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S. HRG. 110–1106

OVERSIGHT OF EPA'S ENVIRONMENTAL JUSTICE PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL HEALTH

OF THE

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

JULY 25, 2007

Printed for the use of the Committee on Environment and Public Works

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ONE HUNDRED TENTH CONGRESS
FIRST SESSION

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[1]Note: During the 110th Congress, Senator Craig Thomas, of Wyoming, passed away on June 4, 2007. Senator John Barrasso, of Wyoming, joined the committee on July 10, 2007.

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OVERSIGHT OF EPA'S ENVIRONMENTAL JUSTICE PROGRAMS

WEDNESDAY, July 25, 2007

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON SUPERFUND AND ENVIRONMENTAL HEALTH,
Washington, DC.

The subcommittee met, pursuant to notice, at 2 p.m. in room 406, Dirksen Senate Office Building, Hon. Hillary Rodham Clinton (chairman of the subcommittee) presiding.

Present: Senators Clinton and Boxer.

STATEMENT OF HON. HILLARY RODHAM CLINTON, U.S. SENATOR FROM THE STATE OF NEW YORK

Senator CLINTON. Good afternoon, everyone, and welcome to the Subcommittee on Superfund and Environmental Health oversight hearing on EPA's Environmental Justice Programs.

I would like to thank all of you for joining us today, and especially those who have traveled from communities in New York, Louisiana, California, Tennessee, South Carolina, many places around our country.

Community groups from across America, from Alaska to New York, submitted statements about their difficult pursuit of environmental justice. If there is no objection, I would like to include their written statements as testimony in the record of this hearing. I hear no objection.

Today's hearing represents the first Senate hearing in history devoted to environmental justice. One only needs to look at the statements submitted by concerned citizens and community organizations ranging from the Asian Pacific Environmental Network to the Farmworkers Support Committee to the Sierra Club, to so many others, to understand the critical importance of this issue to so many of our fellow citizens.

These personal stories and community challenges represent a record of injustice, a record of children growing up with asthma that keeps them home from school; suffering from lead poisoning that harms their ability to learn and reach their God-given potentials; a record of families living within steps of toxic waste facilities; neighborhoods where polluted air poses health risks.

I am entering these statements into the record because they remind us that this is an issue that touches millions. Today, millions live in fear that the air is unsafe to breathe, the water unfit to drink, their home unhealthy to raise their children in. We know

that these are predominantly communities of color and low-income populations.

Therefore, I think it is imperative that we understand we have a moral duty to act.

A 2005 Associated Press analysis of EPA air data found that African Americans were 79 percent more likely than their white counterparts to live in an area where the levels of air pollution posed health risks. About one half of lower income homes in our Nation are located within a mile of factories that report toxic emissions to the EPA.

Hispanic and African American children have lead poisoning rates that are roughly double that of their white counterparts. This is a particular problem in many parts of my State and in older communities across our country where the housing stock is older, and unfortunately therefore more prone to produce unacceptable levels of lead in children's blood.

Asthma rates in East Harlem, New York, a predominantly lower income community of color, Hispanic and African American, are among the highest in the Nation.

I have proposed several pieces of legislation to address these environmental injustices and to help those living with the consequences. When Congress passed the Brownfields law, I included a provision to target funding to communities with higher incidence of diseases such as cancer. My Home Lead Safety Tax Credit Act of 2007 would help to make more than 80,000 homes safe from lead each year, nearly 10 times the capacity of current Federal efforts.

My Family Asthma Act to strengthen our study of environmental pollution linked to asthma would help patients better manage the disease.

I am proud of my bipartisan work on environmental justice and proud of the work of the Clinton administration. In 1994, the Clinton administration required all Federal agencies to make environmental justice part of their mission and created an Interagency Work Group on Environmental Justice to coordinate justice activities. Throughout the Clinton administration, the EPA worked to develop and carry out the mandate that environmental justice was not just a rallying cry, but a real priority of our Nation.

This is not and should not be a Democratic or Republican priority. In fact, under the first Bush administration, the EPA released several reports on what was then known as environmental equity, now called environmental justice. Unfortunately, but not surprisingly, this bipartisan priority stops at the steps of the White House under this President, who for 6½ long years has allowed ideology to trump science and evidence, and permitted politics to make decisions.

The current Administration has taken us backward, and it is millions of low-income families and citizens of color who pay the price. The EPA has refused to recognize the crystal clear evidence. Your income and your skin color is a good indication of how clean your air will be when you take a breath.

The EPA has failed to take action on environmental justice and rolled back many of the gains that we made during the 1990's. Documents from the EPA Administrators from 2001 and 2005 downplay the disproportionate impact of environmental problems on

lower income and minority communities. The Interagency Working Group formed by the Executive order is idling, maintaining only programs started during the Clinton administration. The National Environmental Justice Advisory Committee which used to meet on at least an annual basis has not convened for a full public meeting since 2004, according to the EPA's Website.

The Agency's failures were catalogued in a report released earlier this year by the United Church of Christ. This report, called Toxic Wastes and Race at 20, states that the environmental justice movement faltered and became invisible at the EPA under the George W. Bush administration.

A 2004 report from the EPA Office of the Inspector General found the following: EPA has not fully implemented Executive Order 12898, the Order issued by President Clinton, nor consistently integrated environmental justice into its day to day operations. In 2005, the wholly nonpartisan Government Accountability Office released a report titled, EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules. The GAO concluded that the agency has failed to consider environmental justice in making rules that protect families from environmental degradation and pollution.

In 2006, the Office of the Inspector General released another report on the EPA's environmental justice record, concluding that EPA's senior management had not sufficiently directed program and regional offices to conduct environmental justice reviews.

Under the Bush administration, the EPA has not lived up to its mission to protect health and the environment. Far too many Americans with lower incomes or from communities of color do not have equal access to protections that safeguard health, well being, and the potential of children and families. It is separate. It is unequal, and it is wrong.

As I said at the outset, this hearing is a first in and of itself, the first Senate hearing devoted exclusively to environmental justice programs. But in my view, it is just a first step. We have a lot more work to do on this issue as we will explore in today's hearing. But I want to let everyone who is here today, who is watching on the Web, who has submitted testimony, I am committed to working with you, along with my Chairwoman, Senator Barbara Boxer, to restore environmental justice as a priority at EPA.

I am announcing two followup steps at this hearing. First, I will be introducing legislation to address some of the environmental justice concerns we have identified. The legislation will increase Federal accountability by making sure the Environmental Justice Working Group addresses environmental justice concerns that cross agencies and issues, such as housing and transportation.

Second, we want to help build community capacity through a grant program to help communities engage in this kind of local, multi-agency work, building on a pilot program initiated under the Clinton administration.

Third, we want to provide access to experts by establishing an Environmental Justice Clearinghouse to help connect communities with technical experts who can help them address their environmental justice issues.

Finally, I want to announce that I will be holding a Superfund oversight hearing in my subcommittee this fall. This is something that Senator Boxer and I both think is a critical priority. She has been a champion of Superfund cleanup and of dealing with these environmental justice issues for as long as she has been in public life. She was the first person who memorably said that when it comes to protecting the health of our children from pollution, we cannot think of children as miniature adults. They are much more susceptible to things like asthma, lead poisoning and so much else.

So I am delighted to be able to convene and chair this subcommittee hearing. I especially want to thank the Chairwoman, because Senator Boxer's leadership on this committee is a breath of great fresh air. We are dealing with issues that need to be addressed, and under her leadership we are going to make progress in a bipartisan way dealing with the environmental and health issues confronting Americans.

Senator Boxer.

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Senator BOXER. Senator Clinton, thank you so much. I am so proud that you are on my committee. I am so pleased that you chair this subcommittee. Your leadership is so important.

I think your two announcements today are very important to me. One, your bill that you have outlined is very important and I hope I could have the honor of being your first cosponsor because I love what you have done here to make it simple, to pull everything together, and to give communities the resources they need.

I am very proud that Hilda Solis is here, by the way. I think she has been a tremendous leader and we work together all the time because unfortunately Congresswoman Solis sees some of the problems first-hand in her District and needs our help. Senator Feinstein and I are always proud to stand with her.

I also want to say that there are three people in the audience I would like to recognize briefly, and hope that in the next hearing that we have in the fall on Superfund that you will allow them to be on the panel, because I think they have a lot to say: LaVonne Stone, who is president and executive director of the Fort Ord Environmental Justice Network and Tina Acosta—will you stand Tina and LaVonne?—a community activist with the Fort Ord Environmental Justice Network. They are a Federal facility on the national priorities list and Superfund site. EPA calls this the second most contaminated site in the country. So I think having them would be great.

The third person is LaDonna Williams. If she would rise at this point. She is with the People for Children's Health and Environmental Justice in Vallejo, Midway Village residence, that is where she is. They live directly on top of a Superfund site that has over 400 toxins. So at the next hearing, I hope we can work it out with your concurrence to have them come, because we need to hear their voices. So I want to thank the three of you for being here today.

Let me just ask unanimous consent to put my statement in the record, and I will summarize it.

The environmental justice movement started at the grassroots level in an effort to protect minority and low-income people from the unfair burden they often bear from dangerous pollution in their communities. Studies have shown continually that toxic waste dumps are located in minority and low-income communities far more often than would happen by pure chance. There is a plan involved.

In fact, we will hear today from respected experts such as Dr. Robert Bullard that key studies show that a community's predominant race is the most important factor in predicting the location of commercial hazardous waste dumps, more important than the neighborhood's average education, income or other characteristics.

Madam Chair, this is immoral. I am so glad that you are having this hearing so we can wake up America to this fact. It is just plain wrong that communities of color have to shoulder an unfair pollution burden. It is an injustice that a child born in a predominantly African American or Latino community may face a bigger health threat from pollution than other children in nearby communities.

Unfortunately, we will hear from the EPA Inspector General, the Government Accountability Office, and independent academic experts recent EPA actions have undercut efforts to ensure environmental justice, as Senator Clinton has pointed out. This Administration has gone so far as to redefine the term "environmental justice" so as to undercut the focus on racial disparities. They have failed to carry out, again as our Chairwoman has pointed out, the Executive order adopted by President Clinton requiring strong steps to assure environmental justice.

So whether it is in your State of New York or my State of California or anywhere in between, we see people hurt. They are hurt by the exposure to dangerous poisons; hurt again when their own government fails to put into place the important protections meant to help their children and families.

I think it is important to note that nationally neighborhoods within 1.8 miles of a commercial hazardous waste facility are 56 percent minority. Let me say it again. Neighborhoods within 1.8 miles of a commercial hazardous waste facility are 56 percent minority, according to the study that Dr. Bullard will share with us, and Dr. Wright will share with us.

So the facts and figures are there. The facts are there. Real strides were made, and this is the sad part, real strides were made under the Clinton administration and we thought this fight was over. We sort of sat back and thought, well, we fought that battle. But you know what you learn around here, and Senator Clinton often talks about it, no fight is ever really won as long as the sun comes up in the morning and there are special interests out there who want to take away progress.

So Senator Clinton was the first female Senator to say to me, you know, Barbara, every day we get up, we put on our suit, and we get ready for battle. We are ready for battle on this. Again, I will be by Senator Clinton's side. This is her subcommittee. I have delegated her this responsibility to handle these issues, environmental justice, Superfund, and we couldn't have a better advocate.

Thank you, Senator.

Senator CLINTON. Thank you very much, Senator Boxer.

We are delighted to have Congresswoman Hilda Solis with us today. She represents California's 32d Congressional District. She is the Chair of the Congressional Hispanic Caucus Task Force on Health and Environment, and also serves on the prestigious Select Committee on Energy Independence and Global Warming.

While serving as a California State Senator, she spearheaded efforts to enact the Nation's very first environmental justice legislation, and was the first female recipient of the John F. Kennedy Profile in Courage Award for her pioneering work on environmental justice issues in California.

Both Senator Boxer and I are just delighted and privileged to have you here, and we look forward to your statement, Congresswoman.

STATEMENT OF HON. HILDA L. SOLIS, U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Ms. SOLIS. Thank you, Senator Clinton and Chairwoman Senator Barbara Boxer. It really is a pleasure to be here. I can't tell you how refreshing it is in the 7 years that I have been able to serve in the House of Representatives to know that our leadership now resembles the face of, at least in my opinion, California and the diversity that you bring to this subject matter. I think it is very important and very timely.

As was stated, I represent a very diverse, heavily impacted District in Southern California, East Los Angeles and the San Gabriel Valley home to, I must say, 3 Superfund sites, 17 vacated gravel pits, and one of the largest surrounding landfills in the country, the Los Angeles County Sanitation District's Puente Hills Landfill, where I grew up in the neighboring community.

I can go on about all the stories, the negative impacts in our community, but it goes far beyond that. I think why we are here today is to talk about how there needs to be a correction and enforcement of our laws that are already on the books. I can tell you that as a former member of the California State Senate back in 1994, when Executive Order by President Bill Clinton, 12898, was implemented, that was our goal, to try and see how we could get States to begin to implement that piece of legislation.

We worked very hard. The first year of introduction, it was vetoed by a Republican Governor at the time, but we worked very, very hard to see that we could try to bring people together in a bipartisan effort to see that it could finally be realized. Eventually it was signed into law. I am happy that California led the way with all the help of our different stakeholders to help move that legislation forward. We set the goal, I think, for the rest of the country because shortly after about 29 other States followed suit.

So I am happy that that happened. But what continues to bother me is the lack of enforcement here at the Federal level. Yes, as you said, Senator Clinton and Senator Barbara Boxer, we have really abandoned the pretext of what this initial Executive order was established to do, to protect those communities and to provide equity and balance in a fair assessment of where projects are placed, whether they have positive or negative impacts on communities.

One of the things that I recall saying over and over again in committees was that we wanted to see a level playing field, that not

only Malibu or Beverly Hills would be treated differently, but that they would not disadvantage communities like mine in East Los Angeles and the San Gabriel Valley.

Yet today we find ourselves in the midst of some of the worst air pollution, contaminants in our water, heavy, heavy negative air emissions that we find along our freeways where schools are built, where communities live and reside, and of course the gravel pits in the San Gabriel Valley where Senator Boxer I know is very familiar, where there is literally no form of legislative support to help provide assistance to communities that want to organize and know that the devastating effects of asthma are a direct result of freeway traffic next to their homes, the particulate matter that comes from the gravel pits, and then the toxicity of other air pollutants that surround the San Gabriel Valley that almost act as though it is a net over our community.

Our people, our children can't escape that. The EPA, in my opinion, hasn't done enough to provide the necessary tools and enforcement to help make these goals that were intended some years ago to be implemented.

I am here to plead with you as someone who has also introduced an EJ bill, environmental justice bill, that we hope, too, we can adopt and see both of our Houses work together on this, to see that we come to some resolution and we give hope to the different communities that are here represented today, but also those that are unaware that this legislation or this Executive order that existed some time ago, is there on the books, but has not been enforced, and that we are asking and appealing to the stakeholders, as well as to Members of Congress and the Senate and our President to continue with that pattern of making this a reality for us, to see that in fact we make those corrections; that Superfund sites receive the immediate support that they need to clean up those toxic landfills, in some cases, because I have three in my District right now that thousands of dollars go into litigation and never come to provide any relief to the surrounding communities.

We are starving our communities also because it is very, very important that some of that land be remediated, so Brownfields and others can be turned around so that we can put housing, economic development, and hopefully open space for so many of our young children that don't have that opportunity in the San Gabriel Valley and East Los Angeles, where it is very hard to find an opportunity for many of our young people to go out and enjoy recreation, when you are in fact having to use school yards that are paved with cement because there is no open space. You have to beware of where you go out and play because you may be next to a site that is toxic.

These are the stories that we hear always, year-round in our District and around the country. I am hopeful that somehow we can provide the support, leadership and energy that is needed here in the Congress. I am ready to do that on my part as a member of the Energy and Commerce Committee. We are not only looking at cleaning up our Superfund sites, but we are also looking at hopefully setting a standard to clean up our water, because when the water turns off because we find out that there are contaminants, who does that affect? It affects our families, our children.

We need EPA to also step up to the plate to help us set a standard. California has a good standard, probably one of the best in the country, but the EPA for the last 11 years has done nothing, has been silent on this issue. The research, the science is there. What are we waiting for?

We need help on the Senate side also to see that those kind of remedies are put forward. I would ask that something that I would like to join with you, Senator Clinton, is asking the GAO as they look in review of our Superfund site legislation and cleanup, that we also consider language that would address EJ issues in that matter. Because as you know, near any of these major sites there are communities of color that are either disadvantaged or low income. I rarely see that kind of information placed in the record in any kind of report that is issued by the Federal Government. I find that the EPA really has done nothing to really implement the Executive order that was put in place. I don't see any funding. I don't hear enough about grants, the grant program that they are initially undertaking. I would like to know more about that, and see how we can improve the conditions for all of our communities and for all Americans.

I am delighted that this is the first hearing that you are having. I know it won't be the last, and I hope that we can do joint hearings as well. If you desire to come out to Los Angeles, I am sure we can arrange to do that.

With that, I think my time might be up. I am over. But I do want to say that it is indeed a blessing to know that we have such leadership here in the Senate that is going to challenge this Administration and challenge those individuals that would deny equal treatment under the law, under this Executive order. Hopefully, we will see the light of day of our legislation where we can have true enforcement, implementation, transparency, accountability, and justice for our communities, our communities of color that so, so badly need this.

So I would thank both of you for allowing me the opportunity to be here, and to continue our work with you on our side of the House as well. So thank you so much.

[The prepared statement of Representative Solis follows:]

STATEMENT OF HON. HILDA L. SOLIS, U.S. REPRESENTATIVE FROM THE STATE OF CALIFORNIA

Good afternoon. Thank you for allowing me to testify here today.

My name is Congresswoman Hilda Solis and I represent the 32nd Congressional District of California, which includes parts of East Los Angeles and the San Gabriel Valley. I am a Member of the Energy and Commerce Committee where I am the Vice Chair of the Environment and Hazardous Materials Subcommittee and a Member of the Health Subcommittee. I am also the Chair of the Congressional Hispanic Caucus Health and Environment Task Force. Earlier this year, Speaker Pelosi appointed me to the House Select Committee on Energy Independence and Global Warming because of my work on environmental justice.

CALIFORNIA'S ENVIRONMENTAL JUSTICE LAW/PROFILE IN COURAGE

The issue of environmental justice is one I have worked on for quite some time and am very passionate about. When I took my oath of office, both at the State and Federal level, I vowed to work to protect the health of these communities who have the odds stacked against them.

As a California State Senator I introduced legislation to require the California Environmental Protection Agency (Cal/EPA) to design, conduct, and enforce its policies

and programs in a "manner that ensures the fair treatment of people including minority populations and low income populations of the state." This legislation directed the Cal/EPA to ensure that the public—all communities affected—participate in the development and implementation of environmental policies. It also required the Cal/EPA to improve its research and data collection on programs relating to the health and environment of all people.

After a lengthy battle and one veto, my legislation was eventually signed into law and California became the first state in the nation to have an enforceable environmental justice statute. Since then, more than 30 other states have enacted legislation to protect communities. In 2000, I became the first woman to be awarded the John F. Kennedy Profile in Courage Award for my work on environmental justice. I am very proud of this award and continue to work to improve the lives of those who cannot fight for themselves.

ENVIRONMENTAL JUSTICE

Environmental justice is about making sure that the most vulnerable populations have clean air, clean water, safe homes and good health. It is about ensuring that hard working families are not missing days of work and their children are not missing school because pollution from the local power plants has caused them to have an asthma attack. It is about making sure that all are treated fairly and have equal chance to make their own opportunities.

For decades, minority and underserved communities have been forced to live in close proximity to industrial zones, power plants, and toxic waste sites. These are the communities nationwide whose health and quality of life are negatively impacted the most by environmental injustices. More than 5½ million Latinos live within 10 miles of a coal powered plant and 68 percent of all African Americans live within 30 miles, the range where health impacts are the most severe. Over 70 percent of all African Americans and Latinos live in counties that violate federal air pollution standards, compared to 58 percent of whites. One in four Americans live within four miles of a Superfund site—one of America's most toxic waste sites—including 10 million children.

These communities are not victims of choice. They are victims of circumstance, of environmental injustice, which occur when race and space conflict and the neighborhood is not empowered to fight for its health of environment.

As a result of environmental injustices, Latinos in the South Bronx are nearly 2.5 times more likely to develop asthma than whites. African Americans visit the emergency room with asthma attacks three times more than whites and are more than twice as likely to die from asthma as whites. Babies born in neighborhoods with high levels of smog and pesticides are more likely to die before their first birthday than those who are not. In communities with high levels of large air particle pollution, the death rate from sudden infant death syndrome jumps by as much as 26 percent. These include the communities of McFarland, Bakersfield, Tulare County and Los Angeles in California.

East Los Angeles and the San Gabriel Valley, the communities I represent, are disproportionately exposed to these risks. Sixty percent of the district I represent in Congress is Latino and nearly 20 percent are Asian American. Forty percent have less than a high school education, most are blue collar skilled laborers. Many are immigrants. The water basin in the area is contaminated with rocket fuel linked to thyroid cancer. There are 17 gravel pits—many of them abandoned—which have opened up the aquifers and those operating leave neighborhoods covered with gravel dust. There are three superfund sites and nearby is one of the largest landfills in the nation.

In my community, as in others across the country, these detrimental environmental conditions are not equitably distributed. Both the state of California and County of Los Angeles track averages of percent minority population and poverty levels in a 3 mile radius surrounding a facility. Forty-three enforcement actions were taken against 39 facilities in Los Angeles County between October 2005 and May 2007. Ninety-two percent of people living within a three mile radius of these facilities are minority and 51 percent live below the poverty level [see attached charts]. These environmental conditions significantly impact the quality of life and the health of my community.

ENVIRONMENTAL INJUSTICES CONTINUE

Unfortunately, environmental justice communities have made little to no gains under the Bush administration.

Each fiscal year since 2004, the Bush Administration has requested at least a 25 percent cut in the environmental justice budget at the Environmental Protection

Agency (EPA) [see attached document.] The Administration refused to provide guidance for the National Environmental Justice Advisory Council, and in early 2005, the EPA released a draft Strategic Plan on environmental justice which would have disregarded race as a consideration for determining environmental justice, a significant departure from environmental justice policies and in direct contradiction with the intent of Executive Order 12898. I believe that had this draft plan been implemented, it would have done nothing to reduce existing disparate impacts suffered by minority and low-income communities and may have contributed to the future increase of these impacts.

In 2006, the Administration proposed significant changes to the Toxic Release Inventory Program, a critical community right to know program which ensures first responders and community members are aware of the use and release of toxic chemicals. For more than 20 years this program successfully provided communities with critical information about what is being dumped in their backyards, while also encouraging companies to voluntarily reduce their emissions.

Finalized in December 2006, Bush Administration changes have exempted nearly 3,000 facilities that release up to 2,000 pounds of toxic chemicals from issuing detailed reports and also exempted companies that manage up to 500 pounds of the most dangerous substances, including mercury and lead. While communities of color make up 32 percent of the U.S. population as a whole, they make up nearly 44 percent of the population within one mile of the polluting facilities that could have fewer protections and less information of toxic chemicals as a result of the Administration's proposal. Environmental justice groups across this nation were well justified in decrying these changes as direct attacks on the health of environmental justice communities.

Locomotives and marine vessels are major public health problems for port and rail communities, such as those that I represent. These communities are predominantly minority and low-income. The California Air Resources Board (CARB) estimates that each year there are 5,400 premature deaths, 2,400 hospitalizations, 140,000 cases of asthma, and 980,000 lost days of work as a result of poor air quality—much of which is associated with this pollution.

Recently, the EPA proudly announced that it will "ensure that the Agency's environmental justice considerations are accurately described to the public when proposed and final regulations are published after January 2007." However, it has already failed to live up to this promise. The proposed rule on locomotives to address situations such as those my communities face was released in April of this year, but did not mention environmental justice a single time in the 800-page rulemaking!

GAO AND OIG UNDERSCORE FAILURES ON ENVIRONMENTAL JUSTICE

I continue to be extremely concerned about the manner in which the EPA develops and implements policies and the impact these policies have on environmental justice communities. Reports released by the Office of the Inspector General (OIG) in 2004 and 2006, as well as the Government Accountability Office (GAO) in 2005, underscore the continued failures of the EPA to place a priority on the health and welfare of vulnerable communities.

In 2004, the OIG found that the EPA had not consistently implemented the Executive order on Environmental Justice. The OIG found again in 2006 that the EPA did not know the impact its policies were having on environmental justice communities. In 2005, in response to a report I requested, the GAO found that the EPA failed to consider the impact of its air regulations on minority and low-income communities. In fact, the GAO stated "EPA generally devoted little attention to environmental justice."

During budget hearings before the Energy and Commerce hearing in March of this year, Acting Inspector General Roderick testified that while the EPA agreed with the Inspector General recommendations on environmental justice contained in the 2006 report, it had yet to establish a plan of action and milestones for implementation. I am still waiting for clear indications that the EPA is taking significant, real action to achieve implementation of the recommendations presented by both the OIG and the GAO. In lieu of this, the rhetoric from the Administration on environmental justice is an empty promise, leaving the health of vulnerable communities across our nation hanging in the balance.

CONGRESSIONAL ACTION

I am committed to working to protect the health of communities which this Administration, by its failure to act, has left behind.

Earlier this year, several of my colleagues, along with Senators Durbin and Kerry, joined me in the introduction of H.R. 1103, the Environmental Justice Act of 2007.

This legislation codifies Executive Order 12898 to ensure that minority and low-income communities have meaningful involvement in the implementation and enforcement of environmental laws and access to public information. It also requires the EPA to fully implement recommendations identified by the OIG and the GAO, and develops reporting requirements so that Congress can better monitor the implementation and progress in achieving these goals.

This legislation is endorsed by more than 20 organizations, including the Southwest Network for Environmental and Economic Justice, the Environmental Justice Resource Center, the Labor Council for Latin American Advancement, the Center on Race, Poverty and the Environment, the Lawyer's Committee for Civil Rights Under Law, the Center for Health, Environment and Justice, the Mexican American Legal Defense and Educational Fund and the National Hispanic Environmental Council.

I am also proud to join with Congressman Frank Pallone and Senator Lautenberg to protect community right to know through restoration of the Toxic Release Inventory Program. I hope that soon the Energy and Commerce Committee can consider both bills and restore rights to and protect the health of environmental justice communities.

Finally, I have introduced legislation to require the EPA to establish a safe drinking water standard for perchlorate. Perchlorate is a chemical used as the primary ingredient in solid rocket fuels, missiles and fireworks. This constituent limits the ability of the thyroid gland to take up iodine, which is necessary to help regulate normal human health and development and which poses a serious risk to vulnerable populations. The Centers for Disease Control and Prevention recently found significant changes in the level of thyroid hormones in humans exposed to perchlorate. I am looking forward to the further consideration of this legislation in the U.S. House this fall.

We must also address the findings of the Supreme Court in *Alexander* v. *Sandoval*. In this case the Supreme Court ruled in a 5-4 decision that there is no private right of action allowed in a case of disparate impact. Rather, persons would have to prove discriminatory intent and the federal government is left seeking remedy on their behalf. I understand this may be a particularly divisive issue for some, but I believe it is one we must address none the less.

Finally, we must ensure that environmental justice communities are protected in the drafting of any global warming legislation. I am proud to serve on both the Energy and Commerce Committee and the Select Committee on Energy Independence and Global Warming and look forward to the opportunity to craft legislation that achieves this goal.

CONCLUSION

Minority and low-income communities across this country are vulnerable to health impacts resulting from environmental conditions which have been largely ignored by this Administration. Absent a real commitment to environmental justice, the health and welfare of these communities will continue to suffer. I am pleased that the Committee will hear today from advocates and administration officials. I look forward to working with you all to protect the health and welfare of minority and low-income communities across this country.

Senator CLINTON. Thank you so much, Congresswoman Solis. I am pleased to note that the committee will be marking up several of the bills that you mentioned next week. I look forward to continuing to work with you to address these issues, and certainly under Senator Boxer's leadership, this committee intends to make progress on these very, very important matters.

Thank you so much for taking your time to come today.

We are now going to call our first panel to assume the positions at the table. We have a panel from the EPA and the Government Accountability Office: Granta Nakayama, Assistant Administrator of the Office of Enforcement and Compliance Assistance of the Environmental Protection Agency; Wade Najjum, Assistant Inspector General for Program Evaluation, Office of the Inspector General, Environmental Protection Agency; and John Stephenson, Director, Natural Resources and Environment Section of the U.S. Government Accountability Office.

I thank the three of you for being here. We have copies of your written statement, so you may wish to use the 5 minutes that you have either to summarize them or to add to them, but we welcome all of you. Let me start with Assistant Administrator Nakayama.

STATEMENT OF GRANTA NAKAYAMA, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. NAKAYAMA. Good afternoon, Madam Chairman and distinguished members of the subcommittee, and Chairman Boxer. I am Granta Nakayama, the Assistant Administrator for the Office of Enforcement and Compliance Assurance at EPA. On behalf of Administrator Johnson, thank you for inviting EPA to discuss its environmental justice programs.

EPA is a trailblazer in the implementation of environmental justice programs. No other Federal Agency has attempted to incorporate environmental justice into its programs, policies and activities as comprehensively as EPA. EPA works to comply with Executive Order 12898 and has taken significant and meaningful steps to integrate environmental justice into its mission.

EPA also provides technical assistance to other Federal agencies on integrating environmental justice. EPA has maintained a longstanding commitment to ensure environmental protection for all people regardless of race, color, national origin, or income.

Ensuring environmental justice means not only protecting human health and the environment for everyone, but also ensuring that all people are treated fairly and are given the opportunity to participate meaningfully in the development, implementation and enforcement of environmental laws, regulations and policies.

In 2005, Administrator Johnson reaffirmed EPA's commitment to environmental justice. He also identified national environmental justice priorities such as reducing asthma and elevated blood lead levels. For 2008, the Agency's national program manager guidance and strategic plans are being examined to identify activities, initiatives and strategies for integrating environmental justice into planning and budgeting documents.

EPA's Inspector General recently identified the need for EJ program reviews. The Agency agreed and we will begin conducting those reviews in March 2008. In addition, EPA's Office of Environmental Justice was made an ex officio member of the Agency's Regulatory Steering Committee. A significant achievement is the mandated use of EJ template language for regulatory actions tiered on or after January 1, 2007. The template ensures that environmental justice will be considered in future rulemakings.

EPA renewed the charter for the National Environmental Justice Advisory Council, the NEJAC, so that EPA will continue to receive valuable advice and recommendations from stakeholders. In the wake of Hurricanes Katrina and Rita, the NEJAC helped identify ways to ensure that EJ issues are addressed in a timely manner, and as a result EPA modified its incident command structure or system to ensure an EJ function is included and incorporated into future responses.

EPA has learned that addressing EJ issues is everyone's shared responsibility. Most EJ issues are local or site-specific. Resolving

these issues required the concerted efforts of Federal, State, local and tribal governments, involvement by community organizations, NGO's, business, industry and the community residents themselves.

Since 1993, EPA has awarded more than $31 million in grants to more than 1,100 community-based organizations. These EJ grants promote community empowerment and capacity building. Those are essential factors in maximizing meaningful participation in the regulatory process. You will likely hear more on this from Hon. Harold Mitchell in your next panel regarding a major EJ grant success in Spartanburg, SC.

EPA has also learned that we must have a consistent approach to identify potential areas with environmental justice concerns. EPA is developing a prototype tool, the environmental justice strategic enforcement assessment tool, or EJSEAT, to enhance our ability to consistently identify potential EJ areas.

EPA will continue to integrate EJ considerations into the Agency's core programs, policies and activities, and engage others in collaborative problem solving to address EJ concerns.

Again, thank you for allowing me to appear before you on behalf of the EPA, and thank you for holding this hearing on this very important topic, environmental justice. I will be happy to take any questions.

[The prepared statement of Mr. Nakayama follows:]

STATEMENT OF GRANTA NAKAYAMA, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good afternoon Madame Chairwoman and distinguished Members of the Subcommittee. I am Granta Nakayama, Assistant Administrator for Enforcement and Compliance Assurance (OECA) at the U.S. Environmental Protection Agency (EPA). My office is responsible for enforcing the Nation's environmental laws, as well as serving as the National Program Manager for environmental justice. On behalf of Administrator Johnson, thank you for inviting us to speak with you today on the significant environmental justice accomplishments of the Agency, what we have learned from those accomplishments, and how we plan to continue our efforts to comprehensively address environmental justice issues.

IMPLEMENTING EXECUTIVE ORDER 12898

EPA is a trailblazer in Federal government implementation of environmental justice programs. No other Federal agency has attempted to incorporate environmental justice into its programs, policies, and activities as comprehensively as the EPA. EPA is the lead for implementing Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." This Executive Order directs each Federal Agency to "make achieving environmental justice part of its mission." EPA works to comply with this Executive Order, and has taken significant and meaningful steps to integrate environmental justice into its mission.

In its role as lead agency for the Executive Order, EPA provides technical assistance to other Federal agencies on integrating environmental justice. For example, EPA has been working with the Centers for Disease Control and Prevention (CDC) in developing an environmental justice policy. EPA also is working with the National Center for Environmental Health/Agency for Toxic Substances and Disease Registry (ATSDR) to develop a strategy for integrating environmental justice goals within its programs and operations. Last week, EPA, CDC and ATSDR announced a memorandum of understanding (MOU) to collaborate on data gathering and sharing, and to find solutions for community health problems that could be linked to environmental hazards. Environmental justice was an important consideration in the development of this MOU.

Under the leadership of Administrator Johnson, EPA maintains an ongoing commitment to protect the environment for all people, regardless of race, color, national

origin, or income, so that all people have the clean environment they deserve. We recognize that minority and/or low-income communities may he exposed disproportionately to environmental harms and risks. EPA works to protect these and other communities from adverse human health and environmental effects. Ensuring environmental justice means not only protecting human health and the environment for everyone, but also ensuring that all people are treated fairly and are given the opportunity to participate meaningfully in the development, implementation, and enforcement of environmental laws, regulations, and policies.

INTEGRATING ENVIRONMENTAL JUSTICE INTO EPA'S MISSION

On November 4, 2005, Administrator Johnson reaffirmed EPA's commitment to environmental justice. He directed the Agency's managers and staff to integrate environmental justice considerations into EPA's core planning and budgeting processes. As a result, EPA has made transparent, measurable, and accountable environmental justice commitments and targets in all five goals of EPA's Strategic Plan for 2006–2011. Administrator Johnson identified eight national environmental justice priorities. Specifically, he directed the Agency to work with our partners to:

- Reduce asthma attacks;
- Reduce exposure to air toxins;
- Reduce incidences of elevated blood lead levels (ASTDR and the Department of Housing and Urban Development);
- Ensure that companies meet environmental laws;
- Ensure that fish and shellfish are safe to eat (Federal Drug Administration);
- Ensure water is safe to drink;
- Revitalize brownfields and contaminated sites; and
- Foster collaborative problem-solving.

EPA's Program Offices and Regions each implement an Environmental Justice Action Plan (Action Plan) to support EPA national priorities. These Action Plans are prospective planning documents that identify measurable commitments from each organization.

EPA's Chief Financial Officer directed the Agency's National Program Managers (NPMs) to include language in their FY2008 National Program Guidance that addresses the use of Action Plans and the Agency's 2006–2011 Strategic Plan to identify activities, initiatives, and/or strategies for the integration of environmental justice and incorporate them into planning and budgeting documents and program agreements. By instituting these types of programmatic requirements, EPA is building a stronger foundation to successfully integrate environmental justice into its Programs for the long-term.

In addition, EPA's Inspector General recently identified the need for environmental justice program reviews. EPA agreed, and we have embarked on an extensive effort to develop and conduct those reviews. We are developing and piloting environmental justice review protocols for the Agency's core function areas—rule-making/standard setting, permitting, enforcement, and remediation/cleanup. Once these protocols are complete, the Agency will begin conducting the reviews in March 2008.

Lastly, the Office of Environmental Justice was made an *ex officio* member of the Agency's Regulatory Steering Committee. Its most important contribution in this role so far has been to develop environmental justice template language that assists rule writers in developing their Federal Register publications. The template ensures that the Agency's environmental justice considerations are accurately described to the public when proposed and final regulations are published after January 2007.

OBTAINING THE BEST AVAILABLE ENVIRONMENTAL JUSTICE ADVICE

EPA is taking actions to obtain the best available environmental justice advice and to impart any lessons learned to those who can work with us to address environmental justice issues at the federal, state and local levels.

Importantly, in 2006, EPA renewed the charter for the National Environmental Justice Advisory Council (NEJAC) thereby ensuring that EPA will continue to receive valuable advice and recommendations on national environmental justice policy issues from its stakeholders. The NEJAC is comprised of prominent representatives of local communities, academia, industry, and environmental, indigenous, as well as state, local, and tribal governments that can identify and recommend solutions to environmental justice problems. It is essential that EPA provide an opportunity for such discussions and for ideas to be aired, and that the NEJAC's advice and recommendations be appropriately integrated into EPA's environmental justice priorities and initiatives.

During the response to Hurricanes Katrina and Rita, EPA worked closely with NEJAC to ensure that environmental justice issues were addressed in a timely man-

ner. Among a number of new initiatives, EPA has modified its Incident Command System to ensure an environmental justice function is incorporated into future responses. As part of this initiative, the Incident Commander is responsible for assuring that adequate resources are devoted to environmental justice issues. In addition, EPA Region 6's environmental justice team now participates in the Regional Incident Command Team. EPA also provided $300,000 in grant funding to encourage community-based organizations in EPA Regions 4 and 6 to participate in the decision-making (at all levels of government) related to cleanup, recovery, and rebuilding the hurricane-impacted areas in the Gulf Coast.

IMPARTING LESSONS LEARNED

During the past 13 years and through the course of our more recent efforts, EPA has experienced first-hand the complexities of integrating environmental justice into the programs, policies, and activities of an agency as large and diverse as EPA.

Partnering for Maximum Effect

Most importantly, EPA has learned that addressing environmental justice issues is everyone's shared responsibility. Most environmental justice issues are local or site-specific—resolving these issues requires the concerted efforts of many stakeholders—Federal, State, local and tribal governments, community organizations, NGOs, academic institutions, business/industry, and even the community residents themselves. Since 1993, EPA has awarded more than $31 million in grants to more than 1,100 community-based organizations and others to take on an active role in our nation's environmental stewardship.

These environmental justice grants promote community empowerment and capacity-building—essential ingredients to maximize meaningful participation in the regulatory process. This year, EPA awarded $1 million in environmental justice grants to 10 community-based organizations, and will award an additional $1 million later this month to 20 community-based organizations to raise awareness and build their capacity to solve local environmental and public health issues.

The Power of Collaborative Problem Solving

EPA is proud of the progress that our many Programs have made in environmental justice since President Clinton signed Executive Order 12898 in 1994. I would be remiss not to highlight a particular example that demonstrates not only EPA's success, but the success of other Federal, State, and local partners, and community groups.

EPA's relationship with ReGenesis, a community-based organization in Spartanburg, South Carolina, began in 1999 with a $20,000 grant award to address local environmental, health, economic and social issues. In 2003, EPA developed a Collaborative Problem-Solving (CPS) Model as a framework for others to follow. The model has worked well with amazing results. The ReGenesis Environmental Justice Partnership used elements of the CPS Model to leverage the initial grant from EPA to generate more than $166 million in funding, including over $1 million from EPA Region 4. ReGenesis marshaled the collaboration of more than 200 partner agencies, and local residents, industry, and a university to revitalize two Superfund sites and six Brownfields sites into new housing developments, an emergency access road, recreation areas, green space, and job training that are vital to the community's economic growth and well-being. This result was beyond anyone's expectation.

ReGenesis proved to be such an excellent example of what can be accomplished with EPA's funding, training and partnerships that we created a documentary film about it as a training tool to put thousands of other communities on the path of collaborative-problem solving. The DVD is being distributed across the country.

With the ongoing efforts in collaborative problem-solving and the grant programs, EPA is creating new opportunities to effectively target and address local environmental justice issues. By working together, everyone can benefit from the results.

Sharing Information

Since 2002, EPA has provided environmental justice training nationwide through the *Fundamentals of Environmental Justice* workshop, to almost 4,000 people, including staff in EPA and other government agencies. It is a long-term investment to ensure our workforce knows how to integrate environmental justice into their daily responsibilities. Some EPA offices have customized the training for their own organizations. For example, Region 1 has trained 98 percent of its workforce on environmental justice and has made it a training requirement for all new employees,

Drawing on the success of its classroom-based training, the Office of Environmental Justice introduced three Web-based courses during FY 2006: (1) *Introduction to Environmental Justice*, (2) *Introduction to the Toolkit for Assessing Potential Alle-*

gations of Environmental Injustice, and (3) *Incorporating Environmental Justice Considerations into RCRA Permitting*. By using the latest on-line technology, EPA's training has become more cost effective and reaches a greater audience.

In addition to the importance of training, we also have learned that we must have a consistent approach to identify potential areas for environmental justice concern. My Office is developing a prototype tool, the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT), to enhance OECA's ability to consistently identify potential environmental justice areas, and assist us in making fair and efficient enforcement and compliance resource deployment decisions. Although we may have a tool and a process for ensuring consistency, variations in data availability may affect the tool's usefulness.

FUTURE EPA ENVIRONMENTAL JUSTICE EFFORTS

The EPA successes I have highlighted today demonstrate that we are making significant headway on the road to environmental justice. To fully integrate and implement these concerns, the EPA and its Federal, state, tribal, local and community partners continue to work together to build a better model for the future. We are on that path today, and will continue to address all issues that come our way.

In moving forward, we will complete the environmental justice program reviews so that we can appropriately evaluate the effectiveness of EPA's actions for environmental justice. A number of successes thus far have been the result of innovative outreach rather than traditional EPA regulatory activity. That has to be factored into our plans for the figure. We will focus on leveraging resources so that we can broaden our reach and replicate successes in encouraging collaborative problem-solving.

We will also finalize the Environmental Justice Strategic Enforcement Assessment Tool (EJSEAT) to enhance EPA's ability to consistently identify potential environmental justice areas of concern and assist EPA in making fair and efficient enforcement and compliance resource deployment decisions. We will evaluate the potential for applying the tool in other EPA programs and activities.

Based on the lessons we have learned and our efforts over the past 13 years, we are on a path forward with EPA's environmental justice programs. EPA will continue to integrate environmental justice considerations into the Agency's core programs, policies and activities and to engage others in collaborative problem-solving to address environmental justice concerns at every turn. Whenever and wherever we address environmental justice issues, we strive to build staying power in those communities and share any lessons learned with others.

RESPONSES BY GRANTA NAKAYAMA TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. As part of your testimony, you note that Region 1 has trained 98 percent of its employees about environmental justice, and has implemented requirements to ensure that all new employees receive this training. What is your agency doing to ensure that the training success of Region One is implemented throughout the agency, less than a quarter of whom have received environmental justice training in the past 5 years?

Response. As noted in Mr. Nakayama's testimony, the U.S. Environmental Protection Agency (EPA) is committed to providing environmental justice (EJ) training as a long-term investment, as an integral part of the Agency's efforts to integrate environmental justice considerations into its core program responsibilities. Over the past 5 years, EPA has trained approximately 4,000 employees. Priority for training is given to staff and managers with direct involvement in programmatic activities that may address environmental justice issues, such as permitting and enforcement. In some offices, such as the Office of Enforcement and Compliance Assurance (OECA) and Region 1, EPA has trained almost all of its employees. Other programs and regional offices have made commitments to training in their 2007–2008 action plans. Regions 2, 6, and 8 have made commitments to train all of their employees in 2008.

EPA continues to train its staff through three Web-based courses: (1) Introduction to Environmental Justice, (2) Introduction to the Toolkit for Assessing Potential Allegations of Environmental Injustice, and (3) Incorporating Environmental Justice Considerations into RCRA Permitting. By using the latest on-line technology, EPA's training has become more cost effective and reaches a greater audience. We are also in the process of tracking all classroom-based and e-training that has taken place throughout the Agency.

In addition, EPA created a documentary film about the successful ReGenesis environmental justice partnership in Spartanburg, South Carolina, as a training tool to put thousands of other communities on the path of collaborative problem-solving.

Question 2. In your testimony, you mentioned that EJ template language must be put into place for regulatory actions tiered on or after January 1, 2007. Could you please provide me with a copy of that template language.

Response. Enclosed please find a copy of the environmental justice template language.

Question 3. Your testimony also mentioned the Environmental Justice Strategic Enforcement Assessment Tool—known as EJSEAT. When was EJSEAT supposed to have been completed by the EPA? What is the target date for EJSEAT's completion? How are you revising your Action Plans to reflect this delay?

Response. OECA has made the development and implementation of EJSEAT a high priority since 2005. Our goal is to initiate pilots of EJSEAT in FY2008. We will take the results of these pilots into consideration in the OECA's EJ Action Plan for FY2009.

RESPONSES BY GRANTA NAKAYAMA TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. As a matter of law, do you think that we may be giving EO 12898, a nonbinding, legally unenforceable executive order, more official standing than is legally permissible?

Response. Executive Order 12898 (59 FR 7629, Feb. 11, 1994) established federal executive policy on environmental justice. The Federal agencies subject to the Order, including the U.S. Environmental Protection Agency (EPA), were directed, to the greatest extent practicable and permitted by law, to make environmental justice part of their missions. EPA accomplishes this goal by utilizing existing statutory authorities and when implementing their regulations.

Question 2. Assuming that EPA's primary responsibility is to assess environmental risk in populations, do you think EPA is the appropriate federal agency to perform the kind of complicated socio-economic, demographic and public health impact determinations, normally performed by other agencies such as the Centers for Disease Control and the Department of Housing and Urban Development?

Response. Environmental justice is a complex issue involving environmental, health, economic and social issues. EPA has the expertise and statutory authority to address only some of the possible contributing factors. Experience has taught EPA that addressing environmental justice issues takes a collaborative effort by multiple stakeholder groups such as Federal, State, local and tribal governments, community organizations, NGOs, academic institutions, business/industry, and even the community residents themselves. EPA recognizes the roles of the other agencies mentioned, and is working with them and others at the Federal, state and local levels to obtain the socio-economic, demographic and public health information needed to address environmental justice concerns.

Question 3. Assuming that all disproportionate impacts are not automatically negative impacts; what weight do you believe is given to the economic benefits, increased employment, social services and lower housing costs associated with industrial development in low income areas?

Response. Disproportionate impacts involve many issues, including negative and positive impacts. The cited factors may very well have a mitigating effect on adverse impacts. An analysis of such impacts is complex. See answer to Question 2 above for how EPA coordinates with other agencies on such matters.

Question 4. EPA's various guidance on EJ over the last 13 years is considered an interpretive rule, stating what the agency "thinks" and serves only to remind affected parties of existing duties. The courts have decided that interpretive rules are not subject to the Administrative Procedures Act ("APA") and are outside the scope of judicial review. This leaves ultimate discretion to the EPA on what are 'high and adverse impacts.' The APA, set forth by Congress 60 years ago, created a consistent and transparent process for agency rule makings. Do you believe that an interpretive rule, like the EJSEAT, is meant to affect substantive change in the regulations or serve as a basis for denying permits?

Response. The Environmental Justice Smart Enforcement Assessment Tool ("EJSEAT") is intended only as a screening tool. It is neither an interpretive rule nor a guidance document. EJSEAT is not intended to, and does not, substantively change regulations or provide a basis for denying a permit.

Senator CLINTON. Thank you very much.

Mr. Najjum.

STATEMENT OF WADE NAJJUM, ASSISTANT INSPECTOR GENERAL FOR PROGRAM EVALUATION, OFFICE OF INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. NAJJUM. Good afternoon, Madam Chairwoman, members of the subcommittee. I am Wade Najjum.

Senator CLINTON. Mr. Najjum, could you pull the microphone a little closer to you please, so everyone can hear you. There you go.

Mr. NAJJUM. How is that?

Senator CLINTON. Yes, thank you.

Mr. NAJJUM. I am pleased to be here today to discuss the OIG's work on how EPA has incorporated environmental justice within its programs and activities.

Over the past 5 years, the OIG has been examining EPA's environmental justice activities as part of our strategic plan to review how EPA fulfills its responsibilities. We have issued two reports specifically dealing with EPA implementation of environmental justice reviews.

In 2006, we completed our most recent evaluation of whether EPA program and regional offices had performed environmental justice reviews of their programs, policies and activities. We sought to determine if there had been clear direction from EPA senior management to perform environmental justice reviews; if EPA had performed these reviews; and if EPA had adequate guidance to conduct these reviews or if there was a need for additional directions or protocols.

We concluded that EPA program and regional offices have not routinely performed environmental justice reviews. Therefore, EPA cannot determine whether its programs have a disproportionately high and adverse human health or environmental effect on minority and low-income populations.

We were given multiple reasons why these reviews were not performed, including: the absence of a specific directive from EPA management to conduct such reviews; a belief by some program offices that they are not subject to the Order since their programs do not lend themselves to reviewing impacts on minority and low-income populations; and uncertainty about how to perform the reviews.

We made four recommendations to EPA to address these issues: to require the program and regional offices to determine where environmental justice reviews are needed and establish a plan to complete them; second, to ensure these reviews include a determination if there is a disproportionate impact on minority and low-income populations; third, to develop specific review guidance; and fourth, to designate a responsible office to compile the results of these reviews and make recommendations to EPA senior leadership.

EPA agreed with our recommendations and established milestones for completing those actions. In our 2004 review, we reported on how EPA was integrating environmental justice into its operations. Specifically, we sought there to determine how EPA had implemented the Order and integrated its concepts into re-

gional and program offices, and how were environmental justice areas defined at the regional levels, and what was the impact.

We concluded that EPA had not fully implemented the Order and was not consistently integrating environmental justice into its day to day operations at that time. EPA had not identified minority and low-income communities or defined the term "disproportionately impacted."

In the absence of environmental justice definitions, criteria or standards from EPA, many regional and program offices individually took steps to implement environmental justice policies. The result was inconsistency in environmental justice actions across EPA's regions and programs. Thus, how environmental justice action was implemented was dependent, in part, on where you lived.

We made 12 recommendations to EPA to address the issues we raised. EPA disagreed with 11 of our recommendations. EPA did agree to perform a study of program and regional offices funding and staffing for environmental justice to ensure that adequate resources were available to fully implement its environmental justice plans. EPA completed that study in May 2004.

In the interests of objectivity, I should also say that since the issuance of our reports, EPA has taken some positive steps to address environmental justice issues. However, we think EPA recognizes that more work needs to be done, particularly in its efforts to integrate environmental justice into its decisionmaking, planning, and budgeting processes.

Also, EPA still needs broader guidance on environmental justice program and policy reviews, which EPA acknowledges is not in place.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions you may have.

[The prepared statement of Mr. Najjum follows:]

STATEMENT OF WADE NAJJUM, ASSISTANT INSPECTOR GENERAL FOR PROGRAM EVALUATION, OFFICE OF INSPECTOR GENERAL, U.S. ENVIRONMENTAL PROTECTION AGENCY

Good afternoon Madame Chairman and Members of the Subcommittee. I am Wade Najjum, Assistant Inspector General for Program Evaluation with the U.S. Environmental Protection Agency (EPA) Office of Inspector General (OIG). I am pleased to be here today to discuss the OIG's work on how EPA has incorporated environmental justice within its programs and activities. EPA has made some progress in these areas over the past 5 years. However our reports show that more could be done.

ENVIRONMENTAL JUSTICE AT EPA

EPA defines 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 should bear a disproportionate share of the negative environmental consequences resulting from industrial, governmental, and commercial operations or policies. Meaningful involvement means that: (1) people have an opportunity to participate in decisions about activities that may affect their environment and/or health; (2) the public's contribution can influence the regulatory agency's decision; (3) their concerns will be considered in the decision making process; and (4) the decision makers seek out and facilitate the involvement of those potentially affected.

In February 1994, the president signed Executive Order 12898[1] (Order) focusing Federal attention on the environmental and human health conditions of minority and low-income populations with the goal of achieving environmental protection for all communities. This Order directed Federal agencies to develop environmental justice strategies to help them address disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. The Order is also intended to promote nondiscrimination in Federal programs that affect human health and the environment. It aims to provide minority and low-income communities' access to public information and public participation in matters relating to human health and the environment. The Order established an Interagency Working Group on environmental justice chaired by the EPA Administrator and comprised of the heads of 11 departments or agencies and several White House offices.

At EPA, the Office of Environmental Justice (OEJ) within the Office of Enforcement and Compliance Assurance (OECA) coordinates EPA's efforts to integrate environmental justice into all policies, programs, and activities. Within each regional office there is at least one environmental justice coordinator who serves as the focal point within their organizations and as the liaison to OEJ. Among the coordinator's duties are to provide policy advice and to develop and implement programs within their regions. There is no specific environmental justice statute to fund environmental justice activities at EPA. Consequently, OEJ performs activities using a general Environmental Program Management appropriation budget line item.

OIG ENVIRONMENTAL JUSTICE WORK

For the past 5 years, the OIG has been examining EPA's environmental justice activities as part of our broader strategic plan to review how EPA fulfills its responsibilities to address environmental threats and their impact on ecosystems, communities, and susceptible populations. We have issued two reports focusing on EPA's implementation of Executive Order 12898 requirements.

Evaluation of EPA's Implementation of Executive Order

In a 2004 review[2], we reported on how EPA was integrating environmental justice into its operations. Specifically, we sought to answer the following questions: (1) how had EPA implemented the Order and integrated its concepts into its regional and program offices; and (2) how were environmental justice areas defined at the regional levels and what was the impact.

We concluded that EPA had not fully implemented the Order and was not consistently integrating environmental justice into its day-to-day operations at that time. EPA had not identified minority and low-income communities, or defined the term "disproportionately impacted." Moreover, in 2001, EPA restated its commitment to environmental justice in a manner that did not emphasize minority and low-income populations which we believed was the intent of the Order. In the absence of environmental justice definitions, criteria, or standards from EPA, many regional and program offices individually took steps to implement environmental justice policies. The result was inconsistency in determining environmental justice communities across EPA regions and programs. For example, between the regions there was a wide array of approaches for identifying environmental justice communities. Thus, the implementation of environmental justice actions was dependent, in part, on where you lived.

We made 12 recommendations to EPA to address the issues we raised, which are listed in Attachment A. Four key recommendations were: (1) reaffirm the Executive Order as a priority; (2) establish specific timeframes for developing definitions, goals, and measurements; (3) develop a comprehensive strategic plan; and (4) determine if adequate resources are being applied to implement environmental justice. EPA disagreed with 11 of the 12 recommendations. EPA did agree to 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 its environmental justice plans. In May 2004, EPA issued its report entitled "Environmental Justice Program Comprehensive Management Study" conducted by Tetra Tech EM Inc.

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[1] Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations," February 11, 1994.

[2] "EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice," Report No. 2004–P–00007, March 1, 2004.

Evaluation of EPA Environmental Justice Reviews

In 2006, we completed our evaluation[3] of whether EPA program and regional offices have performed environmental justice reviews of their programs, policies, and activities as required by the Order. We specifically sought to determine if: (1) there had been clear direction from EPA senior management to perform environmental justice reviews of EPA programs, policies, and activities; (2) EPA had performed environmental justice reviews; and (3) EPA had adequate guidance to conduct these reviews or if there was a need for additional directions or protocols.

To determine the direction, frequency, and guidance for environmental justice reviews, we met with OECA, OEJ, and Office of Air and Radiation representatives. We then conducted an EPA-wide survey of each of the Deputy Assistant Administrators in EPA's 13 program offices and each of the 10 Deputy Regional Administrators on their experience conducting environmental justice reviews of their programs, policies, and activities. We also asked them to describe their satisfaction with available guidance and instructions for conducting these reviews, and whether they needed additional directions or protocols. We did not design our survey to draw inferences or project results. Rather we sought to obtain descriptive information on implementing environmental justice at EPA.

Our survey results showed that EPA program and regional offices have not routinely performed environmental justice reviews. Reasons for not performing these reviews included the absence of a specific directive from EPA management to conduct such reviews; a belief by some program offices that they are not subject to the Order since their programs do not lend themselves to reviewing impacts on minority and low-income populations; and confusion regarding how to perform the reviews. In addition, we found that program and regional offices lacked clear guidance to follow when conducting environmental justice reviews. Survey respondents stated that protocols, a framework, or additional directions would be useful for conducting environmental justice reviews. We concluded that EPA cannot determine whether its programs have a disproportionately high and adverse human health or environmental effect on minority and low-income populations without performing these types of reviews.

We made four recommendations to EPA to address these issues. We recommended that EPA: (1) require program and regional offices to determine where environmental justice reviews are needed and establish a plan to complete them; (2) ensure that environmental justice reviews determine whether EPA programs, policies, and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations; (3) develop specific environmental justice review guidance that includes protocols, a framework, or directions; and (4) designate a responsible office to compile the results of environmental justice reviews and make recommendations to EPA senior leadership. EPA agreed with our recommendations and established milestones for completing those actions. For example, in response to our third recommendation EPA convened an Agency-wide Environmental Justice workgroup in April 2007 to begin developing protocols to provide guidance for conducting reviews. Implementation of the protocols developed is scheduled for March 2008.

Noteworthy EPA Achievements

In the interest of objectivity I also should say that since the issuance of our reports, EPA has taken some steps to address environmental justice issues. In 2005, Administrator Stephen Johnson reaffirmed EPA's commitment to environmental justice by directing staff to establish measurable commitments that address environmental priorities such as: reducing asthma attacks, air toxics, and blood lead levels; ensuring that companies meet environmental laws; ensuring that fish and shellfish are safe to eat; and ensuring that water is safe to drink. EPA is also including language in the fiscal year 2008 National Program Guidance that each headquarters program office should use its environmental justice action plan and EPA's strategic plan to identify activities, initiatives, or strategies that address the integration of environmental justice. Finally, EPA is modifying its emergency management procedures in the wake of Hurricane Katrina to incorporate an environmental justice function and staffing support in the EPA's Incident Command Structure so that environmental justice issues are addressed in a timely manner.

These are all positive steps but EPA recognizes that more work needs to be done, particularly in its efforts to making environmental justice part of its mission by integrating environmental justice into its decision making, planning, and budgeting processes. EPA needs to be able to determine if their programs, policies, and actions

[3] "EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities," Report No. 2006–P–00034, September 18, 2006.

have a disproportionate health or environmental impact on minority or low-income populations. EPA also still needs broad guidance on environmental justice program and policy reviews, which EPA acknowledges is not in place.

CONCLUSION

One of EPA's goals is to provide an environment where all people enjoy the same degree of protection from environmental and health hazards and equal access to the decision-making process to maintain a healthy environment in which to live and work. Our work has shown that EPA still needs to do more to integrate environmental justice into its programs and activities so that it may achieve this goal.

Thank you for the opportunity to testify before you today. I would be pleased to answer any questions you may have.

Attachment A

RECOMMENDATIONS FROM 2004 OIG REPORT "EPA NEEDS TO CONSISTENTLY IMPLEMENT THE INTENT OF THE EXECUTIVE ORDER ON ENVIRONMENTAL JUSTICE"

(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) 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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(10) Develop a standard strategy that limits variations relating to Geographical Information System (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.

(11) Require that the selected strategy for determining an environmental justice community is consistent for all EPA program and regional offices.

(12) 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.

RESPONSES BY WADE NAJJUM, TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. As a matter of law, do you think that we may be giving EO 12898, a nonbinding, legally unenforceable executive order, more official standing than is legally permissible?

Response. I am not an attorney therefore I cannot answer this question.

However, as a Federal employee I am required to follow the president's executive orders to the best of my ability and authority.

Question 2. Assuming that EPA's primary responsibility is to assess environmental risk in populations, do you think EPA is the appropriate federal agency to perform the kind of complicated socio-economic, demographic and public health impact determinations, normally performed by other agencies such as the Centers for Disease Control and The Department of Housing and Urban Development?

Response. EPA's mission is to protect human health and the environment. The EPA Office of Inspector General (OIG) has done no work to assess the capabilities of the Centers for Disease Control or the Department of Housing and Urban Development relative to EPA's capabilities.

Question 3. Assuming that all disproportionate impacts are not automatically negative impacts, what weight do you believe is given to the economic benefits, increased employment, social services and lower housing costs associated with industrial development in low income areas?

Response. The OIG has not performed any evaluation of factors outside the scope of Executive Order 12898, which only addresses disproportionately high and adverse human health or environmental effects in Federal agency programs, policies, and activities on minority and low-income populations.

Question 4. EPA's various guidance on environmental justice over the last 13 years is considered an interpretive rule, stating what the agency "thinks" and serves only to remind affected parties of existing duties. The courts have decided that interpretive rules are not subject to the Administrative Procedures Act ("APA") and are outside the scope of judicial review. This leaves ultimate discretion to the EPA on what are "high and adverse impacts." The APA, set forth by Congress 60 years ago, created a consistent and transparent process for agency rule makings. Do you believe that an interpretive rule, like the EJSEAT, is meant to affect substantive change in regulations or serve as the basis for denying permits?

Response. The OIG's environmental justice evaluations did not consider this issue. This question would be better addressed by EPA or the Department of Justice.

Senator CLINTON. Thank you very much.

Mr. Stephenson.

STATEMENT OF JOHN B. STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Mr. STEPHENSON. Thank you, Madam Chairman, Senator Boxer. I am pleased to be here today to discuss GAO's report examining the extent to which EPA incorporates environmental justice into its rulemaking process.

As you know, studies continue to show that low-income and minority populations are disproportionately exposed to air pollution and other environmental risk. The 1994 Executive order, of course, stated that EPA and other Federal agencies shall make achieving environmental justice an integral part of their policies, programs and activities.

In July 2005, we issued a report that identified a number of weaknesses in EPA's approach for incorporating EJ considerations into its rulemaking process. From a list of 19 significant clean air rules promulgated from 2002 through 2004, we focused on three specific rules for detailed study that has a minimum mention of environmental justice in the Federal Register, reasoning that these rules would show EPA's efforts in the best light. So our findings were based on best case examples, not worst case examples.

My testimony today summarizes the key findings, and that report outlines EPA's response to our recommendations and provides current information on subsequent EPA actions since that time.

In summary, we found that EPA generally devoted little attention to environmental justice when drafting clean air rules. Our report concluded, for example, that while EPA guidance on rulemaking states that work groups should consider environmental justice early in the process, a lack of guidance and training for work group members on how to identify and address environmental justice impacts limited their ability to analyze such issues.

Also, while EPA considered environmental injustice to varying degrees in the final stages of the rulemaking process, in general the Agency rarely provided a clear rationale for its decisions. For example, in the case of the gasoline rule, EPA analysis showed that emissions of nitrous oxides and volatile organic compounds would actually go up in 26 of 80 counties with refineries affected by the rule, as much as 298 tons in the first year after implementation in one Louisiana parish.

EPA concluded that the rule would not have any disproportionate impacts on low-income or minority communities, but did not publish any data or provide any analysis in support of that conclusion.

We made several recommendations that EPA has responded to in varying degrees since we issued our report. For example, our report recommended that EPA ensure that its rulemaking work groups devote attention to environmental justice while drafting and finalizing clean air rules. EPA stated in its August 2006 letter, responding to the report that it has made the Office of Environmental Justice an ex officio member of the Regulatory Steering Committee so that it would be aware of emerging regulations and be able to participate in work groups as necessary.

In response to our recommendation that EPA improve the way environmental justice impacts are addressed in its economic reviews, EPA stated that it was examining ways to enhance its air models to better account for low-income and minority populations.

In response to our recommendation that EPA respond more fully to public comments on environmental justice, EPA stated that it would reemphasize the need to address such comments and better explain the rationale and supporting data for the Agency's decisions.

Our recent discussions with EPA officials suggests that some progress has been made to address the recommendations, but that significant challenges remain. For example, while the Office of Environmental Justice is not an ex officio member of the Regulatory Steering Committee, there is no mechanism to assure that their participation in individual rulemaking work groups or option selection meetings, for example, where environmental issues would actually be considered. In fact, in over 100 air rules that had been proposed or finalized in the past year, the Office has participated in only one work group.

In addition, while EPA has made good progress in providing EPA staff with environmental justice awareness training, it has not yet completed more specific training courses nor issued guidance to help rulemakers understand how to address EJ issues.

In conclusion, Madam Chairman, our 2004 report concluded that EPA's actions to address environmental justice fell well short of the goals set forth in the Executive order. In EPA's letter to GAO and the Congress 1 year after our report, EPA committed to a number

of actions in response to our recommendations, but as of today many of these commitments remain largely unfulfilled.

While EPA continues to take steps in the right direction, its progress to date suggests the need for measurable benchmarks for making more meaningful progress in holding the Agency accountable.

Madam Chairman, that concludes my statement. I will be happy to take questions.

[The prepared statement of Mr. Stephenson follows:]

STATEMENT OF JOHN B. STEPHENSON, DIRECTOR, NATURAL RESOURCES AND ENVIRONMENT, U.S. GOVERNMENT ACCOUNTABILITY OFFICE

Madam Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Environmental Protection Agency's (EPA) consideration of environmental justice, particularly as it has been used to develop clean air rules. According to EPA studies, low-income and minority populations are disproportionately exposed to air pollution and other environmental risks. In 1994 President Clinton issued Executive Order 12898, which stated that EPA and other federal agencies, to the greatest extent practicable and permitted by law, shall make achieving environmental justice part of their missions by identifying and addressing as appropriate, the disproportionately high and adverse human health of environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.[1]

To implement the order, EPA developed guidance for incorporating environmental justice into its programs, such as the enforcement of the Clean Air Act, which is intended in part, to control emissions that harm human health. A key to ensuring that environmental justice is sufficiently accounted for in agency decisions and operations is that it be considered at each point in the rulemaking process—including the point when agency workgroups typically consider regulatory options; perform economic analyses of proposed rules' costs; make proposed rules available for public comment; and finalize them in advance of their implementation.

My testimony today is based largely on our 2005 report,[2] which recommended that EPA devote more attention to environmental justice when developing clean air rules. In addition, we met with cognizant EPA staff to understand what actions the agency has taken since the report's issuance to improve its treatment of environmental justice issues during its air rulemaking process.

Our report examined how EPA considered environmental justice during the drafting of these air rules (including activities of the workgroups that typically consider regulatory options, the economic review of the rules' costs, and the manner in which proposed rules are made available for public comment) and their finalization (including how public comments are addressed and how the economic review is revised). The three rules we examined included a 2000 gasoline rule to reduce sulfur in gasoline and to reduce emissions from new vehicles; a 2001 diesel rule to reduce sulfur in diesel fuel and to reduce emissions from new heavy-duty engines; and a 2004 ozone implementation rule to implement a new ozone standard. My testimony today (1) summarizes the key findings of our 2005 report, (2) provides both the recommendations we made to EPA to address the problems identified and EPA's written response to these recommendations in August 2006, and (3) provides updated information on pertinent EPA actions.

SUMMARY

When drafting the three clean air rules, EPA generally devoted little attention to environmental justice. Our 2005 report concluded, for example, that while EPA guidance on rulemaking states that workgroups should consider environmental justice in the rulemaking process, a lack of guidance and training for workgroup members on identifying environmental justice issues limited their ability to identify such issues. In addition, while EPA officials stated that economic reviews of proposed rules considered potential environmental justice impacts, the gasoline and diesel rules did not provide decisionmakers with environmental justice analyses, and EPA

[1] Efforts to identify and address disproportionately high and adverse impacts on specific populations and communities are commonly referred to under the term "environmental justice."

[2] GAO, *Environmental Justice: EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules*, GAO–05–289 (Washington, DC: July 22, 2005).

did not identify all the types of data necessary to analyze such impacts. In finalizing the three rules, EPA considered environmental justice to varying degrees although, in general, the agency rarely provided a clear rationale for its decisions on environmental justice-related matters. In responding to comments during the final phase of the gasoline rule, for example, EPA asserted that the rule would not raise environmental justice concerns, but did not publish data and assumptions to support that conclusion.

Our report made four recommendations to help EPA ensure that environmental justice issues are adequately identified and considered when clean air rules are being drafted and finalized. The following includes each recommendation and summarizes the response provided in EPA's August 24, 2006, letter to the Comptroller General and cognizant committees of the Congress:

• *Ensure that the agency's rulemaking workgroups devote attention to environmental justice while drafting and finalizing clean air rules.* Among the actions highlighted by EPA were that the Office of Environmental Justice was made an *ex officio* member of the Regulatory Steering Committee so that it would be aware of important regulations under development and participate in workgroups.

• *Enhance the workgroups' ability to identify potential environmental justice issues through such steps as (a) providing workgroup members with guidance and training to help them identify potential environmental justice problems and (b) involving environmental justice coordinators in the workgroups when appropriate.* EPA responded that it would supplement its existing environmental justice training with additional courses to create a comprehensive curriculum to assist agency rule writers. In response to our call for greater involvement of Environmental Justice coordinators in workgroup activities, EPA said that as an *ex officio* member of the Regulatory Steering Committee, the Office of Environmental Justice would be able to keep the program offices' environmental justice coordinators informed about new and ongoing rulemakings with potential environmental justice implications. It said that the mechanism for this communication would be monthly conference calls between the Office of Environmental Justice and the environmental justice coordinators.

• *Improve assessments of potential environmental justice impacts in economic reviews by identifying the data and developing the modeling techniques that are needed to assess such impacts.* EPA responded that the Office of Air and Radiation was examining ways to improve its air models so they could better account for the socioeconomic variables identified in Executive Order 12898.

• *Direct cognizant officials to respond fully, when feasible, to public comments on environmental justice by, for example, better explaining the rationale for EPA's beliefs and by providing its supporting data.* EPA responded that it would re-emphasize the need to respond fully to public comments and to include in those responses the rationale for its regulatory approach and a description of its supporting data.

Upon meeting with cognizant EPA officials on July 18, 2007, we learned that in the two years since our July 2005 report was issued, some progress has been made to incorporate environmental justice concerns into EPA's air rulemaking process but that considerably more remains to be done. For example, while the Office of Environmental Justice may be an *ex officio* member of the Regulatory Steering Committee, it has not participated directly in any air rules that have been proposed or finalized since EPA's August 2006 letter to us. In addition, according to EPA staff, some of the training courses that were planned have not yet been developed due to staff turnover, among other reasons. Regarding EPA's efforts to improve assessments of potential environmental justice impacts in economic reviews, agency officials said that their data and models have improved since our 2005 report, but that their level of sophistication has not reached their goal for purposes of environmental justice considerations. They said that economists within the Office of Air and Radiation are, among other things, continuing to evaluate and enhance their models in a way that will further improve consideration of environmental justice during rulemaking. When asked about GAO's recommendation that cognizant officials respond more fully to public comments on environmental justice, the EPA officials cited a recent rulemaking in which this was done; but added that they were unaware of any memoranda or revised guidance that would encourage more global, EPA-wide progress on this important issue.

BACKGROUND

Executive Order 12898 stated that to the extent practicable and permitted by law, each federal agency, including the EPA, ". . . shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, the disproportionately high and adverse human health or environmental effects of its pro-

grams, policies, and activities on minority populations and low-income populations in the United States . . . ." In response to the 1994 order, among other things, the EPA Administrator issued guidance the same year providing that environmental justice should be considered early in the rulemaking process. EPA continued to provide guidance regarding environmental justice in the following years. For example, in 1995, EPA issued an Environmental Justice Strategy that included, among other provisions, (1) ensuring that environmental justice is incorporated into the agency's regulatory process, (2) continuing to develop human exposure data through model development, and (3) enhancing public participation in agency decisionmaking.

The Office of Environmental Justice, located within EPA's Office of Enforcement and Compliance Assurance, provides a central point for the agency to address environmental and human health concerns in minority communities and/or low-income communities. However, the agency's program offices also play essential roles. As such, the key program office dealing with air quality issues is the agency's Office of Air and Radiation. In fulfilling its Clean Air Act responsibilities, the Office works with state and local governments and other entities to regulate air emissions of various substances that harm human health. It also sets primary national ambient air quality standards for six principal pollutants (carbon monoxide, nitrogen oxides, sulfur dioxide, particulate matter, ground level ozone, and lead) that harm human health and the environment. These standards are to be set at a level that protects human health with an adequate margin of safety which, according to EPA, includes protecting sensitive populations, such as the elderly and people with respiratory or circulatory problems.

The Office of Air and Radiation has a multistage process for developing clean air and other rules that it considers a high priority. Initially, a workgroup chair is chosen from the lead program office—normally the Office of Air and Radiation in the case of clean air rulemakings. The workgroup chair assigns the rule one of the three priority levels, and EPA's top management makes a final determination of the rule's priority. The priority level assigned depends on such factors as the level of the Administrator's involvement and whether more than one office in the agency is involved. The gasoline, diesel, and ozone implementation rules were classified as high-priority rules on the basis of these factors. They were also deemed high priority because they were estimated to have an effect on the economy of at least $100 million per year or were viewed as raising novel legal and/or policy issues.[3]

For high-priority rules, the workgroup chair is primarily responsible for ensuring that the necessary work gets done and the process is documented. Other workgroup members are assigned from the lead program office and, in the case of the two highest priority rules, from other offices. Among its key functions, the workgroup (1) prepares a plan for developing the rule, (2) seeks early input from senior management, (3) consults with stakeholders, (4) collects data and analyze issues, (5) analyzes alternative options, and (6) recommends one or more options to agency management. In addition, a workgroup economist typically prepares an economic review of the proposed rule's costs to society. According to EPA, the "ultimate purpose" of an economic review is to inform decisionmakers of the social welfare consequences of the rule.

After approval by relevant offices within EPA, the proposed rule is published in the *Federal Register*, the public is invited to comment on it, and EPA considers the comments. Comments may address any aspect of the proposed rule, including whether environmental justice concerns are raised and appropriately addressed in the proposed rule. Sometimes, prior to the publication of the proposed rule, EPA publishes an Advanced Notice of Proposed Rulemaking in the *Federal Register*. The notice provides an opportunity for interested stakeholders to provide input to EPA early in the process, and the agency takes such comments into account to the extent it believes is appropriate.

As required by the Clean Air Act, when finalizing a rule, EPA must respond to each significant comment raised during the comment period. In addition, EPA's public involvement policy states that agency officials should explain how they considered the comments, including any change in the rule or the reason the agency did not make any changes. After these tasks are completed, the rule, if it is significant, is sent to OMB for approval. Once OMB approves the final rule and the Administrator signs it, it is published in the *Federal Register*. After a specified time period, the rule takes effect.

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[3] President Clinton issued Executive Order 12866 on September 30, 1993, to begin a program to reform the regulatory process and make it more efficient. Among other things, an OMB review is conducted to ensure that the rule is consistent with Federal laws and the President's priorities, including Executive orders.

EPA GENERALLY DEVOTED LITTLE ATTENTION TO ENVIRONMENTAL JUSTICE IN DRAFTING THREE RULES AND CONSIDERED IT TO VARYING DEGREES IN FINALIZING THEM

When drafting the three clean air rules, EPA generally devoted little attention to environmental justice. We found, for example, that while EPA guidance states that workgroups should consider environmental justice early in the rulemaking process, this was accomplished only to a limited extent. Key contributing factors included a lack of guidance and training for workgroup members on identifying environmental justice issues. In addition, while EPA officials stated that economic reviews of proposed rules considered potential environmental justice impacts, the gasoline and diesel rules did not provide analyses of such impacts, nor did EPA identify all the types of data that would have been needed to perform such analyses. In finalizing the three rules, EPA considered environmental justice to varying degrees although, in general, the agency rarely provided a clear rationale for its decisions on environmental justice-related matters.

For the three rules we examined, concerns about whether environmental justice was being considered sufficiently early in the rulemaking process first became evident by its omission on the agency's "Tiering Form." Once a workgroup chair is designated to lead a rulemaking effort, the chair completes this key form to alert senior managers to potential issues related to compliance with statutes, Executive orders and other matters. In each case, however, the form did not include a question regarding the rule's potential to raise environmental justice concerns, nor did we find any mention of environmental justice on the completed form.

Beyond this omission, EPA officials had differing recollections about the extent to which the three workgroups considered environmental justice at this early stage of the rulemaking process. The chairs of the workgroups for the two mobile source rules told us that they did not recall any specific time when they considered environmental justice while drafting the rules. Other EPA officials associated with these rules said environmental justice was considered, but provided no documentation to this effect. Similarly, the chair of the ozone workgroup told us that his group considered environmental justice, but could not provide any specific information. He did, however, provide a document stating that compliance with Executive orders, including one related to low-income and minority populations, would be a part of the economic review that would take place later in the process.

Overall, we identified three factors that may have limited the ability of workgroups to identify potential environmental justice concerns early in the rulemaking process. First, each of the three workgroup chairs told us that they received no guidance in how to analyze environmental justice concerns in rulemaking. Second, as a related matter, each said they received little, if any, environmental justice training. Two chairs did not know whether other members of the workgroups had received any training, and a third chair said at least one member did receive some training. Some EPA officials involved in developing these three rules told us that it would have been useful to have a better understanding of the definition of environmental justice and how to consider environmental justice issues in rulemaking. Finally, the Office of Air and Radiation's environmental justice coordinators—whose full-time responsibility is to promote environmental justice—were not involved in drafting any of the three rules.

As required, an economic review of the costs, and certain other features, was prepared for all three rules. According to EPA officials, however, the economic review of the two mobile source rules did not include an analysis of environmental justice for various reasons, including the fact that EPA did not have a model with the ability to distinguish localized adverse impacts on a specific community or population. EPA's economic review of the 2004 ozone rule did discuss environmental justice, claiming that the rule would not raise environmental justice concerns. However, it based this claim on an earlier analysis of a 1997 rule that established the 8-hour ozone national ambient air quality standard. Yet rather than indicating that the 1997 ozone rule did not raise environmental justice concerns, this earlier economic review said it was not possible to rigorously consider the potential environmental justice effects because the states were responsible for its implementation. Hence, the inability of EPA to rigorously consider environmental justice in the economic review of the 1997 rule appears to contradict EPA's subsequent statement that there were no environmental justice concerns raised by the 2004 ozone implementation rule.

In finalizing each of the three rules, EPA considered environmental justice to varying degrees, but the gasoline rule in particular provided a questionable example of how comments and information related to environmental justice were received and handled. As noted earlier in this testimony, the Clean Air Act requires that a final rule must be accompanied by a response to each significant comment raised during the comment period. In addition, according to EPA's public involvement pol-

icy, agency officials should explain how they considered the comments, including any change in the rule or the reason the agency did not make any changes. In the case of the gasoline rule, representatives of the petroleum industry, environmental groups, and others had asserted during the comment period that the proposed rule did in fact raise significant environmental justice concerns. One commenter claimed that inequities arose from the fact that while the national air quality benefits were broadly distributed across the country, higher per capita air quality costs were disproportionately confined to areas around refineries.

