

US EPA ARCHIVE DOCUMENT

before we take a 15 minute break that Plan EJ 2014 was open to the public for three months and we received 177 comments and we can talk about that later in that section.

If folks can be really disciplined, we are going to take 15 minutes and come right back.

Thank you so much. I think the break is needed.

(Whereupon, a brief recess was taken.)

***EPA Plan EJ 2014: Environmental Justice and Permitting***

MS. YEAMPIERRE: Welcome back everyone. So, we are going to get started with EPA Plan 2014: Environmental Justice and Permitting. We have with us, I thought someone was shaking their head like no I am not really with you, okay you are with us.

We have with us several people, some of whom I have a bio for and then we have some where the bio is at your desk. So, I am going to start with Janet McCabe.

Janet McCabe is Deputy Assistant Administrator for the EPA Office of Air and Radiation. Since November 2009, Ms. McCabe has served as the Deputy Assistant Administrator and prior to joining the Agency she was Executive Director of Improving Kids Environment which works to prevent lead poisoning and reduce asthma in children and promote healthy homes, schools, childcare facilities. IKE, as the organization is called, celebrated its 10<sup>th</sup> anniversary as Indiana's leading advocate and educational source for healthy environments for children last year.

Ms. McCabe who is a graduate of the Harvard Law School is the former Director of the Indiana Department of Environmental Management Office of Air Quality. Ms. McCabe, thank you for joining us.

***Presentation by Janet McCabe,  
Deputy Assistant Administrator, EPA Office of Air and Radiation***

MS. McCABE: Absolutely, thank you for having me. I have been at EPA a year now and this is the first opportunity I have had to come to meet with NEJAC so I appreciate it.

With me are a couple of other people from EPA that I will just mention because I think we see this as not so much a panel 1, 2, 3 but as a conversation among all of us. To my left is Carol Ann Siciliano, she is Associate General Counsel in charge of the cross cutting legal issues part of our Office of General Counsel which includes Environmental Justice.

To my right is Avi Garbow who is the Deputy General Counsel of the Office of General Counsel and then Nancy Stoner who is my counterpart in the Office of Water is also here, so we are all your disposal for the next hour to talk about what the agency is embarking on in terms of Environmental Justice and permitting.

One other thing I wanted to say, I thought I was going to have to tell you a little bit about my background but thank you for doing that, one other thing is that I am a veteran of a FACA group myself.

I was on the Clean Air Act Advisory Committee for a number of years and also the Children's Health Protection Advisory Committee. I have also worked on workgroups so I know personally how much time is involved and how important it is for members of FACA to devote their time to giving the agency advice on these things. So it is, a) important and b) a huge commitment on your part and I cannot emphasize that enough how much we appreciate your thoughts on it.

What we are going to do today is talk a little bit about what the agency is doing in response to the directive from the Administrator in Plan EJ 2014 specifically with respect to permitting, there are of course many other elements to that plan that you are going to talk about today.

So, I am going to talk about that a little bit to get us started and Carol Ann is going to then I think talk more specifically with you or not so much talk as listen and ask questions about the issues that you guys are thinking about to help us as we get started.

We very much see that as we proceed with our work under Plan EJ 2014 that we will be doing it in communication and partnership with the NEJAC as well as any other external stakeholders that want to provide us input on this issue and we would like when appropriate today or later to get a clear understanding of the best ways procedurally for us to interact with you over the course of the next months through 2011. So, does that sound okay as a process?

One thing I wanted to mention, I don't think we are going to be able to respond specifically to every issue that you all raised in the previous conversation. It was unbelievably helpful to hear your conversation this morning, coming into this particular conversation was really, really helpful.

One thing I wanted to mention because there was some confusion about it, Hilton mentioned the de-flexing process in Texas and I just wanted to let you know that is a situation that is unique to Texas. They have some issues with their, and Stephanie knows, they have some issues with the Texas Rules on air permitting that we are working with the State and the industries and the community groups there to try to work out.

But this whole de-flexing thing is not something that people in the other part of the country need to worry about and you should thank your lucky stars that you don't.

So, what I am going to do now is talk a little bit about the process that we are starting and the reason that it is me doing this rather than somebody else is that the Administrator asked the Office of Air and Radiation to take the lead on the internal EPA process to respond to the charge, our charge, in the Plan 2014. That just means that we are in charge but in terms of organization and driving the process as I will explain this is going to be a whole EPA effort but that is why I am here.

So what I wanted to do a little bit is talk about where we are currently, the expectations of the Administrator that she has laid on us and then the process we are proposing to follow in order to carry those out and we will see what you guys think about that whether you agree that we have thought of the right things at this point.

