



OFFICE OF INSPECTOR GENERAL

Catalyst for Improving the Environment

Evaluation Report

EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice

Report No. 2004-P-00007

March 1, 2004



Report Contributors:

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Abbreviations

CEQ	Council on Environmental Quality
EPA	Environmental Protection Agency
EJ	Environmental Justice
FTEs	Full-Time Equivalents
GAO	General Accounting Office
GIS	Geographical Information System
OECA	Office of Enforcement and Compliance Assurance
OEJ	Office of Environmental Justice
OIG	Office of Inspector General
SEP	Supplemental Environmental Project

Cover Photo: Image obtained from US EPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
INSPECTOR GENERAL

March 1, 2004

MEMORANDUM

SUBJECT: Evaluation Report: EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice
Report No. 2004-P-00007

FROM: Kwai Chan /s/
Assistant Inspector General for Program Evaluation

TO: Stephen L. Johnson
Acting Deputy Administrator

Attached is our final report regarding the Environmental Protection Agency's (EPA's) implementation of Executive Order 12898 on Environmental Justice, its integration into the mission of EPA, and associated actions to protect minority and low-income populations. This report contains findings that describe problems and corrective actions the Office of Inspector General (OIG) recommends. This report represents the opinion of the OIG, and the findings in this report do not necessarily represent the final EPA position. Final determinations on matters in the report will be made by EPA managers in accordance with established procedures.

Action Required

In accordance with EPA Manual 2750, as the action official, you are required to provide a written response to the findings and recommendations presented in this final report within 90 days of the final report date. The response should address all recommendations. For corrective actions planned but not completed by the response date, please describe the actions that are ongoing and provide a timetable for completion. Where you disagree with a recommendation, please provide alternative actions for addressing the findings reported.

If you or your staff have any questions regarding this report, please contact me at (202) 566-0827 or Jeffrey Harris, Director for Program Evaluation, Cross-Media Issues, at (202) 566-0831.

Attachment

cc:

Phyllis Harris, Acting Assistant Administrator for the Office of Enforcement and
Compliance Assurance

Barry E. Hill, Director, Office of Environmental Justice

Executive Summary

Purpose

In 1994, President Clinton issued Executive Order 12898, “Federal Action to Address Environmental Justice in Minority Populations and Low-income Populations,” to ensure such populations are not subjected to a disproportionately high level of environmental risk. The overall objective of this evaluation was to determine how the U.S. Environmental Protection Agency (EPA) is integrating environmental justice into its day-to-day operations. Specifically, we sought to answer the following questions:

- How has the Agency implemented Executive Order 12898 and integrated its concepts into EPA’s regional and program offices?
- How are environmental justice areas defined at the regional levels and what is the impact?

Results in Brief

EPA has not fully implemented Executive Order 12898 nor consistently integrated environmental justice into its day-to-day operations. EPA has not identified minority and low-income, nor identified populations addressed in the Executive Order, and has neither defined nor developed criteria for determining disproportionately impacted¹. Moreover, in 2001, the Agency restated its commitment to environmental justice in a manner that does not emphasize minority and low-income populations, the intent of the Executive Order.

Although the Agency has been actively involved in implementing Executive Order 12898 for 10 years, it has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations, and performance measurements. We did note that the Agency made an attempt to issue an environmental justice toolkit; endorsed environmental justice training; and required that all regional and programmatic offices submit “Action Plans” to develop some accountability for environmental justice integration.

In the absence of environmental justice definitions, criteria, or standards from the Agency, many regional and program offices have taken steps, individually, to implement environmental justice policies. This has resulted in inconsistent approaches by the regional offices. Thus, the implementation of environmental justice actions is dependent not only on minority and income status but on the EPA region in which the person resides. Our comparison of how environmental

¹ Disproportionately impacted: A generic term used by EPA, regions, and stakeholders to define the adverse effects of environmental actions that burden minority and/or low-income populations at a higher rate than the general population.

justice protocols used by three different regions would apply to the same city showed a wide disparity in protected populations.

We believe the Agency is bound by the requirements of Executive Order 12898 and does not have the authority to reinterpret the order. The Acting Deputy Administrator needs to reaffirm that the Executive Order 12898 applies specifically to minority and low-income populations that are disproportionately impacted. After 10 years, there is an urgent need for the Agency to standardize environmental justice definitions, goals, and measurements for the consistent implementation and integration of environmental justice at EPA.

Recommendations

We recommended that the Acting Deputy Administrator issue a memorandum reaffirming that Executive Order 12898 is an Agency priority and that minority and low-income populations disproportionately impacted will be the beneficiaries of this Executive Order. Additionally, EPA should establish specific time frames for the development of definitions, goals, and measurements. Furthermore, we recommended that EPA develop and articulate a clear vision on the Agency's approach to environmental justice. We also recommended that EPA develop a comprehensive strategic plan, ensure appropriate training is provided, clearly define the mission of the Office of Environmental Justice, determine if adequate resources are being applied to environmental justice, and develop a systematic approach to gathering information related to environmental justice.

Agency Comments and OIG Evaluation

In the response to our draft report, the Agency disagreed with the central premise that Executive Order 12898 requires the Agency to identify and address the environmental effects of its programs on minority and low-income populations. The Agency believes the Executive Order "instructs the Agency to identify and address the disproportionately high and adverse human health or environmental effects of it (sic) programs, policies, and activities." The Agency does not take into account the inclusion of the minority and low-income populations, and indicated it is attempting to provide environmental justice for everyone. While providing adequate environmental justice to the entire population is commendable, doing so had already been EPA's mission prior to implementation of the Executive Order; we do not believe the intent of the Executive Order was simply to reiterate that mission. We believe the Executive Order was specifically issued to provide environmental justice to minority and/or low-income populations due to concerns that those populations had been disproportionately impacted by environmental risk.

A summary of the Agency's response and our evaluation is included at the end of each chapter. The Agency's complete response and our evaluation of that response are included in Appendices D and E, respectively.

Table of Contents

Executive Summary	i
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Chapters

1	Introduction	1
2	EPA Has Not Fully Implemented Environmental Justice	7
3	Regions Do Not Use Consistent Approaches When Identifying Environmental Justice Communities	19

Appendices

A	Executive Order	29
B	Memorandum: EPA's Commitment to Environmental Justice	35
C	Details on Scope and Methodology	37
D	EPA Response to Draft Report	39
E	OIG Comments on EPA's Response	59
F	Distribution	67

Chapter 1

Introduction

Purpose

The overall objective of this evaluation was to determine how the U.S. Environmental Protection Agency (EPA) is integrating environmental justice into its day-to-day operations, which are administered by EPA regional and program offices. Specifically, we sought to answer the following questions:

- How has the Agency implemented Executive Order 12898, *Federal Action to Address Environmental Justice in Minority Populations and Low-income Populations*, and integrated its concepts into EPA's regional and program offices?
- How are environmental justice areas defined at the regional levels and what is the impact?

Background

What is Environmental Justice?

In 1982, environmental justice became a nationally recognized issue. A minority community in North Carolina protested against the proposed siting of a landfill for polychlorinated biphenyls (PCBs) within the community. In response to the protest, a District of Columbia delegate requested the U.S. General Accounting Office (GAO) to investigate siting issues with respect to race and income. A 1983 GAO report found that three of the four commercial hazardous waste facilities in EPA Region 4 (which includes North Carolina) were in minority areas and the fourth was in a low-income area.

Two major environmental justice conferences were held in the early 1990s:

- The University of Michigan School of Natural Resources' Conference on Race and the Incidence of Environmental Hazards (1990)
- The Environmental Leadership Summit (1991)

Partially in response to these events, the EPA Administrator formed the EPA Environmental Equity Workgroup in 1990. The Workgroup's mission was to evaluate whether minority and low-income communities bear disproportional environmental risk. In June 1992, the Workgroup noted in its report,

“Environmental Equity: Reducing Risk in All Communities,” that minority and low-income populations bear a higher environmental risk burden than the general population.

An EPA environmental justice biennial report defined “environmental justice” as:

... the fair treatment and meaningful involvement of all people regardless of race, color, national origin or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies. Fair treatment means that no group of people, including a racial, ethnic or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from industrial, municipal and commercial operations or the execution of federal, state and local, and tribal programs and policies. Meaningful involvement means that: (1) potentially affected community residents have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public’s contribution can influence the regulatory agency’s decision; (3) the concerns of all participants involved will be considered in the decisionmaking process; and (4) the decisionmakers seek out and facilitate the involvement of those potentially affected.

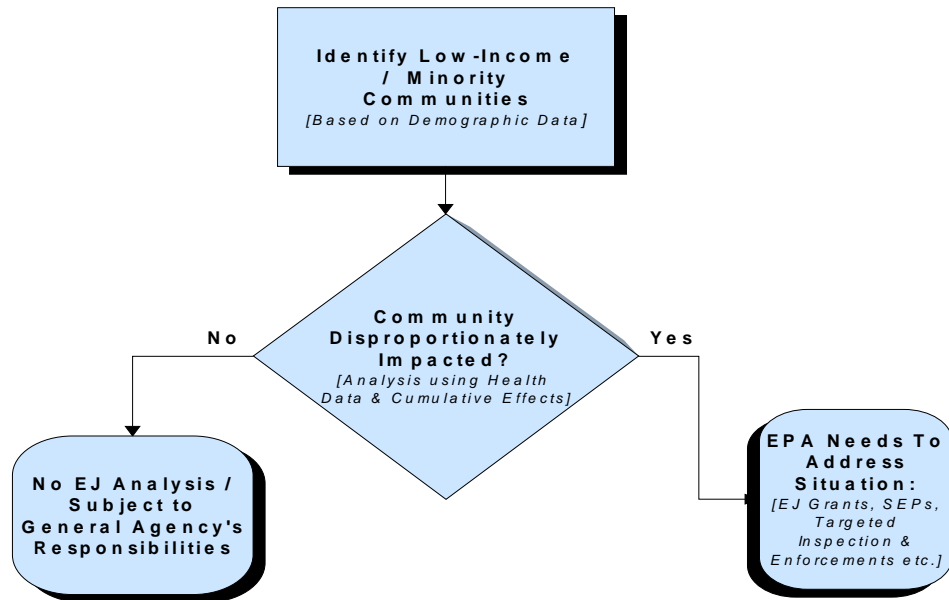
Who is Protected by the Environmental Justice Executive Order?

On February 11, 1994, President Clinton issued Executive Order 12898, “Federal Action to Address Environmental Justice in Minority Populations and Low-income Populations” (see Appendix A). The order states:

To the greatest extent practicable and permitted by law and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

An outline of how the environmental justice process should work is shown in Figure 1.1.

Figure 1.1 : Environmental Justice Process



EJ: Environmental Justice
SEP: Supplemental Environmental Project

Source: EPA-OIG

The Presidential Memorandum² accompanying the Executive Order provides that existing laws can be used to meet the environmental justice objectives. Specifically, the President noted that:

Environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities. Application of these existing statutory provisions is an important part of this Administration's efforts to prevent those minority communities and low-income communities from being subject to disproportionately high and adverse environmental effects.

In 1995, EPA issued its Environmental Justice Strategy to implement the Executive Order. The stated purpose of the Strategy was to ensure the integration of environmental justice into the Agency's programs, policies, and activities consistent with the Executive Order. In August 2001, EPA Administrator

² Presidential Memorandum Accompanying Executive Order 12898 (February 11, 1994).

Christine Todd Whitman issued a memorandum reaffirming EPA's commitment to achieving environmental justice (see Appendix B).

Who Is Responsible for Integrating Environmental Justice into the Agency's Policies and Programs?

In November 1992, in response to the EPA Environmental Equity Workgroup's findings, EPA established the Office of Environmental Equity (renamed the Office of Environmental Justice in 1994). The EPA Administrator made environmental justice an Agency priority in 1993. In 1994, the Office of Environmental Justice started the Environmental Justice Small Grants Program to provide financial assistance to community-based/grassroots organizations and tribal governments dealing with local environmental justice issues.

EPA's Office of Environmental Justice resides in the Office of Enforcement and Compliance Assurance (OECA). There is no specific environmental justice statute to fund environmental justice activities in EPA. Consequently, the Office of Environmental Justice performs activities using a general Environmental Program Management appropriation budget line item; in Fiscal Year 2002, this amounted to approximately \$4.4 million or less than 1 percent of the OECA budget. The Office of Environmental Justice also performs grant making activities pursuant to the EPA Delegation of Authority 1-47.

The Office of Environmental Justice also manages the National Environmental Justice Advisory Council. This Council is comprised of representatives from academia; business and industry; State, tribal, and local governments; environmental organizations; community groups; and non-governmental organizations. This Council provides advice and recommendations to the EPA Administrator on matters related to environmental justice.

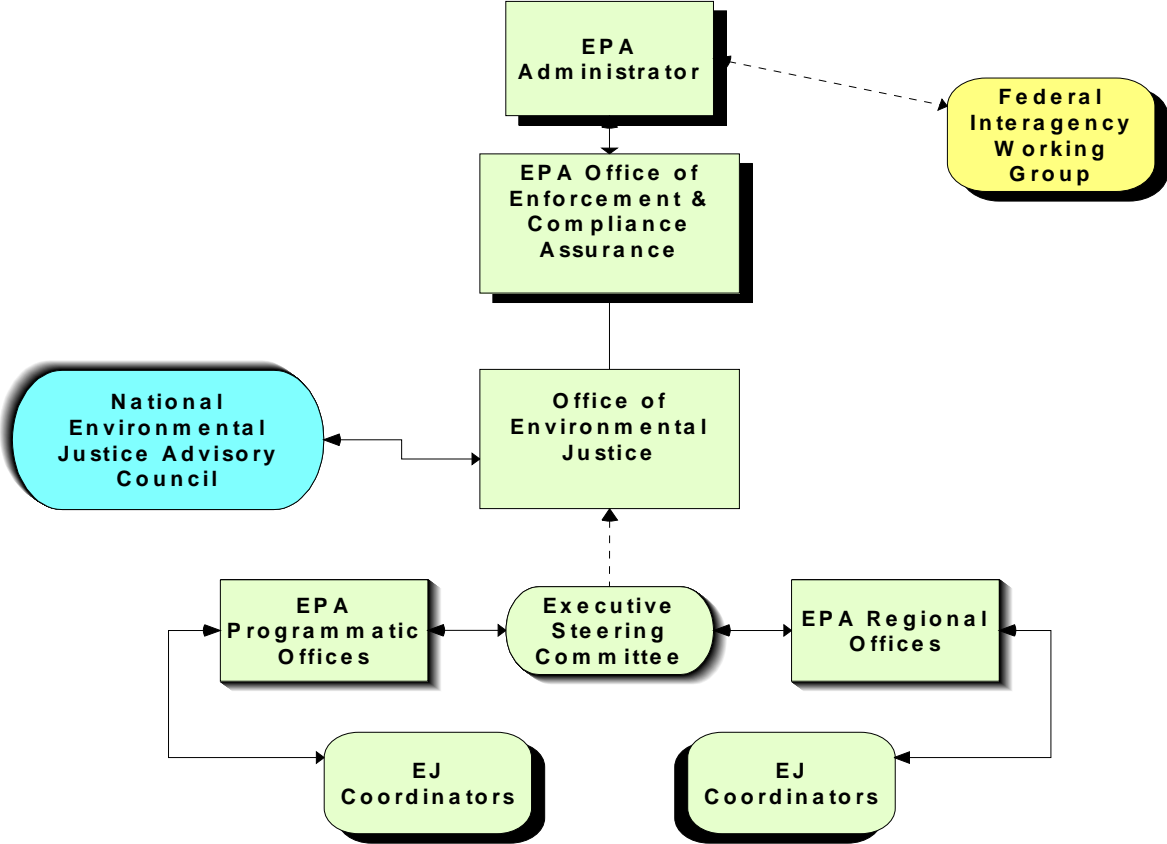
The Executive Order established a Federal Interagency Working Group chaired by EPA and comprised of 11 Federal departments and agencies, as well as several White House offices. EPA's Office of Environmental Justice, while overseeing the integration of environmental justice into EPA's policies, programs, and activities, serves as the lead on the Federal Interagency Working Group to incorporate environmental justice into all Federal agencies.

The EPA Environmental Justice Executive Steering Committee, formed in 1994, is generally comprised of the deputy assistant administrators in each program office, the deputy regional administrators in the regional offices, and other senior Agency officials. The Steering Committee provides leadership and direction on strategic planning, and cross-media policy development and coordination, to ensure that environmental justice is incorporated into the Agency's operations. In April 2002, the Steering Committee agreed to develop Environmental Justice Action Plans. Headquarters' program offices and the regional offices were

required to develop action plans based on the key elements of management accountability, training, environmental justice assessment, and evaluation.

In each regional office there is at least one environmental justice coordinator. The coordinators are the focal point within their organizations and serve as liaisons to the Office of Environmental Justice. The coordinators assist their regions in developing and implementing the action plans. The coordinators' duties include policy advice, program development, and implementation of programs within their regions. The regional environmental justice coordinators receive their funding from their regions.

Figure 1.2: Groups Responsible for Environmental Justice



Scope and Methodology

Our evaluation focused on EPA's integration of environmental justice into its core programs. Our work was performed at four EPA regions and EPA headquarters offices.

The regions were selected on the basis of the State emission credit trading programs operated within their regions. The initial focus of the evaluation was based on allegations received from the Public Employees for Environmental Responsibility, relating to the open market trading of air emission credits. The allegations questioned whether credits generated by facilities located in affluent areas were then used by facilities in minority and low-income communities. Our preliminary research found that EPA regions identified environmental justice areas different from one region to the next, rendering a determination on the allegation problematic. Additionally, based on a concern raised by the EPA Deputy Administrator in December 2002, regarding the Agency's progress in environmental justice integration, we decided that the evaluation would be conducted in two phases. This report covers phase one, addressing the questions associated with integration of environmental justice into EPA programs. A second report will address air emission credit trading's impact on environmental justice populations.

We performed our field work from December 2002 through September 2003. We performed this evaluation in accordance with the *Government Auditing Standards*, issued by the Comptroller General of the United States as they apply to performance audits. Further details on the scope and methodology of our evaluation are in Appendix C of this report.

