

MEETING SUMMARY

of the

ENFORCEMENT SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**December 11, 2002
Baltimore, Maryland**

**Shirley Pate
Designated Federal Official**

**Robert Kuehn
Vice Chair**

**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 Wednesday, December 11, 2002, during a four-day meeting of the NEJAC in Baltimore, Maryland. Mr. Robert Kuehn, University of Alabama School of Law, serves as vice-chair of the subcommittee. A chair for the subcommittee needs to be identified. 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. Exhibit 4-1 identifies the subcommittee members who attended the meeting and members who were unable to attend.

This chapter, which summarizes the deliberations of the Enforcement Subcommittee, is organized in five sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of Ms. Phyllis Harris, Principal Deputy Assistant Administrator, EPA OECA. Section 3.0, *Activities of the Subcommittee*, summarizes the discussions about activities of EPA OECA's Compliance Assistance Tools Workgroup. Section 4.0, *Presentations*, provides an overview of each presentation made to the subcommittee, as well as a summary of relevant questions and comments from the subcommittee members and any answers provided by presenters. Section 4.0, *Significant Action Items*, summarizes the significant action items adopted by the subcommittee during the one-day meeting.

2.0 REMARKS

Ms. Pate opened the subcommittee meeting by welcoming the members who were present. She then requested that the members of the subcommittee introduce themselves. Ms. Pate next introduced Ms. Harris, who provided opening remarks to the subcommittee.

Ms. Harris began by welcoming the members of the subcommittee and stated that she was looking forward to the discussion with the subcommittee. She continued by explaining that she had begun her current position in May 2002 and had previously served as regional counsel and division director in EPA Region 4.

Ms. Harris explained that environmental justice is very important to the current EPA administration. She said that Mr. J.P. Suarez, Assistant Administrator, EPA OECA, is committed personally to emphasizing environmental justice and incorporating it into OECA's programs and activities. She stated that in keeping with the reinvigoration of environmental justice within OECA, she wanted to work more closely with the Enforcement Subcommittee of the NEJAC. She expressed her concern that no representative of community stakeholders currently serves on the subcommittee, and stated that she recognized the need to improve the relationship between the subcommittee and OECA. Ms. Harris stated that OECA values the Enforcement Subcommittee's input on compliance and enforcement programs and that she would like to find a more efficient way to use the subcommittee as a tool to provide insight on enforcement issues.

Ms. Harris next described activities that OECA is undertaking taking with regard to environmental justice. She referenced the OECA organizational chart and explained that the Office of Planning, Policy Analysis, and Communications manages OECA's environmental justice program and coordinates activities with the subcommittee. She continued by explaining that each major EPA headquarters and regional program office had been asked to develop an environmental justice action plan that demonstrates how environmental justice is to be incorporated into EPA's programs and policies. She said that OECA had recently had completed its

Exhibit 4-1

ENFORCEMENT SUBCOMMITTEE

**Members Who Attended the Meeting
December 11, 2002**

Mr. Robert Kuehn, **Vice-Chair**
Ms. Shirley Pate, **DFO**

Ms. Beverly McQueary Smith
Mr. Howard Shanker
Mr. Kenneth Warren

**Members
Who Were Unable To Attend**

Mr. G. William Rice

draft environmental justice action plan, which is currently is being reviewed by the directors of the various OECA offices. Ms. Harris noted that OECA's action plan is organized around several main elements: civil and criminal enforcement, compliance monitoring, compliance assistance, and compliance incentives. She continued by adding that the plan outlines Ms. Harris's and Mr. Suarez's personal expectations and provides guidance to the EPA regions on the incorporation of environmental justice into their programs.

Ms. Harris explained that she and Mr. Suarez envision enforcement moving in three main directions, including the: (1) improvement of information management systems, (2) creation of additional tools like the Enforcement and Compliance History Online (ECHO) Pilot Web Site designed to assist EPA in making smarter decisions about enforcement actions, and (3) strategic targeting to address environmental concerns in environmental justice communities.

Ms. Harris briefly described some of OECA's current national priorities that are particularly pertinent to environmental justice communities. The most significant priorities include storm sewer overflows (SSO) and combined sewer overflows (CSO) from municipal wastewater systems, air pollutants, concentrated animal feeding operations (CAFO), and drinking water. She announced that EPA had settled a case in Baltimore that would reduce hundreds of thousands of gallons of raw sewage that was being discharged in the area. She also announced that the new policy guiding the use of supplemental environmental projects (SEP) would be signed by Mr. Suarez in the near future that would address the involvement of affected communities with the development of SEPs.

Ms. Harris concluded by stating that the EPA would continue to work with states to address resource issues related to the incorporation of environmental justice into state programs and to identify more efficient ways to address issues related to environmental justice. For example, she continued, the Environmental Results Program (ERP) in Baltimore, Maryland represents is a collaborative effort between the State of Maryland and EPA Region 3 to use integrated strategies (a combination of compliance tools) to address environmental problems on a community-wide basis. She stated that the use of integrated strategies to enhance the environment and public health in environmental justice communities is one of the goals in OECA's environmental action plan. She added that making greater use of strategic enforcement targeting to address environmental concerns in environmental

justice communities would be important because the results of targeting analysis determines how OECA will allocate resources.

Ms. Beverly McQueary Smith, Touro College and member of the subcommittee, asked Ms. Harris about EPA's budget for enforcement and compliance assistance in 2003. Ms. Harris responded that EPA is currently working under a continuing resolution that is funded at fiscal year (FY) 2002 levels. Ms. Harris stated that she remained optimistic that once the budget for FY 2003 is approved, it would be funded at the same levels as in FY 2002; however, she stated that there is a possibility that the budget could decline to FY 2001 levels.

Mr. Kuehn stated that he agreed with Ms. Harris's earlier statement that the subcommittee needs to include among its members a representative of a community stakeholders. However, he suggested that more than one community representative be asked to participate. Commenting He then stated that 90 percent of enforcement occurs at the state level, he asked Ms. Harris to identify EPA's role in "policing" states and whether there would be strict oversight of enforcement programs that are delegated to states. She acknowledged that EPA needs to work with the states to build relationships and trust. She continued by stating that the environmental justice action plans currently being prepared by OECA, EPA HQ program offices, and EPA regions should facilitate that process.

