

MEETING SUMMARY

of the

AIR AND WATER SUBCOMMITTEE

of the

NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

**April 15, 2004
New Orleans, Louisiana**

Meeting Summary Accepted By:

**Alice Walker
Co-Designated Federal Official**

**Wilma Subra
Acting Chair**

**Dr. Wil Wilson
Co-Designated Federal Official**

**CHAPTER THREE
MEETING OF THE
AIR AND WATER SUBCOMMITTEE**

1.0 INTRODUCTION

The Air and Water Subcommittee of the National Environmental Justice Advisory Council (NEJAC) conducted a one-day meeting on Thursday, April 15, 2004, during a four-day meeting of the NEJAC in New Orleans, Louisiana. Ms. Wilma Subra, Representative of Louisiana Environmental Action Network, continues to serve as acting chair of the subcommittee. Ms. Alice Walker, U.S. Environmental Protection Agency (EPA) Office of Water (OW), and Dr. Wil Wilson, EPA Office of Air and Radiation (OAR), continue to serve jointly as the Designated Federal Officials (DFO) for the subcommittee. Exhibit 3-1 presents a list of the members who attended the meeting and identifies the members who were unable to attend.

This chapter, which provides a summary of the deliberations of the Air and Water Subcommittee, is organized in four sections, including this *Introduction*. Section 2.0, *Discussion of Recommended Practices Guide on Permitting*, provides a summary of the working session held by members of the subcommittee to complete, "The Guide and Recommendations for Improving the Integrating of Environmental Justice into Environmental Permitting." Section 3.0, *Presentations and Reports*, presents an overview of each presentation and report received by the subcommittee during its meeting, as well as a summary of relevant questions and comments offered by the members of the subcommittee. Section 4.0, *Significant Action Item*, summarizes the significant action item adopted by the subcommittee.

2.0 DISCUSSION OF RECOMMENDED PRACTICES GUIDE ON PERMITTING

This section provides a summary of the working session held by the members of the subcommittee to complete, "Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting."

Mr. Kenneth Manaster, Santa Clara University School of Law, led the discussion to reorganize and improve the current draft of "The Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting." According to Mr. Manaster, the document has been a work-in-progress for two and half years. Mr. Manaster guided the members of the subcommittee through a detailed discussion on the three sections of the document that include, Introduction, Flashpoints, and Recommended Practices. He requested that the members provide comments on the document and track revisions accordingly.

Comments on the Introduction Section

During the discussion on the Introduction section of the guide, Mr. Michael Shapiro, Deputy Assistant Administrator, EPA OW, asked the members of the subcommittee who they envisioned as the primary audience of the guide. Mr. Manaster explained that, following the adoption of the document by the Executive Council of the NEJAC, the subcommittee would like to forward the guide to state and local government agencies responsible for issuing environmental permits. Mr. Shapiro, then asked for clarification, if the intended audience would be permit reviewers or permit writers. Mr. Manaster replied that the guide would be for both audiences. Ms. Jody Henneke, member of the Air and Water Subcommittee and Director, Office of Public Assistance, Texas Commission on Environmental Quality, cautioned that reviewers of permits currently have legal guidelines that must be followed; therefore, the guide may not be applicable to reviewers. Mr.

Exhibit 3-1

AIR AND WATER SUBCOMMITTEE

**Members Who Attended the Meeting
April 15, 2004**

Ms. Wilma Subra, **Acting Chair**
Ms. Alice Walker, **co-DFO**
Dr. Wil Wilson, **co-DFO**

Ms. Jody Henneke
Mr. Robert Sharpe

**Members
Who Were Unable To Attend**

Ms. Carolyn Green
Mr. Jason Grumet

Shapiro agreed and added that the presentation of the document and defining the target audience are important considerations for the subcommittee. Mr. Manaster acknowledged the comments and stated that there will be revisions to the document. In addition, he views the document as a guide to assist permit writers to consider environmental justice concerns when completing a permit.

