



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

Cleaning Up Communities

EPA Can Increase Impact of Environmental Justice on Agency Rulemaking by Meeting Commitments and Measuring Adherence to Guidance

Report No. 15-P-0274

September 3, 2015



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- *EPA Regions Have Considered Environmental Justice When Targeting Facilities for Air Toxics Inspections* ([15-P-0101](#), issued February 26, 2015)
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- *Investigation of Allegations Concerning Environmental Justice Issues in EPA Region 4* ([10-N-0145](#), issued June 14, 2010)
- *Environmental Justice Concerns and Communication Problems Complicated Cleaning Up Ringwood Mines/Landfill Site* ([2007-P-00016](#), issued April 2, 2007)
- *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice* ([2004-P-00007](#), issued March 1, 2004)

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Abbreviations

ADP	Action Development Process
EJ	Environmental justice
EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General

Cover photo: Playground near an industrial facility. (EPA photo)

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At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency (EPA), Office of Inspector General (OIG), evaluated how the EPA incorporates environmental justice (EJ) into its rulemaking activities. EJ is the fair treatment and meaningful involvement of all people with respect to developing, implementing and enforcing environmental laws, regulations and policies. The OIG specifically examined the EPA's actions in accordance with Plan EJ 2014 to determine (1) why the EPA has not finalized the *Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action* (the *EJ in Rulemaking Guide*), (2) the extent to which the EPA has adhered to the interim guidance and can show measurable results, and (3) the impact upon the rulemaking process as a result of the guidance not being finalized. During our review, the EPA finalized the *EJ in Rulemaking Guide*.

This report addresses the following EPA goal or cross-agency strategy:

- Working to make a visible difference in communities.

Send all inquiries to our public affairs office at (202) 566-2391 or visit www.epa.gov/oig.

The full report is at: www.epa.gov/oig/reports/2015/20150903-15-P-0274.pdf

EPA Can Increase Impact of Environmental Justice on Agency Rulemaking by Meeting Commitments and Measuring Adherence to Guidance

What We Found

The EPA was 3 years behind schedule in issuing the final *EJ in Rulemaking Guide*. According to EPA's Plan EJ 2014, the *EJ in Rulemaking Guide* was to have been finalized and released by the end of 2011. However, the document was not finalized until May 29, 2015. Also, the draft *EJ Technical Guidance*—planned to be a technical complement to the *EJ in Rulemaking Guide*—is not projected to be final until 2016. According to the EPA, delays in finalizing the guides were due to efforts to address extensive comments received during the internal agency review process.

Continued delays in issuing or finalizing EJ guidance limits the EPA's ability to broadly and consistently consider EJ during the rulemaking process, potentially impacting susceptible populations at high risk of suffering effects of environmental hazards.

Use of the *EJ in Rulemaking Guide* is voluntary and it is not consistently used during the rulemaking process, so its impact is uneven across the agency. The EPA does not currently have an agencywide process for assessing the extent to which the *EJ in Rulemaking Guide* is applied. We found that the draft *EJ Technical Guidance* is not being used at all.

Without measures and controls that assess when and how the EJ guidance is used in rulemaking, the EPA limits its ability to encourage broad, consistent use throughout the agency and to evaluate the guides' impact on rulemaking.

Recommendations and Planned Corrective Actions

We recommend that the Associate Administrator for the Office of Policy implement a process to measure use of the guides, keep the EPA Administrator informed if delays occur in issuing the *EJ Technical Guidance*, and provide training on using the *EJ Technical Guidance*. We recommend that the Assistant Administrator for Chemical Safety and Pollution Prevention provide training on using the *EJ in Rulemaking Guide*.

The agency concurred with the recommendations and provided acceptable corrective actions with planned completion dates. All recommendations are considered resolved.



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

THE INSPECTOR GENERAL

September 3, 2015

MEMORANDUM

SUBJECT: EPA Can Increase Impact of Environmental Justice on Agency Rulemaking by Meeting Commitments and Measuring Adherence to Guidance
Report No. 15-P-0274

FROM: Arthur A. Elkins Jr.

