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

June 7, 2004

MEMORANDUM

SUBJECT: Agency Response to Recommendations Provided in the OIG Evaluation Report entitled, "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice"

FROM: Stephen L. Johnson /S/
Acting Deputy Administrator

TO: Nikki Tinsley
Inspector General

The purpose of this memorandum is to provide the U.S. Environmental Protection Agency's (EPA or the Agency) response to the recommendations offered by the Office of Inspector General (OIG) in the Evaluation Report entitled, "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice" (No. 2004-P-00007) (March 1, 2004). Attachment A is the Agency's response to each recommendation.

Achieving environmental protection for all communities is a fundamental part of EPA's mission. The Agency has demonstrated its commitment to ensure that minority and/or low-income communities do not bear a disproportionate burden of environmental risks and harms. This statement is an affirmation of that commitment to the Agency's "bias for action" in minority and/or low-income communities as derived from the authorities in existing environmental laws and their implementing regulations, and the guidance reflected in Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994).

Since 1992, the Agency has made this unequivocal commitment to identifying and addressing disproportionately high and adverse human health and environmental effects in minority and/or low-income communities, and the Agency continues to dedicate resources to develop the analytical, policy, and programmatic tools to better accomplish this complex task.

Moreover, the Agency continues to address these challenges posed by issues of environmental justice in a proactive way by developing strategies that accomplish this goal within the context of achieving healthy and sustainable communities for all Americans.

We wish to underscore that, during this relatively short period of time, an enormous amount of progress has been made in the arena of environmental justice – not only within the Agency, but within many other government entities and non-governmental organizations in American society. These include other federal agencies, state and local governments, tribes, business and industry, academic institutions, civic organizations, and local communities. We commend the efforts of these organizations and the many dedicated individuals who work within them.

It is in this light that the Agency expresses its appreciation to the OIG for providing their evaluation of the Agency's environmental justice program. The OIG Evaluation Report serves to focus the EPA's attention on assessing our progress to date and ways to improve the Agency's efforts toward the goal of achieving environmental justice for all communities.

The Agency is proud of its vision and strategies for achieving environmental justice. This vision, and the strategies associated with it, has evolved from years of thoughtful analysis and painful "on-the-ground" experience. This vision is based upon the notion that the best way to address disparate impacts on all communities is to fully integrate environmental justice considerations into all programs, policies, and activities of the EPA while demonstrating the Agency's "bias for action" in minority and/or low-income communities. EPA's strategy rests upon a firm foundation that environmental justice is embedded within the Nation's existing environmental statutes and their implementing regulations. Some key elements of the strategy include:

- Clarifying the legal authorities to incorporate environmental justice considerations into the decisionmaking processes;
- Developing and using multiple sets of tools to address environmental justice issues;
- Developing cogent analysis that incorporates complex factors/nuances that may contribute to the disproportionate impacts;
- Understanding the need for Regional flexibility to address the programmatic, geographic, and substantive environmental justice issues;
- Developing and providing appropriate environmental justice training, both internally and externally;
- Designing effective communication strategies and outreach;
- Developing a collaborative problem-solving model and initiating a new grant program;
- Promoting community capacity-building (including technical and financial assistance);
- Developing and maintaining strategic partnerships (communities, state and

- local governments, business and industry, etc.); and
- Developing Regional and Program Office Environmental Justice Action Plans to ensure the full integration of environmental justice into the Agency's decisionmaking processes.

Recognizing that more needs to be done, it is imperative that the Agency clarify a key difference between the EPA's and the OIG's approach to addressing environmental justice.

Specifically, the Agency does not agree that its environmental justice program should be based upon the development and use of a uniform, national, quantitative measure for defining minority and/or low-income communities. The Agency has examined in detail the efficacy of such an approach. After a great deal of deliberation, the Agency concluded that, because issues of environmental justice are so diverse, variable, and complex, such an approach would not only be impractical but also could be detrimental to those communities. As a result, several years ago the Agency's senior management affirmatively opted for multiple approaches, tools and the flexibility to apply them, whenever appropriate.

Moreover, the Agency also believes that the recommended OIG approach appears to be predicated on an intuitively reasonable but faulty interpretation of Executive Order 12898. The OIG recommended approach is premised on the commonly held notion, drawn from the Environmental Justice Movement's emergence from the Civil Rights Movement, that environmental justice can be achieved merely by identifying disproportionately high minority and low-income communities, and designating them as forming a "protected class." This approach fails to recognize that the Nation's environmental laws do not recognize race, ethnicity, or income as protected classes. To the contrary, those environmental laws are designed to address human health and environmental effects for all communities. The OIG Evaluation Report fails to recognize that the Executive Order, in fact, did not direct federal agencies to identify and address disproportionately high minority and low income populations, but rather to address the disproportionately high and adverse human health and environmental effects on minority and/or low-income populations. The approach recommended by the OIG, thus, fails to form a nexus between human health or environmental effects, and the specific provisions of environmental laws.

The Agency believes that, were it to adopt the OIG recommended approach, its environmental justice program would be set back. Reducing the environmental justice question to an inflexible, single-dimensioned measure and failing to position the environmental justice program in a way that is fully derivative of the Agency's statutory authorities creates a strong possibility of marginalizing the program and lessening the opportunity for full integration of environmental justice into all programs, policies, and activities. Because the Agency is firmly committed to the success of its environmental justice program and its full integration, the EPA cannot accept the OIG recommended approach.

The Agency believes that it has built a solid foundation for moving the environmental justice program to a greater level of effectiveness. The Agency has built upon the guidance of Executive Order 12898 and developed a strategic vision for integrating environmental justice considerations into all programs, policies, and activities. Achieving a vision of healthy and sustainable communities for all Americans requires strategies that fully mobilize the resources, capacities, partnerships, tools, and statutory authorities available to the Agency. This will continue to require foresight, cogent analysis, and effective leadership.

Attachments:

(A) Responses to the OIG's Evaluation Report

(B) Environmental Justice Program Comprehensive Management Study

cc: Kwai Chan, Assistant Inspector General for Program Evaluation
Tom V. Skinner, Acting Assistant Administrator, OECA
Phyllis P. Harris, Principal Deputy Assistant Administrator, OECA
Barry E. Hill, Director, OEJ

Responses to the OIG's Evaluation Report

Introduction

As a general matter, the Agency disagrees with the central premise of the OIG Evaluation Report, namely that Executive Order 12898, "calls for the Agency to identify and address minority and low-income communities and to define disproportionately impacted." (p. 9) . The Agency believes that the OIG's interpretation of the Executive Order may not capture the breadth and complexity of environmental justice, and, if applied, could result in limiting the scope of available tools to meaningfully and tangibly address environmental justice issues. While the Agency understands the OIG intent of applying definitions as a means to an end, we believe that such application severely limits EPA's ability to achieve environmental justice for all communities.