Mr. Kenneth Warren, Wolf, Block, Schorr and Solis-Cohen LLP and member of the subcommittee, addressed the issue of information flow between OECA and the Enforcement Subcommittee. He explained that in the past, the subcommittee had limited interaction with OECA. He suggested that ongoing communication be maintained between the subcommittee and OECA to ensure that the subcommittee is kept informed of current events. Ms. Harris responded that it would be productive to have open discussions between representatives of OECA and the subcommittee about general enforcement topics. She suggested that a quarterly conference call be held between OECA and members of the subcommittee. The members of the subcommittee, along with Ms. Pate, and Ms. Harris agreed to schedule a conference call for January 2003 to clarify the role of the Enforcement Subcommittee with respect to working with OECA and to identify ways to improve the relationship and communication between the subcommittee and OECA.

Exhibit 4-2

**STATUS OF BACKLOG OF
TITLE VI COMPLAINTS**

In 1997, the U.S. Environmental Protection Agency (EPA) established a task force headed by Ms. Gail Ginsberg, EPA Region 5, to address the backlog of Title VI complaints filed under Title VI of the Civil Rights Act of 1964. Initially, 66 cases had been backlogged; currently:

- 38 cases have been closed:
 - 2 cases were resolved after an investigation was initiated
 - 20 cases were rejected
 - 6 cases were withdrawn
 - 9 cases were dismissed after investigation
 - 1 case was referred to another agency
- 28 Complaints are pending:
 - 18 cases currently are under investigation
 - 6 cases have been suspended pending litigation
 - 4 cases are being held for informal resolution or alternative dispute resolution (ADR)

EPA anticipates that the backlog should be eliminated by June 2003. At that time, may be moved to EPA's Office of Compliance (OC).

Noting that concerns about the backlog of cases filed under Title VI of the Civil Rights Act of 1964 concerns had been discussed during the public comment period of the previous night, Mr. Kuehn asked Ms. Harris what role the Enforcement Subcommittee's should play with regard to addressing such concerns. Ms. Harris responded that an update from OECA about complaints filed under Title VI could be a topic for the January 2003 conference call. She also suggested that Ms. Karen Higginbotham, EPA OECA, participate in the call to provide background information about Title VI. Exhibit 4-2 summarizes the status of Title VI complaints registered with EPA.

Ms. Smith made a brief comment about compliance monitoring suggesting that EPA explore ways to "grow" its own scientists through partnerships with academia.

3.0 ACTIVITIES OF THE SUBCOMMITTEE

This section discusses the activities of the subcommittee, which included a status report on the activities of EPA's Compliance Assistance Tools Workgroup.

Compliance Assistance Tools Workgroup

Ms. Deborah Thomas, EPA OECA, provided a status report about EPA's Compliance Assistance Tools Workgroup. She began her presentation by stating that EPA had tasked the Workgroup to design compliance assistance materials that would be helpful to communities and to identify ways to engage the communities in the distribution of those materials. She reported that members of the workgroup include Mr. Howard Shanker, Hagen, Berman & Mitchell, PLLC, and chair of the workgroup; Mr. Bernie Penner, Maryland Department of the Environment (MDE); Ms. Harris; Mr. G. William Rice, EPA Region 7; and Ms. Susana Almanza, People Organized to Defend Earth and Her Resources.

Ms. Thomas stated that the components of an effective enforcement and compliance program are:

- Providing compliance assistance
- Conducting compliance monitoring
- Offering incentives to encourage compliance
- Taking civil and criminal enforcement actions

Ms. Thomas emphasized that it is important to integrate the use of each component to make EPA's enforcement compliance program successful. She defined compliance assistance as providing the information necessary to help the regulated community understand and comply with environmental requirements. Compliance assistance activities also provide information about pollution prevention, waste minimization, environmental management systems, and other ways to improve and protect human health and the environment, she continued, adding that EPA, other federal agencies, states, tribes, trade associations, nonprofit organizations, and environmental groups all provide compliance assistance.

Ms. Thomas noted that compliance assistance is provided through a variety of methods, including (1) outreach (for example, through the development of compliance guides and fact sheets, as well as web-based training), (2) organized systems to provide responses to inquiries (for example, through staffing a telephone hotline), and (3) on-site assistance (for example, through conducting compliance assistance visits, environmental audits, and inspections). She said that EPA plans to develop compliance guides that review new environmental rules, summarize existing requirements for small businesses, discuss problems business may experience complying with existing requirements, and explain existing requirements for specific industry sectors. Ms. Thomas referenced EPA's Compliance Assistance

Clearinghouse which can be accessed online at <http://www.epa.gov/clearinghouse>. She stated that the clearinghouse is a web-based vehicle that is a comprehensive source of information, tools, and resources. In addition, users can add and share information, she continued, adding that the clearinghouse provides links to numerous environmental web sites.

Ms. Thomas said that EPA has entered into partnerships with other government agencies, industry, academic institutions, and environmental organizations to develop sector-specific Compliance Assistance Centers. Exhibit 4-3 lists the industry sectors for which compliance assistance centers have been established. Additional information about the compliance assistance centers is available at <http://www.assistancecenters.net>.

Ms. Thomas said that compliance assistance is “linked” to environmental justice because such assistance can empower communities by giving them increased knowledge about regulatory compliance, and environmental and health and safety. With such knowledge, she commented, individuals are better able to understand facilities in their neighborhoods and communities are able to have more effective interactions with businesses. In addition, assisting different stakeholders to better understand environmental compliance “evens out” the information power balance among EPA, states, and tribes, she said. Ms. Thomas explained that the link between compliance assistance and environmental justice could be enhanced through expanded dialogue with EPA about priority-setting and planning, development of compliance assistance, increased knowledge about how EPA works (for example, its use of regional compliance

assistance coordinators and environmental justice coordinators), expanded community involvement in the selection of SEPs, maintaining a dialogue with states and tribes about environmental justice issues, increased participation in EPA-sponsored training to increase environmental compliance literacy, and other tools (for example, preparing documents and web sites in languages other than English). Ms. Thomas concluded that a dialogue between EPA and the NEJAC is needed to enhance the compliance assistance program’s value to environmental justice communities.

