

MEETING SUMMARY

of the

ENFORCEMENT SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**May 25, 2000
ATLANTA, GEORGIA**

Meeting Summary Accepted By:



**Shirley Pate
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
Designated Federal Official**

Robert Banks	Luke Cole
Office of Enforcement and Compliance Assurance	Chair
U.S. Environmental Protection Agency	
Alternate Designated Federal Official	

**CHAPTER FOUR
MEETING OF THE
ENFORCEMENT SUBCOMMITTEE**

1.0 INTRODUCTION

The Enforcement Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, May 25, 2000, during a four-day meeting of the NEJAC in Atlanta, Georgia. Mr. Luke Cole, Center on Race, Poverty, and the Environment, continues to serve as chair of the subcommittee. Ms. Shirley Pate, U.S. Environmental Protection Agency (EPA) Office of Enforcement and Compliance Assurance (OECA), continues to serve as the Designated Federal Official (DFO) for the subcommittee. Mr. Robert Banks, EPA OECA, serves as the alternate DFO for the subcommittee. Exhibit 4-1 presents a list of the members who attended the meeting and identifies those members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Enforcement Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair of the subcommittee and the Principal Deputy Assistant Administrator of EPA OECA. Section 3.0, *Strategic Planning Process of the Enforcement Subcommittee*, summarizes the discussions about the draft strategic plan of the Enforcement Subcommittee. Section 4.0, *Presentations and Reports*, presents an overview of each presentation and report, as well as a summary of relevant questions asked and comments offered by members of the subcommittee. Section 5.0, *Resolutions and Significant Action Items*, summarizes the resolutions forwarded to the Executive Council of the NEJAC for consideration and the significant action items adopted by the subcommittee.

2.0 REMARKS

This section summarizes the opening remarks of the chair of the subcommittee and of the Principal Deputy Assistant Administrator of EPA OECA, as well as the discussion among the members of the subcommittee that those remarks prompted.

Exhibit 4-1

ENFORCEMENT SUBCOMMITTEE

**Members
Who Attended the Meeting
May 25, 2000**

Mr. Luke Cole, **Chair**
Ms. Shirley Pate, **DFO**
Mr. Robert Banks, **Alternate DFO**

Mr. Delbert Dubois
Ms. Rita Harris
Ms. Nan Freeland *
Ms. Zulene Mayfield
Ms. Lillian Mood
Mr. Gerald Torres
Mr. Robert Varney

**Members
Who Were Unable To Attend**

Ms. Savonala (Savi) Horne, **Vice-Chair**
Ms. Meghan Magruder

* Ms. Freeland served as a proxy for Ms. Horne.

2.1 Remarks of the Chair of the Enforcement Subcommittee

Mr. Cole opened the subcommittee meeting by welcoming the members present and Ms. Pate. Mr. Cole explained that comments of observers would be taken throughout the meeting at the discretion of the chair. At Mr. Cole's request, the members of the subcommittee then introduced themselves.

2.2 Remarks of the Principal Deputy Assistant Administrator of the U.S. Environmental Protection Agency Office of Enforcement and Compliance Assurance

Ms. Sylvia Lowrance, Principal Deputy Assistant Administrator, EPA OECA, discussed EPA's enforcement and compliance targeting activities, noting that EPA had invested various efforts in targeting activities and those efforts have improved over the past five years, helping the Agency to identify nonreporters and areas in need of more regulatory attention. Ms. Lowrance declared that

targeting “is paying off” and that OECA had found numerous cases of noncompliance through its targeting efforts.

Ms. Lowrance then discussed combined sewer and sanitary overflows. She stated that many sewer systems are poorly maintained and are in need of improvement. Mr. Cole agreed, stating that sewer overflows are a major environmental justice issue, as well. Ms. Lowrance touched briefly on the major media programs and stated that air and water are the focus of many of these programs.

Turning her attention to budget matters, Ms. Lowrance stated that a major battle over the enforcement budget is expected. Ms. Lowrance explained that the U.S. House of Representatives will consider the budget first, and then the U.S. Senate will do so. It is expected that approximately 200 inspectors and agents, as well as some laboratory personnel may be eliminated under some congressional proposals.

Turning her attention to state enforcement programs, Ms. Lowrance described a study by the National Academy of Public Administration (NAPA) that will report on state enforcement methods. Past reports on the status of state enforcement programs have shown that the measurement of results should be examined more closely. Mr. Cole asked about the difference between reports prepared by the EPA Inspector General (IG) and by organizations, such as the Environmental Council of States (ECOS) and NAPA on state enforcement programs. Ms. Lowrance explained that reports by ECOS and NAPA are somewhat more qualitative than EPA IG reports, which are more data oriented.

Mr. Cole pointed out that enforcement of Title VI of the Civil Rights Act of 1964 (Title VI) remains an issue. He asked whether Ms. Lowrance could move EPA to take more vigorous action in the area of Title VI. Ms. Lowrance suggested that the Enforcement Subcommittee pay close attention to the issues that Ms. Ann Goode, Director of EPA’s Office of Civil Rights (OCR), was to discuss later in the meeting and examine the cases Ms. Goode was to present. Ms. Lowrance suggested that the subcommittee judge EPA according to the Agency’s actions over the next 6 to 12 months and noted that Ms. Goode likely would discuss the challenges facing EPA’s OCR.

Mr. Cole then turned his attention to EPA’s Tier 2 Clean Fuels Initiative. Exhibit 4-2 describes the Tier 2 Clean Fuels Initiative. He explained that the subcommittee had drafted a letter to the EPA Administrator that will discuss an example of the

implementation of a clean fuels program in California. The letter will discuss good neighbor agreements that cover reductions in fugitive emissions from refineries, he continued. Mr. Cole stated that the California program should be used by EPA as a national model.

Exhibit 4-2

TIER 2 CLEAN FUELS INITIATIVE

In December 1999, the U.S. Environmental Protection Agency (EPA) announced new general emission standards (Tier 2 standards) for passenger cars, light trucks, and larger passenger vehicles. The program is designed to focus on reducing the emissions most responsible for the ozone and particulate matter effect from those vehicles. The program also will, for the first time, apply the same set of Federal standards to all passenger cars, light trucks, and medium-duty passenger vehicles.