Mr. Harvey Minnigh, REAP Solutions, Inc., commented that the document does not have a clear mission statement. He proposed the following revisions, (1) state the purpose of document and (2) define the audience. In addition, he recommended that the document not be too detailed. Mr. Robert Sharpe, member of the Air and Waste Subcommittee and Illinois Environmental Protection Agency, pointed out that if the audience is a permit writer, then the second paragraph of the Introduction section does not acknowledge the set of laws or guidelines permit reviewers use to approve or disprove permits. In addition, he questioned the extent of the NEJAC's authority to develop guidelines to write permits. Mr. Minnigh addressed Mr. Sharpe's comment by stating line 28 of the document, ".....case-by-case basis, distinguishing carefully among what the law requires, allows, or prohibits," believes addresses the concern raised. The goal of the document, Mr. Manaster reminded the members, is to provide a concise guideline for government agencies that issue permits to ensure that environmental justice concerns are addressed in permits. Mr. Minnigh added that the document should not contradict what applicable laws and regulations require, allow, or prohibit. Ms. Henneke agreed and added that the document focuses too much on the permit writers, whom in her agency do not have the authority to deviate from the law. The members of the subcommittee agreed that the Introduction section needs to be improved, specifically on defining the target audience.

Comments on the Flashpoints Section

Mr. Manaster then directed the members to the next section of the document, *Flashpoints*. Questions were raised, among the members, on what is the definition of "Flashpoints." Under siting determinations, Ms. Henneke pointed out that each state agency might have different authorities related to siting, for example Texas, does not have zoning authority. Mr. Chris Elias, Santa Clara Valley Water District, suggested including local planning boards in the document. Mr. Sharpe pointed out the need for the document to address environmental justice issues that occur when a source does not require permit review, as stated in line 91 of document, "..... are considered under applicable law to produce emissions or other environmental impairments that are too low or insightful to require permits."

Mr. Elias again questioned the definition of "Flashpoints" and the goal the Flashpoint section. The members discussed the validity of the current definition of "Flashpoints," which is "triggers for early warning where environmental justice issue might arise at certain stages in permitting processes." Mr. Elias recommended revising the name to "Early Warning," and Ms. Henneke suggested "Decision Point." Ms. Cynthia Larramore, Active Citizens Together Improving Our Neighborhoods, Inc., echoed the need for the subcommittee to define the term flashpoint clearly and the criteria it includes.

Comments on Recommended Practices

Ms. Henneke began the discussion on this section by suggesting reviewing the establishment and authority of Citizen Advisory Boards (CAB) written in the document. Mr. Minnigh explained that the CABs are for public participation and have no authority. Mr. Sharpe suggested addressing the funding source for CABs and Mr. Manaster disagreed. Mr. Shapiro questioned the definition of "authority" used in the document related to CABs. Mr. Sharpe agreed and cautioned that using the word "authority" could be interpreted by the public as having the authority to approve or deny a permit. Mr. Minnigh stated that the emphasis for public participation is to ensure meaningful public participation. Another potential issue under CABs, Ms. Henneke noted, is the site specific issues involved. She suggested emphasizing the involvement of grassroots organizations in CABs. The members concluded two important points under CABs: (1) the need to have public participation and (2) how to select members of a CAB.

Overall Comments on the Document

The document, Ms. Henneke noted, comes across as overly simplified as a “step-by-step” process. In Texas, she pointed out, the permit process is much more extensive and tedious. Mr. Minnigh clarified that the document is not intended for every permitting project. Mr. Elias suggested developing a disclaimer statement for potential users of the document. Mr. Sharpe expressed concern that environmental justice communities often do not receive information in a timely manner to be able to effectively participate in the permit process.

In conclusion, Mr. Sharpe, suggested the need to define the audience, specifically if the audience is the permit reviewer or the decision maker, the definition of Flashpoints, and the overall purpose of the document. He noted that the document currently does not include criteria for acceptance or denial of the recommended practices. Mr. Elias requested the members to consider how the recommended practices would be incorporated by the EPA. Ms. Walker reminded the members to consider having the document reviewed by technical experts.

3.0 PRESENTATIONS AND REPORTS

This section summarizes the presentations made and reports submitted to the members of the Air and Water Subcommittee.

3.1 Community Actions for a Renewed Environment Program

Mr. Larry Weinstock, EPA OAR, presented information on Community Actions for a Renewed Environment (CARE), a community-based toxic reduction initiative program. Exhibit 3-2 provides a description of the CARE program. He emphasized that the program is designed to provide education to communities to help them play a role in reducing toxic emissions in their local neighborhoods. CARE, Mr. Weinstock pointed out, also is a program to introduce communities to government volunteer programs. Mr. Weinstock noted that the CARE program will be successful because unlike other EPA programs, CARE does not focus on just one type of exposure and communities examine all toxic risks they face and select the voluntary solutions that they believe best fit their needs. However, Mr. Weinstock stressed that the CARE program is designed only as a supplement and is not intended to replace existing environmental programs.