Mr. Warren stated that through compliance assistance, EPA’s Office of Compliance is trying to build capacity in communities. He asked whether that office has the resources to educate communities in that regard. Ms. Thomas responded that, currently, the office’s resources are stretched but the budget for education is an issue that should be discussed in the future. An unidentified member of the audience stated that the education of communities is an ongoing problem, adding that because enforcement flows from complex environmental regulations, it is difficult to educate communities about the entire enforcement process. The audience member stated that she would like to see lawyers work *pro bono* as liaisons between EPA and local communities. Ms. Thomas said that she had attended a compliance forum during the previous week where she had learned of an effort in Laredo, Texas where waste was being disposed of illegally. The community got involved because of increased truck traffic across the U.S. and Mexico border and members of the community are helping to identify the truckers she said. She said that funds to conduct seminars on compliance assistance were obtained through an environmental justice grant.

Exhibit 4-3

SECTOR-SPECIFIC COMPLIANCE ASSISTANCE CENTERS

The U.S. Environmental Protection Agency (EPA) has established compliance assistance centers for the following industry sectors:

- Local Governments
- Agriculture
- Transportation
- Federal Facilities
- Automobile Services and Repairs
- Chemical Manufacturers
- Paints and Coatings
- Printers
- Metal Finishers
- Printed Wiring Board

Ms. Smith stated that it is important to decide how to best replicate the success of the Laredo, Texas effort. She said that there is a “new culture of people” who are aware of environmental regulations. She emphasized the importance of preparing informational material in multiple languages so that all people can easily understand such materials. She noted that using the Internet to disseminate information is a valuable tool, however she stated that EPA must recognize that “digital gaps” exist in many communities. She suggested that EPA donate old computers to communities where people may not have access to the internet. Finally, Ms. Smith suggested that a task force comprised of teachers be created to discuss how to educate local communities about environmental regulations. Ms. Thomas said that the EPA Office of Environmental Education already is attempting to address some of those issues.

Mr. Shanker said that the workgroup has had difficulties in addressing the tasks assigned to it. Mr. Warren stated that the workgroup's original assignment to design compliance assistance tools and identify ways to engage the community in the distribution of that material might not be the best assignment for the workgroup. He commented that the failure to include on the subcommittee representatives of community stakeholders had hampered its ability to address the tasks assigned to it.

The subcommittee then discussed possible issues that it could address in the future with regard to compliance assistance. Mr. Penner stated that enforcement and compliance assistance are not "either/or" activities but rather form a continuum. He suggested that the subcommittee develop a "road map" identifying when compliance assistance is appropriate. For example, he stated that when noncompliance is a result of ignorance, it can easily be addressed with education. He also suggested that the subcommittee translate regulations into "plain English," particularly for those communities with environmental justice concerns. Finally, he suggested that the subcommittee develop a research protocol for identifying high-risk sectors in environmental justice communities.

Ms. Evans suggested that the subcommittee focus on compliance assistance and pollution prevention as opposed to enforcement for small businesses. Ms. Harris added that communities play a big role in compliance assistance because they are on the "front line" of the impacts from industry. She added that EPA needs to convince the public that their involvement in compliance assistance would be well spent. Ms. Thomas stated that all information received from the public is reviewed carefully in developing compliance/enforcement approaches. Commenting that every environmental action taken by EPA is an opportunity to educate the public, Mr. Kuehn suggested that the subcommittee contact Mr. Mark Dorfman, who is affiliated with a nonprofit organization in Boston, to obtain information about possible compliance assistance approaches. Mr. Dorfman conducts audits but insists that members of local communities conduct the audits along with him, Mr. Kuehn explained.

The subcommittee members present agreed to work with OECA during a future conference call to clarify which questions the Compliance Assistance Tools Workshop should address. Mr. Shanker requested that members of the subcommittee forward related suggestions to him or Ms. Pate.

4.0 PRESENTATIONS

This section summarizes the presentations made to the Enforcement Subcommittee. The presentations addressed regional enforcement issues, Enforcement and Compliance History Online (ECHO), SEPs, and environmental justice targeting for criminal enforcement cases.

4.1 Regional Enforcement Issues

Ms. Elisabeth Evans, EPA Region 8, presented information about the Northeast Denver Environmental Initiative, the Migrant Farm Worker Drinking Water Project, and the enforcement of the Worker Protection Standard (WPS) project. She described those projects as excellent examples of the challenges faced by an environmental justice community. She stated that the communities in which the projects are conducted:

- Exhibit much higher ethnic diversity and minority populations than other areas in the region and state
- Exhibit lower income and socioeconomic status than other populations in the region and the state
- Have pose health risks and exposures to contaminants in the area but they are difficult to quantify
- Have produced in some portions of the communities some frustration and distrust toward the institutions that work in those communities

4.1.1 Northeast Denver Environmental Initiative

The Northeast Denver Environmental Initiative is a multi-agency, multi-disciplinary project which addresses environment justice concerns in the northeast Denver metropolitan area. The project is envisioned as a cooperative partnership utilizing federal, state, county and local government authorities to address community concerns proactively regarding potentially harmful environmental consequences of industrial and transportation developments. EPA has received support from Federal Highway Administration (FHWA), Colorado Department of Public Health and the Environment (CDPHE), Colorado Department of Transportation (DCOT), the city and county of Denver, the Tri-County health department, Commerce City, and several community and nonprofit organizations on this initiative. The goals of the project are to improve coordination and communication between the partner organizations

and the communities to address environmental concerns through compliance assistance, enforcement authorities, pollution prevention, and other tools available to the agencies. Exhibit 4-4 highlights information provided in Ms. Evans presentation.

