MEETING SUMMARY

of the

ENFORCEMENT SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

December 13, 2000
Arlington, Virginia

Meeting Summary Accepted By:

Shirley Pate
Designated Federal Official

Savonala "Savi" Horne
Acting Chair

CONTENTS

Section **Page**

CHAPTER FOUR: MEETING OF THE ENFORCEMENT SUBCOMMITTEE 4-1

1.0 INTRODUCTION 4-1

2.0 REMARKS 4-1

3.0 PRESENTATIONS AND REPORTS 4-1

3.1 Interagency Panel on the Implementation of Title VI 4-2
3.1.1 U.S. Department of Justice 4-2
3.1.2 U.S. Department of Transportation 4-4
3.1.3 U.S. Department of Housing and Urban Development 4-7
3.1.4 Update on the EPA Title VI Guidance 4-9
3.2 Update on Supplemental Environmental Projects 4-10
3.3 History of Executive Order 12898 on Environmental Justice 4-11
3.4 Status of EPA Targeting Efforts 4-14

4.0 SIGNIFICANT ACTION ITEMS 4-16

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 13, 2000, during a four-day meeting of the NEJAC in Arlington, Virginia. Mr. Luke Cole, Center for 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. 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 four sections, including this *Introduction*. Section 2.0, *Remarks*, summarizes the opening remarks of the chair of the subcommittee. Section 3.0, *Presentations and Reports*, presents an overview of other presentations and reports received by the subcommittee, as well as summaries of the questions and comments on the part of the members of the subcommittee that those presentations and reports prompted. Section 4.0, *Recommendations and Action Items*, summarizes the significant action items adopted by the subcommittee.

2.0 REMARKS

Mr. Cole, opened the subcommittee meeting by welcoming the members present and Ms. Pate. In his review of the guidelines of the NEJAC to remind the members and observers of the protocol to be followed, Mr. Cole stated that the meeting was conducted for the members of the Enforcement Subcommittee. The comments of observers, would be taken throughout the meeting at the discretion of the chair, he explained. At the request of Mr. Cole, the members of the subcommittee and members of the audience then introduced themselves.

Mr. Cole announced that this meeting would be the last meeting for all but four members of the subcommittee. He explained that although the departing members primarily represent non-governmental organizations and community groups, the new incoming members largely will represent academic and industry organizations. He stated that the subcommittee members planned to discuss during the discussion with Mr. Steven Herman, Assistant Administrator, OECA, their concerns about what appears to be an imbalance in membership. See Section 3.5 of this chapter for a detailed summary of that conversation.

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made to the Enforcement Subcommittee on issues related to enforcement and compliance assurance. An interagency panel discussion was held concerning the implementation of Title VI of the Civil Rights Act of 1964 (Title VI). Following the panel presentation, representatives of EPA's Office of Civil Rights (OCR) provided an update on EPA's activities related to Title VI. Other presentations made include reports on supplemental environmental projects (SEP), an overview of the history of

Exhibit 4-1

ENFORCEMENT SUBCOMMITTEE

List of Members Who Attended the Meeting
December 13, 2000

Mr. Luke Cole, **Chair**
Ms. Savonala (Savi) Horne, **Vice Chair**
Ms. Shirley Pate, **DFO**

Mr. Delbert Dubois
Ms. Rita Harris
Ms. Zulene Mayfield
Ms. Lillian Mood
Mr. Gerald Torres

List of Members
Who Were Unable To Attend

Mr. Robert Varney

Executive Order 12898 on Environmental Justice, and an update on the status of EPA's targeting efforts.

3.1 Interagency Panel on the Implementation of Title VI

Mr. Cole remarked that the panel session was convened as part of the theme of the current NEJAC meeting: to explore interagency coordination of environmental justice issues. Before the panel discussion began, he stated that the subcommittee was interested in learning how other agencies undertake enforcement of Title VI. Labeling as "abysmal" EPA's record of enforcement, he stated that EPA has not acted on the more than 100 complaints submitted to EPA by community organizations during the previous 7 years. The subcommittee hopes that the panelists could provide lessons learned and offer "good Ideas" on civil rights enforcement that can be passed on to EPA.

Mr. Cole then introduced three speakers on the panel: Mr. Andrew Strojny, Deputy Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice (DOJ); Ms. Betsy A. Ryan, Senior Equal Opportunity Specialist, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development (HUD); and Mr. Marc Brenman, Senior Policy Advisor, Departmental Office of Civil Rights, U.S. Department of Transportation (DOT). Mr. Cole added that Ms. Yasmine Yorker, EPA Office of Civil Rights (OCR) would provide an update on EPA's civil rights guidance, as well as report on the status of the Agency's enforcement activities.

3.1.1 U.S. Department of Justice

Mr. Strojny first presented a brief overview of DOJ's Coordination and Review Section. He stated that the section is charged by Executive Order 12250 with responsibility for coordinating enforcement of Title VI and all other grant related federal statutes that prohibit discrimination. See Exhibit 4-2 of this chapter for a description of the activities performed by the section.

Mr. Strojny then provided background information about Title VI, which he explained was enacted as part of the landmark Civil Rights Act of 1964, as well as how provisions of Title VI are enforced. Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance, he said, adding that Title VI prohibits acts of intentional discrimination. However, he added, most funding agencies have

Exhibit 4-2

OVERVIEW OF U.S. DEPARTMENT OF JUSTICE COORDINATION AND REVIEW SECTION

The Coordination and Review Section of the U.S. Department of Justice Civil Rights Division operates a comprehensive, government-wide program of technical and legal assistance, training, interagency coordination, and regulatory, policy, and program review, to assure that federal agencies consistently and effectively enforce various landmark civil rights statutes and related Executive Orders that prohibit discrimination in federally assisted programs and in the federal government's own programs and activities. Specifically the Section:

- Develops model regulations, policies, and enforcement standards and procedures, and reviews and approves similar products developed by individual federal agencies.
- Reviews plans and data submitted by federal agencies that describe their civil rights enforcement priorities, activities, and achievements.
- Conducts Technical Assistance Reviews of Title VI enforcement, such as the review completed in 2000 of the Federal Highway Administration's Federal Aid Highway Program.
- Provides technical assistance and training to improve the compliance and enforcement programs of individual agencies. One training course combines classroom study of legal requirements, theories of discrimination, and investigative techniques, and culminates in the hands-on workshop "investigation" of a mock complaint.