The EPA Office of Inspector General (OIG) has not conducted prior reviews of the Office of Environmental Justice's efforts to integrate environmental justice into the Agency's daily activities.

Chapter 2

EPA Has Not Fully Implemented Environmental Justice

EPA has not fully implemented Executive Order 12898 because it has not identified minority and low-income communities, or defined the term disproportionately impacted. Regions and program offices have taken steps, individually, to implement environmental justice, but there has been a void in definitions and guidance from EPA. Although the Agency has been actively involved in implementing Executive Order 12898 for 10 years, it has not:

- Developed a clear vision.
- Developed a comprehensive strategic plan.
- Established values, goals, expectations, and performance measurements.

This has resulted in a wide array of attributes for identifying minority and low-income communities, inconsistent application of environmental justice actions across EPA's regions and programs, and the Agency's inability to accurately quantify environmental justice integration efforts. Consequently, EPA has not ensured on a consistent basis that minority and low-income populations have been afforded the actions that will benefit and protect them as intended by the Executive Order. Due to regional variations, populations in some States do not receive the same level of environmental justice action as in other States. In 2001, the EPA Administrator stressed that environmental justice is for everyone. While this is consistent with EPA's overall mission, it does not address the Executive Order's intent to provide specific actions for minority and low-income populations.

Executive Order 12898 Has Not Been Fully Implemented

EPA has not fully complied with the intent of Executive Order 12898. The Order calls for each Federal agency to make environmental justice part of its mission by identifying and addressing disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. However, the Office of Environmental Justice has not provided regions or program offices with:

- The definitions or attributes necessary to determine what constitutes minority, low-income, a minority or low-income community, or
- A definition of disproportionately.

As a result, several regions have developed their own interim guidelines that define and identify potential environmental justice areas based on demographics

but most do not address the disproportional issue. This flexibility has impacted limited resources because many regional and program offices' staffs have prepared interim guidelines and mapping attributes for environmental justice area definition. These disparate definitions have created inconsistencies among the regions as to who should be included in a defined environmental justice area (see Chapter 3). The lack of a generic environmental justice definition for minority and low-income is also impacting the Agency from being able to quantify the program's accomplishments.

Executive Order 12898, signed in 1994, focuses Federal agencies' attention on the environmental and human health conditions in minority and low-income populations with the goal of achieving environmental justice. The Executive Order calls for the Agency to take various actions (see box). The Agency has attempted to address § 1-102 in part, and § 1-103, but has not addressed § 1-101.

EXECUTIVE ORDER 12898

§ 1-101. Agency Responsibility.

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by **identifying** and **addressing**, as appropriate, **disproportionately** high and adverse human health or environmental effects of its programs, policies and activities on **minority populations** and **low-income populations** in the United States and its territories and possessions.... (emphasis added)

§ 1-102. Creation of an Interagency Working Group on Environmental Justice.

...the Administrator of the Environmental Protection Agency...shall convene an interagency Federal Working Group on Environmental Justice... The Working Group shall:

1. provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

§ 1-103. Development of Agency Strategies.

...each Federal agency shall develop an agency-wide environmental justice strategy... that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations.

EPA Elected Not to Provide National Definition of Environmental Justice

The identification of what constitutes an environmental justice area needs to be determined in order to comply with the Executive Order's provisions. The Executive Order requires collecting data, completing studies, sharing information, and ensuring participation with specific populations (minority and low-income) that have been disproportionately impacted. EPA's ability to comply with the Order's requirements in a consistent manner is impeded if it does not first identify the intended recipients of the environmental justice actions. Not defining what a minority and low-income community is makes it difficult for EPA program staff to incorporate environmental justice into its day-to-day activities. However, the

Office of Environmental Justice Director told us that:

...Because of demographic differences, and the unique, fact specific circumstances in which each case arises, at this point, EPA has elected not to establish a national definition of an “environmental justice community” or to establish specific “cut points” for determining disproportionate impacts.

This statement is contrary to language in the Executive Order that calls for the Agency to identify and address minority and low-income communities and to define disproportionately impacted. In addition, the majority of regions have either issued interim guidance that defines who makes up an environmental justice area or have adopted specific attributes for mapping these identified areas.

While EPA has not made this determination, other Federal agencies and offices have had working definitions for many years. The Council on Environmental Quality (CEQ) – which has oversight of the Federal government’s compliance with the Executive Order – along with such other Federal agencies as the Department of Transportation and Department of Defense, have defined minority, low-income, and disproportionate impact. CEQ advises:

In order to determine whether a proposed action is likely to have a disproportionately high and adverse human health or environmental effects on low-income populations, minority populations, or Indian tribes, agencies should identify a geographic scale for which they will obtain demographic information on the potential impact area.³

EPA’s approach is contrary to the CEQ guidance. We disagree with the Office of Environmental Justice Director’s current approach, and believe the Agency’s previous actions support our position. The Agency prepared an environmental justice strategy in 1995, as well as joined an inter-agency workgroup, both in compliance with the Executive Order’s provisions. Also, the Agency’s 1995 strategy provided the following:

EPA will include in its enforcement efforts identification of communities and populations, such as low-income urban and rural populations which suffer from disproportionately high and adverse human health or environmental effects.

Based on the actions taken by most regions to identify an environmental justice area, as well as the Environmental Justice Strategy’s provisions, we believe the Agency should comply with the Executive Order by identifying and defining minority and low-income communities on a national level.

³ Executive Office of the President, Council on Environmental Quality “*Environmental Justice Guidance Under the National Environmental Policy Act*. (December 10, 1997).

Agency De-Emphasizes Minority and Low-Income Populations

The EPA Administrator reaffirmed in August 2001 that integration of environmental justice into its programs, policies, and activities remained an Agency priority.⁴ However, the Agency changed the focus of the environmental justice program by de-emphasizing minority and low-income populations and emphasizing the concept of environmental justice for everyone. This action moved the Agency away from the basic tenet of the Executive Order and has contributed to the lack of consistency in the area of environmental justice integration.

"...Integration of environmental justice into the programs, policies, and activities ... is an Agency priority."

EPA Administrator
August 9, 2001 Memorandum

In 1998, the direction of the Office of Environmental Justice changed from an emphasis on community outreach to an emphasis on integration of environmental justice concepts in the Agency's activities. The Director of the Office of Environmental Justice advised that his office had moved away from the Executive Order. That statement is evident in the Administrator's memorandum. While affirming a commitment to environmental justice in the August 2001 memorandum, the memorandum also made the point that environmental justice is not limited to minority and/or low-income populations only, but is for everyone. This interpretation was derived from EPA's overall mission, as set forth in the 1997 Strategic Plan, which is to ensure that:

All Americans are protected from significant risks to human health and the environment where they live, learn and work.

Additionally, in June 2002, the Office of Environmental Justice advised the Agency's staff responsible to implement environmental justice:

Senior management should recognize that the environmental justice program is not an affirmative action program or a set-aside program designed specifically to address the concerns of minority communities and/or low-income communities. To the contrary, environmental justice belongs to all Americans and it is the responsibility of Agency officials, as public servants, to serve all members of the public.

The interpretation that environmental justice is for everyone, while consistent with the Agency's overall mission, moved the Agency's environmental justice

⁴ Christine Todd Whitman, Administrator, U.S. Environmental Protection Agency, memorandum to Assistant Administrators et al., "EPA's Commitment to Environmental Justice," August 9, 2001.

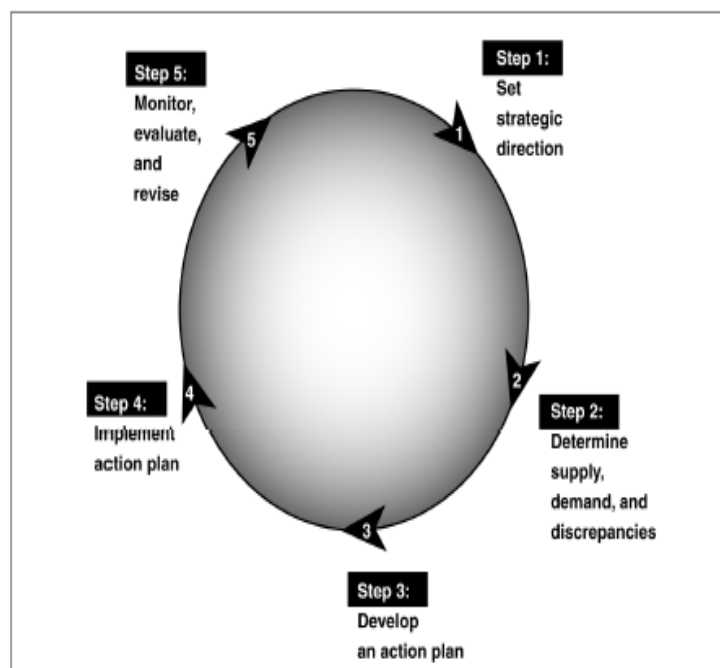
focus away from minority and low-income populations. Based on concerns raised in the early 1990s, these segments of the population were found not to be benefitting from the Agency's overall mission,⁵ and the Executive Order was issued in an attempt to draw more attention to this specific part of the population. The Administrator's August 2001 memorandum and the Office of Environmental Justice actions, returns the Agency to pre-Executive Order status, where everyone is assumed to be afforded protection under the environmental laws and regulations. It does not address the need to ensure that minority and low-income populations are protected from disproportionate environmental risks. It poses the question of why is there a need for separate environmental justice efforts at EPA.

EPA Has Not Developed a Strategic Plan for the Office of Environmental Justice

Strategic plans are intended to be the starting point for each Agency's performance measurement efforts. The Office of Personnel Management has developed a systematic approach to the development of a successful program. The Office of Personnel Management's model suggests that five essential steps are necessary to implement a concept like environmental justice (see Figure 2.1).

EPA has not developed a comprehensive strategic plan for integrating environmental justice. In lieu of such a plan, some offices at the program and regional levels developed their own strategies for environmental justice, which inadvertently made the coordination of all environmental justice programs at the national level more challenging. There have been recent attempts at coordination of the program and regional offices through action plans. These plans, which were first requested to be submitted on September 30, 2002, asked each region and program office to

Figure 2.1 OPM's Strategic Planning Model



Source: OPM.

own strategies for environmental justice, which inadvertently made the coordination of all environmental justice programs at the national level more challenging. There have been recent attempts at coordination of the program and regional offices through action plans. These plans, which were first requested to be submitted on September 30, 2002, asked each region and program office to

⁵ EPA "Environmental Equity-Reducing Risk for All Communities" (June 1992 EPA230-R-92-008A).

follow a suggested template that will describe the region/office efforts in integrating environmental justice into its day-to-day activities. However, this step is out of order, since this process generally occurs subsequent to articulation of an overall Agency strategic plan and clear vision for which the action plans are linked.

While most program offices and regions reviewed have embarked upon some form of strategic planning, the Office of Environmental Justice has not. We were advised by the Office of Environmental Justice Director in March 2003 that:

. . . Consistent with the expectation that the Agency's environmental justice strategy would evolve, several of the Headquarters Offices and Regions have developed Region/Office specific strategies and policies. In April 2002, the Office of Environmental Justice proposed, and the Environmental Justice Executive Steering Committee ("Steering Committee") agreed, that a more current and consistent Agency-wide strategic approach was needed.

In response to the draft report the Director of the Office of Environmental Justice provided a draft Office of Environmental Justice Strategic Plan for 2004.

Seven Key Areas for Effective Implementation

To evaluate the Office of Environmental Justice efforts to integrate environmental justice into the Agency's operations despite the lack of a strategic plan, we used OIG's "Assessing Organizational Systems: A User's Guide," issued in November 2002. This tool was designed to assess organizational "Systems" by providing managers with seven key areas that establish the foundation for an organization or program to be successfully implemented (see Figure 2.2). We assessed the Agency's progress in implementing environmental justice against these key areas. We focused on the areas of leadership, strategic planning, performance results, and human capital, because they were the most pertinent to our evaluation. We found the following.

Figure 2.2: Seven Key Areas	
1.	Leadership
2.	Strategic Planning
3.	Customer/Stakeholder and Market Focus
4.	Information and Analysis
5.	Human Capital
6.	Process Management
7.	Performance Results

Agency Leadership Has Not Developed a Clear Vision for Environmental Justice Integration

The Agency has not provided a clear vision on environmental justice integration, or objectives that are clear, precise, and focused on environmental results. EPA has not yet laid out what the Agency seeks to accomplish from environmental justice integration in terms of real environmental impacts. Consequently, the Agency has encountered difficulties in realizing effective integration of environmental justice into the culture of the Agency staff and the programs they manage. Agency actions are not generally consistent with the Administrator's proclamation to make environmental justice an Agency priority. Without a plan or established goals that can be measured or determined based on quantitative information, the Agency cannot assess progress, provide staff with direction, make mid-course adjustments, and generally manage the program.

Training - Key Tool in Integration

A major component of the Agency's efforts to integrate environmental justice is through formal environmental justice training that has been made available for all Agency employees over the past years. However, the training has had limited success. The program's lack of definitions of terms and inconsistent training contributed to the lack of success.

A report by the U.S. Commission on Civil Rights⁶ on Environmental Justice, examined EPA's Environmental Justice training and advised:

EPA, itself, has not published comprehensive information assessing such training or provided information on how, or if, the training is successfully linked to the integration of environmental justice concepts into its initiative and programs.

Office of Environmental Justice management had issued a memorandum on June 18, 2003, that proposed development of a national approach to environmental justice training. During a National Environmental Justice Coordinators meeting, it was noted that environmental justice training was being planned and managed by the Environmental Justice Coordinators according to the action plans, but was also being conducted independently by some members of the former Environmental Justice Collaborative. This disconnect led to some confusion, and the Office of Environmental Justice believes that a more formalized and structured approach to training is now needed.

We agree a more formalized and structured approach is needed, but this approach should be expanded beyond training to include the basic definitions of a minority

⁶ U.S. Commission on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI as Tools for Achieving Environmental Justice*, October 2003.

and/or low-income community, as well as common goals and vision for the environmental justice initiative. We noted a lack of consensus on a common and shared vision for what constitutes an environmental justice community, and a wide range of often differing visions at the program office and regional levels. Variations often existed due to different philosophical views from senior management of the different regions and program offices.

The U.S. Commission on Civil Rights' report stated similar concerns regarding this area, noting:

...lack of centralized responsibility for environmental justice implementation makes it difficult to create agencywide goals, oversee goals when, and if, they are implemented...Most importantly, it signals that environmental justice is not a priority of the agency's mission.

EPA Has Not Monitored Performance Results for Environmental Justice Integration

EPA has not monitored or evaluated offices' performance and progress against goals and predetermined objectives. Further, the reports that both the Office of Environmental Justice and other Agency offices prepare do not provide evidence of the progress being made by EPA regarding environmental justice. These reports provide details of activity that often only remotely reflect environmental justice. For example, Region 6 highlighted as environmental justice a \$20,000 grant to prepare Parent's Resource Guide on Childhood Respiratory Health. Region 3 awarded \$20,000 "to improve local watershed conditions through resident education, site remediation and damage prevention using the efforts of community members." While these activities may impact minority or low income communities, they were not specifically designed to do so.

The Region 5 Environmental Justice Coordinator noted the region was in the process of developing a database to track all environmental justice complaints and issues, including resolution. This database has the potential to convey useful comparative information to both EPA managers and the public. If implemented on a nationwide basis, this database will provide the Office of Environmental Justice the tool needed to monitor integration in real-time.

Environmental Justice Not Staffed or Organized as Agency Priority

A senior Office of Environmental Justice official advised that staffing at the program and regional levels are not under the control of the Office of Environmental Justice but are instead dependent on the Assistant Administrator or Regional Administrator, respectively. Based on our review of the action plans submitted to the Office of Environmental Justice, Table 2.1 shows the staffing disparities in Full-Time Equivalents (FTEs) noted:

Table 2.1 Environmental Justice FTEs Reported by Regional Offices

Region	1	2	3	4	5	6	7	8	9	10
FTEs	12.65	2	2.1	5.5	1	5	3.75	6.5	50.9	2.6

Within the regions, positions are funded from regional discretionary funds. For program-specific environmental justice activities, funding is provided by the individual program.

EPA Has Not Provided Policy and Guidance

The Office of Environmental Justice’s efforts to develop national guidance on environmental justice have to date been unsuccessful. Staff confused by the lack of a clear vision and meaningful policy are further frustrated with the lack of a road map. To fill this void, many of the program and regional offices created their own policies, developed their own guidance, and created geographical information system applications to identify minority and/or low-income communities. A senior Agency official advised:

“Strongly believes that a baseline criteria needs to be established in order to properly and adequately measure the Agency’s EJ activities and actions. From a Regional standpoint, more focus needs to be placed on those Regions that are “less aggressive” about their focus on EJ. In other words, on those Regions who believe that enforcement is for everybody, rather than recognizing special circumstances exists and need to be addressed in certain types of communities. Mentioned that some Regions do not even account for disproportional impact. Again, focus on better definition of EJ will help address this issue.” (Principal Deputy Assistant Administrator - OECA interview with Office of Environmental Justice consultant)

The Office of Environmental Justice attempted to provide guidance for the Agency by developing in 2001 a draft guidance document titled, “Guidance for Assessing and Addressing Potential Allegations of Environmental Injustice.” This guidance was designed to provide a framework for understanding the Agency’s Environmental Justice program, and to provide a systematic approach and reference tools to assess and respond to potential allegations of environmental injustice and prevent injustices from occurring in the first place.

Due to potential litigation concerns, the document’s title was changed in 2002 to “Toolkit for Assessing Potential Allegations of Environmental Injustice.” The document was reviewed and approved by the program and regional offices. However, Office of General Counsel concerns have delayed draft publication for public comment.

The toolkit was recently distributed to various stakeholders for comment. Regional and program staff identified a number of issues, and openly questioned if they would ever use it. According to one regional environmental justice coordinator, the toolkit is labor intensive and would require the use of multiple disciplines. Additionally, the deputy regional administrator for Region 9 advised in a memorandum to the director of the Office of Environmental Justice regarding the toolkit, “we must be deliberative in assessing our existing capacity and limited resources,” and strongly recommended that the Office “work to develop an implementation plan before the end of the fiscal year that outlines budgetary requirements and potential funding sources” (emphasis added).

