

Landmark Pact Could Speed EPA Review Of Stalled Civil Rights Complaints

EPA has settled a controversial lawsuit with a civil rights group, agreeing to concessions that could give activists new leverage to force the agency to quickly review complaints alleging entities that received agency funds have violated the Civil Rights Act — an issue that is a top priority for EPA Administrator Lisa Jackson but which the agency has been slow to address.

EPA and the Rosemere Neighborhood Association signed a March 19 agreement that obligates the agency for the next five years to meet regulatory deadlines for any future complaints filed by the association under Title VI of the rights law and requires the agency to provide Rosemere with quarterly status updates of all Title VI complaints it is reviewing. These updates will be publicized in order to put pressure on EPA's Office of Civil Rights (OCR) to take action, a Rosemere source says.

The agreement also includes an unprecedented admission that the agency violated administrative law when it failed to respond in a timely fashion to the group's civil rights complaint, an admission that a source familiar with the issue says could give civil rights groups a legal precedent to cite when they seek to force the agency to respond to future complaints.

In the agreement, EPA admits that OCR's "failure to process the retaliation complaint in accordance with [regulatory deadlines] constitutes agency action unlawfully withheld pursuant to the Administrative Procedure Act." *Relevant documents are available on InsideEPA.com.*

The informed source says the agreement could have broad repercussions for OCR, including forcing it to respond to such complaints within established regulatory time frames — something it has never before done.

OCR chief Karen Higgenbotham signed the agreement, which was approved by a federal district court judge in Washington state March 19.

The association had sued EPA for failing to respond to its 2003 complaint charging that the city of Vancouver, WA, violated Title VI of the rights law by failing to properly use EPA funds to make environmental improvements in its work area, and then retaliated against the association after it filed the complaint.

Title VI prohibits discrimination on the basis of race, color and national origin in programs and activities receiving federal funding. Agencies including EPA have rules to prevent discrimination in awarding financial assistance to recipients. But enforcement of those rules stymied after the Supreme Court in 2001 set a high bar requiring plaintiffs to show intentional discrimination before claims can proceed in court, leaving those who believe they suffered discrimination only the option of filing administrative complaints.

In litigation the group filed after EPA failed to respond to its complaint, a federal appellate court held in *Rosemere Neighborhood Association v. EPA* last September that the agency unlawfully used "a pattern of delay" in failing to address the plaintiffs and scores of other pending Title VI complaints.

That ruling prompted Jackson to vow reforms to OCR and how it addresses civil rights complaints, but sources say OCR has done little since then, and also vigorously fought the terms of the settlement.

The informed source believes the settlement will further embroil OCR, whose staff is already at loggerheads with OCR chief Karen Higgenbotham over her alleged workplace discrimination — charges that are being investigated by Democratic senators (*Inside EPA*, March 19).

"Things have deteriorated to the lowest point ever [within OCR], and that's saying something," the source says.

An EPA spokeswoman says the settlement agreement demonstrates Jackson's commitment to reforming OCR. "Administrator Jackson has made it clear that the delays faced by Title VI complainants are unacceptable, and that the Title VI program needs to be reformed. By entering into this settlement agreement and taking other concurrent steps, EPA is standing behind its commitment to reform and revitalize the Title VI program, and to provide timely and effective enforcement of Title VI. EPA remains committed to demonstrating leadership on civil rights and ensuring this process better serves the American people."

Despite Jackson's commitment, activists are still concerned about the slow pace of OCR's response to stalled petitions. For example, the Rosemere source says despite Jackson's order to address the backlog of complaints, "It's not happening, and upper management are the ones getting in the way. . . . There is huge resistance."

The informed source notes that EPA did not sign the settlement lightly, adding that it indicates a more concerted push for changes in OCR. "EPA did not enter into this settlement agreement, with those particular provisions having to do

with meeting deadlines . . . unless EPA expected to meet deadlines in the future. They never did in the past and it remains to be seen if they can,” given the sensitive nature of the complaints.

Most significant to the settlement, according to the source, is the agency’s admission it violated the law because “that sets them up for the next time. They admitted they have a responsibility to comply with their own regulations and they haven’t, and now in the future they have to, or someone will pull this out and say here’s an admission on your part that you are in fact legally bound to these deadlines and that means you have to meet them.”

Another interesting concession is EPA’s agreement to provide Rosemere with status updates of other Title VI complaints, “so in effect Rosemere is acting as a monitor of EPA’s program. That is pretty unusual,” the source says.

Because Rosemere has said it plans to publicize the information, the source notes that will mark a dramatic shift from EPA which has not made such information public for years. “This gives the public, through Rosemere, the opportunity to see” how EPA is addressing civil rights, the source says.

Additionally, the Rosemere source says the group plans to refile its original 2003 Title VI complaint. The Rosemere source says that complaint was never fully investigated due to claims that the group failed to show the Vancouver agency it alleged discriminated against the association received EPA funds — a claim the source disputes. “It is our intent to refile the Title VI complaint now that we have court oversight. Without the agreement, anything we would have filed would have been tossed out.”

The source adds that EPA fought the settlement throughout the negotiations, and that OCR officials were unwilling to engage the group, which only communicated with a Department of Justice legal counsel representing EPA.

In a March 22 statement, Dvija Michael Bertish, Rosemere’s director of environment and conservation, said, “We will continue to push the Office of Civil Rights to do the job it was supposed to do years ago, and insist that EPA clean up its act.” — *Dawn Reeves*