traced to racially discriminatory local government actions -- actions taken in *compliance* with local zoning ordinances and compounded by other government policies.

For example, racially discriminatory real estate covenants were widely used before the adoption of comprehensive zoning. These covenants restricted minorities to certain geographic locations, which were then the host sites for polluted or undesirable land uses. The rigidly controlled boundaries of these neighborhoods caused severe overcrowding. Later, comprehensive zoning (mainly but not exclusively in the south) designated existing black residential areas as the site for further industrial or commercial growth. Because these residentially incompatible but permitted uses resulted in the frequent displacement of black residents, Dr. Rabin dubbed this phenomenon "expulsive zoning." In other words,

comprehensive zoning had an *opposite* result in white and black neighborhoods. In white neighborhoods, zoning prevented intrusive traffic, noise, and pollution; in black neighborhoods, zoning induced such nuisances. These origins, though not widely understood, are important to note to the extent that current policy-makers are tempted to rely on local zoning to alleviate environmental injustice.

Compounding the zoning impact, municipalities frequently permitted substandard construction in minority neighborhoods -- in violation of town building code requirements governing adequate living space, lot size, ventilation, electricity, water supply, and sanitation. In addition, local governments, again especially in the south, often failed to provide municipal services such as paved streets, streetlights, storm and sanitary sewers, fire hydrants, and adequate water supply to black neighborhoods. Thus, although the racially discriminatory local government actions that generated these conditions have long since been mainly discontinued, the consequences remain in probably thousands of black neighborhoods. Tr. I-165-169, 185-186.

Research presented by Paula Forbis on behalf of the Environmental Health Coalition echoed Professor Rabin's findings. The Environmental Health Coalition studied historical local land use decisions in the communities of Barrio Logan, Logan Heights, Sherman Heights, and National City, California, finding that racially discriminatory past land use decisions have current and immediate health impacts. Tr. I-174-181.

More recently, in some (usually larger) cities, Professor Rabin observed that some inequitable conditions (such as substandard housing) have been improved, but only when a court ordered a town to equalize its facilities or blacks became the majority and assumed governance. In either case, improvements occurred only when outside funding was available. By analogy, Professor Rabin concluded that pre-existing conditions adversely impacting health and the environment in low- income and minority communities will only be corrected when substantial outside funding becomes available to these communities. Tr. I-165-169, 185-186.

In addition to highlighting funding issues, stakeholders also focussed on other aspects of EPA's leadership responsibilities. While stakeholders recognized that EPA cannot intrude on local land use decisions, they shared a sense that EPA has not fully explored its opportunities both to address environmental injustices caused by past local land use/zoning decisions and to assist localities in avoiding future injustices.

Recommendation:

The EPA Administrator should exert leadership and become a full partner with local government in eliminating environmental injustice. Specifically, the Administrator should:

1. (In conjunction with other federal agencies) establish a fund to remedy pre-existing environmental injustices in hard-hit low income and minority communities. Tr. I-164-169, 185-186, R. 11.

2. Consider the discriminatory impact of historical land use patterns in deciding whether to use whatever discretionary authority EPA may have to remedy environmental injustices through the state and federal permit process. Tr. I-225-266, III-64.

3. Provide land use guidance for local governments regarding the environmental justice considerations involved in permitting and siting of facilities. Tr. I-184-189, 196, III-47-48.

4. Insist that federally mandated permits to respect local zoning ordinances which protect communities against increases in pollution. (Citizens allege that one such model ordinance in Chester, Pennsylvania was given no weight in the permit process.) Tr. I-74-80.

(Additional recommendations concerning land use/zoning as well as funding are outlined in Section III of this report.)

III. ADDITIONAL POLICY RECOMMENDATIONS.

This section lists all policy recommendations which emerged from the NEJAC meeting (including, for comparison purposes, those identified in Section II). The recommendations cover a wide range of issues, including, in addition to the themes already discussed above, siting criteria, data-gathering for permits, funding, concentrated animal feeding operations, urban air pollution, streamlining/trading/offsets and other alternative compliance schemes, and private sector initiatives.