The other part of the Tier 2 Clean Fuels Initiative will reduce average gasoline sulfur emission levels nationwide. Refiners will install advanced refining equipment to remove sulfur during the production of gasoline. Importers of gasoline will be required to import and market only gasoline meeting the sulfur limits.

Ms. Rita Harris, Community Living in Peace, Inc., then asked Ms. Lowrance for an update on EPA’s air program in light of the many new air quality requirements, which Ms. Harris noted, will cause many facilities to be in noncompliance. Ms. Harris asked Ms. Lowrance to make the air program requirements available on EPA’s Internet home page. Ms. Lowrance stated that enforcement of air requirements is difficult at both the state and Federal level, explaining that capital technology changes for facilities must be studied to detect this compliance. She then stated that EPA’s air program information and various enforcement alerts are available on EPA’s OECA Internet home page. She explained further that press releases and new cases are uploaded to OECA’s Internet home page within a few weeks of their initiation, but she noted that funding problems do hinder the prompt placement of information on the web site.

Ms. Lillian Mood, South Carolina Department of Health and Environmental Control, referred to enforcement cases that had been brought up during public comment periods of the NEJAC and stated that the NEJAC was working to bring attention to the enforcement process. She then asked Ms. Lowrance how EPA responds to enforcement issues

that are discussed during meetings of the NEJAC. Ms. Lowrance stated that the majority of EPA's various regions have deputy regional administrators or environmental justice coordinators present at the NEJAC meeting to document the issues discussed. Those issues, Ms. Lowrance explained, are studied and discussed at the regional level and at the state level, as well. The states then discuss progress on the issues with the communities concerned. To ensure that progress is made, continued Ms. Lowrance, state and EPA regional representatives must perform oversight of facilities that are involved in enforcement issues. Ms. Lowrance stated her belief that fines and penalties enhance the impact of enforcement cases; however, she also added, there is frustration with inaction and a lack of resources for some cases. Ms. Mood then stated that, in some cases, there are questions of authority. In response, Ms. Lowrance admitted that interagency work is "not consistent with success" because the concerns of agencies differ for various sites. She explained that some successes have been achieved because a number of agencies have met with community groups to initiate action. Mr. Cole then stated that interagency work is an issue, but that EPA should follow up more assertively on enforcement issues at the local level. Ms. Harris then asked whether follow up investigations become criminal investigations and whether there is a telephone number that members of communities can call to offer tips and register complaints. The members of the subcommittee, she explained to Ms. Lowrance, need such a telephone number. Ms. Lowrance responded that although a telephone number would be useful to the development of criminal investigations, EPA does not have resources to initiate one.

The discussion then turned to compliance assistance issues. Mr. Robert Varney, New Hampshire Department of Environmental Services, stated that enforcement at the state level had undergone a "very positive elevation." Two key strategies involved are pollution prevention and compliance assistance, he said. Mr. Varney then asked Ms. Lowrance for an update on compliance assistance. Ms. Lowrance explained that 10 compliance assistance centers currently are in operation, providing assistance to small businesses and industry groups. Exhibit 4-3 describes compliance assistance centers. EPA currently was working on a two-year plan to provide compliance assistance and was establishing a national clearinghouse that can coordinate compliance material for states, schools, and Federal agencies. More and more often, she continued, targeted compliance assistance is not effective without enforcement. Ms. Lowrance then noted as an example that metal finishers have had compliance

assistance provided to them over a five year period; yet, she noted, compliance in that industry had not improved. Therefore, she continued, EPA was to begin targeting enforcement actions to metal finishers. Ms. Lowrance explained further that Federal measures of compliance assistance currently were under review. Mr. Varney then suggested that targeted enforcement and compliance assistance be performed in tandem. Ms. Lowrance suggested that a targeted strategy for compliance assistance be outlined by industrial sector. Finally, Ms. Mood noted that both state and EPA efforts in compliance assistance require improvement in terms of community involvement.

Exhibit 4-3

COMPLIANCE ASSISTANCE CENTERS

The U.S. Environmental Protection Agency (EPA) created the Compliance Assistance Centers to provide comprehensive easy-to-understand compliance information targeted specifically to industry sectors. Compliance Assistance Centers seek to promote partnerships between the small business community and their technical and regulatory providers. Through plain-English guides, consolidated checklists, and other tools, Compliance Assistance Centers seek to minimize waste production and maximize environmental performance. There are Compliance Assistance Centers for the following sectors, automotive; metal finishing; agricultural; printed wiring board manufacturers; printing; transportation; painters and coatings; and chemical manufacturers.

3.0 STRATEGIC PLANNING PROCESS OF THE ENFORCEMENT SUBCOMMITTEE

In August 1999, the Enforcement Subcommittee of the NEJAC developed a strategic plan to make the subcommittee's work more focused and to create tools to evaluate the effectiveness of the NEJAC's advice to EPA. The goal of the strategic plan is to enable the subcommittee to ensure that environmental justice principles become institutionalized in all enforcement activities of EPA. The subcommittee currently is gathering data on, analyzing, and providing recommendations for improving EPA's activities in the four areas outlined below:

- Target EPA enforcement resources on the areas in which the levels of pollution are the highest.
- Focus on other enforcement options, including state and tribal enforcement and citizen suits, to

ensure that they include consideration of the principles of environmental justice and to increase the level of resources devoted to enforcement of environmental laws.

- Ensure that the principles of environmental justice are made integral to all EPA's compliance alternatives, including economic incentive programs (EIP); performance partnership agreements; and pollution prevention initiatives, such as the XL program and the Common Sense Initiative.
- Continue to insist that EPA have a real, credible civil rights enforcement policy and presence, including confrontation of the Agency with evidence of gaps and flaws in its implementation of Title VI and recommendation of ways to strengthen EPA processes.