Ms. Evans explained that the initiative had been challenging but that the efforts undertaken by EPA Region 8 had been successful. For example, she stated that:

- 59 percent of all regulated facilities in northeast Denver had been inspected during the last three years
- 99 percent of the major, synthetic minor, and state-permitted minor Clean Air Act (CAA) facilities had been inspected during that same period

She reported that few instances of noncompliance with environmental laws had been found, which indicates that simply ensuring compliance by regulated facilities is not enough to protect the health and welfare of the local communities. Ms. Evans suggested two strategies for addressing environmental justice concerns in northeast Denver, including (1) the formation of partnerships to address the most apparent health risks in northeast Denver and (2) the provision of education, public participation, and empowerment in the community.

Ms. Evans cited the Northeast Metro Pollution Prevention Alliance (NEMPPA) as an example of a successful partnership. She explained that NEMPPA is a coalition of local, state, and federal government agencies and local industry leaders working to address pollution in the Denver area. NEMPPA works with local trucking companies to develop workable solutions that benefit all parties.

Ms. Evans reported that its projects include energy efficiency grants; the Diesel Truck Program, which delivers the message that idling engines waste fuel and contribute to air pollution; and citizen involvement program in reporting trucks that do not comply with efforts to reduce pollution.

Ms. Evans also stated that an example of another opportunity to address environmental justice concerns is the upcoming National Environmental Policy Act (NEPA) environmental impact statement (EIS) required for the expansion of Interstate 70. EPA is working with CDOT and the FHWA to ensure inclusion of environmental justice concerns in the EIS, she reported. Ms. Evans stated that the expansion project represents a unique opportunity for front-end, meaningful public involvement and the development of alternatives that truly consider potential environmental impacts on northeast Denver neighborhoods.

Ms. Evans then described the following elements that she believes are important in promoting successful public participation:

- Providing accessible, useful information to the public
- Providing opportunities for meaningful public involvement
- Linking public concerns and values to EPA actions

Ms. Evans also described several SEPs conducted by Conoco and the EPA Region 8 environmental justice listening sessions as examples of success in public involvement. Ms. Evans stated that the citizens of northeast Denver had been asked by EPA Region 8 to identify the issues of highest concern to them and that the citizens repeatedly identified air

Exhibit 4-4

Northeast Denver Environmental Initiative

Northeast Denver has many potential health risks associated with the existence of heavy industry, multiple transportation corridors, and patterns of land use. For example:

- 5,000 diesel tractors are housed, serviced, and operated out of the northeast Denver neighborhoods and almost 500 regulated facilities, 3 major highway corridors, and 2 active Superfund sites also are located in that area.
- Total air releases of hazardous air pollutants in northeast Denver are 10 times higher than in the city of Denver and 5 times higher than those reported for the State of Colorado.
- There are significantly more mobile emissions per capita in northeast Denver than in the city of Denver. Studies performed by the Colorado Department of Health revealed that approximately 74 more cases of cancer had been diagnosed among residents living in northeast Denver neighborhoods than would be expected based on state averages.
- Northeast Denver contains some of the oldest neighborhoods in the city. As a result, lead paint issues plague the neighborhoods.
- Two different studies have demonstrated that children in northeast Denver had blood lead levels that, on average, are at least twice the national average.

quality, development of a community and recreation center, and environmental education as important issues. Through SEPs arising from a settlement with Conoco, a number of local environmental projects that address those concerns were funded by Conoco with more than \$500,000.

In summary, Ms. Evans reiterated that most of the industries located in the northeast Denver area were in compliance with environmental laws. Some successes had been achieved through SEPs, partnerships, and public involvement; however, challenges remain, she said. Mr. Warren asked how she plans to measure the success of the initiative. Ms. Evans responded that success would be measured in terms of improved communication with government agencies, changes in industry, and the results of the EIS for the Interstate 70 expansion.

Ms. Mimi Guernica, EPA OECA, asked about EPA's relationship with the State of Colorado and whether the agencies shared each others databases. Ms. Evans responded that EPA is working with many different agencies in the state and that their working relationships had been good, especially with CDOT. However, Ms. Evans stated, EPA had not been successful in sharing other agencies' databases. Ms. Guernica then asked whether SEPs and pollution prevention strategies had been used in the area. Ms. Karen Kellen, EPA Region 8, responded by saying that SEPs are being implemented through state-managed oversight and that pollution prevention is being implemented through partnerships with local communities and business.

4.1.2 Migrant Farm Worker Drinking Water Project

Ms. Evans then presented information about the Migrant Farm Worker Drinking Water Project, which she stated addresses the safe drinking water needs of a sector of the population that is often described as "invisible." Most of the farm workers (growers) in Colorado are Hispanic migrant workers, she stated. Ms. Evans explained that the project grew out of EPA's focus on drinking water in areas with the largest presence of migrant farm workers, the greatest use of agricultural chemicals, and the presence of migrant worker camps that should be regulated under the Safe Drinking Water Act (SDWA). The project was intended to locate such camps and assess the quality of drinking water sources without triggering the shutdown of those camps "as a form of grower retaliation," she continued. The project was selected as one of 15 national environmental justice demonstration projects by the Interagency Working Group on

Exhibit 4-5

MIGRANT FARM WORKER DRINKING WATER PROJECT PROJECT PARTNERS

- ✓ Colorado Department of Public Health and Environment
- ✓ U.S. Department of Labor
- ✓ U.S. Department of Health and Human Services
- ✓ Colorado Department of Agriculture
- ✓ Plan de Salud del Valle, Inc.
- ✓ Valley Wide Health Services
- ✓ Colorado Community Health Network
- ✓ Colorado State University Cooperative Extension
- ✓ High Plains Inter-Mountain Center for Agricultural Health and Safety

Environmental Justice. Exhibit 4-5 lists the project partners.