The Agency believes that the intent of the Executive Order is to ensure that environmental actions or decisions do not result in disproportionately high and adverse human health or environmental effects by ensuring that the analysis of these effects includes the examination of secondary effects, cultural concerns, and cumulative impacts/effects. At the same time, while such effects can occur in any community, independent researchers have concluded that significantly greater adverse effects are often correlated with minority populations and/or low-income populations. Thus, EPA's approach includes collecting and analyzing information on demographic factors and other relevant data, as well as the actual environmental and human health effects themselves as part of the scoping process.

Executive Order 12898 supports EPA's efforts to review all of its human health or environmental programs, policies and activities in order to identify and address the "disproportionately high and adverse human health or environmental effects.... on minority population and low-income populations." This mandate is based on the plain language of the Executive Order's Section 1-101 and is supported by the accompanying Presidential Memorandum. EPA is concerned that the OIG's approach will exclude adversely affected minority populations and/or low-income populations merely because their demographics cause them to be screened out for further analysis as a result of a national brightline/threshold. Unquestionably, there is a need for Regional flexibility since a national brightline/threshold would not fit all cases. In New Mexico, for example, the majority of the population are members of one or more minority groups. In that context, what is the minority population? Moreover, "low-income" in urban areas may differ substantially from the definition of low-income in rural areas of the Nation.

The Agency appreciates this opportunity to communicate our perspective regarding the Evaluation Report. The Agency strongly believes that the EPA and the OIG collectively share the belief regarding the importance of securing environmental justice for all communities throughout the country. The Evaluation Report reminds all of us to continue to strive towards ensuring environmental justice for all communities. As stated by distinguished Professor Robert D. Bullard of Clark Atlanta University, "the solution to unequal protection lies in the realm of environmental justice for all Americans. No community, rich or poor, black or white, should be allowed to become a 'sacrifice zone.' "

For the foregoing reasons, the Agency disagrees with some of the major assertions made in the Evaluation Report. Our disagreement stems from the fact that we have a different interpretation of the pertinent language of Section 1-101. Because our approach to addressing environmental justice matters is so markedly different, we do not agree with some of the findings and the recommendations. Moreover, we believe that the approach the Agency has adopted is working. In addition, as a result of our interpretation of Section 1-101, the Agency believes that several of the recommendations have already been or are being addressed.

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

OIG Recommendation 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.

Agency Response: The Agency has affirmed and reaffirmed its commitment to the issue of environmental justice, and continues to manifest its leadership at the federal, state, and local levels of government to ensure the integration of environmental justice considerations into the decisionmaking processes. Indeed, the cover memorandum to the response to the OIG from the Deputy Administrator serves as the latest affirmation of the Agency's commitment to minority and/or low-income communities disproportionately exposed to environmental harms and risks, consistent with the policy of the Executive Order. In light of this, and for the following reasons, the Agency believes that the OIG's recommendation articulates a course of action that the Agency has already completed.

On February 11, 1994, the President demonstrated the highest level of leadership for addressing the issue of environmental justice by signing Executive Order 12898. The Executive Order focused federal agency attention on the environmental and human health conditions of minority and/or low-income populations with the goal of achieving environmental justice. The Executive Order directed federal agencies to develop environmental justice strategies to help them identify and address disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and/or low-income populations.

Executive branch agencies must rely on their statutory authorities to implement the intent of the Order. The use of the law is emphasized in Section 1-101 and Section 6-608 of Executive Order 12898. Section 1-101 specifically states that: "To the greatest extent practicable and permitted by law, ... each Federal agency shall make achieving environmental justice part of its mission..." (Emphasis added) And, Section 6-608 states that: "Federal agencies shall implement this order consistent with, and to the extent permitted by, existing law."

Moreover, the Presidential Memorandum accompanying the Executive Order underscores certain

provisions of existing laws that can help ensure that all persons across this Nation live in safe and healthful environments.

The statutes that the EPA implements generally provide the Agency with the discretionary authority to consider and address environmental justice concerns. These laws encompass the breadth of the Agency's activities including setting standards, permitting facilities, making grants, issuing licenses or registrations, conducting public outreach, prioritizing Agency work, and reviewing proposed actions of other federal agencies, states, and tribal governments. These laws may require the Agency to consider a variety of factors, which generally include one or more of the following: public health; cumulative impacts; social costs; and welfare impacts. Moreover, some statutory provisions explicitly direct the Agency to consider special risks posed to vulnerable populations in setting standards. In essence, environmental laws are intended to protect not only the environment but also public health, and the Agency believes that it is a reasonable interpretation of those laws that the health of vulnerable populations who are adversely impacted and who are disproportionately exposed to environmental harms and risks require the EPA's attention. In all cases, how the Agency chooses to implement and enforce its discretionary statutory authority (whether on a case-by-case basis or through more general policy) can have substantial effects on securing environmental justice for all communities.

The Administrator issued a memorandum on August 9, 2001, that emphasized the use of the law in addressing environmental justice matters in accordance with the purpose, intent and language of the Executive Order. The Administrator stated that: "Environmental statutes provide many opportunities to address environmental risks and hazards in minority communities and/or low-income communities. Applications of these existing statutory provisions is an important part of this Agency's efforts to prevent those communities from being subject to disproportionately high and adverse impacts, and environmental effects." Following the Executive Order's mandate, the Office of General Counsel identified the environmental statutes that the Agency administers which provide the statutory authority to address environmental justice matters during permitting actions. (See Appendix A: OGC General Counsel memorandum, "EPA Statutory and Regulatory Authorities Under Which Environmental Justice Issues May Be Addressed in Permitting," dated December 1, 2000; and Appendix B: "Statutory Provisions to Address Environmental Justice," of the "Toolkit for Assessing Potential Allegations of Environmental Injustice." The Toolkit will soon be released.)

Integrating environmental justice considerations to address environmental justice matters, therefore, into all programs, policies, and activities, consistent with existing environmental laws and their implementing regulations is, in fact, an Agency priority.