While many of the general recommendations pertain to tribes among other stakeholders, six recommendations exclusively address the issue of environmental justice for tribal and indigenous peoples. These recommendations are necessary because Indian reservations present unique challenges for applying the principles of environmental justice. As defined by EPA, environmental justice means "The fair treatment and meaningful involvement of all people, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies." The "fair treatment" component of the term means that "no group of people, including racial, ethnic, or socioeconomic group should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state, local, and tribal programs and policies." [U.S. EPA, Interim Final Guidance for Incorporating Environmental Justice Concerns in EPA's NEPA Compliance Analyses (1997).] This definition includes Indian tribes in two ways. First, tribes are minority groups that can be disadvantaged in socioeconomic terms, and thus tribes are one of the kinds of groups that environmental justice seeks to protect from disproportionate impacts. Second, tribes are also sovereign governments, with the power and responsibility to carry out environmental protection programs. Thus, the challenges of environmental justice for Indian tribes, as outlined by tribal representatives, are two-fold.

First, the communities on Indian reservations tend to fit the definition of environmental justice communities. They are comprised of minority populations and tend to be socially and economically disadvantaged. Indian tribes are diverse, and generalizations should be taken with caution. Many reservation communities have suffered disproportionate impacts to their environments, some of which are the long-term impacts of "development" activities that occurred years or decades ago. Other reservation communities face the prospect of environmental degradation that would result from proposals intended to create jobs and generally improve socioeconomic conditions. Given the rural nature and broad geographic area of many reservations, just to carry the message of environmental justice to the people of reservations is a particular challenge. Communities tend to be far-flung, and the task of outreach when considering a particular environmental permitting issue is difficult at best. Because reservations were established as homelands where tribes could continue to live as separate, self-governing communities, tribal representatives stress that Indian people tend to see themselves as different from other minorities. To the extent that reservation Indians are even aware of the concepts of environmental justice, they may perceive it as something designed to serve the interests of minority groups other than reservation Indians. Many reservations have substantial populations of non-Indians as well as Indians who are members of other tribes. On some reservations, such groups could be considered minorities; on other reservations, the presence of such groups has rendered tribal members minorities within their own homelands.

Second, tribal governments are developing their own environmental programs. Federal environmental laws authorize tribes to operate regulatory programs similar to those administered by the states. The tribal provisions in the federal laws were not enacted, however, until a decade or two after the laws authorizing state programs. The neglect of Indian reservations by Congress in the first generation of federal environmental laws has resulted in less environmental protection infrastructure in Indian country, which can itself be seen as an environmental justice issue. In recent years, many tribes have chosen to establish regulatory programs like those of the states, but they face enormous challenges, in part because tribes generally do not have nonfederal sources of revenue for governmental operations comparable to the states. Tribes also must cope with a confusing body of Supreme Court decisions that opponents of tribal sovereignty can use to challenge tribal programs, and tribes must be prepared to defend against such challenges. Thus, tribes as governments may see environmental justice as another obstacle to the development of effective environmental protection programs. Nevertheless, tribal representatives emphasize that tribes as governments need to understand (1) the legal underpinnings of the principles of environmental justice, and (2) when tribal governments need to apply these principles. Such knowledge, they stress, will take time to develop, and tribes therefore need special consideration from EPA on the underlying issues before being expected to apply the principles of environmental justice as governmental entities. Similarly, much work is still needed on the part of EPA to educate its own staff on the principles of tribal sovereignty and federal Indian law, as well as on the importance of the environment for tribal cultures and philosophies. EPA should therefore proceed with some deliberation and should make extra efforts to ensure that tribes are well informed on the basic environmental laws and environmental justice principles prior to entering into discussions about permits in Indian country.

Unless otherwise indicated, each of the following eighty (80) recommendations is addressed to EPA.

Reframing or expanding the nature of the inquiry:

1. Reword EPA's inquiry as follows:

   > In order to secure protection from environmental degradation for all citizens, *what factors should be determinative* when a federal permitting authority (or state or local agency with delegated permitting responsibilities) makes a decision regarding a new pollution-generating facility proposing to operate in a minority and/or low-income community that already has a number of such facilities? Tr. I-235.

2. Reconvene the Interagency Task Force on Environmental Justice because environmental permitting involves a broader range of agencies than EPA (e.g., the Department of Defense, Department of Energy, Army Corps of Engineers, Bureau of Indian Affairs). Tr. I-297-327, III-223-225.

3. Address permits issued by state, regional, and local agencies as well as those required under federal law. Tr. I-64-65.

4. Ensure broader representation of environmental justice populations and community organizations on federal advisory committees, especially those developing guidelines to be applied in permits. Tr. I-214.

5. Ensure that each relevant regulatory and permitting office, at EPA and in other federal agencies, has a diverse work force. Tr. I-214-216.