The overall concern raised by Agency staff was that the “toolkit” did not provide a standard definition for minority, low-income, and disproportionately impacted.

Conclusion

EPA has made limited progress in its attempt to integrate environmental justice into the fabric of its core mission. The Agency has not developed or established: a clear vision for environmental justice integration; a comprehensive strategic plan; values, goals, and performance expectations for environmental justice; or policy and guidance that identifies and addresses communities that are minority, low-income, and disproportionately impacted. Additionally, the Agency has made the decision not to identify the intended beneficiaries of the Executive Order, thus making it problematic to carry out the intent of the order. Further, the Agency has de-emphasized the focus on minority and low-income populations through the Administrator’s reaffirmation of environmental justice and other Agency actions. As a result, progress in integrating environmental justice into its programs has been slow. Actions to date have consisted of a wide array of approaches and, consequently, inconsistent application of the environmental justice concepts across EPA.

The Office of Environmental Justice was created to address the allegation that racial minority and low-income populations bear a higher environmental risk burden than the general population. However, the Office of Environmental Justice does not provide funding, and has no authority over the program and regional offices regarding efforts to integrate environmental justice. Furthermore, after 10 years, despite the creation of the Office of Environmental Justice, major environmental justice decisions are made on a consensus basis with the Environmental Steering Committee. Without national policy or guidance to follow, or a systematic approach to identify the intended populations of the environmental justice mandate, the Agency cannot ensure that minority and low-income populations disproportionately impacted have been afforded the actions intended by Executive Order 12898.

Recommendations

We recommend that the Acting EPA Deputy Administrator:

- 2-1. Issue a memorandum that reaffirms that Executive Order 12898 is the Agency's priority and that minority and low-income populations that are disproportionately impacted will receive the intended actions of this Executive Order.
- 2-2. Clearly define the mission of the Office of Environmental Justice and provide Agency staff with an understanding of the roles and responsibilities of the office.

We further recommend that the Acting EPA Deputy Administrator ensure that the Acting Assistant Administrator for the Office of Enforcement and Compliance Assurance:

- 2-3. Establish specific time frames for the development of definitions, goals and measurements that will ensure that the 1994 Executive Order is complied with in the most expeditious manner.
- 2-4. Develop and articulate a clear vision on the Agency's approach to environmental justice. The vision should focus on environmental justice integration and provide objectives that are clear, precise, and focused on environmental results.
- 2-5. Develop a comprehensive strategic plan for environmental justice. The plan should include a comprehensive mission statement that discusses, among other things, the Agency's major functions and operations, a set of outcome-related goals and objectives, and a description of how the Agency intends to achieve and monitor the goals and objectives.
- 2-6. Provide the regions and program offices a standard and consistent definition for a minority and low-income community, with instructions on how the Agency will implement and operationalize environmental justice into the Agency's daily activities. This could be done through issuing guidance or a policy statement from the Administrator.
- 2-7. Ensure that the comprehensive training program currently under development includes standard and consistent definitions of the key environmental justice concepts (i.e., low-income, minority, disproportionately impacted) and instructions for implementation.
- 2-8. Perform a comprehensive study of program and regional offices' funding and staffing for environmental justice to ensure that adequate resources are available to fully implement the Agency's environmental justice plan.

- 2-9. Develop a systematic approach to gathering accurate and complete information relating to environmental justice that is usable for assessing whether progress is being made by the program and regional offices.

Agency Comments and OIG Evaluation

The Agency disagreed with our interpretation of the intent of the Executive Order because it believes that the Agency is not required to define minority, low-income, minority population, low-income population, and disproportionate impact. Further it does not believe it is necessary to identify and address minority and/or low income communities where the Agency's actions may have or may cause adverse health impacts. The Agency believes that the Executive Order requires the Agency "to conduct internal reviews of its programs, policies, and activities instead of seeking to establish a 'brightline' for identifying an 'environmental justice community.' "

We continue to believe that our recommendations are warranted to ensure that the intent of the Executive Order is carried out. We believe that in order to review all of its programs, policies, and activities, and to address disproportionately high and adverse human health or environmental effects, it is necessary to evaluate these rules on a certain audience. In this case, the Executive Order clearly advises the Agency that the populations it needs to evaluate are minority and low-income populations. While providing adequate environmental justice to the entire population is commendable, doing so had already been EPA's mission prior to implementation of the Executive Order; we do not believe the intent of the Order was simply to reiterate that mission.

The Agency's complete written response to our draft report and our detailed evaluation of that response are contained in Appendices D and E, respectively.

Chapter 3

Regions Do Not Use Consistent Approaches When Identifying Environmental Justice Communities

EPA's decision not to provide a definition for identifying communities that are minority, low-income, and disproportionately impacted by environmental risk has resulted in inconsistent approaches by the regional offices. As a result, the actions intended in Executive Order 12898 to protect the public have not been consistently applied. Additionally, limited regional office resources are being used on a wide array of approaches. These variations have resulted in the Federal actions provided to a minority and low-income citizen under Executive Order being dependent not only on income and racial status but the EPA region in which the person resides. By focusing on one city (Worcester, Massachusetts), with a population of 172,648, we noted a wide disparity in identifying applicable populations. For example, the Region 6 protocol identified 102,885 potential environmental justice individuals, whereas the Region 5 protocol identified 59,731 individuals, a difference of 43,154. Agency staff indicated it is difficult to operate a program that does not have standard definitions for low-income, minority, and disproportionately impacted, or what represents an environmental justice community.

Variations Existed in EPA Regional Approaches to Identifying Environmental Justice Communities

Since the Agency has not provided national guidance for identifying a minority and low-income community, it has necessitated the EPA regions to develop their own interim guidelines. Most regional offices use demographic information with a geographical information system (GIS) application with limited consistency to identify minority and low-income communities. These variations can impact the decision making process for the Agency, which could ultimately impact the human health and environmental protection of a community. Examples of these variations include:

- Five regions use income levels as major criteria, while the other five use a variation of the Federal Poverty Level.
- Five regions compare an area's low-income percentage with the State average.
- Four regions compare minority percentage with the State average.
- Region 4 multiplies the State average by 1.2 to find the low-income threshold.

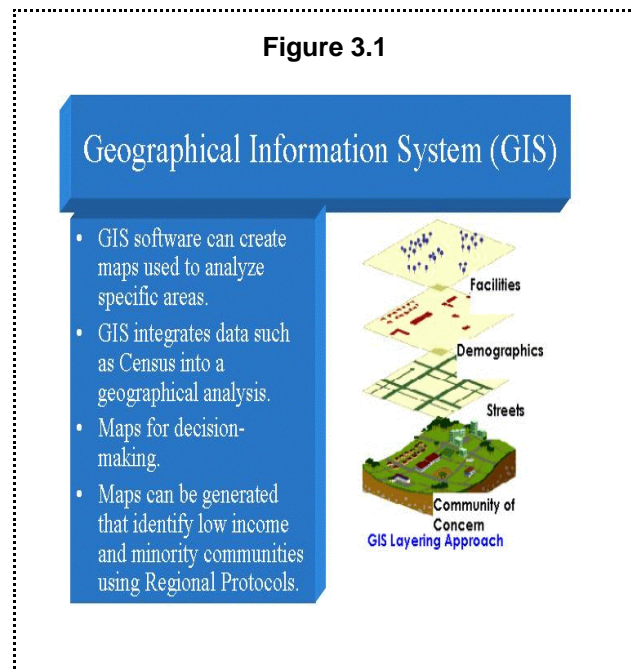
According to the Director of the Office of Environmental Justice, the Agency has not adopted a systematic approach to environmental justice because a predetermined methodology for all offices would impede their flexibility in integrating the program. For example, the official noted that the approach used in

the northeast section of the country may not work in the southwest section because of the differences in population makeup. While we agree that some flexibility is needed based on geographic differences, it is incumbent that the Agency develop some sort of standards that ensure consistent protection is afforded under the Executive Order.

Comparison Made of GIS Protocols by Region

The cornerstone of most regional approaches is the use of demographic data obtained from the U.S. Census Bureau in concert with GIS mapping. (See Figure 3.1) Regions took this approach because the Agency has not created a universal methodology or utilized a statistical model to identify potential environmental justice areas.

We identified a wide variation in the use of GIS applications by the regions. We analyzed regional GIS protocols for EPA Regions 1, 5, and 6 to determine whether the use of different regional protocols on the same city's demographic data resulted in different geographic protection. The City of Worcester, Massachusetts was judgmentally selected by the OIG evaluation team because it represented an average mid-sized American city⁷ with an urban center and residential areas.



The OIG evaluation team compiled information from the three EPA regional offices on the definitions and measures being used to identify “potential environmental justice communities.” A GIS consultant was asked to assess the information provided by the team to determine whether the regional methodologies could be duplicated. The GIS consultant integrated the U.S. Census⁸ data on population income and

⁷ Worcester, Massachusetts is the second largest city in Massachusetts with a population of 172,648 (U.S. Census Bureau, 2000 Census Data), with major universities, hospitals, industrial, urban, and residential areas.

⁸ U.S. Census Bureau, 2000 Census Data, <<http://factfinder.census.gov>>

demographics, and produced comparative maps displaying the impacts of the different methodologies on the existing population.

Differences in Methodologies Impact Population Covered

There are 167 block groups in Worcester. Of that amount, Region 6's protocol identified 112 for inclusion as potential environmental justice communities, substantially more than the other two. Region 1 included 74 and Region 5 was the least inclusive, covering 68 block groups (see Table 3.1 and Figure 3.2).

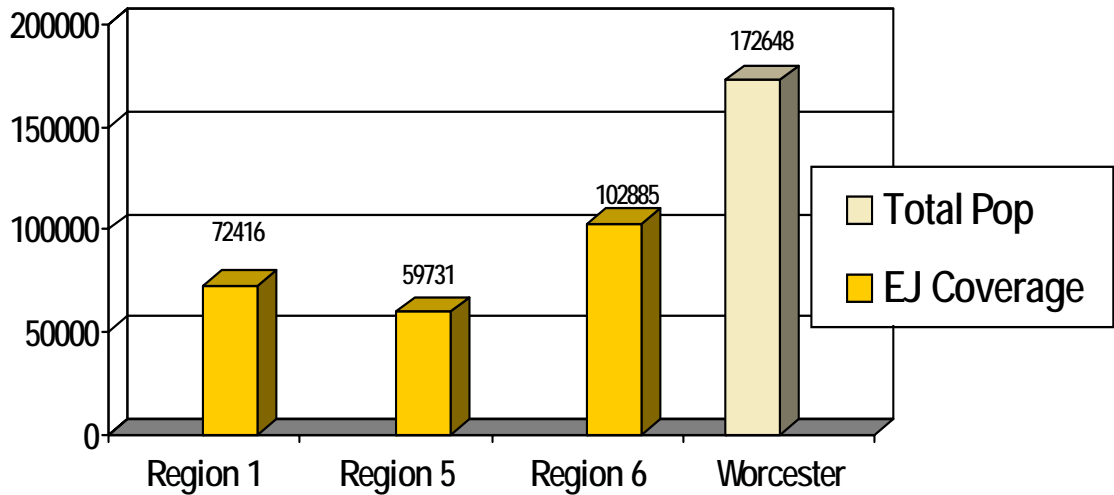
BLOCK GROUP:

A unit for census data reporting formed by a cluster of census blocks. Census block groups generally contain between 250 and 500 housing units.

Table 3.1 Impact of Different Methodologies on Population

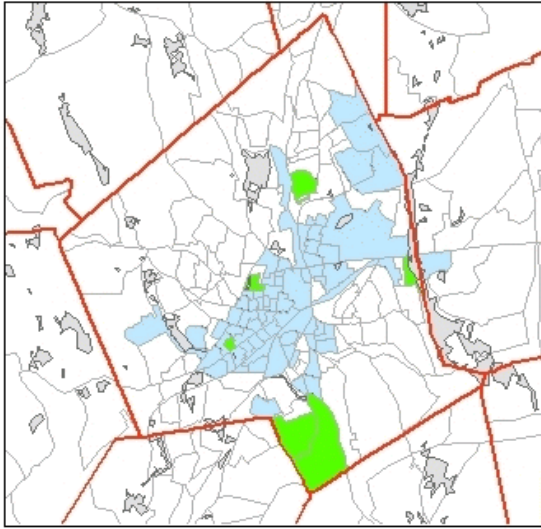
	Worcester	Region 6	Region 1	Region 5
Block Groups	167	112	74	68
People Covered	172,648	102,885	72,416	59,731

Figure 3.2 Protection using different Regional Protocols

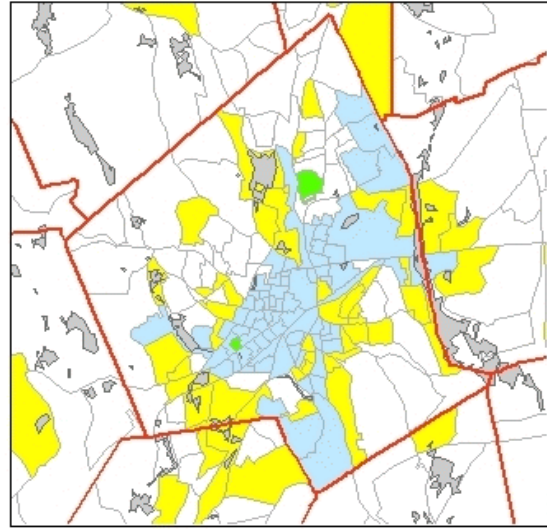


Regional offices generally used mapping to depict potential environmental justice communities. We used the methodologies of the various regions on one set of common data for Worcester, and the resulting overlays of protection are shown in the following maps in Figure 3.3.

Figure 3.3: Overlay Maps for City of Worcester










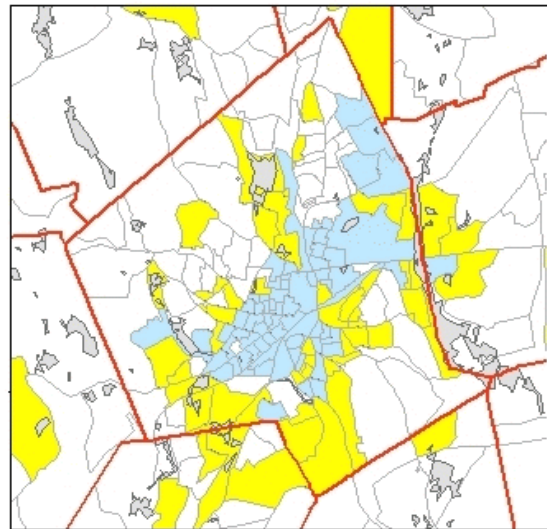
Region 1 and Region 5



Region 1 and Region 6

Legend

-  Town Boundary
-  Rivers, Lakes, etc.
-  Census 2000 Block Group
-  EPA EJ Area Overlap
-  EPA R1 EJ Area
-  EPA R5 EJ Area
-  EPA R6 EJ Area



Region 5 and Region 6

**Worcester, MA
Environmental Justice
Potential Areas of Concern
Inter-Region Comparison**

Differences in Methodologies Impact How Minority and Low-Income Determinations Are Defined

The differences in the regional methodologies impact how the regions defined and formulated both their minority population and low-income determinations.

In regard to minority population, all three Regions used essentially the same definition for minority individuals. Each Region differed, however, in its quantification of what it considered to be a significant minority population fraction.

- Region 1 identified block groups whose minority fraction ranks in the upper 85th percentile among Statewide block groups.
- Region 5 identified block groups whose minority fraction exceeds twice the State average for block groups.
- Region 6 differed substantially from both Regions 1 and 5 in that it included any block group whose fraction matched or exceeded the State average. Therefore, Region 6's methodology was more inclusive.

In regard to low-income populations, all three Regions used a distinct definition for identifying low-income block groups. Regions 1 and 5 based their definitions of economic hardship on the Federal Poverty Level statistic, while Region 6 did not. Examples of low-income identification are as follows:

- Region 1 defined the economic hardship threshold for a block group if it ranks at or above the 85th percentile Statewide, that ranking based on the population fraction having an income below twice the Federal Poverty Level.
- Region 5 defined the economic hardship threshold for a block group to be that its population fraction with income below the Federal Poverty Level, be twice the State average.
- Region 6 used the household income statistic.

The fundamental difference between the methodologies was how each region formulated their definitions. The three regions used essentially the same definition of minority. However, they used different definitions for poverty, each referring to different census variables. For example, Regions 1 and 5, while using the same census file and table, did not use the same variables in that table.

To illustrate the significant difference in the approaches used by individual regions, we utilized the Region 1's GIS Team survey of all the regions to show the variations in the GIS models being implemented by the regions. Their survey disclosed significant variations by the regions (see Table 3.2).

Table 3.2: EJ Tools Survey

Regions	Main Attributes of EJ Definition	Low-income/Poverty Threshold	Minority Definition or Threshold	Comparative Analysis	EJ Terminology	Density Measures
1	Poverty, Minority	<2x Federal Poverty level or ranks \$85 percentile of State	Percentage of Minority \$85 percentile of State in Census Block group	No	Potential EJ area	No
2	Income, Minority	% population below census level from cluster analysis	% non-white + white Hispanic > cutoff value calculated from cluster analysis for urban/rural	Yes	Community of Concern	Yes. Cluster analysis urban v. rural.
3	Poverty, Minority	Census level compared to State average	percentage non-white + white-Hispanic > to State average	Yes	Potential EJ Area	Yes
4	Income, Minority	Percentage 1.2x State average household income= \$15,000	1.2x State average for percentage non-white + white-Hispanic	Yes	Potential EJ Area	No
5	Poverty, Minority	> State average >2x household income State average % w/household	% of minority within block group which exceeds 2x State average	Yes	Area of high Priority	No
6	Income, Minority,	% w/ household income < \$15,000 compared to State > 2x State average	% of minority within block group exceeds State average	Yes	Potential EJ Index	Yes
7	Income, Minority	> 25%,50%,75% with household income < \$12,500	>25%,50%,75% non-white + white-Hispanic ranking	No	Potential Area of Concern	No
8	Poverty, Minority	% w/ household income < Census poverty level compared to State avg.	% non-white + white-Hispanic > State average	Yes	Potential EJ Area	No
9	Poverty, Minority	% < Census poverty level displayed in 25% levels.	% non-white + white-Hispanic displayed in 25% levels	No	Disproportionately impacted Community/area	Yes
10	Income, minority	& w/ household income < \$15,000 and \$25,000 compared to State average	% > 1.2 and 1.5 State average % of non-white + white - Hispanic	Yes	Disproportionately impacted Community	No

SOURCE: REGION 1 GIS TEAM

While regions were using their limited resources to develop maps, most had different attributes. Region 1 recently rolled out a new environmental justice mapping methodology to replace its current method, while Region 9, because of budgetary constraints, had placed its environmental justice GIS mapping application on hold. Additionally, the Office of Environmental Justice is developing a mapping tool at the national level. In our opinion, it would be a more economical use of GIS resources for the regions and the Agency to adopt a consistent methodology for identification of minority and low-income communities.

