

JACKSON SHUFFLING OF KEY EPA CIVIL RIGHTS OFFICE STAFF SPARKS CRITICISM

Correction Appended

EPA Administrator Lisa Jackson is replacing a key Office of Civil Rights (OCR) official with the official's long-time protégé — potentially on an interim basis — drawing criticisms that Jackson's shakeup of the embattled office is only reshuffling OCR personnel who have a losing track record of reforming the office.

Instead, critics say Jackson should bring in “new blood” to the office if the administrator wants to fulfill her vow to invigorate OCR.

Jackson has made the decision to replace Yasmin Yorker — who as head of OCR's external complaints program was directly responsible for addressing discrimination complaints against EPA-funded activities filed under Title VI of the Civil Rights Act — with Helena Wooden-Aguilar, a long-time protégé of Yorker's, an EPA source says. Yorker will now serve as a special assistant to OCR Director Karen Higginbotham. A second EPA source says Wooden-Aguilar's tenure is likely only temporary.

Wooden-Aguilar was the lead investigator on a discrimination complaint filed by the Rosemere Neighborhood Association at issue in a recent federal court ruling that highlighted EPA's “consistent pattern of delay” in responding to complaints, sparking Jackson's vow to reform OCR and its handling of Title VI complaints (Inside EPA, Sept. 25).

An EPA spokesman touts Jackson's efforts to overhaul the office, arguing she has “taken very public and proactive steps to rectify this critical process to better serve the American people,” but did not confirm the personnel switch. “Unfortunately I can't confirm anything related to personnel matters,” the spokesman says.

The staff shuffle is failing to answer critics who say Jackson's personnel picks are only recycling through officials that have failed to address the longstanding problems of the office in the past.

“I don't know if that's going to help,” one civil rights activist says. “It would be preferable to find someone to reform [OCR] who doesn't have a personal stake in an honest assessment of the past program's failures.”

Previously, Jackson announced Nov. 12 that she has hired Patrick Chang, deputy chief of the Department of Justice's (DOJ) civil rights office, as senior counsel for external civil rights to help reform OCR.

But Chang's hire underscores the legal uncertainty facing EPA in resolving discrimination complaints based on disparate impact claims — which allege an EPA-funded action disproportionately affects a minority community — because he took part in a 2001 blue-ribbon panel that tried, and failed, to resolve whether the agency can use Title VI to pursue such claims, which represent the majority of Civil Rights complaints (Inside EPA, Nov. 20).

Chang was a member of the so-called Ginsberg Task Force — named after panel head Gail Ginsberg — which tried to eliminate EPA's backlog of discrimination complaints and aimed to make EPA's first finding of Title VI discrimination based on the disproportionate impact of a federally funded policy on minorities. More than two years later, the task force disbanded, having cleared some of the backlog but failing to resolve the disparate impact issue.

OCR has authority under Title VI of the Civil Rights Act of 1964 to strip beneficiaries of federal funding if it finds the funds are being used in a discriminatory manner.

Agency documents obtained by Inside EPA show some OCR investigations have been open for up to 15 years, despite a regulatory 180-day deadline for issuing discrimination findings. OCR has informally resolved 10 Title VI complaints since 1993 but has never exercised its Civil Rights Act authority to strip funding due to discrimination.

In addition to deep internal strife and charges of incompetence within OCR, legal uncertainty over Title VI has long stymied the office. For instance, OCR has long avoided pursuing civil rights complaints alleging discrimination based on disparate impact for fear that the agency would lose such a case if challenged in court, even though almost all the Title VI complaints over the last two decades are based on the theory

But an EPA spokeswoman recently said that despite the uncertainty, the agency will proceed. “In accordance with current law, [DOJ] guidance and agency regulations, EPA will continue to consider disparate impact complaints.”

As part of the staff shuffle in the civil rights office, Wooden-Aguilar will take over managing EPA's Title VI discrimination complaints, but critics point to her role in a recent civil rights case as a negative sign on her ability to truly revamp the office, after a court found major delays in EPA addressing civil rights complaints.

Wooden-Aguilar was appointed by EPA to be the agency's lead investigator of the Rosemere Neighborhood Association's allegations that the City of Vancouver had discriminated in its provision of municipal services, such as

stormwater treatment, after another OCR staffer was removed from the case for displaying “bias” against the neighborhood group. Yorker remained involved as well, sources say.

A civil rights activist says both Wooden-Aguilar and Yorker were “fairly cordial and professional,” but did not conduct interviews suggested by Rosemere and ultimately made no progress on the case.

Years beyond the statutory deadline by which OCR is required to issue a final verdict on the original complaint, Rosemere filed suit under the Administrative Procedure Act to compel OCR to act. The U.S. Court of Appeals for the 9th Circuit issued a major decision Sept. 17 in the case, Rosemere Neighborhood Association v. EPA, finding that the group’s “experience before the EPA appears, sadly and unfortunately, typical of those who appeal to OCR to remedy civil rights violations. . . . This pattern of delay . . . helps convince us that this action should go forward.”

The civil rights activist notes that Wooden-Aguilar, Yorker, Higginbotham and Chang — in his tenure at DOJ — were “all involved in a vigorous defense” in court of OCR’s failure to respond to the complaint. — Jonathan Strong

Editor’s Note: *An earlier version of the story inaccurately described civil rights discrimination complaints as filed against EPA. The complaints at issue challenge EPA-funded activities, not the agency.*