So I am relatively new to EPA. I have a lot of experience on the air permitting side from my work with the State of Indiana and then as an NGO on the outside knocking on the door the way you guys do. But, I was not familiar with what EPA has been thinking and what NEJAC has been thinking over the last 10 years about EJ and permitting and I have to tell you that when I read the 2000 report from this group on permitting, it was pretty amazing.

There are 80 recommendations in there and my question when I read that was, well what has the agency done? What did the agency do in response and what am I going to say to you guys when I sit up here this morning and you all know that 10 years ago you made a whole bunch of recommendations?

So, I don't know the answer to that question because I just read that report recently and I have not had the chance to talk with all the other program areas about what has been done. I know that there have been some advances on the permitting front, some of which are a part of the agency's entire move towards thinking more about Environmental Justice but some very specific ones and I just wanted to mention a couple of them.

One is the development of the CARE Program, the Community Action for Renewed Environment Program, which actually when I was an NGO I was a CARE recipient with a group in Indianapolis so I am very familiar with that and I think it is one of the best tools that we have to try to address the issue that Vernice was mentioning and Lang was mentioning before about looking at a community holistically rather than permit by permit.

So as somebody else mentioned, over the last 10, 12 years we have greatly increased our ability to analyze data with an Environmental Justice perspective and through the Enforcement Office and through our work on developing our rules we are using those tools to a much greater degree and some of them are pretty sophisticated, some of them not so much and work needs to continue to be done there.

I think also the agency has enhanced the ability of the public to participate in permitting processes generally. I wouldn't say that it is where it needs to be or that it has been fully appropriate in every circumstance but certainly I can tell you that there is much more awareness at the Regional Offices which is the place at EPA that actually does the permitting of making sure that notice is done more appropriately, that documents are provided more appropriately, being sensitive to the needs of communities.

Again, there is much more to be done there but I think especially in the last two years there has been much more increased emphasis on the process and the public access part of the process.

Some of the other things that we have done problematically I think it may indirectly contributed to influencing the permitting process when we tighten the National Ambient Air Quality Standard which the agency has done in the last couple of years that ultimately has the effect of changing the kinds of permits that get issued and the kind of analysis that needs to be done in communities, so all of that is a good thing.

In addition, in the last 12 years I know there have been great improvements at various State levels in terms of how states deal with Environmental Justice permitting, again not uniformly and as I will mention I think that is an area for us to really focus on as we delve into our process.

So you guys I think are familiar with the language of Plan EJ 2014 and what the Administrator asked us to do, but the goal of the effort just to make sure that we are all kind of on the same page about it is to ensure that Environmental Justice concerns are given full consideration as much as possible in the decisions to issue permits and what kind of permit terms are included under the Federal Environmental Laws.

That is a very broad charge and it contemplates kind of a too deliverable approach. One is that our initial focus will be on things that could be implemented very quickly and that might be things that would focus on the permitting actions that EPA undertakes itself, there might be other things too.

The longer term aspect would be things that would take a little bit more time and you guys in your thoughtful discussions have already identified a number of the hard and sensitive questions that we need to think about that may mean that we need to take a little bit more time on some of these things.

So, I don't know about you guys but I am a list maker and I really like to have things on my list that I can then cross off when I finish them and I am also very big on very concrete deliverables and this particular process I think gives us a great opportunity to identify some very concrete deliverables that can be addressed in the short term even while we are discussing the harder more complex questions that may lead to solutions that are more challenging to implement.

As I go into this process I am going to very much have that in mind, what kind of things can we be putting down on our list that are things that we can just move on right away. I have to say that many of the suggestions in the NEJAC's list of 80 recommendations back in 2000 I would put into that category of things that there is no reason that we shouldn't just move ahead and talk about those and get them implemented quickly, as quickly as we can.

So, in terms of our process we have been tasked with getting a group together within the agency to think through these things over the course of 2011. We are to deliver a work plan to the Administrator by the end of January and our plan is to create a workgroup within EPA probably similar in makeup to the workgroup that was created to develop the rule making, EJ and rule making protocol.

So it will include people from all of the offices in EPA especially the ones, well I shouldn't say all I have learned in a year, there are many offices at EPA and each one has its own acronym.

But certainly the offices that are engaged in permitting whether it is the major program offices, OGC, the Office of Environmental Compliance, those various offices, the Regions will be very much involved in this as well because as I said and as you know they are on the front lines when it comes to permitting.

My thought is that the work group can kind of naturally divide itself into two main focuses. One being to focus on the public participation process and access to the process and move ahead with making sure they understand all the recommendations that this group has made collecting best practices from the Regional Offices, from State and local permitting agencies to make sure that we have a comprehensive list of the kinds of things that agencies at whatever level should be employing to make sure that everybody has meaningful access to the process and then figure out what the best mechanisms are for making those available to State and local agencies, to our own Regional offices whether that be through mechanisms like the performance partnership agreement or whether it is guidance or however that makes the most sense.

