



Enhancing Environmental Justice in EPA Permitting Programs

APRIL 2011

ACKNOWLEDGEMENTS

The National Environmental Justice Advisory Council (NEJAC) acknowledges the efforts of the Permitting Subgroup in preparing the initial draft of this report. The members of the Subgroup are listed on page 2 of this report. The NEJAC also acknowledges the staff of EPA's Office of Environmental Justice, especially Victoria Robinson, NEJAC Designated Federal Officer, and APEX Direct, Inc, which provided contractor support.

DISCLAIMER

This Report and recommendations have been written as part of the activities of the National Environmental Justice Advisory Council, a public advisory committee providing independent advice and recommendations on the issue of environmental justice to the Administrator and other officials of the United States Environmental Protection Agency (EPA or the Agency). In addition, the materials, opinions, findings, recommendations, and conclusions expressed herein, and in any study or other source referenced herein, should not be construed as adopted or endorsed by any organization with which any NEJAC member is affiliated.

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**A Report of Advice and Recommendations
of the
National Environmental Justice Advisory Council**

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- x Permits from other federal agencies need environmental justice review and support from EPA and the Interagency Working Group on Environmental Justice. Examples include: U.S. Army Corps of Engineers Section 404 permits; U.S. Department of Defense clean-up work on Formally Used Defense Sites; and U.S. Department of Interior environmental work/oversight in Indian Country.

Once again, thank you for this opportunity to provide recommendations for enhancing environmental justice in EPA's permitting programs.

Sincerely,

A handwritten signature in blue ink, appearing to read "Elizabeth Yeampierre", is positioned above a red and white checkered pattern that serves as a decorative separator.

Elizabeth Yeampierre
Chair

cc: NEJAC Members
Lisa Garcia, Senior Policy Advisor to the Administrator for Environmental Justice
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ENHANCING ENVIRONMENTAL JUSTICE IN EPA PERMITTING PROGRAMS

A Report of Advice and Recommendations of the National Environmental Justice Advisory Council

1.0 INTRODUCTION

1.1 The Charge and Timeline.

At the July 2010 meeting of the National Environmental Justice Advisory Council (NEJAC or the Council), the U.S. Environmental Protection Agency (EPA) asked the Council for advice about how to enhance environmental justice throughout its permitting programs. The advice is to be considered both in terms of the environmental permits that EPA issues and those permits issued by the states and tribes under delegation of authority or federal oversight of state and tribal programs. The Council was given a charge to develop answers to two questions:

- x Question #1 – What types of EPA-issued permits should EPA focus on now, to work on incorporating environmental justice concerns into EPA’s permits?
- x Question #2 – What types of permits issued pursuant to federal environmental laws, whether they are federal, state, or tribal permits, are best suited for exploring and addressing the complex issue of cumulative impacts? Such impacts come from exposure to multiple sources and existing conditions that are critical to the effective consideration of environmental justice in permitting.

A Subgroup of the Council was assembled to address these questions in August 2010. The Subgroup quickly determined that a preliminary response to the charge questions was needed and would be discussed at the November 2010 NEJAC meeting. To conduct its work, the Subgroup was provided the opportunity for six one-hour calls, one of which took place as part of a public conference call addressing several topics. The Subgroup has endeavored to be responsive to EPA’s desire to proceed expeditiously on this important programmatic goal. However, the Subgroup notes that the timeline for deliberations was too short. Scheduling did not allow face-to-face meetings or the kinds of sustained deliberation that have been the hallmark of NEJAC work products produced after a six-month to two-year effort, typical for substantive NEJAC reports.

At the November 2010 Council meeting in Kansas City, Missouri, the Subgroup presented its findings and draft report to the full Council. After deliberations, all Council members were able to provide input and draft refinements. The Council adopted this report as final in early 2011.

