

1 NEW YORK STATE DEPARTMENT
2 OF ENVIRONMENTAL CONSERVATION
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4
5 ENVIRONMENTAL JUSTICE PROGRAM
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8 PUBLIC MEETING

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12 DATE: February 21, 2002

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14 LOCATION: Buffalo, New York
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1 MS. CONLEY: We don't want to keep
2 you waiting any longer.

3 We expected more people to come in
4 as -- as the meeting goes on or maybe not because
5 of the weather. But, this is going to be very
6 inform -- a very informal meeting.

7 If you have a question, just going to
8 go over the report, and give you little background
9 and if you have some questions, feel free to stop
10 me. And, you know, ask me to explain things, if
11 necessary. The purpose of this meeting is really
12 to take comments on the report; your ideas, what
13 you liked about the report, or what you thought,
14 you know, didn't like about the report, what
15 additional suggestions you might have.

16 And for anyone who hasn't read the
17 report, as I mentioned I will go over to key topics
18 in there. So that you become familiar with that.

19 The purpose of the meeting is not
20 really to get into specific environmental justice
21 issues in the region. However, you know, if it is
22 a situation where you can use, as an example to
23 talk about things in the report, we welcome you to
24 do so. As way of background, let me just introduce

1 myself. My name is Monica Abreu Conley and I am
2 the environmental justice coordinator for the New
3 York State, DEC.

4 My position was created two years ago
5 as a result of many community people,
6 environmentalists coming to the DEC and raising the
7 issues of environmental justice and the need to
8 address them. And for anyone who is not really
9 familiar with environmental justice, it focuses on
10 low income minority communities and eliminating
11 or -- or preventing desperate adverse impacts --
12 environmental impacts on those communities with the
13 idea being that those communities who generally are
14 underserved, and bear a high portion of environment
15 pollution, due to their proximity to industrial
16 areas often dual zoned areas for residence and
17 industry.

18 With my position, there were two
19 other positions created in our division of permits
20 and Jeff Gregg is here with me. He deals with
21 environmental justice issues and permitting for all
22 of the regions excluding our region II, which is
23 New York City and our regional I, Long Island and I
24 have another person down in our region II office

1 Michelle Moore deals with -- deals with those
2 areas.

3 When my office was created, we filed
4 a -- a grant application with the USEPA to get some
5 money to actually develop an environmental justice
6 program. And when we filed that application, we
7 said we would do, you know, a few things, to
8 fulfill that -- that grant.

9 One was enhancing our web site to
10 include information on environmental justice.
11 Another was to set up an advisory group that would
12 develop recommendations for the department with
13 respect to environmental justice. Recommendations
14 related to permitting, as well as a strategic
15 environmental justice plan and also hold public
16 meetings throughout the State. And this is our
17 second round of public meetings, we held public
18 meetings back in 2000. Those were a little
19 different because that was -- we had the entire
20 advisory group up here listening just to concerns
21 that people had within their specific communities.
22 So that the -- the Advisory Group could learn about
23 what was going on in New York and -- and from that,
24 develop their recommendations.

1 The group over the past two years has
2 been working to come up with the recommendations
3 and on January 2nd of this year, submitted the
4 report to the Commissioner Crotty for her
5 consideration. Now where do we go from here. This
6 report is an advisory report from an independent
7 advisory group and the DEC is going to take this
8 report and take the comments that we get in these
9 public comment periods and develop policy from
10 that.

11 Our initial policy will focus on
12 permitting issues and we are hoping that that
13 policy will be effective sometime this summer and
14 then there are other suggestions in the report that
15 will require other policies and those will follow
16 after that. The report itself is broken down into
17 three sections. The first two deal with
18 permitting; the first deals permitting very
19 generally, and the second deals with State
20 Environmental Quality Review Act and proposed
21 changes that the group recommends. And the last
22 portion of the report deals with things other than
23 permitting that the group felt needed to be
24 mentioned in -- in report.

1 At this point, are there any
2 questions before I go one to the specifics of the
3 report. Okay.

4 Before, the advisory group could, you
5 know, come up with a -- a policy or - or
6 recommendations related to permitting, it had to
7 figure out what permits the DEC should be looking
8 at with respect to environmental justice and on
9 page three of the report, the advisory group
10 recommends, basically that all -- all the permits
11 issued by DEC under Article 70 be looked at with
12 respect to E.J. and the majority of the
13 recommendations to follow will deal with new
14 applications and applications for major
15 modifications, renewal applications will -- will be
16 dealt with separately.

17 One of the things we heard over and
18 over as we toured the State and -- and talked to
19 communities, was the lack of availability of
20 information to the communities. Often times they
21 would have to do FOIL requests -- Freedom of
22 Information Law requests which required a written
23 request to the agency asking them for information.

24 Sometimes, the response to those

1 requests took quite a long time and didn't give the
2 communities ample time to review the information
3 and participate in public -- public information --
4 public comment periods.

5 So, the advisory group suggests that
6 the DEC look at the way it makes its information
7 available and try and use various methods, rather
8 than just using legal notices in a small newspaper,
9 using actual fliers in the newspaper, you know,
10 colorful fliers; using repositories within
11 communities so that they are accessible the
12 information related to a permit -- permitting
13 project; written public notices; mailing lists
14 directly to the people that -- that the application
15 might affect. And again, using the DEC web site
16 just to get as much information out there as
17 possible, so, they would not have to go through
18 FOIL requests.

19 And I noticed that I -- I skipped one
20 thing. Environmental Justice is -- is something
21 that has -- it has been around since the early '80s
22 but to many people, it is -- it is relatively new
23 and -- and the concepts are -- are not known. So,
24 the advisory group recommends that DEC staff itself

1 be educated on environmental justice, so they can
2 identify it when it comes across their -- their
3 desks. And, you know, have mechanisms with which
4 to deal with it.