Legal factors

6. Find legal authority to address the potential effects of long-term exposure to multiple low-level toxins in permits issued in environmental justice communities in Principle 15 of the Rio Declaration on the Environment and Development. Tr. I-239-240 (and attached prepared statement).

7. Find legal authority to address environmental justice concerns in permitting in the International Convention on the Elimination of All Forms of Racial Discrimination, ratified by the United States in 1994 and made applicable to executive agencies, including EPA, by Executive Order 13107. Tr. I-239-240 (and attached prepared statement).

8. Find legal authority to address environmental justice concerns in permitting in the National Environmental Policy Act (NEPA). Tr. I-170-171.

9. In the alternative, since NEPA provides the best mechanism for ensuring wide-ranging consideration of needs, impacts, and alternatives, voluntarily subject more EPA permits to the NEPA process, utilizing the CEQ guidelines for cumulative impact review in the environmental justice context. Tr. I-170-171.

10. Find legal authority to address environmental justice concerns in permitting in the general provisions of the Clean Air Act. Tr. I-46-59, 237-240 (and attachments).

11. Find legal authority to address environmental justice concerns about cumulative burdens and their associated health risks in permits issued in urban areas in section 112(k) of the Clean Air Act, 42 U.S.C. 7412(k). Tr. I-293-296.

12. Find legal authority to address environmental justice concerns in permits issued under the Clean Water Act. Tr. I-46-59, 237-240 (and attachments).

13. Find legal authority to address environmental justice concerns in permits issued under the Resource Conservation and Recovery Act. Tr. I-46-59, 237-240 (and attachments).

14. Find legal authority to address environmental justice concerns in permits issued under the Safe Drinking Water, Toxic Substances Control, and Federal Insecticide, Fungicide, and Rodenticide Acts. Tr. I-46-59, 237-240 (and attachments).

15. Finally, make environmental justice criteria applicable to permitting through rulemaking so as to bind states and also protect them from suits alleging that they are arbitrary and capricious when they deny a permit on environmental justice grounds. Tr. I-204-208, 285-287.

Substantive permit criteria:

16. Address the following factors as bases for denying permits: (1) negative health risks; (2) racially disproportionate burdens; (3) cumulative and synergistic adverse impacts on human health and the environment; (4) high aggregation of risk from multiple sources; (5) community vulnerability based on the number of children, elderly, or asthmatics; (6) cultural practices, including Tribal and indigenous cultures and cultural reliance on land and water that may become pathways of toxic exposure;

and (7) proximity to residential areas and adequacy of buffer zones. Tr. I-45-46, 74-80, 195, 225-227, 234-237, 240-246, 250-251, 268, 271-272, 281-282, 293-296, 301, 318, III-20-23, 77-83, R. 13, 20.

17. Explore using both a substantive alternatives analysis and a rigid sequencing approach for permitting in highly impacted communities. Begin with an alternatives analysis. Deny a permit if there is a practicable alternative to siting the facility in or near an impacted community and use regulatory incentives to facilitate permitting at the alternative site (e.g., expedited permitting, emission trades, alternative compliance requirements such as emission caps and budgets, etc.). If a facility must be sited in a highly impacted community, strive to avoid adverse impacts; then minimize adverse impacts that cannot be avoided (e.g., through specialized control technology, alternative production processes, site-specific land management practices, buffer zones, alternative traffic routes, etc.); finally, provide compensatory mitigation (such as reducing emissions from other sources in the area) for the remaining risks. Similar approaches can be found in the Clean Water Act section 404 permit program, the Endangered Species incidental takings permit program, and transferable development rights used to protect historic buildings. Tr. I-228-229 and attachment.[2]

18. In addition to cumulative exposure, consider: (1) health and ecological risk assessments; (2) the economic burden of medical costs and lost productivity; (3) access to health care; (4) psychological impacts; (5) the risk of chemical accidents; (6) emergency preparedness; (7) community right-to-know in permitting; and (7) an applicant's compliance history in issuing permits in low-income and minority communities. Tr. I-224-227, III-50-59, 84-85.

19. Recognize that a community's environmental concerns may be considerably broader than the media-specific technical criteria used by federal and state permit agencies. Indeed, community concerns encompass such quality-of-life issues as: (1) noise; (2) dust; (3) constant truck traffic; (4) roadway congestion; (5) blocked roadway access due to truck parking violations; (6) debris falling from trash trucks; (7) safety issues raised by trucks speeding through residential areas; (8) rats; (9) odors; (10) house vibrations; (11) sleep deprivation due to all-night traffic; (12) deteriorated property values; and (13) general neighborhood decline. EPA should clarify that federally required permits need to consider such affronts, because states administering delegated permit programs have told adjacent communities that permit writers lack jurisdiction over such problems. Tr. I-68-72, 224-227, 360-361.