Variations Existed Among Regions in Actions Identified That Will Benefit Minority and Low-Income Communities

We found that Agency actions after being identified as a potential environmental justice community varied greatly by region (see following and Table 3.3):

- In one region, environmental justice grants were awarded to communities the region determined to be a potential environmental justice community.
- Inspections and enforcement activities were targeted in potential environmental justice community in some regions but not all.
- Supplemental Environmental Projects (SEPs) were negotiated with specific communities in some regions.
- Information (brochures, etc.) is prepared in the language of the community as needed.
- Listening sessions are held to engage stakeholders through hosting community dialogue within their States.

Table 3.3 Environmental Justice Benefits Variations

Regions	SEPs	Targeted Environmental Justice Grants	Targeted Inspections & Enforcement	Multi-lingual educational outreach	Listening Sessions
1	x		x	x	x
5	x		x	x	x
6		x		x	x
9	x		x		x

Some regions indicated the designation of a minority and low-income community did not afford extra actions beyond the specific environmental laws and regulations. For example, Region 5’s Interim Environmental Policy clearly states: “It is important to note that the identification of a disproportionately high and adverse human health or environmental effect on a minority or low-income population does not preclude a proposed Agency action from going forward.”

At the Headquarters level, OECA adopted environmental justice as a performance priority for Fiscal Year 2004. EPA’s Chief Financial Officer advised that regions should: “identify EJ communities or areas which display disproportionately high and adverse, human health or environmental effects on minority and low-income populations. Using this information, Regions will be expected to adjust their inspection and investigation targeting to begin to address the risks or threats.” Because of the variations in how a minority and low-income community is defined by regions, some communities may benefit more from this OECA national priority.

The August 9, 2001, memorandum from Administrator Whitman made integration of environmental justice into States' Performance Partnership Agreements and Performance Partnership Grants a priority. In response, some regions started developing Performance Partnership Agreement and Grant language containing environmental justice concepts with their States, but others have not. A regional senior manager advised it was difficult to require States to incorporate environmental justice concepts into their State Performance Partnership Agreements when EPA is not clear on how to define a minority and low-income community. Regional officials have suggested that the Office of Environmental Justice develop model language to ensure consistency Agency-wide.

Conclusion

The various methods used by the Regions to address environmental justice can be traced to the Agency's inability to provide a clear and consistent definition of a minority and low-income community. This has resulted in the expenditure of limited resources and inconsistent applications across EPA. These variations have resulted in the actions provided to a minority and low-income citizen under Executive Order 12898 being dependent not only on income and racial status but the EPA region in which the person resides. Without a consistent, systematic approach to identifying communities that are minority, low-income, and disproportionately impacted, EPA cannot provide assurances that the Federal actions designed by Executive Order 12898 have been consistently applied.

Recommendations

We recommend that the Acting EPA Deputy Administrator:

- 3-1. Develop a standard strategy that limits variations relating to GIS applications, including use of census information, determination of minority status, income threshold, and all other criteria necessary to provide regions with information for environmental justice decisions.
- 3-2. Require that the selected strategy for determining an environmental justice community is consistent for all EPA program and regional offices.
- 3-3. Develop a clear and comprehensive policy on actions that will benefit and protect identified minority and low-income communities and strive to include in States' Performance Partnership Agreements and Performance Partnership Grants.

Agency Comments and OIG Evaluation

The Agency disagreed with the recommendations presented in this chapter. The Agency claimed OIG's environmental justice assessment methodology for identifying and addressing minority and low-income populations was flawed. In the Agency's opinion, the decisionmaking processes are predicated upon the options for action or inaction that the Agency may be considering in a given situation, and any action must be based on the applicable statute and implementing regulations, as appropriate. The Agency said "this allows the Agency to move beyond the dead-end questions relating to what is or is not an 'environmental justice community,' who are or who are not 'environmental justice individuals,' what are or are not 'potential environmental justice communities,' or what are or are not 'environmental justice potential areas of concern.' "

While the Agency believes these may be *dead end questions*, in our opinion it is impossible to carry out the intent of the Executive Order, which is to focus on minority and low-income populations, without first answering these questions. We believe the Agency has been remiss in its responsibilities to carry out the intent of the Executive Order and believe our recommendations are valid.

The Agency's complete written response to our draft report and our detailed evaluation of that response are contained in Appendices D and E, respectively.

February 11, 1994

EXECUTIVE ORDER

FEDERAL ACTIONS TO ADDRESS ENVIRONMENTAL JUSTICE IN MINORITY
POPULATIONS AND LOW-INCOME POPULATIONS

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1-1. IMPLEMENTATION.

1-101. *Agency Responsibilities.* To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Marian Islands.

1-102. *Creation of an Interagency Working Group on Environmental Justice.* (a) Within 3 months of the date of this order, the Administrator of the Environmental Protection Agency (“Administrator”) or the Administrator’s designee shall convene an Interagency Federal Working Group on Environmental Justice (“Working- Group”). The Working Group shall comprise the heads of the following executive agencies and offices, or their designees: (a) Department of Defense; (b) Department of Health and Human Services; (c) Department of Housing and Urban Development; (d) Department of Labor; (e) Department of Agriculture; (f) Department of Transportation; (g) Department of Justice; (h) Department of the Interior; (i) Department of Commerce; (j) Department of Energy; (k) Environmental Protection Agency; (l) Office of Management and Budget; (m) Office of Science and Technology Policy; (n) Office of the Deputy Assistant to the President for Environmental Policy; (o) Office of the Assistant to the President for Domestic Policy; (p) National Economic Council; (q) Council of Economic Advisers; and (r) such other Government officials as the President may designate. The Working Group shall report to the President through the Deputy Assistant to the President for Environmental Policy and the Assistant to the President for Domestic Policy.

(b)The Working Group shall:

(1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(2) coordinate with, provide guidance to, and serve as a clearinghouse for, each Federal agency as it develops an environmental justice strategy as required by section 1-103 of this order, in order to ensure that the administration, interpretation and enforcement of programs, activities and policies are undertaken in a consistent manner;

(3) assist in coordinating research by, and stimulating cooperation among, the Environmental Protection Agency, the Department of Health and Human Services, the Department of Housing and Urban Development, and other agencies conducting research or other activities in accordance with section 3-3 of this order;

(4) assist in coordinating data collection, required by this order;

(5) examine existing data and studies on environmental justice;

(6) hold public meetings as required in section 5-502(d) of this order; and

(7) develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.

1-103. Development of Agency's Strategies.

(a) Except as provided in section 6-605 of this order, each Federal agency shall develop an agency-wide environmental justice strategy, as set forth in subsections (b) - (e) of this section that identifies and addresses disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations. The environmental justice strategy shall list programs, policies, planning and public participation processes, enforcement, and/or rulemakings related to human health or the environment that should be revised to, at a minimum: (1) promote enforcement of all health and environmental statutes in areas with minority populations and low-income populations; (2) ensure greater public participation; (3) improve research and data collection relating to the health of and environment of minority populations and low-income populations; and (4) identify differential patterns of consumption of natural resources among minority populations and low-income populations. In addition, the environmental justice strategy shall include, where appropriate, a timetable for undertaking identified revisions and consideration of economic and social implications of the revisions.

(b) Within 4 months of the date of this order, each Federal agency shall identify an internal administrative process for developing its environmental justice strategy, and shall inform the Working Group of the process.

(c) Within 6 months of the date of this order, each Federal agency shall provide the Working Group with an outline of its proposed environmental justice strategy.

(d) Within 10 months of the date of this order, each Federal agency shall provide the Working Group with its proposed environmental justice strategy.

(e) Within 12 months of the date of this order, each Federal agency shall finalize its environmental justice strategy and provide a copy and written description of its strategy to the Working Group. During the 12 month period from the date of this order, each Federal agency, as part of its environmental justice strategy, shall identify several specific projects that can be promptly undertaken to address particular concerns identified during the development of the proposed environmental justice strategy, and a schedule for implementing those projects.

(f) Within 24 months of the date of this order, each Federal agency shall report to the Working Group on its progress in implementing its agency-wide environmental justice strategy.

(g) Federal agencies shall provide additional periodic reports to the Working Group as requested by the Working Group.

1-104. *Reports to The President.* Within 14 months of the date of this order, the Working Group shall submit to the President, through the Office of the Deputy Assistant to the President for Environmental Policy and the Office of the Assistant to the President for Domestic Policy, a report that describes the implementation of this order, and includes the final environmental justice strategies described in section 1-103(e) of this order.

Sec. 2-2. FEDERAL AGENCY RESPONSIBILITIES FOR FEDERAL PROGRAMS.

Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such, programs, policies, and activities, because of their race, Color, or national origin.

Sec. 3 -3. RESEARCH, DATA COLLECTION, AND ANALYSIS

3-301. *Human Health and Environmental Research and Analysis.*

(a) Environmental human health research, whenever practicable and appropriate, shall include diverse segments of the population in epidemiological and clinical studies, including segments at high risk from environmental hazards, such as minority populations, low-income populations and workers who may be exposed to, substantial environmental hazards.

(b) Environmental human health analyses, whenever practicable and appropriate, shall identify multiple and cumulative exposures.

(c) Federal agencies shall provide minority populations and low-income populations the opportunity to comment on the development and design of research strategies undertaken pursuant to this order.

3-302. *Human Health and Environmental Data Collection and Analysis* To the extent permitted by existing law, including the Privacy Act, as amended (5 U.S.C. section 552a):

(a) each federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies shall use this information to determine whether their programs, policies, and activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations;

(b) In connection with the development and implementation of agency strategies in section 1-103 of this order, each Federal agency, whenever practicable and appropriate, shall collect, maintain and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding facilities or sites expected to have substantial environmental, human health, or economic effect on the surrounding populations, when such facilities or sites become the subject of a substantial Federal environmental administrative or judicial action. Such information shall be made available to the public unless prohibited by law; and

(c) Each Federal agency, whenever practicable and appropriate, shall collect, maintain, and analyze information on the race, national origin, income level, and other readily accessible and appropriate information for areas surrounding Federal facilities that are: (1) subject to the reporting requirements under the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. section 11001-11050 as mandated in Executive Order No. 12856; and (2) expected to have a substantial environmental, human health, or economic effect on surrounding populations. Such information shall be made available to the public unless prohibited by law.

(d) In carrying out the responsibilities in this section, each Federal agency, whenever practicable and appropriate, shall share information and eliminate unnecessary duplication of efforts through the use of existing data systems and cooperative agreements among Federal agencies and with State, local, and tribal governments.

Sec. 4-4. SUBSISTENCE CONSUMPTION OF FISH AND WILDLIFE.

4401. *Consumption Patterns.* In order to assist in identifying the need for ensuring protection of populations with differential patterns of subsistence consumption of fish and wildlife, Federal agencies, whenever practicable and appropriate, shall collect, maintain, and analyze information on the consumption patterns of populations who principally rely on fish and/or wildlife for subsistence. Federal agencies shall communicate to the public the risks of those consumption patterns.

4402. *Guidance.* Federal agencies, whenever practicable and appropriate, shall work in a coordinated manner to publish guidance reflecting the latest scientific information available concerning methods for evaluating the human health risks associated with the consumption of pollutant-bearing fish or wildlife. Agencies shall consider such guidance in developing their policies and rules.

Sec. 5-5. PUBLIC PARTICIPATION AND ACCESS TO INFORMATION

(a) The public may submit recommendations to Federal agencies relating to the incorporation of environmental justice principles into Federal agency programs or policies. Each Federal agency shall convey such recommendations to the Working Group.

(b) Each Federal agency may, whenever practicable and appropriate, translate crucial public documents, notices, and hearings relating to human health or the environment for limited English speaking populations.

(c) Each Federal agency shall work to ensure that public documents, notices, and hearings relating to human health or the environment are concise, understandable, and readily accessible to the public.

(d) The Working Group shall hold public meetings, as appropriate, for the purpose of fact-finding, receiving public comments, and conducting inquiries concerning environmental justice. The Working Group shall prepare for public review a summary of the comments and recommendations discussed at the public meetings.

SEC. 6-6. GENERAL PROVISIONS.

6-601. *Responsibility for Agency Implementation.* The head of each Federal agency shall be responsible for ensuring compliance with this order. Each Federal agency shall conduct internal reviews and take such other steps as may be necessary to monitor compliance with this order.

6-602. *Executive Order No. 12250.* This Executive order is intended to supplement but not supersede Executive Order No. 12250, which requires consistent and effective implementation of various laws prohibiting discriminatory practices in programs receiving Federal financial assistance. Noting herein shall limit the effect or mandate of Executive Order No. 12250.

6-603. *Executive Order No. 12875.* This Executive order is not intended to limit the effect or mandate of Executive Order No. 12875.

6-604. *Scope.* For purposes of this order, Federal agency means any agency on the Working Group, and such other agencies as may be designated by the President, that conducts any Federal program or activity that substantially affects human health or the environment. Independent agencies are requested to comply with the provisions of this order.

6-605. *Petitions for Exemptions.* The head of a Federal agency may petition the President for an exemption from the requirements of this order on the grounds that all or some of the petitioning agency's programs or activities should not be subject to the requirements of this order.

6-606. *Native American Programs.* Each Federal agency responsibility set forth under this order shall apply equally to Native American programs. In addition the Department of the Interior, in coordination with the Working Group, and, after consultation with tribal leaders, shall coordinate steps to be taken pursuant to this order that address Federally- recognized Indian Tribes.

6-607. *Costs.* Unless otherwise provided by law, Federal agencies shall assume the financial costs of complying with this order.

6-608. *General.* Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law.

6-609. *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. This order shall not be construed to create any right to judicial review involving the compliance or noncompliance of the United States, its agencies, its officers, or any other person with this order.

William J. Clinton

THE WHITE HOUSE,
February 11, 1994.

August 9, 2001

MEMORANDUM

EPA MAIL

SUBJECT: EPA's Commitment to Environmental Justice

TO: Assistant Administrators
General Counsel
Inspector General
Chief Financial Officer
Associate Administrators
Regional Administrators
Office Directors

The Environmental Protection Agency has a firm commitment to the issue of environmental justice and its integration into all programs, policies, and activities, consistent with existing environmental laws and their implementing regulations.

The Agency defines environmental justice to mean the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision making processes of the government. Among other things, this requires the following:

- (a) Conducting our programs, policies, and activities that substantially affect human health and the environment in a manner that ensures the fair treatment of all people, including minority populations and/or low-income populations;
- (b) Ensuring equal enforcement of protective environmental laws for all people, including minority populations and/or low-income populations;
- (c) Ensuring greater public participation in the Agency's development and implementation of environmental regulations and policies; and
- (d) Improving research and data collection for Agency programs relating to the health of, and the environment of all people, including minority populations and/or low-income populations.

In sum, environmental justice is the goal to be achieved for all communities and persons across this Nation. Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.

The purpose of this memorandum is to ensure your continued support and commitment in administering environmental laws and their implementing regulations to assure that environmental justice is, in fact, secured for all communities and persons. Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities. Application of these existing statutory provisions is an important part of this Agency's effort to prevent those communities from being subject to disproportionately high and adverse impacts, and environmental effects.

In the National Environmental Policy Act of 1969 (NEPA), Congress could not have been any clearer when it stated that it shall be the continuing responsibility of the Federal government to assure for all Americans "safe, healthful, productive and aesthetically and culturally pleasing surroundings."

Integration of environmental justice into the programs, policies, and activities via Headquarters/Regional Office Memoranda of Agreements and Regional Office/State Performance Partnership Agreements is an Agency priority. The Director of the Office of Environmental Justice, Barry E. Hill, and his staff are available to assist you. Barry Hill can be reached at (202)564-2515.

I am positive that each of you will join me in working to secure environmental justice for all communities.

/signed/

Christine Todd Whitman

Details on Scope and Methodology

We performed our evaluation in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States. Our preliminary assessment included reviews and interviews with EPA's Offices of Air and Radiation, Enforcement and Compliance Assurance, and the 10 regional offices, as well as three States that have air credit trading programs.

Field work for this phase of the review was performed between December 2002 and September 2003. The evaluation included Regions 1, 5, 6, 9, and Headquarters. These regions were selected based on preliminary data that indicated that States within these regions had volatile organic compounds trading programs. These trading programs were selected because of the significant health problems associated with these compounds.

We conducted interviews with the Director of the Office of Environmental Justice, Deputy Regional Administrators in the above cited regions, directors from various media offices within the regions we visited, and Environmental Justice Coordinators at the selected regions and at Headquarters.

Included in our evaluation were reviews and analyses of the following documents for the purpose of gaining background information on environmental justice and how it is being implemented in the regions and integrated into day-to-day program activities:

- Executive Order 12898, "Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations," February 11, 1994
- Report issued by EPA Environmental Equity Workgroup to the Administrator, "Environmental Equity - Reducing Risk for all Communities," June 1992
- The 1995 Environmental Justice Strategy
- The 1996 Implementation Plan
- The Toolkit for Assessing Allegations of Environmental Injustice (Working Draft)
- National Academy of Public Administration Report, "Environmental Justice In EPA Permitting: Reducing Pollution in High Risk Communities is Integral to the Agency's Mission," December 2001
- Office of Environmental Justice Annual Reports (1993, 1994, 1996, 1998, and 2000)
- The 2002 Action Plans for Office of Air and Radiation and all regions
- Various articles and studies on environmental justice

We attended an environmental justice training session held in Region 5 to evaluate the topics covered and to determine the comprehensiveness of the training.

We consulted with OIG's Counsel on questions of interpretation on provisions contained in the Executive Order.