5 With respect to enhancing notice to
6 the communities, the group recommends that DEC look
7 at its policies and procedures for notifying
8 communities and the public about permit -- permit
9 applications. And also, recommends that we
10 encourage the applicant themselves to engage the
11 public in information sessions and public
12 participation opportunities very early on in the --
13 in the permitting process. With the idea that, you
14 know, issues would be raised early, and there would
15 be a long time to deal with those before any type
16 of permit was actually issued.

17 Two key recommendations in this
18 section relate to how the DEC notices its permit
19 applications. The way the regulations are set up
20 now, the DEC is required to notice a permit upon
21 completion. The way that happens is that the DEC
22 receives a permit application and often times, it
23 is either not complete, DEC needs additional
24 information or clarifications. So it asks the

1 permit applicant to supplement their application
2 and sometimes that can take a very short period of
3 times, sometimes it takes a -- a long period of
4 time, sometimes months or longer and the group felt
5 that -- that was critical time that was being
6 wasted, that the community was not aware of what --
7 what might potentially be going into their -- their
8 neighborhoods.

9 So, the pro -- one of the proposals
10 is for the DEC rather than noticing upon
11 completion, to notice upon receipt. So, as soon as
12 we get an application in the door, we would put a
13 notice in our Environmental Notice Bulletin that
14 would notify people that -- that this was an
15 application we received, and notify them that
16 information about the -- the permit application was
17 available.

18 This has actually being tried in our
19 Region II office in New York City and it has been
20 working very well. And not only has our Region II
21 office been noticing in -- in the Environmental
22 Notice Bulletin but they have also have been
23 sending mailings directly to interested people
24 in -- in New York -- in New York City and I guess

1 that they have gotten a lot of good feedback on
2 certain projects.

3 They have encountered issues related
4 to the permit application and gotten the applicant
5 involved with the community and have been able to
6 change the application or the, you know, the
7 impacts that would -- that would occur in a
8 neighborhood based on, you know, the input from the
9 community. Technical assistance grants is another
10 thing that was -- that was suggested by the
11 advisory group, we have heard time and time again
12 that low income minority communities lack the
13 resources necessary to really participate in the
14 permitting process.

15 They either don't have the funds to
16 hire consultants or just, you know, don't have the
17 know-how to do it themselves. So, you know,
18 providing money to community groups so that they
19 can in fact hire consultants to review the
20 information and participate in the permitting
21 process, would really enable them to do so.

22 Alternative -- encouraging
23 alternative dispute resolutions; litigation is
24 often a -- a long and very difficult way to handle

1 things. So, the advisory group encourages, before
2 it even gets to that point that the applicant and
3 the community engage a third party and either have
4 a mediated session or an arbitration. So, they can
5 resolves issues and come up with some kind of an
6 agreement.

7 If the agreement relates to issues
8 that the DEC does not have authority over, they
9 could put it in a separate agreement and both
10 parties would have the ability to enforce that --
11 that agreement. If it is in fact, something DEC
12 has authority over, that agreement can be worked
13 into the permit itself. So, DEC could enforce
14 whatever -- whatever agreements were made.

15 That covers the first section of the
16 report and very generally, there is, as you know,
17 little more meat to -- to those suggestions.

18 But are there any questions at this
19 point? Okay.

20 The next section -- the next section
21 of the report, gets a little more technical and
22 starts, as I mentioned, to deal with the State
23 Environment Quality Review Act. And it starts off
24 with the recommendation that the DEC utilize some

1 method to locate low income minority communities
2 before we can actually, you know -- before we can
3 actually address E.J. issues, we need to know where
4 these -- these issues are occurring. And the group
5 looked at several ways to -- to identify these
6 communities and recommends that the DEC use a -- a
7 tool that was created by USEPA Region II and this
8 is a geographic information system, which enables
9 the user to map a certain area, should be the area
10 that -- that an application a permit -- a facility
11 rather was proposed for. And, you know, map the
12 area around that and the -- the software would then
13 identify low income minority areas within that
14 mapped area using census information, census block
15 groups and a block group represents anywhere from
16 two hundred and fifty to five hundred housing
17 units.

18 So, you know, this would allow the
19 DEC to, you know, kind of, you know, take the
20 application model, what type of impacts might
21 occur, if there are air impacts kind of, you know,
22 model where the -- that the air stream would be
23 going, what communities will be affected and
24 actually, pick out the affected area.

1 For minority in -- in order to
2 identify a low income or a minority community we
3 need to figure out what the thresholds are for
4 those communities and EPA with their software uses
5 for low -- for minority, they use two thresholds.
6 Actually, one for urban areas and one for rural
7 areas. When -- when they were creating this, the
8 status -- statisticians that were -- were going
9 through all the data found that if they clumped
10 rural and urban areas together, they kind of lost
11 the rural areas. They were just kind of absorbed
12 in and they were not really picked up. So they
13 decided to separate those numbers and for an -- an
14 urban area, the cut off number is forty-eight point
15 five percent. So, a community has to be
16 forty-eight point five percent or greater minority
17 in order to qualify as a minority community. And
18 for low income, that number -- oh, I am sorry, for
19 rural areas, that number is thirty-three point
20 five. So, it had to thirty-three point five
21 percent or greater minority in order to qualify and
22 then. For low incomes, the threshold is
23 twenty-four point eight percent. And, again, for
24 the low income use, census information for -- for

1 low -- to determine low income. Determination of
2 significance; when the DEC receives a permit
3 application, they have to determine whether that
4 application has the potential -- the potential for
5 an adverse environmental impact.

6 If -- if -- there are actually three
7 types of -- of permit applicant -- or actions
8 rather; type one, type two and unlisted.