20. Use health-based statistics to identify geographic areas that need to be treated more cautiously for permitting purposes; work in and around Philadelphia provides a model for such an approach. Tr. III-38-39, 53-54, 84.

21. Consider the level of franchise (i.e., access to, and ability to influence, government) of different communities in permitting and establish more preventative approaches where necessary to protect the integrity of the permit process. Tr. III-58-59. (This recommendation stems from the fact that low-income and minority communities historically have lacked the resources necessary to monitor polluting facilities in their communities and, if violations are found, either to persuade government

[2] A letter dated April 18, 2000 from Eileen Gauna to NEJAC outlines this approach in more detail.

officials to take enforcement action or to bring their own citizen enforcement actions.) Tr. I-45-46.

22. Require federally mandated permits to respect local zoning ordinances which protect communities against increases in pollution; citizens allege that one such model ordinance in Chester, Pennsylvania was given no weight in the permit process. Tr. I-74-80.

23. Consider the discriminatory impact of historical land use patterns in deciding whether to use whatever discretionary authority EPA may have to remedy environmental injustices through the state and federal permit process. Tr. I-225-266, III-64.

24. Require an allocation mechanism that addresses *future* projects so that the first permit applicant does not absorb all of a neighborhood's potential for growth (e.g., traffic capacity or clean air increment). Tr. I-226, R. 11.

25. Take cognizance of whether permit applicants propose to displace older, more polluting facilities. Tr. I-169-170.

26. Expedite the permit process for facilities that have been invited into communities and enjoy widespread community support since speed and predictability offer important market advantages to permit applicants. Tr. I-171-174, R. 12.

27. Focus more attention on pollution prevention activities, both as a condition of permits and as a way to avoid toxic releases altogether. Tr. I-195-196.

Siting criteria and land use:

28. Adhere to the recommendations of NEJAC's Waste and Facility Siting Subcommittee as currently being detailed in a draft brochure entitled "Social Aspects of Siting RCRA Hazardous Waste Facilities." Tr. I-210-211, III-46-47.

29. Adhere to the recommendations of NEJAC's Waste and Facility Siting Subcommittee as detailed in their report and related resolution on waste transfer stations.[3] The report outlines the need for best management practice manuals for both facility siting and operations. In addition, the report calls for siting criteria, a planning process to assure a more equitable distribution of facilities, design and operating practice requirements, potential emission reduction requirements, increased community participation, and enhanced enforcement, among other measures. The report reflects a two (2)-year study of transfer stations demonstrating that, absent a federal baseline, there is enormous variability in the operating practices of waste transfer stations and strong community dissatisfaction, particularly where facilities were clustered as they are in New York City and Washington, D.C. Tr. III-143-152. (A copy of the Subcommittee's report and resolution can be found in the NEJAC Executive Summary Report on the EPA Web Site as Appendix B. For additional discussion of the problems associated with waste transfer stations, see Tr. I-33-34, 189-190.)

[3] Waste transfer stations are facilities where municipal waste is unloaded from collection vehicles and subsequently re-loaded onto larger transport vehicles to be taken to a disposal site. Waste transfer stations allow communities to move waste economically over long distances.

30. Provide land use guidance for local governments regarding the environmental justice considerations involved in permitting and siting of facilities. Tr. I-184-189, 196, III-47-48, R. 12.

Public participation and community involvement:

31. Direct the Inspector General to conduct a full audit of the State of Louisiana permitting programs with particular attention to violations of EPA public participation regulations, NEJAC's public participation guidelines, and the U.S. Constitution. Tr. I-284, 344-358, 360-362, III-189-198. (A copy of the Resolution adopted by NEJAC can be found in the NEJAC Executive Summary Report on the EPA Web Site as Appendix B.) See also Tr. I-82.

32. (From the Council on Environmental Quality), convene community-level interagency meetings modelled on successful meetings in Los Angeles and New York City. The meetings would serve to apply principles of environmental justice at the community level, generate a mutually agreed upon agenda, and spotlight local environmental justice problems. Participants should include community leaders, government officials, and Congressional representatives. The meeting should endeavor to produce a series of commitments to the local community. Tr. I-29-37. (While the agenda at such a meeting probably would range well beyond permitting, the meeting could provide a forum to resolve permit issues, among other community concerns.)