Despite comments such as these, EPA's final rule did not state explicitly whether it would ultimately raise an environmental justice concern, although EPA officials told us in late 2004 that it would not. Furthermore, EPA did not publish the data and assumptions supporting its position. In fact, an unpublished analysis EPA developed before finalizing the rule appeared to suggest that environmental justice may indeed have been an issue. Specifically, EPA's analysis showed that harmful air emissions would increase in 26 of the 86 counties with refineries affected by the rule. According to EPA's analysis, one or both types of emissions—nitrogen oxides and volatile organic compounds—could be greater in the 26 counties than the rule's benefit of decreased vehicle emissions. In one case involving a Louisiana parish, EPA estimated that net emissions of nitrogen oxides could increase 298 tons in 1 year as a result of the rule to refine cleaner gasoline.

Under EPA's rulemaking process, the agency prepares a final economic review after considering public comments. EPA guidance indicates that this final economic review, like the economic review during the proposal stage, should identify the distribution of the rule's social costs across society. In the case of the three air rules, however, EPA completed a final economic review after receiving public comments but performed no environmental justice analyses. The publication of the final rules gave EPA another opportunity to explain how it considered environmental justice in the rule's development. When EPA published the final rules, however, two of the three rules did not explicitly state whether they would raise an environmental justice concern. Only the ozone rule stated explicitly that it would not raise an environmental justice concern.

GAO'S RECOMMENDATIONS AND EPA'S RESPONSE

We made four recommendations to help EPA resolve the problems identified by our study. In its June 10, 2005 letter on a draft of our report, EPA initially said it disagreed with the recommendations, saying it was already paying appropriate attention to environmental justice. However, EPA responded more positively to each of these recommendations in an August 24, 2006 letter.[4] The first recommendation called upon EPA rulemaking workgroups to devote attention to environmental justice while drafting and finalizing clean air rules. EPA responded that to ensure consideration of environmental justice in the development of regulations, the Office of Environmental Justice was made an *ex officio* member of the agency's Regulatory Steering Committee, the body that oversees regulatory policy for EPA and the development of its rules. The letter also said that (1) the agency's Office of Policy, Economics and Innovation (responsible in part for providing support and guidance to EPA's program offices and regions as they develop their regulations) convened an agency-wide workgroup to consider where environmental justice might be considered in rulemakings and (2) it was developing "template language" to help rule writers communicate findings regarding environmental justice in the preamble of rules.

Second, to enhance workgroups' ability to identify potential environmental justice issues, we called on EPA to (a) provide workgroup members with guidance and training to help them identify potential environmental justice problems and (b) involve environmental justice coordinators in the workgroups when appropriate. In response to the call for better training and guidance, EPA said it was supplementing existing training with additional courses to create a comprehensive curriculum that will meet the needs of agency rule writers. Specifically, it explained that its Office of Policy, Economics, and Innovation was focusing on how agency staff can best be trained to consider environmental justice during the regulation development process; while the Office of Air and Radiation had already developed environmental justice training tailored to the specific needs of that office. Among other training opportunities highlighted in the letter was a new on-line course offered by the Office of Environmental Justice that addresses a broad range of environmental justice issues.

[4] 31 U.S.C. 720 requires the head of a Federal Agency to submit a written statement of the actions taken on our recommendations to the Senate Committee on Homeland Security and Governmental Affairs, the House Committee on Oversight and Government Reform, and the House and Senate Committees on Appropriations within 60 days of issuance of our recommendations.

EPA also cited an initiative by the Office of Air and Radiation's Office of Air Quality Planning and Standards to use a regulatory development checklist to ensure that potential environmental justice issues and concerns are considered and addressed at each stage of the rulemaking process. In response to our call for greater involvement of Environmental Justice coordinators in workgroup activities, EPA said that as an *ex officio* member of the Regulatory Steering Committee, the Office of Environmental Justice will be able to keep the program office environmental justice coordinators informed about new and ongoing rulemakings with potential environmental justice implications. It said that the mechanism for this communication would be monthly conference calls between the Office of Environmental Justice and the environmental justice coordinators.

Third, we recommended that the Administrator improve assessments of potential environmental justice impacts in economic reviews by identifying the data and developing the modeling techniques needed to assess such impacts. EPA responded that its Office of Air and Radiation was reviewing information in its air models to assess which demographic data could be introduced and analyzed to predict possible environmental justice effects. It also said it was considering additional economic guidance on methodological issues typically encountered when examining a proposed rule's impacts on subpopulations highlighted in the Executive order. Finally, it noted that the Office of Air and Radiation was assessing models and tools to (1) determine the data required to identify communities of concern, (2) quantify environmental health, social and economic impacts on these communities, and (3) determine whether these impacts are disproportionately high and adverse.

Fourth, we recommended that the EPA Administrator direct cognizant officials to respond more fully to public comments on environmental justice by, for example, better explaining the rationale for EPA's beliefs and by providing supporting data. EPA said that as a matter of policy, the agency includes a response to comments in the preamble of a final rule or in a separate "Response to Comments" document in the public docket. The agency noted, however, that it will re-emphasize the need to respond to comments fully, to include the rationale for its regulatory approach, and to better describe its supporting data.

EPA'S PROGRESS IN RESPONDING TO OUR RECOMMENDATIONS

On July 18, 2007, we met with EPA officials to obtain more up-to-date information on EPA's environmental justice activities, focusing in particular on those most relevant to our report's recommendations. While we have not had the opportunity to independently verify the information provided in the few days since that meeting, our discussions did provide insights into EPA's progress in improving its environmental justice process in the two years since our report was issued. The following discusses EPA activities as they relate to each of our four recommendations.

First, regarding our recommendation that workgroups consider environmental justice while drafting and finalizing regulations, EPA had emphasized in its August 2006 letter that making the Office of Environmental Justice an *ex officio* member of the Agency's Regulatory Steering Committee would not only allow it to be aware of all important EPA regulatory actions from their inception through rule development and final agency review, but more importantly, would allow it to participate on workgroups that are developing actions with potential environmental justice implications and/or recommend that workgroups consider environmental justice issues. To date, however, the Office of Environmental Justice has not participated directly in any of the 103 air rules that have been proposed or finalized since EPA's August 2006 letter. According to EPA officials, the Office of Environmental Justice did participate in one workgroup of the Office of Solid Waste and Emergency Response, and provided comments on the final agency review for the Toxic Release Inventory Reporting Burden Reduction Rule. EPA officials also emphasized that its Tiering Form would be revised to include a question on environmental justice. As noted earlier, this key form is completed by workgroup chairs to alert senior managers to the potential issues related to compliance with statutes, Executive orders, and other matters. However, two years after we cited the omission of environmental justice from the Tiering Form, EPA explained that its inclusion has been delayed because it is only one of several issues being considered for inclusion in the Tiering process.

Second, regarding our recommendation to (1) improve training and (2) include Environmental Justice coordinators from EPA's program offices in workgroups when appropriate, our latest information on EPA's progress shows mixed results. On the one hand, EPA continues to provide an environmental justice training course that began in 2002, and has included environmental justice in recent courses to help rule writers understand how environmental justice ties into the rulemaking process. On the other hand, some training courses that were planned have not yet been devel-

oped. Specifically, the Office of Policy, Economics, and Innovation has not completed the planned development of training on ways to consider environmental justice during the regulation development process. In addition, while the EPA said in its August 2006 letter that Office of Air and Radiation had developed environmental justice training tailored to that office, air officials told us last week that in fact they were unable to develop the training due to staff turnover and other reasons. Regarding our recommendation to involve the Program Offices' Environmental Justice coordinators in rulemaking workgroups when appropriate, EPA's August 2006 letter had said that the Coordinators' involvement would be facilitated through the Office of Environmental Justice's participation on the Regulatory Steering Committee. Specifically, it said that the Office of Environmental Justice would be "able to keep the agency's [Environmental Justice] Coordinators fully informed about new and ongoing rulemakings with potential Environmental Justice implications about which the coordinators may want to participate." According to EPA officials, however, this active, hands-on participation by Environmental Justice coordinators in rulemakings has yet to occur.

Third, regarding our recommendation that EPA improve assessments of potential environmental justice impacts in economic reviews by identifying the data and developing the modeling techniques that are needed to assess such impacts, EPA officials said that their data and models have improved since our 2005 report, but that their level of sophistication has not reached their goal for purposes of environmental justice considerations. EPA officials said that to understand how development of a rule might affect environmental justice for specific communities, further improvements are needed in modeling, and more specific data are needed about the socioeconomic, health, and environmental composition of communities. Only when they have achieved such modeling and data improvements can they develop guidance on conducting an economic analysis of environmental justice issues. According to EPA, among other things, economists within the Office of Air and Radiation are continuing to evaluate and enhance their models in a way that will further improve consideration of environmental justice during rulemaking. For example, EPA officials told us that at the end of July, a contractor will begin to analyze the environmental justice implications of a yet-to-be-determined regulation to control a specific air pollutant. EPA expects that the study, due in June 2008, will give the agency information about what socio-economic groups experience the benefits of a particular air regulation, and which ones bear the costs. EPA expects that the analysis will serve as a prototype for analyses of other pollutants.

Fourth, regarding our recommendation that the Administrator direct cognizant officials to respond more fully to public comments on environmental justice, EPA officials cited one example of an air rule in which the Office of Air and Radiation received comments from tribes and other commenters who believed that the proposed National Ambient Air Quality Standard for $PM_{10-2.5}$ raised environmental justice concerns. According to the officials, the agency discussed the comments in the preamble to the final rule and in the associated response-to-comments document. Nonetheless, the officials with whom we met said they were unaware of any memoranda or revised guidance that would encourage more global, EPA-wide progress on this important issue.

CONCLUDING OBSERVATION

Our 2005 report concluded that the manner in which EPA has incorporated environmental justice concerns into its air rulemaking process fell short of the goals set forth in Executive Order 12898. One year after that report, EPA committed to a number of actions to be taken to address these issues. Yet an additional year later, most of these commitments remain largely unfulfilled. While we acknowledge the technical and financial challenges involved in moving forward on many of these issues, EPA's experience to date suggests the need for measurable benchmarks—both to serve as goals to strive for in achieving environmental justice in its rulemaking process, and to hold cognizant officials accountable for making meaningful progress.

Madam Chairman, this concludes my prepared statement. I would be happy to respond to any questions that you or Members of the subcommittee may have.

July 25, 2007

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-07-1140T, a testimony before the Subcommittee on Superfund and Environmental Health, Committee on Environment and Public Works, United States Senate

ENVIRONMENTAL JUSTICE

Measurable Benchmarks Needed to Gauge EPA Progress in Correcting Past Problems

Why GAO Did This Study

A 1994 Executive Order sought to ensure that minority and low-income populations are not subjected to disproportionately high levels of environmental risk. Studies have shown that these groups are indeed disproportionately exposed to air pollution and other environmental and health problems. The Order sought to address the problem by requiring EPA and other federal agencies to make achieving environmental justice part of their missions.

In July 2005, GAO issued a report entitled, *Environmental Justice: EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules* (GAO-05-289). Focusing on three specific rules for detailed study, the report identified a number of weaknesses in EPA's approach to ensuring that environmental justice is considered from the early stages of rule development through their issuance. The report made several recommendations, to which EPA replied in an August 24, 2006 letter. GAO also met recently with cognizant EPA staff to obtain updated information on the agency's responses to these recommendations.

In this testimony, GAO (1) summarizes the key findings of its 2005 report, (2) outlines its recommendations to EPA and EPA's August 2006 responses, and (3) provides updated information on subsequent EPA actions.

www.gao.gov/cgi-bin/getrpt?GAO-XX-XXX.

To view the full product, including the scope and methodology, click on the link above. For more information, contact John Stephenson at (202) 512-3841 or Stephensonj@gao.gov

What GAO Found

EPA generally devoted little attention to environmental justice when drafting three significant clean air rules between fiscal years 2000 and 2004. GAO's 2005 report concluded, for example, that while EPA guidance on rulemaking states that workgroups should consider environmental justice early in the process, a lack of guidance and training for workgroup members on how to identify potential environmental justice impacts limited their ability to analyze such issues. Similarly, while EPA considered environmental justice to varying degrees in the final stages of the rulemaking process, in general the agency rarely provided a clear rationale for its decisions on environmental justice-related matters. For example, in responding to comments during the final phase of one of the rules, EPA asserted that the rule would not have any disproportionate impacts on low-income or minority communities, but did not publish any data or the agency's assumptions in support of that conclusion.

Among its recommendations, GAO called on EPA to ensure that its rulemaking workgroups devote attention to environmental justice while drafting and finalizing clean air rules. EPA's August 2006 letter responded that it had made its Office of Environmental Justice an *ex officio* member of the Regulatory Steering Committee so that it would be aware of important regulations under development and participate in workgroups as necessary. GAO also recommended that EPA improve the way environmental justice impacts are addressed in its economic reviews by identifying the data and developing the modeling techniques needed to assess such impacts. EPA responded that its Office of Air and Radiation was examining ways to improve its air models so it could better account for the socioeconomic variables identified in the Executive Order. GAO also recommended that cognizant EPA officials respond more fully to public comments on environmental justice by better explaining their rationale and by providing the supporting data for the agency's decisions. EPA responded that it would re-emphasize the need to respond fully to public comments, include the rationale for its regulatory approach, and describe its supporting data

Recent discussions between GAO and EPA officials suggest that some progress has been made to incorporate environmental justice concerns in the agency's air rulemaking, but that significant challenges remain. For example, while the Office of Environmental Justice may be an *ex officio* member of the Regulatory Steering Committee, it has not participated directly in any air rules that have been proposed or finalized since EPA's August 2006 letter to GAO. Also, according to EPA staff, some of the training courses that were planned have not yet been developed due to staff turnover among other reasons. When asked about GAO's recommendation that cognizant officials respond more fully to public comments on environmental justice, the EPA officials cited a recent rulemaking in which this was done. But the officials said they were unaware of any memoranda or revised guidance that would encourage more global progress on this key issue.

RESPONSES BY JOHN B. STEPHENSON TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. As a matter of law, do you think that we may be giving Executive Order 12898, a non-binding, legally unenforceable Executive order, more official standing than is legally permissible?

Response. Executive Order 12898, like other Executive orders, provides that Federal agencies shall take certain actions. In particular, Executive Order 12898 specifies Federal actions to address environmental justice in minority populations and low-income populations. Our July 2005 report[1] found that EPA took a number of actions to implement Executive Order 12898 after the order was issued in 1994. However, our report also found that, in drafting three Clean Air Act rules between fiscal years 2000 and 2004, EPA generally devoted little attention to environmental justice. In addition, in at least one respect, EPA did not give Executive Order 12898 the same attention at the time of our study as it gave other Executive orders.

Specifically, EPA included questions concerning compliance with other Executive orders on its Tiering Form, a key form used early in the rulemaking process to help establish the level of senior management involvement needed in drafting rules, but it did not include a question on environmental justice.

Question 2. Assuming that EPA's primary responsibility is to assess environmental risk in populations, do you think EPA is the appropriate Federal Agency to perform the kind of complicated socio-economic, demographic and public health impact determinations, normally performed by other agencies such as the Centers for Disease Control and the Department of Housing and Urban Development?

Response. Executive Order 12898 provides that each Federal Agency shall 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. Our work has not examined the relative roles and responsibilities among agencies implementing this order. However, we would note that the Executive order does create an Interagency Working Group on Environmental Justice, which, under the terms of the order, is to provide guidance to Federal agencies on criteria for identifying the disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. The order states that the working group comprises the heads or designees of a number of executive agencies and offices, including the Department of Health and Human Services, the Department of Housing and Urban Development, and EPA.

Question 3. Assuming that all disproportionate impacts are not automatically negative impacts; what weight do you believe is given to the economic benefits, increased employment, social services and lower housing costs associated with industrial development in low income areas?

Response. Executive Order 12898, in Sec. 1–101, only refers to an agency's responsibility to 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" (emphasis added). However, another Executive order, Executive Order 12866, requires Federal agencies to prepare assessments of the potential costs and benefits of regulatory actions defined to be significant under the order.

Question 4. EPA's various guidance on environmental justice over the last 13 years is considered an interpretive rule, stating what the agency "thinks" and serves only to remind affected parties of existing duties. The courts have decided that interpretive rules are not subject to the Administrative Procedures Act ("APA") and are outside the scope of judicial review. This leaves ultimate discretion to the EPA on what are "high and adverse impacts." The APA, set forth by Congress 60 years ago, created a consistent and transparent process for agency rulemakings. Do you believe that an interpretive rule, like the EJSEAT, is meant to affect substantive change in regulations or serve as a basis for denying permits?

Response. Our work has not examined the extent to which EJSEAT has a binding effect or the force and effect of law and therefore could be subject to notice and comment requirements under the Administrative Procedures Act.

Senator CLINTON. Thank you very much, Mr. Stephenson.

We will rotate in 5-minute rounds.

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[1]U.S. Government Accountability Office, *Environmental Justice: EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules*, GAO–1–05–289 (Washington, DC: July 2005).

Mr. Nakayama, in your testimony today you state that, "We recognize that minority and/or low-income communities may," may, and I emphasize may, "be exposed disproportionately to environmental harms and risks." But I don't think there is any may about it. There is clearly documented evidence of disproportionate burden in minority and/or low-income communities.

So let me ask you, in your judgment are there communities of color or low-income communities in our country today that could be experiencing or have experienced disproportionately high levels of pollution?

Would you please turn on your microphone?

Mr. NAKAYAMA. Let me say first of all I do agree that there are disproportionate exposures to pollutants. I don't think there is any question about that. I think the question facing the Agency is are we making progress with respect to the level of disparity, do these disparities result from land use and development patterns that have existed for decades. The issue for us at EPA is are we making progress? Is the situation getting better or is it getting worse?

I think there is clear evidence that we are taking action to clean the air and water, and address these issues. We are trying to build capacity in these communities so that people can meaningfully participate. We do believe that meaningful participation by community groups is the key. We believe that collaborative problem solving is an excellent tool, based on our experience, for getting the various parties together and seeking commonsense solutions so that we can address these disparities.

There are frankly other drivers that cause disparate exposure. For example, where you have intermodal transportation facilities like a port situation, you have marine diesel vessels, you have freight traffic and you have rail traffic. It makes economic and environmental sense from the efficiency standpoint, the fuel economy standpoint, to co-locate those facilities. Unfortunately, that generates a high environmental stress level on the community that lives adjacent to that facility. So these are the types of situations we are trying to address, and there will be no magic silver bullet. This is hard work. This is very tough work.

Senator CLINTON. Well, I appreciate how hard it is. What I am concerned about is what appears to be a limited effort in the last 6½ years to fulfill the implementation requirements under the Executive order. In fact, if one looks at the history of action during this Administration, there appears to be a dilution of environmental justice in a way that de-emphasizes communities of color and low-income populations, which was certainly not the intention of the Executive order.

Both the GAO and OIG reports identified training of EPA employees as an issue that the Agency needed to address. In your testimony, you note that since 2002, nearly 4,000 employees of EPA and other agencies have undergone environmental justice training, but that figure represents a very small proportion of all employees and only a quarter of the Agency's total employees. It does not appear that the Agency has made the provision of training a priority.

In the Office of Air and Radiation Environmental Justice Action Plan for 2007 and 2008, they list as an accomplishment the fact that 44 employees have undergone training—that is 44 out of hun-

dreds. I don't see the evidence in your testimony or in the reports by the Office of the Inspector General or the GAO that training is being taken seriously.

Similarly, NEJAC, the National Environmental Justice Advisory Council, has had only three full meetings during the Bush administration, the last one of which took place in 2004. There have been reports released, three of them in August 2006, to which the Agency submitted responses, but I would like to ask you, what has been done in the 11 months since those reports from NEJAC, the Advisory Council, have been issued? What has been the reaction of the EPA?

Mr. NAKAYAMA. Well, I appreciate you bringing this issue to my attention, but I can say that I personally have attended two NEJAC meetings since I joined the Agency in August 2005, so I am not sure with respect to the status of the NEJAC that there has been any sort of pause in our efforts. I attended both of those meetings because I realized EJ was a very important issue. With respect to the recommendations to the NEJAC, the NEJAC is staffed by volunteers. These are people who agree to provide their expertise to the Agency.

We very much appreciate their efforts. They are volunteers. Prior to 2005, when the NEJAC submitted recommendations—and this goes back throughout the history of the NEJAC, it is not an issue of one Administration versus the other—the Agency never, never issued a written response to the NEJAC. I said that is not right. We ought to respond. Those are recommendations that they deserve a response to.

So we did respond in writing, placed on our Web site the responses to the three sets of recommendations the NEJAC provided. I thought that was the least we could do, and it showed that we were being responsive with respect to the NEJAC's recommendations by providing written public responses. We did adopt a number of recommendations that the NEJAC made.

Senator CLINTON. Well, let me just say that if NEJAC meetings have been happening, then how come the Agency's own Website says that they have met 19 times since formed back in the Clinton administration, but only three times in the Bush administration. So if the Website information is wrong, please give us corrected information for our records.

Finally, I want to raise a very personal concern with you. In our second panel, we will hear from Peggy Shepard, executive director of the West Harlem Environmental Action Group. She has great frustration at the EPA's delay in establishing a regional listening session in Region II so that residents of New York and other Region II areas have the opportunity to convey their EJ concerns directly to the EPA staff.

Planning on this meeting to meet with the Region II representatives and concerned citizens began in 2002. Five years later, no such meeting has occurred. Mr. Nakayama, would you give me your commitment that the EPA will hold a listening session in Region II by the end of this year?

Mr. NAKAYAMA. I have not heard about this issue before. I will be glad to look into it.

Senator CLINTON. Will you give me your commitment that the EPA will meet with Region II for a listening session before the end of this year?

Mr. NAKAYAMA. I see no reason why we shouldn't be able to hold such a listening session.

Senator CLINTON. I take that as a commitment and this committee will hold you and the EPA to that commitment. My constituents deserve answers to their legitimate questions. They have been waiting for 5 years. I look forward to having a representative at that meeting when it is held before the end of this year.

Mr. NAKAYAMA. Let me, if I could, discuss regional listening sessions. I think they are very valuable. We do need to hear from the public. We do need to hear from community groups. Shortly after Katrina and Rita, we held one of the few listening sessions down in the Gulf Coast. It was very unusual for the Federal Government to come in right after the hurricane and ask, how can we do a better job. But we did. We went down there. We went down to both Mississippi and Louisiana. We held those Gulf Coast listening sessions, focused on EJ. We got wonderful feedback from the community groups.

I personally thought that was one of the most valuable things we could have done. I think listening sessions are very important. I do not know why we haven't had one since 2002. I will definitely go look into it. I see no reason, as I said, that we should not have one. I personally have a rule in my own office: any EPA employee that has a policy issue, they can call me up Friday at 5 p.m. and I will be in my office and we will have a discussion. I can't help my employees with their boss, their raise or their office, but I will address policy issues. I think that is the best way to get input directly from the people involved.

So I will look into it and I see no reason, as I said, why we couldn't have that listening session.

Senator CLINTON. Well, I will look forward to the date of that being scheduled as soon as possible.

Senator Boxer.

Senator BOXER. Senator Clinton, I certainly hope that after the listening session in New York, you will have a better outcome than what happened when they listened in Katrina.

[Applause.]

Senator BOXER. The people down there—no, don't do this.

I mean, the people down there are now suffering with formaldehyde in the trailers. So you know, let's do better. Let's really listen. It is one thing to say you are listening. It is another to really listen. So I look forward to the results of that.

Mr. Najjum, the Inspector General issued valued and forceful reports on EPA actions on environmental justice in 2004 and 2006. Is that correct?

Mr. NAJJUM. Yes, ma'am, that is correct.

Senator BOXER. Did the Inspector General draft, but not issue, another report on environmental justice in 2005?

Mr. NAJJUM. Yes, we have a draft report that we are looking at to see why it wasn't issued.

Senator BOXER. Well, OK, so there was a report that was written in 2005 on environmental justice and it was never brought to the public light. Is that correct?

Mr. NAJJUM. It was issued in draft and then before it was issued in final, it was brought back. The effort was refocused into the work that was released in the 2006 report.

Senator BOXER. I need to see that 2005 report.

Mr. NAJJUM. Yes, ma'am.

Senator BOXER. We need to see it. So will you please send to us at your earliest convenience, and that would mean at the end of business today if you can, this unissued, unedited draft report.

Mr. NAJJUM. Certainly as unissued, Senator. What it is, what we are doing at the current time, if I could explain just a moment, is when we found that we had a report that made it almost to the point of final issuance and was not issued, reworked and then issued later on as a report, we are doing an internal quality control review to see why that happened. So that is in process. It is not a case of where we took a report and decided not to issue it.

We are looking at the rationale for why the IG at the time decided not to issue that report, what happened to it. On the positive side, the work was refocused and the recommendations are similar to the recommendations in the 2006 report, but that is a cause of concern within the IG's office itself as to why that happened.

Senator BOXER. Well, the IG should conduct independent oversight on EPA, and did EPA concerns contribute in any way to the IG's failure to issue this report?

Mr. NAJJUM. At this point, I couldn't say yes or no, but I don't think that that was the sole reason why.

Senator BOXER. I didn't ask if it was the sole reason.

Mr. NAJJUM. Yes, ma'am.

Senator BOXER. Did the EPA concerns contribute in any way to the IG's failure to issue this report in 2005?

Mr. NAJJUM. I don't believe I can answer that because I have no actual trail that would show——

Senator BOXER. Well, let me give you a trail.

Mr. NAJJUM. OK.

Senator BOXER. I want you to look at the Office of Air and Radiation and see whether or not they are the ones responsible for not letting this report out. That is giving you some hints.

Mr. NAJJUM. I understand that, Senator, and I also understand that the responsibility for not issuing that report lies with the Office of the Inspector General. If there was a mistake made in not issuing it, it was our mistake.

Senator BOXER. Well, whether it is a mistake, whether it conveniently got buried because the people in EPA didn't want it, I am not really that interested. What I am interested in is seeing it.

Mr. NAJJUM. Yes, ma'am.

Senator BOXER. So is Senator Clinton. You know, we have had experiences in other committees where reports have somehow magically never seen the light of day. I had a couple of them in Commerce. It was just interesting, Senator Clinton, because the results of these independent reports conflicted with what the Bush administration wanted to do, so they got deep sixed.

So I am asking you for the record, will you do everything in your power to get us this report unedited, the draft report?

Mr. NAJJUM. Yes, Senator.

Senator BOXER. Thank you. We will follow up.

Can I have another few minutes here?

Senator CLINTON. Please.

Senator BOXER. Good.

Mr. Najjum, you said that there have been some positive steps taken by the EPA in this area. Are you aware that in 2005, 2006, 2007 and 2008 in their budget request, EPA has asked for cuts in these programs, the environmental programs and management account and the hazardous waste Superfund account.

Mr. NAJJUM. Yes, Senator, I am.

Senator BOXER. So what good steps have they taken?

Mr. NAJJUM. Not doing the budget review Senator, but what we have seen is that in response to our report and the recommendations that we made as compared to the 2004 report where we got complete nonconcurrence and a disagreement on just about everything that we recommended on the 2006 report, the recommendations, which I might add are consistent with what we recommended in 2004 because the team kept coming back to the same issue since it was not being implemented correctly, we did get a corrective action plan. We did get agreement and we do have some motion to implement the recommendations that we made. So we consider that positive.

Senator BOXER. OK. I would consider it positive if there was some interest in funding some of these programs at the level they need to be at. Even in a Republican Congress, we saw the Republican Congress vote more money. So this has been an amazing situation here.

Mr. Nakayama, the 2007 Toxic Waste and Race Study found that minorities make up 90 percent of the people who live near hazardous waste facilities in Los Angeles. OK? Doesn't it show that EPA should include a focus on minorities in addressing environmental justice?

Mr. NAKAYAMA. I think the issue with respect to any particular statistic like that is, are we making progress. In other words, was it 95 percent 5 years before that? The issue really is are we making progress and are the toxic waste sites or the hazardous waste facilities, are they meeting their environmental responsibilities under law and regulations.

Senator BOXER. Well isn't it true that the original Executive order said that EPA should reduce health threats for people in communities like L.A. by focusing on minority and low-income people. Wasn't that the original Executive order's intention?

Mr. NAKAYAMA. That was certainly the Executive order's intention, but the Executive order did not provide any separate statutory authorities to EPA. It is the extent permitted by law. When we act under our authorities of the Clean Water Act, under RCRA/CERCLA, we act according to the statutory authorities we have available to us. There is no separate statutory authority where if a facility meets its responsibilities and meets all the permitting requirements and other requirements, that we can take action.

Senator BOXER. Look, I know what you are doing here. You are literally changing the whole point of the original Executive order. What you are saying is we are just going to make progress for everybody. I know you don't doubt what I say that minorities make up 90 percent of the people who live near hazardous waste facilities in L.A. and who knows, it may be higher in New York and other places. I don't know the figures.

I am amazed that you continue to pretend, and EPA does, that race isn't a crucial factor. I guess you are confirming the argument that EPA continues to believe it shouldn't focus on minority groups when implementing environmental justice activities. It is just putting your head in the sand.

Well, you said there were legal reasons. So do you support new legal authority that we could put into law to consider environmental justice? Would you support that?

Mr. NAKAYAMA. Let me make two suggestions, if I could as we go forward. That would be helpful. It would be very helpful with respect to environmental justice. There are authorities that would be very helpful to EPA. One is clarification of our ability to have supplemental environmental projects. We have a very robust enforcement program, $20 billion in settlements over the last 3 years; $26 million every work day. The last 3 years have been the first, second and third highest years in the Agency's history with respect to our enforcement results.

Often, respondents or defendants prefer to fund a supplemental environmental project.

Senator BOXER. I don't have too much time for this.

Do you support new legal authority to consider environmental justice? Yes or no? If you do, that would be great for Senator Clinton and I. We can work with you. Do you support that? You said you couldn't do it because you hadn't the legal authority. I am asking you, does it help you to have the legal authority?

Mr. NAKAYAMA. I would have to look at the specific proposal before I am in a position I think——

Senator BOXER. Well, I am not asking about a specific proposal. I am asking you, since you said that there was nothing in the law, would it help you to have something in the law?

Mr. NAKAYAMA. It depends what the law is.

Senator BOXER. You are just evading.

I would just ask unanimous consent to place in the record the Inspector General's report of 2004. We are going to look for the one of 2005, in which it says the Agency changed the focus of the environmental justice program by de-emphasizing minority and low-income populations, 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.

I just think this is a sad legacy of this Administration because the people who are here will tell you they are the ones that are suffering. They are the kids who are getting the asthma and worse.

So I hope you think about working with us on changing the law since this Executive order has been twisted away from what President Clinton said it ought to be. We are never going to make progress if we just dance around this.

Again, I look forward to getting the 2005 report.

Thank you very much, Senator Clinton.

Senator CLINTON. Thank you very much, Senator Boxer. The material will be entered into the record.

Senator CLINTON. I just want to end this panel with a question or two for Mr. Stephenson. You have heard Mr. Nakayama consistently say that the important point is how much progress is being made. In the initial GAO report in 2005, you identified issues at the Agency and in your testimony today you note that the EPA has taken steps to incorporate environmental justice concerns into the rulemaking process. In your view, has the EPA made significant progress in seeking to address environmental justice concerns?

Mr. STEPHENSON. The problem as we see it is that, while EPA made the Office of Environmental Justice an *ex officio* member of the Regulatory Steering Committee, that is at a very high level. What we don't see is the crosswalk or the institutionalization of that high level committee into the many individual rulemakings. It is difficult for people in the EJ office to identify which rules they should pay attention to, and as a result there is almost no participation in the individual work groups on individual rules.

So in our view, EPA has not yet institutionalized environmental justice and as a result there is no way to determine exactly what progress has been made.

Senator CLINTON. Based on your study, does the EPA at this time have a memorandum, guidance or strategic plan that would enable the Agency to make broad-based progress on environmental justice issues?

Mr. STEPHENSON. No, that is why we are suggesting that there needs to be some benchmarks with which EPA can be held accountable, similar to what it did in the grants management process. We would like to see a plan like that where you can actually hold someone's feet to the fire on actions that have been implemented.

Senator CLINTON. Well, we would like to see such a plan as well. That will be one of the reasons why we will be introducing legislation to try to actually bring about implementation on the environmental justice issues that we care so much about.

Thank you very much to this panel.

I would ask that the second panel come forward. The second panel is a very distinguished one indeed. As they take their seats, let me introduce to you Representative Harold Mitchell from the South Carolina State Legislature. Representative Mitchell founded the group ReGenesis, an environmental justice group based in Spartanburg, S.C. He received the 2002 EPA National Community Excellence Award and the 2004 Urban League Humanitarian Award. In 2005, Mr. Mitchell was elected to the South Carolina State Legislature.

Second, Dr. Robert D. Bullard is director of the Environmental Justice Resource Center at Clark Atlanta University. Dr. Robert Bullard is the ware professor of Sociology and director of the Environmental Justice Resource Center at Clark Atlanta University. He is one of the leading authorities in the Nation regarding environmental justice. As an environmental sociologist, he has conducted research and written extensively on issues about urban land use, environmental quality, and housing.

Peggy Shepard is the executive director of the West Harlem Environmental Action, WE ACT. She is the founder, in fact, of WE ACT, New York's first environmental justice organization. From January 2001 to 2003, Ms. Shepard served as the first female chair of the National Environmental Justice Advisory Council. That is NEJAC that some of you have heard us refer to, that serves as an advisory council to the Environmental Protection Agency. She received the Heinz Award for the Environment in 2004.

Finally, Dr. Beverly Wright—we have to get to Mr. Steinberg; I am sorry—Dr. Beverly Wright, founder and director of the Deep South Center for Environmental Justice, which develops minority leadership in the struggle for environmental, social and economic justice along the Mississippi River corridor of Louisiana. For more than a decade, Dr. Wright has been a leading scholar, advocate and activist in the environmental justice arena. She is the co-author of the Toxic Waste and Race at 20 report.

Mr. Michael Steinberg is representing the Business Network for Environmental Justice, a lawyer whose practice focuses on environmental law matters, with special emphasis on litigation and counseling involving the Resource Conservation and Recovery Act, Superfund law, and environmental justice issues under Federal and State civil rights laws.

We will start with Hon. Harold Mitchell and we will go right down the panel, ending with Dr. Beverly Wright.

Representative Mitchell.

STATEMENT OF HAROLD MITCHELL, SOUTH CAROLINA STATE LEGISLATURE

Mr. MITCHELL. Good afternoon. I would like to take this opportunity to thank you for this historic opportunity to talk about environmental justice in Spartanburg, SC. I first want to tell you, Senator Clinton, thank you for your leadership back on the Hill once again on the subject of environmental justice.

I questioned the sickness and mortality in my neighborhood of the two Superfund sites and six Brownfields sites, of the Arkwright/Forest Park neighborhoods in Spartanburg, SC. The property line of the home I grew up in was directly adjacent to the IMC Global Fertilizer facility, the largest producer and supplier of concentrated phosphates and potash fertilizers. This facility was closed in 1986 and was given a clean bill of health.

We later found that toxic furnace dust from Georgia was sent to the facility for disposal and was used as a filler for the fertilizer. The facility never passed its stack emissions test, but did take responsibility for anything that was metal in the community, including my parent's car and repainted cars almost eight tenths of a mile away from the facility.

Located in the rear of my parents' home was the old city landfill, which according to the State Environmental Agency said that the landfill did not exist. Later, I found that 99.9 percent of all medical, auto and industrial waste was dumped there. One of the things about that was that the residents were all on drinking water wells at that particular time. To the rear was an operating chemical facility, which was supposed to have been an apartment complex. Due to zoning in Spartanburg County, a developer came in

and turned this into a chemical storage facility, which is now a full-blown operating chemical plant.

I am convinced that the early deaths of my sister and my mother's sister's daughter from sepsis encephalitis, a germ poisoning, which was in front of our home, was where the raw materials area for this fertilizer plant was located.

My father, who died of lymphoma, was the exact same thing, that I first got involved with with this project, which was never diagnosed, but he had all the exact same symptoms I had and was later diagnosed and died New Year's Day of 1997.

In 1998, I formed an organization called ReGenesis to address the environmental conditions in the three neighborhoods surrounding the fertilizer plant. These abandoned sites became incubators for illegal activity and drug use, and the social and economic deterioration of the community and chronic health problems were overwhelming when you look at the numbers of high infant mortality and cancer within the area.

In 1998, with about 1,400 members of our community group, we requested that EPA Region IV come and conduct workshops and talk to the community. We began to talk about cleanup and reuse of contaminated sites. This is where I saw the opportunity to regain what was lost during the urban renewal programs, when 60 black-owned businesses left the south side of Spartanburg. This was the pivotal point in the process for our community because of the earlier efforts of the environmental justice movement that made sure that communities became equal stakeholders in the public participation process.

I attended my first NEJAC meeting here in Washington. I found that other communities were impacted around the country just like the one that I grew up in myself and heard those testimonies. It was helpful at this point to hear the lessons learned, good and bad, from other impacted communities around the country.

At this NEJAC meeting, that is where I first learned about the Executive Order 12898 on environmental justice that was signed by President Clinton. The Executive order got the attention of the city and county officials. Your former colleague and my former U.S. Senator Fritz Hollings gave us support from the Hill which also grabbed the attention of many of those within our local governments because, as you know, the limited resources that we hear continually to address these issues were very complex. When you talk about accountability and the unknown, a lot of the decision-makers just refuse to come to the table.

But in 2000, EPA Region IV awarded ReGenesis with a $20,000 small grant to help build the capacity of the community, which created a lot of the partnerships that we knew were necessary to address our issue. This grant brought the attention with local leaders to look at other grant opportunities such as the Superfund Redevelopment Initiative and the Brownfields assessment grant.

After creating this vehicle that many wanted to stay away from, now it became a vehicle that no one wanted to be left out of. So at this point, I traveled once again back to Washington and it was at that point where I began to see other Federal agencies addressing environmental justice in their initiatives that I felt could be used in Spartanburg.

From that point, the $20,000 we have leveraged into $167 million in our community, where are addressing through citizen involvement housing, transportation, job creation, community health, entrepreneurial opportunities for the south side of Spartanburg. I have sponsored just this year because of what has happened in Spartanburg the first environmental justice bill in South Carolina, House Bill 3933.

A national comprehensive environmental policy should foster the unique relationship between environmental protection, human health and economic well being. At the same time, such policies should assure that its benefits and risks accrue to all people.

I see I am out of time.

[The prepared statement of Mr. Mitchell follows:]

STATEMENT OF HAROLD MITCHELL, SOUTH CAROLINA STATE LEGISLATURE

Good afternoon Chairman Clinton, Senator Craig, ranking member of this subcommittee and all the subcommittee members. I would like to thank you for this historic opportunity to talk about environmental justice in Spartanburg, SC.

I questioned the sickness and mortality in my neighborhood of the two Superfunds sites and six Brownfields sites, the Arkwright/Forest Park neighborhoods in Spartanburg, South Carolina. The property line of the home I grew up in was directly adjacent to the abandoned IMC Global Fertilizer facility, the world's largest producer and supplier of concentrated phosphates and potash fertilizers. This facility closed in 1986, and was given a "Clean Closure." We found later that toxic furnace dust from Georgia was sent to this facility for disposal and was used as filler for the fertilizer. The facility never passed its stack emissions test but did take responsibility for replacing metal products in the neighborhood, including my parents' car and re-painted other automobiles.

Located in the rear of the property was the old City of Spartanburg landfill, which according to the State Department of Health and Environmental Control, did not exist. Later, we found that 99.9 percent of all medical, auto, and industrial waste was dumped here. To the left and rear, was an operating chemical facility which was supposed to have been developed into an apartment complex. Due to no zoning in Spartanburg County, it was sold to a developer who turned it into a chemical storage facility and later it became what is now a full blown operating chemical plant.

I am convinced that the early deaths of my sister and father were connected to the inhalation of the contaminated dust that came from the plant.

In 1998, I formed an organization called Regenesis to address the environmental conditions in 3 neighborhoods surrounding the fertilizer plant. These abandoned sites became incubators for illegal activity. The social and economic deterioration of this community and chronic health problems were overwhelming. U.S. EPA Region 4 conducted a community workshop to look at the clean up and re-use of the contaminated sites. This is where I saw the opportunity to regain what was lost during the urban renewal programs when 60 black-owned businesses left the Southside. This was a pivotal point in the process for our community because of earlier efforts in the environmental justice movement that made sure communities became equal stakeholders in the public participation process.

I attended my first NEJAC meeting here in Washington, and found other impacted communities around the country with similar testimonies. It was helpful, at this point, to hear the lessons learned, good and bad, from other impacted communities across the country. And it was then that I learned about the Executive Order 12898 on Environmental Justice by President Clinton. The perception that the EO had teeth got the attention of city and county officials. Your former colleague and my former U.S. Senator, Earnest Hollings, gave us support on the Hill which also grabbed the attention of local leaders. Like most communities, funding is the greatest challenge we face, along with the struggle to build capacity and sustainability in our organizations.

In 2000, U.S. EPA Region 4 awarded ReGenesis a $20,000 grant to help build capacity and the community partnerships. This grant allowed us to bring in city and county officials to look at additional grant opportunities, such as the Superfund Re-Development Initiative and the Brownfields Assessment Grant. After creating the vehicle everyone wanted to stay away from now we were organizing regular meetings and forums to address not only the environmental problems but also the solu-

tions for social and economic challenges we face. I traveled to several meetings where other Federal agencies were addressing environmental justice issues. I began to see initiatives that could fit our project in Spartanburg from U.S. HHS with the Community Health Center Initiative; U.S. HUD, U.S. Federal Highway, U.S. Department of Justice, and U.S. Department of Energy. This is where U.S. EPA's presence in the Federal Inter-Agency Work Group on Environmental Justice paved the way for leveraging additional funding and building the partnerships necessary to address our project.

All of these efforts have resulted in Regenesis leveraging over $167 million since 1998. We are addressing—through citizen involvement—housing, public safety/crime, transportation, job-training and creation, community health, and entrepreneurial opportunities in the Southside of Spartanburg and the project area—Arkwright/Forest Park. Please see attached ReGenesis Leverage Report.

The 2007 S.C. Environmental Justice Law charges S.C. DHEC to study and consider the practices of S.C. State agencies as they are related to economic development and revitalization. This resolution will provide the vehicle for communities, like my own, to investigate and revitalize their blighted communities.

A national, comprehensive environmental policy should foster the "unique relationship between environmental protection, human health, and economic well-being. At the same time, such policy will assure that its benefits—and risks—accrue to all people."

It provides an opportunity for reuse of Superfund and Brownfields sites. For example, in Charleston, a $26 million cleanup investment by SCE&G and the City of Charleston resulted in recouping their investment within 5 years and now they generate over $9 million a year in net profit."

Developing Successful Strategies for Integrating Environmental Justice and Sustainable Communities.—Regenesis revitalization efforts have become recognized as a national model and its Revitalization Project and celebrated its progress with a full day of activities on June 14. This included the premiering of the U.S. Environmental Protection Agency documentary, *The Power of Partnerships, the Collaborative Problem Solving Model at Work in Spartanburg.*

RESPONSES BY HAROLD MITCHELL TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1a. ReGenesis first began receiving funding during the Clinton administration, and, in no small part due to your dedication to this issue, managed to leverage that funding into a series of grants from multiple agencies that helped to ensure sustainable environmental and economic opportunity in the area. However, there have been significant cutbacks in grant funding since the Clinton administration, as part of an overall de-emphasis of environmental justice by the Bush EPA.

Response. ReGenesis begin to receive funding during the Clinton administration, and we have been able to leverage that initial funding to a total in excess of $168 million. If we were just starting out in 2007, I believe that it would be much more difficult to ensure sustainable environmental and economic opportunity in Spartanburg for those in greatest need. The opportunities to receive and leverage federal funding have become more difficult today.

Question 1b. If ReGenesis were starting out today, do you think you would have the same opportunities to receive and leverage federal grant funding?

Response. No, it is unlikely that we could have leveraged the amount of funding we have under the Bush administration because the initial programs that built the program foundation are no longer in place. The intact Interagency Working Group on Environmental Justice (IWG), the National Environmental Justice Advisory Council (NEJAC) and the U.S. EPA Office of Environmental Justice (OEJ) under the Clinton administration provided communication, coordination, and a clear line of authority and advocacy. Due to funding cuts, this has not been in operation under the Bush administration. This has had the cumulative effect of a regression in environmental progress, e.g., Brownfields clean ups, and an increase in the conditions that result in the disparities of low income, black communities. The focus has been on the perimeter of the problem and not the Community Small Grants, the IWG, the NEJAC, and other programs that helped build capacity for the people affected by the contamination. This was the foundation that the Clinton EPA was built upon.

Question 2. What changes can we make at the Federal level to improve the ability of communities to work with their governments and reduce and eliminate contaminates that adversely impact health?

Response. ReGenesis supports the need for Federal environmental justice legislation. Such legislation would improve the environmental conditions of our communities, make government more responsive, and serve to empower communities to work with public and private sector partners. I believe that federal legislation should include elements such as the following:

- Collaborative Problem Solving Environmental Justice (EJ) Cooperative Agreements and EJ Small Grants for community-based organizations.
- Establishment of a State Program EJ Grants Program to provide technical assistance to States in addressing the needs of communities having EJ issues.
- Establishment of a Federal Interagency Workgroup on EJ to facilitate coordination and communication by Federal agencies on EJ matters.
- Establishment of a National Environmental Justice Advisory Council to provide external stakeholder advice to EPA on EJ matters.
- Require that all appropriate Federal agencies develop strategies and action plans on how best to integrate EJ into Federal programs, activities, and policies.

Senator CLINTON. Thank you very much. We look forward to getting more information about that, too, Representative Mitchell.

Dr. Bullard.

STATEMENT OF ROBERT BULLARD, DIRECTOR, ENVIRONMENTAL JUSTICE RESOURCE CENTER, CLARK ATLANTA UNIVERSITY

Mr. BULLARD. Good afternoon, Madam Chairman. My name is Robert Bullard. I direct the Environmental Justice Resource Center at Clark Atlanta University in Atlanta, GA.

I, too, want to thank this subcommittee for holding this historic hearing. For the past three decades, I have written on, lectured on, and worked with communities around environmental justice all across this country. I have seen too many cases, enough to fuel at least a dozen books that I have written. It has now been 13 years since President Clinton signed Executive Order 12898. Communities still have not achieved environmental justice.

We have heard the various studies that have been done, a string of them by governmental agencies, the GAO, the Office of Inspector General, showing that EPA has not over the last 13 years been able to integrate environmental justice into its decisionmaking.

I think it is important that we understand that this is not a game. This is not accidental. This is life and death. This year represents the 20th anniversary of the landmark Toxic Waste and Race Report that was produced by the United Church of Christ. To celebrate that 20th anniversary, I was asked to assemble a team of researchers to update that report and to do a new study, and that is Toxic Waste and Race at Twenty. I am one of the co-authors along with Dr. Beverly Wright of Dillard University, Dr. Paul Mohai of the University of Michigan, and Dr. Robin Saha from the University of Montana.

Toxic Waste and Race examined regional, State, national and metropolitan disparities in the numbers, and some of the numbers have been given already, 56 percent of the residents living within a 2-mile radius of commercial hazardous waste sites are people of color.

When you look at the clustering of commercial hazardous waste facilities, that number increases to almost 70 percent of the residents who are people of color living within a 2-mile radius. This is not a southern phenomena, even though I wrote a book called Dumping in Dixie. Nine out of the 10 EPA regions have racial dis-

parities in siting, and 40 of the 44 States, so this is a national phenomenon.

In looking at the findings they are very disturbing, things are getting worse. They are not getting better. Based on these findings, I along with my co-authors and more than 100 environmental justice, civil rights, human rights, faith-based and health organizations have submitted as part of this testimony a letter of endorsement of the major findings of the report and 10 recommendations.

The first recommendation is hold congressional hearings on EPA response to contamination in the environmental justice communities. I think this is important that this is the first hearing in the Senate for this.

Pass and codify the environmental justice Executive order. We need a law. We just can't depend on the whims of who is in the White House. We need a law.

Provide a legislative fix for Title VI of the Civil Rights Act of 1964, which was gutted by the *Alexander* v. *Sandoval* decision of 2001.

Require assessments of cumulative pollution burdens in facility permitting. Right now, if you get 1 facility, you can get 10. There is nothing that deals with cumulative impacts that EPA assesses.

Require safety buffers in facility permitting. We have schools that are next to fence lines with some of the most dangerous facilities. As we just heard, children are not little adults.

Protect and enhance community and worker right-to-know. We have seen strategies and attempts to gut, dismantle and weaken TRI.

Enact legislation promoting clean production and waste reduction.

Adopt green procurement policies and clean production tax policies.

ReinState the Superfund. This is important.

Finally, establish a tax increment finance fund to promote environmental justice-driven community development as it relates to Brownfields redevelopment.

Getting Government to respond to environmental and health concerns of low-income and people of color communities has been an uphill struggle. The time to act is now. Our communities cannot wait another 20 years. Achieving environmental justice for all makes us a much healthier, stronger and more secure Nation as a whole. It is the right thing to do.

Thank you, Madam Chairman. I will answer questions.

[The prepared statement of Mr. Bullard follows:]

STATEMENT OF ROBERT BULLARD, PH.D. DIRECTOR OF THE ENVIRONMENTAL JUSTICE RESOURCE CENTER, CLARK ATLANTA UNIVERSITY

Good afternoon. My name is Robert D. Bullard and I direct the Environmental Justice Resource Center at Clark Atlanta University in Atlanta, GA. Madam Chairwoman and members of the Subcommittee, I want to first thank you for the opportunity to appear before you today at this historic Senate Subcommittee Hearing on Environmental Justice and to share with you some of the recent research and policy work my colleagues and I have completed on environmental justice, toxic wastes and race, and government response to the needs of low-income and people of color populations. For the past three decades I have researched, worked on, lectured about, testifies at public hearings and in court, and written on environmental justice policy issues in the United States and abroad. I have traveled in hundreds of communities

from New York to Alaska and seen with my own eyes and heard with my own ears enough environmental justice "horror" stories to fill at a dozen of my books.[1]

The environmental justice movement has come a long way from its humble beginnings in rural and mostly African American Warren County, North Carolina.[2] It has now been twenty-five years since the controversial 1982 decision to dump 40,000 cubic yards (or 60,000 tons) of soil in the mostly black county. The soil was contaminated with the highly toxic polychlorinated biphenyls (PCB) illegally dumped along 210 miles of roadways in fourteen North Carolina counties in 1978. The roadways were cleaned up in 1982.

Warren County won the dubious prize of hosting the toxic dump. The landfill decision became the shot heard around the world and put environmental racism on the map and the catalyst for mass mobilization against environmental injustice. Over 500 protesters were arrested, marking the first time any Americans had been jailed protesting the placement of a waste facility.

After waiting more than two decades for justice, victory finally came to the residents of predominately black Warren County when detoxification work ended the latter part of December 2003. State and federal sources spent $18 million to detoxify contaminated soil stored at the PCB landfill.

After mounting scientific evidence and much prodding from environmental justice advocates, the EPA created the Office of Environmental Justice in 1992 and produced its own study, Environmental Equity: Reducing Risks for All Communities, a report that finally acknowledging the fact that low-income and minority populations shouldered greater environmental health risks than others.[3]

In 1992, staff writers from the National Law Journal uncovered glaring inequities in the way the federal EPA enforces its laws. The authors found a "racial divide in the way the U.S. government cleans up toxic waste sites and punishes polluters. White communities see faster action, better results and stiffer penalties than communities where blacks, Hispanics and other minorities live. This unequal protection often occurs whether the community is wealthy or poor."[4] These findings suggest that unequal protection is placing communities of color at special risk and that their residents who are differentially impacted by industrial pollution can also expect different treatment from the government.

On February 11, 1994, environmental justice reached the White House when President Clinton signed Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."[5] The EPA defines 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 racial, ethnic, or socio-economic groups should bear a disproportionate share of the negative envi-

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[1] See R.D. Bullard, Invisible Houston: The Black Experience in Boom and Bust. College Station: Texas A&M University Press, 1987; R.D. Bullard, Dumping in Dixie: Race, Class and Environmental. Quality. 3rd ed., Boulder: Westview Press, (1990, 1994), 2000; R.D. Bullard, (ed.), Confronting Environmental Racism: Voices From the Grassroots. Boston: South End Press, 1993; R.D. Bullard, (ed.), Bullard, R.D., J. Eugene Grigsby, III, and Charles Lee, Residential Apartheid: The American Legacy. UCLA Center for African American Studies, 1994; Unequal Protection: Environmental Justice and Communities of Color. 2nd ed. San Francisco: Sierra Club Books, 1996; R.D. Bullard and G.S. Johnson, eds., Just Transportation: Dismantling Race and Class Barriers to Mobility. Gabriola Island, BC: New Society Publishers, 1997; R.D. Bullard, G.S. Johnson, and A.O. Torres, eds., Sprawl City: Race, Politics and Planning in Atlanta, Washington, DC: Island Press, 2000; J. Agyeman, Robert D. Bullard, and Bob Evans, Just Sustainabilities: Development in an Unequal World. MIT Press, 2003; R.D. Bullard, G.S. Johnson, and A.O. Torres, Highway Robbery: Transportation Racism and New Routes to Equity. Boston: South End Press, 2004; R.D. Bullard, (ed.), The Quest for Environmental Justice: Human Rights and the Politics of Pollution. Sierra Club Books, 2006; R.D. Bullard, Growing Smarter: Achieving Livable Communities, Environmental Justice and Regional Equity. MIT Press, 2007; and R.D. Bullard, The Black Metropolis in the Twenty-First Century: Race, Power, and the Politics of Place. Rowman & Littlefield, 2007.

[2] See R.D. Bullard, Dumping in Dixie: Race, Class and Environmental Quality. Boulder: Westview Press, 2000.

[3] United States Environmental Protection Agency. Release of Environmental Equity Report. Press Release. 1992, *http://www.epa.gov/history/topics/justice/01.htm.* (accessed 1/16/2007).

[4] Marianne Lavelle and Marcia Coyle, "Unequal Protection," National Law Journal, September 21, 1992, pp. S1–S2.

[5] Presidential Memorandum (William J. Clinton) Accompanying Executive Order 12898 (February 11, 1994).

ronmental consequences resulting from industrial, municipal, and commercial operations or the execution of federal, state, local, and tribal programs and policies."[6]

Numerous studies have documented that people of color in the United States are disproportionately impacted by environmental hazards in their homes, neighborhoods, and workplace. A 1999 Institute of Medicine study, Toward Environmental Justice: Research, Education, and Health Policy Needs, concluded that low-income and people of color communities are exposed to higher levels of pollution than the rest of the nation and that these same populations experience certain diseases in greater number than more affluent white communities.[7]

A 2000 study by The Dallas Morning News and the University of Texas-Dallas found that 870,000 of the 1.9 million (46 percent) housing units for the poor, mostly minorities, sit within about a mile of factories that reported toxic emissions to the U.S. Environmental Protection Agency.[8]

Even schools are not safe from environmental assaults. A 2001 Center for Health, Environment, and Justice study, Poisoned Schools: Invisible Threats, Visible Action, reports that more than 600,000 students in Massachusetts, New York, New Jersey, Michigan and California were attending nearly 1,200 public schools, mostly populated by low-income and people of color students, that are located within a half mile of federal Superfund or state-identified contaminated sites.[9]

EPA RESPONSE TO ENVIRONMENTAL JUSTICE NEEDS

Thirteen years after the signing of Executive Order 12898, environmental justice still eludes many communities across this nation. In its 2003 report, Not in My Backyard: Executive order and Title VI as Tools for Achieving Environmental Justice, the U.S. Commission on Civil Rights (USCCR) concluded that "Minority and low-income communities are most often exposed to multiple pollutants and from multiple sources. . . . There is no presumption of adverse health risk from multiple exposures, and no policy on cumulative risk assessment that considers the roles of social, economic and behavioral factors when assessing risk."[10]

A March 2004 EPA Inspector General report, EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities, concluded that the agency "has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations, and performance measurements" for integrating environmental justice into its day-to-day operations.[11]

In July 2005, the U.S. Government Accountability Office (GAO) criticized EPA for its handling of environmental justice issues when drafting clean air rules. That same month, EPA proposed major changes to its Environmental Justice Strategic Plan. This proposal outraged EJ leaders from coast to coast. The agency's Environmental Justice Strategic Plan was described as a "giant step backward."[12] The changes would clearly allow EPA to shirk its responsibility for addressing environmental justice problems in minority populations and low-income populations and divert resources away from implementing Executive Order 12898.

The agency then attacked community right-to-know by announcing plans to modify the Toxic Release Inventory (TRI) program—widely credited with reducing toxic chemical releases by 65 percent.[13] In December 2006, the EPA announced final rules that undermine this critical program by eliminating detailed reports from more than 5,000 facilities that release up to 2,000 pounds of chemicals every year; and eliminating detailed reports from nearly 2,000 facilities that manage up to 500

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[6] U.S. Environmental Protection Agency. Guidance for Incorporating Environmental Justice in EPA's NEPA Compliance Analysis. Washington, DC: USEPA, 1998.

[7] Institute of Medicine, Toward Environmental Justice: Research, Education, and Health Policy Needs. Washington, DC: National Academy of Sciences, 1999, Chapter 1.

[8] See "Study: Public Housing is Too Often Located Near Toxic Sites." Dallas Morning News, October 3, 2000.

[9] See the Center for Health, Environment, and Justice, Poisoned Schools report (2001) found at *http://www.bredl.org/press/2001/poisoned—schools.htm*.

[10] U.S. Commission on Civil Rights, Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice. Washington, DC: U.S. Commission on Civil Rights, 2003, p. 27.

[11] U.S. EPA Office of Inspector General, EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice. Washington, DC: GAO, September 18, 2006.

[12] Robert D. Bullard. EPA's Draft Environmental Justice Strategic Plan—A "Giant Step Backward." (7/15/2005). Environmental Justice Resource Center, *http://www.ejrc.cau.edu/BullardDraftEJStrat.html*.

[13] OMB Watch. Changing the "Right to Know" to the Right to Guess: EPA's Plans to Modify Toxics Release Inventory Reporting. (No Date), *http://www.ombwatch.org/tricenter/TRIpress.html*.

pounds of chemicals known to pose some of the worst threats to human health, including lead and mercury.

In September 2006, EPA's Inspector General issued another report chastising the agency for falling to "conduct environmental justice reviews of its programs, policies, and activities."[14]

And in June 2007, the U.S. General Accountability Office (GAO) issued yet another report, Hurricane Katrina: EPA's Current and Future Environmental Protection Efforts Could Be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast, that criticized EPA's handling of contamination in post-Katrina New Orleans and the Gulf Coast.[15] The GAO found inadequate monitoring for asbestos around demolition and renovation sites. Additionally, the GAO investigation uncovered that "key" information released to the public about environmental contamination was neither timely nor adequate, and in some cases, easily misinterpreted to the public's detriment."

In December 2005, the Associated Press released results from its study, More Blacks Live with Pollution, showing African Americans are 79 percent more likely than whites to live in neighborhoods where industrial pollution is suspected of posing the greatest health danger.[16] Using EPA's own data and government scientists, the AP study found blacks in 19 states were more than twice as likely as whites to live in neighborhoods with high pollution; a similar pattern was discovered for Hispanics in 12 states and Asians in seven states.

The AP analyzed the health risk posed by industrial air pollution using toxic chemical air releases reported by factories to calculate a health risk score for each square kilometer of the United States. The scores can be used to compare risks from long-term exposure to factory pollution from one area to another. The scores are based on the amount of toxic pollution released by each factory, the path the pollution takes as it spreads through the air, the level of danger to humans posed by each different chemical released, and the number of males and females of different ages who live in the exposure paths.

TOXIC WASTES AND RACE AT TWENTY

This year represents the twentieth anniversary of Toxic Wastes and Race. To commemorate this milestone, the United Church of Christ (UCC) asked me to assemble a team of researchers to complete a new study, Toxic Wastes and Race at Twenty 1987–2007.[17] The Executive Summary of the new study was released at the 2007 American Association for the Advancement of Science (AAAS) in San Francisco. I have attached a copy of the summary to my testimony. The full report was released in March 2007 at the National Press Club in Washington, DC. In addition to myself, the principal authors of new UCC report are Professors Paul Mohai (University of Michigan), Beverly Wright (Dillard University of New Orleans), and Robin Saha (University of Montana).

Toxic Wastes and Race at Twenty is the first national-level study to employ 2000 Census data and distance-based methods to a current database of commercial hazardous waste facilities to assess the extent of racial and socioeconomic disparities in facility locations. Disparities are examined by region and state, and separate analyses are conducted for metropolitan areas, where most hazardous waste facilities are located.

The new report also includes two detailed case studies: one on environmental cleanup in post-Katrina New Orleans and the other on toxic contamination in the mostly African American Eno Road community in Dickson, Tennessee.

STUDY FINDINGS

• People of color make up the majority (56 percent) of those living in neighborhoods within 3 kilometers (1.8 miles) of the nation's commercial hazardous waste facilities, nearly double the percentage in areas beyond 3 kilometers (30 percent).

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[14] Office of the Inspector General, Evaluation Report: EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities. Washington, DC: US Environmental Protection Agency. Report No. 2006–P–00034, 2006, p. 7.

[15] U.S. General Accountability Office, Hurricane Katrina: EPA's Current and Future Environmental Protection Efforts Could Be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast. Washington, DC: GAO Report to Congressional committees, June 2007.

[16] Pace, David. 2005. "AP: More Blacks Live with Pollution," ABC News, December 13, 2005, available at *http://abcnews.go.com/Health/wireStory?id=1403682&CMP=OTC-RSSFeeds0312*.

[17] R.D. Bullard, P. Mohai, R. Saha, and B. Wright, Toxic Wastes and Race at Twenty: 1987-2007. Cleveland, OH: United Church of Christ Witness & Justice Ministries, March 2007. The full report is available at *http://www.ejrc.cau.edu/TWART-light.pdf*.

• People of color make up a much larger (over two-thirds) majority (69 percent) in neighborhoods with clustered facilities.
• Percentages of African Americans, Hispanics/Latinos, and Asians/Pacific Islanders in host neighborhoods are 1.7, 2.3, and 1.8 times greater in host neighborhoods than non-host areas (20 percent vs. 12 percent, 27 percent vs. 12 percent, and 6.7 percent vs. 3.6 percent), respectively.
• 9 out of 10 EPA regions have racial disparities in the location of hazardous waste sites.
• 40 of 44 states (90 percent) with hazardous waste facilities have disproportionately high percentages of people of color in host neighborhoods—on average about two times greater than the percentages in non-host areas (44 percent vs. 23 percent).
• Host neighborhoods in an overwhelming majority of the 44 states with hazardous waste sites have disproportionately high percentages of Hispanics (35 states), African Americans (38 states), and Asians/Pacific Islanders (27 states).
• Host neighborhoods of 105 of 149 metropolitan areas with hazardous waste sites (70 percent) have disproportionately high percentages of people of color, and 46 of these metro areas (31 percent) have majority people of color host neighborhoods.

STUDY CONCLUSIONS

• Environmental injustice in people of color communities is as much or more prevalent today than two decades ago.
• Racial and socioeconomic disparities in the location of the nation's hazardous waste facilities are geographically widespread throughout the country.
• People of color are concentrated in neighborhoods and communities with the greatest number of facilities; and people of color in 2007 are more concentrated in areas with commercial hazardous sites than in 1987.
• Race continues to be a significant independent predictor of commercial hazardous waste facility locations when socioeconomic and other non-racial factors are taken into account.

TOXIC CASES ON THE FENCELINE

Clearly, low-income and communities of continue to be disproportionately and adversely impact by environmental toxins. Residents in fenceline communities comprise a special needs population that deserves special attention. Toxic chemical assaults are not new for many Americans who are forced to live adjacent to and often on the fence line with chemical industries that spew their poisons into the air, water, and ground.[18] When (not if) chemical accidents occur, government and industry officials often instruct the fence-line community residents to "shelter in place." In reality, locked doors and closed windows do not block the chemical assault on the nearby communities, nor do they remove the cause of the anxiety and fear of the unknown health problems that may not show up for decades.

TCE CONTAMINATION IN DICKSON, TENNESSEE

This case is about slow government response to toxic contamination in a mostly black enclave on Eno Road in Dickson, Tennessee, small town located about 35 miles west of Nashville. Harry Holt and his family owned 150-acres farm in Dickson County's segregated African American Eno Road community for more than five generations. The Holt family wells were poisoned by the leaky Dickson County Landfill, located just 54 feet from their property line.

According to government records, Scovill-Shrader and several other local industries, buried drums of industrial waste solvents at "open dump" landfill site in 1968.[19] Contaminated waste material was even cleaned up from other areas in this mostly white county and trucked to the landfill in the mostly black Eno Road community. For example, Ebbtide Corporation (Winner Boats) removed material from an on-site dump and transferred it to the Dickson County Landfill for disposal.[20] The company disposed of drummed wastes every week for 3 to 4 years.

Scovill-Shrader Automotive manufacturing plant buried drums of industrial waste solvents at the landfill. The company's wastes were known to have contained acetone and paint thinner.[21] A 1991 EPA Site Inspection Report notes that soil con-

[18] Robert D. Bullard, The Quest for Environmental Justice: Human Rights and the Politics of Pollution. San Francisco: Sierra club Books, 2005.
[19] Tetra Tech EM, Inc., Dickson County Landfill Reassessment Report. A Report Prepared for the U.S. EPA, Region IV. Atlanta: March 4, 2004.
[20] Ibid., p. 17.
[21] Ibid., p. 31.

taining benzene, toluene, ethylbenzene, xylenes, and petroleum hydrocarbons from underground storage tank cleanups were brought to the landfill. In 1988, the Dickson County Landfill accepted 275 to 300 cubic yards of solid waste from the CSX White Bluff derailment cleanup.[22]

Government officials first learned of the trichloroethylene (TCE) contamination in the Holt family wells as far back as 1988—but assured the black family their wells were safe. TCE is a suspected carcinogen. The wells were not safe. Three generations of Holts are now sick after drinking contaminated well water up until 2000. The family was placed on the city tap water system—after drinking TCE-contaminated water for twelve years-from 1988 to 2000. In 2003, the Holt family sued the city, county, and Schrader. The case is still pending.

POISONED WELLS IN AN EAST TEXAS OILFIELD

A 2007 *New York Times* article, "Texas Lawsuit Includes a Mix of Race and Water," detailed a Texas family who is struggling for environmental in the East Texas oilfields.[23] Frank and Earnestene Roberson and their relatives who live on County Road 329, a historically black enclave in the oilfields of DeBerry, Texas, wells were poisoned by a deep injection well for saltwater wastes from drilling operations that began around 1980. The Roberson family is the descendants of a black settler, George Adams, who bought 40 acres and a mule there in 1911. Oil was discovered in the area in the 1920s.

The Roberson family first complained to the Texas Railroad Commission back in 1987—the same year the UCC Toxic Wastes and Race issued its report. Nearly a decade later, in 1996, the railroad commission took samples and found "no contamination in the Robersons' household water supply that can be attributed to oilfield sources." Because of the contamination, the family had to drive 23 miles to a Wal-Mart near Shreveport for clean water.

In 2003, the railroad commission tests found benzene, barium, arsenic, cadmium, lead and mercury in the families 'wells at concentrations exceeding primary drinking water standards. Still, no government cleanup actions were taken to protect the Robersons and other black families in the community.

In June 2006, the Roberson family filed suit in federal court, accusing the Texas Railroad Commission, which regulates the state's oil and gas industry, of failing to enforce safety regulations and of "intentionally giving citizens false information based on their race and economic status." The Robersons point to the slow government response to the toxic contamination in their mostly black community and the rapid clean-up response last summer by the railroad commission in Manvel, a largely white suburb of Houston.

INCINERATION OF VX GAS WASTEWATER IN PORT ARTHUR, TEXAS.

The incineration of the deadly nerve agent VX waste water in Port Arthur, Texas typifies the environmental justice challenges facing African Americans. About 60 percent of the city's population is African American. Veolia Environmental Services of Lombard, Ill. won a $49 million contract from the U.S. Army to incinerate 1.8 million gallons of caustic VX hydrolysate waste water near Port Arthur's Carver Terrace housing project. Army and city officials did not announce the project until the deal was sealed. Residents in New Jersey and Ohio fought off plans to incinerate the waste there. It is ironic that the first batch of VX hydrolysate was incinerated in Port Arthur on April 22, 2007—Earth Day.

Jim Crow segregation forced Port Arthur's African Americans to the west part of town. There the city built the Carver Terrace housing development for low income blacks. Port Arthur is encircled by major refineries and chemical plants operated by such companies as Motiva, Chevron Phillips, Valero and BASF. Residents whose homes are located at the fence line are riddled with cancer, asthma, and liver and kidney disease that some blame on the pollution from nearby industries.

The Carver Terrace housing project abuts the Motiva oil refinery. Jefferson County, where Port Arthur is located, is home to one of the country's largest chemical-industrial complexes and is consistently ranked among the top 10 percent of America's dirtiest counties. In June 2007, the U.S. Army temporarily suspended the shipments of a former nerve gas agent, now in the form of caustic wastewater, from In-

[22] Ibid., p. 17.

[23] Ralph Blumenthal, "Texas Lawsuit Includes a Mix of Race and Water," The New York Times, July 9, 2006.

diana while the federal court in Terre Haute, Ind. sets a date for a preliminary injunction hearing on the matter.[24]

PCB Contamination in Anniston, Alabama

The Sweet Valley/Cobb Town neighborhood in Anniston, Alabama typifies the toxic chemical assault on a fenceline community. The mostly black neighborhood was contaminated by Solutia, Inc., a spin-off company of the giant Monsanto chemical company. The Sweet Valley/Cobb Town neighborhood residents organized themselves into a task force and filed a class action lawsuit against Monsanto for contaminating their community with polychlorinated biphenyls (PCBs). Monsanto manufactured PCBs from 1927 thru 1972 for use as insulation in electrical equipment including transformers. The EPA banned PCB production in the late 1970s amid questions of health risks.

In April 2001, a group of 1,500 Sweet Valley/Cobb Town plaintiffs reached a $42.8 million out-of-court settlement with Monsanto in the federal District Court of the Northern District of Alabama. In August 2003, a $700 million settlement of two separate trials, involving more than 20,000 plaintiffs, was reached with Monsanto and Solutia.[25]

POLICY RECOMMENDATIONS

The Toxic Wastes and Race at Twenty report gives more than three dozen recommendations for action at the Congressional, state and local levels to help eliminate the disparities. The report also makes recommendations for nongovernmental agencies and the commercial hazardous waste industry. Base on these findings, I along with my colleagues and more than a hundred environmental justice, civil rights and human rights, and health allies are calling for steps to reverse this downward spiral. The sign-on letter and the organizations are also attached to my testimony. We recommend the following policy actions:

1. Hold Congressional Hearings on EPA Response to Contamination in EJ Communities. We urge the U.S. Congress to hold hearings on the U.S. Environmental Protection Agency's (EPA's) response to toxic contamination in EJ communities, including post-Katrina New Orleans, the Dickson County (Tennessee) Landfill water contamination problem and similar problems throughout the United States.

2. Pass a National Environmental Justice Act Codifying the Environmental Justice Executive Order 12898. Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" provides significant impetus to advance environmental justice at the federal level and in the states. Congress should codify Executive Order 12898 into law. Congress will thereby establish an unequivocal legal mandate and impose federal responsibility in ways that advance equal protection under law in communities of color and low-income communities.

3. Provide a Legislative "Fix" for Title VI of the Civil Rights Act of 1964. Work toward a legislative "fix" of Title VI of the Civil Rights Act of 1964 that was gutted by the 2001 Alexander v. Sandoval U.S. Supreme Court decision that requires intent, rather than disparate impact, to prove discrimination. Congress should act to reestablish that there is a private right of action for disparate impact discrimination under Title VI.

4. Require Assessments of Cumulative Pollution Burdens in Facility Permitting. EPA should require assessments of multiple, cumulative and synergistic exposures, unique exposure pathways, and impacts to sensitive populations in issuing environmental permits and regulations.

5. Require Safety Buffers in Facility Permitting. The EPA (states and local governments too) should adopt site location standards requiring a safe distance between a residential population and an industrial facility. It should also require locally administered Fenceline Community Performance Bonds to provide for the recovery of residents impacted by chemical accidents.

6. Protect and Enhance Community and Worker Right-to-Know. Reinstate the reporting of emissions and lower reporting thresholds to the Toxic Release Inventory (TRI) database on an annual basis to protect communities' right to know.

7. Enact Legislation Promoting Clean Production and Waste Reduction. State and local governments can show leadership in reducing the demand for products produced using unsustainable technologies that harm human health and the environ-

[24] Mary Meux, "Veolia to Temporarily Stop Receiving VX Wastewater," Port Arthur News, June 18, 2007.

[25] Jessica Star, "Sweeter Home Alabama: Alabama PCB Suits End in $700 Million Settlement," Anniston Star, August 21, 2003.

ment. Government must use its buying power and tax dollars ethically by supporting clean production systems.

8. Adopt Green Procurement Policies and Clean Production Tax Policies. Require industry to use clean production technologies and support necessary R&D for toxic use reduction and closed loop production systems. Create incentives and buy-back programs to achieve full recovery, reuse and recycling of waste and product design that enhances waste material recovery and reduction.

9. Reinstate the Superfund Tax. Congress should act immediately to re-instate the Superfund Tax, re-examine the National Priorities List (NPL) hazardous site ranking system and reinvigorate Federal Relocation Policy in communities of color to move those communities that are directly in harms way.

10. Establish Tax Increment Finance (TIP) Funds to Promote Environmental Justice-Driven Community Development. Environmental justice organizations should become involved in redevelopment processes in their neighborhoods to integrate brownfields priorities into long-range neighborhood redevelopment plans. This will allow for the use of Tax Increment Finance funds for cleanup and redevelopment of brownfields sites expressly for community-determined uses.

Getting government to respond to the environmental and health concerns of low-income and people of color communities has been an uphill struggle long before the world witnessed the disastrous Hurricane Katrina response nearly two years ago. The time to act is now. Our communities cannot wait another twenty years. Achieving environmental justice for all makes us a much healthier, stronger, and more secure nation as a whole.

RESPONSES BY ROBERT BULLARD TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

Question 1. Recognizing that past decisions to locate a facility in a particular community occurred long before significant number of low income and minorities resided there, do you think that it is misleading to cite racism and discrimination for the resulting low property values and the housing migration pattern in the community?

Response. The most recent evidence shows that the disproportionately high percentages of minorities and low-income populations were present at the time that the commercial hazardous waste facilities were sited. In a 2001 study published in the *Journal of Urban Affairs*, researchers Pastor, Sadd, and Hipp confirm this phenomenon in Los Angeles County. Likewise in a 2005 study published in the journal, *Social Problems*, researchers Saha and Mohai report that in Michigan during the last 30 years commercial hazardous waste facilities were sited in neighborhood that were located disproportionately poor and disproportionately non-white at the time of siting.

Earlier studies by researchers Oakes, Anderton, and Anderson (1996) and Been and Gupta (1997) also addressed this question but the results of this research were inclusive. The difference between these latter studies and those of Pastor et al. (2001) and Saha and Mohai (2005) is that the earlier studies employed methods which have since been shown to not adequately count the residential population living in close proximity to hazardous sites. This has been shown in recent studies published in the journals *Demography* and *Social Problems* by Mohai and Saha (2006, 2007).

Although the question of which came first, the hazardous waste facilities or the minority and low-income populations, was not addressed in Toxic Waste and Race at Twenty, at the February 2007 meeting of the American Association for the Advancement of Science (AAAS), Mohai and Saha presented a paper providing evidence of the demographic composition at or near the time of siting for the neighborhoods of the 413 facilities examined in Toxic Waste and Race at Twenty. This research found that nationally commercial hazardous waste facilities sited since 1965 have been sited in neighborhood that were disproportionately minority at the time of siting.

References:

Been, Vicki, and Frances Gupta. 1997. "Coming to the Nuisance or Going to the Barrios? A Longitudinal Analysis of Environmental Justice Claims." *Ecology Law Quarterly* 24: 1–56.

Mohai, Paul, and Robin Saha. 2006. "Reassessing Racial and Socioeconomic Disparities in Environmental Justice Research." Demography 43(2): 383–399.

Mohai, Paul, and Robin Saha. 2007. "Racial Inequality in the Distribution of Hazardous Waste: A National-Level Reassessment." Social Problems 54(3): 343–370.

Mohai, Paul and Robin Saha. 2007. "Which Came First, People or Pollution? How Race and Socioeconomic Status Affect Environmental Justice." Paper Presented at the Annual Meeting of the American Association for the Advancement of Science (AAAS) held in San Francisco, CA (February 17).

Oakes, John Michael, Douglas L. Anderton, and Andy B. Anderson. 1996. "A Longitudinal Analysis of Environmental Equity in Communities with Hazardous Waste Facilities." Social Science Research 25: 125–148.

Pastor, Manuel, Jim Sadd, and John Hipp. 2001. "Which Came First? Toxic Facilities, Minority Move-In, and Environmental Justice." Journal of Urban Affairs 23: 1–21.

Saha, Robin and Paul Mohai. 2005. "Historical Context and Hazardous Waste Facility Siting: Understand Temporal Trends in Michigan." Social Problems 52(4): 618–48.

Question 2. Title VI of the Civil Rights Act prohibits intentional discrimination in the siting, permitting, and enforcement process. Do you think the federal government should go a step further in using federal antidiscrimination law as a means of addressing complex environmental problems, where no discriminatory intent exists?

Response. I expect EPA to enforce the law. EPA should enforce Title VI of the Civil Rights Act in a way that is consistent with the recent court decisions, including the 2001 *Alexander* v. *Sandoval* U.S. Supreme Court decision.

Question 3. In your testimony, you recommended that industry increase industrial safety buffers. Have you consulted with local government about this since they would be the ones to implement this recommendation? Are you suggesting that EPA take over land use planning?

Response. Land use planning is a job primarily for local, regional and state jurisdictions. I am not suggesting EPA take over land use planning. In my three decades of work on environmental justice cases, I have spoken with a number of local governments, industry, and residents whose homes and in some instances schools are fenceline with industrial facilities. Generally, residents look to their local government to address land use problems.

Nevertheless, some federal government decisions and guidances impact local and regional land use from zoning regulations to the construction of transportation systems (highways vs public transit and other alternatives to driving) that respond to a region's needs to comply with the federal Clean Air Act. For example the January 2001 EPA report, EPA Guidance: Improving Air Quality Through Land use Activities, supports this point. It reads:

> "In recent years, many of EPA's stakeholders have explored using land use activities as strategies for improving air quality. These stakeholders, including state and local planning agencies, have suggested that EPA improve guidance on how to recognize land use strategies in the air quality planning process that result in improvements in local and regional air quality" (p. 1).

EPA further explains the purpose of the guidance. The guidance"is intended to inform state and local governments that land use activities which can be shown (through appropriate modeling and quantification) to have beneficial impacts on air quality, may help them meet their air quality goals" (p. 2).

The report also speaks to the role of various agencies in land use decision making."Local, regional and state government agencies all have a role a role in land use decision-making. In addition, individuals, community organizations, and developers play important roles in the process" (p. 5).