We contracted for the services of a GIS consultant. This consultant prepared maps of potential environmental justice areas using the methodologies of Regions 1, 5, and 6. The three methodologies were mapped on the City of Worcester, Massachusetts. These maps were used to demonstrate the effects on communities using the different attributes that identify a potential environmental justice area.

EPA Response to Draft Report



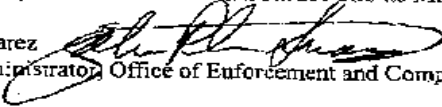
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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MEMORANDUM

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Agency Responses to Proposed Recommendations Provided in the OIG Draft Evaluation Report - No. 2002-000509 entitled, "EPA Needs to Consistently Implement Environmental Justice into its Mission"

FROM: John Peter Suarez 
Assistant Administrator, Office of Enforcement and Compliance Assurance

TO: Kwai Chan
Assistant Inspector General for Program Evaluation

Introduction

The purpose of this memorandum is to provide the U.S. Environmental Protection Agency's (EPA or the Agency) responses to the proposed recommendations offered by the Office of the Inspector General (OIG) in the draft evaluation report entitled, "EPA Needs to Consistently Implement Environmental Justice into its Mission" (No. 2002-000509).

The Agency is committed to fully integrating environmental justice into all EPA programs, policies, and activities, consistent with environmental statutes and their implementing regulations. EPA's environmental justice program is comprehensive and reflects thoughtful strategic planning and implementation by the Office of Environmental Justice, the National Program Managers, and the Regions. The Agency is pleased with the direction of the program and the progress that has been made thus far.

Although the Agency strongly disagrees with many of the major assertions made in the draft evaluation report, we appreciate this opportunity to demonstrate how EPA is complying with the spirit and the letter of Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

As a general matter, the Agency disagrees with a central premise of the draft evaluation report, namely that Executive Order 12898, "requires the Agency to identify and address specific communities and to define disproportionate impact." (p. 9) Executive Order 12898, rather, requires EPA to review all of its programs, policies and activities in order to identify and address the "disproportionately high and adverse human health or environmental effects...on minority populations and low-income populations." This mandate is based on the plain language of the Executive Order and is supported by the accompanying Presidential Memorandum. The Agency, therefore, takes exception to the OIG's assertion that EPA has "reinterpreted" the Executive Order's mandate.

The Agency's responses to the OIG's proposed recommendations are as follows:

OIG Proposed Recommendation 2-1: Issue a memorandum which reaffirms that Executive Order 12898 is the Agency's priority and that minority and low-income populations which are disproportionately impacted will be the beneficiaries of this executive order.

Agency Response: The Agency issued a memorandum on August 9, 2001, in support of the purpose of the Executive Order that unequivocally expressed its commitment to integrating environmental justice into all EPA programs, policies, and activities. Thus, the Agency does not concur with this proposed recommendation for the following reasons.

The proposed recommendation is based on the mistaken premise that Executive Order 12898 requires "the Agency to identify and address specific communities and to define disproportionately impacted." (p. 9) The Agency disagrees with this recommendation because it is contrary to the plain language and intent of the Executive Order. In support of this recommendation, the OIG cites the following language:

"To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies and activities on minority populations and low-income populations in the United States and its territories and possessions...." (OIG's emphasis)

By emphasizing those 7 words (identifying....addressing....disproportionately.... minority populations....low-income populations"), the OIG concludes that the Executive Order requires the Agency to develop a national standard or threshold for defining and/or determining a minority or low-income community. According to the Director of the Office of Environmental Justice, who represented the American Bar Association throughout the development and discussions with the White House Counsel's Office and the Council on Environmental Quality pertaining to Executive Order 12898, this is a strained interpretation of the language, which appears to rest on the word "disproportionately," which was not the intent of the drafters. Following ordinary rules of grammar, the word "disproportionately" modifies the language that immediately follows it. Moreover, grammatically, the phrase "identify and address" does not modify "minority populations and low-income populations" based upon normal sentence structure. Rather, the language of the Executive Order instructs the Agency to identify and address the "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities." This language requires EPA to review all of its programs, policies, and activities in order to identify and address the "disproportionately high and adverse human health or environmental effects....on minority populations and low-income populations." In sum, the Executive Order requires the Agency to conduct internal reviews of its programs, policies, and activities instead of seeking to establish a "brightline" for identifying an "environmental justice community." This is a commonsense interpretation of the language of the Executive Order and not a new interpretation as proffered by the OIG.

Second, the Executive Order does not require the Agency to define "disproportionately impacted" as asserted by the OIG. Indeed, the phrase "disproportionately impacted" is not in the Executive Order. However, the concept is useful for conducting an environmental justice assessment, and the Agency believes that this phrase should be used in reference to certain communities that may be exposed disproportionately to environmental harms and risks and suffer adverse impacts as contemplated by the Executive Order. The Agency has embraced this interpretation, and is seeking advice and recommendations from the National Environmental Justice Advisory Council (NEJAC) at its upcoming meeting (April 13-16, 2004) in New Orleans, Louisiana on how to determine/measure cumulative risks/cumulative impacts. The specific questions that have been developed by the Office of Environmental Justice, the Office of Research and Development, and the Office of Air and Radiation, and formally posed on April 16, 2003, to the NEJAC and its Workgroup are as follows:

"(1) How should the Agency proactively address the issue of using the various existing statutory authorities and their implementing regulations relating to cumulative risks which were identified by

the Environmental Law Institute in their November 2001 research report entitled, “Opportunities for Advancing Environmental Justice: An Analysis of U.S. Statutory Authorities”?

“(2) What factors should the Agency consider when conducting a cumulative risk assessment of vulnerable minority, indigenous, and/or low-income communities disproportionately exposed to environmental harms and risks, and cumulative impacts? These may include, but should not be limited to: (a) multiple durations, pathways, sources, or routes of exposure; (b) multiple effects or impacts; (c) nonconventional stressors or risk factors (e.g., lifestyles, access to health care); and (d) quantification of risks. In addition, what short-term actions should the Agency take to ensure that it can proactively respond to community concerns about the above-stated factors, in parallel with Agency efforts to develop adequate scientific methodology for conducting cumulative risk assessments?

“(3) How should the Agency ensure that vulnerability of certain segments of the population are incorporated into the cumulative risk assessment? In addition, what short-term actions should the Agency take to ensure that it can proactively respond to community concerns related to vulnerability, in parallel with Agency efforts to develop adequate scientific methodology for incorporating this factor into cumulative risk assessments?

“(4) How can the Agency promote more effective participation by vulnerable minority, indigenous, and /or low-income communities disproportionately exposed to environmental harms and risks, and cumulative impacts to improve community health through cumulative risk assessment, particularly during the planning, scoping, and problem formulation phase of a cumulative risk assessment?

“(5) How can the Agency partner with an affected community to more effectively use the results of a cumulative risk assessment to develop appropriate intervention and prevention strategies, including use of models of conducting cumulative risk assessment that promote communities and technical experts working and reaching decisions together?”

“In sum, in order to ensure environmental justice for all communities and tribes, what short-term and long-term actions should the Agency take in proactively implementing the concepts contained in its Cumulative Risk Assessment Framework (i.e., using the concepts of cumulative risk to determine: (a) disproportionate exposure to multiple stressors; (b) the resulting cumulative impacts; and (c) developing appropriate intervention and prevention strategies)?”

Thus, the Agency is actively seeking to clarify how the phrase “disproportionately impacted” should be interpreted and applied at an operational level by EPA, communities, industry, academia, non-governmental organizations, and state, local and Tribal governments.

Third, the Agency has deliberately and consistently sought to ensure that the spirit and intent of the 1994 Executive Order is adhered to. For example, former Administrator Christine Todd Whitman’s August 9, 2001, memorandum, and the Presidential Memorandum accompanying the Executive Order have almost identical language. The former Administrator’s memorandum states in pertinent part that:

“The purpose of this memorandum is to ensure your continued support and commitment in administering environmental laws and their implementing regulations to assure that environmental justice is, in fact, secured for all communities and persons. Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities. Application of these existing statutory provisions is an important part of this Agency’s effort to prevent those communities from being subject to disproportionately high and adverse impacts, and environmental effects.” (Emphasis added)

Whereas, the Presidential Memorandum states in pertinent part that:

The purpose of this separate memorandum is to underscore certain provision[s] of existing law that can help ensure that all communities and persons across this Nation live in a safe and healthful environment. Environmental and civil rights statutes provide many opportunities to address environmental hazards in minority communities and low-income communities. Application of these existing statutory provisions is an important part of this Administration's efforts to prevent those minority communities and low-income communities from being subject to disproportionately high and adverse environmental effects." (Emphasis added)

Based upon the above, it is clear that the Agency has not reinterpreted the Executive Order. Rather, the Agency seeks to ensure that all communities and persons across this Nation secure environmental justice and live in safe and healthful environments. This does not suggest that the Agency is "de-emphasizing minority and low-income populations" as proffered by the OIG. (p. 10) Most significantly, it is clear that both memoranda specifically indicate the use of existing environmental laws to address environmental justice issues. As a result, the Agency has focused a considerable amount of attention and resources to integrate environmental justice into EPA's decisionmaking processes. The Office of Environmental Justice provided this information to the OIG reviewers at a September 24, 2002, meeting, and in response to a series of basic questions. (Attachment A, See Response No. 2)

Fourth, it should be noted that the Executive Order specifically states that:

"6-609 Judicial Review. This order is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person." (Emphasis added)

Therefore, the Agency disagrees with the OIG's assertion at p. 7 that, "EPA has not ensured on a consistent basis that minority and low-income populations have been afforded the benefits and protections intended by the Executive Order." No special benefits and protections have been created or conferred by the Executive Order. Thus, as stated by the OIG at p. 10, consistent with "EPA's overall mission, as set forth in the 1997 Strategic Plan, which is to ensure that: 'All Americans are protected from significant risks to human health and the environment where they live, learn and work,'" the Agency firmly believes that its commonsense interpretation of the Executive Order's plain language and its subsequent activities manifest compliance rather than non-compliance as proffered by the OIG.

In sum, issuing a memorandum which reaffirms that Executive Order 12898 is the Agency's priority and that minority and low-income populations which are disproportionately impacted will be the beneficiaries of this Executive Order is not necessary. The Agency's focus should be that of implementing the 1994 Executive Order, the accompanying Presidential Memorandum, and the former Administrator's memorandum, consistent with existing environmental laws and their implementing regulations.

OIG Proposal Recommendation 2-2: Establish specific time frames for the development of the previously mentioned definitions, goals and measurements that will ensure that the 1994 Executive Order is complied with in the most expeditious manner.

Agency Response: The Agency does not concur with this proposed recommendation for the following reasons.

The 1994 Executive Order required the Agency to complete a number of tasks including: (1) chairing the Interagency Working Group; and (2) developing an Environmental Justice Strategy and submitting that document to the President. As pointed out in the OIG draft evaluation report at p. 8, these tasks have been accomplished. Several of the other tasks are ongoing which include: (1) engaging in human health and environmental research and analysis; (2) engaging in human health and environmental data collection and analysis; (3) reviewing consumption patterns of

fish and wildlife of various populations; and (4) expanding opportunities for public participation and access to information. Additionally, the Executive Order required the Federal government to “develop interagency model projects on environmental justice that evidence cooperation among Federal agencies.” (Section 1-102 (b)(7)) As pointed out by the OIG at p. 4, the Office of Environmental Justice serves as the lead on the Federal Interagency Working Group, and has been the catalyst behind developing 30 interagency model projects on environmental justice. A description of the 30 interagency model projects is available on the Office of Environmental Justice’s Web site at: <http://www.epa.gov/compliance/environmentaljustice/interagency/index.html>. Accordingly, the Agency continues to focus on implementing all aspects of the Executive Order in a coordinated and comprehensive manner. These efforts have required collaboration across the Agency. Despite many impediments over the 12 years of the program, EPA has made tremendous strides in integrating environmental justice into all programs, policies, and activities at EPA and other Federal agencies, through the Office of Environmental Justice.

With respect to several of the ongoing tasks described above, the Agency, through the Office of Environmental Justice, has sought advice and recommendations from the NEJAC pertaining to specific broad-based public policy questions as follows:

- “Advancing Environmental Justice Through Pollution Prevention” – a report developed from the NEJAC meeting of December 9-13, 2002, in Baltimore, MD. Transmitted to EPA on July 9, 2003.
- “Fish Consumption and Environmental Justice” – a report developed from the NEJAC meeting of December 3-6, 2001, in Seattle, WA. Transmitted to EPA on November 19, 2002.
- “NEJAC Report on Integration of Environmental Justice in Federal Programs” – a report developed from the NEJAC meeting of December 11-14, 2000, in Arlington, VA. Transmitted to EPA on June 25, 2002.
- “Environmental Justice and Community-Based Health Model Discussion” – a report developed from the NEJAC meeting of May 23-26, 2000, in Atlanta, GA. Transmitted to EPA on February 8, 2001.
- “Environmental Justice in the Permitting Process” – a report developed from the NEJAC meeting of November 30-December 2, 1999, in Arlington, VA. Transmitted to EPA on August 3, 2000.
- NEJAC’s “Model Plan for Public Participation” – transmitted to EPA in February 2000.

Thus, it is clear that the Agency continues to carry out its responsibilities set forth in the Executive Order. More importantly, the Agency continues to utilize effectively its Federal advisory committee, and seeks advice and recommendations to specific public policy questions related to environmental justice. All of these documents and the proceedings of the NEJAC meetings are available to the public on the Office of Environmental Justice’s Web site at: http://www.epa.gov/compliance/resources/publications/ej/nejac_publications.html.

A key component of the Agency’s efforts to integrate environmental justice into all policies, programs, and activities, consistent with the Executive Order, and the former Administrator’s August 9, 2001, memorandum have been the development of comprehensive strategic Environmental Justice Actions Plans by Regional and Program Offices. These Action Plans are based on a detailed strategic action plan template developed by the Office of Environmental Justice in conjunction with the Environmental Justice Executive Steering Committee. Over the course of the past 3 years, Regional and Program Offices have developed 2 sets of Environmental Justice Action Plans. In June 12, 2003, the Office of Environmental Justice advised Deputy Regional Administrators and Deputy Assistant Administrators that:

“The two most significant changes [from the initial template] are the : (1) conversion of the Action Plan to a two-year cycle; and (2) development of common measures of performance to best gauge the overall success of EPA’s Environmental Justice Program. The new approach will provide greater balance between consistency across all environmental justice efforts and flexibility in each program.”

This memorandum and the attachments were also sent to the OIG at the same time (Attachment

B). Thus, the goals and common measures of performance for integrating environmental justice have been established by the Office of Environmental Justice, National Program Managers and Regional Offices, consistent with the Executive Order and the former Administrator's memorandum.

In sum, the OIG's proposed recommendation which calls for establishing specific time frames for the development of goals and measurements is duplicative of existing goals and measurements that have been established by the Office of Environmental Justice, and each National Program Manager and Regional Office. The Agency continues to focus on implementing all of its responsibilities set forth in Executive Order 12898, and the former Administrator's memorandum.

OIG Proposed Recommendation 2-3: Develop and articulate a clear vision on the Agency's approach to environmental justice. This vision should focus on environmental justice integration and provide objectives that are clear, precise, and focused on environmental results.

Agency Response: The Agency does not concur with this proposed recommendation for the following reasons.

First, the former Administrator's memorandum clearly spelled out the vision for the Agency's efforts to integrate environmental justice. She specifically stated that:

"The Agency defines environmental justice to mean the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decisionmaking processes of government. Among other things, this requires the following:

(a) Conducting our programs, policies, and activities that substantially affect human health and the environment in a manner that ensures the fair treatment of all people, including minority populations and/or low-income populations;

(b) Ensuring equal enforcement of protective environmental laws for all people, including minority populations and/or low-income populations;

(c) Ensuring greater public participation in the Agency's development and implementation of environmental regulations and policies; and

(d) Improving research and data collection for Agency programs relating to the health of, and the environment of all people, including minority populations and/or low-income populations.

"In sum, environmental justice is the goal to be achieved for all communities and persons across this Nation. Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards and equal access to the decision-making process to have a healthy environment in which to live, learn, and work."

(Emphasis added)

As a direct result of this clearly articulated vision, the Regional and Program Offices developed their Environmental Justice Action Plans with goals and measures that seek to integrate environmental justice into the fabric of EPA which focus on environmental results. For example, in its FY2004-2005 Action Plan, for "Objective 1.

Risk Reduction and Protection of Environment and/or Public Health," Region 1 intends to continue its initiative to eliminate childhood lead poisoning in Dorchester and Roxbury, which are described as "areas of concern." Region 1's output is to ensure that there are no new cases of elevated blood lead levels higher than 20mg/dl and an annual percentage decrease each year. As another example, in its FY2004-5 Action Plan, Region 8 intends, as its stated objective, to reduce the risk of exposure to environmental hazards to migrant farm workers by conducting Worker Protection Standard inspections. Region 8 seeks to reduce the exposure of workers at risk from drinking nitrate-laden water. It is clear that Regions 1 and 8, and all other Regional Offices are focused on achieving environmental results in their comprehensive strategic Action Plans.

All of this information related to the Action Plans is available to the public on the Office of Environmental Justice's Web site at: <http://www.epa.gov/compliance/resources/reports/actionplans/ej/index.html>.

In sum, the OIG's proposed recommendation for the Agency to develop and articulate a clear vision that provides objectives that are clear, precise, and focused on environmental results has already been done. The Agency's focus over the next several years will be implementing all Regional Office and Program Office comprehensive strategic Action Plans.

OIG Proposed Recommendation 2-4: Develop a comprehensive strategic plan for environmental justice. The plan should include a comprehensive mission statement that discusses, among other things, the Agency's major functions and operations, a set of outcome-related goals and objectives.

Agency Response: The Agency does not concur with this proposed recommendation for the following reasons.

First, as pointed out by the OIG at p. 3, "In 1995, EPA issued its Environmental Justice Strategy to implement the Executive Order. The stated purpose of the Strategy was to ensure the integration of environmental justice into the Agency's programs, policies, and activities consistent with the Executive Order. In August 2001, EPA Administrator Christine Todd Whitman issued a memorandum reaffirming EPA's commitment to achieving environmental justice." The OIG failed to mention, however, that the Agency also issued in April 1996 its "Environmental Justice Implementation Plan" which supplemented the Strategy by providing timetables and realistic measures of success.

