

US EPA ARCHIVE DOCUMENT

public in its environmental decisions. API is equally committed to this principle.

Minnesota Pollution Control Agency:

The MPCA applauds EPA's effort to improve opportunities for public involvement in EPA decisions.

National Cattlemen's Beef Association and Idaho Cattle Association:

NCBA/ ICA supports EPA's efforts to involve and inform the public and to do it in a timely manner so as to promote public reaction and assistance in the process.

NCBA/ ICA supports and appreciates EPA's commitment to achieve greater public participation in the Agency's activities. Reaching out to the public provides the American people with a sense of civic responsibility and greater understanding of the process as a whole.

Children's Environmental Health Network:

The Network commends the Agency for focusing its attention on these issues, which are key to the integrity of the Agency's activities and policies and, indeed, of our government itself... The Network recognizes and supports the EPA for increasing the role of public involvement in its decision making over time, and encourages the Agency not only to maintain but also to expand this role.

Association of State and Territorial Solid Waste Management Officials:

Despite our criticisms, we believe it is obvious that state waste program managers fully support the extensive use of public participation to achieve better environmental outcomes, and share the objectives of EPA's managers in this regard. We look forward to continuing to work with the Agency and its excellent workforce to improve our joint work with federal programs and to build the capacity of state waste programs for the future.

14. RECOMMENDED BEST PRACTICES FOR PUBLIC INVOLVEMENT

The comments in this section recommend specific "best practices" used by other organizations or agencies for conducting effective public involvement activities. EPA appreciates these comments, and intends to include many of them in a database of public involvement materials and practices, and in public involvement training for EPA staff.

American Water Works Association:

Surveys and focus groups are an opportunity for the EPA to contact the public, in a neutral and controlled forum, to ascertain their opinions on environmental matters. The Social Security Administration has used focus groups successfully for a number of years and we encourage the EPA to model its survey and focus group efforts after the Social Security Administration's. As an example of using focus groups in the regulatory development process, AWWA conducted several focus groups as part of its efforts to provide input on the Consumer Confidence Report (CCR) regulation. The results of these focus groups were presented to stakeholders through EPA's CCR Workgroup under the National Drinking Water Advisory Council. A copy of the report from this project is enclosed as part of these comments. EPA

also conducted its own focus groups as part of its efforts to develop the CCR regulation. The end result of all of these focus groups was a final CCR regulation with requirements for an easily understood report to the consumers.

Response: The Policy lists focus groups as one means for public involvement and consultation. The Social Security Administration's focus group work has informed EPA's customer satisfaction measurement activities, and focus groups as well as small discussion groups are often used at EPA to obtain feedback and input.

American Water Works Association:

The US Department of Agriculture (USDA) has a successful national outreach effort and we encourage EPA to pattern their outreach after USDA.

Response: USDA's Extension Service is an excellent outreach partner of EPA, and EPA agrees that it provides a good model for local outreach and service. However, because EPA's regulatory development functions use centralized staff, EPA's organization and geographic structure are not widely dispersed in small county level installations. Were EPA's primary function to provide localized information and assistance delivery, the USDA Extension model would be one to consider.

Pennsylvania Department of Environmental Protection, Policy Office:

Building on the concept of electronic access to proposed regulations and decisions, DEP has developed the Environment, Facility, Application, Compliance Tracking System (eFACTS) to provide Internet access to permit decisions and enforcement actions. The new eFACTS, developed jointly with the Compaq Company, displays facility permit history, the status of current permit applications and additional compliance information.

Pennsylvania Department of Environmental Protection, Policy Office:

DEP developed the "Public Participation in the Development of Regulations and Technical Guidance" policy. The policy establishes the ground rules for how and when the public can get involved in DEP's decision making. Some of the methods for obtaining public input include the use of advisory committees, advanced notice of rulemakings, public meetings and hearings. All proposed rulemakings are subject to a public comment period of at least 30 days and all comments received during that period are responded to in writing.

Response to above two comments: EPA recognizes that several states have their own strong public involvement policies. Such policies and practices should be included in EPA's public involvement best practices database, and states will have the opportunity to use and contribute to that database once staff have tested its usability.

Louisiana Department of Environmental Quality:

For example, Louisiana Revised Statute 30:2017 B(1) regarding public hearings on permits for facilities provides that citizens living within a two-mile radius of the location of the facility are granted speaking preference at public hearings. This law, a copy of which is attached hereto, has proven successful in the LDEQ's constant effort to offer greater outreach to the minority and/or low-income communities it serves.

Response: EPA appreciates the comment and intends to note it as a best practice of Louisiana when developing the best practices database.

Michigan Environmental Council:

We have appreciated the opportunity afforded by Region V to interested stakeholders to participate in and comment on the status of Michigan's Clean Water Act Section 404 delegated wetlands program, part of the Region's first audit of the program. We believe the stakeholder approach employed by the Region should be standard practice in EPA reviews of state programs. Region staff convened two rounds of meetings with several groups of stakeholders to permit opportunities for informal comment, with formal comment submitted later in writing. However, the process has also demonstrated problems. The review has lasted more than two years, and for months at a time, stakeholders were not notified of the reasons for the delay or the status of the review. EPA should set forth procedures to assure stakeholders are periodically informed of the disposition of their comments and the status of state program reviews.

Response: EPA appreciates this comment and shared it with the EPA Region 5 office. EPA agrees that informing participants about the feedback process and providing feedback to the participating public is important. The Policy suggests in the "Review and use input, and provide feedback to the public:" *Agency officials should briefly and clearly document consideration of the public's views in responsiveness summaries, regulatory preambles, **environmental impact statements** or other appropriate **documents**. This should **occur** at key decision points."*

Wisconsin Department of Natural Resources:

EPA can continue to promote working with community groups, allowing flexibility for locally-tailored solutions, and fostering training and learning. This is an area where other fields have been leaders: social services (such as broad community health initiatives, community policing and justice) and in natural resources management and planning. Those fields may have something to share with the environmental protection community.

Response: EPA appreciates the comments. Informal benchmarking with professionals in these fields does occur, but not on a large scale with findings broadly shared. As EPA creates its best practices data base, we intend to seek relevant information from fields beyond environmental protection.

Colorado Department of Public Health and Environment, Rocky Flats Oversight Unit, Hazardous Materials and Waste Management Division:

I am involved in the Rocky Flats Environmental Technology Site cleanup and because of the level of participation and education of our stakeholders, we are required to work very closely with them. In order to manage the volume of materials of interest to the stakeholders, yet keep all information readily available to anyone who might be interested, we have shifted our emphasis from general meetings and mass distribution of documents to extensive use of the Internet and focused technical work groups. Currently, most correspondence and documents available for review can be accessed through the RFETS web site, and State correspondence and comments are available on the State web site. Extensive linkage exists among Rocky Flats related web sites.

This approach at Rocky Flats was developed by the Public Participation Focus Group, a self selecting group of individuals from involved organizations with responsibility for public involvement, in order to tailor the information mechanisms used to the interests of the public. A copy of this guidance is attached. Section 3 describes the approach taken. (Attachment)

Response: EPA appreciates this advice concerning the use of the Internet and shared the attachment with the Office of Environmental Information. The Policy encourages appropriate use of the Internet, but it also recognizes that the Agency should use other means of communications to reach those who do not have Internet access. Further, EPA intends to include the ideas from this comment and the attachment in public involvement training materials.

Citizen #90:

I was not supplied with a readily available link to e-mail back a response. I would suggest that most people interested in this are short on time.

Response: EPA appreciates the comment. EPA intends to include in training materials the suggestion to provide a URL and e-mail response address in public notifications. For the draft Policy, both were included in all electronic publicity that EPA sent as well as in the Federal Register notice. Such information may have been omitted as the notice was subsequently forwarded.

Environmental Council of the States:

Many governmental agencies are currently experimenting with new processes to ensure that meaningful public input is encouraged and captured. For example, the Pennsylvania Department of Environment has created a web site called eFACTS (Environment, Facility, Application, Compliance Tracking System) where information on pending permit applications is available, and individuals can register to receive notification of activities in specific jurisdictions.

Response: EPA appreciates this advice concerning the use of the Internet, and shared it with the Office of Environmental Information, which develops the Agency's Web and information product guidance.

Louisiana Department of Environmental Quality:

The EPA should review existing public involvement policies, rules, regulations, and laws of states, tribes and local governments to identify and incorporate any existing measures that could be incorporated into the EPA's public involvement policy. Indeed, many state, tribal, and local governments have developed highly effective public involvement measures that could easily be melded into the EPA's public involvement policy.....

The EPA should consider implementation of Louisiana- developed Environmental Justice panels. Additional information regarding these panels is enclosed.

Response: EPA appreciates the comment. As EPA creates its best practices data base, we intend to seek relevant information from other federal, state, tribal and local governments on public involvement policies, rules, etc. The implementation of Environmental Justice panels is outside the scope of the Policy. This comment and the attached information were forwarded to EPA's Office of Environmental Justice.

ACES, Inc.:

As an example, in MADEP has a PIP (Public Involvement Program) whereby 10 or more citizens can request a PIP; it requires periodic public meetings at which the PRP is required to explain the status of their project. The potential public comments and questions insure improved documentation since the PRP knows we are "looking over their shoulder".

Response: EPA intends to include the Massachusetts Department of Environmental Protection's information in its best practices data base.

Doctoral Student, University of Washington, Department of Geography:

I recommend adding a more detailed discussion of performance metrics. The Hanford Openness Panel - a broadly representative group of active Hanford Stakeholders and Tribal Representatives - developed recommendations in this regard that might be useful to the agency. Please see Appendix 14 of the 1999 Hanford Openness Workshop Report <http://www.hanford.gov/boards/openness/trac-0828/pdf/appendix14.pdf> for details. The full report is on line at <http://www.hanford.gov/boards/openness/trac-0828/index.html>.

Response: EPA appreciates this reference. EPA's Public Involvement Policy Evaluation and Accountability Task Group reviewed Hanford's metrics when developing sets of measures for EPA to use to evaluate its various public involvement activities.

Wisconsin Department of Natural Resources:

We appreciate the length of the comment period as it allowed for a thorough study of the document [the draft Public Involvement Policy] by our agency.

Los Angeles County Sanitation District:

We have attached an example, selected at random, of how the South Coast Air Quality Management District responds to comment letters submitted on the environmental analysis that accompanies most rulemaking. As you can see (Attachment 1), the paragraphs are highlighted and responded to individually in the ensuing pages. Where comments are redundant or close to those of other commenters, the author is referred back to a previous response given to an earlier commenter.

The Federal Register, as comprehensive and as well done as it is, is not the user-friendly device it could be in terms of enlightening the common person. It appears to be written and edited for the most part by attorneys for regulatory professionals. While many rules as of late are being written in straight forward and clearer language than has been past practice, the background explanatory text is not and sometimes it is difficult for the common citizen to follow.

As an example suggestion for possible improvement, we are attaching an excerpt from the California voter's pamphlet (Attachment 2) that every registered voter receives around election time. Each initiative, which proposes to change the state constitution, receives an analysis from the legislative analyst that is fairly concise, unbiased and understandable. This is followed by arguments for or against the initiative by identified proponents/ opponents. The actual legalese/ changes to the state constitution text are included in highlighted and strikeout format at the back of the voter's pamphlet for those who wish to draw their own conclusions.

Washington Department of Ecology, Nuclear Waste Program:

It has been our experience that defining a time frame within which the agency will provide information is helpful and helps avoid miss-communication. For example, the Tri-Party

Agreement Community Relations Plan states that the three agencies will strive to include stakeholders "30-45 days in advance" of the beginning of public comment periods. This provides a guideline for both public involvement staff and technical staff for preparation of materials for distribution, and helps reduce conflict over when stakeholders can expect to receive information. This helps reinforce our commitment to involving stakeholders early in the decision making processes, thereby strengthening our stakeholder relationships.

Georgetown University, Government Department:

For a further idea of how such a program could be structured, you may want to look into an innovative program being done at the local level in Arlington County, Virginia. The program, "The Arlington Neighborhood College," attempts to encourage under served members of Arlington to become a part of the larger group of citizens actively involved in civic matters here in their community --- by giving these citizens skills through training exercises in small-group and large-group settings.

Response to the above three comments: EPA appreciates these best practice ideas.

15. GENERAL COMMENTS ON PUBLIC INVOLVEMENT PROCESSES

The comments below describe experiences with public involvement activities - either with EPA or other agencies. While EPA appreciates these comments, since they give valuable information about public involvement issues, such comments are outside the scope of the Policy. Where possible, these comments were shared with the relevant offices within EPA, and EPA intends to incorporate many of these examples in public involvement training for EPA staff as examples of lessons learned.

Comments Shared with EPA Regional Offices

Citizens' Advisory Panel of the Oak Ridge Reservation Local Oversight Committee, Inc. The [Oak Ridge] CAP has interacted extensively with representatives from EPA Region 4 regarding DOE Environmental Management projects. Our members concur that Region 4 does not act within the intent of the Public Involvement Policy with respect to local stakeholders... Further, we repeat a request (see enclosed letter to John Hankinson dated October 26, 1999) that Region 4 place a field office in Oak Ridge, as the current system of EPA being physically removed from the stakeholders has resulted in difficulties in communication and understanding of the community's desires with respect to remediation activities on DOE's Oak Ridge Reservation (ORR).

Response: This comment was shared with the EPA Region 4 office.

Washington State Department of Ecology, Toxics Cleanup Program:

Russian, Hispanic and Hmong communities eat contaminated fish from the Spokane River, which is part of the Coeur d'Alene Basin/Bunker Hill Box Superfund site. EPA has not done outreach to these communities. The local regional health district has taken responsibility to do this work. These communities have NOT been represented in any EPA public meetings nor in the decision making process.

Response: This comment has been shared with EPA Region 10 and its Boise, Idaho, field office.

Washington State Department of Ecology, Toxics Cleanup Program:

EPA project managers and Community Relations staff became physically separated from each other in their office environment. This created a situation where it became difficult for these two groups of people to keep in close contact during critical parts of the clean up process. This resulted in EPA Community Relations staff not getting timely information for them to easily do their jobs. Sometimes, technical staff would bypass the Community Relations staff and write their own fact sheets - this happened in the field offices more frequently. Problems that stemmed from bypassing Community Relations staff included:

- *Timeliness of Community Relations staff involvement.
- *Community Relations staff not kept up to date on site issues.
- *Lack of understanding by some technical staff that the general public may not understand scientific terms and exponential numbers.
- *EPA attorney's insistence on complex technical information in public information sheets.
- *Insistence on Proposed Plan "fact sheets" that often numbered in the 20 - 35 page range.
- *Comments from EPA project managers that layman terms would be like writing "coloring books for the public".
- *EPA Community Relations staff kept out of the loop on site cleanup activities and sometimes absent during the beginning of the public involvement process.

Response: This comment was shared with EPA Region 10 and the headquarters Superfund Office.

Washington State Department of Ecology, Toxics Cleanup Program:

The EPA is working on transborder issues with the Bunker Hill Box, Coeur d'Alene and Spokane River Basin Superfund mining contamination. A comment period which was created for the Feasibility Study, ended on April 12, 2001. On April 16, 2001 a document entitled "Progress Report on the Proposed Cleanup Plan" was distributed to a select group of Idaho citizens, outlining proposed cleanup actions. This document indicated it was taking into consideration the views of citizen groups both in Washington and Idaho. However, the Washington Citizens Advisory Committee only submitted comments at the deadline of April 12, 2001. It does not appear a member of the WCAC was involved in the subcommittee which developed the "Progress Report". It is difficult to imagine their comments were considered in a meaningful way as part of developing the draft report.

Additionally, EPA has been significantly influenced by the political and citizen climate in Idaho versus the political and citizen climate in Washington. The contamination affects both states, however, Washington citizens have expressed concern that Idaho citizens have been given preferential status for receiving information, getting EPA sponsored presentations, etc. Washington citizens often feel they must "fight to obtain information." This is neither meaningful nor effective public involvement.

Response: This comment was shared with EPA's Region 10 office.

CLEANUP: [Note that the name of the site is not mentioned in the comment letter, but is likely near Sugar Creek/Independence, Missouri]

From our experience, Region VII EPA has not achieved the above stated commitment [to early and meaningful public involvement] at this site. The refinery has been closed for almost 20 years. In that time frame, EPA has never hosted a single public meeting. The two meetings here regarding the pollution have been jointly hosted (including the responsible party as a CO-host), in an Open House style. People do not benefit from this style of meeting as they cannot hear all the questions and answers posed by all attendees.

Since any clean up of this site [unnamed] will take years to accomplish, potential future residents are not included as individuals who may be affected by chemical exposure inside homes. EPA has a responsibility to protect the public's health. The responsible party in this instance has bought out nearly 100 homes near the refinery and they plan to sell the vacant homes to people who may not be economically fortunate. EPA should not allow the polluter to sell a house when they know it is contaminated. Also, EPA should not allow a highly contaminated area (fronting the Missouri River), with a less stringent clean up for air, water and soil. Since citizens are the biggest stakeholders, they are more interested in seeing their community cleaned up so that it remains whole, and at this juncture EPA ignores our input. EPA does not make an effort to include citizens in their onsite activities and makes every effort to include the polluter in everything they do. Citizens should not feel like EPA is their enemy.

Response: This comment was shared with EPA's Region 7 Superfund staff.

Columbia River Crab Fisherman's Association:

Having given general comment I will herein give a specific example of an extremely poor public relations and responsiveness to a proposed rule making related to designation of dredge disposal site at the Mouth of the Columbia River on the Washington - Oregon border by a responsible EPA official that resulted in public outcry that is still ignored today.

- 1) Washington State legislature attached encumbering language to state matching funds for Channel Deepening that states funds cannot be expended until an agreement that protects the crab industry is found.
- 2) Oregon State legislature is currently attaching encumbering language to state matching funds for channel Deepening requiring public hearings before funds as spent.
- 3) States of Washington and Oregon both denied water quality and federal consistency to EIS request.
- 4) CZMA requirements of project completely ignored and actively suppressed.
- 5) RFA requirements of SBA short circuited and actively suppressed.
- 6) Multiple agencies in the two states advised compensatory mitigation for severely impacted marine habitat and resources even refused discussion by EPA.
- 7) Formation of Ocean Disposal Taskforce seen as a joke by participants.
- 8) Refusal to apply EO 12898 to actions affecting the county with the lowest median family income in the State.
- 9) This list could go on with equally valid examples, but enough are presented to make the point.

With this much public and agency outcry about a proposed rule making EPA policy is a miserable tragic failure in Region 10, in much need of revision.

Response: This matter was brought to the attention of EPA Region 10 and the EPA Office of Water.

Oak Ridge Site Specific Advisory Board:

The policy is extremely well written and sufficiently detailed to be useful; however, in the Board's opinion, EPA has made only limited implementation of its public participation policy in the Oak Ridge area.

Of particular concern is EPA's lack of a resident field representative in Oak Ridge, which seems at odds with the significance of the Oak Ridge Reservation's environmental remediation projects. A number of stakeholder groups and ORSSAB committees meet regularly throughout the month to discuss ongoing remediation projects, plans, and decisions. Although the ORSSAB monthly meeting is attended by a representative from EPA Region 4, long-distance communication with these other groups and committees is not a satisfactory substitute for face-to-face meetings with stakeholders.

Additionally, although EPA is routinely copied when comments are solicited by the U.S. Department of Energy (pursuant to the Federal Facility Agreement for the Oak Ridge Reservation), EPA does not respond directly to the comments, which is clearly an expected action implied in the draft policy.

Response: This comment was shared with the EPA Region 4 Office in Atlanta.

Guild Law Center and Michigan Environmental Justice Coalition:

Many community members in Michigan perceive MDEQ decisions to have been made based on the influence of the regulated industry, prior to opening of public comments.

Response: The comment was shared with EPA's Region 5 office in Chicago, which works with the State of Michigan.