The EPA report adds: "While the federal government does not have jurisdiction over land use decision making, federal statues and funding policies do influence local land use decision. Grant programs that assist stats in redeveloping abandoned brownfields, earmarking federal funding assistance for 'empowerment zones' in older urban areas, and partnership between federal agencies and state and local governments to test land use planning tools are some examples." (p. 8)

The EPA report described the role of the federal government in the following passage:

> "Although federal agencies are not involved in land use decisions, federal statues such as environmental laws, tax codes, federal mortgage lending policies, and transportation infrastructure policies can influence local land use planning.
>
> Examples of such policies include assessment requirements in the National Environmental Policy Act (NEPA), transportation planning requirements found in U.S. Department of Transportation regulations, and specification on property use included in the EPA's Superfund regulations." (p. 7)

The Federal Aviation Administration (FAA) rules also impact certain local land uses, such as the location of solid waste disposal facilities, near airports. Any solid waste disposal facility (i.e. sanitary landfill) which is located within 1,500 meters (about 5,000 feet) of all runways planned to be used by piston-powered aircraft, or within 3,000 meters (about 10,000 feet) of all runways planned to be used by turbojets is considered by the Federal Aviation Administration (FAA) to be an incompatible land use because of the potential for conflicts between bird habitat and low-flying aircraft. Refer to FAA Advisory Circular 150/5200.33 "Hazardous Wildlife Attractants on or Near Airports" and FAA Order 5200.5,"FAA Guidance Concerning Sanitary Landfills on or Near Airports."

Some regional authorities have taken action regarding buffer zones. The South Coast Air Quality Management District in Los Angeles (SCAQMD), the air pollution control agency for all of Orange County and the urban portions of Los Angeles, Riverside and San Bernardino counties, requires buffer zones for such sensitive receptors as schools to protect against the risks posed by toxic emissions from high impact sources. The SCAQMD guidance provides suggested policies that school districts can use to prevent or reduce potential air pollution impacts and protect the health of their students and staff. The objective of the guidance document is to facilitate stronger collaboration between school districts and the SCAQMD to reduce exposure to source-specific air pollution impacts. See SCAQMD, Air Quality Issues in School Site Selection: Guidance Document, June 2005 (revised 2007).

Question 4. In your testimony you quote the U.S. Commission on Civil Rights study on tools for achieving environmental justice. Can you comment on a study where out of the eight commissioners, 4 refused to sign the final draft stating "the report's recommendations were based on a misguided application of federal anti-discrimination laws to complex environmental problems and the that the report failed to meet the standards of balance and academic rigor that the taxpayers expect of an independent federal agency and that the study should not be permitted to bear the seal of government approval." Please comment.

Response. The U.S. Commission on Civil Rights study, Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice, was published as a federal USCCR report in 2003. The study is currently posted at *http://www.usccr.gov/pubs/envjust/ej0104.pdf* as a USCCR report. The transmittal letter in the report indicates that it was sent forward to the President, Speaker of the House, and the President of the Senate. The 2003 USCCR report is also cited in a number of scholarly books. It is quoted and cited on pages 13 and 14 of the EPA Office of Inspector General EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice report (March 2004).

Question 5. Quoted often is the United Church of Christ continuation study "Toxics Waste and Race at Twenty" of which Dr. Bullard and Wright are principle authors, which states that the universe of commercial hazardous waste disposal facilities in the United States is 413, yet when you go to the EPA's compliance data base, ECHO, and look for operating facilities under hazardous waste disposal, you only get 203 facilities including both commercial and non commercial sites, which is less than half the facilities the University of Michigan study claims. Can you please explain this conflicting data?

Response. The EPA's ECHO database is an environmental enforcement and compliance database. According to the EPA website, "ECHO reflects state/local and Federal compliance and enforcement records under those statutes that have been entered into EPA's national databases" (see: *http://www.epa-echo.gov/echo/about—data.html#data—quality*). This Web site indicates that searches of the database will return a list of facilities that have been inspected or evaluated for enforcement actions. It appears that ECHO does not contain all treatment, storage, and disposal facilities, but just those that have been inspected and inspection records entered into the database, primarily by state environmental agencies.

Several databases were used in Toxic Waste and Race at Twenty to identify commercial hazardous waste facilities in the United States that were operating in 1999 (the year that corresponds to year the 2000 Census data that were employed were gathered).: EPA's Biennial Report System (BRS); EPA's Resource Conservation and Recovery Information System (RCRIS); and the Environmental Services Directory (ESD), a private industry listing. The EPA's Envirofacts Data Warehouse, which is a compilation of multiple EPA databases, was also consulted. A facility was included in our study if it met all the following criteria: (1) it was a private, non-governmental business, (2) designated in 1999 as a hazardous waste Treatment, Storage and Disposal Facility (TSDF) under the Resource Conservation and Recovery Act (RCRA) and (3) operated as a commercial facility in 1999, i.e., received off-site wastes from another entity for pay.

Toxic Waste and Race at Twenty used sources similar to those used in the other studies. It is notable that the original 1987 UCC report and a 1994 update by Benjamin Goldman and Laura Fitton identified 415 and 530 facilities, respectively. In their 1997 national study (referenced in our response to question 1), Vicki Been and Francis Gupta (and in another 1995 study by Vicki Been published in the Journal of Land Use and Law) used a universe of 608 facilities. The 1996 study by University of Massachusetts researchers (by Oakes et al, also referenced in our response to question 1) identified 476 facilities, though in earlier UMass studies identified 454 facilities (Anderson et al 1994 and Anderton et al. 1994). Thus, the number of facilities in Toxic Wastes and Race at Twenty has been in line with the other studies. More details about the methods used to identify commercial hazardous waste facilities in the U.S. operating in 1999 are provided in the Methods Appendix of Chapter 4 of Toxic Wastes and Race at Twenty (see, e.g., p. 68).

References:

Anderson, Andy B., Douglas L. Anderton, and John Michael Oakes, 1994. "Environmental Equity: Evaluating TSDF Siting Over the Past Two Decades." Waste Age 25(7): 83–100.

Anderton, Douglas L., Andy B. Anderson, John Michael Oakes, and Michael R. Fraser. 1994. "Environmental Equity: The Demographics of Dumping." Demography 31(2): 229–47.

Goldman, Benjamin A. and Laura Fitton. 1994. Toxic Waste and Race Revisited: An Update of the 1987 Report on the Racial and Socioeconomic Characteristics of Communities With Hazardous Waste Sites. Washington D.C.: Center for Policy Alternative.

Question 6. In the study, Toxic Wastes and Race at Twenty, you mentioned that racial and socioeconomic disparities in the location of hazardous waste facilities remain after 20 years. Wouldn't this have to be the case since RCRA hazardous waste facilities are required to maintain post-closure permits at least 30 years after they close? How many new hazardous waste facilities have opened in the past 20 years? What was the makeup of the communities at the new facilities?

Response. Toxic Waste and Race at Twenty did not examine facilities that had closure or post-closure permit status. It analyzed facilities that reported to be operating in 1999. Although Toxic Wastes and Race at Twenty did separately examine facilities sited in the last twenty years, at the February 2007 AAAS meeting, Mohai and Saha presented of research of theirs showing that 84 commercial hazardous waste facilities, or 20 percent of the 413 facilities examined in Toxic Wastes and Race at Twenty, were sited since 1985. Mohai and Saha also provided evidence that host neighborhoods of these facilities had disproportionately high percentages of African American, Hispanics and Asian Americans/Pacific Islanders around the time of siting: these minorities comprised approximately 37 percent of population compared to 24 percent in areas without facilities.

In fact, Mohai and Saha examined the racial makeup of hazardous waste host neighborhoods around the time of siting for facilities sited from 1966 to 1975, from 1976 to 1985, and after 1985. Their research showed that neighborhoods had already become disproportionately minority by the time the facilities for facilities sited in all three time periods, though the racial disparities at the time of siting were greatest for those sited from 1976–1985. These national finding are also consistent with those reported by Pastor, Sadd, and Hipp (2001) and Mohai and Saha (2005).

Senator CLINTON. Thank you very much, Director Bullard.

Mr. Steinberg.

STATEMENT OF MICHAEL W. STEINBERG, BUSINESS NETWORK FOR ENVIRONMENTAL HEALTH

Mr. STEINBERG. Good afternoon. On behalf of the Business Network for Environmental Justice, I am pleased to be here. The Business Network is committed to working with EPA, the States, our host communities and other stakeholders to address environmental justice concerns.

Our members are strongly committed to the nondiscrimination mandates of Title VI of the Civil Rights Act of 1964, as well as Executive Order 12898. We also seek to be responsible community members in the communities where we operate.

My brief remarks this afternoon are focused on EPA's tool kit for addressing complaints of environmental justice issued in November, 2004. For the reasons I will go into briefly today, we believe that the tool kit is seriously flawed and should not be used until EPA acts to correct its many deficiencies.

I will focus here on three main problems with EPA's tool kit. I want to say at the outset that each of these was specifically raised in written comments filed with EPA when the tool kit was first proposed. Unfortunately, EPA never responded to our comments.

First, the tool kit sets up a confrontational approach to environmental justice, instead of a collaborative, problem-solving approach. The tool kit includes some of the worst features of EPA's highly controversial guidance on Title IV from back in 2000, guidance which Congress actually de-funded some years ago.

Like the Title VI guidance, the tool kit sets up a reactive approach that focuses on whatever facility is currently seeking a permit. Complaints may be filed at any time, even on issues that were never raised during the permitting process, or issues that were raised and resolved by the permitting agency. EPA acts on complaints that it receives, but it may do so without ever seeking the input of the facility affected by the complaints. So on and so on. The process is confrontational when it should be collaborative.

Our second point is that the tool kit uses 51 indicators of environmental injustice, many of which don't appear to indicate environmental injustice at all. I will give just a few examples: climate, cultural dynamics and percentage of community that uses cigarettes, alcohol, and illegal drugs.

Our point is that EPA can't just put out a list of 51 indicators and tell staff to go figure out where environmental injustice is occurring. EPA needs to explain where these indicators came from and how they should be used in making decisions. Unfortunately, EPA has never done that.

Third and last, the tool kit mistakenly equates disproportionate impacts with environmental injustice. The tool kit seems to suggest that EPA will seek to eliminate all disproportionate impacts. We think this is probably not the right goal, because the law requires equal treatment, not equal results. Let me explain.

The Business Network emphatically believes that all people should be treated equally under our laws, including environmental laws, without discrimination based on race, color or national origin. This means that environmental standard-setting, environmental permitting, and environmental enforcement should all be neutral and nondiscriminatory.

It does not mean that persons can or should be guaranteed equal environmental results. For one thing, it is impossible to place identical facilities equally distant from all people in all communities. Even identical facilities would cause unequal exposures in different locations and different circumstances. So differences in exposure are inevitable and they are not necessarily the same thing as environmental injustice.

So the key point is that differences do exist. There will always be some differences. What EPA's staff really needs is a way to distinguish between differences that are the result of unlawful dis-

crimination and differences that are not. On this basic point, the tool kit provides no useful guidance.

In closing, we believe that EPA's tool kit is seriously flawed and should not be used until EPA acts to address these deficiencies.

Thank you and I will be pleased to answer questions.

[The prepared statement of Mr. Steinberg follows:]

STATEMENT OF MICHAEL W. STEINBERG ON BEHALF OF THE BUSINESS NETWORK FOR ENVIRONMENTAL JUSTICE

EXECUTIVE SUMMARY

EPA's Environmental Justice "Toolkit." In November of 2004, EPA issued its Toolkit for Assessing Potential Allegations of Environmental Injustice. The Toolkit was meant to provide EPA's Environmental Justice Coordinators with a systematic approach for evaluating complaints of alleged environmental injustice.

Unfortunately, EPA's Toolkit has many serious shortcomings that limit its usefulness. These include:

Confrontation instead of collaboration. Rather than encouraging collaborative approaches to problem-solving in affected communities, the Toolkit embodies a confrontational approach similar to EPA's highly controversial guidance, issued in 2000, under Title VI of the Civil Rights Act of 1964.

Uncritical acceptance of complaints. Using an elaborate "hypothetical example," the Toolkit suggests that EPA's EJ Coordinators should view the facts from the perspective of citizens who complain, and should pay little heed to the views of state and local government officials, or to those of business and industry stakeholders. EPA's "hypothetical example," with its "charismatic" citizen leaders and its furtive, secretive facility owner, is nothing short of disgraceful.

Unexplained and subjective indicators of environmental injustice. The Toolkit uses 51 different indicators, many of which have no apparent connection to environmental injustice. Examples include: "climate," "cultural dynamics," "percent of the population that is literate," "percent of the population with access to public transportation and services," and "percent of community that uses regulated (cigarettes, alcohol) and unregulated (drugs) substances."

Equating all disproportionate impacts with environmental injustice. The Toolkit mistakenly equates all disproportionate impacts with environmental injustice. But the law requires equal treatment, not equal results. Moreover, as a practical matter, equal results cannot be achieved in a free society.

Lack of meaningful public comment. The Business Network for Environmental Justice ("BNEJ") filed detailed comments with EPA when the Toolkit was proposed in November of 2003. Yet EPA never responded to those comments. EPA issued the Toolkit in final form without addressing the issues raised by the BNEJ.

STATEMENT

I. Introduction

The Business Network for Environmental Justice ("BNEJ") is a voluntary organization of businesses, corporations, industry trade associations, industry service providers and business groups interested in environmental justice issues. Formed in 1995, the BNEJ believes all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color, or national origin. We support open and informed dialogue with citizens about environmental decisions that affect local communities. We also support continued sound scientific research into factors affecting human health and the environment, and the use of scientifically sound risk assessments in evaluating and prioritizing health and environmental risks.

The BNEJ's statement today focuses on EPA's Toolkit for Assessing Potential Allegations of Environmental Injustice (the "Toolkit"), issued in November of 2004. We believe the Toolkit fails to provide a useful framework for assessing allegations of environmental injustice. Rather than encouraging collaborative approaches to problem-solving in affected communities, the Toolkit embodies a confrontational approach that bypasses state environmental regulators and affected industrial facilities. In many respects, EPA's Toolkit outlines an approach similar to that found in EPA's highly controversial proposed investigation guidance, issued in 2000 under Title VI of the Civil Rights Act of 1964.

Given our serious concerns with the Toolkit, the BNEJ submitted detailed written comments to EPA when the Toolkit was proposed in November of 2003. Unfortu-

nately, EPA never responded to the BNEJ's comments, but simply issued the Toolkit in final form without addressing any of the issues raised by the BNEJ. Thus, it is especially appropriate for the Subcommittee to examine the Toolkit as part of its consideration of EPA's environmental justice programs.

II. The Toolkit Sends EPA's Environmental Justice Coordinators Down the Path of Confrontation, Rather than Collaboration

EPA's target audience for the Toolkit is "the Environmental Justice Coordinators at EPA Headquarters and Regional Offices who are directly involved in environmental justice initiatives and are the front-line in addressing allegations of environmental injustice." Toolkit at 2. The stated objective of the Toolkit is to provide the EJ Coordinators with both

- "a conceptual and substantive framework for understanding the Agency's environmental justice program"; and
- "a systematic approach with reference tools that can be used . . . to assess and respond to potential allegations of environmental injustice . . . ."

Toolkit at 1. The BNEJ agrees that it would be beneficial to provide these tools to the Agency's EJ Coordinators. Unfortunately, the Toolkit falls well short of the mark. Specifically, the Toolkit embodies a confrontational approach to potential environmental justice problems, rather than the collaborative problem-solving approach that is far more likely to succeed.

A. The EJ Coordinators Should Serve Primarily as Facilitators and Problem Solvers.

In order to address potential environmental justice issues most effectively, EPA's EJ Coordinators should seek to serve as facilitators and problem solvers, rather than fact-finders. By promoting collaborative discussions among state and local government, business and industry, and communities, the EJ Coordinators are in the best position to help achieve "win-win" solutions.

This means that the EJ Coordinators should focus on identifying potential solutions to the various problems they encounter, rather than on studying those problems. To help the EJ Coordinators do their jobs, they might benefit from some technical assistance in (1) understanding the nature of the various complaints they may receive, and (2) setting priorities among those complaints. But the Toolkit does not provide that assistance. Instead, as shown below, it departs from the collaborative problem-solving model and reflects a more confrontational approach to environmental justice issues.

B. The Toolkit Departs from the Collaborative Problem-Solving Model

The approach taken in the Toolkit is curiously out of touch with some of the best and most current thinking—both within EPA and elsewhere—on the collaborative problem-solving model. Consider the work of the National Environmental Justice Advisory Council ("NEJAC"), the advisory committee chartered and overseen by the Office of Environmental Justice ("OEJ"). In the past several years, the NEJAC has released a series of major advisory reports intended to guide EPA policy on environmental justice issues. These reports embrace a constructive problem-solving approach that contrasts sharply with the adversarial, fragmented approach advocated in the Toolkit.

For example, in its seminal study of the potential to advance environmental justice through pollution prevention, the NEJAC in its consensus chapter advocated a move "toward a multi-stakeholder collaborative model to advance environmental justice through pollution prevention." The NEJAC specifically advised that: A community-driven multi-stakeholder model would feature the common goal of a healthy local environment and highlight the need to share responsibility for achieving that goal. A community-driven model would take a broad look at environmental concerns in the community, identify the most effective ways to improve health, and utilize the potential of collaboration and mobilizing local resources to make progress in improving the health status of local residents. A community-driven collaborative model would acknowledge the importance of sharing information and establishing a level playing field for all participants. This kind of collaborative model can help build sustainable community capacity to understand and improve the environment.

National Environmental Justice Advisory Council, Advancing Environmental Justice through Pollution Prevention 21 (June 2003) (emphasis supplied).

The approach that underpins the NEJAC pollution prevention report is not an aberration, but is an approach that has been endorsed by EPA's Office of Environmental Justice in numerous other settings. It is the OEJ, after all, that chairs the federal Interagency Working Group that has gained such acclaim for its piloting and institutionalization of the collaborative model. See, e.g., Charles Lee, "Collaborative Models to Achieve Environmental Justice and Healthy Communities," Human

Rights (ABA), Volume 30, Issue 4 (Fall 2003). See also National Environmental Policy Commission, Final Report to the Congressional Black Caucus at 10 (consensus recommendations) (Medical University of South Carolina September 26, 2003).

The effectiveness of the collaborative approach was well articulated in another recent report prepared by EPA's Office of Policy, Economics and Innovation, which summarized:

Multi-stakeholder collaboration can act as a transformative mechanism for enabling communities and associated stakeholders to constructively address complex and long-standing issues concerning environmental and public health hazards, strained or nonexistent relations with government agencies and other institutions, and economic decline.

Office of Policy, Economics, and Innovation, Towards an Environmental Justice Collaborative Model, p. 6 (EPA/100–R–03–001 January 2003), www.epa.gov/evaluate.

The National Association of Manufacturers, a founding member of the BNEJ, was an active and enthusiastic participant in the NEJAC pollution prevention report quoted above. The BNEJ membership is, frankly, dismayed to see EPA's Office of Environmental Justice encourage its EJ Coordinators to turn away from the collaborative problem-solving model and to focus instead on a confrontational approach that—as we show below—pits one "team," consisting of EPA's EJ Coordinators and the community activists, against another "team" made up of state and local government officials and the business community.

C. The Toolkit Outlines a Process Similar to EPA's Highly Controversial Title VI Guidance.

Not only is the Toolkit not premised upon a collaborative process, but it actually outlines a process similar to EPA's highly controversial proposed guidance on Title VI investigations, issued in 2000. The BNEJ commented extensively on that proposed guidance. In particular, we emphasized that the proposed Title VI Guidance adopts a reactive strategy that promotes uncertainty for all involved. Instead of defining clear standards about which facilities and operations will be allowed in which communities, [it] encourages ad hoc challenges to proposed or existing environmental permits. The results are: (1) affected communities and other environmental justice advocates are always reacting to specific projects, rather than proactively establishing clear standards to protect their communities; (2) the momentum of an existing or even proposed facility can be difficult to stop; (3) state permitting agencies and facility owners/operators face substantial uncertainty about whether a proposed activity will be found to have an impermissible disparate impact . . . and (4) a facility owner/operator can invest substantial amounts in a particular facility (including an established, long-permitted facility) and/or permit application only to have it unpredictably investigated and rejected. . . .

August 28, 2000 BNEJ Comments at 4–5, quoting Craig Arnold, Land Use Regulation and Environmental Justice, 30 Env'tl L. Rptr. (ELI) 10395, 10397–98 (June 2000) (emphasis supplied).

The Toolkit, in turn, shares many of these same defects. We mention below some of the more glaring flaws in the Toolkit:

1. *Complaints May Be Raised By Anyone At Any Time, With or Without Evidence.*—A basic concern with the Toolkit is its assumption that anyone may raise a complaint of environmental injustice at any time and in any manner, with or without any supportive evidence. This seems to invite ad hoc challenges to virtually any regulatory or permitting decision, even after the final rule or permit is issued. This in turn means that there will be no predictability and no finality in the regulatory and permitting processes.

Apparently complaints of environmental injustice need not meet any particular threshold of significance in order to warrant a screening-level assessment by EPA. The complaints need not even be made in writing. Moreover, these complaints can be made even after previous complaints of environmental injustice—based upon the same fact pattern—have been made, reviewed, and found to lack merit.

What is more, the Toolkit does not even require the complaining parties to exhaust their administrative remedies with state and local government agencies. This is a very serious flaw, because the community, the regulators, and the permittee(s) all benefit when these issues are pursued to the greatest extent possible during the regulatory or permitting processes.

In fact, requiring exhaustion would help in two ways. First, if the complaining party achieves its objectives through the regulatory or permit process, then there is no need to file a complaint of alleged environmental injustice. Second, if the complaining party does not achieve its objectives because the regulatory or permitting

agency considers and rejects the arguments being advance, then the complaining party may well reconsider the merit of filing a complaint with EPA.

Moreover, even if a complaint is eventually filed, exhaustion helps insure that EPA will have readily at hand a well-developed factual record on which to base its decision-making. The regulatory or permitting agency likely will not be required to gather new data, as the issue(s) will already have been aired. Additionally, the community, the agency, and the permittee(s) would all benefit from early awareness of the issues underlying the complaint, rather than being surprised when new issues are raised in a complaint filed with EPA months after the regulatory or permit decision at issue.

2. *EPA Defines the "Affected Community" and then Selects a "Reference Community" for Comparison.*—A key step in analyzing potential disproportionate adverse impacts is to identify, and determine the characteristics, of the affected community, which then provides a basis for comparison to an appropriate reference community. The results of the analysis will hinge on whether the affected population differs significantly from the comparison population. Unfortunately, the Toolkit fails to clarify how EPA will approach this vital task.

The Toolkit seems to envision using proximity to a pollution source as a proxy for actual exposure to pollution. This suggests that EPA will draw circles of various radii around the source(s) and then assume that the population within the circles is somehow "affected" by air emissions or other impacts. This approach leaves the community, the regulatory agency, and the permittee completely unable to predict the outcome of the analysis, because they cannot predict what the "affected community" will be. They have no way of knowing how large or how small the circles should be or will be. Nor do they have any way of telling how accurately any circles can reflect the realities of exposure, given that emissions are rarely distributed in circular patterns. There can be neither predictability nor certainty to EPA's investigations when no one knows in advance whether EPA will rely on proximity approaches and, if so, how EPA will determine the size of the circles.

Similar problems arise when EPA selects a reference community for comparison purposes. There is no "control" reference group for comparison with the affected community that precisely matches its demographic composition and that lacks the presence of the facility of concern. No theoretical standard exists with which to determine what demographic reference population is the most "appropriate." A reference community thus must be selected based on arbitrary choices. These choices may include demographic groups located within a greater distance, or within a larger jurisdiction, or within a "comparable" jurisdiction in another location.

The inherently arbitrary selection of a reference community has significant consequences, because the racial and ethnic composition of communities is not uniform. Consequently, it will be a rare event that any particular community will contain the same demographic composition as the jurisdictions that surround it. "Generally, population variables are not 'well-mixed': they are not randomly distributed in groups and clusters . . . ."[1] Therefore, if proximity alone is used to define the "affected community," we should expect to find on a fairly routine basis statistically significant disparate impacts between smaller "affected community" jurisdictions and larger "reference community" jurisdictions. As explained below in Section IV, these disparate impacts should not be equated with environmental injustice.

In sum, EPA's Toolkit fails to explain how the Environmental Justice Coordinators are to make the all-important comparison between the "affected" community and the "reference" community. Without clarity on that basic point, no one can ever know in advance whether EPA will decide that any particular situation involves "environmental injustice."

3. *EPA Sets the Bar Too Low on Data Quality.*—EPA's Toolkit indicates a preference for valid and reliable data, but also a willingness to use other data—data that are not valid and/or not reliable—in cases where good data are unavailable. This approaches disserves the community, the regulatory agency, and the permittee(s) by allowing decisions to be made on the basis of information or analytic methods that may not be sufficient to justify the conclusions drawn from the available data, or that may not present an accurate picture of the actual situation.

This problem is most readily apparent in EPA's discussion of the causation aspect of its analysis. The issue here is individual or aggregate causation: Does the facility, either alone or in combination with other sources, actually cause a disparate adverse impact?

To EPA's credit, the Toolkit acknowledges the difficulty of establishing causation in many situations. Toolkit at 69. But EPA does not explain how it will ensure that

[1] Leslie Kish, Survey Sampling 163 (1965).

any proxy for an actual exposure that is evaluated is the cause of a discriminatory disparate impact.

For example, EPA states that it will consider as an "indicator" of environmental injustice "the number of environmentally regulated facilities within a community" and "the length of time" they have been in operation. Toolkit at 31–32. In other words, EPA will look at potential exposure scenarios and make various assumptions in order to use this information in support of overall findings about adverse impacts. But the use or storage of pollutants cannot be equated with actual releases or actual exposure. It would be highly inappropriate for EPA to evaluate the specifics of such use and storage in order to predict the likelihood of possible future releases. See *Fertilizer Institute* v. *United States EPA*, 935 F.2d 1303 (D.C. Cir. 1991) (even CERCLA's very broad definition of "release" does not include storage). This kind of prediction should not be considered to support a complaint of environmental injustice.

The point here is not that EPA must always have current pinpoint emissions monitoring data in order to draw any conclusions about releases and exposures from a facility. Estimates of emissions may be entirely appropriate where actual data are unavailable. However, actual releases and actual exposures, not potential releases, should be the focus of any adverse impact determination.

Finally, despite EPA's stated preference for valid and reliable data, some of the databases and other potential sources discussed in the Toolkit fall short of the mark. TRI reporting data, for example, are widely recognized as having built-in limitations due to the "one size fits all" rules that govern the way facilities must calculate or estimate their own TRI data. The CERCLIS database maintained by the Superfund program is also known to have varying data quality among the EPA Regional offices. It may not be possible to specify in advance which data sources will and will not be considered in all cases. EPA should recognize, however, that data from some of the most common databases may well be unsuitable for use in assessing complaints because they are neither valid nor reliable.

4. *EPA May Not Involve the Permittee in the Assessment.*—EPA should recognize that the permittee typically has a strong and legitimate interest in any government activity relating to its facility. The issue need not be viewed solely in terms of whether a permit amounts to a legally protected property interest. Instead, it can be viewed in terms of ensuring that all persons with an interest in the issues are informed and afforded a reasonable opportunity to submit any information they believe may be useful.

The permittee will likely be in possession of the most up-to-date information about actual facility emissions, available pollution-control technologies, the cost of installing them and their technical practicability. Clearly, there is a role for the permittee(s) in assessing any complaint of environmental injustice, and EPA should recognize such a role.

The permittee's perspective may be particularly crucial in cases where a regulatory benchmark, rather than a risk level, is used to assess the facility's emissions. Regulatory limits on emissions are often established through a lengthy process that considers various margins of safety, impacts on sensitive sub-populations and other complexities. In the Select Steel case, for example, one critical fact was that the National Ambient Air Quality Standards were established to protect human health with an adequate margin of safety. The permittee will often have a unique appreciation of issues such as these from having participated in the standard-setting process. To leave the permittee uninvolved is to risk the loss of this potentially vital information.

Finally, not notifying the permittee of the complaint is simply not being fair to a stakeholder with a strong and legitimate interest in the issues. Permittees may be investing substantial amounts in facilities that may never be allowed to operate, and they obviously need to know that their permits are potentially at risk.

5. EPA May Pressure the State Agency to Take Action Against the Permittee Even If its Facility Has Little Impact on Overall Pollution Levels.—Despite EPA's frequent acknowledgment that a single permitted facility is rarely the sole cause of an disparate adverse impact, there is no mention in the Toolkit of how the remedy for such an impact should be distributed among the various sources that contribute to it.

For all that appears, the complaining party could simply focus on the facility that received the most recent permit (or permit renewal) and demand of that facility sufficient emissions reductions or offsets to address any impacts of concern, even though the facility in question contributed very little to those impacts in the first place. Indeed, this is exactly how EPA proceeds in the "hypothetical example" it presents in Appendix C to the Toolkit.

The BNEJ believes that EPA must commit itself strongly and explicitly to a rule of proportionality—a facility that is a minor part of the problem should not be expected to bear a major share of the solution. This basic rule of proportionality is absent from the Toolkit.

Focusing on the most recent permit, and attempting to hold that one facility accountable for the impacts of many other sources, is blatantly unfair and completely unworkable. What is more, expecting one permittee to remedy or mitigate the cumulative adverse impacts of other businesses, governmental sources, and the general public is also unlawful. Again, the Toolkit simply fails to provide the EJ Coordinators with a coherent framework for addressing this important recurring issue.

6. EPA's Actions May Be Unreviewable.—Finally, the Toolkit fails to provide any right of administrative appeal or judicial review of the actions taken by EPA's EJ Coordinators in response to complaints of environmental injustice. In the "hypothetical example" given in Appendix C, for example, EPA decides that the permittee should pay for an assessment of environmental justice issues and that the state should deny the air quality permit. It is manifestly unfair for the EJ Coordinators to make decisions of this magnitude in a vacuum, shielded from review by anyone else. EPA should expressly acknowledge the desirability of administrative and judicial review for all Agency decisions in the area of environmental justice that significantly affect the rights of any person. The Toolkit itself should also acknowledge the presumption that such review is available.

D. EPA's "Hypothetical Example" Dramatically Illustrates the Toolkit's Confrontational Approach.

The confrontational approach underlying the Toolkit is illustrated most dramatically in EPA's "hypothetical example" of "Census Tract 9999" in Chestnut Heights County, which is Appendix C to the Toolkit. Taken as a whole, Appendix C suggests that EPA's EJ Coordinators should view the facts from the perspective of citizens who complain, and should pay little attention to the views of state and local government officials, or to those of business and industry stakeholders. The BNEJ does not believe that this is how EPA's EJ coordinators actually perform their work. Nor would this be a constructive approach for them to begin using.

Among the many elements of EPA's "hypothetical example" that illustrate the one-sided and confrontational approach are the following:

- No written complaint is ever filed by "Citizens for Environmental Justice (CEJ)," but CEJ "insists" that EPA staff accompany them on a walking tour of their small community, and EPA readily agrees to do so (pp. C–1, C–3);
- EPA observes what it describes as "huge" tractor trailers, a "mammoth" landfill, abandoned buildings that "on their face" indicate possible contamination, and a facility owner who "immediately" shuts his doors as soon as he sees an unfamiliar face (p. C–1);
- EPA never mentions the zoning or other approved land use plan(s) for the community;
- EPA quickly adopts the CEJ perspective that their minority, low-income neighborhood is widely referred to as "The Pits," and EPA itself consistently uses that term, apparently as a gesture of solidarity (p. C–1 and throughout);
- EPA describes the President of CEJ as "charismatic," in contrast to the industrial facility owner who is described as behaving in a highly suspicious manner (pp. C–1, C–2);
- EPA echoes CEJ's claim that their neighborhood "is targeted by the decision-makers" because the residents are minority and low-income, yet EPA apparently finds no evidence to support such a claim (p. C–3);
- EPA fails to mention the state permitting agency's facially neutral permitting practices, or the fact that state law typically requires permitting decisions to be based on technical criteria, not on demographics;
- After the walking tour, EPA's notes "strongly indicate an environmental justice situation," apparently because numerous potential sources of pollution are located in a small community whose residents are heavily minority and low-income (p. C–4);
- EPA invites CEJ to send two representatives to help EPA plan its screening-level assessment, but makes no effort to involve either the owner of the proposed facility whose air quality permit application is pending, or any of the other industrial stakeholders in the community (p. C–5);
- EPA decides that the reference community for comparison purposes is the entire county (Chestnut Heights County), based solely on the way in which CEJ has articulated its (verbal) complaint (pp. C–5 to C–6);

• EPA meets repeatedly with CEJ and takes pains to insure that the assessment plan, the conceptual model, etc., are acceptable to CEJ, yet EPA fails to provide information to, or seek input from, any of the industrial stakeholders (p. C–6);

• EPA asks the state permitting agency to re-do its air quality modeling for the proposed facility, this time "assuming more extreme weather conditions for the area than assumed previously," although there is no indication that the original assumptions were inaccurate in any way or that the new "more extreme" assumptions are more realistic (p. C–11);

• Based on the "more extreme" modeling, EPA concludes that the proposed facility could have adverse health effects on the community "given the possible existing levels of air contamination" (p. C–13);

• Although the state DEQ held a public hearing on CEJ's concerns less than a month ago, and released extensive documentation on its approach to the air quality permitting issues, EPA faults the DEQ because the CEJ members were unable to read its documentation (pp. C–4, C–11);

• EPA expresses concern that "the state DEQ might not deny the [proposed facility's air quality] permit" (C–14) (emphasis supplied), even though the facility apparently meets all of the technical standards for obtaining the requested air quality permit;

• EPA then convinces the state DEQ "that a more Refined Assessment is needed" and that "the owners of the proposed facility should contribute resources for the assessment" (p. C–14); and

• EPA also suggests to the state DEQ various "mitigation options that the state can discuss with the facility owners . . . or consider for state actions . . . ." (p. C–14).

In sum, EPA responds to CEJ's verbal complaint by devoting substantial resources to a new investigation, viewing the facts in the light most favorable to CEJ, second-guessing the findings of the state regulatory agency, bypassing the views of the affected industrial facility, and then pressuring the state agency to extract both a financial contribution and also unspecified "mitigation" measures from the facility owner. This is a textbook example of confrontation and intrigue being pursued where collaborative problem-solving would have achieved better results. Yet the Toolkit presents this case study to the EJ Coordinators as an illustration of how they should perform their official duties. For EPA to encourage this kind of conduct by its employees is nothing short of disgraceful.

III. EPA Must Explain and Document the Toolkit's 51 Different EJ "Indicators"

The Toolkit presents a total of 51 "Environmental Justice Indicators" to be used by the EJ Coordinators in assessing potential complaints. According to the Toolkit, EPA developed these 51 indicators by "adapt[ing]" various indicators used by the Organization for Economic Co-Operation and Development (OECD). Toolkit at 26. But upon closer examination, it is clear that EPA has not fully explained, or adequately documented, most of the 51 indicators it now seeks to use.

The OECD's most current published work in this area is entitled "OECD Environmental Indicators—Towards Sustainable Development" (2001). This publication includes indicators approved by the Environment Ministers of the OECD member countries for use in performing environmental assessments. In this 2001 publication, OECD presents 34 such indicators, divided into 2 groups—environmental indicators and socio-economic indicators.

EPA's Toolkit, on the other hand, presents a total of 51 indicators, divided into 4 groups—environmental, health, social, and economic. According to the Toolkit, EPA has "modified or supplemented the OECD's indicators." Toolkit at 26.

But it appears that EPA has done much more than that. Of the 51 indicators presented in the Toolkit, very few are OECD indicators. Most of the others—particularly those presented as "health" and "social" indicators—are not even loosely related to any of the OECD's indicators. In other words, EPA created many of these indicators on its own, without offering any explanation or documentation for them.

At a minimum, then, EPA must now independently explain and support the manner in which it developed each of these 51 indicators, as well as its rationale for proposing to use them in evaluating environmental justice complaints. The Toolkit simply does not present this explanation or this support.

Even without this explanation or support, many of the 51 indicators in the Toolkit raise significant questions because on their face, they do not appear to be indicative of either environmental problems or environmental injustice. We address below just a few examples taken from 3 of the 4 sub-groups in the Toolkit.

• Climate is listed as an Environmental Indicator, even though every community obviously has a climate and the presence of a climate is not by itself an indicator of any environmental quality issue or environmental justice issue;

• Infant mortality rate is listed as a Health Indicator, even though EPA acknowledges that this rate "is sensitive to a variety of community health factors . . . including nutrition, drug and alcohol use, and disease status," Toolkit at 39–40, which may have nothing to do with environmental quality or environmental justice issues;

• Percent of the population that is literate in English or other languages is listed as a Social Indicator, when the literacy rate in and of itself is obviously not an indicator of either environmental quality or environmental injustice;

• Percent of the population with access to public transportation and services is listed as a Social Indicator because low-income persons may "require public transportation to access urban . . . amenities," Toolkit at 47, which on its face is not an indicator of either environmental quality or environmental injustice;

• Percent of community that uses regulated (cigarettes, alcohol) and unregulated (drugs) substances is listed as a Social Indicator because these substances can make users "more susceptible to other environmental hazards," Toolkit at 48, yet their use is a matter of personal choice and respect for the law, not an indicator of environmental quality or environmental injustice; and

• Cultural dynamics is listed as a Social Indicator, without any clear definition of what it means or how it can be measured, yet it is not an indicator of environmental quality or environmental injustice.

In sum, EPA has yet to explain (1) how it derived these 51 indicators from the OECD's drastically different set of 34 environmental indicators, or (2) how EPA's 51 Indicators can be reliably measured and used in conducting assessments, or (3) most fundamentally, why EPA believes these 51 indicators actually "indicate" the existence of environmental injustice. Until EPA provides the essential explanation and documentation, the Toolkit should not be used by EPA's EJ Coordinators.

IV. By Equating All Disproportionate Impacts with Environmental Injustice, The Toolkit Promises Far More Than EPA Can Deliver

The final problem with the Toolkit is also the most fundamental: It promises far more than EPA can deliver. Based on the term "fair treatment," as found in EPA's Mission Statement, the Toolkit seemingly equates all disproportionate impacts with environmental injustice. See, e.g., Toolkit at 71–72. This is not sound public policy, because EPA is promising more than it can possibly deliver.

As noted earlier, the BNEJ emphatically believes all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color, or national origin. This means that environmental standard-setting, permitting, and enforcement should be free of any such discrimination.

But this does not mean that all persons can or should be guaranteed equal environmental results. See, e.g., *Alexander* v. *Choate*, 469 U.S. 287, 304 (1985) (Congress sought to assure "evenhanded treatment" and equal opportunity to participate in federally-funded programs, not to guarantee "equal results" from such programs) (Rehabilitation Act); *Jersey Heights Neighborhood Ass'n* v. *Glendening*, 174 F.3d 180, 194 (4th Cir. 1999) (noting that, in the context of highway construction, "equal benefits" would mandate "a twisting, turning roadway that zigs and zags only to capture equally every ethnic subset of our population," and rejecting "equal benefits" approach as an "absurdity") (Fair Housing Act).

As a practical matter, a guarantee of equal results would be impossible to implement or enforce in a free society. Identical facilities cannot be placed everywhere, and even identical facilities cause unequal impacts in different locations for different populations. Consequently, some individuals within the community and some communities as a whole will inevitably face greater exposure than others to any given facility. Differences in exposure are not the same thing as environmental injustice. The key point is that differences do exist, and so the EJ Coordinators must have some way to distinguish between those differences that are significant and those that are not.

This point was clearly articulated by the Environmental Hearing Board of the Commonwealth of Pennsylvania in an early phase of the environmental justice litigation arising in Chester, Pennsylvania:

Life in organized society necessarily involves risks, burdens and benefits. These all increase as society grows larger and more complex. Ideally, they should be shared equally by all members of the society, but that is rarely, if ever, possible. Transportation facilities cannot be everywhere; some persons will be close to one, others will not. Whether this is looked upon as benefit or burden will depend on the outlook and interests of each person. Parks and recreational facilities also cannot be in every neighborhood. Those not near to such a facility may feel burdened by the distance while those adjacent to it may feel burdened by the proximity. . . . The point is that all persons in society have a mixture of risks, burdens and benefits in varying proportions to other persons.

Chester Residents Concerned for Quality Living v. *Commonwealth of Pennsylvania*, Environmental Hearing Board Docket No. 93–234–MR, slip op. at 1518 (Oct. 20, 1993) (emphasis added).

Thus, the Toolkit should not suggest that all disproportionate adverse impacts amount to "environmental injustice" that EPA will strive to eliminate. Such an approach is not supported by EPA's legal authorities, is not sound public policy, and is ultimately not a realistic objective in a free society.

V. Conclusion

The BNEJ is committed to working with the EPA, states, our host communities and other stakeholders on environmental justice concerns. Our members are committed to the non-discrimination mandates of Title VI of the Civil Rights Act of 1964 and Executive Order 12898, and they seek to be responsible community members.

We believe that EPA's Toolkit is so severely flawed that it should not be used by the EJ Coordinators until EPA takes action to address these many deficiencies. We hope that this statement concerning EPA's Toolkit will ultimately assist EPA in its efforts to develop better tools for its EJ Coordinators.

RESPONSES BY MICHAEL W. STEINBERG TO ADDITIONAL QUESTIONS FROM SENATOR CLINTON

Question 1. Can you provide some history on the background of the Business Network for Environmental Justice (BNEJ)? Under whose auspices does the BNEJ function?

Response. The Business Network for Environmental Justice (BNEJ) was formed in 1995. It is a voluntary organization of businesses, corporations, industry trade associations, industry service providers and business groups interested in environmental justice issues. The BNEJ believes all people should be treated fairly under all laws, including environmental laws, without discrimination based on race, color or national origin. We support open and informed dialogue with citizens about environmental decisions that affect local communities. We also support continued sound scientific research into factors affecting human health and the environment, and the use of scientifically sound risk assessments in evaluating and prioritizing health and environmental risks. As an unincorporated association, the BNEJ functions under the auspices of the National Association of Manufacturers (NAM).

Question 2. You are also a lawyer for a private firm, Morgan Lewis. Is NAM your client in this matter? If not, who was billed for your time testifying at this hearing?

Response. I represent the BNEJ in this matter, as opposed to NAM, The BNEJ is billed directly for legal services provided by Morgan Lewis, including my time testifying at this hearing.

Senator CLINTON. Thank you.

Peggy Shepard, please.

STATEMENT OF PEGGY SHEPARD, EXECUTIVE DIRECTOR, WEST HARLEM ENVIRONMENTAL ACTION

Ms. SHEPARD. Good afternoon, Madam Chair. Thank you for this historic hearing and thank you for the effective work you do for New Yorkers.

I am director of WE ACT for Environmental Justice, a 19-year-old non-profit advocacy organization based in Harlem. We work to build community power to improve environmental health policy and protection in communities of color.

I have lived and worked for 22 years in Northern Manhattan, a community of mostly African American and Latino residents, with a median household income of $16,000. There are multiple environmental exposures, a high rate of learning disabilities, low birth weight, and excess mortality from asthma, cancer and heart disease. This area has the highest asthma rates in the Nation, and more broadly, Manhattan is a non-attainment area for clean air standards and is ranked number on in cancer risk from air toxics by the EPA.

In 1988, WE ACT was born out of community struggles around the use of Northern Manhattan as the dumping ground for the downtown elite. We began organizing around the operations of the North River Sewage Plant, whose odors and emissions were exacerbating respiratory disease. Then in 2000, WE ACT filed a Title VI administrative complaint with Federal DOT against the Metropolitan Transit Authority because Northern Manhattan neighborhoods bear the disparate impact of hosting one-third of the largest diesel bus fleet in the Nation. Of the six diesel bus depots in Manhattan, five are in uptown communities.

So WE ACT began a process of inquiry that led to collaborative research projects of the last 8 years with the Columbia Mailman School of Public Health. In 1995, WE ACT and Columbia were awarded an EPA community-university partnership grant that allowed us to begin relationship building and community identification of research needs.

In 1997, WE ACT was awarded a grant from the National Institute of Environmental Health Sciences. They had a new program called Environmental Justice Through Communication. That program is now ending.

Now, through training to develop 200 environmental health leaders and to educate youth as field technicians, WE ACT and our academic partners have provided the scientific and regulatory foundation of environmental health issues that affect residents.

Three years ago, the Kellogg Foundation identified the WE ACT-Columbia partnership as one of 10 community-based participatory research projects that document the impact of that kind of research on health policy. In a peer-reviewed article published last January in the Journal of Urban Health, the authors found that carefully designed community-based research that is committed to strong science, high-level community involvement, engagement in policy steps and activities, and the strategic use of study findings to help impact policy can be an important part of the broader struggle for urban health and environmental justice.

They went on to say that conversion of New York City's bus fleet to clean diesel and installation by the EPA of permanent air monitors in Harlem and other hot spots were among outcome for which this partnership's research and policy work was given substantial credit.

Now, from 2001 to 2002, I served as chair of the National Environmental Justice Advisory Council to the EPA, the NEJAC. During this current Administration, the Office of Environmental Justice budget has been reduced and important grant programs have been cut. The Administration has micromanaged the EPA by editing scientific public health documents such as the Statement on Air Impacts from the 9/11 World Trade Center disaster, as you well know.

It has attempted to roll back environmental laws and supported regulations that would increase levels of air pollution. It has introduced schemes to trade mercury, while failing to look at the full range of impacts of mercury emissions. It has sponsored research studies that were ethically compromised, such as the recently abandoned pesticides study in Florida. It has reduced the resources of

the Office of Child Health Protection, which was an important catalyst in the field of children's environmental health protection.

So I hope that this hearing signifies a real commitment by this subcommittee to strong oversight of the EPA's implementation of the Executive order, as well as an assessment of the goals and objectives of the other 17 agencies. I believe that the Office of Environmental Justice should be based in the Office of the EPA Administrator from which it can draw strength, resources and clarity in how that order should be implemented.

I think that the Office must have a Director with a strong profile in environmental justice, who is a member of the EPA executive staff, who can integrate the environmental justice perspective throughout the EPA. That Office must be accountable to this committee through annual reports here.

Now, let me say that during my tenure as the NEJAC Chair, the NEJAC, made up of volunteers, submitted well-researched and peer-reviewed reports on community-based participatory research, pollution prevention, cumulative impact, and fish consumption. Yet there was rarely feedback or response after the submission to the Administrator.

I think the bottom line here is that the current Administration has failed to ensure that EPA managers integrate EJ into all departments and aspects of the Agency. According to the Inspector General's report, the EPA has failed to ensure the goals, objectives and performance measures set to ensure that environmental justice is achieved.

I think this lack of Federal leadership has shifted the focus of advocates to State initiatives, where there has been more opportunity. But even there, the EPA's lack of definitions such as of "disparate impact," despite the studies that demonstrate those impacts, it continues to paralyze innovative efforts in the States. The lack of protocols to measure cumulative impact continues to stymie real progress.

So I echo the recommendations that have been advanced by Dr. Bullard in the 2000 Toxic Waste and Race Report, to which I was a contributor. We need strong congressional oversight and support to ensure that the Inspector General's recommendations are implemented. We need the Executive order fully implemented and codified. We need leadership and commitment.

[The prepared statement of Ms. Shepard follows:]

STATEMENT OF PEGGY SHEPARD, EXECUTIVE DIRECTOR, CO-FOUNDER, WE ACT FOR ENVIRONMENTAL JUSTICE

Good afternoon Madame Chair and committee members. I am Peggy Shepard, co-founder and executive director of WE ACT For Environmental Justice, a 19-year old non-profit advocacy organization based in Harlem in New York City. WE ACT works to build community power to fight environmental racism and to improve environmental health, protection and policy in communities of color. WE ACT has developed a national reputation for its community-based participatory research partnerships to improve environmental health locally, to develop a national environmental health research agenda to address a broad array of community-based environmental exposures, and to translate research findings into reformed public policy. My aim today is to portray an urban community of color and low income that is disproportionately impacted by pollution, and to address the impact of EPA programs on community capacity to advance environmental justice and children's environmental health. I am also a former chair of the National Environmental Justice Advisory Committee (NEJAC) to the EPA from 2001–2002.

The EJ Frame challenges the current environmental protection model in addressing environmental inequities, disparate impact and unequal protection. The frame is a precautionary one and seeks to prevent environmental threats before they occur and shift the burden of proof to the polluter. The vision of EJ places human health at the center of environmental struggles, understanding that communities of color and low income are home to more susceptible populations, that multiple environmental exposures must be addressed by studying their cumulative impact and synergistic effects on health, that children, in their early stages of development, are more vulnerable to environmental exposures, and that children of color living in communities of color disproportionately impacted by pollution are the most disadvantaged.

I have lived and worked for 22 years in Northern Manhattan, an area of 7.4 square miles composed of four neighborhoods where over 600,000 mostly African-American and Latino residents live on a median household income of $16,000. There are multiple environmental exposures, high proportion of learning disabilities, low birth weight, and excess mortality from asthma, cancer, and heart disease. This area has the highest asthma rates in the nation in East Harlem, and has two neighborhoods that rank in the top 12 in New York City for new lead poisoning cases. Significant broader impacts are that Manhattan is a non-attainment area for clean air standards and is ranked #1 in cancer risk from air toxics by the EPA.

In 1988, WE ACT was born out of community struggles around the use of Northern Manhattan as the dumping ground for the downtown elite. We began organizing around the operations of the North River sewage treatment plant whose odors and emissions were exacerbating respiratory disease. And in 2000, WE ACT filed a Title VI (of the Civil Rights Act of 1964) Administrative Complaint with federal DOT against the Metropolitan Transit Authority because Northern Manhattan neighborhoods bear the disproportionate burden of hosting one third of the largest diesel bus fleet in the nation. There are six diesel bus depots in Manhattan and Northern Manhattan communities host five of those. Poor urban communities everywhere are burdened by a multitude of toxic exposures, often at high levels of concentration due to factors like: disproportionate siting of industry and infrastructure, to the aged and deteriorated buildings that serve as affordable housing, and to transportation-related air toxins.

To respond to community concern about these environmental impacts, WE ACT, no longer an unincorporated volunteer group (due to funds from the settlement of WE ACT vs. NYC DEP) began a process of inquiry, outreach and relationship building that led to discussions and ultimately, collaborative research projects with clinicians at Harlem Hospital and researchers at the Columbia Mailman School of Public Health. In 1995, WE ACT and Columbia were awarded an EPA Community-University Partnership (CUP) grant that allowed us to begin communication, relationship building, and community identification of concerns with our academic partners. Then in 1997, WE ACT was awarded a three-year grant from the National Institute of Environmental Health Sciences (NIEHS) new grant program, Environmental Justice Through Communication. We began work with the understanding that there was room for us to reshape and redirect the research agenda to include our critical concerns.

We have had a total of eight years of these partnership grants that have allowed us to develop capacity. We have been able to hire staff with advanced degrees in environmental health and science and provide technical assistance within our local, regional and national environmental justice community. WE ACT has leveraged additional funding for our research partnerships, and one Columbia Center alone has leveraged over $6 million in grants, due, according to them, to the effective community component. We have sustained the partnership for 10 years and continue as a matter of course to develop collaborative projects. We have developed new tools such as GIS, curricula, and air monitoring procedures. There is policy and system change with all levels of government, academic institutions and community groups who want to consult or work with us. And importantly, we are having impact on the field through our trainings, findings, publications, policy changes, new models of action, and the new perception—that it can be beneficial to work with affected communities.

Our engagement in community-based participatory research (a method where scientists work closely with community partners involved in all phases of research, from inception of research questions, to study design, to collection of data, monitoring of ethics, and participation in the interpretation and communication of study results) has allowed us to answer community questions regarding their exposures from a variety of sources of pollution. According to a study conducted by Meredith Minkler, Dr PH, "The 8-year partnership between WE ACT/Columbia's NIEHS Center/Children's Environmental Health Center produced credibly scientific research

and helped bring about environmental health policy change . . . From a research perspective, the 1996 Earth Crew (WE ACT's youth group that was trained to collect data) study, and the WE ACT partnership's careful look at the relationship between bus diesel emissions and asthma are still widely cited by the EPA and academic researchers . . . Policy makers commented on the strength of having research partners with recognized and respected staff scientists. These scientists, well-received by regulatory agencies, do the research that the community partner has access to and ownership of to present convincing health and public risk arguments."

WE ACT has engaged in research that has studied the relationship between community-level environmental exposures and environmental health outcomes of mothers and children in West and Central Harlem, Washington Heights, and the South Bronx. WE ACT is making environmental data and research accessible and relevant to community residents through citywide campaigns such as Our Housing Is our Health that translates relevant findings into practice and policy. We work to ensure that city policies related to environmental health and indoor air quality are informed by the latest and most relevant research. Through Environmental Health and Justice Leadership Trainings for over 200 residents, we and our academic partners have provided the scientific and regulatory foundation of environmental health issues that affect community residents. It has been a rewarding experience to educate youth as field technicians to engage in CBPR, and to co-author several peer-reviewed articles on our CBPR work: Diesel Exhaust Exposure Among Adolescents In West Harlem (PI: Dr. Northridge) and Airborne Concentrations of $PM_{2.5}$ and Diesel Exhaust Particles On Harlem Sidewalks (PI: Dr. Kinney).

Three years ago, the Kellogg Foundation identified the WE ACT/Columbia partnership as one of ten CBPR projects that document the impact of CBPR on health policy. In a peer-reviewed article published last January 2007 in the Journal of Urban Health, a bulletin of the NY Academy of Medicine, the authors found that "carefully designed CBPR that is committed to strong science, high level community involvement, engagement in policy steps and activities, and the strategic use of study findings to help impact policy can be an important part of the broader struggle for urban health and environmental justice . . . "Conversion of NYC's bus fleet to clean diesel and installation by the EPA of permanent air monitors in Harlem and other hot spots were among outcomes for which the partnership's research and policy work was given substantial credit.

The partners' roles in creating awareness of, and leading the fight for environmental justice and the reduction in health disparities around asthma has been widely recognized and cited (Brown et al, 2003; Lee, 2004; Corburn, in press; Blackwell et al, 2005). As Brown et al (2003) have noted: "Asthma has become perhaps the primary disease in which poor and minority people have pointed to social inequality and have engaged in widespread political action. The case of asthma demonstrates how environmental justice approaches place ethics and rights issues in the center of health policy" [40]. (Promoting Environmental Health Policy Through Community Based Participatory Research: A Case Study from Harlem, New York by Vasquez V., Minkler M., Shepard P., Jan. 2007, Journal of Urban Health, NY Academy of Medicine.)

When I first began organizing around these issues in 1985, I recognized that the lack of scientific literacy, information, data, and context was and is a serious void that contributes to the systemic exclusion of communities of color and low income from decision making that affects their families and their communities. Around the nation, environmental justice advocates have realized that evidence-based campaigns move policymakers and empower residents. Though we understand that science cannot always correlate exposures with suspected point sources, or confirm community suspicions about exposures and outcomes, we recognize that science and technology are important tools that can impact our ability to develop safe, sustainable communities.

To achieve that goal, we must ensure translation of research findings, scientific data, health information and government regulations into policy reform and educational materials for a broad range of stakeholders including research participants, residents, health care providers, elected officials, policy makers and civic and advocacy organizations. For that information exchange to be effective, we need to build and expand the capacity of low-income communities of color to improve children's environmental health pre-natally and post-natally by training area residents and organizations to apply this information in ways that will help to inform individual choices and to modify current policies to improve community environmental conditions.

In the 90s, the Environmental Justice Movement with little resources and capacity (i.e. the report Green of Another Color authored by Faber and McCarthy, published by the Aspen Institute in 2001, which found that just 12 foundations provided

most of the environmental justice funding between 1996–99, and that the EJ Movement receives one-half of one percent of all environmental funding nationally), focused its attention on federal initiatives and achieved an Environmental Justice Executive Order 12898 by President Clinton, an Office of Environmental Justice (OEJ) at the EPA, and the National Environmental Justice Advisory Committee (NEJAC) to the EPA. WE ACT is here because we understand—the Environmental Justice Movement understands—that we must all hold each other accountable to ensure that the promise of that executive order is fulfilled.

I have had the challenge of being a member of NEJAC for seven years since 1995: serving two years as chair, and vice chair for one. From the beginning, the NEJAC was an important opportunity for environmental justice advocates to interact with policymakers on environmental policy, to dialogue with the business and academic sectors, and to have their voices heard on long standing issues that had gone unheard and ignored. There were many successes that were celebrated: The 1995 Interagency Meeting at Clark Atlanta University where the director of the NIEHS told me to contact Dr. Joe Graziano at Columbia School of Public Health which set me on our present course of CBPR, the first relocation of 358 African-American residents living next to the Escambia Wood Treatment plant in Pensacola, Fla., and in 1997. the partial denial by the EPA of Louisiana's Title V air permit to Shintech which led to Shintech's withdrawal of their application to locate in Convent, La., also known as Cancer Alley, because of the proliferation of chemical and oil companies emitting toxic pollution. That was a time of heady and exciting redress of longstanding abuse.

Though the executive order called on 17 agencies to address EJ concerns, the EPA has taken the lead in convening the Interagency Task Force that has had achievements—including the commitment to environmental justice and CBPR by the NIEHS, planning grants from the Department of Energy for groups in Empowerment Zones, and the inclusion of environmental justice advocates on other agency federal advisory groups. Those were not small steps for communities that had been locked out for so long. The federal Interagency Task Force is crucial to informing the goals, objectives, and initiatives of its 17 agencies. We must ensure that the Interagency Task Force is chaired by a senior manager with vision, experience navigating the federal bureaucracy, and a heart felt commitment to reducing environmental exposures in communities of color. We must remember that environmental protection, public health, and community sustainability issues are shared by these 17 agencies, and it will take them all to address the challenges we encounter in cleaning up contaminated sites, encouraging green economic investment, reducing health disparities, transportation-related impacts, and ensuring equal environmental protection. But there came a time when these exciting successes became mired in bureaucracy and ambivalence, and unfortunately, it was on my watch, shortly after I became chair of NEJAC.

During the Bush Administration, the OEJ budget has been reduced, and important grant programs have been cut. To make matters worse, the Bush Administration has micro managed the EPA by editing scientific public health documents such as the statement on air impacts from the 9/11 World Trade Center disaster. It has attempted to roll back environmental regulations and supported regulations that would increase not reduce levels of air pollution. It has introduced schemes to trade mercury while failing to look at the full range of impacts of mercury emissions. It has sponsored research studies that were ethically compromised such as the recently abandoned pesticide study in Florida, and it has reduced the resources of the Office of Child Health Protection, an important office that was once a catalyst in the field of children's environmental health protection.

In the beginning, the NEJAC held two to three public meetings around the nation to solicit public testimony and concerns, and to review NEJAC-identified issues for recommendation to the EPA. By my tenure in 2001, there was one meeting every 12 to 16 months. Finally, I recommended that we hold regional public sessions where the EPA regional staff would host the meetings and follow up on the issues and concerns. A few of these "listening sessions" have been held, but I am embarrassed to say that Region 2 where I live, where Senator Clinton lives, began planning for a session in 2002. A session in Region 2 has never been held, despite the fact that I personally attended planning meetings with city and state officials for two years. The regions must be held accountable to implement goals and objectives that have been determined by the regional EJ coordinators. Any assessment of EPA regional initiatives on EJ will show the disparate and uneven implementation of the executive order's goals.

I hope that this hearing signifies a commitment by this subcommittee to strong oversight of the EPA's implementation of the executive order as well as an assessment of the goals and objectives of the other 17 agencies. I believe that the Office

of Environmental Justice (OEJ) should be based in the Office of the EPA Administrator from which it can draw strength, authority, resources, credibility, and clarity in how the executive order should be implemented. Otherwise it can be a stepchild with no jurisdiction, few resources and staff.

The OEJ needs to have a director with not only a strong profile on environmental justice, but who is a member of the EPA "executive staff," someone who has had the experience of navigating a huge government bureaucracy, a leader who can interact and integrate the environmental justice perspective within EPAs departments and its "permanent government." We have an opportunity to identify a leader of OEJ who can be held accountable to strategic objectives through annual reports to this committee. NEJAC members have complained about the year-long reports they work on and submit to the EPA with little or no response. During my tenure we submitted well researched and peer reviewed reports on CBPR, Pollution Prevention, Cumulative Impact, and Fish Consumption. The work on these reports was well done, the dynamics were frustrating, the members are all volunteers, and there was rarely any feedback or response after my letter accompanied the report to the Administrator. In some cases, the report sat for months in the OEJ without timely submission to the Administrator.

The bottom line is that the Bush Adminstration has failed to ensure that EPA managers integrate EJ into all departments and aspects of the agency. According to the EPA's own Inspector General, the EPA has failed to ensure that goals, objectives, and performance measures have been set to ensure that environmental justice is achieved. This lack of federal leadership has shifted the focus of advocates to state initiatives where there has been more opportunity. But even there, the lack of definitions of disparate impact—despite the studies that demonstrate those impacts—continues to paralyze innovative efforts in the states. The lack of protocols to measure cumulative impacts continues to stymie real progress.

I hope that I have articulated some of the challenges and how we may move forward to address them. Our goal is to improve the health and lives of all communities especially communities of color and low income those that are disproportionately burdened by pollution and health disparities. I echo the recommendations that have been advanced by Dr. Bullard in the 2007 Toxic Waste and Race At Twenty report to which I was a contributor. We need strong congressional oversight and support to ensure that the Inspector General's recommendations are implemented. We need the Executive Order 12898 fully implemented and codified. We need leadership and commitment.

Senator CLINTON. Thank you very much, Ms. Shepard.

Dr. Wright.

STATEMENT OF BEVERLY WRIGHT, PH.D., FOUNDER AND DIRECTOR, DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE

Ms. WRIGHT. Good afternoon, Madam Chair. I really want to thank you for this hearing. I certainly appreciate having a voice. I would like to thank this Senate Subcommittee for holding the first of what we hope will be a series of environmental justice hearings.

I am here today representing the National Environmental Justice Network and thousands of Hurricane Katrina survivors who are struggling with the Federal Environmental Protection Agency and the Louisiana Department of Environmental Quality to address post-Katrina environmental contamination and risk reduction concerns in New Orleans. I thank you for the opportunity to testify on these critical issues.

My professional and personal experiences of growing up, living and working in the city of New Orleans greatly influenced my perspective and testimony. I am a life-long resident of New Orleans, LA and a hurricane survivor. I, like many others, lost everything that I owned in this storm—my home, my church, university and community were all destroyed. Nearly every relative and close friend that I had living in the city also lost everything. Our family

had only one family member whose house was not destroyed, and needless to say is very crowded today.

I am speaking to you today with not only great personal knowledge of the impact of Federal policy on victims of this storm, but also as a professional working with community residents to return home safely to their communities.

Hurricane Katrina represents the greatest environmental disaster to ever occur in North America, but the response of the Federal Government has not paralleled our problems. To illustrate, I would like to acquaint you with a project that has concentrated its efforts in New Orleans East and is focused on the safe return of residents to the area. It is called A Safe Way Back Home. We have formed a collaborative that includes the United Steel Workers, Common Ground, faith-based organizations, and colleges and universities to complete soil remediation projects in several neighborhoods in eastern New Orleans. The process for completing the project requires residents to contact and organize their neighbors in their block. The result is that we are bringing back neighborhoods block by block, rather than house by house.

I can tell you without hesitation that I am disappointed in our government's response to this disaster's consequences of Katrina in my community. I am broken-hearted and disappointed in the inaction of government. But the actions that have been taken by our government have hampered our safe and speedy return. The Safe Way Back Home project emerged out of the frustration of many citizens over the lack of information available on the environmental contamination, health, and safety. Even more disconcerting was the actual double-talk that we were receiving from the Environmental Protection Agency on contamination levels and risk and how residents should respond.

In our attempt to respond in the midst of what we saw to be slow to no action in the cleanup of neighborhoods by government, and at the same time watching residents return to their homes every day without protective gear or information on risk levels of sediment, we decided to implement a demonstration project that the government could model in the cleanup of the city.

In the project's development, we spoke to EPA, FEMA, the United Steel Workers Union, volunteer organizations, and student organizations. After a short planning period and coordination of partners, the DSCEJ at Dillard and the United Steel Workers developed a plan to remediate 25 homes or one block in New Orleans East. With approximately 180 volunteers, over 2 weekends we removed 6 inches of topsoil, deposited clean soil and planted 5 of the 25 homes where residents agreed to the terms of application.

FEMA committed to pick up the soil. The Red Cross agreed to provide supplies. The volunteers agreed to assist. The bottom line is that the Federal Government actually to some extent, EPA in particular and the Louisiana Department of Environmental Quality, really worked against our efforts. First and foremost EPA did not assess and properly mitigate Katrina environmental impacts in this case, as cited in the GAO report. In December 2005, the assessment stated that a majority of sediment exposure was safe, but 8 months later, August 2006, the Agency revealed that this meas-

ure was for short-term visits such as assessing immediate exposure damage and not to live near or in the area.

Our volunteer neighborhood cleanup project was in March 2006. I believe that it was this inconsistent and misleading information that led to FEMA's decision to disengage with our project and resulted in the LDEQ reporting that our project was unnecessary. As a result, residents on our block were actually left to handle on their own large mounds of contaminated soil piled on the street in the front of our houses.

What has become clear through my interaction with EPA and this experience is that the Agency has lost sight of its true mission to protect the public health and the environment. We experienced a bureaucratic response in a crisis situation. The Agency followed the letter of the law and not the spirit of the law. For example, the State and Federal officials labeled the volunteer cleanup efforts as "scare mongering." EPA and LDEQ officials said that they tested soil samples from the neighborhood in December 2005 and that there was no immediate cause for concern.

While I was initially totally confused by EPA's response to contamination threats in my home town presented on their Web site, I was truly angry after reading the June 2007 GAO report. It is clear that existing policies are not adequate to protect the public in matters related to disasters, especially catastrophic events like Hurricane Katrina. It would seem that the existing policies actually worked in a manner that is diametrically opposed to the Agency's mission, that being the environmental health and safety of the public.

The Safe Way Back Home project has caused excitement and increased hope for the neighborhood's return. All of this is happening without any assistance from local, State or Federal Government. My recommendation would be to reexamine the policy of a National Flood Insurance Program Act that allows for up to $30,000 in additional funds to homeowners to demolish or even raise their houses. I recommend that the Federal Government appropriate a $3,000 to $5,000 grant to homeowners to remediate front and back yards from sediment left by Hurricane Katrina.

I think my time is up. Thank you.

[The prepared statement of Ms. Wright follows:]

STATEMENT OF BEVERLY WRIGHT, PH.D., DIRECTOR OF THE DEEP SOUTH CENTER FOR ENVIRONMENTAL JUSTICE, DILLARD UNIVERSITY

Good afternoon. I am Dr. Beverly Wright, Director of the Deep South Center for Environmental Justice at Dillard University. I too would like to thank this Senate Subcommittee for holding the first of what, we hope, will be a series of environmental justice hearings. I am here today representing the National Black Environmental Justice Network (NBEJN) and thousands of Hurricane Katrina survivors who are struggling with the federal Environmental Protection Agency and the Louisiana Department of Environmental Quality to address post-Katrina environmental contamination and risk reduction concerns in New Orleans. I thank you for the opportunity to testify before the Subcommittee on critical issues of concern in the aftermath of the hurricane and flood. My professional and personal experiences of growing up, living and working in the City of New Orleans greatly influence my perspective and testimony.

MISSION STATEMENT

The Deep South Center for Environmental Justice (DSCEJ) was founded in 1992 in collaboration with community environmental groups and universities within the

region to address issues of environmental justice. The DSCEJ Community/University Partnership, under the auspices of Dillard University in New Orleans, provides opportunities for communities, scientific researchers, and decision makers to collaborate on programs and projects that promote the rights of all people to be free from environmental harm as it impacts health, jobs, housing, education, and general quality of life.

WHO WE ARE

A major goal of the Center has been the development of minority leadership in the areas of environmental, social, and economic justice along the Mississippi River Corridor. The DSCEJ has become a powerful resource of environmental justice education and training. A major aim of the Center has been the development of curricula that are culturally sensitive and tailored to the educational and training needs of the community. Over the past thirteen years, the Center has made great strides in the accomplishment of these goals. We have observed the incredible metamorphosis of local grassroots community residents into national and international leaders, advocates, and spokespersons for environmental justice.

The DSCEJ has developed and embraces a model for community partnership that is called "communiversity". This model emphasizes a collaborative management or partnership between universities and communities. The partnership promotes bilateral understanding and mutual respect between community residents and academicians. In the past, collaborative problem-solving attempts that included community residents and academicians were one-sided in terms of who controlled the dynamics of the interaction between the two, who was perceived as knowledgeable, and who was benefited. The essence of this approach is an acknowledgment that for effective research and policy-making, valuable community life experiences regarding environmental insult must be integrated with the theoretical knowledge of academic educators and researchers. Either group alone is less able to accomplish the goal of achieving environmental equity, but the coming together of the two in a non-threatening forum can encourage significant strides toward solutions. The DSCEJ has advanced the communiversity model with the formation of the Mississippi River Avatar Community Advisory Board (CAB). The board consists of representatives from grassroots organizations and leaders of affected communities in the corridor. The Center has been involved in valuable environmental research aimed at providing technical assistance. Additionally, the Center has developed environmental justice education curriculum infusion modules that New Orleans Public Schools (NOPS) teachers in grades kindergarten through 6th were trained to incorporate across disciplines into their teaching. We trained over 200 elementary teachers to implement these curriculum modules and disseminated curriculum guides to sixty-two elementary and middle schools in the greater New Orleans area. The DSCEJ provides educational seminars to college-level students and integrates student interns and workers into its programs, research, and community outreach. Toward that end, the Center sponsors Environmental Justice clubs on university campuses and supports their projects.

The DSCEJ has gained a considerable reputation in the field of hazardous waste worker training. Over the past twelve years, in partnership with the Environmental Justice Resource Center at Clark Atlanta University, the DSCEJ has forged a new, culturally sensitive training model designed to meet the specific needs of urban city youth living in environmentally contaminated communities through the implementation of Minority Worker Training Programs and Brownfields Minority Worker Training Programs in New Orleans, Baton Rouge, and Shreveport, LA; Biloxi/Gulfport, MS; West Dallas, TX; Atlanta, East Point, and Savannah, GA, and Ft. Lauderdale and Miami, FL.

Additionally, the DSCEJ has worked with two military communities in Biloxi and Gulfport, Mississippi. This project was designed to strengthen the ability of communities living in close proximity to military bases to participate effectively in environmental restoration decisions. The project resulted in greater knowledge and participation in local Restoration Advisory Boards (RAB) and the election of several community residents to a local RAB.

Since its inception in 1992, the DSCEJ has implemented numerous grants in the areas of research, capacity building, and education and training. Projects have been conducted in the areas of community assistance and education, research and policy, and primary, secondary, and university education. In its long-standing history of providing service to communities that have sustained negative environmental impact, the DSCEJ has continued to forge ahead, training communities and building capacity.

For the last fifteen years, the Deep South Center for Environmental Justice (DSCEJ) has worked with communities that have sustained negative impacts from environmental contamination along the Mississippi River Chemical Corridor. In the aftermath of Katrina, we find ourselves fighting for the health and safety of our university, our city, and our homes. A major objective of our center initiatives was to remove the veil of secrecy that surrounds the issues of environmental contamination.

In the Post Katrina era, the Center has directed its programmatic components and research efforts toward finding solutions and providing technical assistance for community residents along the Gulf Coast. Community projects specifically directed toward clean up and rebuilding, and worker training programs for displaced residents, represent the Center's first efforts in what is intended to be a long-term investment in the restoration of the devastated communities.

We have assisted in the mobilization and education of the citizenry to fight for the proper clean-up of our land. The center has addressed the research and policy, community outreach, education and training needs of displaced residents of the city of New Orleans, with special attention to issues of race and class. There are critical issues of health and environmental restoration that must be monitored for fairness as it relates to standards of cleanup for re-settlement. Additionally, in the area of jobs and economic development, the center engages in job training and placement related to environmental clean-up. Our focus has been on training displaced citizens of New Orleans and job placement for those citizens who have already been trained through our Minority Worker Training and Brownfields Minority Training programs funded by National Institute of Environmental Health Sciences (NIEHS).

The task of the center continues to be to provide a space for dialogue between community leaders who are concerned about how the "new" New Orleans will be shaped by race and class. Of utmost concern is the potential for permanent displacement and permanent removal of poor and working class African Americans who have called New Orleans home for generations. Also at stake is the loss of a culture that is deeply rooted in the African American community and that has been preserved and practiced by the grassroots. First and foremost are the goals of returning residents who wish to return, and the monitoring of all aspects of government and commerce that may hinder that effort.

To date, we have been extremely involved with our state legislators and city councilpersons. We have organized briefing sessions on both legal and environmental issues of importance to rebuilding the city. The NAACP Legal Defense Fund and NRDC have assisted us in these efforts. We are participating in numerous work groups sponsored by EPA (including FEMA) in an attempt to guide their responses to Katrina. We have also been working on the ground with our grass roots community based and civic organizations that we partnered with before Katrina to respond to the many needs to our community. All of the work that we plan will continue to be in partnership with these and other organizations with which we have developed relationships since Katrina. We successfully implemented a demonstration project to assist community residents in removing toxic top soil, replacing it with new sod, and cleaning up their neighborhoods.

Our Center has trained:

- Over sixty small businessmen and contractors in Hazardous Waste Removal, Mold Remediation, and Health & Safety for devastated communities;
- Displaced New Orleans residents in Baton Rouge, LA and Houston, TX in worker training programs aimed at providing technical skills that will allow them to embellish the workforce involved in the clean-up and rebuilding of New Orleans;
- Over 200 volunteers in Health & Safety training for devastated communities so they could clean up homes targeted in the "Safe Way Back Home" project;
- Over 2,000 community members educating them about toxic exposure risks associated with the reality of post Katrina New Orleans.

Additionally, I have testified before congress and produced scholarly papers, monographs, and reports on the impact of Katrina.

Moreover, the Deep South Center for Environmental Justice has played a critical role in servicing the citizens of New Orleans who have been displaced by Katrina, providing important information and serving as an advocate for the cause of rebuilding the city along race and class lines. The impacts are far-reaching and the center once again has set itself apart from many by introducing ground-breaking ideas and methods to address some of the most devastating effects of this terrible storm.

Further evidence of the center's outstanding accomplishments and commitment has been the recognition of my work for leadership in addressing the challenges of Post Katrina New Orleans. I was honored with the Environmental Health Leader Award by the Robert Wood Johnson Foundation in 2006.

KATRINA IMPACTS

As a resident of New Orleans East (also known as West Lake Forest) and a professor of sociology and director of the Deep South Center for Environmental Justice at Dillard University in New Orleans, I would like to express my sincere gratitude to Senator Clinton and the Subcommittee on Superfund and Environmental Health of the Senate Environment and Public Works Committee for holding this hearing on environmental justice. I am a life-long resident of New Orleans, LA and a Hurricane Katrina survivor.

I, like many others, lost everything that I owned in this storm. My home, church, university, and community were all destroyed. Nearly every relative and close friend that I had living in the city also lost everything. Our family had only one family member whose house was not destroyed. I am speaking to you today with not only great personal knowledge of the impact of federal policy on victims of this storm but also as a professional working with community residents to return home safely to their communities.

More than a million Louisiana residents fled Hurricane Katrina, of which 100,000–200,000 could end up permanently displaced. Katrina displaced just under 350,000 school children in the Gulf Coast, 187,000 in Louisiana, and closed the entire Orleans Parish Public School System. More than 110,000 of the 180,000 homes in New Orleans were flooded. Katrina affected over 20,000 black owned businesses and 60,000 in the Gulf Coast, totaling sales of 3.3 billion a year.

Katrina toppled offshore oil platforms and refineries, sending shock waves throughout the economy, with the most noticeable effects felt at the gas pumps. Katrina and Rita temporarily closed oil operations in the Gulf Region that supply twenty-nine percent of US-produced oil and nineteen percent of US sourced natural gas. Katrina caused six major oil spills, releasing 7.4 million gallons of oil. The Hurricane also hit 60 underground storage tanks, five superfund sites, and numerous hazardous waste facilities.

Hurricane Katrina represents the greatest environmental disaster to ever occur in North America. This could cause enormous consequences to health and the environment. It has been described as the biggest Brownfield and may be the largest reconstruction project in US history. Evidence thus far shows that many flood impacted areas are contaminated, and the contamination in large measure exceeds the Environmental Protection Agency's (EPA) clean-up standards. Testing done by the Natural Resources Defense Council (NRDC), EPA and others shows sediments contaminated with heavy metals, petroleum, pesticides, and industrial chemicals from oil and soot. In the immediate aftermath of the storm, dangerously high mold counts were found in the air with some neighborhoods showing mold spore counts as high as 645,000 per cubit meter. The recommended safe level by EPA for mold spores is 50,000 spores per cubic meter.

The response to the health implications related to this enormous environmental catastrophe falls far below any logical or reasonable response to this disaster. Second only to "rebuilding the levees", environmental health should be the issue of greatest concern in the rebuilding and repopulating plan for the city. Unfortunately, issues related to health and the environment have hardly been mentioned in the discussions of rebuilding the city. This piece of the rebuilding process is missing. Its omission is giving life to numerous rumors and panic that can stall the rebuilding process. At stake is not only the health of the community but also the loss of property and wealth for a large portion of the New Orleans African American community, and a possible dramatic shift in the demographics of the city, with negative implications for the black electorate.

To illustrate, I would like to acquaint you with a project that has concentrated its efforts in New Orleans East and is focused on the safe return of residents to the area. It is called "A Safe Way Back Home." (*www.dscej.org*) As a professor and Director of the Deep South Center for Environmental Justice at Dillard University that is located in the Gentilly area, I have been actively involved in projects that assist community residents returning to the city and rebuilding their homes. Our emphasis, however, has been on their safe return and on environmental contamination issues. To this end, we have formed a collaborative that includes the United Steele Workers, Common Ground, faith based organizations (i.e. the United Methodist Church), and colleges and universities to complete soil remediation projects in several neighborhoods in eastern New Orleans. The process for completing the project requires residents to contact and organize their neighbors in their block. The result is that we are bringing back neighborhoods block by block rather than house by house.

We have also experienced a "tipping point" in the project in that we are beginning to see other houses and blocks in the area replicating the project. New lawns are

cropping up all around the neighborhood. That means that residents have not only improved the aesthetics of the neighborhood but are now also protected from environmental contamination.