So I see that as one distinct part of the work of the group and then the other part is all the other stuff, right? So it is the more substantive, if you will, part of how we can meaningfully integrate Environmental Justice considerations into the permitting process and much of your discussion this morning goes to those sorts of consideration.

I think one of the most important questions that we have to consider is the one that you guys discussed this morning is what are we talking about here and what is the right way to approach this in order to make progress not get bogged down? Do we want to be going through the whole long list of permits that EPA issues or that others issue under Federal Laws? Or is there a more community focused way to approach this identifying the types of facilities that get these permits or the types of communities where our focus ought to be on initially.

I myself am inclined to look at it that way, that we are going to be more successful. Not every permit that is issued under Federal Environmental Law has Environmental Justice implications, so let's not set ourselves up to integrate Environmental Justice into the universe.

Let's focus on the ones where it really makes sense and let's focus on it in a way that is more holistic from the community perspective because that is the way people in communities think about

facilities in their community. They don't think about it in terms of the PSD permit and the underground injection permit, they think about the landfill in my community and what are we going to do to reduce the pollution from the landfill in my community? So, an initial inkling there.

So two efforts there, our plan is to try to have draft recommendations by about mid year that is pretty aggressive as you guys know having just, although if you can do it hopefully we can too with your help and then to have final recommendations to the Administrator by the end of 2011.

But as I say, if there are things along the way that can be implemented before getting to the end of 2011 there is much motivation to go ahead and do that.

We want to make sure that we work into our process a way to get input from, as I said, from NEJAC, from State and local permitting agencies who are clearly important stakeholders from Tribal representatives and others and we would look to your advice and help on how to do that.

So, that is kind of the process that we are thinking about. It is not set in stone, so we certainly if you have suggestions about whether that makes sense, the timing makes sense and in particular how the NEJAC would like to interact with that process that would be extremely helpful.

Before I turn it over to Carol Ann, I wanted to mention a couple of other things that we are thinking about in terms of some of the key questions I think and she will go into this in much more detail but in addition to how to continue to make the permitting processes acceptable as possible what is the interplay between what the Federal Government does and what State and local governments particularly when it comes to citing a facility. I think that that is a very challenging issue.

The Federal Government is not the best at doing a lot of things nor does it have responsibility or authority to do a lot of things and we need to be respectful of where it is local community, State governments, community groups and private enterprise that really has the responsibility and the authority to make those decisions.

So I think that that is something to keep in mind. Related is the interplay between environmental permitting and economic development and job growth which you guys have also acknowledged is a key issue to think about as we move forward with this.

The last thing I will mention is the issue of cumulative impacts which I think is there anything harder than that? I don't think so and one of the challenges is that our technical tools and our data are not everything that we would hope them to be in order to equip us at any level to really understand and deal with cumulative impacts.

Does that mean that we shouldn't have it as a primary focus? Absolutely not. These tools will come along and if we are not focused on it then tools won't come along so we need to keep it in the forefront of our mind.

But I think it is incredibly challenging as we think about specific communities, as we think about specific permit actions and what it is or should be within the ability of a particular agency as they look at a particular permit what they can do to try to address or understand the cumulative impacts.

So I am going to stop there, turn it over to Carol Ann and that will be the time for you guys to start talking.

***Presentation by Carol Ann Siciliano,  
EPA Office of General Counsel***

MS. SICILIANO: Well good morning and thank you very much for inviting me to appear before you to talk about your preliminary response to the permitting charge.

My name is Carol Ann Siciliano, as Janet said I am in the Office of General Counsel. I am the Associate General Counsel for the Cross Cutting Issues Law Office. I have been at EPA for 20 years and in the first 17 years I did a lot of work under the Clean Water Act and now have moved to my new position where I am challenged and delighted to work on some of, I think some of the vexing issues that the Agency faces and the most interesting ones and the ones with greatest for change.

Included among them are, of course, Environmental Justice, Indian Law, NEPA, I work an endangered species act as well as administrative and international law. So I am in position thanks to my portfolio to look broadly at the ideas that this council is putting forward and seeing all the connections that you are encouraging us to make. I like to make those connections too and I thank you very much for putting that first and foremost in front of EPA as we ponder the permitting question.

As I have told a lot of you as I was reading your preliminary response which I did, I had three uninterrupted hours and I used every one of those minutes to read this report and I found it incredibly engaging and thoughtful, provocative and helpful, helpful to EPA as we begin to tackle this

question about how do we integrate EJ into permits?

We have talked a lot about it. We have had advice from the NEJAC on this issue and we thank you for that. What to me set your recommendation apart was the way you cut through the questions we posed, types of permits, cumulative impact, took a gigantic step back asked yourself there are questions first we need to address, we as the subgroup, we as EPA and there are themes cross cutting themes that really perhaps should be the organizing principle for EPA as EPA tackles this question.