In the March 25, 2003, response to the following OIG follow-up question -- What is the status of the 1996 Environmental Justice Implementation Plan? Have the goals in the plan been met? If not, what are the target dates for completion? -- the Office of Environmental Justice stated that:

"The 16 specific goals of the Environmental Justice Implementation Plan were written as ongoing and aspirational goals. However, the Implementation Plan does identify specific 'Key Efforts...."

"As provided in the Implementation Plan, the lead Office or Region designated for each Key Effort was to measure the progress made, and report its success to the Office of Environmental Justice. The annual and biennial reports covering the years for which [the] Implementation Plan was in effect, and which are based on submissions from the headquarters and regional offices, are available for review online at the following:

http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html."

(Attachment N)

In short, the Agency continues to focus on environmental justice integration as reflected in the Regional and Program Office Action Plans. Therefore, the need to develop and issue a new comprehensive strategic plan is not warranted since, "The whole is equal to the sum of its parts," and the Template of the Action Plans provides the necessary coordination.

As stated previously, the Agency has already embarked on a comprehensive strategic plan for integrating environmental justice by requiring all Regional and Program Offices to develop Environmental Justice Action Plans and implementing what is contained in those plans. The progress in integrating environmental justice will be reflected in the FY2003 Progress Reports, which are due to the Office of Environmental Justice in February 2004.

In sum, this proposed recommendation is unnecessary because it is duplicative of existing efforts under Regional and Program Office Environmental Justice Action Plans.

OIG Proposed Recommendation 2-5: Provide the regions and program offices a standard and consistent definition for an environmental justice area, with instructions on how the Agency will implement and operationalize environmental justice into the Agency’s daily activities. This could be done through issuing guidance or a policy statement from the Administrator.

Agency Response: The Agency does not concur with this proposed recommendation for the following reasons.

First, the Agency vigorously objects to the “outline of how the environmental project should work” as reflected in Figure 1.1 at p. 3. The OIG’s flowchart indicates that only after identifying minority communities or low-income communities will the Agency take action. The EPA is an environmental regulatory agency that administers environmental laws to protect human health and the environment for all communities, and its decisions should not be based on attempting to transpose a civil rights paradigm into an environmental law paradigm. If this approach were accepted as the way for the Agency to do business, the following questions arise because the OIG is proposing to use race, income or economic status as the initial basis for Agency action or inaction:

- What if the minority community has been identified as having 26.5 percent minorities in the particular community and 26.5 percent is the “threshold” or “brightline” established by EPA for defining what is or what is not a so-called “environmental justice community”?
- What happens if another community has 26.4 percent minorities?
- Does this mean that the Agency will not expend any resources because the “threshold” or “brightline” has not been reached?
- Do the environmental laws and their implementing regulations that the Agency administers provide EPA with the authority to make decisions on the basis of race or economic status alone?

This proposed OIG approach, although quite simple and easy to apply, strains credulity, and is also not practicable. Environmental laws and their implementing regulations are not crafted with this oversimplified approach to administering those laws that are designed for the protection of the general public. Both the Presidential Memorandum and the former Administrator’s memorandum spoke in terms of using existing environmental laws and their implementing regulations to address the public health and environmental concerns/issues for all communities, including minority and low-income communities. Neither of those documents suggests or requires that there must be any arbitrary number/threshold/brightline that EPA needs to develop which would cause the Agency to act or not to act depending solely on the racial makeup or economic status of the residents of a community. Such demographic data alone should not control or determine Agency action or inaction.

Second, of course, the race or economic status of the residents of a community are important factors in identifying potential risks or harms, but this demographic information are not the only factors that the Agency needs to consider and analyze before making any decision to act or not to act, nor does the Agency have the statutory authority to make decisions based on race and income demographic data alone. The Agency’s draft “Toolkit for Assessing Potential Allegations of Environmental Injustice” (which is currently undergoing a public comment period until March 4, 2004) points out that other information/data are equally important (e.g., Social, Health, Economic and Environmental Indicators, in addition to Public Participation and Access to Information). (See Attachment C) The draft Toolkit provides tools that EPA staff can use in addressing a broad spectrum of environmental justice issues. Specifically, the draft Toolkit presents an approach for conducting a preliminary assessment of such potential allegations. It was never intended to provide the overly simplistic “brightline” since environmental justice as a major public policy issue is much more than mere demographic information.

Although the comment period has not ended, the Office of Environmental Justice has not received any negative comments thus far regarding the draft Toolkit. One of the commenters is Wilma Subra who is not only a current member of the NEJAC’s Executive Council but also serves as the Vice Chair of EPA’s National Advisory Council on Environmental Policy and Technology. More importantly, she is a representative of the Louisiana

Environmental Action Network, an environmental justice organization. On October 9, 2003, she sent an e-mail which states as follows:

“Thank you for the opportunity to review the EJ Toolkit for EPA employees. The document sets forth an excellent system for identifying and responding to environmental injustice situations. The incorporations of social and economic indicators in addition to environmental and health indicators is critical to evaluating injustices in EJ communities.

“EPA is to be commended for committing the resources necessary to compiling the toolkit. Through the implementations of the toolkit, EJ communities will benefit from fewer insults.” (Attachment D)

Consistent with the Agency’s strategy, Vice Chair Wilma Subra’s e-mail regarding the draft Toolkit indicates, in her view, that race and income demographic information alone (which is part of the Social Indicators) should not be the sole determining factors in conducting an environmental justice assessment.

In sum, the OIG’s proposed recommendation that EPA should provide a threshold number or “brightline” for defining/determining what is an “environmental justice community” misses the point entirely. There is, indeed, many factors/information/data that the Agency must consider in the comprehensive decisionmaking processes that do not begin or rest solely on the demographic data pertaining to any particular community.

OIG Proposed Recommendation 2-6: Ensure that the comprehensive training program currently under development includes standard and consistent definitions of the key environmental justice concepts (i.e., low-income, minority, disproportionately impacted) and instructions for implementation.

Agency Response: The Agency concurs with this proposed recommendation in part while, at the same time, does not concur with certain aspects for the following reasons.

First, the Agency, with the Office of Environmental Justice as the lead, has a comprehensive environmental justice training program which includes the highly acclaimed “Environmental Justice Fundamentals Workshop.” Information regarding the Workshop is available on the Office of Environmental Justice’s Web site at: <http://www.epa.gov/compliance/training/index.html>. The Office of Environmental Justice also serves as the lead for developing environmental justice training for permit writers in the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act permitting programs. Moreover, the Office of Environmental Justice serves as the lead for the inspector training for the Office of Enforcement and Compliance Assurance. Finally, the Office of Environmental Justice is currently assisting other offices in developing environmental justice training, e.g., the Office of Pesticides and Toxic Substances; the Office of Water; the Office of International Affairs; and the Office of Enforcement and Compliance Assurance. The Agency has demonstrated its commitment to a comprehensive training program, and believes that the greater number of EPA employees who receive training will help to integrate environmental justice into all programs, policies, and activities.

Second, for the reasons stated previously, the Agency does not believe that “standard and consistent definitions of the key environmental justice concepts (i.e., low-income, minority, disproportionately impacted) and instructions for implementation” are needed nor warranted. The Agency categorically rejects the OIG’s assertion at p. 12 that environmental justice “training has had limited success” and that “The program’s lack of definition of terms and inconsistent training contributed to the lack of success.” In fact, to the contrary, the environmental justice training has been quite successful given participant evaluations.

The Fundamentals of Environmental Justice Workshop, for example, has trained over 2,500 people across the country. The Fundamentals Workshops conducted at Headquarters by the Office of Environmental Justice and the Office of Air and Radiation have received an overall evaluation score of 9.6 out of a possible 10. The Fundamentals Workshop has received the National Enforcement Training Institute’s highest ratings. There have also been over 150

people who have participated in the “Train-the-Trainer” Workshop with participants from Federal, state and local governments, academia, business and industry, and grassroots organizations.

The following is a very small sample of quotes and remarks taken directly from the evaluations of the participants from both workshops:

“Fundamentals Workshop” comments:

- “All of the instructors were very knowledgeable on the information they presented. This course was an eye opener and I suggest everyone at EPA take it.” Clifton Townsend, Office of Water.
- “Very educational and informative which created an awareness in issues and concerns to all of us. I will think environmental justice in my work as well as in my community. I will cultivate the values of environmental justice to others.” Abdallah Khasawinah, Office of Pollution Prevention.
- “I really liked the variety of learning modules used in the course including the variety of speakers. I also liked the open and relaxed atmosphere created and maintained throughout the course. This is a great course.” Carolyn Scott Office of Pollution Prevention and Toxic Substances.
- “This environmental justice workshop has opened my eyes to the injustices that could be directly attributed to the decisions I make within my organization, as a result I want to learn more and become more involved.” Tawanda Spears, Office of Pollution Prevention.
- “Great job on a complex and sometimes controversial topic.” Shrabhi Shah, Office of Water.
- “I found the workshop to give me a better understanding of environmental justice. I feel more comfortable discussing the topic of environmental justice with management and promoting it within my organization.” Elaine Johnson, Office of Pollution Prevention and Toxic Substances.
- “This was a great and essential training that should be mandatory for management and heavily encouraged for all employees.” Sabrina Johnson, Office of Air and Radiation.
- “This class was a wonderful introduction to environmental justice. I think the information gained will prove useful to assisting me in my current job.” Artensie Flowers, Office of Pollution Prevention and Toxic Substances.
- “Thank you. This is a super course. I hope I can take the Train the Trainer course. I plan to share the course materials within my agency.” Sarah Bridges, United States Department of Agriculture.
- “This course taught me that environmental justice is many things to different people. I gained a lot of useful information. Even though I don’t work on environmental justice issues, I enjoyed the course and would recommend it to others.” Victoria Green, Office of Water.
- “I thoroughly enjoyed myself. This is hands down the best training I’ve ever taken since I started at EPA.” Marlisa Stewart, Region 5.

“Train-the -Trainer” Workshop comments:

- “This was an excellent course, great job.” Gloria Tatum, Mississippi Department of Environmental Quality.
- “Thanks for an informative and entertaining experience.” Lora Lee Schroeder, U.S. EPA.
- “Great Job, Best Training Ever.” Sedar Ertep, U.S. EPA
- “Excellent Course.” Michael Spring, U.S. EPA- OEI
- “Excellent course.” Linda Diane Long, North Carolina Department of Environment and Natural Resources.
- “I really enjoyed this workshop.” Donna Bledsoe, U.S. EPA-OSWER
- “This was fabulously presented. I both enjoyed and learned the information with ease.” Dr. Soloman Pollard, U.S. EPA.
- “I really enjoyed this course.” Keera Cleare, Army Environmental Policy Institute.
- “This is the best training class/seminar I have ever experienced.” Nacostia C. Ward, U.S. EPA
- “I loved this training and I look forward to working with EPA in the future.” John Taylor, Southern Organizing Committee.

- “This was a great course. I like the diversity of participants and the learning theories.” Priscilla Oliver, U.S. EPA.
- “The entire workshop was helpful to me. I really enjoyed the interaction and role play exercises.” Toshia King, U.S. EPA - OSWER.

In sum, the environmental justice training has indeed been successful without the use of a definition of an “environmental justice community.” All of the evaluation forms are available to the OIG. The Office of Environmental Justice understands that it will, however, take a number of years to quantify the impact of the environmental justice training on the day-to-day work of EPA employees.

OIG Proposed Recommendation 2-7: Perform a comprehensive study of program and regional offices’ funding and staffing for environmental justice to ensure that adequate resources are available to fully implement the Agency’s environmental justice plan.

Agency Response: The Agency concurs with this proposed recommendation for the following reasons.

On June 12, 2002, the Office of Environmental Justice provided the Regions and Program Offices with it comprehensive “Suggestions On Developing An Effective Environmental Justice Program.” (Attachment E) Since the Office of Environmental Justice cannot dictate to any office how its limited resources should be expended, the intent of the document was to provide the Regions and Program Offices with the Office’s perceptions regarding the basic components of an effective environmental justice program. Each Regional and Program Office has been advised to implement its program based on this guidance to more fully determine the nature and extent of their environmental justice integration initiatives.

The Office of Environmental Justice retained the services of Tim Fields, Vice President of Tetra Tech EMI, (and former Assistant Administrator of the Office of Solid Waste and Emergency Response) to help the Agency refine the Action Plan approach and to conduct discussions with each Deputy Regional Administrator and Deputy Assistant Administrator, and others regarding developing performance measures for their program and to prepare a summary on those interviews (all of this information and documents have been provided to the OIG reviewers). (Attachment Q) As a follow-up to this work and in response to the OIG recommendation, the Office of Environmental Justice will have Tetra Tech EMI conduct a comprehensive study of Regional and Program Office funding inconsistencies and staffing disparities for environmental justice. Once the study has been completed, the Agency will confer with the OIG regarding the recommendations and EPA’s response to those recommendations.

OIG Proposed Recommendation 2-8: Clearly define the mission of the Office of Environmental Justice and provide Agency staff with an understanding of the roles and responsibility of the office. While doing so, assess whether the Office of Environmental Justice, an office based on a non-traditional regulatory/statutory concept, is best located in OECA or would be better in another organizational location.

Agency Response: The Agency does not concur with this recommendation for the following reasons.

First, the roles and responsibilities of the Office of Environmental Justice have not changed since its creation: they have evolved over the last 12 years because of the maturation of the environmental justice program at the Agency.

In the Green Border review package to establish the Office of Environmental Equity, the predecessor office to the Office of Environmental Justice, that cleared September 30, 1992, the activities were described as follows:

- “advising the Administrator on the impacts of environmental risks, programs, regulations and legislation on racial minority and low-income populations;

- establishing an Agency equity program, coordinating with Environmental Equity Cluster activities, tracking implementation of Equity Workgroup and Cluster activities, and preparing periodic progress reports;
- administering the Minority Academic Institutions (MAI) Program by implementing MAI Task Force recommendations; and enhancing MAI interaction with the EPA through technical assistance and technology transfer;
- enhancing environmental-equity outreach, training and education programs for [the] public and other groups through conferences, symposia and meetings;
- providing minority and low-income communities with technical and financial assistance for community/economic development activities to address environmental equity;
- serving as a centralized clearinghouse and dissemination point for equity information to EPA staff and the public;
- developing environmental equity training for EPA managers and staff;
- providing interagency coordination of equity programs;
- supporting consultation among EPA and outside equity organizations; and
- supporting key research and environmental risk reduction projects.” (Attachment F)

In light of the above, the Agency disagrees with the OIG’s statement that the Office of Environmental Justice was, “[G]enerally regarded as a public relations office until recently....” It is true that in 1992, the issue of environmental justice was new and controversial and people had a negative view of the issues because of the allegations of “environmental racism.” It was, therefore, necessary for the Office of Environmental Equity at that time to focus a great deal on attention on seeking to address the negative perceptions about the issue of many segments of the public. However, perceptions evolved as the issue also evolved. Beginning in 1998 as the current Director assumed the position, the emphasis of the program changed, but not the role, responsibilities, and mission of the Office. Thus, the roles and responsibilities of the Office remain the same as defined in September 1992. Therefore, “clearly defining the mission of the Office of Environmental Justice and providing the Agency staff with an understanding of the roles and responsibilities of the office” is unnecessary.

Second, it is true that, “the Office of Environmental Justice has become more proactive with the program and regional offices, attempting to coordinate various efforts to integrating environmental justice” as stated by the OIG at p. 14. That is why the Director of the Office of Environmental Justice shared with the OIG reviewers the Office’s 5-step strategy (e.g., [1] Advice and Recommendations; [2] Analysis, legal and administrative; [3] Training; [4] Implementation; and [5] Evaluation) for integrating environmental justice into the RCRA, CAA, and CWA permitting processes. (Attachment G) In a March 14, 2002, e-mail, the Director of the Office of Environmental Justice explained the 5-step strategy to the Deputy Regional Administrators, and the Deputy Assistant Administrators. (Attachment H) The Agency is just beginning the “Implementation” stage of the 5-step strategy.

The Director of the Office of Environmental Justice also shared with the OIG reviewers a 1-page document with the heading, “Everything is connected to everything else.” (Attachment I). The purpose of this document is to attempt to depict many of the activities that the Office of Environmental Justice is engaged in under the headings: (1) Stakeholder Communication; (2) Studies/Reports; (3) Tool Making; (4) Support; and (5) Training. Underlying each and every one of these activities is the current primary emphasis of the Office, which is to assist the Agency in integrating environmental justice into the fabric of EPA’s day-to-day work and decisions.

Both the 5-step strategy and the “Everything is connected to everything else” diagrams have been shared with EPA employees and the public in countless presentations. Therefore, there is or should be no misunderstanding of the roles and responsibilities of the Office. Moreover, the Director of the Office of Environmental Justice has provided Agency staff the Office’s priorities for FY02 and FY03 via memoranda. (Attachments J and K)

Additionally, the Director of the Office of Environmental discussed the Office’s strategic planning process with the OIG reviewers. A revised draft of the current strategic plan, which is attempting to match individual

employee's performances with various segments of the strategic plan and the Agency's new goal structure which is still under development, is attached. (Attachment L) Therefore, the OIG's statement at p. 11 that, "While most program offices and regions reviewed have embarked upon some form of strategic planning, the Office of Environmental Justice has not," is, most assuredly, not accurate.

Based on the above, the Office of Environmental Justice does, in fact, have a clear mission, roles and responsibilities. It should also be clear that no office, in government or in the private sector, remains static: otherwise, there is no progress. The Office of Environmental Justice's emphasis on its different responsibilities have evolved over the last 12 years based upon the facts and circumstances at the time confronting the Agency, in general, and the Office, in particular.