1.2 The Subgroup

The Subgroup’s work was chaired by Mr. John Ridgway and facilitated by the Council’s Designated Federal Officer, Ms. Victoria Robinson. Administrative and document production assistance to the Subgroup was provided by APEX Direct, Inc., EPA’s support contractor for the NEJAC. The members of the Subgroup – and the stakeholder categories they represent – are listed in Exhibit 1.

3.0 GENERAL CONSIDERATIONS AND RECOMMENDATIONS REGARDING

would be included in a new environmental justice regulation, policy, guidance, or other EPA action. This is important to understand both administrative feasibility and impact on the ground in terms of making progress in environmental justice communities.

In the initial projection, we found that of the 117 environmental justice concerns listed:

- x 21 were addressed under the Clean Air Act,
- x 25 were addressed under the Resource Conservation and Recovery Act (RCRA) which governs hazardous waste), although for 17 of the 25 concerns, the specific environmental justice concerns would be addressed only at RCRA facilities and would go unaddressed at sources without a RCRA permit obligation (note: businesses can legally generate hazardous waste without needing a permit),
- x 13 were addressed under the Clean Water Act,
- x 2 were addressed under the Safe Drinking Water Act,
- x 4 were addressed under the Toxic Substances Control Act (TSCA), although half of the specific environmental justice concerns would be addressed only at a TSCA-permitted facility and would go unaddressed at sources without a TSCA permit obligation, and
- x 75 or 64 percent would not be addressed by a permit.

This kind of understanding is important. NEJAC has repeatedly said that EPA (and authorized states and tribes) must take a comprehensive, community-based approach to addressing environmental justice. Focusing only on a limited subset of permits can leave communities with concerns based on other activities without a mode of redress.

encouraged by other means.

“In both views of the proportional response, the linchpin is community involvement and multi-stakeholder consensus building. There is no “one size fits all” remedy, but instead the approach must be a search for all applicable legal authorities, an engagement with the community to understand and seek direction on the means to reduce cumulative impacts, and an on-going expectation that all sources of environmental burden will contribute their share to its reduction or elimination.”

The approach recommended in NEJAC’s cumulative risk report became the foundation for EPA’s CARE program, which NEJAC in 2010 and prior years recommended be expanded. The approach is made workable by employing tools like EPA’s Environmental Justice Strategic Enforcement Screening Tool (EJ SEAT), which NEJAC evaluated in 2009, and facilitated by EPA’s EJView Mapping Tool.⁷

We summarize these key prior NEJAC documents here because they are directly relevant to EPA’s 2010 request that we identify the kinds of permits in which the Agency should begin to incorporate environmental justice. Previous Councils have considered in great detail the way environmental justice should be considered in permits and the limits to what can be accomplished by an ad hoc permit approach.

Reflecting on the geographic rather than single permit approach, the NEJAC again notes that a cumulative impact approach will substantially help assure that environmental justice concerns can be addressed across all media. Many facilities have multiple permits (often issued by multiple agencies), and most environmental justice communities have concerns with multiple facilities and impacts across multiple media. If EPA proceeds on a permit category by permit category approach, it may develop different standards under different programs. It should not be easier to “pass” the environmental justice test for an air permit versus a water discharge permit, etc., when both impact the same location.

Recommendation:

7. Follow the consensus recommendations of relevant prior NEJAC reports. The NEJAC also recognizes that in the intervening period, EPA’s practices and community needs may have changed. A current review by EPA of permitting and environmental justice gaps would be helpful to this discussion. What has EPA addressed in the years after previous NEJAC reports were delivered to the EPA Administrator? Has recent experience suggested that NEJAC should re-consider its advice in light of changed circumstances, or does the consensus of these previous reports continue to provide a fundamental answer to EPA’s questions?