Before discussing the strategic plan in detail, Mr. Cole led a discussion about whether the subcommittee should make a change from providing resolution-based advice to providing report-based advice to the EPA Administrator through the Executive Council. Mr. Cole suggested that a report format be used for issues that deal heavily with policy. Mr. Varney indicated that the Federal Advisory Committee Act (FACA) committee that he had chaired did not operate with resolutions, but instead wrote letters to EPA and had paragraphs to summarize concerns and recommendations; EPA then would send a response letter mirroring the letter that summarized the Agency's responses to each concern and recommendation. He suggested that there sometimes is a formality and aggressiveness associated with resolutions that make them inappropriate when the primary purpose of the document is to advise the EPA Administrator. Mr. Cole noted that there are three types of solutions: political (for which the subcommittee expects action, rather than response), community support (for which there should be a focus on resources), and policy (for which in-depth discussions would be most helpful). The members of the subcommittee should consider the use of letters or resolutions and let other members know their opinions, he suggested.

The members of the subcommittee then discussed the progress of the subcommittee related to addressing the first section of the Strategic Plan related to targeting EPA enforcement actions. The first section of the Strategic Plan is divided into six subsections: Communities of Color and Low-income Communities; Enforcement by EPA's Regional Offices; Federal Facilities; Supplemental Environmental Projects (SEP) and Community

Benefit; Concentrated Animal Feeding Operations (CAFO); and Bad Actors.

Communities of Color and Low-Income Communities

Ms. Mood and Ms. Zulene Mayfield, Chester Residents Concerned for Quality Living, were to work on incorporating community views into the determination of enforcement priorities. Ms. Mayfield suggested that enforcement fines assessed in minority and nonminority areas be compared, since, she noted, there often is disparity between the two. Mr. Cole and Ms. Mayfield were to draft a letter to the Agency to request an updated analysis to ensure that fines are fair in both minority and nonminority areas.

Enforcement by EPA's Regional Offices

Mr. Cole indicated that he had been working with Ms. Pate to schedule a conference call with regional EPA offices to discuss the creation of an "enforcement report card" to focus on outstanding performance and enforcement underachievement by the regions. Mr. Cole and Ms. Pate were to prepare a revised report card on regional enforcement and present it to the EPA Administrator and the 10 EPA regional administrators.

Federal Facilities

Mr. Cole directed his attention to the section of the Strategic Plan on Federal facilities. He indicated that a work group of the NEJAC was being established to analyze and take action on environmental justice issues related to Federal facilities. Mr. Cole asked whether any members of the subcommittee would serve on the proposed work group. Ms. Harris then volunteered to join the Federal facilities work group of the NEJAC.

Supplemental Environmental Projects (SEP) and Community Benefit

Mr. Cole indicated that the subject of SEPs was open for public comment. He then asked Ms. Pate to make the Federal Register citation on SEPs available to Mr. Gerald Torres, University of Texas School of Law, Ms. Mayfield, and himself. Mr. David Nielsen, Director of the Resource Conservation and Recovery Act (RCRA) Enforcement Division, Office of Regulatory Enforcement (ORE), EPA OECA, was asked to make publications on SEPs available directly to the members of the subcommittee, while Mr. Varney was asked to provide examples of SEPs to the subcommittee.

Concentrated Animal Feeding Operations

Ms. Harris suggested that the subcommittee submit a report on CAFOs, rather than a resolution, because, she said, the topic requires a much more detailed discussion. Mr. Cole also proposed that a larger report be prepared. The subcommittee discussed the forwarding of a proposed resolution on CAFOs to the Executive Council of the NEJAC and the subsequent submittal of a larger report on CAFOs at a later date. Members of the subcommittee had agreed to forward a proposed resolution on CAFOs to the Executive Council for consideration.

Bad Actors

This subsection of the plan discusses a small percentage of permit holders that are responsible for a large percentage of permit violations and enforcement actions. Ms. Mayfield and Ms. Harris were asked to work on that section. Ms. Harris was to investigate whether states observe those facilities. Ms. Mayfield was to prepare a list of potentially responsible parties, targeting the “top ten” bad actors or the “dirty dozen.” Mr. Cole asked about EPA’s policy on dealing with bad actors. Ms. Pate agreed to determine whether there is a list of model regulations for bad actors. Mr. Varney will assist Ms. Harris and Ms. Mayfield in gathering information about bad actors from state agencies.

4.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made to the Enforcement Subcommittee on issues related to enforcement and compliance assurance. Mr. Cole introduced the theme of the meeting as: What health data should EPA use to target enforcement resources at the most vulnerable communities, and how should resources be gathered to support effective efforts? A panel discussion on the health theme was presented. Other presentations were made on CAFOs and the status of EPA’s activities related to Title VI.

4.1 Health Theme Discussion: What Health Data and Indicators Should the U.S. Environmental Protection Agency be Using to Target its Enforcement Efforts and Resources?

Ms. Mood moderated a panel of four speakers who discussed health data and indicators as they are related to enforcement and environmental justice. The presentations made on the theme of the meeting are summarized below.

4.1.1 Presentation on the U.S. Environmental Protection Agency’s Enforcement and Compliance Targeting Activities

Ms. Betsy Smidinger, Chief, Targeting and Evaluation Branch (TEB), Office of Compliance, EPA OECA, provided an overview of EPA’s compliance screening and targeting activities. In a handout to the members of the subcommittee, Ms. Smidinger described the TEB. She explained that the TEB develops analytic projects and targeting tools that are provided to enforcement and compliance personnel of EPA. She stated further that TEB is customizing the tools for use by state governments.

Ms. Smidinger then spoke about risk-based activities and the use of subjective risk assessments in compliance screening activities. She explained that most risk-based activities use historical approaches and observe various factors, such as: the economic size of companies and facilities, a facility’s greatest perceived risk, and the rate of noncompliance. Ms. Smidinger also described EPA’s current screening activities, that include screening, planning, and strategy. She then identified three steps in screening activities: (1) identify problems that pose the highest risk, (2) determine national enforcement priorities, and (3) develop a strategy for each area that identifies what activities will be done to address the problem. Ms. Smidinger indicated that additional information from regions; state, local, and tribal governments; environmental organizations; and industry groups that are not available through EPA’s data systems are helpful in this process.