I have been giving a lot of energy and a lot of thought to this permitting question but it was not until I read your preliminary response that I started achieving some clarity in my own mind of how EPA could make a real difference here, really do something new and creative and meaningful in the next year, next 18 months that could change things on the ground.

So while I recognize that you are not done with your work and I recognize that EPA as a whole has not formally considered and responded to your work, I just wanted to speak from my personal position that I found a lot here to help us and I wanted to name a couple of things and to acknowledge, first actually to acknowledge the individuals who worked on this and I have gotten a chance to talk to several of you but have not met all of you.

Jody I know you worked on this and Sue and Hilton and John and I have also talked to Shankar and to Edith and to Vernice and I know Don is not here, so thank you very much. I have individually spoken with you and I have a great sense of the energy and passionate commitment you invested into this and I have seen that from the council as a whole your engagement.

For me, there were a couple of things. You made several requests from a process point of view and you alluded to some of these this morning, for information, data, about the permits, who issues them, what kind of permits they are as far as the statutory regime under which they fall and then you have asked us to report that information to the public.

You have also invited us to assemble a workgroup or otherwise keep engaging with the NEJAC as we tackle this issue. You have asked us to think about how we can use the Interagency Working Group of the senior officials of the agencies across the Federal Government, how to engage that group to tackle some of these issues and I will come back around to that.

You have also asked us if the NEJAC continues to be involved in this to facilitate presentations by the State and local permitting authorities, people who have on the ground experience writing permits who might be able to give us some on the ground reactions to some of the ideas you all are coming up with.

Then you asked, do our past reports help? You very helpfully provided links to a number of reports that the NEJAC has produced in past years. I found it very helpful to have that all in one place, links that I could get ready access to. That is a very fair question, do they help? How can they help? What more needs to be done, in light of what you have already offered to us.

As Janet says, that is a question I take very seriously and then we will look at that. We will be sure that in our library of resources as we the Agency tackle this issue we have your word. So thank you for that.

I found a couple of, I noticed some themes some cross cutting themes in your paper. I know some of you almost apologetically said, EPA we may not be giving you what you asked for. I believe with these cross cutting themes that you have started to identify, you have given us what we need. What we didn't think to ask for you have given us some very thoughtful things to ponder.

These are the themes that I identified and I really would like folks to react to see if I have gleaned themes appropriately from where you are preliminarily.

One of them, Janet alluded to this, is public participation. That getting communities involved not only during the public comment process when a permit has already been drafted and a preliminary decision has been made but getting the public involved very early in the process in a way that they can meaningful engage with the facility before emotions get high, positions get fixed and when interests can be deliberated among caring professionals.

Some examples of that were the community outreach plan that Edith supplied as an example from Connecticut's work where Connecticut asks, or maybe we require, facilities as part of their permit application process to develop a plan. How are you going to reach out to the community who cares? Who is the community that cares? What are their names? What is your process? Do this early.

In fact, there is even a provision in the template that the subcommittee provided here that says that the permitting authority will not consider the application until 60 days have gone by from the

date of a public meeting that the facility has.

I found that to be a very intriguing idea that I invite this group to talk about and to give us advice about because to me what that signified was an opportunity for the facility and the community to talk and then to perhaps inform the permitting process before EPA or the State even gets involved in a decision making capacity. Very, very interesting idea.

Other aspects in the public participation, also you talked a lot about Part 124 of EPA's regulations, laws that already exist. How is EPA using those? Those of course cut across all permits, how are we using them? That is a great question, I don't know the answer to that. Is it worth investigating?

I know permit writers probably know the answer to that but the folks who are in the process of developing an overarching strategy, I know one of those people, I don't really know, it is a great question.

I also appreciated the conversation this morning about the good neighbor opportunities there. Jody raised the point, to what extent can these agreements be integrated into permits and even if they can be to what extent can they be enforced under the applicable laws? That is a very fair and interesting point.

Having said that, it is interesting to have again that dialogue between the facility and the community and also folks alluded to that, is the permit the only mechanism by which change can happen on the ground? You have challenged us to answer, to ponder that question. Are we looking to myopically add permits as the solution? Janet alluded to the citing issue, of course permit is not the only solution. So thank you for challenging us about the role of the public before decisions are made.

Another thing, and this was related to it, a theme about community right to know. Okay, so now we have a permit, we have discharges or emission. The permit includes, one would hope, monitoring reporting obligations. Are they good enough? Do we have, and one of the things our group is going to be looking at, do we have the right tools, the right monitoring tools? What kind of reporting would be helpful for the community to understand the environmental implications of the permit once it is issued? That is a really interesting question.

