National Advisory Council for Environmental Policy and Technology

Federal Advisory Committee

Summary of the Title VI Implementation Advisory Committee Meeting

Approved by Committee 10/18/98

Philadelphia, Pennsylvania
July 27-28, 1998

NATIONAL ADVISORY COUNCIL FOR ENVIRONMENTAL POLICY AND TECHNOLOGY

Title VI Implementation Advisory Committee Meeting

Summary of Second Meeting
Philadelphia, PA
July 27-28, 1998

FINAL DRAFT AGENDA

July 27, 1998—Afternoon/Evening Session

- Welcome and Introductions, Approval of May Meeting Minutes
- Review of Agenda for Both Days
- Presentation on the City of Detroit
- Assessment Workgroup Presentation
- Assessment Priorities
- Mitigation Workgroup Presentation
- Mitigation Priorities
- Operations Workgroup Presentation
- Operations Priorities
- Summary of Workgroup Issues and Proposal for Next Steps
- A Model Permitting Program—What Should It Include?
- Public Comment Session
- Meeting Adjourns for the Day

July 28, 1998—Morning/Afternoon Session

- Recap of Day One, Agenda Review, Discussion of Themes from Public Comments
- Elements of a Model Permitting Program (continued)
- Workgroup Breakout Sessions
- Workgroup Breakout Sessions
- Lunch
- Review of Workgroup Progress
- Next Steps, Assignments, Resource Needs
- Plans for the Next Meetings
  - ♦ Location
  - ♦ Engaging the Public
  - ♦ Process Improvement
- Wrap Up
- Meeting Evaluation
- Meeting Adjourns

MEMBERS PRESENT:

Title VI Implementation Advisory Committee

Elliott Laws, Chair

Susana Almanza (new member)

Cherae Bishop

Sue Briggum

Robert Bullard

John Chambers

Luke W. Cole

Mayor Rosemary Corbin (new member)

Eileen Gauna

Russell Harding

Richard Lazarus

Charles Lee

Langdon Marsh

Barry McBee

Richard Monette

Richard Moore

Jane T. Nishida

Dell Perelman (new member)

Peggy Shepard

Robert Shinn

Gerald Torres

Haywood Turrentine

Members Not Present:

Tom Goldtooth, Walter Handy and Lillian Kawasaki

Opening of the Meeting: Elliott Laws opened the meeting and welcomed committee members, members of the public, EPA staff and other observers.

Membership Changes: Alexandra Dunn of the Chemical Manufacturers Association has tendered her resignation and is being replaced by Dell Perelman, also from the Chemical Manufacturers Association. The group welcomed new members, Mayor Rosemary Corbin of Richmond, CA, and Susana Almanza of People Organizing to Demand Environmental Rights (PODER) in Austin, TX. John Gibson of African Americans for Environmental Justice has been invited to join the committee but was unable to attend this meeting.

Administrative Matters: Melanie Medina-Ortiz is the new Designated Federal Officer (DFO) from the Office of Cooperative Environmental Management. Greg Kenyon has left the agency to pursue writing music professionally.

The Chair introduced the facilitation team. Mary Margaret Golten, from CDR Associates, noted that Michael Lewis has had to withdraw due to the pressure of other work. Peter Woodrow, from CDR Associates, has joined the facilitation team and will work with Workgroup II. Judy Mares-Dixon will continue to work with Workgroup I.

PRESENTATION REGARDING DETROIT RENAISSANCE

The Chair noted that, at the recent meeting of the Conference of Mayors in Detroit, Mayor Archer of Detroit expressed concerns about EPA's Title VI Interim Guidance—specifically the lack of consultation with mayors and how the Guidance might affect economic redevelopment in Detroit and other cities. Administrator Browner asked representatives of Detroit to make a presentation

to this Committee, in order to outline their concerns and suggestions.

Sarah Lile, Director of Environmental Affairs, City of Detroit indicated that the goal of this presentation was to inform the Committee regarding the recent Conference of Mayors and the work in Detroit. She said that the mayors are interested in a rational, reasonable, workable solution to environmental issues, including up front participation by local communities. Sarah Lile then introduced *Paul Hillegonds, President of Detroit Renaissance.* Detroit Renaissance represents fifty corporate CEOs in southeast Michigan, focusing on the economic revitalization of Detroit. The business community has developed a set of key principles concerning implementation of Title VI.

