



U.S. ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF INSPECTOR GENERAL

EXHIBIT 9

Catalyst for Improving the Environment

Special Report

Investigation of Allegations Concerning Environmental Justice Issues in EPA Region 4

Report No. 10-N-0145

June 14, 2010

Abbreviations

ADEM	Alabama Department of Environmental Management
EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General
TVA	Tennessee Valley Authority



At a Glance

Catalyst for Improving the Environment

Why We Did This Review

On October 27, 2009, 16 allegations involving environmental justice issues were brought to the attention of the Acting Regional Administrator, U.S. Environmental Protection Agency (EPA) Region 4, Atlanta, Georgia, with a request that the Office of Inspector General (OIG) investigate these matters.

Background

EPA Administrator Lisa Jackson has made environmental justice one of her top seven priorities and has created an office to promote environmental justice for affected groups and communities throughout the United States. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

For further information, contact our Office of Congressional, Public Affairs and Management at (202) 566-2391.

To view the full report, click on the following link:
www.epa.gov/oig/reports/2010/20100614-10-N-0145.pdf

Investigation of Allegations Concerning Environmental Justice Issues in EPA Region 4

What We Found

The OIG's Office of Investigations undertook a detailed review of the allegations to determine whether the OIG had investigative jurisdiction in terms of EPA contracts, assistance agreements, programs, or personnel involvement. Using these criteria, we determined that five allegations merited further investigative review. Our further investigative review of the five allegations disclosed no evidence that EPA contracts, assistance agreements, or programs were involved, or that an EPA employee committed any actionable offense(s). In instances in which we determined that applicable violations were outside of the OIG's jurisdiction, we made a professional referral to the appropriate investigative entity. In addition, some of the programmatic issues raised may merit further review and have been forwarded to the OIG's Office of Program Evaluation.

Executive Order 12898, *Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*, directs federal agencies to make achieving environmental justice part of its mission to the greatest extent practicable and permitted by law. The Executive Order states that it is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Consequently there are no enforcement provisions for environmental justice guidelines.



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

OFFICE OF
INSPECTOR GENERAL

June 14, 2010

MEMORANDUM

SUBJECT: Investigation of Allegations Concerning
Environmental Justice Issues in EPA Region 4
Report No. 10-N-0145

FROM: Bill A. Roderick 
Acting Inspector General

TO: A. Stanley Meiburg
Acting Regional Administrator, Region 4

This is a report on the subject investigation conducted by the Office of Inspector General (OIG) of the U.S. Environmental Protection Agency (EPA). This report represents the opinion of the OIG and does not represent the final EPA position.

Because this report contains no recommendations, you are not required to respond to this report. We have no objections to the further release of this report to the public. This report will be available at <http://www.epa.gov/oig>.

If you or your staff have any questions regarding this report, please contact me at (202) 566-0847 or Associate Deputy Inspector General and Counsel Mark Bialek at (202) 566-0861.

Introduction

EPA Administrator Lisa Jackson has made environmental justice one of her top seven priorities and has created an office to promote environmental justice for affected groups and communities throughout the United States. Environmental justice is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.

On October 27, 2009, 16 allegations involving environmental justice issues were brought to the attention of the Acting Regional Administrator, U.S. Environmental Protection Agency (EPA) Region 4, Atlanta, Georgia, with a request that the Office of Inspector General (OIG) investigate these matters.

According to the Inspector General Act of 1978, as amended, the OIG has broad jurisdiction to conduct audits and investigations of EPA programs and operations. The OIG's Office of Investigations undertook a detailed review of the allegations to determine whether the OIG had investigative jurisdiction in terms of EPA contracts, assistance agreements, programs, or personnel involvement.

The OIG determined that five allegations merited further investigative review. We performed our investigative review from October 27, 2009, through April 27, 2010, focusing on allegations of environmental justice issues in EPA Region 4. Specifically, we interviewed the complainants, numerous witnesses, and appropriate government personnel. In addition, we reviewed pertinent correspondence and other documentation.