Citizens Against Rails-to-Trails / Citizens Advocating Responsible Treatment:

These comments are submitted on behalf of our citizens' group, C.A.R.T., which has been identified as a "stakeholder" in the north Idaho Coeur d'Alene Basin cleanup. We, as individuals and collectively as a grass-roots organization, have been trying to work with EPA and the other Governments for years, and we have serious concerns related to EPA actions in the Basin, as well as to the lack of real, honest, inclusive public involvement. Our experience is that EPA "talks the talk," but agency interest in "real" public involvement is minimal. In addition, it appears to us that EPA "uses" citizen groups to further their own agendas, rather than to truly involve the people most affected by their decisions. We do not think that EPA takes seriously our voiced concerns, nor are we confident that EPA protects our welfare and our environment. It has been our direct and documented experience that EPA apparently chooses to "control" public involvement, rather than opt for real, honest stakeholder input which may involve hearing (and, perhaps, doing) things that may run counter to EPA agendas but are, nonetheless, sound, scientific, valid responses based on direct landowner or stakeholder experience. We base this observation on the fact that EPA apparently refuses to adhere to the stated "Principles of Customer Service" espoused on EPA's own website, which state that written requests will be addressed within 10 working days. This has NEVER happened for us, and currently, EPA has chosen to redirect our serious concerns and questions to the PRP, Union Pacific Railroad, rather than to protect our welfare and our environment. This is unconscionable! In addition, EPA has created a cumbersome process whereby questions are accumulated and then discussed among the Governments (in a closed conference call, with no stakeholder

participation, no notes, no accountability to the public) once a month. After this, "answers" (often double- speak) are sent, over a month later (if at all.) In one case, it took 9 months and legal intervention to get EPA to answer stakeholder questions submitted at a public meeting (hosted by EPA) called by the Department of Justice specifically to answer questions! In addition, for at least the past two years, EPA has refused to answer directly our basic questions. EPA has, rather, been evasive or has chosen to "hide" behind "negotiations" which excluded us, stakeholders and the public, from any voice in the decision process which can change forever our use and enjoyment of our land. This is unconscionable! EPA's evasive and general answers to our responses to cleanup- related documents has been cursory, at best. EPA personnel have, on several occasions, apparently been upset by free speech. First, at the August 19, 2000 EPA Ombudsman hearing in Coeur d'Alene, to which C.A.R.T. was an invited participant, an incident occurred involving Mike Gearheard, Region 10 EPA and a C.A.R.T. member. The incident was reported, an affidavit made, and only after repeated attempts to find out what was being done, did we receive "word" that the EPA Inspector General considered the matter closed. We do not consider the matter closed, and we will continue to protest Mr. Gearheard's inappropriate behavior, as well as the way the incident was handled by internal EPA management. Second, at a public meeting, Mary Ann Deppman made (what we consider) inappropriate comments to a C.A.R.T. member and then came up to "apologize for saying something that may have been out of line" after the meeting was adjourned. The point is: EPA personnel appear to try to stop free speech in public, and then there is no accountability for those actions. In our situation, certainly EPA did not "create early and continuing opportunity for public involvement, nor did EPA "ensure that environmental decisions are made with an understanding of the interests and concerns of affected people and entities." Rather, EPA waited until the proposed Mullan-Plummer 72-mile recreational trail was a "done deal" before even acknowledging our specific concerns. In the rush to "bite the recreational carrot" offered by the PRP Union Pacific, EPA apparently drove negotiations (as evidenced by the pages and pages of "secret and confidential" communications listed on the Administrative Record). EPA currently "pretends" to have come to the project "late" (as stated by Mike Gearheard and Cliff Villa at a recent meeting with us), yet EPA was there, in the background, the entire time, since the earliest negotiations for the proposed trail, in the early 1990's. EPA endorsed from the beginning a plan (the EE/CA and subsequent documents) which covers contamination and creates double- standards for cleanup within the Basin. EPA endorsed a plan which invites the public to recreate in contaminated areas to which they would not otherwise have come! This is unconscionable, and the 10-foot wide strip of asphalt proposed for the trail does not begin to address the contaminants which will be left in place. "Foster mutual trust?" How do "iterative" processes whereby EPA conducts business on conference calls, with no accountability to the public, foster trust? How can the astounding number of "secret and confidential" documents (available to all state, Tribal, government officials but NOT to the public!) generate trust? How can holding meetings where there is absolutely no information disseminated foster trust? How does changing plans without informing the public foster trust? How does generating huge volumes of clumsily written (often techno-speak) double-talk foster trust? If EPA really wanted to foster trust, EPA could do so, and the first step would be to make EPA accountable to the people who pay their salaries: the tax-paying public.

"Actively develop options that address the conflicts in underlying issues expressed by disagreeing stakeholders, thereby seeking to facilitate discussion....." In our case, EPA appears to have done just the opposite. First, our stakeholder concerns have NEVER been acknowledged by EPA, and it is our belief that EPA has, rather, actively given or used information from other stakeholders against us. We base this complaint on the fact that we have had only one face-to-face meeting with EPA "officials" in the two years that we have been participating in Basin cleanup issues. In fact, that meeting, arranged at Chuck Findley and Ann Williamson's convenience for last April 4, was not even attended by them. They even tried, at the last minute, to cancel the meeting the day before it was to be held. And, those EPA personnel attending the meeting were not able to answer our legitimate questions about TAS (Treatment As State), nor were they informed enough to answer serious questions and concerns about wetland cleanup double standards, as well as other issues we have tried for years to address.

Your Draft PI policy states that "EPA particularly seeks comments on how the Agency can improve involvement for minority, low-income and underserved populations and how it can encourage involvement opportunities in programs delegated or authorized to states, tribes and local governments." Toward that end, we offer the following comments:

--Our community of stakeholders includes all of the above populations, yet EPA appears to actively ignore or circumvent us.

--Our community is most definitely "underserved" in the sense that we have no clear voice in the decisions which impact us directly and permanently.

--Our community is underserved by the fact that decisions are made for us in spite of our active attempts to be heard about the contamination which will be left in place.

--Our community has been circumvented in favor of the state of Idaho, the Tribe, and some parts of local government. We have been excluded, to our detriment, and we hold EPA accountable as the protector of the public and our environment. EPA must STOP making decisions for us, the public, the people who pay their salaries! EPA must be required to post notices of meetings, discussions, publications in very public places (not like the one ad, run once, buried in the legal section of one Basin area newspaper announcing the call for TAS comments.) EPA must stop creating layers of bureaucracy (written and within communication systems) which effectively keep us, the public, from the very involvement EPA purports to invite!

In closing, we continue to be shocked, saddened, even outraged at the apparent political game-playing and back-scratching that seems to permeate Basin cleanup. We are dismayed by the apparent struggle among the Governments (State of Idaho, the Tribe, EPA) for control of Basin waterways and cleanup of those waterways, instead of honest, citizen-based consensus building to reach solutions. We continue to protest EPA's policy which, in reality, creates the pretense of public involvement, but does not allow the reality. In short, EPA non-public involvement has, we believe, allowed abuse by the Governments of Railbanking legislation, resulting in the proposed 72-mile recreational trail which covers contamination left by Union Pacific and creates a dangerous precedent for future similar projects. EPA's lack of genuine public involvement is one factor that has made our citizen group hire lawyers, and we believe our lawsuit is just one of many to come.

Response: This issue was shared with EPA's Region 10 and Superfund offices.

The following 15 comments were generated at a public meeting on public involvement issues convened by EPA Region 6 on July 21, 2001 in San Antonio, Texas. The regional office submitted the resulting public comments from that meeting to be included as public comments on the draft Public Involvement Policy. The recommendations from these comments regarding the Policy are included in other sections of this Responsiveness Summary. The following comments do not relate to the Policy, but express opinions regarding the public involvement and cleanup processes associated with Kelly Air Force Base. EPA Region 6 is responding to these issues.

Citizen #64:

Please drop your (EPA) opposition to allowing members of the Kelly RAB and public to attend base closure team meetings.

EPA isn't following its responsibilities. The BCT is making all the decisions. The RAB has asked to take part in those discussion with BCT, but the answer was NO. We asked to just sit in & again - NO. EPA agreed with that decision. On Nov. 4 1998 the BCT concluded it was better not to have the RAB in attendance. Why did EPA agree to keep us out? We live here. We are affected by their decisions. We need to have input.

Citizen #65:

Thanks for all of you being here. EPA mailed thousands of cards I got 3 of them about today's meeting. Thanks to all the Congressmen for all the help they've given. I'm a member of RAB and Sect of Center for Env. Justice. I may not say nice things about EPA

The purpose of this meeting is to increase public participation. They can do that by holding meetings in the contaminated neighborhoods. (98% are Hisp homes) by Kelly or R &H. EPA has known about this for years, but hasn't listened to our cries to clean up our toxic homes. When will EPA do something about it? EPA has known for 20 years but hasn't done any cleanup. Where is EPA & EJ. Why have they ignored us. Why wasn't this meeting held in the middle of the contaminated site? This is miles away. When will EPA involve the contaminated communities? KAFB has spent 200 million dollars cleaning the base, but not the neighborhoods. I hope the outcome is positive. We've had too much [atole con el dedo] [like eating pudding by just dipping a finger in - too slow a process]. I hope we will get a response from EPA & EPA HQ as a result of this meeting.

EPA Region 6 has never met with the community, contaminated by Kelly AFB since the 1980s. To this date there is no plan by Kelly AFB to clean the neighborhood and EPA has never asked TNRCC to take Kelly to court.

Community Health and Environmental Justice Center:

Thank you for inviting us to this meeting, even tho its far from Kelly AFB - EPA is funding ATSDR - and the reports ATSDR gives are flawed. They really do not show the reality of our illness and the severity of contamination in our communities. ATSDR always sides with the A.F. Base and Bevar Metro Health District. We need the land cleaned in the shortest time possible like 6 years and our illness taken care of, that our pain and despair in our families and new families that are buying the houses that are still being building still over the contamination.

We live on contaminated ground & drink water contaminated with thalium and we have gone a long ways and I have been following and reporting all this since 1989. I was on the RAB but didn't see progress. I am president of Community Health and Environmental Justice Center. You are funding ATSDR but they came up with a study that's flawed. We would like for them to come out with accurate reports. The Air Force was giving erroneous readings on water. You need to stop pain & despair of families living here. They are continuing to build houses on contaminated land. We had been drinking water for 3 years when we found out it had thalium. We need more attention & more help. I have been on a Japanese TV program & on a program with Russian prime minister. It's a shame when agencies cover up for each other.

Citizen #67:

Some hazard exist as when Civil Service was in place I witness first hand accounts and documents to prove it. And still no clean up plan exist for Kelly A.F.B. Military seems to be exempt from its responsibility.

We're the ones who are going to make a difference. I was employed on base with Boeing- I speak up. Nothing has changed. EPA is here & say they want to help. In Dec. a fuel spill took place. Fueled up twice 6,512 gals then 7,950 gals. They just guess at the quantity instead of checking the tank. They reported 10 gallons spilled only. I reported it to OSHA but E-mail lost due to a virus. TNRCC rubber stamped what the fuel guys said. 3-4 weeks later our water went brown. They say don't worry about the aquifer- it can't be breached. The aquifer can be breached. EPA should check these records 150 gal spill went down the storm drain. They didn't report it (since the creek was dry they said it wouldn't hurt), but what about when it rains. It was cleaned up. Another problem was that there were all kinds of birds. Boeing threw abutrol throughout facility with no warning. The dead birds were being scooped up in droves. Screamed at [??] They denied it was poison they said the birds died because they were starving. I gave this information to Fish & Wildlife, but they called the supervisor and Boeing had time to remove all the dead birds. They all want to sweep violations under the rug. Things like this happen all the time. We have to join together to make a difference. The military doesn't want to be held responsible. My wife, parents are sick. My wife bleeds through the colon when she menstruates. We all drink this water. My employer supplies bottled water to cover their butts. This is our only water source and it's being polluted.

Citizen #68:

There are lots of concerns about Kelly AFB. Is the AF going to do what is right? We are very concerned because EPA doesn't seem to be looking at the contamination outside the gates of KAFB. EPA can help by being independent from the Air Force & serving in a checks & balances function. They should listen more to the Thompson Neighborhood Assoc. EPA can say there are other ways than the AF's way and exert their influence. They have been contaminating the Base since 1917. We need a check & balance- EPA should have independence from the AF. EPA should ask, "Is this the right way to do it?" This will help a lot in the future cleanup. Bergstrom AFB spent lots of money cleaning it up. We are concerned as to why it wasn't designated a Superfund site.

Citizen #60:

Thank you all for coming from EPA. It's a rare opportunity you are giving us to express our concerns. The Policy talks about "meaningful" participation. This is bureaucratic lingo. "Meaningful" to whom? The community wants to feel that their participation bears fruit - that you truly do listen and that there is a positive result because of our input. This is POWER. If people don't see that participation, commenting, protesting, etc., yield some result, they won't become involved, or they will stop whatever involvement they have had. If there's nothing to show for their effort, they won't come back. You have a group here I see all around. They may be losing hope. They must feel they can make a difference. They won't bother if you keep asking for input but then you don't listen or go on with business as usual. Kelley AFB is a good example. They [community] are educated on the issues, but EPA & the AF are allied with big interests, and the people feel they have no reason to participate. This is one example to show that the community made a difference. If you can't do it with Kelly, you'll have a hard time getting participation elsewhere.

National Image:

I'm from the Christ the King parish. I'm also the Regional Director for Nat'l Image. Thanks for the opportunity you've given us to meet with you and tell you what is on our minds. It's very important to have this forum. Kelley problems will be around a while, so we need EPA even more. What will be the next base closure? Ft. Sam Houston? Randolph? Will they close it down? If so, will you all have learned from Kelly? Contaminated communities are left behind by the U.S. government, and in San Antonio, it's mostly Hispanics who have been affected. EPA needs to be more active in dealing with this. I see all sorts of people in all walks of life and most people are concerned about pollution. Recently I went down to Mercedes to some *colonias* down there. Hispanics need to be heard because of our issues. It seems strange that there's no Hispanic in EPA's Office of Civil Rights & only one in OEJ. We need to be able to talk to you. It's imperative that the government find out how to communicate with us & very necessary to bring in more Hispanics in to work in EPA. You wouldn't have as big a problem communicating with the Hispanic community if you had more Hispanics working for you. We are literally killing some of our people with contamination. I hope you understand that when the government isn't concerned about the lives of its people, something is wrong and it's got to change.

I was talking to Hector Gonzalez. Lots of health agencies have been involved in the Kelly situation. Talking with the representatives of the Congressmen here, and one solution could be possible. It would be a good idea for EPA to work with both congressmen [Morales-is also a representative] to push for a resolution to get the Center for Disease Control to analyze situation. In the case of ALS [Lou Gerhig's disease] - there are some 80 cases in the Kelly area. The CDC is known for being objective. Our congressmen can push congress to investigate through CDC - They can push for whatever testing they need to do to see what the real problems are. I would ask Mr. Morales to take this back to Ciro Rodriguez. We want the sampling done where we know there are problems.

We recommend that we go through our Congressional offices to work with EPA to find solutions to these health problems and other contamination problems in the Kelly area.

Citizen #70:

I'm an intern with Southwest Workers Union. I live near Kelly. Why isn't EPA having hearings on Health problems? [She read written statement - "10 Reasons Why Are We Protesting Kelly AFB?" and "10 Reasons We Are Protesting the EPA?"]

Citizen #71:

I live & work in Kelly AFB. You want us only to use Kelly as an example of communication. Kelly is in the top 10 in contamination. What about a spill or accident? Inadequate assessments are being made. On the original health assessment, they used 10 zip codes, but on the last one it was only on 3 zip codes. Why didn't ATSDR use the same 10 in the original assessment? There is a huge lack of trust with the government. This lack of trust is due to DELAYS. Everything takes too long. The screening done by Metro Health are a shaft, mistakes were made several times, on me, on my family and my friends. It is a sham that mistakes are being made when EPA is supposed to protect the public. Someone has to be responsible. I want to see what will happen to Camp Bulliss. If there's different treatment, I will be upset because a low-income area shouldn't get worse treatment than a higher income area.

Citizen #72:

I'm secretary for Environmental Justice Action for the SWU--This draft policy... Do they really have to wait for more comments? In May of 2000 SWU and others reached out to EPA. We went up to Dallas and met with R6 about Kelly issues, but especially about the communication between EPA and communities. R6 said they would keep us involved and informed. In June 2001 EPA came here for a Community Involvement conference here, but EPA didn't reach out to the public. It was invitation only and they kept us out. SWU protested outside, and then they let us in. We had to protest publicly to get EPA to listen to us. During some of our people's comments about our problems with Kelly, some of the EPA members were very moved by what was said about our health problems, etc., and they said they didn't know why SWU wasn't invited. One said that Kelly [cleanup?] is not in EPA's jurisdiction; however, in *Spring Valley*, Wash DC, an affluent neighborhood, EPA & DOD took aggressive action to clean up contamination due to a DOD facility. It seems that it's only in EPA's jurisdiction if contamination is in an affluent neighborhood. It's a very complicated issue laymen can't understand. EPA isn't responsive to people of color communities. EPA shouldn't shut the door & say it's not their jurisdiction especially when they are not consistent (if it's an affluent community it's in their jurisdiction). You can't close the door now on our participation. The goal of mutual trust won't occur when the only advice is take it [complaints about/blame for contamination?] elsewhere. This situation where EPA says take it up with the responsible parties makes everyone upset. Is the Military not accountable for environmental laws or not? They shouldn't be above the law. The public demands it be a top priority with EPA. Military must clean up their mess. EPA must insure environmental protection also for poor communities of color.

Citizen #73:

NEJAC outlined the importance of public participation with federal agencies. This model plan [NEJAC's] was developed in 94, but no agency tries to adhere to it. Example: 3 government agencies are responsible to close Kelly. Now there's a Title VI complaint because of the discriminatory effects related to Kelly. The BCT excluded people, and there's no public access to its meeting. Meetings & public hearings shouldn't be confidential. With people's work

schedules they can't attend daytime meetings. Translation should be supplied. For example, the Greater Kelly Development Authority, the GKDA, the RAB and the Base Closure Team, the BCT are three governmental agencies responsible for the conversion of Kelly Air Force Base into Kelly USA. These three governmental agencies have outright ignored the model of Public Participation in their attempt to outreach to the communities.

Other problems we have with EPA are Timeliness and follow-up - both are lacking. The need for interagency coordination is obvious, but ignored. This lack can have grave results.

Contaminated properties were tested. ATSDR took from top layer of soil, even though the property owners said it had been replaced some time ago. So no contamination showed up. Then ATSDR announces the soil is uncontaminated. Why should the public think it would be different. No honest effort was made to put it [homeowners' information?] into practice. Their concerns were brushed aside, thereby causing inconsistent results. Decisions have been made behind closed doors, and this is wrong.

National Organization for Mexican American Rights:

My organization addresses Hispanic employment, education, and civil rights, but we especially focus on employment. We were organized in Fort Worth, but have chapters in several states. We have worked with EPA, and they haven't done very well in the past. We were involved with the first Hispanic Stakeholders Meeting in San Diego in 1999. They have improved lately. They are beginning to make some sincere efforts to reach out to our community, so we are trying to help EPA. Hispanic groups are all trying to improve situation for Hispanics. We can't complain unless we are ready to step up & work to improve the situation. Now we are asked to provide input on public involvement. Later we will have to ask how they have implemented what we input. This is guidance, but groups like ours need to go & ask "What have you done?"

We think it's imperative to include our community in EPA decision making. It is all for naught if we aren't at the table. EPA needs high-level Hispanics in the Agency, and then you won't have the same problems communicating with us. If you want to communicate with us, we need to be at the table for our needs to be entered into the equation. EPA has failed to employ Hispanics in positions where they should have such as [EPA liaison] in the US Embassy in Mexico City, management in EPA's US/Mexico Border Office). If we put our comments on record, we can later hold EPA accountable. Will all the groups be given the document when it is finalized? Can a citizens' group be formulated to help advise? Why not have a meeting here in San Antonio for EPA to give us all kinds of information we need about issues here, as everyone has been asking about, particularly about Kelly. We need the straight story. Thanks for this good faith effort, EPA.

Citizen #75:

I have been struggling with everything here - more than 40 years - and with lots of sicknesses. All of this has happened here. One of my daughters has asthma, a son has _____ (unintelligible). I am thankful for those who have helped me, such as brother Chavel for cleaning up the contamination well. I suffered a stroke recently. It's important that everyone cooperate together. May God bless you all. Everything is contaminated. Sometimes the water

comes out black [very dirty]. May God bless everyone and may we all continue to work together.

Citizen #66:

I applaud the decision of R6 to have this meeting here & Congressmen Charlie Gonzales & Ciro Rodriguez. We are all in this together. Creator expects us to work together & keep clean. Conflicting information makes it difficult to guide decisions here on the local level re: Kelly. We need to know if the plans for the cleanup are good or not. The plan is to promote development along the lines of NAFTA. We want EPA to share more information on Mexico. Accountability is important. Conflicting reports do cause a big problem. We must look at pollution prevention. Education - most effective place to deal with environmental problems - before they start. In San A we have the wonderful blessing of the Edwards Acquifer. Growth is exploding on the recharge zone. We need help to contain the damage. Indigenous people lived here for thousands of years . We need to honor our birthright and continue living without harming the environment.

Citizen #74:

I'm a long-time citizen here. More & more people are coming to speak out. They have found more & more contamination - I'm a member of the RAB, represent my area - 38 years there. For the record. I'm Latino, Spanish descent - 1st language was Spanish. I still think in Spanish. I have helped the Republicans since '64. I speak often to City Council. Because the Republican Party was not very environmental I became a part of the Republic of Texas. Everyone is welcome in it, but must be a Texan, even if you moved here. Here's a Biblical story - in the year 1 common era 4026 BC it didn't used to rain. Then everything was green. The water underground kept everything green. The plumes watered everything. Now plumes rises and if there's contamination in the ground, as water comes up, it brings up the contamination. I went to A& M I'm 58 trying to learn more. I'm asking EPA. Latinos should push for the federal government to do their job. The plumes go under the Apache Creek area. I go to Austin & campaign for the people. I take off from my job to do that. We have to stick together. I hope Mr. Bush can help improve our problems here.

Comments Shared with EPA Headquarters Offices

Iowa Department of Natural Resources, Water Supply Section:

The single DBPR/IESWTR Implementation Meeting was held in Denver in February. While the location was accessible for most of the States and the travel costs were reasonable, the weather was questionable (fog canceled most of the incoming and outgoing flights the night prior to the meeting), and it was held during some of the peak snow ski season - so flights were less accessible and more costly than if the meeting had been held at a different time. The second example is the upcoming single national meeting on Capacity Development, which is scheduled for Seattle in May. It is in the far corner of the U.S., and while it is more accessible to some of the surrounding States, it results in excessively long travel times for many more of the States.

Response: This comment was shared with EPA's Office of Ground Water and Drinking Water.

International Association for Public Participation:

The EPA has been incorporating public participation for nearly thirty years. However, the Agency is no longer the leader it once was. Regulatory-driven participation requirements have overshadowed a comprehensive approach. RCRA permits are a prime example. By the time a permit review is subject to public participation, numerous higher level decisions are already assumed. Only a small number of highly interested and affected people are likely to respond to a call for comment on whether one foot or three inches is the better distance for barrels at a site that is already permitted for a set of contaminants.

Response: This comment was shared with the EPA Resource Conservation and Recovery Act program.

