

Environmentalists Suggest EPA Close Civil Rights Office Due To Petition Backlog

Environmentalists are starting to suggest that EPA close its Office of Civil Rights (OCR) due to its inability to address a long-running backlog of civil rights discrimination complaints and are instead suggesting alternative options for the agency to strengthen its oversight of environmental justice issues.

Advocates say they are growing increasingly frustrated and have seen few, if any, changes at OCR despite high-profile promises by EPA Administrator Lisa Jackson to make civil rights and environmental justice a key part of the agency's decisionmaking process a year after a landmark appeals court ruling found the agency engaged in a "pattern of delay" in addressing discrimination complaints.

Since the September 2009 ruling in *Rosemere Neighborhood Association v. EPA*, OCR continues to accept discrimination complaints but has never agreed with a single complainant that an action taken by an agency receiving EPA funding was discriminatory, in part because of an extremely high legal bar set by the Supreme Court in 2001 that requires complainants to show discrimination is intentional.

Jackson as part of her effort to resolve the backlog has beefed up OCR staff and hired Patrick Chang, a former EPA and Justice Department official, to serve as senior counsel for external civil rights specifically to address complaints filed under Title VI of the Civil Rights Act, which prohibits use of federal funds in a discriminatory manner. "I have also asked that he evaluate potential long-term institutional changes to the agency's Title VI complaint process to avoid future delays, with a particular focus on ensuring that all appropriate agency components are used to create a timely and effective Title VI process," Jackson said in a Nov. 12, 2009, announcement.

Since then, OCR has dismissed some complaints for lack of jurisdiction or lack of finding of discrimination. OCR is also conducting jurisdictional reviews on at least eight new complaints it has received this year, according to OCR's website, meaning it continues to accept new complaints without resolving older ones, and continues to review several that date back to 1994 and 1995.

But advocates are still awaiting an affirmative finding and say they are running out of patience.

Part of the problem is that the agency has yet to receive a case that is a "slam dunk" on which to test a credible legal theory, according to sources familiar with Title VI complaints who agreed to review some of the 31 active complaints obtained by *Inside EPA* through a Freedom of Information Act request. *Relevant documents are available on InsideEPA.com.*

These sources note that OCR also has agreed to investigate a number of cases that are obviously not within its realm and should never have been accepted for review, including a case alleging employment discrimination, one concerning a dispute between neighbors and another that accuses a state agency of discrimination for complying with a federally mandated vehicle emissions inspection program.

Additionally, OCR has dismissed at least one case on questionable grounds, according to a source who has sought to appeal the dismissal through administrative channels. The petition, filed by Don't Waste Arizona, alleges discrimination by an Arizona air district over a permit it granted to an asphalt facility, but OCR dismissed the complaint because the facility was closed due to reasons other than the air permit, which remains valid.

In an Aug. 13 letter from acting OCR Director Rafael DeLeon to the group, OCR rejects their charges that the petition's dismissal was faulty. "Because OCR has been able to confirm that the asphalt operations will not resume, as you assert in your letter . . . your administrative complaints concerning those activities were properly dismissed as moot," the letter says. "As part of EPA Administrator Lisa Jackson's commitment to reforming and revitalizing the agency's Title VI program, we have dedicated significant resources and energy to reviewing your complaints. . . . We appreciate your continued patience. . . . In the event operations recommence at the asphalt plant, you can refile your complaint with OCR."

Actions like these are prompting advocates to call for OCR to close its external complaint division. "How can it be that in 16 years they have never found anyone discriminated against? That is not realistic. They decide that [discrimination] never happens and so OCR is just a fraud and we should save our money," the Arizona source says.

The source first issued the call to close OCR on a recent National Environmental Justice Advisory Committee call, and plans to reiterate it at an upcoming conference by the group OMB Watch in Washington, D.C., next month focusing on access to information. "I can inform people about the OCR [petition] option but that would be drawing them into a scam, and I'm not going to do that and instead want to send EPA a message to close this thing down because it is a complete fraud," the source says.