- x Environmental justice and robust public participation should be part of every permit⁸
- x Authorities under every permitting program are available and should be employed to seek environmental justice⁹
- x Environmental justice concerns arise in a geographic area, not just within the bounds of a particular permit, and EPA should focus on locating and improving places with high cumulative

⁷ See NEJAC, Nationally Consistent Screening Approaches, <http://www.epa.gov/compliance/ej/resources/publications/nejac/ej-screening-approaches-rpt-2010.pdf> and <http://epamap14.epa.gov/ejmap/entry.html>.

⁸ See <http://www.epa.gov/compliance/ej/resources/publications/nejac/permit-recom-report-0700.pdf>

⁹ See <http://www.epa.gov/compliance/ej/resources/publications/nejac/permit-recom-report-0700.pdf>

processed, joint comment periods and hearings to be held, and final permits to be issued on a cooperative basis whenever EPA and a State agree to take such steps in general or in individual cases. These joint processing agreements may be provided in the Memoranda of Agreement corpora

penalty settlement efforts. EPA can specify the same from the authorized states/tribes through the agreements, noted further in this report (Agreements with States and Tribes). The training and implementation should include clear advice and tools to help a penalized facility that wants to invest in its host community – beyond the enticement of a slight cost reduction. Clearly, SEPs directly offer more to the host community as well as the facility itself and the state or tribe by keeping some of the penalty monies from going into the national coffers. EPA and states should do everything possible to help this happen. Additionally, SEP investments can only improve the facilities' ties to community leaders and neighbors. Use of this tool to help mend adversarial relationships between the facilities and their host communities (and with the regulatory role of the penalizing agency) is a fundamental part of regulatory and permitting enforcement. It should be noted that investing in host communities via SEPs is not an attempt to buy host community silence, but rather an attempt to demonstrate remorse over the violation having occurred as well as improving the local environment.

Employing Environmental Justice/"Good Neighbor"/Environmental Benefit Agreements as part of permitting

Permit negotiations, if handled well, are an opportunity to evaluate and provide tangible measures to better balance or reverse the trends of disproportionate impact – beyond minimum requirements. One way of doing so is through the negotiations of environmental benefit agreements during the permitting process. The negotiation process has considerable flexibility and can include agreements on emission reductions at existing facilities and cleanup of contaminated property. These agreements could even extend to such benefits as funding for improving the indoor air quality at local schools, etc. A permit applicant may likely welcome community participation in these negotiations if it means that they will avoid a long, costly adjudicatory hearing that may jeopardize the project or the applicant's standing in the region. These agreements also can be effectively used by states mandated by their legislatures to reduce the permitting review times and operate in a business-friendly manner.

Good neighbor agreements provide the community a direct way to negotiate for tangible benefits like the use of cleaner fuels, the best pollution control equipment available, enhanced local monitoring and reporting, or for a project that can remediate an existing pollution burden. Since this is supplemental to the formal permitting process, it does not have to be negotiated by the primacy agency, yet it could still be referenced within a permit. This is where EPA and/or the primacy agency can help: bring the community and the permit-related facility representatives together to consider this option. Presuming parties are willing, such agreements can be directly negotiated between the facility and 'the community' – however that may be defined. This kind of agreement has broader potential than the SEP concept described above because there is more flexibility and the opportunity for direct communication among the parties without the legal constraints that are part of the SEP process.

Recommendation:

15. Help communities employ environmental justice/"Good Neighbor"/Environmental Benefit Agreements as part of permitting in order to more proactively resolve environmental justice concerns. EPA should consider a more proactive approach to resolving environmental justice concerns as part of permitting.

Understanding Tribal and Indigenous communities and permitting. There are too many special considerations related to tribal and indigenous peoples and permitting to be responsibly addressed in this report. Although we had active participation of our tribal representatives, additional perspectives are needed to fully inform recommendations. The NEJAC feels it must again highlight the critical, ongoing

for environmental justice communities. It may be good to bring more EPA/outreach to environmental justice communities dealing with pesticides, as well as farm worker groups and public health advocates working in this arena.