Two major documents produced by the Section, a *Title VI Legal Manual* and an *Investigation Procedures Manual*, are designed as essential building blocks for the development of an agency's Title VI compliance program. The Section also publishes a quarterly newsletter, *The Civil Rights Forum*.

promulgated regulations implementing Title VI that prohibit practices that have the effect of discrimination.

Mr. Strojny stated that the Title VI can be enforced in one of three ways: an administrative remedy, an administrative appeal for injunctive relief, and a private cause of action or lawsuit:

- Aggrieved individuals may file an administrative complaint with the federal agency providing financial assistance to recipients. Under an administrative remedy, primary responsibility for enforcement rests with the federal agency that provides the assistance. The administrative remedy process is designed to encourage people to talk about their concerns and to "work things out."

- Under an administrative appeal, if a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance can either initiate proceedings to terminate funding or refer the matter to DOJ for injunctive relief. If an agency chooses the latter, DOJ attempts to seek assurances that the party will comply with Title VI. DOJ formalizes this agreement with a "contract" that spells out how compliance will be achieved. This appeal process also focuses on resolving issues without resorting to court sanctions.

- Aggrieved individuals may file in federal district court a private cause of action for appropriate relief. With the limited number of such cases, one can look to case law for enforcement of Title IX of the Civil Rights Act of 1964 to see how this process would work.

Mr. Strojny also explained several differences between pursuing an administrative remedy and pursuing a private cause of action, notably the time frame in which a complaint can be filed. He explained that under an administrative remedy, which is promulgated by regulation, aggrieved individuals must file a compliant within 180 days of the act of discrimination. Under a private cause of action, which has court-made limitations, there is no statute of limitations for filing a compliant, he continued, adding that the courts have set as a standard the closest applicable state action that is "like" Title VI.

Mr. Strojny explained that most cases filed under Title VI have been brought as private rights of action. Citing a case currently before the U.S. Supreme Court, he stated his opinion that the only issue at hand is whether a private citizen can use a private right of action to enforce the discriminatory effects clauses of agency regulations implementing Title VI. He said that he could not identify any other federal statute that precludes an individual from enforcing implementing regulations through a private right of action. In fact, he said, most federal circuit courts have ruled that enforcement statutes do not preclude such action.

Mr. Strojny then returned to a discussion of the role of DOJ in civil rights enforcement. He stated that DOJ coordinates enforcement across agencies, conducting coordination reviews that examine how each agency conducts its civil rights enforcement and identifying specific items that agencies can emulate. He added that no federal agency can promulgate regulations to implement Title VI unless the U.S. Attorney General, as the President's designee signs off on the regulations. Mr. Strojny added that DOJ also is responsible for coordinating complaints filed with multiple agencies. Resolution of such case often are lengthy and time-consuming, he explained, because DOJ must seek consensus among all federal agencies involved. Although the Executive order has assigned to DOJ responsibility for resolution, DOJ can not make unilateral decisions because its authority over other federal agencies is limited, he continued. For example, DOJ can not affect the budget of another federal agency, he remarked.

Mr. Strojny described DOJ as a major provider of federal financial assistance, noting that recipients of DOJ funds include state and local law enforcement agencies, courts, corrections systems, juvenile justice systems, and a variety of non-governmental entities. Under agreements reached with several DOJ funding components, the Section conducts administrative investigations of selected complaints of discrimination by recipients of financial assistance provided by DOJ, he continued. The Section seeks case resolutions through the use of alternative dispute resolution techniques, if appropriate, in lieu of full field investigations, he stated, adding that in other cases, investigations may result in the issuance of formal findings of compliance or non-

compliance. If voluntary compliance cannot be achieved where non-compliance is found, the Section refers the case to the appropriate DOJ Division for litigation or, in cooperation with the appropriate funding component within the Department, seeks to terminate the Federal financial assistance through an administrative hearing, said Mr. Strojny.

Mr. Strojny reported that DOJ has published a *Title VI Legal Manual* to assist federal agencies that provide financial assistance, the wide variety of recipients that receive such assistance, and the actual and potential beneficiaries of programs receiving federal assistance. He explained that the manual sets forth legal principles and standards. Additionally, the Department has published a*n Investigation Procedures Manual* that provides to federal agencies practical advice about how to investigate Title VI complaints, he added. Also available on the Section's Internet web site are many other materials that may be helpful to those interested in ensuring effective enforcement of Title VI, he said.

Ms. Mood asked Mr. Strojny to describe the role of DOJ in overseeing the implementation of Title VI by other federal agencies. Has DOJ established a procedure by which it requests and uses representatives of other agencies to help with oversight, she added. Mr. Strojny stated that in response to Executive Order 12250, agencies meet quarterly to discuss concerns and implementation plans about a variety of complaints received by agencies. Many of the complaints filed by agencies involve Title VI and Section 504, he said, although most of the case backlog involves Section 504. However, the problem is that only Title VI offers a clear enforcement mechanism, but it is being stretched into areas that it does not fit, he said. Ms. Mood commented that including the viewpoint of the community could help in those interagency discussions. She recommended involving a member of the NEJAC to help provide this perspective.

3.1.2 U.S. Department of Transportation

Mr. Brenman reported that DOT is very much involved with enforcement of Title VI as well as environmental justice. He stated that in addition to issuing its own environmental justice order, the Department has established regulations for implementing Title VI. When a complaint under Title VI is filed with DOT, it is referred for investigation to one of DOT's 10 operating administrations if it concerns a single mode of transportation, he explained. For complaints involving multiple modes of transportation or intermodal operations, different administrations within DOT must work together to resolve the complaint. He reported that the Federal Highway Administration had issued guidance for Title VI, as well as an environmental justice order. The Federal Transit Administration, currently operating under the Title VI Circular issued more than 15 years ago, has started to develop new procedures for implementing Title VI, he said. Mr. Brenman also reported that he had developed a manual describing how to investigate environmental justice complaints under Title VI.

Mr. Brenman stated that DOT's environmental justice order emphasizes Title VI. Through the order, DOT has tried to institutionalize environmental justice concepts throughout is programs and polices, he said. The agency also has issued guidance to recipients of DOT financial assistance on the provision of separate language services to people with limited English proficiency, he said, which emphasizes Title VI. However, he stated, one of problems with relying on enforcement of Title VI as the primary remedy for environmental justice is that it does not specifically address low-income populations. He stated his belief that the Robert T. Stafford Disaster Assistance and Emergency Relief Act of 1993, which concerns the provision of post-disaster emergency assistance, is the only federal statute that explicitly prohibits discrimination on the basis of income. Fortunately, he added, a significant number of low-income people are addressed by other statutes because many are included among minority populations, as well as among those individuals with limited proficiency in English.