Mr. Hillegonds indicated that the business community opposes the Interim Guidance and is hoping for a more workable, proactive process to address environmental justice concerns and to oppose discriminatory behavior in the permitting context. Business leaders are concerned that the uncertainty caused by the permitting process, including Title VI considerations, creates a high risk environment for businesses attempting to reinvest in environmental justice communities. Mr. Hillegonds presented a set of maps generated for Detroit Renaissance which identify all of the communities in Michigan and the Midwest that are potential sites for disparate impact findings under Title VI. The maps used poverty as a demographic indicator for such communities. [Mr. Hillegond's full statement was provided to the Committee.]

Comments by Committee Members following the Detroit Renaissance Presentation:

- The Congress has determined that the costs associated with environmental justice concerns are worth it. Any basic change in this structure must be addressed to Congress. The problem at present is that *existing laws* are not being enforced consistently.
- Title VI is not about income—that is not a category named in the law. The use of income as a proxy for communities potentially affected by Title VI is fundamentally flawed.
- The Brownfields development process must bring together the interests of businesses and distressed communities, in order to integrate a safe environment, economic development and civil rights. This Committee should see Title VI in context. So far, there have been only 58 complaints (none of which relate to Brownfields) out of some 270,000 permitting decisions.
- Environmental justice communities emphasize their involvement in decisions which affect their lives. As communities do become involved, they need technical and legal support in order to be equal participants in negotiations and decision making.
- One Committee member noted that the US mayors are not in conflict with Title VI. They support giving local communities the right and responsibility to make land use decisions. They want to be a part of the discussion of how Title VI gets implemented.

WORKGROUP PROGRESS REPORTS

Report from Assessment Workgroup I

Workgroup I is looking at definitions of Disparate Impact, Impacted Community, and Measures of Disparate Impact.

Disparate Impact: No one standard will fit. Disparate impact is not always discrete, identifiable and traceable. Both quantitative and qualitative measures are needed. Common sense can also be applied, using the local traditions of the impacted community. Tools for examining different kinds of situations will also be helpful.

Concept of "disparate" refers to an impact on one group identified by race, color, or national origin that is greater than that born by other groups.

The group needs more discussion on disparate impact and harm and must also consider cumulative impacts.

Impacted Community: Again, one size does not fit all. The group feels a need for additional discussion of cumulative impact across different media. A peer review process is needed. Are communities defined by geography, cultural, religious practice, or other factors? What is the process for identifying a community?

The question of harm/adverse impact is still outstanding. Is impact measured quantitatively, qualitatively, through peer review (using balanced/objective criteria)? Will the process be accessible to state/local government, business and the community? Can we use GIS, proximity, exposure monitoring? Regardless of the measuring tool used, the data must be accessible to potential complainants as well as to industry.

The group noted that involvement of the community in design of the analysis will enhance precision and predictability. The group continues to have significant areas of basic disagreement, and lots of questions remain. These are complex and difficult issues. At the most recent Workgroup meeting last night, two next steps were identified:

- First, how do we begin to operationalize the assessment process based, on what we have agreed on? Do we have enough agreement to move towards operational agreements?
- Second, how do we begin to initiate fact finding and dialogue processes, given legal history and authorities, and incorporating cumulative risk analysis?

The Workgroup noted the valuable contribution of Alexandra Dunn to their deliberations and regrets her departure. The group also wished to note that the summary of their deliberations in the summary of all workgroups did not accurately reflect their discussion. The full Workgroup I notes were distributed to the Committee.

Committee Questions/Discussion following Workgroup I Report:

- All other components of the Committee's task are driven by the need for a clear definition of disparate impact. We must advance beyond a vague definition in order to move on other fronts.
- The workgroup had trouble defining "impact." Are we looking at human health, traffic, economic effects, or all potential impacts? Some said "anything and everything." Others said only human health impacts verifiable by scientific studies.
- What are communities of concern that would have to be subject of analysis? In practical terms, this would be determined by issues raised by environmental justice communities.
- In determining how much disparity is enough to trigger action, perhaps Title VII case law and guidance would be helpful. Environmental laws make application of Title VI especially challenging.
- In our visit to Chester we noted increased truck traffic, exhaust, and noise. These secondary or indirect impacts would need to be included in common sense analysis of impacts.
- What about issues that do not fall under the authority of the permitting agency? A lot of the impacts we saw in Chester cry out to be dealt with. Conundrum—do trucks fall under an environmental statute? Prostitution?
- Our mission is to find a process to address issues before they become Title VI litigation. If we define in a narrow sense, it will not serve a meaningful purpose. We should provide ways to do something up front to eliminate the need for law suits.
- We can define a community according to interaction and input, but can't divorce ourselves from political subdivisions—that's how we are organized.