Instead of operating OCR, the source suggests that EPA use the millions of dollars it spends on OCR external investiga-

tions to appoint regional advocates who can work with activists on strengthening permits issued in equity areas. That would send a message that the agency wants to really help address problems “rather than, ‘Good luck suing us’ [over the permit.] To fight an air permit through to the last drop of blood in your body is a dubious outcome,” the source says.

Another source says EPA could move OCR’s external work to the agency’s Office of Environmental Justice (OEJ), which is seen as being more responsive to such complaints. The source explains that regional OEJ offices, gutted during the Bush administration, used to work with complainants in writing Title VI complaints but then those complaints would go to the “black hole” of OCR, which the source says operates in an incredibly insular manner.

A source with the Rosemere Neighborhood Association — which won the landmark 9th Circuit ruling last year and is now closely tracking the office’s actions — says Jackson has declined to meet with the group despite her stated commitment to environmental justice and the Title VI issue.

“I don’t even understand why that department exists,” the source says of OCR. “I don’t see the point of their functioning. They haven’t even adopted official policies on how to conduct a proper investigation. They don’t interview your witnesses.”

The source says the group will not refile its original complaint that was the basis of its 9th Circuit suit because it does not want to waste time and money to prepare a document that OCR would “round file.”

“The only person who can fix OCR is Jackson and she is so hands off with all of this it is not real reassuring,” the source says. “It’s pretty clear there will be no contact [with Jackson] and that she is not taking anything seriously.”

Jackson’s spokeswoman did not respond to requests for comment but the administrator has said in the past that she would work to address the petition backlog. “What may have been acceptable under a previous administration is certainly not acceptable under this one,” she said in a statement to *Inside EPA* last year.

However, other equity advocates are somewhat more sympathetic, noting that EPA and OCR face difficult hurdles, including the high legal bar set by the high court in *Alexander v. Sandoval* and congressional riders throughout the late 1990s that prevented OCR from pursuing investigations until it produced consensus guidance for how to proceed.

But one long-time advocate says part of the problem is that Jackson and others in the Obama administration “haven’t made the connection” between pollution impacts and civil rights. “What if something EPA was doing was infringing on voting rights of black people or infringing on the rights of Native Americans to get an education?” the source asks, adding that those would unquestionably be acts of discrimination.

Yet the source adds despite the frustrations, expectations remain high. “If they don’t get it right in this administration, with these people in charge, I don’t know if they’ll ever get it right. They need to be very deliberative about how they respond to these petitions . . . and how they look at the ramifications of those responses.”

Another source who praises Jackson’s work on environmental justice says of Title VI that there is a “timidity at the agency to really want to take on the private sector on this issue . . . which is really galling.” The source adds, “My understanding of the Civil Rights Act is that it is not voluntary” and that other agencies, particularly the Department of Transportation, have been able to be bold. The source calls Title VI a “simple but extraordinarily powerful” tool that EPA should embrace.

But one key source familiar with EPA’s Title VI complaint review process says part of the problem is that the types of complaints being filed are the same ones the agency has been getting for almost 20 years, and that none contain an explicit showing of discrimination.

The source says, for example, many complaints focus on permits issued for a facility near a minority population which in and of itself is not a discriminatory act. “That doesn’t comply with the legal requirements under civil rights law, so on the surface most of these complaints don’t seem to make the mark. They don’t allege any irregularities or unusual actions by anybody in authority that would take the cases out of the ordinary.”

Because of this, the source says it is “baffling” that EPA continues to drown in a backlog and says the “only other explanation is that EPA’s got itself in a bind” because agency officials are teeing up civil rights and equity as major issues but have no credible complaints or valid legal theory under which to address them.

And EPA cannot dismiss the complaints *en masse* without undercutting its own rationale. “Where does that leave them? Nowhere. They are just stuck,” the source says. — *Dawn Reeves*