A handwritten signature in black ink, appearing to read "Arthur A. Elkins Jr.", is written over the printed name.

TO: Joel Beauvais, Associate Administrator
Office of Policy

Jim Jones, Assistant Administrator
Office of Chemical Safety and Pollution Prevention

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 audit resolution procedures.

The EPA offices having primary responsibility over the issues discussed in this report are the Office of Policy, within the Office of the Administrator, and the Office of Chemical Safety and Pollution Prevention. While the draft report recommendations were originally issued to the Office of Enforcement and Compliance Assurance, we were informed that the issues identified are more appropriately addressed by those other two offices.

You are not required to provide a written response to this final report because you provided agreed-to corrective actions and planned completion dates for the report recommendations. Should you choose to provide a final response, we will post your response on the OIG's public website, along with our memorandum commenting on your response. Your response should be provided as an Adobe PDF file that complies with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final response should not contain data that you do not want to be released to the public; if your response contains such data, you should identify the data for redaction or removal along with corresponding justification.

We will post this report to our website at <http://www.epa.gov/oig>.

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Purpose

The purpose of this review was to determine how the U.S. Environmental Protection Agency (EPA) incorporates environmental justice (EJ) into its rulemaking activities. Specifically, we looked at:

- Why the EPA has not yet finalized the *Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action* (the *EJ in Rulemaking Guide*), as set forth in Plan EJ 2014.¹
- The extent to which the EPA has adhered to the *EJ in Rulemaking Guide* and can show measurable results.
- The impact upon the rulemaking process as a result of the *EJ in Rulemaking Guide* not being finalized.

Background

The EPA protects public health and the environment in a variety of ways, and one of the most important ways is through regulation development. EPA regulations cover a range of environmental and public health protection issues, including setting standards for clean water, establishing requirements for proper handling and reduction of toxic wastes, and controlling air pollution from industry and other sources. On average, the EPA generally issues over 120 Administrator-signed regulations each year, many of which address highly technical, scientific and complex environmental problems.

EPA's Action Development Process (ADP) is designed to be a multi-disciplinary, collaborative, cross-office and cross-media approach to rule development that accelerates the progress of protecting human health and the environment. The ADP was developed to encourage better planning and analysis, promote improved collaboration among offices and agencies, and foster a creative problem-solving environment where the EPA can develop cost-effective, scientifically sound solutions to environmental problems. The ADP also makes certain that scientific, economic and policy issues are adequately addressed at the appropriate stages in action development. ADP Tracker is the agency's primary method for monitoring the development of regulations, guidance documents, general permits and other actions that follow the approved rulemaking procedures within the ADP.

Environmental Justice

In Plan EJ 2014, the EPA defines EJ 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.” Plan EJ 2014 further defines the

¹ Plan EJ 2014 is the EPA's roadmap for integrating EJ into its programs, policies and activities.

term “fair treatment” to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, issued in 1994, required that each federal agency make EJ 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 January 2010, Administrator Lisa Jackson made expanding the Conversation on Environmentalism and Working for Environmental Justice an agency priority. This priority was incorporated into the EPA’s Strategic Plan for 2011–2015.² To implement the priority, the EPA developed Plan EJ 2014 as the agency’s roadmap for integrating EJ into its programs, policies and activities.

Plan EJ 2014, which was meant to mark the 20th anniversary of the signing of Executive Order 12898, is the EPA’s overarching strategy for advancing EJ. Plan EJ 2014 has three major sections: Cross-Agency Focus Areas, Tools Development Areas and Program Initiatives. Plan EJ 2014 is comprised of nine implementation plans with goals, strategies, deliverables and milestones. Our evaluation focused on Incorporating Environmental Justice Into Rulemaking, which is one of the five Cross-Agency Focus Areas. The goal is to more effectively protect human health and the environment for overburdened populations by developing and implementing guidance on incorporating EJ into the EPA’s rulemaking process. EPA’s strategies for incorporating EJ into rulemaking include:

1. Finalizing the *Action Development Process: Interim Guidance on Considering Environmental Justice During the Development of an Action*.
2. Facilitating and monitoring implementation of guidance on incorporating EJ into rulemaking.
3. Developing the *EJ Technical Guidance* on how to conduct EJ assessments of rulemaking activities.