Ms. Smidinger indicated that most of the targeting reports developed by TEB use data from the Integrated Data for Enforcement Analysis (IDEA) system. That system, she noted, brings together enforcement and compliance data from various agencies and external data bases to provide broad analytic capabilities. Data in the system include information from the water, air, and hazardous waste programs, the Toxic Release Inventory (TRI), and the Emergency Response Notification System, as well as economic and demographic data from the U.S. Census Bureau, she explained.

Ms. Smidinger also spoke about strategic targeting. She explained that strategic targeting projects examine large data sets to determine which industry sectors and high risk geographic areas should be the focus of the compliance and the enforcement program. Information about pollutants and chemical releases, inspection and compliance history, TRI risk data, and demographic information are analyzed to determine which industries or geographic areas

should be the focus of additional inspection or enforcement coverage, she said.

Ms. Smindinger also briefly mentioned other EPA screening tools, such as the On-line Targeting System (OTIS), which maps facilities according to compliance factors, and the Risk Screening Environmental Indicators Model, which relies on TRI data. She described geographic analysis as a screening tool that identifies counties in the United States in which environmental conditions are poor and appear to receive less enforcement attention than other counties. However, noted Ms. Smindinger, that screening tool was not found to be successful. Responding to Mr. Cole's inquiry about why geographic analysis is not a successful screening tool, Ms. Smindinger explained that she did not know all the details about the reason, but that one factor is that internal EPA data bases do not have all the information needed to support geographic analysis, such as a list of nonnotifiers and facilities that are not in compliance.

4.1.2 Presentation on Indicator Technology: Utility for Identifying High Risk Communities

Mr. Tim Aldrich, Chief of the Chronic Disease Epidemiology Division, South Carolina Department of Health and Environmental Control, first defined an indicator, which can be community-based or environmental, as an indirect measure that reveals a change in a community practice or in risk behavior.

Mr. Aldrich explained how exposures that are hazardous to human health are monitored through the use of indicators. As an example of indicator logic, he explained how the human health effects of the toxin *pfisteria* can be measured. There is no monitoring agent available to actually measure *pfisteria*, he continued. Therefore, fish kills are monitored instead to determine the human health effects of the toxin. While it may not be possible to monitor the actual contaminant, said Mr. Aldrich, the results of the monitoring of fish kills can provide an indication of human health exposures to the toxin.

Mr. Aldrich next described four factors that influence the use of indicators in environmental health: (1) selective forces, (2) spatial and temporal consistency, (3) clarification of issues, and (4) nuisance indices. A selective force, he explained, may be representative of class, level of wealth, or accessibility. An example of a selective force is a trip to the emergency room or the use of home care. He next identified an example of spatial and temporal consistency, levels of ozone emissions that differ from one another in different geographic

regions. Clarification of issues, Mr. Aldrich explained, deals with susceptibility. An example would be the monitoring of rates of absenteeism at schools and workplaces to help determine groups at risk. Nuisance indices, he then explained, may not be a health effect; odor, he added, is an example of a nuisance index.

Mr. Aldrich then identified several examples of indicators and then described several indicators in the context of cancer. He noted that, with community participation, various indicators can be evaluated and occurrences of hazards monitored more closely. He said incidence and mortality ratios can measure which communities are most heavily affected by environmental health issues. He explained that those indicators are available through state cancer registries. Next, Mr. Aldrich discussed screening activities. If there are low incidence and mortality ratios, there are lower occurrences with lower screening rates. Last, he described sentinel events. Mr. Aldrich said sensors are used as a system to help identify where events are occurring, he said; when cases begin to occur, connections can be made for where and when events are occurring by watching for outcomes of the sensor use.

Mr. Aldrich then turned his attention to sources of indicator data. Two sources, he explained, are disease registries and demographic data bases supported by the U.S. Census Bureau. Another source of indicator data is the Behavioral Risk Factor Surveillance System, which is available in all states. The system, he said, rates the health and limitations of communities and monitors complaints and dissatisfactions. The final source, Mr. Aldrich identified, was sentinel event processes, which can relate good biological information and in turn help enforcement begin earlier.

Turning his attention to interpreting indicators and criteria for choosing indicators, Mr. Aldrich explained that interpreting indicators can involve quantitative and qualitative analyses. Another method of interpretation is the use of directed surveys in schools, homes, and churches. Referring to the criteria for indicators, Mr. Aldrich stated that indicators can be nonspecific, such as environmental data, or spatially localized, such as community-based data. Indicators can be chosen on the basis of the system designed for data collection and should take into account specificity and sensitivity, Mr. Aldrich said in conclusion.

4.1.3 Presentation on Environmental Enforcement and Public Health

Dr. Maureen Lichtveld, Associate Director of Workforce Development, Public Health Practice, Centers for Disease Control and Prevention (CDCP), provided an overview of the relationship between environmental enforcement and public health.

Dr. Lichtveld first spoke about exposure pathways, explaining that hazardous substances are transferred from operations through various pathways, such as biota, air, soil, and water, to receptors, such as people and animals. Next, she discussed the model for establishing a relationship between exposure to hazardous substances and adverse health effects. The model tracks environmental contamination from biologic uptake through contact with the target organ, biological change; and, finally, disease.

Next, Dr. Lichtveld described the hierarchy of data for exposure assessment. She indicated that individual assessments and measurements are most accurate. Other exposure surrogates are ambient measurements, such as indoor air. The remaining portions of the hierarchy include measuring distance and duration, residence or employment proximity, and residence or employment in geographic areas of concern. Dr. Lichtveld then turned her attention to biological testing. She explained that biological testing can measure various effects of the interaction of a toxicant with the human body, including: a toxicant (directly), a metabolite of a toxicant, an effect of an interaction, absorption of a toxicant (indirectly), and effects on a target organ.

Dr. Lichtveld then discussed the role of science in addressing environmental health concerns. She stated that solving public health problems involves evaluating scientific and technical knowledge and public concerns. Dr. Lichtveld then listed the key issues that influence the delivery of environmental health service to persons at risk and communities:

- Application of population-based epidemiologic findings in community-oriented intervention strategies.
- Toxicological concordance of effects and effect levels among species.
- Availability of biological markers of exposure, effect, and susceptibility.
- Development of standardized methods and techniques for quantitatively assessing

increased knowledge gain and behavioral change.