The Agency's position that it must make its decisions and develop its policies based upon

environmental laws instead of Executive Order 12898 is consistent with the position taken by other government agencies. For example, the Nuclear Regulatory Commission (NRC) issued its draft “Policy Statement on the Treatment of Environmental Justice Matters in NRC Regulatory and Licensing Actions” on November 5, 2003. The proposed NRC policy specifically provides that: “The legal basis for analyzing environmental impacts of a proposed Federal action on minority or low-income communities is NEPA, not Executive Order 12898....The NRC considers and integrates what is referred to as environmental justice matters in its NEPA assessment of particular licensing or regulatory actions.”

Second, the OIG contends that when the Administrator stated in the August 9, 2001, memorandum that environmental justice is the goal to be achieved for all communities, including minority and/or low-income communities, that this somehow indicates that EPA is de-emphasizing minority and/or low-income populations. This is a mistaken impression. Rather, the Agency recognizes that while minority and/or low-income communities often may suffer disproportionate adverse environmental and human health effects, it is the goal of the EPA to ensure that no community suffers those effects. To do this, the Agency must focus on the adverse environmental and human health effects because the environmental laws are, in fact, written to address adverse environmental and human health effects, rather than focusing on a community’s demographics before seeking to address such effects. At the same time, however, all EPA employees have been advised by the senior leadership of the Agency to integrate environmental justice considerations into their daily work, and to ensure that no community suffers disproportionate adverse human health or environmental effects. Because low-income and minority populations often live in the vicinity of industrial sources of pollution, the Agency’s experience is that these populations may suffer disproportionate adverse effects and cumulative impacts, and, thus, will be aided by the Agency’s general policy approach geared to all communities. Furthermore, going beyond the policy of the Executive Order, Regional environmental justice initiatives often focus additional attention on low-income and minority communities, recognizing that such communities are often more vulnerable to exposures than are other communities (e.g., due to the lack of access to adequate health care). Thus, the Regions have targeted efforts in those communities to evaluate whether adverse human health and environmental effects are disproportionate, to ensure greater access to environmental information, and to ensure compliance with enforcement of environmental laws. The GIS mapping tools routinely employed by the Regions are just one means of highlighting the presence of significant minority and/or low-income populations as part of the scoping process.

Third, the OIG stated that the Agency has recently 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 (p. 10). The OIG believes that the Agency is attempting, as a result, to reinterpret the Executive Order (p. ii). The Agency firmly believes that the OIG misunderstood the basis for the Agency’s position, and did not understand that the EPA’s approach has been replicated by others. For example, California’s 1999 landmark environmental justice legislation (Senate Bill 115) articulates a direction that is consistent with the direction taken by the Agency since the issuance of the Executive Order in 1994. Specifically, the legislation states that:

“The California Environmental Protection Agency, in designing its mission for programs, policies, and standards, shall do all of the following:

(a) Conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations of the state.

(b) Promote enforcement of all health and environmental statutes within its jurisdiction in a manner that ensures the fair treatment of people of all races, cultures, and income levels, including minority populations and low-income populations in the state.

(c)

(d) Improve research and data collection for programs within the agency relating to the health of, and environment of, people of all races, cultures, and income levels, including minority populations and low-income populations in the state.” (Emphasis added)

Therefore, consistent with the California legislation, merely stating that environmental justice belongs to all communities, including minority and/or low-income communities, does not mean that the Agency is reinterpreting the Executive Order or de-emphasizing its intended purpose. The Administrator simply articulated in writing a common approach to addressing environmental justice issues in the August 9, 2001, memorandum.

The Agency believes and has demonstrated through concrete grant funding initiatives that environmental justice is a priority. Since 1994, for example, EPA, through the Office of Environmental Justice, has demonstrated its commitment to support one of the fundamental principles of environmental justice – community capacity-building – by allocating more than \$ 17 million in grant resources into the Environmental Justice Small Grants Program. In this fiscal year, the Agency, through the Office of Environmental Justice, has allocated \$3 million to the new Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program. The Agency also has a number of other grant programs that advance environmental justice objectives and which contribute to community capacity-building (e.g., Brownfields Redevelopment, Pollution Prevention, Community Alliance for a Renewed Environment, etc.). The Agency firmly believes that, through such grant funding activities, it has built upon the specific language of Section 1-101 and Section 6-608 of the Executive Order by demonstrating that environmental laws and their implementing regulations are the means by which minority and/or low-income communities that are disproportionately affected are receiving, in the OIG’s words, “the intended actions of the Executive Order.”

In conclusion, the Agency has affirmed and reaffirmed the importance of the issue of environmental justice and believes that issuing another memorandum at this time to reflect that

commitment is unnecessary. However, the Administrator may exercise the his/her discretion to issue a memorandum related to the Agency's continued commitment to environmental justice when he/she determines that an appropriate memorandum may be useful for administrative purposes.

OIG Recommendation 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.

Agency Response: The Agency believes that it has adequately defined the mission of the Office of Environmental Justice, which has provided clear direction to Headquarters and Regional Offices to consistently integrate environmental justice into their respective programs, policies, and activities.

The mission of the Office of Environmental Justice has been the same since it was created in 1992: to assist the Agency in integrating environmental justice into all programs, policies, and activities, consistent with environmental laws and their implementing regulations. This mission is premised on providing leadership and consistency to the Regional and Program Offices.

In order to accomplish its mission, the activities of the Office of Environmental Justice have evolved as the Agency and the impacted stakeholders gained experience in addressing the issue of environmental justice. The OIG's premise that the Office of Environmental Justice has moved its emphasis away from community outreach fails to understand that the fundamental principles of community outreach and meaningful public participation are central to the mission of the Office, and are most appropriately carried out in the Regional Offices. The activities of the Office continue to rely heavily on community outreach and public participation. It has been through the Office of Environmental Justice's outreach and public participation initiatives that lessons have been learned and practical solutions have been generated.

With respect to the activities of the Office, the Office of Environmental Justice has been shaped, in part, by its direct experience in seeking advice and input from all stakeholders (e.g., NEJAC) impacted by the Agency's efforts and initiatives. It has been through collaborative efforts to identify practical solutions to address environmental justice matters that the Office is able to provide direction and leadership to the Headquarters Program Offices and Regional Offices. For example, the Office of Environmental Justice provided the other members of the Environmental Justice Executive Steering Committee and Agency staff with the Office's priorities for FY02 and FY03 via memoranda and has orchestrated the development of Headquarters and Regional Environmental Justice Action Plans to ensure consistency in approach, to encourage measured results, and to promote accountability to meet environmental justice goals and objectives. Each EPA Headquarters Office and Region has developed such action plans under the leadership of the Office of Environmental Justice.

