

US EPA ARCHIVE DOCUMENT



People Organized In Defense of Earth and her Resources

August 25, 2000

Honorable Carol Browner
Administrator
U.S. Environmental Protection Agency
401 M. Street
Washington, DC 20460

Anne Goode, Director
Office of Civil Rights (1201A)
US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Comments on Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits and Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs

Dear Administrator Browner and Ms. Goode:

On behalf of the PODER (People Organized in Defense of Earth and her Resources) we demand that EPA withdraw the Title VI Guidance (Guidance) and begin again. PODER has offered EPA our input for many years on civil rights in general and on the Guidance but the Guidance does not reflect our input.

Title VI of the Civil Rights Act of 1964 has been the law of the land for almost 36 years; EPA's regulations implementing Title VI are more than 25 years old. Title VI is not a new requirement that EPA is imposing on grant recipients; recipients of EPA financial assistance have always been required to comply with Title VI.

PODER along with two community groups has filed two Title VI complaints. Our first complaint was filed in 1992 against TNRCC and the City of Austin. The City of Austin approved a special ordinance that allowed Tokyo Electron to by-pass normal development process and TNRCC allowed Tokyo electron to withdraw air permit application and subsequently issued a series of standard exemptions to construct essentially the same facility. The community was already heavily burden with such facilities as Advanced Micro Devices, SEMATECH and Wilson Oxygen. East Austin has a disproportionate amount of industries and industrial zoning. Our second complaint was filed in March 1999, against the City of Austin for failing to comply with a resolution passed in 1995 that outline a plan for closure of a power plant that was sited in a predominantly Latino community in the late 1960's. The City failed to adhere to the plan to shut down two of the plants four generators at the end of 1998. The Holly Power Plant emits harmful particulates into the air from fuel oil and natural gas combustion and is the largest stationary source of NOx in all of Travis County. Census data indicates that 85% of residents living near the plant are Latinos.



In the Draft Revised Guidance, EPA has made the policy decision to hurt the civil rights complainant and help the civil rights violator. First, EPA acts as though benefits and burdens are not systematically distributed in unequal fashion. It sets up an extremely burdensome process to determine whether, in any particular case, a community of color is being adversely affected by an environmental, social, cultural, or economic insult- when in most cases, these facilities are not present in hundreds of white communities.

Second, EPA acts as if “benefits” can somehow “justify” discrimination. We must not allow EPA to justify a decision that has a discriminatory impact by pointing to the polluter’s economic benefit to the local community. Our communities have endured agency decisions to trade away our health for “economic benefits” for years, with disastrous consequences.

Third, EPA proposes to approve discriminatory effects it finds if recipients come up with plans to “mitigate” but not eliminate, those effects. EPA must acknowledge that Civil Rights enforcement must have as its goal the prevention and elimination of discrimination.

Fourth, EPA says it will dismiss Title VI complaints in communities with Area Specific Agreements, or ASAs, which are compacts among states, industry, and some local residents to allow certain types of development in exchange for pollution reductions. ASAs would allow industry to set up front groups to join local agreements, thus precluding actual community residents from filing Title VI complaints. EPA is saying that if there is an ASA, EPA won’t even determine whether individual complaints have validity.

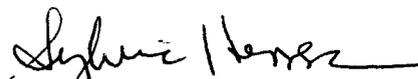
The Guidance is a testament to the lack of commitment to civil rights enforcement at EPA. There is not credible civil rights enforcement threat in this Guidance, which makes it meaningless.

Again, the Guidance is fatally flawed in so many ways, each of which penalizes the communities suffering civil rights violations and benefits the civil rights violators, we request that the Guidance be withdrawn and discarded. We request that EPA begin again the process of formulating a Guidance, this time with the goal of enforcing civil rights.

Sincerely



Susana Almanza
Director



Dr. Sylvia Herrera
Health Coordinator