EPA’s program offices and regions have assumed principal responsibility for leading at least one Cross-Agency Focus or Tools Development Area in Plan EJ 2014. According to Plan EJ 2014, EPA’s program offices and regions have dedicated senior management and established a staff-level workgroup to carry out this responsibility. For Incorporating Environmental Justice Into Rulemaking, the lead program offices and region are: Office of Chemical Safety and Pollution Prevention, Office of Policy, Office of Research and Development, Office of Environmental Justice, and Region 9.

² In the EPA’s Fiscal Year 2014–2018 Strategic Plan, Administrator Gina McCarthy reiterated the EPA’s commitment to EJ and to “implement[ing] the goals of the Environmental Justice (EJ) 2014 strategy.”

In July 2010, the EPA issued the interim *EJ in Rulemaking Guide*. This guidance calls upon agency rule writers and decision makers to consider EJ throughout all phases of a rule's development, from the point of its inception through all the stages leading to promulgation and implementation. The EPA is also developing technical guidance to assist rule writers and decision makers in determining how to analyze and incorporate EJ in the agency's rulemaking process.

The draft *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis (EJ Technical Guidance)*, dated April 2013, was created to be a technical complement to the *EJ in Rulemaking Guide*. As of September 2015, the draft *EJ Technical Guidance* was not in use and has an expected completion date of February 2016. The recently finalized *EJ in Rulemaking Guide* and the *EJ Technical Guidance* represent two-thirds of the EPA's proposed products to support its overall strategy for implementing EJ into its rulemaking process.

Responsible Offices

The offices primarily responsible for incorporating EJ in national rules are the appropriate rule-writing National Program Managers—specifically, the Office of Air and Radiation, Office of Water, Office of Solid Waste and Emergency Response, and Office of Chemical Safety and Pollution Prevention. The Office of Chemical Safety and Pollution Prevention is the lead in finalizing the *EJ in Rulemaking Guide*, and the EPA Office of Policy (within the Office of the Administrator) has a lead role in the development of the *EJ Technical Guidance*.

Scope and Methodology

We conducted our review from July 2014 through June 2015. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

To determine what actions the EPA has taken to incorporate EJ into rulemaking activities, we reviewed relevant federal regulations and EPA guidance, including the *EJ in Rulemaking Guide*, Plan EJ 2014, and draft *EJ Technical Guidance*. We also reviewed data obtained from the EPA's ADP Tracker database.

We judgmentally sampled the program offices and regions to interview from those that answered either "yes" or "no" to the ADP Tracker question, "Is this [regulatory] action likely to have an impact on minority, low-income, tribal, and/or other vulnerable populations?" as follows:

- Program offices and the region that answered “yes” to the question and had the largest number of regulatory actions (Office of Air and Radiation, Office of Chemical Safety and Pollution Prevention, and Region 6).
- Program offices and the region that answered “no” to the question and had the largest number of regulatory actions (Office of Enforcement and Compliance Assurance, Office of Water, and Region 9). This excluded offices we had already selected them from the “yes” category.

Region 9 is also the lead region for the Plan EJ 2014’s Cross-Agency Focus Area of Incorporating Environmental Justice Into Rulemaking.

