

US EPA ARCHIVE DOCUMENT

ENVIRONMENTAL DEFENSE

August 28, 2000

BY EMAIL AND FACSIMILE TRANSMISSION;
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Title VI Guidance Comments

U.S. Environmental Protection Agency

Office of Civil Rights (1201A)

Attn: Ann E. Goode, Director

1200 Pennsylvania Avenue NW

Washington, D.C. 20460

Transmitted by email to: civilrights@epa.gov

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

Dear Ms. Goode:

These comments cover both of the following draft documents:

- a) EPA's *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs*, and
- b) EPA's *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits*,

because the two documents reference each other and address the same substantive information. For convenience, both documents collectively are referred to below as "draft Guidance." These comments are submitted on behalf of Environmental Defense, a national, not-for-profit organization dedicated to protecting the environmental rights of all people, including the right to clean air, clean water, healthy food, and flourishing ecosystems. Over 300,000 Environmental Defense members live in the United States.

Environmental Defense strongly supports the issuance of EPA Guidance on Title VI compliance. The public has a right to know the potential civil rights impacts of agency actions on communities of color and low-income communities. Affected communities and agencies also benefit from predictability in the process that is used to assess pollution control permits. EPA Title VI Guidance can help to provide such predictability. For example, the glossary of defined terms in the draft Guidance provides common ground for community members, recipients and other interested parties to initiate a dialogue regarding compliance with EPA's Title VI regulations.

Specific areas of the draft Guidance could be improved and in present form raise concerns about clarity and effectiveness which are described below. Our comments include recommendations for specific improvements.

1. The Draft Guidance fails to provide a set timeline to complete Title VI Investigations.

Regarding EPA's response to administrative complaints, the draft Guidance states that the Office of Civil Rights "*intends* to promptly investigate all Title VI complaints that satisfy the jurisdictional criteria." (Emphasis added.) It is not clear from the draft Guidance how long EPA will take, or expects to take, to investigate a new Title VI administrative complaint. In addition, no provision is made for the administrative complaints already pending in EPA's Office of Civil Rights, many of which have been pending for years.¹ In light of the approximately 50 complaints still awaiting EPA investigation, the final Guidance should provide complainants and recipients with a more concrete time commitment from EPA, *i.e.*, six to eight months, so that the public can rely upon timely and responsive Title VI investigation.

2. No administrative appeal process is provided for complainants. Should EPA make a finding of recipient noncompliance with EPA's Title VI regulations, the draft Guidance includes an administrative appeal process for recipients. However, in the event of a dismissal of a Title VI complaint, there is no such appeal procedure for complainants. While we recognize that a Title VI investigation is not an adversarial proceeding between recipient and complainant, it seems unfair to allow an appeal and further EPA review process for recipients and not allow the same access to complainants. Complainants should be allowed the same review and appeal process as recipients, and the final Guidance should include an administrative appeal process for complainants.

3. The alternative dispute resolution process is too vague to be useful. Throughout the draft Guidance, EPA references its preference for complainants and recipients to engage in alternative dispute resolution ("ADR") before and after filing an administrative complaint. Yet, aside from references to a selection of ADR procedures, the draft Guidance fails to articulate any further guidelines for ADR. There is no discussion of who should bear the costs of pursuing ADR and what the timeline should be for ADR before EPA Title VI investigation begins. This particular recommendation is also problematic because if ADR was a successful, local problem-solving strategy, complainants would not have had to file Title VI complaints in the first place. Without more discussion about the alternative dispute resolution process, a general recommendation for ADR might not be reasonable.

¹ According to the EPA website, as of June 29, 2000, fifty Title VI administrative complaints were pending in the EPA Office of Civil Rights, including one accepted for investigation in 1993 - still awaiting resolution.

Without question, the draft Guidance expands and improves upon the Interim Guidance issued by EPA in 1998. We recognize the difficulty of drafting these proposed regulations and appreciate the time spent by EPA staff to complete the draft Guidance. We also urge EPA to consider our comments in preparing the final Title VI Guidance, as well as the comments of other environmental and civil rights advocates, to ensure the Guidance provides the clearest and most useful regulations for the public to follow.

Thank you for your consideration of our views.

Respectfully submitted,

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