National Association Of Home Builders:

NAHB has over 850 state and local Home Builder Association in its federation and has found few of these groups have ever been identified as groups interested in EPA actions. This is true despite the fact that the construction industry regularly participates in EPA proceedings and is significantly affected by countless EPA actions.

...when EPA published proposed changes to its TMDL plan on August 23, 1999, it provided a 60-day comment period. This was simply not enough time to formulate a response to such a complex technical issue. In the ensuing public outcry, EPA did extend the comment period (twice!), but all the effort that was spent on securing the extension of time could have been used to formulate better suggestions and feedback on the technical merits.

...during the storm water rulemaking EPA formed an Urban Wet Weather Flows Federal Advisory Committee (FACA Committee), which established two subcommittees, including one on Storm Water Phase II. This subcommittee met a total of 14 times over three years; however, the format and leadership of the meetings were disorganized, ineffective, and not conducive to productive discussion. As a result, the subcommittees members' ideas, suggestions, and concerns were largely stifled, overrun by agency preconceptions, or tabled for later discussion that never occurred. In the end, the subcommittee never agreed on any aspect of the Phase II program, never provided a written report to the FACA Committee, and the FACA Committee never provided written advice and recommendations to EPA. In the end, this led to a report (and arguably a final rule) that was unfairly skewed toward the views of the majority of the FACA Subcommittee and not necessarily the public at large. In episodes like this it appears to the public that EPA is simply using public participation as a mere formality when its results are preconceived. This element of mistrust is particularly damaging to the public involvement process and impedes EPA's ability to develop consensus and support for its regulatory actions.

... NAHB has been dismayed, for instance, that EPA's proposed effluent limitation guidelines for the Construction and Development industry have been based on a survey of a mere six (6) construction sites. This is simply inadequate to fully grasp the unique character and complexity of all the various construction sites, and no amount of public participation "process" will overcome the technical deficiencies of the proposal. EPA staff should be sufficiently versed in

the subject matter they are attempting to regulate so they can fully appreciate the complexity of the issues as well as scientific and technical information they must evaluate.

Response: These comments have been shared with the EPA Office of Water and with the Office of Cooperative Environmental Management, which manages Federal Advisory Committees.

Property Rights Congress of America, Inc.:

Review and revise the 111 key elements of the Clean Water Action Plan. In 1997 when then-Vice President Gore introduced the Clean Water Action Plan, the Notice of public meetings was published in the Federal Register on a Thursday, the same day of the first meeting (of only three meetings held nationally) that was held in Atlanta, Georgia. The second meeting was scheduled for the next day, Friday in Columbia, Missouri. The third and final meeting was scheduled for Sacramento, California the following Monday. (I cannot find the FR Notice on the Internet now. Hopefully EPA can.) I lived in Missouri then and was able to attend the Columbia meeting. It was very well attended by members of environmental groups, specifically the Sierra Club, Missouri Coalition for the Environment, and the Stream Team. There was only one member each from Cattlemen's Association, one dairyman, one pork that it is hard to know if excess nitrogen could be from fertilizer as EPA was saying, or if it could come from the crops. Some crops put nitrogen into the soil and some crops take it out, so they rotate their crops to balance the nutrients in the soil. Depending on time of year, or succession of crops, nitrogen levels will be higher from one crop and lower from another, so testing results will not be accurate. That made no difference to the EPA rep. I supported the County Commissioner and recommended that local Soil & Water Boards also be included in the te producer, myself and what was most disturbing to me, only one County Commissioner. I don't remember seeing any Farm Bureau representative. I had alerted as many people as I could but the County Commissioners in other parts of the State could not attend on such short notice. There were no representatives from any other State. They did not have enough notice to be able to attend. The County Commissioner, who is a farmer, spoke just before I did. He told the EPA representative that if he just knew what "levels" were considered unsafe (phosphorous and nitrogen were the ONLY pollutants discussed) and if he had the testing equipment, that he would promise them a "clean" county. But the EPA rep told him "no" that the equipment was too expensive and that the testing would have to be done by the Stream Team, a grant-funded partnership of "volunteers" with Missouri Dept. of Conservation. The Commissioner also said sting process. These are the duly elected officials closest to the people. They are farmers and livestock producers and have the knowledge and experience required to make good decisions. But they are not allowed to participate nor even consulted with in EPA's "environmental" programs. EPA's partner in the CWAP is the NRCS, under the Department of Agriculture. Many rural producers and Soil & Water Boards have been intimidated by NRCS since they are at the helm in "cost-share" conservation programs which in the past, had been a beneficial program. This has changed under the previous administration also. And the CWAP placed EPA and NRCS in the position to over-ride local elected Soil & Water officials. After the comment period expired for the CWAP, addressing only the issues discussed at the meetings, EPA/NRCS issued the 111 key elements of the Plan. These included the highly controversial TMDL issue, and the CAFO feeding rule, changing the "C" from "concentrated" animal feeding

operation, to "confined" animal feeding operation. There is a big difference between animals being "concentrated" and merely "confined." (Draft Unified Strategy for Animal Feeding Operations, September 11, 1998) During the CAFO meetings, the first one was held in Texas the day BEFORE the meeting Notice was published in the Federal Register. (I cannot find the FR meeting Notice in question now. It may have been TMDL/NPDES meeting which affects CAFOs) During the TMDL meetings, EPA declined Missouri Forest Products Association's invitation to attend a public meeting to explain the TMDL issue. They deferred to Missouri Dept. of Natural Resources who also declined to come and explain the rule.

Please review those 111 key elements of the CWAP. I think you can see that they seem to be designed to totally shut down natural resource producers which will destroy the traditions, culture and economies of rural areas. We will never achieve an effective energy policy like President Bush has proposed, or be able to feed America, or rural areas even continue to exist if the EPA proposals of the previous administration are allowed to continue. Especially if EPA employees continue to take the attitudes they have exhibited in the past eight years.

Response: This comment was shared with the EPA Office of Water.

People for the Ethical Treatment of Animals and Earth Island Institute:

Until very recently, the EPA has entirely excluded the animal protection community and animal welfare considerations from its decision making process. To our consternation, we quickly learned that no Federal Register notice had ever been published to inform interested stakeholders about the HPV [High Production Volume] program (to date, there has still been no Federal Register notice) and no solicitation of public input had occurred. In clear disregard of the 1981 policy on public participation, the HPV program had been developed quietly, behind closed doors, between three organizations B the EPA, the EDF, and the Chemical Manufacturers Association. When PETA and other animal organizations attempted to meet and discuss these issues with EPA officials, we were met with complete disinterest and, in some cases, outright hostility. We proposed changes to the program that were endorsed by 17 animal and environmental protection organizations representing more than 10 million Americans and received no response from the agency. We suggested the use of validated non-animal test methods to replace some of the proposed animal tests and were stonewalled by officials in the Office of Pollution Prevention and Toxics.To this day we continue to run into problems of notification, participation, and consideration of our issues with other EPA animal testing programs, such as the voluntary children's health chemical testing program (CHTP) and the endocrine disrupter screening program (EDSP). Following our interaction with the EPA on the HPV program, it was abundantly clear to EPA officials that PETA was, in fact, an interested stakeholder in the EDSP. Yet we learned of ongoing EDSP meetings only through an article in the Bureau of National Affairs' Chemical Regulation Reporter. After repeated, we were allowed to place an eminently qualified scientist on the EDSP taskforce but were denied observer status at the meeting, i.e., the meeting is officially closed to the public.

Many EPA meetings appear to be held behind closed doors and only the favored non-governmental organizations that the agency is used to, and comfortable in dealing with are invited.

Response: This comment was shared with the EPA Office of Pollution Prevention and Toxic Substances.

American Water Works Association:

Notices: For example, the Office of Research and Development (ORD) held a research progress meeting on February 22-23rd to review the results of Drinking Water Grants from the Science to Achieve Results (STAR) program. AWWA, along with other stakeholders with long histories of involvement in drinking water issue, received no advance notice of this meeting. Yet, the results of the research presented at this meeting will likely influence drinking water regulatory policy the next several years.

As another example, the Office of Pesticide Programs (OPP) held a public workshop on February 28th on the methodology for assessing the risks from pesticides in drinking water. The Federal Register notice for this meeting came out on February 26th, two days before the meeting.

Response: This comment was shared with EPA's Office of Research and Development and the Office of Pesticide Programs.

York City Wastewater Treatment Plan, York, Pennsylvania:

Municipalities are frequently caught in the middle as the public clamors both for increased environmental protection and stability of public expenditures. In the area of water, for example, the public wants clean water and does not want sewer and water costs to go up unreasonably. When the Agency frequently underestimates or completely fails to recognize the cost of water regulations and other actions, municipalities and the public suffer because the Agency has not properly assessed the benefits against the costs.

Response: This comment was shared with EPA's Office of Regulatory Management, the EPA National Center for Environmental Economics, and Office of Water.

Minnesota Pollution Control Agency:

The MPCA has found that the single spot radio ad announcement required under Part 124 for RCRA Permit Notices is not a practical use of public participation resources.

Response: This comment was shared with the EPA Resource Conservation and Recovery Act program.

Association of State Drinking Water Administrators:

Unless and until implementation guidance such as data reporting and violation determinations accompanies rule proposals, understanding and thoughtful public response to the issues will not occur. The public and states must understand how a proposed rule will affect them at the local level. This can only be accomplished through review of the implementation requirements to be imposed.

Recent rule proposals and promulgations in the drinking water program have been problematic because the Agency has sought comment on multiple approaches, each potentially having different significant impacts. It is not until the rule is promulgated that states and the public are made fully aware of the Agency's final decisions. In several recent cases, significant decisions were made between rule proposal and promulgation without public comment on impacts and costs associated with those decisions.

Response: This comment was shared with the EPA Office of Water and the Office of Regulatory Management.

Consultants in Toxicology, Risk Assessment and Product Safety:

For example, EPA's Options for Development of Parametric Probability Distributions for Exposure Factors (EPA/600/R-00/058 - July 2000) is in many ways an innovative and important document. Initially developed by a contractor, both Agency exposure assessors and several outside assessors reviewed the document. Thus, the document received a private, but not an external peer review, and it completely escaped public comment. No EPA controlled scientific group, such as SAB, reviewed this important document. The external peer reviewers' comments were not available to the external scientific community, and EPA did not allow for public comments on a draft version of the document. So, external scientists with insights to contribute to the document had no venue for submission. In this sense, the document, the public, the scientific community, the Agency, and taxpayers lost. When CTRAPS reviewed the document, we found several typographical errors, several false assumptions, several places where the authors did not work out important consequences, and several missing citations to the literature. Further, the document had important implications for the development of population assessments of exposure to pesticides, a process under development and controversial at EPA. Yet, none of its authors or reviewers came from the Office of Pesticide Programs (OPP). Public comments would have caught this nearly fatal omission. CTRAPS noticed it. The document exhibits no awareness of the parallel developments within OPP to develop probability distributions of exposure and does not cite them. Understanding what EPA could have lost by submitting the draft document for public comment is difficult.

Response: This comment is outside of the scope of the Policy. The comment was shared with EPA's Office of Research and Development, staff of the Science Advisory Board, and Office of Prevention, Pesticides and Toxic Substances.

Consultants in Toxicology, Risk Assessment and Product Safety:

EPA needs to decide whether the external scientific community is part of the "public" and what role the external scientific community should play in developing science-based regulations and policies.

Unless EPA wants to pretend that Agency scientists can credibly review their own work products, external peer review of these products seems advisable. EPA occasionally uses its own Science Advisory Board (SAB) or panels of the National Research Council to obtain peer reviews, while independently soliciting public comments. CTRAPS agrees that this practice is worthwhile. Some consider it essential. (See the National Environmental Policy Institute's Enhancing the Quality of Science in the Regulatory Process, 1998 and Enhancing the Integrity and Transparency of Science in the Regulatory Process, 1996). More recently, EPA has extensively used Agency funded, contractor-run peer reviews. CTRAPS disagrees that these Agency funded, contractor-run peer reviews are worthwhile. In particular, these reviews are poor substitutes for SAB reviews.

Problems remain, even with Agency organized and controlled peer reviews, namely that EPA controls the selection of the SAB or National Research Council experts who participate, either directly or indirectly. Other scientists, who EPA does not want on its panels, still have opportunities to comment on the same scientific support documents, when EPA allows for public comments. Even so, if a National Research Council or an Agency funded, contractor-run peer review does not allow for public participation, public observation, and public access to

the documents used in the reviews, external scientists who seek to use the public comment process will face an impediment.

While EPA controlled peer reviews are worthwhile, limiting external comments to selected, if highly credentialed, experts seems questionable. So, the Agency should open the review process to any scientist wishing to comment. To do so effectively, EPA needs to develop better ways to notify the scientific community. Few scientists read the Federal Register. While publication there does discharge a legal obligation, the Agency should develop additional communication channels through widely read scientific journals.

EPA's peer review process has improved since the 1981 Public Participation Policy. Since June 7, 1994, EPA has had a formal Peer Review Policy, by which Administrator Browner required peer reviews of all scientific work products related to major decisions. In response to Congressional and General Accounting Office prodding, the Agency has extended peer reviews of scientific work products to programs that previously did not understand this process or its desirability. [See General Accounting Office, Federal Advisory Committee Act: Views of Committee Members and Agencies on Federal Advisory Committee Issues. (GAO/GGD-98-147) Washington, DC (1998)]. EPA officials less frequently confuse notice and comment with scientific peer review. The Office of Research and Development (ORD) now provides a mechanism for Agency-wide coordination, oversight and planning of peer reviews. ORD's Science Policy Council has generated a Peer Review Handbook, which provides guidance to Agency officials...

EPA needs to decide whether meetings with external scientific experts for purposes of soliciting advice (peer reviews) fall within the scope of the Federal Advisory Committee Act (FACA) and whether FACA meetings improve public participation. If so, the Agency needs to seek reversal of a Clinton administration policy that limited the number of FACA meetings each year...

Both President Bush and Administrator Whitman have recently called for more emphasis on sound science in federal regulations and policies. CTRAPS strongly supports this call. [See Daniel M. Byrd and C. Richard Cothorn, Introduction to Risk Analysis: A Systematic Approach to Science-Based Decision Making. (ISBN 0-86587-696-7) Government Institutes, Dallas, TX (2000)]. However, for it to succeed, EPA must engage the external scientific community through the public comment process, apply FACA to meetings with external scientists, and use normative scientific procedures of peer review and communication. In particular, EPA staff must explain to President Bush and Administrator Whitman that they need to overturn Clinton administration policies to improve participation of the external scientific community in peer reviews...

Response: The comment was shared with EPA's Office of Research and Development and staff of the Science Advisory Board. EPA agrees that the definition of public is broad and that alternate methods of notification should be used. The Policy's definition of "the public" includes external scientists and other professionals, as well as research, university, education, professional and governmental organizations and associations. As also noted in the Policy's "Identify the interested and affected public" section, EPA encourages notifying the public through other than Federal Register notices, the use of mailing lists of interested members of the public, working with the media, and participating in the events of others and reaching the members of organizations through their publications. Also see new language added at the end

of the Goals section: “**Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement.**” EPA agrees that peer review, especially external peer review, is an important subset of public involvement. EPA’s Science Policy Council “Peer Review Handbook” (EPA 100-B-98-001) sets out guidance on how the peer review process should be managed. The Peer Review Handbook notes that it is not appropriate for all external peer reviews to be carried out by established advisory committees, such as the Science Advisory Board. Peer reviews carried out by the National Academy of Sciences (NAS) are external reviews and are controlled and managed by the NAS. As described in Appendix 2 of the Policy, EPA is subject to the requirements of the Federal Advisory Committee Act (FACA) when EPA establishes or uses an advisory committee to obtain collective advice or recommendations. It should, however, be noted that when EPA obtains advice from individuals rather than a group, the meeting is not subject to FACA.

EPA’s Science Advisory Board is a federal advisory committee that provides independent technical advice to EPA on the technical underpinnings of the Agency’s decisions. In this process the SAB seeks to work cooperatively with the Agency to support its mission and goals, while maintaining the independence necessary to provide the Agency information, knowledge and critical advice in a credible manner. The Board has mechanisms in place to inform the public about upcoming SAB reviews. In addition to using the Federal Register to announce FACA meetings; the Board publishes a 6-month advance calendar on the SAB’s website; hosts a Listserv with news about Board activities; and published a monthly electronic newsletter, *Happenings*, on a rolling calendar basis.

Consultants in Toxicology, Risk Assessment and Product Safety:

For example, Administrator Whitman’s recent press release about the withdrawal of EPA’s new standard for arsenic in drinking water stated, “While scientists agree that the previous standard of 50 parts per billion should be lowered, there is no consensus on a particular safe level.” The problem with this statement is that it is false; all scientists do not agree that EPA should decrease the old standard. Some of these scientists submitted public comments to EPA explaining why the standard did not need lowering. In contrast, other scientists retained by an EPA-controlled [word missing], the National Research Council, did recommend a decrease. Unfortunately, Administrator Whitman has chosen to return deliberation of the arsenic standard to the National Research Council, instead of engaging the wider scientific community. Instead, Administrator Whitman (and EPA staff) might have paid more attention to the past reviews by the SAB and to public comments on the proposed new standard. If so, perhaps EPA would obtain better advice by turning the matter over to SAB, as its process admits greater openness and public participation.

Response: These comments were shared with the Science Advisory Board, the EPA Office of Research and Development, and the EPA Office of Ground Water and Drinking Water.

Various Issues

California Association of Resource Conservation Districts:

In my opinion, this draft arose, in large part, because of the lawsuits over CWAP activities. Since the document does little or nothing to 'substantially' change the previous policy, I see that it will have little positive effect on outreach and communications with stakeholders.

Response: As described in the report "Engaging the American People,"

[<http://www.epa.gov/publicinvolvement/policy.htm#engaging>] an EPA workgroup conducted an internal and external review of the 1981 Public Participation Policy, and recommended that EPA modify the Policy to recognize the changed role and capacity of state, tribal and local levels of government; new laws and policies affecting public involvement; the electronic age; and EPA's experience in public involvement. The review began at the suggestion of a FACA committee. The Framework for Implementing EPA's Public Involvement Policy, released with the final Policy describes actions EPA intends to undertake to implement the Policy. See the Framework at [<http://www.epa.gov/framework.pdf>].

Color Pigments Manufacturers Association, Inc.:

An example of problems which may ensue when informal guidance is published through the Internet and not through appropriate notice and public comment procedures is the publication and distribution of the Waste Minimization Prioritization Tool ("WMPT"). The WMPT was intended to prioritize chemicals based on the characteristics of Persistence, Bioaccumulation and Toxicity ("PBT"). Chemicals with higher scores would be targeted for minimization and elimination from waste streams and the environment.

However, the WMPT was constructed by using a simplistic scoring system in which three points were assigned to each characteristic. Unfortunately, EPA did not consult with the public to seek comment on what could only be described as a major rulemaking effort which, if fully implemented, would have a very significant negative impact on many industries. EPA instead spent considerable resources to develop the model software system. Following this, EPA distributed the flawed software through the Internet. When academic and industry experts became aware of the program, the obvious problems with the flawed software and the basic scoring system used by the software were immediately pointed out to EPA.

Although there were many problems with the WMPT, from our perspective, the most serious was that the program far overweighted mere persistence in the environment. Metals and other benign compounds, such as titanium dioxide, were assigned values which were as high as highly toxic compounds. This is because mere persistence was not only one complete category, but also an incorporated characteristic in measuring bioaccumulation and toxicity. After EPA in effect withdrew the WMPT, which had been distributed through the Internet, the State of Washington, through its Department of Ecology, adopted the failed program as a means of identifying compounds and products for dramatic reduction in manufacture and use. The rule in Washington was entitled the "Proposed Strategy to Continually Reduce Persistent Bioaccumulative Toxins". Of course, by adopting the WMPT as a measuring device, Washington would not be able to determine accurately what compounds are PBT's from those that are not. The WMPT could not accurately determine which compounds or products could be used as environmentally beneficial substitutes, even if a consensus were made on the compounds or products which should be the targets of substitution.

Therefore, due to the premature release of this flawed risk analysis scheme without appropriate disclaimer, a state government proposed to use the scheme to define acceptable and

unacceptable products in interstate commerce. This occurred even while national and international agencies are still debating PBT and similar risk analysis and prioritization. All of this could be avoided if reasonable, substantive and timely notice had been provided to the interested public before the new rule was distributed by the EPA in an apparent final form.

Response: The Waste Minimization Prioritization Tool is outside of the scope of this Policy; however, this comment was shared with the EPA Office of Prevention, Pesticides and Toxic Substances and the Office of Regulatory Management.

WPI:

...I am referring to occasions when the EPA grants oversight of a project to a state or other entity. I find that the states or others do not then conduct proper community involvement practices, or do not require the regulated party to do so.

Response: EPA's Public Involvement Policy is intended to provide guidance to EPA staff on how to conduct public involvement activities. It does not place any requirements on states, tribes or local governments, but EPA does and intends to continue to encourage those governments to develop and implement their own public involvement policies.

American Chemistry Council:

As a general rule, the Council believes the Agency too often fails to involve the public in the early stages of defining issues and options. Instead, these are presented when they are largely fleshed-out, and the public is merely invited to comment. At best, this results in delay and inefficiency, as issues and options are reworked in light of public input. As worst, it is too late in the process to fully express public views, so the Agency's treatment of issues and options, by not including public input, is less than ideal.

Response: EPA agrees that early public involvement provides the best results.

National Association of Home Builders:

NAHB is encouraged by EPA's stated commitment to public involvement, but will withhold our judgement as to whether this process will be carried out in a fair, balanced, and impartial manner. NAHB members and staff spend large amounts of time and resources monitoring EPA and other regulatory agencies and participating in a wide array of governmental panels, working groups, FACA committees, SBREFA panels, etc. Unfortunately, NAHB members frequently feel they are viewed as adversaries and that all of these process mechanisms are mere formalities that must be followed before a preconceived conclusion can be reached. This is an unfortunate conclusion and one that NAHB members hope can be improved through this public involvement effort.