- Use of clinical practice to identify and address community health issues.
- Use of quantitative outcome information to increase the effectiveness of public health interventions.

Dr. Lichtveld then discussed community-driven approaches in environmental health by describing four project components that are crucial to environmental health interventions: (1) community health needs assessments, (2) environmental health education, (3) clinical evaluations, and (4) clinical speciality referrals.

Dr. Lichtveld stressed the importance of the role of public values and popular opinions as they are related to public health. She noted that societal factors are crucial in implementing community interventions as is taking a holistic rather than an individual approach. She also presented an integrated framework for environmental health that focuses on health promotion, health education, risk communication, and medical intervention.

Finally, in the area of future possibilities and opportunities, Dr. Lichtveld stated that government agency actions should be based on early systematic planning by bringing together community health concerns, environmental health interventions, and enforcement strategies.

Ms. Mayfield asked for a list of universal indicators for health. Dr. Lichtveld mentioned that the U.S. Department of Health and Human Services (HHS) identified ten leading health indicators including environmental quality, obesity, mental health, and access to health care. These indicators are associated with a comprehensive list of objectives and are published in the "Healthy People 2010 Initiative," she said.

Ms. Mood asked whether communities could complete health and environmental assessments for themselves. Ms. Mayfield indicated that the community of Chester, Pennsylvania, had already done so. The effort, she continued, included the collection of TRI data, data from the U.S. Census Bureau, data on low birth weight, and other information. Mr. Cole said that the Enforcement Subcommittee was to recommend feasible ways to target enforcement indicators, such as low-birth weight and infant mortality rates. Mr. Cole asked whether there are data available to make "targeting" possible and whether "targeting" is a good idea. Dr.

Lichtveld responded that, while some communities have a wide variety of data, existing data often are not sufficient in most cases nationwide. Dr. Lichtveld noted that all entities, including EPA, public health agencies, and communities, must come to an agreement about “targeting” and if communities are to be treated fairly, agencies must consider all data. Finally, Dr. Lichtveld stated that public health should precede enforcement because decisions about “targeting” will otherwise not benefit from crucial public health data and information.

4.1.4 Presentation on the Richmond County Health Department Health Intervention Project

Ms. Juanita Burney, Coordinator of the Richmond County, Georgia Health Department, presented information about the Richmond County Health Department Health Intervention Project. The project addressed health concerns of former and current residents of a community in Richmond County who were exposed to many toxic substances, she said. She explained that some of the citizens were believed to have become ill because of exposure to the toxic substances. Those sicknesses might have been prevented if cause and effect between exposure and the sicknesses had been established, she said.

Ms. Burney identified the participants in the project as residents living in a 1.4 mile radius of exposure to contaminants who participated over a specific period of time. The residents’ drinking water was being affected and was tested; the tests revealed that the drinking water was contaminated, she said. Ms. Burney then explained that all other media were tested, as well. She said the citizens were concerned about who would help them with the contamination, since many industrial companies failed to admit blame or take action. Because of the contamination, she explained that residents of the community drink city water instead of well water.

Ms. Burney indicated that a number of people were involved in the project development and oversight: a director, a coordinator, a lead nurse, a panel of citizens (The Citizens Alliance for Community Health), a medical advisory committee, and staff of the Agency of Toxic Substances and Disease Registry (ATSDR). Other project staff included data assistants, doctors, nurse practitioners, and specialists, she added.

Ms. Burney then turned her attention to a discussion of the components of the project. The components included Census data, an enrollment questionnaire,

community health education, medical examinations, follow-up medical visits, and medical referrals.

Ms. Burney then discussed community concerns that were brought to light as a result of the health intervention project. With respect to health issues, the community was concerned most deeply about cancer, dermatological problems, and mental health issues, she said. The community also was concerned about property issues related to damage, decreased values, insurance coverage, inability to sell property, limits on outside activity, and relocation.

Ms. Burney made the following suggestions that she believed could improve upon future public health and environmental studies: (1) adequate environmental and health education provided to both citizens and medical professionals; (2) use of a laymen’s approach instead of a technical approach; (3) obtain information that is specific to the industries involved; and (4) ensure that citizens in affected communities know their rights.

Finally, Ms. Burney explained the positive and negative factors of the project according to the perspective of the community. Members of the community had a positive opinion about the no-cost physical examinations, the concern shown for the community, and the project’s knowledgeable staff. Members of the community also expressed their concerns and suggestions for improving such projects. The inability of the project staff to have physicians to assist with relocation; the need of citizens for more mental health assistance; the limited duration of the projects; and the communities need to demonstrate interest, care, and compassion were among the concerns expressed by the members of the community, reported Ms. Burney.

4.2 Presentation on Concentrated Animal Feeding Operations

This section summarizes presentations on CAFOs provided to the Enforcement Subcommittee by Mr. Gary Grant, Executive Director, Concerned Citizens of Tillery, and Dr. Steve Wing, Associate Professor, Department of Epidemiology, University of North Carolina.

After noting EPA’s lack of support thus far on the issue of CAFOs, Mr. Grant stated his belief that EPA is “behind” in enforcement related to CAFOs. He then stated his desire to see the enforcement process move faster with respect to CAFOs, especially because of issues related to health problems and decreased land values. Mr. Grant then introduced Dr. Wing.

Dr. Wing first provided an overview of hog farming. He stated that the numerous confining houses in existence contain thousands of hogs. Wastes from confinement facilities are thrown into waste pits and then deposited into spray fields, he said. Dr. Wing noted that the state of North Carolina has required liners in waste pits since 1992, and, in some cases plastic or synthetic liners are used. Dr. Wing explained that the waste sometimes undergoes anaerobic decomposition. Occasionally, however, he continued, the pits fill up, and the waste is pumped onto spray fields and used as a fertilizer for crops. That practice, he declared, could lead to saturation of farm lands with wastes.