9 Type one action is an action that is
10 presumed to have a significant adverse impact on --
11 on the surrounding community and those are the
12 one's that get an environmental impact statement
13 review done.

14 The type two are the smaller
15 applications and those do not get an environmental
16 review. And, then, the unlisted is anything in
17 between those and all of those terms are identified
18 or defined rather in our regulations. The
19 unlisted, the -- the middle group, kind of
20 undefined group, the DEC kind of has discretion on
21 what to do with those -- those permit applications.

22 We can request that when the
23 application come in that the -- the permit -- the
24 permit applicant fill out a two-page environmental

1 assessment form, and kind of give some general
2 information about the application, or we could ask
3 that they fill out a full environmental assessment
4 form which is like a thirteen-page form, it gets a
5 little more in depth and asks some additional
6 questions regarding health impacts and traffic
7 impacts.

8 Now, for -- the type one, the more
9 serious action, the full environmental assessment
10 form is always required. And there is discretion
11 as to whether the DEC can use the long form or the
12 short form for the unlisted. And the group felt
13 that this short form really didn't provide enough
14 information to allow the DEC to address or assess
15 environmental justice issues. So the
16 recommendation is that where there has been a low
17 income or minority community identified, the DEC
18 require that the applicant fill out the long form
19 and then, along with that, there is a suggestion
20 that -- that form itself -- the long form needs to
21 be revamped, that it does not really capture enough
22 of the information the DEC might need as far as
23 demographics, more specific information related to
24 health impacts. So, you know, that is something

1 the DEC is going to look to do in -- in the future.

2 Posting Environmental Assessment

3 Forms on the DEC web site, again, just an

4 opportunity to get as much as information out to

5 the public as possible requiring a minimum time

6 frame with which to make the significance

7 determination.

8 Currently, there is no minimum time

9 frame established. The -- once the -- once the DEC

10 publishes notice of the -- the permit application,

11 it goes through its procedures and then eventually

12 makes the significance determination. The group

13 felt that there may not be enough time, from the

14 time that the DEC notices the application, till the

15 time that they make their significance

16 determination for the community to get involved

17 and -- and give information to the DEC.

18 So, the advisory group suggests that

19 there be a minimum time frame established from

20 the -- the day that it's -- that the application is

21 public noticed, until the day that it can make its

22 significance determination.

23 The idea behind that and we have had

24 several key examples, one particular in New York

1 City where the Department made a determination that
2 there were no significant adverse impacts and this
3 was for a solid waste transfer station in the south
4 Bronx. And the community did not have enough time
5 to weigh into the process and throughout the public
6 hearings that were held, the information that they
7 brought to the table led the environment -- the
8 administrative law judge to say that the DEC had
9 made an erroneous finding, that there would in fact
10 be impacts.

11 So, this is just lengthening the time
12 that -- that the public can -- can, you know, weigh
13 in before that decision is made. And, then, just
14 using as much information as possible and the
15 permit reviewer looks at the permit application.
16 They should be looking at our environmental
17 navigator. I don't know how many of you are
18 familiar with that, but on our web site, we also
19 have -- on the DEC's web site, a GIS application
20 where you can pinpoint a certain area and find out
21 what type of environmental facilities are, I am
22 sorry -- what type of facilities are located around
23 that area.

24 For instance, there is toxic release

1 inventory information on there, Article 10, power
2 generating facility information, solid waste
3 facilities, hazardous waste facilities and all that
4 information can be used by a permit applicant to
5 see what else is around the community before they
6 go ahead and -- and add additional burden to a
7 specific community.

8 Assessing whether a significant
9 adverse impact has a disproportionate impact on a
10 minority community. As I mentioned, we have -- DEC
11 has to make this determination of significance. If
12 there is a significant environmental or potential
13 significant environmental impact, the applicant has
14 to go on to do an environmental impact statement
15 and determine whether there are disproportionate
16 impacts on a low income or minority community.

17 The advisory group suggested that
18 where an environmental impact statement is
19 required, that scoping be done in all -- in all
20 circumstances, that is another area that is
21 discretionary.

22 Scoping is the process by which the
23 environmental impact statement or environmental
24 impact review is defined. The applicant would

1 propose what they intend to study, the DEC weighs
2 in, and the public has an opportunity to weigh in
3 as well. And this whole idea of scoping is -- is
4 in the regulations, discretionary and the advisory
5 group suggests that where a low income or minority
6 community has been identified, that scoping be
7 required. And then in the scoping process, the
8 applicant demonstrate that they have in fact
9 involved the community in the process and within
10 that process, you know, the community could weigh
11 in and say, you know, that, you know, look at what
12 the applicant is proposing and say well, you have
13 forgotten to include, you know, perhaps this other
14 facility down the road or -- or other things
15 that -- that they should be studying.

16 Preparation of the E.I.S., we have
17 heard -- we have heard quite often that short
18 environmental impact statements are done, but they
19 are not always done very well. And, one of the
20 recommendations in the report is for the DEC to
21 look at its guidance on how to do environmental
22 impact reviews and enhance that -- that guidance
23 and perhaps put examples of environmental injustice
24 and just, you know, give -- give a little more

1 information as to, you know, what should be going
2 into the E.I.S.'s.

3 Public comments on the environmental
4 impact statement; once an -- an impact statement is
5 completed, a public comment period is then given
6 and the way the regulations are written, state
7 that -- that public comment period can be no less
8 than thirty days. Again, the advisory group
9 suggested that might not be enough time and
10 recommends that that be changed to, require a
11 minimum of sixty day public comment period.

12 And then requiring public hearings,
13 holding of public hearings is not something that is
14 mandatory, it is also another discretionary item
15 and, you know, again, where low income minority
16 communities are identified, the advisory group
17 recommends that a hearing be held.

