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OSWER Environmental Justice Task Force Draft Final Report

Presented to Elliott P. Laws Assistant Administrator Office of Solid Waste and Emergency Response

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CHAPTER 1
INTRODUCTION AND BACKGROUND ON OSWER ENVIRONMENTAL JUSTICE TASK FORCE

A. INTRODUCTION

Over the last decade, concern about the impact of environmental pollution on particular population groups has been growing. There is a widespread belief that minority populations and/or low-income populations may bear disproportionate high and adverse human health and environmental effects from pollution. This belief has resulted in a movement to assure environmental justice for all populations.

Several studies have been conducted by a variety of organizations (e.g., National Law Journal, United Church of Christ) which conclude that certain communities are at special risk from environmental threats. The authors of these studies have concluded that the implementation of key environmental laws have not historically provided protection to all citizens and that certain populations are more vulnerable than others to health threats from environmental pollution. These studies suggest that vulnerabilities may stem from multiple exposure situations exacerbated by other social and economic factors, such as poor health care and lack of adequate nutrition. Many groups have concluded that the government must take these issues into account in its decision-making processes, research and data collection.

Early in her tenure as the U.S. Environmental Protection Agency's (EPA) Administrator, Carol Browner, designated the pursuit of environmental justice as one of the Agency's top priorities. In response to concerns voiced by many groups outside the Agency, the Assistant Administrator of the Office of Solid Waste and Emergency Response (OSWER), Elliott P. Laws, on November 29, 1993, directed the formation of a task force to analyze environmental justice issues specific to waste programs and develop recommendations to address these issues. President Clinton signed an Executive Order on Environmental Justice (February 11, 1994) (Executive Order) which focused the attention of Federal agencies on environmental justice issues. EPA is currently developing an Agency-wide strategy pursuant to the Executive Order. The requirements of the Executive Order provide extra emphasis to the mission of the OSWER task force.

B. ENVIRONMENTAL JUSTICE EXECUTIVE ORDER

President Clinton's issuance on February 11, 1994 of the Executive Order 12898 on Environmental Justice and its accompanying Presidential Memorandum marked a significant step toward focusing the attention of Federal agencies on

B. ENVIRONMENTAL JUSTICE EXECUTIVE ORDER

environmental justice concerns. The Order requires certain Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing disproportionately high and adverse human health or environmental effects on minority populations and low-income populations. To help meet this objective, the Order calls on covered agencies to develop environmental justice strategies. These strategies must include (but are not limited to) a list of agency programs, policies, planning and public participation processes, enforcement, and/or rulemakings that should be revised to, at a minimum: 1) promote enforcement of environmental and health statutes in areas with minority populations and low-income populations; 2) ensure greater public participation issues; 3) improve research and data collection relating to the health and environment of minority populations and low-income populations; and 4) identify differential patterns of subsistence use of natural resources among these populations.

Other key elements of the Executive Order include: establishes a Federal Interagency Working Group; directs federal agencies not to discriminate in programs, policies and activities; directs human health research to include diverse segments of the population; mandates federal data collection and maintenance and analysis to assess environmental and human health risks borne by populations by race, national origin or income; requires agencies to collect, maintain and analyze information on populations who rely principally on fish and/or wildlife for subsistence; instructs agencies to provide for public involvement; and applies the Executive Order equally to Native American programs.

The Executive Order reflects the priority this Administration places on the goal of achieving environmental justice. In addition, the Presidential Memorandum that accompanied the Executive Order emphasizes several provisions of environmental, civil rights and other statutes that provide opportunities for agencies to address environmental hazards in areas with minority populations and low-income populations. It directs agencies to take immediate and specific actions under the enumerated statutory provisions as part of the Administration's efforts to prevent these communities from being exposed to disproportionately high and adverse human health or environmental effects. OSWER has a major role to play in contributing to the success of the Agency's implementation of the Executive Order, since many of the issues raised by environmental justice advocates relate directly to OSWER activities. By creating a program-specific environmental justice task force, OSWER has already taken a major step toward implementing the requirements of the Executive Order within the programs for which OSWER has responsibility. As the OSWER environmental justice task force mission statement points out (see section on OSWER Task Force goals), OSWER intends to explore ways to better respond to environmental and public health problems facing minority populations and low-income populations. Thus, OSWER's actions will directly support the goals and objectives established by the EPA Administrator and President Clinton.

C. HUMAN HEALTH ISSUES AND ENVIRONMENTAL JUSTICE

Many of the concerns about environmental justice are associated with waste disposal sites. Several incidents that occurred during the 1980s indicate this. In 1982, demonstrations against the proposed site for a polychlorinated biphenyl (PCB) landfill in Warren County, North Carolina, received national attention. In 1983, a General Accounting Office study found that three of four hazardous waste sites investigated in the southern United States were located in primarily African American communities.

In 1987, the United Church of Christ's Commission for Racial Justice released a nationwide study on the demographics of populations living near commercial hazardous waste facilities. The study found that the proportion of racial minorities was significantly greater than in communities without such facilities.

Environmental factors play a key role in human development, health and disease. The science base for many issues in environmental health is not well developed. The National Academy of Sciences reported in 1984 that the available information base for 82 percent of major industrial chemicals does not include even minimal testing for their toxic properties. The most difficult challenges for environmental health today come not from what is known about the harmful effects of agents; rather they come from what is not known about the toxic and ecologic effects of the use of fossil fuels and synthetic chemicals in modern society. Even less is known about chemical mixtures, which is how most chemicals present themselves.

High blood lead levels are among the most prevalent childhood conditions and the most prevalent environmental threat today, and is preventable. Lead exposure may be associated with learning problems, mental disabilities, mental retardation, reduced IQ scores, delayed development, impaired hearing, birth defects, seizures, coma and death.[1]

One in eight Americans live in families with incomes below the federal poverty level. Twenty-five percent of children under the age of six live below the federal poverty level. For many chronic diseases (e.g., cancer), people of low income are at greater risk than people of higher income. African Americans are the largest minority group in the U.S., and make up 12% of the U.S. population. One in three African Americans lives in poverty. African American men experience a higher risk of cancer than non-black men and high blood pressure, poor nutrition, alcohol and drug abuse are more common among African Americans than caucasians.[2] Hispanic Americans face the most varied set of health problems of any group. For example, Mexican Americans have lower rates of strokes while Puerto Ricans have the highest rates; infant mortality is highest among Puerto Ricans and lowest among Cubans. Asian and Pacific Islander Americans are the third largest minority group in the U.S., and the most heterogeneous. There is the least amount of health data for this group than for any other group. American Indians

and Alaskan Natives are the smallest of the minority groups, consisting of over 400 federally recognized nations. Poverty is also a major risk factor among this group.[3]

D. GOALS FOR OSWER ENVIRONMENTAL JUSTICE TASK FORCE

The OSWER Assistant Administrator (AA) created the OSWER Environmental Justice Task Force and established its mission on November 29, 1993. The OSWER Task Force's effort within the programs administered by OSWER is to be undertaken in conjunction with the Administrator's effort to develop an EPA-wide environmental justice strategy.

In keeping with EPA Administrator Carol Browner's goal of achieving "Environmental Justice for All," the AA stated that the mission of the OSWER environmental justice Task Force is to:

"... examine how (OSWER) could better address the concerns of minority populations and/or low-income populations about the manner in which EPA manages public health and environmental risks under the jurisdiction of OSWER programs. ...The Task Force shall assess options and make recommendations on how EPA can more effectively address environmental justice issues across all OSWER programs."

The OSWER Environmental Justice Task Force examined a variety of goals suggested by the participants and focused on the two goals developed by the Agency-wide Environmental Justice Task Force. The Agency-wide goals as currently drafted are:

GOAL I Achieve Environmental Protection for All

Achieve environmental protection for all, so that no segment of the population, regardless of race, national origin or income, bears disproportionately high and adverse effects of environmental pollution and that all peoples benefit from clean and sustainable communities.

Objective 1: Using input from environmental justice stakeholders, identify and prioritize affected communities and populations.

Objective 2: In partnership with the affected communities and populations, address disproportionately high and adverse human health or environmental impacts.

D. GOALS FOR OSWER ENVIRONMENTAL JUSTICE TASK FORCE

GOAL II Educate and Empower Affected Communities

Educate and empower affected communities, community and other nonprofit organizations, Federal, tribal, state and local governments, academic institutions, business and industry to ensure early participation in environmental issues, form partnerships, achieve environmental justice and to help promote sustainable communities.

Objective 3: Enhance outreach, communication and partnership.

Objective 4: Promote development of sustainable communities and increase access to financial assistance.

Objective 5: Build on existing minority academic institutions programs to provide for increased participation of affected communities within the Agency.

Objective 6: Achieve environmental justice at all levels of government.

No conflicts were seen by the OSWER Task Force members between the Agency-wide goals and those being examined by OSWER. Out of this examination, the Task Force began to develop an overall OSWER strategy and to identify major OSWER environmental justice issues. Six key areas were the focus of the Task Force's recommendations. They were:

1) Empowering communities, improving OSWER programs' communications with these communities, and establishing trust of EPA in the communities;

2) Incorporating environmental justice concerns into all OSWER decision-making and eliminating any potential for discrimination;

3) Increasing the priority of consideration of environmental justice issues on a national and Regional basis and in our relationships with States;

4) Incorporating environmental justice issues into OSWER risk assessment and risk management processes, including consideration of multiple/cumulative risk;

5) Integrating consideration of economic redevelopment and job creation with environmental justice;

D. GOALS FOR OSWER ENVIRONMENTAL JUSTICE TASK FORCE

6) Developing employees and new job candidates who are well-trained and sensitive to environmental justice issues.

[1] Healthy People 2000: National Health Promotion and Disease Prevention Objectives. U.S. Department of Health and Human Services. October 1990.
[2] Ibid.
[3] Ibid.

CHAPTER 2
OSWER TASK FORCE MEMBERSHIP AND OUTREACH EFFORTS

The OSWER Task Force sought input from a broad array of stakeholders in developing their recommendations. An essential component of this effort was to involve a broad spectrum of stakeholders from the beginning of the OSWER Task Force's deliberations and establish a direct line of communication so that environmental justice issues addressed in this Task Force report received scrutiny throughout its development. This final draft will be shared with EPA's Environmental Justice Federal Advisory Council for their review and comment.

A. OSWER TASK FORCE MEMBERSHIP

The OSWER Task Force was comprised of 67 members representing all OSWER programs, other EPA offices (i.e., Office of Environmental Justice (OEJ), Office of Communication and Public Affairs (OCEPA), Office of Enforcement (OE), Office of General Counsel (OGC), Office of Policy, Planning and Evaluation, (OPPE), and Office of Research and Development (ORD)), Regions 3,4,5,6,7,8, and 9, the National Association of Remedial Project Managers, and the National On-Scene Coordinators Association. Representatives of the Agency for Toxic Substances and Disease Registry (ATSDR), the U.S. Department of Justice (DOJ), and the National Institute of Environmental Health Sciences (NIEHS) also served on the OSWER Task Force.

The OSWER Task Force met seven times and discussed its outreach strategy at each meeting. The members provided contact names and suggestions for outreach activities. Extensive amounts of information were shared at the meetings and the OSWER Task Force members, in turn, kept their parent programs informed.

B. INTERNAL OUTREACH

1. REGIONAL VISITS

The OSWER Task Force visited Regions 3, 4, 6 and 9 to engage in dialogue on environmental justice issues. These Regions were selected because the environmental justice issues they have encountered represented a wide array of issues considered throughout the country. These visits included meetings with Hazardous Waste Division Directors and other senior Regional managers, the Regional Environmental Justice Coordinators, Regional environmental justice Advisory Boards, Regional OSWER Task Force Members, and Regional environmental justice Quality Action Team members. In addition, the OSWER Task Force contacted the following groups:

- Community Relations Coordinators

B. INTERNAL OUTREACH

- Resource Conservation and Recovery Act (RCRA) Public Involvement Network
- On-Scene Coordinators
- Remedial Project Managers
- Superfund Branch Chiefs
- RCRA Branch Chiefs
- Site Assessment Managers
- National Priorities List (NPL) Coordinators
- Chemical Emergency Prevention and Preparedness Office (CEPPO) Coordinators
- Superfund Amendments and Reauthorization Act (SARA) Title III Coordinators
- Technical Assistance Grant (TAG) Coordinators
- Indian Coordinators
- Waste Management Division Directors
- Regional Counsels
- Regional/Deputy Regional Administrators
- Federal Facility Coordinators
- Public Affairs Staff
- Congressional Affairs Staff

The Regional visits provided a valuable opportunity to exchange information on various Region-specific environmental justice issues. The Regional visits also offered insight to the OSWER Task Force's deliberations in developing an effective set of recommendations.

C. EXTERNAL OUTREACH

2. Meetings with OSWER Task Force Chairman

The OSWER Task Force Chairman met with each of the six OSWER Office Directors and with Senior Managers from the Offices of Environmental Justice, Enforcement, General Counsel, and Civil Rights to solicit their input on the OSWER environmental justice Strategy.

3. Other Internal Outreach Efforts

The OSWER Task Force reviewed the OSWER-related environmental justice activities which were conducted by each EPA Region during FY 1993. The Task Force chairman discussed the draft strategy development status with Regional Waste Management Directors at their quarterly meeting on January 20, 1994, in Santa Fe, NM, and with Superfund Branch Chiefs on February 22, 1994, in New Orleans, LA. OSWER staff discussed the status of the development of these recommendations with Regional Community Relations Coordinators in Philadelphia, PA, on February 1, 1994 and at the National Site Assessment Conference in Albuquerque, NM in April 1994.

C. EXTERNAL OUTREACH

EPA held a meeting/teleconference on January 10, 1994, at Headquarters with representatives from several organizations that have expressed an interest in discussion of environmental justice issues. The OSWER Task Force chairman also sent letters to over 500 concerned environmental justice stakeholders, asking them to identify their key environmental justice issues, recommendations, and proposed solutions for EPA's consideration. This outreach method proved very effective and the various comments were incorporated into the environmental justice strategy. Responses were received from 17 external organizations. The distribution list included:

- National Community Groups
- Local Community Groups
- State & Local Governments
- National & Regional Tribal Representatives
- Industry Representatives
- Trade Associations
- National Advisory Council for Environmental Policy and Technology (NACEPT) Community Issues Workgroup

In addition, outreach efforts were extended to include the Department of Justice (DOJ) and various health agencies (Indian Health Service, ATSDR, NIEHS and the Bureau of Primary Health which includes the National Health Service Corps (NHSC)), and DOJ. OSWER Task Force members also briefed key Congressional staff on the major recommendations contained in this report.