Ms. Evans said that the goals of the project were to:

- Create a database of agencies that are involved with migrant farm worker agencies
- Create a database of locations of migrant farm worker camps locations and their associated sources of drinking water
- Assess the safety of these drinking water sources by identifying contaminants present
- Target counties with the highest concentrations of migrant farm workers and the greatest pesticide usage
- Provide technical assistance to growers who need or request it
- Determine which migrant worker camps should be regulated under the SDWA

The project currently is focusing on the last two goals, she said.

Ms. Evans explained that the objective of the project was to target migrant farmworker camps that might have public water systems and conduct water sampling with the permission of the growers who owned the camp. Once such sampling is conducted, the water then is tested for contaminants such as chlorinated pesticides organophosphates, nitrate, nitrite, sulfate, lead, arsenic, and selenium, as well as for the presence of *E. coli* and total coliform bacteria, she said. She continued by saying that the project focused on camps in Weld County, Colorado that were thought to use well water. She stated that out of the 211 camps examined, approximately 23 camps were identified as using wells as drinking water sources. Ms. Evans stated that Weld County was chosen because agriculture accounts for 37 percent of the land use and because approximately

2 million pounds of pesticide per year is used in the county.

Ms. Evans said that the project has faced many challenges. Navigating the jurisdictional tangle of federal, state, and local agencies that are involved with migrant farm workers was the first challenge, she said, stating that there also was some reluctance by those agencies to share data. Other challenges, she continued, include the lack of authority to collect samples on private property unless the owner granted permission and the fear of undocumented workers of the federal government. Ms. Evans emphasized that the U.S. Department of Justice (DOJ) Immigration and Naturalization Service (INS) was not involved in the project.

Ms. Evans also reported that the migrant worker camps that had met the size requirements to be regulated under the SDWA were further investigated. She noted that the SDWA is designed to ensure safe drinking water through regulation of public water systems that serve more than 25 individuals for more than 60 days per year or which have more than 15 service connections. The SDWA requires periodic water testing to ensure the safety of drinking water.

Ms. Evans said that EPA had prepared the agricultural community for the project by meeting with the Weld County Commissioners, the local Health Department, and the Colorado Union Association. Next, she continued, EPA had sent letters to growers seeking permission to collect water samples and followed up with telephone calls, she said. Ms. Evans reported that four camps then were sampled the results of which indicated that two camps had registered nitrate levels at about 25 milligrams per liter (mg/L), which is two and half times the SDWA maximum contaminant level (MCL) of 10 mg/L. Ms. Evans said the next step would be to ask permission from the growers to resample the two camps at which high concentrations of nitrate and sulfate were detected. She added that EPA would refer the evaluation of all camps that potentially are large enough to be regulated under the SDWA to the Colorado Department of Public Health and the Environment (CDPHE). CDPHE would then determine if the camps had public water systems that should be regulated, she said, adding that EPA and CDPHE would work with growers to find technical resources to address nitrate problems and other contamination.

Mr. Warren asked Ms. Evans whether she had talked directly to any migrant farm workers. Ms. Evans responded that she had been unable to speak to many of the workers. Mr. Warren suggested that EPA Region 8 develop a more proactive way to

include the migrant farm workers in the project. Ms. Smith suggested involving individuals with bilingual language skills or who possess strong connections with the local community. Ms. Michelle Yaras, EPA OECA, stated that she had been involved in developing new definitions for the Worker Protection Standard (WPS) and that the focus had been to include information provided by workers.

4.1.3 Enforcement of the Worker Protection Standard

Ms. Evans then reported about revisions to the WPS, which aims to protect all handlers of pesticide as well as agricultural laborers. The WPS is intended to reduce the risk of pesticide exposures to agricultural workers and handlers, she explained, stating that the standard requires:

- Pesticide safety training for workers
- Notification of pesticide applications
- Use of personal protective equipment by handlers
- Conformance with restrictions (time intervals) onto areas at which pesticides have been applied
- Decontamination supplies for workers
- Emergency medical assistance

Ms. Evans explained that the WPS had been in effect since April 1994, but that efforts to ensure compliance had been challenging. She reported that EPA inspectors face challenges because (1) the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) does not provide explicit authority for the inspection of grower operations; (2) the targeting of inspections must to coincide with periods of recent pesticide use and farm worker employment; (3) the interviewing of workers typically requires bilingual inspectors or the use of a translator; and (4) FIFRA limits any initial enforcement response to a Notice of Warning, rather than more stringent enforcement responses (for example, notice of violations).

Ms. Evans said that a Colorado Legal Services Survey conducted during the 2001 growing season had revealed violations of the restricted-entry intervals and demonstrated that after the application of pesticides, workers had reported irritation of the nose and throat, dizziness and weakness, and breathing difficulty. She reported that EPA Region 8 manages the WPS Program in Colorado and Wyoming, stating that in 2001, EPA Region 8 had inspected 23 facilities, 87 percent of which had been found to be out of compliance. Facilities that were not in compliance were issued Notices of Warning and EPA conducted compliance assistance efforts at these facilities, she continued. Facilities that had

received Notices of Warning, were targeted for re-inspection in 2002, she said. Ms. Evans announced that in 2002, EPA Region 8 had inspected 30 facilities, 17 of which had received Notices of Warning in 2001. She stated that, 81 percent of those facilities re-inspected in 2002 were in compliance. Of the 13 facilities inspected for the first time in 2002, only 5 were out of compliance, she said.

Ms. Evans concluded her presentation by stating that facilities found to be out of compliance after receiving a Notice of Warning are subject to a penalty. EPA Region 8 had filed and settled one case against a facility, assessing a \$6,090 penalty, she said. The end goal, she stated, is compliance, and she stated that EPA Region 8 is aggressively pursuing facility compliance and permanent behavioral changes to protect farm workers. Although penalties are small (FIFRA limits penalties to \$5,500 per violation), the cases would have a substantial deterrent effect, Ms. Evans said.