18 Let's see, another regulatory change
19 that the advisory group suggests is that the DEC,
20 when it issues its permit, actually certifies that
21 they have looked at environmental justice in low
22 income minority areas and certifies that there is
23 no disproportionate environmental impact related to
24 that facility or that -- if in the event that there

1 is -- there is such a disproportionate impact, that
2 it has been mitigated to the -- to the greatest
3 extent practicable.

4 Traffic generating facilities.

5 Currently, in order for a -- a
6 traffic generating facility to trigger the
7 threshold for an environmental review. You need to
8 have a -- a thousand vehicles or -- or greater and
9 particularly in urban communities, we have heard
10 many times that -- that diesel from trucks coming
11 through, you know, there may not be a thousand
12 vehicles related to a particular facility but even
13 if there are, you know, five hundred, two hundred
14 and fifty, sixty, the diesel emissions coming from
15 those facilities and -- and any impacts related to
16 other vehicles could significantly contribute to
17 the pollution in -- in these areas.

18 So, the recommendation is to have the
19 DEC look at that threshold and -- and lower it.

20 Permit renewals; I mentioned when we
21 first started that permit renewals would not -- are
22 being treated a little separately. They would not
23 go through the -- the recommendations I have talked
24 to -- I talked about so far. The idea being that

1 when a permit was granted, they went through the
2 whole environmental impact process. And so long as
3 the facility itself is still complying with the
4 regulations, that there is no need to reopen it
5 again as a new application and go through the
6 process all over again.

7 However, we have heard time and time
8 again that existing facilities cause huge problems
9 with respect to environmental justice where --
10 where that facility is not complying with its
11 permit or it is not -- it's just looked at as a
12 nuisance by the community.

13 So, you know, and there is a
14 perception that when the DEC receives an
15 application for renewal, it is just kind of rubber
16 stamped and sent on its way.

17 And the advisory group through its
18 recommendations wanted to make sure that the DEC,
19 its Division of Permits is working with its
20 Division of Environmental Enforcement, making sure
21 that -- that the facility is in compliance with all
22 of its regulations before it actually issues a -- a
23 permit renewal.

24 The other part of renewals that

1 advisory group wanted to make mention of in its
2 report is the DEC's current ability to treat a
3 renewal application as a new application under
4 certain circumstances.

5 For instance, if the application
6 involves a material change, if new information is
7 brought to the -- to the DEC, if an opportunity for
8 public comment perhaps, was not done in the past
9 and is required now. So, these are all
10 opportunities that the DEC can use to treat an
11 application as a new application, which would
12 subject it then to all the recommendations I have
13 been talking about before with respect E.J.

14 That is the second section of the
15 report. Any questions or comments.

16 FROM THE FLOOR: When they go out
17 and do the assessment of the neighborhood, how far
18 do the advisory board recommend, as far as, radius
19 around a permitted application or an applicant's
20 permitted area.

21 How do you determine how far you are
22 going to -- you are going to kind of assess the
23 neighborhood and --?

24 MS. CONLEY: Okay. That is a great

1 question. The way EPA system works, it gives
2 you -- it kind -- I guess it kind of gives three
3 opportunities to define the community of concern.

4 Primarily, what we are mapping is
5 based on where the impacts are going to be. So,
6 the -- the software actually allows you to pin
7 point where those areas are going to be based on --
8 on modeling. If it is a situation where we are not
9 sure, we don't have modeling effect, or we are not
10 sure you can actually draw radius around -- or a
11 circle rather around the facility and do, you know,
12 like a -- do it that way and that is just a
13 starting point.

14 Then EPA suggests there is the
15 ability, then -- then you are supposed to go out to
16 the community, make this information known and ask
17 the community if they think it accura -- accurately
18 reflects the area that is going to be impacted and
19 then based on information that is received from the
20 community and -- and from the applicant as well,
21 that information -- that boundary rather can become
22 modified, but it is -- it is really used and -- and
23 the area map is really going to be that area that
24 is affected by environmental impacts based on air

1 or water impacts, based on what the DEC knows.

2 FROM THE FLOOR: So, when you have a
3 facility that is discharging to air, anything, I
4 mean -- I mean YOU can go pretty far reaching on
5 a -- on AN air discharge.

6 MS. CONLEY: Right.

7 FROM THE FLOOR: I mean is that what
8 they are going to -- is that what the advisory
9 board is looking at -- is the -- the downwind
10 areas -- of an area that is coming off a permitted
11 facility?

12 MS. CONLEY: Right.

13 FROM THE FLOOR: Using that as a part
14 of their --

15 MS. CONLEY: Right. Exactly. If it
16 is something where there is a water discharge to
17 a -- a water body, we would look at where that
18 water body ends up and what -- what communities it
19 goes through. So, if there is -- if there is
20 facility located in a particular but the discharge
21 actually affects an area well away, then that would
22 be the area, we would be looking at.

23 FROM THE FLOOR: But they have TO
24 carry a weighted basis on that discharge, I mean

1 somebody is discharging two pounds into Lake

2 Ontario?

3 MS. CONLEY: Right.

4 FROM THE FLOOR: There are not going

5 to to give --.

6 MS. CONLEY: It would -- again, we

7 are looking at significant adverse impacts. So it

8 will have to -- to meet that threshold first. So,

9 if it is something minor, it is -- it is even going

10 to get to the point of Environmental Impact

11 Statements, so --.

12 FROM THE FLOOR: Proportionate for

13 the area does that include like middle class and

14 upper class, do you weigh them against the lower

15 income?

16 MS. CONLEY: The way it is -- this is

17 very tough area because there is really no set

18 methodology for how to do this?

19 What the suggestion in the report is

20 that if there is a facility that needs to be

21 located within a particular municipality, then we

22 would be looking at the community affected versus

23 the entire municipality.