D. STAKEHOLDERS

The OSWER Task Force, for purposes of this report and its recommendations considered the following groups to be stakeholders in considering environmental justice issues:

- Community Organizations
- Nonprofit Organizations
- Environmental Organizations
- Business
- Industry
- Academia
- Federal, State and Tribal Governments
- Labor

E. COMMUNICATION ISSUES

OSWER will continue to reach out to our many and varied stakeholders on how best to address environmental justice issues with regard to waste programs. OSWER expects the dialogue to continue as implementation plans are developed by Regions and Headquarters waste programs to address the major recommendations of this report.

CHAPTER 3
OSWER-WIDE ENVIRONMENTAL JUSTICE ISSUES AND RECOMMENDATIONS

Issues and recommendations related to the following ten subject areas are included in this chapter: 1) establishing guidelines for environmental justice; 2) Title VI of the Civil Rights Act; 3) cumulative risk; 4) Geographic Information System (GIS); 5)internal and external outreach, communications and partnerships; 6) economic redevelopment; 7) contracts, labor and grants; 8) Federal Interagency Cooperation; 9) Native American/Tribal issues; 10) internal training, organization and program implementation. Each of these areas has implications for all OSWER programs and recommendations pertaining to each of them will be addressed in implementation plans.

A. ESTABLISHING GUIDELINES FOR ENVIRONMENTAL JUSTICE

Background

The Agency is working to create parameters to define environmental justice concerns. The Agency is currently using and evaluating several tools to create these parameters. These tools, such as the Geographic Information System (GIS) and other information management systems focus on demographics, pollution sources and geography.

Issue: Need for a means to identify circumstances that raise environmental justice issues.

Establishing means to identify sites that raise environmental justice issues is critical to addressing environmental justice concerns.

Recommendation: Establish guidelines for identifying communities with environmental justice issues that ensure a measure of flexibility while contributing consistency across the Regions.

Interim guidelines that promote a measure of consistency, but still provide for Regional and programmatic flexibility, are warranted. The guidelines would be used by the Regions to identify sites that either raise or would be likely to raise environmental justice issues. Guidelines could take the form of specific questions that EPA officials would consider on a site-specific basis. Questions could address existing environmental risks and health effects, the racial and ethnic makeup of an affected community, relative income levels, educational backgrounds, past regulatory practices, and the perspective provided by local community leaders. The guidelines might also list various scenarios that would tend to indicate an environmental justice situation, such as the filing of a Title VI complaint. Under this proposal, areas determined to fall within the guidelines would

be targeted for additional public participation and outreach efforts, pilot initiatives, multi-media compliance and enforcement efforts, and, to the extent practicable, OSWER-directed grants.

First, this recommendation would help facilitate the development of uniform practices and procedures while avoiding the use of inflexible definitions that do not take into account site-specific dynamics. Second, it would give priority to areas that need it most, and could help erase perceptions of bias associated with past regulatory practices. Third, it is consistent with discussions taking place within the EPA's Environmental Justice Policy Work Group. Fourth, it would not detract from prior practice within the Regions, but rather, would serve as supporting guidance. Fifth, this recommendation would not involve allocation of new resources and could ultimately bring about reduced costs by attempting to address potential problems before they arise.

B. TITLE VI OF THE CIVIL RIGHTS ACT

Background

Title VI of the 1964 Civil Rights Act generally requires that any program or activity receiving Federal financial assistance be implemented in a non-discriminatory manner.

Title VI of the Civil Rights Act of 1964 provides that:

No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

Although Congress enacted Title VI during a period of great concern with public school desegregation, the statute is not limited to discrimination in education; Title VI also directs all Federal departments and agencies to effectuate its provisions through the issuance of rules, regulations or orders of general applicability.

Under EPA's implementing regulations, recipients and applicants are required to assure compliance with Title VI in order to receive EPA financial assistance. Title VI requires that any program or activity receiving federal financial assistance be implemented in a non-discriminatory manner. OSWER programs administer a variety of grants and cooperative agreements through which EPA financial assistance is made available for State and local programs and activities. Applications for EPA financial assistance must contain compliance information regarding the recipient program or activity to be funded.

B. TITLE VI OF THE CIVIL RIGHTS ACT

On February 11, 1994, President Clinton issued Executive Order 12898 entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations." The order directs federal agencies to conduct their programs, policies and activities "that substantially affect human health or the environment" in a manner that ensures they do not have the effect of subjecting persons to discrimination on the basis of race, color or national origin. However, Section 6-608 of the order states that "federal agencies shall implement the order consistent with, and to the extent permitted by, existing law."

Issue: OSWER needs to develop a strategy to respond effectively when OSWER funded State programs or activities are challenged as violating Title VI.

Several Title VI complaints have been filed predicated on claims that State-implemented RCRA programs have produced discriminatory effects. The Office of Civil Rights (OCR), which has primary responsibility for the Agency's implementation of Title VI, has recently accepted these complaints for investigation.

A Title VI complaint could affect federal funding of authorized State permitting programs for new hazardous waste facilities. In the case of a new facility, OSWER may retain authority over issuance of a portion of the required permit, and, pending a Title VI investigation, might be called upon to make the final determination concerning issuance of a permit.

In making permitting decisions, OSWER does not have the authority to consider allegations in a Title VI complaint that are not related to protection of human health and the environment. The Resource Conservation and Recovery Act (RCRA) does not give OSWER authority to consider purely socio-economic impacts when making a permitting decision. Section 3005(c) of RCRA provides that EPA "shall issue a permit" to a facility in compliance with the requirements of RCRA. Section 3005(c)(3) requires EPA to add to a permit such terms or conditions necessary to protect human health and the environment. EPA has interpreted this latter provision to authorize denial of a permit to a facility in extraordinary circumstances where EPA determines that there are no additional permit terms or conditions that would address unacceptable risk that would be posed by a facility's operation. Thus, where complaints or comments alleging discrimination concerning a RCRA facility are related to adverse effects on human health or the environment, EPA has authority to consider and respond to those concern generally by adding more restrictive operating conditions.

The criteria for denying a permit under RCRA do not include claims of bias based on race or income that are not related to risk to human health or the environment. In light of this situation, OSWER officials -- particularly those implementing RCRA -- need guidance on how to respond when Title VI claims arise. A statutory amendment to RCRA, however, would be required to allow EPA to base permitting decisions on

B. TITLE VI OF THE CIVIL RIGHTS ACT

environmental justice concerns that are unrelated to protection of human health and the environment (e.g., allegations of purely socio-economic discriminatory effects).

Recommendation: OSWER programs should establish a strategy to respond effectively to environmental justice complaints raising health-related concerns.

Title VI claims raise issues that stretch beyond the scope of OSWER programs. Ultimately, the Agency as a whole must develop a strategy for how its offices should respond to these types of complaints. Thus, OSWER should work closely with other officials across EPA to help develop a strategy that takes into account OSWER's unique perspective. Concurrently, however, OSWER must proceed to develop interim solutions that will provide the Regions with the guidance needed to respond effectively when confronted with Title VI complaints that affect waste program activities.

Some experience in addressing the derivative effects of a Title VI complaint already exists in the context of the RCRA permitting program. Recently, Region 6 requested guidance on how to respond to environmental justice-based challenges to the issuance of EPA's portion of a RCRA permit. In response, OSWER Headquarters sent a memorandum stating that the Region should be prepared to address all environmental justice comments before arriving at any final permitting decisions.

Based on RCRA standards, OSWER programs have a duty to evaluate new permits to ensure that they would not pose an unacceptable risk to human health or the environment. Thus, where complaints or comments alleging discrimination concerning a RCRA facility are related to disproportionate effects on human health or the environment, EPA has authority to consider and respond to those concerns in taking action on a permit application. Since environmental justice complaints are often based on the threat of unhealthy environmental exposures, OSWER would be justified in refusing to issue a new permit pending full consideration of potential health effects. During the interim period of evaluation, several options exist.

Recommendation: Encourage mediation and possibly discussion of alternate sites, and, in serious cases, consider performing risk assessments, in the absence of an existing risk assessment.

Pending full evaluation of threats to human health, RCRA permit officials should attempt to work closely with the State to encourage dispute settlements among stakeholders which would involve mediation and could focus on explaining the actual levels of risk posed and could include discussion of alternative sites. Bringing all parties to the table and attempting to resolve dispute through this manner of facilitation is the most desirable first step. Before issuing a permit, the state and EPA should review environmental justice concerns and the level of public involvement to ensure consistency with EPA and State standards and policies.

B. TITLE VI OF THE CIVIL RIGHTS ACT

Where the affected community is already burdened with significant levels of exposure based on the presence of multiple pollution sources, consideration should be given to performing or encouraging the State to initiate a risk assessment, in the absence of an existing risk assessment. In cases where a risk assessment has already been performed by the State or permittee, OSWER would review the contents to ensure its accuracy and assess the incremental risks. OSWER could also, in appropriate circumstances, use its authority under RCRA Section 3013 or 40 CFR 270.10(k) to compel the permittee to carry out a study or risk assessment. This option may not be well received by the community due to low community confidence in a risk assessment performed by the permittee.

It is important to note that given the fact that facilities must operate within strict regulatory limits, a risk assessment on a facility operating in compliance of RCRA regulations would not be expected to routinely demonstrate that the facility is outside an acceptable risk range. Furthermore, in the event that a risk assessment demonstrated unacceptable risk to human health or the environment, EPA could impose permit terms or conditions beyond those in the regulations to address such risk. Only if EPA determined that no additional permit terms or conditions could be designed that would protect human health and the environment, could EPA deny the facility a permit.

Recommendation: Explore the possibility of using early baseline health evaluations, as appropriate.

One approach OSWER should explore further is whether, as appropriate, baseline evaluations of community health could serve as a screening tool for determining where risk assessments may be appropriate. To the extent this proves feasible, such evaluations should be performed at the earliest possible point in the permitting process, when the public has an opportunity to participate in the discussion. Under this proposal, where public health evaluations revealed serious public health concerns in the vicinity of a proposed facility, OSWER might opt to perform or require a risk assessment that focused on the incremental health risks associated with the new facility, in the absence of an existing risk assessment. There are resource concerns associated with this option, although the use of public health evaluations as a screening tool might help limit costs.

Recommendation: The Regions, OSWER, OGC and OCR should routinely communicate pro-actively on Title VI issues.

OSWER and the Regions should stay in close contact with the Office of Civil Rights (OCR) and the Office of General Council (OGC) since the majority of Title VI environmental justice related claims received by EPA have been made in association with OSWER related programs. OSWER, the Regions and OCR should consult regularly to determine what ideas and resources can be leveraged to resolve complaints informally and obtain compliance by recipients.

C. CUMULATIVE RISK

Recommendation: Perform periodic reviews of State-authorized programs to ensure compliance with Title VI.

As a preventative measure, OSWER could help finance OCR and other EPA programs periodic Title VI compliance reviews of recipient programs and activities. EPA's implementing regulations allow for Agency review of recipient programs and activities for compliance with Title VI. Such oversight activities could address potential Title VI concerns before complaints are filed. Resource limitations could severely restrict the frequency of such review.

Recommendation: Require States to comply with Title VI as a condition for referral or authorization under Superfund.

As part of any referral or authorization, OSWER, in accordance with Title VI, must insist that States avoid discriminatory implementation of the cleanup program.

C. CUMULATIVE RISK

Background

Cumulative risks may be the result of exposures to single or multiple contaminants from one or more sources. OSWER and other Agency programs have generally considered site-specific risks without considering current exposure to other (non-site specific) pollution sources. An Agency effort is now underway to explore cumulative risk from a given source or facility when background risk levels for that population in the vicinity of that facility are at or near levels of concerns for health. Additional discussion of cumulative risk can be found in the Superfund section of this report in the Program-Specific Chapter.

Issue: Inadequate science to measure cumulative risk.

Answers to the following questions will enhance the Agency's ability to measure cumulative risk:

- What are the appropriate risk assessment methods for cumulative risk?

- How should cumulative risk be considered in making (site-specific) permitting, siting, national priorities listing, remediation, and enforcement decisions?

- How should cumulative risk be considered in making regulatory decisions?

- How can information such as total pollution loadings, be used for decisions in the interim before cumulative risk methods are developed?

Recommendation: Support Agency efforts to develop scientifically valid standards for measuring cumulative risk.

First, OSWER supports amendments to Superfund that would fund demonstration projects designed in part to fashion appropriate cumulative risk assessment techniques. This approach has the attraction of providing OSWER and the Agency with the time needed to experiment with various models and select a sensible analytical approach with potential for widespread future application. Second, OSWER has requested that the newly established Science Policy Council include cumulative risk analysis as one of its top priorities. Third, OSWER should work in cooperation with other EPA offices and other Federal agencies to help craft viable methodological tools to be tested under the auspices of future demonstration projects.

D. GEOGRAPHIC INFORMATION SYSTEM (GIS)

Background

Developing a strategy for the use of GIS to identify communities with environmental justice concerns is the focus of a major Agency-wide effort. In Fall 1993, EPA held a three-day GIS conference in Washington, D.C., at which officials from across EPA headquarters and the Regions attended. The major objective of the conference was to establish common protocols, definitions and implementation plans for use of GIS. OSWER officials have participated actively in the process of developing GIS capabilities.

With GIS, EPA can access spatially referenced data bases of demographic and economic information, sources of pollution and pollution burden on the environment. Using this information, EPA analysts can identify known sources of pollution, spatially relate these sources to demographic information, and identify geographic areas where sources of pollution appear to have a disproportionately high and adverse health or environmental effects on minority populations, low-income populations and educationally disadvantaged populations.

The uses of GIS for environmental justice analysis stem from its ability to organize and present detailed demographic information on all types of sites and facilities from Superfund to RCRA. Channeling this ability into applications for environmental justice work within OSWER creates a powerful tool for both communication and analysis.

Presentation of basic demographic data (e.g., ethnicity, race, income level, age, etc.) describing the population characteristics surrounding sites and facilities of interest

is the typical service provided by GIS within Agency Headquarters. These demographic data form a springboard for detailed policy analysis.

Issue: Need for consistent GIS data.

Until all Regions and programs have access to GIS information, we will not be able to screen for communities with potential environmental justice concerns. The issues involved in attaining this capability include resources for equipment, trained personnel, improved location longitude and latitude coordinates for facilities and sites, and agreement on acceptable analysis techniques and procedures.

Recommendation: Support OARM and ORD in developing GIS capability throughout the Agency.

OSWER should support EPA's lead offices, the Office of Administration and Resources Management (OARM) and the Office of Research and Development (ORD), in developing GIS capability throughout the Agency. They are developing national GIS support. This national database will work toward more consistent data and GIS term definitions for Headquarters and Regions.

Recommendation: Develop compatible and appropriate Agency-wide approaches.

Regions and Headquarter program offices should use GIS and other information systems such as CERCLIS, RCRIS and RELAI to proactively identify and address potential environmental justice concerns.

OSWER should work closely with other EPA offices and the Regions to develop compatible Agency-wide approaches to GIS, which utilizes the appropriate GIS systems based on the needs of the analysis.