Prior OIG Report on Rule Development Process

EPA Office of Inspector General (OIG) Report No. [13-P-0167](#), *Efficiency of EPA’s Rule Development Process Can Be Better Measured Through Improved Management and Information*, issued February 28, 2013, found that there remained some limitations in ADP Tracker with regard to tracking and documentation. This challenged the agency’s ability to monitor, evaluate and assure the efficiency of EPA rulemaking. We recommended that the Associate Administrator for EPA’s Office of Policy establish guidance, maintain database documentation and track resources, to enhance the agency’s ability to determine the efficiency of the rulemaking process. In response, the agency created two new guidance documents: ADP Tracker Data Entry Responsibilities and ADP Tracker Milestone Management. According to the EPA’s Management Audit Tracking System, the agency has completed all the corrective actions in response to our prior report’s recommendations.

Results of Review

The EPA had planned to issue its *EJ in Rulemaking Guide* by 2011 but did not finalize it until May 2015, which was during our review. The EPA cited delays due to extensive internal workgroup reviews of the document. Despite delays in producing a final guide, there was some use of the guide’s interim version in parts of the agency, but its use was not consistent. The *EJ in Rulemaking Guide’s* impact is uneven across the agency due to its inconsistent use during the rulemaking process. Further, the EPA was not assessing adherence to the guide’s provisions, which did not allow for the agency to track and certify its usage. A technical complement to the guide is not in use; it was originally scheduled for release in fiscal year 2013, and is now scheduled for release in 2016. The agency has yet to develop and provide training on the use of the guidance documents.

EPA Was 3 Years Behind Schedule in Issuing EJ in Rulemaking Guide

According to the EPA’s Plan EJ 2014, the *EJ in Rulemaking Guide* was to be finalized and released by the end of December 2011. However, the document was not finalized until May 29, 2015. According to the EPA, the delay in finalizing

the guide was due to efforts to address extensive comments received during the internal agency review process for the document, known as the “Red Flag Review” process. The Red Flag Review was used to obtain final concurrence on the revisions to the *EJ in Rulemaking Guide* made by the delegated workgroup in the development of the final version. The EPA stated that the Red Flag Review is subjective, lasting anywhere from a couple of weeks to several months, depending on the complexity and length of the materials being reviewed. According to the EPA, the Red Flag Review for the *EJ in Rulemaking Guide* started in February 2014 and ended that April. After the Red Flag Review, the draft *EJ in Rulemaking Guide* was sent to the EJ Committee of EPA’s Executive Management Council for responses to the comments received. An additional review was then provided to the agency’s Assistant Administrators.

The technical complement to the *EJ in Rulemaking Guide*—*EJ Technical Guidance*—is not in use and has a projected final date of February 2016. It was originally scheduled to be finalized and released in fiscal year 2013. The EPA stated that the delay was due to delays in the Science Advisory Board’s review process. The board issued its report on April 23, 2015, and the report includes recommendations to make the *EJ Technical Guidance* more useful to EPA analysts and to address the health concerns of EJ communities.

EPA Does Not Assess Adherence to EJ in Rulemaking Guide

The EPA does not currently have an agencywide process for assessing the extent to which the *EJ in Rulemaking Guide* is applied in the rulemaking process. Each National Program Manager is responsible for integrating EJ into their program, including their rulemaking processes. We found that program offices rely on the *EJ in Rulemaking Guide* to different degrees, while the draft *EJ Technical Guidance* is not being used at all.

During our interviews with EPA staff, employees involved in rulemaking decisions affirmed that their offices are following the ADP and described to us steps taken to follow the ADP. As for consideration of EJ in rulemaking, the *EJ in Rulemaking Guide* is intended to integrate EJ considerations into the EPA’s ADP from rule inception through all the stages leading to promulgation and implementation. Having a mechanism to track adherence to the provisions of the *EJ in Rulemaking Guide* will assist EPA in determining its use and impact.

For some offices, the EJ question in EPA’s ADP Tracker can serve as a screening process when considering EJ concerns during rulemaking. However, it does not house the supporting documentation for the responses or require a manager to certify or attest to its accuracy and completeness. Doing so will allow the EPA to determine compliance with the EJ guide, which is one indicator that the guidance is having an impact.