The Agency believes that the mission of the Office of Environmental Justice is well

understood, and is being pursued by all Headquarters Offices and Regions as they implement their respective Environmental Justice Action Plans. Therefore, a restatement of the mission does not appear to be necessary.

Some of the more recent activities and accomplishments of the Office of Environmental Justice include:

- Chairing the EPA's Environmental Justice Executive Steering Committee which is comprised of the deputy assistant administrators in each program office, the deputy regional administrators in the regional offices, and the Associate General Counsel of Cross-Cutting Issues. Through the Environmental Justice Action Plans, the members of the Steering Committee are responsible for the integration of environmental justice into the Agency's daily operations. The Office oversees the action plan development and implementation process. The action plans are available at:
<http://www.epa.gov/compliance/resources/reports/actionplans/ej/index.html>
- Chairing the 12-member federal Interagency Working Group (IWG) on Environmental Justice, which was established by Executive Order 12898. The IWG is currently overseeing the second round of 15 Revitalization Demonstration Projects to showcase collaborative partnerships among federal agencies and other stakeholders in the area of community revitalization and environmental justice. The anticipated result will be dramatic improvement in the quality of life in 30 minority and low-income communities that suffer disproportionate environmental impacts. Since the first 15 demonstration projects were launched in 2000, the IWG has initiated working relationships with more than 150 public and private organizations and 11 federal agencies, and secured the commitments of more than \$15 million in public and private funding to address issues ranging from children's health to economic development and community revitalization. More information on these demonstration projects is available at:
<http://www.epa.gov/compliance/environmentaljustice/interagency/index.html>
- Heading the EPA management team that provides direct support to the daily operations of the National Environmental Justice Advisory Council (NEJAC). The NEJAC provides independent advice, and recommendations to the Administrator on matters related to environmental justice. NEJAC reports and recommendations have been instrumental in ensuring that the Agency's programs address environmental justice issues around the country, including those in affected minority and low-income communities. Examples of these comprehensive reports include:

- Environmental Justice in the Permitting Process (1999)
- Environmental Justice and Community-Based Health Model (2000)
- Integration of Environmental Justice in Federal Programs (2000)
- Fish Consumption and Environmental Justice (2001)
- Advancing Environmental Justice Through Pollution Prevention (2003)
- Cumulative Risks and Impacts and Environmental Justice (to be released in Fall 2004)

More information on the NEJAC is available at:

<http://www.epa.gov/compliance/environmentaljustice/nejac/index.html>

- Leading the Agency's environmental justice training program, in which EPA staff learn how to integrate environmental justice into their daily responsibilities. This training program has consistently received the National Enforcement Training Institute's highest ratings for environmental training. The *Fundamentals of Environmental Justice Workshop*, for example, has trained approximately 3,000 people across the U.S. since 2001. Also, more than 150 people have completed the "Train-the-Trainer" Workshop, including participants from federal, state and local governments, academia, business and industry, and grassroots organizations.
- Providing resources to assist the Agency in its decisionmaking on environmental justice issues. The Office developed the soon to be released "Toolkit for Assessing Allegations of Environmental Injustice". Also available online is the interactive Environmental Justice Geographic Assessment Tool, which was jointly developed by the Office of Environmental Justice and the Office of Environmental Information to help EPA staff and managers gather data for their environmental and public health assessments. These resources are available online at:
http://www.epa.gov/compliance/resources/publications/ej/ej_toolkit.pdf
<http://www.epa.gov/compliance/environmentaljustice/assessment.html>
- Investing \$3 million towards a new Environmental Justice Collaborative Problem-Solving Cooperative Agreement Program aimed directly at affected communities. Thirty projects have been selected for awards of \$100,000 each, over a three-year period, to undertake environmental and/or public health projects to address the local environmental justice issues/concerns.
- Administering and managing, over the past 10 years, the Environmental Justice Small Grants Program which has provided more than \$17 million in direct financial assistance to over 1,000 community organizations

seeking to address local environmental and/or public health issues.

- Developing and managing, since 1992, an extensive on-the-job training program for aspiring environmental professionals. Through a grant with the Environmental Careers Organization (ECO), students receive practical experience working at EPA in fields such as science, engineering, law, computer science, policy analysis, and more. To date, over \$30 million has been invested in this program which has boosted the careers of more than 2,300 recent college graduates. Its success has spawned in 2000 the Office's Community Intern Program, allowing students to assist local community organizations on environmental and/or public health issues. In the past 4 years, over 100 students have gained working experience at the grassroots level on projects ranging from health education to research.

For more information on the Office's activities, please visit the Web site at: <http://www.epa.gov/compliance/environmentaljustice>

OIG Recommendation 2-3: Establish specific timeframes for the development of definitions, goals and measurements that will ensure that the 1994 Executive Order is complied with in the most expeditious manner.

Agency Response: The Agency believes that clear goals and measurements, in general, promote accountability to address the issue of environmental justice. The process for developing goals and measurements of success has already begun with the Regional and Program Office action plans. However, with respect to definitions, the Agency believes that it is problematic to develop definitions that would constitute a national "brightline/threshold" for defining minority and/or low-income populations given the various demographic dynamics throughout the country.

The Agency does not believe that in order to comply with the Executive Order it is necessary to identify and define minority and/or low-income communities on a national level. In other words, the Agency does not believe that there must be a brightline/threshold on a national level in order to have a vibrant and successful environmental justice program. Instead, the Agency believes that it is more appropriate to identify and address "environmental justice matters" in communities, through work at Headquarters and the Regions, consistent with existing environmental laws and their implementing regulations.

Identifying and addressing "environmental justice matters" is not a new approach to the implementation of Executive Order 12898. Upon the issuance of the Executive Order in 1994, for example, the Department of Justice issued its "Department of Justice Guidance Concerning Environmental Justice" that has also served as a guide to EPA as we continue to improve our own program. <http://www.usdoj.gov/enrd/frereqrec.html> The Guidance provides that:

“For purposes of the Justice Department, an ‘environmental justice matter’ is any civil or criminal matter where the conduct or action at issue may involve a disproportionate and adverse environmental or human health effect on an identifiable low-income or minority community or federally-recognized tribe.”