Next, Dr. Wing explained why the operations of the hog industry in North Carolina is an example of environmental injustice. He stated that the concentration of hog production in the state has affected primarily poor, nonwhite, rural communities because the production operations cause excessive pollution and offensive odors. The majority of CAFOs currently are concentrated in North Carolina's coastal plain region. Their location further concentrates the waste and increases the potential for damage because the region is subject to flooding, continued Dr. Wing. The waste from CAFOs can contaminate groundwater with nitrates and pathogens, he said. Odorants also are an issue, he explained, because airborne emissions contain volatile organic compounds (VOC), ammonia, and hydrogen sulfide; these odorants can cause health issues, not only for CAFO workers, but also for residents in the vicinity of such operations. The presence of CAFOs can lower land values and decrease the quality of life and can affect the health of residents and workers who already suffer from poor nutrition, low wages, and lack of access to sufficient medical care, continued Dr. Wing.

Dr. Wing explained that the organization, Concerned Citizens of Tillery in Tillery, North Carolina, wanted public health issues associated with the hog industry documented. To investigate those health issues, households were surveyed door-to-door to identify symptoms and reduced quality of life characteristics common to households allegedly affected by CAFOs. The households, Dr. Wing explained, were located in three rural communities: one in the vicinity of a 6,000-head hog operation, one near two intensive cattle operations, and a third in an area in which no livestock operations are located. The response rate was very high, continued Dr. Wing, and 155 interviews were completed. The majority of respondents were female African-Americans, he said. Dr. Wing noted that adjustments were made in the study to account for differences in age and gender; employment status; and whether

respondents were smokers. In addition, the study detailed only acute effects, it did not account for chronic disease, he pointed out.

Dr. Wing then described the symptoms that were observed in the three communities. The occurrences of many symptoms were higher in the community in the vicinity of the hog operations than in other communities, while some occurrences were higher for the community near the cattle operations than in the community in the area having no livestock operations. Symptoms reported are listed in Exhibit 4-4. Dr. Wing explained that the symptoms were divided into six groups: upper respiratory and sinus, lower respiratory, gastrointestinal, skin and eye irritation, and quality of life. The percentage of respondents who reported upper respiratory and sinus episodes was the largest in the community near the hog operation, while the community near the cattle operation showed more intermediate results. The number of respondents who reported lower respiratory, gastrointestinal, and skin and eye irritation symptoms was generally smaller. Incidences of gastrointestinal symptoms was the

Exhibit 4-4

REPORTED SYMPTOMS IN COMMUNITIES LOCATED NEAR CATTLE AND HOG OPERATIONS

The following describes reported symptoms in communities located near cattle and hog operations:

Stuffy nose/sinuses Runny nose Burning nose	Significantly higher for the community near the hog operation.
Sore throat	Higher for the community near the hog operation.
Mucus/phlegm Excessive coughing Shortness of breath Skin/eye irritation	More episodes for the community near the hog operation, less significant for the community located near the cattle operation.
Gastrointestinal (heartburn, lack of appetite, nausea or vomiting, diarrhea)	All symptoms were significantly higher for the community near the hog operation.
Quality of life (cannot open windows or go outside)	The community near the hog operation reported more than 12 times the number of episodes reported by the other two communities.

highest among the residents of the community near the hog operation. However, Dr. Wing indicated that the largest differences among the three communities occurred in the reported occurrences of a decrease in the quality of life symptoms, which included not being able to open windows or go outside. More than 50 percent of the residents of the community near the hog operation reported that they could not open windows or go outside, compared with the 20 percent of residents in the other two communities.

Dr. Wing next discussed several enforcement issues associated with CAFOs. He indicated that in 1995, there had been tremendous concern about spraying and the potential that waste would seep into the ground and affect the groundwater. Spray fields are not lined and are sometimes built in areas where there are drained wetlands and that livestock operations have been built in areas in which floods often occur, he said. Dr. Wing noted that the operations are not designed to contain waste; rather the operations often dump waste onto the spray fields. Cesspools must be emptied so they will not be affected by flooding, he noted. Dr. Wing stated that, during winter months, discharges to the environment often occur. Wastes are dumped into fields and spread in trenches. Eventually, he said, they reach local water supplies. Dr. Wing also noted that enforcement may be lacking because (1) most agricultural businesses see themselves as nondischargers and (2) the North Carolina Department of Natural Resources is supported in part by lawyers who represent the North Carolina Pork Council.

Dr. Wing then discussed the distribution of farms and ethnic populations. He noted that there is a large concentration of CAFOs in eastern North Carolina, where the highest percentage of African-Americans live. There are almost no livestock operations in white areas, continued Dr. Wing. He stated that CAFOs are located in poor areas having high percentages of minority populations that do not have ample political representation. He also explained that areas in which livestock operations are located are 85 to 100 percent dependent on well water. Within Tillery, North Carolina, he continued, 35 hog farms create 170,000 tons of waste per year, predominantly in communities that are nonwhite, and those farms use well water. Ms. Harris asked whether the state of North Carolina was concerned about wells in areas in which hog farms are located. Dr. Wing responded that the state of North Carolina had implemented a testing program for neighbors of hog farms who depend on wells. However, because of a lack of adequate enforcement and public education, he observed, many people did not participate in the well testing. Dr. Wing also noted

that many counties do not cooperate with the state because of pressure from pork farmers.

Mr. Grant asked that the subcommittee act on behalf of people living near CAFOs, in part because the communities have done all they can and now need the help of others. Dr. Wing also noted that health issues associated with both water and air must be explored. Thus far, attention has been concentrated on water pollution, he pointed out. Mr. Cole noted that the subcommittee's proposed resolution on CAFOs was the first step in enforcement and indicated that a larger report supporting the issue would be the next step.

4.3 Update on the U.S. Environmental Protection Agency Guidance Related to Title VI of the Civil Rights Act of 1964 and Health Effects Associated with Lack of Enforcement of Title VI

Ms. Goode provided an overview of the status of EPA's guidance to address administrative complaints filed under Title VI which challenge permits and also discussed OCR's current case load and backlog.

Ms. Goode described the Federal Register package that would contain EPA's revised draft guidance related to enforcing Title VI. Exhibit 4-5 describes the new draft guidance. She also stated that the Federal Register will identify times and dates of listening sessions and conference calls to discuss the guidance documents. She explained that a robust external process of review of the *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* had taken place for the past two years. That process, she said, had included stakeholder meetings and the convening of the Title VI Implementation Advisory Committee. An extensive internal review process also had occurred, including five meetings with the EPA Administrator since May 1999. Ms. Goode stated that she also had met with representatives of the Office of Management and Budget and members of the congressional Black Caucus to discuss the guidance. She noted that members of Congress were being contacted to obtain their comments on the guidance and stated that a civil rights status report soon would be placed on EPA OCR's Internet home page. An electronic mailbox also will be established on the home page to solicit comments on the new draft guidance documents.