33. Adopt binding public participation requirements which ensure permit writers will consult with affected communities "early and often." Tr. I-87-88, 91-99, 129-130, 198-199, R. 14-16, 19-20. Specifically:

a. Contact potentially affected communities as soon as an agency is aware that a permit application may be filed or that emissions from a facility may increase, but in no event later than immediately upon receipt of the permit application or notice that emissions could increase. Tr. I-91-92, 129-130, 132-133, 198-199, 272, 279, R. 19.
b. Hold an initial hearing or informal meeting with the potentially affected communities immediately upon receipt of a permit application. R. 14-16, 19-22.
c. Accurately identify community leaders; do not rely on local government to represent low-income or minority communities. Tr. I-129-130.
d. Develop a plan for community involvement in conjunction with the community. Tr. I-91-92.
e. Require a community outreach plan modelled on those used with success in the brownfields grants program; follow up to ensure that the plan is implemented. Tr. I-131-132, R. 12.
f. Use broadcast media and other effective forms of communication to advertise the public participation process. Tr. I-94-95, R. 19.
g. Require permit notices in newspapers to be printed in legible print and to be placed in spots likely to attract the attention of potentially affected residents. Tr. I-82-83, 355, R. 14.
h. In public notices of proposed permits, describe what the discharge/emission means to the community in lay, rather than technical, terms. Otherwise,

comment periods end before communities learn about potential impacts. Tr. I-87-88, 101-103, 132-133, III-20, R. 14.

i. Utilize local government resources as well by bringing local government into the process as early as possible. Tr. I-95-97, 187-189.

j. Make technical reports accessible to the community as soon as they are available, rather than holding them internally until commencement of a 30-day comment period. The 30-day comment period is often an inadequate time in which to obtain independent technical advice on the complicated issues involved in permitting. (Presumably, this recommendation would require agencies to establish a publicly accessible permit docket.) Tr. I-132-133, 274-275, R. 14.

k. Extend the 30-day public comment period for complicated permits. Tr. I-132-135.

34. Adopt permit conditions which provide communities with adequate test data and sufficient control over ongoing monitoring to ensure the safe operation of a facility. Tr. I-45-46, 202. In pre-meeting interviews, stakeholders identified a variety of obvious, as well as innovative, ways to accomplish this objective, including:
    a. bucket brigades in which citizens learn how to collect and send samples to EPA-approved labs (used as the basis for at least one successful enforcement action in Region IX),
    b. requiring companies with continuous emission monitoring to have digital printouts on stacks reporting their emission limits,
    c. Community Advisory Committees,
    d. monitoring and enforcement by other governmental entities (e.g., tribes and local governments),
    e. use of qualified consultants,
    f. community-facility good neighbor agreements, and
    g. daily posting of compliance data on the web. R. 22-23.

35. Assess, for the purposes of developing benchmarks, whether required public participation programs associated with permitting are working effectively because there is considerable testimony to the effect that such efforts are extremely problematic. Tr. III-132-133.

36. Make qualified, independent experts available to the local community to review permit technicalities. Tr. I-101.

37. Require permit applicants to certify under penalty of perjury that the information they provide to the public is complete and accurate. Tr. I-133-134.

38. Provide training for citizens and tribal governments on the permitting process itself. Tr. I-101, 210-211, 365-366, III-20-21.

39. Develop a citizens' guide to grandfathered facilities to facilitate citizen monitoring and involvement in permit reissuance for these facilities. Tr. III-115-116.

40. Identify existing legal authority to address cumulative impacts in permitting; make a list of these authorities available to environmental justice communities. Tr. III-116.

41. Require permit applicants to make geographic information system ("GIS"), demographic, and other computerized data (including the computers to review the data) available to local communities. Tr. I-191-194.

42. Address, through permits, communication networks extending from the community to the upper echelons of EPA in the event of chemical accidents or explosions. Tr. III-59-60.

Data gathering for permits:

43. (To EPA and other agencies), recognize the excellent health effects research now being done by community organizations and support further community-driven (i.e., community controlled) health effects research to ensure better permitting decisions. Tr. III-55-56.

44. (To ATSDR), incorporate more communities of color in research, such as the recent report on the economic burden of medical costs and lost productivity, since such information is relevant to permitting. Tr. III-84-85.

Funding:

45. (To EPA, in conjunction with other federal agencies), establish a fund to remedy pre-existing environmental injustices in hard-hit low income and minority communities. Such a fund is an essential precondition to improved permitting. Tr. I-164-169, 185-186, R. 11.