Report from Mitigation Workgroup II

Workgroup II has been concentrating on mitigation. A short report summarizing the key questions and a few agreements of the Workgroup was distributed to the Committee.

The Interim Guidance uses the term "mitig-ation" in two ways: measures applied after a finding of disparate impact in order to reduce disparity, and other mitigation measures included in Supplemental Mitigation Projects. Mitigation comes into play after a finding of disparate impact. This leaves many questions about mitigation unanswered.

The Workgroup is discussing ***when*** consideration of mitigation should take place, and agrees that mitigation should be addressed as early as possible—not after a permit has been granted. Discussion of mitigation should be part of the permitting process. Public participation and stakeholder involvement is essential. However, stakeholder involvement is only effective with a level playing field. Resources must be provided for the community to participate effectively.

In terms of ***what*** constitutes appropriate mitigation, the workgroup agrees that mitigation is tied to the definition of disparate impact: the broader the categories of impacts deemed relevant, the broader the types of mitigation measures that might be appropriate. What kind of nexus must exist between the disparity and mitigation? Since it is not always possible to mitigate directly, what should be done if direct mitigation fails to end the disparity? In some cases the only option will be no permit. Is it possible for mitigation discussions to develop an acceptable trade off, such as reducing broader public health risks? Will such mitigation measures reduce the risk of noncompliance?

Where is mitigation appropriate? Are we artificially confined by the permitting process? Even in the permitting context, mitigation could go beyond the permit applicant to include mitigation steps undertaken by the permitting authority, which is subject to Title VI. For instance, the agency might reallocate its enforcement resources or change its environmental standards to deal with noise and transportation.

Committee Questions/Discussion following Workgroup II Report:

- We don't want to encourage "buying out" environmental compliance through the lure of supplemental environmental projects.
- What about the measurement and enforceability of mitigation? If the disparate impact was environmental in nature and you don't address the environmental concern, you haven't addressed the disparate impact. These collateral measures may not constitute sufficient mitigation, legally.
- The best mitigation is one that reduces the environmental risks at the facility itself. But what if the community, by consensus, wants another type of mitigation? If you give the community something they want, have you eliminated the disparate impact?
- We also have to consider the "last applicant" problem, where a community is already close to or actually exceeding various emissions levels, and a new facility wants to come in. The logical solution to the problem is not to permit that facility. By not permitting the facility, you haven't addressed the disparate impact. In that context the permitting process can't help you.
- If you can't mitigate to address the disparate impact, how likely are you to have to face the same problem again? Someone else is probably going to bring another charge. But if mitigation has to be tied directly to eliminating the disparate impact, is that going to make Title VI a more narrow solution to communities? Will compliance with Title VI limit our options regarding solutions?
- The principle is that the local community must have input from the beginning. The

affected community ought to be making mitigation decisions.

Report from Operations Workgroup III

The workgroup has focused on operations, with particular reference to existing state programs. They looked to three of the states represented on this Committee: New Jersey, Texas and Oregon. The group has identified several "understand ings," which include:

1. It is crucial for states and environmental justice (EJ) communities to develop an on-going relationship and dialogue—a "common sense" or relational approach, and to allow communities to self-identify, avoiding "lines in the sand" (to include people who live near the site, people who use the resource, as well as those who are potentially impacted).

2. States may be hampered by the lack of resources to do proactive, permit-by-permit outreach, but their goals are to develop an outreach plan and a good data base of where the communities of concern may be.

3. In identifying communities of concern (or EJ or Environmental Equity--EE communities), it is important to have a variety of tools, such as information on toxic release areas, GIS, census data, etc.

4. It is important for the states to involve the EJ community in comprehensive, proactive planning for addressing these issues and/or to have pre-involvement dialogues in advance of any new or renewal application. Renewal applications present issues of particular concern for states, industry and for the EJ community.

5. It appears that many states are looking for a flexible policy which will allow the communities to identify their interests and which will facilitate those interests being addressed.