Third, with respect to the location of the Office of Environmental Justice in OECA, the Agency does not believe that moving the Office to some other AA-ship or to the Administrator's Office is needed primarily because the reasons why OECA was chosen as the home for the Office are still valid. In the August 1995 package for the "Request for Change in Organization Structure" it was stated that:

"The move of the Office of Environmental Justice from OARM to OECA has been under consideration for more than 3 years. At the time that OEJ was first established, outside community organizations and stakeholders in environmental justice issues questioned the rationale of placing a multimedia programmatic office in an almost exclusively administrative management organization. The need to place OEJ in a multimedia organization has been under discussion for some time. Therefore, this realignment is in keeping with the duties and responsibilities currently a part of the OEJ and does not interfere with any current or future operations. OECA will not incur any changes in its operations as a result of absorbing OEJ. The move provides an opportunity for environmental justice, enforcement and compliance assurance to better coordinate their activities to more effectively address the needs of impacted communities." (Emphasis added) (Attachment M)

The move of the Office of Environmental Justice to OECA came about as a result of then — Administrator Carol Browner hiring a consultant to develop and submit an options paper for her consideration. Following is a description of the deliberative process regarding relocation of the Office which was contained in the "Request for Change in Organization Structure" package:

"Because outside groups played a major role in making EPA aware of the need for environmental justice, these same groups have remained strong advocates for how the Office is organized and have served as advisers to the Administrator on these issues. In the summer of 1994 the Administrator hired a consultant, Dr. Michael Gelobter, to evaluate EPA's approach at incorporating environmental justice into its activities. Dr. Gelobter was requested to develop an options paper on how the Agency could assimilate environmental justice into day-to-day activities and specifically into which organization the Office of Environmental Justice could be placed to best continue EPA's progression toward environmental protection for all communities. Dr. Gelobter's report was submitted in October 1994 and has been under consideration since that time.

"Numerous discussions were held among the Administrator, Senior Managers and members of the National Environmental Justice Advisory Council (NEJAC), a Federal Advisory Committee to the Administrator on environmental justice issues. OECA was among the recommended offices for OEJ placement. The Administrator announced her decision for the OEJ realignment at the NEJAC meeting on July 25, 1995." (Emphasis added) (Attachment M)

In sum, placement of the Office of Environmental Justice in OECA was a good decision on November 6, 1994, and remains a good decision today since the goal was and is "to best continue EPA's progression toward environmental protection for all communities" in a multi-media organization. Again, as pointed out in the Agency's

response to the OIG's proposed recommendation 2-1, seeking "environmental protection for all communities" does not indicate any retreat whatsoever by the Agency from addressing the issue of environmental justice or that EPA is "de-emphasizing minority and low-income populations" as proffered by the OIG at p. 10.

OIG Proposed Recommendation 2-9: Develop a systematic approach to gathering accurate and complete information relating to environmental justice that is usable for assessing whether progress is being made by the program and region offices.

Agency Response: The Agency does not concur with the proposed recommendation for the following reasons.

In a March 25, 2003, e-mail to the OIG, the Director of the Office of Environmental Justice stated that, in conjunction with the Environmental Justice Executive Steering Committee, a "Template and Instructions for Action Plans to Integrate Environmental Justice" was developed. (Attachment N) The Template provided the 7 areas for the Office of Environmental Justice to conduct an assessment of the Regional and Program Offices environmental justice programs. The Template identified specific objectives that Regional and Program Offices should address which included:

- Management accountability;
- Internal organizational engagement;
- External stakeholder engagement;
- Data collection, management, and evaluation;
- Professional and organization development;
- Environmental justice assessment process; and
- Program evaluation.

This Template sets forth a systematic approach by which the Office of Environmental Justice gathers accurate and complete information relating to progress being made by Regional and Program Offices in integrating environmental justice into their decisionmaking processes. On December 18, 2002, the Office of Environmental Justice developed specific assessment questions to be used by the Environmental Justice Executive Steering Committee's Accountability Workgroup regarding the Action Plans. (Attachment O) These assessment questions serve as the vehicle for gathering accurate and complete information relating to the integration of environmental justice that is usable for assessing whether progress is being made by the Regional and Program Offices.

OIG Proposed Recommendation 3-1: Develop a standard strategy that limits variations relating to GIS applications, including use of census information, determination of minority status, income threshold, and all other criteria necessary to provide regions with information for environmental justice decisions.

Agency Response: The Agency does not concur with this proposed recommendation for the following reasons.

First, the Agency believes that the OIG's conclusions pertaining to the environmental justice assessment methodology are severely flawed. The fundamental flaw stems from the mistaken interpretation of what the Executive Order actually requires of EPA, in particular, and the Federal government, in general. As pointed out earlier in this memorandum, the Executive Order does not call for identifying and addressing minority populations and low-income populations but rather "identifying and addressing...disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations..." The OIG's mistaken interpretation of the language was bound to lead to flaws in the understanding of the approach towards, and the methodology for the Agency conducting an environmental justice assessment. While terms such as "environmental justice communities", "environmental justice individuals", "potential environmental justice communities", "environmental justice potential areas of concern", or "environmental justice decisions" are

expedient, it is more accurate to describe the work of the Agency as that of integrating environmental justice considerations into the Agency's decisionmaking processes.

The decisionmaking processes are predicated upon the options for action or inaction that the Agency may be considering in a given situation, and any action must be based on the applicable statute and implementing regulations, as appropriate. This allows the Agency to move beyond the dead-end questions relating to what is or is not an "environmental justice community;" who are or who are not "environmental justice individuals;" what are or are not "potential environmental justice communities;" or what are or are not "environmental justice potential areas of concern." The Agency, in sum, cannot make "environmental justice decisions" in a vacuum as suggested by the OIG. Moreover, from the perspective of using geographic information systems and geographical databases, it is more appropriate that the Agency uses the term "geographic areas" which is much more precise than the question - begging word "community." Many of the issues raised by the OIG have been addressed by the Environmental Justice/GIS Workgroup and reflected in the Environmental Justice GIS Assessment Tool which is available to the public on the Office of Environmental Justice's Web site at: <http://www.epa.gov/compliance/environmentaljustice/assessment.html>.

Second, the OIG determined that there was some variation in methodology from region to region. However, there was no analysis provided by the OIG of the full nature of the variations and why the variations existed in the first place or the implications of each variation. Thus, it is premature for the OIG to conclude whether or not such variations are positive or negative unless there is some cogent analysis of why the Regional Office(s) chooses a particular methodology. The OIG must understand and appreciate that conditions vary greatly from region to region, and, therefore, it is most appropriate for the regions to determine how best to understand the conditions in their areas of jurisdiction and responsibility. Simply applying a methodology used by one or two other regions and forcing it to fit in another region without analysis begs the question. The variations include differential environmental conditions, population groups, institutional histories and relationships, and require different approaches and strategies. The OIG draft evaluation report unfortunately, however, simply conveys the impression that such variations are negative merely because the Agency has not come up with some hard and fast number regarding the "determination of minority status, income threshold, and all other criteria necessary to provide regions with information for environmental justice decision." The Deputy Regional Administrators (in addition to the other members of the Environmental Justice Executive Steering Committee) determined after a full day of discussion and deliberation that they believed that flexibility in methodology was what they needed to conduct these environmental justice assessments. The Action Item Summary Report on the April 17, 2002, facilitated dialogue states that:

"Handbook as a Toolbox

- Unanimity that the document would be used as a toolbox which offers a range of tools and approaches for conducting an environmental justice assessment.
- OEJ will make changes to the document to explicitly reflect this intended use, and include specific language (see Region 9's suggested wording in Tab 8 of the briefing binder) to indicate that each region has the flexibility to make its own judgment regarding when and how the tools will be used.
- Somewhere in the assessment process, there is a nexus between environmental impacts and demographics. The sequencing may vary and, depending on the surrounding facts and circumstances, the more in-depth analysis may start at different points, but the end result is the same regardless of approach.

Thresholds

- The participants reached a conscious decision to be silent on the issue of thresholds. There will not be a national definition for thresholds. No "brightline."
- The document should maintain the demographic metrics to help Regions reach their own decisions.
- The participants approved the existing language and metrics in the draft document, and asked OEJ to ensure this decision is reflected explicitly and consistently throughout the document. (OEJ will also take out references to "culture" and "education" that were previously proposed by some regions but keep "race" and "income" as some of the metrics.)" (Emphasis added) (Attachment P)

Third, there is a major distinction between a “standard approach” and a “systematic approach”. The OIG, on one hand, has recommended that a standard approach should be used to determine what is an “environmental justice community” because it has found that variations exist among the regions although it failed to point out in the analysis why these variations are, in fact, negative. The Agency, on the other hand, has determined that the challenges of effectively integrating environmental justice considerations into all policies, programs, and activities requires a systematic approach to account for such variations. Uniformity is not the most effective approach in the Agency’s view.

Fourth, the Agency strongly believes that the OIG did not accurately quote the statement of the Director of the Office of Environmental Justice because he has repeatedly argued for a systematic approach to addressing the issue of environmental justice. In the September 24, 2002, response to the OIG question — How are “potential environmental justice communities” identified and what are the benefits or implications of being so designated?— he stated that the:

“OEJ has developed a proposed draft reference guide entitled, ‘Toolkit for Assessing and Addressing Potential Allegations of Environmental Injustice,’ which provides tools that EPA staff can use in addressing a broad spectrum of environmental justice issues raised by a community or other stakeholders. Specifically, the proposed Draft Toolkit presents an approach for conducting a preliminary assessment of such allegations. The Methodology for Environmental Justice Assessment, is found at Chapter 4. Attached. Because of demographic differences, and the unique, fact-specific circumstances in which each case arises, at this point, EPA has elected not to establish a national definition of an environmental justice community, or to establish specific ‘cut-points’ for determining disproportionate impacts. The proposed Draft Toolkit, was approved by the EPA Environmental Justice Executive Steering Committee, however, due to policy concerns raised by the Office of General Counsel, the document has not yet been issued.

“In addition to the proposed Draft Toolkit, the Environmental Justice-GIS (Geographic Information System) Work Group was established to assist in the development of a national GIS-based environmental justice assessment tool. This tool seeks to make readily available to the user a robust set of indicators relevant to environmental justice. It follows the framework developed for the assessment methodology in the proposed Draft Environmental Justice Toolkit (i.e., use of environmental health, economic and social factors). The Work Group reached consensus that an environmental justice assessment should go beyond merely the use of demographic thresholds (i.e., race and income) to make an determination on whether an area is an ‘environmental justice community.’ Selection of indicators will also follow the criteria developed in the proposed Draft Toolkit. The Work Group consists of representatives from both the GIS and environmental justice staffs from all the regional offices and several headquarter programs offices. It is co-chaired by the Office of Environmental Information and the Office of Environmental Justice.” (Attachment A)

His full written statement focused on the lack of necessity for absolute uniformity only and did not suggest the lack of a systematic approach.

The Agency takes issue with the OIG’s apparent premise that a set of uniform thresholds for minority status and low-income status represents a systematic approach. And, hence, the OIG believes the lack of having these thresholds represents a lack of a systematic approach. The OIG’s assumption that a set of nationally uniform thresholds can be characterized as anything close to a systematic methodology is mistaken. As discussed previously, the challenges of integrating environmental justice considerations into the Agency’s decisionmaking processes requires a systematic approach that accounts for variations from region to region. Moreover, the Agency strongly believes that a uniform approach based solely upon what will be, at best, an arbitrary predetermined national threshold value for race or income is not only, in fact, not workable but will inevitably produce more harm than good.

In sum, the Agency strongly believes that developing a standard strategy that limits variations relating to GIS applications is not the appropriate approach for EPA to take. Programmatic consistency as reflected in a systematic approach is the appropriate and practicable course of action.

OIG Proposed Recommendation 3-2: Require that the selected strategy for determining an environmental justice community is consistent for all EPA program and regional offices.

Agency Response: The Agency does not concur with this proposed recommendation because it calls for determining what is or what is not “an environmental justice community.” Please see the Agency’s responses to the OIG’s proposed recommendations 2-1, 2-2, 2-5, 2-6, and 3-1.

OIG Proposed Recommendations 3-3: Develop a clear and comprehensive policy on benefits and protections that should be afforded to identified environmental justice communities and strive to include in States’ Performance Partnership Agreements and Performance Partnership Grants.

Agency Response: The Agency does not concur with this proposed recommendation because it calls for “a clear and comprehensive policy on benefits and protections that should be afforded to identified environmental justice communities.” This is flawed not only because it attempts to inject a civil rights law paradigm into the environmental law arena but it also seeks to identify “environmental justice communities” with the threshold demographic values that the Agency rejects. Moreover, the OIG is arguing that these “environmental justice communities” should have special “benefits and protections” based upon its mistaken interpretation of the Executive Order. Again, the Executive Order specifically provides no such special “benefits and protections.” Please see the Agency’s response to the OIG proposed recommendation 2-1.

The Agency, however, believes that integration of environmental justice considerations into states’ Performance Partnership Agreements and Performance Partnership Grants is appropriate. This is reflected in the former Administrator’s memorandum which states that:

“Integration of environmental justice into the program, policies and activities via Headquarters/Regional Office Memoranda of Agreements and Regional Office/State Performance partnership Agreements in an Agency priority. The Director of the Office of Environmental Justice, Barry E. Hill, and his staff are available to assist you.”

Additionally, in order to examine how states are attempting to integrate environmental justice, the Office of Environmental Justice, through a cooperative agreement, asked the National Academy of Public Administration (NAPA) to develop and issue its report, entitled, “Models For Change: Efforts by Four States To Address Environmental Justice,” (June 2002). NAPA provided 39 specific recommendations to states in its comprehensive report. The report is available to the public on the Office of Environmental Justice’s Web site at:

http://www.epa.gov/compliance/resources/publications/ej/ej_annual_project_reports.html.

Factual Inaccuracies

In addition to the Agency’s concerns expressed in the above responses, the OIG may want to correct the following factual inaccuracies in the draft evaluation report:

- Page 4, paragraph 5: “The EPA Environmental Justice Executive Steering Committee, formed in 1994, is generally comprised of the deputy assistant administrators in each program office, and the deputy regional administrators in the regional offices.” The Environmental Justice Executive Steering Committee is actually comprised of the deputy assistant administrators in each program office, the deputy regional administrators in the regional offices, the Director of the Office of Environmental Justice, the Associate General Counsel of Cross-Cutting Issues, and the Assistant Inspector General for Program Evaluation or his representative. The Steering Committee is comprised of more offices and individuals.
- Page 9, paragraph 3: “We disagree with the Office of Environmental Justice Director’s current approach, and believe the Agency’s previous actions support our position.” It is not “the Director’s current approach.” It was a concerted decision made by the Environmental Justice Executive Steering Committee at the April 17, 2002, facilitated dialogue in Washington, D.C. related to the draft Toolkit. See Attachment O. This decision was reaffirmed as recently as August 28, 2003, in the Tim Fields’ report discussed previously, which the OIG reviewers were sent at the same time.

In the “Summary of Major Findings and Recommendations Regarding the Development and Implementation of Environmental Justice Performance Measures,” with respect to the definition of an “EJ Community or EJ Area,” the report specifically stated that:

“Only a few of the EPA senior managers presented differing opinions as to how an EJ community or area should be defined. These officials believe that there should be one national definition of an EJ community or EJ area, which is consistently applied across all EPA Regions and laboratories. However, the vast majority believe that there is a need for flexibility, and that efforts required to develop one consistent definition are not the best use of EPA resources. Tetra Tech recommends the flexible approach and that development of one uniform definition of an ‘EJ community or EJ Area’ is not appropriate.” (Emphasis added) (Attachment Q)

- Page 7, paragraph 7: “The EPA’s Office of Environmental Justice has not fully complied with Executive Order 12898...” Although the Agency strongly disagrees with the OIG’s conclusion, it would be more accurate for the OIG to state that it is the Agency and not the Office of Environmental Justice who is not in compliance with the Executive Order since it was a concerted decision by the Environmental Justice Executive Steering Committee at the April 17, 2002, facilitated dialogue in Washington, D.C. related to the draft Toolkit. See Attachment P and also Attachment Q.
- Page 11, paragraph 3: “While most program offices and regions reviewed have embarked upon some form of strategic planning, the Office of Environmental Justice has not.” This statement is not accurate. See Attachment L. Also, after countless hours talking to the OIG reviewers about the Office’s strategic planning, the OIG did not ask the Director for a copy of any particular strategic planning document. Moreover, the language that the OIG quoted is taken out of context in that it was a response to the OIG’s specific question: “1. In 1995, EPA issued the Environmental Justice Strategy. What is the implementation status of the strategy?” See Attachment N.
- Page 15, paragraph 3: “The Office of Environmental Justice Director said the Agency was being ‘pummeled’ over having issued guidance used against it.” It should read, instead, that, “The Office of Environmental Justice Director said that several appellate courts had recently ruled against the Agency concluding that guidance documents should have been subjected to the standard regulatory review process.” The statement, as written by the OIG, does not make sense.
- Page 16, paragraph 2: “The Office of Environmental Justice was created to be the national coordinator to oversee the Agency’s implementation of the Executive Order...” The Office of Environmental Justice was not created for that purpose. The Executive Order was issued February 11, 1994: whereas the Office was created in 1992. See Attachment F.
- Page 14, paragraph 2: “However, critics of the slow progress of environmental justice integration point to the office being moved from the Office of the Administrator to OECA as being tantamount to de-emphasizing environmental justice.” The Office of Environmental Justice was never in the Office of the Administrator: it was originally part of the Office of Administrative and Resources Management. See Attachment F and Attachment M.
- Page 25, paragraph 1: “Supplemental Environmental Projects (SEPs) were awarded to specific communities but not most.” SEPs are not awarded to specific communities. In the Fiscal Year 2002, OECA Accomplishments Report entitled, “Environmental Results Through Smart Enforcement,” SEPs are explained at page 31, as follows:

“Supplemental Environmental Projects (SEPs) provide opportunities for environmental violators to undertake environmentally beneficial projects. A SEP is part of an enforcement settlement connected with the violation of a statutory or regulatory environmental requirement.”