24 If it is something that could be

1 sited anywhere in the State, we would be looking at
2 the entire State to compare it to the affect on
3 this -- this one community.

4 So, it all depends on what -- what is
5 being sited and -- and the needs related to that.

6 If it is going to service a
7 particular municipality, then it has to be sited
8 there and we would be looking only to the
9 municipality and you would be looking at all the
10 residents in the State.

11 FROM THE FLOOR: From a standpoint
12 of, I mean, this advisory board is making
13 recommendations on low income and minority areas
14 but as we had discussed earlier, it does not really
15 address areas that are -- that have borne the brunt
16 and the burden of, in particular, hazardous waste
17 sites.

18 How -- how are they going to address
19 that where we have, you know, maybe only two or
20 three areas in the whole State that are bearing the
21 brunt of the whole northeast United States. And
22 have borne the brunt of super-fund sites, all
23 within an area of one county. I mean, that is --
24 to me is environmental justice also. I mean, we --

1 we are in an impacted area where there is a
2 tremendous amount of hazardous waste landfills,
3 super-fund sites, radioactive sites and they
4 continue to permit a facility or two facilities,
5 that are continuing to receive hazardous waste from
6 the northeast United States.

7 You know, this is impacting not
8 minorities per se, not low income people. It is
9 affecting the whole community. It is affecting a
10 whole way of life at one end of the State. And I
11 don't see anything in the -- in -- looking through
12 this that really addresses that, it is more focused
13 on inner city or minority areas when in fact, the
14 word environmental justice really should apply to
15 areas like ours where we have got severe impacts.

16 Not moderate impacts, I am talking
17 about severe impacts of hazardous waste disposal
18 facilities and past practices. Are they going to
19 make any kind of a recommendation that would
20 address those concerns?

21 MS. CONLEY: Well, this group was put
22 together to deal with environmental justice from
23 the perspective of low income minority communities.
24 When that phrase was coined, it was really meant to

1 address low income minority communities. The idea
2 that a lot of the concepts in here are, you know
3 just good practice and should carry through, you
4 know, to non low income minority communities is
5 something, you know, the group talked about and --
6 and we are hoping that -- that the changes that are
7 made will in fact make positive -- make positive
8 changes to the entire State. But, right now, the
9 focus is on low income minority communities with
10 the idea that those are the communities that have
11 traditionally been underserved.

12 FROM THE FLOOR: I mean in our area,
13 you don't -- based on practices in the past, you
14 don't, it affected everybody. It was not just
15 limited. I mean you don't go into per se, the city
16 of Niagara Falls and say, gee whiz sixty percent is
17 on public assistance. So we are going to dump
18 there or we dumped there because of that. They
19 dumped there or they created these areas because it
20 was an industrial area. It was based on, you know,
21 the best practices at the time and it just happens
22 that everybody, you know, upper and middle classes
23 have fled the area and left a minority group. But,
24 it does not, I mean, this advisory, if it goes

1 through and they do incorporate, hopefully they
2 will because there is a tremendous amount of good
3 effort here that would make drastic changes in the
4 whole process if it was implemented.

5 The threshold, I mean, it kicked rest
6 of us out, that live in areas that are drastically
7 affected, but do not teeth to be able to go after
8 the issues necessary to either close it down, or
9 get these areas cleaned up or, you know, address
10 the -- the issues per se.

11 MS. CONLEY: I can definitely
12 understand you --.

13 FROM THE FLOOR: I would -- I would
14 hope that the DEC advisory board could incorporate
15 something that understanding, of course, low income
16 and the minority issues and agreeing with those, I
17 don't see them in our area because it affected
18 everybody. It didn't matter what you were, it just
19 affected everybody as a community but addressing
20 those concerns because there is only a few areas in
21 the whole State that really are typical of Niagara
22 County and we have no redress.

23 We have no redress right now. We
24 cannot go in and like you are talking about

1 renewing permits. If they would open it backup and
2 go through the whole permitting process now,
3 instead of rubber stamping because that is exactly
4 the sentiments that we feel in the community, that
5 the DEC is there as a rubber stamp agency.

6 You know, we are finding out more and
7 more as we -- as we are uncovering more information
8 and our issues that we are addressing in Niagara
9 County that the DEC is under funded, does not have
10 the staff or personnel to really overlook and
11 oversee the operations of these hazardous waste
12 facilities. And, as a -- as a result of that, the
13 facility -- the facility operators are operating
14 outside the scope of their permits. We have got an
15 issue there where they have operated. They have
16 proven it, there are under an EPA consent order to
17 remove material, but how can we use that
18 information to go back through the permitting
19 process, when it is not going to be open on a
20 environmental review basis. When they re-up their
21 permits. I mean, the EPA has sited them, the DEC
22 is aware of the siting and -- and is cooperating to
23 try and remove the -- the material that was sited
24 there or buried there wrongly.

1 But unless, this advisory board
2 information is actually implemented, it is another
3 rubber stamp case unless, you know -- I think that
4 the -- this information really needs to be
5 implemented. But I think it also needs to address
6 three or four areas in the State particularly in
7 Niagara County for having done their fair share and
8 giving us the teeth to be able to combat what we
9 feel is just a tremendous burden of, you name it;
10 radioactivity, fuels from rocket development
11 programs, hazardous waste of -- pages and pages of
12 chemicals that most people would not be able to
13 pronounce, let alone understand that this facility
14 is permitted to address or to receive. Just
15 decades and decades of impacting communities
16 including minorities and Native Americans, which we
17 are going to address when we go back. Just a
18 tremendous burden for one community to take for the
19 whole State. And I would hope that these
20 recommendations are implemented and gives us some
21 teeth maybe to be able to combat this.