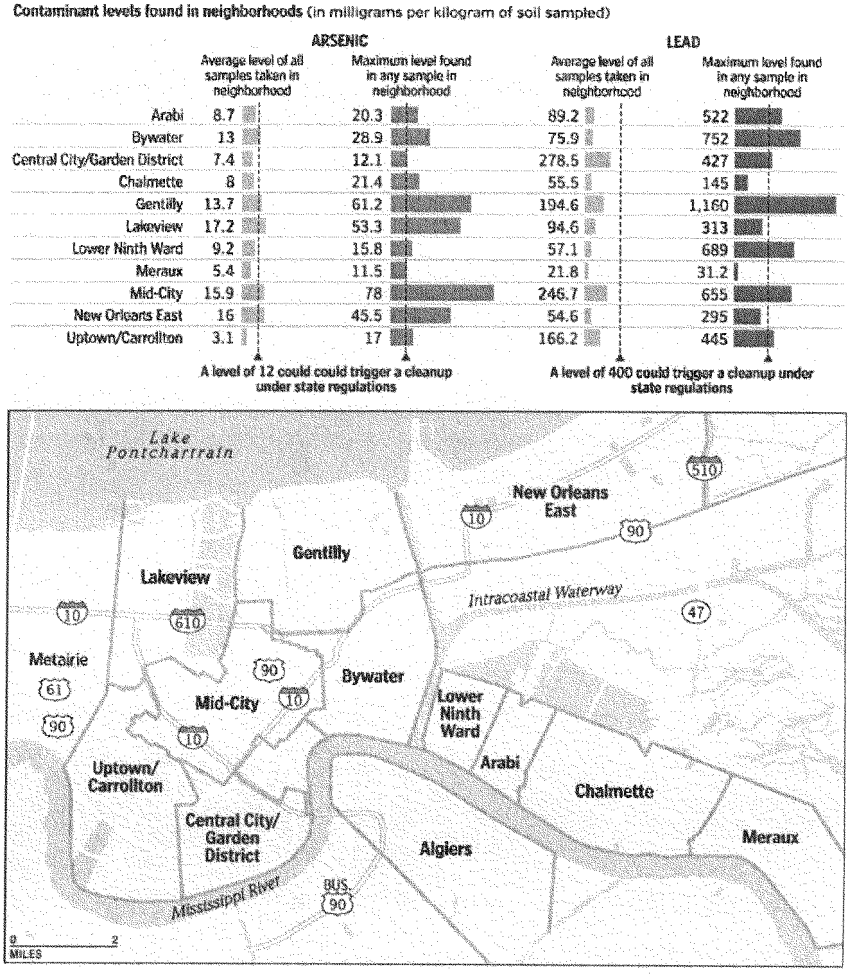
I can tell you without hesitation that I am disappointed in our government's response to the disastrous consequences of Katrina on my community. I am broken hearted and disappointed, not by the "inaction" of government, but by the actions that were taken by our government that hampered our safe and speedy return to our homes.

The "Safe Way Back Home" project emerged out of the frustration of many citizens over the lack of information available on environmental contamination, health and safety. Even more disconcerting was the actual "double-talk" that we were receiving from the EPA on contamination levels and risks, and on how residents should respond.

The DSCEJ at Dillard University has been conducting environmental remediation training with a grant from NIEHS for the last 12 years. The specialized expertise and the trained workforce that it provided was a great benefit to the city after Katrina. It also meant that our university center could and would play a critical role in providing a vital service in the clean-up of the city. We could supply trainers and workers in areas gravely needed to clean-up and rebuild the city. But, there was one more thing that we could provide besides our professional expertise, and that was the implementation of a program that would result in the actual clean-up of a site.

After Katrina, however, there was mass confusion on the ground. The information that we received from EPA's website showed contamination levels for lead, arsenic, and PCB's to be extremely high, exceeding both EPA's and LDEQ's recommended safe risk levels.

We consulted with scientists from the Natural Resource Defense Council (NRDC) and consulted EPA's website that reported sampling data, to determine the type and extent of remediation needed to reduce the risk of exposure from chemicals found in the soil.



GRAPHICS: Seth Hamblin, Laris Karklis and Cristina Rivero, *The Washington Post*, February 23, 2006

In our attempt to be responsive in the midst of what we saw to be slow to no action in the clean-up of neighborhoods by government and at the same time watching residents return to their homes everyday without protective gear or information on risk levels for sediment, we decided to implement a demonstration project that the government could model in the clean-up of the city. In the project's development, we spoke with EPA (off the record), FEMA, the United Steelworkers Union, volunteer organizations and student organizations.

After a short planning period and coordination of partners, the DSCEJ at Dillard University and the United Steelworkers developed a plan to remediate 25 homes or one block in the New Orleans East area. With approximately 180 volunteers over two weekends, we removed six inches of top soil, deposited clean soil and planted sod on the 25 homes where residents agreed to the terms of participation.

FEMA committed to pick-up the soil. The Red Cross agreed to provide supplies, and the volunteers agreed to assist. The United Steelworkers operated the bobcats to remove the soil. We were well on our way to completion of what we saw as a precedent-setting event when on the third day, FEMA stopped picking up the soil. All of our efforts to get them to honor their commitment were thwarted. We were

actually stuck with several large piles of contaminated soil on the street of a block we had just returned to normal with beautiful green grass on front and back lawns, safe enough for children to play outside. We could not understand why FEMA discontinued picking up the soil. We were latter informed that the soil was contaminated and considered Hazardous Material and under the Stafford Act could not removed by FEMA. EPA and the LDEQ were insisting that the soil was not contaminated. The residents were caught in the middle of an unbelievable dispute. What were we to do with these large mounds of soil now sitting in the street in front of our houses?

The story does have an ending, but not because the Federal Government resolved this issue. Eventually, the city of New Orleans removed the soil from the median where we moved it so as not to re-contaminate the entire block.

The U.S. General Accountability Office (GAO) June 2007 report, Hurricane Katrina: EPA's Current and Future Environmental Protection Efforts Could Be Enhanced By Addressing Issues and Challenges Faced on the Gulf Coast, speaks directly to actions taken by EPA.[1]

First and foremost, the agency did not assess and properly mitigate Katrina environmental impacts in this case. As cited in the 2007 GAO report, EPA's December 2005 assessment stated that a "majority" of sediment exposure was safe. But eight months later August 2006, the agency revealed that this measure was for short-term visits such as to assess immediate exposures damage, not to live near or in the area.

Our voluntary neighborhood clean up project was in March 2006. I believe that it was this inconsistent and misleading information that led to FEMA's decision to disengage with our project and resulted in the LDEQ reporting that our project was unnecessary. As a result, residents on our block were left to handle on their own large mounds of contaminated soil piled on the street in front of our houses.

What has become clear through my interaction with EPA and this experience is that the agency has lost sight of its true mission to protect the public health and the environment. We experienced a bureaucratic response in a crisis situation. The agency followed "the letter of the law and not the spirit" of the law. For example, state and federal officials labeled the voluntary clean-up efforts as "scare-mongering." EPA and LDEQ officials said that they tested soil samples from the neighborhood in December 2005 and that there was no immediate cause for concern. According to Tom Harris, administrator of LDEQ's environmental technology division and state toxicologist, the government originally sampled 800 locations in New Orleans and found cause for concern in only 46 samples. Generally, the soil in New Orleans is consistent with "what we saw before Katrina" says Harris. He called the "Safe Way Back Home," program completely unnecessary.

A week after the March 2006 voluntary neighborhood clean-up project began, a LDEQ staffer ate a spoonful of soil scraped from the piles of soil left by FEMA in front of the beautiful new lawns planted by volunteers of the "Safe Way Back Home" project. The soil-eating publicity stunt was clearly an attempt to disparage the proactive neighborhood clean-up initiative. I immediately invited Mr. Harris back to eat a spoonful of soil every day for the next 10 years. Only then would I be convinced that his exposure to the chemicals in the soil would be comparable to my children or grandchildren playing outside in the soil everyday. I offered to buy him lunch and bury the hatchet if he were still alive and well.

While I was initially totally confused by EPA's response to contamination threats to my hometown presented on their website, I was truly angry after reading the June 2007 GAO report. It is clear that existing policies are not adequate to protect the public in matters related to disasters especially catastrophic events like Hurricane Katrina. It would seem that the existing policies actually work in a manner that is diametrically opposed the agencies' mission; that being the environmental health and safety of the public.

The "Safe Way Back Home" project has caused excitement and increased hope for the neighborhood's return. All of this is happening without any assistance from local, state, or the federal government. It has been the unrelenting resolve of New Orleans East residents to rebuild their homes and their lives that has given us a glimmer of hope for recovery.

In attempting to understand how and why the federal agencies (EPA, FEMA, Army Corps of Engineers) were unable to assist citizens in their quest to remediate their own properties after the storm, the GAO's Hurricane Katrina: EPA's Current and Future Environmental Protection Efforts Could Be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast report offers much insight on the inner workings of these agencies that fostered their failure to act. In fact, their actions served as a deterrent to citizens' efforts.

While it is still my deepest contention that the federal government should be responsible for the assessment and mitigation of impacts from Katrina, in the absence of appropriate response that would lead to the mitigation of exposure, I would expect and strongly contend that the EPA and /or LDEQ should assist citizens in the mitigation of their property when necessary.

The project, however, has been seriously hampered by the actions of government to negate its necessity and the inaction of government with some assistance in removing the soil. Ironically, although the EPA and LDEQ officials say that the soil is "safe," FEMA refused to pick up the soil because it was contaminated. We have been unable to find any government agency that will take responsibility for disposing of this material and we are left to find our own individual solution. The phrase "Let Them Eat Dirt," is appropriate in this situation but much more menacing in that this "dirt" is contaminated.[2] I have also been told that money not safety is the driver in this instance.

Although government officials insist the soil in residents' yards is safe, Church Hill Downs Inc., the owners of New Orleans' Fair Grounds, felt it was not safe for its million dollar thoroughbred horses. The owners hauled off soil tainted by Hurricane Katrina's floodwaters.[3] Certainly, if tainted soil is not safe for horses, surely it is not safe for people—especially children who play and dig in the dirt.

My recommendation would be to re-examine the policy of the National Flood Insurance Program/Act that allows for up to $30,000 in additional funds to homeowners to demolish or even raise their houses. I recommend that the federal government appropriate a $3,000 to $5,000 grant to homeowners to remediate front and back yards from sediment left by Hurricane Katrina flood waters.

What however is most significant in our struggle is that all of our efforts may be for naught. The latest report including flood maps produced by the Army Corps of Engineers show no increase in levee protection to New Orleans East residents since Katrina.[2]

I would like to see this subcommittee investigate why a disproportionately large swath of Black New Orleans once again is left vulnerable to future flooding. After nearly two years and $7 billion of levee repairs, the Army Corps of Engineers has estimated that there is a 1 in 100 annual chance that about one-third of the city will be flooded with as much as six feet of water.[4] Mostly African American parts of New Orleans are still likely to be flooded in a major storm. Increased levee protection maps closely with race of neighborhoods with black neighborhoods such as the Ninth Ward, Gentilly, and New Orleans East receiving little if any increased flood protection. This is clearly an environmental justice issue since this could lead insurers and investors to think twice about supporting the rebuilding efforts in these vulnerable areas.

INTERGENCY PERFORMANCE EVALUATION TASK FORCE RISK AND REHABILITATION REPORT ARMY CORPS OF ENGINEERS JUNE 20, 2007			
	Average Depth of Flood Water Decrease	Fatalities Decreased	Property Loss Decreased
Lake View	5.5 ft	70%	32%
Upper Ninth	.5	31%	11%
Lower Ninth	2 ft	29%	4%
Gentilly	.5 ft	19%	5%
N.O. East (West Lake Forest)	NC	NC	NC
Michoud	NC	NC	NC
New Orleans East	1 ft	83%	24%

Source: Army Crops of Engineers Interagency Performance Evaluations Task Force IPET), *Risk & Reliability Report* (June 20, 2007) found at http://nolarisk.usace.army.mil/.

All things being equal, my neighbors and I can expect the same amount of flooding as occurred with Katrina. The injustice lies in the fact that this same scenario does not exist for all New Orleanians who were affected by the storm. The Lakeview area can expect 5½ feet of increased levee protection, that means 5½ feet less water than what they received from Katrina. The fact is that Lakeview is mostly white and affluent; New Orleans East is mostly black and middle class. Where is the justice? I cannot believe that this is still happening to us.

This same scenario is also true for the mostly black Lower Ninth Ward, Upper Ninth Ward, and Gentilly. There is a racial component to this injustice. Whether you are rich, poor, or middle class, if you are a black resident of New Orleans, you are less protected and you have received less increased protection from the federal government than the more white and affluent community of Lakeview.

AGRICULTURE STREET LANDFILL

Hurricane Katrina is not the first time New Orleans residents have heard from official sources that a place is safe, only to discover evidence to the contrary. New Orleans' Agricultural Street community, which includes the Gordon Plaza subdivision, Housing Authority of New Orleans (HANO) housing and the Press Park residential area and community center, was built in the early 1980s on top of the Agricultural Street Landfill site. The 95-acre site was used as a municipal landfill (that included debris from Hurricane Betsy in 1965) for more than 50 years prior to being developed for residential and light commercial use. It closed in 1966.

Metals, pesticides and polycyclic aromatic hydrocarbons (PAHs) were found in surface and subsurface soils in the Agricultural Street area during environmental studies in 1993. The EPA refused to declare the site eligible for the Superfund program in 1986, but, using standards that gave more weight to soil contamination, added the landfill to the National Priorities List as a Superfund site in 1994.[5] Residents immediately pushed for a property buy-out and relocation from the contamination. But the federal EPA disagreed, and ordered a $20 million "clean-up," which began in 1998 and was completed in 2001.

Government officials assured the Agricultural Street community residents that their neighborhood was safe after the "clean-up" in 2001. But the Concerned Citizens of Agriculture Street Landfill disagreed and filed a class-action lawsuit against the city of New Orleans for damages and relocation costs. Unfortunately, it was Katrina that accomplished the relocation—albeit a forced one. This year, after thirteen years of litigation, Seventh District Court Judge Nadine Ramsey ruled in favor of the residents, describing them as poor minority citizens who were "promised the American dream of first-time homeownership," though the dream "turned out to be

a nightmare."[6] Her ruling could end up costing the city, the Housing Authority of New Orleans and Orleans Parish School Board tens of millions of dollars.[7]

The case is currently on appeal. "It was a long and hard struggle, but we won," says resident Elodia Blanco. "It's a bitter-sweet victory because we lost our community before Katrina." A dozen or so FEMA trailers now house residents on the contaminated site, where post-Katrina government samples have turned up levels of benzo(a)pyrene exceeding EPA's residential guidelines.

The Agriculture Street Landfill story, however, does not end here. Since Katrina, toxic hot spots have been identified on the site by EPA, the Katrina flood waters evidently stirred up a toxic soup that has further exacerbated the problem. When we inquired about the contamination problem at the site some months after the storm, EPA's retort was that "there were hot spots but it was no longer an environmental justice issue because all the people were gone." Wrong!! A visit to the site showed people living in FEMA travel trailers and others preparing to re-enter their homes after remediation.

In closing, I would like to call to the attention of the committee a situation of grave concern to parents of children attending New Orleans public schools.

In March of 2007, a coalition of community and environmental groups collected over 130 soil samples in Orleans Parish. Testing was conducted by Natural Resources Defense Council (attached to my testimony). Sampling was done at 65 sites in residential neighborhoods where post-Katrina EPA testing had previously shown elevated concentrations of arsenic in soils. Sampling was also done at 15 playgrounds and 19 schools. We strongly believe the results of the testing indicate the need for additional investigation into the safety of a number of school grounds. Results from the independent laboratory testing for the 19 schools are as follows:

Sample Location	Street Address	Arsenic concentration (mg/kg)
Einstein Charter	5100 Cannes	0.4
Mary Bethune Accelerated School	4040 Eagle St.	0.4
Moton Elem	3000 Abundance Street	0.4
Dr. MLK Jr	2503 Willow St	0.5
Lake Forest Elementary	12000 Hayne Blvd.	0.5
Lusher Elementary/Middle School	7315 Willow St.	0.5
McDonogh 28	401 Nashville Ave.	0.5
Laurel Elementary	820 Jackson Ave.	0.5
Reed Elementary	2521 Marais St.	0.6
International School of LA	1400 Camp St. (Andrew Jackson Bldg)	0.6
P.A. Capdau Middle School	3821 Franklin Ave.	1.1
S.J. Green Middle School	2319 Valence St.	1.3
Lafayette Academy	2727 S. Carrollton Ave.	10.6
Medard H. Nelson Elementary School	1111 Milan St. (McDonogh 7 Bldg)	12.4
McMain Magnet Secondary School	5712 South Claiborne Ave.	12.6
Craig Elementary	1423 St. Philip St.	16.1
Drew Elementary	St. Claude Avenue & Pauline St.	20.3
Dibert	4217 Orleans Ave.	22.8
McDonogh Elementary (#42)	1651 North Tonti St.	34.4

The six results against the grey background indicate levels of arsenic in excess of the LDEQ's soil screening value for arsenic. The LDEQ soil screening value of 12 milligrams per kilogram (mg/kg) normally requires additional sampling, further investigation, and a site-specific risk assessment. It is clear that the levels of arsenic in the sediment are unacceptably high for residential neighborhoods. We are especially concerned about potential health risks to children playing in areas with arsenic contaminated sediments. At some of the sites sampled in March, lab results indicate that arsenic levels have increased in the time passed since earlier post-Katrina studies.

In June 2007, the coalition sent a letter to LDEQ requesting it to take action (letter is attached as part of my testimony) and recommending that it take advantage of the window of opportunity provided by the upcoming summer vacation to (1) conduct additional sampling of school playgrounds in previously-flooded areas; (2) conduct a site-specific risk assessment; and (3) work with the schools and community to examine potential remediation options. Because we feel it would be unethical to withhold this data from potentially affected parties, we have notified school officials in the six schools with the elevated arsenic levels detected in their sediments. The

response that we received from the USEPA (attached to my testimony) was basically that they were reviewing our letter and would respond within 30 days. The response that we received from LDEQ (attached to my testimony) concerning the high arsenic levels found on the school grounds of New Orleans public schools, once again supports the criticism of EPA's response to Katrina cited by the June 2007 GAO report, that being, the agency did not assess and properly mitigate Katrina environmental impacts.

Specifically, the letter from LDEQ first of all addresses the fact that "15 of the 19 schools sampled fell below health-based levels of concern and are consistent with background levels for Louisiana." Our data actually show 13 of the 19 schools at safe levels. However, this was not the point. We were and presently are only interested in those schools with problems.

Secondly, the letter from LDEQ immediately speaks to their process for collecting samples and the fact that LDEQ and USEPA together collected more than 2,000 sediment and soil samples in the impacted area and that NRDC "collected only one sample." What is implied in this statement is that the sampling that we did, although the results were high, does not warrant further testing or concern. Consequently, we were told that we should inform the schools in question. But, although LDEQ was under no legal obligation, since the public schools are strapped for funds, they would provide further testing if the principal of the school made the request. My reply to that is, "well, thanks for the favor," but is it the job of citizens to assess and mitigate the impacts of Katrina?

In the letter from LDEQ, there is an attempt to educate the coalition on a few facts that we were not aware of. These involved the possibility of the arsenic contamination existing on these school grounds before Katrina. I find this to be an absolutely incredible statement coming from this agency. Does this mean that LDEQ was actually aware of the fact that elevated arsenic was on the playgrounds of these schools? If not, then why are we discussing pre-Katrina arsenic levels?

The point is that LDEQ and USEPA seem much more interested in justifying their existing position, that being that they are not obligated or even forbidden by law to clean up pre-Katrina contamination, than they are in protecting the public. It is our hope that LDEQ and USEPA rise to the challenge of its mission to ensure that Louisiana's citizens "have a clean and healthy environment to live and work in for present and future generations" by responding to this data in a time-sensitive manner.

End Notes

[1]U.S. General Accountability Office, Hurricane Katrina: EPA's Current and Future Environmental Protection Efforts Could Be Enhanced by Addressing Issues and Challenges Faced on the Gulf Coast. Washington, DC: GAO Report to Congressional committees, June 2007.

[2]See Robert D. Bullard, "Wrong Complexion for Protection," The Next American City, (Winter 2006/2007), found at *http://www.americancity.org/article.php?id—article=206*.

[3]Brett Martell, "Horse Racing Returns to New Orleans," Associated Press, November 23, 2006.

[4]John Schwartz, "Army Corps Details Flood Risks Facing New Orleans," The New York Times, June 20, 2007.

[5]See Agency for Toxic Substances and Disease Registry, Public Health Assessment—Agriculture Street Landfill, New Orleans, Orleans Parish, Louisiana, Atlanta, GA: ATSDR (June, 1999); Alicia Lyttle, Agriculture Street Landfill Environmental Justice Case Study, University of Michigan School of Natural Resources, Ann Arbor, Michigan (January 2003).

[6]Ibid.

[7]Susan Finch, "Ag Street Landfill Case Gets Ruling: City Ordered to Pay Residents of Toxic Site," The Times-Picayune, January 27, 2006.

Senator CLINTON. Thank you very much, Dr. Wright.

I appreciate all of the panelists being here. I have a few questions that I would like to followup with.

Let me start with you, Dr. Wright, because that was a very compelling testimony. I really applaud the efforts that you, your organization and your community have taken to try to bring New Orleans back. As you know, I have been there several times. I was privileged to be at Dillard University to deliver the commencement. I

am just heartbroken, as you are, with the response of our government to what is a national disaster and deserves better.

I am pleased you were able to highlight the environmental justice aspects of this disaster. They continue now nearly 2 years after Katrina. Just last week, we learned that the trailers FEMA finally provided to victims may be contaminated with dangerous levels of formaldehyde. This is absolutely unconscionable and it is a perfect example of why we are having this hearing today, to highlight the increased exposures to environmental hazards faced by low-income and minority communities.

In this particular example, FEMA has stated that they are doing all they can to rectify the situation. But I intend, along with my colleagues, to keep a very close eye on FEMA to ensure that testing for contaminated trailers is conducted and that people living in these contaminated trailers are moved out and into uncontaminated living space.

But of course, it is a problem because we don't yet have enough living spaces because, as you pointed out, we haven't done enough to mitigate against the effects of the disaster and find places for people to be able to live safely so that they can return. It has become a very unfortunate vicious cycle. We can't get the public services back in New Orleans and the surrounding parishes because we don't have enough people. We can't get the people back because we don't have hospitals, fire stations, police stations, retail stores, and so much else.

I think it is especially critical that we keep an eye on EPA as they go forward because certainly your testimony about the detail concerning the soil sampling that was done in these neighborhoods raises some very serious questions.

I want to ask you specifically, I believe that in your submitted testimony you spoke about the levels of arsenic being higher than what is acceptable in six of the schools where soil sampling was done. What action do you believe, Dr. Wright, EPA needs to take in order to protect the children who attend these schools?

Ms. WRIGHT. Well, I believe they need to do something. So far, we have gotten nothing but a letter from them basically saying that we have received this data; we are reviewing it; and we will get back to you in about 30 days. So what we would like to see them do is to do what protocol calls for when there are high arsenic levels that are existing. But we need them to speed up the process because the children will be back in those schools in September, so we need them to do the extensive testing that they need to do and an immediate cleanup is necessary.

To be honest with you, the citizens of New Orleans are so tired of waiting that we are actually ready to move forward on our own to help our schools get cleaned up. The project that I am involved in would do it, but we don't believe that this should be the citizens' obligation to do this. Our actions are reactive in that we can't get a straight response on levels of contamination. We get double-talk and then no action.

So what we are doing we hope is presenting a model for government to follow in terms of protecting the health of people in the city of New Orleans. The city right now is covered with weeds because grass won't even grow. So at some point, somebody is going

to have to remove the topsoil in the manner that we are asking it to be done in order for it to be safe, but also just for aesthetic reasons. Community people would come back if they came back to a neighborhood that looked different from what it looks now. Our project has encouraged people when they come back and they see the green grass, they say, oh maybe I can go back home, and how do I get my yard in front and back safe for my children to play in.

Senator CLINTON. Dr. Wright, I would appreciate your working with my staff and Senator Boxer's staff to help us draft a letter to the EPA asking for answers to your questions. We will work with you as expeditiously as possible to get such a letter and also with your organization any other experts and those with whom you have worked to try to get some answers before school starts, and also some answers with respect to what you have run into with sediment removal and collection and replacement.

Thank you very much for your leadership.

Ms. WRIGHT. Thank you.

Senator CLINTON. Representative Mitchell, your observations are very compelling. You have lived this experience. Your family has been affected by the results of environmental injustice. Your voice has become very important, not just in South Carolina, but around the country because you have led a very impressive effort to try to deal with what you found in Spartanburg.

I want to ask, you know, do you believe that the EPA should have an active National Environmental Justice Advisory Committee that does regularly convene and discuss the concerns of disempowered group of people? How best can we get the voices that you eloquently represent, of your neighbors, your now-constituents, to be heard more effectively in the setting of policy when it comes to protecting our citizens from contamination, from the effects of toxic sites and pollution and so much else that people are suffering from?

Mr. MITCHELL. Yes, thank you. I thank you first of all from headquarters to the regions and with the State agencies because of the importance of having such meetings such as the NEJAC. If there were not a NEJAC, I wouldn't be sitting here now and the situation in Spartanburg would probably be as what we first saw it back in 1997. So yes, I do think that that is important, and I think just having the simple presence, and what you are currently doing here now, of putting it back on the radar screen. Because at that point when we were designated one of the demonstration projects through the Federal Interagency Working Group, this was something that was unknown. No one knew as far as the mandates that they were required to assist the communities, but we were able to with the presence of EPA at that point to leverage other Federal agencies who were looking at environmental justice initiatives in their various agencies.

This is where we incorporated and leveraged these other agencies to do what EPA couldn't do regarding housing and health care. With Health and Human Services, Senator Hollings was able to help me after we identified and categorized as far as the nature of the extent of the chronic disease in the community. He was able to help us to get our community health center established there in Spartanburg to where now we treat some 14,000 patients a year

that otherwise didn't have a medical home, and looking at early prevention.

Senator CLINTON. Thank you very much, and thank you for your leadership on this issue. I know you are working in the South Carolina Legislature to try to further this agenda. I wish you well on that.

Mr. MITCHELL. Senator Clinton?

Senator CLINTON. Yes, sir?

Mr. MITCHELL. I might add too, though, that it is a very complex situation and that is why I think that, as Dr. Bullard stated and Peggy, this is something that needs to continually happen as far as the dialog. Without the dialog, we will never find the answers to some of the complex problems across the country because they are very complex in different regions of the country. I think until we have the listening sessions and get the regions more active in the communities like Region IV was in our case. I know that there are some regions that respond more or better than some of the others, but I think we need to have a blanket approach.

I think with your leadership and what you are doing here now will get us to that point that we need to address these communities across the country.

Senator CLINTON. Thank you very much. I look forward to having your continuing involvement and advice.

Dr. Bullard, as part of your testimony, you submitted a letter signed by 100 organizations and individuals urging immediate action on the recommendations to Congress that were contained within the Toxic Waste and Race at Twenty report. I hope we are starting to accomplish it. The first recommendation, as you know, is to hold congressional hearings on the EPA response to contamination in environmental justice situations. I look forward to working with you and the coalitions that have formed to advocate for these findings, to enact additional recommendations.

With that in mind, I am hoping you might be able to provide in greater detail information about another recommendation: reinstating the Superfund tax. Can you explain the benefits that this action would have for America in general, but specifically for communities of color and low-income that are impacted by questions of environmental justice?

Mr. BULLARD. Yes, Senator. I think it is important that when we look at the data and look at the statistics as to where these sites are located, they are disproportionately located in communities of color. There are so many communities of color and low-income communities that right now have no—there is nothing that you can hang your hat on to get them action.

So I think having Superfund reinstated would not only help these communities that are fence line or they are nearby or that are suffering, but it also would help the Nation as a whole. I think having communities that don't have to worry about leaky landfills and whether or not it will get cleaned up, or whether or not there is money available to clean it up; families that are struggling, that are suffering.

Somehow there may have been sites that should have been listed on Superfund, but were not, such as the example in Dixon, TN, the

landfill that is leaking, that is creating lots of problems for families that are next door, 54 feet from a 150-acre farm.

I think the fact that we don't have a program that is in place, and the reason why the communities are asking, well, what can we do? Can we get national leadership on this issue? I think it is important to know that some States are doing something, but to have national leadership on this, I think that is very important.

Senator CLINTON. Well, I know that my Chairman, Senator Boxer, agrees completely. She has pointed out every year the number of Superfund sites that are targeted for cleanup has continued to decrease. The work that is undertaken and completed is less and less, compared to the problems that we know are out there. The fact that we did away with the basic principle that polluters should pay, and we don't have a dedicated stream of revenue to deal with these cleanups is one of the reasons we are not doing this work. So I certainly agree with your recommendation.

In the executive summary of the report that you submitted along with your testimony, you note that in recent years the EPA has mounted an all-out attack on environmental justice and environmental justice principles. You know, we have heard from the first panel as to some of the inaction and the failures that have been the track record with respect to environmental justice. But what are some of the proposals that you have made in the report that would try to reinstate a more vigorous approach? Could you answer this question about what we need to do to implement the Executive order compared to what needs to be codified? Do you recommend trying to codify the Executive order or support the Executive order through appropriations, the reinstatement of the Superfund, a polluter pays revenue stream? Could you give us some guidance on that, Dr. Bullard?

Mr. BULLARD. Yes, Senator. I think it is important that we first of all, the fact that there is an Executive order that is still in place that is somehow not being addressed adequately. I think the complication of the Executive order, which is basically based on two laws: the Title VI of the Civil Rights Act of 1964 and the National Environmental Policy Act of 1969, NEPA and Title VI. Those are two laws, but when you put them together, you have the order.

I think the fact that the way that EPA operates is to say, well, we can't do EJ because there is no statute. So if we had a statute, had a law, then they wouldn't have that excuse.

I think it is important to look at the way that the Agency has operated in the last 6 years has been an attempt to dismantle, redefine, not just the Executive order, but also a very important piece of legislation like the right to know, TRI, to try to like weaken it, and instead of the right to know more, the right to know less.

This whole idea of NEJAC, and I have heard a discussion about NEJAC. NEJAC, I served on the first NEJAC—not knee-jerk, NEJAC.

[Laughter.]

Mr. BULLARD. I think the fact that the only thing that brought NEJAC back was a catastrophe of Katrina. Now, that is not good news. So when we talk about trying to take race and income out of the Executive order or redefine environmental justice is for ev-

erybody. If you redefine environmental justice in the Executive order as for everybody, you don't have an Executive order.

The looking at how you are closing the EPA regional libraries. Well, a lot of the research and legal work is done on environmental justice in the regions. There are just too many attempts and initiatives that are going in the opposite direction of where we need to go. So I think if we had laws that were in place that you could point to and say, this is the law; you need to enforce the law. Those are very important things.

The Title VI hook that environmental justice legal litigation had, a big point was lost after the Supreme Court decision. So that Supreme Court decision in 2001, it was a very chilling effect on a lot of the environmental justice work around the country. To some extent, there are some agencies—I won't quote any names, but the initials are like DOT and DOE—say that we don't have to EJ anymore because, you know, you have this lawsuit and it was lost and EPA is not doing it, and they looked at EPA as the lead. So if EPA is not doing it, that means a whole lot of other agencies are not doing it.

So I think having laws, having clear guidance so that you can say that this is what environmental justice is. It has been 13 years and I think 13 years for very smart people is long enough.

Senator CLINTON. Thank you very much, Dr. Bullard.

Finally, I want to turn to Peggy Shepard. I really want to thank you for all the work you have done on behalf of the residents of Harlem and Washington Heights and other neighborhoods in Northern Manhattan, and the pioneering partnership between WE ACT and Columbia.

I am particularly concerned, as you pointed out in your testimony, about asthma, lead poisoning, the impacts of all of the concentrations of pollution and contamination on our children. I have seen that first-hand, and I appreciate your always emphasizing that.

In your testimony, you discuss the important role of community-based participatory research in not only advancing science, but in improving community knowledge. Earlier this year, the National Institute of Environmental Health Sciences convened a panel to examine the Institute's children's centers, which perform important research on the environmental pollutants that pediatric populations are exposed to on a daily basis.

The panel recommended that the National Institute of Environmental Health Sciences remove guidelines that make community involvement an essential component of the Center's research. I wrote a letter to Director David Schwartz expressing concern about this recommendation because as we have seen from your testimony today and your 20 years of work, community-based research that involves the community gives us important information upon which to make policy decisions.

I wanted to ask you, Ms. Shepard, would you comment on the Bush administration's record regarding community-based participatory research, and the real significance of this pioneering work that you and others have done?

Ms. SHEPARD. Well, you know, I do think that the NEJAC was able to highlight community-based participatory research, and I do

believe that the National Institute of Environmental Health Sciences at the EPA has put some funds into those children's centers, as well as the NIHS. So I think that that has been excellent and we should applaud them for that.

But there is a different turn that has been taken at the NIHS just as we have had 10 solid years of partnerships where even communities that might be in the South or looking to partner with communities even in California because they need that kind of help. Just as we have partners really beginning to work well together, because you know, it is a challenge. There are differences in power. There are differences in resources between residents and universities. But now we have been fairly comfortable and now it is coming to an end.

Schwartz is saying yes, we have community partners with these research centers, but now you don't need to do that anymore. Some researchers think that perhaps they will be looked on more favorably if they are not diverting, you know, 10 percent of their funds to community translation of research.

So I think that we have to not only hold the line there and certainly hope that EPA will continue to fund those children's centers, which NIHS would also like to de-fund, but we also should ensure that other national institutes of health are providing grant programs that do support this kind of research, because we know that it is working.

Senator CLINTON. Well, it is also part of the continuing education effort. While we are trying to make progress to clean up some of these sites, people need to know how to protect themselves. They need to know what actions they can take for themselves and their families. Involving the community is the best way to get that information going in both directions. So I will continue to try to make that case.

We will be submitting questions to each of you for the record and would very much appreciate getting your responses in writing.

In closing, I would like to thank our witnesses, those who are here in person, those who submitted testimony, even though you may not have been able to deliver it here on the panels, I thank you for coming, especially the people who came all the way from California.

I want to thank my Chairman, Senator Boxer.

This is just a first step, but I think it is a very important one. I want to reiterate my commitment to continue working for environmental justice with all of you. As I announced, I will be introducing legislation to address a number of the problems that we have identified today.

I will be holding a Superfund oversight hearing in my subcommittee this fall. Environmental justice is one of the aspects we will be looking at during that additional hearing.

We are very grateful to all of you. Some of you have literally labored in the vineyards for decades. You have been at the forefront of the environmental justice movement. You helped to identify it and name it and bring it to life. It may be on life support, but we are going to give it back a good positive future through our joint efforts working together.

I am very grateful again that everyone would participate in this historic hearing, and the hearing is adjourned.

[Whereupon, at 4 p.m., the subcommittee was adjourned.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Today we are going to take a hard look at EPA's environmental justice program and its application. EPA's attempts to interpret the broad and largely undefined concept of environmental justice have been challenging. A series of highly criticized internal guidance documents have created confusion on the practice of executing the duties of President Clinton's executive order 12898. Today, environmental justice means many things to many people, creating a complicated and inconsistent understanding of its purpose and application. It is not a formal rule, but often it is treated like one. As a matter of law, I am concerned that we may be giving a non-binding, legally unenforceable executive order more official standing than is legally permissible.

EPA does not currently provide an official definition or specific guidance regarding the full effects to consider in environmental justice complaints. The community impact analysis, which takes into account the socio-economic and public heath effects of a targeted population, is complicated and often lacks the required data needed to calculate the net benefits industrial development can have in the community. We must make sure that environmental justice programs don't discourage Brownfields redevelopment efforts and other programs that would bring jobs to low income areas.

For example, in 1997, a group of environmentalists opposed Louisiana's issuance of air permits to a $700 million plastics manufacturing facility in Covenant, Louisiana. The coalition argued that the facility would impose a disproportionate pollution burden on the mostly African-American community. The city, its elected officials, and the local chapter of the NAACP supported the project and eagerly awaited the 165 jobs, the $5.6 million in expected school revenue, and the associated health benefits from increased community prosperity. Unfortunately, however, the charges of environmental racism led to EPA's objection to issuance of the permits. In response, the company decided to relocate the facility to Texas. In this case the environmental justice advocates may have won, but at the expense of the state and the local community. The term environmental justice was used as a rhetorical tool and prevented much needed and desired development in the community. Unfortunately it lacked the cumulative impact analysis required of such a comprehensive sociological issue.

In an attempt to clarify the agency's policy on environmental justice and in response to the criticisms of inconsistent application, EPA created the Environmental Justice Smart Enforcement Assessment Tool ("EJSEAT"). Although the EJSEAT is considered strictly by the agency as an internal management document for screening agency actions, I am concerned that this internal document alters the rights of outside parties and acts outside its legal reach and its intended purpose.

EPA's various guidance on environmental justice over the last 13 years is considered an interpretive rule, stating what the agency "thinks" and serves only to remind affected parties of existing duties. The courts have decided that interpretive rules are not subject to the Administrative Procedures Act ("APA") and are outside the scope of judicial review. This leaves ultimate discretion to the EPA on what are "high and adverse impacts." The APA, set forth by Congress 60 years ago, created a consistent and transparent process for agency rule makings. An interpretive rule, like the EJSEAT, is not meant to affect substantive change in regulations or serve as a basis for denying permits, as it has effectively done in the past.

EPA's continued efforts to protect vulnerable communities from intentional discrimination are commendable. But I fear for every success story of where an EPA justice grant made it possible for a community to educate its residents and improve public health, there is an example of where the term environmental racism was used as a rhetorical tool to mobilize activists, cast blame, and generate unfounded pressure on targeted institutions. I look forward to hearing from the Administration on its progress in implementing its Environmental Justice program, and ideas for making the program more uniform and predictable in its application.

STATEMENT OF HON. LARRY E. CRAIG, U.S. SENATOR FROM THE STATE OF IDAHO

The purpose of today's hearing is to examine EPA's Environmental Justice Program and its practical application. Executive Order Number 12898 issued by President Clinton in 1994 has a variety of practical interpretations and legal sideboards. EPA quotes Environmental Justice "as the fair treatment and meaningful involvement of ALL people with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies."

Generally speaking, there are three areas where environmental justice can be applied:

First, permitting a new facility or proposing a new rule; second, regulating current facilities or updating rules; and third, cleaning up old industrial facilities and revitalizing a community.

Environmental Justice has had exceptional success stories. For example, later today you'll hear about the efforts in Spartansburg, South Carolina where a community banded together to create something better for themselves by utilizing grant programs and community leadership.

However, while there have been some successes, I believe the program has had unintended consequences. In Convenant, Louisiana, local citizens and community leaders were supportive of a manufacturing facility, but due to charges of environmental racism under Title 6 of the Civil Rights Act, EPA objected to the issuance of the needed permits. The facility moved to another state—taking with it 165 jobs and millions in expected school revenue.

The EPA Inspector General and the Government Accountability Office have both been critical of EPA's implementation of the program and the lack of overall implementation direction.

However, we must keep in mind the legal sideboards that apply to this executive order. Environmental Justice in this instance can only be considered an interpretive rule and is not subject to the Administrative Procedures Act (APA). It is outside the scope of judicial review and is not meant to bring about significant change in regulations or serve as a basis for denying permits as it has effectively done in the past.

It is also important to remember that Environmental Justice isn't just an executive order, but an overarching philosophy. At the Federal level, it is very difficult to equitably apply such a broad stroke executive order. States like New York and Idaho are different in so many ways and face problems that are often unique to each state. Therefore, it is important that implementation include local communities and officials and planning and zoning boards, utilize collaborative groups with industry representation and we—the Federal Government—make assistance available through programs like Brownfield grants and environmental cooperative grants.

With that, Madam Chair, I look forward to hearing the testimony.

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Statement to the Subcommittee on Superfund and Environmental Health
July 20, 2007
Prepared by Pamela Miller, Executive Director,
Alaska Community Action on Toxics

I thank The Honorable Senator Hillary Rodham Clinton, Chair of the Subcommittee on Superfund and Environmental Health, and Members of the Subcommittee for holding this important hearing today concerning Superfund and environmental justice issues and for the opportunity to provide a statement.

Alaska Community Action on Toxics ("ACAT") is a statewide non-profit public interest environmental health research and advocacy organization dedicated to protecting environmental health and achieving environmental justice. Alaska Community Action on Toxics mission: *to assure justice by advocating for environmental and community health. We believe that everyone has a right to clean air, clean water and toxic-free food. We work to stop the production, proliferation, and release of toxic chemicals that may harm human health or the environment.*

The United States military, industrial mining and oil corporations have used the lands and waters of Alaska as a dumping ground. These activities have been largely unregulated, allowing contamination to affect the traditional lands, waters, and foods of the Indigenous Peoples and others who reside in Alaska. Alaska Community Action on Toxics (ACAT) has documented 2,000 hazardous waste sites in Alaska (GIS maps on our web site at www.akaction.org). In addition, the north is a hemispheric sink for persistent organic pollutants (POPs), such as PCBs, pesticides, and dioxins, which threaten the integrity of ecosystems and human health.

Indigenous Peoples of the north are particularly vulnerable to the health effects of persistent chemicals because they are reliant on traditional foods such as fish and marine mammals. Many POPs originate from thousands of miles away, traveling northward via wind and ocean currents and in the bodies of migratory animals. POPs accumulate in the cold environment of the north through global distillation. Alaska Indigenous Peoples have a deep concern about the potential long-term health effects of contaminants in traditional foods. Indigenous Peoples in Alaska who are reliant on subsistence foods for their physical, cultural and spiritual sustenance want to know whether subsistence foods are safe to eat. It is a violation of human rights to contaminate the foods that should nourish and sustain. Eliminating sources of toxic chemicals, especially persistent pollutants, is necessary to protect the health of present and future generations. Alaska Native peoples rely on traditional foods such as fish, greens, berries, marine mammals,

waterfowl, and caribou. Fish consumption in rural Alaska is often more than six times the national average.

Alaska is a site of great strategic importance to the Department of Defense from World War II through the Cold War and into present times. There are approximately 700 formerly used defense sites in Alaska, many in close proximity to Alaska Native communities and traditional fishing and hunting grounds and waters. Alaska has been used as an experimental testing ground for the military's nuclear, chemical, and biological warfare programs. Weapons testing ranges encompass an area approximately the size of the state of Kansas. Alaska is perceived as "remote," with small populations of isolated communities that lack the political clout to resist the intrusions. On the Aleutian Island of Amchitka, the U.S. Atomic Energy Commission detonated three nuclear blasts between 1965 and 1971, including the world's largest underground nuclear test, the 5 megaton Cannikin test. At Fort Greely in Interior Alaska, the Army operated a nuclear reactor to make weapons-grade nuclear materials. The Army concealed radioactive contamination that affects workers, residents of nearby communities and the natural environment (ACAT investigative report at www.akaction.org).

Department of Defense policy has been to leave contamination in place, relying on institutional controls such as fences and signs to "prevent" exposures to toxic chemicals. Many of the sites have significant PCB contamination, in addition to massive fuel spills, solvents, herbicides/pesticides, heavy metals, chemical warfare materials, and radioactive waste. Information about these sites is often shrouded in secrecy—FOIA requests take months or years. All sampling information is conducted and controlled by DoD. The DoD frequently prepares grossly incomplete site characterizations and vested-interest science using contractors with no accountability to affected communities. Most sites lack a comprehensive assessment of the nature and extent of contamination. Although millions of dollars are spent on site assessments in Alaska, much of this money is wasted through the conduct of poor science and lack of accountability.

The Distant Early Warning (DEW) Line stations, built to detect missiles and bombers heading toward North America, included 63 military radar stations along the 66th parallel across Alaska, Canada, and Greenland. The Arctic Monitoring and Assessment (AMAP) Report estimates that 30 tonnes of PCBs were used in the stations, with an unknown amount disposed in landfills. The sites in Canada have been more thoroughly studied. The Canadian government has measured PCBs levels ranging from 1-10,000 nanograms per gram in soils. The AMAP report states that: "these numbers can be compared to remote background areas with 0.9 nanograms PCBs per gram soil. As is apparent from measurements in soils and plants, the severely contaminated soils have served as a source to nearby areas." The DEW Line and other FUD sites in Alaska hold significant stores of PCBs, many along the margin of the Bering, Chukchi, and Beaufort Sea coasts, providing a ready path into the marine and/or freshwater environment and the fat-rich food web of fish and marine mammals—animals used by Alaska Natives and others for subsistence.

Military representatives often hold meetings with affected communities and talk earnestly about "partnering with stakeholders," but such officials are notorious for avoiding responsibility for the damage caused to the environment and to the health of Alaska Native peoples. They seldom

integrate local input into their decisions, and tribes have difficulty obtaining basic information about the nature and extent of contamination. Rather than address the actual problem at hand, they require further research studies that include development of "risk-assessment models." One Native leader identifies the problem with risk-assessment when she states,

> *They're trying to tell me that it is acceptable for a certain percentage of my people to get cancer just so they don't have to fix the damage they have caused.*

When tribes report health problems that may be linked to a specific site, agencies are failing to conduct adequate investigations. Community leaders who want to sponsor their own sampling or health assessment programs are faced with high costs and lack of resources.

The U.S. Department of Defense (DoD) and the U.S. Department of Energy, as well as other federal and state agencies, frequently dismiss links with contaminants as "anecdotal" or blame the life-styles of those who are suffering from health problems. When we demonstrated a link between cancer deaths and exposures to military contaminants on St. Lawrence Island, the DoD funded a health organization to go to the Island and conduct anti-smoking campaigns. Only after that attempt failed to assuage the concerns of the Yupik people on the Island (the cancers are not the types one gets from smoking), the DoD finally sent the Army Corps of Engineers to remediate the military site that has been polluting the environment since before it was abandoned in the 1970s. Even then, ACAT and the people of the Island had to provide oversight for the Corps.

Technicians hired by the military conduct inadequate sampling programs. They avoid taking samples in the locations where contamination has been reported and evade remediation methods that would remove toxic materials. They attempt to use "institutional controls" that leave contaminants in place with warning signs and fences, which fail to protect the waters, soil, air, fish, wildlife, and people from contaminants. (We have a photo of one sign at a military contaminated site on St. Lawrence Island that was written in Inupiaq, but the people there speak Yupik!) Sometimes officials respond to community concerns by agreeing to clean up contaminated areas, but then try to utilize less-expensive methods such as leaving contaminants in place in unlined landfills.

At a statewide conference on military toxics and environmental justice conducted by ACAT, representatives (including elders and youth) tribal communities met in round table discussions. Below are examples of how the participants of the workshop view their situations with military toxics.

Ron Englishoe, leader from Fort Yukon, an Athabascan Indian village located in the Interior of Alaska 390 miles north-northwest of Anchorage, not on the road system:

> *No matter what documentation we make, the military people ignore us completely. They listen to us, but that's about all they do. It seems like the age group of people getting cancer are getting younger and younger. So many members of our family died from cancer, are dying from cancer.*

Kathleen Peters-Zuray, Environmental Coordinator under the Indian General Assistance Program (IGAP) for the EPA, from the Athabascan Indian Village of Tanana--290 miles north of Anchorage in the Alaska Interior, not on the road system:

> *I grew up thinking all of this fuel and contamination was normal, until two years ago when I started working in this field. Now I realize how scary it is. Why did my Dad die of brain cancer? Why does my son have asthma? As Natives, we are spiritually, physically, emotionally connected to the land. It's not about money. It's about what we've learned from the ancestors about our land. We live off the land because we don't have a store, and we don't want to eat processed foods.*

Edith Tegoseak, Tribal Environmental Officer of the Inupiat Community of the Arctic Slope, from Barrow which is an Eskimo village 730 miles north of Anchorage, not on the road system:

> *I was overwhelmed to find out how much of the Arctic had been dumped on. The military came in and buried so much without saying a word. It was an injustice to us and our children and the villages around us. I took this anger and frustration and started in my own home--recycling, using non-fragrant products, different shampoos. Then I thought to teach the military. Let them clean up their own messes and prevent others.*

Elder Bill Tegoseak an Inupiat Eskimo leader from Barrow:

> *After World War II, there was a Cold War, which brought about military sites. Now it's part of our daily lives. PCBs, toxic agents, contamination, thousands and thousands of barrels of unexplained chemicals. As we speak, there are landfills seeping into the ocean.. The military does not want to take responsibility for what they have done... Natives can sit on Restoration Advisory Boards, but the military doesn't have to take your advice. They listen and leave, and the problem is not solved. If it was the Potomac River running out of Washington D.C., you can bet it would be taken care of!*

Elder Harriet Penayah, a leader from the Yupik Eskimo village of Savoonga on St. Lawrence Island (Alaska) in the Bering Sea, 700 miles northwest of Anchorage:

> *I became a health aide in my village because there was no nurses or doctors. In those days there was no airport. The public health nurse and doctors came by boat, and they taught me how to give medicine to the people. We were treating TB... but now there's cancer and leukemia in the village, and it's not going away.*

Larry Aiken, Tribal Environmental Officer of the Inupiat Community of the Arctic Slope, at the Village of Atqasuk, which is 57 miles west of Barrow, not on the road system.

> *In 1963, the military was loading up 18 barges of debris [and] a major storm hit Barrow. Toxic liquids and acids ran, and Nelson Lagoon was contaminated. The people got cancer. Cancer didn't inflict our people before... Many, years ago, we were healthy people-- we didn't have toxic waste, we didn't have cancer. It makes my heart break to see my people suffer.*

June Degnan is an Inupiat Eskimo from Unalakleet, located on Norton Sound near military installations in Northwest Alaska. Currently she serves as a liaison between the Department of Defense and the Sitka Tribe of Alaska comprised of a coalition of Tlingit, Haida, and Tsimshian Indians in Southeast Alaska. Sitka is an ethnically diverse city (more than 8,000 population) located on Baranof Island, 558 miles east-southeast from Anchorage, 95 miles from Juneau.

> *A communications cable made of lead was placed in Sitka Sound during World War II. This cable impacts our life systems, on the waterways and the fishing communities. Each of you knows how much toxic waste has been left by the military since they came onto our lands. I know this all too well, because I am a cancer survivor. I acquired cancer in 1994, and although I was victimized by them, I do not consider myself to be a victim. I say "You messed it up; now you clean it up."*

Dr. Ronald Scrudato at the of the School of Public Health State University of New York states in his review of the Adak Naval Air Station and Saint Lawrence Island sites: "*Based on the extensive use of institutional controls and "no further action" remedies for sites that have not been effectively characterized, it is likely that Adak and Saint Lawrence Island will continue to serve as long-term sources of contaminants to the Arctic region.*"

Alaska Native peoples express profound concerns about the health of traditional foods and human health. The Department of Defense must be held accountable for the contamination that affects traditional foods and human health. Some examples of the problem of military toxics follows:

- **Northeast Cape on Saint Lawrence Island (northern Bering Sea)**: The Air Force acquired the strategically located Northeast Cape site in 1952 and operated it as a surveillance station as part of the Cold War North American Air Defense Command from 1952-1972. Beginning in 1982, the Navy used the area as a White Alice communications site. Within an area that encompasses approximately 9 square miles, the Army Corps of Engineers contractors have identified at least 23 contaminated sites that require environmental investigation and cleanup. Contamination includes fuel spills totaling over 220,000 gallons, solvents, heavy metals, asbestos, and PCBs. Recent studies demonstrate that fish downstream from the site contain contaminants (PCBs and PAHs) at levels that warrant a designation of "*no consumption recommended* (according to EPA guidance)."

- **Umiat former Air Force site (Colville River)**: Near the Umiat site along the Colville River, levels of PCBs in soils ranged up to 240,000 parts per billion. PCBs have been detected in broad whitefish and burbot of the Colville River. Contaminant levels in burbot are high at 665 ppb PCBs and 1029.8 ppb DDT/DDE.

- **Cape Romanzof Long-Range Radar Site (western Alaska near villages of Hooper Bay, Scammon Bay, Paimute, and Chevak):** This site contains numerous hazardous waste landfills and spill sites containing fuels, solvents, ethylene glycol, PCBs, and incinerator ash. A U.S. Fish and Wildlife Service report reveals that the Cape Romanzof

Long Range Radar Site has "contaminated the area's environment. Findings indicate that Fowler Creek's sediment is contaminated with petroleum hydrocarbons, and fish and wildlife resources (dolly varden, voles, and red fox) are contaminated with petroleum hydrocarbons, PCBs and DDT-related compounds." The site is within the Yukon Delta National Wildlife Refuge and subsistence fishing and hunting areas of nearby communities.

Several of the state's impaired waterbodies (currently listed as required under 303(d) of the Clean Water Act are degraded due to military activities:

- Eagle River Flats (estuary of the Eagle River near Anchorage) was used by the Army to test incendiary weapons containing white phosphorus. The area is now part of the Fort Richardson NPL site. Thousands of waterfowl have been killed as a result of exposure to the white phosphorus from the weapons range. The Army refuses to assess or remediate damage from the heavy metals and other toxic contamination from the more than 10,000 unexploded munitions in the estuary.
- Cold Bay on the Alaska Peninsula served as a military site and fuel storage area. High levels of diesel fuel and other petroleum products contaminate the cliffs, beach soils, and ocean sediments.
- Garrison Slough (near Fairbanks) contains high levels of PCBs in sediments and fish from military operations at Eielson Air Force Base.
- King Salmon Air Force Base (Alaska Peninsula) contaminated the Naknek River, King Salmon Creek, and aquifers upstream from Bristol Bay with petroleum hydrocarbons, pesticides, heavy metals, and PCBs. DoD selected a remedy of capping large landfills containing thousands of barrels.

The U.S. government exhibits a lack of will in addressing persistent pollutant contamination as a public health issue through such international forums as the Arctic Environmental Protection Strategy and the international treaty on persistent organic pollutants (POPs). The Arctic has become a hemispheric sink for POPs because of the physical and biological characteristics of the Arctic environment that favor the accumulation and retention of POPs in the food web. The weakest aspect of the U.S participation in the Arctic Monitoring and Assessment Program (AMAP) is POPs—this is also the area that may have the greatest health implications for peoples living in the Arctic.

PCBs and other POPs derive from both military and long-range transport, including atmospheric, oceanic and biotransport mechanisms. A recent research report demonstrated that spawning salmon carry PCBs and DDT into lakes as the contaminants are transferred from fats in the muscle tissue to roe deposited in the lakes. Grayling, which feed upon the roe, in lakes with anadromous salmon, had significantly higher levels of both PCBs and DDT. Pollutants in the salmon then are more readily available for bioaccumulation in eagles, bear, and humans. Biotransport provides a mechanism for long-range transport of pollutants that are not chemically persistent or volatile enough to survive atmospheric transport, but which may damage environmental and human health. The authors conclude that all seven species of Pacific salmon are likely to be biotransporters of pollutants into freshwater spawning areas. The levels of PCBs and DDT may be high enough to affect roe hatching and survival.

Transient killer whales that feed on marine mammals in the Gulf of Alaska contain PCBs and DDT in extremely high levels. Concentrations are 14-22 times those of fish-eating killer whales. Concentrations of PCBs and DDT are the highest found to date in Alaska marine mammals. The authors suggest that the contamination may come from military sites and/or SE Asia/China.

In a study of green-winged teal in the Aleutian Islands/Bering Sea, more than 25% of the teal had PCBs at levels high enough to cause reduced hatchability. Twenty five percent of the eggs had mercury levels high enough to cause deformities in chicks. All of the teal eggs contained PCBs and DDT/DDE. Sea otters around Adak Island Naval Air Station (NPL site) had PCB and DDT levels higher than in surrounding areas. Blue mussels of Adak and Dutch Harbor (former defense site) have high PCB levels. Sources are likely both military and long-range transport.

Health effects of persistent pollutants include impairment of childhood development, learning and intelligence; damage to the immune system; endocrine disorders; harm to reproductive health in men and women; and certain cancers. Researchers from the University of California published an article in 2006 that describes their study of records from 1997 to 2001 of adverse birth outcomes in infants whose mothers lived in Alaska villages containing dumpsites potentially hazardous to health and the environment. The researchers identified 10,073 eligible infants born to mothers in 197 Alaska Native villages. Infants whose mothers lived in villages with hazardous dumpsites had a higher proportion of low birth-weight infants than those not exposed, and more infants born to mothers from villages with hazards suffered from intrauterine growth retardation than those with mothers living in villages with low exposures to hazardous dumpsites. This was the first study to evaluate adverse pregnancy outcomes associated with open dumpsites in Alaska Native Villages. Although this project was not set up to identify direct pathways from specific contaminants to adverse outcomes, the researchers referred two three previous studies and noted that several contaminants identified in and proximal to individual dumpsites (arsenic, lead, methyl mercury, and several petroleum hydrocarbons) are associated with negative birth outcomes.

Levels of DDE (a breakdown product of the pesticide DDT) measured in the maternal plasma of Aleutian Island women are greater than levels in women of any of the other circumpolar nations. The following maternal plasma levels of p,p'-DDE were reported within the Arctic Monitoring and Assessment (AMAP) circumpolar study (geometric means, parts per billion (ppb) lipid): Aleutian Islands, Alaska—666.5 ppb; Canada—133 ppb; Greenland—407 ppb; Sweden—84 ppb; Norway—79.4 ppb; Iceland—113.2 ppb; Russia—411.9 ppb. Levels of trans-nonachlor and oxychlordane were highest in women's maternal plasma from Greenland and second highest in Aleutian Island women's maternal plasma. PCB levels, compared as geometric means, ppb lipid) are substantially higher than in Canada, Norway, Iceland, Sweden, and Russia. The authors of the study conclude that levels of PCBs and pesticides do not warrant any restrictions in consumption of subsistence foods.[i] In reviewing the data from this study, Dr. Ted Schettler of Physicians for Social Responsibility observed: "some women are exposed to substantially more PCBs than others and their children are at much greater risk than would be implied by only discussing median PCB blood levels. Data indicate that there are some people in the communities who are really disproportionately exposed to PCBs early in life and means/medians just don't tell their story."

Native children in the Yukon River delta in their first year have ten times the national rate of hospitalization for respiratory infections. Since 1990, the occurrence of cancer among Alaska Natives has been rising at a 30% higher rate than Whites. Studies show above-normal levels of toxic substances such as cadmium, mercury, and PCBs in the blood of Natives who live in the Yukon delta, Northwestern Alaska, and the Aleutian Islands. The studies give the facts, but do not describe the suffering of tribal peoples seeking assistance from ACAT because of health concerns related to environmental contaminants in traditional foods.

The north is suffering from the rapidly intensifying changes caused by global warming. Rates of warming in the Arctic are three times those of temperate latitudes. The only way to stop the devastating impacts of global warming is to drastically curb greenhouse emissions and make a swift transition to renewable energy sources including wind, solar, small-scale hydro, and ultimately, a hydrogen-fuel based economy. Increasing storm surges and rapidly melting permafrost mobilize contaminants associated with military and other hazardous waste sites, especially along the coast and freshwater streams and rivers. Scientists also report that global warming causes the more rapid volatilization and transport of persistent pollutants from lower latitudes into northern and Arctic environments, posing a greater threat to the health of the environment and people.

In Alaska, the 231 ethnically-diverse and widely-scattered tribes provide governance for their people. They administer the day-to-day services for their villages (*e.g.* health clinics, law enforcement, schools), which are largely funded by the federal government. Tribal leaders are deeply concerned about the health of people and the safety of traditional foods. The state and federal agencies dismiss these concerns and continue to allow the military and industry to operate with impunity and with little accountability to the Alaska Indigenous Peoples.

Solutions

- Ratify and implement the international treaty on persistent pollutants, the Stockholm Convention. More than 120 nations have ratified this important treaty that eliminates twelve of the most toxic chemicals on an international basis and includes provisions for the addition of new chemicals that are also persistent and toxic (such as brominated flame retardant chemicals and fluorinated chemicals (in Teflon and many other materials on the market) that are accumulating in northern wildlife and people). The U.S. has not yet ratified this critical treaty.
- Ensure funding and hold the military accountable for the responsible cleanup and restoration of lands and waters contaminated by the U.S. Department of Defense. Prevent the destructive weapons testing and training activities by military operations in Alaska that harm the environment and human health.
- Prevent industrial discharges of pollutants from mining, oil and gas, and military operations that harm water quality, air quality, and human health. Empower communities to participate fully, conduct community-based participatory research, and make decisions to protect the health of present and future generations.
- Prevent the registration of harmful pesticides and other industrial chemicals by the U.S. EPA in order to eliminate the sources of contaminants that adversely affect communities where the chemicals are produced and used, as well as the communities of the

north/Arctic. Ensure the just transition from the production of toxic chemicals to safe processes and products—green chemistry.

- Provide research and development funding to make a swift transition to renewable energy sources and prevent subsidies to oil and other fossil fuel based corporations and nuclear power. Support research and development funding to allow Alaska to become a leader in renewable energy and green chemistry.
- Ensure adequate funding for the training of health care professionals serving people throughout Alaska to prevent, properly diagnose, and treat illnesses associated with environmental exposures.

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[i] Assessment of Exposure to Persistent Organic Pollutants in 5 Aleutian and Pribilof Villages. May, 2000. Bulletin of the State of Alaska Division of Public Health.

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To: Subcommittee on Superfund and Environmental Health of the Senate Environment and Public Works Committee
From: Eugene B. Benson, Legal Counsel, Alternatives for Community & Environment, Inc.
Re: Environmental Justice
Date: July 20, 2007

Thank you for the opportunity to provide a written statement about environmental justice to the Committee.

This statement has three sections. First, it describes our organization and the work we are doing to address environmental injustices. Second, it discusses major challenges to achieving environmental justice. Third, it suggests how government might support environmental just efforts.

I. Alternatives for Community & Environment (ACE)

ACE's Mission

ACE builds the power of communities of color and lower income communities in New England to eradicate environmental racism and classism and achieve environmental justice. We believe that everyone has the right to a healthy environment and to be decision-makers in issues affecting our communities.

Brief History of ACE

Incorporated in 1994, ACE has pioneered an organic and powerful bottom-up model for environmental organizing and advocacy. Our early work supported community leadership on environmental justice issues and provided legal resources for community partners.
ACE is now becoming an organization composed of and led by the constituents we serve. Anchored in our home neighborhood of Roxbury, Massachusetts, we organize residents, build coalitions, and provide legal and technical assistance to win significant concrete victories in Greater Boston and Massachusetts.

Since 1994, we have partnered with more than 40 neighborhood groups representing over 3,500 people throughout Greater Boston, Lowell, Lawrence, and New Bedford. We actively build coalitions and serve as a primary resource for the growing movement for environmental justice in Greater Boston and throughout New England. We have helped groups address persistent problems such as trash transfer stations, vacant lots, and dirty diesel exhaust. Our work has also prevented additional environmental insults such as asphalt plants and freeway offramps. But solving immediate environmental threats is not enough. Thus, many of our initiatives have

grown from individual neighborhoods seeking relief from specific hazards to proactive system-wide efforts, such as converting the public bus fleet from dirty diesel to cleaner alternative fuels, cleaning up and redeveloping brownfields, and promoting a resident vision of sustainable and healthy communities.

Current Work

ACE operates three programs:

- Services to Allies. We provide legal and technical assistance and capacity building services to community groups working for environmental justice and transit equity. We engage in public policy issues affecting environmental justice. We coordinate and staff the Massachusetts Environmental Justice Assistance Network (MEJAN), a voluntary network of more than 200 attorneys, law firms, public health professionals, and environmental consultants that provide pro bono assistance throughout Massachusetts.
- Transportation Justice. We are home to and staff the T Riders Union, which organizes public transit riders to build a unified voice for better public transit in greater Boston. We seek to improve the environment and quality of life in lower income communities and communities of color by achieving transit equity and transportation improvements.
- Roxbury Environmental Empowerment Project (REEP). We develop and support youth environmental justice leadership through a school-based environmental justice curriculum, an after-school youth leadership program, and youth-led organizing projects.

II. Major Challenges to Achieving Environmental Justice

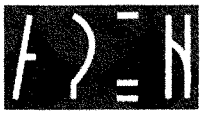
The challenges to achieving environmental justice are many; some of the major impediments we often encounter include:

- Environmental laws and regulations do not prohibit pollution but instead place limitations on pollution and do not require a disparate impact analysis. Consequently, the cumulative impacts of relatively small and more dispersed sources of pollution throughout some neighborhoods may contribute to or exacerbate poor health conditions and a poor quality of life but they may not violate environmental standards. Thus, environmental burdens continue and adverse impacts of pollution are more pronounced in lower income communities and communities of color.
- Compliance with pollution limits often ignores "hot spots" in environmental justice communities. For example, monitoring for particulate matter for air quality ignores hot spots and may not be done in environmental justice neighborhoods. Thus, the air quality in an environmental justice neighborhood may be unsafe, but there is no violation of pollution limits.
- Pollution limits are often set without adequate regard for vulnerable populations, thus allowing levels of pollution that have adverse impacts on people living in environmental justice communities, which often have higher levels of pollution and more vulnerable persons.
- Environmental justice communities lack adequate resources (including access to legal and technical assistance) to analyze and respond fully to proposals for their communities.

- Decisions about environmental justice communities are often made by federal, state, or municipal governments or by private entities without meaningful input from those communities.
- Regulatory processes allow for community input but disregard the substance of the input.
- Too often, environmental justice has become another box for regulators to check off as having been considered rather than a requirement to achieve. We are aware of instances where regulators have approved projects with an alleged environmental justice component that achieve no environmental justice or that result in further environmental injustice.
- Executive orders, policies, and regulations about environmental justice cannot be enforced by environmental justice communities.
- *Sandoval v. Alexander*, 532 US 275 (2001), which requires a showing of intent rather than impact.

III. Suggestions how Government Might Support Environmental Justice

- There should be stronger and more comprehensive environmental justice orders and policies and a strong environmental justice law. They must go beyond simply requiring consideration of environmental justice to requiring that environmental justice be achieved.
- Environmental laws and regulations must require a close look at disparate impact and cumulative impact on the affected community and prohibit adverse disparate or cumulative impact.
- There should be adequate funding to allow residents of environmental justice communities to obtain needed legal and technical assistance.
- Meaningful input is not enough. Residents of environmental justice communities must be decision makers in issues affecting their communities.
- Environmental justice orders, policies, laws, and regulations should be enforceable in court and it must be easier for community residents to obtain standing to challenge decisions that adversely affect their communities.
- Litigation under Title VI showing disparate impact should be allowed based on impact not intent, for if an adverse environmental justice impact is the same whether an action is intentional or unintentional, why focus on intent rather than on how to right the wrong? In other words, there should be legislation overturning the *Sandoval* decision.
- There should be more basic research to identify connections between environmental degradations and community health problems.



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Senate Committee Hearing on Environmental Justice, 7/25/07
APEN Statement

APEN Background: Environmental Justice for Asian and Pacific Islander Communities

The Asian Pacific Environmental Network (APEN) was founded in 1993 because we believe that all people have a right to a clean and healthy environment in which their communities can live, work, learn, play and thrive. Towards this vision, APEN brings together a collective voice to develop an alternative agenda for environmental, social and economic justice. Through building an organized movement, we strive to bring fundamental changes to economic and social institutions that will prioritize public good over profits and promote the right of every person to a decent, safe, affordable quality of life, and the right to participate in decisions affecting our lives. APEN holds this vision of environmental justice for all people. Our work focuses on Asian and Pacific Islander (API) communities.

Environmentally, the API community faces many of the same hazards affecting other communities of color and low-income communities throughout the US. Although research related to APIs and their environments is sorely lacking, the landmark study, "Toxic Wastes and Race at Twenty 1987-2007," by the United Church of Christ Justice & Witness Ministries shows that more than 616,000 APIs live in communities with uncontrolled hazardous waste sites [1].

About 35 percent of the API community in the US resides in California, with the group making up over 10% of the state's population. In the San Francisco Bay Area, where APIs make up over 20% of the population, the need for environmental protection is especially critical [2]. Some of the environmental health and justice issues that APIs in the Bay Area face include:

- Santa Clara County, which has the second largest API population of any county in California, also has the most Superfund sites of any county in the entire US [3].

- The Laotian refugee community in Contra Costa County lives in one of the most toxic regions in the nation. They are surrounded by more then 350 toxic facilities polluting their homes and schools, exposing them to dangerous levels of lead, pesticides, and other chemicals on a daily basis. After a major Chevron oil refinery explosion in 1999, APEN found that the government safety information and warning system was only given in English, thus excluding non-English speakers from protection.

- A significant number of APIs engage in subsistence fishing, consuming contaminated fish as a result. Language barriers often prevent an awareness of the potential health risks, as warning signs are often only in English.

- Fifty-three percent of all textile and apparel workers are Asian women, and 28% are Asian men working under unhealthy conditions due to overcrowding, poor ventilation and lighting, fire hazards, and daily exposure to chemicals such as formaldehyde and other dye preservatives [4].

- Many Asian-owned and operated dry cleaners use perchloroethylene, a carcinogen. Workers and their families are exposed to this toxic chemical [5].

- A large number of APIs work in the Bay Area's micro-electronics assembly plants, and are exposed to carcinogenic solvents daily [6]. After violating several health and safety regulations, particularly by exposing its predominantly Chinese American workers to gallium arsenide, a cell-phone manufacturer in Fremont laid off its workers, shut down its operations and re-opened in China. APEN organized hundreds of these workers to demand accountability from AXT Corporation with long-term health monitoring for illnesses resulting from this working condition.

Major Challenges and Suggestions: Accountability To Communities Exposed To Toxic Hazards

There are cases upon cases of toxic disaster in low-income communities of color that sparked the Environmental Justice movement to form and demand accountability from polluters and perpetrators of the problems. It is also the resilience of our communities, like Richmond's Laotians and Oakland's Chinese, that organize for solutions and muster the Herculean strength to survive these hazardous conditions that improve America's environment, and this planet. We have stepped up to learn chemical safety procedures, public health laws, civil rights history, industry and regulatory agency systems, etc, so that we have the tools to create healthier places to live.

What has been missing from this picture is the government and industry's lack of cooperation and leadership to protect the health of low-income communities of color living next to these toxic sites. When we have been able to win some environmental justice legislation and regulations for cities, states and/or the federal level (like former President Clinton's Executive Order 12898 for Environmental Justice) [8], we have been discouraged and offended to witness that implementation was slow, under-funded or lacking.

To step up our commitment to environmental justice, and to make it easier for officials to step up in these solutions with us, we have helped to outline dozens of recommendations in the Toxic Wastes and Race at Twenty Report for all levels of government, industry, as well our continuing to do our part in our communities. One such recommendation is requiring assessments of cumulative pollution burdens in facility permitting so that places like Richmond, CA can be safer places to live [9]. And in our communities' effort to model solutions, we look for champions in government to lead with us so that we can look to a more comprehensive picture of environmental justice, now.

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COMITE DE APOYO A LOS TRABAJADORES AGRICOLAS
FARMWORKERS SUPPORT COMMITTEE

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Richard Mandelbaum, CATA

Agriculture is often cited as one of the most significant causes of non-point source pollution in the United States. Although organic and sustainable farming methods have been on the rise (organic by as much as 20% annually), the vast majority of agriculture remains chemical intensive. Thus a livelihood that is sometimes idyllically portrayed as stewardship in harmony with the land is responsible for widespread contamination of the air, land, and water with agricultural chemicals and runoff. This has had a profoundly negative impact not only on wildlife and the environment itself, but also on human health. The use of agro-chemicals has exposed not only rural agricultural communities to these toxins where they are first applied, but has also exposed more distant communities by environmental dispersal through the air and groundwater. "At least 143 pesticides and 21 metabolites have been detected" in groundwater around the country, and a 1995 national water survey by the United States Geological Survey found "one or more pesticides...in almost every stream sample collected." (FoE, p.3-5, 3-6)

It is the agricultural community, however, that is most affected, and within that community, it is farmworkers who are at the frontlines of exposure to environmental hazards. ***For farmworkers, environmental pollution represents an occupational hazard.*** Agriculture, in fact, is one of the most hazardous occupations in the nation. Injury rates amongst farmworkers are up to twice as high as the average of occupational injuries for all industries, and the death rate over five times the average. (CPR, p.10) Farmworkers suffer in higher than average numbers from chronic lung disease, cancer, arthritis, lower back pain, dermatitis, acute chemical toxicity (including symptoms such as nausea, vomiting, rashes, and dizziness), noise induced hearing loss, intestinal parasites, urinary tract infections, diabetes, hypertension, hepatitis, anemia, tooth decay, tuberculosis, HIV, conjunctivitis and degenerative eye disease, anxiety and depression." (ASH-NET, p.2; Wilk, pp.17-19)

While other hazardous industries, such as mining, have improved their health and safety records, agriculture has not. (ASH-NET, p.1) In fact, it could be argued that with the advent of chemical intensive agriculture, farm work is indeed more hazardous than it was 100 years ago. "Since 1945, the use of synthetic pesticides in the United States has grown 33-fold." (Friends of the

Earth, p.1-1). The General Accounting Office has estimated that 300,000 farmworkers are acutely poisoned by pesticides each year. (GAO 1992, pp.2-3) This is most likely an under-representation of the problem: Many farmworkers do not report illnesses out of fear of employer retaliation, others simply return to their home country when they are no longer able to work due to illness or injury, and still others are misdiagnosed by medical practitioners. CATA has seen firsthand numerous instances of each of these scenarios in its outreach to workers. Indeed, the GAO itself in a more recent report admits that "the data sources that are available to track acute, short-term pesticide illnesses are incomplete and have limitations that result in the underestimation of both the frequency and the severity of such illnesses." (GAO, p.4)

In addition, the health effects from chronic, long term exposure to pesticides, and the synergistic effect of exposure to multiple chemicals at once, have not been studied sufficiently. Such studies on farmworkers are almost non-existent (a fact which reflects environmental injustice as much as the exposure itself). However, the effect of these chemicals on farmers' health has been studied to some degree. By looking at statistics gathered on farmers' long term illness, it can be extrapolated that farmworkers - who are often more directly exposed to chemicals than farmers and who in general have much less access to quality medical care - would be suffering more from such illnesses. "Farmers... appear to experience elevated rates for several cancers, including leukemia, non-Hodgkin's lymphoma, multiple myeloma, soft-tissue sarcoma, and cancers of the skin, lip, stomach, brain, and prostate." The EPA has also linked the widespread use of endocrine disrupting chemicals to a long list of maladies including "breast cancer, endometriosis, testicular and prostate cancers, abnormal sexual development, reduced male fertility, neurobehavioral effects and immune system suppression." (FoE, p.3-3) CATA's grassroots work amongst farmworkers in New Jersey reinforces the finding of this link between pesticide exposure and illness, as significantly higher rates of illness were reported on those farms in which employers repeatedly violated pesticide regulations. (FHSI, p.29)

The use of synthetic agricultural fertilizers also represents both an environmental and human health hazard. Nitrate contamination of groundwater from fertilizer use is widespread. Once ingested into the body nitrate-derived secondary amines are transformed into nitrosamines, "which are known to be powerful cancer-causing agents and mutagens. Some epidemiologic studies indicate an association between nitrate and non-Hodgkin's lymphoma, stomach cancer, and possibly birth defects." (ASH-NET, p.40) In New Jersey, the use of nitrogen fertilizers has also been linked to the contamination of the aquifer with a radioactive isotope of radium, a potential carcinogen. These contamination rates are further increased by federal agricultural policies that encourage monocultures and maximum yields, an unnatural combination that requires the intensive use of agro-chemicals.

Beginning in 1992, in response to repeated farmworker complaints about contaminated drinking water, CATA began testing wells on farm labor camps in southern New Jersey. It was discovered that almost half of all wells (45%) used by farmworkers were contaminated with high levels of nitrates, as well as E.coli and bacterial coliform. This project, carried out with the collaboration of the resident farmworkers themselves, prompted the EPA and local Departments of Health to begin conducting more systematic tests. Although contamination continues, the success of CATA's campaign is borne out by the fact that contamination rates have steadily fallen. In 1998 the rate was down to 19%.

Because of the high cost and complicated nature of testing for pesticide contamination of water, CATA has not been able to conduct such a survey. However, it can be considered likely that if

agricultural fertilizers are leaching into the wells used by farmworkers, pesticides would be as well. In addition, although no surveys have been done to specifically demonstrate radium contamination in wells on farm labor camps, it is likely that such water sources have higher rates of contamination resulting from on-site fertilizer use.

The health hazards faced by farmworkers are compounded by the poverty and substandard conditions in which they live. Nationwide the median seasonal income for male farmworkers is $5000 and half that - $2500 – for farmworker women. (CPR, p.11) It is estimated that 800,000 farmworkers across the country lack even the most basic shelter and are living in tents, under bridges, in their vehicles, etc. (CPR, p.11) Workers often are not provided soap and clean water to wash pesticide residue from their hands, or field toilets for use during the workday, in violation of the EPA's Worker Protection Standard. Locally, CATA has found that in New Jersey only 50% of workers had access to toilets during the day, and only 20% had access to soap and water for washing their hands. (FHSI, p.2) Only a third of workers have received legally required pesticide safety training, and only half are informed by their employers about safe re-entry times after chemicals have been applied. In 13% of farms surveyed, CATA's outreach workers discovered pesticides improperly stored in the vicinity of farmworker housing. In addition to direct exposure, workers are continually exposed to chemicals in their housing through drift from neighboring fields and from old and malfunctioning plumbing and septic systems that are vulnerable to contamination.

This then is the environment in which food is produced in the US today. Rather than recognize that farmworkers are the proverbial "canary in the coalmine", signaling the risks faced by all members of Society, US policy has furthered these violations of farmworkers' basic human rights by continuously excluding them from protections afforded other workers. By adequately providing farmworkers a healthy and safe workplace, Society at large would be protecting not only the environment but the health and well being of all, since toxic pollution would be controlled and prevented at its source. And yet, EPA pesticide tolerance levels have always been set to residue levels to which consumers are exposed, rather than occupational levels to which workers are exposed. Even the Food Quality Protection Act, passed in 1996 amid praise as the most comprehensive pesticide legislation in US history, completely ignores occupational exposure.

This approach, besides being an unjustifiable violation of workers' rights, is short sighted. ***As long as workers are exposed to hazardous levels of chemicals in the workplace, any regulatory controls will fall short, since this occupational exposure in itself signifies a release of toxins into the environment that cannot be reversed.*** This type of regulatory discrimination is practiced on the local level as well. In New Jersey, the Department of Environmental Protection categorized farm labor camps as locations serving "transient populations" for purposes of its comprehensive state-wide water plan, thus lumping farmworker housing together with places such as highway rest-stops that required the least amount of regulatory oversight. This of course, ignores the fact that many farmworkers return to work on the same farm for many years, and that even if they do not, they would as a result of this regulation be migrating from one unregulated water source to another year after year.

These legal exemptions can be traced back to the institution of slavery, the historical roots of commercial scale agriculture in the US. Although slavery has long been abolished, its legacy survives in societal tolerance for lack of equal rights for agricultural workers. For example, farmworkers (together with domestic workers) are excluded from the National Labor Relations

Act, the New Deal era law that grants all other workers the protected right to organize, and makes it illegal for an employer to retaliate against a worker for organizing activities. Thus farmworkers are not legally protected when they file complaints or attempt to organize based on workplace hazards. Often they are simply fired, or in the case of H2A guestworker programs, fired and promptly deported without the right to appear before an immigration judge. Furthermore, the many farmworkers who are undocumented have even fewer rights and protections – such as lack of access to Legal Services when and if they have been wronged. The US Congress has rejected attempts to grant a general amnesty to these workers despite the fact that it is universally recognized that the nation's agricultural economy is dependent on them. Meanwhile farmworkers are de facto excluded from attaining permanent residency due to restrictive wage requirements impossible for farmworkers to achieve.