Mr. Weinstock then stated that there are future plans to sponsor conferences to bring together communities involved in the program. He also stated EPA’s plan to create a central team to develop a database to track training and other related CARE initiatives. The database, he stated, would allow regional teams to interact and link related programs together, as well as provide question and answer sessions. He concluded with presenting a resource guide on the CARE program.

Exhibit 3-2

COMMUNITY ACTION FOR A RENEWED ENVIRONMENT

The new Community Action for a Renewed Environment (CARE) is a competitive grant program that offers an innovative way for communities to take action to reduce toxic pollution. Through CARE, communities can create local collaborative partnerships that implement local solutions to reduce releases of toxic pollutants and minimize exposure to toxic pollutants. CARE will empower communities to help them assess the pollution risks they face while also providing funding and access to EPA’s and other voluntary programs to address local environmental priorities. In addition, EPA offers support for communities to develop their own approach to reduce toxics. Examples of some of the EPA voluntary programs that reduce exposure to toxics and create safer communities include: reduced emissions from diesel engines, clean abandoned industrial sites, reduce emissions from small business operations while reducing costs, improve the indoor environment in schools, and use pollution prevention to protect drinking water supplies.

For further information on the CARE program, visit www.epa.gov/CARE.

3.2 Office of Water Permitting Programs

Mr. Shapiro presented information on permitting programs administered by EPA OW's Office of Wastewater Management, specifically the National Pollutant Discharge Elimination System (NPDES). The NPDES permitting program Mr. Shapiro noted, controls waster pollution by regulating point sources that discharge pollutants into waters of the U.S. Exhibit 3-3 provides a summary of NPDES permits. He added that currently, the program has focused on animal feed discharge as a result of the revised Concentrated Animal Feeding Operations (CAFO) regulation. The revised CAFO regulation, he noted, requires many CAFOs to have NPDES permit coverage. Mr. Shapiro explained that the revision has authorized many states to revise their regulations to include the new provisions.

Exhibit 3-3

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Water pollution degrades surface waters making them unsafe for drinking, fishing, swimming, and other activities. As authorized by the Clean Water Act, the National Pollutant Discharge Elimination System (NPDES) permit program controls water pollution by regulating point sources that discharge pollutants into waters of the United States. Point sources are discrete conveyances such as pipes or man-made ditches. Individual homes that are connected to a municipal system, use a septic system, or do not have a surface discharge do not need an NPDES permit; however, industrial, municipal, and other facilities must obtain permits if their discharges go directly to surface waters. In most cases, the NPDES permit program is administered by authorized states. Since its introduction in 1972, the NPDES permit program is responsible for significant improvements to our Nation's water quality.

For further information on NPDES, visit www.epa.gov/npdes.

Mr. Shapiro also discussed the Permitting for Environmental Results (PER) initiative, which is a multi-year effort by EPA and the states to improve the overall integrity and performance of the NPDES program. Since most states are authorized to implement the NPDES program, Mr. Shapiro stated that the PER initiative is based on a partnership between the states and EPA. The purpose of PER, he added, is to promote collaborative effort to develop a set of national measures that can be applied state by state, and be used as key measure of success or failure. He noted that EPA and the states are focusing on identifying permits with the highest environmental significance to ensure better state and Federal resources allocation.

Another area of interest, Mr. Shapiro shared with the members, is the development and use of electronic tools to streamline the permit process. He provided an example, electronic Notice of Intent (eNOI), which is an electronic storm water notice of intent application designed for use by construction sites and industrial facilities that need to apply for coverage under EPA's Construction General Permit (CGP) or Multi-Sector General Permit (MSGP-2000). He also highlighted the permit scanning program to increase public access to permits. In addition, he noted a mapping tool developed by EPA to link water program data from multiple offices that allow users to screen permitted facilities for discharges.

An important focus of OW, Mr. Shapiro concluded, is in its commitment to support communities. He commented on the difficulty often experienced by communities and Tribes in achieving the goals of the Clean Water Act. Therefore, Mr. Shapiro explained, the OW programs focus on supporting these communities to operate small wastewater system to meet national standard develop capacity to meet complex environmental standard, as well as to provide adequate financing and technology through a "Small Communities Team."