Results of Review

Our investigative review of the five allegations disclosed no evidence that EPA contracts, assistance agreements, or programs were involved, or that an EPA employee committed any actionable offense(s). In instances in which we determined that applicable violations were outside of the OIG's jurisdiction, we made a professional referral to the appropriate investigative entity for action. In our opinion, adequately enforcing environmental justice guidelines and combating discrimination is difficult because pertinent federal criminal statutes and civil rights legislation in this area have not been fully developed. A summary of what we found on the five allegations reviewed follows.

Coal Ash Disposal, Perry County, Alabama

It was alleged that EPA Region 4 officials failed to properly execute their official duties by not appropriately considering the environmental justice concerns and potential health hazards associated with the disposal of coal ash in the Arrowhead landfill.

The requirement and procedures for permitting solid waste disposal facilities are under the authority of an approved State government program – in this case, the Alabama Department of Environmental Management (ADEM). Accordingly, EPA was not involved in the process and does not retain separate authority for this program, negating any federal investigative jurisdiction.

ADEM granted the permit for the Tennessee Valley Authority (TVA) to dispose of coal ash in the Arrowhead landfill. TVA's selection of the Arrowhead landfill for the disposal of coal ash met or exceeded all of the criteria established under the Administrative Order of Consent between EPA and TVA. Specifically, the Arrowhead landfill is constructed with a compacted clay composite liner, a polyethylene geomembrane liner, a leachate collection system, a protective cover, and a 100-foot buffer that surrounds the property. Landfill personnel conduct regular groundwater monitoring, and ADEM regularly inspects the landfill.

Our evaluation of this allegation disclosed no wrongdoing by EPA employees, and we discovered no other viable criminal, civil, or administrative violations. Accordingly, this complaint was closed.

Chemical Contamination, McIntosh, Alabama

It was alleged that Olin Corporation violated environmental laws by misrepresenting the amount of hazardous waste (mercury) stored at its facility, as well as misrepresenting the amount being shipped offsite. In addition, it was alleged that Olin misrepresented the danger associated with piles of mercury-laden soil (brine wastes or well sands) on the Olin property and that Olin stated that the mercury is not leaching into and contaminating the soil and ground water. It was further alleged that EPA and ADEM are complicit in the misrepresentation.

A full investigation was opened and the complainant provided a total of eight detailed allegations in this matter. Seven of these allegations dealt with specific soil sample analyses and test reports. Our investigation determined that these seven allegations were unfounded. The eighth allegation, regarding the ownership interest in certain property, is not within the OIG's investigative jurisdiction. Accordingly, this investigation was closed.

Chemical Contamination, Columbus, Mississippi

It was alleged that the site of a faith-based institution in Columbus, Mississippi, had been contaminated by creosote from Kerr-McGee Corporation since August 1999. It was also alleged that false analytical data was submitted regarding the contamination at this site, and that an unknown substance was illegally disposed of near this site.

After an evaluation of this complaint, we determined that the contaminated areas are undergoing remediation and that current engineering controls are designed to minimize the potential for human exposure to contamination. In addition, Kerr-McGee offered the faith-based institution a \$4.5 million settlement. While we noted conflicting sampling results, we found that the alleged falsified data were never submitted to EPA, negating any OIG investigative jurisdiction. We referred the allegation of unauthorized disposal of an unknown substance to the EPA Criminal Investigation Division. No EPA employee or financial resource was involved, negating EPA OIG investigative jurisdiction in this part of the allegation. Accordingly, this complaint was closed.

Landfill Contamination, Dickson, Tennessee

It was alleged that EPA was mishandling an environmental justice issue by advising an African American family that its well water was safe to drink, while advising white families that their

wells were unsafe and were contaminated with trichloroethylene from the Dickson County landfill.

An attorney for the complainant was concerned that any investigation into this matter might harm the complainant's ongoing civil actions and therefore did not provide information to support the allegation. Accordingly, this complaint was closed.

Ground Water Contamination, Tallevast, Florida

It was alleged that chemicals leached into the ground water from the site of a former precision-weapons manufacturing facility, and that residents did not learn of the contamination from either the manufacturer or a governmental entity for approximately 3 years.