46. (To EPA as well as to the National Institute for Environmental Health Sciences, Agency for Toxic Substance Disease Registry, the National Institutes of Health, Center for Disease Control, and other agencies with health responsibilities), fund research on cumulative exposure analysis analogous to the research conducted by Communities for a Better Environment along the Aladema Corridor in Los Angeles. There, researchers used GIS mapping systems, demographic data, the Toxic Release Inventory database, other facility siting information, and a physical inventory conducted by community members to publish a report on cumulative exposure entitled "Holding Our Breath." Noteworthy findings included the fact that 70% of area facilities were not reporting to environmental agencies and, hence, were not identified in agency databases. In addition, an industrial chrome plating facility had been permitted immediately adjacent to an elementary school. Such research can be an essential tool for community empowerment, enabling communities to identify appropriate permit terms and conditions or circumstances in which permitting should not go forward. (The Los Angeles research was funded by the National Institute of Environmental Health Sciences, UCLA School of Public Health, Center for Occupational Environmental Health, Labor Occupation Safety and Health Divisions, and the USC Southern California Environmental Health Science Center.) Tr. I-60-65.

47. Attach environmental health funds to permits, with special emphasis on communities of color, children, women, and elders. Tr. I-203, III-59.

48. Provide funds for universities to provide independent technical advice on permitting issues to affected communities. Tr. I-134, 215-216.

49. Make funding available to states to engage in activities related to improved permitting in environmental justice communities, including site and community data-gathering and evaluation, expanded public participation, and community training. Tr. I-207.

50. Make funding available to encourage youth in low-income and minority communities to pursue environmental careers so that permit agencies can employ a diverse workforce. Tr. I-214-216.

51. Recognize the special funding needs of tribes to develop regulatory and permitting infrastructure. Tr. I-241-245.

Enforcement of permits and related regulatory requirements:

52. Ensure that EPA guidance on environmental justice reaches beyond the headquarters level to each of the regional offices and, in particular, regional permit writers. Tr. I-155-160, 277.

53. Ensure that EPA guidance on environmental justice reaches beyond to state personnel, especially permit writers, administering federally approved or required programs. Tr. I-160.

54. Assess all delegated state permit programs for compliance with federal legal requirements and withdraw federal program delegation in states which fail to implement the requirements. Tr. I-84, 102.

55. Address unpermitted or underpermitted activity, since this is a major problem. (For example, NEJAC heard testimony that a facility in Arizona is being allowed to operate even though EPA Region IX believes that the facility does not have an effective permit.) Tr. I- 144, III-62-63.

56. (To EPA and States), use enforcement programs to capture the economic benefits of permit violations so that corporations cannot profit from pollution. (See the NEJAC Enforcement Subcommittee's resolution and report on "Credible Deterrence," can be found in the NEJAC Executive Summary Report on the EPA Web Site as Appendix B.) Tr. III-164-165.

57. Be more assertive in exercising regulatory authority to reopen permits for grandfathered facilities, many of which would not have been approved under modern standards. One stakeholder asserted that, under modern "takings" case law, old polluting facilities can be shut down where there is a documented technical basis that they are causing an adverse impact. Tr. I-169-170.

58. Explore an initiative to clean up 1,712 high priority RCRA facilities. Tr. III-47.

59. Conduct a pilot test of enforcement options against waste transfer stations in New York City. Tr. III-152-153.

60. Adhere to the NEJAC Enforcement Subcommittee's resolution recommending that EPA refrain from recognizing state and local authority to grant variances from federally mandated air pollution permit requirements in cases of alleged malfunction, start-up, shut down, and maintenance. The Subcommittee cautioned

that, in practice, state and local variances receive little scrutiny, reflect highly subjective standards, and are relatively easy to obtain. Federal recognition of these variances would preclude both federal and community enforcement suits, potentially increasing emissions in low-income and minority communities which disproportionately host polluting facilities. Instead, the Subcommittee recommended that EPA exercise case-by-case prosecutorial discretion to determine whether or not Clean Air Act violations due to alleged malfunction, start-up, shut down, or maintenance merit enforcement. (A copy of the Subcommittee's resolution can be found in the NEJAC Executive Summary Report on the EPA Web Site as Appendix B.) Tr. III-164.

Concentrated animal feeding operations:

61. Accelerate the schedule for permitting concentrated animal feeding operations because now there is virtually a complete lack of permitting and a tremendous need for enforcement. Tr. III-25-26, 129-131, 178-180.