DOT uses a variety of approaches to investigate Title VI complaints, continued Mr. Brenman. In additional to traditional investigative processes, DOT utilizes alternative dispute resolution in accordance with the Executive Order that encourages federal agencies to explore using such techniques. However, Mr. Brenman acknowledged, DOT has not been "hugely" successful in mediating civil rights cases. We do not know exactly why, he admitted, explaining

that mediation could be affected by such factors as the unfamiliarity of the mediation community with environmental justice cases, the selection of the "wrong mediator," or the Department may have not selected appropriate cases for mediation. Perhaps DOT's failure in mediation is because none of the parties are willing to budge from their positions, he continued.

Discussing another DOT approach for incorporating environmental justice, Mr. Brenman explained that, several years earlier, DOT had received a notice of intent to bring law suits against DOT from a number of environmental justice organizations in the Atlanta, Georgia area. After meeting with the environmental justice groups in Atlanta, the groups had agreed to the conduct of a two-part environmental justice review of the Atlanta area, in lieu of litigation, he said. After conducting an investigation, DOT developed a public participation approach that included local environmental justice organizations, as well as the Georgia Department of Transportation, the Atlanta Regional Transportation Commission, and the Metropolitan Atlanta Regional Transit Agency, the local transit agency, he stated. The approach consisted of some 25 recommendations for implementing change in the public participation process in the metropolitan Atlanta area, he said.

Mr. Brenman stated that other approaches employed by DOT to investigate Title VI complaints include the use of stakeholder partnerships as a way to encourage all the parties to work together. He cited a study conducted in the metropolitan Atlanta, Georgia area in response to a letter notifying DOT of an intent to sue the Department for alleged violations of the Clean Air Act (CAA). DOT responded quickly, he continued, to address environmental justice concerns in the metropolitan Atlanta area because of the environmental justice implications. Working closely with affected stakeholders, including local government agencies and community groups, DOT has developed a two-step approach to addressing the issues of concern, he added. The first step focuses on improving public participation in the planning process, said Mr. Brenman, noting that such participation is essential throughout the lengthy planning transportation process. When communities file complaints late in the process, such as when construction is about to begin, they will face tremendous barriers because of the extensive planning that has been conducted over what is often a 20 plus year period, he warned.

Mr. Cole asked what options are available to the "innocent" landowner who has never been informed that plans are underway until "the bulldozers show up one day." Mr. Brenman responded that the real question may not be whether they had received notice, but rather, was the notice effective and had the person been afforded an equitable opportunity to participate.

Mr. Brenman stated that the second part of DOT's response in Atlanta features an equity analysis that identifies the transportation needs of a community and examines how well these needs are being served. He said the analysis is being conducted to address allegations that a substantial gap exists between a community's needs and what services are being supplied. Noting that car ownership among African Americans is very low in comparison to other ethnic groups, Mr. Brenman reported that one question the equity analysis is examining is whether a regional transportation plan that is almost exclusively oriented toward roads adequately serves the African American community.

Continuing, Mr. Brenman reported that DOT had settled an environmental justice lawsuit involving the Jersey Heights neighborhood near Salisbury, Maryland, a predominantly African-American community that had been uprooted when U.S. Route 50 was built. After the community was resettled, the state of Maryland had undertaken an effort to build another highway project that would have had an adverse effect on the community. Mr. Brenman explained that the outcome of the settlement had been a "win-win" result for the community and the state of Maryland. That settlement had set the stage for the way in which DOT had begun to address environmental justice complaints in the future, he said.

Mr. Brenman cited several other examples of the types of issues for which Title VI complaints have been filed alleging inequalities in:

- Responses to noise pollution (for example, when state highway departments install

sound barriers in response to complaints by white residents while ignoring the complaints of inner city, largely minority residents)

- Road tolls, which could effectively bar low-income persons from accessing communities and jobs that would require the use of a toll road
- Subsidies on different modes of transportation that typically serve different constituencies (for example, transit buses in minority communities and commuter trains used by white suburban commuters)
- Location of bus facilities (complaints allege that minority communities are home to noisy, polluting diesel buses while white communities are getting quieter, cleaner natural gas buses)

Mr. Brenman stated that the lessons DOT has learned are: (1) Title VI does not have jurisdiction in all complaints alleging environmental injustice; (2) reminding many recipients of federal financial assistance who think Title VI imposes new requirements that Title VI has been around since 1964; and (3) there is an unending need for stakeholder education, both internally and externally. There is a need for more training, an area in which the members of the subcommittee could help, he continued. DOJ can not be everywhere, doing all the training, he emphasized.

Turning to a discussion of socioeconomic concerns, Mr. Brenman stated that agencies and consultants conducting environmental impact assessments need to understand that an equity analysis should be a part of the impact analysis. An analysis of environmental justice concerns should be commensurate with the analysis conducted of other issues under NEPA, he urged.

Mr. Cole asked how many Title VI complaints have been filed with DOT. Mr. Brenman responded that fewer than 20 environmental justice complaints are pending; all but one currently are being addressed, he explained, with some new cases at the initial complaint intake stage. He added that very few cases have been resolved because the process is a long one. He acknowledged that the established relationships between regional transportation offices and state transportation offices can be "both good and bad." Their can be a level of trust that allows DOT to go in and attempt to settle the complaint, as well as the perception that the interests of the people giving the money is identical to those of the people getting the money, he explained. Mr. Brenman stated that for some issues, a simple telephone call can resolve complaints.

In response to a request by Mr. Cole, Mr. Brenman agreed to provide the members of the subcommittee and EPA OCR with a copy of DOT's informal 'cookbook" on investigating environmental justice complaints under Title VI. Mr. Cole remarked that although the document is not an official document of the agency, it is a strong document that seeks to discover "what the problem is and attempt to solve it" rather than seek to block the complainant out at every step, Mr. Cole said.

Referring to a case in Texas involving the reopening of a 50-year old, 700 mile former crude oil pipeline, Mr. Gerald Torres, University of Texas Law School and member of the Enforcement Subcommittee, stated that the case technically does not fall under the jurisdiction of Title VI. However, there are issues related to the conduct of an environmental assessment (EA) that did not address environmental justice concerns, he said. He added that an environmental impact statement (EIS) would be preferred through which to address Title VI concerns. Although the plan raises concerns about threats to an endangered salamander, and the impact of the pipeline on the Karst aquifer, local residents in predominantly black and brown communities have significant fears about the potential for explosions when the pipeline reopens carrying gasoline under pressure. Calling Mr. Torres comments "well taken," Mr. Brenman responded that DOT had the week before participated in a meeting with several stakeholders. They concluded that DOT needed to conduct more research and prepare an emergency response plan, he continued.