E. OUTREACH, COMMUNICATIONS AND PARTNERSHIPS

Background

OSWER has functions devoted to external outreach spread throughout each of the program offices.

E. OUTREACH, COMMUNICATIONS AND PARTNERSHIPS

1. External Outreach and Communication

Issue: Current outreach may not effectively communicate to all stakeholders.

A variety of external stakeholders have expressed the view that waste programs in EPA have not always fully communicated their actions and activities to affected communities.

Recommendation: Develop a public education and outreach program for communities likely to have OSWER-related environmental justice concerns

OSWER with the Regions should consider developing a public education and outreach program for communities likely to have environmental justice concerns in the proximity of OSWER-regulated facilities. As a model, OSWER has initiated a pilot program with the National Association for the Advancement of Colored People (NAACP) to assist in communication and facilitation of issue resolution with minority populations and low-income populations.

Recommendation: Ensure community outreach by locating most accessible forms of local media.

To ensure effective community outreach, OSWER community relations officials should evaluate local media to identify the publications, radio stations, and television outlets that enjoy the broadest exposure. For example, Region 4 has found the strategy of identifying popular media outlets to be critical to its successful response activities in Tift County, GA.

Recommendation: Develop program-specific and community/minority specific publications strategies.

OSWER should examine its publication process to determine how to build in consideration of different types of stakeholders, such as sensitivity to the type of language and photographs used, vocabulary and level of complexity, the ability to easily translate the document, means of distributing the document, and discussion in the document that directly address environmental justice issues where applicable.

In addition, OSWER programs, for example, should develop outreach materials that identify and communicate policy for responding to environmental justice issues associated with their activities, providing a consistent Agency message. These materials could also highlight success stories and profile ongoing environmental justice activities.

E. OUTREACH, COMMUNICATIONS AND PARTNERSHIPS

Recommendation: Explore ways of expanding translation services.

Currently, the Agency depends substantially on contractor support for translation services, particularly when dealing with Asian communities. EPA should explore hiring translators to work on Regional community relations staff versus continuing to use contractor support.

Regional offices should be encouraged to rely on local volunteers to help communicate with the community, review documents for accuracy and target appropriate media. In one instance, a local resident warned Region 9's community relations officials not to issue Spanish language fact sheets since illiteracy was widespread in his community. As a result, information was broadcast over Spanish radio and television and effective communication was achieved.

OSWER and the Regions may consider reevaluating existing publications for translation needs, developing an Emergency Translation Service Capability and including translation services in response action contracts.

Recommendation: Conduct Regional environmental justice public forums.

Each Region should conduct an environmental justice public forum open to all interested stakeholders. The Regional forum meetings will be scheduled biannually, and will address implementation of OSWER's environmental justice strategy, as well as site-specific concerns arising within each Region.

Recommendation: Coordinate with recently established Subcommittee on Waste of the first National Environmental Justice Advisory Council on environmental justice to focus on implementation of the OSWER Task Force's recommendations.

The Agency has announced the formation of the first National Environmental Justice Advisory Council. OSWER has worked with OARM to create a subcommittee on waste. OSWER will work with the Agency-wide council as well as the subcommittee on waste. OSWER should direct the subcommittee to address the following objectives: 1) advise OSWER in the implementation of environmental justice Task Force recommendations; 2) identify opportunities to demonstrate recommended actions; 3) advise OSWER on issues that arise at specific sites; and 4) evaluate the success of OSWER's activities. This recommendation will further strengthen our external outreach and communications activities on environmental justice.

Recommendation: Explore use of Regional environmental education grants to promote environmental justice education.

EPA's Office of Environmental Education Grants funds grants for $5,000 or less by Regions for environmental education. Local education agencies, State

E. OUTREACH, COMMUNICATIONS AND PARTNERSHIPS

education agencies, colleges or universities or not-for-profit organizations and other groups are eligible recipients. The law requires that a specified percentage of appropriated funds be awarded for these grants. OSWER should explore using these Regional grants to get education money to organized community groups on environmental justice issues. In addition, the Office of Environmental Justice also funds small grants to local entities for these purposes.

Recommendation: Future contracts to staff EPA hotlines should include a requirement of access to translation services for non-English speaking persons.

OSWER has a toll-free hotline to disseminate up-to-date information to the public on Resource Conservation and Recovery Act (RCRA), Superfund, Emergency Planning and Community Right-to-Know (EPCRA), and Underground Storage Tanks (UST). The hotline's central functions are to field questions and provide information on federal EPA regulations. The present contractor has always employed a Spanish-speaking person, although this is not required by the contract. For future contracts to staff the hotline, OSWER should require that the contractor provide access to multi-lingual translation services.

Recommendation: OSWER should more effectively communicate the limits of its authority.

In discussions conducted with various Regions as part of the OSWER Environmental Justice Task Force activities, the following message arose repeatedly, and should form an integral part of all outreach activities: OSWER needs to more effectively communicate the limits of its authority and resources; that is, what it can and cannot do. This issue bears particular relevance to the Superfund program since it must undertake more aggressive community outreach and is often the only point of contact communities have with EPA officials. This recommendation notwithstanding, where reasonable requests are made that merely require the attention of other parts of EPA or other Federal or State agencies, OSWER officials have a responsibility to direct citizens to the appropriate parties (see section on Federal Interagency Cooperation).

2. Partnerships

Background

Given the key role of business, industry, labor and other stakeholders in waste programs, OSWER has begun to explore how it can work more effectively in partnership with these entities. OSWER believes that such partnerships have relevance to addressing environmental justice concerns.

E. OUTREACH, COMMUNICATIONS AND PARTNERSHIPS

Issue: Need to increase business and industry role in addressing environmental justice issues.

As previously discussed, EPA and States are often limited in authority and resources in their ability to respond to environmental justice concerns. Industry, however, may have more flexibility within the community to develop cooperative programs to resolve environmental justice issues.

Recommendation: Develop guidance for making business and industry a key player in addressing environmental justice issues.

If OSWER were to bring business and industry explicitly into the dialogue on environmental justice issues, OSWER may be able to ensure that community, business and industry views are mutually shared. Creative solutions to environmental justice issues may result from this dialogue. The OSWER Task Force recommended that a guidance be developed to address joint partnerships with industry.

Specifically, the OSWER Task Force suggested the following joint activities:

- Initiate focus groups with all stakeholders, and promote communication between EPA, business and industry on environmental justice issues. Conduct a conference that brings community representatives and other stakeholders together with industry to discuss what each side can do to address environmental justice concerns.

- Select specific facilities where industry and business are willing to meet directly with community leaders. Representatives should discuss and listen to community concerns and recommendations. Industry and business should also be willing to discuss risk, siting and other environmental justice concerns. OSWER should analyze the results of these activities and incorporate the lessons learned into guidance development.

- Examine cases where communities have been able to encourage industry to modify their approach to address environmental justice issues.

- Based on what is learned through these activities, OSWER should develop guidance for addressing environmental justice issues where industry and business are major players.

Issue: Need to consider role of labor groups

Labor groups offer valuable information on matters of worker health and safety, worker training, and identification of combined residential/industrial exposure scenarios. Labor groups have indicated to the OSWER Task Force their desire for OSWER to factor their input into this report's recommendations.

E. OUTREACH, COMMUNICATIONS AND PARTNERSHIPS

Recommendation: Enter into partnerships to resolve issues that do not fall exclusively under OSWER jurisdiction.

Like the above discussion, OSWER should explore partnerships with labor and other stakeholders to help resolve issues that extend beyond OSWER's jurisdiction and resources.

Issue: Need to expand opportunities for community participation.

Many communities near hazardous waste sites, including low-income, minority and tribal populations, may not have had an opportunity to fully participate in the cleanup process. These communities believe that remediation programs do not address local concerns adequately when addressing risk or determining the method and level of cleanup. Further, local community members may not have had the educational and training opportunities to be able to fully participate in the economic benefits of cleanup.

Recommendation: Expand environmental workforce curriculum and develop pilots with community colleges, labor organizations, universities and other worker training groups.

One of the most effective means of assuring local involvement in the cleanup decision-making process is to train residents for potential environmental employment opportunities. Community colleges provide an existing avenue for achieving that goal. The Environmental Workforce Initiative that EPA is piloting at Tri-C in Cleveland, OH, to develop an environmental cleanup curriculum will be expanded through the Hazardous Materials Training and Research Institute HMTRI to other community colleges in environmental justice communities around the nation. These will be linked, whenever possible, to brownfields pilots, offering in some communities a holistic approach to economic redevelopment.

In addition, unions have been leaders in hazardous materials training for workers and community members. OSWER needs to evaluate these programs as models for expanding our current training efforts.

3. Internal Outreach and Communications

Background

OSWER wants to ensure effective internal outreach and communication with regard to environmental justice. This involves policy development and regulation development.

F. ECONOMIC REDEVELOPMENT

Issue: Need to ensure attention is focused on environmental justice in policy, regulatory and guidance development.

The Agency, as a matter of policy, requires the consideration of environmental justice in policy and regulatory development. OSWER has not consistently implemented this policy.

Recommendation: OSWER to issue a directive requiring consideration of environmental justice in all policies, guidances and regulations

The Assistant Administrator of OSWER will sign a directives instructing program offices within OSWER and the Regional waste programs to consider environmental justice issues in developing policies, guidances, and regulations.

F. ECONOMIC REDEVELOPMENT

Background

Economic development opportunities may arise and should be explored in conjunction with many activities that also promote environmental justice. This section primarily addresses opportunities for economic redevelopment (i.e., returning contaminated sites to economically productive use). Such efforts are increasingly blocked by uncertainty about future tort, third party and Superfund (or RCRA, UST, or other) liability, as well as uncertainty about costs, cleanup standards and time involved in cleanup. This uncertainty causes many potential investors to avoid developing the sites. As a result, the affected communities suffer such adverse economic effects as declining property values and increased rates of unemployment. This phenomenon has been termed the "Brownfields dilemma."

Issue: Patterns of Environmental "Redlining" and "Landbanking"

The practice of banks refusing to provide loans for sites they perceive as being contaminated is known as "redlining" and may be a major driving force behind the brownfields dilemma. Lenders allegedly "redline" a property because, in the absence of reassurances to the contrary, they may anticipate enforcement action on any previously industrial site. In addition, "landbanking" occurs when property owners, from small businesses to large corporations, decline to either expand operations on existing property or try to sell property they own because site contamination and remediation costs may exceed the value of the property.

F. ECONOMIC REDEVELOPMENT

Recommendation: Explore the use of enforcement tools (in coordination with the Office of Enforcement) to stimulate brownfields development.

One option for combating this phenomenon that EPA is already considering under its Superfund Administrative Improvements initiatives, is to expand its use of agreements that would give prospective purchasers a covenant not to sue. To accomplish this, EPA may want to consider modifications to "Guidance on Settlements with Prospective Purchasers of Contaminated Property" (OSWER Dir. 9835.9). Pursuant to this Guidance, EPA has limited its use of prospective purchaser covenants not to sue to sites at which "enforcement action is anticipated" A limitation of liability would lend some certainty regarding the investment/remediation costs a new investor is likely to face at a contaminated site.

OSWER may also want to consider responding to requests for covenants at sites where EPA does not anticipate enforcement action with a letter suggesting that the Agency does not currently anticipate enforcement action at this site. While such a letter would fall far short of a covenant not to sue, it may provide lenders with some assurance that the given property is not likely to be subject to an enforcement action by the United States.

It should be noted that the prospective purchaser language in the Administration's proposal to reauthorize Superfund would, if passed, alleviate much of the current burden on parties that qualify as a "bona fide prospective purchaser" by providing a mechanism by which they could be exempted from Superfund liability.

Issue: Uncertainty with environmental assessments.

Environmental assessments are conducted routinely on commercial property prior to sale in order to identify any environmental contamination on the property. Environmental assessments have become a routine part of commercial real estate transactions as a result of Superfund liability. Section 101(35) of CERCLA states that in order for an owner of real property to qualify for the "innocent landowner" defense, the party must have undertaken at the time of acquisition "all appropriate inquiry into the previous ownership and uses of the property..." The statute does not, however, offer a precise definition of what would constitute "all appropriate inquiry."

Recommendation: OSWER should support private efforts to conduct and define "all appropriate inquiry."

Several private professional groups are currently developing standards for "all appropriate inquiry." At some future date OSWER may want to consider evaluating and commenting on the adequacy of those standards. OSWER should also inform private parties trying to obtain information about the previous ownership and uses of a property of publicly-available information sources, such as permitting data and CERCLIS (and GIS information as it becomes available).

Recommendation: Continue to implement "brownfields" pilot projects.

The Cleveland "Brownfields" pilot to return contaminated inner-city properties to productive use is another example of using partnerships to address environmental justice needs. This project is founded on a strong partnership between EPA, the State of Ohio, the Cuyahoga County Planning Commission, and the communities surrounding the pilot sites. By recognizing the common interest these parties have in revitalizing inner-city Cleveland, this project will help overcome the obstacles that have kept these blighted areas from thriving. The pilot funds the assessment of hazardous substances and potential sites within the brownfields area.

Building upon the example of the Cleveland pilot, the OSWER Task Force recommends expanding the brownfields pilots to include seven additional areas.

G. CONTRACTS, GRANTS AND LABOR

Background

Communities throughout the nation, through public forums and other means, have clearly expressed a desire for EPA to do what is necessary to increase employment opportunities for local labor and to generally reduce the economic and social "stigma" associated with Superfund sites and other waste facilities. It is the policy of the Federal government that a fair proportion of government contracts and subcontracts be placed with small and disadvantaged businesses.

To ensure that small and disadvantaged businesses obtain a fair proportion of contract awards, agencies together with the Small Business Administration (SBA) set percentage goals for small and disadvantaged business awards. It is important to note that these are goals and not rigid quotas, and the extent to which the goals have been met is reported to Congress each year. Public Law 101-507, EPA's Appropriations Act of 1990, requires that 8% of federal funds for contracting be made available to small and disadvantaged businesses. In 1992, EPA actually awarded 15.7% of its total contracting dollars to small and disadvantaged business concerns.

Local labor typically tends to consist of small businesses, and there are various mechanisms described in the Federal Acquisition Regulations (FAR) to promote contract awards to small and disadvantaged businesses. These include "set asides," which enable agencies to reserve contracts for award only to a designated group, and can be total or partial. Also included are the Section "8(a)" program and policies favoring "labor surplus areas," both of which are extensively discussed in the FAR.

G. CONTRACTS, GRANTS AND LABOR

While many Federal government acquisitions are too large for small businesses to participate as prime contracts, they may be able to participate as subcontractors. Thus, several policies have been developed to encourage the maximum possible participation by small business subcontractors.

Agencies may include an incentive clause in negotiated contracts under which a contractor may increase its profit by a designated percentage of the extent to which the actual awards to small businesses exceed the percentage negotiated and included in the clause. FAR 52.219-10.