In evaluating the complaint, we determined that the Florida Department of Environmental Protection would assume responsibility for the site. Accordingly, there is no OIG investigative jurisdiction because EPA is not involved at the site. We referred all information provided to us to the State of Florida OIG for investigation. Accordingly, this complaint was closed.

Prior Reports Issued by OIG on Environmental Justice

Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, was signed on February 11, 1994. The Executive Order directs all federal agencies to implement environmental justice into its programs as follows: "To the greatest extent practicable and permitted by law . . . each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." EPA OIG issued two prior reports on environmental justice:

- *EPA Needs to Conduct Environmental Justice Reviews of Its Programs, Policies, and Activities* (Report No. 2006-P-00034, September 18, 2006, <http://www.epa.gov/oig/reports/2006/20060918-2006-P-00034.pdf>)
- *EPA Needs to Consistently Implement the Intent of the Executive Order on Environmental Justice* (Report No. 2004-P-00007, March 1, 2004, <http://www.epa.gov/oig/reports/2004/20040301-2004-P-00007.pdf>).

In the 2006 report, the OIG found that EPA senior management had not sufficiently directed program and regional offices to conduct environmental justice reviews in accordance with Executive Order 12898. OIG conducted a survey that showed the majority of respondents reported their programs or offices had not performed environmental justice reviews. The respondents expressed a need for further guidance to conduct reviews, including protocols, a framework, or additional directions. OIG concluded that until these program and regional offices performed environmental justice reviews, the Agency could not determine whether its programs cause disproportionately high and adverse human health or environmental effects on minority and low-income populations.

We made four recommendations to EPA to address these issues. We recommended that EPA: (1) require program and regional offices to determine where environmental justice reviews are needed and establish a plan to complete them; (2) ensure that environmental justice reviews determine whether EPA programs, policies, and activities may have a disproportionately high and adverse health or environmental impact on minority and low-income populations; (3) develop specific environmental justice review guidance that includes protocols, a framework, or directions; and (4) designate a responsible office to compile the results of environmental justice reviews and make recommendations to EPA senior leadership. EPA agreed with our recommendations and established milestones for completing those actions. In January 2008, EPA reported completing each corrective action in response to the recommendations. Corrective actions included the creation of guidance for conducting environmental justice reviews and the formation of a workgroup representing programs and regions to develop environmental justice action plans.

In our 2004 review, we reported on how EPA was integrating environmental justice into its operations. We concluded that EPA had not fully implemented the Executive Order and was not consistently integrating environmental justice into its day-to-day operations at that time. We found that EPA had not identified minority and low-income communities or defined the term “disproportionately impacted.” Moreover, in 2001, EPA restated its commitment to environmental justice in a manner that did not emphasize minority and low-income populations, which we believed was the intent of the Order. In the absence of environmental justice definitions, criteria, or standards from EPA, many regional and program offices individually took steps to implement environmental justice policies. The result was inconsistency in determining environmental justice communities across EPA regions and programs. Thus, the implementation of environmental justice actions was dependent, in part, on where a person lived.

We made 12 recommendations to EPA to address the issues we raised. Four key recommendations were: (1) reaffirm the Executive Order as a priority; (2) establish specific timeframes for developing definitions, goals, and measurements; (3) develop a comprehensive strategic plan; and (4) determine if adequate resources are being applied to implement environmental justice. EPA disagreed with 11 of the 12 recommendations. EPA did agree to perform a comprehensive study of program and regional offices’ funding and staffing for environmental justice to ensure that adequate resources are available to fully implement its environmental justice plans. In May 2004, EPA issued its report, *Environmental Justice Program Comprehensive Management Study*, conducted by a contractor.

Conclusion

Executive Order 12898 directs federal agencies to make achieving environmental justice part of its mission to the greatest extent practicable and permitted by law. The Executive Order states that it is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Consequently there are no enforcement provisions for environmental justice guidelines.

Appendix A

Distribution

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