Mr. Delbert Dubois, Four Mile Hibernian Community Association, Inc. and member of the Enforcement Subcommittee, asked whether federal agencies used a "report card" system to track or monitor the status of Title VI cases. Mr. Brenman responded that DOT has a

computerized tracking system through which it tracks Title VI complaints. However, he added, the system does not include some litigation in which DOT is involved nor those environmental justice complaints that do not legally constitute a complaint or fall under the jurisdiction of Title VI. To enhance case monitoring and improve coordination between the operating administrations within DOT, the agency has convened an environmental justice council of senior management officials who meet periodically to discuss new cases and the status of pending cases, said Mr. Brenman. The Council has been moderately successful in getting the different operating administrations to work together in a coordinated approach, he added, explaining that DOT has begun to use a team approach to investigate complaints. These teams bring together technical and legal experts and staff knowledgeable of DOT programs, he said.

Mr. Dubois asked whether the subcommittee could prepare a report card that tracks Title VI complaints within the various federal agencies. Citing the subcommittee's mission to provide advice to EPA, Mr. Cole suggested that a report assessing the ways various agencies are approaching its obligations under Title VI, could prove useful to EPA in assessing its own procedures. Mr. Torres added that the assessment also would provide advice to EPA on how to drive interagency cooperation. Mr. Brenman recommended the subcommittee examine the surveys of the U.S. Commission on Civil Rights in which it assesses every 10 years what each federal agency has done or is doing for civil rights enforcement.

3.1.3 U.S. Department of Housing and Urban Development

Ms. Ryan opened her presentation by describing how HUD processes complaints received by the Department. She explained that HUD's 10 regional offices conduct intake for complaints alleging discrimination. She noted that in addition to complaints filed under Title VI and Section 504 of the Americans with Disabilities Act, a significant number of complaints are received alleging discrimination under Title 8 in which no federal financial assistance is received. Investigators in HUD's 50 offices also may be assigned to investigate complaints, she said. Ms. Ryan reported that HUD coordinated an extensive training effort with DOJ, in which 200 of the agency's 600 investigators were trained. She added that HUD prefers to use a team approach to address major complaints. This team approach, modeled after the teams used for compliance reviews, brings together staff with different areas of expertise, such as legal and knowledge of program and policy issues.

Ms. Ryan stated that having the proper equipment on-site is essential; the lack of laptops, printers, and digital cameras makes it difficult to conduct an investigation in a short period of time, she explained. In addition, specific roles for staff conducting the investigation should be clearly identified, she said.

Turning to the number of complaints currently pending before HUD, Ms. Ryan reported that approximately 675 complaints have been filed, with an additional 75 active cases slated for compliance reviews. She acknowledged that progress toward resolving these complaints has been hampered because HUD has had to direct significant resources to responding to a lawsuit in which 70 housing authorities in East Texas have been charged with violating Title VI. The investigation requires HUD to conduct compliance reviews of each housing complex, she continued. To date, HUD has completed 52 of the 70 reviews, she added. Because of time limits imposed by Congress, fair housing complaints are given priority over other complaints, she commented.

Ms. Ryan noted that 12 of the 675 complaints involve issues related to environmental justice. She stated that HUD has not done a good job responding to the environmental justice complaints. Part of problem is the lack of technical resources and expertise onsite to address concerns, such as groundwater, which do not fall under the jurisdiction of HUD, she explained. However, EPA has been helpful in responding to these concerns, she said. Interagency cooperation also has proven useful in several other cases, Ms. Ryan stated, adding that having more than one agency exerting pressure can help move the process faster.

Ms. Lilian Mood, South Carolina Department of Health and Environmental Control and member of the Enforcement Subcommittee, asked Ms. Ryan to provide an example of an environmental

justice complaint handled by HUD. Ms. Ryan referred to one case in which public housing subsidized by HUD had been built on a contaminated site. The question for HUD has been do you tear down the housing or build new housing, Ms. Ryan continued. Other cases cited by Ms. Ryan involve the construction of new homes for low-income residents on land in which the shallow groundwater may be contaminated, and the proximity of low-income housing to contaminated sites such as a lead smelter. There are not enough resources to go around, she stated.

Ms. Zulene Mayfield, Chester Residents Concerned for Quality Living and a member of the Enforcement Subcommittee, stated that one of her primary concerns relates to the relocation of families where housing is contaminated with lead. She urged that all housing subsidized by HUD should be tested before families are placed into the unit. Ms. Ryan responded that part of problem is that private individuals own Section 8 housing, in which the rent is subsidized by funds received from HUD through a local housing authority. Ms. Ryan stated that although she was unfamiliar with how lead is addressed in Section 8 housing, HUD has an active program for lead abatement in public housing units. In addition to the fact that landlords participating in the Section 8 program are not direct recipients of federal financial assistance, many low-income residents go into the private rental market, find a unit, which in turn is subsidized by a local housing authority. Ms. Mayfield stated that despite the local housing authority "middle man," the money leads back to HUD. HUD should do more to test for contamination, she emphasized.

Referring to a recent request for funding in which HUD is working in cooperation with the U.S. Department of Agriculture (USDA) to address the rural housing needs of farm workers, Ms. Savonala "Savi" Horne, Land Loss Prevention Project and member of the Enforcement Subcommittee, suggested HUD include a component in which EPA monitors pesticides in these communities. Including pesticides monitoring as part of rural housing plans, would further enhance interagency cooperation, said Ms. Horne. Ms. Ryan agreed to forward to HUD the suggestion that the two agencies collaborate on this issue.

Mr. Cole asked how HUD conducts environmental reviews. Ms. Ryan responded that the agency requires local housing authorities to conduct an environmental assessment (EA). However, some local governments do not complete each step fully, she added, explaining that they may not examine concerns that should be considered during the project. Unfortunately, HUD has very few environmental officers who can perform in-depth reviews of EAs, she continued, stating that with those limited resources, HUD can only monitor that an EA has been completed. Ms. Ryan added that when HUD discovers that an EA has not been completed properly, it can impose program sanctions, including affecting funding.