...members of the public and the regulated community, including NAHB members, have often found themselves barred from meaningful participation due to a lack of notification, procedural flaws, inaccessible documentation, and an inability to understand EPA's often complex and highly technical proposals.

Guild Law Center and Michigan Environmental Justice Coalition:

Too often, community members feel that decisions have been made long before they entered the process and that their public comments essentially fall on deaf ears. As a result, many

people may choose not to commit the time and energy to submitting meaningful comments on agency actions.

Response to above two comments: EPA expects that implementation of this Policy should minimize the problems mentioned in these comments, and that the public will have increased and fair opportunities for early and meaningful involvement in EPA's decisions.

Citizen #4:

I support the idea of increasing public involvement, and you have enumerated several ways that this can be facilitated, but I doubt that any of this will ever become a reality. From my own experience, I have found that public officials, at best, only tolerate genuine public comment. I am sure that many officials find it a nuisance. This whole notion really amounts to nothing more than paying lip service to the concept of involving the public. Mostly the public is ignored, and I suppose the rationale will always be that the particular agency, or public official, doesn't have the requisite resources (i.e., budget, people, etc.) to respond to the public's requests. I have numerous examples from own experience in Wichita, Kansas, at almost every level of government, including the federal government.

Response: This comment was shared with EPA Region VII. EPA expects that implementation of this Policy should minimize the problems mentioned in the comment, and that the public should have increased opportunities for early and meaningful involvement in EPA's decisions. Please refer to the Policy's "Who manages the application of this policy?"

16. ISSUES NOT RELATED TO THE POLICY

EPA received a number of comments that did not relate to the Public Involvement Policy; instead they discussed other environmental topics or controversies. Commenters are listed below so to document their participation; however, the text of their comments is available in the EPA docket. EPA forwarded the comments to the appropriate EPA offices and is not responding to them in this Response to Comments document.

Environmental Education

Citizen #52

Support for Genetically Engineered Corn Lines

Citizen #77

Land Use/Property Rights

Property Rights Congress of America, Inc.

Enforcement

Virginians for Wilderness Forests of the Central Appalachians Project

Pesticides Regulation

National Coalition for the Chemically Injured
Citizen #78

Clean Water, Clean Air

Citizens #12, #76, #79 and #80

EPA's Web Page

OMB Watch

Accountability for Access to Information

OMB Watch

Use Government Performance and Results Act Processes

Environmental Defense

American Chemistry Council

Various Issues

Citizens #61, #69, #81 and #82

17. Public Comments Regarding State or Delegated Governments

EPA modified the draft Public Involvement Policy to address comments regarding the roles of states and to clarify language regarding its applicability to states as follows:

1. New language in the Policy's section "What are the Roles of States, Tribes and Local Governments?" includes:

"State agencies, tribes and some local governments have unique roles regarding EPA's programs and decisions:

1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.

2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders.

3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on

policy, rules, plans and recommendations under development, and providing input on EPA's decisions.

2. Additional language in the Policy's "When Does This Policy Apply?" section (new language in bold italics):

"This Policy applies to all EPA programs and activities. In programs or activities where the public is already meaningfully involved, EPA can use this Policy to enhance that public involvement. Where the existing level of public involvement needs to improve, this Policy provides suggestions for how to move forward. Finally, this Policy can serve as a model for building public involvement into new programs as they are developed.

The activities where conducting meaningful public involvement should particularly be considered include:

6. ***EPA rulemaking, when the regulations are classified as Economically Significant Actions (under the terms of Executive Order 12866)***
7. ***EPA issuance or significant modification of permits, licenses or renewals***
8. ***Selection of plans for cleanup, remediation or restoration of hazardous waste sites or Brownfields properties***
9. ***EPA's decision on whether to authorize, delegate or approve states or local governments to administer EPA programs consistent with the relevant regulatory requirements for each program (Note: Tribes seeking approval to administer environmental programs under EPA statutes generally also seek "treatment in a similar manner as a state (TAS)" status from EPA. Appropriate opportunities for public participation are contained in the relevant statutory and regulatory provisions establishing a TAS process. Consult with the Office of Regional Counsel or the Office of General Counsel, and/or the American Indian Environmental Office for assistance.)***
10. ***All other policy decisions that are determined by the Administrator, Deputy Administrator or appropriate Assistant, Regional or Associate Administrator to warrant public participation in view of EPA's commitment to involve the public in important decisions***
11. ***The development of significant information products (as the Office of Environmental Information has defined them in Appendix 2: Definitions)".***

3. Additional language in the Policy's "Does This Policy Affects Authorized, Approved or Delegated Program?" section (new language in bold italics):

"EPA developed this Policy for EPA staff use, but it also may be useful to states, tribes and local governments that implement federally delegated, authorized or approved programs. EPA encourages these entities to adopt similar public involvement policies if they have not already done so. EPA intends to discuss the effectiveness of their public involvement activities during periodic meetings with states, tribes and local

governments, and will obtain their input about ways to improve EPA's activities. EPA will not use whether a state, tribe or local government has adopted EPA's Public Involvement Policy as a criterion for the authorization, approval or delegation of programs or the award of grants. In general, recipients may use grants for continuing environmental programs and Performance Partnership Grants to fund public involvement activities to the extent that costs are allowable under OMB Circular A-87 and applicable EPA regulations. [Note: Some statutory or regulatory provisions require compliance with certain public participation requirements before EPA may approve a grant. (See 40 CFR §§ 25.11 and 25.12.) The grant applicant may comply with such requirements without adopting EPA's Policy.]'

Need to Clarify State Role in EPA Decisions

Ohio Environmental Protection Agency:

As states' role in the regulatory process steadily increases, it would seem that states should play a role in developing rules and policies, not merely commenting on proposed rules. Ohio EPA values the input of all stakeholders; however, U.S. EPA should recognize the states' elevated role in establishing national environmental rules and policies as the states are responsible for implementing them.

Nebraska Department of Health and Human Services, Drinking Water Program:

The draft policy does not address each State's pivotal and regulatory role in implementing new rules. The State is a regulatory partner of the USEPA. States should not be treated as one of several listed entities to whom USEPA would like to apply the new public involvement policy.

Association of State Drinking Water Administrators:

ASDWA is concerned that this approach wrongly reinforces the perception that states do not have a unique role at the table when regulatory decisions are being made. In the majority of cases, states have primary enforcement responsibility for each of those regulatory decisions. State drinking water programs have parallel regulatory authority and responsibility to carry out the provisions of the Safe Drinking Water Act. As co-regulators of Federal and state environmental laws, states must be considered as full partners with the Federal Government as regulations are designed and implemented to protect the public health.

Response to above three comments: See new language stated above which recognizes the multiple roles of states, tribes and local governments.

Environmental Council of the States, from the ECOS federalism resolution:

ECOS supports early, meaningful, and substantial State involvement in the development and implementation of environmental statutes, policies, rules, programs, reviews, joint priority setting, budget proposals, budget processes, and strategic planning, and calls upon the Congress and appropriate federal agencies to provide expanded opportunities for such involvement.

Response: Commitment to meaningful, timely and substantive consultative engagement in the development of regulations, policy and budget proposals is part of EPA's partnerships with states in the management of federal environmental programs. In this spirit of expanded engagement, EPA's Public involvement Policy and other policies promote going beyond the more narrow definitions of recent Executive Orders and statutes to encourage greater interactions between EPA and both state and local governments.

Association of State and Territorial Solid Waste Management Officials:

...we found the role of States and other government entities as co-regulators understated. We will not speak for other government entities, but in our experience States are not stakeholders in the general sense addressed here, because they are sovereign governments whose views must be addressed and incorporated into decision making. In many cases, State waste programs have parallel regulatory authorities which will be used to carry out their professional environmental decisions. Those State decisions will be developed with full consideration of public participation, but will not necessarily incorporate all those public recommendations. In many cases, States and other governments must put in place implementing steps which will make federal decisions possible (e.g., institutional controls). In short, there is a discrete requirement for early, continuous federal consultation with State governments in order to develop the parameters of environmental decisions. We are not suggesting that the Agency attempt to define the State-EPA relationship in this policy document, but to acknowledge that it exists and is different from the public policy described herein. We do not agree with the characterization at the top of page 82337 that State regulatory agencies can be "stakeholders who provide input into EPA's decisions", because it oversimplifies and confuses this very complex relationship.

Response: See above two responses.

Iowa Department of Natural Resources, Water Supply Section:

Page 82337: Goal: To ensure that the Agency communicates to the public how its input affected the Agency's decision. If there are significant changes made to a proposed rule as a result of the public comments, add an additional step for review of those changes by the States and other stakeholders. An example of where this didn't happen was with the Consumer Confidence Report Rule. In the six months between the proposed and final rule (February to August 1999), there were significant changes made to the rule. Those changes were never subjected to public review.

Response: EPA's internal deliberative processes should take all public comments into consideration. After the Agency determines how to use those comments to modify a draft rule, and makes the changes to reflect those decisions, the Agency issues the rule. Unless the process EPA designs is an iterative process, and is so stated for all interested parties, EPA determines the changes from draft to final based on all the information it gathers. Legally, if EPA makes substantive changes to a rule between the proposal and final, EPA must re-propose the rule (and thereby subject to a new comment period) only if the changes were not a logical outgrowth of the proposal.

States as Partners in Public Involvement Activities

New York State Department of Environmental Conservation, Office of Administration:

We also commend the inclusion (p. 82337) of the objective of “striving to identify, communicate with and listen to all affected sectors of the public”. This should include the recognition that state environmental agencies share with EPA the role in planning and conducting public involvement activities that provide equal opportunity for all individuals and groups to be heard. For instance, there may be situations where DEC will have greater insights for recommending extra encouragement and assistance to some sectors, such as minorities and low-income populations, or small businesses, which may have fewer opportunities or resources to participate in EPA actions.

Response: See expanded language on methods in the “What are the Roles of States, Tribes and Local Governments?” states: ***“(states) In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.”*** Also, ***“Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA’s decisions. EPA will seek to include such partnering efforts in public involvement training for EPA staff.”***

New York State Department of Health, Center for Environmental Health:

When EPA staff are conducting any public involvement activity (e.g. meeting, fact sheet distribution, etc.), they need to notify the appropriate State and local agencies prior to the activity occurring and allow time for the State and local government to be involved.

Response: In the interest of maintaining good partnerships, EPA agrees that Agency staff should notify state and local agencies prior to public involvement activities as suggested in the comment. EPA intends to include such partnering efforts in public involvement training for EPA staff.

States Should Not be Required to Implement EPA’s PolicyMinnesota Pollution Control Agency:

EPA wants state, local and tribal governments to adopt policies similar to EPA’s. This may not always be practical, desirable, or necessary. For example, if a state wants to adopt an EPA rule, EPA should have already applied its Policy while promulgating that rule. Repeating the Policy in the state would be duplicative and would result in delays rather than improved decisions. Second applications of this Policy would either derive the same conclusion following a delay, or raise a conflicting result, neither of which is beneficial.

The Policy has the effect of an unfunded mandate for the agency. It sets goals where the Policy admits no implementation criteria yet exist.

Nebraska Department of Health and Human Services, Drinking Water Program:

We support public involvement and education but have some concerns about this draft policy eventually being applied to the States.

The Draft Public Involvement Policy was written for use by the U.S. Environmental Protection Agency (USEPA). However, throughout the draft document reference is made to the States adopting similar public involvement policies. The draft policy also says that the USEPA will review and comment on State efforts to increase public involvement during annual meetings, audits, and other meetings regardless of whether the States actually have adopted these policies. Nebraska statutes do not allow our Drinking Water Program to enforce USEPA policies. Rather the Program can only enforce regulations.

Alabama Department of Environmental Management:

The applicable language may be interpreted to mean that every work plan that the Department receives would require the project manager to notify the public (see also #2 and #3). Furthermore, this condition is lumped into a category with actions that currently require public notice (permit issuance and significant modifications), so will this policy require a public notice, comment period, and feedback for all work plans received by the Department?

Missouri Public Drinking Water Program:

I appreciate the acknowledgment that this policy is not binding upon states, tribes and local governments that implement federally delegated, authorized or approved programs. However, I am concerned that the implementation of the policy will differ from this position. Our experience has been that EPA policies and guidance documents all too often turn into binding requirements.

Association of State and Territorial Solid Waste Management Officials:

While we think the policy may well meet the needs of the Agency to direct its own actions, we are most concerned with the message that this policy will be made a condition of future State program requirements. This message is more alarming because it is incorporated along with a disingenuous disclaimer that the policy is not binding on any party other than EPA itself. We refer to two statements that are apparently intended to point to the way the Agency will review State environmental programs (emphasis added). The first states that:

“ The Draft Policy is not a rule, is not legally enforceable, and does not confer legal rights or impose legal obligations upon any member of the public, EPA, or any other Agency. It is, however, EPA's statement of its strong commitment to full and meaningful involvement in Agency activities. As a policy, the Draft Policy is not binding on states, tribes and local governments that implement federally delegated, authorized or approved programs. However, EPA encourages those entities to adopt similar policies and will discuss public involvement among other issues in its periodic joint planning efforts with states, tribes and local governments that implement these programs.” (page 82338)

and the second states that: “Although this Draft Policy is not binding on states, tribes and local governments, EPA encourages these entities to adopt similar policies where they administer federal programs authorized, approved or delegated by EPA. EPA intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local program(s), any program audit or review.” (page 82343)

We think the final sentence of each of these statements carries a clear message that EPA headquarters and regions intend to impose this policy, though putatively not binding on states,

as a condition of approval, authorization or delegation, or for provision of federal grants, work plans, or other similar State-EPA agreements relevant to the implementation of those federal statutory programs delegated, authorized or approved by the Agency. If this is EPA's intent, it is inappropriate and arguably illegal and should be immediately changed before it is challenged by litigation. If it is not EPA's intent, the Agency must make that abundantly clear so that its many employees cannot possibly misunderstand the intent of these paragraphs, and all other readers will understand that the non-binding policy is genuinely so. The binding public participation requirements of each environmental program are established by law and regulation, and by the delegation agreements developed by individual States with their Region on the basis of those statutory and regulatory requirements. Other conditions, particularly drawn from a non-binding policy, are not legitimate.

Our recommendation is that EPA delete the final sentences of each of the paragraphs cited above, and instead include language along the following lines:

" EPA encourages these entities to adopt similar policies and will offer technical assistance to that end during its periodic reviews of state, tribal and local government programs. In no case will the authorization, approval or delegation of environmental programs or the provision or continuation of any federal funding in the form of grants, cooperative agreements, or other financial assistance agreements be predicated or made conditional on that entity's adoption of all or any part of this federal Draft Policy."

We think this change is an essential affirmation of the Administration's commitment to federalism and a stated intent to remake the relationship between the federal government and States and other governments. If this policy language is left unchanged, EPA would convey the clear signal that it was prepared to engage in surreptitious rulemaking, despite the absence of statutory or rulemaking authority in this instance. This is the wrong message, and we trust the Administrator will quickly amend the ill-advised language noted above.

National Governors Association:

We are primarily concerned that, despite the disclaimer that the Draft Policy is not binding on states, it appears that EPA would be able to impose the policy as a condition of federal approval of delegated programs, or for federal funding of those programs. In at least two places, the Draft Policy notes that EPA will "discuss public involvement among other issues in its periodic joint planning efforts with states, tribes and local governments that implement these programs."(page 82338); and "EPA intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local programs(s), any program audit or review." (page 82343).

We are of the opinion that these statements could indicate an intention by EPA to impose this policy as condition of approval, authorization or delegation, or for provision of federal grants, work plans, or other similar State-EPA agreements relevant to the implementation of such measures. The Draft Policy, if left unchanged, has the potential to conflict with existing state delegation agreements and individual environmental programs implemented by the states, all of which include statutory and regulatory requirements for public participation.

We urge the Draft Policy to be amended to make it absolutely clear that the Policy will not be binding on states. The Administrator has committed to Governors that she will seek a more positive partnership between EPA and states; the language cited in the Draft Policy of the previous Administration unfortunately sends the opposite message.

Association of State Drinking Water Administrators:

While the proposed policy states that it is not a rule and is not binding on the states, the draft specifically refers to the policy's application in situations "...leading to a determination of approval of state, tribal or local government administration of a program..." as well as during annual reviews and program audits. The proposed policy also states that where public participation requirements already exist within a regulatory program, such requirements should be considered the "minimum level" of public involvement.

ASDWA is concerned that this broadly written language leaves too much to individual interpretation as Agency personnel make determinations regarding state drinking water program primacy applications, Drinking Water State Revolving Loan Fund awards and withholdings, and programmatic approvals for state drinking water strategies, plans, and approaches such as those for capacity development and operator certification. ASDWA is concerned that such statements could lead to imposition of the proposed policy as a condition of approval, authorization or delegation, or for provision of grants, work plans, or other similar state-EPA agreements. As proposed, the latitude offered by the draft policy has the potential to become yet another de facto regulation imposed on the states.

ASDWA recommends that this language be either deleted or modified to acknowledge existing state delegation agreements and individual state environmental program implementation efforts. States must not be made accountable for nonbinding Federal policies.

South Dakota Department of Environment and Natural Resources:

As guidance, there is some good information contained in this document regarding public participation....Therefore, I would recommend that EPA limit the scope of this document strictly to EPA's operations.

Response to above eight comments: See new language shown at the beginning of this section that clarifies that states are not required to implement this Policy.

Association of State Drinking Water Administrators:

By its nature, the mechanism for drinking water rule promulgation in delegated state programs generally does not encourage wide public participation. The practical reality is that once a new Federal regulation has been adopted, states must adopt a regulation at least as stringent to qualify for primacy. Adoption of Federal regulations by reference at the state level is strongly encouraged by EPA. This approach allows little opportunity for the public to provide meaningful input regardless of state public participation efforts. The more effective opportunity is to enhance public involvement at the time of Federal rather than state rule development. Unless there is a significant fee issue or contamination problem that affects the public at large, there is typically little public participation even when actively solicited by states.

Response: EPA's implementation of the Policy should enhance public involvement at the federal level.

Alabama Department of Environmental Management:

The first bullet on page 65FR 82338 indicates that this policy (including the draft) applies to: "EPA activities in support of programs that are authorized, approved, or delegated by EPA that are funded by EPA financial assistance (grants and cooperative agreements) to States, tribes,

interstate agencies, intertribal consortia, and local governments.” The first full paragraph in the middle column on page 65FR 82343 states: “Although this Draft Policy is not binding on states, tribes and local governments, EPA encourages these entities to adopt similar policies where they administer federal programs authorized, approved, or delegated by EPA. The Agency intends to include public involvement among the issues discussed during the annual reviews of state, tribal, or local program(s), and during any other program audit or review.” ADEM would vigorously oppose any attempt by EPA to require this Policy to be implemented as a condition of any grant, Memorandum of Agreement, or any other similar agreement between ADEM and EPA. Further, we would oppose EPA using this Policy as a means of forcing entry for non-statutory or regulatory considerations, such as environmental justice, into grant conditions. This draft policy would impose significant unfunded mandates and detract from basic program implementation. EPA must recognize that States have been tasked with implementing a variety of new programs as a result of unfunded federal mandates and limited resources cannot be further stretched.

Response: EPA’s 1981 Public Participation Policy required states to conduct effective public involvement as a condition of receiving EPA grants. This Public Involvement Policy does not. Should a state wish to use EPA funds to support public involvement, the National Environmental Performance Partnership System and Performance Partnership Agreements can support public involvement.

Florida Department of Environmental Protection, Division of Water Resource Management: Clarification is needed as to when the states are required to institute the details of this policy. The policy states on page 82338: “As a policy, the Draft Policy is not binding upon states, tribes, and local governments that implement federally delegated, authorized or approved programs”. However, on page D-4 of Appendix D (Part 25), it is stated that “the policy applies to all EPA activities as well as to State and local activities funded or delegated by EPA.” We are particularly concerned whether a state agency that is working under a federal grant that involves public participation is required to follow all the procedures required of federal agencies that are laid out in your policy. In other words, does the fact that a state is receiving federal money for a project obligate the state agency to be bound by the public participation procedures of the policy?

Response: The second citation above is contained on page D-4 of Appendix D of the report “Engaging the American People,” which quotes EPA’s 1981 Public Participation Policy. That language is not in the draft 2000 or the final Public Involvement Policy, nor in 40 CFR Part 25. See clarified language at the beginning of this section about the applicability of this Policy to states.

Western States Water Council:

...the policy should clearly recognize that states already have equivalent or equally effective policies in place, and the draft policy should not be used as a checklist to evaluate state programs and impose new public participation requirements on states beyond that required by existing law or regulation.

Response: Some states have similar public involvement policies. States are not required to implement this Policy; see clarified language at the beginning of this section.

Missouri Public Drinking Water Program:

I encourage you to consider deleting from the policy the statements that could be misinterpreted as linking a successful annual program review to whether or not a state is implementing EPA's policy. These are:

--- Delete from page 82338 the sentence: A. However, EPA encourages those entities to adopt similar policies and will discuss public involvement among other issues in its periodic joint planning efforts with states, tribes and local governments that implement these programs; and

--- Delete from page 82343 the statement: EPA encourages those entities to adopt similar policies where they administer federal programs authorized, approved or delegated by EPA. The Agency intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local program(s), and during any other program audit or review.

Response: EPA has changed or deleted this language in the final Policy. EPA will not use state adoption of EPA's Public Involvement Policy as a criterion during EPA reviews of state programs.