A subcontracting plan, typically included by EPA in its contracts for site cleanup, must include goals for the use of small and disadvantaged business and small disadvantaged business concerns, along with other information and assurances relating to the contractor's planned efforts to utilize small business to the maximum extent possible.

Small and Disadvantaged Businesses

Section 8(a) of the Small Business Act authorizes SBA to enter into contracts with other Federal agencies and to perform those contracts by subcontracting to "socially and economically disadvantaged small business concerns."

"Socially and economically disadvantaged small business concerns" means any small business: (1) at least 51 percent owned by one or more socially disadvantaged (e.g., presumptively including African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and Subcontinent Asian Americans) and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

Under the 8(a) program, SBA assists disadvantaged small businesses in contracting opportunities with the Federal government. SBA helps procuring agencies identify potential 8(a) contracts and match the needs of 8(a) firms with potential contract opportunities. 8(a) contracts under $3 million may be awarded on a non-competitive basis, whereas 8(a) contracts exceeding $3 million (except for manufacturing which has a threshold of $5 million) must be procured competitively. The 8(a) program offers an effective means to stimulate growth of small and disadvantaged businesses over a period of time so that these firms may be self-sustaining, competitive entities in the market place.

Policies Favoring "Labor Surplus Area" Concerns

"Labor surplus area" means a geographical area identified by the Department of Labor as an area of concentrated unemployment or underemployment or an area of labor surplus. The contracting officer may set aside the entire amount of a procurement for labor surplus area (LSA) concerns when there is a reasonable expectation that offers

G. CONTRACTS, GRANTS AND LABOR

will be obtained from a sufficient number of responsible LSA concerns so that awards will be made at a reasonable price. LSA requirements can be met through contractors or subcontractors.

Issue: Need to find ways to increase use of local labor.

The issue, simply put, is how can EPA do more to achieve greater small business and local labor content from a contracting perspective, while remaining in compliance with the FAR and other relevant requirements. Despite the mechanisms currently in place there is a widespread belief among both the public and many EPA personnel that more must be done to encourage the use of local labor and to increase education efforts in the communities.

Recommendation: Evaluate possible changes to the award process which would promote increased use of local and small and disadvantaged businesses

OSWER, working with the Office of Acquisition Management, should explore possible changes to the bidding process that would facilitate greater participation by small and disadvantaged businesses and benefit local communities. For example, 1) establish during contract performance local "fair share" disadvantaged business goals under the small disadvantaged goals of the subcontract plan agreed to at time of contract award; 2) decrease bonding requirements for local firms; and 3) have prime contractors provide 30-day advance notice to local companies by publishing subcontract opportunities in local newspapers.

These initiatives would promote increased use of local minority and disadvantaged businesses, yet may require deviations from the FAR or amendments to the EPA Acquisition Regulations.

Recommendation: Use existing FAR provisions to benefit small and disadvantaged businesses.

For all new contracts, the Regions should consider adding language into their Request for Proposals (RFPs) that give more points to those firms that would subcontract to small disadvantaged businesses and have the TEP criteria reflect this. OSWER could also expand reliance on existing FAR provisions that establish monetary incentives for subcontracting with small and disadvantaged businesses. For example, OSWER could draft incentive clauses allowing contractors to increase award fees to the extent small/disadvantaged business utilization exceeds negotiated percentage goals. OSWER should encourage greater use of FAR 52.219-10, the incentive clause in negotiated contracts which provides clear monetary incentives for contractors who exceed their contract subcontracting goals to small and small disadvantaged business concerns.

G. CONTRACTS, GRANTS AND LABOR

Recommendation: Require contractors to keep track of money spent in the community.

In addition, OSWER could require Waste programs' contractors to report amounts of small and disadvantaged business awards in local communities, which the Agency could then incorporate into progress reports issued to the public. OSWER could also take steps to research local community capabilities and increase community interaction outside of the contracting process. Once again, this could help promote use of local businesses.

However, it might lead to higher costs as contractors seek to pass on the reporting expense. In addition, EPA would need to obtain OMB clearance, under the Paperwork Reduction Act to implement a new reporting requirement.

Recommendation: Establish a dialogue with contractor groups.

OSWER will establish a dialogue with contractor groups regarding environmental justice issues and solicit their support in use of local labor to augment the economic base of the communities (e.g., Hazardous Waste Action Coalition). OSWER will also begin a dialogue with the Office of Enforcement to determine the feasibility of considering environmental justice and employment of local labor in settlement discussions with the potentially responsible parties.

Recommendation: Establish local consultation committees.

OSWER will explore: 1) establishing local consultation committees that include representatives from minority businesses and the Chamber of Commerce that would help EPA identify local employment opportunities and publicize potential contracting opportunities; 2) using the committee to define scope and pattern of work in a manner that facilitates opportunities for small and disadvantaged businesses; 3) working with the Office of Enforcement on the possibility of including provisions in consent decrees at Superfund sites that require either EPA or responsible parties to complete, at the 50% remedial design point, an evaluation of availability and capabilities of the local labor pool.

Recommendation: Fully implement the Mentor-Protege Program.

OSWER will work with EPA's Office of Small and Disadvantaged Business Utilization (OSDBU) to fully implement the Mentor-Protege Program, which is currently being piloted in Superfund Response Action Contracts. This program, which is administered through the OSDBU, is designed to stimulate the participation of small disadvantaged businesses in EPA contracts by fostering long term relationships between large contractors and small and disadvantaged businesses.

The Mentor-Protege program provides incentives to large contractors to share their managerial and technical expertise with smaller firms throughout performance of

a contract, to help such firms develop the necessary expertise to compete successfully for future EPA prime and subcontract opportunities.

OSWER's Mentor-Protege program currently focusses on performance-fee type contracts where EPA can evaluate and recognize a contractor's performance assisting a protege firm. In addition, contractors may receive additional credit in evaluation for contract award for participating in this program. OSWER expects participation in this program to foster a broad range of experience that can be applied across other Agency programs.

Recommendation: Consider regulatory and statutory changes.

OSWER should in the long term: (1) evaluate the results of the above efforts in increasing use of local labor and promoting environmental justice goals; and (2) explore implementing stronger actions as appropriate (e.g., seek statutory authority, and deviations from FAR requirements, executive order, etc.) to fully meet environmental justice objectives.

Recommendation: Include language that gives priority to Environmental Justice concerns in grants and cooperative agreements.

OSWER will work with the Grants Administration Division to explore incorporating special conditions for contracting goals (not set asides), if the impacted community is directly benefited by meeting these goals, e.g., site-specific cooperative agreements. Minority Business Enterprise/Women Business Enterprise goals are currently included in grants under 40 CFR 31.36(e).

H. FEDERAL INTERAGENCY COOPERATION

Background

There are a many other Federal agencies with whom EPA must work to accomplish our responsibility of protecting human health and the environment. Some of these agencies are: Agency for Toxic Substances and Disease Registry (ATSDR), U.S. Department of Justice (DOJ), the National Institute of Environmental Health Sciences (NIEHS), Department of Housing and Urban Development (HUD), Department of Agriculture (USDA), Department of the Interior (DOI), and the many other Federal agencies that own or operate facilities regulated by OSWER. With the issuance of the Environmental Justice Executive Order, the Federal government will increase the emphasis on interagency cooperation.

Certain examples of how OSWER is working together with other agencies to ensure environmental justice already exist. At the RSR Superfund site in West Dallas,

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TX, the Superfund program has joined forces with HUD to work with the Dallas Housing Authority to abate indoor and outdoor lead contamination. EPA Administrator Carol Browner and HUD Secretary Henry Cisneros have both visited the site to bring attention to this effort. This partnership is an example of the kind of work that can and must be done to alleviate environmental risks in low income and minority communities.

There are at least two major national health agencies that have a designated role in the Superfund program and that also have the intent, interest, and ability to assist in addressing many of the outstanding environmental justice health science issues. The Agency for Toxic Substances and Disease Registry (ATSDR) was created in 1986 to implement the health related sections of CERCLA (as amended). The health mandate is the basis for the Agency's mission "to prevent or mitigate adverse human health effects and diminished quality of life resulting from exposure to hazardous substances in the environment." The National Institute of Environmental Health Science (NIEHS), one of the National Institutes of Health, is a world center for research into human health effects from chemical pollutants.

ATSDR has in place a Minority Health Program which addresses the possible impacts on minority populations from potential exposure to hazardous substances. The goals of this program are: (1) to develop a comprehensive demographic profile of communities living near hazardous waste sites and other sources of hazardous substances; (2) to determine the relationship between identified adverse human health outcome and hazardous substances in minority communities; (3) to develop and execute environmental risk communication and education programs and to mitigate and prevent adverse health effects from chemical toxicants in minority communities; and (4) to develop, promote, and support public health partnerships with Federal/State/Tribal/ local government, citizens, and health professionals and enable them to work together to prevent, or mitigate adverse health effects and diminished quality of life resulting from exposure to hazardous substances in the environment.

The mission of NIEHS is to reduce the burden of human illness and dysfunction from environmental exposures by understanding each of three elements - environmental exposures, individual susceptibility and time - and how they interrelate. NIEHS achieves its mission through multi-disciplinary biomedical research programs, prevention and intervention efforts, and communication strategies that encompass training, education, technology transfer, and community outreach.

Emphasis is placed on: research into the basic mechanisms of environmental disorders; research into the environmental causes of diseases of public health import; clinical studies on clinical research; and enhanced science base for public policy decisions and health programs.

The Superfund Amendments and Reauthorization Act (1986) authorized NIEHS to conduct grant programs for basic research and worker health and safety training for hazardous substance handling and emergency response. The basic research component is a unique program of basic research and training grants directed towards

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understanding, assessing, and attenuating the adverse effects on human health resulting form exposure to hazardous substances. Grants made under this program are for coordinated, multicomponent, interdisciplinary programs.

Issue: Avoid possible duplication of effort between EPA and health agencies.

There are a number of common goals relating to environmental justice that are being pursued by both the health agencies and EPA: obtaining more demographic information about the residents living near hazardous substance sites, ensuring that health professionals are adequately educated about effects of hazardous substances, filling data gaps about toxic substances, using more outreach to locate workers in communities with environmental justice concerns who need training, removing impediments to training workers in communities with environmental justice concerns, and building trust among the communities. However, without close coordination and cooperation, the effort to achieve these goals will be duplicated, time and money wasted and the attainment of trust within the communities thwarted.

Recommendation: Improve coordination between the agencies.

Coordination is an important way to avoid duplication of effort. The Interagency Working Group mandated in the Executive Order will ensure coordination on Environmental Justice issues among Federal agencies. OSWER will participate in this effort. The OSWER Task Force recommends that someone be appointed as an Environmental Justice liaison for OSWER, designated to coordinate with, at a minimum, ATSDR and NIEHS. Duties of the liaison should include communicating regularly with the liaisons from the other two agencies, distributing information to people within their own agency regarding activities in the other agencies, and acting as a point person for information.

OSWER may also help facilitate increased coordination of exchange of exposure data that EPA, ATSDR and NIEHS have for the purpose of the Geographic Information System (GIS).

Recommendation: Explore other means of cooperation with other Federal agencies

An effective future strategy for environmental justice will require an increase in cross-programmatic and interagency cooperation. The Environmental Justice Executive Order recognizes this by calling for interagency model projects that show cooperation among agencies. Thus, OSWER should continually seeks ways to leverage the resources and authorities of other Federal, State and local agencies.

EPA's experience at Superfund sites in particular highlights the need for such partnerships. Communities frequently request services that the Superfund program does not have authority to provide. One of the most frequently requested items is medical treatment to address health problems associated with exposure to contamination.

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Citizens in affected communities may also ask for responses from Superfund officials that would most appropriately be directed to other EPA program offices such as the air and water programs.

The Administration's Superfund reauthorization proposal addresses this in part by calling for the funding of demonstration projects addressing multiple sources of risk linked to HUD and USDA empowerment zones. Under this proposal, EPA would leverage the resources of other agencies participating in the HUD and USDA empowerment zone initiatives in an effort to provide more far-reaching, multimedia solutions to communities' environmental problems.

OSWER should explore options with HUD and USDA empowerment zones in as many ways as possible. The money available through this HUD and USDA initiative might be used to help fund multimedia cleanups, innovative new approaches to risk analysis, lead abatement initiatives, pollution prevention efforts, public education and training, economic redevelopment efforts, and enhanced community involvement.

OSWER should also work with HUD to explore the potential of collaborating on HUD's new Step-Up initiative. This initiative combines the resources of organized labor with the needs of the community to train new workers from the contaminated and impoverished communities to improve housing, lead base paint abatement and other hazard abatement. HUD has already formed collaborations with DOL, DOJ and HHS and they welcome EPA's participation.

OSWER should also aggressively explore the range of authorities available throughout the Federal government to examine whether, under such authorities, communities impacted by exposure to contamination could receive health benefits currently beyond EPA's authority to provide. Joint projects with ATSDR can serve as one avenue of enhancing delivery of health services. The Administration's proposal to free up Superfund money for health benefits on a demonstration basis also represents a step in the right direction. OSWER also needs to aggressively explore other less traditional partnerships as well, however, with emphasis on HHS authorities. Thus, OSWER should determine what benefits HHS can provide communities suffering from environmental health effects.

For example, OSWER should also explore other options that may be available through the Public Health Service. The National Health Services Corporation and the Maternal Child Health Programs may have resources available to respond to communities plagued by medical problems associated with toxic exposure.

Issue: Community's solutions are beyond EPA's authority.

In many of the communities impacted by OSWER-regulated facilities, there are concerns that often go beyond the scope of the environmental statutes we are administering, such as health and housing issues. In order to address these concerns, other Federal agencies need to be involved.

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Recommendation: Regions establish environmental justice pilot projects working with another Federal department or agency and explore development of interagency Regional Councils.

The OSWER Task Force recommends that each Region explore ways in which we can work cooperatively with one or more other Federal agencies and include State, Tribal and local governments, as appropriate, to address the environmental, but also other citizen concerns (e.g., housing, health care, employment) in a specific community. This increased focus on partnerships will ensure more complete solutions to communities' environmental, human health, and related needs.

In addition, OSWER should encourage Regions to develop Regional Councils comprised of such Federal agencies as HUD, USDA, HHS, Department of Labor (DOL), Department of Commerce, Department of Interior (DOI), Bureau of Indian Affairs (BIA), DOD, ATSDR, the Bureau of Reclamation and the Corps of Engineers to respond to community needs at Superfund sites. Region 6 has already initiated such an effort as a result of the problems routinely faced by the region's Superfund program. Similar efforts could be undertaken in other regions.

Recommendation: Continue to participate in ATSDR's minority health program (e.g., Mississippi Delta Region Project).