Ms. Goode then discussed the changes to the draft guidance. Ms. Goode explained that it has been suggested that a list of definitions be added to the guidance; the guidance be made more concrete; and

U.S. ENVIRONMENTAL PROTECTION AGENCY TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 GUIDANCE DOCUMENTS

The U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) will publish two draft Title VI of the Civil Rights Act of 1964 (Title VI) guidance documents in the Federal Register on June 27, 2000. EPA will accept public comments for 60 days, until August 28, 2000. The draft documents are titled:

- *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (“*Draft Recipient Guidance*”)
- *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (“*Draft Revised Investigation Guidance*”)

Title VI prohibits discrimination based on race, color, or national origin by any entity that receives Federal financial assistance. When entities (such as, state environmental agencies) receive EPA financial assistance, they accept the obligation to comply with Title VI and with EPA’s Title VI implementing regulations. Persons who believe EPA recipients are administering their programs in a discriminatory manner may file an administrative complaint with EPA.

In 1998, EPA issued its *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (“*Interim Guidance*”) for public comment. The *Interim Guidance* provided an initial framework for EPA OCR to process complaints filed under Title VI that allege discriminatory environmental and health effects from environmental (pollution control) permits issued by EPA financial assistance recipients.

EPA has revised the *Interim Guidance* based upon a robust stakeholder input process, as well as the public comments received on the *Interim Guidance*. EPA convened an advisory group to provide recommendations and has conducted numerous meetings with a variety of stakeholders over the past two years.

What is the purpose of these documents?

The *Draft Recipient Guidance* is intended to offer suggestions to assist state and local recipients of EPA financial assistance develop approaches and activities to address potential Title VI concerns. Examples include fostering effective public participation, conducting assessments of potential adverse impacts, developing geographic, area-wide pollution reduction programs, and using informal resolution techniques. Recipients are not required to adopt or implement any of the Title VI approaches or activities described in the *Draft Recipient Guidance*.

The *Draft Revised Investigation Guidance* describes procedures EPA staff may use to perform investigations of Title VI administrative complaints that allege adverse, disparate impacts caused by permitting decisions.

In response to comments received by EPA, the *Draft Revised Investigation Guidance* differs from the *Interim Guidance* by providing more detail and clarity. The new guidance contains more detailed explanations of the various steps of an investigation and the actions that may be considered at each stage (such as, how a finding of adverse impact is expected to be reached, or when an allegation will likely be dismissed). In addition, both guidance documents define terms through examples and a glossary.

More than 120 written comments on the *Interim Guidance* were received from a broad range of interested parties. Community groups, environmental justice organizations, state and local governments, industry, academia, and other interested stakeholders also contributed to the development of the draft guidance documents as part of the Title VI Implementation Advisory Committee established by EPA, as well as through many other meetings with stakeholders during the past two years.

that the guidance specify community involvement in the case investigation as early as possible. EPA also is suggesting ways in which state programs can improve their efforts and track their records on civil rights cases, she said. Ms. Goode asked that all comments submitted on the new draft guidance be very focused to facilitate the process of approval; comments should be submitted within the 60-day comment period, said Ms. Goode, because the Agency would like to release the final guidance document in the Federal Register by the end of the calendar year. She noted that the 60-day comment period would not begin until the document is released in the Federal Register for comments. The guidance, she added, also would be made available on EPA's Internet homepage.

Ms. Goode then explained that the outreach strategy will be crucial in soliciting comments on the new guidance documents. She reported that she had planned several meetings across the country. Such meetings, she continued, were to be held in Washington D.C.; Dallas, Texas; Chicago, Illinois; New York, New York; and Oakland, California to solicit comments from various groups and to address those comments.

With respect to civil rights cases, Ms. Goode explained that actual facts must be the focus of EPA's inquiry into a case. She stated that the allegations of the complaint, the availability of methodologies, and the resources necessary to perform a reasonable investigation of the case are factors that affect EPA's work on various cases. Mr. Cole mentioned some specific civil rights cases and then asked about the issue of backlog. Ms. Goode responded that strategies adopted to attempt to decrease backlog had failed. She explained that cases continue to be unique and complex, and she expressed the hope that those cases will serve as good examples to expedite future cases. Mr. Cole asked what was the greatest impediment to efforts to decrease backlog, noting that 27 cases are pending review and 21 cases are at the accept or reject stage. Ms. Goode responded that the current staff and resources are insufficient. She also explained that no adequate framework had been established for resolving the cases. Ms. Goode then stated that, when she first joined OCR, she had inherited a backlog that since had continued to increase in number and complexity. She also cited delays because of a large learning curve, since a history of resolved cases is lacking. Mr. Cole noted that he was troubled to hear that Ms. Goode continues to wait for a proper framework through which to resolve cases, since she had been waiting for such a framework when she joined the program. Ms. Goode explained that the framework continues

to evolve and must include decisions about the approach to the case and who to involve to obtain support in resolving the case. She said that she had requested more staff from various media offices to help decide whether analytical tools and policy issues relating to civil rights cases should be more defined in greater detail. She stated further that staffing issues and the daunting nature of tasks associated with the cases has hindered the schedule.

In response to a question from Ms. Mayfield about whether health is used as a criterion, Ms. Goode responded that she had spoken with several people about that matter. She cited difficulty in gathering public health data because data identified usually are not adjusted for race or age. She also explained that locating and categorizing data are difficult and, while she acknowledges that a relationship between health issues and the problems occurring must be demonstrated, she also reported that the current health of a community is not considered as a criterion in the new draft guidance.

Expressing concern about the backlog of civil rights cases at EPA, Ms. Harris asked whether the support of part-time attorneys could be called upon. Ms. Goode responded that she did have attorneys working on cases. Ms. Mayfield then asked about the status of cases in which complaints were filed years ago, but the cases still have not been resolved. Ms. Goode explained that those cases are not disregarded. She added that final decisions on those cases will be based on historical circumstances.