4.2 Enforcement and Compliance History Online Pilot Web Site

Ms. Betsy Smidinger, EPA OECA, provided an overview of EPA's new ECHO pilot web site. She announced that the web site had been made available to the public on November 20, 2002, and is currently undergoing a 60-day review and comment period. She explained that the web site had been developed as part of EPA's effort to build infrastructure that would make the enforcement program more "transparent." Commenting that the Freedom of Information Act (FOIA) establishes the right of citizens to request government records, Ms. Smidinger explained that the FOIA had been amended by the "eFOIA law", which directs the government to use technology, including the internet, to make record review easier and to provide information in the form asked for by the requestor. ECHO had been designed to fill the information void and move the EPA enforcement program toward compliance with eFOIA, she stated. Ms. Smidinger stated that public access to government information can serve as a driver or incentive to get problems fixed and to market successes. In addition, she continued, many violators are discovered through tips, and public access to government records provides a forum to learn more about the operations of regulated facilities. She also emphasized that with the increased reliance on information in government information systems, it becomes increasingly important that such information is correct.

Ms. Smidinger then explained the steps that had led to the development of ECHO. In 1990, she said,

EPA had launched the Integrated Data for Enforcement Analysis (IDEA) web site and made it available by subscription. Members of the subcommittee asked whether the fee for IDEA could be waived for environmental justice communities and academia. Ms. Smidinger stated that she did not know but she would find out and report back to the subcommittee. She said that IDEA is the source of data in the ECHO site; however, not all the data on IDEA is available on ECHO because of the sensitive nature of some of the data, she said. In the intervening 12 years, she continued, EPA had conducted two web-based pilots: a sector facility indexing in 1998 and Region 10 EC-Online in 2001. Ms. Smidinger added that in 2000, an EPA-State Public Access Workgroup was organized to address issues related to public access to government enforcement information and the Online Targeting Information System (OTIS) had been released to the states on a virtual "extranet." EPA had also received FOIA requests for a national web site, she said, resulting in the development of the ECHO pilot web site; EPA had begun to develop web-based data quality review procedures in 2002, she said.

Ms. Smidinger explained that ECHO is unique because it does not use Oracle; rather the backbone of ECHO is IDEA, a mainframe system that downloads compliance and enforcement data from more than 10 databases every month, she said. Mr. Smidinger stated that ECHO contains compliance and enforcement data for more than 800,000 regulated facilities, including CAA stationary sources, CWA permitted dischargers (under the National Pollutant Discharge Elimination System), the Resource Conservation and Recovery Act (RCRA) hazardous waste generators and handlers, and other facilities that have been subjected to federal enforcement actions under any statute (for example, facilities listed in EPA's Integrated Compliance Information System [ICIS]). ECHO users have a variety of search options and are able to receive multimedia reports, she continued, adding that ECHO reports are supplemented with data from the U.S. census. A list of the types of information found in ECHO is summarized in Exhibit 4-6.

Ms. Smidinger said that ECHO offers many innovative features. Because of ECHO, a data steward network had been developed with states to handle comments on the system, she explained, Ms.

Smidinger added that the network uses EPA's Integrated Error Correction Process (IECP) to allow data stewards to see the report and line that were commented on. ECHO also contains caveat boxes that explain when information is not required and uses "interpreted" data that makes the web site much easier to decipher and use. Two weeks after ECHO had been launched, queries to the system averaged about 10,000 per workday with more than 125,000 queries received since the site's inception), Ms. Smidinger explained. She added that the feedback button had received a total about 80 comments and 50 questions and that more than 700 errors had been reported to date for a wide range of data. Of the 80 comments that had been received, she continued, 40 percent were positive, 26 percent were positive with suggestions, 23 percent were neutral with suggestions, 4 percent were negative, and 7 percent were concerned with homeland security. General comments consisted of recommendations for providing more information about the nature of the violations and whether they pose a threat, questions about downloading files, or questions about why a particular facility is listed in the database. Ms. Smidinger said that EPA is responding to comments in a prompt manner. Examples of specific comments about ECHO are shown in Exhibit 4-7.

Ms. Smidinger explained that the next step would be to solicit comments during the 60-day review and comment period. After EPA addresses the comments, the "pilot" designation would be removed from the web site, she said.

Ms. Smidinger said that the subcommittee and the

Exhibit 4-6

ENFORCEMENT AND COMPLIANCE HISTORY ONLINE (ECHO)

Databases accessed by ECHO include the Air Facility System (AFS); the Permit Compliance System (PCS); the RCRA Information System; and the Integrated Compliance Information System (ICIS), which contains multi-statute federal enforcement data. The following data is included in ECHO:

- Name and address of each facility
- Facility characteristics (type of permit, latitude and longitude, Standard Industrial Code (SIC) code, etc.)
- Inspection history
- Compliance status and violations
- Formal enforcement actions taken during the last two years
- Penalties assessed during the last two years
- Demographics within one, three, and five miles of the facility
- Key compliance and enforcement data from EPA and

environmental justice community could support ECHO by providing links to ECHO in the web pages managed by those organizations, sending e-mails containing information about the project to other environmental justice organizations, notifying list servers or e-mail group subscribers that may be interested, submitting comments about the applicability of the information on the site to environmental justice concerns, and submitting to EPA any errors encountered. She explained that through ECHO, environmental justice communities would be able to assess overall or corporate

Exhibit 4-7

USER COMMENTS TO ECHO

The following comments to the ECHO web site were provided by users:

"...the ease of use and speed at which the queries are processed is very good. The level of detail possible is great. Finally a way to check compliance for facilities and getting new information (RTK site usually has very old information) and it doesn't cost anything. Thanks."

– Industry Representative

"Great database! Very useful information on local companies. Hope you can make this a permanent database. Very useful to the public."

– Academician

"This is an impressive and valuable resource for citizens and communities located near industrial facilities. Even though I have participated in a Citizens Advisory Panel to the South Baltimore chemical industry, I have never received information on most of these non-compliance and enforcement activities. Keep up the good work!"