Public Involvement Requirements of States

Wisconsin Department of Natural Resources:

Under the list of actions when this draft policy applies (p. 82337-82338), the policy does indicate it applies to EPA activities in support of EPA-funded programs, yet it does not seem to apply to those activities which are funded by EPA and carried out by others. Public involvement activities, consistent with the EPA policy, can become part of funding agreements and a requirement for those funds. We are not proposing and Wisconsin would not endorse prescriptive public involvement approaches or techniques in funding agreements. One size does not fit all and Wisconsin has had difficulty when requirements were overly rigid in the past. However, adding language regarding basic standards, goals, and expectations for public involvement to funding agreements does seem appropriate.

City of Phoenix, Arizona, Office of Environmental Programs:

Methods to ensure that the public involvement Policy will be implemented by delegated agencies need to be defined and strengthened. While the Policy states that it applies to delegated programs (P 82338), the Policy then states that it is not binding and that EPA will "encourage" these entities to apply. This is very weak and allows for too much discretion on the part of the delegated agencies (such as states with delegated permitting programs). Instead, EPA should provide specific funding for public involvement in grants and hold delegated entities to the same standards that EPA is supposed to achieve. Otherwise, the Policy will not be implemented, as public involvement can be costly, controversial, and create project delays. If there are no clear incentives or requirements, public involvement activities can easily be overlooked or inadequately conducted by a delegated agency, especially at the Project Manager level.

Response to above two comments: The EPA's 1981 Public Participation Policy, which this Policy replaces, linked the adequacy of state public participation activities with provision of EPA funding. This Policy does not contain such state requirements. However, states working with

EPA can include public involvement provisions and funding in their National Environmental Performance Partnership Agreements and grants.

Center for Public Environmental Oversight:

At a time when states are pressing for more regulatory authority, EPA should go beyond encouraging states, tribes, and local governments to adopt public involvement policies. It should make both delegation of authority and the provision of federal assistance contingent on the existence and implementation of public involvement policies, to the extent that statute allows.

That is, in general EPA is authorized to delegate authority to state, tribal and local programs when those agencies demonstrate both the will and capacity to implement those programs effectively. Often that qualification is recognized through a formal agreement with EPA. Public involvement, including particular emphasis on involving environmental justice communities, should be a requirement in such agreements.

Finally, if any state, tribal, or local environmental or public health agency adopts and implements an agency-wide public involvement and environmental justice policy, then that should be seen as a major step toward satisfying the requirements for delegation or assistance for specific programs managed by that agency.

Response: The Policy does apply to the process for delegation of authority, but not as a condition for federal assistance. See the Policy's "Does This Policy Affect Authorized, Approved or Delegated Programs?" This sections states ***"EPA developed this Policy for EPA staff use, but it also may be useful to states, tribes and local governments that implement federally delegated, authorized or approved programs. EPA encourages these entities to adopt similar public involvement policies if they have not already done so. EPA intends to discuss the effectiveness of their public involvement activities during periodic meetings with states, tribes and local governments, and will obtain their input about ways to improve EPA's activities."***

Golden Gate University, Environmental Law and Justice Clinic:

As it stands now the Draft Policy is not legally enforceable, but is instead, "the EPA's statement of its strong commitment to full and meaningful public involvement in Agency activities." However, because the policy does not, "confer any legal rights or impose legal obligations on any member of the public, EPA or any other agency," the EPA is not actually being held accountable to the public. Unfortunately, in our experience, a strong commitment to the public is not always enough. Conversely, citizen suit provisions in environmental laws are an invaluable tool in empowering the public to be actively involved in environmental protection. Building such a provision into the final Policy, making it into a Regulation, or requiring states to incorporate the Policy into State Air and Water Quality Plans submitted to the federal government, would make it clear that the Agency is prepared to stand by, and be held to its words, and truly rely on input from the public.

Response: The Policy provides guidance only for EPA's activities and will not become a regulation or requirement for EPA or states. Title 40, Part 25 of the Code of Federal Regulations specifies public involvement requirements under RCRA, SDWA and CWA; the

Clean Air Act and other statutes contain specific requirements for public participation. Also see above response.

Sierra Club, Committee on Environmental Justice:

Many programs, especially delegated state programs, have serious deficiencies in public participation, and deserve concentrated attention. Yet, the Policy offers no mechanism by which the Policy can be deployed other than having public involvement be “among the issues discussed” during the annual program reviews.

Response: States are not required to implement this Policy. See revised language at the beginning of this section.

Do Not Include Public Involvement as an Issue in EPA/State Reviews

South Dakota Department of Environment and Natural Resources:

...the policy includes a statement that says the policy is not binding on the states, it also says EPA is to use the policy in its annual reviews of state programs. We would hope this does not mean that we have to submit an annual review of our public participation procedures so EPA can determine whether we meet the goals of this policy.

Environmental Council of the States:

As published, Policy contains language clarifying that it is not binding on states, tribes and local governments. In the very next sentence, the document states that US EPA intends to include public involvement among issues discussed during its periodic reviews of federally delegated programs. Thus, the avenue for abuse is apparent. While it may be appropriate to discuss how public outreach is being conducted in general at these meetings, to the degree that US EPA intends to apply some sort of “checklist” to states in the same manner that it would review its own employees’ performance, ECOS objects. This is directly contrary to the notion that the states are partners in environmental programs, not just another category of stakeholder. It also does not ensure that flexibility in how public participation efforts are conducted will be recognized and valued. We recommend that the Policy distinguish between US EPA’s review of its own programs and its much more limited oversight of programs delegated to the states.

Wyoming Department of Environmental Quality, Water Quality Division:

As guidance, there is some good information contained in this document. However, most states already have in place their public participation policy. I notice that the document suggests that this document would not be binding on a state, yet it turns around and directs EPA officials to include public involvement among the issues discussed during the annual review. I suggest that the application of this document be limited in scope to EPA's operation. If there currently exist problems with public participation in a state, then those problems can and should be handled during the annual review. However, the birth of this document should not mean that every state program should now go through a review of its public involvement methods.

Missouri Public Drinking Water Program:

The policy states that EPA encourages states, tribes and local governments to adopt similar policies where they administer federal programs authorized, approved or delegated by EPA: The Agency intends to include public involvement among the issues discussed during the annual reviews of state, tribal or local program(s), and during any other program audit or review. (See pages 82338 and 82343.) Such wording tends to discredit the statement that the policy will not be binding on states.

EPA's oversight of state public involvement activities should be limited strictly to the requirements in the law and regulations. Any public involvement activities that are beyond the requirements in regulation and law are entirely the purview of the state. Additional oversight through policy or guidance is both unnecessary and inappropriate. It is unnecessary because states, like EPA, recognize the value in providing for public involvement opportunities that are more extensive than the minimum required by law. It is inappropriate because EPA oversight should be focused on the requirements, not state implementation of federal policies.

Response to above four comments: See new language at the beginning of this section that clarifies that EPA does not use state adoption of EPA's Public Involvement Policy as a criterion during EPA reviews of state programs.

EPA Should Ensure that State, Tribal and Local Public Involvement Commitments are Carried Out

Center for Public Environmental Oversight:

...the existence of a formal policy does not ensure public involvement in practice. When EPA first awarded Brownfields Assessment Pilots, for example, many recipients promised public involvement, actually naming community group partners in proposals, but they failed to follow through. EPA began to check such promises, even contacting listed community partners. This should be a general practice. EPA, to the extent that resources allow, should ensure that state, tribal, and local public involvement policies are carried out as advertised.

Response: EPA agrees that when public involvement activities are included in or funded under an EPA grant, contract or cooperative agreement, EPA should ensure they are carried out.

State Comments Supporting Discretion in Public Involvement Activities

Association of State and Territorial Solid Waste Management Officials:

As we understand the policy, the key is that the Agency intends to apply the six basic functions listed on page 82338, and to use as many of the techniques listed thereafter in carrying out those functions. While we agree that functions substantially along these lines assist a successful environmental public participation program, we have to note that each carries considerably different resource implications. While the suggested techniques and vehicles all have merit, their use will also be affected by state judgments about the priority and availability of

resources. We are concerned that with this policy the Agency may mistakenly raise public expectations that all levels of government can and will provide the full range of described participatory vehicles and techniques. For example, the description of function number 3, "Consider Providing Technical or Financial Assistance to the Public to Facilitate Involvement" at page 82339 includes items sometimes specifically excluded by State statutes such as compensated advisory committees. The Agency should revise this language to be clear that this listing is exclusively one of federal program support, and that State and other governments should be expected to address these resources intensive vehicles on the basis of State priorities and laws.

South Dakota Department of Environment and Natural Resources:

Second, state agencies are in the best position to determine the appropriate public notification procedures for the programs we implement. Every state has established procedures that work best for that state in its laws, regulations, and policies. Those state procedures must meet the minimum federal requirements established in federal law. We are committed to meeting those minimum legal standards for providing notice to the public on our delegated programs. But, anything beyond those minimum federal standards must be left to the state to decide.

Environmental Council of the States:

Effective US EPA public outreach may vary program-to-program as well as region-to-region, hence the need for flexibility. It is understandable that the Policy may spell out more detailed criteria for US EPA's own public participation activities. The Policy needs to recognize the need for flexibility in gauging whether delegated State programs have met the goal of the Policy. In short, while US EPA may wish to adopt specific Policy recommendations for its own staff to utilize in conducting public participation efforts in its various programs, it should not use the Policy as leverage against the states to dictate specifically what procedures constitute adequate public outreach. The Policy should specifically note that states may choose to achieve these goals in very different ways and that it is not the role of the US EPA to decide how they are achieved. The laudable goal of effective public participation should not serve as an excuse or mechanism by which the federal government micro-manages state programs.

Michigan Department of Environmental Quality, Surface Water Quality Division

We support the concept of allowing states discretion in establishing the appropriate public involvement opportunities depending on the situation. The Draft Policy can be used to determine the appropriate nature and extent of public involvement above the minimum requirements.

The National Pollutant Discharge Elimination System (NPDES) permit program is a good example. The NPDES permit program has its own public participation process established by federal and state regulations. Michigan has a well-established public participation process that includes elements above the basic requirements. While we support the concept of improved public participation, it is equally important to maintain the timely issuance of permits. Michigan recently completed a successful effort to eliminate the backlog of expired NPDES permits.

Allowing flexibility in determining the nature and extent of public participation beyond minimum requirements will help address permit backlog issues.

Nebraska Department of Health and Human Services, Drinking Water Program:

In the draft policy, the USEPA says several times that the USEPA wants States to adopt formal guidelines for public involvement above that involvement required by regulations. We believe that formal guidelines are too inflexible. We would like to maintain this flexibility to respond as needed. This enables us to prioritize staff time and funds and to tailor our response to individual situations and issues.

If States have to comply with the USEPA's public involvement policy after it becomes final, the record-keeping burden will increase. The number of documents that will need to be written will increase substantially. Additional demands besides these two listed examples will be placed on staff time and program funding at a time when several new rules are moving through the implementation process at the State level. We need to maintain flexibility in assigning staff and funds when and where they will do the most public good in the State of Nebraska.

Response to above five comments: States are not required to implement EPA's Policy. See clarified language at the beginning of this section.

Environmental Council of the States:

ECOS reminds US EPA that the two parties signed an Agreement to further outcome-based environmental decision making and joint planning by establishing the National Environmental Performance Partnership System in May 1995. The capability and individuality of state programs is a fundamental precept of the NEPPS ideal. Earlier this month, Administrator Whitman reaffirmed her support for NEPPS in an interview with ECOS staff. Neither the language nor the interpretation of the Policy should contradict the philosophy undermining NEPPS. What makes sense in some circumstances will not make sense in all; therefore US EPA headquarters and regional office staff as well as the thousands of ECOS member employees need to remain focused on the goals and not become obsessed with the process.

Response: EPA strongly supports NEPPS, and this Policy does not contradict the philosophy behind it. States may use NEPPS agreements and grants to support state public involvement activities.

EPA Should Delegate Programs to Lowest Level of Government

New York State Department of Health, Center for Environmental Health:

When possible, delegate the program to the level of government closest to the people, or work with a higher level entity (e.g. a state) to design a way that a lower level of government can be involved or take on some of the program responsibilities. This will enable people to become more involved in a program/project.

Response: This comment is outside the scope of the Policy. It was shared with the EPA Office of Congressional and Intergovernmental Relations.

EPA Should Provide Public Involvement Funding to Delegated Programs

Environmental Council of the States:

ECOS members appreciate the recognition in the Policy that training is important to accomplish these goals and that federal grant funds should be made available to states to cover some of the additional costs of public involvement.

Response: EPA intends to share its information on best practices in public involvement and available training with states, and to invite states to participate in public involvement training. The National Environmental Performance Partnership System agreements and grants may be used to support state public involvement activities. In addition, the Policy's "Plan and budget" section states (new language in bold italics): "*When identified in an approved grant work plan, grant funds may be used, subject to any statutory or regulatory limitations, to support reasonable costs of public involvement incurred by assisted agencies **or organizations**, including advisory group expenses.*"

Alabama Department of Environmental Management:

The Department's position here is that currently State funding is earmarked for specific grant commitments and unless EPA substantially increases funding to the Department specifically for public outreach, then the Department could not provide financial assistance to the public as part of this program.

New York State Department of Health, Center for Environmental Health:

As we stated in our "General Comments Attachment", we concur with the draft Policy that programs need to properly plan and budget for public involvement activities. This logic needs to carry through when EPA is providing funding for projects that are delegated. If more public involvement is needed/mandated then additional resources should be allocated.

Alabama Department of Environmental Management:

Lastly, this proposal seeks to provide all of this information through mail outs and/or information repositories free of charge. State environmental agencies do not have the fiscal resources to provide such information at no cost. Substantial additional federal funding would be required to implement this provision.

Florida Department of Environmental Protection, Division of Water Resource Management:

Suggestion to encourage involvement opportunities in programs delegated or authorized to states, tribes and local governments: Everyone is short on funds. Provide these organizations with funding directed toward involvement activities with specific requirements for outreach, such as reaching all of the communities affected within the specific areas covered by the policy. Funding often is needed for equipment for producing communication materials, vehicles, and for positions to carry out this effort.

Response to above four comments: States are not required to implement EPA's Policy. States may use the National Environmental Performance Partnership System agreements and grants to support state public involvement activities. In addition, the Policy's "Plan and budget" section states (new language in bold italics): "*When identified in an approved grant work plan, grant funds may be used, subject to any statutory or regulatory limitations, to support*

reasonable costs of public involvement incurred by assisted agencies or organizations, including advisory group expenses.”

EPA Should Provide Public Involvement Training for Delegated Program Staff

New York State Department of Health, Center for Environmental Health:

The draft Policy calls for “guidance, resource and training” for technical staff. We would like to suggest that when a program is delegated that staff working for the delegated entity receive training on:

- poverty (how people living in poverty select priorities, their thought process, barriers to their involvement, etc.)
- effective public involvement (what is it, why is it important, benefits, potential consequences of not doing it, etc.)

Response: EPA’s Framework for Implementing EPA’s Public Involvement Policy for this Policy focuses on public involvement training for EPA staff. EPA plans to make this training available to delegated program staff as well. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document. EPA intends to include the topics suggested above in EPA’s training materials.

McNulty Group:

.... skip requirements for detailed written public involvement plans, etc. Instead, institute a traveling training program (which you can make mandatory) that is designed to convey the concept of public involvement supporting decision making rather than being decision making. (Making decisions in public, not the public making decisions.) Require the decision makers to participate in the training, and insist all others involved in the delegated project (deputies, managers, regulation writers, etc.) participate as well. You cannot demand they change the way they think or make decisions, but you can convince them to change. Here your goal is changing attitudes; probably won’t happen in a single session.

Response: EPA intends to include a discussion of how public involvement supports EPA decision making in its training materials, and EPA plans to make this training available to delegated program staff. EPA agrees that many EPA employees should be participants in public involvement training tailored to their particular responsibilities and functions.

International Association for Public Participation:

In terms of specific techniques for identifying interested people and groups, providing technical assistance, providing information, and conducting public participation activities there are hundreds of pages and decades of experience available to the EPA and your colleagues. While the ideas delineated in your Draft Policy are admirable, we recommend that EPA conduct a comprehensive training program where particular techniques can be presented and discussed in context with your staff at headquarters, at the regions, and at the Tribes and states. In addition to the community relations staff who currently have responsibility for most public participation, we also recommend training for project and program staff, technical staff, senior decision makers, contracting officers and attorneys, restoration advisory boards and other regular participants. IAP2 offers a full complement of public participation training developed by

the top practitioners in the field. This training includes the principles of public participation, public participation planning, communications for public participation, large group techniques and small group techniques.

Response: EPA is aware of IAP2 training and recommends it among other offerings. EPA agrees that it would be helpful if many EPA employees participated in public involvement training tailored to their particular responsibilities and functions. EPA's Framework for Implementing EPA's Public Involvement Policy for this Policy focuses on providing public involvement training for EPA staff. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

Environmental Council of the States:

ECOS members appreciate the recognition in the Policy that training is important to accomplish these goals and that federal grant funds should be made available to states to cover some of the additional costs of public involvement.

Response: EPA's Framework for Implementing EPA's Public Involvement Policy for this Policy focuses on training, and EPA plans to make this training available to delegated program staff as well. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document. Several states have expressed interest in participating in the training, using EPA public involvement materials and resources, and providing information to share with EPA and other partners.

Florida Department of Environmental Protection, Division of Water Resource Management:

In some areas, if not all that funding may involve new positions and training: Training is undervalued, especially for those designated as "trainers and communicators." Our staff have been searching for economic "train the trainers" programs to improve their ability to listen to and teach others. These types of programs are generally quite expensive.

Response: EPA's Framework for Implementing EPA's Public Involvement Policy for this Policy contains a strong training component, and EPA plans to make its training information available to delegated program staff. Please see <http://www.epa.gov/publicinvolvement/framework.pdf> for this document.

New York State Department of Health, Center for Environmental Health:

Some states, tribes and local governments will need more help than others conducting public involvement. Written guidance/self-teaching manuals about common problems or how to handle controversial issues would be useful. For example, the guides could discuss what things tend to exacerbate the issue and techniques that would help defuse the situation. Two programs that delegated entities often look for help with are Brownfields and the environment vs. jobs debate.

Response: EPA hopes to gather and share case studies and to create other helpful materials. Several manuals are already available on the EPA web site at <http://www.epa.gov/publicinvolvement/involvework.htm#manuals>

Can EPA Create Public Involvement Programs for States?

ACES, Inc.:

In our case MADEP was involved with EPA from the beginning. When a State agency is involved, it should facilitate public involvement since we are more closely allied to State representatives. As an example, in MADEP has a PIP (Public Involvement Program) whereby 10 or more citizens can request a PIP; it requires periodic public meetings at which the PRP is required to explain the status of their project. The potential public comments and questions insure improved documentation since the PRP knows we are "looking over their shoulder". Could EPA create a similar PIP for States not providing this tool?

Response: This Policy applies only to EPA, and EPA does not intend to create similar ones for states. However, the example cited above is a "best practice" that EPA intends to share with states. This comment was shared with EPA's Superfund office.

What EPA can do to encourage, promote and ensure effective public involvement in programs that have been delegated to states, tribes and local governments?

The draft Policy requested commenters to provide suggestions on the above question. The comments are shown below. EPA appreciates these suggestions and will seek to incorporate many of them as EPA implements the Policy, collects and shares best practices, and develops training materials.

Wisconsin Department of Natural Resources:

However, some of the need relates to education and training in the field, philosophy, and practice of public involvement. EPA should support and foster the field, training, and awareness. Become a visible advocate for the value and values of public involvement. The International Association for Public Participation could be a key partner in such an effort.

Iowa Department of Natural Resources, Water Supply Section:

EPA needs to become more results-oriented in its implementation policies, rather than being so prescriptive at times. If the objectives of the rules are met, even though it is by a method that wasn't outlined in the implementation guidance, then EPA should allow and accept the process and method that meets those objectives. (E.g.: Iowa has used public participation in its rules and policy development for the drinking water program for several years. As an example, the capacity development program held several meetings as a part of a year-long process with the stakeholder group to develop the ideas that were used in the existing system strategy. The stakeholders group included those with a traditional interest in drinking water (water treatment operators, design engineers, municipal governments, rural water systems, etc.) and those who were more peripherally interested in drinking water and water quality issues (banking industry for infrastructure improvement, medical community for immunocompromised and susceptible people, conservation and wildlife groups for water quantity and quality issues, agriculture interests, health insurance industry, etc.). There were instances where this group suggested a new approach to a given issue, but it was perceived that EPA would not allow it. Since EPA had the power to withhold the funds tied to the program via approval or denial of the State's capacity development program, and there were tight deadlines involved with the entire process, those novel approaches were not used.

McNulty Group:

How to ensure effective Public Involvement in delegated programs. First, you can't. No way you can get an absolute here. Effective public involvement is a state of mind, not a procedure. Decision makers, their assistants, regulation writers, and program administrators have to *want* to have information from those they affect before they make decisions. If they don't want to listen and understand, you can't make them. You can make them go through the motions, but you can't make them think the way you want them to.

New York State Department of Health, Center for Environmental Health:

EPA should consider how much involvement it has with a program it delegates to a state or local government. EPA should not walk away from a delegated program; however, it should not be expected to be doing a significant portion of the program for the local entity to which it was delegated.

- Open lines of communication should be established and maintained between EPA and the delegated entity. The communication should include regular, 2-way conversations and timely sharing and discussion of information.

- The emphasis on public involvement needs to continue through the program development stage to the program implementation stage until the program is completed.