6. State regulations will probably need to be changed to deal with disparate impact.

7. Both companies and communities desire predictability and clarity of process, while recognizing the need for flexibility to address site specific circumstances. This includes determining which regulation is involved and what data are needed to determine if there is an environmental equity problem.

8. One model state process was identified to address the concerns of Native American communities—to attempt to develop an on-going dialogue on issues of concern, to keep tribes up to date on prospective permits, and to jointly develop pre-permit plans where ever possible.

9. In determining if there is "harm:" There is a need to develop better rules and/or processes or policies for analyzing cumulative risk, synergistic effects of multiple chemicals from industries in all communities—including EJ communities—and then deciding how to apply this to current permit applications.

10. Public Outreach: All agree that in some instances current public participation processes are frustrating and that these processes can be improved. The criteria for "good" outreach seem to be: accessible and targeted to the community (e.g., by language), ongoing as well as early in any permit process, responsive, understandable (specifically for technical data, legal issues), building on the current knowledge and expertise within the community. It would be helpful for State and local government to continue to work together to improve these processes. The EPA/EJ public participation model has been helpful.

11. Mitigation: See Workgroup II's thoughts, which are mirrored here. Basically, there may be some authority under some state statues

which address disparate impacts and will enable states to "bring people to the table." This may enable states to provide "incentives" for companies and communities to negotiate solutions which will offset the negative aspects of the permit. Some states are looking at alternative dispute resolution processes to offer assistance.

Committee Questions/Discussion following Workgroup III Report:

- There are two tracks in this process. One track identifies an ideal, up-front comprehensive approach for dealing with the community's concerns. This might go well beyond the permitting agency's purview. The second track occurs when we don't have the resources or the political support to engage in that kind of comprehensive approach, but the agency has to make decisions on a permit anyway.
- There is a clear need for developing tools for conducting cumulative risk analysis. Applicants may be required to do a supplemental analysis specific to the appropriate neighborhood.

The Workgroup has had extremely helpful in-depth discussions of the three state programs. Those interested are invited to review the notes from the three Workgroup III conference calls (available on request).

MONDAY AFTERNOON WRAP UP

The Chair and Facilitator posed several questions for the Committee to consider overnight and come prepared to discuss at the next session. These were:

- Are the issues/questions that have been identified the appropriate ones to go forward with?
- What areas/issues/questions are missing? Are any that have been identified superfluous?

(Monday afternoon Committee comments on these questions are included in the notes for Tuesday morning, July 28.)

Themes from the Public Comment Period

The Committee held a two-hour public comment period from 6:30 - 8:30 on Monday, July 27, 1998. The following are summary themes from presentations made.

- The Committee should adopt a balanced view of communities struggling to emerge from poverty, racial discrimination and disempowerment.
- People in communities should not be treated as victims, but as creative and dedicated voices regarding their own futures.
- People who live in Title VI communities do not find these issues simple.
- A complex set of factors affect public health—not all result directly from industrial emissions. Too much attention on environmental factors will divert attention from other necessary measures.
- Examining implementation of Title VI must not be used as an opportunity to undermine the Civil Rights Act.
- Industry has indicated its interest in reinvesting in communities and its willingness to engage in dialogue with communities, to undertake a variety of voluntary initiatives, and to take appropriate responsibility for the effects of facility siting.
- Industry is quite concerned about the potential effects of uncertainty and costly delays due to Title VI processes. They looking for predictability and a minimum of obstacles.
- Industry is supportive of the efforts of local governments to address these issues.

- Permitting agencies should consider not siting undesirable facilities in communities unless the communities want it.
- Many communities do not have access to adequate resources for engaging in negotiation processes and making good decisions. Adequate support, including legal advocacy and technical assistance, are among the criteria for creating a level playing field for negotiations.
- The Title VI process requires states to undertake an examination of the broader impacts of facility siting, not just a narrow focus on permitting issues.
- People in communities need to be able to bring challenges regarding actions other than permitting, such as the lack or slow speed of enforcement of environmental laws.

TUESDAY MORNING SESSION, JULY 28, 8:30 a.m. to 11:15 a.m.

Approval of May Meeting Notes*:* The Chair asked for additions or corrections to the draft notes (as revised 7/14/98) of the May meeting of the Committee in Washington, DC. The notes of the May meeting were approved as submitted.