Care in continually reviewing pesticide registrations is important, but it also is important for EPA (and sister federal agencies – via the Environmental Justice Interagency Working Group) to enhance protection of those living and working in areas affected by pesticide drift, contamination of soil and groundwater, and ingestion of pesticides near application areas. In addition, communities have raised serious concerns about enforcement of the rodenticide application requirements of this act, particularly where children are poisoned by compounds distributed in forms that make exposure more likely.

Certainly, due to the high numbers of non-English speaking and/or reading workers, family members and neighboring residents, reliance on proper use and precautions based on posting directions and warnings is entirely ineffective within these populations. Exposure is common; viable solutions are needed.

- x Air permits -- Although States likely issue more of these permits than does EPA, EPA still maintains key, unique roles within air permitting. One is a need to provide clarifying guidance on the integration of environmental justice and cumulative risk concerns into the air pollution emissions permitting process. This is also appropriate for the second question of the charge, addressed later in this report.
- x Concentrated Animal Feeding Operations (CAFO) – NEJAC continues to hear regularly of concerns about inadequate environmental justice surrounding this issue. It appears that EPA maintains a significant role here under the Clean Water Act in terms of possible groundwater contamination, and significant water body deterioration from CAFO runoff, Total Maximum Daily Load limits, etc. Odor and air emissions from these facilities may also tie to permitting issues in need of more environmental justice attention.

Advice Specific to EPA's Focus per Relevant Permit 'Type'. Acknowledging the proceeding caveats, the following overview is considered a good start for enhanced environmental justice focus by EPA's leadership and permitting programs. In making these program-specific comments, the NEJAC realizes that these types of permits are not always in EPA's direct control. However, we believe that to a large, if not always complete extent, EPA is either in direct control of the permitting process or has direct oversight capabilities and obligations, regardless of primacy. This list of permit types has been brought to the Council's attention through NEJAC public conference calls, individual Council members, review of prior NEJAC documents, Subgroup research and expertise, and Subgroup discussions with EPA staff.

Clean Air Act Clean Air Act permits set guidelines and carryout provisions for considerations for alternative sites This is connected to EPA's "New Source Review" (NSR) and the "Prevention of Significant Deterioration" (PSD) permitting activities.

Recommendation:

18. Review Clean Air Act permits for incorporation of environmental justice When reviewing Clean Air Act permits for incorporation of environmental justice, EPA should be mindful of the following:

- x How often is environmental justice currently considered in these permits, and how often are alternative sites evaluated? Is this really done?
- x If this analysis is considered, is it meaningful? Can it be? How?
- x Delegated states need more guidance on the process and a mechanism to be held accountable by EPA so that this does happen where appropriate.
- x EPA needs to exercise this agency discretionary tool. It was put there for a purpose; don't let it be lost because of atrophy. The Subgroup believes the intent of this provision is good, so use it with intentionality and clarity. The law says, "consider." Clarify what this really means. Make it an overt, pro-active, community-oriented (however defined) consideration, with the engagement of the applicants and multiple regulatory entities.
- x Build clear cumulative impact considerations into the NSR process.
- x Currently, the notion of such a consideration seems to be in a quagmire, helping no one, likely costing EPA and others money, and providing the basis for legal challenges from the regulated community. There are raised expectations by the public that have been undermined by a bad process. How can the process be re-imagined to make environmental justice a uniform, organized part of the decision-making process?

Clean Water Act - §404 permits regarding the 'Discharge of Dredge or Fill Material' use of surface coal mining, EPA has concerns with §404 and §402. The Council believes these permits can achieve important environmental justice goals:

- x These permits, particularly tied to Mountain Top Removal (MTR) mining and stream protections, have come to the Council's attention as mechanisms that need clarification and stronger enforcement.
- x In relation to MTR mining, often permits for this type of activity impact very rural, small and isolated communities. This exacerbates local environmental burdens and inhibits communication to states and larger communities of downstream impacts.
- x There are multiple permitting conditions that hamper communication between all relevant parties. In addition to U.S. Army Corps of Engineers (USACE) §404 permits, states will typically issue the related §402 water discharge permits (NPDES) and the federal Surface Mining and Reclamation Control Act permits. In general, coordination and communication across these bureaucracies related to environmental justice concerns appears to be less than optimal; some have suggested it's nonexistent.
- x Between the initial public review/input opportunity related to a §404 permit application and the final permit, a year may pass. During this time, permit details may dramatically change from what was initially proposed. The next public opportunity to learn of permit modifications is when the permit is in final form, and therefore too late for the public, EPA or the host states to be able to modify or mitigate for environmental justice concerns. This is a dysfunctional process that needs senior-level attention by EPA, USACE, and possibly the Interagency Working Group.
- x National Environmental Policy Act (NEPA) reviews and the scope of Environmental Impact Statements (EIS) are carried out by the USACE. There is a consistent view (based on specific local experiences) that the USACE does not look at the broad scope of potential local environmental impacts of a project or permit activity (if not specifically required by NEPA) including impacts on human health and the environment.
- x EPA/USACE coordinated engagement and EPA's oversight need dramatic improvement in this area. Fundamentally, EPA is in charge of the Clean Water Act, and thus (one may infer) 40 C.F.R. 124 – public participation processes are just as applicable to the USACE. Where is EPA's accountability to address problems related to the USACE's limited public participation procedures?

- x Enforcement. What if the USACE doesn't enforce the permit's conditions? Can EPA take over or somehow require the USACE to step up? What is the case record of USACE's enforcement and penalties related to §404 permits?

Recommendations:

19. Incorporate a closer and/or independent review of the formal consideration of environmental justice concerns by the USACE, EPA, tribes, states and local jurisdictions regarding not only the issuance and enforcement of Clean Water Act §402 permits (issued by states or other delegated authorities) and §404 permits on Discharge of Dredge or Fill Material (issued by USACE). Perhaps the greatest need here is for more information sharing, particularly from USACE, which EPA has had little influence over. This clearly suggests an opportunity for the Interagency Working Group to help the USACE do more than the minimal requirements within their own rules and procedures.
20. Facilitate better coordination between the various permitting entities issuing permits for MTR mining activities and projects. EPA should seek a balance between state efforts to "streamline" permitting of these types of activities, and greater engagement of affected communities in the permitting process for surface mining. Residents of affected communities have requested via the NEJAC that EPA establish that Community Right-to-Know and public engagement, as well as protecting public health and ecological resources, have primacy when juxtaposed against MTR permit applications.
21. Re-affirm the necessity of undertaking Environmental Impact Assessments and/or Environmental Reviews of all MTR-proposed projects, especially those that propose to move massive amounts of land as required under NEPA. Such reviews also increase the opportunities for public review, comment, engagement, and appropriate modification for amendment or repeal of final permits. This is needed urgently.

Hydraulic Fracturing (or Fracking) activity is covered (with ambiguity) within 'Underground Injection Controls' (UICs) of the Safe Drinking Water Act. It is also tied to the Clean Water Act. The 2005 Energy Policy Act excluded hydraulic fracturing from regulation under the Safe Drinking Water Act, but communities have made clear that current permitting obligations are inadequate.

- x When recovered fracking fluids (flowback) are discharged to a surface source, the regulation of these fluids fall within a NPDES permit under the Clean Water Act. In addition, if the flowback is disposed through reinjection back into underground aquifers, this action is regulated through the Underground Injection Control program of the Safe Water Drinking Act as a Class II reinjection well.
- x Because the action of hydraulic fracturing is not regulated, there is **non**-transparency in environmental impact reviews (e.g., National Environmental Policy Act review), leading up to the development of new energy resources. Unless the public is aware that fracking will be part of the process in natural gas/oil development, public comments and concerns do not become part of the permitting public record. On this point, it's important to also note that the U.S. Department of Interior is currently looking to streamline permitting processes that allow for fracking so that the development of "cleaner" natural gas can occur faster, in keeping with an increased demand of natural gas versus coal energy. This is another example where EPA needs to work aggressively to provide better and more consistent environmental protections across federal agencies.
- x There's a fundamental environmental justice and Community Right-to-Know problem with whatever permitting may be tied to this process. Un-named chemicals, protected as "proprietary information," are pumped into the ground to assist in well drilling operations. These chemicals can potentially contaminate surface and ground water that at times is also the source of drinking water in rural communities.