– Citizen Group

ECHO Pilot Web Site: www.epa.gov/echo
Send comments to echo@epa.gov

compliance records, determine whether individual permits are being complied with, examine environmental justice issues using searches based on an area's percentage of minorities, and examine the level of state or EPA enforcement activity in particular areas. Ms. Smidinger concluded with a brief demonstration of ECHO. During the demonstration, Ms. Smidinger explained that a reference to this web site could be provided in lieu of a written response to a FOIA request about EPA compliance/enforcement data. She also said that discharge management reports required of NPDES still are being filed in hard copy format, and thus, would involve significant costs to make them available electronically.

Mr. Bernie Panner, Maryland Department of the Environment and a member of the audience, explained that development of ECHO had been challenging because of the history of the development of the data. He noted that, in the past, enforcement data had been maintained on paper. He went on to say that when databases (e.g., IDEA) finally were created, each agency had used different definitions and data fields. He described this situation as "information chaos." There is still concern about how the data is being presented, he said, but he said he felt EPA is "making progress" to collect information about large facilities. The information for smaller facilities still has some discrepancies, he said.

Ms. Alisa Harris, Pennsylvania Department of Environmental Protection and a member of the audience, suggested that EPA use other models as a reference to improve the web site. She offered to provide information about Efacts, which was made available to the public in Pennsylvania. She also suggested extending the 60-day review and comment period so that members of the subcommittee would have adequate time to review the web site. She further suggested that a workgroup be formed to review the web site and to educate the public about how to use those types of tools.

Subcommittee members also expressed concern that the public had not been involved in the development of the ECHO Pilot Web Site. The subcommittee agreed to request an extension of the 60-day public review and comment period to give the subcommittee time to conduct a review and provide advice about the web site.

4.3 Supplemental Environmental Projects Guidance

Ms. Rosemarie Kelley, EPA OECA, provided an

update about the upcoming Community SEP Guidance. She described a SEP as an environmentally beneficial project that is undertaken by the defendant in an enforcement action as part of a settlement to reduce the amount of a fine or penalty. The defendant must agree to complete the project, she continued, and EPA would consider the project when determining a fine. To qualify as a SEP, the project must be completed in response to an enforcement action, must go beyond compliance with environmental laws, and must be related to the environmental action, she stated. For example, if a company violates a SDWA standard, its SEP should be related to providing clean drinking water, Ms. Kelley explained.

Ms. Kelley said that the SEP Policy had been last updated in 1998, adding that a potential upcoming change to the policy would allow SEPs that could eventually result in profits for the violating company. However, she noted, the policy is expected to dictate that a project cannot be profitable immediately (that is, until after 5 years of existence), she also noted that a profitable project also might be allowed in the future if it would benefit environmental justice communities, she said.

Ms. Kelley stated that EPA's 1998 SEP Policy had included a section on community involvement. She further stated that, in 1999, a workgroup had been developed to identify cases where it would be appropriate to include community involvement. As a result of the workgroup's efforts, a draft Community SEP Guidance was published in June 2000, which advises early involvement and education of the community about SEPs. Ms. Kelley stated that the guidance encourages communities to participate in the SEP process and emphasizes that outreach efforts must be conducted by EPA or state agencies in the affected community. She said that comments to the draft guidance had been provided by four public interest groups and one industry group. The public interest groups' comments had overall been very positive, she reported, but they did suggest that the guidance be written in a more positive tone. In contrast, she said, comments from industry representatives had been "very negative" in which they had stated that involving the community in decisions about SEPs "would be a mistake."

Ms. Kelley said that the Community SEP Guidance provides information primarily for the EPA regional offices and the DOJ, although information is available to affected communities and defendants in enforcement actions. The guidance also encourages development of regional SEP libraries and a national database that are internet-accessible to be used as resources for new ideas, she said,

adding that the cost to establish the database have been estimated to be approximately \$200,000. Ms. Kelley said that EPA hopes to start developing this database in FY 2003. Ms. Smith asked how the projects would be funded. Ms. Kelley responded that she hopes the funds can be obtained from the regional offices. She also referred to the CWA trust fund bill, which would have funded a dedicated pool of money for beneficial projects; however, the legislation had not passed in Congress. In response to a request, Ms. Kelley said that she would send Ms. Smith a copy of the bill.

Ms. Kelley stated that one concern about involving communities in SEPs is that SEPs must comply with court-imposed deadlines and often have time constraints and that community involvement may slow the process and threaten completion of projects by those deadlines. For example, she said that the City of Atlanta had been sued and there had not been adequate time to involve the community until the end of the project. She also said that community involvement would be hard to implement in cases where there are issues of imminent and substantial endangerment to human health or the environment or confidentiality. However, she added, the guidance suggests that in those cases, information be shared as soon as possible with the community.

Mr. Kuehn asked why a defendant would be reluctant to enter into a SEP. Ms. Kelley said that it is getting harder to find good ideas for SEPs. EPA previously had given credit for projects as simple as purchasing a fire engine. She said that EPA no longer is willing to give credit for projects that have already been done; rather, she explained, EPA wants SEPs in which the defendant actually has to do something that would benefit local environments, such as providing clean drinking water.

Mr. Kuhn continued the discussion by asking about how states have implemented with SEPs. Ms. Kelley responded by saying that she is not involved with state SEPs. An audience member said that several states (for example, Ohio) keep a running list of SEPs they would like to see implemented so that when an enforcement action arises, the state can make suggestions. Ms. Kelley added that states also can "bundle" cases. Ms. Harris asserted that states have more flexibility in crafting SEPs; for example, she explained, federal SEPs do not allow a zero penalty, whereas the State of Pennsylvania does. Ms. Evans said that the real benefit of a company's entering into a SEP is the positive publicity. She continued by saying that another potential for a SEP involves identifying a relationship (or nexus) between the reason for the environmental action and the SEP. Ms. Kelley responded that it

sometimes it is necessary to be creative. She said that SEPs are more flexible than people may think.