The Guidance proceeds to provide examples and further discussion of an “environmental justice matter” in the following manner:

- “a. Environmental and Natural Resources Division
 - 1) Contaminated drinking water....
 - 2) Discrimination and participation....
 - 3) Protection of tribal lands....
 - 4) Polluted air....
 - 5) Natural resource damages....
- b. Civil Rights Division
 - 1) Storm and sewage disposal systems....
 - 2) Siting of a landfill....
- c. Civil Division
 - 1) Radiation exposure....
- d. Community Relations Service “CRS”
 - 1) Clean-up of Superfund Site.”

None of the Justice Department’s examples of “environmental justice matters” makes any reference to a national brightline/threshold that its attorneys must use to prosecute a case. However, all examples involve the use of the law, whether civil or criminal, to address the environmental and /or public health concerns in an identifiable low-income or minority community or a federally-recognized tribe.

The Agency has benefited from the approach first developed by the Justice Department for identifying “environmental justice matters.” This approach is also reflected in EPA’s Environmental Justice Toolkit. Therefore, the Agency has determined that it does not need a national brightline/threshold to identify or address “environmental justice matters.” And, a definition of what is referred to by some as an “environmental justice community” on a national level using a single or definitive brightline/threshold is counterproductive. An environmental justice community appears to be a substitute for referring only to the demographic data (race and income) related to a particular community.

However, federal environmental laws were not written by Congress with such an approach in mind. And, as an executive branch agency, EPA is required to comply with those environmental laws. (A more expanded discussion of the Agency’s concerns regarding establishing a national

standard for defining an environmental justice community is found in the Agency's response to OIG Recommendation: 3-1).

The Agency, however, supports the development and use of GIS mapping tools that consider, among other data, demographic information as part of the scoping process. On October 29, 2001, the Office of Environmental Justice, in conjunction with the Office of Environmental Information, convened a Work Group to provide recommendations on the development of a national GIS tool when conducting preliminary environmental justice assessments. The Work Group's primary objective was to identify a set of environmental justice indicators which could be used as a baseline by all Regional and Headquarters programs when conducting those assessments. The Work Group (comprised of Regional and Headquarters GIS staff, and Environmental Justice Coordinators) reached consensus that an environmental justice assessment needed to go beyond the use of demographic data only to make a determination on whether a geographic area would require more focused attention by the Agency. This tool is also available to the public on the Office of Environmental Justice's Web site (<http://www.epa.gov/compliance/environmentaljustice/assessment.html>). This tool contains links to Headquarters and Regional Office mapping tools. In addition, data from this mapping tool is intended to be integrated at the frontend into all Agency assessment tools. EPA Headquarters and Regional Offices recognize that categorically defining communities or disproportionate impacts based on a national brightline/threshold approach using race and income only is misguided.

In general, with respect to establishing specific timeframes for the development of goals and measurements, the Agency concurs. That process has already begun with the Environmental Justice Action Plans and Progress Reports submitted to the Office of Environmental Justice by each Regional and Program Office. 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 Administrator's August 9, 2001, memorandum.

The Agency believes that it has a vibrant and successful environmental justice program. In just the past 2 years, there have been many examples of accomplishments across Regional and Program Offices. Following are a few highlights from the action plans that reflect goals and measures of success:

- As a specific example of environmental justice integration, the Office of Enforcement and Compliance Assurance (OECA) issued its Environmental Justice Policy in January 2004 to support the importance of environmental justice in program implementation. OECA has also developed an environmental justice targeting tool for staff.
- Based on the Clean School Bus USA Program, the Office of Air and Radiation (OAR) awarded cooperative agreements for 17 demonstration projects across the country in October 2003. Environmental justice was one of the evaluation factors in the selection process. One of the goals is

to improve the health of communities that are considered low-income, and/or minority, have high asthma rates, or receive a disproportionate amount of pollution from diesel vehicles.

- OAR's Urban Bus Retrofit/Rebuild Program is a regulatory-based program with the objective of reducing pollution from the existing urban bus fleets. This mandatory program is designed to ensure that particulate matter emissions are reduced for 1993 and earlier model year urban buses at the time of engine rebuild or replacement. The regulations apply to metropolitan areas with 1980 populations of 750,000 or more, including areas with environmental justice concerns. Forty-nine urban areas across the U.S. have been identified which are covered by this regulation. This program will continue as long as those vehicles are in service.
- OAR established the Idle Reduction Program to reduce air pollution and conserve fuel from idling trucks and locomotives. As part of this program, the Office of Transportation Air Quality continues to organize regional coalitions of communities, state and local governments, and trucking and truck stop companies to install idle reduction systems along major interstate corridors, such as I-65 in the Midwest and I-95 in the Northeast. The criteria for identifying locations includes areas with low-income, minority populations with a disproportionate amount of facilities nearby. One of the locations is a large truck stop in Gary, Indiana which received a \$125,000 grant for the installation of truck stop electrification infrastructure. To date, additional federal transportation funding has been secured and there are plans to build a 50-space Truck Stop Electrification project in Gary.
- The Office of Radon and Indoor Air (ORIA) launched a second wave of the English and Spanish-language versions of the "Goldfish" campaign to reduce asthma attacks in children. This asthma media campaign yielded \$96 million in donated media time, over 400,000 visitors to the Web site, and over 11,000 hotline calls as a result of the campaign. Training activities to address environmental triggers for disproportionately affected children suffering from asthma yielded the following results: (1) over 660 respiratory therapists were trained to be cognizant of environmental triggers of asthma; (2) over 2,500 childcare providers and over 2,000 school nurses were also trained; and (3) over 400 Open Airways classes were held, reaching over 3,000 students.
- ORIA distributed approximately 1500 radon canisters to environmental justice organizations that work with residents from low-income households. The lab, subsequently, analyzed approximately 1300 canisters. There are approximately 40 environmental justice organizations located throughout the U.S. that participate in the program.