Recommendations:

22. Include the full disclosure of the chemicals used and an assurance that such use is appropriate and safe. Residual contamination as a result of the fracking process should not be allowed. This type of information sharing would be entirely consistent with the federal Emergency Planning and Community Right-to-Know Act (EPCRA), and could be implemented in a similar fashion, perhaps even incorporated into the EPCRA laws.
23. Work with states to initially develop more protective standards and policies surrounding hydraulic fracturing. EPA has limited regulatory authority to permit this activity based on congressionally imposed limitations. EPA also should develop proposals to expand EPA, state, and tribal protective permitting options, rules, and statutes related to hydraulic fracturing and the chemicals used in the process.

RCRA Hazardous Waste Permit Section 3005c(3) This omnibus section of the law requires that RCRA permits contain all conditions necessary to protect human health and the environment. To the extent this section is applied to both the permitting process and its enforcement once the permit has been issued, this subject likely deserves more attention by EPA.

- x In the 1995 case, *In re Chemical Waste Management of Indiana*, the EPA Appeals Board ruled that "Each permit issued under this section shall contain such terms and conditions as the Administrator (or the State) determines necessary to protect human health and the environment." In the eyes of community groups, this means that unless the facility in question has zero emissions, can their permit be supported and/or approved if its incremental releases cannot be shown to further protect human health and the environment.

Recommendation:

24. Address the extent to which RCRA §305 is applied to both the permitting process and its enforcement once the permit has been issued. EPA should deal with how this section is addressed when the permitted facility (or one in application for a new permit/renewal/modification) is located in

The following points are initial responses to EPA; by no means should they be considered complete. This is another reason the NEJAC recommends that more time and attention be applied to the many facets surrounding environmental justice and cumulative impacts in relation to permitting, regardless of which governmental entity has primacy.

Agreements with States and Tribes: The coordination between EPA's regional offices and the authorized state and tribal programs provides key opportunities for addressing and tracking environmental justice through permitting that are underutilized. That relationship includes regularly renewed formal agreements, some of which provide for public review and engagement. Two types of agreements are the focus of this recommendation: **Performance Partnership Agreements** and **Memoranda of Understanding**.

The Performance Partnership Agreements (PPAs) by EPA regions and their respective states (and possibly tribes) to spell out how EPA-delegated or authorized work will be carried out. States are accountable for the work they implement under EPA's authority, and they're accountable for the funds they receive to do the work. Although not established in rule or law, the PPAs have been in use for at least the past 10 to 15 years. Because they are not specified in rules/statutes, they are flexible. The agreements can address specific activities under the respective federal laws, as well as address broader common environmental issues of concern including environmental justice, climate change/adaptation, sustainability, and even cumulative impacts. They could also be ignored if the states and EPA don't support them, which the NEJAC believes should not be allowed to happen.

Each state will have its own agreement with EPA. It is typically renewed every two years. When drafted for a new two-year cycle, there should be a public review/comment period of at least 30 days. Notice of this public comment period should be accomplished through press releases, written notice to known environmental justice community leaders and organizations, and made accessible through a dedicated public notification web page on the respective Regional EPA website. After that, the state and EPA should consider and respond to the comments before the PPA is finalized and signed (by the EPA Regional Administrator and the state environmental agency's director).