Therefore workers who seek to remedy the environmental hazards they confront at their workplace lack the legal rights and protections by which to do so. It is the workers on the farm who see and know the abuses and violations that take place, which often result in environmental pollution affecting the larger community. Due to their lack of labor protections, however, they are effectively silenced from speaking out about abuses. New threats to the environment continue to emerge, such as the widespread adoption of genetically modified crops and the recent EPA approval of the use of heavy metal-laden industrial sludge in agricultural production. CATA has found through its outreach that once farmworkers are provided with information they are very concerned about these issues, perhaps even moreso than many members of the public due to their occupational exposure, in addition to their exposure as consumers. The adoption of the Precautionary Principle, in which substances such as chemicals and GMO's must be proven safe before they are permitted for use, would protect not only workers on the frontline but the entire human food chain as well as the environment.

By empowering farmworkers with equal rights and sufficient protections from employer retaliations, Society would reap a tremendous environmental benefit – in addition to reversing an unjustifiable discrimination. For it is workers who have the most direct stake in transforming agricultural production into one that is ecologically benign. Public policy should encourage and facilitate accurate information gathering and organizing efforts by farmworkers around these issues, rather than hinder them as it does today. Instead, current policy harms not only workers but the public, the environment, and the farmers themselves. Indeed, the only ones who benefit are a small number of agri-business corporations that make large profits from the current agricultural economy, while the health and well-being of farmworkers, family farmers, and the public is compromised.

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Community In-power and Development Association Inc.
409-498-1088
(CIDA Inc.)

Statement
To
Subcommittee on Superfund and Environmental Health of the Senate Environment and Public Works Committee

1. **A description of your organization and the work that you are doing to address environmental justice.**

Mission

The Community In-Power and Development Association (CIDA) is a 501(c) (3) nonprofit organization that empowers residents of the low-income Port Arthur, Texas communities to take action against the neighboring chemical manufacturers, Refineries and incinerators to keep them from polluting our air, land, and water. CIDA was founded in 2000 with the belief that chemical polluters should be held accountable for the chronic, systematic poisoning of low-income communities living along the "fence line" of their operations. In keeping with this belief, CIDA Inc. has created a grassroots initiative that:

1. Collects scientific data about the sources, types, and amounts of pollution emitted by our polluting neighbors.
2. Educates residents of our community (who are overwhelmingly low-income individuals and people of color) about the toxic burden we shoulder.
3. Unites Port Arthur residents to take action against major chemical polluters, advocating for socially responsible refineries and chemical plants and the reduction of toxic emissions.
4. Works with other low-income, communities of color in the United States via the Coming Clean Campaign and internationally in South Africa via the Global Community Monitor.
5. With our national and international partners, approach polluters (such as Shell Oil) at their annual share holder general meetings.

2.The major challenges you have identified that are facing your organization and organizations like yours in seeking to address environmental contaminants and clean up communities.

-One of our biggest obstacles is dealing with city officials that cater more to what industry needs rather than to the health and safety needs of the community they were put in office to serve.

Due to the fact that our community has become an industrial town, one would think that there will be some type of bells and whistles in place to protect the residents from dangerous emissions. Our local government has no environmental committee to handle environmental issues in our community. CIDA Inc. is the only line of defense against industry.

-More funding opportunities should be provided for EJ groups on the fence line of Refineries and chemical plants and other big polluter. This funding can come from the fine money that

many of these big polluter have to pay due to environmental violations. Many times the fine money goes to the state and the communities that are being impacted never see a dime of the fine revenues which could be used to repair and rebuild dilapidated polluted areas in the community and give health care to those who's health has been impacted.

Lack of enforcement by the EPA is a major problem. EPA should be better equip financially to assist with enforcing the clean air act laws.

- Create policy that limit industrial lobbyist political contributions on the hill in Washington DC and on the state level.

3. Suggestions for the ways in which federal, state, and local governments can support environmental justice efforts.

Environmental justice efforts can be supported by Federal, State and Local government by seriously and aggressively enforcing the clean air act laws presently on the books.

Create policy that ensures the safety and health of residents living on the fence line of these industries, create policies that will make community safety top priority when industry seeks a permit to emit toxins into the environment make sure that all big polluter use best available technology on their smoke stacks and process unites and when ever possible we must insist that emission recovery unites are in place to recover toxins from going into the air and ultimately spread over communities.

Keep school away from these polluter make it mandatory that all schools are not with in a two mile radius of polluting facilities.

Make it mandatory that local governments protect it's residents from big polluters by providing a pollution safety team that monitors it's polluting industries or have local government partner with local non-profit EJ groups to help protect the public. The billions of dollars that's collected in fines from big polluters each year can be used to support local government that works with EJ non-profits that are fighting to clean up their community and our environment.

Hilton Kelley
Dir / Founder (CIDA Inc.)
Community In-power and Development Association Inc.
A "united voice in the community by the community".
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To: Subcommittee on Superfund and Environmental Health
From: The Center on Race, Poverty & the Environment
Re: Statement for Hearing on Environmental Justice
Date: December 13, 2011

I. The Center on Race, Poverty & the Environment

The Center on Race, Poverty & the Environment ("CRPE") is a national environmental justice advocacy organization with offices in San Francisco and Delano, California. We provide legal and technical assistance to grassroots groups in low-income communities and communities of color fighting environmental hazards. We use campaigns around specific environmental hazards to seek environmental, economic, and racial justice in these communities. We use organizing, training, administrative advocacy, coalition-building and litigation to accomplish our aims. CRPE's vision is environmental justice for all. Our mission is threefold:

(1) First, that individuals taking part in a particular campaign leave the campaign with more personal capacity than they had coming into it;

(2) Second, that the community involved has more power vis a vis decisionmakers at the end of the campaign than at the beginning; and

(3) Finally, to concretely address the environmental hazard at hand.

CRPE has a 16-year history of using civil rights laws in environmental struggles. We filed pioneering lawsuits such as *South Camden Citizens in Action v. New Jersey Department of Environmental Protection*. CRPE has published more than a dozen articles on using civil rights advocacy in environmental struggles and for 13 years has published the journal *Race, Poverty & the Environment* with Urban Habitat. CRPE coordinated the national response to U.S. EPA's fitful attempts to define its civil rights policy; CRPE wrote comments signed on to by over 100

community groups on EPA's civil rights guidance in 2000. CRPE represents groups from New York to Alabama to California in administrative civil rights complaints under Title VI, challenging the disparate impact of siting decisions in dozens of communities.

For more information on CRPE's campaigns and work, please visit our website at www.crpe-ej.org.

II. Major Challenges Facing Environmental Justice Organizations.

A. Lack of Civil Rights Enforcement or Remedies.

Environmental hazards in the United States are not distributed equitably: their burdens fall most heavily on the poor and people of color. This disparate impact is found in every environmental hazard that affects humans, from air pollution, pesticide poisonings, lead poisoning, water contamination, proximity to toxic waste dumps, and lack of access to open space, to noise pollution, hazardous workplaces and deliberately incompatible zoning. Title VI of the Civil Rights Act of 1964 bans discrimination by entities that receive federal financial assistance. Since 1994, CRPE has filed about 12 Title VI administrative civil rights complaints with the US Environmental Protection Agency and others alleging disparate impact in the distribution of environmental hazards. Unfortunately, in 14 years of receiving civil rights complaints, the EPA has never ruled in favor of a civil rights complainant and has never facilitated positive action on the community's behalf. Hundreds of community organizations across the nation can attest to the EPA's failure to take action. For example, the Rosemere Neighborhood Association who lodged complaints 01R-03-R10r and 01R-03-R10 recently filed an action against the EPA in Washington federal court challenging the EPA's failure to act under the Administrative Procedure Act.

Further, in 2001, the Supreme Court decided *Alexander v. Sandoval*, which eviscerated civil rights plaintiffs' ability to use the disparate impact standards in Title VI regulations when suing discriminating agencies. Thus, plaintiffs alleging discrimination in federal court must prove intentional discrimination – a largely impossible task. This leaves only one forum for the enforcement of the civil rights of environmental justice communities. Those communities who bear the disparate impact of environmental hazards (but do not have proof of intentional discrimination) must file administrative complaints with the agencies that have enacted disparate impact regulations, such as the EPA. The EPA has 5 days from receipt of the complaint to notify the complainants and 180 days after receipt to conduct a preliminary investigation into the complaint and decide whether to resolve it informally, dismiss or refer to another agency.[1]

However, the EPA consistently violates the time limits in its regulations – some complaints have been accepted for investigation by the EPA for over 13 years with no final action taken. Most complaints filed with the EPA are either rejected, dismissed or no action is taken – in CRPE's experience of filing complaints and working with more than 100 groups which have filed civil rights complaints, we know of no occasion in which EPA helped successfully resolve a civil rights

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[1] EPA's Title VI regulations are located at 40 C.F.R. part 7.

violation. These extreme delays mean that, nationwide, communities who bear disparate impacts as a result of programs or policies implemented by governments and government agencies are denied relief and denied justice.[2]

CRPE is currently networking with other environmental justice groups create nationwide support for H.R. 3809, the "Fairness and Individual Rights Necessary to Ensure a Stronger Society: Civil Rights Act of 2004" ("Fairness Act"). A provision in the Fairness Act would restore a private right of action to enforce the Title VI disparate impact standard eviscerated by *Alexander v. Sandoval*. Reinstating this right to access the courts would create another forum for civil rights complaints to be heard and would prevent the EPA from denying justice to civil rights complainants nationwide.

B. Co-option.

Another major challenge facing environmental justice organizations is that decision-makers define environmental justice by focusing on participation in the rule-making process. Decision-makers believe that by letting community members be involved, they are giving the community a voice and meeting the community's environmental justice needs. As such, the environmental justice community is co-opted – while the community believes it is having meaningful input, decision-makers feel free to disregard their interests, believing that they have fulfilled their duty to treat all members of the public fairly.[3] Although the public is allowed to participate, no substantive changes are being made to address environmental justice communities' interests. Mere compliance with process or procedure that does not result in pollution reduction and prevention for those who, because of poverty and or race are exposed to many more health hazards than others, is ineffective and is not environmental justice.

B. The EJ Community's Lack of Resources.

Environmental justice disputes often pit low income communities against large profitable corporations. The community is thus faced with the issue of how to withstand and adequately reply to and address the reports paid for and produced by their corporate adversaries. The community must fight an uphill battle because it does not have the money or connections at hand to be able to combat the "science" that is used against it. The major flaw in the process is that the law does not require the company to prove that its operations near the community will be environmentally safe, instead the community must prove that it will be or is harmed.

C. Decision Makers Ignore Cumulative Impact.

A major environmental justice issue is the lack of equitable siting of hazardous materials release sites. Because no regulations currently prevent polluters from moving into neighborhoods where a certain threshold of pollution capacity has already been exceeded, many environmental

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[2] For another statement regarding EPA's failure to enforce or act, please see the statement filed by Ingrid Brostrom on behalf of the Arvin Community Task Force.

[3] See, California Government Code Section 65040.12.

justice communities are surrounded by numerous environmental hazards. For example, certain south central Los Angeles community residents live within a one-mile radius of six or seven hazardous waste sites. Residents of San Francisco's Bayview-Hunter's Point are exposed to over 280 sources of toxins. Corpus Christi, Texas' Northside neighborhood is immediately adjacent to "Refinery Row" where over 16 refineries and other polluting industries are located, a superfund site and a sewage waste treatment facility. Meanwhile, agencies charged with implementing environmental laws focus on area wide compliance and ignore these toxic hot spots.

III. How Federal, State and Local Governments Can Support Environmental Justice Efforts.

A. Federal Disparate Impact Standard.

In *Alexander v. Sandoval*, the Supreme Court eviscerated the right to enforce the disparate impact standards in Title VI regulations. The Fairness Act has been proposed in Congress. The Act would reinstate a private cause of action to enforce the disparate impact standard as well as bolster many other elements of civil rights law. We urge Senator Clinton and other committee members to endorse the bill.

B. The Precautionary Principle

Federal, State and Local governments should all use the Precautionary Principle as the basis for all environmental and public health laws, regulations and decision-making processes. The principle imposes a duty to prevent pollution and to err on the side of public safety. Governments and government agencies should focus more time and resources on implementing preventive measures, instead of simply focusing on how to clean up pollution that has already been created. Achieving environmental justice requires not only addressing current environmental problems, but also preventing new ones.[4] To prevent new environmental justice problems, permitting agencies must evaluate cumulative impacts and incorporate an alternatives assessment into the process of evaluating new permits. Further, the precautionary principle should be applied not only to initial rule making or permit decisions, but should also should be applied to require subsequent assessments of whether the permits or rules are achieving intended goals.

Governments should direct serious attention to and grant funding to organizations dedicated to uncovering ways that industry can be encouraged to develop alternate methods of production – "better than best" – to refrain from generating hazardous waste. Environmental legislation and regulation should be technology forcing. Yet, no laws currently prohibit companies or individuals from "generating" hazardous materials.[5]

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[4] Martha Matsuoka, ed., Building Healthy Communities From the Ground Up: Environmental Justice in California, Asian Pacific Environmental Network, et al., 2004, 13.

[5] Dominique R. Shelton, The Prevalent Exposure of Low Income and Minority Communities to Hazardous Materials: The Problem and How to Fix it, Beverly Hills Bar Association Journal, Summer/Fall 1997.

C. Cumulative Impact.

Permits should be denied in communities where certain thresholds of exposure to pollution have already been reached. Any objective definition of cumulative health impacts must consider, among other factors: (1) already existing health issues in the affected community, including health problems not directly caused by pollution, but which, when coupled with the effects of pollution contribute to deterioration in the quality of life; (2) the impacts of exposure to multiple hazardous materials release sites in the surrounding area; and (3) any possible health hazards associated with long-term exposure to low-level (permissible) emissions of hazardous materials. Although the effects of long-term exposure are difficult to quantify, they cannot be ignored.

Any studies of community health should involve residents in all phases of the study, including study design implementation and evaluation. Community residents are the experts as to their own day-to-day living conditions and health threats in their communities. By including community residents, they will become aware of the health issues they are facing and will be educated on how to protect their health. This puts power back into the hands of affected communities and gives them the tools they need to be effective.

D. Zoning.

Local governments and municipalities need to re-evaluate zoning laws with adverse effects on impacted communities. They must consider cumulative impact before allowing toxic industries to accumulate in one area. In California, the siting of hazardous materials release sites is an issue of local control. Any municipality can pass prohibitory ordinances.

A huge problem with the environment in low-income communities of color is that they are largely ignored for redevelopment. Equitable development through infill incentive programs can help make infill development attractive and feasible, helping to catalyze revitalization, boost jobs, purchasing power and generate tax dollars for local government. Currently unused land can be put to use for the creation of new community assets such as childcare centers, art districts, parks and shopping areas. Such measures will go far toward removing the blight and crime associated with vacant and abandoned properties. In urban areas, smart growth principles emphasizing the creation of integrated, multi-use districts that blend housing, services, recreation and jobs should be utilized.

The bottom line is that the economy and political clout of the affected areas must be strengthened so that the community will have a meaningful voice in decisions that affect their lives – environmental justice is inextricably linked with economic justice.

E. Public Participation and Community-Capacity Building.

A community must be allowed to not only participate in decision-making, but also to have an actual effect on government action. Community input must be acted on, not just listened to – participation is only meaningful if it is efficacious.

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To: Subcommittee on Superfund and Environmental Health
From: The Center on Race, Poverty & the Environment
Re: Testimony for Hearing on Environmental Justice
Date: December 13, 2011

Dear Senator Clinton and Committee Members:

Thank you for providing this opportunity to provide testimony on the environmental justice concerns facing our communities. While we work with many communities facing environmental injustices, I would like to highlight one in particular. Arvin, California is a small, rural city at the southern tip of the State's largest agricultural region. The community is home to around 15,000 residents, most of whom are Latino and low-income. Arvin also hosts a contaminated Superfund Site.[1]

For over twenty-five years, toxic chemicals from an abandoned pesticide plant have been seeping into the city's soils and groundwater aquifers. The contaminated site was listed as a Superfund site in 1989, but little clean-up has been done since that time. Because of years of EPA inaction, the city is now being forced to close its most productive drinking water well to ensure that the plume of toxic contamination does not destroy the entire drinking water aquifer. In addition, the plume has already reached and contaminated the top two layers of groundwater and is separated

[1]In addition, Arvin has the worst air quality in the Nation, as measured by annual smog violations. Cumulative effects from several sources also disproportionately impact low-income, communities of color. See testimony of Marybelle Nzegwu.

from the drinking water aquifer by only a layer of clay.

After 25 years of waiting, EPA has finally proposed a clean-up plan for the groundwater. EPA's preferred option would leave the second, larger aquifer contaminated and leave most of the contaminated soil in place that may potentially re-contaminate the upper layer. The question must be raised... would the EPA have taken as long and chosen such an inadequate remedy if the city had been predominately white?

In 1992, Marianne Lavelle and Marcia Coyle published a historic study looking at environmental justice concerns surrounding the Superfund program. According to the study, EPA took longer to address hazards in communities of color than in largely white communities and EPA accepted less stringent cleanup remedies in communities of color.[2]

From my experience working in Arvin, the study's findings are still applicable today, 15 years later. In Arvin, the EPA has delayed action, has chosen an incomplete and ineffective remedy, and has effectively kept the city and its residents out of the process.[3]

In Arvin and elsewhere, environmental racism continues to plague our countries' most vulnerable residents. Therefore, it is my sincere hope that this sub-committee will fight to implement the proposals in Dr. Robert Bullard's the Toxic Waste and Race at Twenty report and the suggestions in the testimony of Marybelle Nzegwu from the Center on Race, Poverty & the Environment.

Sincerely,

Ingrid Brostrom

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[2]Marianne Lavelle & Marcia Coyle, Unequal Protection, NATIONAL LAW JOURNAL (Sept. 21, 1992).

[3]For example, no documents have been translated into Spanish and residents were not aware that contamination remained on the site.

Statement from Craig Williams, Director
Chemical Weapons Working Group
2006 Goldman Environmental Prize Recipient
P.O. Box 467, Berea, KY 40403 (859) 986-7565
www.cwwg.org

July 20, 2007

The Chemical Weapons Working Group (CWWG) is a national grassroots coalition of citizens living near U.S. chemical weapons stockpile sites in Alabama, Arkansas, Colorado, Indiana, Kentucky, Maryland, Oregon and Utah. The CWWG has for sixteen years worked to promote the safe disposal of chemical weapons; to ensure that the U.S. Army destroys our nation's own weapons of mass destruction without destroying our health and the environment.

Hundreds of communities all over the nation are subjected to historical and ongoing toxic contamination from the Department of Defense. Ironically, the weapons and warfare items created to defend the American public have devastating impacts here at home. This is certainly true for the chemical weapons disposal program, where low-income and minority communities suffer disproportionately from the risks of chemical agent exposure. The CWWG has succeeded in defeating four of eight proposed chemical weapons incinerators, in favor of safer disposal methods that prevent toxics emissions to the air, water and soil. However communities where incinerators are located – in Alabama, Arkansas, Oregon and Utah – are still at tremendous risk from emissions of chemical agent, PCBs, mercury and a host of other chemicals.

One glaring environmental racism challenge is the Army's choice to ship VX chemical agent byproduct – called hydrolysate – from a stockpile site in rural Indiana to Port Arthur, Texas, a comparatively poor and a minority community, to be incinerated. The Army began shipping the waste on April 16, 2007 to the Veolia Environmental Services incinerator, which is slated to burn roughly 2 million gallons of hydrolysate over the next two years. The decision was made in secret, with no public involvement as required by the National Environmental Policy Act (NEPA). Port Arthur is a community already overburdened by toxic emissions from oil refineries, chemical plants and other waste disposal facilities.

The Army, waste industry and state and federal regulators legitimize the shipment by saying there are worse chemicals being shipped on highways and railways every day. They also point out that incinerators like the one in Port Arthur are already permitted to burn waste from all over the country. They are correct, but their arguments only prove the extent to which our government and industry are willing to sacrifice the health of entire communities. The winners are Army managers seeking to avoid liability, and waste industries whose pockets are lined with dirty government contracts. Everyone else loses, and the agencies directed to protect and defend Americans fail once again.

There is an easy remedy for this situation. The Indiana community has supported, and the state has permitted that the hydrolysate be safely destroyed at the Newport Army Depot. The technologies exist and could be deployed today if state agencies, EPA and federal legislators exercised their duty to prevent harm through consideration of safe alternatives in the NEPA process, and follow the intent and guidance of the Executive Order on Environmental Justice. Neither Port Arthur nor any other community should suffer needlessly from toxic incinerator emissions when safer technologies for destruction of our most hazardous military and industrial wastes exist.

Appropriations for Environmental Justice Program Activities Administered by EPA: FY2004 through FY2008 Enacted and Requested
(amounts in millions of dollars)

As of February 16, 2007

	Environmental Programs and Management (EPM) Account		Hazardous Waste Superfund Account		Total	
	Requested	Enacted	Requested	Enacted	Requested	Enacted
FY2004	$4.14	$5.81	$0.90	$0.90	$5.04	$6.71
FY2005	$4.23	$5.88	$0.90	$0.94	$5.13	$6.82
FY2006	$3.98	$5.57	$0.85	$0.83	$4.83	$6.40
FY2007	$3.86	est. $5.57	$0.76	est. $0.83	$4.62	est. $6.40
FY2008	$3.82	—	$0.76	—	$4.58	—

Prepared by the Congressional Research Service with information from the following sources:

The FY2004 and FY2005 requested amounts are from the Environmental Protection Agency (EPA) *FY2005 Annual Performance Plan and Congressional Justification.*

The FY2004 enacted amount for the EPM account is as reported in the House Appropriations Committee Report (H.Rept. 108-674) for the House-passed FY2005 Veterans Affairs and Housing and Urban Development, and Independent Agencies (VA-HUD) appropriations bill (H.R. 5041) and reflects a 0.59% across-the-board rescission required by the Consolidated Appropriations Act for FY2004 (P.L. 108-199). The House report did not report a specific amount for the Environmental Justice Program funding in the Hazardous Waste Superfund account. The conference report (H.Rept. 108-401) on the Consolidated Appropriations Act for FY2004 also did not specify an amount above or below the President's FY2004 request for this purpose in the Superfund account, therefore the amount in the table above assumes the requested amount was provided within available funds, and *does not* reflect the 0.59% across-the-board rescission.

The FY2005 enacted and FY2006 requested amounts are as reported in the conference report (H.Rept. 109-188) on the Interior, Environment, and Related Agencies Appropriations Act for FY2006 (P.L. 109-54). The FY2005 enacted amounts reflect an across-the-board rescission of 0.80% required by the Consolidated Appropriations Act for FY2005 (P.L. 108-447).

The FY2006 enacted and FY2007 requested amounts are as reported during the second session of the 109th Congress in the House Appropriations Committee report (H.Rept. 109-465) for the House-passed FY2007 Interior appropriations bill (H.R. 5386). The FY2006 enacted amounts reflect a 0.476% across-the-board rescission required in the Interior Appropriations Act for FY2006 (P.L. 109-54), and a 1% government-wide rescission required in the Department of Defense Appropriations Act for FY2006 (P.L. 109-148).

The FY2007 estimated enacted amounts are based on the provisions of the joint resolution H.J. Res 20 passed in the House and Senate during the first session of the 110th Congress, making further continuing appropriations for the fiscal year 2007. The resolution provides full-year continuing funding at the level and under the authority and conditions in the applicable appropriations Act for fiscal year 2006, unless otherwise specified in the resolution.

The FY2008 requested amounts are from the Environmental Protection Agency (EPA), *FY2008 Annual Performance Plan and Congressional Justification*; as of the creation of this table, Congress had not proposed or enacted FY2008 appropriations legislation for EPA.

Appropriations for Environmental Justice Program Activities Administered by EPA: FY2004 through FY2008 Enacted and Requested
(amounts in millions of dollars)

As of February 16, 2007

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The FY2008 requested amounts are from the Environmental Protection Agency (EPA), *FY2008 Annual Performance Plan and Congressional Justification*; as of the creation of this table, Congress had not proposed or enacted FY2008 appropriations legislation for EPA.

Statement of Sheila Holt-Orsted

Before the U.S. Senate Committee on Environment and Public Works,
Subcommittee on Superfund and Environmental Health

July 25, 2007

My name is Sheila Holt-Orsted. My family and I are from Dickson, Tennessee. I would like to thank Senator Boxer and Senator Clinton for inviting me to share my family's story with the Committee.

In December 2002, I returned to my hometown in Dickson for the Christmas holidays. I arrived to find my community riddled with cancer, including my wonderful father, who had just been diagnosed. I was so disturbed that when I returned to Virginia, where I lived at the time, I went for a full physical. The biopsy report showed that I had Stage Two breast cancer. Five years later the doctors tell me that my cancer is in remission, after five operations, chemotherapy, and radiation.

I have always taken care of my health, and in fact had made a career of it. At the time I was diagnosed with breast cancer, I was teaching several aerobics classes per day, competing in two recreational basketball leagues,

and working as a personal trainer. I am a former Miss Tennessee heavyweight and mixed pairs bodybuilding champion.

I was devastated by the cancer diagnosis, and I began looking for answers. I didn't have to look far. My family's farm – the place where I grew up, spent holidays and vacations, and have lived with my daughter as an adult – is adjacent to the town landfill, where the City and County of Dickson had allowed private companies to dump toxic chemicals for decades. Among the chemicals dumped in the landfill was TCE, or trichloroethylene, a cancer-causing chemical that is used as a metal degreaser. It is one of the most toxic chemicals known to man.

I made records requests and started searching through documents in the State's files. I learned that lab tests from 1988 had shown the presence of TCE in our water. I also learned that in 1990 and 1991, the EPA tested our water and results showed more than 5 times the EPA limit for TCE in our water, but despite those results, the EPA sent us a letter stating, "use of your well water should not result in any adverse health effects." This assurance was a lie.

I also learned that in 1991 a state employee went to his supervisor because he was concerned that EPA had misinformed my family about the

safety of our water. The supervisor suggested that EPA be contacted and questioned about the letters we had received. The EPA said they were not in a position to deal with it at that time. The State decided not to do anything about it either. One letter that I found in the State files – copied to various agencies, including the EPA – said they decided not to warn us of the TCE contamination to avoid the "confusion of having various agencies" sending different signals. The State of Tennessee was more concerned with not contradicting EPA than with protecting my family from a known cancer-causing chemical in our water.

No one lives closer to the landfill than my family does. In the late 1960s, the City placed the landfill just 57 yards away from our property. But even though we lived 57 yards from a landfill that was a documented TCE site and our water had previously shown TCE contamination, no agency – not the EPA, not the State, and not the local government – tested our water for another 10 years.

Among the documents I found in the landfill files, I also found letters written to white families who lived near the landfill whose water was being monitored. These families were warned when tests indicated that their well water was contaminated with TCE, and they were immediately placed on

clean drinking water from the municipal supply to minimize harm to their health.

But from 1991 to 2000, while the government monitored water from white families' farms, water from duck ponds, and even the water at the dog pound, our water went untested. It was truly shocking to learn that dogs that were waiting to be put to sleep were given more concern than my family.

My family filed a lawsuit in 2003 and we hope to find justice. Despite our efforts over the past four years to find justice, no person or agency has yet been held accountable. No one has ever told us that they care that they ruined my family's health and my family's property. We have figuratively and literally been treated like garbage. My father, who was diagnosed with cancer in 2002, died in January of this year. We buried him on January 13, 2007, the Saturday before Martin Luther King Day.

You would have to have known my father to truly understand my family's loss and why we miss him so much. He was a man who loved God and his family. I only heard him say one curse word in my entire life, when someone ran a stop sign and almost hit our car head-on. He sang in a gospel band for 48 years. I believe he is now singing in a heavenly quartet where he isn't being judged by the color of his skin.

One lawyer we spoke to a few years ago told us that the people we were suing were simply waiting for us to die – that they will drag the court proceedings on as long as possible, because time is on their side. Although my previous career as a personal trainer has been taken away from me, the horrible experience of the past few years has given me a new goal – to be an advocate not only for my own family, but for other victims of environmental racism and injustice. No community deserves to be used as a toxic dumping ground. We must fight for environmental justice, just as we fought for equal education, equal access to employment, and fair housing.

Thank you for allowing me to share my family's experiences with you.

TESTIMONY FROM THE LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW

1. A description of your organization and the work that you are doing to address environmental justice.

The Lawyers' Committee for Civil Rights Under Law is nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to involve the private bar in providing legal services to address racial discrimination. The principal mission of the Lawyers' Committee is to secure, through the rule of law, equal justice under law. Established in 1991, the Environmental Justice Project works with the private bar to represent and advocate on behalf of communities of color challenging environmentally discriminatory conditions and decisions. The Environmental Justice Project seeks justice for people of color who are fighting to clean up contamination in their community or who are fighting to stop environmentally harmful activities from occurring in their neighborhoods.

Over the past two years, we have focused on the environmental justice implications of Hurricanes Katrina and Rita. We convened the National Commission on Environmental Justice on the Gulf Coast. The Commission is a panel of prominent academics, local community leaders and civil rights practitioners charged with creating a comprehensive report detailing the history of environmental justice issues unique to the Gulf and in the wake of Hurricanes Katrina and Rita. The Commission held four hearings receiving testimony from local community members, officials, policy and lawmakers, and activists. Testimony included concerns over the historic lack of enforcement by the Environmental Protection Agency and the Army Corps of Engineers as well as the disregard for the continued vulnerability of minority and low-income communities despite the wrath of Katrina and Rita.

In addition to supporting the National Commission, the Project is monitoring the environmental conditions of public schools and efforts to improve environmentally hazardous conditions. The Project is also assisting minority and low-income communities across the country in challenging permits issued for polluting and environmentally degrading activities.

2. The major challenges you have identified that are facing your organization and organizations like yours in seeking to address environmental contaminants and clean up communities.

The biggest challenge facing our organization and similar organizations is the lack of clear federal support and guidance on achieving environmental justice. Theoretical support for environmental justice has failed to translate into tangible action and relief. The Executive Order and aggressive oversight by the EPA's Office of the Inspector

General as well as the General Accounting Office are important and are to be commended. However, a demonstrable commitment to securing environmental justice is required. This can be achieved, in part, by defining environmental justice communities in racial, ethnic and economical terms and ensuring enforcement efforts do not ignore the realities of historical discrimination against these communities.

Additionally, the lack of resources to assist those in need is a significant challenge. Because federal and state agencies are failing to protect communities, communities look to non-profit organizations to assist them in picking up the government's burden. For example, our organization has received requests for assistance on matters involving the operation of a waste incinerator near a school, the excessive expansion of a landfill in a minority community, aggressive illegal wetlands filling in minority communities. The lack of accountability of polluting industries to the neighborhoods in which they are located impacts hundreds of communities, too much for national organizations to effectively address, and in many cases too complex or politically impossible for local residents to challenge. The result is continued violations of the law and an ever increasing burden on people with limited economic and political power.

3. Suggestions for the ways in which federal, state, and local governments can support environmental justice efforts.

Enforcement

Real enforcement of existing environmental laws (CAA, CWA, RCRA in particular), especially in minority and low-income communities, is critical. We have witnessed either a total lack of enforcement or displacement of government enforcement responsibility on residents or the offending industries themselves. For example, on May 25, 2007, the Army Corps of Engineers issued Regional General Permit SAM-20 which would allow development of up to three acres of wetlands in coastal Mississippi without public comment or significant review or oversight by the Corps, arguably in violation of the Clean Water Act. In Mobile, Alabama, residents are fighting illegal wetlands clearing after Hurricane Katrina, and efforts to construct a wastewater treatment facility in a flood plain. As one of the poorest regions in America, and one significantly devastated by flooding related to weather events, the Corps has prioritized development over the law and the protection of vulnerable communities.

Increased Environmental Standards for Public Schools

Greater protection for children in schools is an extremely important environmental justice issue. No federal standards exist governing the assessment of environmental health risks of our schools and property adjacent to schools. Extensive research and reports have documented the negative health impacts decrepit schools have on our children. However, there are no regulations or guidelines to protect students, leaving them open to having their school sited in toxic areas. For example, community activists

in Houston, Texas were unsuccessful in their efforts to prevent the construction of Cesar Chavez High School on a site adjacent to an oil refinery.

This matter has implications on the future of this country's labor force, health system and overall economic viability. Therefore, the federal government needs to adopt guidelines for protecting our most vulnerable population by addressing school siting, indoor environmental conditions, and stricter emissions/clean up standards for facilities located near a school.

NATURAL RESOURCES
AND ENVIRONMENT
UNIVERSITY OF MICHIGAN

July 18, 2007

Senator Hillary Rodham Clinton
Chair, Superfund and Environmental Health Subcommittee
U.S. Senate Committee on Environment and Public Works
Washington, D.C.

Dear Senator Clinton:

I am a Professor in the School of Natural Resources and Environment at the University of Michigan, Ann Arbor, and a Faculty Associate at the University's Institute for Social Research. I have been studying racial and socioeconomic disparities in the distribution of environmental hazards for the better part of two decades. In addition to my research, I helped to create, along with other Michigan colleagues, such as Drs Bunyan Bryant and Dorceta Taylor, the first academic program in the U.S. to offer both Masters and Doctoral degrees in the field of environmental justice.

My work in the area of environmental justice began after reading in 1987 the groundbreaking and influential report commissioned by the United Church of Christ entitled, *Toxic Wastes and Race in the United States.* It was the first report to demonstrate a national pattern of racial and socioeconomic disparities in the distribution of hazardous waste sites. It not only showed that racial and ethnic minorities tend to be concentrated where hazardous waste facilities are located, but that the racial composition of communities is the best predictor of where hazardous waste facilities are located when compared with other factors such as the socioeconomic characteristics of the communities and the presence of sources of hazardous wastes.

The compelling findings of this report plus the growing visibility of the environmental justice movement led my colleague, Dr. Bryant, and me to organize in 1990 the "Michigan Conference on Race and the Incidence of Environmental Hazards". It was the first such conference to bring together academics from around the U.S. to discuss research pertaining to environmental injustices and to discuss ways to raise public attention about this issue. One of the steps taken by the Conference participants was to draft a letter to then U.S. EPA Administrator, William Reilly, outlining the findings of our group, proposing steps that EPA could take to address environmental injustices, and requesting a meeting to discuss with him personally our findings and proposals. Administrator Reilly responded positively and invited representatives from our group to meet with him and his staff in September of that year. The meeting led to the Administrator's creation of an Office of Environmental Equity (now called the Office of Environmental Justice) and an EPA workgroup (the "Environmental Equity Work Group"). The workgroup was charged with examining the evidence pertaining to environmental injustices and drafting a set of policy recommendations the agency could take to remedy them. The results of the fact finding and policy proposals were published in EPA's 1992 report, *Environmental Equity: Reducing Risks for All Communities.* Although this report was widely criticized for not having gone far enough, it nevertheless represented the first official acknowledgement by any agency of the federal government of the existence of environmental injustices and the first to offer policy proposals at

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the federal level to deal with them. Since the publication of EPA's report there have been a number of important policy developments, not the least of which was President Clinton's issuance in February 1994 of Executive Order 12898 calling upon all the agencies of the federal government, not just EPA, to make environmental justice a priority in their decision making.

In addition to organizing the 1990 Michigan Conference, I conducted with Dr. Bryant one of the first systematic reviews of the quantitative evidence pertaining to environmental injustices in the early 1990s. At the time we identified 16 such studies and found that all the studies revealed significant racial or socioeconomic disparities in the distribution of environmental hazards of a wide variety, including the distribution of air pollution and the placement of hazardous waste sites. Where it was possible to weigh the relative importance of race and income in predicting the location of environmental hazards, race was the stronger predictor in six out of nine studies. Since that first review was published in 1992, there have been two additional systematic reviews of the quantitative evidence, the most recent published in 2005. These reviews have found the same as what we found in 1992, that racial and socioeconomic disparities in the distribution of environmental hazards are significant and that when the racial and socioeconomic characteristics of neighborhoods are weighed, race is revealed to be the most significant predictor of how environmental hazards are distributed.

Since this early work, I have been involved in a number of projects examining the extent, causes, and consequences of racial and socioeconomic disparities in the distribution of environmental hazards. One effort has been to improve methodology on how environmental disparities are measured. In an article published last year (2006) in the journal *Demography* my colleague, Dr. Robin Saha, and I demonstrated that the traditional method of conducting environmental inequality analyses, what we have called "unit-hazard coincidence" methodology, fails to adequately account for where people live in relation to hazardous site locations. We demonstrated how with the aid of Geographic Information Systems (GIS) better methods exist for determining the location of residential populations to nearby hazardous sites and that when such methods are applied they reveal that racial and ethnic minorities and the poor are much more heavily concentrated around hazardous waste sites than what previous studies have reported. As co-authors of the new (2007) United Church of Christ report, *Toxic Wastes and Race at Twenty*, we applied these methods to the most recent information about hazardous waste facility locations and the 2000 Census. We found that nationally, people of color now make up the majority (56%) of those living within 3 km of such facilities and that where facilities cluster they make up over two-thirds (69%). These are the highest concentrations of people of color ever reported from a national study of the distribution of hazardous waste facilities. In addition to providing further evidence of environmental disparities, we believe these results are especially significant as they reveal that environmental injustices persist despite almost 20 years of public attention and government efforts to address these problems. Clearly past policy approaches have been insufficient to remedy environmental injustice.

My colleagues, Drs Robert D. Bullard, Robin Saha, and Beverly Wright, and I believe that new and stronger measures are needed. Some observers of the environmental justice movement have claimed that although the movement has been very successful in raising public awareness about environmental injustices and defining the critical issues, there has been less success in articulating and implementing effective policy proposals to remedy the problems. However, all the parties

with an interest in the issues of environmental justice, including activists, academics, and policy leaders have learned much from the past twenty years of experience. The policy recommendations outlined in *Toxic Wastes and Race at Twenty* reflect the wisdom of that experience. They represent concrete, reasonable, and implementable steps for remedying environmental injustices. I urge members of the Senate to give careful examination and consideration of these proposals.

I believe it is paramount that environmental justice be elevated to a national priority by an act of Congress, much in the same way that the goal of protecting the environment was elevated to a national priority by the National Environmental Policy Act of 1970. President Clinton's 1994 Environmental Justice Executive Order (12898) could be a model for such legislation. By codifying into law Executive Order 12898, Congress would establish an unequivocal legal mandate and impose federal responsibility in ways that advance equal protection under law in communities of color and low-income communities. A national act should also establish an *Annual Report on the State of Environmental Justice in the U.S.*, which should go to Congress and the American public, assessing environmental justice nationally and providing state by state assessments of current policies and conditions. An act of Congress is needed to elevate environmental justice to a national priority, pave the way to government-wide action, and provide a means of accountability.

Among a number of other important actions, Congress should: 1) hold hearings on EPA response to contamination in environmental justice communities; 2) provide a legislative "fix" for Title VI of the Civil Rights Act of 1964 that was gutted by the 2001 Alexander v. Sandoval U.S. Supreme Court decision that requires intent, rather than disparate impact, to prove discrimination; 3) require assessments of cumulative pollution burdens in facility permitting; 4) require safety buffers in facility permitting; 5) protect and enhance community and worker Right-to-Know; 6) enact legislation promoting clean production and waste reduction; 7) adopt Green Procurement Policies and Clean Production Tax Policies; 8) reinstate the Superfund tax; and 9) establish Tax Increment Finance (TIP) Funds to promote environmental justice-driven community development. Further details about these and other proposals are provided in *Toxic Wastes and Race at Twenty.*

I thank you for the opportunity to submit this testimony. If I can be of further assistance in any way by providing additional information pertaining to the outcomes of scholarly research in the area of environmental justice or by providing my perspectives on policy proposals to remedy environmental injustices, please consider me at your service.

Respectfully submitted,

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NATIONAL BLACK ENVIRONMENTAL JUSTICE NETWORK
History

The National Black Environmental Justice Network (NBEJN) was formed in December 1999 at the first ever national gathering of nearly 300 Black grassroots, environmental and economic justice activists. The gathering also included youth, labor, health, and religious organizations, attorneys, academicians and a whole host of other professional groups from 33 states. The purpose of the gathering was to mobilize a nationally coordinated response to the conservative backlash against environmental justice policies and achievements.

The meeting resulted in the development of a national action plan. Since its inception NBEJN has pursued a proactive strategy for organizing a broad-based response to defend and advance environmental justice policies.

To achieve this goal, our strategy continues to "fight" for an end to racially discriminatory environmental decision-making by raising broader awareness of the connection between pollution and poor health; promoting sustainable communities by advancing clean production technologies, pollution strategies and economic alternatives.

To carry out our work, we formed committees that focus on issue areas that were identified as priorities. Those committees were as follows:

1. **Equal Protection**
2. **International Human Rights and Environmental Justice**
3. **Federal Facilities**
4. **Outreach/Community Support**
5. **Clean Production and Sustainable Development**
6. **Youth Leadership Development**
7. **Superfund Relocation and Land Loss**
8. **Health**

Major Challenges

Unequal Protection Under the Law
Historically communities of color have received the short end of environmental protection in the United States. Communities are continually challenged with the lack of enforcement of existing regulations that every American is entitled to by law. Therefore, the following strategies seek to redress this issue.

Objective:
NBEJN advocate for the vigorous enforcement of Title VI of the 1964 Civil Rights Act and other laws to ensure equal environmental protection.

Activities & Accomplishments:
• Organized a national press conference in Washington, D.C. on the occasion of Dr. Martin Luther King Jr. Birthday to issue a declaration of a national state of emergency on environmental racism and injustice
•Convened several meetings with the Director and staff of EPA Office of Civil Rights to urge necessary revisions to draft guidance for investigating administrative complaints filed under Title VI of the 1964 Civil Rights Act
•Convened meetings with the Department of Justice-Assistant Attorney on Civil Rights during the Clinton Administration in an attempt to bring greater enforcement and investigation of administrative

civil rights complaints and ensure compliance by federal facilities with executive orders broadening the application of Title VI of the 1964 Civil Rights Act to the federal government.

Federal Facilities

African Americans and other people of color suffer disproportionately by the location of military disposal facilities such as Memphis, Tenn.; Port Arthur, TX; Anniston, Ala and Pine Bluff, Arkansas for example.

Objective: NBEJN and its member organizations continue to advocate for the responsible disposal of military waste without putting vulnerable populations in harms way. There is a continual disregard by the military and other federal facilities to be accountable and compliant of environmental protection laws and regulations as civilian businesses and facilities are required to be.

Activities:

•Convened meetings with the Department of Justice-Assistant Attorney on Civil Rights during the Clinton Administration in an attempt to bring greater enforcement and investigation of administrative civil rights complaints and ensure compliance by federal facilities with executive orders broadening the application of Title VI of the 1964 Civil Rights Act to the federal government.

•Confronted the U.S. Department of Defense's hazardous operations of a military facility, located nearby an African American neighborhood in Memphis, Tennessee. This action, held on April 4, 1999 (the anniversary date of Dr. Martin Luther King's assassination) was named DAYS OF RAGE protest

Outreach/Community Support

Communities such as those living in Louisville, KY; Dickson, Tenn. and Detroit, MI continue to face the threat of non-response to the cleaning up of contamination whether it occurred in the past or by the permitting of new facilities.

Objective:

Support environmental justice communities in their on-going struggles by bringing together resources and talents of a wide array of members.

Activities:

•Supported African American residents in their struggle to prevent the building of elementary/secondary schools on toxic landfills

•Co-sponsored a delegation of youth living near contaminated federal facilities to advocate before federal government officials at the White House and Capitol Hill. This advocacy event, held on February 4, 1999 (the date President Clinton signed the Executive Order on Environmental Justice) was done in conjunction with the People of Color and Disenfranchised Communities Environmental Justice Network

•Opposed the operation of a medical incinerator in Detroit, Michigan, May 5, 2001

•Preparing with for the Second National Gathering of NBEJN to be held in Detroit, 2002. Preparation includes major outreach to church, labor, community, youth, civil rights and health organizations

• Worked with a member organization, Community Action Response Against Toxics (CARAT) Team of the Coalition of Black Trade Unionists. The CARAT Team continues to provide critical support for the planning of the National Black Community Summit on Environmental and Economic Justice

•Convened a focus group meeting of business leaders in Detroit to determine attitudes toward environmental justice for the purpose of devising strategies for collaboration

•Participated in an education and strategy workshop as well as other subsequent meetings of the National Society of Black Engineers (NSBE).

•Conducted "National Stand for Environmental Justice" outreach activities during the Congressional Black Caucus Legislative, September 2000. Five thousand (5,000) educational flyers about NBEJN and environmental justice were distributed.

Clean Production and Sustainable Development

Objective:
To introduce the concept of alternative economic development by focusing on clean production, safe technologies and progressive land use practices to a broader constituency of Black groups.

Activities:
•Convened and organized a clean production and alternative economic development training as part of an NBEJN quarterly meeting in Detroit, Michigan, weekend of May 4, 2001

- Support initiatives such as the Green Commission in New Orleans. LA

•Develop strategies to protect vulnerable communities from the impact of climate change.

Superfund, Relocation and Land Loss

Objective:
To ensure equity in the relocation of African American residents due to property loss in urban neighborhoods and rural areas, (i.e. Black owned farms) that has been identified as Superfund sites.

Activities:
•Participated in the development of new guidelines regarding Superfund relocations by the Environmental Protection Agency (EPA)
•Developed and submitted written comments to EPA

Health
Health disparities continue to plaque African Americans. Almost daily there is emerging data linking pollution in the environment to health and quality of life issues. More must be done to protect the vulnerable from environmental assaults.
Objective:
NBEJN works to provide information and tools regarding environmental health as a major aspect of the public health debate. Specifically as it pertains to environmentally induced illnesses that disproportionately affect African Americans (i.e. asthma/other respiratory illnesses and childhood lead poisoning).

Activities:
•Supported member organizations such as Jesus People against Pollution in Jackson, Miss. in its efforts to organize environmental health conferences throughout the country.

- We have presented papers and made presentations annually at the American Public Health Association and the annual meeting of the Congressional Black Caucus Foundation Inc.'s Health Brain Trusts.

•Worked with the National Medical Association to launch its environmental justice health initiative.

NBEJN CAMPAIGNS:

Healthy and Safe Communities Campaign
The Healthy and Safe Communities Campaign educate and organize Black communities and others about the link between pollution and poor health. We have developed fact sheets and toolkits distributed

throughout the United States sharing information about the categories of diseases associated with environmental toxins, which are: cancer, asthma/other respiratory illnesses, lead poisoning and other neurotoxins. Environmental hazards and the health of children is a central component of the campaign. We continue to maximize opportunities to raise awareness about other illnesses associated with environmental hazards.

Civil Rights and Equal Protection Campaign
The Civil Rights and Equal Protection Campaign advocates for the vigorous enforcement of civil rights and environmental laws by confronting and exposing current and anticipated policies and laws intended to undermine environmental justice and civil rights protections. Specifically, we work to protect and strengthen the legal application of civil rights laws to remedy environmental injustices.

Clean Production and Alternative Economic Development Campaign
NBEJN believes that a central component of an environmental justice strategy is to work for less or non polluting, and less destructive forms of economic development and land-use, while at the same time working to end racial discrimination in environmental policymaking. Clean production practices, sustainable economies, and alternative businesses have been researched and analyzed to develop practical models for implementation in communities suffering from land loss, poor health, environmental hazards, and/or financial dis-investment.

- NBEJN has met and will continue to meet with members of Congress, state legislators, and local policy leaders to discuss strategies in the legislative arena to carryout our goals and objectives.

ACTIVITIES AND ACCOMPLISHMENTS

When Katrina struck the Gulf Coast creating the most devastating calamity ever to hit the United States. It was at that time that NBEJN took its rightful place in asserting its leadership on the negative environmental impacts brought on by both the natural and unnatural disaster.

- Labor Day weekend, NBEJN's delegation traveled to Houston, Texas. The delegation met with local community based leaders positioned to provide support to the dislocated citizens of New Orleans and other gulf coast residents. Pictures were taken and as well as interviews with victims. The delegation visited both the George Brown convention center and the Houston "superdome"- It was determined first hand that local organizations were not in line to receive support to assist with meeting the needs of the victims. The delegation also attended several meetings with a variety of national organizations including the Urban League, NAACP and the Nation of Islam while there. It was an effort to help provide technical assistance on the environmental conditions that the hurricane exposed.

- Members of NBEJN arranged strategy sessions and hearings with both House and Senate staff. These sessions provided the groundwork for the development of key policy resolutions to prevent the weakening of the existing environmental regulations. NBEJN arranged for a delegation of Gulf Coast Katrina survivors to travel to D.C. to participate in the hearings. NBEJN co-chair Dr. Beverly Wright presents Testimony on Hurricane Katrina before the Subcommittee on Environment and Hazardous Materials Committee on Energy and Commerce, United State House of Representatives, Washington, DC, September 29, 2005.

- NBEJN co-chair Dr. Beverly Wright presents Testimony on Hurricane Katrina before the U.S. Senate Committee on Environment & Public Works, Washington, DC November 8, 2005.

- NBEJN members participate in Brownfields2005 Conference held in Denver, CO on November 2-5, 2005. NBEJN co-chair Dr. Beverly Wright served as a Plenary Keynote Speaker at the Town Hall Meeting.

- NBEJN lost its founder Damu Smith to colon cancer in May. Following his death- NBEJN moved its headquarters from Washington D.C. to Detroit, MI. As we mourned the loss of our brother this year, NBEJN continued with renewed vigor realizing that Damu would have wanted it that way. NBEJN remained true to reaching the black community raising the environmental justice movement throughout mainstream Black America by providing outreach to key constituencies.

- NBEJN researchers were part of EJ team of experts assembled to examine the environmental justice implications of Hurricane Katrina and disasters (natural and man-made) for the Russell Sage Foundation. The project resulted in the first report to systematically place environmental justice at the forefront in the Katrina disaster. The citation for the report is found at: Manuel Pastor, Robert D. Bullard, James K. Boyce, Alice fothergill, Rachel Morella-Frosch, and Beverly Wright, In the Wake of the Storm: Environment, Disaster and Race After Katrina (Russell Sage Foundation, May 15, 2006).

- NBEJN organized workshop at the Coalition of Black Trade Unionists (CBTU), Community Action Response Against Toxins Team- (CARAT) Team Annual Conference, Orlando, FL, "Post Katrina Reconstruction," May 31, 2006, Glenn Ford and Peter Gamble, "Cover Story: In Search of 'Liberation Economics," *The Black Commentator*, Issue # 186, June 1, 2006 http://www.blackcommentator.com/186/186_cover_black_labor.html.

- NBEJN members served on the planning committee and presented papers at the Poverty and Race Research Action Council (PRRAC) along with the Health Policy Institute of the Joint Center for Political and Economic Studies and the Alliance for Healthy Homes "New Orleans Health Disparities Conference," held in New Orleans, LA on June 12, 2006. http://www.prrac.org/pdf/NOHDI-Agenda.pdf.

Recommendations for Subcommittee:
NBEJN support the recommendations outlined in the Toxic Waste and Race at Twenty report and therefore would urge that the subcommittee consider them accordingly with special emphasis on the following:

1. **Codify Environmental Justice Executive Order 12898.** In order to strengthen compliance and enforcement of environmental justice objectives at the federal level, ensure that discriminatory agency decisions and actions are addressed, and to provide clear leadership to the states, Congress should codify into law Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." By codifying the Executive Order, Congress will establish an unequivocal legal mandate and impose federal responsibility in ways that advance equal protection under law in communities of color and low-income communities. Executive Order 12898 provides significant impetus

at the federal level and in the states. However, arguably the power of the Executive Branch alone is limited. Enacting a law which codifies the government's role in achieving environmental justice, expands the original list of seventeen agencies required to comply and establishes annual reports to Congress that would pave the way to government-wide action and provide a means of accountability.

2. **Provide Legislative "Fix" for Title VI of the Civil Rights Act of 1964.** Work toward a legislative "fix" of Title VI of the Civil Rights Act of 1964 that was gutted by the 2001 *Alexander v. Sandoval* U.S. Supreme Court decision that requires intent, rather than disparate impact, to prove discrimination. Congress should act to restore the status quo that existed prior to Sandoval by passing legislation to reestablish that there is a private right of action for disparate impact discrimination under the Title VI regulation. The failure to restore the private right of action will mean that private advocacy organizations will have to fight many discrimination battles with one hand tied behind their backs.

3. **Re-instate the Superfund Tax.** The new Congress needs to act immediately to re-instate the Superfund Tax, re-examine the National Priorities List (NPL) hazardous site ranking system and reinvigorate Federal Relocation Policy implementation in communities of color to move those communities that are directly in harm's way.

4. **Hold Congressional Hearings on EPA Response to Contamination in EJ Communities.** We urge the U.S. Congress to hold hearings on the U.S. Environmental Protection Agency's (EPA's) response to toxic contamination in EJ communities, including post-Katrina New Orleans, the Dickson County (Tennessee) Landfill water contamination problem, and similar toxic contamination problems found in low-income and people of color communities throughout the United States.

5. **Enact Legislation Promoting Clean Production and Waste Reduction.** Require industry to use clean production technologies and support necessary R&D for toxic use reduction and closed loop production systems. Create incentives and buy back programs to achieve full recovery, reuse and recycling of waste and product design that enhances waste material recovery and reduction. Policies must include material restrictions for highly toxic and carcinogenic materials.

6. **Require Comprehensive Safety Data for All Chemicals.** Chemical manufacturing companies must provide publicly available safety information about a chemical for it to remain on or be added to the market. The information must allow for reasonable evaluation of the safety of the chemical for human health and the environment and must include hazard, use and exposure information. This is referred to as the "No Data, No Market" principle.

Executive Branch Actions

Implement EPA Office of Inspector General's Recommendations. Even the EPA's own Inspector General (IG) agrees that the agency has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations and performance measurements for integrating environmental justice into its day-to-day operations. The EPA should implement the EJ recommendations of the IG's 2004 and 2006 reports for addressing Executive Order 12898.

Fully Implement Environmental Justice Executive Order 12898. The U.S. EPA, FEMA, Army Corps of Engineers, Department of Labor, HUD and other federal agencies need to fully implement the

Environmental Justice Executive Order 12898 in the cleanup and rebuilding in the hurricane-ravaged Gulf Coast region.

Protect Community Right-to-Know. Reinstate reporting emissions to the Toxic Release Inventory (TRI) database on an annual basis to protect communities' right to know. Reinstate reporting lower emission thresholds to the TRI.

End EPA Rollback of Environmental Justice Initiatives. Environmental justice leaders are demanding that the U.S. EPA end its attempts to roll back environmental justice and take aggressive steps to implement EJ Executive Order 12898 and provide targeted enforcement where the needs are the greatest, and where unequal protection places low-income and people of color populations at special risk.

Require Cumulative Risk Assessments in Facility Permitting. EPA should require assessments of multiple, cumulative and synergistic exposures, unique exposure pathways, and impacts to sensitive populations in issuing environmental permits and regulations under the Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), Clean Water Act (CWA) and other federal laws. Similar considerations should be made in establishing site-specific clean-up standards under Superfund and Brownfields programs.

Require Safety Buffers in Facility Permitting and Fenceline Community Performance Bonds for Variances. The EPA and states should adopt site location standards requiring a safe distance between a residential population and an industrial facility so that the population is not located within the area where deaths or serious injury to health or property would result in the event that a toxic or flammable substance stored, processed or generated by the facility would be released to the environment through explosion, fire or spill. If safety buffer exemptions are granted, require a locally administered Fenceline Community Performance Bond to provide recovery resources for residents impacted by chemical accidents.

July 20, 2007

The Honorable Senator Hillary Clinton
Senate Committee on Environment and Public Works

Dear Senator Clinton,

Pesticide Action Network North America (PANNA) applauds the Senate Committee on Public Works and Environment for your attention to issues of environmental justice and we ask for timely and concrete action toward the implementation of environmental justice throughout the nation and as part of our foreign policies. We are pleased to have the opportunity to submit this letter for the record of testimony for your Hearing on July 25th, 2007.

At Pesticide Action Network, we confront poisonings and chronic illnesses in communities of color that are caused and exacerbated by the on-going use of extremely hazardous pesticides. Federal policy intent upon protecting communities from these substances – many of them known carcinogens, neurotoxicants, endocrine disruptors and reproductive toxicants, among other disturbing tendencies – has failed. Federal policy and regulation does not implore decision makers to prioritize the safest solutions for our common problems. Instead, our rules have created a toxic soup all around us. Communities who live or work in proximity to the manufacture, use or disposal of many of these chemicals are tragically bearing the burden and cost of our failure.

The following are just a few examples of how hazardous pesticides are effecting the health of workers, families and communities. We hope problems like these – and their solutions - will be considered in your Committee's discussion of environmental justice.

• In California, for example, some pesticides emit volatile organic compounds, or "VOCs." In hot weather when VOCs mix with chemicals from cars, trucks and power plants, ground level ozone or "smog" air pollution is formed. Air pollution from smog damages lung tissue, exacerbates asthma, reduces lung capacity, increases respiratory and cardiovascular hospital admissions, and increases school and work absenteeism. Recent studies are revealing that global warming will perhaps intensify the harm of these chemicals in our environment as temperatures rise.

• Pesticides are the third largest contributor to smog in Ventura County and the fourth largest contributor to smog in the San Joaquin Valley. Smog-forming pesticides—many of which are fumigants—also poison farmworkers and other community members. Other pesticides are carcinogenic, are linked to nervous system disorders, lower birth weights and infertility. The list goes on. These are preventable health problems.

• Organophosphate (OPs) pesticides, approved by EPA against the recommendations from EPA's own staff scientists, are neurotoxicants. OPs present significant risk to farmworker families and residents of rural communities. A 2007 study of Hispanic/Latino children in Chula Vista, California, shows that short-term OP pesticide exposure seems to have deleterious effects on children's speed of attention, sequencing, mental flexibility, visual search, concept formation, and conceptual flexibility. Our recent air, blood and urine monitoring – done in collaboration with Latino/a residents of Lindsay, California and other partners - reveals evidence of a dangerous OP, chlorpyrifos, in the air and in the bodies of those who live there. We submit to you their stories, their concerns and their demands – along with their levels of chlorpyrifos contamination – for your consideration.

A new study of the organochlorine pesticide endosulfan demonstrates links to autism in children from communities of color where applications occur in the California Central Valley.

U.S. foreign policies that promote DDT-reliant malaria control programs in Africa put communities at risk and show blatant disregard for the numerous studies that link a wide range of human health impacts with low level environmental exposures to DDT and its break-down product DDE, including: premature delivery and reduced infant birth weight, miscarriage, neurological effects, including developmental delays among babies and toddlers exposed to DDT in the womb, reduced breast milk production and poor sperm quality. Families and communities in Africa already battling malaria deserve safer and more effective solutions. Indigenous people in Alaska and elsewhere in the Arctic are seeing contamination health effects from DDT, which travels north on wind and water and is a persistent organic pollutant (POP), slated for global phase-out under the international treaty, the Stockholm Convention.

We ask that the United States Congress listen keenly to the communities of color, indigenous people, the scientists and the public health professionals who have documented the health problems from toxic contamination in communities of color and in all communities, and adopt the recommendations from the *Toxic Waste & Race at 20* report, the Louisville Charter, and implement the Precautionary Principle as a basis for U.S. domestic and foreign policy on toxic chemicals, including pesticides.

All of us at Pesticide Action Network remain at your service to provide additional information to support the elimination of hazardous pesticides and all toxic contamination in our communities, and ask you to commit your support for an urgent transition to safer alternatives.

Sincerely,

Kathryn Gilje
Executive Director

Stephenie Hendricks
Public Information Director

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July 25, 2007

Superfund and Environmental Health/Environment and Public Works

Dear Senator Clinton and Members of the EPW,

Thank you for the opportunity to present statements on environmental justice and our community issues at Midway Village in Daly City, California and, other EJ communities across our nation. Many of us have buried our loved ones and have damaged health, and a diminished standard of life, as a result of Federal EPA's lack of action taken to protect our communities especially those that are African American like Midway Village.

It is exciting to finally have a hearing addressing environmental justice. EJ has been totally ignored by the current Bush Administration. Under the previous Clinton Administration, President Clinton issued a Presidential Referral in 1998-99, that resulted in Midway Village being re-evaluated resulting in Federal EPA Superfund Division re-engaging and getting involved with Midway's issues of being exposed to over 350 hazardous Superfund toxins directly underneath their units, backyards, air, soil, water, and sidewalks (whole community). Federal EPA and State (DTSC) toxic and health agencies for years denied the seriousness of hazardous exposure problems existing at Midway but, current agency reports confirm the fears of residents of the continuing exposures of high levels of these superfund hazardous contaminates that has resulted in their numerous illnesses, birth defects (including abnormal genitals in the children), deformed animals and deaths at Midway.

Although we are totally excited about this hearing, we are very, very disappointed that grassroots Fenceline Communities and their CBO's and their expertise were not included on this first panel representing Environmental Justice. In order to get a clear idea of what is needed, grassroots Fenceline Communities should have been included in this first panel, not minimized in this very first historical hearing on environmental justice and related issues affecting our EJ communities. Testimonies heard and data presented today from Congresswoman Solis, was very much needed, however her testimony and evidence

represented her areas of Los Angeles in Southern California, not Northern California. Northern California representing the Bay Area, San Francisco, Daly City, Richmond and Oakland California Fort Ord Monterey, and other communities with huge environmental injustices was left out and and not represented in this historical live testimony hearing.

Description of Organization

People for Children's Health and Environmental Justice (PCHEJ) is a non-profit organization, grassroots organization founded in 1997 in an environmental justice community called Midway Village in Daly City California, built directly on top of a superfund site in 1977. All agencies knew the site was hazardous but didn't tell residents.

Midway Village is a low-income community of color primarily African American and Hispanics, suffering numerous illnesses including cancers, and death as a result of Pacific Gas & Electric Company hazardous waste being placed directly under resident's units, sidewalks, and the Park where their backyards are, and children play. All surrounding schools use Midway's Bayshore Park as their physical education requirements. PG&E is one of the largest energy suppliers in California, who literally continues to get away with openly and blatantly contaminating communities, especially African American communities such as Midway Village in Daly City and Hunter's Point in San Francisco with no accountability whatsoever from agencies or elected officials for the cancers, numerous illnesses and death caused by PG&E's hazardous toxic chemicals disposed of in these environmental justice communities.

Through community outreach efforts, with emphasis on youth involvement, education and organization, People for Children's Health & Environmental Justice (PCHEJ) continually inform and educate communities, especially low-income communities of color, on environmental issues, especially environmental justice issues affecting their families and health effects from living in a toxic, contaminated environment.

We meet regularly with all stakeholders, and various agencies (Federal &California Environmental Protection Agenices, Department of Health Services), elected officials, and disproportionately impacted, low-income communities of color. Our goals are the elimination of toxic exposures in (our air, soil and water) living environment by affecting and making policy changes to actually protect the health, lives and environment of these communities. In addition, PCHEJ advocates for the right of community inclusion, polluter accountability, community decision-making power in the very beginning of decisions, actions and policies, and processes made at the local, state and federal level affecting our lives, health, environment. Our goals are for actual inclusion of affected communities, at the local, state and federal level, to have a voice, vote and decision-making power at the very beginning of any action, or decision that affects and impacts' their lives and right to self-determination and self-sustainability.

Communities have a right to self-determination, and decision making especially on environmental and health related issues affecting them and their families. Communities can achieve positive change, a clean environment and accountability of responsible parties through non-violent action by empowering themselves with accurate and factual knowledge to make informed decisions.

We all have a right to a safe, clean and a toxic free environment regardless of color, or social economic status.

Major Challenges

One of the major challenges is the exclusion of FENCELINE/FRONTLINE grassroots community based groups such as PCHEJ with our expertise and experience, being excluded from very first historical hearing on Environmental Justice, such as this one held on July 25, 2007 by the Superfund and Environmental Health EPW committee. This also occurs within agencies. CBO's are always an afterthought, not a forethought when these hearings or actions are put together or held. There is a misconception that academia or larger well know environmental organizations who claim to speak for EJ communities are more qualified to present our EJ issues. However, one must understand that academia and NGOs get their information for their reports, and presentations, etc. from the affected FENCELINE/FRONTLINE grassroots CBO's, who are then put in a position having others speak for them when they are fully capable of speaking and communicating directly with elected officials, or agencies.

There are numerous major challenges but, those most pressing are the LACK OF LEGISLATION AND LAWS, ENFORCING ACCOUNTABILITY of Federal EPA and health agencies tasked with environmental protection. Both Federal and State EPA agencies openly and blatantly ignore and fail to follow legislation that already exist that would prevent or eliminate harm to environmental justice communities. Federal EPA and their regional offices have been allowed to openly practice environmental racism and injustice, by lack of or taking no action that eliminates, or prevents further harm to our communities, especially those of color, with no accountability whatsoever. These same agencies then point to there being no legislation with direct language that mandates them to actually take actions that prevents or protects, low-income people of color from living on or low-income housing being built on a hazardous waste site.

Agencies routinely and strategically use ADVISORY COMMITTEES such as NEJAC (National Environmental Justice Advisory Committee) as a front to portray a sense of community and stakeholder inclusion in the decision-making processes. The advisory committees and it's process has been detrimental, useless and destructive especially for front-line communities because it allows a SHOW and PRETENSE of community inclusion and participation but end results are agencies ignoring the recommendations advice, and expertise of communities that would result in real elimination of toxic exposures, and adverse health affects.

Advisory roles or positions within agency decision-making committees hinder and block CBOs from having real inclusion and an equal playing field.

Elected officials responsible for Midway Village continues, to ignore and address the environmental injustices and relocation needs of the residents.

The current STANDARD MALE MODEL used as a benchmark of allowable toxic levels of exposures agencies uses, and points to as justification for allowable levels of hazardous chemical exposures are causing illnesses and deaths especially in EJ communities that are preventable.

Drinking Water Standards, are too lax. Water agencies processes are designed to keep EJ communities out of the decision-making process for cleaner water standards.

Agency COVERUPS/TAMPERING and DESTRUCTION of data, and documents proving agencies lack of actions and protection of polluters instead of communities and the real levels of unthinkable and inhumane levels of hazardous exposures that are 100-500 times and higher, well above background levels. Records tampered with to make appearances of agencies working with residents, giving the impression residents are non-responsive.

Pacific Gas & Electric controls our local media and some elected officials. We have been told directly by local elected officials PG&E told them hands off Midway Village. Media has collected numerous officials records and conducted numerous interviews with Midway residents, but they refuses to release information on the cover-up, corruption and environmental injustices that has and continues to occur at Midway Village.

Lack of fairness, and legal representation, in the courts/judicial system for EJ communities. Courts as in the case of Midway and other EJ communities rule in favor of the responsible (polluter) parties, not the communities being harmed.

NO ACCOUNTABILITY of POLLUTER (as in our case Pacific Gas & Electric Co) or responsible party for damaging our health and lives.

SUGGESTIONS

Midway Village residents need immediate support from elected officials for relocation, addressing their environmental justice issues. An immediate hearing for relocation of residents from this hazardous superfund waste site is urgently needed. Residents must be directly involved in the actions and decisions taken to accomplish it.

Force HUD, San Mateo Housing to abide by residents' lease, which states lessee shall be refunded all their monies in the event a threat to their lives, health or safety exist. After many years of agency denying these conditions exist at Midway, current OEHHA reports confirm these threats and continued exposures do in fact exist at Midway and always has. Midway's residents are now being required to sign a Toxic Disclosure Statement as a

condition of their housing. After many years of denying contamination and health threat, San Mateo County Housing with their Board of Supervisors are requiring this disclosure statement but refusing to work with residents in good faith as promised to work with them in resolving this huge environmental injustice.

Force HUD (and ALL responsible parties) to do their part in providing funding and assistance with relocation (of the resident's choice) since HUD has provided funding to the San Mateo Housing and it's county for this superfund hazardous site to be used as low-income housing. There has been no accountability from HUD for it's part in assisting with providing a hazardous superfund site as housing for low-income people of color.

POLLUTER PAYS Legislation, that would reduce the need for costly litigation and burden on EJ communities who lack resources to legal assistance, to receive relief from the negative affects and impacts of responsible parties damaging their health, lives and environment.

HOUSING LEGISLATION needed to protect and prevent low-income housing from being built on a superfund or hazardous toxic site, and relief (funding and assistance) to those who has already been exposed and damaged from such

Order Midway Village and Bayshore Park immediately shut down to prevent further harm to residents, the children using the park, the schools, childcare centers and the public all who are being exposed at this superfund hazardous waste site.

Demand Federal EPA immediately list Midway Village on the Federal National Priorities List (NPL). Federal EPA has refused to list Midway Village on it's National Priorities List (NPL) Superfund List, although Midway Village has always since 1979 and currently continues to be listed as an action site within Federal Superfund Division and the State Department of Toxic Substance Control.

Legislation to change the currently used Standard Male Model to Standard Pregnant Woman and Infant Model to be most protective of all our health, especially those most vulnerable. The current STANDARD MALE MODEL used as a benchmark of allowable toxic levels of exposures agencies uses and points to as justification for allowable levels hazardous exposures needs to be replaced with a model of a Standard Pregnant Woman to be most stringent and protective of all human health. The current Standard Male Model used is a white male of 150-170 pounds in an 8hr/ 40 hour environment, that doesn't take into account, the most vulnerable infants and children, pregnant women, women of child-bearing age, the elderly, people of color who are living and daily exposed and even white males.

Legislation needed to ensure Fenceline Community Based Groups/Orgs have a decision-making position, not an advisory seat, position or role on the decision-making Boards or Committees.

Legislation for most protective Drinking Water Standards, that includes changing the levels of all chemical contaminates but especially those associated with superfund and military sites with nuclear waste contaminates to the most protective standard level.

Legislation to protect low-income dental patients from dental services requiring mercury filling currently being used.

HEARINGS OR LISTENING SESSIONS WITH NO ACTION IS CAUSING SUFFERING AND DEATHS THAT ARE PREVENTABLE. Hearings on environmental justice and their communities with immediate actions are immediately needed.

Funding for Fenceline grassroots community based groups without burdensome tedious reporting requirements are needed to assist them with being able to focus on the needed actions specific to their community issues.

Performance measures and restructuring needed within the Federal EPA Superfund Division especially the regional offices such as REGION 9 in California. Directors and managers within the Superfund Departments who failed to take common sense protective actions for EJ communities should be immediately replaced with new staff.

Legislation needed for POLLUTER PAYS. This would reduce and prevent costly litigation and burdens on EJ communities who lack resources to legal assistance, to receive relief from the negative affects and impacts of responsible parties damaging their health, lives and environment.

Look at previous environmental justice case rulings for low-income African American EJ communities, comparing them to White, and Hispanic cases, to make the case for those cases to be re-evaluated.

A National Toxic Tour follow-up from the one held last October 2006 to be attended by our elected officials, touring environmental justice communities, especially focusing on those EJ communities where big corporations have been successful with the assistance of agencies in covered up and keeping their issues out of the media or public attention.

Special health services and health monitoring paid by responsible parties for affected EJ communities living on or being exposed to hazardous toxins in their communities.

A comparison is needed to evaluate the actions taken by Federal EPA especially in the years starting 1993, showing the ineffective or lack of actions taken nationally in our environmental justice communities, especially those that are African American.

I'm sure, I'm not covering all that is needed to adequately address the huge problems we are facing in our communities, but these are a start. It is our sincere hopes that this hearing and our statements will result in immediate action and attention for our communities, many of whom like Midway Village have been fighting these huge environmental and health injustices alone for the last 17 years.

We look forward to working with you and being included on the panel, as promised by Senator Boxer, with the follow up hearing that will be held in Calforinia in the fall.

Again, we appreciate this opportunity to do our part in helping make some real changes in environmental justice policies that will result in real environmental protection.

Sincerely,

LaDonna Williams
Executive Director

"Oversight of the EPA's Environmental Justice Programs."
Written testimony of Leslie G. Fields, National Environmental Justice Director, Sierra Club
Before the US Senate
Committee on Environment and Public Works
Subcommittee on Superfund and Environmental Health
July 25, 2007

INTRODUCTION AND DESCRIPTION OF WORK

Good day Madame Chair Clinton, Ranking Member Craig and other members of the Subcommittee on Superfund and Environmental Health. I am Leslie G. Fields and I submit this testimony on behalf of the Environmental Justice Program of the Sierra Club.

In 1992, the Sierra Club hired its first environmental justice organizer to support the efforts of communities fighting polluting corporations in the Southeast. Since then, we have expanded our staff to nine environmental justice organizers who help communities across the country secure victories to protect their health and environment. The Club plays a supportive role, helping affected communities take the lead in developing solutions to their own environmental problems.

The Sierra Club's Environmental Justice (EJ) Grassroots Organizing Program has provided support to more than 100 low-income and communities of color in their EJ struggles. Our services have ranged from consultations by phone to regular visits by our EJ grassroots organizers. Our goal is to assist low-income and communities of color to empower themselves to overcome the environmental assaults on their lives and communities. The Sierra Club's work is national in scope, yet it has a grassroots presence everywhere in the country. It is volunteer-based and operated and includes professionals willing to devote their volunteer time to help local communities. We have successfully built such bridges at all eight (El Paso, Detroit, Flagstaff, Memphis, Minneapolis, New Orleans, Washington DC, and the Appalachia region) of our EJ sites around the country, bringing together Sierra Club volunteers, staff, and affected community members to strengthen the fight against environmental injustices.

MAJOR CHALLENGES

For years EJ communities have been begging for the Environmental Protection Agency (EPA) to have stronger oversight when it comes to the state agencies on compliance and enforcement. But, sadly, what we have seen over the years is a long list of "guidance documents" that *suggest*

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to states rather than mandate that they take a particular stance or act in a specified way. Below are examples of work in EJ communities detailing the challenges and suggestions for governments on all levels to address and **remedy** EJ issues.

In Appalachia, before being transported to market, coal must be washed to separate it from the surrounding soil and rock--the more impurities a company can remove from coal, the higher its market value and the lesser the transportation costs. The washing process generates huge volumes of liquid waste, while the mining process generates millions of tons of solid waste. The cheapest way for coal companies deal with this some of this waste is by constructing dams from the solid mining refuse (that is, rocks and soil) to impound the liquid waste. (In mountaintop removal coal mining, some of the solid refuse is dumped directly into valleys). Coal companies usually build these dams in the heads of hollows (valleys), close to their coal processing plants. The dams and impounded slurry or sludge are often euphemistically referred to as "ponds," but "toxic lake" is the accurate name, as coal sludge impoundments can store billions of gallons of liquid coal waste.

Coal companies say the sludge contains mostly water, rocks and mud. But sludge contains carcinogenic chemicals used to process coal. It also contains toxic heavy metals that are present in coal, such as arsenic, mercury, chromium, cadmium, boron, selenium, and nickel.

Remedial Actions—The Pennies of Promise Campaign (the Campaign) succeeded in getting the Environmental Protection Agency (EPA) to investigate the health risks facing the schoolchildren of Marsh Fork, VW and in bringing a major public health threat into the public eye. The students' current school sits nears a coal silo and preparation plant and is just 400 yards from a leaking dam containing more than 2 billion gallons of toxic sludge. The Campaign is now using this momentum to create a new school for the Marsh Fork community in the Coal River Valley of West Virginia.

Unable to make headway with state officials, community members decided to go on a fundraising walk to Washington, D.C., led by local grandfather Ed Wiley. The Sierra Club worked with Coal River Mountain Watch, the Southern Appalachian Mountain Stewards, and Save our Cumberland Mountains to generate public support and media attention for Ed's march. Ed was successful in meeting with Senator Byrd, and the event prompted the EPA to get involved.

In support of the Sludge Safety Project, a group that is working to protect Appalachian residents from the harmful byproducts of coal production in West Virginia, our Central Appalachian EJ staff helped bring community leaders to the State Capitol to tell their stories to key legislators. This led to the introduction of a bill that would have placed a moratorium on sludge impoundments and injection (the practice of storing toxic coal slurry underground in abandoned mines). Although the bill did not pass, it did lead to a resolution to conduct an environmental study. To keep this issue in the public eye next year, the Sierra Club will help to commemorate the 35th anniversary of the deadly Buffalo Creek flood that killed more than 100 people when an impoundment dam collapsed.

In El Paso, our organizer has worked with the Sierra Club's El Paso Group and members of several grassroots organizations to build a formidable force to oppose the ASARCO copper smelter's proposed reopening. In February, 2006, the Texas Commission on Environmental

Quality (TCEQ) changed its initial decision to renew ASARCO's air pollution permit, putting substantial roadblocks in the way of the company's efforts to renew operations that have severely contaminated communities along the U.S.-Mexico border. The smelter operated for more than 100 years, spewing lead and arsenic over surrounding communities in Texas, New Mexico, and Mexico before it was closed in 1999. To prevent it from reopening, local residents and groups worked with the Sierra Club's EJ program to mount intense public opposition and publicize past and potential problems in the media.

In October, 2006 the Sierra Club's El Paso Group to released a Department of Justice document secured through the Freedom of Information Act that showed ASARCO (and its subsidiary, ENCYCLE Texas Inc.) made a practice of burning hazardous waste that it claimed to be recycling at the El Paso facility, including waste that came from the former Army Chemical Warfare Depot. Media coverage was detailed in the *New York Times.*

Policy-makers, academics, community members, and representatives from a variety of organizations traveled to Austin to oppose the renewal of the smelter's air permit. Sierra Club's EJ Organizer Mariana Chew helped organize a caravan of more than 100 people to attend the hearing and go on record to oppose the permit.

Remedial Actions: As a result, the TCEQ ordered that more studies, plant inspections, and further hearings about air pollution must be conducted before making a final decision. Additionally, ASARCO will have to conduct new air emissions testing to measure the impact of its operations in Mexico and New Mexico, rather than relying on data for Texas alone. EPA Region 6 should scrutinize and enforce the completion of the TCEQ analysis.

In Detroit, in general most of Detroit is an environmental threat to its residents, with many Brownfields sites, abandoned heavy industrial sites, the only oil refinery in the state, and the largest municipal incinerator in the U.S. The operating plants (i.e. Ford Rouge, Chrysler and the GM Poletown) while still employing hundreds of employees, are among the top five operating polluting facilities in the city of Detroit. This is in addition to the only oil refinery in the state, Marathon Ashland Refinery, and Great Lakes Steel, Zug Island and Detroit Wastewater Treatment Facility. In addition to these facilities, Detroit is home to two coal fired power plants, with an additional three coal fired plants in neighboring cities along the Detroit River. To top it off, twelve of the state's thirteen lead smelters are in the city.