Rutgers University, Cook College, Center for Environmental Communication:

EPA should use means that have worked to promote other innovations in delegated programs. Some of the "promotional approaches" that might work for PI include incorporating PI in written documents (such as MOUs) delegating programs; funding PI; building capacity of delegated agencies (e.g. providing conferences --which EPA is already beginning to do successfully, research on effective PI; evaluation tools, etc.), providing successful models of PI.

The draft policy does not address clearly a concept critical to promoting PI in delegated programs. EPA's role in PI is not merely as a sponsor (or delegation) of PI. In some cases, such as watershed management efforts or other community-based efforts, EPA needs to play a role as a participant, not a leader. Perhaps the policy could more explicitly acknowledge that sometimes PI is not merely between EPA (or delegated agencies) and stakeholders but also among all parties. While often EPA will serve as lead agency, sometimes EPA should serve merely as a catalyst or be one participant among equals. A number of studies have suggested agencies' difficulty with empowering others to act has been the cause of PI failures.

Citizen #8:

With regard to providing information & opportunities to various concerned parties in a situation where EPA is delegating power &/or oversight to another entity (State, tribe, etc), the 'partnering' with that entity, in which EPA does the outreach WITH the 'delegatee', is most likely to work to the benefit of all concerned. The Hanford cleanup (Tri-Party Agreement) is an example of this. Even though there will be some overlap of information to some of the participants at first, this is helpful, because: participants may get a sense of the 'leanings' of the various agencies involved; participants will be able to compare

quality of information (as well as timeliness, opportunities for input, thoroughness of advertisement, etc) between agencies; & there's a greater likelihood of including those who may not be included otherwise (because of lack of funds, bias against certain media, language barriers, cultural isolation, etc). When things are going smoothly, EPA may quietly go about some other business, becoming a 'silent partner' in the work / jurisdiction which they've delegated.

Florida Department of Environmental Protection, Division of Water Resource Management:

Suggestion to encourage involvement opportunities in programs delegated or authorized to states, tribes and local governments: Everyone is short on funds. Provide these organizations with funding directed toward involvement activities with specific requirements for outreach, such as reaching all of the communities affected within the specific areas covered by the policy. Funding often is needed for equipment for producing communication materials, vehicles, and for positions to carry out this effort.

Provide funding for public awareness with the delegated programs: Funding directly to outreach programs may be the key. Outreach implies getting information into the community and getting their concerns heard outside of the community. Funding of this sort often becomes waylaid.

When the public hears that something is going to effect their world, they often become interested enough to speak out in some form.

One recommendation is to provide funding for advertising to the public (in 6th to 10th grade language) and for education. For some agencies, outreach is still developing and materials for outreach information can be costly to develop. There are still bridges to cross between outreach coordinators and those with direct understanding of the environmental information.

Children's Environmental Health Network:

The Network supports the Agency's goal of encouraging similar involvement opportunities in programs delegated or authorized to states, tribes and local governments. In addition to providing support for such programs through trainings, grants, materials and similar activities, the Agency could establish awards or other means of recognition for governments that do an outstanding job in this area.

Washington State Department of Ecology, Toxics Cleanup Program:

How will these public participation policies be encouraged among states, tribes, and local governments? It was a "fluke" that we in Washington even found out about this draft. EPA Region X has done excellent training in the past and kept us informed on a personal basis. I have observed over the years that great ideas with good intentions come from EPA Headquarters. What is lacking is an adequate number of regional staff to actually carry out these great ideas. Will EPA be working through their Community Relations staff in each region to promote EPA's new policy?

Response: EPA will be working through all programs' staff to implement the Policy.

18. Public Comments Related to Local Governments

EPA modified the draft Public Involvement Policy to address comments regarding the roles of local governments. Training materials plan to stress the important role that local governments can play in identifying people and organizations, communicating with them on behalf of or in collaboration with EPA, and making consultation with communities more effective because of their knowledge of the history, the issues, social and economic conditions, and the best ways, times and places to engage people.

New language in the Policy's "What are the Roles of States, Tribes and Local Governments?" section is as follows:

"State agencies, tribes and some local governments have unique roles regarding EPA's programs and decisions:

1. State agencies, tribes and some local governments may be co-regulators with EPA. In some cases, they implement authorized, approved or delegated Federal programs. In other cases, they run independent, but closely related programs. In both cases they work closely with EPA as regulatory partners. In addition, they may have expertise that can be valuable to EPA in designing public involvement activities.

2. State agencies, tribes and local governments also may be regulated parties when they undertake activities that are subject to Federal laws and regulations. As regulated parties, they are also members of the community of regulated stakeholders.

3. Whether they are partners helping EPA implement a program or members of the regulated community affected by EPA regulations, state agencies, tribes and local governments often play an active role in making recommendations on policy, rules, plans and recommendations under development, and providing input on EPA's decisions."

Clarify Roles of Local Government

City of Phoenix, Arizona, Office of Environmental Programs:

The role of local governments as key stakeholders in the public involvement process is barely mentioned in the draft Policy. It is unfortunate that the local governments, which are directly impacted by many of EPA's decisions, have not been viewed as partners in the public involvement processes. For example, local governments can provide EPA with listings of neighborhood organizations, names of concerned citizens, locations of libraries/schools, etc., and a local perspective about impacts of proposed activities that EPA may be unaware of. The role of local governments should be clarified and strengthened in the Policy so that EPA staff will recognize the importance of coordinating with local governments.

City of Toledo, Ohio:

I find it distressing that local governmental entities are not mentioned as a partner in the draft policy. As you are aware, local governments have been involved in environmental issues well before the federal and state agencies ever existed. We are where the policies and regulations issued by the USEPA are monitored and enforced. It is important to have local representation be involved!

City and County of Denver, Colorado, Department of Environmental Health:

The Draft Policy makes no allowance for the different role played by public entities like DEH. Instead, public entities are treated like any other stakeholder, their acknowledged different role and expertise in public participation procedures ignored. EPA should change this in the new policy, and recognize local government as a partner on environmental and health issues, not just another member of the public. The new policy should recognize that local governments have in place excellent communication systems with neighborhoods and elected officials; understand community economic and social concerns; and have a regulatory and enforcement interest in environmental issues such as air, water, contaminated industrial sites, and public health.

City of Dallas, Texas, Department of Environmental and Health Services:

The following specific recommendations are provided to encourage EPA to make local governmental entities full partners in the public involvement process. This can be accomplished by:

- Keeping the local officials fully informed of the issues.
- Using local government to develop contacts in the impacted "public" sphere.
- Relying on local government to do their share in contacting and providing information to citizens.
- Make local officials, both elected and staff, participants in the education, discussion and decision making process.
- Where assistance is necessary to facilitate public involvement, utilize the resources of the local governmental entity. Provide assistance to the governing body if resources are lacking. The emphasis on EPA/local government partnerships is due the fact that local elected officials are closer than any other elected officials to the people they represent and are better able to facilitate their involvement. There may be, on occasion, a tendency by local officials to let the EPA handle matters on their own. However, EPA should not take the position of "we know best" and neither should EPA allow local government to avoid their responsibility.

City and County of Denver, Colorado, Department of Environmental Health:

We feel that the new policy needs to do three key things:
Recognize and strengthen the role of local governments...

Citizens' Advisory Panel of the Oak Ridge Reservation Local Oversight Committee, Inc.:

In the subject policy, local governments are treated as a part of "the public." EPA should keep in mind that local elected officials are empowered by their office to speak for a broad constituency and are primary stakeholders. Thus, input from elected officials should be

accorded more weight than that from an individual. Impacted communities would benefit greatly if EPA were to establish direct lines of communication with local governments.

City and County of Denver, Colorado, Department of Environmental Health:

DEH understands the importance of public involvement both to gather facts and to ensure credibility for agency decision making. We wish to be a partner with EPA to improve communication, streamline decision processes, and increase the public's access to information.

Citizen #58:

Check with the elected officials at all levels - Interview them and ask that they share their responses with their constituents.

Citizens for Responsible Water Management:

Well-informed local politicians can help the EPA select the most appropriate means for interacting with the public and reduce the likelihood of inappropriate regulatory actions.

Citizen #88:

One of the best means of communication to rural residents about pollution and environmental problems is through the local health departments. The environmentalists who work for the local health departments are generally well informed and good communicators and could get the information out to the public.

New York State Department of Health, Center for Environmental Health:

Identify the interested and affected public - underserved.

- Partner with local health departments. Often local health departments:
- know the people in the community;
- can provide information on how the community is likely to respond to an issue;
- can speak the language of most of the people in the community; and
- have a positive relationship with the community that could overflow to a "partner" agency.

Response to above eleven comments: EPA agrees that public involvement efforts can greatly benefit from partnerships with local governments who have knowledge of communities and their cultural norms, as well as established positive relationships. The Policy reflects this and recognizes the importance of such relationships with local governments. See new language at the beginning of this section. EPA intends to include such partnering efforts in public involvement training for EPA staff.

Reichold, Inc.:

Local leaders and officials can help expand public involvement outreach. In these cases, mailings may have to suffice since e-mail and the Internet may not reach everyone in these categories (except for local municipal governments). Notices could be printed and posted in the community by the local stakeholder. EPA Funds may be needed to cover the cost of mailings, printing notices and the labor to post such notices in local community centers.

Response: See above response. Regarding funding, if EPA has a site-specific or project-specific partnership agreement with a local government, such funding could potentially be provided.

New York State Department of Health, Center for Environmental Health:

When EPA staff are conducting any public involvement activity (e.g. meeting, fact sheet distribution, etc.), they need to notify the appropriate State and local agencies prior to the activity occurring and allow time for the State and local government to be involved.

Response: In the interest of maintaining good partnerships, EPA agrees that this is a best practice that EPA should use consistently. EPA intends to include this suggestion in public involvement training for EPA staff.

City of Madison, Wisconsin:

It has been my prior experience that municipalities as a whole have been under represented during the drafting of federal regulations. If we want to improve the participation of minorities, low-income and under served populations while strengthening EPA's commitment to early meaningful public involvement, I strongly recommend that the local units of government be given a stronger voice during the rulemaking process.

I am suggesting that, at a minimum, EPA should follow the lead of DOE and others who involve the National League of Cities, the National Association of Counties and the US Conference of Mayors in the rulemaking process. They in turn will gather data from cities like Madison, Wisconsin.

City of Cedar Rapids, Iowa, Solid Waste & Recycling Department:

As the Director of the Solid Waste and Recycling Department with the City of Cedar Rapids, we are always criticized by our customers that they feel they have no say in any decisions made at the City level regarding their solid waste collection programs. Many times the decisions made are made for the health and welfare of the community and need very little discussion other times there may even be a Citizen's Committee established to study the matter.

Many times we as City officials feel the same when issues come up at the State or Federal level. I am aware that the Department of Energy has a policy, which follows a course of action whereby their policy requires that the National League of Cities, the National Association of Counties, the U.S. Conference of Mayors, and the International City/County Management Association be invited to be involved in DOE actions. I strongly encourage that the EPA adopt the exact same policy. Many times there may be very little to discuss and at other times, those of us that are effected at the local level may have concerns requiring more thorough thought and dialogue before actions are taken.

York City, Pennsylvania, Wastewater Treatment Plant.:

A major concern and objection is that the policy fails to state a specific role for municipalities as part of the public.

Municipalities cannot, without considerable investment of time and money, evaluate the cost and other consequences of the many regulations proposed. Not having an objective basis for comment or objection, municipalities often do not make them. Yet municipalities and municipal associations frequently have the expertise to support a reasonable assessment of Agency actions. The new Policy should make special provision for municipal participation as a part of public participation. Too frequently municipalities are seen as special interests whereas environmental groups are seen as the public. This is unsound because municipalities represent the public in a broad sense reflecting their electorate. As such, municipalities should be given a special role in public participation.

We urge you to recognize the value of municipal participation in Agency actions and to make special provision for it in the Final Public Involvement Policy.

Environmental Council of the States:

On the issue of early public outreach, the policy should recognize the role that regulated entities and local government bodies need to play. Frequently a proposed project is fairly old by the time it reaches the environmental regulated agency. This is especially true of permit applications.

US EPA Local Government Advisory Committee:

First, the draft does not outline any efforts above and beyond those included for the general public to engage local governments in the Agency's work.

Response to above five comments: In some cases, local governments have an implementing role in federal programs. In other cases, as the comments illustrate, local governments are concerned more about the impact of federal activities on them as regulated entities. For both purposes, EPA recognizes the need to consult closely with local units of government as the Agency develops policies and crafts regulations. EPA maintains a number of advisory bodies that include both local members and members of national associations representing local government officials. In addition, the Agency has established the thirty-member Local Government Advisory Committee and its standing Small Community Advisory Subcommittee, composed of elected and appointed officials from across the country, as well as representatives from other locally based interest groups, to focus specifically on the needs and concerns of local governments and communities. EPA intends to emphasize in public involvement training for EPA staff the need to coordinate closely with local governments.

US EPA Local Government Advisory Committee

1. EPA's responsibility in this LGAC-Association [national associations representing local governments] relationship is to make the appropriate staff available to assist. It is essential that the Administrator and senior staff adopt a policy requiring EPA staff members to provide accurate and timely information to LGAC members and the associations, and that they be responsive to requests for assistance. Further, the EPA must be willing to solicit actively input from local governments during critical phases in programs and processes, such as in policy development and rule making. The LGAC will help the EPA to understand that local governments are not simply a sector to be regulated, but also a valuable partner available to assist in reaching important environmental goals.

2. The LGAC commends EPA for its efforts to increase consultation with State and local elected officials in compliance with Executive Order 13132. This consultation should be coordinated with other existing forms of consultation to build a stronger and more comprehensive interactive engagement of local government with EPA.
3. The LGAC recommends that EPA enhance the role of regional offices in interacting with local governments. LGAC urges EPA to investigate opportunities for institutionalizing local government advisory capacity within the Agency's regional structure.
4. No new policies, regulations, programs and services which significantly impact local entities should be put forward by EPA without the Agency conferring with a broad representation from local government, institutions, and other relevant stakeholder groups, in accordance with Executive Order 13132.
5. From this point forward, the criteria for grant programs that are designed to serve local entities' needs should be reviewed by a broad representation from local government, institutions, and other relevant stakeholder groups prior to the development of the Federal Register Notice for such grants, and every three years thereafter for the duration of the program.
6. LGAC encourages EPA to direct its technical and policy staff members throughout the organization to seek input from local government officials at the earliest stages of the decision making process.

Response: The US EPA Local Government Advisory Committee submitted the above six comments for the record as pertinent recommendations that had originally been included in the Committee's report of March 2001, *"Building the Communication Network between the Federal and Local Governments"* At the time of submittal of the 2001 recommendations, the Agency committed to carefully review and implement, where appropriate, practice changes consistent with the Committee's recommendations. This revised Policy follows that theme and articulates much more completely than the draft 2000 policy did the unique and significant role of Tribes, States and Local government in the management of EPA programs. Further, EPA in its recent reformulation of regulatory processes and implementation of Executive Orders and statutory revisions redefining the advisory role of states and local governments in particular, has more fully recognized the important roles of States, Tribes, and local governments in the formulation of program processes and practices.

19. Public Comments Regarding Tribal Issues

The draft Public Involvement Policy specifically requested public comments on the following questions, "What EPA can do to encourage, promote and ensure effective public involvement in programs that have been delegated to states, tribes and local governments?" and "How EPA can improve involvement opportunities for minority, low-income and underserved populations?" The comments below address these questions as they pertain to tribes. EPA appreciates

these comments, and intends to coordinate among the various EPA programs that work with tribes to ensure that these issues are included in EPA training programs. Some of the recommendations contained in these comments are also included and responded to in other applicable sections of this Responsiveness Summary. All of the comments contained in this section of the Responsiveness Summary have been provided to the American Indian Environmental Office (AIEO) and to the appropriate EPA Regional Office Tribal Coordinators.

In order to clarify the unique role and status of tribes, and EPA's responsibilities for consulting with tribes on decisions that may affect them, EPA added the following new language in a section of the "What are the Roles of States, Tribes and Local Governments" section of the Policy:

"The role of Tribes is unique in another way. Each federally-recognized tribal government is a sovereign entity that has an individual government-to-government relationship with the federal government. Therefore, it is appropriate for EPA to engage in consultation activities with such tribes in addition to activities that the Agency would undertake for the public. EPA should coordinate and consult meaningfully with Tribes to the greatest extent practicable for agency actions that may affect the tribes. This Policy complements EPA's efforts to consult with Tribes. (See Executive Order 13175, Consultation and Coordination With Indian Tribal Governments (Nov.6, 2000.))"

Consultation should be a meaningful and timely two-way exchange with Tribal officials that provides for the open sharing of information, the full expression of Tribal and EPA views, a commitment to consider Tribal views in decision making, and respect of Tribal self-government and sovereignty. The Agency should allow comment from Tribes early in the planning process and prior to making a decision. However, consultation does not imply that the Tribes or any other non-EPA entities that are consulted can stop an Agency action by withholding consent."

University of Washington, Department of Geography Doctoral Student:

Finally, I notice throughout the policy that the term stakeholder is considered to include Tribes. Given the government to government relationship accorded to Tribes they should be called out explicitly.

Response: See the new text added to the Policy (shown above) which clarifies the unique role and status of tribes.

Citizen #56

Overall, I think that the Draft PIP is a good policy that represents a balance of competing interests. If EPA officials actually try to comply with the Draft PIP, they will necessarily have to invest much effort. It could lead to better decisions, it could lead to more people having the perception that EPA is actually concerned about what they think on particular issues, but it will not be easy.

This leads to my basic comment about the Draft PIP. One of the points on which EPA asks for comments on “What EPA can do to encourage, promote and ensure effective public involvement in programs that have been delegated to states, tribes and local governments.” I am mostly concerned with how EPA can help tribes develop and use effective public involvement programs, without imposing an overwhelming burden on tribes, for example by creating standards that would strain the resources of tribal governments.

Tribal governments should be encouraged to provide meaningful opportunities for public involvement in environmental programs. In theory, at least, doing so holds the potential for disarming arguments that tribes should not have authority over non-Indians because non-Indians do not get to vote for tribal officials. On the other hand, if tribal officials provide a public forum and people use it to challenge the tribe's right to exercise governmental authority, I could understand it if tribal officials were to decide that they did not want to go through that again.

I think that there is a very important set of issues at stake. As some of the comments in the on-line dialogue demonstrated, a lot of people in this country resist the principle that tribes are sovereign governments. EPA could do more to help the general public understand this. I also believe that it is important for non-Indians who live within Indian reservation boundaries to know the historical circumstances through which reservations were opened to settlement by non-Indians. Even though such events occurred one hundred or so years ago, generally through federal policies that have long been repudiated, the federal laws of that era inflicted wounds on tribal cultures that have not healed. EPA might be able to help non-Indian reservation residents understand this. An example of this problem was provided by the comment filed in the on-line dialogue by the person who kept referring to the Coeur d'Alene Reservation as the “(former?)” reservation and who said she did not understand why the Tribe's maps of the Reservation listed the area where her land was located as having been illegally seized from the Tribe when her family had valid patents from the federal government. Well, after the Supreme Court decided *Lone Wolf v. Hitchcock* in 1903, Congress learned that it was constitutionally permissible to break treaty promises with tribes and take tribal land. It's easy for me to understand how a tribe might describe taking land in violation of a treaty as an illegal seizure even if the Supreme court says that Congress has the power to do it. It's also easy for me to see that a tribe whose ancestors have been in a place since time immemorial might see a hundred years of presence by the descendants of white homesteaders as a relatively short period. I guess the point is that tribal members and non-Indian reservation residents have very different understandings of the last hundred years or so, and my impression is that a lot of the non-Indians do not seem to care very much about trying to see this recent history from an Indian perspective. I think that people in the larger American society really need to learn about this era of history and try to understand the suffering that has been inflicted on Indian people. See Dean B. Suagee, *Trust Funds and Trust Lands: The Stories Beneath the Story*, 15 *Natural Resources & Environment* 51 (Summer 2000). I think EPA has a role in promoting such understanding.

As a member of the Indigenous Peoples Subcommittee of the National Environmental Justice Advisory Council (NEJAC), and one of the authors of the NEJAC “Guide on Consultation and Collaboration with Indian Tribal Governments and the Public Participation of Indigenous Groups

and tribal Members in Environmental Decision Making,” I was involved in discussions with tribal representatives on the topic of government-to-government consultations between federal agencies and tribes and the topic of public participation in tribal environmental programs. I have also co-authored a law review article on the topic. See Dean B. Suagee and John P. Lowndes, *Due Process and Public Participation in Tribal Environmental Programs*, 13 *Tulane Environmental Law Journal* 1 (1999). In that article, I tried to list some of the legal requirements imposed on tribal environmental programs by federal statutes and regulations administered by EPA. I have the impression that many tribal officials and attorneys regard these federal minimum requirements for public involvement as burdensome but acceptable. Through my involvement in the environmental justice movement, I have become aware that many people believe that the minimum requirements are simply not nearly enough to ensure meaningful public involvement.

In my experience, many tribal representatives are not very comfortable with EPA giving them advice on how to accomplish public involvement. Many tribal representatives are not yet convinced that EPA employees know how to relate to tribes in a government-to-government basis. In my view, I think that EPA should be able to engage tribes in government-to-government consultation and also help tribes promote public involvement, perhaps by developing a range of optional practices for tribes. (I almost said “best practices,” but I am afraid that if we use that term, the message will be that using anything less than the “best” will not be good enough.) Before charging ahead, though, I believe that EPA should engage tribes in consultation on this topic. Executive Order 13175 seems to require as much.

So, I suggest that EPA formally engage tribal governments in a dialogue on public involvement. The dialogue should include at least four topics:

- (1) Government-to-government consultation with tribes regarding EPA actions and policies;
- (2) Government-to-government consultation with tribes regarding decisions made, and programs administered, by states pursuant to delegation from (or approval) by EPA;
- (3) Public involvement in tribal programs, perhaps limited to programs delegated to tribes EPA (and tribal programs authorized pursuant to federal law); and
- (4) Public involvement in EPA programs that affect rights and interests of tribes and their members.