Ms. Rita Harris, Community Living in Peace and member of the Enforcement Subcommittee, asked whether HUD, given its limited in-house environmental expertise, had sought interagency support from EPA. Ms. Ryan stated that HUD consults regularly with EPA, but added that the problem is not having an environmental expert on site when conducting investigations. Although EPA has been very helpful, it is better to have an expert on site who can address issues as they arise, Ms. Ryan said.

When asked how each agency handles Title VI complaints when a suit is filed simultaneously in court, Ms. Ryan stated that HUD defers action on the complaint until the litigation is resolved. Mr. Brenman added that, absent any extraordinary circumstances, administrative deferrals are the standard approach taken by federal agencies because agencies do not want to get into a dispute where the court decides one way and the agency another. However, deferrals would be made only in those cases in which the litigation addresses the same issues and involves the same parties, interjected Mr. Strojny. One of the benefits of deferral are that federal judges have more power to impose equitable remedies because federal agencies are limited to the withdrawal of federal financial assistance.

Mr. Cole remarked that EPA has taken the position that it will dismiss administrative complaints filed with it when litigation also has been initiated. NEJAC has voiced strong objections to this policy, he stated, because it effectively eliminates the administrative complaint as a viable option for remedy. If a complainant attempts to refile the administrative

complaint after litigation has concluded, typically more than 180 days after the alleged discrimination, the statute of limitations would prevent consideration of the complaint.

Ms. Mayfield stated that she recognizes that action by federal agencies on Title VI often is hampered by financial constraints. However, she added, the very allocation of resources by an agency in which environmental justice concerns routinely fail to be addressed because of insufficient funds is, in itself, a form of discrimination. Agencies are not in compliance with Executive Order 12898 on environmental justice, she emphasized. Ms. Ryan responded that HUD has given "top priority" to environmental justice; such cases are forwarded to HUD headquarters for resolution, she said. Ms. Mayfield recommended that, in light of the financial constraints, agencies should look for creative ways to ensure that complaints relating to environmental justice and Title VI are given equal consideration.

3.1.4 Update on the EPA Title VI Guidance

Ms. Yorker provided an update on the status of the administrative complaints filed with EPA. She acknowledged that EPA has not processed complaints timely, adding that the Agency has a backlog of cases. EPA's Office of Civil Rights (OCR) is "under the gun," she commented. Unfortunately, EPA is "short on resources," she stated, explaining that currently three case managers and one technical expert have been allocated to process the more than 100 complaints on file. However, EPA recently has been given the authority to hire four temporary staff members to help OCR attack the backlog that exists, she announced.

Ms. Yorker then discussed the efforts by EPA to prepare guidance on Title VI. She reported that after a "robust" stakeholder involvement process, EPA published in the Federal Register on June 27, 2000 for public comment two draft guidance documents related to Title VI. The first document was the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (Draft Recipient Guidance), which was written at the request of the states and is intended to offer suggestions to assist state and local recipients in developing approaches and activities to address potential Title VI concerns. During the comment period, OCR conducted seven public listening sessions throughout the U.S.

Ms. Yorker also discussed EPA's *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits* (Draft Revised Investigation Guidance), which describes a framework for how OCR will process complaints that allege discrimination in the environmental permitting context. Public comments for this document also were accepted through August 28, 2000.

Ms. Yorker stated that during the 30-day comment period, OCR had received 96 comments, with an additional 5 comments received after the comment period had concluded. She said that while most of the comments focused on specific areas of concern to the commenter, several comments commended OCR on making a significant effort to involve all stakeholders during the drafting of the documents. Ms. Yorker stated that the key areas of controversy identified by the comments falls into four general areas: justification, the recipient's scope of authority, "due weight" accordance, and who has a standing to file a complaint. In a memo distributed by Ms. Yorker to the members of the subcommittee, OCR had summarized for each key area, the general concern expressed by four stakeholder groups:

- Justification
  - — Industry: too narrow
  - — Community: should be limited to the legitimate interests of the recipient
  - — Civil Rights: economic development should not justify disparate impacts
  - — States: guidance lacks details on adequate justification

- Recipient Scope of Authority
  - — Industry: scope of impact should be limited to what is within the authority of the permitting agency
  - — Community: states should be responsible for all impacts, whether or not they have the authority
  - — Civil Rights: all impacts from a permit should be considered because Title VI is not a sub-component of EPA's environmental responsibilities
  - — States: guidance does not address land use decisions not made by the recipient

- Due Weight Accordance
  — Industry: should be granted beyond Area Specific Agreements (ASA)
  — Community: ASA will shield states from investigation
  — Civil Rights: OCR and communities should have a role in ensuring that ASA and other settlements between recipients and complainants are enforced
  — States: guidance lacks details

- Who Has Standing
  — Industry: standing should be limited to those in the community
  — Community: guidance limits who can file the complaint

Ms. Yorker reported that, in addition to analysis of all key issues, OCR is preparing a list of key issues sorted by stakeholder. OCR anticipated receiving a draft summary of comments by the end of December 2000, she said. After all comments have been considered carefully, OCR will make final the draft guidance documents and publish them in the Federal Register, Ms. Yorker concluded. In response to Ms. Horne's question about whether the NEJAC would be able to provide additional comment to OCR's final analysis, Ms. Yorker said she would refer the matter to the Director of OCR.

When asked whether copies of the written comments would be made available to the public, Ms. Yorker stated that each document can be accessed from OCR's Internet web site at <*www.epa.gov/civilrights*>. She explained that each document had been scanned and could be retrieved simply by clicking on the name of a specific commenter.

Referring to earlier discussions about the "standard practice" of deferring administrative complaints filed simultaneously with litigation, Mr. Cole requested that OCR explain why EPA policy is to dismiss complaints rather than defer them for later consideration, which runs counter to the standard policy of other federal agencies. He expressed concern that EPA's policy is just one part of EPA's pattern of "hurting" civil rights complainants. The anti-complainant "mind-set" is very troubling, he said.

3.2 Update on Supplemental Environmental Projects

Mr. Torres opened the discussion with a brief overview of supplemental environmental projects (SEP). He stated that the presentation would focus on limitations on the capacity of affected communities to negotiate what a SEP would be. He asked to members of the subcommittee to consider ways to get all relevant and affected stakeholders to play an active role in the formulation of SEPs. He then turned the presentation over to Ms. Mayfield, who presented information to the members of the Enforcement Subcommittee on the obstacles faced by her organization in operating a SEP.

