



CENTER ON
RACE, POVERTY
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PRESS RELEASE

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EPA FAILS TO ENFORCE CIVIL RIGHTS ACT Secret Methyl Bromide Back-Room Deal Disregards Latino Children's Rights

WATSONVILLE, CALIFORNIA - After parents of California Latino school children patiently waited twelve years for the U.S. Environmental Protection Agency to resolve civil rights violations, the U.S. Environmental Protection Agency today announced a secret settlement with the California Department of Pesticide Regulation that fails to enforce the Civil Rights Act. The settlement excluded the parents and provided no meaningful actions to repair the harm caused by the Department's discrimination.

The civil rights complaint called *Angelita C. v. California Department of Pesticide Regulation* alleges that the Department of Pesticide Regulation discriminated against Latino school children by allowing unhealthy levels of methyl bromide, a highly toxic fumigant, to be applied near schools populated by mostly Latino children. Schools with a majority of white children, by contrast, are not subject to unhealthy methyl bromide exposures in California. This pattern and practice of allowing methyl bromide to be applied near schools, the complaint alleged, caused an unhealthy and racially discriminatory condition for Latino school children and their parents, which violates Title VI of the Civil Rights Act.

In April 2011, the EPA made a finding that the complaint had merit – that the Department's conduct disparately and adversely affected Latino school children and their parents.

“For the first time, EPA has found a violation of Title VI, which is a historic victory given the ineptitude with which EPA has implemented the Civil Rights Act,” said Brent Newell, General Counsel of the Center on Race, Poverty & the Environment. “However, EPA's conduct handling and resolving the violations inflicted its own injustice.”

Once EPA found a violation, EPA did not inform the parents or their attorneys. Nor did EPA refer the civil rights violations to the U.S. Department of Justice for enforcement.

Instead, EPA entered into secret negotiations with the Department of Pesticide Regulation. The terms of that settlement, executed yesterday and announced today, provide no relief for the children or their parents and only require additional monitoring of methyl bromide near schools and “outreach” by the Department of Pesticide Regulation.

“EPA is supposed to withhold federal funding when it finds a violation of Title VI of the Civil Rights Act,” said Newell. “EPA can also refer Title VI violations to Attorney General Holder for prosecution. Instead, EPA concocted a back-room deal that excluded the parents, their children, and their attorneys, allowed continued methyl bromide use near schools with majority Latino populations, and left any substantive curtailment of

excessive and unhealthy methyl bromide use to EPA's further discretion.”

Methyl bromide continues to be used in significant amounts in California, especially for growing strawberries, under annual EPA-issued “critical use exemptions” from the Montreal Protocol, which banned Methyl Bromide because it depletes the ozone layer, which protects the earth from harmful solar radiation.

EPA's finding of discrimination and settlement overlook the fact that EPA recently approved the known carcinogen Methyl Iodide to replace Methyl Bromide. The settlement contains no provisions that govern Methyl Iodide, or ensure that Latino children and their parents will not be subject to the same discrimination by the Department when the Department allows Methyl Iodide to be applied liberally near Latino-majority schools.

“EPA's recent actions add insult to injury,” said Newell. “Lisa Jackson and her predecessors delayed action until the children named in the complaint have long since graduated from high school and EPA found a replacement for Methyl Bromide. Then, EPA excluded them, their parents, and their attorneys from EPA's back-room deal that does not even help them or the next generation of Latino children in rural schools. Any promises of further EPA discretionary enforcement of laws protecting children from pesticide discrimination ring hollow after we have witnessed what Jackson's discretion and so-called commitment to environmental justice looks like.”

EPA's finding of racial discrimination in *Angelita C. v. California Department of Pesticide Regulation* marks the first time the agency has ever found discrimination has occurred, despite many civil rights complaints being lodged with EPA. Dozens of other complaints alleging discrimination have languished at EPA.

EPA recently commissioned Deloitte Consulting, LLP to evaluate the performance of EPA's office of Civil Rights. On March 21, 2011, Deloitte released its report, finding that the Office of Civil Rights has not adequately adjudicated Title VI Complaints. Deloitte found that pervasive delays in accepting and investigating complaints are the result of (1) the complexity in determining whether a complaint falls within EPA's jurisdiction; (2) a lack of EPA methods to conduct needed analyses; (3) a lack of standard operating procedures; and (4) a lack of supporting resources from EPA program and regional staff who have no incentive to prioritize Title VI investigations above their own program and region-related work.

“Lisa Jackson and the Obama Administration have failed to deliver on their promise to protect the civil rights of America's low-income and communities of color who suffer environmental injustice,” said Newell. “Despite Jackson's claims that environmental justice is one of her top priorities, her agency's conduct and record on civil rights is pathetic.”

The Center on Race, Poverty & the Environment represents the complainants in *Angelita C. v. California Department of Pesticide Regulation*.

Facts about EPA's Civil Rights Program

- Title VI of the Civil Rights Act prohibits recipients of federal funding from discriminating on the basis of race or national origin;
- Individuals are not allowed to privately enforce Title VI of the Civil Rights Act in court after a recent U.S. Supreme Court decision (*Alexander v. Sandoval*) held that there is no private right to enforce Title VI;
- EPA's Title VI regulations allow citizens to file administrative complaints alleging discrimination in the use of the EPA funding, and EPA's Office of Civil Rights administers its Title VI program;

- Within 20 days of a civil rights complaints being filed, EPA is required to either accept or deny the complaint for investigation;
- Within 180 days of accepting a civil rights complaint for investigation, EPA is required to issue preliminary findings from its investigation.
- EPA has a long and well-documented history of failing to process civil rights complaints in a timely manner, with some complaints languishing for 15 years or more without any agency response.
- In 1996, the U.S. Commission on Human Rights found that EPA did not have an effective complaint investigation system, noting the growing backlog of complaints.
- The backlog continued throughout the next decade. By 2007, EPA had a backlog of at least 27 Title VI complaints that had not been accepted or rejected within 20 days.
- EPA failed to meet its timelines with respect to every single one of the 24 complaints filed in 2006 and 2007.
- In 2009, the Ninth Circuit Court of Appeals ruled against EPA in the first case related to the backlog of Title VI complaints. The Court noted a “consistent pattern of delay by the EPA” and that the delays in that case “appear, sadly and unfortunately, typical of those who appeal to [EPA] to remedy civil rights violations.” *Rosemere Neighborhood Association v. EPA*.
- In July of 2009, Lisa Jackson, the EPA Administrator, made the following comments to the National Environmental Justice Advisory Council.

My friends, the EPA is once again guided by a broad vision of public health protection and environmental preservation. Environmental justice is central to that vision. I look forward to making real progress in the months and years ahead, and continuing this important partnership.

- In 2011, Deloitte Consulting, LLP released a report on EPA’s Title VI program, finding that the backlog of complaints continues.