Ms. Kelley concluded her presentation by reporting on the Breathmobile, a Baltimore-based SEP implemented by SE Johnson. She explained that SE Johnson had distributed Allocare, an asthma product, without first registering the product. Ms. Kelley stated that the fragrance in Allocare had caused a bad respiratory allergic response, and that many people who had been exposed to it in their homes had to be evacuated. Consequently, she continued, SE Johnson had to recall the product, remove out the fragrance, pay a \$200,000 penalty, and enter into a \$700,000 SEP. For the SEP, SE Johnson used trained doctors at the University of Maryland to run the Breathmobile, which is a full-time project that treats children in inner-city schools for asthma. In the months since the project's inception in March 2002, the Breathmobile had visited 23 schools and treated 200 children, 98 percent of whom were African-American, she reported. Of the 200 children treated, 94 percent had asthma and 74 percent had asthma that was triggered by an allergen. SE Johnson funded the Breathmobile for one year; it will be funded by the University of Maryland in future, Ms. Kelley said.

The discussion of SEPs concluded with Ms. Kelley stating that EPA is trying to implement pollution prevention in SEPs by considering the benefit of 100 percent fine or penalty mitigation. Ms. Evans made a final comment that some SEPs have resulted in technical changes within a facility, which indirectly benefit the community; however, she stated, some of the money used for SEPs should directly benefit the community. Ms. Smidinger noted that a line in ECHO refers to SEP cost; however, the web site does not provide any details about SEPs.

4.4 Environmental Justice Targeting for Criminal Enforcement Cases

Mr. Nick Swanstrom, EPA Office of Criminal Enforcement, Forensics, and Training (OCEFT), gave a presentation about the role of criminal enforcement in environmental justice. Mr. Swanstrom stated that his purpose for speaking to the NEJAC members was to share information in an effort to overcome communities' historical mistrust of the Agency. He explained that OCEFT directs EPA's Criminal Program; provides a broad range of technical and forensic services for civil and criminal investigative support; and oversees EPA's enforcement and compliance assurance training programs for federal, state, and local environmental professionals. Mr. Swanstrom continued that the mission of OCEFT is to identify, apprehend,

prosecute, and convict those who are responsible for the most significant violations of environmental law that pose substantial risks to human health and the environment. He stated that environmental justice had been a national initiative in EPA's Criminal Program since the early 1990s.

Mr. Swanstrom then defined environmental justice and referred to the Environmental Justice Collaborative Model (February 2002) developed by the Federal Interagency Working Group on Environmental Justice (IWG). He said that the 11 federal agencies represented on the IWG had developed and issued an Interagency Environmental Justice Action Agenda. Mr. Swanstrom noted that the goals of the agenda are to:

- Improve coordination and cooperation among federal agencies
- Make government more accessible and responsive to communities
- Initiate environmental justice demonstration projects to develop integrated, place-based models for addressing community quality-of-life issues
- Ensure integration of environmental justice into policies, programs, and activities of federal agencies

Mr. Swanstrom explained that the underlying premise of the action agenda is that a collaborative model is an effective method for comprehensively and proactively addressing environmental justice issues. He also stated that the IWG, in partnership with various stakeholders, had established 15

demonstration projects to test this premise. Exhibit 4-8 lists the demonstration projects. He explained that OCEFT's role is to act as a liaison between the people working on the projects and the federal government and to look into unresolved issues at the project sites.

Mr. Swanstrom concluded his presentation by stating that OCEFT has partnerships with many different associations, including regional environmental enforcement associations such as the Midwest Environmental Enforcement Association, the Northeast Environmental Enforcement Project, the Southern Environmental Enforcement Network, and the Western States Project, as well as law enforcement support organizations such as the International Association of Chiefs of Police and the National Organization of Black Law Enforcement Executives (NOBLE). Mr. Swanstrom also described as an example OCEFT's partnership with NOBLE's "pilot" environmental justice project. He stated that NOBLE had been formed in 1976 and now has more than 48 chapters across the nation consisting of more than 3,500 law enforcement professionals. The purpose of NOBLE is to help shape law enforcement policy in areas of vital importance to minorities and the law enforcement community, he said. OCEFT also has a partnership with the Hispanic-American Police Command Officers Association (HAPCOA), an organization that had been formed more than 30 years ago and which provides annual national conferences for training, networking, and establishing relationships and partnerships within the law enforcement profession.

Exhibit 4-8

**Interagency Environmental Justice Action Agenda
15 Demonstration Projects**

- Re-Genesis: Cleanup and Revitalization through Collaborative Partnerships
- Protecting the Community Health and Reducing Toxic Air Exposure through Collaborative Partnerships in Barrio Logan
- Metiakatia Indian Community Unified Interagency Environmental Management Task Force
- Protecting Children's Health and Reducing Lead Exposure through Collaborative Partnerships
- New Madrid County Tri-Community Child Health Champion Campaign
- New York City Alternative Fuel Vehicle Summit
- Addressing Asthma in Puerto Rico – A Multifaceted Partnership for Results
- Bridges to Friendship: Nurturing Environmental Justice in Southeast and Southwest Washington
- Bethel New Life Power Park Assessment
- Camden-City of Children Partnering for a Better Future
- Easing Troubled Waters: Ensuring Safe Drinking Water Sources in Migrant Farm Worker Communities in Colorado
- Environmental Justice and Public Participation Through Technology: Defeating the Digital Divide and Building Capacity
- Oregon Environmental Justice Initiative
- Greater Boston Urban Resources Partnership: Connecting Community and Environment
- Environmental Justice in Indian Country: A Roundtable to Address Conceptual, Political, and Statutory Issues

5.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action items adopted by the Enforcement Subcommittee.

- ✓ Schedule a conference call that includes Ms. Harris for January 2003 to:
 - Clarify the role of the Enforcement Subcommittee and identify ways to improve the relationship and communication between the subcommittee and OECA
 - Identify specific topics that the subcommittee should address in the future
 - Clarify the question that the Compliance Assistance Tools Workgroup should address with regard to compliance assistance. Members of the subcommittee should forward suggestions to Mr. Shanker or Ms. Pate
 - Discuss Title VI concerns (including an update about EPA's progress with Title VI complaints)
 - Discuss the ECHO Pilot Web Site

- ✓ Submit a formal letter to Ms. Harris requesting an extension of the 60-day public review and comment period for the ECHO Pilot Web Site