You guys alluded to TSCA and Reform, that is what it is and the Agency is doing what it is doing on that. In the permitting contest though at the micro level each emission matters and we have mechanisms under our regulations about record keeping and reporting, monitoring, record keeping, reporting, how are we using them? That is a good question.

Another theme that I picked up was compliance and enforcement, we talked a little bit about this morning and the SEPs, the supplemental environmental projects, SEPs context and some question about how that relates to permitting and we do welcome your advice as you all figure that out in the final response.

Then the question relating to that is compliance and assistance grants and making sure that people are implementing their permits as they have been written. What is the role there for EPA? What tools do we have to facilitate that? Again, an excellent question.

Another theme is interagency relationships. Teri talked about the Corps of Engineers this morning and other agencies get involved in environmental permitting or make decisions that affect the environmental health of a community.

So, how are we going to use this newly reconstituted interagency working group for Environmental Justice, the Administrator, the Attorney General, Secretaries of key Federal Agencies, that is a lot of brain power, a lot of influence, a lot of opportunity, you have recognized that and you have identified in your response some ways that maybe we could think about using that group. Again, a very interesting question.

And there particularly, and I want to highlight, Tribes because you hit the nail on the head in your preliminary response by acknowledging that there are a lot of Federal Agencies that affect environmental quality of life in Indian Country and EPA has a little slice of that but we have Indian Health Services, of course Department of Interior, we have HUD, we have any number of agencies. So, what are we doing about that?

A footnote here I can speak briefly about that is that we are working, the lawyers and the agencies, are working try to get together and talk about some of these cross cutting Indian issues to share common experiences and figure out where the synergies are. So thank you for naming that, I appreciated that.

The last partnership was State and EPA partnerships and then I guess I would include

the local permitting authorities because certainly in California there are the districts issue water and air permits. There you challenged us to think about your relationship with the states, to think about our relationship with the states.

We authorized many states to administer programs, certainly under the Clean Water Act, the Air Act as well, RCRA, what does that mean in terms of EPA's oversight? What does that mean in terms of our expectations of the State when they start to administer these programs, as in this case, as it affects permits? What are the opportunities there?

The performance partnership agreements, John you talked about those as an opportunity to influence the State's thinking about Environmental Justice on these important issues so that the themes we talk about, public participation, community right to know, maybe compliance related issues. How do we memorialize those?

To what extent and how do we bring the states, either learn from the states in the case we were talking about with Connecticut, California and for others who are still working on this issue how do we bring them? How do we engage them as leaders with us or at least engaged followers? A very, very important question.

Of course, there is the Title VI issue, money. What does that mean? How do we use that? I have gleaned from your work what for me are five very, very important themes that cut across every type of permit. It doesn't matter if it is a UIC permit, underground injection permit, or a Clean Water Act permit or an Air Act permit, these questions have common applicability.

I would like to actually maybe turn at this point to ask you all some questions because what I am interested in is with this deliberative advisory body continuing to advise us as we tackle these questions.

So maybe my first question, if that is okay and of course we welcome questions too, but I would like to know whether these things resonate with you. Are these the themes that you would like us to draw from your report as possible ways of organizing our own work? And I do have more to say about any one of them.

#### **Questions and Comments**

MR. RIDGWAY: Thank you Carol Ann, you got a lot in there that I was not able to so I appreciate that. Yes, I think all those themes are there and appropriate and so yes you are on track and I will just throw out one comment from what you said was early engagement, you said, before emotions get high.

I would suggest a different view on that. That the emotions may be high from the get go and the sooner you get into it, the sooner they can be addressed, mitigated and allow the process to move on as opposed to when you keep the public out of it until a lot of the decisions are done then you hear about everything it really throws a wrench in the works.

So I wouldn't say it is to avoid high emotions but rather it is to address them earlier.

MS. SICILIANO: Thank you.

MS. YEAMPIERRE: Father Vien?

FATHER NGUYEN: Vien Nguyen, Viet Nam Community Development Corporation. Carol Ann, I just wanted to bring up what you mention about the monitoring tools. The reality for us I believe at the local level and this is concern where EPA has the adequate care on some issues but then a lot of the monitoring work is relegated to the State. The State delegates to the local government. The local government does not always have the capacity to monitor or even to understand what they are seeing.

An example of that is a situation in New Orleans where there was a landfill that was reopened and then the concern was that the levy would be compromised and so the requirement was that there would be monitoring devices on the levy to see if it moves and it took forever for the State to get the City of New Orleans to bring in the results.

But then both sides looking at it had no idea what they were looking at. So, it is the capacity of the people monitoring more than the tools in this case.

MS. YEAMPIERRE: Jolene?