Impact of EJ Guidance on Rulemaking Process Is Uneven

Use of the *EJ in Rulemaking Guide* is voluntary and, when used, the agency lacks a reliable way to track and certify use of the guide. Our interviews with staff indicate that the program offices used the interim *EJ in Rulemaking Guide* to varying degrees; therefore, any impact is uneven across the agency. Of the EPA staff we interviewed, there were varying levels of familiarity with the interim *EJ in Rulemaking Guide*. Some staff said they only became aware of the guide upon learning of the OIG's evaluation, and others simply knew that the guide exists but did not use it. Without measures and controls that assess when and how the EJ guidance is used in rulemaking, the agency limits its ability to encourage broad, consistent use throughout the agency and assess the impact of the guidance on the rulemaking process.

Each National Program Manager is responsible for integrating EJ in their programs, including their rulemaking processes. Each has its own approach toward addressing this issue. Consideration of EJ during rulemaking is documented in two places: a rule's preamble and the docket. For every action, program offices and regions are expected to provide an answer in ADP Tracker to the EJ question, "Does this action involve a topic that is likely to be of particular interest to or have particular impact upon minority, low-income, or indigenous populations, or tribes?" The responses to this question are an indication that an action might be of particular interest to, or have particular impacts upon, minority, low-income or indigenous populations, or tribes.

Completing the associated *EJ Technical Guidance* can assist National Program Managers with incorporating EJ during the rulemaking process. The *EJ Technical Guidance* is expected to serve as a tool for staff on how to assess disproportionate environmental and public health impacts of proposed rules and actions on minority, low-income and indigenous populations. The technical complement is being developed and thus is not currently used to conduct analyses to evaluate potential EJ concerns associated with EPA regulatory actions.

Conclusions

The EPA was delayed by at least 3 years in completing its guide on incorporating EJ into rulemaking and supporting technical guidance remains delayed. The guides are necessary to ensure the uniform consideration of EJ concerns in EPA rulemaking. The completed guides can provide a level of assurance to the EPA and overburdened communities that the EPA has assessed and documented the impact of its regulatory actions on overburdened populations. Finalizing the guides, providing agencywide training on the guides once issued, and developing a process to measure adherence to the guides will ensure that EJ is incorporated in the EPA's rulemaking, as the agency committed to in its plans.

Recommendations

We recommend that the Associate Administrator for Policy:

1. Implement a process to measure use of the EJ guides in the rulemaking process. This should minimally include a certification statement by a Director within the originating office when the guides are used.
2. If the February 2016 milestone date to issue the *EJ Technical Guidance* is missed by 6 months, prepare and submit to the EPA Administrator a report detailing the progress in completing the document, including reasons for delay, revised milestone date, and steps to keep the completion of the guidance on schedule.
3. Develop and provide training on the use of the *EJ Technical Guidance* upon its final issuance.

We recommend that the Assistant Administrator for Chemical Safety and Pollution Prevention:

4. Develop and provide training on the use of the *EJ in Rulemaking Guide*.

Agency Response and OIG Evaluation

We received comments on the draft report from the Office of Chemical Safety and Pollution Prevention, who responded on behalf of several EPA offices. The agency concurred with the recommendations and provided acceptable corrective actions with planned completion dates. The agency also provided technical comments to the report, which we accepted where appropriate. Based on the response, we consider all recommendations resolved upon issuance of this final report. The agency's complete response and our comments are in Appendix A.

While the draft report recommendations were originally issued to the Office of Enforcement and Compliance Assurance, the Office of Chemical Safety and Pollution Prevention responded, and indicated that the recommendations should be addressed to the Office of Policy and the Office of Chemical Safety and Pollution Prevention. Therefore, we modified the order and numbering of the recommendations to reflect the responsible offices.