22 MS. CONLEY: Okay. I can't speak for
23 the entire group but, your -- your recommendation
24 your suggestion is -- is well taken. I think, you

1 know, we go through this process and the whole idea
2 of environmental justice. You really look at the
3 low income minority communities as being the ones
4 that would have disproportionate burden. But, as
5 you point out, there are other areas in other
6 counties that may not meet that threshold, that
7 still have it, you know, disproportionate burden.
8 So that, you know, DEC perhaps should -- should
9 look at -- at those areas as well.

10 FROM THE FLOOR: We have the only
11 burden for all of New York State. I mean if you --
12 you want to talk about environmental justice. Why
13 is that? Why is -- why is there a court order to
14 require the DEC to site in each region their own
15 facilities and yet, Niagara County has the only one
16 for all -- all of the regions and all of New York
17 State, and all of northeast United States and
18 Canada.

19 If there isn't something for
20 environmental justice there, then there is nothing
21 for the minorities, there is nothing for the low
22 income communities because we meet all the
23 criteria. There is not another -- there is not
24 another case like ours anywhere in New York State.

1 And it is not addressed here. There is nothing
2 here that will allow us, other than the radius
3 areas, you know, around this facility, traffic
4 patterns because they are going through these
5 areas. I mean those are really like, they are
6 really -- really tiny, hang your head on that hook
7 and the hook is holding it up with a safety pin.

8 You are not going to hang your hat --
9 your hat on it. It just -- I am not an attorney,
10 but, you know, we have worked through this process
11 and I don't see a hook there. It just -- it is too
12 bad, we are coming in so late onto this process
13 because I think we could have formulated a lot more
14 opinion at the beginning of this thing. And maybe
15 it could have been incorporated in. I think it may
16 be too late at this point, but at least the
17 comments are being made.

18 MS. CONLEY: Not necessarily. As I
19 mentioned, you know, this is the perfect time to
20 making comments like that because, you know, the
21 DEC is going to base its -- its policy development
22 on the report and the comment. So it is, you know,
23 it is definitely timely and I appreciate your
24 comments. I think they are --.

1 FROM THE FLOOR: Can't Region Nine be
2 considered a minority if it has to take everything
3 in. I mean it is much like it was --.

4 MS. CONLEY: Well, we -- we actually
5 define in here what is considered minority and we
6 look at, you know particular, you know, Hispanics,
7 African American, American Indians and Asian and
8 Pacific Islanders those are the minority -- that is
9 who is classified as a minority based on this U.S.
10 census description of minority as well.

11 So it is not really -- I understand
12 what you are saying definitely. But maybe that is
13 something we need to look into. Okay. I just
14 wanted to read this license plate a minivan tan
15 Chrysler APW 8529, lights are on. I don't know if
16 that is anybody here. I want to make sure you can
17 all get home.

18 Jeff just wanted me to point out that
19 the comments that you are giving tonight are
20 actually comments to the commissioner, not comments
21 to the advisory group. The advisory group with --
22 with respect to this report has -- has done its job
23 and -- and now its -- its up to the commissioner to
24 take your comments and -- and turn this into

1 policy.

2 The last section of the report, I
3 will just talk very generally. I am just going to
4 mention, the general recommendations here. The
5 first section deals with environmental justice
6 issues with respect to Native Americans.

7 Within our definition of minority, we
8 include American Indians and then that really
9 relates to American Indians living within New York
10 State among -- not on reservation, not on -- on
11 Indian territory. But because of the special
12 sovereign nature of Indian nations, the advisory
13 group felt that we should address those issues
14 separately at the end of this report and, you know,
15 we just mentioned a -- a couple of -- a couple of
16 recommendations.

17 One, is to develop an Indian policy
18 statement with -- to respect -- how the DEC should
19 interact with the nations on a government to
20 government relationship. That the commissioner
21 should meet on a yearly basis with the nations,
22 that a cultural awareness training needs to be
23 established, the DEC develop a consultation and
24 contact guidelines, primarily for, you know, we are

1 envisioning situations where the DEC might be
2 permitting a facility off reservation but it has
3 impacts that may affect reservation land or
4 territory land.

5 You know, air, you know, air or as I
6 mentioned also before, water discharges that may go
7 through a water body on -- on the Indian Nation
8 territory.

9 And then just kind of looking at --
10 looking at State laws related to excavation and
11 removal and such burial of human remains related to
12 native American burial sites and sharing of that
13 information with the Indian nations. A
14 recommendation to continue the advisory group --
15 the advisory -- that I mentioned had been working
16 for two years so far. You know, the group
17 recommends that the DEC to look at continuing that
18 advisory group. So, now when we actually develop
19 policy we will have a body that can assist us with
20 that implementation.

21 Assessing distribution of green
22 benefits, the whole idea we are talking about with
23 respect to environmental justice deals with
24 preventing or eliminating disproportionate burdens

1 on low income minority community. But then there
2 is also the flip side that not only should we
3 prevent these burdens but we should also enhance
4 these communities bring green benefits, bring open
5 space and park land to enhance these communities
6 base.

7 Assessing our enforcement efforts
8 with respect to environmental justice, looking at
9 how we do enforcement now and as you mentioned we
10 have limited resources but we need to make sure
11 that our enforcement is equitable throughout the
12 State, that we are looking at these low income
13 minority communities the same as we are looking at
14 other communities and making sure that that
15 enforcement is -- is done.

16 Evaluating and addressing activities
17 in agencies exempt from SEQAR review. There are
18 some actions that even if there is a potential for
19 adverse or significant adverse impacts, the agency
20 or the activity is exempt from doing the
21 environmental review because of legislation or --
22 or regulation and the advisory group suggests that
23 EPA encourage, if not require those entities to go
24 through the full environmental review that they can

1 to look at the environmental justice issues and --
2 and engage in the recommendations that I have
3 talked about today up until now.