Since the late 1970s, Detroit and suburban officials have squabbled over a system that supplies water and sewerage service to 4.3 million people in 126 communities in eight counties in southeast Michigan. The system operates on a $355-million budget and provides the fifth lowest rates of city-owned systems across the country. Suburban leaders accused Detroit officials of gouging them on rates. Detroit leaders accused the suburbs of trying to hijack a system the city built and extended into the region. Since 2003, Gov. Jennifer Granholm has vetoed two bills to regionalize the system. In the mist of this conflict residents of metro-Detroit and Detroit have seen water and sewage rate increase on a yearly basis. Residents of the City of Detroit are practically burdened by increases which many say they can not afford. In 2006 Director of Detroit's Water Department, Victor M. Merado reported that over 40,000 residences in Detroit

had their water shut-off. This situation created great hardships and health/ safety problems particularly for thousands of families with children. It is quite possible for the Department of Protective Services to take the children from a family whose water has been shut-off because of neglect and health reasons.

Nearly 90 percent of African-Americans in Metro Detroit live within 30 miles of a coal fired power plant. That means they are more likely to have asthma and make more hospital visits according to the *Air of Injustice Report* released in October 2002. Nationally, according to the study, 71% of African-Americans live near coal-fired power plants. Among whites, the national figure is 58 percent. African Americans are disproportionately affected by power plant emissions because we are concentrated in large urban centers, suffer higher rates of asthma and share a historical bond with the developing world where climate change threatens already weak and overburdened economies. Of the 18,500 reported asthma attacks in Michigan in 2000, more than 11,000 were in Detroit,

The Sierra Club EJ Program is working with Michigan Welfare Rights Organization and community partners to impose upon congress to pass legislation to provide funding for water infrastructure improvements for Detroit. According to the director of the cities water department the aging sewer system would cost in the billion to repair. By assisting the city with cost of repairing the system it might also help with holding back future water and sewage rate increases.

Remedial Actions and Suggestions: On February 17, 2006, the Department of Environmental Quality's Environmental Advisory Council (EAC) submitted recommendations to the governor's office for executive action on environmental justice. The EAC's recommendations came as a result of a 10-month long process that included members of the Campaign for State Action on Environmental Justice and finalized by members of the business community, environmental organizations and county and local government that serve on the EAC. The governor promised, but delayed taking action on the Environmental Justice Executive Directive.

We encouraged the mayor of the City of Detroit to also sign onto the U.S. Mayors Climate Protection Agreement and to implement energy efficiency and renewable energy strategies which can make communities healthier, provide jobs and save the city money. We would also encourage the mayor to close adopt the recommendation of the Solid Waste and Recycling Taskforce Report to close the municipal incinerator and to implement a city wide recycling program.

We have encouraged the federal, local and state government to follow rigorous oversight of the proposed new international bridge construction between Detroit and Canada to assure that impact on economically disadvantaged neighborhoods and the health impacts of traffic-induced air pollution are fully addressed.

In the Southwest, the state of New Mexico has been issuing draft permits for uranium milling at the base of Mt. Taylor, a mountain considered sacred by many tribes in northern New Mexico.

The Navajo Nation and the Pueblo of Acoma, began to develop administrative and legal strategies for protecting Mt. Taylor and for opposing other uranium mining development in the Grants Mineral Belt that runs through this region. The Sierra Club EJ Program in Flagstaff, AZ has been assisting this effort by giving the Navajo Nation Council updates on new proposed mining projects.

Indigenous communities in Flagstaff, Arizona fight to stop the proposed expansion of an area ski resort that threatens the sacred San Francisco Peaks and local communities. The resort is seeking permission to manufacture artificial snow from Flagstaff's wastewater and to take another 270 acres for snowmaking infrastructure and new trails. When melted, this snow could contaminate the mountain's aquifer and would compromise the city's water supplies as well.

Remedial Actions: The Sierra Club EJ Program has worked closely with the Navajo Nation, the Havasupai and Hualapai tribes, the Dine' Bidziil Coalition, and the Save the Peaks Coalition to organize numerous outreach events and activities that were successful in getting more organizations, tribes, and individuals involved in this issue, including Azee Bee Nahagha of Dine' Nation, the Western Navajo Agency Council, and the Arizona Commission on Indian Affairs. The EJ organizer has also worked with the Navajo Nation Council to inform Flagstaff residents about the economic and environmental costs inherent in the misuse of reclaimed wastewater, generating public support for limiting or even terminating the ski resort's water contract with the city.

CONCLUSIONS

The Sierra Club EJ Program is honored to be able to assist communities and always upon their request. Intense community involvement, for example regarding mercury contamination concluded with Governor Pawlenty of Minnesota signing a law in May, 2006 requiring the state's coal-fired power plants to cut emissions 90 percent by the year 2015. This victory was made possible by intensive public organizing on the part of many environmental organizations, including Environmental Justice Advocates of Minnesota (EJAM) and the Sierra Club.

Such efforts, as detailed above require the steadfast advocacy of communities. This work is made harder if communities do not have the support of the local, state and federal agencies charged with oversight, compliance and enforcement of environmental, health and civil rights laws. The EPA, unfortunately has not lived up to its mandate on environmental justice. In recent years:

- A 2001 report of the National Academy of Public Administration performed for EPA on environmental justice in permitting programs found "environmental justice has not yet been integrated fully into the agency's core mission or its staff functions" and "EPA does not now have a routine process for identifying high-risk communities and giving them priority attention to prevent pollution and reduce existing public health hazards."

- The U.S. Commission on Civil Rights 2002 study of and report on the implementation of Executive Order 12898 found that federal agencies (including EPA) have failed to incorporate environmental justice into their core missions and that federal agencies

(including EPA) have not established accountability and performance outcomes for environmental justice in their programs and activities.

- The 2004 EPA OIG report that concluded that 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 [populations] . . . and has neither defined nor developed criteria for determining [who is] disproportionately impacted."

- The 2006 EPA OIG report that concluded that "EPA senior management has not sufficiently directed program and regional offices to conduct environment justice reviews in accordance with Executive Order 12898."

- The Lawyers Committee for Civil Rights Under Law upcoming report of the Gulf Coast EJ Commission detailing Gulf residents' testimony and recommendations for remedies in that region regarding Hurricanes Katrina and Rita issues.

In addition, Title VI of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color or national origin in any program or activity receiving federal financial assistance.[1] It applies to all recipients of federal aid, such as state departments of environment.[2] In 2001, the Supreme Court in *Alexander v. Sandoval*[3]eliminated the ability of private individuals to sue to enforce certain Title VI regulations.[4] Thus, individuals may only bring intentional discrimination lawsuits charging a violation of Title VI statute.[5] A disparate impact analysis is no longer valid such that potential plaintiffs can no longer utilize statistical evidence to demonstrate an action had disparate impact based on race, color or national origin. Federal agencies still have the authority to enforce the regulations.[6] Agencies may suspend or terminate funding to obtain compliance with Title VI or may seek equitable relief, such as an injunction. Thus, state environmental agencies and the federal government must rigorously enforce Title VI because individual lawsuits are now severely curtailed.[7]

To make matters worse for individuals, all Title VI complaints filed from 1993 to 2003 to the Environmental Protection Agency's Office of Civil Rights were denied. Of the 136 cases received by EPA since 1993, 75 were rejected without investigation. The agency accepted 26 for

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[1] 42 U.S.C. Sec. 2000d et.seq .
[2] Sanchez, Thomas W., Rich Stolz and Jacinta S. Ma. *Moving to Equity: Addressing Inequitable Effects of Transportation Policies on Minorities.* The Civil Rights Project at Harvard University, Cambridge, MA. 2003 at vi.

[3] 532 US 275, 121 S.Ct. 1511 (2001)
[4] *Id.*
[5] *See,* Sanchez, Thomas, et.al., *supra* note 2, at 35
[6] *Id.*
[7] *Id.*

investigation but found zero showed timely evidence of discrimination.[8] Despite the curtailment of a private right of action for individuals regarding Title VI, all federal agencies via EO 12898, must make achieving environmental justice part of its mission by identifying and avoiding "disproportionately high and adverse" effects on minority and low-income people.[9]

As discussed earlier, poorly enforced environmental policies and laws can contribute to the stagnation of the upward social and economic mobility of a significant portion of this country's population. All stakeholders must recognize the confluence of this country's history of racism, exclusion of low-income people to the political process and neglect to the lack of proper land use, equity and support programs that understand and address this interaction.[10]

> To understand power as a property of a social system of relations is to see power as a shared resource that can be activated from many different positions within the system. Once power is understood as relational, it becomes apparent that at least some of what the dominant "have" must already be available to the subordinated. Indeed, there is an important sense in which this second point is the same as the first. The deconstruction of power is also the deconstruction of the agency and autonomy of the traditional liberal subject. This means that responsibility for subordination and inequality cannot be localized in certain identifiable agents; it is widely distributed throughout the social network. To the exact degree that this understanding of power diminishes the agency of the dominant, it amplifies the agency of the subordinated. What it subtracts from one part of the network, it necessarily redistributes to the other."[11]

Thank you for your interest on these matters. The Sierra Club looks forward to working with this Subcommittee and the EPW Committee on remedying these issues.

---

[8] Michael B. Gerrard, "EPA Dismissal of Civil Rights Complaints," New York Law Journal, Nov. 28, 2003, p. 3, *reprinted in* The Law of Environmental Justice: Update Service, http://www.abanet.org/environ/committees/envtab/ejweb.html

[9] *See,* Sanchez, Thomas, et.al., *supra* note 2, at 35, *see also,* Executive Office of the President, Council on Environmental Quality "*Environmental Justice Guidance Under the National Environmental Policy Act,*" Appendix A, "Guidance for Federal Agencies on Key Terms in Executive Order 12898," p. 25 (December 10, 1997)(the "CEQ EJ Guidance").

[10] *Id.*

[11] Stephen Winter, *The "Power"Thing,* 82 Virginia Law Review 721, 835 (1996), *reprinted in,* Luke W. Cole & Sheila R. Foster, From the Ground Up, Environmental Racism and the Rise of the Environmental Justice Movement, 216, New York University Press (2001).

SOUTHWEST WORKERS' UNION

Executive Board

President: Eloy Contreras

Vice-President: Helen Winslow

Secretary: Willie Stamps

The 'State' of Environmental Justice

San Antonio reality about where we work, where we play, where we study, where we pray

Southwest Workers Union (SWU) and its local, the Committee for Environmental Justice Action (CEJA) represent families and former workers impacted by the systematic marginalization and deadly contamination of the former Kelly Air Force Base, situated in the southwest part of San Antonio, Texas. For over a decade, residents have worked to ensure that their concerns about environmental integrity and community health have been heard and advocated for proactive solutions to address these obvious problems. Most importantly, the community has consistently demanded open and transparent participation as equals in decisions that affect the lives of their family and their future.

Sitting atop a 12 square mile toxic soup while cancer and disease eat away at lives, it is apparent that the public entities - the Department of Defense, the federal Environmental Protection Agency, the Texas Commission on Environmental Quality, Health Department, the City, and the State – have failed this community. With the environmental justice movement moving towards its 20th anniversary and despite numerous meetings, actions, committees, executive orders, new departments, glossy government brochures, etc. little has changed on the ground for the people.

Institutionalized Inaction

As a society and in particular as public institutions, we are far away from realizing anything close to environmental justice, particularly as originally defined through the Principles of Environment Justice. While the concept of environmental racism has been recognized, no proactive solutions have been implemented to create systemic change for the most marginalized members of society. The reality is that our communities are still plagued with contamination, sickness, lack of services and institutional racism. The victories and change visible in our communities are the result of direct public pressure and community-based organizing rather than any systemic effort by public officials to actively address the problems. The challenge faced by communities is that governmental representatives of the wealthiest nation in the world only offer excuses for not adequately protecting poor and people of color communities.

For four years, SWU has been actively organizing and participating in the Interagency Working Group, as a national demonstration site to model how communities and agencies can effectively work in partnership. SWU-CEJA designed a proactive collaborative-based strategy and process for all parties to collectively develop solutions to the issues faced by the community around environmental contamination, community health and economic revitalization. This participatory model was intentionally developed in response, and as a viable alternative to, the legacy of community exclusion and marginalization by governmental agencies. For the organization and our membership it is extremely disappointing to see the culmination of 4 years of work to develop real interagency partnerships with environmental justice communities being met with a cowardly retreat by the Environmental Protect Agency, the lead governmental partner in the process and a lack of real engagement by other agency partners. When collaborations move beyond talking into action, the reality for our communities is that agencies go running and commitment to implementing any steps toward environmental justice dissipates.

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San Antonio, TX 78283

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www.swunion.org
email: swu@igc.org

"We can't do that department"
Working with the Office of Environmental Justice for many years, our experience is that this department acts more as a barrier for our community than an advocate. This bureaucratic entity serves to water down concerns and provide lip-service to placate community demands. The system is created so that the EJ department falls out of the realm of enforcement divisions, regulations, permitting, etc. and does not have respect or accountability from other entities of the government. Not only has the EPA's participation been lax at best in the interagency process in San Antonio, but they have only made it clear that they 'can't enforce, can't decide don't know and can't do.' The challenged posed by SWU is to enumerate what you CAN do for the community, how you can work collaborative toward environmental justice and how you commit to realizing. There is a real concern for community organizations about engaging with an entity that is unable to produce measurable positive outcomes.

Currently, it is imperative that the EPA and other governmental agencies respond to the recent National Academy of Sciences recommendation to tighten regulations on allowable TCE levels. Environmental justice entities, in particular, need to take the lead to ensure the health and safety of communities by making standards that make sense.

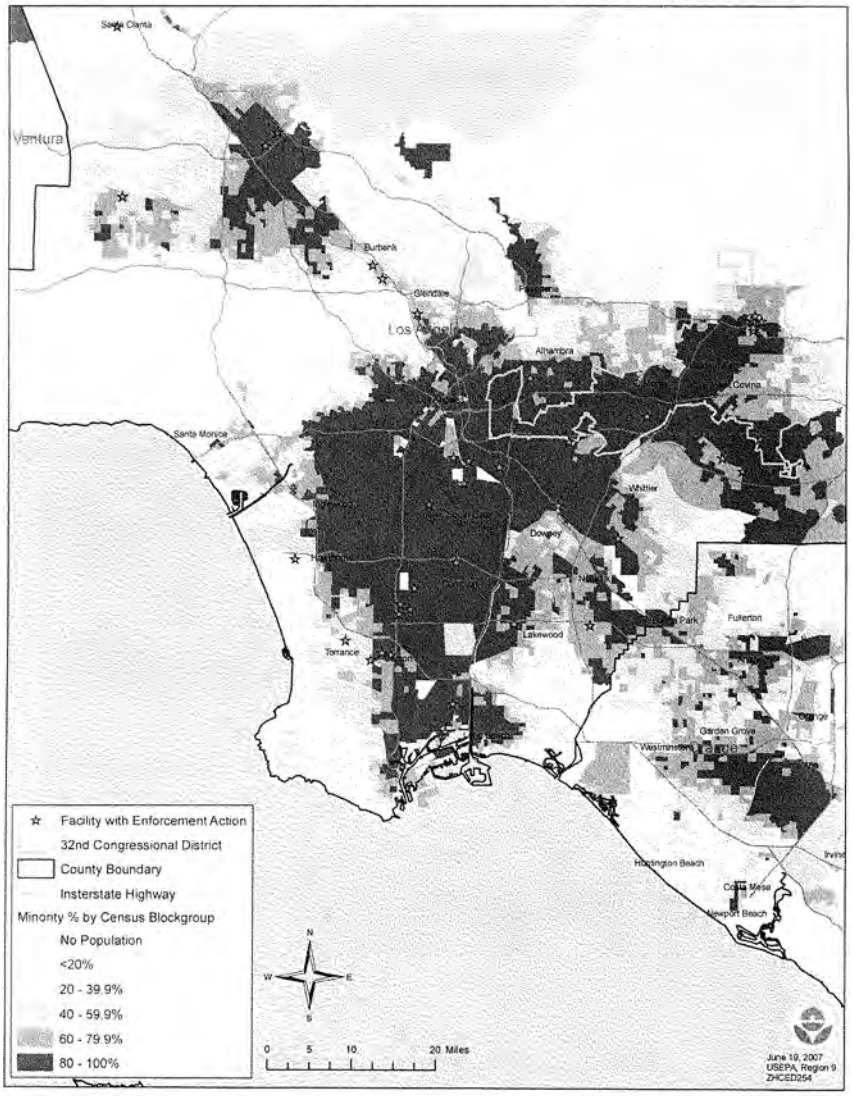
Breaking out of the mold
SWU-CEJA calls on the EPA to take proactive approaches to addressing the needs of the community around Kelly AFB as well as environmental justice communities across the nation.

It is imperative to change the paradigm of what the EPA and all public agencies view as expertise. The true experts in a community are not scientists or agencies that come from far away office cubicles with the answers, but from the residents whose lives and families are invested in the area, who have accumulated a lifetime of experience about the problems and needs of their neighborhood. Without integrating this philosophy into an organization, environmental justice cannot be achieved and environmental racism is perpetuated in more subtle forms. The problem is not that the people do not understand, but rather that the agencies do not listen. Answers will not come until the agencies accept a moment of humility and truly hear the voices of the people they supposedly serve.

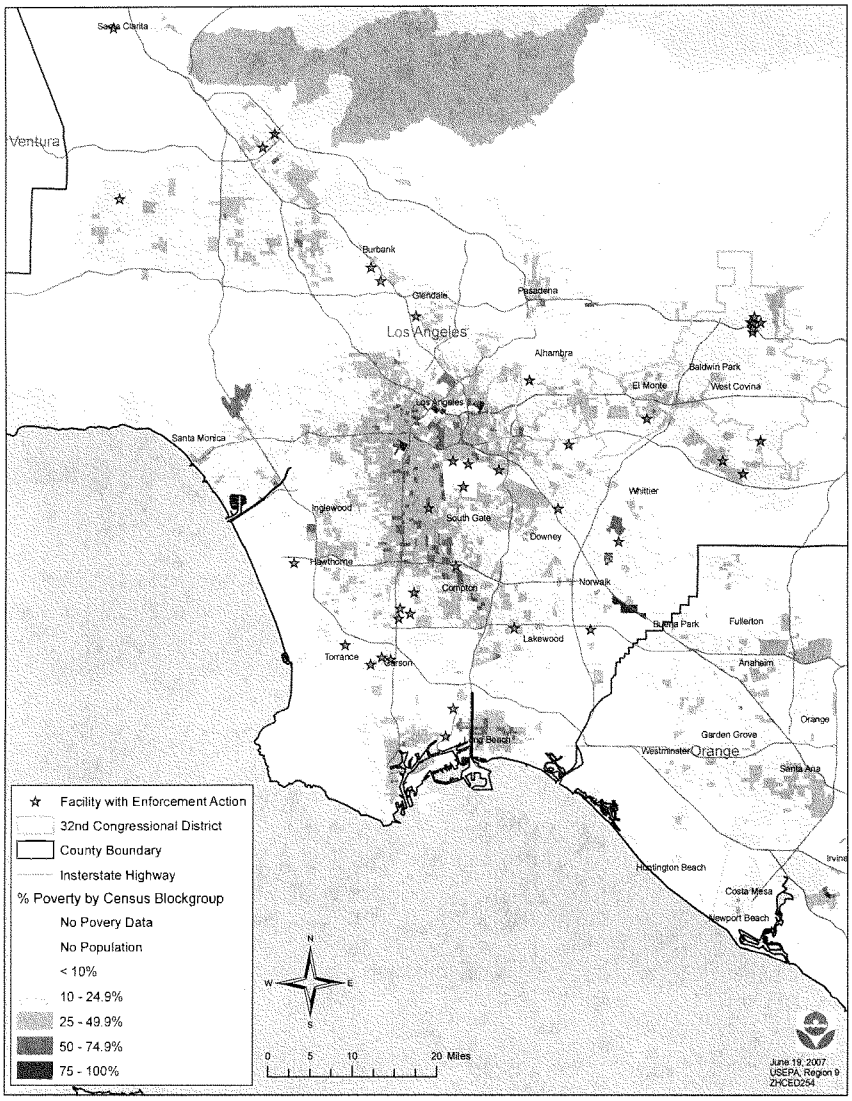
SWU and CEJA demand that the EPA and all offices of environmental justice:

(1) Becomes a transparent organization that is accessible, accountable and responsive to community organizations.
(2) Proactively offer and engage in interagency collaborations and works toward solutions for environmental justice communities.
(3) Recognize impacted community residents (living or working within the contamination plume) as the core stakeholders of any process.
(4) Follow the NEJAC Guidelines for Public Participation.
(5) Tighten standards of TCE levels in accordance to recommendations by the National Academy of Sciences
(6) Take a firm, concrete stance of the clean up standards that must be achieved in the community around the former Kelly Air Force Base and ensure that those measured are rigorously enforced. This includes reviewing and commenting on permit applications made by the Air Force Real Property Agency to the TCEQ to ensure that thorough clean-up plans are developed and implemented.

Facilities with Enforcement Actions (FY'06 - present): Los Angeles County



Facilities with Enforcement Actions (FY'06 - present): Los Angeles County



Advocates for Environmental Human Rights ♦ Deep South Center for Environmental Justice at Dillard University ♦ Holy Cross Neighborhood Association ♦ Louisiana Environmental Action Network ♦ Natural Resources Defense Council ♦ People's Environmental Center ♦ Sierra Club, Louisiana

June 8, 2007

Secretary Mike D. McDaniel
Louisiana Department of Environmental Quality
P. O. Box 4301
Baton Rouge, LA 70821-4301

Re: Notification of Arsenic Soil Sampling Data from Orleans Parish School Grounds

Dear Secretary McDaniel:

We are writing to inform you of a recent study that suggests the need for Louisiana Department of Environmental Quality's ("LDEQ") attention to arsenic contamination in currently open and previously-flooded school grounds in the New Orleans area.

In March of 2007, a coalition of community and environmental groups collected over 130 soil samples in Orleans Parish. Sampling was done at 65 sites in residential neighborhoods where post-Katrina EPA testing had previously shown elevated concentrations of arsenic in soils. Sampling was also done at 15 playgrounds and 19 schools. We strongly believe the results of the testing indicate the need for additional investigation into the safety of a number of school grounds.

Results from the independent laboratory testing for the 19 schools are as follows:[1]

Sample Location	Street Address	Arsenic concentration (mg/kg)
Einstein Charter	5100 Cannes	0.4
Mary Bethune Accelerated School	4040 Eagle St.	0.4
Moton Elem	3000 Abundance Street	0.4
Dr. MLK Jr	2503 Willow St	0.5
Lake Forest Elementary	12000 Hayne Blvd.	0.5
Lusher Elementary/Middle School	7315 Willow St.	0.5
McDonogh 28	401 Nashville Ave.	0.5
Laurel Elementary	820 Jackson Ave.	0.5
Reed Elementary	2521 Marais St.	0.6

[1] Testing was conducted by Natural Resources Defense Council.

International School of LA	1400 Camp St. (Andrew Jackson Bldg)	0.6
P.A. Capdau Middle School	3821 Franklin Ave.	1.1
S.J. Green Middle School	2319 Valence St.	1.3
Lafayette Academy	2727 S. Carrollton Ave.	10.6
Medard H. Nelson Elementary School	1111 Milan St. (McDonogh 7 Bldg)	12.4
McMain Magnet Secondary School	5712 South Claiborne Ave.	12.6
Craig Elementary	1423 St. Philip St.	16.1
Drew Elementary	St. Claude Avenue & Pauline St.	20.3
Dibert	4217 Orleans Ave.	22.8
McDonogh Elementary (#42)	1651 North Tonti St.	34.4

The six results against the grey background indicate levels of arsenic in excess of the LDEQ's soil screening value for arsenic. The LDEQ soil screening value of 12 milligrams per kilogram (mg/kg) normally requires additional sampling, further investigation, and a site-specific risk assessment. It is clear that the levels of arsenic in the sediment are unacceptably high for residential neighborhoods. We are especially concerned about potential health risks to children playing in areas with arsenic contaminated sediments. At some of the sites sampled in March, lab results indicate that arsenic levels have increased in the time passed since earlier post-Katrina studies.

We strongly recommend that LDEQ take advantage of the window of opportunity provided by the upcoming summer vacation to (1) conduct additional sampling of school playgrounds in previously-flooded areas; (2) conduct a site-specific risk assessment; and (3) work with the schools and community to examine potential remediation options. Because we feel it would be unethical to withhold this data from potentially affected parties, we have notified school officials in the six schools with the elevated arsenic levels detected in their sediments.

It is our hope that LDEQ rises to the challenge of its mission to ensure that Louisiana's citizens "have a clean and healthy environment to live and work in for present and future generations" by responding to this data in a time-sensitive manner.

Please feel free to contact any one of the individuals below if we can be of assistance in exploring solutions to this problem.

Sincerely,

Wilma Subra, Louisiana Environmental Action Network, (337) 367-2216
Bryce White, People's Environmental Center, (504) 451-3693
Monique Harden, Advocates for Environmental Human Rights, (504) 919-4590
Pam Dashiell, Holy Cross Neighborhood Association, (504) 430-9041

Al Huang, Natural Resources Defense Council, (212) 727-4534
Darryl Malek-Wiley, Sierra Club Louisiana, (504) 427-1885
Dr. Beverly Wright, Deep South Center for Environmental Justice, (504) 782-8989

cc:

Administrator Stephen L. Johnson, US EPA
Administrator Richard Greene, US EPA, Region 6

FROM : PHONE NO. Jul. 12 2007 02:34PM
JUL-12-2007 13:02 02/07

DEPARTMENT OF ENVIRONMENTAL QUALITY

KATHLEEN BABINEAUX BLANCO
GOVERNOR

MIKE D. McDANIEL, Ph.D.
SECRETARY

July 9, 2007

Ms. Wilma Subra
Louisiana Environmental Action Network
P.O. Box 66323
Baton Rouge, LA 70896

Re: Notification of Arsenic Soil Sampling Data from Orleans Parish School Grounds, MDM-07-038

Dear Ms. Subra:

Thank you for your letter expressing concern over soil arsenic concentrations at specific schools in the New Orleans area. We share your concern for the health and safety of our citizens.

We have reviewed the soil arsenic sample results that you provided to us. It appears that one sample was collected at each of 19 schools in the New Orleans area. Results from 15 of the 19 schools are below health-based levels of concern and are consistent with background levels for Louisiana.

In your letter, you refer to previously flooded school yards and contaminated sediments, implying that these results are somehow the result of Hurricane Katrina. The sampling of New Orleans area soils after Hurricane Katrina was extensive. LDEQ and USEPA together collected more than 2000 sediment and soil samples in the impacted area. These samples were analyzed for arsenic and over 200 other metals and organic chemicals. As the sampling was completed, results were compared to conservative health-based screening levels for residential exposure developed by USEPA and LDEQ. It is important to keep in mind that health-based screening levels represent a level below which adverse health effects are not expected for healthy adults as well as sensitive subpopulations such as children. The USEPA and LDEQ sample results clearly indicate that soils and sediments left behind by the flooding did not negatively impact soils in the affected area and are not expected to cause any adverse health impacts to residents, including children, returning to New Orleans and surrounding parishes.

The sample results from Craig Elementary, Drew Elementary, the Dilbert School and McDonogh Elementary #42 do not appear to be Katrina-related and are likely due to pre-Katrina activities such as the application of herbicides and/or the use of CCA treated play equipment and fencing. Regardless of the source, if these concentrations or higher are present over the entire school yard, some type of remedial action would be warranted.

Ms. Wilma Subra
Notification of Arsenic Soil Sampling Data
MDM-07-038
Page 2

One sample result from a location is not sufficient to adequately characterize conditions at a site. LDEQ will contact school officials and request that they provide the Department with further investigation and site characterization to determine if a release has occurred and if remedial action is required. However, given the dire financial circumstances facing the Orleans Parish school system, LDEQ will offer our assistance to these schools and will aid in performing this additional site investigation upon request from school officials.

If you have any questions regarding this matter, please feel free to contact Mr. Tom Harris of my staff at (225) 219-3393.

Sincerely,

Mike D. McDaniel

Mike D. McDaniel, Ph.D.
Secretary

tfh

c: Byree White, People's Environmental Center
Monique Harden, Advocates for Environmental Human Rights
Pam Dashiell, Holy Cross Neighborhood Association
Al Huang, Natural Resources Defense Council
Darryl Malek-Wiley, Sierra Club Louisiana
Beverly Wright, Deep South Center for Environmental Justice
Stephen L. Johnson, Administrator, USEPA
Richard Greene, Administrator, USEPA Region 6
Tom Harris, LDEQ
Imaging Operations

United States Government Accountability Office

GAO

Report to the Ranking Member, Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, House of Representatives

July 2005

ENVIRONMENTAL JUSTICE

EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules

GAO-05-289

July 2005

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-05-289, a report to the Ranking Member, Subcommittee on Environment and Hazardous Materials, Committee on Energy and Commerce, House of Representatives

ENVIRONMENTAL JUSTICE

EPA Should Devote More Attention to Environmental Justice When Developing Clean Air Rules

Why GAO Did This Study

Executive Order 12898 made achieving "environmental justice" part of the mission of the Environmental Protection Agency (EPA) and other federal agencies. According to EPA, environmental justice involves fair treatment of people of all races, cultures, and incomes. EPA developed guidance for considering environmental justice during the development of rules under the Clean Air Act and other activities.

GAO was asked to examine how EPA considered environmental justice during two phases of developing clean air rules: (1) drafting the rule, including activities of the workgroup that considered regulatory options, the economic review of the rule's costs, and making the proposed rule available for public comment, and (2) finalizing the rule, including addressing public comments and revising the economic review. GAO reviewed the three clean air rules described in the next column.

What GAO Recommends

GAO recommends, among other things, that EPA improve workgroups' ability to identify environmental justice issues and enhance the ability of its economic reviews to analyze potential environmental justice impacts. EPA disagreed with the recommendations because it believes it pays appropriate attention to environmental justice. GAO believes the recommendations are still valid.

www.gao.gov/cgi-bin/getrpt?GAO-05-289.

To view the full product, including the scope and methodology, click on the link above. For more information, contact John B. Stephenson at (202) 512-3841.

What GAO Found

When drafting the three clean air rules, EPA generally devoted little attention to environmental justice. While EPA guidance on rulemaking states that workgroups should consider environmental justice early in this process, GAO found that a lack of guidance and training for workgroup members on identifying environmental justice issues may have limited their ability to identify such issues. In addition, while EPA officials stated that economic reviews of proposed rules consider potential environmental justice impacts, the gasoline and diesel rules did not provide decision makers with environmental justice analyses, and EPA has not identified all the types of data necessary to analyze such impacts. Finally, in all three rules, EPA mentioned environmental justice when they were published in proposed form, but the discussion in the ozone implementation rule was contradictory.

In finalizing the three clean air rules, EPA considered environmental justice to varying degrees. Public commenters stated that all three rules, as proposed, raised environmental justice issues. In responding to such comments on the gasoline rule, EPA published its belief that the rule would not create such issues, but did not publish the data and assumptions supporting its belief. Specifically, EPA did not publish (1) its estimate that potentially harmful air emissions would increase in 26 of the 86 counties with refineries affected by the rule or (2) its assumption that this estimate overstated the eventual increases in refinery emissions. For the diesel rule, in response to refiners' concerns that their permits could be delayed if environmental justice issues were raised by citizens, EPA stated that the permits would not be delayed by such issues. Moreover, after reviewing the comments, EPA did not change its final economic reviews to discuss the gasoline and diesel rules' potential environmental justice impacts. Finally, the portions of the ozone implementation rule that prompted the comments about environmental justice were not included in the final rule. Overall, EPA officials said that these rules, as published in final form, did not create an environmental justice issue.

Three Clean Air Rules

GAO reviewed EPA's activities relating to three clean air rules issued between October 1999 and September 2004. These rules were selected because, of the 19 issued during this period that were deemed significant by EPA and the Office of Management and Budget, they were the only rules that mentioned environmental justice.

- ***Gasoline rule*** to reduce sulfur in gasoline, to reduce emissions from new vehicles (2000).
- ***Diesel rule*** to reduce sulfur in diesel fuel, to reduce emissions from new heavy-duty engines (2001).
- ***Ozone implementation rule*** to implement a new ozone standard (2004).

Source: GAO analysis of EPA data.

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United States Government Accountability Office
Washington, D.C. 20548

July 22, 2005

The Honorable Hilda L. Solis
Ranking Member
Subcommittee on Environment and
Hazardous Materials
Committee on Energy and Commerce
House of Representatives

Dear Ms. Solis:

Low-income and minority populations are disproportionately exposed to air pollution and other environmental risks, according to Environmental Protection Agency (EPA) studies. For example, a 1991 study cited by EPA found that African Americans and Hispanics were more likely to be exposed to ground-level ozone and several other air pollutants known to cause health problems. In 1992, EPA established an office to address environmental pollution affecting racial minorities and low-income communities. Efforts to identify and address disproportionately high and adverse impacts on specific populations and communities are commonly referred to under the term "environmental justice."

In 1994, President Clinton issued Executive Order 12898, which stated that EPA and other federal agencies, to the greatest extent practicable and permitted by law, shall make achieving environmental justice part of their missions by identifying and addressing, as appropriate, the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. To implement the executive order, EPA developed guidance for incorporating environmental justice into specific program areas. One such program area is EPA's implementation and enforcement of the Clean Air Act, a comprehensive law intended, in part, to control emissions that have been found to harm human health. To implement the act, EPA—among other things—develops, implements, and enforces rules on the amount of various pollutants that may be emitted by mobile sources (such as cars, trucks, and other vehicles) and stationary sources (such as power plants and refineries).

According to EPA guidance, environmental justice and other specific factors are to be considered at various points during the development of a rule. For example, to draft a proposed rule, EPA establishes a workgroup, comprised of officials from relevant offices within the agency, to consider

various options and typically recommend one option to managers. EPA guidance, issued in 1994 and 2004, reinforced Executive Order 12898 by suggesting that environmental justice be considered early in the rulemaking process.[1] Also, the Clean Air Act, other statutes, and executive orders require EPA to prepare an economic review of the proposed rule's costs and other impacts. EPA guidance specifies that this review will consider the rule's potential total costs to society (which could include adverse health effects due to exposure to pollutants), including the distribution of those costs among various social and economic groups. Finally, after the approval of all relevant offices within EPA, the proposed rule is published in the *Federal Register*, and a public comment period is opened to solicit formal public comment on the proposed rule. Further, the Clean Air Act requires EPA to allow the submission of public comments, and the final rule must be accompanied by a response to each of the significant comments. Significant public comments that raise environmental justice issues would be addressed along with any other significant public comments on the proposed rule. After considering formal public comments and sometimes changing the economic review and the rule as a result, EPA publishes the final rule in the *Federal Register* and on the Internet. After a specified time period, the rule goes into effect.

In this context, you asked us to determine how EPA considered environmental justice in both drafting and finalizing significant clean air rules between fiscal years 2000 and 2004. Drafting the rule included initial reports flagging potential issues for senior management, activities of the workgroups that considered regulatory options, the economic review of the proposed rule's costs, and making the proposed rule available for public comment. Finalizing the rule included addressing public comments, revising the economic review, and publication of the final review in the *Federal Register*.

To address these objectives, we analyzed EPA documents and held discussions with EPA officials in Washington, D.C.; Anne Arbor, Michigan; and Research Triangle Park, North Carolina, relating to three final clean air rules that were considered significant by EPA and the Office of Management and Budget (OMB) and were finalized between October 1, 1999, and September 30, 2004. In order to identify the rules we would review in detail, we initially analyzed a database of clean air rules finalized

[1]EPA, Action Development Process (June 30, 2004); Memorandum, Initiation of EPA's New Regulatory and Policy Development Process (July 1994).

between fiscal years 2000 and 2004. We then selected rules for review (1) that involved the EPA Administrator's office or extensive cross-agency involvement and (2) that were sent to OMB for review. Rules are sent to OMB for review if their expected annual costs or benefits exceed $100 million, if they raise novel legal or policy issues, or if they may interfere with actions undertaken by another federal agency or a state, local, or tribal government. We examined two mobile source rules: one rule addressed, among other things, the sulfur content of gasoline used in cars and similar vehicles (the gasoline rule, promulgated in 2000), and a second rule addressed, among other things, the sulfur content of diesel fuel used in trucks and similar vehicles (the diesel rule, promulgated in 2001). We also examined the rule for implementing the 8-hour ozone national ambient air quality standard (the ozone implementation rule, promulgated in 2004). A more detailed description of these rules can be found in appendix I. We also selected these rules because, of the 19 clean air rules finalized during this period that met our criteria, they are the only 3 that included the terms "environmental justice" or "Executive Order 12898" in the final rule. We believed that compared with the other 16 rules, these 3 were more likely to include an in-depth consideration of environmental justice by EPA. Therefore, these 3 rules are not likely to be representative of all 19 rules.

In addition, we are including information in this report on how EPA considered environmental justice in drafting three proposed rules of substantial congressional interest, detailed in appendix II. We did not review how EPA considered environmental justice when finalizing these rules because they had not been finalized when we completed our initial fieldwork. Additional details about our scope and methodology are provided in appendix III. We conducted our work between July 2004 and May 2005 in accordance with generally accepted government auditing standards.

Results in Brief

We found that in four phases of drafting three significant clean air rules between fiscal years 2000 and 2004, EPA generally devoted little attention to environmental justice. First, initial reports used to flag potential issues for senior management did not address environmental justice. Second, although EPA guidance suggests that workgroups should consider ways to build in environmental justice provisions early in the rulemaking process, there is reason to question whether this occurred for the three rules we examined. Specifically, the chairs of two workgroups said they did not consider environmental justice, although other workgroup members said that it was considered. Members of the third workgroup said they did

consider environmental justice, but they could not provide us with details on how they did so. Regardless of the extent of discussions, we identified several factors that could have limited the workgroups' ability to identify potential environmental justice issues. For example, workgroup members received no guidance on how to identify potential environmental justice problems in the drafting of a rule and received little, if any, training about environmental justice.

Third, although EPA officials told us that for the proposed rules, their economic reviews—which are intended to inform decision makers of the social consequences of the rules—considered environmental justice, we found that the reviews for the proposed gasoline and diesel rules did not include environmental justice analyses. Moreover, EPA has not identified all of the types of data necessary to perform such an analysis. Finally, in publishing the proposed rules (an opportunity for EPA to explain how it considered environmental justice), EPA mentioned environmental justice in all three cases, but the discussion was contradictory in one case. Specifically, the proposed ozone implementation rule stated in one section that it would not raise any environmental justice issues. However, in another section, the rule specifically invited comments on an option to concentrate commercial and residential growth, which it recognized might raise environmental justice concerns. The proposed gasoline rule stated that environmental justice is an important economic dimension to consider, but it did not describe whether or how it was considered. In a section on environmental justice, the proposed diesel rule noted that it would improve air quality across the country and could be expected to mitigate environmental justice concerns about diesel emissions in urban areas.

We found that, in three phases of finalizing the three clean air rules between fiscal years 2000 and 2004, EPA considered environmental justice to varying degrees. First, public commenters raised concerns about environmental justice in connection with all three rules as proposed, and EPA generally responded to these comments, although not always thoroughly. For example, EPA received comments that refinery emissions would increase under the gasoline rule, and that such an increase would create environmental justice issues. EPA responded that an increase in refinery emissions was possible but—because of projected reductions in vehicle emissions—overall emissions near refineries were unlikely to increase. However, EPA did not explain the basis for this response. Specifically, EPA did not publish its estimate that potentially harmful emissions would increase in 26 of the 86 counties with refineries affected

by the rule, nor did it publish its assumption that this estimate overstated the eventual increases in refinery emissions. For the diesel rule, where similar concerns were raised that refinery emissions would increase, EPA conducted no additional analyses. In response to refiners' concerns that their permits could be delayed if environmental justice issues were raised by citizens, EPA stated that it did not believe the permits would be delayed by such issues. For the ozone implementation rule, EPA received comments on environmental justice, but these comments did not relate to the provisions included in the final rule. Second, after reviewing public comments, EPA made no changes to how potential environmental justice impacts were addressed in the final economic reviews, and thus the final economic reviews generally did not provide decision makers with an environmental justice analysis. Finally, in publishing the three rules in final form, which was another opportunity for EPA to explain how it considered environmental justice, EPA stated explicitly that one rule would not create an environmental justice issue. However, EPA did not explicitly state whether the other two rules would create an environmental justice issue, although the preambles to both rules discussed the mitigation of potential environmental justice effects. EPA officials told us that they believed that none of the rules did create environmental justice issues.

We recommend in this report that the EPA Administrator, among other things, improve the workgroups' ability to identify environmental justice concerns—for example, by providing better guidance and training—and enhance the ability of its economic reviews to analyze potential environmental justice impacts.

We received comments from EPA in a letter dated June 10, 2005 (see app. IV). First, EPA expressed the view that its rules have resulted in better air quality nationally. Second, EPA stated that in examining the agency's process for considering environmental justice, we asked the wrong question and that we should have focused on the outcome of the rulemaking process—the rules themselves. Finally, EPA stated that our evidence of how it considered environmental justice during the development of the three final rules did not support our conclusions and recommendations, and it provided detailed information about the efforts it took relating to environmental justice for the three final rules.

We question the relevance of the information provided on air quality nationally and disagree with EPA's other two points. First, EPA's statements that clean air rules have resulted in better air quality nationally at some level misses the point. Executive Order 12898 calls on agencies to identify

and address the disproportionately high and adverse effects of its programs, policies, and activities on specific groups. For example, such groups could include those who live near refineries and may be exposed to increased emissions as a result of the two mobile source rules, but EPA provided no information on such groups. Second, EPA suggested that it would have been more appropriate for us to look at the outcomes of its efforts than at the process that produced the outcomes. We agree with EPA that outcomes are important, but it is not yet clear whether the rules we examined will address environmental justice issues effectively because the rules are being implemented over the next several years. It is also important to examine the process that led to the rules—as we did. The various process steps are intended to help ensure that EPA's activities during the many phases of drafting and finalizing all rules are efficiently and effectively focused on achieving the desired outcomes.

Third, although EPA stated that our evidence did not support our conclusions and recommendations, it did not challenge the accuracy of the information we provided on how it considered environmental justice during the many phases of developing the three final rules discussed in the body of our report and the three proposed rules discussed in appendix II. While EPA provided detailed information on certain activities and the rationale for undertaking them, our report already discussed nearly all of these activities. For example, EPA noted at length its efforts, after drafting the gasoline rule, to hold discussions with environmental justice and other groups on issues relating to permits that refiners would need if they increased their emissions to comply with the rule. We already acknowledged these efforts in our report. However, EPA's efforts at this stage do not mitigate the fact that it devoted little attention to environmental justice up to that point, or the fact that discussions with affected groups while beneficial, do not offset the effects of possible increases in refinery emissions on these groups. EPA is essentially relying on state and local governments to deal with environmental justice concerns as they implement the gasoline and diesel rules at the refinery level, even though the executive order does not apply to state or local governments, and absent specific state or local law, they have no obligation to consider environmental justice when issuing permits. In addition, the three final rules were selected in part because they mentioned environmental justice and therefore should have showcased EPA's efforts to consider environmental justice. Thus, we continue to believe that the evidence we provided supports our conclusions and recommendations.

Background

Even before Executive Order 12898 was issued in 1994, EPA took steps to address environmental justice. For example, in 1992, it established the Office of Environmental Equity, which is now known as the Office of Environmental Justice, to focus on environmental pollution affecting racial minorities and low-income communities, but this office has no specific role in rulemaking. In 1993, EPA created the National Environmental Justice Advisory Committee to provide independent advice and recommendations to the Administrator on environmental justice matters.

The 1994 executive order stated that EPA and other federal agencies, to the extent practicable and permitted by law, shall make achieving environmental justice part of their missions by identifying and addressing, as appropriate, the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The executive order does not create a right to sue the government or seek any judicial remedy for an agency's failure to comply with the order.

After the issuance of the executive order, EPA took additional steps to identify and address environmental justice. Among other things, in 1994, the Administrator issued guidance for the rulemaking process suggesting that environmental justice be considered early in the rulemaking process. In 1995, EPA issued an Environmental Justice Strategy that included, among other things, (1) ensuring that environmental justice is incorporated into the agency's regulatory process, (2) continuing to develop human exposure data through model development, and (3) enhancing public participation in agency decision making. In 2001, the Administrator issued a memorandum defining environmental justice more broadly 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." In 2004, EPA developed new guidance for rulemaking that, like its earlier 1994 guidance, suggested that environmental justice be considered early in the rulemaking process.

Under the Clean Air Act, EPA, along with state and local government units and other entities, regulates air emissions of various substances that harm human health. According to EPA data, from 1995 though 2004, emissions of certain air pollutants have declined from 15 percent to as much 31 percent, as shown in table 1.

Table 1: Changes in Estimated Emissions of National Air Pollutants, 1995-2004

Type of air pollutant emission	Air emission amount (millions of tons per year) 1995	2004[a]	Percentage change
Carbon monoxide	120.0	87.2	(27)
Nitrogen oxides	24.7	18.8	(24)
Sulfur dioxide	18.6	15.2	(18)
Particulate matter[b]	3.1	2.5	(19)
Volatile organic compounds	21.6	15.0	(31)
Lead	0.0039	0.0033	(15)

Source: GAO analysis of EPA data.

[a]Data for 2004 are preliminary.

[b]Paticulate matter measuring 10 microns or less.

In addition, EPA sets primary national ambient air quality standards for six principal pollutants that harm human health and the environment. These standards are to be set at a level that protects human health with an adequate margin of safety, which, according to EPA, includes protecting sensitive populations, such as the elderly and people with respiratory or circulatory problems. These six pollutants include the five types of emissions listed in table 1, along with ozone, which is not emitted directly but is formed when nitrogen oxides and volatile organic compounds react in the presence of sunlight. According to EPA, in 2003, about 161 million people (about 56 percent of the population) lived in areas where the concentration of ozone met the standard; about 120 million people (41 percent) lived in areas where the concentration of particulate matter met EPA's standard; and about 168 million people (58 percent) lived in areas where the concentrations of the other four pollutants met the standards.

EPA has a multistage process for developing clean air and other rules that it considers high priority (the top two of three priority levels) because of the expected involvement of the Administrator, among other factors. Initially, a workgroup chair is chosen from the lead program office, such as the Office of Air and Radiation (Air Office) in the case of clean air rulemaking. The workgroup chair assigns the rule one of the three priority levels, and EPA's top management makes a final determination of the rule's priority. The priority level assigned depends on such factors as the level of the Administrator's involvement and whether more than one office in the agency is involved. The gasoline, diesel, and ozone implementation rules

were classified as high-priority rules on the basis of these factors. In addition, these rules were considered significant because they had an effect of $100 million or more a year on the economy, or they raised novel legal or policy issues and, therefore, were required under Executive Order 12866 to be sent to OMB.[2] Among other things, an OMB review is conducted to ensure that the rule is consistent with federal laws and the President's priorities, including executive orders.

EPA guidance identifies environmental justice as one of many factors to be considered early in the rulemaking process. In 1994, the EPA Administrator established guidance for rulemaking and identified 11 characteristics for "quality actions" in rulemaking. Among these characteristics were (1) consistency with legal requirements and national policies, which would include Executive Order 12898, and (2) adherence to the Administrator's seven priorities, which included environmental justice. According to the guidance, managers must consider all 11 areas early on and be explicit about any trade-offs made among them.

For high-priority rules, the workgroup chair is responsible for, among other things, ensuring that work gets done and the process is documented. Other workgroup members are assigned from the lead program office and, in the case of the two highest priority rules, from other offices. The workgroup may conduct such activities as (1) collaborating to prepare a plan for developing the rule, (2) seeking early input from senior management, (3) consulting with stakeholders, (4) collecting data and analyzing issues, (5) considering various options, and (6) recommending usually one option to managers. In addition, an economist (who typically participates in the workgroup) prepares an economic review of the proposed rule's costs to society. According to EPA, the "ultimate purpose" of an economic review is to inform decision makers of the social welfare consequences of the rule. Finally, after the approval of all relevant offices within EPA, the proposed rule is published in the *Federal Register*, the public is invited to comment on it, and EPA considers the comments. Comments may address any aspect of the proposed rule, including whether environmental justice issues are raised and appropriately addressed in the proposed rule. Sometimes, prior to the publication of the proposed rule, EPA publishes an Advanced Notice of Proposed Rulemaking in the *Federal Register*. The notice provides an opportunity for interested stakeholders to provide input to EPA early in the

[2]President Clinton issued Executive Order 12866 on September 30, 1993, to begin a program to reform the regulatory process and make it more efficient.

process, and the agency takes such comments into account to an appropriate extent, according to EPA.

In finalizing a rule, EPA is required to provide a response to all significant public comments, including those on environmental justice, and to prepare a final economic review. After these tasks are completed, the rule, if it is significant, is sent to OMB for approval. Once OMB approves the final rule and the Administrator signs it, it is published in the *Federal Register*. After a specified time period, the rule goes into effect.

Within EPA, the Air Office is primarily responsible for implementing the Clean Air Act, as amended. Within that office, the Office of Air Quality Planning and Standards is primarily responsible for developing the majority of new rules for stationary sources resulting from the act. Also within the Air Office, the Office of Transportation and Air Quality has primary responsibility for developing rules and other programs to control mobile source emissions. The Office of Environmental Justice, located within EPA's Office of Enforcement and Compliance Assurance, provides a central point for the agency to address environmental and human health concerns in minority communities and/or low-income communities—a segment of the population that has been disproportionately exposed to environmental harms and risks, according to the office's Web site. The office works with EPA's program and regional offices to ensure that the agency considers environmental justice.

EPA Generally Devoted Little Attention to Environmental Justice in Drafting Three Rules

Although EPA guidance calls for environmental justice to be considered early in the rulemaking process, we found that EPA generally devoted little attention to environmental justice during the drafting of the three rules as proposed. First, environmental justice was not mentioned in an initial form used to flag potential issues for senior management. Second, it is unclear how much the workgroups discussed environmental justice because EPA officials had differing recollections on the matter. Even when the workgroups did discuss environmental justice, their ability to identify potential problems may have been limited by a lack of training and guidance, among other factors. Third, the economic reviews of two of the three proposed rules did not discuss environmental justice. Finally, when the proposed rules were published in the *Federal Register* and made available for public comment, all three mentioned environmental justice, but the discussion was contradictory in one case.

Initial Form Prepared for Senior Management Did Not Address Environmental Justice

Although EPA guidance suggested that environmental justice was one of the factors that should be considered early in rulemaking, it did not include information on environmental justice in a key form prepared for management at the beginning of the process. After being designated, the workgroup chair is to complete a "tiering form" to help establish the level of senior management involvement needed in drafting the rule. For example, the highest priority rules would involve the Administrator and more than one office in the agency. The forms for the gasoline, diesel, and ozone implementation rules stated that these rules were of the highest priority. In addition, the form asks a series of questions, the answers to which are to be used to alert senior managers to potential issues related to compliance with statutes, executive orders, and other matters. This form specifically asks about, among other things, the rules' potential to pose disproportionate environmental health risks to children and to have potential Endangered Species Act implications. However, the form does not include a question regarding the rules' potential to create environmental justice concerns. Moreover, on the forms that were completed for the three rules we reviewed, we found no mention of environmental justice.

Lack of Guidance and Training May Have Limited Workgroups' Ability to Identify Potential Environmental Justice Concerns

EPA officials had differing recollections about the extent to which the three workgroups considered environmental justice. The chairs of the workgroups for the two mobile source rules told us that they did not recall any specific time when they considered environmental justice during the rules' drafting, but other EPA officials said environmental justice was considered. The chair of the ozone workgroup told us that his group did consider environmental justice, but that he could not provide any specifics about this.

Because 3 to 7 years have passed since these workgroups were formed and the workgroup members may not have remembered discussions of environmental justice during the rules' drafting, we asked them to provide us with any documentation that may have indicated that environmental justice was considered. Members of the two mobile source workgroups told us that they did not have any such documents. The chair of the ozone workgroup provided us with a copy of a document, prepared by the

workgroup, which identified issues needing analysis.[3] The document stated that information would be developed for an economic review related to the proposed rule, and that such information would be used in part to support compliance with executive orders, including one related to low-income and minority populations.

Even when the workgroups stated that they had considered environmental justice, we identified three factors that may have limited their ability to identify potential environmental justice concerns. First, all three workgroup chairs told us that they received no guidance in how to analyze environmental justice concerns in rulemaking. Second, workgroup members had received little, if any, training on environmental justice. Specifically, all three workgroup chairs told us they received no training in environmental justice. Two chairs did not know whether other members of the workgroups had received any training, and a third chair said at least one member had. Some EPA officials involved in developing these three rules told us that it would have been useful to have a better understanding of the definition of environmental justice and how to consider environmental justice issues in rulemaking. Finally, the Air Office's environmental justice coordinators, whose full-time responsibility is promoting environmental justice, were not involved in drafting any of the three rules. Neither of the two coordinators we spoke with (the overall coordinator for the Air Office and the coordinator for the unit within the Air Office that prepared the rules) could recall being involved in drafting any of the three rules. Further, the Air Office's environmental justice coordinators said they rarely served as part of a workgroup for air rulemaking or received questions from a workgroup during the development of any rule under the Clean Air Act.

[3]The document, called an "analytic blueprint," is to be developed for high-priority rules, according to the 1994 EPA guidance on rulemaking, to provide an opportunity for early identification of issues and for the workgroup to reach agreement on how issues will be resolved. According to the guidance, senior management approval provides managers with the opportunity to engage in a dialogue with the workgroup on the analyses that will support the rule.

Economic Reviews Did Not Always Provide Decision Makers with an Environmental Justice Analysis

EPA is required under the Clean Air Act, other statutes, and executive orders to prepare an economic review for proposed rules, and the type of economic review to be prepared depends on the rule's impact on the economy. Specifically, rules that are expected to have an effect of $100 million or more a year—like the two mobile source rules—require a more detailed "economic analysis." Other rules—like the ozone implementation rule—still must conduct a less detailed "economic impact assessment." According to EPA, the "ultimate purpose" of these reviews is to inform decision makers of the social consequences of the rules. According to EPA guidance, both types of review are to discuss the rule's cost and the distribution of those costs across society. According to EPA officials, both types of review consider environmental justice. The more detailed reviews, or economic analyses, also are to discuss the rule's benefits and equity effects, which include environmental justice.

For all three rules, an economic review of their economic costs and certain other features was prepared for decision makers before the proposed rules were published. However, the economic analyses of the two mobile source rules did not include an analysis of environmental justice. The supervisor of the economists who prepared the analyses said that environmental justice was not discussed in the analyses due to an oversight. However, he also said (and a senior policy advisor in the Air Office concurred) that EPA has not agreed upon the complete list of data that would be needed to perform an environmental justice analysis. Further, he said that EPA does not have a model with the ability to distinguish localized adverse impacts for a specific community or population.

Although the economic impact assessment of the ozone implementation rule did discuss environmental justice, it inconsistently portrayed some information relevant to the rule's potential environmental justice impacts. Specifically, the assessment stated that EPA determined the rule would not create environmental justice issues, based on its analysis of the 1997 rule that established the 8-hour ozone national ambient air quality standard. However, the earlier rule referred to its economic review, which stated it was not possible to rigorously consider the potential environmental justice effects of the rule because the states were responsible for its implementation. The inability of EPA to rigorously consider environmental justice in the 1997 rule does not seem to support EPA's statement that there were no environmental justice issues raised by the ozone implementation rule. Also, the economic impact assessment did not address the potential environmental justice effects of a certain provision, which EPA stated 2 months later, in the proposed rule, might raise environmental justice

issues. The provision would attempt to reduce vehicle use generally throughout a large metropolitan area by encouraging mixed-use growth—a combination of industrial, retail, and residential development—in portions of that metropolitan area, so transportation would be concentrated there. According to EPA, concentrating vehicle emissions and stationary emissions might create environmental justice concerns for low-income residents.

All Three Proposed Rules Mentioned Environmental Justice, but the Discussion Appeared Contradictory in One Case

According to EPA's director of regulatory management, the agency did not have any guidance on whether environmental justice should be included in the preamble of a rule at the time the gasoline and diesel rules were developed. By the time the ozone implementation rule was proposed, EPA had developed guidance, which is still in place today. While this guidance indicates that environmental justice and seven other executive orders should be considered when a new rule is developed, it does not state that officials must include a discussion of environmental justice in the proposed rule. Specifically, the guidance provides that five orders should be discussed in all rules, and that three other orders—including the order relating to environmental justice—may be discussed if necessary and appropriate. (Table 2 contains a list of these executive orders.) EPA officials told us that a discussion of environmental justice was made optional under the guidance because it is infrequently identified by EPA as an issue.

Table 2: EPA Guidance for Discussion of Executive Orders in Proposed Rules

Guidance	Executive order	
	Number	Title
Executive orders that *should* be discussed	E.O. 12866	Regulatory Planning and Review
	E.O. 13045	Protection of Children from Environmental Health and Safety Risks
	E.O. 13175	Consultation and Coordination with Indian Tribal Governments
	E.O. 13211	Actions That Affect Energy Supply, Distribution, or Use
	E.O. 13132	Federalism
Executive orders that *may* be discussed	E.O. 12630	Governmental Actions and Interference with Constitutionally Protected Property Rights (Takings)
	E.O. 12898	Environmental Justice
	E.O. 12988	Civil Justice Reform

Source: EPA.

The publication of a proposed rule gives EPA an opportunity to explain how it considered environmental justice in the rule's development. Although all three rules mentioned environmental justice when they were published in the *Federal Register*, they differed in the extent to which they discussed this issue and, in one case, the discussion appeared contradictory. In the proposed gasoline rule, EPA stated that environmental justice is an important economic dimension to consider, but it did not describe whether it was considered or whether the proposed rule raised any environmental justice issues. In the proposed diesel rule, in a section on environmental justice, EPA stated that the rule would improve air quality across the country and could be expected to mitigate environmental justice concerns about concentrations of diesel emissions. More particularly, EPA stated that health benefits could be expected for populations near bus terminals and commercial distribution centers, where diesel truck traffic would be concentrated, because pollutants in diesel emissions would be reduced. The treatment of environmental justice in the proposed ozone implementation rule was unclear because two sections of the rule appeared to contradict each other. In one section, EPA stated that it did not believe the rule would raise any environmental justice issues, but in another section, it specifically invited comments on an option to

concentrate commercial, industrial, and residential growth, which it said "may raise environmental justice concerns."[4]

EPA Considered Environmental Justice to Varying Degrees in Finalizing Three Rules

In all three cases, EPA received and generally responded to public comments on environmental justice, although in one case it did not explain the basis for its response. In addition, in all three cases, it completed a final economic review, but these reviews generally did not provide decision makers with an environmental justice analysis. EPA published all three final rules, and EPA officials told us that they believed that these rules did not create an environmental justice issue.

EPA Generally Responded to Public Comments Pertaining to Environmental Justice

In Clean Air Act rulemaking, EPA is required to allow the submission of public comments, and the final rule must be accompanied by a response to each significant comment. These comments are generally submitted during the official public comment period after a rule is proposed, but they may be submitted while EPA is drafting a proposed rule. The act also requires EPA to place written comments in a public docket.[5] In addition, according to EPA's public involvement policy, agency officials should explain, in their response to comments, how they considered the comments, including any change in the rule or the reason the agency did not make any changes.[6]

The Gasoline Rule

Commenters from the petroleum industry, environmental groups, and elsewhere stated that the proposed gasoline rule raised environmental justice concerns. For example, one commenter representing environmental justice groups stated that the proposed rule was "completely devoid of environmental justice analysis," and that the national benefits of the rule were derived from transferring broadly distributed emissions into areas

[4]In commenting on our report, EPA explained its "seemingly contradictory statements" about the proposed ozone implementation rule. It said that it sought comments on the proposal, which it said "might raise environmental justice concerns," to alert stakeholders and facilitate discussions, and that the proposal was not definitive enough to proceed to final rulemaking.

[5]A public docket serves as the repository for the collection of documents or information related to a particular agency action or activity. It generally consists of documents specifically referenced in the *Federal Register*, any public comments received, and other information used by decision makers or otherwise related to the agency action or activity.

[6]EPA, *Public Involvement Policy of the U.S. Environmental Protection Agency*, EPA 233-B-03-2002, May 2003, which updated a 1981 policy.

around refineries. Also, a representative of a petroleum company stated that EPA needed to address environmental justice issues. EPA responded by taking two actions. It (1) analyzed the rule's potential impact on communities around refineries and (2) sought stakeholders' views on environmental justice and other issues relating to refinery emissions.

First, EPA estimated how two types of refinery and vehicle emissions would change, as a result of the rule, in 86 U.S. counties[7] that contained a refinery. The two types of emissions—nitrogen oxides and volatile organic compounds—contribute to the formation of ground-level ozone, which is regulated under the Clean Air Act because it is harmful to human health. EPA estimated that the increase in refinery emissions could be greater than the decrease in vehicle emissions, resulting in a net increase in emissions of one or both substances, in 26 counties (about 30 percent of the total), as shown in table 3. Specifically, it estimated that emissions of both substances could increase in 10 counties, with a population of about 13 million people, and that emissions of only one substance would increase in another 16 counties. On the other hand, EPA estimated that emissions of both substances could decrease in 60 counties. For example, EPA estimated that in Plaquemines Parish, Louisiana, net emissions of nitrogen oxides could increase 298 tons as a result of the rule, reflecting an increase in refinery emissions of 356 tons and a decrease in vehicle emissions of 58 tons. Conversely, it estimated that in Calcasieu Parish, emissions of volatile organic compounds could decrease by 61 tons, reflecting an increase in refinery emissions of 84 tons and a decrease in vehicle emissions of 145 tons.

[7]EPA's analysis covered counties and parishes.

Table 3: Estimated Potential Changes in Selected Emissions in 2007 Resulting from the Gasoline Rule in Counties with Refineries

Estimated potential changes	Number of counties
Increased emissions of one or both emissions	
Increased emissions of both emissions	10
Increased emissions of only one emission	16
Subtotal	**26**
Decreased emissions of both emissions	60
Total	**86**

Source: GAO analysis of EPA data.

The results of EPA's analysis appear to support those commenters who asserted that the rule might create environmental justice issues in some localities. They also appear to conflict with EPA's statements, in its summary of and response to comments document, that "it would be unacceptable to trade the health of refining communities in exchange for generalized air pollution benefits. However we do not believe the Tier 2/gasoline sulfur control rule will cause such an exchange." EPA also stated that, for the "vast majority" of areas near refineries, the benefits of reduced emissions from vehicles would "far outweigh" any increase in refinery emissions.[8]

When asked whether this analysis appeared to confirm concerns about the rule's potential environmental justice impacts, EPA officials told us that the analysis was limited and overstated the net increase in refinery emissions in two ways. First, according to EPA officials, the analysis did not consider the actions that refiners would likely take to offset increases in emissions because of the new rule; EPA assumed that they would seek to reduce emissions in other ways to avoid additional regulation at the state level. EPA said it believed these actions would limit the expected increases in refining emissions. Second, EPA analyzed the effect of the rule only for 2007. EPA officials said they believed that the benefits of the rule would increase after that year, as new (and cleaner) vehicles increasingly replaced older (and less clean) vehicles.

[8]EPA, *Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements: Response to Comments*, EPA 420-R-99-024, December 1999.

We note two other ways in which the analysis was limited in estimating the potential effects on communities near refineries. First, EPA did not ask refiners about the rule's impact on their output of these two emissions, nor did EPA perform an analysis to determine how the rule would impact individual refiners' emissions of these two substances. Instead, EPA assumed that emissions would increase by the same proportion at each refinery—nitrogen oxides, by 4.5 percent, and volatile organic compounds, by 3.32 percent—although individual refineries increases could be lesser or greater than these percentages. Secondly, EPA did not estimate the rules' impact on other pollutants, such as particulate matter and sulfur dioxide, which might also increase as a result of the increase in refining activity needed to comply with the rule.

EPA did not make the results of its analysis available to the public, either in the economic review of the final rule or elsewhere in the docket, because EPA officials told us they considered the results of the analysis too uncertain to release to the public. However, EPA officials told us that the analysis—along with their assumption that refineries were likely to emit less emissions than the analysis indicated—supported their belief that the rule would be unlikely to cause environmental justice impacts. In addition, these officials said they believed that, if the rule did create environmental justice issues, they could be best addressed by the state or local governments. This is because any refiners needing to increase their emissions to comply with the gasoline rule would have to submit specific plans to such governments during the permitting process.

Second, EPA believed that environmental justice issues would be best addressed during the permitting process, and EPA hired a contractor to solicit stakeholders' potential concerns about this issue. In September 1999, the contractor interviewed individuals from EPA, environmental organizations, the oil refining industry, and state agencies responsible for regulating refinery emissions to ascertain their views. In December 1999, the contractor again sought stakeholders' views, focusing largely on local environmental groups, because few of them were interviewed in September. In December, local environmental groups stated that they did not trust the state environmental agencies, and that they perceived that EPA had "talked exclusively with industry representatives prior to developing the proposed rule, but not to the local environmental organizations." In addition, these groups said that they did not want "any added emissions to their air, even if there will be a net benefit to the nation's environment."

In response to the stakeholders' concerns, the contractor recommended that EPA develop permitting teams, provide information about the rule, and enhance community involvement. The contractor said that these recommendations would improve the permitting process for all stakeholders by addressing issues specific to each permit, potentially including environmental justice. EPA said that it would implement the contractor's recommendations for improving the permitting process to deal with environmental justice issues.

EPA stated that it believed that environmental justice issues could be dealt with during the permitting process at the state or local level, and officials told us that EPA has limited direct authority over permitting because most permitting occurs at the state level. Several groups commented that the states, not EPA, "act as the permitting authorities" over refineries. EPA said it agreed that states generally have primary authority over permitting. Further, Executive Order 12898 does not apply to state or local permitting authorities, and absent specific state or local law, state and local governments have no obligation to consider environmental justice when issuing permits.

The Diesel Rule

In response to an Advanced Notice of Proposed Rulemaking, several commenters expressed concern that the diesel rule would lead to increased refinery emissions of regulated pollutants. They specifically stated that EPA should address the potential for increased emissions in its economic analysis of the rule. EPA did not respond to these comments[9] and did not factor the potential increase in regulated pollutants into its final economic analysis. In commenting on the proposed rule, several petroleum companies stated that changes they would need to make to comply with the rule might increase emissions and, therefore, lead citizens to raise environmental justice issues. EPA responded that it did not believe that complaints would delay the refineries' permitting applications. However, EPA did not analyze the rule for environmental justice impacts, such as increases in air emissions in communities surrounding refineries. EPA officials told us that they did not perform such an analysis because they

[9]In commenting on our draft report, EPA noted that the agency was not obligated to respond to these comments because they were filed on an Advanced Notice of Proposed Rulemaking, which provides an opportunity for interested stakeholders to provide input to EPA early in the process, and the agency takes such comments into account to an appropriate extent. Furthermore, EPA said commenters did not repeat these concerns when the proposal was issued about a year later, and EPA assumed this was because they were satisfied.

believed that they had sufficiently analyzed these issues in the context of the gasoline rule.

The Ozone Implementation Rule

In the proposed rule on implementing the ozone standard, EPA asked for public comments on potential environmental justice issues stemming from a specific provision that would have encouraged concentrated growth in urban areas to reduce the number of commuter vehicles contributing to ozone emissions. Seven public commenters stated that the provision could have potential environmental justice impacts. However, these comments on environmental justice did not relate to the provisions of the ozone implementation rule that have, thus far, been finalized, and therefore it was not necessary for EPA to respond to these comments. According to an EPA official, EPA is still considering the provision, and the public comments on it, for a second phase of the rule implementing a new ground-level ozone standard that EPA intends to finalize this year.

Final Economic Reviews Generally Did Not Provide Decision Makers with an Environmental Justice Analysis

After taking into consideration public comments, the agency prepares a final economic review. EPA guidance indicates that this final economic review, like the proposed economic review, should identify the distribution of the rule's social costs across society. After considering public comments, EPA did prepare a final economic review for all three rules, but, for two of the three rules, environmental justice was not discussed.

Even after the public expressed concerns about environmental justice, the final economic analysis of the gasoline rule, like the analysis of the proposed rule, did not discuss environmental justice. According to the supervisory economist, not discussing environmental justice in the final analysis was an oversight.

Similarly, the final economic analysis of the diesel rule, like the analysis of the proposed rule, did not discuss environmental justice. Again, according to the supervisory economist, not discussing environmental justice in the final analysis was an oversight. As a result, EPA did not incorporate the public's suggestions that EPA include the cost of increased refinery emissions in its economic analysis.

For the ozone implementation rule, EPA did not prepare a new economic impact assessment for its final version. Instead, it issued an addendum to the proposed assessment and stated that it considered the addendum and the proposed assessment to constitute a final economic impact assessment. In addition, because EPA decided to finalize the ozone

implementation rule in two phases, the addendum addressed only the part of the rule that was finalized, not the entire proposed rule. Thus, the assessment of the final rule did not change the conclusion of the assessment of the proposed rule, namely that the ozone implementation rule did not create any environmental justice issues.

EPA Officials Believed That the Three Final Rules Did Not Create Environmental Justice Issues

The publication of a final rule gives EPA another opportunity to explain how it considered environmental justice in the rule's development. For all three rules, EPA discussed environmental justice.[10] The preamble to one rule stated explicitly that it would not create an environmental justice issue.[11] The other two rules did not explicitly state whether they would create an environmental justice issue, although the preambles to both rules discussed the mitigation of potential environmental justice effects. EPA officials told us that they believed that these rules did not create an environmental justice issue.

In the preamble to the final ozone implementation rule, as in the proposed rule, EPA stated that the rule did not raise any environmental justice issues. The agency supported its statement by explaining that the rule was implementing a standard, developed in 1997, that had already taken environmental justice into account.

In the preamble to the final gasoline rule in 2000, EPA stated that areas around the refineries would receive an environmental benefit from the rule, and that emissions at some refineries might increase even after installing equipment to comply with emissions controls in the Clean Air Act. It concluded that the increases in refinery emissions would be very small in proportion to the decreases in vehicle emissions in the areas around refineries. Moreover, EPA discussed its previous actions to consider environmental justice concerns, as previously discussed, and stated that it was committed to resolve environmental justice issues if they arose, through additional outreach efforts to local communities and similar means. Although the final rule did not state explicitly whether it would or would not ultimately create an environmental justice issue, EPA officials

[10]Of the 19 clean air rules that EPA finalized during the time period we reviewed and that met our criteria, the 3 rules we reviewed were the only ones that mentioned environmental justice in the final rule.

[11]The preamble to a rule contains additional text that explains the rationale behind a proposed or final rule.

told us in late 2004 that, in their opinion, the rule did not create such an issue.

Lastly, in the preamble to the final diesel rule in 2001, EPA stated that the rule could mitigate some of the environmental justice concerns pertaining to the heavy-duty diesel engines that often power city buses. The final rule does not discuss any potential environmental justice issues pertaining to impacts from increased refinery emissions on nearby communities, even though EPA officials told us that they recognized increased refinery emissions could have such impacts. Nevertheless, EPA officials told us in late 2004 that they believed the rule did not create environmental justice issues.

Conclusions

We found some evidence that EPA officials considered environmental justice when drafting or finalizing the three clean air rules we examined. During the drafting of the three rules, even when the workgroups discussed environmental justice, their capability to identify potential concerns may have been limited by a lack of guidance, training, and involvement of EPA's environmental justice coordinators. It is important that EPA thoroughly consider environmental justice because the states and other entities, which generally have the primary permitting authority, are not subject to Executive Order 12898.

EPA's capability to identify environmental justice concerns through economic reviews also appears to be limited. More than 10 years have elapsed since the executive order directed federal agencies, to the extent practicable and permitted by law, to identify and address the disproportionately high and adverse human health or environmental effects of their programs, policies, and activities. However, EPA apparently does not have sufficient data and modeling techniques to be able to distinguish localized adverse impacts for a specific community. For example, EPA has not agreed upon the complete list of data that would be needed to perform an environmental justice analysis. This suggests that, although EPA has developed general guidance for considering environmental justice, it has not established specific modeling techniques for assessing the potential environmental justice implications of any clean air rules. In addition, by not including a discussion of environmental justice in all of the economic reviews, EPA decision makers may not have been fully informed about the environmental justice impacts of all the rules.

Finally, even though members of the public commented about two rules' potential to increase refinery emissions—potential environmental justice issues, (1) in one case, EPA did not provide a response and (2) in the other case, it did not explain the basis for its response, such as the rationale for its beliefs and the data on which it based its beliefs. While these may not have been significant comments requiring a response, EPA's public involvement policy calls for EPA to provide responses when feasible, and this policy does not appear to distinguish comments on Advanced Notices of Proposed Rulemaking from comments on proposed rules.

Recommendations for Executive Action

In order to ensure that environmental justice issues are adequately identified and considered when clean air rules are being drafted and finalized, we recommend that the EPA Administrator take the following four actions:

- ensure that the workgroups devote attention to environmental justice while drafting and finalizing clean air rules;
- enhance the workgroups' ability to identify potential environmental justice issues through such steps as (1) providing workgroup members with guidance and training to help them identify potential environmental justice problems and (2) involving environmental justice coordinators in the workgroups when appropriate;
- improve assessments of potential environmental justice impacts in economic reviews by identifying the data and developing the modeling techniques that are needed to assess such impacts; and
- direct cognizant officials to respond fully, when feasible, to public comments on environmental justice, for example, by better explaining the rationale for EPA's beliefs and by providing its supporting data.

Agency Comments and Our Evaluation

EPA's Assistant Administrator for Air and Radiation provided comments on a draft of this report in a letter dated June 10, 2005 (see app. IV). In addition, he provided technical comments that we incorporated where appropriate.

First, EPA expressed the view that its rules have resulted in better air quality nationally. EPA said it was "disappointed" that we did not

accurately reflect its progress in achieving environmental justice with respect to air pollution. It noted that the three rules are part of a larger program that is making significant progress in providing cleaner air nationwide. Second, EPA stated that in examining the agency's process for considering environmental justice, we asked the wrong question, and that we should have focused on the outcome of the rulemaking process—the rules themselves. Finally, it stated that our evidence of how it considered environmental justice during the development of the three final rules did not support our conclusions and recommendations, and it provided detailed information about the efforts it took relating to environmental justice for the three final rules.

We question the relevance of the information provided on air quality nationally and disagree with EPA's other two points. First, in addition to the data we had already presented on the decrease in emissions of certain air pollutants, EPA provided data on overall improvements in air quality, specifically the decrease in the number of areas throughout the nation that did not meet certain ambient air quality standards. However, because these data provide no detail on the conditions facing specific groups—for example, residents of areas near refineries, who might be negatively affected by the two mobile source rules—these data are not necessarily germane to environmental justice. Although Executive Order 12898 calls on agencies to identify and address the disproportionately high and adverse effects of its programs, policies, and activities on specific groups, EPA provided no information about such groups. Also, we believe that EPA's statement about the effect of clean air rules on national air quality at some level misses the point. Second, EPA suggested that it would have been more appropriate for us to look at the outcomes of its efforts than at the process that produced the outcomes. We agree with EPA that outcomes are important, but it is not yet clear whether the rules we examined will address environmental justice issues effectively because the rules are being implemented over the next several years. It is also important to examine the process that led to the rules—as we did. The various process steps are intended to help ensure that EPA's activities during the many phases of drafting and finalizing all rules are efficiently and effectively focused on achieving the desired outcomes.

Third, although EPA stated that our evidence did not support our conclusions and recommendations, it did not challenge the accuracy of the information we provided on how it considered environmental justice during the many phases of developing the three final rules discussed in the body of our report and the three proposed rules discussed in appendix II.

While it provided detailed information on certain activities and the rationale for undertaking them, our report already discussed nearly all of these activities. For example, EPA noted at length its efforts, after drafting the gasoline rule, to hold discussions with environmental justice and other groups on issues relating to permits that refiners would need if they increased their emissions to comply with the rule. We already acknowledged these efforts in our report. However, EPA's efforts at this stage do not mitigate the fact that it devoted little attention to environmental justice up to that point, nor the fact that discussions with affected groups, while beneficial, do not offset the effects of possible increases in refinery emissions on these groups. EPA is essentially relying on state and local governments to deal with environmental justice concerns as they implement the gasoline and diesel rules at the refinery level, even though the executive order does not apply to state or local governments, and, absent specific state or local law, they have no obligation to consider environmental justice when issuing permits. In addition, the three final rules were selected in part because they mentioned environmental justice and should have showcased EPA's efforts to consider environmental justice. Thus, we continue to believe that the evidence we provided supports our conclusions and recommendations.

Finally, aside from its general statement that the evidence we presented does not support our conclusions and recommendations, EPA generally did not respond to our four recommendations. We continue to believe that all of them are still warranted. With respect to our recommendation that workgroups devote attention to environmental justice while developing clean air rules, EPA stated that it "devoted appropriate attention to environmental justice issues" in the three final rules. EPA's guidance suggests that environmental justice be considered both at the beginning of process (when the rules are drafted) and at the end of the process (when they are finalized). However, nearly all of the attention EPA described came at the end of the process—after receiving public comments.

EPA responded in part to our recommendation on the need to provide guidance and training to workgroup members and the need to involve environmental justice coordinators. EPA did not provide any information that would refute the finding on the lack of guidance and training, for example, by bringing to our attention any guidance or training that it provides to workgroup members. However, EPA noted that an environmental justice coordinator "was heavily involved" in one of the three final rules and became an "ad hoc member" of the workgroup for the gasoline rule "around the time the rule was proposed." From EPA's

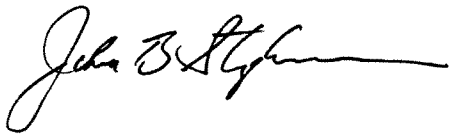
comment, it is clear that the coordinator became involved only at the end of the process of drafting this rule (i.e., "around the time the rule was proposed"). Further, EPA did not mention whether a coordinator was involved at all in the other two final rules, nor in the three proposed rules.

EPA did not comment specifically on our recommendation on the need to improve assessments of potential environmental justice impacts in economic reviews or provide any information that would refute the finding that led to it. EPA responded in part to our recommendation on the need to respond fully, when feasible, to public comments on environmental justice. Specifically, it noted that it did not respond to comments on the Advanced Notice of Proposed Rulemaking on the diesel rule, and that it is has no legal or policy obligation to respond to comments on an Advanced Notice of Proposed Rulemaking. Although we understood that EPA's public involvement policy calls for the agency to include a response to all comments when feasible, we revised our report to reflect EPA's comment that it had no obligation in such instances.

As arranged with your office, we plan no further distribution of this report until 15 days after the date of this letter, unless you publicly announce its contents earlier. At that time, we will send copies of this report to interested congressional committees and the EPA Administrator. We will make copies available to others upon request. This report will also be available at no cost on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-3841 or stephensonj@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff that made major contributions to this report are listed in appendix V.