COMMITTEE DISCUSSION REGARDING THE DIRECTION OF ITS WORK
(from questions posed to the Committee on Monday afternoon)

Scope of the Committee's Work

- We are looking at the right questions. We should not back off from these, despite the short timeframe and pressures from various external events.
- We must look at more than Environmental Justice concerns, including federal, state and local government influences.
- We need to understand the scope of EPA's authority and avoid expending energy on questions which EPA cannot address. We must obtain clarification of the scope of our task from the Administrator or others.
- We have to distinguish between Title VI and Environmental Justice—they are not the same thing. We have to focus our limited time and energy.
- The definition of Environmental Justice must come from the grassroots—not be defined by government legal experts.
- We have to see Environmental Justice issues at the community level in context, not in isolation from other dynamics, including unequal power arrangements, exclusionary zoning, unfair housing, redlining, etc.
- Several Committee members requested some form of public assurance that the purpose of the Committee is in no way to dilute or dismantle the Civil Rights Act.
- One Committee member suggested that industry groups represented on the Committee were undermining the Committee's work through lobbying efforts in Washington. Industry representatives denied such activities.
- The purpose of the Committee's work is not to "head off Title VI complaints." It should be to prevent discrimination.

Developing Model Programs, Pilots or Case Studies

- We should focus on generating a set of principles to guide development and implementation of an inclusive and transparent public process to involve communities in decision making.
- We already have agreement on certain principles. We should move on and attempt to operationalize these principles.
- We should undertake some pilot programs in order to test the principles and generate additional learning.
- If we encourage implementation of several pilot programs in the field, different solutions will emerge in response to the needs in different communities. Let's proceed even if we don't have all of the answers.

- A template to guide the development of state programs would be helpful. States want to know how to become proactive so as to prevent Title VI complaints from being filed, but also to go beyond Title VI to address Environmental Justice concerns more broadly.
- What can we learn from the Chester experience that we witnessed yesterday? Surely there are many Chesters repeated all over the country—this is not unique.
- The Chester case would be interesting, but presents some problems, since it is a case in litigation. However, we should try to figure out what went wrong there.

Formation of Pilot or Case Study Workgroup: *The Committee approved formation of an additional Workgroup to explore pilot projects and/or case studies: Sue Briggum, Eileen Gauna, Charles Lee, Langdon Marsh, Peggy Shepard, and Robert Shinn.*

Legal Questions

- What are the remedies provided for under Title VII—and what can we learn there that might apply to Title VI?
- How has disparate impact been defined in law?
- The statute's equal protection clause does not say that disparate impacts can never take place. What would be the basis or justification for issuing a permit despite a finding of disparate impact and inadequate mitigation measures? What basis or justification has been established in other contexts?

- Can we get an interpretation from the government about the division between Title VI and other more broad EJ, non-Title VI concerns?
- We would like additional legal resources to be provided to the Committee from the Office of General Counsel, particularly regarding disparate impact, justification and remedies.

Formation of Legal Team: *A small Legal Team from this Committee will serve as a liaison to OGC regarding these issues: John Chambers, Luke Cole, Richard Lazarus, and Dell Perelman.*

Attention to Tribal Issues

- The Committee's request for an opinion from the Department of Justice regarding the applicability of Title VI to tribes has not been fulfilled. What can be done to expedite the process?
- We have given verbal recognition to the importance of Native American issues regarding Title VI, but we have not done anything. The tribal situations will differ significantly from the inner cities.
- At the very least, we should set up a panel presentation about tribal issues at the next meeting. Perhaps have a meeting in Indian country or ask tribal leaders to meet with us.

Addressing Tribal Issues: *Richard Monette was asked to make a brief, introductory presentation to the Committee in the afternoon session—as a preliminary step to more complete consideration of tribal issues at the next meeting.*

Committee Agenda Setting/Process

- In addition to a presentation on tribal issues, we should consider a presentation from a group that has filed a Title VI complaint in order to hear their perspective.
- It would be helpful to establish a small group to work with EPA, the Chair and facilitators to set the agendas for the Committee.