62. Require states to assume responsibility for permitting concentrated animal feeding operations within their jurisdiction. (A corollary recommendation is to educate states that have not had much experience with concentrated animal feeding operations about the associated environmental problems, because states often assume that these facilities do not discharge and, hence, do not require permits.) Where states are not interested in permitting these facilities, conduct federal inspections. Tr. III-130-131.

63. Investigate compliance with permit and regulatory requirements in Oklahoma where there has been a rapid proliferation of concentrated animal feeding operations in a small geographic area. Tr. I- 332-344, III-131-132, 180. (See related resolutions pertaining to tribal land, below.)

Urban air pollution:

64. Adhere to the recommendations of the NEJAC Air and Water Subcommittee on the urban air toxics strategy. (See their report, a copy of which can be found as Appendix C on the EPA Web Site.) Many of these recommendations address significant outstanding issues, such as choice of pollutants, selection of monitoring location and technology -- issues which remain relevant during the implementation phase of the strategy. Tr. III-116-120.

65. Structure public hearings and workshops around the country on implementation of the urban air toxics strategy to address monitoring questions, choice of technology, and state and local pilot projects. Tr. III-116-120.

66. Develop model materials on urban air toxics so that when state and local governments start implementing the program, communities can participate effectively. Tr. III-120-121.

67. Address the environmental justice implications of energy generation. Tr. III-119-127.

68. Address the environmental justice implications of Tier II reductions in the amount of sulfur in commercially sold gasoline. The concern is that, as refineries tighten

production processes to produce cleaner fuels, they will emit more locally. Trading programs may allow facilities to offset local emission increases with estimates of emission reductions from cleaner fuels. Tr. III-127-129.

69. Create a two (2)-page document informing communities impacted by Tier II-related local emission increases how to ensure new source review of plant process changes and reasonable reductions in local emissions. Tr. III-127-129.

70. Assess the pollution effects of permitted and proposed nuclear incinerators such as that proposed for Idaho Falls. Tr. III-134.

71. Take specific actions with respect to Puerto Rico's state implementation plan (SIP); namely, a) require Puerto Rico to revise the SIP because the regulations for power plants do not include federally mandated emission limitations on sulfur dioxide and particulates, even in nonattainment areas, b) require these power plants to use clean fuel (i.e., sulfur content of no more than 0.5%), and c) require these power plants to install continuous emission monitoring for sulfur dioxide. Tr. III-135-143, 183.

72. In consultation with the U.S. Department of Transportation, convene a meeting of the New Jersey Department of Transportation, the New Jersey Department of Environmental Protection, and the South Jersey Transportation Authority to address: a) long-term air quality issues associated with the Atlantic City Tunnel Project, b) community exposure to contaminated soil during construction, c) potential post-construction impacts such as flooding and safety, and d) the broader policy issues implicated by this project. Tr. III-153-155. (A copy of the NEJAC Resolution can be found in the NEJAC Executive Summary Report on the EPA Web Site as Appendix B.)

Streamlining, trading, offsets and other alternative compliance schemes:

73. Five different recommendations for "alternative compliance schemes" emerged; some of these are mutually exclusive:

    a) (From EPA's Air Program), explore whether, in certain communities heavily burdened by toxics or large concentrations of pollutants, the desire for economic development can be harnessed to drive reduced total loadings of toxics. Specifically, communities could proactively undertake toxic reductions (e.g., replace diesel-fueled buses with natural gas-fueled vehicles, retrofit pollution controls on existing trucks and buses, replace oil-based solvents with water-based products) and identify still further potential emission reductions. Accomplished emission reductions would provide room for new growth; targeted, desired reductions would identify potential offsets for new sources. Both types of reductions -- and the streamlined, expedited permitting EPA would offer new sources in these communities -- would make the communities more attractive to new development than communities where further growth would cause environmental justice problems. Tr. I-140-148, III-25, 29-46.

    b) Explore whether global facility permits, used in several states, provide an opportunity to reduce total emission loadings. Tr. III-39.

    c) Recognize that compliance alternatives are a huge potential loophole in permitting. Trading, in particular, allows a company to bypass public

involvement and obviate community gains in permitting. EPA, therefore, should adhere to the recommendations of the Enforcement Subcommittee of NEJAC as outlined in their comments on the Economic Incentive Program document, a copy of which can be found in the NEJAC Executive Summary Report on the EPA Web Site as Appendix B. Tr. I-145-148, 318, 327-332, III-62-64, 167-178.