Personally, I think that all these topics overlap, but I would anticipate that many tribal representatives would say that at least some of these topics should be addressed separately.

In sum, I think that EPA should engage in consultation with tribes regarding the general topic of public involvement, and should do so in a way that starts out with a full range of topics on the table. Through consultation, some topics may be identified as high priorities and others may be set aside.

While I think that EPA should engage in such a broad-scope consultation process, that does not mean that the Agency should ignore more specific topics in the mean time. One specific topic on which the Agency should engage the tribes in consultation is the nature of EPA's responsibilities under the National Historic Preservation Act (NHPA). The Agency's responsibilities under the NHPA have implications for the first two topics listed above (i.e., Government-to-government consultation with tribes regarding EPA actions and policies, and Government-to-government consultation with tribes regarding decisions made, and programs administered, by states pursuant to delegation from (or approval) by EPA). I suggest that EPA begin a process of consultation with tribes to establishing a policy to meet EPA's responsibilities under the NHPA. I addressed the NHPA in one of the comments I posted in the on-line dialogue. Since those comments are not part of the formal process of commenting on the Draft PIP, I have pasted that comment into this letter (with corrections for misspelled words):

Several commenters have noted the need to seek involvement from various kinds of groups and individuals that make up the public, generally those in the vicinity of the area where a proposed action will cause environmental impacts. At least one commenter mentioned efforts to contact local Native American groups.

In many cases there are legal requirements to identify federally recognized tribes that should be invited to participate, because, for example, there may be impacts within a reservation or there may be impacts on off-reservation resources in which tribes have statutory or treaty rights. In such cases, it's not usually very hard to determine which tribes ought to be contacted.

In other cases, however, it may be considerably more difficult, particularly where tribes may have statutory rights to be consulted regarding actions that affect aboriginal lands that are located some distance from their present-day reservations. Two important statutes that establish such rights are the Native American Graves Protection and Repatriation Act (NAGPRA) (which applies to federal lands and tribal lands) and the National Historic Preservation Act (NHPA) (which, like NEPA, is triggered by federal agency action or funding, regardless of the ownership status of the affected lands).

Let me briefly state some of the requirements of the NHPA (16 U.S.C. 470 et seq.), as implemented through regulations issued by the Advisory Council on Historic Preservation (36 C.F.R. part 800, revised Dec. 12, 2000, 65 Fed. Reg. 77698). The right of tribes to participate in the section 106 consultation process is based on section 101(d)(6) of the Act (codified at 16 U.S.C. section 470a(d)(6)). In its outreach efforts for specific actions that will result in environmental impacts, including permit decisions, EPA is legally obligated to determine whether the proposed action is an "undertaking" for purposes of the National Historic Preservation Act and, if so, whether the undertaking has the potential to cause effects on historic properties. 36 CFR section 800.3(a). If the proposed action is such an undertaking, then EPA must make a "reasonable and good faith effort to identify any Indian tribes or Native Hawaiian organizations that might attach religious and cultural significance to historic properties in the area of potential effects and invite them to be consulting parties." Section 800.3(f)(2). This is supposed to be done at the very outset of the NHPA section 106

consultation process. Tribes have a right to participate in the process of identifying places that are potentially eligible for the National Register of Historic Places and to contribute their views in making determinations of eligibility. Tribes also have the right to consult regarding effects of the proposed undertaking on any such National Register eligible property and the adequacy of proposed measures to avoid or mitigate adverse impacts.

Some places that are eligible for the National Register include places commonly referred to as archaeological sites, some of which may include human burials. Such places may not be known to exist until construction activity cause some disturbance; or there may be indications that such sites exist but there is no need (and no funding) to do any excavation until there is a threat. Some such places may be eligible for the National Register, and may also hold religious and cultural significance for a tribe. (If there are burials, and they are culturally affiliated with a modern tribe, the tribe will almost always regard the site as holding religious significance.)

In addition, there is a category of historic property commonly known as a "traditional cultural property" (TCP) which is eligible for the National Register on one or more of the standard criteria but which also has ongoing importance in the cultural life of a living community, such as an Indian tribe. Many TCPs are relatively undisturbed natural areas that are important in tribal religious practices. E.g., certain sand bars in the Rio Grande have been determined to be eligible for the National Register, as have the tops of many mountains. Generally there is no need to go through the process of determining eligibility for the National Register until there is some kind of threat. Even then, many tribes are very reluctant to document their cultural and religious practices.

In any case in which an EPA action has the potential to affect National Register eligible properties, EPA has a duty under the statute and regulations to seek out potentially concerned tribes and consult with them, involving them in the relevant determinations in the section 106 process.

In addition, under the statute and regulations, an action "subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency" may be an "undertaking" for purposes of the NHPA. Section 800.16(y). This raises another set of issues regarding such actions as NPDES permits issued by states -- what are EPA's NHPA responsibilities for such permits? What are the states' responsibilities?

I raise these issues because I'm afraid they will tend to be ignored. In many cases there will not be easy practical answers. One of my friends who works for a tribe that was removed from the southeast to Oklahoma tells me that he receives a lot of notices of proposed actions from a variety of agencies -- what he receives in the way of notices far exceeds the Tribe's capacity to respond. So just identifying potentially concerned tribes and sending written notices does not seem to be an effective way of actually achieving meaningful consultation. On the other hand, I suspect that federal agency staff in regions such as the southeast, from which many tribes were removed to Oklahoma, probably feel overwhelmed by the effort of trying to identify the tribes that they are obligated to invite to consult.

The Department of the Interior and the Advisory Council on Historic Preservation have launched a project to develop a data base for use in identifying tribes and engaging in consultation, and I strongly recommend that EPA investigate this project and become involved in it.

Under Section 110 of the NHPA, each federal agency is required to develop an historic preservation program, and to do so in consultation with, among others, Indian tribes and Native Hawaiian organizations. Since this is a subject matter in which the federal statute recognizes the interests of tribes in historic places outside their reservations, I believe that it could be a very constructive framework for consultation among EPA and the tribes. As we all know, pollution of the environment crosses jurisdictional lines, and so governments in different jurisdictions should try to cooperate. Because Indian tribal cultures are grounded in the natural world, and in particular places, pollution tends to affect Indian people differently than it affects the larger society. The process established under the NHPA allows tribal representatives to bring their cultural values into federal decision making processes. I believe that EPA staff, and state agency staff, could benefit from a sincere effort to engage tribes in the development of an EPA policy for implementing the NHPA.

Response: EPA agrees that the Agency has a role in promoting understanding of tribal histories and cultures within EPA staff and managers. EPA headquarters and regional offices conduct training for its management and staff entitled "Working Effectively with Tribal Governments." The purpose of this training is to increase awareness and respect for tribal cultures, and clarify how those cultural differences should influence EPA's interaction with Tribes. The training also surveys several important concepts in federal Indian law such as tribal sovereignty, the federal government's trust responsibility to Tribes, and the government-to-government relationship between the federal government and federally-recognized tribal governments. The training also explains EPA's Indian Policy, which recognizes Tribes as the most appropriate entity to manage reservation environments. Through this training EPA management and staff should gain a better understanding of Native American history, culture, sovereignty, environments, and EPA's approach to furthering tribal management of reservation environments.

EPA has established a workgroup to develop internal agency guidance for implementing Executive Order 13175 "Coordination and Consultation with Indian Tribal Governments." The workgroup has sought to involve the Tribes in this component of public participation in many aspects of the work. In the process of developing this guidance, EPA sent a letter to tribal leaders asking for their recommendations on how the Agency might better identify EPA actions with "tribal implications" as defined by the Executive Order, and how the Agency might best consult with Tribes for these various actions. The workgroup also solicited individual advice from tribal representatives in several workgroup sessions. The tribal representatives are elected tribal officials or duly appointed to represent their tribe in an advisory capacity to the workgroup. The tribal representatives and their alternates were chosen by the tribal members of the Regional Tribal Operations Committees (RTOCs) for those regions that have RTOCs. Finally, once EPA develops a draft guidance on Executive Order 13175, it will be distributed for comment to all interested parties, including all federally-recognized tribal governments.

As stated above, part of the work conducted by the Executive Order 13175 workgroup entails identification of agency actions with tribal implications. Along with activities undertaken under statutes under EPA's authority such as the Clean Air Act, analysis is undertaken for agency actions with tribal implications under other statutes.

Abenaki Representative, Portland, Maine:

As a general rule, Indian groups seeking reversal of prior termination or seeking recognition via the BAR process or legislative means, or having State but not Federal status, have no relationship with the EPA. These groups are, by definition, minority, low-income, and underserved. The EPA can establish a process to explore mechanisms to establish relationships with Indian groups which is not dependent upon a status finding by the BAR, or other status findings.

Specifically, the EPA could contact the Abenaki of Western Maine concerning Western Maine water quality, species recovery, dam removal or abatement, and other issues, including volunteer monitoring activities.

Where State law claims to be the controlling authority, e.g., under the Maine Settlement Act, and has the effective result of exposing Tribal executives to quasi-criminal liabilities for maintaining a distinct relationship to the EPA, the EPA may evaluate the core jurisdictional issues and the effective access the affected Tribes have to Federal relief for State conduct. Specifically, the EPA could contact the Passamaquoddy, Penobscot, and Maliseet Tribal Executives and establish a process to explore mechanisms to ensure unrestrained access to the Federal courts, even when a preemption claim is advanced by Maine.

St. Regis Mohawk Tribe Environment Division, Akwesasne, NY:

Public involvement in decision making processes is an integral part of making policy decisions successful. By including stakeholders in decision making processes, tribal and federal agencies alike, "foster a spirit of mutual trust, confidence, and openness between the Agency and the public."

Throughout the draft policy, EPA places a number of communication mechanisms as possible ways to keep the community informed and also keep individuals as active participants. Information and outreach programs play key roles in doing such. In Akwesasne, we have been developing a plan to involve our community members into environmental issues that directly affect their health and public health in general.

As stated in the draft policy, "lack of adequate participation or lack of effective means for participation can result in agreements or policies that do not necessarily reflect the interests of communities or constituencies that will be most impacted by them." Certainly, in Indian Country this is what we don't want because of the highly sensitive issues such as PCB contamination, lost habitat for medicinal plants, and fish advisories.

It appears as though EPA has identified the main components necessary to incorporate public participation in regard to its public policy and other sensitive issues affecting its constituents.

Probably the most important being the actual planned and budgeted activities for public involvement.

Certainly, utilizing creative means to get intended messages across is paramount in smaller communities where technical and electronic information may be limited or unavailable. EPA will need to make a more concerted effort in reaching out to those minority, low-income communities whose voices may not be heard in favor of more populated areas. I don't think it can be understated how important it is to write documents in plain language and when appropriate in other languages, as well.

One of the more important tools included in the draft policy was Alternative Dispute Resolution (ADR). In my experience, ADR can create and maintain a dialogue between parties who disagree on a controversial issue. It can also cut down on courts costs and be a quicker instrument in reaching consensus, or at the least, understanding of the other sides' perspectives.

Other actions that can be imperative in public participation are providing timely, feedback to the public. The public can become frustrated when agencies don't get back to them when they've participated in a specific project, study, or have provided comments to a document. Therefore, giving back to the community in terms of study results or results of comments they've provided is a way to keep the public involved in the future.

As environmental programs go, we know that public involvement is an integral part of making them successful. However, just as important is evaluating our efforts with public involvement in environmental issues and policy.

All in all, EPA through this draft policy identified, comprehensively, the components necessary to engage the public to become part of environmental solutions within their respective communities. It is the hope within Indian Country that EPA remains committed to reaching out to minority communities across the board. It will take a more concentrated effort on EPA's part to make this draft policy a reality within these smaller communities.

Bison Land Resource Center:

Our organization provides support to dozens of other organizations, and I have worked with the NEPA process for over twenty years. While the process has always had some shortcoming as far as the involvement of minority and low-income populations, recently we have seen an alarming trend in our area toward limiting the general public's ability to be involved in the process. Our comments will address these two issues.

At its most basic, EPA's public involvement process must allow easy stakeholder access to information, prior notice of opportunities to provide input, and input settings that encourage involvement by a broad cross-section of the public. In our area, one of the greatest barriers is a language barrier, as our largest minority group is the Lakota/Dakota (Sioux). When events are held in English without translation, many members of this group are effectively excluded. Similarly, when local reservation publications and Lakota-language radio stations are not

provided full information for public involvement, these populations are excluded. For the public to truly be involved, the general public must be notified of environment-related activities in a timeframe and in a manner that makes input not only possible, but likely.

In our area, poverty and low population density provide major challenges to public input. South Dakota, our primary area of work, is usually the lowest or second-lowest state in per capita income. Reservation populations are the lowest income areas within the United States. Low population density means large distances must often be traveled by those wishing to provide comments at public hearings or to get copies of documents from libraries. Due to low-income, a large proportion of reservation residents can't afford phones, much less computers or cars. The vehicles that are available are often used by extended families and are famous for not running well (this is a matter of much lore, if you ever want some interesting stories). In sum, this means that, if someone has or can find a vehicle that is road-worthy for distance travel, the cost of a few gallons of gas may mean the difference between paying a bill and not paying a bill, or between buying a child shoes and not buying shoes.

Recently, a series of public hearings was held in our area by the Surface Transportation Board (STB) on the proposed expansion of the Dakota, Minnesota, and Eastern Railroad (DM&E). None of these hearings was held on a reservation. In fact, none was held within 50 miles of a population center on the Pine Ridge Reservation, which would be most directly effected. This issue was raised with the STB, but was basically ignored until after the public hearings were completed. At that time, a quickly-planned, poorly-advertised meeting was held on the Rosebud Reservation. This was not included in the Draft EIS documents or other publications related to public input. To try to compensate for the lack of opportunity for public input, the Oglala Sioux Tribal Government co-sponsored an event to gather public input, including providing translation and transcription. Tribal governments should not have to take on this role - it should be taken on from the beginning by the lead agency, and the EPA and CEQ should insure that it happens.

Another issue regarding public involvement that is raised repeatedly by reservation residents is that those who participate, particularly in public hearings, are expected to follow agency rules that are not culturally sensitive. For the Lakota, this includes limiting people's time for input and cutting people off at a certain time limit. This is considered extremely rude in Lakota culture. Elders, in particular, have the privilege and the right to talk as long as they please without interruption. Anyone can talk until they are done with what they have to say, and questions are held until the person is finished. The person finishes by thanking listeners, and that is the sign that someone else may speak.

An extreme lack of cultural sensitivity is also shown when people do not recognize native nations as just that -- nations. Additionally, in what is generally known as "western South Dakota," the Lakota Nation has land rights under the 1868 Fort Laramie Treaty that supercede the rights of the state or any entity that might propose an activity that would have environmental impacts. Again using the DM&E situation as an example (although this happens repeatedly), it is extremely uneducated to plan a major project across Lakota lands, work for several years to get federal permission, and then "tell" the Lakota about the plan. Instead, the Lakota, as first

landholders, should be "asked" if the project would be okay with them first. Then, if permission to proceed with a plan is given, federal agencies should be brought into the picture.

One way the EPA could improve the situation would be by taking the lead in this matter. This would simply mean implementing its existing policy toward Native Americans in a manner that includes giving other federal agencies notice that anyone proposing a project must approach native nations before proceeding further. This approach should be done as one would approach any other international government -- as someone requesting a favor, not as someone implementing an existing plan.

In addition, the EPA can educate others to the fact that the exact nature of behaving in a culturally sensitive manner varies from one native group to another and should be researched before proceeding. The examples I have provided for the Lakota are just that -- examples for one of over 500 Native American groups within the United States. Cultural issues vary tremendously from place to place, and any company that wants its project to succeed would do well to find out what behavior is appropriate before approaching any native nation. Federal agencies can take the lead by suggesting this when approached by companies with proposals. Each EPA Region could maintain a list of tribal members from each native nation within its borders who are willing to act as consultants to companies on proper protocol.

The other key issue involving public involvement has to do with what Native American entity is contacted and sent project materials. In my experience, agencies commonly send Draft EIS's to federally-recognized tribal governments. I have heard repeated stories of tribes not receiving these documents. There are a number of reasons this might happen, and agencies need to be aware of them.

For example, I have worked with the Bureau of Indian Affairs' list of tribal governments. This is often seriously outdated. Many tribal officials don't have offices, and the addresses provided by the BIA are for homes. There is a lot of turnover in tribal officials, so a DEIS may never get passed along to the next incumbent. Even when there are offices, it is common for a defeated tribal government to take all documents with them, so there is little or no institutional memory. Just because a reservation's government got scoping documents and participated in that part of the NEPA process doesn't mean that those in power at the time of the DEIS have any idea what's going on.

Even when there are offices and when documents are received by the Tribal Chair, tribal governments often have little or no environmental expertise. In a study I completed recently, the average tribal government had four environmental staff, and they were working on six major environmental issues. Many have no environmental staff at all. So the Tribal Chair might receive a notice or a DEIS document and have neither the time nor the information necessary to determine its importance. Basically, the EPA must educate tribal governments repeatedly and must go out of its way to involve tribal entities in order to gain real participation.

The other factor that complicates gaining public involvement by Native Americans is that many federally-recognized tribal governments are not accepted by some or most members of that

native nation. When an agency sends notices only to the federally-recognized tribal government, it may not really be providing information to the public in the sense that it is reaching a representative body with responsibility to its constituents. It may be reaching an elite that could potentially gain financially if a project proceeds -- and that knows the public would probably oppose the plan. Most tribal governments have nothing resembling the Freedom of Information Act, so tribal leaders are free to keep information secret. Rectifying this means knowing the situation on each reservation and involving traditional (pre-United States) governments, federally-administered reservation programs, citizens' organizations, and other appropriate bodies.

Turning to our second major topic area, the more general limitations on public involvement, we would first like to note that gaining true public involvement appears to be less important in recent years. Agencies are sometimes flippant about this, as when a representative of the Surface Transportation Board was asked by a member of the media for an update on the NEPA process in the DM&E matter. The official would not indicate whether the EPA's recommendations for further study would be implemented and told the reporter that there was "nothing further the public needs to know at this time regarding the DM&E application for expansion." Obviously, the public wanted to know more, or the reporter would not have called. It was not the official's role to determine the public's "needs." The NEPA process is supposed to be open to the public.

Another major problem in the last several years has been the move toward printing fewer copies of DEIS's. This seems like a great idea from an environmental angle, and at first I avidly ordered my CD-ROMs for NEPA documents. The problem is that CD-ROMs are not useful for those who want to do more than take a leisurely stroll through a few pages of Executive Summary. One cannot compare maps and the pages describing them, look at the main text and supporting appendices, or cross-check information from section to section without essentially printing out their own copy from the disk --which is unrealistic and, in some cases, impossible.

Some CD-ROMs, such as the one for the DM&E project, are so slow as to be unusable. Electronic access may be present for those with computers, but in this case it was also so slow as to be unusable to members of the public. Only those whose sole life focus was reading the DEIS were able to access larger portions of the document electronically. What's worse, when people discovered that their CD-ROMs were unusable and websites for the documents were useless, they were not able to get a paper copy of the DEIS. The STB would not send a second DEIS in any form to someone who had already received one. This makes sense in terms of conserving agency resources and tax dollars in most situations. But in a case where public involvement is the law of the land, it does not make sense, after all.

In a rural area such as South Dakota, especially when a long and/or complicated environmental document is involved, library access is not the solution to these problems. Distance alone will keep most people from being able to provide meaningful input, with people in most areas of the state having to travel at least 50 miles to get to a repository library. Library access should be provided, but additional copies of documents should also be available to late-comers, and

comment periods should be extended. Anyone who has a job or a family is not likely to be able to spend several weeks (assuming they read fast) in a library reading a lengthy DEIS. People with both jobs and families would find this a hopeless task.

In South Dakota, a full 10% of the population has not just one, but two jobs. And we also have the highest percentage of women with children working outside the home. So providing true public involvement here means overcoming economic, time, and distance hurdles. The EPA should take these types of factors into account in determining public involvement needs and vary its procedures according to regional realities.

Another regional reality is weather. I cannot speak for people from other regions, but I know that in the northern Great Plains, travel may basically shut down for long portions of the winter. Out-of-town travel may be impossible, uncertain, or dangerous six months of the year, especially for the youngest and oldest drivers.

Again, the DM&E situation provided one of a number of examples. The Draft EIS comment period took place during winter months, even after it was extended. It happened to be a rough winter, meaning that much of eastern South Dakota was blanketed in snow from mid-November until April, at which time we had floods that hampered travel and coated miles of countryside. I was vitally interested in this process but, like everyone else, I was unable to observe the landscape along the proposed route during the comment period because it was covered with snow. Because I had not gathered information on the proposed route before the DEIS came out, I could not give adequate input -- BUT no one in the public was given the proposed route until the DEIS came out. The STB refused many requests for this information while they were writing the document. So public input was seriously hampered.

Again, this is a regional reality that needs to be taken into account in planning public involvement. For our largely agricultural area, planting, calving, and harvest are also poor times for public involvement. Agencies should know this and plan or extend comment periods accordingly.

In summary, we would like to emphasize again that EPA's public involvement process -- and the processes it oversees in other agencies -- must allow easy stakeholder access to information, prior notice of opportunities to provide input, and input settings that encourage involvement by a broad cross-section of the public.

Response: EPA's current training on "Working Effectively with Tribal Governments" includes information regarding appropriate culturally sensitive behaviors.