4 Reviewing the DEC's organizational
5 structure for my office, the Office of
6 Environmental Justice and making sure that that
7 office is -- is staffed and staffed properly, that
8 we get some additional bodies in there.
9 Sociologists or -- or, you know whatever other
10 experts are necessary to address environmental
11 justice issues.

12 Translation policy, again with
13 respect to getting information out to the public,
14 we have some members of the public that don't speak
15 English and the DEC should be aware of this and
16 where necessary translate documents into other
17 languages and provide translation in public
18 meetings like this, so that everyone can
19 participate.

20 Then the last recommendation is a
21 rather broad recommendation that the DEC encourage
22 the legislature to issue legislation or the
23 governor to issue executive order to require other
24 State agencies, as well as local governments, to

1 also address environmental justice issues.

2 You know, we talk about zoning as
3 being an issue with respect to environmental
4 justice and that is not something that comes under
5 the authority of the DEC.

6 So while we can, as the DEC can make
7 some changes, we need other entities as well to --
8 to help us to really make the changes that are
9 necessary.

10 I just wanted to point out the report
11 that -- that pretty much summarizes the report and
12 attached to the report are several supplemental
13 letters, that were submitted by advisory group
14 members, primarily to either add additional
15 information that they think should be considered by
16 the DEC when it -- it develops its policy or, you
17 know, mention certain disagreements they might have
18 with -- with some of the information on the report.

19 And we were taking public comment on
20 the report tomorrow. And, you know, this is --
21 this is going to be an ongoing process as we learn
22 more about environmental justice issues, we will
23 enhance policies that come out and, you know,
24 hopefully just develop the practices that can

1 address, you know, all areas of New York State.

2 I just wanted to point that we have
3 a -- a member of the advisory group here. Diana,
4 would you just want to introduce yourself?

5 MS. HINCHCLIFF: Sure.

6 MS. CONLEY: Thank you.

7 MS. HINCHCLIFF: I am Diana
8 Hinchcliff and I represent the Alliance of Chemical
9 Industries in New York State.

10 MS. CONLEY: Thank you. I -- I
11 neglected to mention earlier the advisory group was
12 made up of eighteen individuals. All of very
13 different backgrounds. We had business
14 representatives, community representatives,
15 environmentalists, government representatives from
16 the local, state and federal government.

17 We had a representative from the
18 Department of Health and as you can imagine it was
19 a -- a learning experience in getting everyone to
20 work together and -- and I think the
21 recommendations that came out really speak to
22 the -- the dedicated nature of the advisory group.

23 I mean, you know, the hard work they
24 put in over the past two years. So, I can answer

1 any questions that you might have.

2 FROM THE FLOOR: If the
3 recommendations in this report are incorporated
4 into the permitting process, what happens to the
5 permits that are in place now?

6 Are they going to be grandfathered or
7 will they come up for a full review and --.

8 MS. CONLEY: That is one of the
9 things that the commissioner will have to evaluate,
10 actually come forth with policy in one of the
11 supplemental letters, the suggestion is that when
12 the policy becomes effective, that it pertain to
13 any future permit actions, after that. But as I
14 mentioned, it is something that the commissioner
15 will have to consider, when we develop our policy.

16 FROM THE FLOOR: Is there -- is there
17 is a lobbying effort against these advisory
18 recommendations from a monetary aspect that people
19 would say that it would cost too much to institute
20 what you would, you know, recommend that for -- to
21 institute these recommendations, as far as an undue
22 burden, on say the chemical industries or the
23 hazardous waste facilities and -- have they
24 generated negative comments to this?

1 MS. CONLEY: Well, I have to say that
2 the majority of the comments we have received are
3 very supportive of the recommendations. And there
4 is definitely concern that -- that if the process
5 is -- is lengthened, that that will cause problems
6 for the permit applicants. If it becomes more
7 expensive, that is also a concern. With respect to
8 the TAG grant that I had mentioned earlier, the
9 supplemental letter from the -- the business
10 representatives did mention that they believe that
11 those TAG grants should be funded by the State and
12 not be funded by the applicants themselves.

13 So there -- there definitely has been
14 concern over how this will affect and, you know,
15 there is the idea that you don't want to prevent
16 economic development from coming into these
17 communities because they desperately need it. But
18 you want -- you want -- environmentally positive,
19 you know, outcomes in these community so. And
20 then, with respect to the resources of the DEC
21 itself, I mean DEC currently is looking at the
22 recommendations and trying to figure out what can
23 be done immediately, what will take additional
24 resources, you know, and that information also has

1 to be considered when we develop out policies.

2 But I think the whole idea that the
3 advisory group had in the back of their minds, when
4 they were coming out with these recommendations, we
5 don't want to recommend something that was
6 completely off the wall that couldn't be
7 implemented. You know, we could have come up with
8 a -- a ton more suggestions that looked good on
9 paper but in reality would never come about, just
10 because they would have cost too much or we didn't
11 have the technology to do that.

12 So, you know the -- the
13 recommendations are pretty durable. I have no
14 other comments, you know, people want to stay
15 around, I, you know, I am free to answer questions.

16 I will give you some time to think of
17 additional questions. Just a -- a couple of things
18 I wanted to mention. Out on the front table the
19 DEC put together a hotline -- a toll free hotline
20 and that number is out there to enable most of the
21 residents of low income minority communities to
22 make the long distance call to Albany to -- to
23 reach my office.

24 My card is also out there. I

1 encourage you to call my office if you have
2 questions, e-mail as well.

3 FROM THE FLOOR: Is there anyway,
4 that the group suggestions are going to make the
5 DEC more positive for communities like ours to us,
6 you know, less burden?