- Region 1 completed the Environmental Justice Functional Guidance Compendium which covered seven major EPA functions: (1) Contracts and Procurement; (2) Development and Approval of State Programs; (3) Federal Financial Assistance Agreements; (4) Inspections, Enforcement and Compliance Assistance; (5) Performance Partnership Agreements with States; (6) Permitting; and (7) Waste Site Cleanup, Emergency Response and Brownfields. Cross-office training on each functional area began in March 2004.
- In FY 2003, the Region 1 Regional Administrator authorized the use of \$320,000 of Regional Geographic Initiative monies (approximately 60% of the total available dollars) to support environmental justice activities, including funding the new Healthy Communities Grants Program. These regional grant programs aim to identify community-based projects that will achieve measurable environmental and human health improvements in communities across New England. A total of 25 grants have been awarded across the region. An additional \$314,200 from headquarters was directed to environmental justice-related efforts.
- Region 1 just completed a record year on the lead paint enforcement front. During the fiscal year that ended Sept. 30, 2003, the region conducted more than 100 inspections to ensure that landlords and property owners are complying with federal lead disclosure rules. More than a half-dozen enforcement actions were initiated in response to those inspections and earlier inspections. The cases were in Connecticut, Massachusetts, Maine, New Hampshire and Rhode Island.
- In Region 6, 10 new cooperative agreements were awarded to community-based organizations in areas with environmental justice concerns, as part of the Brownfields Program.
- In Region 7, the St. Louis Community Air Project (CAP) is a broad-based community environmental project established in response to citizens concerns about air pollution and their health. This community effort, with support from government, industry, and local organizations, monitored the air for over 100 hazardous air pollutants and identified 5 pollutants that exceeded community set health benchmarks for acetaldehyde, arsenic, benzene, chromium, and formaldehyde. The CAP partnership is now developing educational tools and action plans to increase public awareness about these pollutants as well as what steps they can do to reduce emissions of these pollutants to achieve healthier air. A task force was also formed to work with the American Lung Association, school districts, school bus companies, and others to find ways to reduce exposure to

diesel particulate emissions.

- In Region 7, the Superfund Asarco Site is a 20-sq. mile area of residential properties, child care facilities, schools, and other residential-type properties in the city of Omaha, Nebraska that have contaminated surface soils resulting from the air emissions of lead smelting operations. The total area of the Omaha's Lead site is approximately 20 square miles. In 2002, 9,521 blood lead level screenings were performed. Of the 437 children that were identified with an elevated blood lead level in Douglas County, 383 (88%) lived in the zip codes located east of 45th Street. Currently, removal and replacement of lead contaminated soil has occurred at 403 properties. EPA anticipates that these actions will result in a significant decline in the blood lead levels of children in Douglas County.

OIG Recommendation 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.

Agency Response: The Agency agrees with the intent of this recommendation, and firmly believes that a clear vision on environmental justice is reflected in the vast range of EPA's efforts and activities.

The Administrator's August 9, 2001, memorandum articulates the vision for the Agency's efforts to integrate environmental justice: "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." Moreover, pursuant to that memorandum, the Regional and Program Offices' Environmental Justice Action Plans demonstrate how the Agency intends to integrate environmental justice into the government's decisionmaking processes, and all reflect environmental results. Also, each Regional and Program Office is required to submit an annual Progress Report which tracks and measures the results of each activity identified in the Action Plan. Therefore, the OIG 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 accomplished.

The Agency's focus over the next several years will be implementing all Regional and Program Offices' comprehensive strategic Environmental Justice Action Plans.

OIG Recommendation 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.

Agency Response:

The Agency has begun an on-going comprehensive strategic process to integrate environmental justice considerations into EPA's decisionmaking processes. This process promotes an outcome-based orientation to achieving environmental justice objectives.

The Agency will continue to focus on integrating environmental justice into the EPA's decisionmaking processes as reflected in the Regional and Program Office's Environmental Justice Action Plans. This is the Agency's comprehensive strategic plan for environmental justice. Each of the Action Plans includes outputs and outcome-related measurable goals and objectives. The Agency's progress in integrating environmental justice is reflected in the FY2003 Progress Reports, which have been submitted to the Office of Environmental Justice for review.

OIG Recommendation 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.

Agency Response:

The Agency's efforts to integrate environmental justice considerations into the decisionmaking process has been and continues to be a focus of EPA. However, as stated earlier, providing rigid, numeric brightlines/thresholds on a national level for certain definitions are problematic and may adversely impact the delivery of environmental protection to disproportionately affected communities.

Instead of simply defining a minority and/or low-income community based upon a national brightline/threshold, the Agency uses a consistent set of Environmental, Economic, Health and Social Indicators in order to identify and prioritize communities (affected areas) with environmental and/or public health issues/problems. Moreover, the Agency believes that Environmental Compliance Factors, Health (vulnerabilities) Factors, Environmental Factors, and Demographic Factors should be analyzed within the context of the given situation. Thus, for example, these factors are used by the Office of Enforcement and Compliance Assurance as criteria for enforcement targeting in the environmental justice context, allowing the Agency to first identify affected areas of concern with environmental and/or public health issues as follows:

- Environmental Compliance Factors
 - Facility density and proximity to Corrective Action/Superfund Sites;

- Frequency of compliance monitoring; and
- Compliance history of facilities within a geographic area (e.g., a governing body's jurisdiction based upon pre-selected levels (e.g., state, county, local, census block, census tract, or other similar geographic areas of analysis))
- Health (vulnerabilities) Factors
 - Nationally available U.S. Department of Health and Human Services Centers for Disease Control health data (e.g., cancer mortality rate, cancer incidence rate, infant mortality rate, and low birth weight rate, etc.; and
 - Available local data (e.g., asthma rates data, childhood lead poisoning data, birth defects data, etc.)
- Environmental Factors
 - Nationally available data (e.g., TRI emissions data using Risk Screening Environmental Indicators program; EPA emission data and ambient environmental data (NATA, non-attainment, 305 (b) stream data, etc.)); and
 - Available local data (e.g., beach closings, fish advisories, etc.)
- Demographic Factors
 - Nationally available U.S. Bureau of Census data regarding race, ethnicity, and income; and
 - Available local data regarding population age, population density, education, literacy, and rapid or severe changes in population or economic growth.