Ms. Mayfield, whose Chester, Pennsylvania community had initiated a lawsuit alleging violations of the Clean Air Act (CAA) by the a local sewage treatment facility, stated that her community initially had not known about EPA's SEP program, nor had federal, state, or local government agencies informed her community about what could be accomplished with one. She stated that the members of her community had believed that the penalties paid by polluters was sent directly to the federal and state government rather than invested back in the affected community. When they had inquired about developing a community-driven SEP, the members of her community had been told that a community could never implement or operate a SEP, she explained, adding that any SEP programs were controlled by the polluter or contractor for the polluter. Subsequently, she declared, they had discovered that several communities were running SEPs across the country, despite claims to the contrary by EPA.

Ms. Mayfield continued by explaining it was not until her community had initiated a lawsuit, that EPA and the Pennsylvania Department of Environmental Protection (DEP) had become involved in the suit. Eventually, it became a five-way negotiation, she said. The consent agreement, she noted, could not be implemented for three years primarily because of objections voiced by industry to the community implementing the program. There were many barriers, she said, declaring it an "insulting and extremely hard process." There were no problems with the SEP itself, she continued. Although not a typical SEP, which usually focus on beautification efforts, the Chester project was

designed to provide "something of value" to the community, Ms Mayfield said. The purpose of the project, which addresses childhood lead poisoning prevention, will be to identify children before they are exposed to lead and try to minimize their exposure or prevent that exposure from occurring, she explained.

Ms. Mayfield reported that, in light of the obstacles they had and continue to face, many members of her community believe that the EPA and the Pennsylvania DEP have not been as supportive as they could have been. However, she acknowledged there are certain individuals at EPA who have helped the community initiate, implement, and administer the SEP. However, a number of barriers imposed by federal, state, and local agencies remain, Ms. Mayfield claimed. As example, she expressed her belief that decisions made by the local government have resulted in the perception that it does not want the project to succeed. Pointing to an ongoing problem with reporting requirements, she explained that the community only has used one reporting process to date; however, she continued, it appears that the reporting mechanism no longer is valid. No one will tell the community an alternate method to use, she claimed. Ms. Mayfield admitted that the community is responsible for some of the problems. However, for those problems over which the community has no control, they are repeatedly asked to identify a solution, she emphasized. We feel we are always backed into a corner, she stated.

Ms. Mayfield explained that despite many problems, the project is running smoothly. It has had a positive effect on the community, she said. Lessons learned include the need to educate communities about SEPs and their benefits, as well as how to implement a SEP, she continued. In addition, federal, state, and local agencies need to put in place a mechanism that would ensure that communities are receiving sufficient resources to achieve the goals of its SEP, she concluded.

Mr. Cole asked whether Ms. Mayfield believed that a training program for community-run SEPs would be helpful for communities. The members of the subcommittee then recommended that EPA create such a training program for communities related to the implementation of SEPs.

Mr. Torres then stated that SEPs usually arise from litigation about a case. He explained that it is very important that the SEP does no more harm to the community than the original pollution and that is why defendants should not have as much control over SEPs as they currently do. He stated that SEPs should be recognized as a project that can help control legal issues and act as an ancillary related to environmental issues.

3.3 History of Executive Order 12898 on Environmental Justice

Mr. Cole introduced Mr. Torres and Ms. Deeohn Ferris, President, Global Environmental Resources, Inc., to provide a historical overview of Executive Order 12898 on Environmental Justice. Mr. Cole stated that the lessons to be drawn from the presentation particularly would be appropriate the coming years. He introduced Mr. Torres who had been the Acting Attorney General for Natural Resources, DOJ, when the executive order was drafted. Mr. Cole stated that Ms. Ferris, who had been with the Lawyers Committee for Civil Rights and the Washington Office for Environmental Justice when the order was drafted, will offer the perspective of the non-government "outsider" involved in the process . He also reminded the members that Ms. Ferris previously had served as the chair of the Enforcement Committee.

Opening the discussion, Mr. Torres explained that the Executive order illustrates the capacity of a concerted and long-term effort by community activists to change public policy. One thing that the documents from the transition between the Bush and Clinton administrations clearly demonstrate was the effort to determine the best way to address environmental justice, he continued. Although legislation had been considered, the two bills under consideration were not considered capable of passage, he said, adding that issuance of a presidential executive order would be one of the best ways to achieve the goal.

Mr. Torres stated that although DOJ had been tasked to direct the effort to draft the order, it did not do so in isolation. In addition to meeting with members of the White House Council on Environmental Equity (CEQ), DOJ had held a series of hearings at which community groups were invited to present their concerns to DOJ staff. The goal was to draft language that

defined what issues to address and how to address them in the order, as well as how to use the executive order to change the way the federal agencies do business, he continued. The process was lengthy; DOJ continued to meet with community organizations, CEQ, and representatives of other federal agencies, he said, adding that these discussions also were designed to determine the impact of an executive order on agencies whose programs and policies directly and indirectly affect the environment.

Mr. Torres added that most of the difficulty experienced by DOJ in drafting the order occurred when negotiating with CEQ and various federal agencies on the language for creating the Interagency Working Group on Environmental Justice (IWG). He stated that the IWG also has experienced obstacles in fulfilling its mission as stated in the order. He cited as an example the difficulty in obtaining environmental justice strategies for every federal agency. In addition, he stated, one intention of the executive order was for the IWG to serve as a central point of contact to whom citizens could bring complaints, which in turn would be referred to the appropriate agency for response.

One of the early working models for the order was the National Environmental Policy Act (NEPA), said Mr. Torres. Although an early critic of NEPA because it appeared to have no real law behind it, he stated he now can see that one advantage of using NEPA to address environmental justice is that we can see whether it has changed how those agencies that do not have clear environmental mandates make decisions.

Ms. Ferris noted that some of the activities that had occurred during the early stages of environmental justice public policy development are applicable to what is happening in policy development today. Notably, the tremendous momentum at the grass roots level was remarkable, she explained, adding that although she would like to see that momentum regenerated today, she understands that a number of political circumstances would continue to make that a challenge. This momentum reflected the phenomena of grass roots organizations around the country and internationally that were unifying around the position that communities should provide input into and be involved in decisions about the environment and other issues affecting the quality of their life, she continued. Ms. Ferris added that grass roots organizations also were redefining what constituted environmental justice; environmental issues did not stop at the door but rather was a quality of life issue, she explained. As such, the umbrella of environmental justice was wide and diverse, she said.