The State of Washington's practice on public notice of PPAs represents a good model. Washington publishes a draft PPA for a 30-day public comment period. It then takes an additional ~20 days to address each comment in writing. All comments are considered for incorporation into the final PPA, and responses are included in the final PPAs appendix. This is a relatively short and efficient process. Other states may also have good practices including ways to continually update environmental justice contact lists to foster open and regular communication. The NEJAC believes this would be a fruitful area for further EPA inquiry.

appropriate tools, authorizations, references, etc., where environmental justice is linked to federal environmental laws. These links connect to the states and tribes that are delegated or authorized and funded to implement those laws through the MOUs.

Further, there is nothing that should prohibit specific references within MOUs to remind federal fund recipients that they will be held accountable to support environmental justice efforts, procedures, PPAs, etc. This suggests a process that could be folded in over time as MOUs are renegotiated around the country. This also implies EPA needs to be ready to work with federal fund recipients if environmental justice obligations are not carried out according to the laws and the MOUs.

Occasionally, MOUs can be utilized as an alternative path to speed up pollution reduction either at specific sites or even at a larger regional and national scale. However, they can also be used by the business or industry to avoid rule making or postpone implementation schedules. Hence, the pros and cons of each MOU (if not the document itself) must be evaluated thoroughly, in an open public process that includes all stakeholders including representatives from businesses and local and tribal governments. The debate and controversy surrounding the railroad MOU with the California Air Resources Board serves as an example of mistakes to avoid and the process that should be followed prior to signing an MOU. The following links provide more background on environmental justice issues in California related to MOUs:

- x <http://www.aqmd.gov/news1/2005/AQMDResponsetoCARBMOU.html>
- x <http://www.arb.ca.gov/msprog/offroad/loco/062405qarymou.pdf>
- x <http://www.reportingonhealth.org/fellowships/projects/health-and-air-pollution-commerce>
- x http://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=vofi.dsp_CFMS_Report&rptid=99&cfnumber=05-0002-S152

Recommendations:

30. Include appropriate environmental justice-oriented language in its MOUs with states and tribes.
 31. Ensure appropriate environmental justice language is clearly defined and built into those MOUs If MOUs are developed between EPA and other federal agencies.
 32. Hold the authorized or delegated entities to a higher requirement of environmental justice engagement when discussing and negotiating MOU renewals.
 33. Nationally, Hold regional EPA offices accountable to include environmental justice language and references in the regionally-negotiated MOUs.
 34. Provide training to all EPA regional offices on the value of establishing relationships through meaningful communication with environmental justice communities and tribal nations. The training should include how to define and incorporate environmental justice into MOUs and PPAs.
 35. Provide clear guidance to all federal fund recipients pointing out environmental justice references, procedures and obligations tied to the receipt and use of the funds.
 36. Review and consider better ways to ensure 40 C.F.R. 124 (cited elsewhere in this report) is applied to the public participation processes carried out by primacy entities.
 37. Review how states are incorporating the public participation process. To ensure meaningful public participation, the public notice and outreach process must include direct communication in appropriate languages through telephone calls and mailings to environmental justice and tribal communities, press releases, radio announcements, electronic and regular mail, website postings and the posting of signs (where local zoni
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environmental justice meetings, etc. Notification of the public by publishing in the legal section of regional newspapers is antiquated and ineffective. This method should not be counted on to communicate, even if legally required.

39. Establish procedures for MOU completion to ensure all related environmental justice impacts are addressed through satisfactory negotiations between all parties before the agreements are signed.

5.0 CONCLUSION

The NEJAC appreciates the opportunity to provide input and has endeavored to meet EPA's timeline. We must make clear, however, that well-founded, true consensus advice takes more time and dialogue than this exercise afforded. Our Subgroup operated under time constraints very different from those experienced by previous Work Groups. Nonetheless, we were able to raise pertinent issues and affirm the usefulness of specific guidance given by our predecessor Councils. This process reminded us that the deliberative process in which NEJAC historically has engaged has long-term value to the Agency in seeking to implement environmental justice throughout its programs. We urge EPA to allow the NEJAC adequate time, access to relevant EPA experts, and resources to tackle complex questions. This support would allow the Council to make the consensus recommendations to help EPA lay the foundation for a future in which its permitting programs are keystones in continual progress toward environmental justice in this country.