ATSDR's Mississippi Delta Region Project's goal is to prevent or mitigate adverse health effects on minority and disadvantaged populations impacted by environmental hazards, including toxic waste and pollution. This goal will be pursued jointly with other Federal agencies (EPA, NIEHS, Centers for Disease Control (CDC)), State and local health departments, local community groups, and institutions of higher education, particularly those that serve large minority populations. In addition to serving as a model of cooperation among Federal, State and local health agencies, the Delta Project will: identify environmental hazards, including toxic wastes that may impact on the health of people in the Delta; evaluate (in association with State and local health agencies and academic institutions in the Delta region) the public health impacts of identified environmental hazards; increase the awareness of health care providers who practice in the Delta Region about the adverse environmental health impact of identified hazards; enhance capacity building in State and local health departments to address environmental public health problems; and through collaborative effort with the EPA, increase the awareness of environmental hazards among students at the Headstart Centers, preschool and primary through college level institutions in the Delta Region. Currently, the needs assessment phase of the project is being conducted in collaboration with the Minority Academic Institutions (MAI). The Hispanic and Native American Initiatives are preliminary starts to this effort.

The three agencies should work together to accomplish the goals of the Mississippi Delta Project.

I. NATIVE AMERICAN/TRIBAL ISSUES

Background

The unique legal status of Tribal governments requires a EPA-wide and OSWER-wide coordination. There is a current EPA-wide initiative underway to strengthen tribal environmental programs. The Administrator's Senior Leadership Team for Tribal Operations will be developing additional solutions to issues identified in this section of the report. Additional program-specific issues and recommendations can be found in the following chapter of this report.

Issue: Development of Tribal capacity and/or full implementation of Federal programs.

On Indian Lands, there are two principal avenues for environmental protection: 1) development of Tribal capacity and the authorization of Tribes to operate environmental programs in lieu of the Federal government and/or 2) the implementation of Federal programs in partnership with a Tribe. In addition, the Agency supports the voluntary cooperation between State, Tribal and local governments to resolve environmental issues of mutual concern. However, Tribal representatives believe that neither of the two principal avenues have been sufficiently implemented in Indian Lands. Tribal representatives believe that this can only be achieved through the further development of Tribal environmental programs or the full implementation of Federal programs.

Recommendation: OSWER will continue to support the efforts of the EPA Senior Leadership Team for Tribal Operations.

OSWER should continue to support the effort currently underway by the Administrator's Senior Leadership Team for Tribal Operations and OSWER should develop action plans to respond to the recommendations developed by the Administrator's team.

Recommendation: Examine ways to provide additional resources for and technical assistance to Tribal governments to address Tribal environmental protection.

OSWER should examine ways to provide funding to Tribal governments that will enhance their capacity to implement OSWER programs. In addition, OSWER will examine options available to fund Federal implementation of OSWER programs when a Tribe does not implement such programs. OSWER should also explore other alternatives for providing resources such as providing training and information on pollution prevention, management options, innovative technologies and Regional environmental protection networks.

I. NATIVE AMERICAN/TRIBAL ISSUES

Recommendation: Improve communication and initiate pilots with other Federal agencies on Indian Lands.

Coordination and strategic resource allocation should improve the Tribal governments' ability to implement regulatory programs. OSWER program offices should initiate pilots with other Federal agencies, including the Bureau of Indian Affairs, the Indian Health Service, USDA and HUD to develop the capacity of the Tribes to address overlapping programs and environmental problems. Assistance provided by the Federal agencies with responsibility for Tribal lands will be examined in relation to each agency's mandate and resource base.

In addition, OSWER will explore options to improve communication and help facilitate a clarification of authority between agencies. This may be accomplished through a Memorandum of Agreement.

Issue: Need to improve EPA/Tribal communications

Effective communication between EPA and the Tribes remains difficult for a variety of reasons. EPA should be clear about who is responsible for tribal issues within the Agency. Tribal governments should likewise designate a single point of contact or, in the case of smaller Tribes, an inter-tribal point of contact.

Recommendation: Develop meaningful Tribal participation in EPA activities on a "government-to-government basis".

OSWER should review Tribal interaction in its programs for major activities that affect Tribal populations. In conformance with current Agency policy, the interaction should be on a "government-to-government" basis thereby treating tribes as governmental entities. OSWER will also coordinate with Tribal Consortia, when appropriate. Tribal Consortia are not governments, but official Tribal governments have the authority to authorize these consortia to act on their behalf.

Issue: Need to account for special dietary habits of Native Americans in evaluating risk

Exposure consumption patterns are different for tribes, as learned through several studies, including the forthcoming one performed by the Columbia Intertribal Fish Commission The draft report being undertaken under an EPA grant suggests some populations face elevated health risks due to a larger ingestion of fish. In addition, ATSDR in cooperation with EPA, tribes and State agencies is studying consumption patterns of tribes, as well as male and female anglers and their children, in the Great Lakes region. Fish tissue analyses are being conducted, blood samples are being taken from Native Americans with subsistence lifestyles and fish consumption patterns are being studied.

I. NATIVE AMERICAN/TRIBAL ISSUES

Recommendation: Support a national fish consumption analysis.

OSWER should support ongoing studies being conducted throughout programs in the Agency on fish consumption and factor these into their decision-making with regard to tribal exposure patterns.

Recommendation: OSWER Sponsorship of Second National Tribal Conference on Environmental Management

On May 23 - 26, 1994, OSWER will help sponsor the Second National Tribal Conference on Environmental Management. The event is being hosted and co-sponsored by the Eastern Band of Cherokee Indians, in Cherokee, NC. The first such OSWER conference was held two years ago and about 400 people attended representing 90 Tribes. The conference planners are expecting many more people to attend this year. Travel assistance is being provided to Tribal representatives on an as-needed basis. The planned agenda, with 30 sessions over three days, has been developed based on suggestions from the Tribes.

Issue: Alaska Native Tribes

In Alaska there are 236 federally recognized Alaska Native Tribes that are afforded the same general status as the Tribes in the lower 48 states. However, these Alaska Tribes do have unique legal and environmental concerns that are not shared by the other 309 Tribes in the lower 48 States.

Recommendation: Explore options in addressing unique concerns of Alaska Native entities.

OSWER will work to cultivate an increased sensitivity to the problems faced by Alaska Native Tribes. Achieving environmental justice in Indian Lands in Alaska will require up-front education and training of OSWER staff and management in order to fully understand the Tribes' different environmental concerns within this unique legal status to the federal government.

J. INTERNAL TRAINING, ORGANIZATION AND PROGRAM IMPLEMENTATION

1. Employee Training

Background

OSWER recognizes that it workforce is not fully familiar with environmental justice issues.

Issue: **OSWER needs to educate its employees and the public on environmental justice issues.**

OSWER and the Regions should find ways to educate their many employees regarding environmental justice issues. Environmental justice training may be helpful to employees at all levels based on the role and responsibilities they assume within the organization, and the nature of their contacts with the public.

Recommendation: **Educate OSWER and Regional employees on environmental justice issues.**

OSWER should develop a seminar or training curriculum for Headquarters and Regional waste programs employees to sensitize them to environmental justice issues. In addition, OSWER should emphasize how environmental justice concerns may arise in the employees' daily work and how to respond to those issues.

2. OSWER Organizational Changes

Background

The OSWER Task Force also examined the current organizational structure to determine whether improvements could be made to better address environmental justice issues.

Issue: **OSWER's activities outreach, environmental justice, economic redevelopment, and State/local and Tribal government relations are spread throughout OSWER organizations.**

OSWER's current organizational structure has communications and outreach functions, and environmental justice functions spread throughout the individual program-specific offices. There currently is no organizational entity focusing on economic redevelopment issues relating to all OSWER waste programs. State and local government relations receive attention in the program-specific offices; however,

J. INTERNAL TRAINING, ORGANIZATION AND PROGRAM IMPLEMENTATION

organizations such as the National Governors Association, the Association of State and Territorial Solid Waste Management Officials and the International City/County Managers Association have expressed a desire for high level management attention and input into these relationships. Tribal groups have similarly expressed their desire for more senior management focus.

Recommendation: OSWER needs a centralized focal point and coordinator for environmental justice issues.

The OSWER Task Force recommended the establishment of a clear focal point with access to senior management to coordinate issues related to environmental justice, community outreach, State/local/tribal government and economic redevelopment issues and to establish an OSWER environmental justice workgroup with representatives across all programs to focus on these issues. One of the OSWER Deputy Assistant Administrators should be designated as the senior organizational focal point for environmental justice issues and activities. It was also recommended that a single person be designated as an Environmental Justice coordinator for the Assistant Administrator.

3. **Program Implementation**

Background

Regions are currently implementing, under the oversight of the Superfund administrative improvements, certain creative approaches to addressing environmental justice issues at Superfund sites.

Issue: Need to expand creative approaches to addressing environmental justice issues throughout Regional waste programs.

Currently Regions are pursuing creative approaches in only one of the waste programs (Superfund); however, environmental justice issues also arise in the context of the other waste programs under EPA's control.

Recommendation: Pilot new ideas for addressing environmental justice concerns in a specific geographic area.

Each Region should look across their waste programs and select one additional project to pilot creative new ideas for addressing environmental justice concerns in a specific geographic area. Regions will nominate what will be the most appropriate project within their Region.

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CHAPTER 4
PROGRAM-SPECIFIC ENVIRONMENTAL JUSTICE ISSUES AND RECOMMENDATIONS

This section of the Environmental Justice Task Force report sets forth OSWER program-specific issues and recommendations.

A. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

Background

Passed by Congress in 1976, the Resource Conservation and Recovery Act (RCRA) grants the Environmental Protection Agency (EPA) the authority to regulate the management of hazardous and nonhazardous solid waste. Congress then greatly expanded the scope of RCRA with the Hazardous and Solid Waste Amendments (HSWA) of 1984. Through these provisions, EPA has established a cradle-to-grave system of rules, many of which are implemented at the State level, covering the identification, generation, transportation, treatment, storage, and disposal of wastes.

In the RCRA Subtitle C (hazardous waste) program, EPA strives to protect human health and the environment from the potential harmful effects resulting from the mismanagement of hazardous wastes. One of the goals under RCRA is to minimize the amount of hazardous waste which is generated. The less hazardous waste generated, the less hazardous waste there is requiring management. When industries do generate hazardous wastes, the next priority under RCRA is to ensure safe management of these wastes. This is accomplished through technical standards which govern the storage, treatment and disposal of these wastes. In the case where hazardous wastes are or have historically been mismanaged, the Agency then requires careful clean-up steps to be taken.

Once generated, hazardous wastes are managed at facilities called Treatment, Storage, and Disposal Facilities (TSDFs) which are located throughout the country. These facilities are subject to both permitting requirements and possible enforcement to ensure compliance with all EPA regulations.

The environmental justice issues discussed in this section relate primarily to the siting and operation of TSDFs. EPA has come to realize that certain segments of the population may be unevenly bearing the effects of hazardous waste management at TSDFs. Some investigations have shown that there are high percentages of low-income populations and minority populations located near numerous TSDFs. Partly for this reason, the OSWER Environmental Justice Task Force was called together and has identified the following issues which need to be addressed in order to more effectively respond to environmental justice concerns in the implementation of the RCRA program.

A. RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)

The major environmental justice concerns to which the following recommendations respond are: 1) siting of new RCRA Subtitle C (hazardous waste) facilities; 2) RCRA Subtitle C permits; 3) public involvement in RCRA Subtitle C decision-making; 4) RCRA corrective action; 5) disproportionate impacts research; and 6) RCRA tribal implementation issues.

1. SITING OF NEW FACILITIES.

Siting generally has been a local land use decision carried out by State and local governments. RCRA Section 3004(O)(7), however, does direct EPA to "specify criteria for the acceptable location of new and existing Treatment, Storage and Disposal Facilities (TSDF) as necessary to protect human health and the environment."

Using this authority, EPA has issued technical location standards that restrict siting in 100-year floodplains, seismic fault zones, and salt dome formations/underground mines and caves. Furthermore, EPA recently prepared a draft rule proposing additional standards that would restrict siting in certain "environmentally sensitive locations," defined on the basis of risks associated with geologic and geographic features (e.g., seismic faults or areas with sinkholes). The preamble to this proposal would have sought comment on whether and how siting restrictions could address the threat of cumulative risk in environmentally distressed communities. The rule was never finalized.

Issue: Under current regulations, EPA has limited authority to determine where a hazardous waste facility will be sited.

Concerns have been raised that RCRA facilities may be sited disproportionately in minority communities. There are currently only three technical location standards (40 CFR Part 264.18) that hazardous waste facilities have to comply with regarding siting: 1) 100-year floodplains, 2) seismic fault zones, and 3) salt dome formations/ underground mines and caves.

Almost 40 States have location standards that are more stringent than the existing three Federal regulatory requirements. Generally, States can pass siting laws much more easily than EPA because States often have simpler statutory standards. For example, they may not have to show that a siting standard is "necessary to protect human health and the environment." Therefore, setback distances do not have to be based on groundwater or air modeling data.

Setback distances, which are defined as the State-required distance from the property boundary of a TSDF to the nearest school, church, prison, etc., may not completely address environmental justice concerns, although some believe this to be an answer to the RCRA facility siting issue. Setback distances potentially may have a negative impact on environmental justice communities, and may be perceived as a band-aid approach. For example, setback distances could force siting in rural areas outside

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of high density populations and such rural areas may be composed of a poor/minority/ less educated community.

In considering appropriate future actions, a variety of options exist. There are several avenues through which OSWER could attempt to influence State and local governments in the siting area.

Recommendation: Form a siting work-group to evaluate location standards, environmental justice issues and setback distances.

The Office of Solid Waste (OSW) should form a work group to evaluate a variety of siting issues such as; evaluating options for revising the technical geological location standards; review of existing and potential standards for siting hazardous waste facilities; environmental justice issues with siting; and the feasibility of setback distances. The work group will be involved in the next four recommendations listed below:

Recommendation: Develop siting guidance to provide technical assistance to State, tribal and local governments.

OSW officials, working in conjunction with other interested parties, could develop a siting guidance document that would provide technical assistance on how to best site a hazardous waste facility in light of environmental justice concerns.

Although non-binding, the document could serve as a catalyst for change. In developing this guidance, OSW would consult with State, tribal and local decision-makers and politicians to discuss the dynamics associated with the siting of a hazardous waste facility. Ultimately, the goal would be to educate local decision-makers so they can make knowledgeable siting decisions that best serve the community they live in.

Recommendation: Meet with State and local government organizations about EPA siting concerns.

OSWER could seek to highlight siting concerns in discussions with State and local organizations such as the Association of State and Territorial Solid Waste Management Officials, the National Governors Association, the National League of Cities, and the National Conference of Mayors. Dialogue could focus on policy options and their limitations.

Recommendation: Compile a national summary of State, tribal and local siting requirements with environmental justice components.

Compile a national summary of all 50 States on their experience with siting issues such as setback distances, local decision-making processes, and patterns of

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discrimination with siting. This type of information has been sought by States and would be invaluable in providing models for their own State siting standards.

Recommendation: Include siting principles into State Capacity Assurance Plan (CAP) guidance.