As grass roots organizations began linking up across state, regional, and increasingly global borders, the momentum flourished, Ms. Ferris continued, and there was a growing public awareness about the issues. What initially had resonated with the public were concerns about facility siting and expansion, although that model has changed so that facility siting is just but one component of reassigning what constitutes the phrase “the environment” and how one addresses environmental issues, she said. The media played an important role in capturing and focusing the attention of the public on those issues, she added, which in turn captured the attention of government agencies, Congress, and state legislatures.

Ms. Ferris commented that its important to understand that the environmental justice movement is not populated exclusively with Democrats. Rather, she explained, environmental justice activists represent a multi-political configuration. The grass roots momentum was happening during the administration of George Bush, she added, noting that community groups had captured the attention of the then EPA Administrator William Reilly. It was during Reilly’s tenure that EPA had begun to realize that certain populations of Americans were treated differently when environmental burdens and benefits were allocated, she continued. During the transition to the Clinton administration, grass roots organizations had the ear of many incoming and outgoing political officials, said Ms. Ferris, noting that this type of political support was unprecedented. She stated that she had assembled a core group of community activists who prepared a paper outlining community problems relating to environmental racism; two members of the group later served on Clinton’s transition team assigned for the environment, she added.

At that time, the core group was expanded to include a broader set of diverse interests who could come together collaboratively and think collectively about what could be achieved if given a choice to define an environmental agenda for the Clinton administration, Ms. Ferris continued. In drafting the transition paper, the group extracted the most important issues to communicate, she said, noting that the paper focused on recommendations that were "true to ideals of the environmental justice movement." Ms. Ferris commented that the process by which the paper was drafted was "very interactive." We worked hard to communicate the views from the bottom up, she declared.

Ms. Ferris outlined several key recommendations presented in the paper which later were implemented in some form:

- Establishment of an executive order on environmental justice
- Establishment of a federal interagency council on environmental justice in recognition of the need to coordinate cross-cutting and cross-jurisdictional impacts affecting communities of color and low income communities
- Establishment of a federal advisory committee on environmental justice
- Consolidation by EPA of American Indian programs and activities into an American Indian office and establishment of a tribal coordinating council.

Ms. Ferris observed that the transition paper had foretold the environmental issues currently facing the nation. The paper addresses where the environmental agenda needs to be; where sustainable development needs to be; and the direction of global sustainability, she explained. In addition, the paper calls for increased scrutiny of state programs and the establishment of a federal role in ensuring that states fulfill their responsibilities, she added. Within that context, the recommendations discussed the applicability of Title VI and the need for states to examine how they address environmental justice, said Ms. Ferris, adding that the paper called for an extension of the federal mandate to that.

Acknowledging that congratulations are in order for what has been accomplished, Ms. Ferris urged the environmental justice community to examine the other concerns raised in the transition paper that still need to be addressed. She cited the need for equity impact statements, which analyze the impacts on sensitive communities affected by environmental conditions. She noted that although much attention has been placed on the assessment of environmental impacts on children's environmental health, much remains to be done. Other areas of concern include: global sustainability, sustainable development, the revitalization of blighted communities, an increase in compliance and enforcement targeting, and consideration of not only external environmental conditions but also internal environmental conditions that include lack of access to health care and other quality of life deficiencies.

Other recommendations hailed as "cutting edge" by Ms. Ferris includes urging EPA to examine the development of environmental policies in developing countries, a comparative analysis of consumption in developing countries and consumption in industrial countries, the provision of assistance to developing countries so they would not replicate the problems that industrial countries had created. She remarked that the paper also urged that EPA be elevated to cabinet-level status. In addition, the paper insisted that EPA recognize that health and environment are synonymous, Ms. Ferris explained, as well as urged the agency to examine the regressive impact of economic and environmental policies such as the trading of pollution credits. She remarked that the United States increasingly is encouraging the merging market treatment of environmental issues. Admitting that she does not necessarily oppose such a trend, Ms. Ferris urged caution.

Ms. Ferris concluded her presentation with an acknowledgment of the various persons working to address these issues, including the members of NEJAC and the EPA staff supporting them.

Ms. Harris agreed that there is a lot more work to do, particularly at the state and local level. For example, she said, the State of Tennessee is just completing its strategic plan for environmental justice. Although not pleased with all the elements of the plan, she commented that at least the state has begun to talk about the

issues. Ms. Harris expressed concern about the plan's use of the term "disparate impact on sensitive populations." Business and industry interests do not want that terminology to be used, she explained. We supposedly have come a long way since 1994 but we have a long way to go, Ms. Harris remarked.

Ms. Mood asked that copies of the Clinton Administration transition paper on environmental justice be distributed to the members of the subcommittee. Ms. Ferris agreed to provide a copy of that document.

Mr. Cole asked that, given that Ms. Ferris was among the first members of the NEJAC, what advice would she give to current members. Ms. Ferris offered the following recommendations:

- First, pay attention to "survival" because the advent of the new administration represents "changed circumstances" for the NEJAC. The NEJAC, as well as its allies should contact key congressional and administration representatives to increase empathy for and education about the importance of stakeholder involvement in environmental decision making, as well as the role of the NEJAC in making that happen. The administration needs to understand that environmental justice is not anti-business, nor is it anti-development; rather environmental justice is about broadening and diversifying the stakeholders present at the decision making table so that decisions are more informed, more holistic, and more sustainable. Environmental justice is not just about taking a place at the table but also is a recognition that the new stakeholders can offer new insights and perspectives.

- Second, stick with what we know needs to improve. The Enforcement Subcommittee should shift to bread and butter issues of compliance and enforcement and continue to make the incoming administration aware of the need to make advances in these areas. Agencies should be encouraged to take enforcement actions that will directly benefit disproportionately affected populations around the country.

- Third, urge government agencies to continue to learn about what steps can be taken with respect to enforcement to protect populations that traditionally are under-protected.

- Fourth, continue to address the concept of permitting, especially area-wide permitting. Improve stakeholder interaction and involvement in the process for issuance of permits.

3.4 Status of EPA Targeting Efforts

Mr. Herman prefaced his comments by remarking that he was not attending the meeting alone. He explained that he had asked several members of OECA headquarters and EPA regional staff to attend to answer and respond to comments. He added that it always has proven helpful to hear directly what the subcommittee members are saying and asking. He assured the members of the subcommittee that their comments and recommendations do have an impact on the Agency's deliberations.