Further, as was discussed at the July NEJAC meeting, EPA is considering creating an internal Agency work group to drill down on the actual process of delineating how to integrate environmental justice into the Agency's permitting practice and procedures. We recommend that EPA consider inviting NEJAC representatives and other non-agency experts to this work group. We envision a process much like the past NEJAC subcommittee structure where EPA staff worked side-by-side with NEJAC members and other outside representatives and experts on a range of issues and concerns. We think that this approach could yield a more comprehensive examination of permitting issues, and provide the Agency with a range of expertise to draw on in its further deliberations.

APPENDIX A

**INCORPORATING ENVIRONMENTAL JUSTICE CONCERNS
INTO PERMITS UNDER FEDERAL ENVIRONMENTAL LAWS**

**CHARGE
JULY 27, 2010**

EPA seeks advice and recommendations from the National Environmental Justice Advisory Council (NEJAC) to inform how we can better incorporate environmental justice concerns into government decisions on permits issued under the Agency's0

Next Steps: Our next steps will include reaching out to the states and Indian tribes, as well as federal agencies, who implement federal environmental laws. State environmental programs have long grappled with issues of

APPENDIX B

COUNCIL QUESTIONS RELATED TO EPA PERMITTING CHARGE

These questions are outlined for the purpose of ensuring clarity in our Subgroup's mission and proper scoping, as well as to assure that we understand EPA's fundamenta

"Of the greatest concern and interest to communities" -- How can this be gauged?

- x In the concept of a 'total maximum daily loads' for a given water body (TMDLs - such as is in the Clean Water Act), the question is what's the 'total load' an entire community can safely, sustainably take on or absorb? Going over that load or capacity – implying the combined environmental loading from all forms of permitted pollution in an environmental justice community -- is the problem, particularly for the weakest members of the community. All governmental entities involved with any or all steps of permitting in such communities have to work on this together – along with all the permittees and community stakeholders and with those involved with the cleanup of existing sources of contamination. "Types" of permits does not get to this bigger-picture dynamic.
- x If the cumulative risk approach is considered instead of the focus on sets of permits, does this suggest newly invigorated Interagency Working Group on Environmental Justice could provide new opportunities to achieve the goals NEJAC was seeking in its report on cumulative risk? Should this opportunity be considered in mapping EPA's objectives in permitting?
- x Given these considerations, the Subgroup finds question 2 (and probably question 1, since it is the initial step in a project that includes the concepts raised in question 2) somewhat misdirected. These considerations are much better addressed in the NEJAC recommendations on cumulative impacts, compared to what this Subgroup can address in this short time frame. See: [Ensuring Risk Reduction in Communities with Multiple Stressors: Environmental Justice and Cumulative Risks/Impacts \(PDF\)](#) - December 2004.
- x Could we enhance that body of knowledge in the next four weeks? More likely, the Subgroup will have to defer to a better-formulated NEJAC work fa/6-5(e5oup tofulblytacklen this questi)7ion.

Legend:

Site selection/ review of alternatives
Smart Growth
Soil staging
Spills (3)
Storm debris
Sugar harvesting and burning
Superfund sites (2)
Surface runoff (3)
Traffic hazards
Transportation application of herbicides
Transportation corridors
TRI emitters (only if otherwise have permit)
Truck routing

Underground tanks (2)
Underground injection wells (4)
Urban farming
Utilities (1)
Vacant lots
Volume reduction facilities
Warehouses
Waste combustion (1, 2)
Waste transfer stations
Wastewater treatment facilities (2)
Water discharges (3)
Zoning authorizations