US EPA ARCHIVE DOCUMENT

THE U.S. ENVIRONMENTAL PROTECTION AGENCY
DRAFT REVISED (EPA) GUIDANCE
AND DRAFT RECIPIENTS GUIDANCE (6/16/00)

SUBMITTED BY CLEAN AIR COUNCIL
JOSEPH MINOTT, ESQUIRE

AUGUST 1, 2000

Founded in 1967, Clean Air Council is a Pennsylvania-based, membership non-profit organization working through a combination of public education, community advocacy, and oversight of government enforcement of environmental laws to ensure that all can live in a healthy environment. Clean Air Council has offices in Philadelphia, Harrisburg, and Wilmington, Delaware.

On June 16, 2000, EPA issued two draft Title VI documents concerning environmental civil rights (Environmental Justice). These guidances are designed to provide recipients of EPA financial assistance with alternative approaches and activities to address potential Title VI concerns. Unfortunately, these guidance documents complicate the complaint procedure and prevent many communities from filing complaints. EPA has failed to develop a simple transparent guidance that is easily replicated and designed to protect minority communities with poor health. EPA's *Draft Revised Guidance* does not adhere to recent research reports or current public outcry. It also does not address serious public health concerns or protect minority communities against civil right violations. In order to protect minority communities EPA's *Draft Revised Guidance* must be withdrawn.

Title VI of the Civil Rights Act of 1964 prohibits recipients of federal financial assistance from adversely discriminating against persons on account of race, color, or

national origin; 42 U.S.C. & 2000d et seq. The EPA annually provides the 50 states (and their local subsidiaries) with very substantial financial assistance for the operation of their respective environmental protection programs. Unfortunately, EPA has never investigated the Title VI program or the activities of any state in respect to environmental civil rights. In turn, the U.S. EPA has never found a Title VI environmental civil rights violation among any of the more than 50 administrative civil rights complaints filed with the EPA. Such a record is unconscionable. This evidence stands in sharp contrast to numerous research reports, both private and public, that reveal unfair and unequal concentration of polluting facilities such as waste treatment and waste disposal facilities in close proximity to minority communities. These waste facilities are unwanted and universally opposed by all communities, minority as well as white.

In response to these pressing public health concerns, EPA has published for comment two interrelated guides: (1) Draft Revised Guidance For Investigating Title VI Administrative Complaints Challenging Permits (June 2000) (*Draft EPA Guidance*) and (2) Draft Title VI Guidance For EPA Assistance Recipients Administering Environmental Permitting Programs (June, 2000) (*Draft Recipient Guidance*). These guidances are complex and uncertain. Rather than addressing public concerns regarding distribution of waste treatment and waste disposal facilities, the guidances pose severe enforcement limitations on EPA's authority. They also strongly suggest that the meaningful involvement of a minority community in environmental civil rights matters can only occur prior to the issuance of a permit by a state environmental protection department. The guidances will not be understood or accepted by affected communities, particularly minority communities that already suffer from significantly disparate poor-

public health. As a result, most minority communities will choose not to file complaints due to the amount, detail, and complexity of the information to be provided.

The method that EPA used to draft these guidances also raises a number of important questions. Most importantly, EPA has never suggested that a Title VI investigation should include the existing public health or the comparative public health of an affected community. EPA has neglected public comment and scientific studies. EPA has received many letters of support for the adoption of a guidance based on comparative public health from representatives of public and private organizations. EPA must finally heed this advice and produce a standard that takes into account important existing public health concerns and the comparative public health of the affected communities.

Clean Air Council believes that it should be a violation of Title VI environmental civil rights to grant a pollution control permit for a facility that would be located in a minority community that presently suffers substantially disparate poor public health. The introduction of a pollution releasing facility into such a community will reduce the quality of that community's environment, and adversely affect the public health of that community, thereby increasing the disparity of the community's public health with respect to the other communities in the county or state. EPA's proposal is not a step in the right direction. EPA's *Draft Revised Guidance* should be withdrawn and replaced by a plan that allows minority communities to protect their endangered environments.