Sincerely yours,



John B. Stephenson
Director, Natural Resources
and Environment

Appendix I

Information about the Three Final Clean Air Rules That We Examined

Short title used in this report	Gasoline rule	Diesel rule	Ozone implementation rule
Full title	Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements	Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements	Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1
EPA summary of the rule	This rule is designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, vans, minivans, and sport-utility vehicles, to provide for cleaner air and greater public health protection. This rule treats vehicles and fuels as a system, combining requirements for cleaner vehicles with requirements for lower levels of sulfur in gasoline.	This rule reduces particulate matter and nitrogen oxides emissions from heavy-duty engines by 90 percent and 95 percent below current standard levels, respectively, to decrease health impacts caused by diesel emissions. Under this rule, a heavy-duty vehicle and its fuel are regulated as a single system, combining requirements for new heavy-duty engines to meet more stringent emission standards and reductions in the level of sulfur allowable in highway diesel fuel.	To provide certainty to states and tribes regarding classifications for the 8-hour national ambient air quality standards (NAAQS) and their continued obligations with respect to existing requirements. This rule addresses the following topics: classifications for the 8-hour NAAQS; revocation of the 1-hour NAAQS; how antibacksliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS; attainment dates; and the timing of emissions reductions needed for attainment.
Final rule in the *Federal Register*	65 Fed. Reg. 6698 02/10/2000	66 Fed. Reg. 5002 01/18/2001	69 Fed. Reg. 23951 04/30/2004
Response to comment date	12/20/1999	12/21/2000	04/15/2004
Final economic review date	12/1999	12/2000	04/2004
Proposed rule in the *Federal Register*	64 Fed. Reg. 26004 05/13/1999	65 Fed. Reg. 35430 06/02/2000	68 Fed. Reg. 32802 06/02/2003
Date of economic review for proposed rule	04/1999	05/2000	04/2003
Workgroup initiated date	08/19/1998	09/01/1999	08/21/2001

Source: The *Federal Register* and EPA.

Appendix II

EPA's Consideration of Environmental Justice in the Drafting of Three Proposed Clean Air Rules

Because of substantial congressional interest, we are including information about how the Environmental Protection Agency (EPA) considered environmental justice during the drafting of three additional proposed clean air rules, up through their publication in the *Federal Register*. The three proposed rules we reviewed were as follows:

- The December 2002 New Source Review proposed rule, which proposed a change in the category of activities that would be considered routine maintenance, repair, and replacement under the New Source Review Program.[1]
- The January 2004 mercury proposed rule, which proposed two methods for regulating mercury emissions from certain power plants.[2]
- The January 2004 proposed Clean Air Interstate Rule (interstate rule), which, among other things, proposed a requirement that 29 states and the District of Columbia revise their state plans to include control measures limiting emissions of sulfur dioxide and nitrogen oxides.[3]

When we completed our initial fieldwork, these rules had not been finalized. Since then, the mercury and interstate rules have been finalized and a portion of the New Source Review rule has been finalized. Additional detail on these rules is provided in table 4.

[1]67 Fed. Reg. 80290 (2002). EPA issued a final rule on the equipment replacement portion of the New Source Review rule in October 2003. 68 Fed. Reg. 61248. EPA has not finalized the remainder of the rule.

[2]69 Fed. Reg. 4652 (2004). EPA issued a final mercury rule in March 2005. 70 Fed. Reg. 28606.

[3]69 Fed. Reg. 4566 (2004). EPA issued a final rule on the interstate rule in March 2005. 70 Fed. Reg. 25162.

Table 4: Information about Three Proposed Clean Air Rules

Short title	Mercury rule[a]	New Source Review routine maintenance	Clean Air Interstate Rule (interstate rule)
Full title	Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electric Utility Steam Generating Units	Prevention of Significant Deterioration (PSD) and Non-attainment New Source Review (NSR): Routine Maintenance, Repair and Replacement	Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule)
EPA summary of the rule	This rule would set national emission standards or standards of performance for mercury emissions from new and existing coal-fired power plants. One approach would require coal-fired power plants to meet emission standards reflecting the application of currently available pollution controls known as "maximum achievable control technologies" (MACT). The second approach would set a cap on the total mercury emissions allowed from coal-burning power plants nationwide and would allow emissions trading.	The rule would provide a future category of activities that would be considered "routine maintenance, repair and replacement" for the New Source Review Program, as well as an annual allowance for such activities. Two categories would be considered routine maintenance, repair, and replacement: (1) certain activities as long as the facility's annual maintenance, repair, and replacement allowance is not exceeded and (2) replacement of certain components that meet EPA's equipment replacement provision criteria.	The rule would require 29 states and the District of Columbia to revise their state implementation plans to include control measures to reduce emissions of sulfur dioxide and/or nitrogen oxides. Based on EPA's finding that the 29 states and the District of Columbia contribute significantly to nonattainment of the national ambient air quality standards for fine particles and/or 8-hour ozone in downwind states, EPA would require statewide sulfur dioxide and nitrogen oxide reductions. Besides requiring reductions on controls for power plants, the proposed rule discusses a model multistate cap and trade program that states could choose to adopt. The model trading program would be proposed in a supplemental action.
Proposed rule in the *Federal Register*	69 Fed. Reg. 4652 01/30/2004	67 Fed. Reg. 80290 12/31/2002	69 Fed. Reg. 4566 01/30/04
Date of economic review for proposed rule	The assessment consisted of (1) an EPA memorandum to the docket on Economic and Energy Impact Analysis for the MACT rulemaking on 01/28/2004; (2) a memorandum to the docket called the regulatory flexibility analysis on 12/15/2003; and (3) a MACT benefit analysis of 01/2004.	11/2002	01/2004
Workgroup initiated date	04/06/2001	02/11/2002	Prior to 08/30/2003

Source: The *Federal Register*.

[a]The proposed rule also addressed nickel emissions. A supplemental notice of proposed rulemaking was published in March 2004.

EPA officials told us that they did not consider environmental justice while drafting two of these three proposed rules. Moreover, in our analysis of these rules' economic reviews, we found no discussion of environmental justice for two of the three rules. Finally, when published in the *Federal Register*, none of the proposed rules discussed environmental justice.

Workgroups Devoted Little Attention to Environmental Justice

The three workgroup chairs provided initial reports to senior management in tiering forms to help establish the level of senior management involvement needed in developing the rule. In these initial reports, all three proposed rules were classified as top priority. The forms were to be used to alert senior managers to potential issues related to compliance with statutes, executive orders, and other matters. Environmental justice was not a specific element on the form at the time, and the reports for the three rules did not discuss environmental justice.

The chair of the New Source Review workgroup said his group did not consider and address environmental justice early in the development process because the rule was to be applied nationally and was prospective in nature. The chair of the interstate rule workgroup said his group conducted no environmental justice analysis. Finally, the chair for the mercury workgroup said his group considered environmental justice in drafting the proposed rule, but he provided no details about how it was considered.

Workgroup members' ability to identify potential environmental justice concerns may have been limited by a lack of guidance, training, and involvement by environmental justice coordinators. Specifically, all three chairs said that their workgroups did not receive guidance for how to consider environmental justice when analyzing the rules. Furthermore, while the mercury workgroup chair said that he had received training on environmental justice, the other two chairs said they had received no such training. All three chairs said they did not know whether other members in their workgroups had received environmental justice training. Also, all three chairs said that environmental justice coordinators did not assist their workgroup.

Little Attention Was Devoted to Environmental Justice in the Economic Reviews

EPA prepared an economic analysis for all three rules. Among these economic analyses, only the review for the New Source Review rule stated that environmental justice was unlikely to be a problem because the potential for disproportionate effects generally occurs as a result of decisions on siting new facilities, and EPA noted that this rule dealt exclusively with existing facilities. The analysis for the mercury rule did not discuss environmental justice. The analysis stated that—due to technical, time, and other resource limitations—EPA was unable to model the changes in mercury emissions that might result from the rule. However, EPA stated that to the extent mercury emissions do have adverse health effects, the proposed rule would reduce emissions and subsequent exposures of people living near power plants.[4] The analysis for the interstate rule did not discuss environmental justice. It was not discussed, according to the supervisor for economists in the Office of Air and Radiation, because the rule was expected to provide nationwide benefits and because EPA lacked the data and modeling capability to predict how regulated entities will react to the requirements of the rule.

Proposed Rules Did Not Discuss Environmental Justice

We found no discussion of environmental justice in any of the three rules, as they were published in the *Federal Register*. Neither Executive Order 12898 nor EPA guidance requires a discussion of environmental justice in proposed rules. According to EPA officials, such a discussion was not necessary for these three rules because they did not believe the rules would have any environmental justice impacts.

[4]See EPA, *Benefit Analysis for the Section 112 Utility Rule*, which is EPA's analysis of a technology-based approach to reducing mercury emissions from a current level of 48 tons per year to a projected 34 tons per year by 2008. EPA did not finalize this approach; instead, it finalized an alternative approach to reducing mercury emissions to 38 tons per year in 2010 and 15 tons annually by 2018.

Appendix III

Scope and Methodology

To determine how EPA considered environmental justice when developing significant rules under the Clean Air Act, as amended, we reviewed an EPA database of clean air rules finalized during fiscal years 2000 through 2004. We assured ourselves that the database was reliable for our purposes. Rules are considered significant and sent to the Office of Management and Budget for review if their expected annual costs or benefits exceed $100 million; they raise novel legal or policy issues; or they may interfere with actions undertaken by another federal agency or state, local, or tribal governments. In addition, rules that involve the Administrator or an interoffice review are considered high priority within EPA. We identified 19 clean air rules EPA finalized in our time period that were considered significant and a high priority. We then reviewed the 19 rules in the *Federal Register* to identify those rules that mentioned the terms "environmental justice" or "Executive Order 12898" and found 3 rules that mentioned one or both terms. The 16 rules that did not mention environmental justice included rules relating both to mobile sources, such as a rule to control the emissions of air pollution from nonroad diesel engines and fuels, and rules relating to stationary sources, such as a final rule to establish a national emission standard for hazardous air pollutants at iron and steel foundries. We focused on the three rules that mentioned environmental justice because we believed they were more likely to demonstrate how EPA considered this issue in clean air rulemaking.

To determine how EPA considered environmental justice as it drafted and finalized clean air rules, we reviewed EPA documents and interviewed EPA officials, including workgroup leaders. To characterize how or whether EPA's economic reviews for the rules considered environmental justice, we analyzed both the preliminary and final economic reviews for each rule and interviewed the supervisor of the economists who developed the reviews. To determine whether the public raised environmental justice concerns in commenting on proposed rules and how EPA addressed those comments, we reviewed EPA documents, such as the agency's summaries of comments and responses, and the final rules as published in the *Federal Register*.

We conducted our work between July 2004 and May 2005 in accordance with generally accepted government auditing standards.

Appendix IV

Comments from the Environmental Protection Agency

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

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

JUN 10 2005

OFFICE OF
AIR AND RADIATION

Mr. John B. Stephenson
Director
Natural Resources and Environment
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Mr. Stephenson:

The Environmental Protection Agency's Office of Air and Radiation (OAR) takes environmental justice seriously. OAR has taken a comprehensive look at its programs to determine how, with respect to air quality, to achieve "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 the government."[1] OAR's goal is to achieve environmental justice by decreasing the burden of environmental risks on all communities by improving air quality.[2] Indeed, as stated by then Administrator Whitman, "Environmental justice is achieved when everyone, regardless of race, culture, or income, enjoys the same degree of protection from environmental and health hazards."[3]

EPA is disappointed that the Draft Report does not accurately reflect the progress we are making in achieving environmental justice with respect to air pollution; nor does it accurately reflect the way in which the three final rules GAO reviewed, and EPA's development of them, address environmental justice issues. The Draft Report focuses on three final rules: two mobile source rules issued in the Clinton Administration and a rule issued last year establishing a framework for bringing all areas in the country into attainment with the national health-based ozone standard. When objectively examined on the record, the three final rules reviewed by GAO demonstrate that OAR paid appropriate attention to environmental justice during the rulemakings. The Draft Report's description of how EPA considered environmental justice in these rules contains a number of factual inaccuracies and misleading statements, and omits important information. These three final rules do not provide support for GAO's conclusions and recommendations.

[1] See Administrator Whitman's Memorandum of August 9, 2001.

[2] OAR's 2004-2005 Action Plan to Integrate Environmental Justice at Page 8.

[3] See n. 1.

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More importantly, we believe GAO's approach is too narrow and does not ask the right questions. The Draft Report focuses on process issues – like whether environmental justice was listed on an intra-agency form used to track a rule. It completely neglects the most important issues – do the rules advance or hinder environmental justice? Do they help provide cleaner air to the people who need it? Judged against these standards, these three rules, and OAR's program in general, show that OAR is making important progress in addressing environmental justice issues.

Summary

See comment 1.

Contrary to the Draft Report's conclusion, the three final rules GAO reviewed demonstrate that OAR paid appropriate attention to environmental justice issues. EPA concluded that one of the three final rules, the Phase I Ozone Implementation Rule (Phase I Rule), did not raise environmental justice concerns. No one submitted comments disagreeing with EPA's conclusion. In fact, the Phase I Rule establishes key elements of the framework to bring all areas of the country into attainment with the national health-based 8-hour ozone standard – an important environmental justice goal.

It is hard for us to see the Tier 2/Low Sulfur Gasoline Rule (Tier 2 Rule) as anything but an environmental justice success story. This rule will improve air quality for millions of Americans, especially those living in urban areas or that otherwise have high exposure to car and light-duty truck emissions. The Agency did sufficient analysis to identify the potential environmental justice issues and to identify the permitting process as the way to address them under the Clean Air Act. We then conducted extraordinary outreach efforts with various stakeholders, including representatives of the environmental justice community and communities near refineries, to determine how to resolve conflicting objectives of the refiners and the local communities with regard to the permitting process. Due in large part to comments from the environmental justice community, EPA declined to adopt some changes to the permitting process that were suggested by the refinery industry and opposed by the environmental justice community.

The Heavy Duty Diesel Engine/Low Sulfur Diesel Rule (Heavy Duty Diesel Rule), which was finalized one year after the Tier 2 rule, helped address a specific environmental justice concern – certain communities' disproportionate health risks from diesel exhaust. EPA believed that the Heavy Duty Diesel Rule raised essentially the same permitting and refinery-related environmental justice issues that EPA had just successfully worked with stakeholders to address. Thus, EPA proposed to resolve those issues the same way for the Heavy Duty Diesel Rule. EPA did not receive any public comments from environmental justice or local community groups objecting to EPA's proposal to use this approach.

2

These three rules are part of a larger program that is making significant progress in providing cleaner air to communities with high pollution levels. One measure of this progress is that almost 85% of the areas that were designated nonattainment (i.e., areas that did not meet a national, health-based air quality standard) in the early 1990s for a particular pollutant now have monitored air quality that meets the standard they were violating, as shown in Table 1.[4] EPA devotes a significant amount of its air rulemaking resources to bringing cleaner air to the cities and other areas that do not meet the health-based standards.

Table 1: Progress in Meeting National Health-Based Attainment Standards[5]

Criteria Pollutant	Nonattainment Areas as of 1992	1992 Nonattainment Areas Currently Monitoring Violations (based on 2003 data)
Nitrogen Oxide	1	0
Sulfur Dioxide	54	0
Carbon Monoxide	43	0
Lead	13	0
Coarse Particles (PM10)	87	21
Ozone (1-Hour Standard)	101	26

[4] As discussed later in this letter, in 1997 EPA determined that new scientific evidence warranted a health-based standard for fine particles and a new, more stringent standard (the 8-hour standard) for ozone. EPA is working with states to meet the Clean Air Act timetable for bringing into attainment those areas that do not currently meet the 1997 standards.

See comment 2.

[5] There are often slight year-to-year variations in the number of 1992 Nonattainment Areas monitoring violations. Please note that EPA included essentially the same table in a May 18, 2005, Letter from Mr. Holmstead to Mr. Stephenson regarding GAO's draft report entitled "EPA Has Completed Most of the Actions Required by the 1990 Amendments, but Many Were Completed Late." The table in the previous letter, which showed a higher number of areas monitoring violations than does the table in this letter, contained some incorrect information.

3

Phase I Ozone Implementation Rule

EPA appropriately considered environmental justice during the Phase I Ozone Implementation Rule (Phase I Rule) and concluded that, based on what the Rule requires and on the ambient air quality standard-setting and implementation process, the Phase I Rule does not raise environmental justice concerns. The work group spent a sufficient amount of time considering and analyzing environmental justice issues in the context of this rule.

The Phase I Rule helped establish the framework for states to follow so that areas that do not meet the health-based 8-hour ozone standard now will meet that standard in the future.[6] Under the Clean Air Act, once EPA sets or revises an ambient air quality standard at a level requisite to protect public health, states and EPA are then required to adopt appropriate pollution reduction plans to bring all areas in the country into attainment with the standard. Although EPA had regulated ozone for decades, in 1997 EPA determined that new scientific evidence warranted setting a new, more stringent standard to protect people from ground-level ozone pollution. In setting this standard, EPA considered the risk to sensitive populations, such as children and people with respiratory problems. Exposure to ozone has been linked to a number of health effects, including significant decreases in lung function, inflammation of the airways, and increased respiratory symptoms, such as cough and pain when taking a deep breath. Respiratory systems of children are still developing, and thus are at greater risk from repeated exposure to ozone.

EPA and the states have identified which areas of the country are not meeting the 8-hour ozone standard and are in the process of setting up plans to bring these nonattainment areas into attainment in accordance with the Clean Air Act schedule. Bringing these areas into attainment with the 8-hour ozone standard is an important environmental justice goal; it would make significant progress in providing for the fair treatment of all people with respect to air pollution. Implementing the 8-hour ozone standard will help continue the trend of improving air quality. For the 8-hour ozone standard, 2003 ozone levels were 9% lower than 1990 levels and 21% lower than 1980 levels.

See comment 3.

We continue to believe that the Phase I Ozone Implementation Rule does not present environmental justice concerns. Contrary to the misimpression conveyed by the Draft Report, public commenters did not state that the Phase I Rule raised any environmental justice concerns. Nor has GAO identified any environmental justice concerns in the Phase I Rule. This is not surprising given that EPA, taking sensitive populations into account, set the 8-hour standard at a

[6] In particular, it set forth the classification scheme for nonattainment areas and the requirements for states' continued obligation with respect to the old, 1-hour ozone standard. The Phase I Rule revoked the old, generally less stringent 1-hour standard and adopted measures to avoid backsliding between the time the 1-hour standard was revoked and the time an area meets the 8-hour standard.

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level requisite to protect public health with an adequate margin of safety. The implementation process generally, and the Phase I Rule in particular, are designed to ensure that all communities attain and maintain the national, health-based 8-hour ozone standard.

The Draft Report is confusing and misleading because it does not adequately explain when it is referring to the Phase I Rule (which has been finalized) and when it is referring to the proposed Ozone Implementation Rule (many elements of which have not been finalized). EPA initially included all elements of the Ozone Implementation Rule in one proposal (June 2, 2003), but later decided to divide the numerous elements of the proposal into two groups and promulgate the final Ozone Implementation Rule as two separate rules. The first phase was published April 30, 2004, but the second phase has not been finalized. EPA responded to the public comments on the elements in the Phase I Rule, but has not yet responded to comments on portions of the proposal that it has not yet finalized.

In the preamble to the proposed rule, EPA took comment on the Clean Air Development Communities (CADC) concept (regarding possible state adoption of land use planning as a pollution reduction strategy) and noted that it might raise environmental justice concerns. As the Draft Report notes, public comments were submitted that raised environmental justice concerns with this concept. EPA has not responded to these (or any other) comments on the CADC concept because, as GAO notes, this element has not yet been finalized.[7] Since the Phase I Rule did not include a final decision on the CADC concept, EPA had no obligation to respond to these comments in the Phase I rulemaking. In fact, it is difficult to see how EPA could prepare a response given that we have not yet made any final decision on this element of the proposal.

GAO should state explicitly that the public comments did not raise environmental justice issues on the Phase I Rule and that EPA was not required in that final rule to respond to environmental justice issues on an element of the proposed Ozone Implementation Rule that we

See comment 4.

[7] In fact, EPA believes the CADC concept was never a definitive enough proposal to proceed directly to final rulemaking without a subsequent, more substantive proposal. As part of a larger rulemaking package, it is not uncommon for EPA to take comment on concepts that the Agency is considering but that are not yet developed enough for a full proposal, as it did here. This alerts stakeholders to and facilitates discussion on emerging concepts at an early stage of their development. EPA's use of this approach on the CADC strategy explains the seemingly contradictory statements GAO noted in the preamble to the proposed rule. Although the section on the CADC concept suggested that it might raise environmental justice issues, EPA stated in the "Environmental Justice" discussion that the proposed Ozone Implementation Rule did not raise environmental justice concerns. CADC was an emerging concept on which EPA was attempting to facilitate discussion. Although EPA proposed draft regulatory text for the remainder of the proposal (68 FR 46536 (Aug. 6, 2003)), we did not propose regulatory text for the CADC concept and did not believe it was definitive enough to be considered part of the proposed rule for analytical purposes.

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See comment 5.

have not finalized. The Draft Report is inconsistent (or at least confusing), claiming that public commenters stated that all three rules (which could be read to include the Phase I Rule) raised environmental justice issues, but later noting that EPA has not finalized the element of the proposed Ozone Implementation Rule that prompted the comments about environmental justice. The Draft Report could also be read as criticizing the Agency for failing to respond to environmental justice comments on one element of the proposed Ozone Implementation Rule. Such criticism would be unfair because EPA responded to comments on the issues raised by the elements in the final Phase I Rule, commenters did not raise environmental justice issues on the Phase I Rule elements, and EPA is simply not in a position to respond to comments on a concept on which it has not yet taken final action.

The Tier 2/Low Sulfur Gasoline Rule

The Tier 2/Low Sulfur Gasoline Rule (Tier 2 Rule), which was issued in December 1999, tightened emission standards for cars and light-duty trucks (including sport utility vehicles) and established a low sulfur requirement for gasoline. The low sulfur gasoline requirement was necessary to enable the vehicles' pollution control equipment to operate properly. As a result, we have passenger vehicles that are 77% to 95% cleaner than 2003 vehicles. The rule was designed in large part to help reduce ozone pollution, especially in large, urban areas where emissions from passenger vehicles represent a relatively large contribution to the problem. Limiting passenger vehicle emissions of ozone precursors is one of the keys to ensuring that areas come into (and stay in) attainment with the health-based ozone standards. For example, in the Tier 2 Rule, we estimated that before large numbers of Tier 2 vehicles are on the road, passenger vehicles would represent about 16% of nitrogen oxides (NOx) emissions and 13% of Volatile Organic Compounds (VOC) emissions nationally. These numbers are higher in some urban areas: 34% of NOx and 17 % of VOC in Atlanta, 24% of NOx and 15% of VOC in Charlotte. EPA's Tier 2 analysis estimated that, by the time Tier 2 vehicles are fully phased in, the contribution of passenger vehicles would drop dramatically, to about 5% of NOx and 9% of VOC emissions nationwide.

See comment 6.

We agree with GAO that this rule raises potential environmental justice issues. The Draft Report is incorrect in stating or implying that the Agency believes otherwise. In the preamble to the final Tier 2 rule, in a section labeled "Environmental Justice," we stated,

> We believe it is important to understand and address concerns relating to potential localized emissions increases from refineries that make significant process changes to meet the requirements of the Tier 2 rule. . . . To this end, the Agency has already taken some actions to mitigate potential environmental justice concerns.

65 FR at 6774. It is clear that the Agency's official position was that Tier 2 raised potential environmental justice issues. Otherwise there would have been nothing to mitigate. Furthermore, EPA officials told GAO that the Tier 2 Rule raised potential environmental justice

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issues due to the potential for emission increases at some refineries. In the Preamble to the Final Tier 2 Rule, EPA published its belief that, "Although we expect residual emissions increases at some refineries even after installing the stringent level of emissions controls required under the Act, for the vast majority of areas, we believe that these potential refinery emissions increases will be very small compared to the Tier 2 benefits in those same local areas." That statement indicates EPA's belief that Tier 2 would not cause environmental justice issues in the vast majority of areas, but it also demonstrates that EPA understood that some areas (albeit not the vast majority) were facing a potential net increase in emissions and, thus, potential environmental justice issues.

See comment 7.

The Draft Report (particularly the Highlights page) misleadingly creates the impression that EPA did not recognize or address environmental justice concerns, when actually EPA was quite sensitive to them. In fact, EPA took action to address environmental justice concerns based on the potential for such concerns to arise rather than requiring proof that such concerns would arise. Given what EPA knew about the NSR permitting process and the great incentive it gave refineries to make changes without increasing emissions, and given the commitments EPA made regarding the permitting process, EPA staff believed that, as a factual matter, as the rule was implemented, it was unlikely to pose environmental justice concerns. However, EPA recognized that there was the potential for local emissions increases, and thus the potential for environmental justice concerns, and took steps to address that potential.

See comment 8.

The Draft Report should not state that EPA officials told GAO that the Tier 2 rule, as published in final form, did not create environmental justice issues without explaining the context given above and noting that the Agency took steps to address potential environmental justice concerns. The Draft Report also should not state that EPA "published its belief that the rule would not create such [environmental justice] issues" without noting that this statement appeared in the Response to Comments technical support document in a paragraph that acknowledged the potential for environmental justice concerns, that it did not appear in the preamble that was published in the Federal Register, and that the published preamble acknowledged potential environmental justice concerns and set forth steps EPA took to mitigate those concerns.

Having identified potential environmental justice issues (i.e., potential refinery emissions increases), EPA identified the new source review (NSR) permitting process, a largely state-run program required by the Clean Air Act, as the way to address potential increased refinery emissions. Under the NSR permitting program, a refinery that wanted to increase its emissions significantly would have to obtain a permit, which would require local air quality modeling and could require the installation of pollution control equipment. By operating the NSR permitting program (which is designed to provide environmental protection for all citizens) the states are working to achieve the goal of environmental justice, although, as the Draft Report notes, the states are not subject to the environmental justice Executive Order (EO). Some local community representatives noted some concerns with relying on state agencies, but Congress made the decision in the Clean Air Act that local authorities are in a better position than EPA to assess and

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protect local interests related to emissions increases at existing refineries. EPA did not receive any public comments suggesting that EPA should issue a national rule limiting potential refinery emissions increases resulting from meeting Tier 2 requirements.

Theoretically, EPA could have decided not to issue the low sulfur fuel requirements and the tighter emissions standards for cars and trucks. Even if that option was legally permissible, it was unacceptable. It would have meant foregoing important air quality improvements for the millions of people that are exposed to motor vehicle emissions and resulting air pollution, including people in urban areas and other communities suffering from heavy air pollution burdens. EPA is not aware of any public comment filed by representatives of the environmental justice community, national or local environmental groups, or communities near refineries recommending that EPA not issue the Tier 2 Rule.[8]

GAO does not conclude or suggest that we had a different option for addressing these potential environmental justice issues. Rather, the main conclusion of the Draft Report on this front is that we should have done more analysis so we could better quantify the environmental justice issues. Even if additional analysis could have been done in a meaningful time period, it could not have changed EPA's decision that NSR permitting was the way to address these potential increased refinery emissions.

EPA and various stakeholders focused a significant amount of attention on the permitting process because of conflicting objectives related to the process. Environmentalists and environmental justice representatives desired a robust permitting process to protect air quality in communities near refineries, while refiners saw the permit process as a potential obstacle to timely compliance with the proposed low sulfur rule. Refiners suggested several ways of limiting or removing this "obstacle," including options that would have allowed refiners to make significant emissions increases at the facility while avoiding the permitting process altogether. Representatives of the environmental justice community were particularly troubled by the suggestion that, because of national environmental benefits, refiners would be allowed to increase emissions without going through the local permitting process. Some of the refiners' suggested approaches (which the proposal preamble discussed and on which it took comment) would have limited or eliminated local communities' ability to participate in the permit process.

Because local communities' opportunity for meaningful participation in the permitting process for refineries is itself an important environmental justice value, suggested changes to the permitting process raised environmental justice issues independent of the potential for increased local emissions. The Draft Report seems to miss completely the environmental justice

[8] Although, in special outreach sessions convened by EPA related to the Tier 2 permitting issues, individual representatives of some local groups said they did not want their air quality to get worse even if there was a net environmental benefit nationally, it is not clear whether they specifically wanted EPA to stop the Tier 2 Rule.

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ramifications of the permitting process with respect to local communities' opportunity for meaningful participation – even though the environmental justice EO recognizes the opportunity for public participation as an important component of environmental justice. EPA staff who worked on the Tier 2 rulemaking recall the permitting issue as the one about which environmental justice representatives were most concerned.

See comment 9.

Having identified the way to address the potential emissions increases that raised environmental justice concerns and being aware of the environmental justice issues raised by options that would limit public participation in permitting refinery changes, EPA spent a considerable amount of time trying to understand and reconcile the conflicting objectives related to refinery permitting for Tier 2 changes. An OAR environmental justice coordinator was heavily involved in development of EPA's resolution of the permitting process issues and became an ad hoc member of the Tier 2/low sulfur work group around the time the rule was proposed. In addition, a representative from EPA's Office of Environmental Justice (OEJ) was involved in a number of conference calls regarding the permitting issues after the proposed rule was published. GAO's statement that OAR environmental justice coordinators were not involved in the Tier 2 rulemaking is either incorrect or misleading given the coordinator's involvement in the Tier 2-related permitting issues.

The Agency took extraordinary measures to facilitate participation by environmental justice representatives and others in the rulemaking process on these issues. As described in the final rule preamble (65 FR at 6774):

> [OAR] and the Alternative Dispute Resolution Team in the Office of the Administrator implemented a national convening process which was designed to bring together a broad spectrum of stakeholders to explore with them their perceptions and views of issues associated with Tier 2 permitting and to assess the potential for a collaborative process to address specific implementation issues at some time in the future. The convening was carried out by an outside neutral who conducted interviews with representatives from selected EPA offices, States, industry, environmental groups, and environmental justice organizations. Second, EPA held informational briefings and provided background materials to the National Environmental Justice Advisory Council's (NEJAC) Air and Water Subcommittee and Enforcement Subcommittee to provide an opportunity for them to provide feedback and recommendations to the Agency. Finally, in October 1999, we met with both national environmental groups and environmental justice advocacy representatives, to discuss their views on the permitting aspects of the proposed rule.

The environmental justice organizations' comments and concerns affected EPA's final action. EPA affirmed the importance of public participation in local permitting decisions and made it clear that none of the measures we adopted would limit public participation in the permitting process, thereby protecting an important environmental justice value. EPA rejected

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many of the methods the industry had suggested for expediting permit decisions or allowing refineries new methods to avoid triggering the permit process. EPA committed to facilitate communication among permit applicants, permitting authorities and community members in the hope that the community concerns could be expressed and resolved as early as possible in the permitting process. EPA also committed to provide broad guidance on Best Available Control Technologies, to issue guidance on potential use of mobile source reductions as offsets, and to form permit teams which would be able to assist, when requested, communities, states and refiners who might have special concerns.

See comment 10.

The Draft Report's conclusion that EPA paid "limited" attention to environmental justice issues related to the final Tier 2 rulemaking is contradicted by the amount of time and effort EPA spent resolving issues related to the refinery permitting process, and the fact that EPA ultimately agreed with the position of environmental justice community representatives and rejected many of the industry-supported suggestions for modifying the permitting process for Tier 2-related refinery changes. Further analysis was not required by the environmental justice EO and could not have changed the result.

Heavy Duty Diesel Engines/Low Sulfur Diesel Rule

The Heavy Duty Diesel Engine/Low Sulfur Diesel Rule (Heavy Duty Diesel Rule), which was issued in December 2000, will provide the cleanest running heavy-duty trucks and buses in history. These vehicles will be 95 percent cleaner than today's trucks and buses. As with Tier 2, low sulfur fuel requirements were necessary to enable the engines' pollution control equipment to operate properly. By addressing diesel fuel and engines together as a single system, the rule will reduce 2.6 million tons of smog-causing nitrogen oxide emissions each year once the program is fully implemented. Emissions of soot, or particulate matter, will be reduced by nearly 110,000 tons each year. As a result, the emission reductions will prevent 8,300 premature deaths, 5,500 cases of chronic bronchitis, and 17,600 cases of acute bronchitis in children. It will also avoid over 360,000 asthma attacks and more than 386,000 cases of respiratory symptoms in asthmatic children annually. The rule will prevent 1.5 million lost work days, 7,100 hospital admissions and 2,400 emergency room visits for asthma every year. By any measure, this rulemaking provides significant and meaningful public health protection.

EPA paid an appropriate amount of attention to environmental justice issues during the development of the Heavy Duty Diesel rule, which was proposed just months after the Tier 2 rule was finalized. The environmental justice issues were virtually identical to those that EPA had just resolved as part of the Tier 2 rulemaking process, so EPA relied on the work that had been done during the Tier 2 rulemaking and proposed to resolve the issues the same way.

The heavy duty diesel rule presented essentially the same environmental justice issues as did the Tier 2 rule, with one exception. The rule itself was responsive to specific environmental justice concerns that had been raised by local community groups and environmental groups regarding exposure to diesel exhaust in communities near heavy truck traffic. One report found

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that "These affected communities, and the workers at these distribution facilities with heavy diesel truck traffic, are bearing a disproportionate burden of the health risks."[9] Numerous environmental justice and local environmental representatives supported the heavy duty diesel rule, and the main environmental justice concern expressed was the need to reduce diesel emissions as soon as possible.

EPA clearly stated early in the development of the diesel rule that it would follow the same approach to permitting (and therefore, the same approach to environmental justice issues related to potential refinery emissions increases) that had been set up for Tier 2-related permits. We did not receive negative comments on this proposed approach by members of the environmental justice community or other public health groups.

See comment 11.

The Draft Report's criticism of EPA for failing to respond to environmental justice comments on the diesel rule appears to be based on a misunderstanding of the rulemaking process. EPA was not obligated to respond to these comments because they were filed on the Advanced Notice of Proposed Rulemaking (ANPRM).[10] The ANPRM was published in May of 1999, while EPA was still involved in the Tier 2 rulemaking and before EPA had finished its outreach efforts with stakeholders and resolved the Tier 2 refinery permitting issues. An ANPRM provides an opportunity for interested stakeholders to provide input to EPA early in the process as the Agency is developing a proposed rule. To the extent appropriate, EPA takes comments on the ANPRM into account in developing the proposal. Although commenters apparently conveyed concerns about localized emissions increases based on the specific request for comments in the ANPRM, they did not repeat these comments once they had the opportunity to review the specific proposal we issued in June, 2000. EPA assumes this is because the commenters were satisfied with the way the proposal addressed the issues. EPA does not have a legal or policy obligation to respond to comments filed on an ANPRM, and it is not OAR's practice to develop a Response to Comments document for comments on an ANPRM.

OAR's Environmental Justice Plan

Understanding OAR's approach to environmental justice requires more than a review of a few isolated rules. To improve air quality in all communities, we start with the base of air quality improvements we can achieve by issuing strong, national rules under the Clean Air Act. Although these national programs are an important component of decreasing environmental risks

[9] *Exhausted by Diesel: How America's Dependence on Diesel Engines Threatens Our Health*, Natural Resources Defense Council, Coalition for Clean Air, May 1998.

[10] According to GAO staff, the comments to which we did not respond were on the ANPRM. The environmental justice related comments on the proposal were submitted by refiners and expressed a concern that environmental justice issues would delay permit issuance; EPA responded to these comments.

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to all communities, OAR recognizes that they are not wholly sufficient. In some instances, some communities, including minority and low-income communities, will face a higher level of environmental risk than the general population and will need reductions beyond what we can provide through national rules. OAR staff attempt to identify specific areas where minority and low-income populations are being disproportionately exposed to environmental hazards or where there are potential benefits to minority and low-income communities (i.e., through transportation and air quality improvements, mass transit policies, and voluntary programs). Since 1998, OAR staff have worked closely with the National Environmental Justice Advisory Council's (NEJAC's) Air and Water Subcommittee and other grassroots organizations to ensure the integration of environmental justice in our programs, policies, and activities in a manner which is consistent with existing environmental laws and implementing regulations. As a result of these discussions, we are involved in a number of activities that, in collaboration with local communities, focus on getting emission reductions that are of particular concern to those communities.

Since 1970, steps taken under the Clean Air Act have dramatically reduced air pollution in the United States, producing significant health benefits. Many of these emission reductions and health benefits have occurred in both urban and rural areas with environmental justice concerns. Everyday, clean air programs across the nation prevent roughly:

- 600 premature deaths;
- 2,000 cases of chronic illness, such as asthma and bronchitis;
- 300,000 cases of minor respiratory illness, such as aggravated asthma; and
- 75,000 people from missing work.

The cornerstone of the Clean Air Act is the program to set and attain the health-based national ambient air quality standards (NAAQS), which is done for six pollutants. EPA sets these at a level requisite to protect public health with an adequate margin of safety. In doing so, the standards are to protect sensitive populations, such as the elderly, children or people with respiratory or circulatory problems. EPA then works with states and tribes to set up monitoring networks to determine which areas do not meet the standards. Often these areas are urban areas. Each state is then responsible for ensuring that all areas within its authority meet the standards on a schedule set out in the Clean Air Act. EPA has oversight authority over the state plans and has authority to issue some national rules that will help areas meet the standards. The goal of the NAAQS program is clean air (as defined by the standard) everywhere. Achieving this goal should address environmental justice issues with respect to these regulated pollutants in most, if not all, communities. OAR has identified continued review and implementation of the NAAQS as one of its key environmental justice initiatives.[11]

We are making great progress in meeting these standards, as shown in Table 1 above. Nationally, since 1970, the country has reduced its emissions of these key pollutants by 50%.

[11] OAR 2004-05 EJ Action Plan at Page A-2.

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In 1997, EPA tightened the ozone standard, setting a new 8-hour ozone standard, and, for the first time, set a standard for fine particles (PM2.5). EPA recently designated 112 areas nonattainment for the 8-hour ozone standard (effective 2004) and 47 areas nonattainment for the PM2.5 standard (effective in 2005). Although we are at the beginning of the Clean Air Act process for bringing these areas into attainment, we have already taken significant steps to provide them with cleaner air. For nonattainment areas in the eastern half of the country, which are significantly affected by transported pollution from other states, all but five ozone areas and 14 PM2.5 areas are projected to come into attainment by 2015 as a result of the Clean Air Interstate Rule (CAIR, issued March 9, 2005) combined with the Tier 2 and Heavy Duty Diesel Rules and other existing state and federal programs. Additional state or local controls will be needed to bring the remaining areas into attainment.

Emissions of air toxics, which are covered by a different Clean Air Act regulatory regime, are of particular interest to the environmental justice community because of the proximity of many minority and low-income communities to the generators of toxic emissions (e.g., industrial facilities, waste transfer stations, roadways, bus terminals). EPA rules issued since 1990 are expected to reduce emissions of 188 air toxics by 2.5 million tons a year from chemical plants, oil refineries, aerospace manufacturing and other industries. Motor vehicle and fuel programs put in place since 1990 will reduce total vehicular air toxics by approximately 40 percent.

In addition to national rulemakings, OAR is focusing additional resources on nonregulatory programs, in part due to environmental justice concerns. OAR is leading an agency-wide effort to develop and implement a new community-based, multi-media toxics program, the Community Action for a Renewed Environment (CARE) program. CARE is designed to help communities develop collaborative partnerships to examine and reduce the cumulative risk from toxics, including air toxics, in their communities. While CARE is not limited to environmental justice communities, it is designed to address the needs of those communities. EPA also has an idle reduction program to reduce air pollution and conserve fuel from idling trucks and locomotives. EPA has set up non-regulatory, incentive-based, voluntary programs designed to reduce air pollution from existing school buses and other diesel engines by replacing old buses and by installing pollution-reducing technology.

Factual Inaccuracies and Omissions

We have attached a list containing some of the additional, specific problems with the Draft Report.

Conclusion

EPA agrees with GAO that EPA should ensure that it devotes attention to environmental justice when developing Clean Air Act rules. We believe the three final rules reviewed in the Draft Report demonstrate that EPA devoted appropriate attention to environmental justice issues.

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The evidence regarding EPA's consideration of environmental justice during development of three final rules does not support the conclusions and recommendations in the Draft Report.

Sincerely,

Jeffrey R. Holmstead
Assistant Administrator

Attachment

14

The following are our comments on the Environmental Protection Agency's letter dated June 10, 2005.

GAO Comments

1. We disagree with EPA's assertion that the Air Office paid appropriate attention to environmental justice issues. We found that EPA devoted little attention to environmental justice in four phases of drafting the rules and considered environmental justice to varying degrees in the three phases of finalizing them. EPA provided virtually no new information on its activities during these phases.

2. EPA was referring to our report entitled *Clean Air Act: EPA Has Completed Most of the Actions Required by the 1990 Amendments, but Many Were Completed Late*, GAO-05-613 (Washington, D.C.: May 27, 2005).

3. As we stated, several public commenters said that the ozone implementation rule, as proposed in June 2003, could have potential environmental justice impacts. As we also stated, in April 2004, EPA finalized a portion of the ozone implementation rule, which it then called Phase I; but it did not include the provision that drew the public comments on environmental justice. EPA officials are still considering this provision for a second phase of the rule implementing a new ground-level ozone standard, called Phase II. It is true, as EPA stated, that we did not identify any environmental justice issues in the Phase I rule. However, our objective was not to identify such issues with the rules, but to review how EPA considered environmental justice in developing the rules.

4. On the basis of EPA's letter, we added clarification about the "seemingly contradictory statements" in our discussion of the ozone implementation rule.

5. As we stated, public commenters did raise such issues about all three rules as they were proposed. As we also stated, EPA did not finalize the portion of the ozone implementation rule that it, and others, said could raise environmental justice issues.

6. While EPA stated that our report is misleading and needs further explanation of context, it is not clear from EPA's comments how the agency would want us to frame this issue differently. First, EPA comments that EPA staff believed that, as a factual matter, as the rule

was implemented, it was unlikely to pose environmental justice issues. Similarly, we state in the report that EPA officials believed that the final rules did not create environmental justice issues. Second, EPA stated that we should note the steps that the agency took to address potential environmental justice concerns. We did so, noting EPA's discussion of these steps in the final rule. Moreover, in its letter, EPA stated that it agreed with us that the gasoline rule (finalized in February 2000) would create "potential environmental justice issues." It was public commenters, not we, who raised concerns about potential environmental justice issues.

7. We clarified in the *Highlights* page and other portions of the report to note that EPA officials told us, after the rules were finalized, that none of the rules created an environmental justice issue.

8. We clarified the source of EPA's statements. The preamble of the final rule is discussed in our report.

9. According to EPA, we stated that the Air Office's environmental justice coordinators were not involved in the gasoline rulemaking. In fact, we stated only that the coordinators were not involved in developing the rule, as opposed to public outreach efforts, where they were involved. EPA's description of how and when a coordinator was involved buttressed our point. According to EPA's letter, the environmental justice coordinator was involved only in resolving "permitting process issues" and became involved only "around the time the rule was proposed." Similarly, according to EPA's letter, the Office of Environmental Justice representative was involved only in discussions of "permitting issues" and only "after the proposed [gasoline] rule was published." Thus, it appears that in neither case were they substantively involved in drafting this rule. We added language in the report clarifying the discussion of the process.

10. As EPA noted, it devoted resources to seeking public involvement while finalizing the gasoline rule. Accordingly, we changed our characterization of EPA's efforts in finalizing the three rules.

11. EPA's public involvement policy provides that it will, to the fullest extent possible, respond to public comments. We did not see a distinction in the policy between comments on Advanced Notices of Proposed Rulemaking and comments on proposed rulemakings. However, EPA interprets its policy as requiring a response to comments

on the latter but not the former, and we have revised our report accordingly.

Appendix V

GAO Contact and Staff Acknowledgments

GAO Contact

John B. Stephenson (202) 512-3841

Staff Acknowledgments

In addition to the individual named above, the key contributors to this report were John Delicath, Michael A. Kaufman, David Marwick, Thomas Melito, and Daniel J. Semick. Tim Guinane, Anne Rhodes-Kline, and Amy Webbink also made important contributions.

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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: Daniel J. Carroll
Steven J. Weber

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 impacted[1]. 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.

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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.*

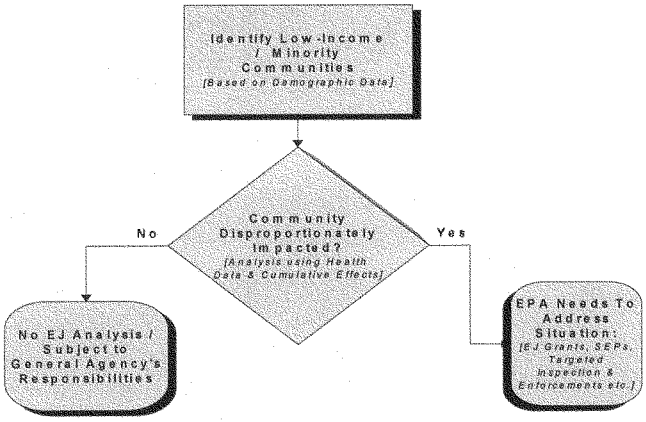
Who is Protected by the Environmental Justice Executive Order?

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 Memorandum[2] 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.

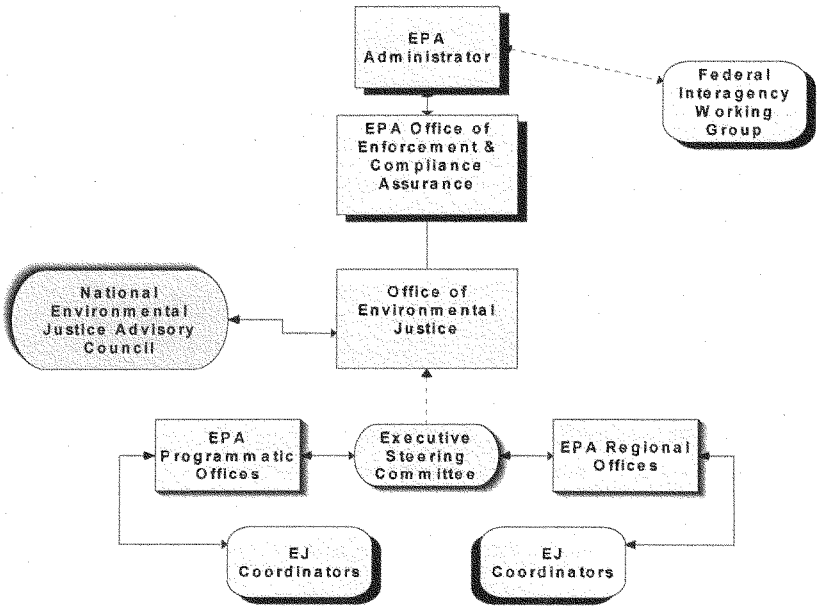
The Executive Order established a Federal Interagency Working Group chaired by EPA and comprised of 11 Federal departments and agencies, as well as several White House offices. EPA's Office of Environmental Justice, while overseeing the integration of environmental justice into EPA's policies, programs,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

§ 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.

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.

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.

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[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

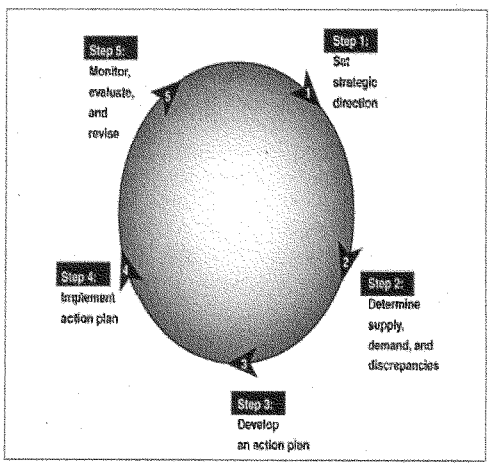
[4] Christine Todd Whitman, Administrator, U.S. Environmental Protection Agency, memorandum to Assistant Administrators et al., "EPA's Commitment to Environmental Justice," August 9, 2001.

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 Justices 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).

Figure 2.1 OPM's Strategic Planning Model



Source: OPM.

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

[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 Rights[6] 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

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[6] U.S. Commission on Civil Rights, *Not in My Backyard: Executive Order 12,898 and Title VI os 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

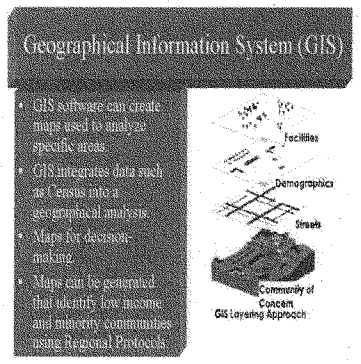
the northeast section of the country may not work in the southwest section because of the differences in population makeup. While we agree that some flexibility is needed based on geographic differences, it is incumbent that the Agency develop some sort of standards that ensure consistent protection 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 city[7] with an urban center and residential areas.

Figure 3.1



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. Census[8] 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

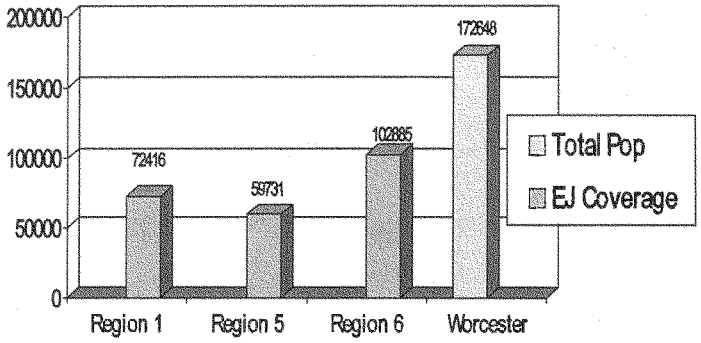
There are 167 block groups in Worcester. Of that amount, Region 6's protocol identified 112 for inclusion as potential environmental justice communities, substantially more than the other two. Region 1 included 74 and Region 5 was the least inclusive, covering 68 block groups (see Table 3.1 and Figure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

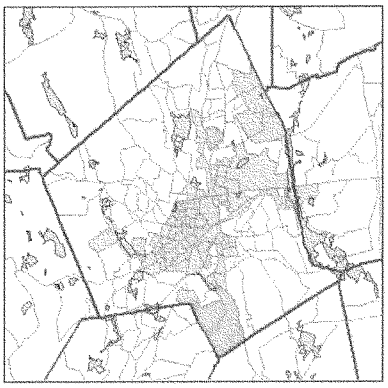
	Worcester	Region 6	Region 1	Region 5
Block Groups	167	112	74	68
People Covered	172,648	102,885	72,416	59,731

Figure 3.2 Protection using different Regional Protocols

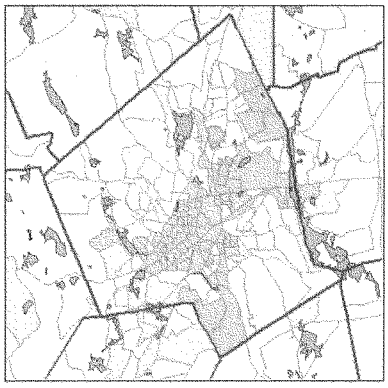


Regional offices generally used mapping to depict potential environmental justice communities. We used the methodologies of the various regions on one set of common data for Worcester, and the resulting overlays of protection are shown in the following maps in Figure 3.3.

Figure 3.3: Overlay Maps for City of Worcester



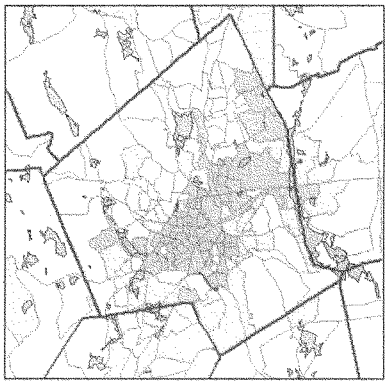
Region 1 and Region 5



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.

Appendix A

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 wit 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 at 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, shell 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 tie environment. Independent agencies are requested to comply with the provisions of this order.

6-605. *Petitions far 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.

Appendix B

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

Appendix C

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.

Appendix D

EPA Response to Draft Report

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

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.

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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 it 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 proferred 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. Environment 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 of 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 <u>not</u> 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 decisionsmaking 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 project 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;
  - <u>Identify and address environmental justice problems in communities in which significant noncompliance is occurring</u>;
  - 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

Appendix E

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.

Appendix F

Distribution

EPA Headquarters

Administrator
Acting Deputy Administrator
Acting Assistant Administrator for Enforcement and Compliance Assurance
Director, Office of Environmental Justice
Acting Associate Administrator, Office of Public Affairs (1101A)
Agency Followup Official (the CFO) (2710A)
Agency Audit Followup Coordinator (2724A)
Audit Followup Coordinator, Office of Enforcement and Compliance Assurance
Audit Followup Coordinator, Office of Public Affairs
Associate Administrator for Congressional and Intergovernmental Relations (1301A)
Director, Office of Regional Operations (1108A)

EPA Regions

Regional Administrators
Regional Audit Followup Coordinators

EPA Office of Inspector General

Inspector General (2410)

OFFICE OF INSPECTOR GENERAL

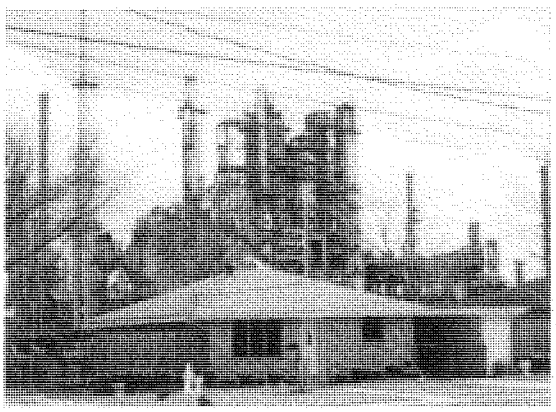
Catalyst for Improving the Environment

Evaluation Report

EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities

Report No. 2006-P-00034

September 18, 2006



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Abbreviations

EJSEAT	Environmental Justice Smart Enforcement Assessment Tool
EPA	U.S. Environmental Protection Agency
OAR	Office of Air and Radiation
OECA	Office of Enforcement and Compliance Assurance
OEJ	Office of Environmental Justice
OIG	Office of Inspector General

Cover Photo: Housing impacted by industry. Photo from EPA Region 2 Environmental Justice Website: http://www.epa.gov/region2/ej/.

U.S. Environmental Protection Agency
Office of Inspector General

2006-P-00034
September 18, 2006

At a Glance

Catalyst for Improving the Environment

Why We Did This Review

We conducted this review to determine whether the U.S. Environmental Protection Agency's (EPA's) program and regional offices performed environmental justice reviews of their programs, policies, and activities as required by Executive Order 12898, and whether they needed additional guidance.

Background

Environmental justice reviews seek to identify and address disproportionately high and adverse human health or environmental effects on minority and low-income populations. The 1994 Executive Order 12898, *Federal Action to Address Environmental Justice in Minority Populations and Low-Income Populations*, directs agencies to make environmental justice part of their mission by reviewing the effects of their programs on minority and low-income populations.

For further information, contact our Office of Congressional and Public Liaison at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2006/20060918-2006-P-00034.pdf

EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities

What We Found

Our survey results showed that EPA senior management has not sufficiently directed program and regional offices to conduct environment justice reviews in accordance with Executive Order 12898. Consequently, the majority of respondents reported their programs or offices have not performed environmental justice reviews. Though some offices may not be subject to an environmental justice review, the respondents expressed a need for further guidance to conduct reviews, including protocols, a framework, or additional directions. Until these program and regional offices perform environmental justice reviews, the Agency cannot determine whether its programs cause disproportionately high and adverse human health or environmental effects on minority and low-income populations.

What We Recommend

We recommended that the Deputy Administrator:

(1) Require the Agency's program and regional offices to identify which programs, policies, and activities need environmental justice reviews and require these offices to establish a plan to complete the necessary reviews.

(2) Ensure that environmental justice reviews determine whether the programs, policies, and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations.

(3) Require each program and regional office to develop, with the assistance of the Office of Environmental Justice, specific environmental justice review guidance, which includes protocols, a framework, or directions for conducting environmental justice reviews.

(4) Designate a responsible office to (a) compile the results of environmental justice reviews, and (b) recommend appropriate actions to review findings and make recommendations to the decisionmaking office's senior leadership.

The Agency accepted our recommendations.

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

OFFICE OF
INSPECTOR GENERAL

September 18, 2006

MEMORANDUM

SUBJECT: EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities
Report No. 2006-P-00034

TO: Marcus C. Peacock
Deputy Administrator

This is our report on the subject evaluation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report represents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established resolution procedures.

The estimated cost of this report – calculated by multiplying the project's staff days by the applicable daily full cost billing rates in effect at the time – is $157,433.

Action Required

In accordance with EPA Manual 2750, you are required to provide a written response to this report within 90 calendar days. You should include a corrective actions plan for agreed upon actions, including milestone dates. We have no objections to the further release of this report to the public. This report will be available at http://www.epa.gov/oig.

If you or your staff have any questions, please contact me at (202) 566-0847 or roderick.bill@epa.gov, or Jeffrey Harris, Product Line Director for Cross Media Issues, at (202) 566-0831 or harris.jeffrey@epa.gov.

Sincerely,

Bill A. Roderick
Acting Inspector General

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Chapter 1
Introduction

Purpose

The objective of this evaluation was to determine whether U.S. Environmental Protection Agency (EPA) program and regional offices have performed environmental justice reviews of their programs, policies, and activities as required by Executive Order 12898. The evaluation specifically sought to answer the following questions:

- Has there been clear direction from Agency senior management to perform environmental justice reviews of EPA programs, policies, and activities?
- Has the Agency performed environmental justice reviews?
- Does the Agency have adequate guidance to conduct these reviews or is there a need for additional directions or protocols?

Background

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* was signed on February 11, 1994. The Executive Order directs all Federal agencies to implement environmental justice into its programs as follows:

> *To the greatest extent practicable and permitted by law ... 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.*

In August 2001, the EPA Administrator issued a memorandum reaffirming the Agency's commitment to environmental justice. This memorandum directed EPA to conduct its 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 and low-income populations. In addition, the memorandum directed EPA to improve its research and data collection relating to the health of all people, including minority and low-income populations.

Four years later, on November 4, 2005, the EPA Administrator issued another memorandum reaffirming the Agency's commitment to environmental justice and

directing Agency officials "to implement [EPA] programs and activities to ensure that they do not adversely affect populations with critical environmental and public health issues, including minority and low-income communities." The 2005 memorandum also directed "EPA to more fully and effectively integrate environmental justice considerations into its programs, policies, and activities" and "to incorporate environmental justice considerations into its planning and budgeting processes."

However, neither the 2001 nor the 2005 memoranda specifically directed program and regional offices to assess whether any of their programs, policies, or activities had disproportionately high and adverse human health or environmental effects on minority and low-income populations.

In response to our 2004 report on environmental justice,[1] the Assistant Administrator of the Office of Enforcement and Compliance Assurance (OECA) responded in part as follows:

> *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 Office of Environmental Justice (OEJ) advised us that, since our 2004 environmental justice report, the Agency has also:

- Integrated environmental justice into each goal of the Agency's Draft Strategic Plan;
- Issued the *Toolkit for Assessing Potential Allegations of Environmental Injustice* and the *Environmental Justice Smart Enforcement Assessment Tool*;
- Linked its regional and program office environmental justice action plans to the Agency's Strategic Plan, and developed new action plans for each program and regional office;
- Established the OEJ as an *ex officio* member of the Agency's Regulatory Steering Committee to help ensure that environmental justice considerations are taken into account during the rulemaking process;
- Developed in-person and on-line training in the "fundamentals of environmental justice"; and
- Developed in-person and on-line training for EPA staff responsible for writing permits under the Resource Conservation and Recovery Act and the Clean Air Act.

[1] EPA OIG Report No. 2004-P-00007, *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice*, March 2004.

OEJ provided us with the following definitions of the types of environmental justice reviews the Agency performs:

- "Environmental justice assessments" are comprehensive analyses of potential disproportionately high and adverse impacts within a given geographic area, or that may arise from a proposed activity.

- "Environmental justice reviews" or "environmental justice program evaluations" address potential disproportionately high and adverse impacts resulting from a program, policy, or set of activities on all impacted communities, including minority and/or low-income communities.

For this evaluation, we sought to identify any reviews of the potential to cause disproportionately high and adverse impacts on minority and low-income populations regardless of how program and regional offices labeled the reviews. Therefore, this document uses the terms "analysis," "review," and "assessment" interchangeably.

Scope and Methodology

To determine the direction, frequency, and guidance for environmental justice reviews, we met with OECA, OEJ, and Office of Air and Radiation (OAR) representatives. We then conducted an Agency-wide survey of each of the Deputy Assistant Administrators in the Agency's 13 program offices and each of the 10 Deputy Regional Administrators on their experience conducting environmental justice reviews of their programs, policies, and activities. We also asked them to describe their satisfaction with available guidance and instructions for conducting these reviews, and whether they needed additional directions or protocols. We selected this population after discussion with OECA and OEJ suggested that we would likely receive a more complete picture of environmental justice reviews and assessments if the Deputy Regional Administrators and Deputy Assistant Administrators serve as our points of contact.

We received 15 completed surveys: 5 Deputy Regional Administrators responded and 5 program offices responded. OAR provided responses from five of its divisions, and the Office of the Administrator provided responses from two of its offices. We did not design our survey to draw inferences or project results. Rather we sought to obtain descriptive information on implementing environmental justice at EPA. Our response rate was 43 percent (10 of 23 offices) which is high for a voluntary survey. While the regional and program offices that responded may not represent all regional and program offices at EPA, we received responses from those offices directly responsible for environmental programs (e.g., OAR, Office of Water, Office of Solid Waste and Emergency Response), as opposed to offices that function in more of a support capacity (e.g., Office of the Chief Financial Officer, Office of General Counsel). We considered

all responses when summarizing results in order to use the most information available to us. See Appendix A for a list of offices that responded to our survey.

This evaluation began on January 9, 2006, and field work ended on May 18, 2006. We conducted the review in accordance with Government Auditing Standards.

Chapter 2
EPA Has Not Consistently Performed Environmental Justice Reviews of Programs, Policies, and Activities

Our survey results showed that EPA program and regional offices have not performed environmental justice reviews in accordance with Executive Order 12898. Respondents stated that EPA senior management has not sufficiently directed program and regional offices to conduct environment justice reviews. Also, respondents expressed a need for further guidance on conducting these reviews, including protocols, a framework, or additional directions. Until these program and regional offices perform reviews, the Agency cannot determine whether its programs cause disproportionately high and adverse human health or environmental effects on minority and low-income populations.

Program and Regional Offices Have Not Routinely Performed Environmental Justice Reviews

Although Executive Order 12898 requires environmental justice reviews, EPA program and regional offices have not consistently performed them. In our survey of program and regional office directors, 9 of the 15 respondents (60 percent) had not performed reviews as required by the Executive Order. Reasons for not performing these reviews included the absence of a specific directive as well as confusion regarding how to perform the reviews.

In our survey, 13 of the 15 respondents (87 percent) stated that EPA management had not requested them to perform reviews of the Agency's programs, policies, and activities as required by the Executive Order. Section 6.601 of the Executive Order states that the Office of the Administrator is responsible for ensuring that internal reviews are conducted to demonstrate compliance with the Executive Order.

One program office respondent said:

> *Framework, protocols, or further directions would help a program office scope an environmental justice review. Program Offices would find useful and relevant a framework, etc., that is flexible and weighed against existing commitments and programs that compete for program resources.*

Other program offices responded that the nature of their programs does not lend themselves to reviewing impacts on minority and low-income populations and, as a result, they believe their programs are not subject to Executive Order 12898 requirements. However, the Agency has not yet determined the programs, policies, and activities subject to the Executive Order's analysis.

EPA has focused on integrating environmental justice into its programs, policies, and activities through developing action plans from each of the program and regional offices, and through other activities as described in Chapter 1. Action plans provide staff with a strategic instrument to ensure environmental justice considerations are integrated into all Agency activities. In some cases, the action plans provide for assessment and performance measurement.

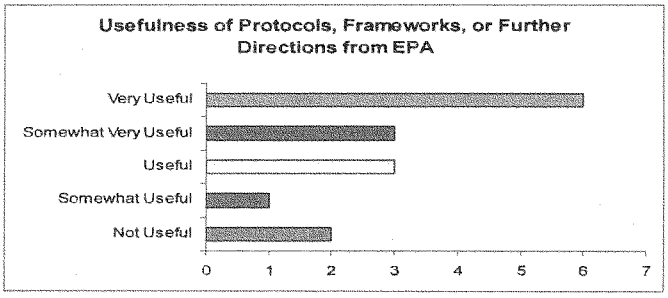
For example, in 2003, OEJ initiated the *Collaborative Problem-Solving Cooperative Agreement Grants Program.* This program provides $100,000 cooperative agreements to affected community-based organizations to help find practical solutions to environmental concerns. The Agency awarded $3,000,000 in Fiscal Year 2004 for these cooperative agreements to 30 projects. The Agency also provides financial assistance to external stakeholders through the *Environmental Justice Small Grants Program.* In Fiscal Year 2004, EPA awarded 17 grants totaling $423,454 to community-based organizations focusing primarily on environmental and/or public health problems of the affected community.

Need for Protocols, a Framework, or Additional Directions

Program and regional offices lack clear guidance to follow when conducting environmental justice reviews. The majority of our survey respondents (12 of 15, or 80 percent) stated they would find protocols, a framework, or additional directions useful for conducting environmental justice reviews (see Figure 1). One of the survey respondents said:

> *Given there isn't a common understanding of what a [environmental justice] review is, it was difficult to answer "yes" or "no" to questions that really required more explanation. ... We advocate the nationwide Agency use of a consistent methodology for conducting [environmental justice] reviews.*

Figure 1. Summary of Survey Respondents' Need for Additional Guidance



No Agency-wide guidance exists on environmental justice program or policy review. However, the Agency issued a *Toolkit for Assessing Potential Allegations of Environmental Injustice* on November 3, 2004. OECA issued the *Toolkit* given its role as the National Program Manager for Environmental Justice. Because no single office has authority to establish binding environmental justice policy, each national program office was required to approve the document prior to its issuance. OEJ stated, "The Toolkit represents current Agency policy with respect to environmental justice and provides a structured, but flexible, framework for conducting an environmental justice analysis." OEJ did advise that they did not design the *Toolkit* for conducting environmental justice reviews of programs and policies, but for conducting site-specific activities, such as issuing a permit.

OECA, with OEJ, has subsequently developed its own environmental justice review based on the *Toolkit*'s Environmental Justice Indicators Framework. According to the Environmental Justice Smart Enforcement Assessment Tool (EJSEAT) guidance document, OECA uses a set of indicators to:

(1) Proactively identify, in a consistent manner, potential disproportionately high and adversely affected areas ("Areas with Potential Environmental Justice Concerns") to assist OECA in making fair and efficient resource deployment decisions, including targeting inspections; and

(2) Analyze these areas, in a consistent manner, based on demographic (race and income) information, to evaluate and measure how OECA's actions affect areas with minority and/or low-income populations.

Thus, EJSEAT serves as both a tool for integrating environmental justice into OECA's work, as well as a methodology for reviewing EPA's compliance program with respect to environmental justice. OEJ envisions that other program/regional offices will develop similar guidance documents for performing environmental justice reviews. EPA advised that some regions and program offices, such as the Office of Water, have stated in the draft Strategic Plan and in their respective Fiscal Year 2006 action plans that they will establish methodologies, like EJSEAT, which identify areas with potential environmental justice concerns and assess progress.

Recommendations

We recommend that the Deputy Administrator:

(1) Require the Agency's program and regional offices to identify which programs, policies, and activities need environmental justice reviews and require these offices to establish a plan to complete the necessary reviews.

(2) Ensure that environmental justice reviews determine whether the programs, policies, and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations.

(3) Require each program and regional office to develop, with the assistance of OEJ, specific environmental justice review guidance, which includes protocols, a framework, or directions for conducting environmental justice reviews.

(4) Designate a responsible office to (a) compile the results of the environmental justice reviews, and (b) recommend appropriate actions to review findings and make recommendations to the decisionmaking office's senior leadership.

Agency Response and OIG Evaluation

The Agency agreed with our recommendations. We reviewed the Agency's comments to the draft report and made changes to the final report where appropriate. Appendix B provides the full text of the Agency's response.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in $000s)	
Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Claimed Amount	Agreed To Amount
1	7	Require the Agency's program and regional offices to identify which programs, policies, and activities need environmental justice reviews and require these offices to establish a plan to complete the necessary reviews.	O	Deputy Administrator	TBD		
2	8	Ensure that environmental justice reviews conclude whether the programs, policies, and activities have a disproportionately high or adverse health or environmental impact on minority and low-income populations.	O	Deputy Administrator	TBD		
3	8	Require each office to develop, with the assistance of the Office of Environmental Justice, specific environmental justice review guidance, which includes protocols, a framework, or directions for program and regional offices.	O	Deputy Administrator	TBD		
4	8	Designate a responsible office to (a) compile the results of the environmental justice reviews, and (b) recommend appropriate actions to address findings.	O	Deputy Administrator	TBD		

[1] O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is undecided with resolution efforts in progress

Appendix A

Regional and Program Office Survey Respondents

	Regions	Program Offices
Respondents	1 4 5 8 9	Office of Solid Waste and Emergency Response Office of Air and Radiation Office of Water Office of Research and Development Office of the Administrator
Total	5 (out of 10)	5 (out of 13)
Agency-wide Response Rate	10 (out of 23, or 43%)	

Appendix B

Agency Response

MEMORANDUM

SUBJECT: Response to Draft Evaluation Report 2004-000929, "EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities"

FROM: Granta Y. Nakayama
Assistant Administrator

TO: Jeffrey Harris
Director for Program Evaluation, Cross-Media Issues
Office of Inspector General

The United States Environmental Protection Agency (EPA) appreciates the opportunity to comment on the Office of Inspector General's (OIG) Draft Evaluation Report 2004-000929, "EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities."(Draft Report). I am sending this memorandum on behalf of EPA Deputy Administrator Marcus Peacock. EPA believes that the Draft Report sets forth cogent recommendations that, with some modification, will help to strengthen EPA's environmental justice program.

EPA believes that the integration of environmental justice considerations into the Agency's decisionmaking processes represents an essential first step in making environmental justice part of its mission, as directed by Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (Feb. 16, 1994). Environmental justice program review is the next appropriate step to follow. Accordingly, the OIG's Draft Report is especially timely, and EPA appreciates the OIG's efforts in this regard.

EPA concurs, in general terms, with the OIG's finding that, instead of conducting environmental justice reviews, "[t]he Agency has focused on integrating environmental justice into its programs, policies, and activities through the development of action plans from each of the EPA program and regional offices. These action plans provide Agency staff with a strategic instrument to ensure environmental justice considerations are integrated into all Agency activities." However, as noted in comments to earlier drafts, certain aspects of the Draft Report's research methodology and analysis can be made clear.

EPA points out that, in addition to the action plans, the Agency has taken steps to integrate environmental justice into its work. For example, EPA, for the first time, is integrating environmental justice considerations into its Strategic Plan, which will improve the Agency's ability to plan, coordinate, and evaluate its environmental justice priorities. Moreover, EPA has significantly enhanced its on-line environmental justice mapping and assessment capabilities, which should lead to improved accountability, efficiency, and, most importantly, improved conditions in environmentally burdened communities.

I am attaching EPA's comments to the Draft Report. If you have any questions regarding the enclosed comments or any other aspect of EPA's environmental justice program, please contact me, or your staff may contact Barry E. Hill, Director, Office of Environmental Justice, (202) 564-2515.

Attachment (1): Response to OIG Draft Evaluation Report, "EPA Needs to Conduct Environmental Justice Reviews of Its Program, Policies, and Activities

Response to OIG Draft Evaluation Report, "EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities"

General Comments:

While EPA finds the Draft Report recommendations to be quite useful, certain aspects, such as the "Scope and Methodology" Section should be made clearer and more understandable. Specifically, EPA recommends the following:

1. Identify Data and Analysis Limitations and Explain Survey Methodology

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The "Scope and Methodology" Section should include an explanation of the data and analysis limitations of the Draft Report, given that only half of the Agency's regional offices (5/10) responded to the OIG's survey. (Draft Report Page 3). This section should also explain the analytical basis for: (1) aggregating the results from the regional and the program offices, which are entities with very different institutional roles within EPA and have different needs (*e.g.*, programmatic policy operations versus more location-specific functions); and (2) counting, as separate responses, the submissions of different offices located within a single region or program office. A discussion of the Draft Report's limitations would help the reader know whether the data and analysis should be considered representative of conditions and/or needs Agency-wide. Including raw or tabularized data in an appendix to the Final Report would also increase the transparency of the evaluation's data and analysis.

2. Distinguish between Categories of Environmental Justice Reviews

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EPA reiterates its previous recommendation that the survey and analysis of results should distinguish between "environmental justice assessments," "environmental justice reviews," and "environmental justice program evaluations." The Draft Report's interchangeable use of these terms (Draft Report Page 3) leads to confusion and potentially misleading conclusions. For example, while OECA agrees that the "[t]here is no Agency-wide guidance in place on environmental justice program or policy review," it is incorrect to state that there exists "no established parameters or protocols to follow in conducting an environmental justice review." (Draft Report Page 6). As noted in the Draft Report, the *Toolkit for Assessing Potential Allegations of Environmental Injustice* provides guidance "for conducting site-specific activities, such as issuing a permit . . . [and] provides a structured, but flexible, framework for conducting an environmental justice analysis." *Id.*

Specific Comments:

1. Page 2, first full paragraph. The first sentence should read, "However, neither the 2001 nor the **2005** memoranda . . .."

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2. Page 2, bullet #6. The sentence should be revised for clarity: "Developed in-person and on-line training for EPA staff responsible for writing permits under the Resource Conservation and Recovery Act and the Clean Air Act."

See OIG Comment in Appendix C Note 4

3. Page 3, "Scope of Methodology," paragraph 1. As noted above in General Comment 1, identify the Draft Report's data and analytical limitations and explain the survey methodology with greater clarity.

See OIG Comment in Appendix C Note 5

4. Page 3, "Scope of Methodology," paragraph 2, sentence 2. The sentence should be modified, as follows: "The Office of Inspector General designed the sampling process after consultation with OECA and OEJ."

See OIG Comment in Appendix C Note 6

5. Page 5, paragraph 3, sentence 1. The sentence should be modified, as follows, to accurately show the range of mechanisms that EPA has used to integrate environmental justice into its programs, policies, and activities:

See OIG Comment in Appendix C Note 7

"The Agency has focused on integrating environmental justice into its programs, policies, and activities through **planning and budgeting processes,** development of **on-line assessment tools, training courses, policy guidance documents, and** action plans**, which are submitted by** each EPA program and regional offices, **as well as through OEJ's participation in the regulatory rulemaking process as an *ex officio* member of the** Regulatory Steering Committee.

6. Page 6, paragraph 3, sentence 2. The sentence should be modified as follows to clarify that policy exists with respect to environmental justice assessments. In addition, consistent with Recommendation #3, page 7, the sentence should be modified to state that the regions and program offices, rather than EPA, as a whole, have not established guidance on environmental justice program evaluation or policy review:

See OIG Comment in Appendix C Note 8

"**The regions and program offices have not established** guidance on environmental justice program or policy review. **Further, except for the *Toolkit*, which addresses site** specific assessments, and for assessments conducted under the National Environmental Policy Act and in the compliance assurance context, we found no established parameters or protocols to follow in conducting an environmental justice analysis."

7. Page 6, paragraph 5, sentence 2. Clarify that other program offices, such as the Office of Water, and regions have stated in the draft Strategic Plan and in their respective Fiscal Year 2006 Action Plans that they will establish methodologies, like EJSEAT, which identify areas with potential environmental justice concerns and assess progress.

See OIG Comment in Appendix C Note 9

Recommendations:

See OIG Comment in Appendix C Note 10

(1) Require the Agency's program and regional offices to identify which programs, policies, and activities need environmental justice reviews and require these offices to establish a plan to complete the necessary reviews.

EPA accepts this Recommendation without modification.

(2) Ensure that environmental justice reviews conclude whether the programs, policies, and activities **may** have a disproportionately high ~~or~~ **and** adverse health or environmental impact on minority ~~and~~ **or** low-income populations.

EPA accepts this Recommendation with modifications, as above. The inclusion of the term "may" provides a protective margin. The use of the conjunctions "and" and "or" have been conformed to track the language of Executive Order 12898.

(3) Require each **program and regional** office to develop, with the assistance of the Office of Environmental Justice, specific environmental justice review guidance, which includes protocols, a framework, or direction **for conducting environmental justice reviews.** ~~program and regional offices.~~

EPA accepts this Recommendation with modifications, as above. The modifications clarify that each region and program office will be responsible for developing its own guidance with the assistance of the Office of Environmental Justice. A successful environmental justice review must combine expertise both in environmental justice issues and the relevant science surrounding a particular program and pollutant.

(4) Designate a responsible office to (a) compile the results of the environmental justice reviews, and (b) recommend appropriate actions to **review findings and make recommendations to the decisionmaking office's senior leadership.**

EPA accepts this Recommendation with modification, as above. The modification is necessary to maintain existing delegations of authority and to maintain decisionmaking authority with the office accountable for implementing its program, or overseeing operations within its region.

Appendix C

OIG's Comments on Agency's Response

1. We edited the "Scope and Methodology" section to elaborate and clarify our discussion on the data and analysis used in our report. (See Page 3)

2. As suggested, we edited the report section on categories of environmental justice reviews to clarify our position. (See Pages 3 and 7)

3. We made the correction. (See Page 2)

4. We revised the sentence as suggested. (See Page 2)

5. See the first comment above.

6. We made the suggested modification. (See Page 3)

7. We modified the sentence by referring to the Chapter 1 "Background" section of our report which provides this information. (See Page 6)

8. We did not change the report since existing statements provide the same information.

9. We added the suggested statement to the report. (See Page 8)

10. We added the suggested word changes and additional information to our recommendations. (See Page 8)

Appendix D

Distribution

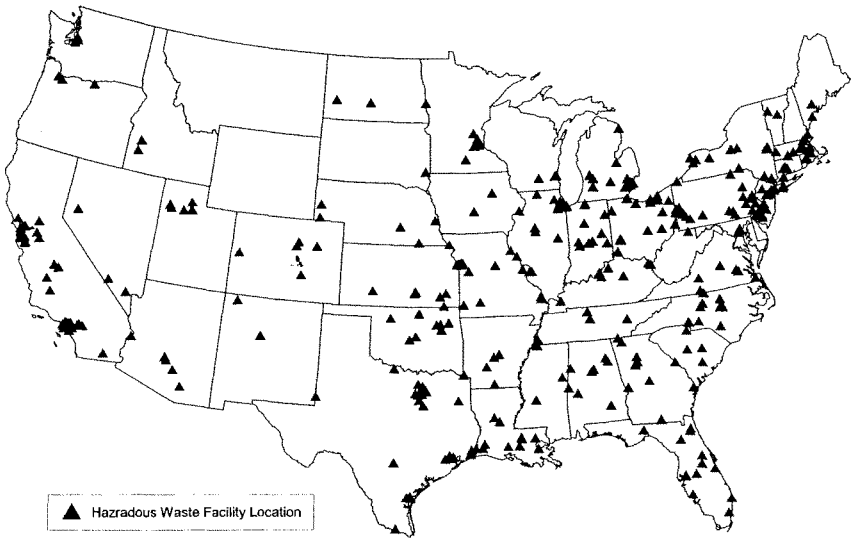
Office of the Administrator
Assistant Administrator for Enforcement and Compliance Assurance
Agency Followup Official (the CFO)
Agency Followup Coordinator
Audit Followup Coordinator, Office of Enforcement and Compliance Assurance
General Counsel
Associate Administrator for Congressional and Intergovernmental Relations
Associate Administrator for Public Affairs
Acting Inspector General

Executive Summary

TOXIC WASTES AND RACE AT TWENTY 1987-2007

Grassroots Struggles to Dismantle Environmental Racism in the United States

A Report Prepared for the
United Church of Christ
Justice and Witness Ministries



Special Preview Release for American Association for the Advancement of Science (AAAS) Annual Meeting, San Francisco, CA

Principal Authors:
Robert D. Bullard, Ph.D.
Paul Mohai, Ph.D.
Robin Saha, Ph.D.
Beverly Wright, Ph.D.