7 MS. CONLEY: Well, -- I mean, the
8 comment has been recorded and is part of the
9 official record, so that is something that will be
10 considered when we come out with our policy. You
11 know, if you wanted to submit something in writing
12 as I mentioned, the comment period closes tomorrow,
13 but you know, call my office and you know, I can
14 talk to you about that.

15 FROM THE FLOOR: Okay. But how come
16 like, I didn't even know about this.

17 MS. CONLEY: Uh-huh.

18 FROM THE FLOOR: If it wasn't for
19 Tom. Why aren't things put out more to the public,
20 I mean, individual households. So that they --
21 people like us, in the -- in our community who are
22 drastically affected you know could come here and
23 have our voices heard?

24 MS. CONLEY: I would say it is, you

1 know, resources is one issue. The lack of
2 knowledge on the part of the DEC as to who needs to
3 be informed and that is all things that are --
4 those are all things that are going to be enhanced
5 through this whole -- whole project.

6 I anticipate hiring perhaps a
7 consultant to actually look at -- at these
8 communities and figure out the best ways to address
9 them, whether that be developing mailing lists to
10 make sure we are reaching the proper person --
11 peoples that we can in fact, you know, at this
12 point we try -- you know, we try to use regional
13 mailing lists and mailing lists that I receive on
14 my web site. At this point I -- I have a page it
15 that allows people to join the mailing list. So if
16 you know anyone, I encourage you to, you know, have
17 them get on there or just send me the information,
18 and we can add you and by putting your address out
19 front you would be added to our mailing list that
20 way.

21 But I anticipate that within the
22 next -- definitely within the next year, we will
23 have a much better mechanism for notifying the
24 public about these types of meetings as well as

1 projects in their communities.

2 FROM THE FLOOR: So, if I were to
3 take the mailing list I have and check the people
4 can I put the addresses on there for tomorrow and
5 have you send them information?

6 MS. CONLEY: Absolutely. Yes, I will
7 take any addresses you have and you can e-mail them
8 to me or you know, deliver them to me however, and
9 I will just them to our -- to our database.
10 Absolutely.

11 MR. GREGG: I would say when we were
12 in Buffalo the last time one of the recommendations
13 was made to use a particular -- I can't remember
14 what the operation was called, at Buff State, where
15 they have a -- a liaison person with the
16 communities and that -- that person was identified
17 by numerous groups, community groups in Buffalo
18 area as a good place to get the word out.

19 And when we -- when we reached out to
20 them, they were no longer there, funded at Buff
21 State, so -- and we were on tight time frames and
22 all that to -- to do these and we're -- we're these
23 all around.

24 So apologies for not -- not getting

1 the word out, very well in some cases.

2 FROM THE FLOOR: We have five hundred
3 to six hundred hard core people, you know, I mean
4 that is just people that we have contacted, have
5 contacted us, want to do something in our
6 community. I mean it goes well beyond that. We
7 have got a lot more people than that, but we have
8 got -- people have submitted their names and
9 addresses I mean, we could e-mail that whole list
10 to you.

11 MS. CONLEY: That would be great.

12 FROM THE FLOOR: We have got to do it
13 by tomorrow.

14 MS. CONLEY: That would be great.

15 No. No. I mean, that information
16 can be added at any point.

17 FROM THE FLOOR: Yes. I mean for
18 other advisories that are coming out, is what we
19 are looking for.

20 MS. CONLEY: Yes.

21 FROM THE FLOOR: So could you tell us
22 has it actually been submitted to the DEC for the
23 expansion of CWF unit?

24 MS. CONLEY: No. I -- I don't want

1 to put anyone on the spot. We do have some DEC
2 personnel here. Perhaps, you know, at -- at a
3 later date you could call their office and -- and
4 get some additional information from them or -- you
5 know, reach out to them. But, he is shaking his
6 head no, that it has --.

7 FROM THE FLOOR: They haven't even
8 filed a permit yet.

9 MR. GREG: I don't know if you know
10 Steve Jileski (phonetic spelling), he is the
11 regional permit administrator for the DEC in this
12 region. So, if -- if you want to touch base with
13 Steve.

14 MS. CONLEY: Hopefully we are not
15 buried in. I don't think it was snowing that hard.

16 MR. GREGG: I will -- I will just say
17 you know, I -- I should not volunteer right away
18 but I was mentioning that you should talk to Neil
19 Patterson and I was telling you that he is with the
20 Environmental Task Force. Linda Logan is with the
21 Tonawanda Nation, Tonawanda Seneca Nation and she
22 is with -- she is with the Environmental Task Force
23 as well. So you might want to talk to her a little
24 bit about the task force and all of its

1 capabilities and things it gets involved in and all

2 that. And Linda is right there.

3 FROM THE FLOOR: I also saw that one

4 of the advisory members of --.

5 MS. CONLEY: Yes.

6 MR. GREGG: He is the executive

7 director of the Environmental Task Force.

8 MS. CONLEY: It has been -- the -- I

9 guess the meeting is effectively concluded but as I

10 mentioned I will stay up here if you have questions

11 come on up. If you need -- if you want to make any

12 other statements on the record, you can do that at

13 this point as well.

14 Thank you, very much for coming. I

15 really appreciate it.

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1 STATE OF NEW YORK

2 I, Diane Morrow, do hereby certify that the

3 foregoing was reported by me, in the cause, at the

4 time and place, and in the presence of counsel, as

5 stated in the caption hereto, at Page 1 hereof;

6 that the foregoing typewritten transcription,

7 consisting of pages number 1 through 50, inclusive,

8 was prepared under my supervision and is a true

9 record of all proceedings.

10 IN WITNESS WHEREOF, I have hereunto

11 subscribed my name, this the _____ day of

12 February, 2002.

13

14 _____

15 Diane Morrow

16 State of New York

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