Pointing to several of the recommendations offered by Ms. Ferris, Mr. Herman commented that several are very important. He urged the NEJAC to not only reach out to those seen as allies and friends, but to widen the approach to include all key officials. Referring to the "bread and butter" issues of compliance and enforcement, he acknowledged there are different ways to approach the issues. Disagreeing with Ms. Ferris, Mr. Herman stated that he believed that there has been a significant change in the way EPA does enforcement. He cited as example the shift from bundling individual cases after the fact as a initiative to a serious and comprehensive planning and targeting process. Targeting now is focused on what we know are the most serious threats to not only the environment but serious health risks, as well, he said. He offered as example efforts undertaken by the Agency to reduce air and water pollution which are associated with premature mortality and respiratory illnesses which are rampant in minority and poor communities.

Today, the Agency is fielding fewer complaints about lack of responsiveness about enforcement actions and community concerns, said Mr. Herman, than it did when the Clinton Administration came into office in 1992. In those eight years, EPA has doubled the number of

agents assigned to its criminal program, taken on large industry cases that have disproportionately affected low-income and minority communities, and increased the amounts of fines and penalties while producing reductions in pollutants, he explained. Mr. Herman added that, overall, EPA's record of enforcement reveals that it has attempted to cultivate a program that is sophisticated and produces reductions in contaminants. He noted that although SEPs are a "slightly more cumbersome process," it is an active and vibrant program. He acknowledged that despite the current hiring freeze, he is proud of all that has been accomplished in the past eight years.

Mr. Herman stated that industry is not doing nearly as well as it would like to think it is. He said that EPA is pursuing violations by many different types of companies, even "respectable ones" who are in violation. Mr. Herman acknowledged that he was disappointed in the Agency's relationship with the states. However, he added, things are starting to turn around. Mr. Herman concluded his presentation by asking the members of the subcommittee to "keep telling EPA how it is doing and how it can improve."

Ms. Mayfield asked about the relationship between EPA and affected communities. Pointing to her Chester, Pennsylvania community as example, she questioned whether it should help companies who are slow or refuse to take action. Claiming inaction on the part of state and federal agencies, she stated that EPA has not made a strong presence about enforcement in the eight years her organization has been trying to address local concerns. Mr. Herman responded that he will try to encourage some action by the EPA Region 3 office. He acknowledged that in several instances, states have issued permits without correct information or made a token action in response to a violation. Ms. Mayfield added that she does not understand why states and industry are allowed to continue with rectifying a problem when it is known that a community is overburdened with impacts and EPA has stated that more enforcement and compliance efforts are needed. What happens in those communities in which less is known about what is going on, she asked.

Mr. Herman stated that the EPA regional offices are working with communities around the country and has initiated several lawsuits. He agreed that to prompt swifter action by companies, fines should increase as the severity of the violation increases. Although EPA has limited tools with which to address the lack of action by states, Mr. Herman stated that EPA does retain the right to take back any programs it has delegated to a state, although it never has been done. To think that EPA would do a better job is questionable, he said. He cited recent efforts to improve enforcement in Texas in which EPA threatened to take back the water program because of the state's order privilege law. He added that the NEJAC can do more with states by inviting their representatives to attend a NEJAC meeting, either to observe or to make a presentation. EPA is trying to get the "biggest bang for its buck and do with what we have," said Mr. Herman.

Mr. Gregg Cooke, Regional Administrator, EPA Region 6, added that resources do dictate what strategies are used to confront a myriad of issues. Pointing to the state of Louisiana, which has many issues, he said that the regional office, as well as staff from OECA headquarters are working together to target various areas.

Echoing Mr. Cooke's comments about combining enforcement strategies in all sectors, Mr. Jerry Clifford, Deputy Regional Administrator, EPA Region 6, commented that the region targets inspections, tracks violations, and increases media attention to the area. In addition, penalty actions have increased, said Mr. Clifford. Mr. Herman added that EPA has been conducting additional inspections to create a statistically valid universe of data by which to assess compliance rates in the regions, as well as to help the Agency better distribute its limited resources.

A representative of EPA Region 5 noted that a recent federal court ruling suggests that EPA may have to assume Indiana's regulation of concentrated animal feeding operations. Ms. Horne added that in addition to similar cases pending in California and Michigan, the River Permitting Council has petitioned EPA to take over permitting operations in seven states, most of which are in the south.

Mr. Cole referred to earlier discussions about the difficulties experienced by citizen groups in

implementing a SEP, either due to not having the resources or training to properly implement the SEP or having restrictions placed on how the SEP was to be implemented that are not placed on other SEPs. He suggested that a SEP "cookbook" designed to help communities share knowledge and lessons learned might be useful for the Agency. Mr. Herman agreed, noting that the document also should outline what can and can not be done in a SEP and why. Mr. Herman added that before 1992, EPA had drawn criticism from Congress and the U.S. Government Accounting Office for how it handled SEPs, although the Agency has not received that criticism lately. He suggested that if it would be helpful to the subcommittee, OECA would be willing to review EPA's policy on SEPs to help determine what kind of cookbook would be useful to communities.

Ms. Mayfield stated that although citizen organizations do need training in what a SEP is and how to manage SEP projects, staff of EPA should be trained in how they communicate with local communities to improve its sensitivity to community organizations that are willing to take the lead on a SEP. Mr. Herman responded that EPA recently had issued an internal guidance on developing uniform guidance on how to approach communities about SEPs. He reminded the members of the subcommittee that defendants can not be compelled to conduct a SEP unless they agree to.

4.0 SIGNIFICANT ACTION ITEMS

The following is a list of action items the members adopted during the subcommittee meeting:

- Requested Mr. Brenman forward to EPA OCR and the subcommittee copies of DOT's informal guidebook that describes how to investigate environmental justice complaints under Title VI.

- Ms. Yorker agreed to forward to Ms. Ann Goode, Director, EPA OCR, the request of the NEJAC to provide additional comment to the final analysis of EPA's guidance documents related to investigating Title VI complaints.

- Requested EPA OCR provide the Enforcement Subcommittee with an explanation of how EPA's policy of dismissing administrative complaints filed simultaneously with litigation was formulated, as well as how EPA can justify continuing that policy when it is at odds with the standard practice of other federal agencies is to defer such complaints.

- Requested that the staff of EPA responsible for administering SEPs, convene a meeting of eight to ten community-based organizations that have experience in implementing SEPs to identify problems and obstacles they have encountered. With the consultation of the community-based organizations, EPA should draft a manual or "cookbook" to assist community groups in implementing SEPs.

- Requested Mr. Herman provide the subcommittee a copy of the documents, including pleadings and complaints, that challenge air pollution from concentrated animal feeding operations located in Missouri, North Carolina, and Indiana.