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	Implement a process to measure use of the EJ guides in the rulemaking process. This should minimally include a certification statement by a Director within the originating office when the guides are used.	O	Associate Administrator for Policy	12/31/15		
2	7	If the February 2016 milestone date to issue the <i>EJ Technical Guidance</i> is missed by 6 months, prepare and submit to the EPA Administrator a report detailing the progress in completing the document, including reasons for delay, revised milestone date, and steps to keep the completion of the guidance on schedule.	O	Associate Administrator for Policy	8/31/16		
3	7	Develop and provide training on the use of the <i>EJ Technical Guidance</i> upon its final issuance.	O	Associate Administrator for Policy	3/31/16		
4	7	Develop and provide training on the use of the <i>EJ in Rulemaking Guide</i> .	O	Assistant Administrator for Chemical Safety and Pollution Prevention	12/31/15		

¹ O = Recommendation is open with agreed-to corrective actions pending.
 C = Recommendation is closed with all agreed-to actions completed.
 U = Recommendation is unresolved with resolution efforts in progress.

Agency Response to Draft Report and OIG Comments

(Received August 4, 2015)

MEMORANDUM

SUBJECT: Agency Response to Draft Report entitled “EPA Can Increase Impact of Environmental Justice on Agency Rulemaking by Meeting Commitments and Measuring Adherence to Guidance” (Project No. OPE-FY14-0040)

FROM: James J. Jones
Assistant Administrator

TO: Arthur A. Elkins, Jr.
Inspector General

This memorandum is in response to the Office of Inspector General's (OIG) June 30, 2015, Draft Report, entitled *EPA Can Increase Impact of Environmental Justice on Agency Rulemaking by Meeting Commitments and Measuring Adherence to Guidance* (Project No. OPE-FY14-0040). While the Office of Chemical Safety and Pollution Prevention (OCSPP) agreed to prepare this response, we do so on behalf of several EPA offices, as environmental justice is an Agency-wide priority.

Environmental Justice is 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. EPA has this goal for all communities and persons across the nation. It will be achieved when everyone 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.

EPA appreciates the OIG’s effort to review the Agency’s incorporation of environmental justice into our programs, rulemakings and policies, and we acknowledge the OIG’s interest in improving our ability to make a meaningful impact in this area. The Agency concurs with the four recommendations in the Draft Report, and in this memorandum we set forward proposed corrective actions to address them. Where possible, we have provided anticipated completion dates for those corrective actions.

EPA has already made important strides to improve environmental protection for all people with respect to developing, implementing and enforcing environmental laws, regulations and policies, and we are eager to continue our progress in making environmental justice integral to all of our actions and initiatives.

The Agency's recently published *Guidance on Considering Environmental Justice in Regulatory Actions* (EJ in Rulemaking Guidance), as well as the forthcoming *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* (EJ Technical Guidance), are tools that the EPA offers analysts and workgroups for incorporating environmental justice into regulatory actions and analyses. These guidance documents identify key steps during the Action Development Process (ADP) when environmental justice should be considered, as well as compile best practices and analytic principles for technical analysis. The documents have been extensively reviewed both internally and by the public. These processes to develop the guidance have served to improve the documents and reach Agency consensus on its approach.

The Agency's Science Advisory Board (SAB) reviewed and discussed the proposed EJ Technical Guidance in a public forum, and provided extensive comments in April 2015. The SAB commended the Agency for addressing the issue of incorporating environmental justice in regulatory analyses, and offered a number of significant recommendations that require technical and policy consideration. While there were some delays due to this extensive and helpful review, the process served to inform the Agency and improve the final document.

We are pleased to implement the OIG recommendations and view this as a way to further ensure that EPA analysts and workgroups have the tools to promote full consideration of environmental justice in regulatory actions and analyses.

Responses to the OIG's Recommendations

1. **Recommendation:** Issue the Technical Guidance by the established date.