February 2007

ABOUT THE JUSTICE & WITNESS MINISTRIES

Justice and Witness Ministries of the United Church of Christ embraces God's transforming mission to do justice, seek peace, and build community. Therefore, in response to the call of Christ, we speak and act prophetically through public witness, policy advocacy, issue education, and grassroots empowerment to build a more just, compassionate and inclusive world.

Justice and Witness Ministries, one of four Covenanted Ministries in the United Church of Christ, helps local congregations and all settings of the church respond to God's commandments to do justice, seek peace and effect change for a better world. The work of Justice and Witness Ministries is guided by the pronouncements and resolutions approved by the United Church of Christ.

JWM has a long history of working to confront and dismantle racism. JWM's work serves as a catalyst for social transformation, particularly in the ushering in of a fully integrated multiracial, multicultural world – a world where diversity becomes the focal point of communal celebration. Our work for criminal and juvenile justice reform, toward the abolishment of capital punishment, and in support of political prisoners is aimed to remove the barriers that divide people, that they may be liberated to live as one.

JWM uses a variety of strategies to undertake justice advocacy. These strategies include mobilizing people to participate in public life so as to impact social policy. *Responding to legislative issues, JWM positively impacts the areas of global economy, public education, workers rights, health care, economic development, and the environment.*

Working as individuals, congregations, Associations, Conferences and national covenanted ministries, the UCC is engaged in diverse ministries of compassion, advocacy and reconciliation. We seek to be a church that is multiracial, multicultural, open and affirming, accessible to all.

We embrace God's transforming mission to do justice, seek peace, and build community. In response to Christ's call, we prophetically speak truth to power and act through public witness in over twenty social justice advocacy areas. Jesus calls us to be a more inclusive church and society.

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United Church of Christ
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ABOUT THE AUTHORS

Robert D. Bullard is the Ware Distinguished Professor of Sociology and Director of the Environmental Justice Resource Center at Clark Atlanta University. He is the author of thirteen books that address sustainable development, environmental racism, urban land use, industrial facility siting, community reinvestment, housing, transportation, and smart growth. His book, *Dumping in Dixie: Race, Class and Environmental Quality* (Westview Press, 2000), is a standard text in the environmental justice field. His most recent books include *Just Sustainabilities: Development in an Unequal World* (Earthscan/MIT Press, 2003), *Highway Robbery: Transportation Racism and New Routes to Equity* (South End Press, 2004), *The Quest for Environmental Justice: Human Rights and the Politics of Pollution* (Sierra Club Books, 2005), *Growing Smarter: Achieving Livable Communities, Environmental Justice, and Regional Equity* (MIT Press, 2007), and *The Black Metropolis in the Twenty-First Century: Race, Power, and the Politics of Place* (Rowman & Littlefield, forthcoming May 2007).

Paul Mohai is Professor in the School of Natural Resources and Environment, University of Michigan, Ann Arbor. He was an early and major contributor to the growing body of quantitative research examining the disproportionate environmental burdens in low-income and people of color communities. A significant outcome of this early research was the organization of the historic 1990 "Michigan Conference on Race and the Incidence of Environmental Hazards" with colleague, Dr. Bunyan Bryant. Dr. Mohai has also been a major contributor to research examining the environmental attitudes of African Americans and their influence on the environmental movement. His current research involves national-level studies examining cause and effect relationships in the distribution of environmental hazards by race and class, including examining the role environmental factors play in accounting for racial and socioeconomic disparities in health. He is the author of numerous articles on the subject of race and the environment.

Robin Saha is Assistant Professor of Environmental Studies at the University of Montana and affiliated faculty with its School of Public and Community Health Sciences. He is among the leading scholars conducting quantitative studies of environmental inequality using Geographic Information Systems (GIS). His articles appear in leading social science journals including *Demography* and *Social Problems.* His teaching and research focuses on the intersection of environmental justice, health, and policy with an emphasis on community engagement and empowerment. He is committed to providing assistance to contaminated communities and works actively on tribal environmental issues. One of his current community-based research projects focuses on substandard housing and environmental health on Montana Indian reservations. He also consults on environmental justice legal cases and conducts environmental justice analyses for a wide variety of nonprofit advocacy organizations.

Beverly Wright is a sociologist and the founding director of the Deep South Center for Environmental Justice (DSCEJ) at Dillard University (formerly at Xavier University of Louisiana) in New Orleans. She is a leading scholar, advocate, and activist in the environmental justice arena. She served on the U.S. Commission of Civil Rights for the state of Louisiana and to the city of New Orleans' Select Committee for the Sewerage and Water Board. She is co-chair of the National Black Environmental Justice Network and the Environmental Justice Climate Change (EJCC) Initiative. She is the co-author of *In the Wake of the Storm: Environment, Disaster, and Race After Katrina* (Russell Sage Foundation, May 2006). She is a native of New Orleans and a survivor of Hurricane Katrina.

EXECUTIVE SUMMARY

Introduction

In 1987, the United Church of Christ Commission for Racial Justice released its groundbreaking study *Toxic Wastes and Race in the United States*. The report was significant because it found race to be the most potent variable in predicting where commercial hazardous waste facilities were located in the U.S., more powerful than household income, the value of homes, and the estimated amount of hazardous waste generated by industry. The *Toxic Wastes and Race* study was revisited in 1994 using 1990 census data. The 1994 study found that people of color are 47 percent more likely to live near a hazardous waste facility than whites.

This year, the United Church of Christ Justice and Witness Ministries commissioned a new report as part of the twentieth anniversary of the release of the 1987 report. The 2007 *Toxic Wastes and Race at Twenty* report uses 2000 census data. The report also chronicles important environmental justice milestones since 1987 and a collection of "impact" essays from environmental justice leaders on a range of topics. This new report also examines the environmental justice implications in post-Katrina New Orleans and uses the Dickson County (Tennessee) Landfill case, the "poster child" for environmental racism, to illustrate the deadly mix of waste and race.

Toxic Wastes and Race at Twenty is designed to facilitate renewed grassroots organizing and provide a catalyst for local, regional, and national environmental justice public forums, discussion groups, and policy changes in 2007 and beyond.

Approach

This new report includes the first national-level study to employ 2000 Census data and distance-based methods to a current database of commercial hazardous waste facilities to assess the extent of racial and socioeconomic disparities in facility locations in the U.S. Disparities are examined by region and state, and separate analyses are conducted for metropolitan areas, where most hazardous waste facilities are located.

Key Findings

The application of these new methods, which better match where people and hazardous sites are located, reveals that racial disparities in the distribution of hazardous wastes are greater than previously reported. In fact, these methods show that people of color make up the majority of those living in host neighborhoods within 3 kilometers (1.8 miles) of the nation's hazardous waste facilities. The evidence is clear that these racial and ethnic disparities are prevalent throughout the country.

National Disparities

Over nine million people (9,222,000) are estimated to live in circular host neighborhoods within 3 kilometers of the nation's 413 commercial hazardous waste facilities. Over 5.1 million people of color, including 2.5 million Hispanics or Latinos, 1.8 million African Americans, 616,000 Asians/Pacific Islanders, and 62,000 Native Americans live in neighborhoods with one or more commercial hazardous waste facilities. Indeed these host neighborhoods are densely populated, with over 870 persons per square kilometer (2,300 per mi^2), compared to 30 persons per square kilometer (77 per mi^2) in non-host areas. Not surprisingly, 343 facilities (83%) are located in metropolitan areas.

For 2000, neighborhoods within 3 kilometers of commercial hazardous waste facilities are 56% people of color whereas non-host areas are 30% people of color. Thus, percentages of people of color as a whole are 1.9 times greater in host neighborhoods than in non-host areas. Percentages of African Americans, Hispanics/Latinos, and Asians/Pacific Islanders in host neighborhoods are 1.7, 2.3, and 1.8 times greater (20% vs. 12%, 27% vs. 12%, and 6.7% vs. 3.6%), respectively. These racial disparities in the location of

the nation's commercial hazardous waste facilities are statistically significant at a 0.001 level, i.e., there is less than 1 chance in 1000 that they are due to random chance.

Poverty rates in the host neighborhoods are 1.5 times greater than non-host areas (18% vs. 12%) and mean annual household incomes and mean owner-occupied housing values in host neighborhoods are 15% lower ($48,234 vs. $56,912, and $135,510 vs. $159,536, respectively). Depressed economic conditions characterize host neighborhoods of the nation's hazardous waste facilities.

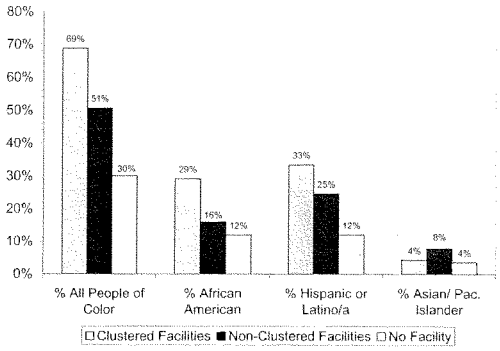
Racial and Socioeconomic Disparities between Host Neighborhoods and Non-Host Areas for the Nation's 413 Commercial Hazardous Waste Facilities

Demographic Variable	Host Neighborhoods	Non-Host Areas
Race/Ethnicity		
% People of Color	55.9%	30.0%
% African American	20.0%	11.9%
% Hispanic or Latino	27.0%	12.0%
% Asian/Pacific Islander	6.7%	3.6%
% Native American	0.7%	0.9%
Socioeconomics		
Poverty Rate	18.3%	12.2%
Mean Household Income	$48,234	$56,912
Mean Housing Value	$135,510	$159,536

Based on 2000 Census Data

Neighborhoods with Clustered Facilities

Neighborhoods with facilities clustered close together have higher percentages of people of color than those with non-clustered facilities (69% vs. 51%). Likewise, neighborhoods with clustered facilities have disproportionately high poverty rates. These differences are statistically significant at a 0.001 level.



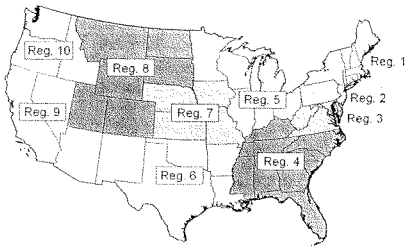
Percentages of African Americans and Hispanics in the neighborhoods with clustered facilities are significantly higher than neighborhoods with non-clustered facilities (29% vs. 16% and 33% vs. 25%, respectively).

Clustered facility neighborhoods have higher poverty rates than non-clustered facility neighborhoods (22% vs. 17%). Mean household incomes are 10% lower in neighborhoods with clustered facilities ($44,600 vs. $49,600), and mean housing values are 14% lower ($121,200 vs. $141,000).

Because people of color and the poor are highly concentrated in neighborhoods with multiple facilities, they continue to be particularly vulnerable to the various negative impacts of hazardous waste facilities.

EPA Regional Disparities

Racial disparities for people of color as a whole exist in 9 out of 10 EPA regions (all except Region 3). These disparities are statistically significant at the 0.001 level. Disparities in people of color percentages between host neighborhoods and non-host areas are greatest in: Region 1, the Northeast (36% vs. 15%); Region 4, the southeast (54% vs. 30%); Region 5, the Midwest (53% vs. 19%);



Region 6, the South, (63% vs. 42%); and Region 9, the southwest (80% vs. 49%). See Appendix 1.

Seven EPA regions have statistically significant disparities in Hispanic or Latino percentages, seven EPA regions have statistically significant disparities in African American percentages, and six EPA regions have statistically significant disparities in percentages of Asians/Pacific Islanders (see Appendices 2-4).

Differences in poverty rates between hazardous waste host neighborhoods and non-host areas are greatest for Region 1 (16% vs. 8.7%), Region 2 (19% vs. 12%), Region 5 (19% vs. 9.6%), Region 7 (15% and 10%), Region 8 (15% and 10%), and Region 9 (21% vs. 13%) – see Appendix 5. Socioeconomic disparities are statistically significant in all 9 EPA regions, all except Region 9.

Disproportionately high percentages of people of color are found in 7 of the 9 regions with clustered facility neighborhoods. Differences between clustered and non-clustered facility neighborhoods are greatest in Region 5 (62% and 46%), Region 7 (59% vs.25%), Region 8 (55% vs. 26%), and Region 9 (89% vs. 75%). Regions 1, 3, and 4 also have large disparities between clustered and non-clustered facility neighborhoods.

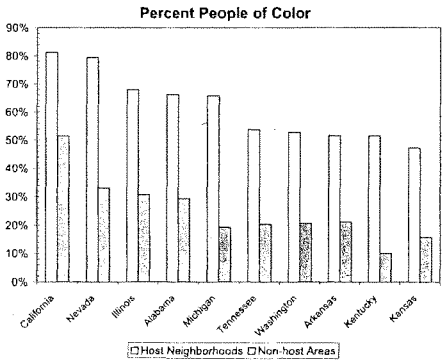
Percent People of Color in Clustered and Non-Clustered Facility Neighborhoods by EPA Region

EPA Region	Clustered	Non-Clustered	No Facility
Region 1	39.6%	35.5%	15.0%
Region 2	52.6%	51.3%	36.0%
Region 3	32.0%	23.1%	24.5%
Region 4	63.3%	52.7%	30.4%
Region 5	62.3%	45.7%	18.8%
Region 6	61.8%	63.0%	41.8%
Region 7	58.6%	25.4%	13.4%
Region 8	54.7%	26.0%	18.2%
Region 9	88.9%	74.8%	49.4%
Region 10	n/a	38.9%	19.1%

In sum, racial disparities in the location of the nation's commercial hazardous waste facilities exist in 9 of 10 EPA regions. For Hispanics, African Americans, and Asians/Pacific Islanders, statistically significant disparities exist in the majority or vast majority of EPA regions. Moreover, the pattern of people of color being especially concentrated in areas where facilities are clustered is also geographically widespread throughout the country.

State Disparities

Alaska, Delaware, Hawaii, New Hampshire, Montana, Wyoming, and the District of Columbia did not have licensed and operating commercial hazardous waste facilities in 1999. Forty of the remaining 44 states (90%) with facilities have disproportionately high percentages of people of color in circular host neighborhoods within 3 km. of the facilities – on average about two times greater than the average percentage in non-host areas for each state (44% vs. 23%). Host neighborhoods in 19 states are majority people of color (see Appendix 1).



States with the 10 largest differences in people of color percentages between host neighborhoods and non-host areas are indicated in the figure and shown in order of the largest percentages of people of color living in the host neighborhoods. For both California and Nevada, these percentages are about 80%. For three additional states, people of color make up a two-thirds or more majority in these neighborhoods. In descending order of by the size of the differences between host and non-host areas, these states are: Michigan (66% vs. 19%); Nevada (79% vs. 33%); Kentucky (51% vs. 10%); Illinois (68% vs. 31%); Alabama (66% vs. 31%); Tennessee (54% vs. 20%); Washington (53% vs. 20%); Kansas (47% vs. 16%); Arkansas (52% vs.

21%); and California (81% vs. 51%). Differences in these percentages range from a high of 47% for Michigan to 30% for California.

Host neighborhoods in Arizona, California, and Nevada are majority Hispanic or Latino. Other states with very large disparities in Hispanic or Latino percentages include: Colorado, Connecticut, Florida, Illinois, Kansas, and Utah (see Appendix 2). Differences in these percentages between host neighborhoods and non-host areas range from a high of 32% for Nevada to 13% for Kansas. Twenty-five other states have disparities in Hispanic percentages.

Host neighborhoods in Alabama and Michigan are majority African American. Other states with very large disparities in African American percentages: Arkansas, Illinois, Kentucky, Nevada, North Carolina, Ohio, Tennessee, and Wisconsin. Among these 10 states, differences in African American percentages between host neighborhoods and non-host areas range from a high of 46% for Michigan to 19% for Nevada. Twenty-eight other states have African American disparities (see Appendix 3).

The State of Washington has the largest disparity in the percentage of Asians/Pacific Islanders (26% vs. 5.6%). Some of the other 20 states with Asian/Pacific Islander disparities include California, Massachusetts, Minnesota, New York, Oregon, Rhode Island, and Utah (see Appendix 4).

Thirty-five states have socioeconomic disparities, i.e., in poverty rates. In these states, the average poverty rate in host neighborhoods is 18% compared to 12% in non-host areas (see Appendix 5).

Metropolitan Disparities

In metropolitan areas, people of color percentages in hazardous waste host neighborhoods are significantly greater than those in non-host areas (57% vs. 33%). Likewise, the nation's metropolitan areas show disparities in percentages of African Americans, Hispanics/Latinos, and Asians/Pacific Islanders, 20% vs. 13%, 27% vs. 14%, and 6.8% vs. 4.4%, respectively. Socioeconomic disparities exist between host neighborhoods and non-host areas, with poverty rates of 18% vs. 12%, respectively.

Racial and Socioeconomic Disparities between Host Neighborhoods and Non-Host Areas for 343 Commercial Hazardous Waste Facilities in Metropolitan Areas

Demographic Variable	Host Neighborhoods	Non-Host Areas
Race/Ethnicity		
% People of Color	56.6%	33.1%
% African American	20.1%	12.8%
% Hispanic or Latino	27.4%	13.7%
% Asian/Pacific Islander	6.8%	4.4%
Socioeconomics		
Poverty Rate	18.3%	11.6%
Mean Household Income	$48,391	$60,438
Mean Housing Value	$136,880	$173,738

Based on 2000 Census Data

One hundred and five of the 149 metropolitan areas with facilities (70%) have host neighborhoods with disproportionately high percentages of people of color and 46 of these metro areas (31%) have majority people of color host neighborhoods (see Appendix 6).

Host neighborhoods in the 10 metropolitan areas with the largest number of people of color living in the host areas have a total of 3.12 million people of color, which is 60% of the total population of people of color in all hazardous waste host neighborhoods in the country (5.16 million). Six metropolitan areas account for half of all people of color living in close proximity to all of the nation's commercial hazardous waste facilities– Los Angeles, New York, Detroit, Chicago, Oakland, and Orange County, CA. Los Angeles alone accounts for 21% of the people of color in host neighborhoods nationally.

In sum, significant racial disparities exist within the nation's metropolitan areas, where 4 of every 5 hazardous waste facilities are located.

Continuing Significance of Race

In 1987, *Toxic Wastes and Race in the United States* found race to be more important than socioeconomic status in predicting the location of the nation's commercial hazardous waste facilities. In 2007, our current study results show that race continues to be a significant and robust predictor of commercial hazardous waste facility locations when socioeconomic and other non-racial factors are taken into account. A separate analysis of metropolitan areas alone produces similar results.

Conclusions

Twenty years after the release of *Toxic Wastes and Race,* significant racial and socioeconomic disparities persist in the distribution of the nation's commercial hazardous waste facilities. Although the current assessment uses newer methods that better match where people and hazardous waste facilities are located, the conclusions are very much the same as they were in 1987. In fact, people of color are found to be more concentrated around hazardous waste facilities than previously shown.

Race matters. People of color and persons of low socioeconomic status are still disproportionately impacted and are particularly concentrated in neighborhoods and communities with the greatest number of facilities. Race continues to be an independent predictor of where hazardous wastes are located, and it is a stronger predictor than income, education and other socioeconomic indicators. Indeed, a watershed moment has occurred in the last decade. People of color now comprise a majority in neighborhoods with commercial hazardous waste facilities, and much larger (more than two-thirds) majorities can be found in neighborhoods with clustered facilities. People of color in 2007 are more concentrated in areas with commercial hazardous sites than in 1987. African Americans, Hispanics/Latinos and Asian Americans/Pacific Islanders alike are disproportionately burdened by hazardous wastes in the U.S.

Race maps closely with the geography of pollution. The findings in our new report are consistent with a September 2005 Associated Press (AP) study showing African Americans were more than twice as likely as whites to live in neighborhoods where air pollution seems to pose the greatest health danger. Hispanics and Asians also were more likely to breathe dirty air in some regions of the United States. However, toxic chemical assaults are not new for many people of color who are forced to live next to and often on the fence line with chemical industries that spew their poisons into the air, water and ground.

Place matters. People of color are particularly concentrated in neighborhoods and communities with the greatest number of hazardous waste facilities, a finding that directly parallels that of the original UCC report. This current appraisal also reveals that racial disparities are widespread throughout the country – whether one examines EPA regions, states or metropolitan areas, where the lion's share of facilities is located. Significant racial and socioeconomic disparities exist today despite the considerable societal attention to the problem noted in this report. These findings raise serious questions about the ability of current policies and institutions to adequately protect people of color and the poor from toxic threats.

Unequal protection places communities of color at special risk. Not only are people of color differentially impacted by toxic wastes and contamination, they can expect different responses from the government when it comes to remediation—as clearly seen in the two case studies in Post-Katrina New Orleans and in Dickson County, Tennessee. Thus, it does not appear that existing environmental, health and civil rights laws and local land use controls have been adequately applied or adapted to reducing health risks or mitigating various adverse impacts to families living in or near toxic "hot spots."

Polluting industries still follow the path of least resistance. For many industries it is a "race to the bottom," where land, labor and lives are cheap. It's about profits and the "bottom line." Environmental "sacrifice zones" are seen as the price of doing business. Vulnerable communities, populations and individuals often fall between the regulatory cracks. They are in many ways "invisible" communities. The environmental justice movement served to make these disenfranchised communities visible and vocal.

The current environmental protection apparatus is "broken" and needs to be "fixed." The current environmental protection system fails to provide equal protection to people of color and low-income communities. Various levels of government have been slow to respond to environmental health threats

from toxic waste in communities of color. The mission of the U.S. EPA was never designed to address environmental policies and practices that result in unfair, unjust and inequitable outcomes. The impetus for changing the dominant environmental protection paradigm did not come from within regulatory agencies, the polluting industry, academia or the "industry" that has been built around risk management. The impetus for change came from grassroots mobilization that views environmental protection as a basic right, not a privilege reserved for a few who can "vote with their feet" and escape from or fend off locally undesirable land uses or LULUs—such as landfills, incinerators, chemical plants, refineries and other polluting facilities.

Slow government response to environmental contamination and toxic threats unnecessarily endangers the health of the most vulnerable populations in our society. Government officials have knowingly allowed people of color families near Superfund sites and other contaminated waste sites to be poisoned with lead, arsenic, dioxin, TCE, DDT, PCBs and a host of other deadly chemicals. Having the facts and failing to respond is tantamount to an immoral "human experiment."

Clearly, the environmental justice movement over the last two decades has made a difference in the lives of people of color and low-income communities that are overburdened with environmental pollution. After years of intense study, targeted research, public hearings, grassroots organizing, networking and movement building, environmental justice struggles have taken center stage. Yet, all communities are still *not* created equal. People of color neighborhoods are still the dumping grounds for all kinds of toxins. Federal agencies such as the EPA have dropped the ball in implementing environmental justice and civil rights policies and programs that could truly make a difference to affected communities.

Community leaders who have been on the front line for justice for decades know that the lethargic, and too often antagonistic, government response to environmental emergencies in their communities is not the exception but the general rule. They have come to understand that waiting for the government to respond can be hazardous to their health and the health of their communities. Many of these leaders are not waiting, but are mobilizing to force all levels of government to do the right thing—and do it in a timely manner before disaster strikes.

While communities all across the nation celebrate the twentieth anniversary of *Toxic Wastes and Race* and the new report, they know all too well that there is still much work to be done before we achieve the goal of environmental justice for all. While much progress has been made in mainstreaming environmental protection as a civil rights, human rights and social justice issue, the key is getting government to enforce the laws and regulations equally across the board—without regard to race, color or national origin.

Getting government to respond to the needs of low-income and people of color communities has not been easy, especially in recent years when the United States Environmental Protection Agency, the governmental agency millions of Americans look to for protection, has mounted an all-out attack on environmental justice and environmental justice principles established in the early 1990s. It has not been easy fending off attacks and proposals from the EPA that would dismantle or weaken the hard-fought gains made by individuals and groups that put their lives on the front line. Moreover, the agency has failed to implement the Environmental Justice Executive Order 12898 signed by President Bill Clinton in 1994 or apply Title VI of the Civil Rights Act.

Recommendations

Many of the environmental injustice problems that disproportionately and adversely affect low-income and people of color communities could be eliminated if current environmental, health, housing, land use and civil rights laws were vigorously enforced in a nondiscriminatory way. Many of the environmental problems facing low-income persons and people of color are systemic and will require institutional change, including new legislation. We also recognize that government alone cannot solve these problems, but need the support and assistance of concerned individuals, groups and organizations from various walks of life. The following recommendations are offered:

Congressional Actions

Codify Environmental Justice Executive Order 12898. In order to strengthen compliance and enforcement of environmental justice objectives at the federal level, ensure that discriminatory agency decisions and actions are addressed, and to provide clear leadership to the states, Congress should codify into law Executive Order 12898 "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." By codifying the Executive Order, Congress will establish an unequivocal legal mandate and impose federal responsibility in ways that advance equal protection under law in communities of color and low-income communities. Executive Order 12898 provides significant impetus at the federal level and in the states. However, arguably the power of the Executive Branch alone is limited. Enacting a law which codifies the government's role in achieving environmental justice, expands the original list of seventeen agencies required to comply and establishes annual reports to Congress that would pave the way to government-wide action and provide a means of accountability.

Provide Legislative "Fix" for Title VI of the Civil Rights Act of 1964. Work toward a legislative "fix" of Title VI of the Civil Rights Act of 1964 that was gutted by the 2001 *Alexander v. Sandoval* U.S. Supreme Court decision that requires intent, rather than disparate impact, to prove discrimination. Congress should act to restore the status quo that existed prior to Sandoval by passing legislation to reestablish that there is a private right of action for disparate impact discrimination under the Title VI regulation. The failure to restore the private right of action will mean that private advocacy organizations will have to fight many discrimination battles with one hand tied behind their backs.

Re-instate the Superfund Tax. The new Congress needs to act immediately to re-instate the Superfund Tax, re-examine the National Priorities List (NPL) hazardous site ranking system and reinvigorate Federal Relocation Policy implementation in communities of color to move those communities that are directly in harm's way.

Hold Congressional Hearings on EPA Response to Contamination in EJ Communities. We urge the U.S. Congress to hold hearings on the U.S. Environmental Protection Agency's (EPA's) response to toxic contamination in EJ communities, including post-Katrina New Orleans, the Dickson County (Tennessee) Landfill water contamination problem, and similar toxic contamination problems found in low-income and people of color communities throughout the United States.

Convene Congressional Black Caucus and Congressional Hispanic Caucus Policy Briefings. We urge the Congressional Black Caucus and the Congressional Hispanic Caucus to convene policy briefings on the findings of *Toxic Wastes and Race at Twenty* to explore possible legislative and policy remedies.

Enact Legislation Promoting Clean Production and Waste Reduction. Require industry to use clean production technologies and support necessary R&D for toxic use reduction and closed loop production systems. Create incentives and buy back programs to achieve full recovery, reuse and recycling of waste and product design that enhances waste material recovery and reduction. Policies must include material restrictions for highly toxic and carcinogenic materials.

Require Comprehensive Safety Data for All Chemicals. Chemical manufacturing companies must provide publicly available safety information about a chemical for it to remain on or be added to the market. The information must allow for reasonable evaluation of the safety of the chemical for human health and the environment and must include hazard, use and exposure information. This is referred to as the "No Data, No Market" principle.

Executive Branch Actions

Implement EPA Office of Inspector General's Recommendations. Even the EPA's own Inspector General (IG) agrees that the agency has not developed a clear vision or a comprehensive strategic plan, and has not established values, goals, expectations and performance measurements for integrating

environmental justice into its day-to-day operations. The EPA should implement the EJ recommendations of the IG's 2004 and 2006 reports for addressing Executive Order 12898.

Fully Implement Environmental Justice Executive Order 12898. The U.S. EPA, FEMA, Army Corps of Engineers, Department of Labor, HUD and other federal agencies need to fully implement the Environmental Justice Executive Order 12898 in the cleanup and rebuilding in the hurricane-ravaged Gulf Coast region.

Protect Community Right-to-Know. Reinstate reporting emissions to the Toxic Release Inventory (TRI) database on an annual basis to protect communities' right to know. Reinstate reporting lower emission thresholds to the TRI.

End EPA Rollback of Environmental Justice Initiatives. Environmental justice leaders are demanding that the U.S. EPA end its attempts to roll back environmental justice and take aggressive steps to implement EJ Executive Order 12898 and provide targeted enforcement where the needs are the greatest, and where unequal protection places low-income and people of color populations at special risk.

Require Cumulative Risk Assessments in Facility Permitting. EPA should require assessments of multiple, cumulative and synergistic exposures, unique exposure pathways, and impacts to sensitive populations in issuing environmental permits and regulations under the Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), Clean Water Act (CWA) and other federal laws. Similar considerations should be made in establishing site-specific clean-up standards under Superfund and Brownfields programs.

Require Safety Buffers in Facility Permitting and Fenceline Community Performance Bonds for Variances. The EPA and states should adopt site location standards requiring a safe distance between a residential population and an industrial facility so that the population is not located within the area where deaths or serious injury to health or property would result in the event that a toxic or flammable substance stored, processed or generated by the facility would be released to the environment through explosion, fire or spill. If safety buffer exemptions are granted, require a locally administered Fenceline Community Performance Bond to provide recovery resources for residents impacted by chemical accidents.

State and Local Actions

Require State-by-State Assessments (Report Cards) on Environmental Justice. Require states to evaluate and report their progress made on environmental justice. From 1993 to present, nearly three dozen states have expressly addressed environmental justice, demonstrating increased attention to the issue at a political level by passing legislation. However, little is known about the efficacy of these laws and if in fact they are being enforced.

Require Brownfields Community Revitalization Analysis. Parties seeking to benefit from governmental subsidies should be required to conduct a Community Revitalization Analysis (CRA) and take steps to address the most serious impacts identified in the analysis.

Develop Brownfields Partnerships with Academic Institutions. Residents in neighborhoods with brownfields sites must be an integral part of the redevelopment process. Many brownfields are located in or near low-income and people of color communities, historically black colleges and universities, Hispanic Serving Institutions and American Indian Tribally Controlled Colleges and Universities.

Establish Tax Increment Finance Funds to Promote Environmental Justice-Driven Community Development. Environmental justice organizations should become involved in redevelopment processes in their neighborhoods in order to integrate brownfields priorities into long-range neighborhood redevelopment plans. This will allow for the use of Tax Increment Finance funds accrued by the redevelopment process to fund the cleanup and redevelopment of brownfields sites for community-determined uses. It is imperative that EJ groups and other community-based organizations are provided

resources to drive the development process, as investment in an area increases and as real-estate values rise—to minimize gentrification and displacement of incumbent residents.

Establish Community Land Trusts. The establishment of Community Land Trusts (CLTs) could allow communities to purchase or obtain brownfields from local governments at below-market rates, and then redevelop them for a variety of community needs including limited-equity housing. CLTs are community-governed nonprofits, with development priorities that are determined by local residents.

Adopt Green Procurement Policies and Clean Production Tax Policies. State and local governments can show leadership in reducing the demand for products produced using unsustainable technologies that harm human health and the environment. Government must use its buying power and tax dollars ethically by supporting clean production systems. Ecological tax reform can assure that public money goes to safer materials and promotes pollution prevention.

Nongovernmental Organization (NGO) Actions

Develop Community Benefits Plans. Encourage environmental justice movement leaders to develop environmental justice criteria for Community Benefits Plans (modeled after those employed successfully in union organizing) in order to assess the desirability of any given brownfields redevelopment project proposed for a community.

Increase Private Foundations' General Support Funding for Environmental, Economic and Climate Justice, and Healthy Communities. Increase private foundation support for efforts of environmental justice groups and their allies to craft and implement legislative, public policy and legal advocacy campaigns to address long-ignored environmental and public health inequities. Currently there is a tremendous amount of attention and focus by environmental grantmakers in particular to issues of climate change. But very little attention is being paid (in terms of grants and philanthropic support) to campaigns that focus specifically on climate justice issues.

Fund Support for Training New Generations of Leaders. Environmental justice organizations, campaigns and collaborative partnerships, including environmental justice centers and academic programs at universities, remain the stepchild of philanthropic giving, thereby exacerbating environmental and public health disparities. Increasing the pool of young people of color in the environmental fields makes good economic sense. It is also good common sense, given the changing demographics of the country. Funders should challenge their environmental grantees to confront the issues of diversity on their staffs and boards.

Target the "Dirty Dozen" Environmental Justice Test Cases. Since much of the environmental protection apparatus was placed on hold or shut down altogether over the past decade, we urge the national environmental, civil rights, human rights, faith-based and political organizations to "adopt" environmental justice test cases to draw national attention back to the deadly mix of waste, race, class and government inaction. We recommend the national coalition compile a list and target the twelve worst cases, the "Dirty Dozen," of private industry and government installations that have polluted African American, Native American, Latino American, Asian American/Pacific Islander and poor White American communities and their residents.

Step up Efforts to Diversify Mainstream Environmental Organizations. There must be a serious and sustained effort to redress this utter lack of diversity within the mainstream environmental movement, an effort that moves beyond tokenism toward real organizational transformation. In the twenty years that have passed since the original publication of *Toxic Wastes and Race in the United States*, there continues to be a huge divide between "mainstream" environmental organizations and environmental justice groups. The environmental movement in the U.S. continues to be one of the most segregated spheres in American society. While a few environmental organizations took seriously the challenges put forward at the First National People of Color Environmental Leadership Summit in 1991, the overall lack of diversity at the staff, board, and program level remains staggering.

Continue to Strengthen Racial, Ethnic, Cross-Class Collaborations Among Environmental Justice Organizations. Important strides have been made by the environmental justice movement in building multi-racial, multi-ethnic coalitions and in developing strategic alliances with mainstream environmental groups, organized labor, faith-based groups and the scientific community. An October 2005 conference, called *Summit 2005 – Diverse Partners for Environmental Progress,* took some initial steps at strengthening alliances within the environmental justice movement. Since then several regional meetings have occurred and in September 2007 "Summit 2007" will take place to "strengthen the network of environmental advocates that is reflective of race, ethnicity, culture, class, and geography." We encourage these and similar efforts to work together in a multi-racial, multi-ethnic fashion to achieve our collective mission to end the suffering of communities most affected by environmental degradation.

Industry Actions

Adopt Clean Production Principles and Methods. Clean production is rooted in the Precautionary Principle and requires clean manufacturing processes that produce clean and safe products. As a healthy business strategy to transform the toxic chemical economy, industry is urged to adopt toxic use reduction, waste reduction, zero waste and closed loop production systems that promote use of renewable energy, nontoxic materials, safer chemical practices and sustainable product design. Industry must invest in research and development of sustainable chemicals, products, materials and processes. It can begin by adopting the Louisville Charter for safe chemicals developed in 2004 by a broad set of environmental justice and health organizations and professionals.

Phase Out Persistent, Bioaccumulative, or Highly Toxic Chemicals. Prioritize for elimination chemicals that are slow to degrade, accumulate in our bodies or living organisms, or are highly hazardous to humans or the environment, including those that disrupt hormones and the immune system and are particularly dangerous to children and other vulnerable populations. Ensure that chemicals eliminated in the United States are not exported to other countries.

Adopt Extended Producer Responsibility. Extended Producer Responsibility (EPR) requires producers take responsibility for the entire product life cycle including the post consumer phase of their product, thereby promoting closed loop systems. EPR makes producers responsible for the environmental and public health impacts of their products, for example, by prohibiting export of end-of-life product waste to other countries as a commodity. Industry must establish minimum recovery, reuse, and material recycling targets. Incineration or combustion should not be considered "recycling." Industry also must widely adopt end-of-life product buy-backs and phase out plans for all product wastes going to landfills, incinerators, cement kilns, or combustion facilities.

Support Community and Worker Right-to-Know. An informed public, workers, and communities must have access to information about industries' use and release of toxic chemical and industries' product chains. Disclose chemicals and materials, list quantities of chemicals produced, used, released, and exported, and provide access to information. The public and workers must be made sufficiently aware of chemical hazards, uses and exposures to make informed decisions. Access to information must include citizen/community inspections. Corporations also must provide adequate information such as life cycle assessments and product labeling so that consumers and governments can use their spending power to support clean production. Industry must also provide meaningful involvement for the public and workers in decisions on chemicals.

Adopt and Uphold Legally-Binding Good Neighborhood Agreements. Uphold performance standards negotiated with fence line communities that may include community access to information, environmental and health monitoring, right to inspect the facility, accident preparedness, pollution prevention and support of good local jobs, union jobs, local economic needs and means for dispute resolution.

Appendix 1 – People of Color Percentages in Hazardous Waste Host Neighborhoods and Non-Host Areas by EPA Region and State[1]

EPA Region/State	Sites[2]	Majority People of Color Sites[3]	Host Neighborhoods	Non-Host Areas	Difference[4]	Ratio
Region 1	**23**	**3**	**36.3%**	**15.0%**	**21.3%**	**2.43**
Connecticut	4	1	49.0%	21.3%	27.7%	2.30
Maine	2	0	7.8%	3.4%	4.4%	2.31
Massachusetts	12	1	33.5%	17.2%	16.3%	1.95
Rhode island	3	1	39.6%	14.6%	25.0%	2.71
Vermont	2	0	4.4%	3.9%	0.5%	1.13
Region 2	**32**	**5**	**51.5%**	**36.0%**	**15.6%**	**1.43**
New Jersey	14	3	54.8%	33.0%	21.9%	1.66
New York	18	2	50.3%	37.3%	13.0%	1.35
Region 3	**35**	**1**	**23.2%**	**24.5%**	**-1.3%**	**0.95**
Maryland	3	1	44.8%	37.8%	7.0%	1.19
Pennsylvania	23	0	16.5%	15.9%	0.6%	1.04
Virginia	9	0	36.1%	29.8%	6.3%	1.21
West Virginia	2	0	10.2%	5.4%	4.8%	1.89
Region 4	**67**	**28**	**54.3%**	**30.4%**	**23.8%**	**1.78**
Alabama	8	3	66.3%	29.3%	36.9%	2.26
Florida	13	5	52.7%	34.3%	18.4%	1.54
Georgia	12	7	55.6%	37.0%	18.6%	1.50
Kentucky	9	1	51.5%	10.0%	41.5%	5.14
Mississippi	3	2	50.6%	39.1%	11.5%	1.29
North Carolina	10	4	55.9%	29.4%	26.5%	1.90
South Carolina	4	3	43.9%	33.8%	10.2%	1.30
Tennessee	6	3	53.8%	20.4%	33.4%	2.64
Region 5	**85**	**28**	**52.6%**	**18.8%**	**33.8%**	**2.80**
Illinois	16	10	67.9%	30.8%	37.1%	2.21
Indiana	16	4	41.2%	13.1%	28.1%	3.14
Michigan	19	8	65.7%	19.2%	46.5%	3.43
Minnesota	10	2	34.4%	10.3%	24.1%	3.33
Ohio	21	4	39.0%	15.3%	23.7%	2.55
Wisconsin	3	0	35.6%	12.4%	23.2%	2.87
Region 6	**61**	**28**	**62.7%**	**41.8%**	**20.9%**	**1.50**
Arkansas	5	2	51.6%	21.3%	30.4%	2.43
Louisiana	12	5	52.7%	37.3%	15.4%	1.41
New Mexico	3	1	52.5%	55.4%	-2.9%	0.95
Oklahoma	8	0	28.1%	25.9%	2.2%	1.09
Texas	33	20	66.4%	47.1%	19.4%	1.41
Region 7	**32**	**5**	**29.1%**	**13.4%**	**15.7%**	**2.17**
Iowa	3	0	21.0%	7.0%	13.9%	2.98
Kansas	9	3	47.2%	15.9%	31.3%	2.97
Missouri	15	2	28.3%	15.9%	12.4%	1.78
Nebraska	5	0	11.2%	12.7%	-1.4%	0.89
Region 8	**15**	**5**	**31.2%**	**18.2%**	**13.0%**	**1.72**
Colorado	5	1	41.0%	25.2%	15.8%	1.63
North Dakota	3	0	7.5%	8.2%	-0.7%	0.91
South Dakota	1	0	13.7%	11.9%	1.8%	1.15
Utah	6	4	36.5%	14.1%	22.4%	2.58
Region 9	**55**	**43**	**80.5%**	**49.4%**	**31.1%**	**1.63**
Arizona	7	4	64.3%	35.7%	28.6%	1.80
California	45	38	81.2%	51.5%	29.7%	1.58
Nevada	3	1	79.4%	33.1%	46.3%	2.40
Region 10	**8**	**1**	**38.9%**	**19.1%**	**19.9%**	**2.04**
Idaho	2	0	7.9%	12.0%	-4.1%	0.66
Oregon	3	0	25.7%	16.3%	9.4%	1.57
Washington	3	1	52.8%	20.7%	32.0%	2.54
U.S. Total	**413**	**147**	**55.9%**	**30.0%**	**25.9%**	**1.86**

[1] Alaska (Reg. 10), Hawaii (Reg. 9), Delaware & New Hampshire (Reg. 1), Montana & Wyoming (Reg. 8) have no commercial hazardous waste facilities. [2] Number of commercial hazardous waste facilities. [3] Number of host neighborhoods with majority people of color, i.e., greater than 50%. [4] Differences may not precisely correspond to other values due to rounding off. Tabulation based on 2000 Census data.

Appendix 2 – Hispanic/Latino Percentages by EPA Region and State

EPA Region/State	Host Neighborhoods	Non-Host Areas	Difference[1]	Ratio
Region 1	**19.5%**	**5.5%**	**13.9%**	**3.52**
Connecticut	25.8%	8.6%	17.2%	3.00
Maine	1.7%	0.7%	1.0%	2.42
Massachusetts	19.0%	5.9%	13.1%	3.21
Rhode island	19.6%	6.9%	12.8%	2.86
Vermont	1.2%	0.9%	0.3%	1.37
Region 2	**23.3%**	**14.0%**	**9.3%**	**1.66**
New Jersey	23.8%	12.8%	11.0%	1.87
New York	23.1%	14.6%	8.5%	1.58
Region 3	**4.7%**	**3.7%**	**1.0%**	**1.26**
Maryland	2.5%	4.3%	-1.9%	0.57
Pennsylvania	5.8%	3.1%	2.7%	1.88
Virginia	2.3%	4.6%	-2.3%	0.50
West Virginia	1.1%	0.6%	0.5%	1.74
Region 4	**13.7%**	**7.2%**	**6.5%**	**1.91**
Alabama	1.2%	1.6%	-0.4%	0.74
Florida	33.6%	16.5%	17.0%	2.03
Georgia	8.5%	5.2%	3.3%	1.64
Kentucky	0.9%	1.4%	-0.5%	0.61
Mississippi	1.7%	1.3%	0.4%	1.27
North Carolina	6.6%	4.6%	2.0%	1.43
South Carolina	1.4%	2.3%	-0.9%	0.60
Tennessee	6.2%	2.0%	4.1%	3.02
Region 5	**11.3%**	**5.0%**	**6.3%**	**2.27**
Illinois	25.8%	11.8%	14.0%	2.19
Indiana	15.4%	3.0%	12.4%	5.12
Michigan	3.5%	3.2%	0.3%	1.09
Minnesota	6.9%	2.6%	4.3%	2.64
Ohio	5.2%	1.8%	3.4%	2.90
Wisconsin	2.4%	3.6%	-1.2%	0.68
Region 6	**37.9%**	**23.1%**	**14.7%**	**1.64**
Arkansas	2.0%	3.2%	-1.2%	0.62
Louisiana	6.4%	2.4%	4.0%	2.71
New Mexico	42.3%	42.1%	0.2%	1.00
Oklahoma	5.0%	5.2%	-0.1%	0.98
Texas	43.1%	31.7%	11.4%	1.36
Region 7	**8.9%**	**3.6%**	**5.3%**	**2.50**
Iowa	4.1%	2.8%	1.4%	1.49
Kansas	19.8%	6.5%	13.4%	3.06
Missouri	4.4%	2.0%	2.4%	2.18
Nebraska	7.9%	5.4%	2.5%	1.47
Region 8	**22.9%**	**10.5%**	**12.4%**	**2.19**
Colorado	35.0%	16.7%	18.3%	2.10
North Dakota	1.2%	1.2%	0.1%	1.06
South Dakota	3.8%	1.3%	2.5%	2.85
Utah	23.2%	8.6%	14.6%	2.69
Region 9	**54.1%**	**28.7%**	**25.3%**	**1.88**
Arizona	50.9%	24.8%	26.1%	2.06
California	54.3%	30.8%	23.5%	1.76
Nevada	50.3%	18.5%	31.8%	2.72
Region 10	**10.1%**	**7.5%**	**2.6%**	**1.35**
Idaho	3.9%	7.9%	-3.9%	0.50
Oregon	12.7%	7.9%	4.7%	1.60
Washington	8.1%	7.5%	0.7%	1.09

[1] Differences may not precisely correspond to other values due to rounding off. Tabulation based on 2000 Census data.

Appendix 3 – African American Percentages by EPA Region and State

EPA Region/State	Host Neighborhoods	Non-Host Areas	Difference[1]	Ratio
Region 1	**9.6%**	**4.8%**	**4.8%**	**2.00**
Connecticut	20.5%	8.4%	12.1%	2.44
Maine	1.9%	0.4%	1.4%	4.21
Massachusetts	5.7%	5.3%	0.4%	1.08
Rhode island	11.0%	3.2%	7.8%	3.41
Vermont	0.4%	0.5%	-0.1%	0.87
Region 2	**16.0%**	**15.0%**	**1.0%**	**1.07**
New Jersey	23.8%	12.9%	10.9%	1.85
New York	13.1%	15.9%	-2.8%	0.83
Region 3	**15.1%**	**16.6%**	**-1.5%**	**0.91**
Maryland	37.3%	27.5%	9.8%	1.35
Pennsylvania	7.8%	9.9%	-2.2%	0.78
Virginia	30.8%	19.5%	11.3%	1.58
West Virginia	6.3%	3.0%	3.2%	2.06
Region 4	**37.0%**	**20.4%**	**16.6%**	**1.82**
Alabama	64.0%	25.6%	38.4%	2.50
Florida	16.5%	14.4%	2.1%	1.14
Georgia	41.8%	28.3%	13.4%	1.47
Kentucky	48.7%	6.6%	42.1%	7.39
Mississippi	47.5%	36.2%	11.3%	1.31
North Carolina	44.2%	21.2%	23.0%	2.09
South Carolina	41.3%	29.4%	11.9%	1.40
Tennessee	43.6%	16.0%	27.6%	2.72
Region 5	**35.8%**	**10.1%**	**25.7%**	**3.55**
Illinois	38.0%	14.1%	23.9%	2.69
Indiana	23.2%	7.7%	15.5%	3.00
Michigan	57.5%	11.9%	45.6%	4.84
Minnesota	12.8%	2.8%	10.0%	4.57
Ohio	30.7%	10.7%	19.9%	2.86
Wisconsin	29.0%	5.4%	23.6%	5.39
Region 6	**20.4%**	**13.5%**	**6.9%**	**1.51**
Arkansas	47.7%	15.4%	32.2%	3.09
Louisiana	44.2%	32.2%	12.0%	1.37
New Mexico	2.3%	1.8%	0.5%	1.28
Oklahoma	10.6%	7.5%	3.1%	1.42
Texas	19.2%	11.2%	8.0%	1.71
Region 7	**16.1%**	**6.7%**	**9.4%**	**2.40**
Iowa	13.6%	1.8%	11.7%	7.39
Kansas	21.2%	5.1%	16.1%	4.17
Missouri	20.0%	10.9%	9.2%	1.84
Nebraska	0.8%	4.1%	-3.2%	0.21
Region 8	**1.9%**	**2.0%**	**-0.1%**	**0.95**
Colorado	1.5%	3.8%	-2.3%	0.40
North Dakota	1.2%	0.5%	0.7%	2.34
South Dakota	3.8%	0.5%	3.2%	6.98
Utah	2.8%	0.7%	2.1%	4.10
Region 9	**11.8%**	**5.6%**	**6.2%**	**2.10**
Arizona	7.9%	2.9%	5.0%	2.72
California	11.6%	6.2%	5.4%	1.87
Nevada	24.8%	5.9%	18.8%	4.18
Region 10	**6.6%**	**2.3%**	**4.2%**	**2.84**
Idaho	0.8%	0.4%	0.4%	2.04
Oregon	1.3%	1.6%	-0.2%	0.86
Washington	11.6%	3.0%	8.6%	3.82

[1] Differences may not precisely correspond to other values due to rounding off. Tabulation based on 2000 Census data.

Appendix 4 – Asian/Pacific Islander Percentages by EPA Region and State

EPA Region/State	Host Neighborhoods	Non-Host Areas	Difference[1]	Ratio
Region 1	**4.9%**	**2.6%**	**2.4%**	**1.91**
Connecticut	1.3%	2.5%	-1.2%	0.51
Maine	1.9%	0.6%	1.2%	2.92
Massachusetts	6.6%	3.6%	3.0%	1.83
Rhode island	5.6%	1.8%	3.8%	3.14
Vermont	1.0%	0.8%	0.2%	1.28
Region 2	**9.7%**	**5.4%**	**4.3%**	**1.81**
New Jersey	2.2%	5.0%	-2.8%	0.44
New York	1.3%	1.1%	0.2%	1.19
Region 3	**2.0%**	**2.7%**	**-0.7%**	**0.75**
Maryland	3.1%	4.0%	-0.9%	0.76
Pennsylvania	1.8%	1.8%	0.0%	0.99
Virginia	1.4%	3.7%	-2.3%	0.38
West Virginia	1.1%	0.5%	0.6%	2.06
Region 4	**2.2%**	**1.4%**	**0.8%**	**1.59**
Alabama	0.2%	0.7%	-0.5%	0.31
Florida	1.8%	1.7%	0.1%	1.03
Georgia	4.0%	2.1%	1.9%	1.89
Kentucky	0.4%	0.8%	-0.4%	0.49
Mississippi	0.7%	0.6%	0.0%	1.03
North Carolina	11.4%	5.2%	6.2%	2.19
South Carolina	0.2%	0.9%	-0.7%	0.25
Tennessee	1.9%	1.0%	1.0%	1.99
Region 5	**3.2%**	**2.0%**	**1.2%**	**1.59**
Illinois	3.1%	3.5%	-0.4%	0.89
Indiana	0.8%	1.0%	-0.2%	0.79
Michigan	1.6%	1.8%	-0.2%	0.90
Minnesota	10.2%	2.4%	7.8%	4.27
Ohio	1.2%	1.2%	0.0%	1.00
Wisconsin	2.1%	1.6%	0.5%	1.32
Region 6	**2.5%**	**2.1%**	**0.4%**	**1.17**
Arkansas	0.2%	0.8%	-0.6%	0.21
Louisiana	1.1%	1.3%	-0.2%	0.88
New Mexico	5.1%	5.8%	-0.6%	0.89
Oklahoma	0.6%	1.4%	-0.8%	0.45
Texas	2.9%	2.7%	0.2%	1.06
Region 7	**1.7%**	**1.3%**	**0.4%**	**1.30**
Iowa	1.4%	1.2%	0.1%	1.11
Kansas	2.5%	1.7%	0.8%	1.46
Missouri	1.5%	1.1%	0.4%	1.33
Nebraska	3.0%	1.4%	1.6%	2.14
Region 8	**3.1%**	**1.7%**	**1.4%**	**1.80**
Colorado	2.1%	2.3%	-0.2%	0.92
North Dakota	1.3%	0.5%	0.8%	2.57
South Dakota	1.3%	0.6%	0.6%	2.00
Utah	6.8%	2.2%	4.6%	3.11
Region 9	**12.3%**	**10.8%**	**1.5%**	**1.14**
Arizona	2.6%	1.9%	0.7%	1.36
California	13.1%	11.1%	2.0%	1.18
Nevada	1.2%	1.3%	-0.1%	0.93
Region 10	**17.1%**	**4.2%**	**12.9%**	**4.07**
Idaho	1.3%	1.0%	0.3%	1.30
Oregon	8.1%	3.0%	5.0%	2.66
Washington	26.3%	5.6%	20.7%	4.72

[1] Differences may not precisely correspond to other values due to rounding off. Tabulation based on 2000 Census data.

Appendix 5 – Poverty Rates by EPA Region and State

EPA Region/State	Host Neighborhoods	Non-Host Areas	Difference[1]	Ratio
Region 1	**15.7%**	**8.7%**	**7.0%**	**1.80**
Connecticut	16.0%	7.5%	8.6%	2.15
Maine	14.4%	10.8%	3.6%	1.33
Massachusetts	14.6%	9.0%	5.6%	1.63
Rhode island	19.7%	10.8%	8.9%	1.83
Vermont	8.5%	9.5%	-1.0%	0.90
Region 2	**19.4%**	**12.3%**	**7.1%**	**1.57**
New Jersey	15.6%	8.2%	7.5%	1.92
New York	20.8%	14.2%	6.5%	1.46
Region 3	**12.6%**	**10.7%**	**1.9%**	**1.18**
Maryland	15.6%	8.3%	7.2%	1.87
Pennsylvania	11.2%	11.0%	0.2%	1.02
Virginia	11.4%	9.6%	1.8%	1.19
West Virginia	23.3%	17.8%	5.5%	1.31
Region 4	**15.7%**	**13.7%**	**2.0%**	**1.15**
Alabama	22.9%	16.0%	6.8%	1.43
Florida	13.9%	12.5%	1.4%	1.11
Georgia	12.5%	13.0%	-0.5%	0.96
Kentucky	23.3%	15.7%	7.6%	1.48
Mississippi	17.5%	20.0%	-2.5%	0.88
North Carolina	17.2%	12.2%	5.1%	1.41
South Carolina	14.0%	14.1%	-0.2%	0.99
Tennessee	14.8%	13.5%	1.3%	1.10
Region 5	**19.4%**	**9.6%**	**9.7%**	**2.01**
Illinois	18.6%	10.4%	8.2%	1.79
Indiana	16.3%	9.2%	7.0%	1.76
Michigan	22.8%	9.9%	12.9%	2.30
Minnesota	16.1%	7.4%	8.7%	2.17
Ohio	21.6%	10.2%	11.4%	2.11
Wisconsin	10.0%	8.7%	1.3%	1.15
Region 6	**18.8%**	**16.0%**	**2.8%**	**1.18**
Arkansas	25.2%	15.8%	9.4%	1.60
Louisiana	21.3%	19.6%	1.7%	1.09
New Mexico	14.8%	18.5%	-3.7%	0.80
Oklahoma	19.8%	14.7%	5.1%	1.35
Texas	18.7%	15.3%	3.5%	1.23
Region 7	**15.0%**	**10.4%**	**4.7%**	**1.45**
Iowa	14.1%	9.0%	5.0%	1.56
Kansas	18.5%	9.6%	8.9%	1.93
Missouri	16.3%	11.6%	4.7%	1.40
Nebraska	7.6%	9.8%	-2.2%	0.77
Region 8	**14.8%**	**10.3%**	**4.4%**	**1.43**
Colorado	15.1%	9.1%	6.0%	1.66
North Dakota	13.2%	11.8%	1.4%	1.12
South Dakota	13.0%	13.2%	-0.1%	0.99
Utah	15.7%	9.2%	6.5%	1.70
Region 9	**20.7%**	**13.5%**	**7.2%**	**1.54**
Arizona	28.3%	13.7%	14.7%	2.07
California	20.2%	13.8%	6.4%	1.46
Nevada	28.1%	9.8%	18.3%	2.87
Region 10	**10.9%**	**11.0%**	**-0.1%**	**0.99**
Idaho	5.7%	11.8%	-6.0%	0.49
Oregon	9.6%	11.6%	-2.1%	0.82
Washington	12.4%	10.6%	1.8%	1.17

[1] Differences may not precisely correspond to other values due to rounding off. Tabulation based on 2000 Census data.

Appendix 6 – People of Color Percentages for 50 Selected Metropolitan Areas

Metropolitan Area	Sites[1]	Host	Non-Host	Difference[2]	Ratio
Albuquerque, NM	2	53.0%	52.2%	0.8%	1.01
Atlanta, GA	4	64.6%	39.6%	24.9%	1.63
Augusta--Aiken, GA--SC	1	58.2%	38.5%	19.6%	1.51
Baton Rouge, LA	3	89.6%	34.7%	54.9%	2.58
Beaumont--Port Arthur, TX	3	57.5%	34.9%	22.5%	1.65
Birmingham, AL	2	74.4%	31.9%	42.4%	2.33
Bridgeport, CT	1	64.4%	22.1%	42.3%	2.91
Canton--Massillon, OH	1	38.1%	8.5%	29.6%	4.49
Charlotte--Gastonia--Rock Hill, NC--SC	4	74.9%	26.5%	48.4%	2.83
Chicago, IL	9	71.6%	40.5%	31.1%	1.77
Cincinnati, OH--KY--IN	3	54.9%	14.2%	40.7%	3.87
Corpus Christi, TX	4	64.3%	60.4%	3.9%	1.06
Dallas, TX	8	55.1%	43.2%	11.9%	1.27
Detroit, MI	12	69.3%	25.8%	43.5%	2.68
Fresno, CA	2	78.4%	58.9%	19.6%	1.33
Gary, IN	3	68.0%	28.1%	39.9%	2.42
Houston, TX	10	78.6%	52.7%	25.9%	1.49
Jackson, MS	1	93.1%	46.3%	46.8%	2.01
Jersey City, NJ	1	66.4%	64.7%	1.7%	1.03
Las Vegas, NV--AZ	2	80.2%	34.8%	45.4%	2.31
Lawrence, MA--NH	1	57.9%	7.4%	50.5%	7.85
Longview--Marshall, TX	1	70.9%	26.6%	44.3%	2.66
Los Angeles--Long Beach, CA	17	90.9%	65.8%	25.0%	1.38
Louisville, KY--IN	3	51.6%	15.7%	35.9%	3.29
Lowell, MA--NH	1	40.8%	7.8%	33.0%	5.25
Memphis, TN--AR--MS	4	57.2%	47.8%	9.4%	1.20
Miami, FL	1	91.9%	79.0%	12.9%	1.16
New Orleans, LA	2	53.5%	45.1%	8.4%	1.19
New York, NY	3	61.0%	60.4%	0.6%	1.01
Newark, NJ	4	66.8%	38.1%	28.7%	1.75
Oakland, CA	6	76.0%	49.2%	26.7%	1.54
Orange County, CA	3	69.8%	46.8%	23.0%	1.49
Phoenix--Mesa, AZ	5	63.7%	33.5%	30.2%	1.90
Pueblo, CO	1	63.1%	39.7%	23.4%	1.59
Riverside--San Bernardino, CA	4	70.5%	52.4%	18.2%	1.35
Saginaw--Bay City--Midland, MI	1	68.7%	17.0%	51.7%	4.04
San Antonio, TX	2	72.7%	60.4%	12.2%	1.20
San Francisco, CA	2	55.6%	48.6%	7.0%	1.14
San Jose, CA	2	77.1%	53.6%	23.5%	1.44
Savannah, GA	1	50.1%	39.6%	10.5%	1.27
Seattle--Bellevue--Everett, WA	2	58.1%	23.0%	35.2%	2.53
South Bend, IN	3	48.5%	12.5%	35.9%	3.87
Stockton--Lodi, CA	1	58.3%	52.4%	6.0%	1.11
Sumter, SC	1	80.3%	47.4%	32.9%	1.69
Tallahassee, FL	1	76.9%	39.2%	37.7%	1.96
Tampa--St. Petersburg--Clearwater, FL	2	52.6%	23.7%	28.9%	2.22
Tucson, AZ	1	70.0%	38.1%	31.8%	1.83
Vallejo--Fairfield--Napa, CA	2	59.1%	45.4%	13.7%	1.30
Waterbury, CT	1	47.8%	17.3%	30.4%	2.75
Wichita, KS	3	50.7%	17.5%	33.1%	2.89
AVERAGE	**3.1**	**65.3%**	**38.2%**	**27.1%**	**2.16**

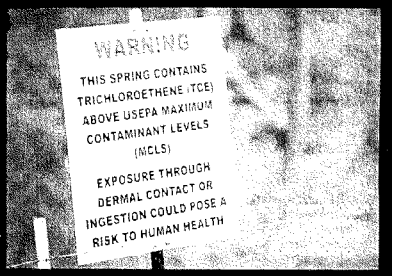
[1] Number of commercial hazardous waste facilities. [2] Differences may not precisely correspond to other values due to rounding off. Tabulation based on 2000 Census data.

TROUBLED WATERS

The government told the Holts their water was safe to drink. But when several family members came down with deadly diseases, suddenly they weren't so sure. ESSENCE traveled to Tennessee and followed the Holts to Capitol Hill to report on their charges of environmental racism and their continuing fight for justice

BY CYNTHIA GORDY

PHOTOGRAPHY BY STEVE JONES



SHEILA HOLT-ORSTED COULDN'T WAIT TO GO TO TENNESSEE FOR Christmas in 2002. The Virginia military base where she lived with her husband, Corey, a U.S. Army sergeant, and their daughter, Jasmine, was pleasant enough. But she missed Dickson County, the rural community where she grew up, where her family had resided for seven generations and where her father and his three brothers owned 150 acres of sprawling grasslands.

"This was home," Sheila, 45, says wistfully from her mother's living room, decorated with family portraits, animal figurines and shiny plastic plants. "We planned to move here after my husband got out of the military. That was our dream."

That dream may never be realized.

Shortly before Christmas, Sheila's father, Harry, was diagnosed with prostate cancer. Although the news was devastating, the family took an optimistic attitude and expected he would beat the disease. But a few days into Sheila's visit, her mother mentioned that her aunt across the road had cancer, too.

What a coincidence, Sheila thought.

"Then my mom told me about our neighbor who lives on the property adjoining ours," Sheila recalls. "She had cancer. Then she told me that two of my cousins who live next door had it. So I'm like, 'Wait a minute. This is too many people.'" ▷

Gisela Holt-Chesnel at her family's burial plot.

Suspicious, Sheila would later pull out the phone book and call everyone who lived on the road about a quarter mile from her parents' homestead. What she found was astounding. In nearly every household, somebody had cancer, or someone had died from it. "It was like a punch in the stomach," Sheila says of the shock. "Those numbers were just not normal."

Sheila returned to Virginia with a "hard gut feeling" that she should get herself checked out, but she wasn't very worried. "I was teaching five aerobics classes—three of them to military personnel—and doing personal training," she says, ticking off each athletic achievement on her fingers. "I'm a former Miss Tennessee bodybuilding champion, and I was playing in two basketball leagues at the time. So I was physically fit." She was floored when the pathology report came back. She had breast cancer. Then, when her mother called a week later with news that her doctor thought maybe she had cancer, too, Sheila began looking for answers. She didn't have to look far. Fifty-four feet from her parents' house lies the Dickson County Landfill. Government records clearly show that toxic chemicals dumped there polluted the well water that the family had been drinking nearly all their lives.

The Holt family (left to right): Bonita, Sheila, Patrick, Beatrice and Dorothy.

The Holts now say the contamination caused an assortment of diseases, including breast cancer, prostate cancer, cervical polyps, diabetes, immune disorders, gastrointestinal disorders and tumors. In 2003 they filed a personal injury lawsuit, which was later amended with a civil rights claim, against the local governments of Dickson County. The lawsuit, which also names the automotive company that dumped contaminants into the landfill, further states that government officials knew about the Holts' polluted well since 1990. Yet the family was assured their water was safe for ten years before a warning finally came. On the other hand, White families with polluted wells were immediately notified, according to state records.

Government agencies at the federal, state, county and city levels say they're not to blame for what happened. They each have their particular duties were handled correctly, holding a different agency responsible for any oversights. As the years go by with no accountability, the Holts suspect that the government is stalling the court proceedings for as long as possible, simply waiting for them to die. The family has already lost a loved one. Sheila's father, Harry, succumbed to his battle with cancer in January 2007, at age 66.

THE PAPER TRAIL

In hindsight, there had been a sign that something was seriously wrong with the Holts' water. A few years back, the Dickson County landfill director, Jim Lunn, popped in and told them to stop drinking it, just as a precaution. Now Sheila was certain there was more behind this recommendation, but her suspicion was not always shared by family members.

"We thought she was a little crazy at first," her sister Bonita, 40, says, recalling how Sheila had angrily marched around the house during her visit home, convinced that everyone's sickness was connected. "But she was right." During the six months Sheila underwent chemotherapy, which she received in Tennessee so that she could be near her parents and siblings, she began to dig through state records. Most days she felt violently ill and frail and vomited constantly. But periodically, when the pain was less raw, she drove to the state office in Nashville and pored over heaps of landfill documents.

"I was worried she was stressing herself," says Sheila's mother, Beatrice, 61. "I thought she needed to relax and concentrate on her illness. But I think her sickness just made her want to work harder on getting to the bottom of this water business." One night the enormity of it all hit Sheila. Sitting alone in her bedroom, she broke down—screaming, throwing clothes, pulling the mattress off her bed. When her brother, Patrick, came in to console her, she wailed, "I'm going to die."

After finishing radiation treatment, Sheila decided to stay in Tennessee to be with her ailing father and to research state records full-time. Supportive of her mission, her husband stayed in Virginia, even though it meant weathering a long-distance marriage. "I knew she had to do it to find some justification in her life," says Corey Orsted, Sheila's

Sheila collected more than 900 pages of reports, test results, letters and memos. "You know the proverbial can of worms," she says. "Well, there were pythons and anacondas in that can!"

husband of 13 years. "Part of me hated being away from her, but there will be many years after this period that we'll be able to spend together."

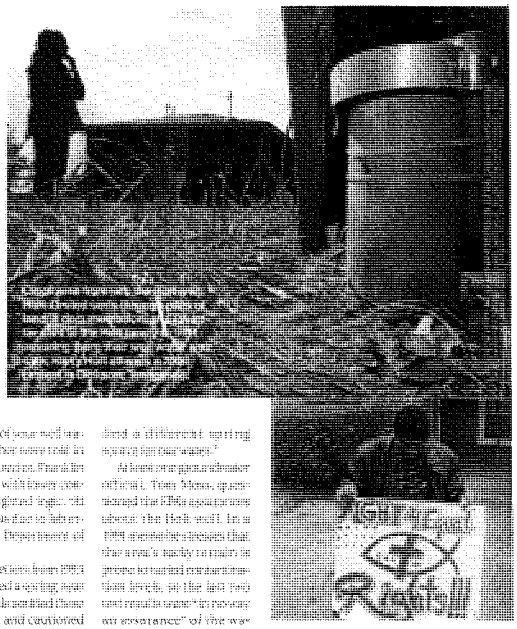
In the end, Sheila collected more than 900 pages of reports, test results, letters and memos, with piles strewn all around the living room, the den, bedrooms, the kitchen. "You know the proverbial can of worms?" she says, ready to tell all about the smoking-gun documentation she found. "Well, there were pythons and anacondas in that can!"

According to federal reports, the city of Dickson opened a city dump on Eno Road in 1968. Dickson County's small Black community—less than 5 percent of the population—has lived on Eno Road since the post-slavery era. It's a picturesque postcard of country life: winding gravel roads dotted with modest tract houses and faded barns, all surrounded by unspoiled woodland. The one blot on the landscape is the Dickson County Landfill. Today the noisy, debris-littered site operates as a garbage transfer station and demolition landfill. But in the sixties and seventies, local companies buried industrial waste there. Searching through thick reports on landfill activity, Sheila learned that waste dumped by an automotive company included a cancer-causing chemical, trichloroethene, or TCE.

It's no accident that a mostly Black neighborhood was picked for the town dumping grounds, says Robert Bullard, director of the Environmental Justice Resource Center at Clark Atlanta University. Residents from San Francisco to the South Bronx have also suffered the effects of environmental racism. "Governments target communities of color that don't have money, lawyers or power in office," says Bullard, who has assisted the Holt family in their case. When the Environmental Protection Agency (EPA) was called in to inspect the landfill in 1988, they sampled Harry Holt's well as part of the investigation. What they found during the span of a five-year probe set off a string of events that has shattered the family.

In January of 1990, the Holts' water showed TCE pollution at a noxious five times above the level at which the government is required to intervene. Yet nothing was done. Seven months later, the EPA sampled the Holt well again, and a third time a year later in 1991.

Exposure to TCE can cause damage to the heart, immune system, prostate, cervix, kidneys and liver, according to the Agency for Toxic Substances and Disease Registry.



These last two times, the toxin levels were low. "Use of your well water should not result in any adverse health effects," [illegible] in a 1991 notification letter from the EPA. The agency's director, Frank [illegible] Hill, says their analysis was based on the last two tests with lower contaminant levels. And the state followed this shortsighted logic: "At that time it was concluded that the first sampling was due to lab error," Joe Sanders, general counsel for the Tennessee Department of Environment and Conservation (TDEC) told Essence.

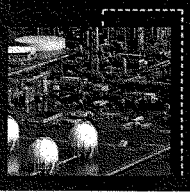
Sheila, however, discovered a very different set of levels from EPA and 1994 that the state sent to White families who used a spring near the landfill, which they suspected was polluted. Officials notified those families within 48 hours of detecting the chemical and cautioned them to stop using their wells. Their test results were not written off as a lab error. "They brought us 12 gallons of water a week," says Kaye Stewart, a White resident, who adds she was reimbursed by the county for expenses incurred at the laundromat: she showered at a friend's house during this time. "Three weeks later they dug us a new well to feed a different spring [illegible] on our [illegible]."

At least one government official, Tony Moss, questioned the EPA's approach [illegible] the Holt well. In a [illegible] he wrote that the area's [illegible] is prone to varied contaminant levels, so the last two test results [illegible] "in no way an assurance" of the water's safety. But the state shot down his appeal for further monitoring. And the Holts drank toxic water for nine more years.

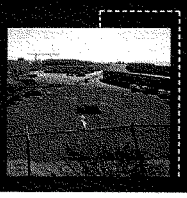
Exposure to TCE can cause damage to the heart, immune system, prostate, cervix, kidneys and liver, according to the Agency for Toxic

DUMPING ON OUR COMMUNITIES

The targeting of communities of color for toxic waste

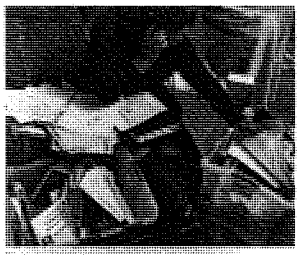


The rural African-American community of MOSSVILLE, LOUISIANA, is home to 300 residents and 17 major industrial facilities, many of which have admitted to releasing millions of pounds of toxic chemicals into the air and water. Residents have two to three times more dioxin, a carcinogen that attacks the hormone system, in their bodies than the general public.



One in six children in the predominantly Black BAYVIEW HUNTER'S POINT neighborhood in San Francisco has asthma, and a disproportionate number of residents suffer from cervical and breast cancer, congestive heart failure and emphysema. The low-income community contains one-third of the city's hazardous-waste sites.

Substances and Disease Registry. It's also linked to cancer and diabetes. Sheila thought about her brother, Patrick, who had an immune disorder so severe that, at one point, he was too weak to walk. Her mother's cancer scare had turned out to be cervical polyps. Sheila, her parents and her sisters had diabetes. *Hell,* she wondered, *could these cows that my sisters'da dropped dead on the farm back in 2001 be connected to this too?*



With some additional sleuthing, Sheila learned that the chemical can cause speech impediments. She was floored: Jasmine had a speech impediment, a slurring of words she had received therapy for since age 3. And her niece and nephews have chronic skin rashes, another symptom of exposure to the chemical. More records show that between 1991 and 2000, state, county, and city officials repeatedly tested other water sources around the landfill. A (sweeping geological) study was conducted in 1997 and [illegible], with 24 test sites, including duck ponds and a dog pound. Despite the Holt family's property being closest to the landfill, their well was excluded from that study.

"They were more concerned about duck ponds and dogs waiting to be put to sleep than my family," Sheila says with an exasperated, can-you-believe-this chuckle.

By the time the Holts' well was sampled again in 2000, TCE showed up at a whopping 29 times above the drinking water standard. The family was notified and put on city water, but the damage may have already been done.

Sitting nonchalantly behind their office desks, elected officials told Sheila not to worry about the findings, she says, because there were not enough toxins to hurt anyone. Still, she tried to get someone to listen. When she heard Oprah Winfrey would be taping her show at a Kentucky military base, Sheila and a friend drove up to the base, feverishly looking for the talk show queen to beg her to hold a rally for the Holts. "They had torn down the stage by the time we got there," Sheila recalls.

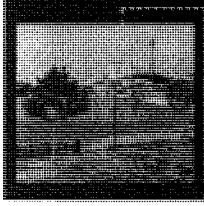
But her greatest disappointment, she says, is how much she's been let down by their neighbors on Eno Road, who she believes "scurried and hid" for fear of how the negative attention would affect them. She assumed they'd be outraged by the damage to everyone's land and health, but that hasn't been the case. "You have to understand the nature of a beat-down community," says Bullard, who explains that there's a great deal of hostility surrounding the issue. "This is a little Black enclave that's been literally treated like garbage. People aren't trying to rise up." Myra Beard, a White resident, concurs that the lawsuit has caused divisiveness in the town. "People think that it's been blown out of proportion," she says. "The threat to their property values is part of it too—if they don't believe it, then it can't be true."

Sheila distributes fact sheets from her parents' home, now a strategy headquarters of sorts, for anyone who's curious. She remembers a White man who stopped by, one of her father's cabinet factory coworkers. "I want to know everything I can," she recalls him saying. "But most people out here think that y'all are niggers trying to get money."

Several White families in the city of Dickson also got organized. They even invited the Holts to join a class-action suit. Their children were all born with cleft palates, and even though they used either city water or wells distant from the landfill—and despite a study by the Centers for Disease Control and Prevention finding no link between the families and TCE—they believed the birth defects were caused by landfill groundwater contamination.

The Holts declined to participate. They lived practically on top of the landfill and had mountains of documents proving their well had been polluted. Surely a case based on murky [CONTINUED ON PAGE 176]

[illegible] and other harmful industries is a national problem



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troubled waters

CONTINUED FROM PAGE 151

speculation would be thrown out. They were wrong. Last November the city and county settled with the White families. Both government bodies agreed to pay them 75 percent of the money they stand to receive from their own $4 million lawsuit against the company that dumped the toxin. "The Holts were given the opportunity to participate in the settlement," wrote Debi Thomas, Dickson County public information consultant, in an e-mail to ESSENCE. Thomas also points to the EPA's role in testing their water and telling them it was safe. The county had no part in that, she says.

Franklin Hill of the EPA denies the agency was culpable. He told ESSENCE that when the agency completed its investigation of the landfill in 1991, the state was in charge. Meanwhile, Joe Sanders of TDEC insists that the Tennessee agency was only following the EPA's judgment, adding that the state is not in the business of testing wells unless a problem is raised.

When asked about the findings, Don L. Weiss, Jr., the mayor of Dickson, focuses his response on the landfill, which the city originally owned. The county and state are behind its operation and maintenance, he wrote in a faxed statement to ESSENCE; the city is no longer involved. "There's a lot of 'It's not my job' going on around here," says Matthew Colangelo, an attorney with the NAACP Legal Defense & Education Fund, which took on the Holts' case last December. "Our position is that they all had a responsibility to the Holt family, and nobody is absolved of that responsibility just because there were others involved in the process who also failed to do the right thing."

THEIR BATTLE CONTINUES

The Holt family's tiny living room seems smaller today, crammed with an influx of ornate floral arrangements delivered by the undertaker. It is the day after Harry's funeral. Hundreds attended, many spilling down the funeral home halls, to hear memories of a gentle, soft-spoken man who loved animals, practical jokes and gospel music. Pastor Richard Sibert of Tennessee's Missionary Baptist State Convention, one of the few organizations that has rallied round the Holts, used his eulogy to gently drive support for the family. "If we all come together," he said, "there is power in this room."

Back at home, Beatrice greets visitors with a smile and gracious offers of her special seven-layer salad. But her eyes have a sad, slightly distracted look. She was married to Harry for 46 years, ever since she was 15. While the grandbabies watch cartoons in the den, the Holt women—Beatrice, Sheila and her two sisters, Bonita and Demetrius—take a breather from the emotion of the preceding days. Full-figured, attractive and deceptively sturdy looking, the four have numerous medical conditions among them: acid reflux, cervical and colon polyps, diabetes, ovarian tumors, rheumatoid arthritis and breast cancer three years in remission.

Four years after finding what they believe to be the source of their ailments, they remain unwavering in their fight. "A desire for justice is what keeps us going," says Demetrius, 40. "We're determined to see that my daddy didn't die in vain." Sheila has her mind set on long-term goals of legislation to protect other families like theirs. A week after the funeral, she faced off against Charles Lee, an EPA representative, in Washington, D.C., as both spoke to a congressional panel. She fidgeted, her arms crossed, as Lee droned on about the agency's commitment, within its limited jurisdiction, to fair treatment.

When she took the podium to tell the story of what she called Tennessee's "contaminated conspiracy," she broke into tears at the part where her daddy died. After a moment and a deep breath, she wiped her eyes and continued. "We must stop Black communities from being used as toxic dumping grounds," she said, the confidence in her voice rising. "We must take back our communities. And we must fight for environmental justice." □

Cynthia Gordy is an assistant news editor at ESSENCE.

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word

GORÉE, ISLAND OF INFAMY

(West Africa, August 5, 1996)

Something terrible happened here.
Bones of my bones, teeth
of my teeth line this Atlantic floor.
Ripped apart, like clams, families
captured, chained in transport
jumped into this sea to declare:
better flesh becomes shark food
than pass through
The Door-of-No-Return
better immediate death than distant
demise in white-winged sea monsters.

Today, I bathe in Africa's Atlantic
where something terrible happened.
Salt-soaked spirits arise, follow
slave ships, human cargo stuffed
in their bulged gut, spoon-fitted, space.
The fetid air is whipped by despair
and restless spirits whisper names
of ancestors, beg continuance
of infant names given up to waters,
given back to sea gods, *Ife, Layla, Mosi.*
I revere your names, honor you,
call out my name to you, as gull
calls out to gull.
Mother of Great-Grandmother's bones,
father of Great-Grandfather's bones
you put oceans in me and I'm drawn
to watery graves where ancestors lie.

—CONSTANCE QUARTERMAN BRIDGES
Reprinted from *Lions Don't Eat Us*
(Graywolf Press)

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