MS. CATRON: I am still trying to craft my question in my head here. Thank you for the opportunity Carol. I smiled when you said that you are a specialist in Indian law because of really complicated failed to be involved in and it seems like jurisdiction issues are really a lot of what the bump up against between the State, the Tribes, it is just mind boggling the kind of jurisdictional quagmire we find ourselves in a lot of times.

And then trying to explain that back to the community level especially Tribal Elders about, no the Tribe doesn't have jurisdiction over their groundwater but they do once it comes out of the ground or they put it in a pond or it just gets really difficult.

One of the things I wanted to mention and I will be saying more about this later on this afternoon is that it is unclear of EPA's policy towards engaging Tribal Community members whether they are organized like in the case of where I work through their own general counsels or whether they organize them formally through non-profit or community organizations and how that fits into the umbrella of Consultation for Tribes and how Tribal Governments might influence that Consultation at a community level.

MS. YEAMPIERRE: Carol Ann, do you want to respond or should I keep going around?

MS. SICILIANO: I will just briefly to acknowledge that that is an important and difficult question of what constitutes Consultation from Government to Government perspective which is what is our charge, EPA's charge and all the Federal Agencies and what constitutes outreach to the communities and members, not the same thing as Government to Government Consultation and then who are the other groups within Tribal Governments like the General Counsel and others who would have tremendously valuable information to EPA as we try to make the right choices.

So thank you Jolene, I will look forward to hearing more about that this afternoon and thank you for identifying that.

MS. YEAMPIERRE: Wynecta?

MS. FISHER: Carol, thank you for asking for feedback and thank you for reading the document. My question is fairly simple, it is about the siting issues and you brought that up and you are smiling, so I am just curious how is EPA go about working with municipalities because that is generally where the siting is, how would EPA go about doing something like that?

EPA is going to walk into a city and say, yeah you know this is zone heavy industrial it now needs to be zoned. How would that process ---?

MS. McCABE: Well I don't think EPA is going to be going into any city and tell them how to do their zoning, it just doesn't seem like the appropriate role for the Federal Government.

There are some environmental statutes that speak more explicitly to siting and alternatives consideration than others, so we need to pay attention to that. Again, I think that we have as was mentioned before permitting involves a whole range of issues not always brand new facilities where you may already be dealing with a facility that is there and so siting it is not really as present as when you are thinking about new things.

I think having people involved early is very helpful in that but I think we don't have an answer to your question today nor do I think it would be appropriate for us to before we have walked through the discussions that we are planning to have with you and others over the next year to try to figure that out. Carol Ann, I don't know if there is anything you want to add on that.

MS. SICILIANO: Thank you Janet. I do smile on Janet as well because siting is a remarkably difficult issue for EPA. We care but by the time the matter comes to us and as you know the facility is built, the pipe is built and we decide what the limits should be or what the monitoring requirements should be or other conditions.

So, at some point I would very much like to get your creative ideas about how, who influences siting, we all have ideas about that and what are the ways that caring people can influence how they thing? So it is something, the siting issue I want to acknowledge, it is there we all know it. It is there in the room with us. We are going to work on what my deep interest with Janet is, let's do what we EPA can do. Let's influence what we can influence.

And then for that hard question, do we have some ideas that maybe we can share with other people who do have influence, direct influence, that maybe can make a difference. Nancy?

MS. STONER: So I just wanted to pick up on, I think Janet said this I don't think I am making this up, there are sometimes their siting is not in any Federal environmental statute, it is really not the Water Act, but there are things that reflect where discharges occur that could be looked at in terms of something that is like an analog sort of, of siting.

So the Water Quality Standards Program is all about what is the water body being used for and is the discharge into that water body consistent with that use? Now, that is not siting but it is different in different places depending on how the water is used.

So you just might, I don't know in thinking about your recommendations you might want to think about is there something in the statutes that even though it isn't about siting helps address the

same concern that motivates the siting.

MS. YEAMPIERRE: Vernice?

MS. MILLER-TRAVIS: Thank you. I am just going to take a pass on this question which is the vein of my existence for 25 years but we will revisit it and there has been many things that we have attempted to do to get at it while respecting EPA's hard and fast prohibition from being able to recommend, say or even speak to what local jurisdictions around land use.

But two things that I would recommend that the NEJAC has produced in the past and I think we cited them in our report is the Resource Conservation and Recovery Act social siting brochure and the Waste Station Transfer Report which were both issues that tried to get at that issue but walked a very fine line that EPA has to walk around how you can relate to local jurisdictions about that issue.

To your question Carol Ann about were you hearing us correctly, I would say you are right in the wheelhouse in terms of the themes that we tried to integrate in the report. The one piece that I would highlight, and you and I have talked about this a little bit, is the Army Corp of Engineers is an incredibly, incredibly vexing relationship particularly for local communities.