EPA guidance concerning State Capacity Assurance Plans (CAPs) could incorporate siting principles that take into account concerns raised by disadvantaged communities. In fact, a 1993 report prepared by the National Governors Association and reflecting the viewpoint of State and local government, the business community, and environmental groups, contained model language for addressing environmental justice issues, which EPA could replicate in the CAP guidance.

Recommendation: Incorporate environmental justice priorities into annual RCRA Implementation Plan.

OSWER could ensure that environmental justice priorities are included in the annual RCRA Implementation Plan, which the Regions use to set priorities when negotiating the State work plans and grant allocations.

Recommendation: Craft a grant condition to State grant agreements to require States to consider environmental justice concerns when making siting Decisions based on protecting human health and the environment.

OSWER should attach a grant condition to State grant agreements that require States to consider human health and environmental concerns that adversely impact low income and minority populations. Grant conditions must be directly related to the goals of a statute pursuant to which the grant is awarded and thus environmental justice criteria or conditions in the grant must relate to RCRA goals such as protection of human health and the environment.

2. RCRA PERMITS.

Issue: Need to respond to environmental justice complaints that arise during *permitting process.*

RCRA does not contain explicit or implicit authority entitling EPA to deny a permit based on environmental justice concerns that are not related to risk to human health and the environment. However, the omnibus provision found at section 3005(c)(3) allows EPA to add permit conditions necessary to protect human health and the environment. In theory, if no permit conditions could be written that would adequately protect against the identified risk, then EPA could justify permit denial.

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Recommendation: Establish strategy to respond effectively to all environmental justice issues raising health-related concerns.

As noted in the Title VI section of this report, OSWER should fully consider health risks related to environmental justice concerns prior to issuance of a final determination on the permit. During the ensuing period, EPA could attempt to mediate the situation through various channels of communication. In highly volatile situations, where risks to human health and environment are found, a risk assessment could be performed or be required by EPA in appropriate circumstances, presuming one has not already been performed.

In order to try to identify environmental justice concerns early on, OSWER should explore the possibility of using, in certain circumstances, public health assessments at the outset of the permitting process as a tool for gauging potential human health concerns in communities affected by a proposed facility. Thus, where such assessments revealed serious preexisting health problems, OSWER would focus on the incremental risks associated with the facility and respond accordingly. Relevant discussions would occur during the public involvement phase of the permitting cycle in order to ensure that decisions reflect community concerns. To the extent this proposal is viable, it would not apply in every instance but rather would be considered based on the merits of each case.

3. RCRA PUBLIC INVOLVEMENT.

Issue: Public involvement in RCRA siting and permitting decisions may not be adequate.

Concerns have been raised that RCRA siting and permitting decisions are made without sufficient meaningful public involvement. Current RCRA public involvement requirements have only two points for formal participation (draft permit and modification stages). Each Region has approximately one person dedicated to this function. RCRA public involvement coordinators have similar responsibilities as the Superfund Community Relations Regional specialists; however, RCRA has nowhere near the resources, high visibility or support as its Superfund counterpart.

OSW is currently drafting a proposed public participation rule that should expand public involvement opportunities during the RCRA permitting process. The goal is to encourage earlier, more meaningful community involvement. In this way, the proposal is similar conceptually to ideas raised in association with Superfund reform. Specific items include requiring a pre-application meeting with the affected community, public notification upon receipt of permit application and prior to trial burns, and multilingual fact sheets and translators in predominately non-English speaking communities. The rule may also require the creation of information repositories within

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affected communities. The proposal would also request additional suggestions for responding to environmental justice concerns.

Recommendation: Increase number of Regional community relations personnel.

More than one RCRA public involvement coordinator is needed per region to implement the proposed rule on increased community involvement. The proposed rule should be finalized next year.

4. RCRA CORRECTIVE ACTION.

Issue: Need for consistency across cleanup programs.

RCRA corrective action facilities raise many of the same health and safety issues as Superfund sites, and therefore merit comparable responses.

Recommendation: Examine whether priority setting method adequately considers environmental justice concerns.

OSW officials should examine if current priority setting methods utilized for corrective actions adequately considers environmental justice concerns.

Recommendation: Ensure that activities are consistent with Superfund program policies.

Remedy selection decisions and pace of cleanup at corrective action facilities could, consistent with Superfund, factor in exposure to multiple sources of pollution, including Federally permitted releases.

5. DISPROPORTIONATE IMPACTS RESEARCH

Issue: Combustion facilities' impacts on communities.

Emissions from combustion facilities could potentially add to the multiple source exposure that some minority and low income populations experience. Therefore, the environmental justice impacts of siting these facilities should be fully considered.

Recommendation: Perform demographics analysis around combustion facilities.

OSWER should perform demographics analysis using GIS which examines the population and income around various combustion sites. The study also could examine the proximity of these sites to other potential sources of hazard, such as TRI

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sites, Superfund sites, etc. OSWER should seek, through the study, to inform the Agency's combustion strategy by better understanding the distribution of minority populations and low-income populations surrounding hazardous waste combustors.

6. RCRA TRIBAL IMPLEMENTATION ISSUES.

Issue: Tribal capacity and program implementation options need to be developed.

Program implementation by tribes is one strong indicator of environmental justice, according to tribal representatives. As sovereign governments, tribes are the environmental managers on Tribal lands. Achieving true progress, however, may require statutory and regulatory changes (RCRA does not create an explicit role for tribal implementation of Subtitle C and other RCRA programs) as well as increased funding for tribal operations.

Recommendation: Accelerate efforts to develop draft rule for Subtitle C hazardous waste authorization to tribes.

Given the uncertainty associated with seeking legislative action to clarify the roles of tribes under RCRA, OSW should accelerate efforts to amend 40 CFR Part 271 (state hazardous waste programs) to include tribes. OSW recognizes that Subtitle C authorization may not be necessary or appropriate for all tribes. There are other ways tribes can participate in the Subtitle C program such as through cooperative agreements and/or grants.

Recommendation: Explore methods to enhance funding of tribal operations.

EPA's financial support is crucial in helping tribes build organizational infrastructures, develop appropriate regulations and explore integrated waste management alternatives. OSWER should continue to provide increased technical assistance through in-house resources, grants and contract assistance.

Issue: Increased need for coordination of environmental activities among Federal agencies leveraged resources.

To accommodate budgetary shortfalls, OSW should explore ways to leverage resources and coordinate environmental activities with other Federal agencies.

Recommendation: Expand interagency cooperation.

In order to increase interagency cooperation, OSW should: 1) promote the formation of Regional inter-agency work groups to address waste management issues on Indian lands; 2) develop action plans with other Federal agencies to cooperatively assist tribes with waste management; 3) work with other agencies to ensure that

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Congressional budgetary appropriations for tribal assistance go to the most appropriate agency; 4) promote and encourage voluntary partnerships among tribes, Federal agencies, States and local communities in order to further leverage resources and share expertise; 5) work with other EPA offices to provide multimedia solutions to environmental problems confronting tribes; and 6) continue to expand its association with the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) in planning and implementing waste management activities on Indian lands.

Recommendation: Expand the VISTA program to provide assistance to Native Alaskan villages on solid waste management issues.

Currently, OSW funds four Volunteers In Service To America (VISTA) to provide solid waste management assistance to Native Alaskan villages. OSW would like to duplicate its Alaska VISTA project with tribes throughout the continental United States. In addition, a National Service Project is being proposed to build on this programmatic foundation.

Issue: Need to enhance training and outreach activities, seek to leverage resources and coordinate environmental activities among Federal agencies.

OSW is initiating outreach with the tribes to ascertain their environmental justice concerns. Once a framework for this outreach is developed, OSW staff will engage the tribes in dialogues through a variety of outreach activities. These discussions should provide the additional direction needed to ensure that OSW's Indian Program is consistent with EPA's commitment to environmental justice.

Recommendation: Enhance tribal outreach and training.

OSW should expand outreach and training activities to enhance tribal capability. OSW's action agenda may include continuing its Regional outreach meetings with tribes across the country to discuss rules, regulations and laws that affect them, providing technical assistance and ensuring that appropriate printed and electronic information is made available to them.

Recommendation: Expand communications network between tribes and regions.

Four tribes are being provided access, on a pilot basis, to the State and Regional Programs Bulletin Board. The Bulletin Board has been expanded to include Subtitle D and Underground Storage Tank information (it currently has Subtitle C information). Tribes will access the Bulletin Board through IndianNet, a tribal communications network. This pilot is also serving as a model to other Federal agencies that are working to provide the tribes with readily accessible data information. If the pilot project is successful, OSW will expand the communications network to include more tribes.

B. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), or SUPERFUND

Background

CERCLA authorizes EPA to take response action when there is a threatened or actual release of hazardous substances or a threatened or actual release of pollutants or contaminants which may present an imminent and substantial danger to the public health or welfare. The Superfund program is responsible for the remediation of hazardous substance sites and responds to emergencies posing immediate threats to human health and the environment. To accomplish the Superfund goals, EPA, States, and Tribal governments coordinate site assessment, risk assessment, risk management, and site remediation. These efforts include considerable public outreach and community involvement programs managed by EPA's Regional Offices.

Meaningful public involvement is essential to the effective cleanup of hazardous substance sites. The people most affected by hazardous substance sites are members of the communities in and around sites. Community Relations Coordinators tailor outreach activities to meet the specific needs of each community. These may include activities such as: learning about community needs through community interviews; public meetings (with interpreters, as necessary); multi-lingual informational site documents; open houses with site managers; environmental education for school children; a "Superfund 101" course to introduce the Superfund process to communities; on-scene information offices and local ombudsmen; multi-lingual regional public involvement staff; and providing up to $50,000 per site for technical assistance grants to community groups.

Although EPA employees, Potentially Responsible Parties (PRPs) and contractors frequently interact with community members, the length and nature of these interactions may vary. For example, during emergency response activities, an EPA On-Scene Coordinator (OSC) and contractor may be in a community for a week or longer and the Remedial Project Manager (RPM) will make occasional visits during site investigation and remedy selection phases and then return during implementation of the cleanup remedy. The remedial cleanup contractor may be on-site continually, often on a multi-year basis. The Superfund Community Relations Coordinators in the Regional Offices attempt to provide some continuity between EPA and the community by establishing early contact with community members and being available, as needed. This direct interaction of response personnel with community members is an opportunity to identify and effectively address environmental justice issues at Superfund sites.

While Superfund's community relations program is in direct contact with communities and therefore is most aware of environmental justice issues, all Superfund program elements (e.g., site assessment, risk assessment) need to be more sensitive to

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identifying and addressing environmental justice issues. Some stakeholders have questioned whether Superfund sites in minority communities are cleaned up as quickly, or have remedies that are as protective, as non-minority sites. Others have expressed concern that sensitive populations may not be adequately addressed in risk assessments. The Office of Emergency and Remedial Response (OERR) is evaluating some of these concerns in a statistical and demographic analysis of National Priorities List (NPL) sites. In addition, Superfund's risk assessment guidance (RAGs) directs risk assessors to determine if any population groups may be at increased risk due to increased sensitivity, or lifestyle/behavior patterns that may result in high exposures (e.g., subsistence fishing or consumption of home-grown vegetables). There is a significant opportunity for enhancing environmental justice in Superfund by focusing on site-specific practices and procedures, while continuing to evaluate and improve national program policy.

Superfund environmental justice issues and recommendations are discussed in greater detail below in six major program areas: public involvement, site assessment, risk assessment, risk management, lead-based paint and tribal implementation. Many of the issues raised in this section have been identified by sources outside the Agency (see Chapter 3, of this report, on outreach). These issues are of great concern and EPA will identify actions, as well as areas of research to clarify the nature, extent and causes of environmental justice problems.

1. PUBLIC INVOLVEMENT

Issue: EPA needs to ensure meaningful community involvement, by all affected communities, in the Superfund process.

Through outreach efforts it has come to EPA's attention that some communities in or near Superfund sites, especially minority populations and low-income populations believe that they have insufficient opportunities to participate in the Superfund process. These communities have indicated to EPA that the program does not address local concerns adequately when assessing risk or selecting the method and level of cleanup, especially when considering future land use. These communities also voiced concern that opportunities for involvement in site activities come too late in the process and that their input has little impact on cleanup decisions.

The current Superfund law and regulations provide for numerous opportunities and requirements for public involvement. The Superfund Community Relations program is currently implementing many innovative techniques and using effective tools to promote greater public participation. OERR believes that this approach helps ensure effective communication with minority populations and low-income populations.

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Recommendation: Implement pilot projects establishing Community Advisory Groups at Superfund sites. Develop interim guidance on Community Advisory Groups.

Community Advisory Groups should be formed to promote early, direct and meaningful public involvement throughout the Superfund process. Membership of a Community Advisory Group should consist of community leaders and members. The Community Advisory Group would serve as a conduit for site information to and from the affected community, assist in determining land use expectations, and obtain greater community input for remedial decisions affecting future land use. The Task Force recommends that this concept be piloted on at least 10 sites across the Regions.

Interim guidance should be developed on the function, operation, and scope of authority of Community Advisory Groups. This interim guidance should build on existing sources (i.e., Federal Facilities Environmental Restoration Dialogue Committee Interim Report on establishing Site-Specific Advisory Boards (SSABs), 2/93; EPA-DOD guidance on establishing Restoration Advisory Boards for Base-Closures (draft); and experience at the dozen or so DOE sites with established SSABs nationwide.) Results of experiences with pilot efforts will be factored into the development of this guidance also.

The recommendations above are consistent with both the President's Environmental Justice Executive Order (No. 12898) and the Administrations Proposed Bill to Amend Superfund. The Environmental Justice Executive Order directs Federal agencies to develop an environmental justice strategy that is designed to ensure greater public participation, which is also one of the objectives of the Superfund Community Involvement program. The Administrations Proposed Bill to Amend Superfund also provides for increased public participation in the Superfund process.

There is a general consensus, both from within EPA and from the general public, that earlier, direct, and regular community involvement would enhance the cleanup process. However, this expanded community involvement is associated with additional costs. An indirect cost of expanded community involvement may be delays in moving sites through the cleanup process. A direct cost is the need for expanded resources for EPA and, through grants, the communities. Therefore, additional resources must be made available to implement these recommendations, or we may raise unrealistic expectations of what can be achieved.

2. SITE ASSESSMENT

Issue: Because Superfund relies on a passive site discovery approach (i.e., notification from States, communities, citizens), all of the sites in areas with minority populations and low-income populations that warrant Federal attention may not be brought into the Superfund program.

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A preliminary demographic analysis conducted by OERR suggests that, in the communities surrounding the 300 NPL sites evaluated, some minority populations are present in slightly higher percentages than the national population. However, this study does not allow the program to gauge whether there is a group of sites in areas with minority populations and low-income populations that have not been brought to the EPA's attention.

Recommendation: Conduct a pilot proactive site assessment program.