3.3 Indoor Air Quality Program

Ms. Elizabeth Cotsworth, EPA Office of Radiation and Indoor Air (ORIA), presented information on the prevention of indoor air pollution. Ms. Cotsworth explained that indoor air pollution sources that release gases or particles into the air are the primary cause of indoor air quality problems in homes. Inadequate ventilation, she continued, can increase indoor pollutant levels by not bringing in enough outdoor air to dilute emissions from indoor sources and by not carrying indoor air pollutants out of the home. High temperature and humidity levels, she stated, also can increase concentrations of some pollutants. Ms. Cotsworth stated that there are many sources of indoor air pollution in any home. For example, she noted, combustion sources such as oil,

gas, kerosene, coal, wood, and tobacco products; building materials and furnishings as diverse as deteriorated, asbestos-containing insulation, wet or damp carpet, and cabinetry or furniture made of certain pressed wood products; products for household cleaning and maintenance, personal care, or hobbies; central heating and cooling systems and humidification devices; as well as outdoor sources such as radon, pesticides, and outdoor air pollution.

Ms. Cotsworth continued her presentation by discussing the health effects from indoor air pollutants that may be experienced soon after exposure or, possibly, years later. She explained that several immediate effects that may show up after a single exposure or repeated exposures, include: irritation of the eyes, nose, and throat, headaches, dizziness, and fatigue, which are usually short-term and treatable. She noted that sometimes the treatment is simply to eliminate the person's exposure to the source of the pollution, if it can be identified. Symptoms of some diseases, including asthma, hypersensitivity pneumonitis, and humidifier fever, also may show up after exposure to some indoor air pollutants, she noted. In addition, other health effects that may show up years after exposure or only after long or repeated periods of exposure, include: respiratory diseases, heart disease, and cancer. She stated that studies are showing that Hispanic and African-American communities are suffering a higher rate of indoor air pollution, primarily from second-hand smoke and biological contaminants (body parts from insects and rodents).

To provide education on the effects of indoor air pollution, Ms. Cotsworth stated that EPA and the Advertising Council have launched media campaigns to increase national awareness of the serious health effects caused by indoor air pollution. One such campaign, Ms. Cotsworth noted, included the to increase awareness related to asthma and indoor air pollution is the Goldfish Campaign, which features a child who describes feeling like a fish with no water when he has an asthma attack. She noted that grants may be available for communities related to indoor air pollution through ORIA's community-based air toxics projects. She explained that communities across the U.S. are taking an active role in improving air quality and finding solutions to other environmental concerns they face. EPA, she noted, is providing financial and technical assistance for community-based projects to resolve health and environmental issues cause by indoor air pollution.

Ms. Cotsworth concluded her presentation by discussing EPA's Clean School Bus USA, which is a public-private environmental partnership, that seeks to reduce children's exposure to air pollution from diesel school buses. The program emphasizes three ways to reduce public school bus emissions through anti-idling strategies, engine retrofit and clean fuels, and bus replacement. The goal of Clean School Bus USA, Ms. Cotsworth explained, is to reduce both children's exposure to diesel exhaust and the amount of air pollution created by diesel school buses. She stated that EPA is working aggressively to reduce pollution from new heavy-duty diesel trucks and buses by requiring them to meet tougher and tougher emission standards in the future. Clean School Bus USA, she continued, is designed to jump-start the process of upgrading the nation's public school bus fleet so that this generation of school children can reap the benefits of technologies that are available now to reduce emissions.

Mr. Bill Harnet, EPA OAR, continued the discussion on air quality issues by presenting, A Guide to Air Quality and Your Health. The Air Quality Index (AQI), Mr. Harnet explained, is an index for reporting daily air quality and informs the public how clean or polluted the air is and what associated health effects might be of concern. The guide, he stated, also has been translated into Spanish and is available to the public. Mr. Harnet noted the balanced representation of the Clean Air Act advisory group, with inclusion of members from the environmental groups, industry, and grassroots organizations. He explained that the primary purpose of the advisory group is to review the Clean Air Act and to receive feedback from the communities.

4.0 SIGNIFICANT ACTION ITEMS

This section summarizes the significant action item adopted by the subcommittee.

- T Beginning May 18, 2004, conduct a conference call every three weeks to focus on revising the “Guide and Recommendations for Improving the Integration of Environmental Justice into Environmental Permitting.”
 - Ms. Henneke and Mr. Sharpe will work on Section 3a (Public Participation) and Section 3b (Permit and Terms)
 - Mr. Manaster will focus on the Introduction and Flashpoint sections.

The goal of the subcommittee is to produce a final document by June 29, 2004 and then decide when to seek technical advice from subject matter experts.