It is vexing in the Gulf Coast, it is vexing in coal country, it is vexing around local jurisdictions and water bodies, it is vexing around natural resource damages and protection, but communities have such a difficult time being able to even sit at the table with the Army Corp.

I know what we have asked the EPA in the past and we are certainly asking it again is that you have to help us figure out how to have a relationship with the Army Corp of Engineers such that they are not completely dismissive of local communities and their concerns and even dismissive probably doesn't begin to really capture how they operate around in coal country.

It is destructive, it is violent, it is costing people their lives and the fact that they won't even talk to these folks is just, it is an abomination. But, we have been here before many, many times again and we have asked EPA to help us figure this out and we are asking you to really help provide some leadership on how we get them to be compliant with existing environmental law and statute and we know that there is some great area around Federal Agencies having to be compliant with their own law Federal facilities is one of those issues.

But if the Army Corp of Engineers is not going to comply with basic fundamental environmental laws then how can you expect industry and others in the extractive industry to be compliant with the law if the Government is not going to be compliant with the law.

So this is a real difficult sticky wicky, we don't have an answer but we would very much like to be in dialogue and thinking together about what we can do to bring the Army Corp to the table and not a shotgun way but in a way that is really engaging and provides a platform for relationship going forward to get them to respect the interest of local communities because they are paying with their lives when the Army Corp dismisses what their concerns are.

MS. YEAMPIERRE: Council members, I am sorry we only have about seven minutes left, so I will ask you to be judicious with your time and your questions and your comments. The next person on the list is Shankar.

MR. PRASAD: Janet, Carol Ann, thank you for coming and I really appreciate your enthusiasm towards this issue. Two words of caution, EJSEAT was followed in the same way that you are planning to go ahead as well.

It was --- an internal working group and it came up with a report and it became like what I call as a bad principle, decide, announce and defend and it fell into that and we still have serious issues with that so let's to award that part you may want to think about, I understand the urgency you have in order to produce a draft at six months, but let that not be a close loop as it happened with the EJSEAT in making it a big problem for all of us. So just a word of caution on that.

Similarly, as we went through history again cumulative impacts I was also on that workgroup, worker hard great, outcome expected was some policy recommendations what did they --- is a research program.

So you want to be very careful about how you craft and what is the outcome expected and the people whom you want to include are the essentially it should include not just the EPA but to bring about the actual permit writers state level and how you want to utilize this body is something that you all decide, that is fine with us. We don't have to be a part of it but we would welcome it to be an open process.

MS. YEAMPIERRE: Thank you. Sue?

MS. SICILIANO: I am sorry, may I respond?

MS. YEAMPIERRE: Absolutely, yeah.

MS. SICILIANO: Shankar thank you very much because you probably already figured this out that I have a great deal of enthusiasm in energy, a great deal of confidence in what I and my colleagues can achieve but by the same token this is really, really, really hard and your reminder to me to manage the work effectively, to manage my own, never mind other people's expectations, my own expectations about what we can accomplish.

Make sure that what we take on in the next six months produces a product that we can use that won't fall into a drawer and unused. So while I do have identified the many themes that you all have identified yourselves and personally I find them engaging, what are we going to work on first? How do we want to be sure that the time we have, the effort we employ is going to change whatever it is we all think should be changed? So thank you for that and we look forward to getting your help on this priority.

MS. YEAMPIERRE: Thank you. Pat?

MS. SALKIN: Thanks. Patty Salkin, Albany Law School. I just cannot pass up the opportunity to take the bait on the siting issue and zoning. I just want to say in the famous movie line, you know, go ahead and make my day, ask me Jack to look at what EPA can do with respect to influencing local control of planning and zoning decision making.

You don't have to take away the local control in order to change behavior and time is limited but I just want to quickly raise a couple of points. There was an article that was written in the Law Review by Gerald Caden from Harvard Law School who said, there is no Federal land use policy and I wrote a response in another journal saying that he was wrong.

Some things just from historical perspective, in the early 1920's the model, planning and zoning enabling acts that the states then used to tell local governments what they can and cannot do, they were promulgated by the U.S. Department of Commerce.

That today is still what we use as the basis and the model for our planning and zoning enabling acts. If that is not Federal influence on what local governments are doing I don't know.

There is a huge opportunity here for cooperative federalism and for EPA to take the lead. In the 1970's, HUD had the 701 Program that provided money to local governments to revise their comprehensive land use plans in accordance with the HUD Program regulations. You didn't have to take the money but if you did you had to craft it and do it in a way that met the program funding requirements.

In the 1990's, huge interagency across agency lines Federal Government bought into the Clinton/Gore liveable communities agenda and all of you changed the names of your programs and you changed funding requirements to get people to do things with the liveable communities agenda.