Response: EPA's Office of Policy (OP) will be the Action Official for implementing this recommendation. In April 2013, the Agency issued the draft EJ Technical Guidance. The Agency is currently revising the Guidance to reflect the April 2015 recommendations of the SAB, as well as public comments that were received from a separate 120-day review. In the three months since the SAB report was released, the Agency has met with senior management several times to seek input on key policy decisions, and plans to hold a second internal review of the revised Guidance prior to its release in February 2016. EPA points out that when the OIG was conducting its investigation for this audit, EPA anticipated receiving the SAB report in time to complete its revisions and release the Guidance in 2015. However, the SAB report was not received until the end of April 2015, pushing the finalization of the EJ Technical Guidance to February 2016.

Proposed corrective action and completion date: EPA plans to issue the Technical Guidance by February 2016.

OIG Response: We accept this corrective action and completion date. This recommendation – incorporated into Recommendation 2 in the final report – is considered resolved.

2. **Recommendation:** If the final date to issue the EJ Technical Guidance is missed by 6 months, prepare and submit to the EPA Administrator a report detailing the progress in completing the document, including reasons for delay, revised milestone date, and steps to keep the completion of the guidance on schedule.

Response: The Office of Policy will serve as the Action Official for this recommendation. OP will continue to update the Administrator on its progress on the Technical Guidance, and agrees to inform the Administrator in the event of a delay greater than 6 months.

Proposed corrective action and completion date: In the event of a delay greater than 6 months in issuing the Technical Guidance (August 2016), the Office of Policy will apprise the Administrator of progress in completing the EJ Technical Guidance, including reasons for the delay and revised milestone dates.

OIG Response: We accept this corrective action and completion date. This recommendation – numbered Recommendation 2 in the final report – is considered resolved.

3. **Recommendation:** Develop and provide training on the use of the EJ guides upon their issuance.

Response: The Office of Chemical Safety and Pollution Prevention (OCSP) is the lead for training on the EJ in Rulemaking Guidance and the Office of Policy (OP) has the lead for training on the EJ Technical Guidance. These two offices will each serve as the Action Officials for the two parts of the recommendation.

Proposed corrective actions and completion dates:

- a. Training on the EJ in Rulemaking Guidance: By December 2015, the Agency will review and revise the current training materials for the EJ in Rulemaking Guidance to ensure they reflect the final version of the document and will make the revised training available to the Agency. The Office of Chemical Safety and Pollution Prevention will be the Action Official for this corrective action.
- b. Training on the EJ Technical Guidance: Training associated with this guidance will be developed within one month of finalizing the guidance (March 2016). The Office of Policy will serve as the Action Official for this corrective action.

OIG Response: We accept the Office of Chemical Safety and Pollution Prevention's corrective action and completion date for developing and providing training on the use of the *EJ in Rulemaking Guide*. This recommendation – numbered Recommendation 4 in the final report – is considered resolved.

We accept the Office of Policy's corrective action and completion date for developing and providing training on the use of the *EJ Technical Guidance*. This recommendation – numbered Recommendation 3 in the final report – is considered resolved.

4. **Recommendation:** Implement a process to measure use of the EJ guides in the rulemaking process. This should minimally include a certification statement by a director within the originating office when the guides are used.

Response: EPA’s Office of Policy will serve as the Action Official for this recommendation. Each action signed by the Administrator is accompanied by an “Action Memorandum” from a senior official in the office responsible for developing the action. This memo summarizes the substance of the action, the internal process used to develop the action, and possible concerns of external stakeholders. The Action Memorandum is a formal communication to the Administrator that represents the process and substance behind the action and recommends that the Administrator sign the action. By December 2015, OP will review and revise the template for the development of the “Action Memorandum” to add new language regarding appropriate consideration of environmental justice issues.

Proposed corrective action and completion date: EPA will revise the Action Memorandum Template to include language regarding the consideration of environmental justice issues by December 2015. The Office of Policy will serve as the Action Official for this corrective action.

OIG Response: We accept this corrective action and completion date. This recommendation – numbered Recommendation 1 in the final report – is considered resolved.

Distribution

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