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Personnel Disputes Roil EPA's Rights Office, Undermining Equity Agenda

EPA's Office of Civil Rights (OCR) — under order from agency Administrator Lisa Jackson to address a lengthy backlog of civil rights discrimination claims — is embroiled in a contentious personnel dispute that some officials charge is undermining Jackson's order and the administrator's environmental justice agenda.

Jackson has made resolving hundreds of stalled discrimination complaints pending in OCR a top priority as part of her agenda to address environmental injustice, saying it will help EPA "advance its mission of protecting human health and the environment" and help the agency restore its credibility with minority and other community groups. But the personnel conflicts in the office threaten to undermine her efforts.

The latest dispute centers on OCR Director Karen Higginbotham's Feb. 3 decision to remove Susan Morris, the former OCR assistant director for affirmative employment and diversity, from her slot and place her in a new, non-supervisory slot.

Morris told Sen. Mark Warner (D-VA) in a Feb. 11 letter that she was removed from her position because of a "false accusation" from Higginbotham. She has filed a discrimination complaint with the federal Equal Employment Opportunity Commission (EEOC), which ordered EPA Jan. 29 to produce records related to Morris's complaint.

An EPA spokeswoman says "the agency has a strong policy on not tolerating discrimination and abuse in the workplace."

Higginbotham, a career EPA employee, did not reply to a request for comment, but in 2007 she told plaintiffs suing over the stalled civil rights complaints that she plans to develop new agency guidance, based on Department of Justice best practices, to address the backlog of outstanding civil rights complaints.

Morris has also filed a Jan. 28 petition for EPA's Office of Inspector General (OIG) to investigate OCR's failure to issue annual reports on the agency's equal opportunity employment practices. According to a July 2009 letter from the EEOC, OCR has failed to issue the report, called an MD-715 report, since 2006. Morris alleges in her complaint to the OIG that Higginbotham blocked the MD-715 reports year after year "under the guise of programmatic considerations."

Morris and other OCR staff have called for key lawmakers — including Rep. James Moran (D-VA), the incoming chair of the House Appropriations Committee panel that oversees EPA, and Senate environment committee Chair Barbara Boxer (D-CA) — to strengthen federal workforce laws and to intervene to prevent a hostile work environment.

"For many years at EPA, a group of managers have misused and abused their authority by going after employees who are not a part of their group or agenda," Morris said in her letter to Warner. She said that the practices show the managers' "disregard for the civil rights and welfare of the federal employees within the agency, as well as those who protest from communities covered under Title VI" of the Civil Rights Act, which prohibits the discriminatory use of federal funds.

Some OCR staff say the dispute echoes the contentious personnel dispute during the Clinton administration, when a jury found EPA liable for violating the civil rights of Dr. Marsha Coleman-Adebayo — an OCR employee. In response, Congress in 2002 passed the Notification and Federal Employee Antidiscrimination and Retaliation Act (No-FEAR Act), which seeks to discourage federal managers from engaging in unlawful discrimination and retaliation.

Morris and others charge the agency's practices have not changed despite passage of the No-FEAR Act.

The latest allegations threaten to place additional pressure on Higginbotham, who civil rights activists have called to be removed in the wake of revelations stemming from an appeals court ruling that found a "consistent pattern of delay" by EPA in responding to Title VI complaints.

In *Rosemere Neighborhood Association v. EPA*, the U.S. Court of Appeals for the 9th Circuit found that the petitioner's struggle to get EPA to respond to its Title VI complaint — alleging that Vancouver, WA, had misused EPA grant funds — "appears, sadly and unfortunately, typical of those who appeal to OCR to remedy civil rights violations."

"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," the 9th Circuit said.

Agency documents obtained by *Inside EPA* showed that OCR Title VI 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 (*Inside EPA*, Oct. 23).

Jackson, who has made environmental justice a top priority for EPA, directed OCR in September "in the strongest

terms, to review and reform the Title VI process so that complainants receive timely responses and decisions,” according to a statement (*Inside EPA*, Sept. 25).

Civil rights activists have welcomed Jackson’s order to speed OCR review of discrimination complaints but they have said that more is needed than Higginbotham’s vow to develop a best practices guidance. One activist said last year that there is a need for extra OCR staffing, tighter deadlines for responding to complaints and an OIG investigation of the office.

Jackson has also drawn criticism for promoting key EPA employees whose inaction was highlighted by the 9th Circuit’s ruling. In particular, Higginbotham promoted both Helena Wooden-Aguilar — the lead investigator on the Rosemere Neighborhood Association complaint at issue in the appeals court case — as well as her former supervisor, Yasmin Yorker (*Inside EPA*, Dec. 4).

Yorker was initially slated to be a special assistant to Higginbotham but documents obtained by *Inside EPA* show she has again been promoted and placed in the “Senior Executive Service” program to groom her for a senior position at the Department of Energy.

In addition to Morris’ actions, a group of five OCR staffers has written to Warner, Sen. James Webb (D-VA) and other lawmakers requesting congressional assistance in rectifying what the staffers charge is a bitterly hostile work environment under Higginbotham and EPA deputy chief of staff Ray Spears. Spears did not reply to a request for comment.

“Under the leadership of [Higginbotham and Spears], we have been subjected to prevarications, underhanded tactics, retaliation, favoritism, nepotism, unethical behavior [and] a hostile work environment,” the letter from the five OCR staffers to Webb says. The five staffers say they wrote the lawmakers after Morris was removed from her position by Higginbotham. “Until last week, we felt protected and supported by our supervisor and mentor, [Morris].”

The letters say many of the conflicts within OCR carry racial overtones. “In spite of Ms. Morris’ own continuous battle (as the only white female in OCR), she protected us from Ms. Higginbotham’s wrath,” the letter says.

Morris’ letter says Higginbotham’s and Spears’ “bias, abuse of authority and power, intimidation and discrimination (particularly against non-African Americans and complainants) is well known throughout the agency.”

Webb’s office did not reply to a request for comment, while a spokesman for Warner said his office had not yet received the letter. — *Jonathan Strong*