Develop and conduct a pilot proactive site assessment program, in conjunction with States and local communities, that would ensure that sites in areas with minority populations and low-income populations that warrant EPA action are identified. This could be accomplished by encouraging States, local government and community groups to use demographic information (e.g., LandView, GIS) and any other information tools to locate sites with potential environmental threats. OSWER and the Regions may also consider options including evaluation of the site inspection sites in the queue and determine which of these are located in areas with environmental justice concerns.

Issue: Need for consistency across cleanup programs.

Superfund cleanups raise many of the same health and safety issues as RCRA corrective actions, and therefore merit comparable responses.

Recommendation: Examine whether priority setting method adequately considers environmental justice concerns.

OERR officials should examine if current priority setting methods utilized for cleanups adequately considers environmental justice concerns.

Recommendation: Ensure that activities are consistent with RCRA program policies.

Remedy selection decisions and pace of cleanup at Superfund sites could, consistent with corrective action facilities, factor in exposure to multiple sources of pollution.

3. RISK ASSESSMENT

Issue: While risk assessment guidance requires consideration of sensitive subpopulations, current risk assessments at Superfund sites may not adequately address other exposure factors of concern in areas with minority populations and low-income populations.

Superfund risk assessment guidance directs risk assessors to evaluate risks to special subpopulations. In practice, this is usually implemented in risk assessments by

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examining populations for reasonable maximum exposure (RME) consumption levels of locally caught fish, animals, and home-grown vegetables. RME defaults are most representative of individuals living in a small town or other nontransient community.

Issue: **Because site remediation under CERCLA addresses only those risks posed by the site, Superfund risk assessments currently assess only those sources of risk resulting from the CERCLA site. Other sources of environmental risk to populations around Superfund sites should be identified in order to better establish/coordinate the proper federal response.**

The focus of risk assessments has been on risks caused by contaminants from individual Superfund sites. In some cases, populations around Superfund sites are exposed to additional sources of environmental risk, such as high levels of industrial emissions, lead in paint, or household chemicals.

Recommendation: **Superfund will develop supplemental risk assessment guidance in coordination with Agency-wide efforts.**

In order for Superfund to issue supplemental risk assessment guidance, it will first have to work with ORD, ATSDR, NIEHS and other Federal health agencies to establish exposure and risk factors which are unique to areas with minority populations and low-income populations. Once these factors are established, Superfund will issue supplemental guidance in coordination with Agency-wide efforts that will make those factors available and discuss appropriate circumstances for their use, particularly at sites with minority populations and low-income populations. Following this effort, OSWER will develop risk assessment and risk management tools that would allow Superfund site managers to work with other Federal and State agencies to create solutions that address multiple sources of environmental risk in coordination with Agency-wide efforts on this issue.

4. RISK MANAGEMENT

Issue: **There are sites with populations exposed to multiple sources of environmental risk.**

The Superfund program needs to find ways to encourage Potentially Responsible Parties (PRPs) and other Federal agencies to address the total environmental risks of populations exposed to multiple sources of pollution (e.g. populations exposed to indoor lead paint).

B. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), OR SUPERFUND

Recommendation: Establish site-specific federal coordination groups for issues outside Superfund jurisdiction.

OSWER and the Regions will work with other Federal and State agencies to develop model remediation projects at Superfund sites with multiple sources of environmental risk. Such model projects should address, where appropriate, indoor lead paint problems that add to community exposures. Superfund is currently developing a pilot project with HUD to evaluate opportunities to address indoor lead paint exposures in homes at Superfund sites.

Issue: Stakeholders have suggested that Superfund cleanup processes do not result in environmental justice in areas with minority populations and low-income populations.

As stated earlier, OERR is also evaluating some of these concerns in a statistical and demographic analysis of National Priorities List (NPL) sites. OERR is examining the demographic composition and average median income around Superfund sites as it relates to delivery of services. The demographic characterization has been completed for a subset of sites, and the methodologies to be used in the analysis are now complete.

OERR is now conducting the demographic characterization of all sites on the NPL and refining the analytic approach. Analysis will be completed over the next few months.

Recommendation: Evaluate remedy selection and speed of cleanups in communities with environmental justice issues.

OERR will complete the evaluation of remedy selection and speed of cleanup in areas with minority populations and low-income populations. Focus on sites where remediation is in progress in order to establish "real time" data and to allow opportunities for intervention. An additional option which Superfund may also consider is an evaluation and a comparison of similar remedy selection processes at a minority population site and a nonminority population site.

5. LEAD-BASED PAINT

Issue: Under the current statute, OSWER cannot expend Superfund money to clean up interior lead-based paint.

The Superfund program frequently encounters sites where lead levels in soil pose less of a human health threat than the lead levels associated with indoor paint and dust. Yet, based on existing authorities, the program concentrates on soil cleanup while leaving the greater health threat unabated.

B. COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), OR SUPERFUND

Superfund is developing a policy to ensure more holistic relief at sites. PRPs are currently encouraged to abate deteriorating indoor lead-based paint and indoor dust as well as the exterior lead sources.

The policy under development, however, does not currently detail response in the absence of viable PRPs. Currently, CERCLA precludes the use of Superfund money to perform abatement of indoor lead.

Recommendation: Encourage other agencies to coordinate efforts on removal or control of indoor lead paint at Superfund sites.

OSWER should continue to encourage PRP action in this area. Another option would be to actively encourage other Federal, state and local agencies with appropriate jurisdiction to work in conjunction with Superfund to coordinate the removal or exposure control effort. OERR officials are currently exploring a pilot endeavor of this kind with officials from HUD. This pilot could serve as a catalyst for additional efforts in the future.

6. SUPERFUND TRIBAL IMPLEMENTATION

Issue: Tribal governments are requesting systematic Superfund changes.

Currently, OERR activities focus on providing financial and technical assistance to help tribal governments develop environmental regulations and perform hazardous substance cleanups. Indian tribes believe that future activities should emphasize systematic changes under CERCLA that would better accommodate tribal needs and improvements in tribal outreach and communications. Comments received during a series of eight tribal outreach meetings conducted as part of the CERCLA reauthorization effort were considered by the Administration as part of the process to develop its "Superfund Reform Act of 1994" proposal.

Recommendation: Continue to assist tribes financially and technically and work to build response capacity among the tribes.

OERR should continue to use financial and technical assistance to help tribes undertake their own cleanup activities. Through the use of the Superfund Core program funding, OERR and the Regions will work with individual tribes in building this capacity; where this proves impractical, tribal consortia, with the approval of tribal governments, may be utilized. Tribes can apply for Core program funds, but they compete with States for the limited funds which are available on a Regional basis. OERR will examine options to encourage more tribal participation in the core program, which may include setting aside funds for Indian tribes.

These recommendations will assist OERR and OSWER in moving forward with implementation of the Environmental Justice Executive Order and gaining valuable experience in anticipation of a reauthorized Superfund law.

C. OIL POLLUTION ACT (OPA)

Background

Under authority of the Clean Water Act, as amended by the Oil Pollution Act of 1990, the Oil Program regulates prevention and response activities at facilities that could discharge oil. The universe of regulated facilities is large and diverse, with facilities located throughout the country in large cities, suburbs, Indian lands and in remote areas. Regulated facilities range widely from small "end users," such as those that store heating oil and motor fuel, to large refineries and tank farms that supply petroleum products to whole communities.

Issue: Disproportionate Exposure to Oil Contamination

A disproportionate share of oil storage facilities may be in or near communities with potential environmental justice concerns. Furthermore, many of these sites have leaked or spilled oil. When oil storage facilities leak, they may contaminate surface waters, ground water or soils in the community. Not only does this add to the cumulative risk due to multiple exposures, but it may pose particular problems for populations that rely on subsistence farming/gardening or fishing.

Issue: Clustering of Industries Around Oil Facilities

Oil storage facilities may be clustered with other industrial facilities which are sources of pollution. Thus, environmental justice communities near oil storage facilities may be exposed to multiple industrial sources of contamination.

1. SITE IDENTIFICATION.

Recommendation: Develop an approach to identify oil storage facilities near communities with environmental justice issues.

The Oil Program does not have a comprehensive list of the facilities it regulates. In 1991, it tried unsuccessfully to adopt a regulatory requirement that facilities "register" with EPA.

OSWER could make another attempt to impose this requirement, and thereby develop a comprehensive list of regulated facilities. By overlaying census data, the Oil Program could pinpoint facilities located in communities with environmental justice concerns and target them for identification. This would also enable OSWER to track new installations.

Even without this requirement, some progress can be made in identifying existing facilities. The Oil Program is currently planning a statistical survey of some 30,000 facilities. The survey data will be extrapolated to the nation as a whole, and is better linked to county census data. This will make it possible to characterize communities surrounding the surveyed facilities.

2 PRIORITIZATION EFFORTS.

Recommendation: Enhance outreach to communities with potential or actual environmental justice concerns.

Once characterized, specific outreach and regulatory activities could be targeted at facilities located in communities with environmental justice concerns.

Opportunities for outreach and education would include: 1) notification of and education about facility modifications, 2) job opportunities within the plant, 3) compliance history of the plant, including inspection and penalty history, 4) disclosure of environmental degradation within or beyond facility borders, such as notification of spills or leaks, 5) education about health risks posed by subsistence farming or fishing in the area, or other issues as appropriate and 6) methods of communicating community concerns to facilities. This proposal would require significant increase in resources and may be inviable in light of current program constraints.

Recommendation: Explore ways to target inspections and enforcement activities in communities with environmental justice concerns.

Certain regulatory processes could also be altered to better serve communities with environmental justice concerns, such as: 1) more fully considering environmental loading and sensitive populations in inspection and other enforcement decisions, 2) targeting inspections and other enforcement efforts on facilities in minority communities, and 3) requiring enhanced community participation.

D. UNDERGROUND STORAGE TANKS (UST)

Background

In 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks (USTs) by adding Subtitle I to the Resource Conservation and Recovery Act (RCRA), and in 1986 by section 205 of the Superfund Amendments and Reauthorization Act. Subtitle I required EPA to develop a comprehensive regulatory program for USTs. With these UST regulations, owners and

D. UNDERGROUND STORAGE TANKS (UST)

operators are required to meet four goals: prevent leaks and spills from occurring; monitor their tanks for leaks and spills; correct problems created by leaks and spills that are discovered; and make sure that the owners and operators of USTs can pay for correcting the problems created if their tanks leak.

The Superfund Amendments and Reauthorization Act of 1986 amended Subtitle I of RCRA to create the Leaking Underground Storage Tank (LUST) Trust Fund. All states but Florida, which has its own cleanup fund, have signed cooperative agreements and are allocated Trust Fund monies. The Trust Fund ensures protection of human health and the environment by helping States pay for the oversight of responsible party cleanup and for taking state action to cleanup petroleum releases from USTs when owners and operators are unknown, unwilling, or unable to accomplish the cleanup.

About 1.3 million petroleum USTs and 37,000 hazardous substance USTs are subject to federal regulations. Large petroleum companies, mid-size marketers, small "Mom and Pop" gasoline service stations, and convenience stores own motor fuel tanks. Other facilities that use USTs include public and service sectors, such as airports, schools, and transit authorities. To date, over 230,000 releases have been confirmed and EPA expects that number may grow to 400,000 over the next several years.

To manage the national program, the Office of Underground Storage Tanks adopted a decentralized model that empowers State and local programs. The national program provides technical support and assistance to States in streamlining their cleanup program and in finding mechanisms to enforce leak prevention requirements. This arrangement allows States to run programs that are tailored to the needs and demands of their own regulated communities, while EPA offers implementation support, including financial support, to States. EPA's national UST program is notable for its flexibility, focus on State customers, and emphasis on continuous program improvement.

Issue: Tracking and remediating confirmed releases does not currently consider environmental justice issues.

Major challenges for UST programs include ensuring that the large universe of regulated tanks meets all technical requirements for preventing and detecting leaks and that cleanups keep pace with the growing number of confirmed releases. These releases add to the multiple exposure problem experienced by many environmental justice communities. States that receive LUST Trust Fund money are required to develop priority ranking systems for sites requiring State-lead actions. Releases that threaten drinking water supplies or cause explosive vapors to accumulate in sewers or basements, for example, require emergency action and are addressed before sites that do not pose an immediate threat to human health and the environment. When all other ranking factors are equal, however, sites in environmental justice communities with multiple exposures should get priority attention. Ranking systems should consider environmental justice concerns as a qualitative factor.

D. UNDERGROUND STORAGE TANKS (UST)

Given that the UST program is largely implemented by State agencies and given the national program philosophy which emphasizes flexibility and avoids directing states, EPA must find ways to sensitize implementing agencies to environmental justice concerns and offer suggestions to States for addressing these concerns as they proceed with their UST compliance/enforcement and cleanup activities.

Recommendation: Provide guidance for State/local agencies on considering environmental justice as a qualitative factor in priority ranking systems for State-lead cleanup and enforcement activities.

Recommendation: Issue environmental justice brochure to States and regulated facilities.

Recommendation: Outreach to States, tribes and local agencies.

The Office of Underground Storage Tanks (OUST) could step up outreach to State and local agencies in an effort to influence priority ranking systems for State-lead cleanups and State compliance and enforcement strategies. Thus, the office could prepare materials such as fact sheets that would be routinely included in information packages distributed to State and local agencies. The material would discuss environmental justice concerns and suggest ways to address theses issues in program plans and strategies. This would require minimal additional resources since much of OUST's work involves preparation and dissemination of outreach materials. Regional all-States meetings and national conferences would also serve as useful forums in which to explore these issues.

Recommendation: Incorporate environmental justice criteria into UST State grant and cooperative agreements.

OUST could incorporate environmental justice criteria in UST grant and cooperative agreements entered into with States. Specific clauses could require States to consider environmental justice as they develop outreach materials and develop their cleanup, compliance and enforcement strategies. Depending on the perceived value of these grants and the ability to tie the conditions to the goals of the enabling legislation, OUST may wish to be more or less prescriptive in crafting the specific language.

Recommendation: Encourage use of minority contractors and consultants for State-lead cleanups.

OUST could encourage the use of local minority contractors and consultants for State-lead cleanups. In this regard, OUST could ask States to include qualified minority contractors and consultants on lists distributed to the regulated community.

E. CHEMICAL EMERGENCY PREVENTION AND PREPAREDNESS OFFICE (CEPPO)

Recommendation: Encourage minority contractors to apply for certification and provide grant to National Association of Minority Contractors

Furthermore, in States with contractor certification programs, OUST could provide outreach materials to minority contractors and encourage them to apply for certification. In conjunction with this effort, OUST would continue to provide grant money from sources other than the National Association of Minority Contractors for training of minority firms in proper tank installation and removal and in the use of alternative remediation technologies.

Recommendation: Continue to identify existing UST's including hazardous substance tanks and abandoned tanks on Indian Lands.

EPA should continue to identify abandoned tanks on Native-American lands, drawing substantially on the work of the circuit riders and where necessary, by using other Agency resources.