“SEPs are environmentally beneficial projects that may be proposed by a violator or EPA during the settlement of an enforcement action. We examine whether a violator is committed to, and has the ability to, perform a SEP when determining the appropriateness of including a SEP in the settlement. If a violator agrees to perform a SEP, its cash penalty may be lowered. The SEP must reduce risks to improve or protect public health or the environment.” (Emphasis added)

The OIG may want to review the following Agency documents related to enforcement targeting and environmental justice:

- “Memorandum, Assistant Administrator OECA, “Compliance and Enforcement Strategy Addressing Combined Sewer Overflows and Sanitary Sewer Overflows,” Section IV, B. 2. “Priorities for SSO Enforcement Response” (April 27, 2000) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns).
- Supplemental Environmental Project Policy, §§ A.2 and E (May 1, 1998) (encouraging the use of SEPs that address environmental justice issues and specifying that environmental justice should be considered in the SEP mitigation percentage).
- Guidance on the Use of Section 7003 of RCRA, § II, Bullet 1 (Oct. 1997) (directing OECA to target compliance assurance/enforcement activities in areas raising environmental justice concerns).
- Memorandum, Assistant Administrator, OECA, “Issuance of the Interim Policy on Settlement of CERCLA § 106(b)(1) Penalty Claims and § 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders,” (September 20, 1997) (establishing environmental justice as a penalty consideration factor).
- Page 25, paragraph 3: “At the Headquarters level, OECA adopted environmental justice as a performance priority for Fiscal Year 2004... Because of the variations in how an ‘EJ community’ is defined by regions, some communities may benefit more from this OECA national priority.” The OIG does not appear to understand OECA’s “Smart Enforcement” Program which essentially requires EPA to use the most appropriate enforcement or compliance tools to address the most significant problems to achieve the best outcomes. Smart Enforcement means, for example, compliance monitoring and data analysis to:
 - “Identify and select priorities for the enforcement and compliance program;
 - Identify environmental problems and patterns of noncompliance that may need to be addressed through a targeted initiative;
 - Identify and address environmental justice problems in communities in which significant noncompliance is occurring;
 - Assess the state of compliance in a particular sector or population of regulated entities;
 - Measure environmental outcomes resulting from program activities;
 - Measure progress addressing priorities, initiatives and annual performance goals; and
 - Provide public access to enforcement and compliance data.” (Emphasis added)

Source: Fiscal Year 2002, OECA Accomplishments Report, “Environmental Results Through Smart Enforcement,” at page 10.

Thus, OECA’s targeting efforts, in actuality, will not be based on the definition of an “environmental justice community.” Instead, it is based on identifying and addressing the environmental justice problems in communities regardless of who resides in the communities,

where there is significant noncompliance occurring. Therefore, no community will be punished or receive greater benefit because of some small variation in methodology in the regions.

Conclusion

The Agency disagrees with the major assertions made by the OIG in the draft evaluation report because we strongly believe that those assertions were based on a mistaken interpretation of the language of the Executive Order. In light of the above, the Agency asks the OIG to reconsider its basic premise and interpretation of the language of the Executive Order since every recommendation flows from that mistaken interpretation.

The Agency believes that it has a vibrant environmental justice program and has made a considerable amount of progress in integrating the issue into the EPA decisionmaking processes. There is, however, more work to be done before there is full integration. The Agency is committed to ensuring that this is accomplished.

The Agency appreciates the work done by the OIG reviewers and sincerely hope that EPA's responses have provided useful information to the OIG about our comprehensive environmental justice program.

cc: Greg Marion, OECA
Jeff Harris, OIG
Steven Weber, OIG

OIG Comments on EPA's Response

General Comments

The OIG and the EPA Office of Environmental Justice clearly disagree regarding the intent of Executive Order 12898. The OIG believes that the intent of the Executive Order is to specifically outline the Federal actions needed to address environmental justice *for minority and low-income population*, while the Agency believes the Executive Order and the concept of environmental justice should apply to everyone and not just focus on specific populations. However, the Executive Order was issued following specific concerns raised about minority and low-income communities being disproportionately impacted by environmental risk, and the Executive Order specifically refers to minority and low-income populations, including in the actual title of the Executive Order itself (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”). Therefore, we believe EPA needs to specifically address providing environmental justice to minority and low income populations. While providing adequate environmental justice to the entire population is commendable, doing so had already been EPA’s mission prior to implementation of the Executive Order; we do not believe the intent of the Executive Order was simply to reiterate that mission.

It is important to note that other Federal entities, as well as many officials at the EPA regional level, appear to share our opinion that the specific intent of the Executive Order is to draw attention to minority and low-income populations that may be disproportionately impacted by environmental risk. To sufficiently provide environmental justice to minority and low-income communities that may be disproportionately impacted, it is critical to define affected populations. Standard definitions related to such terms as minority, low-income, and disproportionate impact have already been provided by other Federal groups. For example, the White House Counsel on Environmental Quality (CEQ), on December 10, 1997, issued *Guidance for Federal Agencies on Key Terms in Executive Order 12898*, and included the following definitions:

Low-income population: Low-income populations in an affected area should be identified with the annual statistical poverty thresholds from the Bureau of the Census' Current Population Reports, Series P-60 on Income and Poverty. In identifying low-income populations, agencies may consider as a community either a group of individuals living in geographic proximity to one another, or a set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions of environmental exposure or effect. (Emphasis added)

Minority: Individual(s) who are members of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic.

Minority population: Minority populations should be identified where either: (a) the minority population of the affected area exceeds 50 percent or (b) the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis. In identifying minority communities, agencies may consider as a community either a group of individuals living in geographic proximity to one another, or a geographically dispersed/transient set of individuals (such as migrant workers or Native American), where either type of group experiences common conditions of environmental exposure or effect. (Emphasis added)

The selection of the appropriate unit of geographic analysis may be a governing body's jurisdiction, a neighborhood, census tract, or other similar unit that is to be chosen so as to not artificially dilute or inflate the affected minority population. A minority population also exists if there is more than one minority group present and the minority percentage, as calculated by aggregating all minority persons, meets one of the above-stated thresholds.

Disproportionately high and adverse human health effects: When determining whether human health effects are disproportionately high and adverse, agencies are to consider the following three factors to the extent practicable: (a) Whether the health effects, which may be measured in risks and rates, are significant (as employed by NEPA), or above generally accepted norms. Adverse health effects may include bodily impairment, infirmity, illness, or death; and (b) Whether the risk or rate of hazard exposure by a minority population, low-income population, or Indian tribe to an environmental hazard is significant (as employed by NEPA) and appreciably exceeds or is likely to appreciably exceed the risk or rate to the general population or other appropriate comparison group; and (c) Whether health effects occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

Disproportionately high and adverse environmental effects: When determining whether environmental effects are disproportionately high and adverse, agencies are to consider the following three factors to the extent practicable: (a) Whether there is or will be an impact on the natural or physical environment that significantly (as employed by NEPA) and adversely affects a minority population, low-income population, or Indian tribe. Such effects may include ecological, cultural, human health, economic, or social impacts on minority communities, low-income communities, or Indian tribes when those impacts are interrelated to impacts on the natural or physical environment; and (b) Whether environmental effects are significant (as employed by NEPA) and are or may be having an

adverse impact on minority populations, low income populations, or Indian tribes that appreciably exceeds or is likely to appreciably exceed those on the general population or other appropriate comparison group; and (c) Whether the environmental effects occur or would occur in a minority population, low-income population, or Indian tribe affected by cumulative or multiple adverse exposures from environmental hazards.

Further, to comply with Executive Order 12898, the U.S. Department of Transportation issued the *Order to Address Environmental Justice in Minority Populations and Low-Income Populations*, which contains the following definitions:

- Low-Income means a person whose median household income is at or below the Department of Health and Human Services poverty guidelines.
- Minority means a person who is:
 - (1) Black (a person having origins in any of the black racial groups of Africa);
 - (2) Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race);
 - (3) Asian American (a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands); or
 - (4) American Indian and Alaskan Native (a person having origins in any of the original people of North America and who maintains cultural identification through tribal affiliation or community recognition).
- Low-Income Population means any readily identifiable group of low-income persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.
- Minority Population means any readily identifiable groups of minority persons who live in geographic proximity, and if circumstances warrant, geographically dispersed/transient persons (such as migrant workers or Native Americans) who will be similarly affected by a proposed DOT program, policy or activity.
- Adverse effects means the totality of significant individual or cumulative human health or environmental effects, including interrelated social and economic effects, which may include, but are not limited to: bodily impairment, infirmity, illness or death; air, noise, and water pollution and soil contamination; destruction or disruption of man-made or natural resources; destruction or diminution of aesthetic values; destruction or disruption of community cohesion or a community's economic vitality;

destruction or disruption of the availability of public and private facilities and services; vibration; adverse employment effects; displacement of persons, businesses, farms, or nonprofit organizations; increased traffic congestion, isolation, exclusion or separation of minority or low-income individuals within a given community or from the broader community; and the denial of, reduction in, or significant delay in the receipt of, benefits of DOT programs, policies, or activities.

- Disproportionately high and adverse effect on minority and low-income populations means an adverse effect that:
 - (1) is predominately borne by a minority population and/or a low-income population, or
 - (2) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population.

EPA regional personnel have also noted the importance of providing environmental justice, including definitions. For example, Region 9 states in its Environmental Justice Assessment Project:

“EPA Region 9 has begun to identify and address environmental justice (EJ) issues in the Region through an EJ Assessment Project. The purpose of the project is to identify low-income communities and minority communities where existing and potential sources of environmental hazard and risk are numerous; identify potential options for addressing the most significant environmental problems in these communities; and begin to address the problems in these communities through EPA action and through the involvement of other agencies with jurisdiction.

“Utilizing Geographic Information System (GIS) mapping, the Agency will target low-income communities and minority communities in the Region which are in close proximity to a high number of potential pollution sources. These "EJ communities" have a greater likelihood of high environmental exposures and potential for higher end risks. The Agency will then examine current federal, state, and local activities aimed at reducing or eliminating potential exposures and risks in these "EJ communities," in order to identify communities where environmental needs are not being adequately addressed.”

Further, Region 1 Senior Officials expressed concerns about how the various regions were developing their own separate definitions:

“Noted that the myriad of definitions for an EJ community presents a challenge. Each region has a different definition, threshold, or mechanism to describe an affected community and actions taken to address issues in such communities. The fact the OEJ is addressing this issue through such mechanisms as the recent meeting in San Francisco is positive, but the agency still has a long way to go to standardize EJ definitions and language. The agency may be supporting regional definitions in the future, this would be fine in Region 1 because they have created definitions and thresholds, and have even mapped communities

using GIS.” (Senior Region 1 Officials interview with Office of Environmental Justice consultant)

Based on its mission, we believe EPA should be a leader in providing environmental justice, and should have a program in place that is equal to if not greater than those used by other agencies, such as CEQ and the U.S. Department of Transportation. While EPA has made progress at the regional level, the EPA Office of Environmental Justice needs to provide more leadership at the national level. In particular, the Office of Environmental Justice needs to provide definitions on such key terms as minority population, low-income population, and disproportionately impacted. Overall, the Agency cannot carry out its responsibilities to enforce the Executive Order’s intent without considering the effects of its actions on minority and low-income populations.

In addition to the above general comments, we noted the following regarding the Agency’s comments on the specific recommendations.

OIG Response to Comment on Recommendation 2-1

The EPA Administrator’s August 9, 2001, memorandum does not address EPA’s responsibilities for implementing Executive Order 12898. The memorandum speaks of EPA’s efforts on integrating environmental justice concepts into the Agencies policies, programs, and activities. This memorandum attempts to include minority and low-income considerations into the Agency’s overall mission statement. The memorandum should not be considered a substitute for the Executive Order. In its draft toolkit on environmental justice, the Agency noted:

“A fundamental basis for EPA’s environmental justice program is Executive Order 12898, which directed federal agencies to make environmental justice a priority ... **However, while the Executive Order focused on minority and low-income populations, EPA’s mission statement demonstrates that the environmental justice concepts should be applied to all communities regardless of race, ethnicity or income status.** Existing environmental statutes and their implementing regulations provide EPA with the opportunity for applying these principles in carrying out this fundamental mission. **A recent memorandum from Administrator Whitman further affirms that environmental justice is intended for all populations...**” (emphasis added)

As noted, we disagree that the intent of the Executive Order was to focus on all populations, since that was already the overall mission of EPA.

We further disagree with the Agency’s contention that the Executive Order does not require it to define disproportionately impact. The Executive Order’s Section 102 (b) states:

“The Working Group shall: (1) provide guidance to Federal agencies on criteria for identifying disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.”

OIG paraphrased this requirement as “disproportionately impacted,” a term already in use by the EPA Office of Environmental Justice as well as several regional offices. While the specific phrase is not in the Order, we used it because it is a generic term already in use by the Agency, regional offices, and stakeholders.

Also, the intent of the Executive Order as interpreted by regional offices and other Federal entities, does provide actions that are intended as protections and/or benefits that are incumbent within existing law, regulation, policies, and actions. While the Executive Order may not use the exact words “special benefits and protections,” it was clearly intended as a mechanism to ensure that Federal agencies take action so that minority and low-income populations are afforded the protections and benefits contained within Federal environmental law. If it was not the intention of the Executive Order to afford benefits and protections, it begs the question why was it enacted at all.

OIG Response to Comment on Recommendation 2-2

The issue of developing definitions, goals, and measurements is addressed by our preceding general comment.

The original action plans’ template from the Office of Environmental Justice was not a detailed strategic plan as provided by the Office of Environmental Justice in its response. The original template in 2002 asked a series of questions of the regional and Headquarter offices, such as:

“What is your Regional/Headquarter Office’s environmental justice policy?”

“Identify the aggregate full-time equivalents in your Regional/Headquarter office that will specifically focus on environmental justice issues.”

“What are the functions and day-to-day responsibilities of your environmental justice coordinators and/or team?”

These template questions are more indicative of the Office of Environmental Justice asking the region and Headquarter offices for basic information the national office should have already had after being in existence for 12 years. Also, while we believe that the Office of Environmental Justice’s decision to require action plans in order to establish some accountability over the program was appropriate, it was initiated late into the process.

OIG Response to Comment on Recommendation 2-3

The Agency’s response provides a definition for environment justice, not a vision. Our recommendation is valid. The Agency does not have a vision with clear objectives showing how the Agency will achieve the goal of environmental justice, as it is defined.

OIG Response to Comment on Recommendation 2-4

It should be noted that on the various occasions we met with the Office of Environmental Justice Director, it was made very clear to us that Office of Environmental Justice did not have a strategic plan. In its response, the Agency stated it allowed each region and program office to establish its own strategies and considers this to be its strategic plan. However, we maintain there is a need to develop a national plan. It should be noted that subsequent to our draft report being issued, the Office of Environmental Justice developed and provided to us a draft Strategic Plan for 2004.

OIG Response to Comment on Recommendation 2-5

Regarding the providing of definitions, we believe such definitions are needed, as discussed in our general comment. Regarding the Agency's concern with our flow chart, the OIG's outline was an attempt to show how the Agency should respond under the Executive Order, since the Executive Order calls for the Agency to identify and address impacts on minority and low-income populations. The outline is based on guidelines being used by various EPA regions and other Federal agencies. The OIG believes that demographics alone are not sufficient, but demographics (along with a definition of disproportionate) is nonetheless needed to identify an environmental justice area.

OIG Response to Comment on Recommendation 2-6

As provided in its draft Strategic Plan for 2004, the Office of Environmental Justice plans to have 10 percent of EPA employees trained in the basic fundamentals training by December 2004. This seems to be a small portion of employees for an effort that started in 2002. Additionally, per the 2004 draft Strategic Plan, training for permit writers and inspectors is targeted to only be developed by December 2004. As the lead for this type of training, it does not appear that the Office of Environmental Justice has developed this training in a very timely manner. Also, in June 2003, training was discussed at an National Environmental Justice Coordinators meeting because of inconsistency among the regions in how the training was being delivered. While the Agency decided it would therefore be appropriate to coordinate environmental justice training at the national level, we did not consider the training to be sufficient because it did not provide definition of such key areas as minority population, low-income population, and disproportionately impacted.

OIG Response to Comment on Recommendation 2-7

The Agency concurred with our recommendation to perform a comprehensive study of program and regional offices' funding and staffing for environmental justice.

OIG Response to Comment on Recommendation 2-8

We disagree with the Agency's contention that the mission of the Office of Environmental Justice has not changed since 1992. The office itself noted 10 years later in its Fall 2002 *EJ Quarterly* publication:

“OEJ has redefined itself and the very notion of environmental justice. Its mission is clear and ongoing: In a nutshell, environmental justice is for all communities.”

Staff at the regional and Headquarters level expressed uncertainty regarding the role of the Office of Environmental Justice. Therefore, we believe that office needs to more clearly define its mission and provide Agency staff with an understanding of its roles and responsibilities of the office.

OIG Response to Comment on Recommendation 2-9

We believe our recommendation is valid and should be implemented. Additionally, it should be noted that the Office of Environmental Justice recognized the need to have performance measures to assess the program's accomplishments. It contracted with a

consultant in 2003 to provide recommendations on the development and implementation of environmental justice performance measures for the Office of Environmental Justice. The consultant advised the Office of Environmental Justice that performance measurement is “an integral part” of the environmental justice action plans to monitor and report a program’s accomplishments.

OIG Response to Comment on Recommendation 3-1

We believe that our recommendation is valid and should be implemented. We can provide the Agency with our consultant’s methodology used to formulate the differences in mapping between the regions. The differences between the regions is not as dramatic as stated by the Agency. All the regions use variations of demographics from the Census Bureau. The Office of Environmental Justice questioned why OIG did not determine the reasons for the regional variations. The most immediate answer is that since the Office of Environmental Justice never issued any definitions or guidance, each region took it upon itself to define what constitutes an environmental justice area. Additionally, the Agency stated that it was premature for the OIG to conclude whether such variations are positive or negative. The OIG never stated or drew any conclusion that one method was negative or positive. The OIG’s report demonstrates that lack of consistency between the regions in defining and mapping of potential environmental justice areas can lead to inconsistent implementation of the Executive Order 12898 by the Agency. In addition, if other Federal agencies can define minority and low-income populations on a national basis, as noted in our “General Comments,” it should also be possible for EPA to do the same.

OIG Response to Comment on Recommendation 3-2

We believe that our recommendation is valid and should be implemented. The issues raised by the Agency our addressed in the “General Comments” and responses to other recommendations.

OIG Response to Comment on Recommendation 3-3

We believe that our recommendation is valid and should be implemented. The issues raised by the Agency are addressed in the “General Comments” and responses to other recommendations. The Agency did note that it agrees the integration of environmental justice considerations into States’ Performance Partnership Agreements and Performance Partnership Grants is appropriate. However, without a clear and comprehensive policy from EPA, this cannot be implemented.

Distribution

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