Formation of Process Group: *The idea of a Process Group was accepted and the following individuals agreed to serve: Cherae Bishop, Luke Cole, Tom Goldtooth (to be invited), Barry McBee, Richard Moore (for the Tucson meeting only).*

ASSIGNMENT TO WORKGROUPS

In the time remaining before the lunch break, the Workgroups were asked to meet and to address the following questions:

- Clarify your understanding of your task between now and the October meeting. Propose concrete next steps, timeline, and product(s) you will present at the October meeting.
- What additional resources (legal or technical) are necessary for your Workgroup to make progress?

TUESDAY AFTERNOON SESSION: 1:30 p.m. to 4:30 p.m.

INTRODUCTION TO TRIBAL ISSUES

Richard Monette was asked to make a brief presentation to the group regarding the dynamics and considerations of tribes in relation to Title VI. This was intended as a short introduction—to be expanded at later meetings.

Presentation by Richard Monette

Two interrelated questions are important to the consideration of the application of Title VI to tribes:

- Does Title VI apply to tribal governments or other bodies as recipients of federal funds?
- Can tribal members on a reservation invoke Title VI against a state?

The first question has a long history. The hot points are Title VI, Title VII, Title IX and gender discrimination. Title VII has an express exemption—which might guide Title VI and Title IX.

There are three constitutional authorities for these statutes: the Commerce Clause, the Bill of Rights (14th Amendment), and Spending Clauses. The Bill of Rights/Amendment 14 is the main source of constitutional authority. We have been fighting that issue from day one, and there have been a variety of Supreme Court decisions. In 1978, the Supreme Court said that the Bill of Rights and the U.S. Civil Rights Act do not apply to tribes. The Indian Civil Rights Act applies to tribes, but was passed by the U.S. Congress, not by the tribes.

Another case, *Santa Clara Pueblo vs. Martinez*, was about gender discrimination and denial of dollars for health care. It was determined that tribes are not subject to federal suit on these matters, since they are sovereign entities. There have been attempts to undermine tribal culture using Title IX and Title VI. The logic should be the same as with Title VII exemption: there is no reason that Title VI should apply to tribes.

In terms of the Commerce Clause, the Supreme Court often uses Indian cases to flesh out details of constitutional law. *Seminoles vs. Florida* asked whether the commerce clause would waive the state's immunity and allow citizens to sue the state. We argue that commerce means the same to tribes as to states. If you can't bring a state into court under commerce, you should not be able to bring a suit against a tribe.

Monette posed "an interesting theoretical question:" Should a tribe be able to site a hazardous waste site in the middle of white farmers' lands on a reservation? Would that constitute discriminatory action that could be challenged under Title VI?

In terms of the Spending Clause, EPA might believe that if you want to do X, you must do that under the *type* of rules laid out in Title VI. That might be acceptable.

In terms of "common sense democracy." Is the sovereignty of tribes created by the USA or does it spring from its own people? If it is a creation of the federal government, then laws should

apply. If the tribes are sovereign, then they are not a creation of Europeans and the laws would not apply.

If tribes are separate and sovereign, can tribal members bring a suit against a state? There are compelling arguments to suggest that they can, except for a minor flaw: tribes are not at the table nor represented in Congress, the entity trying to impose laws on them. Values and norms that tribes cling to should not be subverted by US law.

Committee Discussion following Richard Monette's Presentation

- The Office of Civil Rights has undertaken discussions with Kathy Gorospe at the EPA American Indian Environmental Office about Title VI consultations. The idea is to convene federal agencies and tribes for consultation regarding the application of Title VI to tribes.
- This Committee could give advice on this matter by holding a panel discussion and then developing some advice.
- The bottom line is that under the spending clause rationale, tribes could be used to forced to comply with Title VI—but that does not say that Title VI applies legally.
- Since tribes are recipients of federal funds, they may have to comply to standards similar to Title VI, even though this might not be Title VI itself, since tribes have been unrepresented.
- Although Title VI may not apply to Indian tribes, tribal members can bring legal suits under Title VI. As American citizens, everyone is covered by the law—even an non-citizen can invoke Title VI. There is a difference between a "domestic dependent nation" and an individual.

The Committee urged EPA to proceed with consultations on these questions before the October meeting and then confer with the Process Group about inclusion of the issue on the October meeting agenda.

WORKGROUP REPORTS regarding questions posed earlier: Clarification of tasks, product, next steps as well as resources required to complete the task.

Assessment Workgroup I

The Workgroup continued to work on definition of concepts such as disparate impact. The group achieved consensus in support of up-front, quality community processes with impacted communities in permitting procedures.

