

JACKSON ORDERS AGENCY REFORMS TO SPEED CIVIL RIGHTS CLAIMS REVIEWS

EPA Administrator Lisa Jackson is ordering agency staff to reform and speed up its process for resolving Civil Rights Act discrimination claims in response to an appeals court ruling that found EPA's Office of Civil Rights (OCR) violated its own policies through a "pattern of delay" in tackling discrimination complaints.

Jackson in a statement to *Inside EPA* says the Sept. 17 ruling by the U.S. Court of Appeals for the 9th Circuit in *Rosemere Neighborhood Association v. EPA* "found a consistent pattern of EPA delays in responding to complaints under Title VI of the Civil Rights Act of 1964. These delays are indefensible and unacceptable. What may have been acceptable under a previous administration is certainly not acceptable under this one."

Title VI prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance, according to the Justice Department's Web site. Most agencies, including EPA, have rules in place to prevent discrimination in awarding assistance to recipients.

But enforcement of the rules has been stymied after the Supreme Court, in a 2001 ruling, set a high bar requiring plaintiffs to show intentional discrimination before claims can proceed.

Jackson — who has made environmental justice issues a key component of her agenda at EPA — adds that she has directed staff "in the strongest terms, to review and reform the Title VI process so that complainants receive timely responses and decisions. By reforming and revitalizing the Title VI program, and expeditiously resolving pending complaints, EPA will advance its mission of protecting human health and the environment."

Jackson has said she will create a new senior-level position to oversee and coordinate all diversity issues at the agency, in order to further boost her ongoing drive to increase EPA's consideration of environmental justice impacts and the concerns of minority communities in agency decisions on rules and policies (*Inside EPA*, Aug. 28).

The 9th Circuit case concerned a 2003 discrimination complaint filed with EPA's OCR by the Rosemere Neighborhood Association, which works to improve municipal services in low-income communities in Vancouver, WA. The group claimed the city failed to properly use EPA funds to make environmental improvements in its work area and then retaliated against the association for filing the petition.

OCR regulations require the office to determine whether to accept a complaint within 20 days of its filing, and if it accepts the case then the office must issue a preliminary finding within 180 days.

But in the Rosemere Neighborhood Association situation, OCR did not accept or reject the complaint for 18 months, until Rosemere went to federal district court to force action. After a long and complicated legal history, the district court upheld EPA's claim that Rosemere's claim of discrimination was moot. Rosemere appealed to the 9th Circuit, which issued the Sept. 17 decision that reversed and remanded the lower court's ruling.

"[W]e note that Rosemere's experience before the EPA appears, sadly and unfortunately, typical of those who appeal to OCR to remedy civil rights violations," the 9th Circuit says. "EPA failed to process a single complaint from 2006 or 2007 in accordance with its regulatory deadlines. . . . This pattern of delay . . . helps convince us that this action should go forward." *Relevant documents are available on InsideEPA.com.*

The court relied heavily on an *amicus* brief filed in support of Rosemere by the Center for Race, Poverty & the Environment that stressed the importance of such administrative complaints. The center says such complaints, filed under the Administrative Procedure Act, are the only recourse for those seeking to redress disparate impact discrimination following the Supreme Court's 2001 ruling in *Alexander v. Sandoval*, which effectively "stripped victims of disparate impact discrimination of the right to bring action in federal court," the brief says.

"Because complainants who may bear disparate environmental burdens are prevented from bringing disparate impact claims in federal court, the Title VI administrative complaint is vital to the continued enforcement of civil rights law and the struggle for environmental justice. If federal agencies such as EPA are allowed to abdicate their responsibility to adhere to the law, victims of discrimination will be precluded from any legal remedy for their harm," the brief adds.

In the filing, the Center for Race, Poverty & the Environment cited Title VI petitions that have "blown the 180-day deadline by 12 to 13 years," one activist says.

A Title VI administrative complaint does not need to prove intentional discrimination and can be successful if it can show that a state uses a discriminatory pattern for the way it implements its programs — in this case failing to

provide federal funds for environmental improvements in environmental justice communities.

But while EPA does have authority to force a state to fix its program or threaten to withhold funding if it finds discrimination, one industry source says that outcome is “so draconian I don’t think it has ever happened.”

Environmentalists are lauding the ruling, with the activist saying that the 9th Circuit’s decision to “refer to EPA’s consistent pattern and practice of unreasonable delay in Title VI cases as a reason relevant to the issue of mootness is very big for us. . . . Communities have been suffering civil rights violations for decades and EPA has done nothing. So after this case, if EPA doesn’t take action to resolve the Title VI complaints that are pending, we will sue and force them to take action.”

The source adds the ruling rejecting EPA’s mootness claim is important “no matter what jurisdiction you are in. It is at least persuasive precedent” beyond the 9th Circuit.

A second industry source, however, cautions that “people may be overreacting in terms of the importance of this ruling” because it does not address the substance of the Title VI claim but only the process.

Still, the environmentalist is hopeful that the agency will begin to seriously consider the outstanding petitions. However, the source notes that despite Jackson’s promises to emphasize environmental justice issues, it would have been difficult for EPA to reverse course in the case “unless they really were going to change everything about the way they do business. . . . It remains to be seen exactly how serious the new administration will be about pursuing environmental justice. We’ve seen some changes, including a greater willingness to engage with us on issues [but it is unclear] how many actual policy changes they are willing to make.”

Still, the industry source expects more EPA action in the future. “They mean to shake things up and we’ll see what that looks like.”

The first industry source adds it is “way too early to know” substantively what EPA will do on civil rights issues. “I suspect over the course of eight years, they will do a great deal.” But on Title VI petitions, “I’m not really sure they’ll do all that much because they are really in a bind. [These petitions] go against the recipients of federal funding, which are the states. I don’t even see the Jackson EPA” coming down hard on states. “I suspect the historic, awkward relationship will continue to limp along without EPA deciding to start wrapping a lot of knuckles.”

Finally, the source says that environmental justice advocates need to decide what it is they want most from EPA. “I suspect there will be enormous outreach to the [environmental justice] community, and if they decide they’ll push for five things instead of 120 I’d bet they’d get them all. At the moment, fortunately, they are still shooting at each other’s heads.” — *Dawn Reeves*