The Agency uses the following definitions for all programs, policies, and activities when conducting environmental justice assessments:

- Affected area or community of concern: The affected area or community of concern is the geographic area of analysis that the proposed project or action will or may have an effect on.
- Adverse effect or impact: Adverse effect or impact is a term used to describe the entire compendium of "significant" (as defined by the National Environmental Policy Act) individual or cumulative human health or environmental effects or impacts which may result from a proposed project or action. Examples of adverse effects or impacts include but are not limited to:
 - Bodily impairment, infirmity, illness, or death;
 - Air, noise, soil, and water pollution or contamination;
 - Destruction or disruption of man-made or natural resources;
 - Destruction or disruption 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; and
- Increased traffic congestion, isolation, exclusion, or separation of individuals within a community or from a broader community.
- Disproportionately high and adverse effects or impacts: Means an adverse effect or impact that: (1) is predominately borne by any segment of the population, including a minority population and/or a low-income population; or (2) will be suffered by a minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect or impact that will be suffered by a non-minority population and/or non-low-income population.
- Low-Income: Means a person whose median household income is at or below the U.S. Department of Health and Human Services poverty guidelines.
- 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 farm workers or Native Americans) who will be similarly affected by a proposed project or action, or EPA program, policy, or activity.
- Minority: Means a person, as defined by the U.S. Bureau of Census, who is a : (1) Black American (a person having origins in any of the black racial groups of Africa); (2) Hispanic person (a person of Mexican, Puerto Rican, Cuban , Central or South American, or other Spanish culture or origin, regardless of race); (3) Asian American or Pacific Islander (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 or Alaskan Native (a person having origins in any of the original people of North America and maintains cultural identification through tribal affiliation or community recognition).
- Minority Population: Means any readily identifiable group of minority persons who live in geographic proximity, and, if circumstances warrant, geographically dispersed/transient persons (such as migrant farm workers or Native Americans) who will be similarly affected by a proposed project or action, or EPA program, policy, or activity.
- Programs, Policies, and Activities: Means all projects, actions, programs, policies, and activities that adversely affect human health or the environment, and which are undertaken or approved by EPA. These include, but are not limited to, permits, licenses, and financial assistance provided by EPA.
- Reference community: Means another community of equal size, the

surrounding county, the region or metropolitan statistical area, the state or the entire United States.

These definitions are set forth in the Agency's Environmental Justice Toolkit, which will be used as a reference guide by Headquarters and Regional Offices.

OIG Recommendation 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.

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

The Agency firmly believes that its comprehensive environmental justice training program is effective. The Agency uses the standard government-wide definitions of minority and low-income in its training courses. However, the focus of the training for EPA employees is to identify and address "environmental justice matters," consistent with existing environmental laws and their implementing regulations, and based on an evaluation of the totality of the circumstances. As discussed earlier in the Agency's Response to OIG Recommendation 2-1, the "Department of Justice Guidance Concerning Environmental Justice" states that:

The ultimate determination whether a particular situation raises an environmental justice issue will depend on an evaluation of the totality of the circumstances. However, there are a number of factors that should be considered in determining whether any individual situation does raise such an issue:

1. FACTORS TO BE CONSIDERED

- Whether individuals, certain neighborhoods, or federally recognized tribes suffer disproportionately adverse health or environmental effects from pollution or other environmental hazards;
- Whether individuals, certain neighborhoods, or federally recognized tribes suffer disproportionate risks or exposure to environmental hazards, or suffer disproportionately from the effects of past under-enforcement of state or federal health environmental laws;
- Whether individuals, certain neighborhoods, or federally recognized tribes have been denied an equal opportunity for meaningful involvement, as provided by law, in governmental decision making relating to distribution of environmental benefits

or burdens. Such decision making might involve permit processing and compliance activities.

While it is important to avoid overly narrow conceptions of possible environmental justice situations, the mere presence of environmental hazards in a particular community does not in and of itself mean that an environmental justice problem is addressable in litigation. Additional factors must be considered, such as the accumulation of a number of environmental hazards in an affected area because of the lack of public participation by the community, lack of adequate protection under the laws designed to protect health and the environment, or unusual vulnerability of the community to such hazards.

Thus, utilizing this approach, each “environmental justice matter” must be assessed on a case-by-case basis by EPA employees.

The Agency is committed to providing the basic knowledge regarding environmental justice matters to its employees in order to integrate environmental justice into the decision-making processes based upon the laws that the Agency administers. This is consistent with how the Department of Justice operates. Again, this approach is set forth in the Environmental Justice Toolkit and frames how the Office of Environmental Justice currently is serving as the lead for developing environmental justice training for permit writers in the Clean Air Act, Clean Water Act, and the Resource Conservation and Recovery Act permitting programs. Furthermore, at least one region – Region 1 – has provided a 2-day comprehensive training course to staff and management at all levels, and is currently developing plans to introduce program-specific environmental justice training in virtually all functional areas. Moreover, environmental justice training has been extended to partner government agencies to further promote consistency and to raise awareness of environmental justice issues. For example, through a collaborative effort between EPA Region 9 and the State of California – specifically with the Governor’s Office of Planning and Research and the California Environmental Protection Agency, the two state agencies responsible for environmental justice in the state – over 500 state employees have been trained on environmental justice since 2001.

OIG Recommendation 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.

Agency Response: The Agency concurs with this recommendation.

The Agency, through 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 conduct the comprehensive management study. Pursuant to the OIG’s findings, the comprehensive management study was designed to address

the following areas:

- Examine Headquarters and Regional Offices' funding and staffing for environmental justice activities to ensure that adequate resources are available to fully implement the Agency's environmental justice program;
- Explore the benefits of designating qualified and committed full-time employees to manage the environmental justice program in each Headquarters and Regional office;
- Determine opportunities to integrate environmental justice into the strategic and operating planning process; and
- Examine the need for and benefits of shifting resources and formal reporting structures to improve the integration of environmental justice into core programs in Headquarters and Regional offices.

Mr. Fields completed the management study and provided a number of recommendations (Attachment B). The Agency, through the Environmental Justice Executive Steering Committee, is continuing to review and discuss those recommendations, and will determine whether and how they will be implemented. A facilitated dialogue is scheduled for July 14 so that the members of the Executive Steering Committee can discuss the recommendations and to develop a comprehensive environmental justice strategic plan for the Agency.

OIG 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 regional offices.

Agency response: The Agency has an on-going effort to measure the progress of the Headquarters Program Offices and Regional Offices.

Each Regional and Program Office has used the "Template and Instructions for Action Plans to Integrate Environmental Justice" developed by the Executive Steering Committee's Accountability Workgroup. The Template identified the following 6 specific objectives.

- Risk Reduction/Protect Environmental and/or Public Health* - To ensure equal implementation of environmental laws to achieve significant risk reduction which will improve the environment and/or public health of affected communities.
- Outreach and Communications* - To provide opportunities for meaningful involvement and ensure effective communication between the Agency decisionmakers and stakeholders, including all affected communities.
- Training* - To provide training for EPA managers and staff to enable them to incorporate environmental justice considerations into their decisionmaking

process.