Mr. Cole noted that, until the Agency has credible enforcement related to Title VI, EPA will not have credible environmental justice enforcement. The civil rights of citizens are being ignored and the civil rights of communities of color are being violated, he declared. Mr. Cole cited 94 complaints in seven years, none of which, he pointed out, had been resolved. He observed that, in seven years, some cases should have been resolved. He observed that he was speaking for the subcommittee and noted that the members of the subcommittee were looking forward to response and action from OCR. Ms. Goode responded that she did not excuse EPA for its lack of progress, adding that she was mindful of the subcommittee's concerns and hopes to move forward quickly.

5.0 RESOLUTIONS AND SIGNIFICANT ACTION ITEMS

This section summarizes the resolutions discussed by the Enforcement Subcommittee and forwarded to the Executive Council of the NEJAC for consideration. In addition, this section discusses significant action items adopted by members of the subcommittee.

The members of the Enforcement Subcommittee discussed a resolution in which the NEJAC recommends to the EPA Administrator that several actions be taken related to the issue of CAFOs. The Enforcement Subcommittee amended a proposed resolution on CAFOs to reflect concerns of the Air and Water Subcommittee. Amendments made to the resolution include:

- Direct the EPA Office of Air and Radiation (OAR) to conduct analyses of its authority to protect communities from odor and toxic emissions.
- Mandate groundwater monitoring at CAFO operations.
- Incorporate community concerns in guidelines for the siting of CAFOs.
- Prevent states from starting new CAFO programs through aggressive Federal crackdowns on states that allow facilities to operate without National Pollutant Discharge Elimination System (NPDES) permits.
- Establish a CAFO hotline for reporting violations of environmental laws to EPA.
- Aggressively audit facilities of CAFO owners that have poor compliance records, particularly those located in environmental justice communities, to target them for shutdown.
- Protect the integrity of Federal authority delegated to states by removing permitting authority from states that flaunt the NPDES process with regard to CAFOs.
- Establish triggers for imposition of penalties by the state, and triggers for EPA action.
- Survey other Federal agencies to identify subsidies of CAFOs that may conflict with requirements for compliance with Federal environmental laws.

- Require NPDES permits for land disposal of CAFO waste.

The members discussed a resolution on multiple chemical sensitivity (MCS) through which the NEJAC recommends to the EPA Administrator that EPA:

- Establish disease registries and make MCS a “reportable condition.”
- Investigate and report the prevalence and incidence of MCS in minority communities and low-income communities, especially those heavily affected by environmental pollutants.
- Provide funding and programs to support increased understanding, education, and research that will aid in identifying causes, diagnosis, treatment, accommodation, and prevention of MCS.
- Include MCS as a factor when establishing standards and developing regulations, especially with regard to multiple exposures to and cumulative effects from environmental chemicals.
- Examine existing environmental laws and revise or add standards, as appropriate, ensure protection from chemicals that cause initial sensitization and those that trigger existing sensitivities.
- Encourage states and other government and nongovernment entities to take regulatory and voluntary actions, including notices and restrictions as necessary, to protect individuals who have MCS in the workplace, the home, and public places.
- Ensure that accurate information about minority and low-income populations is included in the final version of the report of the Interagency Workgroup on MCS and other policy documents issued on the matter of MCS.
- Establish a fragrance-free policy for meetings and identify and use facilities that actively attempt to reduce and minimize use of toxic chemicals, for example, those that use non-toxic building materials, cleaning agents, and pest control measures.

The members of the subcommittee also adopted the following significant action items:

- ✓ Requested that EPA provide the time table for its strategic planning process for the budget.

- ✓ Requested that the state of New Hampshire provide one example of an ECOS or NAPA report on state enforcement for comparison to an EPA inspector general report on state enforcement.
- ✓ Requested that EPA provide a “report card” on enforcement of environmental laws and regulations by states.
- ✓ Assigned Ms. Mood and Ms. Mayfield to identify ways to incorporate the views of communities of color and low-income communities about health-based targeting into the subcommittee’s strategic plan.
- ✓ Agreed to prepare a letter to the EPA Administrator to request an update on the Agency’s analysis of whether enforcement fines are equitable and consistent in minority and nonminority areas.
- ✓ Proposed that Ms. Harris represent the Enforcement Subcommittee on the proposed Federal facilities work group of the NEJAC.
- ✓ Assigned Mr. Varney, Ms. Mayfield, and Ms. Mood to gather information about EPA’s “bad actor” regulation for the subcommittee’s strategic plan.
- ✓ Agreed to draft a letter to be addressed to each FACA at EPA to request that an environmental justice perspective be represented on each FACA committee. In the letter, the Environmental Law Institute report *Building Capacity to Participate in Environmental Protection Agency Activities: A Needs Assessment and Analysis* should be referred to with regard to broader community representation in environmental decision making.
- ✓ Asked that Mr. Varney provide examples of interagency coordination and cooperation on the state level to assist the subcommittee in preparing for the December 2000 meeting of the NEJAC.
- ✓ Agreed to continue drafting a report on lack of enforcement of Title VI by EPA. The report will outline the background and history of Title VI enforcement issues and provide recommendations for future action and response by EPA.
- ✓ Agreed to draft a letter to EPA to request that the Agency meet with members of the community of Anniston, Alabama and representatives of the Alabama Department of Environmental Management (ADEM). Agreed further to request that a representative of EPA provide an update on the activities in Anniston, Alabama, to the NEJAC.
- ✓ Agreed to draft a letter to the citizens of Anniston, Alabama, to thank them for the opportunity to visit their community and to encourage them to keep in contact with members of the NEJAC.
- ✓ Submitted to the Executive Council of the NEJAC for approval a letter addressed to the EPA Administrator that outlines the concerns of the Enforcement Subcommittee about EPA’s implementation of its Tier 2 Clean Fuels Initiative.
- ✓ Ms. Goode made a commitment to convene a meeting in July 2000 in southern California to discuss the outreach strategy to solicit views and comments on the new guidance for Title VI.

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