The group suggests separating legal aspects from community involvement and process aspects, working on the community involvement process first. After defining disparate impact and impacted community, the group will develop a template or process recommendation for this group and EPA. The Committee also needs to identify tools for cumulative impact analysis.

Resource needs: On their next conference call, the group will tap internal EPA resources regarding cumulative impacts (environmental and public health) and ask for an assessment of the analytical tools that are available. The group is most interested in how you go about the analysis, not content—tools for industries, states, communities. Standards for methodologies: precise, transparent, inclusive, accessible, and predictable.

Mitigation Workgroup II

Workgroup II identified three tasks that members have agreed to undertake and set a timeline for accomplishing these before the October meeting.

1. They will address the goals of mitigation and present the pros and cons of addressing disparate impact only—or a wider set of community concerns. Richard Lazarus will

develop a draft paper which the Workgroup will discuss. The group will then ask all community group representatives to engage in discussions with their constituencies, in order to inform the Workgroup about how community people feel about this issue.

2. Another product will address the question of when and how discussion of mitigation alternatives should occur among community members, the permit applicant and the permitting agency. Who should be involved and how? What constitutes a level playing field for a negotiated processes? New Jersey will develop draft for consideration by the Workgroup.

3. The group is also interested in the connection between mitigation and justification. Would it ever be permissible to consider approval of a facility, despite a finding of disparate impact and inadequate mitigation measures? John Chambers (who is also on the Legal Team) will keep the Workgroup apprised of any information available on this topic.

- All drafts will be completed by August 28 and distributed to the Workgroup.
- Conference Calls are scheduled for September 9 and September 29.

Operations Workgroup III

The group considered what an ideal environmental justice program might look like. This is only a beginning and the Workgroup will develop these rough ideas further.

The group brainstormed "Principles, Goals & Objectives, Program Elements and Criteria" (not yet differentiated) for an acceptable state plan, which should:

- be community-based, to identify key EJ issues and address them proactively;
- be accurate and inclusive of all elements of pollution sources affecting the community;
- differentiate among types and degrees of impact in a community—e.g., proximity, susceptibility, cultural patterns;
- provide ongoing information to local government and local economic development officials who are recruiting businesses;
- include latest technology as well as common sense, in terms of pollution prevention;
- provide constant communication and dissemination of information, transparent to all stakeholders, with no hidden or coded messages, providing readable and understandable information to the right people;

- use a variety of tools and methods (GIS, census, wealth data) to identify the boundaries of the impacted population;
- look for incentives for permittees to address community concerns voluntarily, beyond their legal obligations;
- build the enforcement and monitoring capacity of the community (e.g., help the community understand monitoring devices, so they would have tools in the permitting process)—include education of the community as well as new monitoring and enforcement processes that assure community involvement and recourse.

Resources needed: The group has asked EPA staff to describe the steps that are already in place, to provide a variety of scenarios for different kinds of permitting, including the applicable standards in air, water and RCRA. One product of the Committee might be consensus on a template or model for a good program. Therefore, the group is also asking EPA for assistance from an outside consultant who has been involved in EJ and/or Title VI issues and who has a background in land use or permitting programs.

The Workgroup's next product will be a draft template or framework that could be used by the states to develop programs to address EJ/discrimination issues, and connect to Title VI implementation. The Workgroup is not just

thinking in Title VI terms, but in terms of promoting a good EJ program.

BROWNFIELDS ISSUE

At the end of the meeting the issue of Brownfields was raised. Members discussed the Detroit Renaissance presentation as well as Chester—both visit and subsequent public input. Concerns were raised regarding delays and uncertainties in the permitting process and potential barriers to the development process that could result from Title VI complaints. Others felt that traditional Brownfields site have not yet had problems, and that fears about Title VI may be greater than reality, especially if there are good working relationships among stakeholders.

NEXT MEETING

Taking up a suggestion from Richard Moore, the Committee agreed to hold its October meeting in Tucson, Arizona. Richard Moore will join the Process Group in order to provide a local liaison for this meeting.

The Process Group will discuss special presentations and a site visit for the Tucson meeting. The full Committee has agreed that the meeting will be three rather than two days **(starting on Sunday, October 18 and continuing through October 20**), with half day for a site visit and two full days for a meeting. Some suggest that there is also need for a half to full day for Workgroup meetings.