- d. *Federal, State, Tribal, and Local Government Coordination* - To ensure effective coordination across all levels of government to address the environmental and public health concerns of affected communities.
- e. *Grants and Contracts Administration* - To promote effective and efficient management of all grants and contracts to ensure that the environmental and public health concerns of affected communities are addressed.
- f. *Environmental Justice Assessment* - To conduct an assessment of the Environmental Justice Indicators (i.e., Environmental, Health, Social, and Economic) within affected communities as part of the environmental decisionmaking process.

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. Each Regional and Program Office's environmental justice program will be assessed by the Office of Environmental Justice based on the objective activity and performance measures set forth in their Environmental Justice Action Plan. Regions also conduct their own evaluation of environmental justice activities in light of region-specific goals and objectives and many maintain detailed inventories of their environmental justice work.

OIG 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 agrees that GIS can be an important tool to identify environmental justice issues. However, as stated earlier, limiting the scope of analysis by establishing rigid national brightlines/thresholds can limit viable solutions for addressing environmental justice issues.

The OIG is recommending that the Agency must develop a brightline/threshold for "identifying and defining minority and low-income communities on a national level" in order to comply with Executive Order 12898. The OIG states that other federal agencies have accomplished this task and offers the Council of Environmental Quality and the Department of Transportation as examples. A detailed examination of CEQ's and DOT's guidance documents do not support the assertion that these agencies have established an absolute and uniform brightline/threshold for identifying and defining an "environmental justice community" on a national level. Moreover, a review of other departments' and agencies' environmental justice

policies reveals that no other government entity is following the OIG's recommended national brightline/threshold approach:

- Department of Energy (<http://web.em.doc.gov/stake/envjus.html>);
- Department of Housing and Urban Development (<http://www.hud.gov:80/offices/cpd/energyenviron/environment/subjects/justice/deptstrategy.cfm>);
- Federal Aviation Administration (<http://www.aee.faa.gov/aee-200/ejq&a.pdf>);
- Department of Commerce (<http://www.ecs.noaa.gov/implementing12898.html>);
- Department of Agriculture (<http://www.USDA.gov/da/5600>);
- Department of Defense (<http://web.dandp.com/asn/ejstrat.html>);
- Department of Interior (www.doi.gov/opec/justice.html);
- Department of Justice (<http://usdoj.gov/enrd/enrdfrereqrec.html>);
- Department of Health and Human Services (no posting on Web site of environmental justice strategy);
- Department of Labor (no posting on Web site of environmental justice strategy).

All of these departments were identified in the Executive Order as members of the Interagency Federal Working Group (IWG).

Executive Order 12898 requires that the Agency, in addition to the other IWG members, identify and address, “as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” (Section 1-101), by promoting the enforcement of all health and environmental statutes; by ensuring greater public participation in decisions affecting human health and the data collection involving human health and environment; and by identifying differential patterns of consumption of natural resources (See Section 1-103(a)(1)-(4)). This has been the Agency's strategy since the Executive Order was signed and will continue to be so.

Against this backdrop, the Agency developed the Environmental Justice Toolkit which sets forth a standard environmental justice assessment methodology. The Agency also developed the Environmental Justice GIS Assessment Tool for using GIS technology and geographic databases to conduct those Environment Justice Assessments. This national tool, along with the other mapping and assessment tools developed by the Regions, aid EPA employees in determining minority and/or low-income populations as they conduct Environmental Justice Assessments. Within the Toolkit, the Agency uses the term “geographic areas” which is more precise instead of the term “environmental justice communities” as follows:

- Geographic Areas where any readily identifiable group of minority persons reside at a higher percentage than the state average. Minority populations which are defined by the U.S. Bureau of Census as individuals who are members of the following population groups: American Indian or Alaskan Native; Asian American or Pacific Islander; Black American, not of Hispanic origin; or

Hispanic. This definition includes, if circumstances warrant, geographically dispersed/transient persons who may not be accounted for in census data. These populations include seasonal, migrant farmworkers. Sources of information regarding small pockets of minority populations can be obtained through local churches, state and local colleges, community centers, and expanded public participation efforts.

- Geographic areas where any readily identifiable group of individuals, whose median household income is at or below the U.S. Department of Health and Human Services poverty guidelines, who reside at a higher percentage than the state average. Because the U.S. Bureau of Census data related to poverty is only gathered every 10 years and may not provide the level of detail required for analysis, local sources of information (e.g., university, local or state departments of economic development) can also be used to augment census data.
- Geographic areas where the percentage of children (6 years of age and younger) and/or older individuals (65 years and older) reside at a higher percentage than the state average.

This common general systematic approach is reflected in the Agency's Environmental Justice Toolkit.

EPA recognizes that national consistency is an important objective in the Agency's quest to integrate environmental justice considerations into all programs, policies, and activities: but the Agency cannot ignore the crucial need for Regional flexibility so that integrating environmental justice considerations is accomplished in a manner that is responsive to the particulars of the populations and geographic areas addressed. Therefore, because of the need to maintain flexibility in the Regions, the Agency does not agree that strictly limiting variations relating to GIS applications is prudent. Nor does the Agency agree that a uniform national brightline/threshold is appropriate for making an "environmental justice decision." On the other hand, the Agency believes that a systematic approach and methodology as reflected in the Environmental Justice Toolkit is beneficial.

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

Agency Response: The Agency does not concur with this recommendation because it calls for a restrictive definition to determine what is or what is not an "environmental justice community." Please see the Agency's responses to the OIG's recommendations 2-1, 2-3, 2-6, and 3-1.

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

The Agency does not concur with this recommendation because it calls for "a clear and comprehensive policy on actions that benefit and protect identified minority and low-income communities." This recommendation calls on EPA to develop a comprehensive policy to benefit and protect only a subset of communities. The Executive Order specifically provides no such special "benefits and protections," in accordance with Section 6-609. Environmental laws do not allow the Agency to base its decisions on demographic data alone and does not contemplate the notion of categorizing "environmental justice communities" in the environmental decisionmaking processes of the federal government. Although the Regions use environmental justice mapping technologies to identify large minority, low-income or other populations, the Regions do not confer any special "status" or "designation" from which, for example, particular rights or remedies may spring.

For example, a permit is not granted or denied solely on the basis of a community's median income level or racial makeup. EPA does not apply civil rights requirements as is it implements the Nation's environmental laws.

The Administrator's August 9, 20001, memorandum specifically provides that: "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." Therefore, the Agency is already striving to include environmental justice considerations into those documents.