These are just a couple of examples, the list can go on of what you can do if you want to focus resources, if you want to put out guidance, suggestions, models, it doesn't have to be a mandate, it doesn't have to be top down but the models, the suggestions, putting information out there, technical assistance and a little bit of programmatic incentive voluntary funds will go a long way to changing how local governments are making these initial decisions on citing policies where things can and cannot go because of their comprehensive plans and their zoning regulations. They need EPA's help.

MS. YEAMPIERRE: You know I felt like I was in law school again but this time enjoying it (laughter).

MS. McCABE: Can I just respond very briefly? Those are very, very fair points and I certainly didn't mean to suggest that EPA is doing nothing on the issues of land use and sustainable communities and all that sort of thing. I think people around this table know that EPA is working actively on those issues. I appreciate you calling us up on that.

First of all, I didn't want to leave a wrong impression but also I think it is important for us to keep those in mind as we move forward with this more discreet task. So thanks.

MS. YEAMPIERRE: Sue?

MS. BRIGGUM: Thank you and I would like to take off from something that Lang elevated for us and then combine it with something that Edith brought to our report and that is the importance of starting with the most burden communities and then using all available resources under all of your permitting authority to improve the circumstances of the community.

It occurs to me that if you coupled EPA's firm declaration that henceforth in all permits we will maximize our authority to address cumulative impact and Environmental Justice and we also encourage early communications and discussions and in order to talk about how those reductions might take place and improvements as soon as possible then you wouldn't have to just work with the one facility that has the permit in 2011 and everybody else is like, not my problem.

But everyone would know that relentlessly going forward you would expect everyone to be a good citizen and you already have the tools you have done such a great job. I mean it is not just that you have an EJSEAT but EJ view alone allows anybody to type in their street address and say, oh wow look at all of this stuff and we are all in the game together and there are going to be expectations on all of us to do a better job.

I think that you really might be able to leverage a lot of positive benefits very quickly by changing expectations and everybody who is responsible knows I am going to have a role that I have to help cure.

MR. YEAMPIERRE: So we are down to the wire. We are going to take one more question. Jody?

MS. HENNEKE: Mine is more of an observation and it is building a little bit on what Vernice said and that is in my perspective is more from the Gulf Coast but in dealing with as the Interagency Working Group has been re-energized and the Administrator's Gulf Coast Restoration Task Force and all of the events, let's just call them events, that have happened in the Gulf Coast over the last several years it has focused for me how difficult, and I will try to say this kindly, how difficult it is to work with the Corp of Engineers.

Their corp mission has changed over the decades, they have gone from navigation and flood control to being very involved in environmental decisions and in a way that they may be technically prepared for but not organizationally in any way and Vernice if you think they blow the communities off, they are right there blowing off the states as well.

It is very difficult to work with them in a way that is meaningful that doesn't turn into decades worth of effort that never really winds up with much except spending billions of dollars and I would encourage as we have these opportunities over the next several months to a couple of years to see if we can help finesse that in any way possible.

It doesn't have anything to do with the individual, it has to do with the mission of the Agency and how they feel like they are to accomplish what they are supposed to accomplish however slowly it takes.

MS. YEAMPIERRE: I want to thank you for your thoughtful and candid presentation. I think it was remarkable that you actually spent time with each member of the permitting committee and so I want to extend a heartfelt thank you.

We are going to break now for lunch. We will be back. If you look at the agenda it says that we return at 1:00, we will be back at 1:30, 1:30 okay?

(Meeting adjourned for lunch at 12:04 p.m.)

## AFTERNOON SESSION

(1:34 p.m.)

### ***EPA Plan EJ 2014: Supporting community-based Action -- An Overview***

#### ***Presentation by Mathy Stanislaus, EPA Assistant Administrator, Office of Solid Waste and Emergency Response***

MS. YEAMPIERRE: So Mathy, welcome to the NEJAC.

MR. STANISLAUS: Hello everyone. It is great being here. As you all know I am the Assistant Administrator for the Office of Solid Waste and Emergency Response. We are responsible for almost everything hazardous in solid waste, Superfund Program, Solid Waste Program, Federal facilities, underground storage tanks, all kinds of the RCRA kind of issues.

So one of the things that the Administrator charged us and what I am trying to do is really kind of operationalize the --- in a real kind of substantive way, in a real way that we can bring about tangible kind of results in a way that kind of deals with overburden communities and really trying to move the ball on Environmental Justice in a real kind of a community based mechanism.

I have spoken at your prior NEJAC meetings about some of the other activities that I am doing. So I am going to focus today on Plan EJ 2014 so you got some discussion earlier today about Plan EJ 2014 and it really maps out the EJ strategy through 2014, the 20<sup>th</sup> anniversary of the creation of the EJ Program.

What I am going to focus in on is one aspect of that and that is the cross agency focus area of supporting community based action programs. For those of you who know me and I have spent a