Issue: Develop tribal capacity and program implementation in Indian Country

Since Subtitle I is part of RCRA, OUST faces the same issues regarding improving it's tribal policies as OSW faces in the RCRA programs it implements. Due to the limited number of tanks on Tribal Lands and the disparity in tribal capabilities and interest in addressing an UST Regulatory program, work needs to be done to find innovative ways of financing and implementing a program on Tribal Lands, with tribes and EPA as partners.

Recommendation: Find ways to provide funds and technical assistance to tribal governments.

EPA and OUST should work towards obtaining the ability to treat tribes in the same manner as States for authorization purposes. Efforts should be made to continue to find viable mechanisms to provide sources of revenue to tribal governments that have the desire and capacity to administer their own program.

E. CHEMICAL EMERGENCY PREVENTION AND PREPAREDNESS OFFICE (CEPPO)

Background

The Chemical Emergency Preparedness and Prevention Office (CEPPO) was established by EPA in December 1984. CEPPO has three goals: (1) to reduce the risks to the public and the environment from accidental releases of hazardous materials,

E. CHEMICAL EMERGENCY PREVENTION AND PREPAREDNESS OFFICE (CEPPO)

through regulatory and nonregulatory programs, promotion of a community's right to know, public education, and research; (2) to develop and maintain within EPA an infrastructure for responding to emergencies involving hazardous materials and environmental emergencies and to coordinate and continuously improve the existing federal systems for emergency preparedness and response to such events; and (3) to develop and improve the capabilities of state, tribal, and local governments, as well as industry and other parties concerned with preparedness, prevention, and response.

CEPPO is responsible for federal implementation of Sections 301-312 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA -- also know as Title III of the Superfund Amendments and Reauthorization Act of 1986 -- SARA Title III), the accidental release provisions of the Clean Air Act (CAA), and the Hazardous Materials portion of the Federal Response Plan. CEPPO also plays a support role in the Oil Pollution Act, and the Hazardous Materials Transportation Safety Act (HMTSA).

- EPCRA establishes State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) that use information provided by facilities to develop a comprehensive emergency plan. There are over 3000 LEPCs. Indian Tribes can establish their own commissions (TERCs) or work with the SERC and neighboring LEPCs. EPCRA gives citizens the right to know about chemicals in their communities -- the amount of chemicals present, their properties and any potential health effects, as well as information about accidental and routine releases.

- Under CAA, facilities are required to provide Risk Management Plans. These plans contain information on how facilities manage risks posed by substances listed by EPA. Additionally, these plans indicate how facilities are minimizing risks to the community by preventing accidental releases of hazardous substances. Facilities must provide the risk management plan to states and local emergency planners and make the plan available to the public.

- CEPPO administers the emergency preparedness, response and coordinating mechanisms for national and international major hazardous materials spills and releases. These efforts are accomplished primarily through the National Incident Coordination Team (NICT), the US National Response Team (NRT), and Emergency Support Function #10 of the Federal Response Plan.

CEPPO provides training, grants, and technical assistance to SERCs, TERCs, and LEPCs, as well as to industry to enhance their preparedness, prevention, and response activities. CEPPO also provides tools (including CAMEO and LandView) to assist communities to manage and use Community Right-to-Know information.

E. CHEMICAL EMERGENCY PREVENTION AND PREPAREDNESS OFFICE (CEPPO)

Issue: Environmental justice communities' may have limited knowledge of information and rights under CEPPO.

The major environmental justice issues related to CEPPO programs are the ability of economically disadvantaged and minority citizens to receive, understand, and use the information available to them under EPCRA and the CAA. Specifically, even though these citizens may be at substantial risk from chemicals near them in the community and in the workplace, they may not know that they have a right to information about the chemicals, how to get the information, and/or how to participate in the work of LEPCs as they prepare emergency plans to protect human life and the environment. Similarly, LEPCs in poor and minority areas -- even if they are well intentioned and committed to implementing EPCRA and the CAA -- may not have the resources to manage information, conduct a hazards analysis, develop an emergency plan, and obtain the appropriate response equipment and personnel training.

CEPPO has already taken significant steps to address environmental justice issues. First, CEPPO, working with NOAA, has developed the software program CAMEO, which enables local emergency planning committees (LEPCs) to manage EPCRA information about chemicals, list contacts during an emergency, and conduct a hazards analysis. More recently, CEPPO has developed the software package LandView to become part of the CAMEO system, which enables users to overlay census block information onto computer-generated maps of specific geographic areas. Using this program, community planners can target low income and minority communities for the type of outreach needed to ensure they are adequately informed about the chemical risks confronting their communities and have an opportunity to participate in emergency planning efforts.

Since its inception, CEPPO has emphasized EPCRA's mandate that LEPCs have a broad-based membership. It is CEPPO's position that emergency planning efforts should include ordinary citizens whose lives may be at risk.

CEPPO has used its grant program to emphasize environmental justice. For example, one of the criteria used to evaluate grant applications is whether they include environmental justice considerations. Thus, of the 26 grants issued by CEPPO in FY93, two went to Indian Tribes and nine (totaling $400,000) went to areas burdened by multiple environmental stresses.

CEPPO has arranged a program whereby representatives from more affluent and better developed LEPCs visit and provide assistance to less developed LEPCs.

In developing regulations under CAA, CEPPO is attempting to ensure that facilities provide risk management plan information in a format that can be used by LEPCs and understood by ordinary citizens, especially disadvantaged and minority populations.

E. CHEMICAL EMERGENCY PREVENTION AND PREPAREDNESS OFFICE (CEPPO)

CEPPO is currently undertaking a wide-ranging effort to improve the effectiveness of LEPCs. It plans to identify environmental justice issues and take appropriate steps to implement suggested improvements.

In preparing the guidance for the Clean Air Act accidental release provisions, CEPPO will seek to ensure that implementation measures incorporate environmental justice concerns.

CEPPO will apply useful prevention tools, such as chemical safety audits, in areas where environmental justice concerns are prevalent.

Recommendation: Send a letter to all Governors regarding efforts EPA is making on environmental justice issues and asking them to support us in our effort.

EPA's Administrator should send a letter to all Governors describing EPA's commitment to environmental justice and inviting States to support OSWER by encouraging State Emergency Response Committees (SERCs) to appoint representatives to Local Emergency Planning Commissions (LEPCs) which reflect all populations of the local area. EPA could also provide guidance to States regarding the composition and role of SERCs.

Recommendation: Work with LEPCs and TERCs to ensure implementation of EPA's environmental justice policies.

Looking to the future, CEPPO should continue to focus on helping communities with environmental justice concerns manage and understand Community Right-to-Know information and to campaign for minority representation on LEPCs. Furthermore, CEPPO should work with LEPCs and TERCs to ensure adequate implementation of the Agency's environmental justice policies. CEPPO should also promote use of CAMEO and LandView and explore ways of making it more available to LEPCs, TERCs and other local institutions.

Recommendation: Use the chemical safety audit program to promote environmental justice.

As part of CEPPO's accident prevention program, chemical safety audits are conducted at facilities where chemicals are stored, used or produced. The audit includes a review of the facilities safety procedures, management practices, contingency plans for worker protection and coordination with community emergency responders. The audit team uses a standard procedure to conduct the audit.

CEPPO and the Regions should give appropriate attention to auditing facilities located in areas with minority populations and low-income populations. CEPPO should include in its standard audit procedure consideration of environmental justice

issues, such as ensuring that the facility's contingency plan includes provisions to protect nearby residents in the event of a chemical emergency.

Recommendation: Work with affected environmental justice communities to explain community right-to-know information.

CEPPO will work with economically disadvantaged and minority citizens to receive, understand, and use the information available to them under EPCRA and the CAA. Specifically, they need to know that they have a right to information about the chemicals, how to get the information, and/or how to participate in the work of LEPCs as they prepare emergency plans to protect human life and the environment.

Recommendation: Expand use of demographic systems.

CEPPO will lead OSWER's effort to work with other EPA offices and the Regions to develop compatible Agency-wide approaches to GIS, which makes the LandView system a viable option when choosing the appropriate GIS or Landview systems based on the needs of the analysis. This topic was discussed in the cross-cutting section of this report.

F. TECHNOLOGY INNOVATION OFFICE (TIO)

Background

The Technology Innovation Office (TIO) advocates the broader use of innovative treatment technologies for the remediation of soil and ground water at contaminated sites. The office seeks to remove regulatory and institutional impediments and provide critical technology and market information to potential users and suppliers of new technology. The scope of the mission extends to Superfund sites, corrective action sites under RCRA, and underground storage tank clean-ups. TIO influences the use of innovative technologies by working with individuals and groups both inside and outside EPA.

Innovative remediation technologies are defined as those which lack sufficient performance and cost information for routine use. They include a variety of thermal methods, bioremediation, physical/chemical techniques and in-situ ground water technologies. Innovative technologies do not include incineration, conventional stabilization, land disposal technologies, or conventional pump and treatment of ground water.

F. TECHNOLOGY INNOVATION OFFICE (TIO)

Issue: Treatment versus containment remedies.

Environmental justice concerns have not focused directly on innovative technologies. However, there are issues related to the treatment versus the containment of waste. Treatment is generally considered as providing a permanent remedy while containment entails efforts to isolate contamination from the environment. One of the environmental justice goals--economic redevelopment--is directly related to cleaning-up urban land to satisfactory levels which allow productive economic re-use. This is generally more consistent with the treatment objective. In addition, the Tribal Outreach Initiative on CERCLA Reauthorization expressed a preference for neutralization or complete removal over capping or containment, and promotes the use of new technology when remedies are selected.

Recommendation: Encourage the development and commercialization of innovative treatment technologies.

The objective of cleaning-up sites for reuse by treatment is best served through the development and commercialization of less costly and more effective innovative alternatives to conventional technologies and through empowering communities to participate more fully in the remedy selection process.

Additionally, environmental justice activists generally advocate treatment versus containment of hazardous waste. TIO is continually exploring new treatment technologies that may prove more cost effective in the future. Once again, these efforts complement the long-term interests of communities with environmental justice concerns.

Recommendation: Continue efforts with SBA to promote small businesses that focus on environmental technologies.

TIO's outreach efforts can also service environmental justice needs. TIO and the Office of Research and Development (ORD), on behalf of the Agency's Innovative Technology Council efforts, have entered into a partnership with the Small Business Administration (SBA) on new technologies and EPA programs, regulations, and policies at Small Business Development Center offices around the country. The goals are to promote the formation of small businesses that focus on environmental technologies; assist technology developers to begin and enhance their business ventures; assist potential customers of new technologies in identifying alternative technologies and create incentives to purchase environmentally superior technologies; and to assist small businesses with compliance by making regulatory information available for business planning. This effort could help foster minority business in distressed areas, thereby promoting economic redevelopment.

TIO has developed numerous publications that describe technologies, identify their applicability to clean-up problems, and identify business opportunities for clean-up. Some examples include: a series of Citizen Guides to Innovative Treatment Technologies in both English and Spanish; and the VISITT database, which provides

vendor supplied information on innovative technologies. VISITT is being modified to designate disadvantaged and minority-owned businesses. Finally, OSWER should further commit to providing information on new treatment technologies at environmental justice sites.

Recommendation: Revise and expand environmental justice training module.

The Environmental Justice module which is currently included in the Public Participation training course at EPA's CERCLA Education Center will be revised and expanded. The module will be added to other training courses where appropriate.

Recommendation: Conduct demographics analysis of a representative sample of the 263 Superfund NPL sites where innovative technology was selected as a remedy.

Demographic profiles of the communities surrounding these Superfund National Priority List (NPL) sites has been generated. TIO should analyze the relationship, if any, of the innovative technology selected at these sites and the demographic information describing the communities surrounding the sites.

G. FEDERAL FACILITIES

Background

CERCLA Section 120(a) requires that Federal facilities comply with CERCLA, both substantively and procedurally, to the same extent as any nongovernment entity, including liability under Section 107 of CERCLA. CERCLA Section 120 also makes State laws concerning the removal and remedial actions applicable to cleanups of Federal facilities not on the NPL. For Federal facilities or the NPL, CERCLA section 120 establishes deadlines for completion of the various steps in the cleanup process. CERCLA Section 120 also requires that federal agencies with facilities on the NPL enter into interagency agreements with the EPA for selecting the remedial action establishing a schedule for completing the action. These IAGs generally are enforceable under CERCLA's citizen suit provisions (Section 310). Generally, response actions at Federal facilities must comply with State cleanup standards if they are more stringent than Federal standards.

SARA Title III: The Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) establishes requirements for Federal, State and local governments and industry regarding emergency planning and reporting on hazardous and toxic chemicals. It is intended to encourage and support emergency planning efforts at the State and local level and provide community residents and local governments with information concerning potential chemical hazards in their communities. While not subject to EPCRA, Federal agencies are required, by a recent Presidential Executive

G. FEDERAL FACILITIES

Order, to comply with the requirements of Title III. In addition, contractors operating Government-Owned facilities are subject to Title III to the same extent as any other operator and, therefore, are statutorily required to comply with the full range of requirements under the Emergency Planning and Community Right-to-Know Act.

Federal agencies generally must comply with all provisions of Federal environmental statutes and regulations as well as all applicable State and local requirements. In addition, Presidential Executive Orders stress the mandate for Federal facilities to fully comply with environmental requirements and establish procedures for ensuring that this is accomplished. Executive Order 12088 states that all Executive Branch agencies are "responsible for compliance with applicable pollution control standards" which are defined in the Executive Order as "the same substantive, procedural and other requirements that would apply to a private person."

Recommendation: Utilize the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC) for cooperative environmental justice decision-making between Federal agencies.

Several of the issues identified by communities with environmental justice concerns, e.g., holistic remedies for multiple and cumulative exposures, are applicable at Federal facility sites. Lessons learned from EPA activities to date can be shared with other Federal agencies in order to proactively prevent environmental justice concerns, as well as, avoid unnecessary delays and duplication of effort among Federal agencies. The FFERDC provides for such exchange and a mechanism for joint recommendations. EPA will continue to play a major leadership role in FFERDC's effort to better incorporate environmental justice into Federal facility priority-setting and stakeholder involvement.

Recommendation: Evaluate all base closing activities for environmental justice implications.

These activities are ideally suited for addressing concerns raised by communities with environmental justice concerns and intersect with many ongoing OSWER initiatives, such as the economic redevelopment activity. Environmental justice community representatives have asked that the base closure redevelopment process be used to provide affordable housing, accessible health facilities, available training facilities, and sustainable development in their communities.

Recommendation: Evaluate and develop policy on cleanup priorities of Federal sites on Indian lands.

There are a number of sites located on Indian lands that originated from activities of Federal agencies or activities authorized by Federal laws (e.g., mining laws). In cooperation with other offices that focus on tribal issues, OSWER should evaluate and develop policy on tribal roles in the Federal facility cleanup process.

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