



The EPA Denies Civil Rights Protection for Communities of Color

One of the major achievements of the Civil Rights Movement was the enactment of federal laws that prohibit discrimination based on race, color, or national origin. One of these laws is Title VI of the Civil Rights Act of 1964, which outlaws discrimination by any entity that receives federal funds. As the provider of federal funds to state environmental agencies and other entities, the U.S. Environmental Protection Agency (“EPA”) has the duty to enforce Title VI of the Civil Rights Act and terminate federal funds to any entity that discriminates. Under Title VI of the Civil Rights Act, the EPA has established regulations that prohibit both intentional discrimination and actions that have a discriminatory effect.

Justice Delayed Is Justice Denied

The Environmental Justice Movement advocates for the enforcement of Title VI of the Civil Rights Act to stop the racial discrimination of permitting toxic pollution and other environmental hazards in the places where people of color live, work, learn, play, and worship. Beginning in 1993, communities of color across the United States filed Title VI civil rights complaints with the EPA. For more than a decade, the EPA has failed to take action on these complaints in violation of the agency’s own civil rights regulations. For the long backlog of civil rights complaints, the maxim “Justice delayed is justice denied” applies.

EPA’s Select Steel Decision Erodes Civil Rights Protection

In 1998, the EPA issued its first Title VI civil rights decision on a complaint against a Michigan environmental agency for permitting the Select Steel Company to operate a steel recycling facility in a predominantly African American neighborhood in Flint, Michigan. Unfortunately, EPA’s decision did not enforce Title VI of the Civil Rights Act, but made the civil rights law subordinate to environmental standards that bear no relation to anti-discrimination law. The EPA ruled that there was not violation of civil rights because there was no violation of the Clean Air Act.¹ The EPA’s ruling contradicts the Department of Justice’s interpretation, which explains that civil rights laws are independent and that compliance is evaluated in light of anti-discrimination requirements.² In response to the widespread disapproval among environmental justice and civil rights advocates, the EPA issued draft guidance for investigating civil rights complaints in 2000 and invited public comment. However, the EPA has yet to respond to the comments that were submitted in writing and presented orally during public meetings in several cities.

A Right without a Remedy Is No Right at All

On August 25, 2011 – three days before the scheduled unveiling of the Martin Luther King Jr. Memorial on the National Mall – the EPA reached a secret settlement agreement that further erodes protection under Title VI of the Civil Rights Act. The settlement agreement involves a twelve year-old civil rights complaint filed on behalf

¹ *Select Steel Complaint: EPA Title VI of the Civil Rights Act Decision Memorandum and Report*, 1998, pp. 4-5, available at http://www.epa.gov/ocr/docs/ssdec_ir.pdf.

² *Brief Amicus Curiae of the United States, Save Our Summers v. Washington Department of Ecology*, No. CS-99-269-RHWQ (filed Sept. 6, 2000), available at <http://cforjustice.org/wp-content/uploads/2009/03/amicus.pdf>.

of Latino parents whose children were exposed to unhealthy levels of the toxic fumigant methyl bromide (a pesticide that was later banned by an international treaty). The State of California allowed methyl bromide to be used in much higher quantities near schools with majority Latino students. In April 2011, the EPA preliminarily found that the complaint established a *prima facie* violation of Title VI of the Civil Rights Act. Despite what would have been an historic event – EPA had never before made such a finding – EPA withheld its finding from the parents, their attorneys, and the general public until the EPA announced the settlement agreement on August 24, 2011. The EPA also excluded the parents and their attorneys from its settlement negotiations with the State of California. Under the settlement agreement, the California Department of Pesticide Regulation will install one additional air monitor, maintain a handful of existing monitors for a period of two years, and conduct outreach to the Latino community.³ Air monitors and community outreach do not remedy the years of toxic exposure suffered by the school children nor do they redress the institutional racism practiced by the California Department of Pesticide Regulation which continues to allow excessive pesticide use near schools with predominantly Latino children while schools with predominantly white children experience no such detrimental conditions. Moreover, the settlement agreement does nothing to protect Latino school children from the harmful and discriminatory use of methyl iodide, the toxic fumigant approved by the EPA and the State of California to replace methyl bromide.

Our Demands of the EPA:

- Rescind the *Select Steel* civil rights decision and the *Angelita C. v. California Department of Pesticide Regulation* settlement agreement to ensure proper and robust enforcement of the Title VI of the Civil Rights Act.
- Request the oversight and guidance of the Department of Justice's Federal Compliance and Coordination Section to help the EPA institutionalize complaint investigation procedures, enforcement measures, and compliance assurance tools pursuant to Title VI of the Civil Rights Act.
- With Department of Justice oversight, respond to public comments submitted on the 2000 EPA *Revised Draft Guidance for Investigating Title VI Administrative Complaints Challenging Permits*.
- Establish a date by which the EPA will complete the investigations and resolve all pending Title VI civil rights complaints, with the involvement of complainants and their attorneys.
- Prioritize civil rights and human rights protection within the Federal Inter-Agency Work Group on Environmental Justice.

Prepared by the following organizations:

Advocates for Environmental Human Rights
Alaska Community Action on Toxics
Asian Pacific Environmental Network (APEN)
Center on Race, Poverty & the Environment
Deep South Center for Environmental Justice
Environmental Justice League of Rhode Island
The Just Transition Alliance
Land Loss Prevention Project
Mossville Environmental Action Now, Inc.
Rubbertown Emergency Action (REACT)
Sierra Club
Southwest Network for Environmental and Economic Justice
Texas Environmental Justice Advocacy Services
UPROSE
WE ACT for Environmental Justice, Inc.

³ *Agreement between the California Department of Pesticide Regulation and the U.S. Environmental Protection Agency*, August 24, 2011, available at <http://www.epa.gov/ocr/TitleVIcases/title6-settlement-agreement-signed.pdf>.