Citizen #89:

In reading your information, I was quite surprised and offended that our government would use such a racist policy in dealing with non federal agencies. I feel that all citizens should be treated equally under the law, and not segregate American Indians for special treatment. Assuming that this is a legal procedure, I ask that this special treatment be limited to only long standing reservations. I ask that your Indian policies not apply to any tribes or lands not found

within the boundaries of a long standing reservation. I think State & Local government rights should override any Tribal rights since States & Local governments represent all citizens, not just citizens of a particular race.

Response: Since 1984, EPA has adopted an Indian Policy consistent with an overall federal position which stresses two related themes: (1) that the Federal Government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal Governments on a "government-to-government" basis. EPA's relationship with Tribes includes a recognition of the right of tribes as sovereign governments to self-determination, and an acknowledgment of the Federal government's trust responsibility to the Tribes. One manifestation of this policy is EPA's recognition of tribal governments as the primary parties for setting standards, making environmental policy decisions and managing programs for reservations, consistent with agency standards and regulations.

20. ENVIRONMENTAL JUSTICE PUBLIC COMMENTS

In the preamble to the draft policy, the Agency asked specifically for public comment on "How EPA can improve involvement opportunities for minority, low-income and underserved populations." Related comments follow; Agency responses appear in other sections of this document grouped with comments on various sections of the Policy. Many of the suggestions contained in the following comments urge partnering with organizations of all kinds. The following was added to the Goals section: ***"Develop and work in partnership with state, local and tribal governments, community groups, associations, and other organizations to enhance and promote public involvement."*** Many of the ideas will be included in training for EPA staff.

The Policy contains a new section, "How Does the Policy Relate to Environmental Justice?" states the following:

"This Policy complements and is consistent with EPA's environmental justice efforts. "Environmental justice" is the fair treatment of people of all races, cultures, and incomes, including minority and/or low-income communities and Tribes, with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision-making processes of the government. Environmental justice is achieved when everyone, regardless of race, culture or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn and work. This includes ensuring greater public participation in the Agency's development and implementation of its regulations and policies. (Memorandum from EPA Administrator Christine Todd Whitman, dated

August 9, 2001, "EPA's Commitment to Environmental Justice") [See also, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994)] Thus, ensuring meaningful public involvement advances the goals of environmental justice."

Improving involvement opportunities for minority, low-income and underserved populations (including Tribes)

Golden Gate University, Environmental Law and Justice Clinic:

Despite the fact that in the *Introduction* the Draft Policy says, "we should not accord privileged status to any special interest...", it accurately recognizes in its *Purposes, Goals and Objectives* section the need to give, "extra encouragement to and consider providing assistance to some sectors, such as minorities and low income populations... which may have fewer opportunities or resources to participate."

Often times, members of these communities suffer disproportionate disparate impacts from numerous forms of pollution and toxins. Furthermore, they are usually at a disadvantage when speaking out against potentially detrimental industry actions, because of limited funding, and limited access to information about the specific nature of the pollutants. Additionally, necessary scientific studies to support their positions are frequently unavailable to them. This can also be attributed to lack of funding, as well as other factors such as non-representative sample populations in these studies. These are just a few reasons why such communities may not be actively involved in the public comment process. However, their lack of participation, or silence on the matters, should not be read or interpreted as lack of concern about the issues that affect them.

The Draft Policy offers many positive and concrete steps that can be taken in attempt to counteract this situation. Some of these include early and ongoing opportunities for involvement in the process, increased notice of public comment periods in a wide range of places, notification to all known stakeholders, as well as attempts to identify unknown stakeholders, public meetings at accessible times for those who work during the weekdays, and possible funding and resources to those who qualify. We would strongly recommend their inclusion in the final Policy. Particularly in regards to the issue of funding, we believe that some form of public participation grant is absolutely essential to facilitate adequate citizen involvement. This funding should be equivalent to what interested private parties spend in the process.

The McNulty Group:

How to improve involvement opportunities for minorities, low income, and underserved populations. The answer to these issues is in techniques. These are questions that should -- no, MUST-- be asked for *every* project, and answered effectively by action. However, the question and answer here involves techniques, and probably has no place in a "policy" at least as stated here. A statement that expresses the importance of hearing from all potentially affected "populations" or "publics" would be appropriate, but selecting just a few for emphasis in a general policy statement is not appropriate.

City of Madison, Wisconsin:

It has been my prior experience that municipalities as a whole have been under represented during the drafting of federal regulations. If we want to improve the participation of minorities, low-income and under served populations while strengthening EPA's commitment to early meaningful public involvement, I strongly recommend that the local units of government be given a stronger voice during the rulemaking process.

Georgetown University, Government Department:

...grants can and should be provided to organizations whose sole/main purpose is to increase "civic capacity," i.e., the ability of people to communicate with public officials and help to govern their own lives. This small grant program could be expanded to include both small and medium size grants (i.e., any where from \$5000 to \$100,000) for work on building civic capacity. Who could help you with such implementation? I would also argue that there are political scientists in each of the ten EPA regions that have expert knowledge about citizen participation (about who participates, who doesn't, and why). Furthermore, many of these political scientists have the skills to help EPA develop such programs, tailoring the "Civic Capacity Grants" somewhat to the particular concerns in any given region. For a further idea of how such a program could be structured, you may want to look into an innovative program being done at the local level in Arlington County, Virginia. The program, "The Arlington Neighborhood College," attempts to encourage underserved members of Arlington to become a part of the larger group of citizens actively involved in civic matters here in their community --- by giving these citizens skills through training exercises in small-group and large-group settings.

National Organization for Mexican American Rights:

We think it's imperative to include our community in EPA decision making. It is all for naught if we aren't at the table. EPA needs high-level Hispanics in the Agency, and then you won't have the same problems communicating with us. If you want to communicate with us, we need to be at the table for our needs to be entered into the equation. EPA has failed to employ Hispanics in positions where they should have such as [EPA liaison] in the US Embassy in Mexico City, management in EPA's US/Mexico Border Office). If we put our comments on record, we can later hold EPA accountable. Will all the groups be given the document when it is finalized? Can a citizens' group be formulated to help advise? Why not have a meeting here in San Antonio for EPA to give us all kinds of information we need about issues here, as everyone has been asking about, particularly about Kelly. We need the straight story.

Wisconsin Department of Natural Resources:

Understand cultural and other differences and barriers that affect the willingness and ability for people to participate in public involvement processes. Some of the specific comments listed above address this issue. This is another area that needs more development and education. EPA should fund research, training, development of methodologies, and projects that explore ways to connect with these populations. Once again, the International Association for Public Participation could be a key partner in such an effort.

The Groundwater Foundation:

I was especially pleased to see the agency's emphasis on audiences with limited access or traditional links to EPA rule making, enforcement actions, and regulatory and pollution prevention programs.

Sierra Club, Committee on Environmental Justice:

While some [contact] lists are under-inclusive, others are sometimes so broad in subject matter that community members are inundated with so much information and so many requests for participation that sorting through it all is too time consuming and difficult. Indeed this is a major problem for under served communities. In such communities, where participation rates are low, agencies look to the few individuals who are participating and ask them to do more rather than reach out to a wider community.

Delaware Nature Society:

It is prudent to recognize that traditionally underserved populations, minority populations, and other excluded groups need to participate in our public policy process. Ensuring their participation is an excellent goal.

Citizen #60:

The EPA needs to explicitly commit to implementing Environmental Justice policies and programs. There is great uncertainty about EPA's level of commitment even in the best of times. In the current political environment, it now appears EPA is ready to repudiate the few gains made over the last 5-10 years.

Citizen #8:

There are ways to ensure that the poor, the minority communities, the young, etc are paying attention: the agency must be willing to speak Truth to Power (generally, Power being a transnational corporation); the agency must be brutally honest about the likelihood of 'things going the way' that a majority of the 'outsiders' (ie the poor, the minorities, etc) would desire to see things go; & the agency could schedule hearings on evenings &/or weekends, when the unempowered have whatever brief opportunities they may have to comment in person upon a question or 'problem.' Beyond this, EPA could support legal services for the poor, knowing that, at some point, those services will likely be used to sue.

New York City Environmental Justice Alliance:

I urge EPA to give very serious attention to the comments it has received and to work strenuously in an effort to improve the agency's interaction with those who have traditionally been foreclosed from participation in that process. Adequate staffing will be critically important to ensure that the policy is fully and effectively implemented.

As is the case with the other potentially positive measures enumerated in the draft policy, any efforts to bolster participation by those in traditionally underserved communities will only be successful if they are fully implemented by agency staff, across the board. Thus, while the stated goals and proposed measures set forth in the draft are certainly encouraging, it is the implementation of those goals and measures that will truly determine the success of the new policy.

National Image, Inc.:

Hispanics need to be heard because of our issues. It seems strange that there's no Hispanic in EPA's Office of Civil Rights & only one in OEJ. We need to be able to talk to you. It's imperative that the government find out how to communicate we us & very necessary to bring in more Hispanics in to work in EPA. You wouldn't have as big a problem communicating with the Hispanic community if you had more Hispanics working for you.

Miami University, Department of Communication:

EPA asks for input on involving minority, low-income and underserved populations. A generally effective way to do this is through personal contact with opinion leaders. For example, many African-American communities are heavily involved in their churches. Make personal contact and meet the minister/preacher and enlist his/her help in getting the community involved in the environmental issue EPA is addressing. This effort will be resource intensive, in that it may require a good deal of one-to-one communication with the opinion leader, but these efforts tend to be well worth it in the long-term. A respected person as a strong advocate of involvement will be more effective than all the letters and newspaper announcements you can produce.

Louisiana Department of Environmental Quality:

Pursuant to the Federal Register announcement, the EPA is particularly interested in obtaining comments on how it can improve involvement opportunities for minority, low-income and underserved populations and how it can encourage involvement opportunities in programs delegated or authorized to states, tribes, and local governments. In response to the request, the LDEQ makes the following recommendations:

- (1) The EPA should once and for all develop a meaningful and workable environmental justice policy;
- (2) The EPA should review existing public involvement policies, rules, regulations, and laws of states, tribes and local governments to identify and incorporate any existing measures that could be incorporated into the EPA's public involvement policy. Indeed, many state, tribal, and local governments have developed highly effective public involvement measures that could easily be melded into the EPA's public involvement policy.
- (3) The EPA should consider implementation of Louisiana- developed Environmental Justice panels. Additional information regarding these panels is enclosed.

Guild Law Center and Michigan Environmental Justice Coalition:

We are concerned, however, that the EPA has not explicitly recognized the central role of expanded public participation opportunities in preventing environmental injustice and protecting environmental justice communities from disparate environmental burdens. Both the Environmental Appeals Board and the EPA's Office of General Counsel have recognized that "early and ongoing opportunities for public involvement in the permitting process" is key to preventing environmental injustices. In re Chemical Waste Management, 6 E.A.D. 66, 73 (1995); Undated Memorandum from Gary S. Guzy, Office of General Counsel/EPA, to Steve A. Herman, Office of Enforcement and Compliance Assistance; Robert Perciasepe, Office of Air and Radiation; Timothy Fields, Jr., Office of Solid Waste and Emergency Response, and J.

Charles Fox, Office of Water. The Draft Policy, however, does not direct EPA staff to determine whether any proposed actions have more significant or adverse effects on environmental justice communities or to make any effort to expand public participation opportunities where environmental justice communities are affected. We urge the EPA to include an explicit recognition of the increased importance of public participation in environmental justice communities and to make additional efforts to ensure that such communities have sufficient information and assistance to make a meaningful contribution to the agency's decision making in such situations.

GLC and the MEJC believe that the Draft Policy must specify that more aggressive outreach and notification efforts are needed when a proposed action or decision may adversely affect an environmental justice community. In such circumstances, we believe the EPA should consider holding a public meeting just before or just after the beginning of the comment period to ensure that these communities are aware of the proposed action, its possible effect and their right to comment on the decision. The EPA could work with churches, community centers and social service organizations to plan and publicize these meetings.

Local Government Advisory Committee:

Secondly, the draft policy requires Agency officials to give extra encouragement and consider providing assistance to some sectors, such as minorities and low-income populations, or small businesses that may have fewer opportunities or resources to participate. Let the record show that many local governments, large and small, also would benefit substantially if afforded this "extra" effort.

Just Transportation Alliances:

People that fall into the category of minority, low-income, and underserved populations very often have the greatest barriers to active participation.

(1) Some of these barriers may be physical, i.e., they simply can not get to a meeting because they don't have transportation, they may not be able to take the time from work or family care, or they do not have a computer. These are in many ways simply logistical factors that can be overcome by canvassing, going to places they are already meeting (church, community center, etc.).

(2) Some of the barriers are more personal, i.e., distrust of government; a lack of confidence, etc. These barriers are overcome only as organizations with their community have the resources to build the awareness, skills, and confidence one person at a time. If EPA and other agencies truly want to include such people as active partners in the development of policy and/or local solutions, then the agencies have to consider strategies that include investment in the local organizations which are already engaged in building participation as well as new organizations that could do this kind of work.

Sierra Club, Piasa Palisades Group:

With those purposes and objectives outlined, The Piasa Palisades Group presumes that if there were small stipends available for the participants of the minority, low-income and underserved populations, then we might begin to see a larger influx of public involvement. Compensation money needs to be built into the proposal for citizens in poorer areas where

environmental justice issues may or may not prevail. It could be presented in the form of mileage paid, per diems, stipends, or incentives. It would behoove the EPA to seek those interested participants in the early stages and ask what it would take, within reason, to keep their participation at a high level.

Citizen #78:

I submit that each and every local, state and federal government official receive a copy of the essay "Multiple Chemical Sensitivities Under Siege," reposted here with permission of Dr. Ann McCampbell. This essay may be posted, with Dr. McCampbell's permission having been given for such use, in an effort to involve minority groups, low-income field workers and underserved populations in their exchanges with pesticide regulation agencies. The EPA can encourage, promote and ensure more effective public involvement in state, tribal and local governments by recognizing the disenfranchised state in which pesticide-sensitive individuals themselves.

Lake County Health Department, Waukegan, Illinois:

Technical expertise and resources used by the EPA during the early process benefits the general public and, in particular, low-income groups that may not have financial means to independently evaluate alternatives or a selected option. A genuinely open and receptive environment established early and maintained throughout the decision process fosters public participation and encourages minority, low income and underserved populations.

Florida Department of Environmental Protection, Division of Water Resource Management:

Improve involvement opportunities for minority, low-income and underserved populations: We suggest that EPA outreach positions be placed in or near these types of communities, or that EPA send outreach staff to these communities. Whether urban or rural, most groups respond to direct contact. These communities historically and currently depend upon word of mouth from the respected individuals in the community. The purpose of the EPA outreach positions should be to help the community form its own representative group and provide guidance for their involvement. Look at the people in these types of communities as citizens with as much standing as everyone else and provide them the respect they deserve by acknowledging receipt of their comments and concerns in a forum readily available to them such as a local newspaper or TV (not cable). Unlike many other identified groups, they may need assistance to become involved. Help them establish a local support office where citizens can go to for information, such as the assistance provided by the National Resources Conservation Service (NRCS) offices, available in every county. Provide funds and equipment to support this necessary outreach effort. These communities need to see feed back or they will continue to "feel" frustrated and ignored. What they feel is important – perception is reality.

New York State Department of Health, Center for Environmental Health:

How EPA can Improve Involvement Opportunities for Minority, Low-income and Underserved Populations.

EPA specifically asked for suggestion of ways to involve more minority, low-income and underserved populations. We conducted a brainstorming session to gather ideas on this topic,

and below is a list of suggestions. Comments are organized under main headings of the document.

Definitions

The draft Policy should include a definition of what constitutes an underserved population and, if necessary, a methodology for determining an underserved community.

2. Identify the interested and affected public.

§ Partner with local health departments. Often local health departments:

- know the people in the community;
- can provide information on how the community is likely to respond to an issue;
- can speak the language of most of the people in the community; and
- have a positive relationship with the community that could overflow to a "partner" agency.

§ Different programs within EPA should reach out to each other and to other Federal and State agencies for help in solving issues of how to reach a community. In many cases an agency may already be working with a community and the "new" program can gain insight about the community and receive help in building a relationship with the community.

§ Talk with WIC program coordinators to determine productive ways of reaching the community.

4. Provide information and outreach to the public.

§ As stated in our "General Comments Attachment", we concur with the draft Policy statement that EPA should "ensure that the public understands the legal requirements for Agency action...". We feel that in minority, low-income and underserved communities that special emphasis should be given to this. EPA should determine initially what the community knows about EPA. Do they know what the agency does? Do they know what the agency can and cannot do with regards to the program/project? Clarify any misconceptions and clearly state the policy/program goals and objectives emphasizing how this affects the community.

§ Use phone surveys to reach people who will not come to meetings.

§ Continue to use the Internet. This means of disseminating and gathering information will continue to grow.

5. Conduct public consultation and involvement activities.

§ The draft Policy states that EPA should "consider the appropriate use of third parties in the development and implementation of programs...". We concur with this statement and have the following suggestions about third parties that may be helpful. In addition, the groups/entities listed below could also be helpful in #2 (Identify the interested and affected public) and #4 (Provide information and outreach to the public.).

- Work with local and statewide environmental justice groups. Our state has a statewide environmental justice advisory group. It probably would be helpful for regional staff to be involved with such groups. They would build relationships and have a better understanding of environmental justice issues in the region.
- Consult with bilingual community members and ask them to serve as translators at meetings or during other activities.
- Engage students (particularly college undergraduate or graduate level) from the community and ask them to follow the issue and give suggestions about the community's perspective. This could include talking with residents, gathering their opinions, and reporting back to the agency. This activity could be for credit or for pay.

- Work with church leaders and leaders of local civic groups to determine what are the best ways to disseminate information and the format of the information (both written and verbal).
- Schools, churches, community centers, etc. could be asked to get involved in mobilizing the community to participate in EPA activities.
- Hire a community person to listen and speak for the community or portion of the community. This takes the pressure off people who might want to be involved in the issue but may not be able to lose time from work.

§ Although it often is necessary to work with activists representing minority, low-income and underserved communities, the people who will be living with the program/project should be involved in the decision making process as much as the activists.

§ Often people have “barriers” that prevent them from becoming involved. Some barriers are physical/time restrictions such as a lack of transportation or need for childcare. An idea of a way to overcome transportation issues is to hold the meeting or event near the people’s homes (e.g. local school or church), or hold more than one session in different sections of the neighborhood. If childcare is an issue then hold meetings when children are in school or work with a church or a trusted civic group to provide childcare during the meeting. Some barriers come from preconceived ideas; for example new immigrants that come from countries with repressive governments have a general fear of government. In general, barriers may be more prevalent among minority, low-income and underserved populations and EPA should be aware from the beginning of a program/project if barriers exist and address them initially. Talk with community leaders and see if there are barriers that would prevent people from participating. Discuss suggestions for overcoming the barriers and building trust.

§ Many people in minority, low-income and underserved communities are not available during the traditional workday (9 AM – 5 PM) to go to the document repository, call agency staff, do site tours, etc. Staff should consider ways to make themselves and information about the program available outside the traditional workday.

§ We have found the following techniques helpful in making a meeting between a minority/low income community and the State more productive:

- hold the meeting/event in a familiar, comfortable location (e.g. school, church);
- provide food;
- have presenters that represent different racial backgrounds; and
- structure the meeting so there are plenty of opportunities for open discussions with a question and answer component.

Minnesota Pollution Control Agency:

Nearly any EPA decision to protect human health and the environment will find well-financed opponents. As discussed in the policy, those without financial interest are often least able to participate. A public participation challenge becomes balancing the strong involvement of a few special interest detractors against the minimal involvement of the broader public and environment that an EPA action is designed to protect (including those with no direct voice—such as children or the environment). I especially applaud EPA’s efforts to acknowledge and involve segments of the public that are often under-represented.

Shoshone Natural Resources Coalition:

The EPA can improve involvement opportunities for minority, low-income and the underserved population through early awareness and simplified explanations. Often times the general public is unaware of the potential effects the decisions made by the EPA will have on their community. These potential effects need to be expressed when meeting notices are announced. This needs to be done through all available options including newspapers, radio, flyers etc. If more of the general public were aware of what could happen to the community, they would show a greater interest in being involved. They need to know how these decisions will affect them personally.

Environmental Defense:

By employing strategies such as improving its outreach skills, reaching out to different constituencies, working with local community groups, and soliciting feedback regularly, the Agency will be able to increase the number of comments it receives, especially from low-income, minority, and under-represented populations.

Children's Environmental Health Network:

The Agency particularly sought comments on how to improve involvement opportunities for minority, low-income and underserved populations. As discussed below, the Agency must undertake aggressive outreach efforts to these populations, and must provide adequate technical and financial resources for these groups and individuals. Such support historically has not been adequate, and we are concerned that one of the few programs designed to address these concerns directly, EPA's EMPACT program, has been completely eliminated from the 2002 EPA budget.

Sierra Club, Committee on Environmental Justice:

Public participation indeed takes time and money. But decision making takes even more time (in the form of delays) and more money (for example, in litigation costs) when the public participation component fails. Moreover, it is in the planning and budgeting area in which the most gains could be made in terms participation by low income and minority communities. Such communities have special needs that can only be met with detailed planning and appropriate budgeting.

Michigan Environmental Council:

EPA regional leadership should develop and maintain lists of consistent strategic partners who can serve as conduits for public involvement opportunities and announcements. Each list should include state agencies, trade organizations, non-governmental organizations, corporate interests and private citizens. These groups should understand that they are partners in the effort to build public awareness of pending EPA decisions. Partners should be provided with notification of processes about to begin and basic instructional materials regarding the public participation methods for dissemination to their constituents. Particular attention should be paid to the development of partners representing and including minority and low-income populations. These cross-project associates will help generate consistent participation from underserved

communities and enhance the EPA's list of concerned citizens.