d) If trading is to be allowed, consider some or all of the following limitations on it:
   - restrict its use to situations that directly and favorably impact conditions in environmental justice communities. Tr. III-113-114.
   - avoid using counties as a geographic area for emission trading purposes because California has counties (like San Bernadino) that are as big as Connecticut, Rhode Island, and Massachusetts combined. Reducing pollution in the county as a whole may still impact environmental justice communities adversely or disproportionately. Tr. III-41-45.
   - avoid emission trading of lead emissions. Tr. III-163.
   - consider that less poisoning of a community is still poisoning. Tr. I-271-272, III-59.
   - prohibit streamlining or expediting the permit process in overly impacted communities because additional time may be needed to evaluate the additional complex issues presented in these communities. Tr. I-227-228.

e) Create an environmental emission trading review board of representatives of environmental justice communities; federal, state, and local officials; and experts in health, engineering, and real estate. The board would rank and prioritize environmental justice projects, contract for professional services where necessary, use a pre-funded $50 million emission trading bank to address disparate impacts, and auction emission reduction credits. Tr. I-230-234.

Tribal and Indigenous Peoples:

74. Recognize that EPA has a special legal relationship with tribes who are sovereign governments. In recognition of that relationship, educate representatives of both regulated communities (e.g., industry) and regulators (i.e., state and federal government agencies) on indigenous cultural values. Lack of understanding of indigenous cultural, religious, and historical values permeates permitting on or adjacent to tribal lands. Tr. I-240-246, III-20-23, 77-83.

75. Notify potentially affected tribal governments and members directly of pending review of permits as soon as a permit application is submitted. Tr. I-245, III-20. Identify community leaders accurately; do not rely on local government to represent environmental justice communities, because many low-income and/or minority communities do not have visibility or political influence. Tr. 1-129-130. However, consistent with the government-to-government relationship with tribal governments and the federal trust responsibility owed to them, in the case of Native American communities, initial outreach efforts should, in the first instance, be directed to the tribal governments as representatives of their communities and to their tribal members. Additional outreach to other potentially affected persons and nongovernmental organizations also may be needed to ensure optimal public participation.

76. Encourage and support ongoing consultation between tribes and the permitting agency throughout the permit process. Tr. I-242-245, III-20.

77. Modify public participation requirements to account for the special problems attendant in reaching small, isolated rural communities on tribal lands. Tr. I-86-88.

78. Develop core water quality standards for permitting on tribal lands lacking such standards. Federal action is necessary because tribes which have adopted their own standards have found those standards attacked approved water quality standards, protect the quality of reservation waters from excessive degradation due to licensing or permitting activities by developing, in consultation and agreement with tribes, core water quality standards. Tr. I-127-128.

79. Include tribal lands in best management practice and regulatory requirements applicable to waste transfer stations. Tr. I-127-128.

(Note related recommendations #16, pertaining to substantive permit criteria, #38, pertaining to training, #51, pertaining to funding, and #63 pertaining to concentrated animal feeding operations on tribal land.)

Private sector initiatives:

80. Encourage the private sector to address environmental justice issues. Specific initiatives suggested by industry representatives for the private sector include:

    - Utilize the NEJAC guidelines on public participation. Tr. I-198-199.

    - Commit to listen, record, and respond to every question asked of a permit applicant at a public meeting. Tr. I-198-199, R. 20.

    - Change corporate policies on siting and acquisition so that environmental personnel are integrated into decision-making earlier in the process, before companies are heavily invested in a particular site. (Under current practice, siting is primarily market-driven. Only after a lengthy analysis of non-environmental factors, such as access to supplies and transportation corridors, growth potential, etc., does a company look at the community, its environment and quality of life.) R. 12.

IV. APPENDICES (On EPA Web Site)

A – Pre-Meeting Report
http://www.epa.gov/oeca/main/ej/nejacpub.html

B – December 1999 NEJAC Executive Council Meeting
http://www.epa.gov/oeca/main/ej/nejac/past_nmeet.html

C – Air/Water Subcommittee Comments on Draft Urban Air Strategy
http://www.epa.gov/oeca/main/ej/nejacpub.html

D – Transcripts from November 30-December 2, 1999 NEJAC Meeting
I – November 30, 1999, Plenary Session w/Permitting Public Comment Session
II – December 1, 1999, General Public Comment Period
III – December 2, 1999, Plenary Session
http://www.epa.gov/oeca/main/ej/nejacpub.html