

EPA Takes Steps To Resolve Civil Rights Concerns But Hurdles Remain

EPA is taking some significant steps to resolve long-running concerns about its Office of Civil Rights' (OCR) delays and handling of discrimination complaints by drafting plans to dramatically overhaul its civil rights program, but sources say EPA still faces major hurdles to addressing the concerns, including its apparent reluctance to issue a finding of discrimination.

EPA Administrator Lisa Jackson has vowed to reform OCR in order to tackle a large backlog of petitions filed under Title VI of the Civil Rights Act, which prohibits federal funds from being used to intentionally discriminate. OCR officials on a Jan. 19 outreach call highlighted progress in clearing the backlog. Jackson also met with activists Jan. 18, the first time an administrator has met with advocates to discuss the agency's anti-discrimination efforts.

The same day as the meeting, EPA released a draft executive committee report recommending sweeping changes to the agency's civil rights program, including establishing deputy civil rights officials and de-centralizing OCR's role.

Other recommendations are: include Title VI and other rights issues in strategic plans and performance objectives; issue a clear agencywide statement of its civil rights mission; and provide for transparency and ongoing stakeholder involvement.

"As a first step toward broadening responsibility for civil rights, a network of senior officials should be delegated certain authorities and held accountable for 'local implementation' of civil rights programs in their offices," according to the draft report. It recommends each agency region and program office appoint a deputy civil rights officer at the assistant administrator or equivalent level. EPA is taking comment on the draft through Feb. 17.

The draft report is the result of a Civil Rights Executive Committee, chaired by EPA Deputy Administrator Bob Perciasepe. Jackson ordered the formation of the panel following a scathing external audit of OCR by consulting firm Deloitte that found major problems with the office, including that employees were not properly trained.

"While the Deloitte report mostly focused on changes within" OCR, the executive panel "took a broader view. Addressing OCR issues and policies/procedures is not enough to fundamentally improve EPA's civil rights program. Bold actions are needed, and civil rights — like any important priority of the agency — needs to emulate 'One EPA' principles. A model civil rights program needs broad buy-in, senior level commitment, and accountability from many quarters, not just OCR," the report explains.

One knowledgeable source who follows civil rights issues, however, criticizes the recommendations, alleging they "take advantage of deficiencies in OCR to impose affirmative civil rights requirements on all parts of EPA," and may be unlawful because they would impose a "results requirement" through a "discriminatory process."

On the public outreach call, OCR Director Rafael DeLeon nevertheless touted the draft recommendations and also said that the agency is making progress in clearing its much-criticized Title VI backlog.

DeLeon on the call said OCR has "either closed or dismissed" about 50 rights complaints during the last two years but did not discuss how any case was resolved. He called that "the most Title VI complaints that we've ever processed in the history of the agency over that kind of period," and noted there are only 35 active cases remaining.

But despite rejecting or referring many complaints, EPA has yet to issue a finding of actual discrimination as alleged. EPA also continues to face sharp criticism for a settlement it entered into last year with a California agency that resolved a long-pending rights petition but revoked an earlier landmark finding of "disparate impact."

The settlement between EPA and the California Department of Pesticide Regulation (CDPR), unveiled Aug. 24, resolved a 1999 petition filed under Title VI of the Civil Rights Act that alleged CDPR's annual approval of methyl bromide use discriminated against Hispanic children at nearby schools. EPA had made a first-time preliminary finding that the CDPR action did impose disparate harms on the children (*Inside EPA*, Aug. 26).

But the settlement in *Angelita C., et al. v. California Department of Pesticide Regulations* allowed the agencies to sidestep that finding, resulting in "a kind of charade," one environmentalist said. Activists were also furious that the settlement excluded parents of the children, who had not been informed of the initial finding.

The settlement prompted civil rights advocates to issue a list of five "demands" they said EPA must undertake to dramatically reform its civil rights program, including revoking the California settlement and resolving the backlog of other Title VI complaints. The groups at a meeting in Detroit late last year presented OCR's DeLeon with the demands (*Inside EPA*, Sept. 2), and followed up with a formal written request in October to meet with Jackson.

One EPA spokeswoman acknowledges that EPA has yet to issue a discrimination finding, but says the *Angelita C*

settlement shows progress. OCR “preliminarily found an unintentional adverse and disparate impact on Latino children from the registration of methyl bromide. . . . EPA communicated those preliminary findings to CDPR on April 22, 2011. Then on Aug. 24, 2011, CDPR and EPA entered into an agreement to resolve the civil rights complaint.”

Activists’ Oct. 21 letter seeking the meeting with Jackson — signed by 11 advocacy groups and individuals, and recently provided to *Inside EPA* — reiterates the demands presented to DeLeon in Detroit. In addition to rescinding the *Angelita C* settlement, the letter asks EPA to revoke its only other Title VI decision from a 1998 case known as *Select Steel*, which rejected a discrimination complaint on the grounds that the area where the Michigan facility was located met national ambient air quality standards — an unfair test that has hamstrung OCR, the letter argued.

The letter mostly focuses on the *Angelita C* settlement, noting it “is in stark contrast to some of the more proactive efforts of your agency in recent months regarding environmental justice. The decision perhaps even contravenes provisions outlined in Plan EJ 2014” — EPA’s plan to elevate equity in agency decisionmaking.

The letter references the initial disparate impact finding in California in the *Angelita C* case and says, “Despite what would have been an historic event — EPA had never before made such a finding — EPA withheld its finding from the parents, their attorneys and the general public until the EPA announced the settlement agreement.” The letter also criticizes the terms of the settlement, noting, “Air monitors and community outreach do not remedy the years of toxic exposure suffered by school children, nor do they redress the institutional racism practices” by CDPR.

DeLeon noted on the outreach call that Jackson had met with the advocates to discuss their concerns in the letter and that they had “a fruitful and robust discussion about a number of legal and policy issues. We are committed to continue our dialogue and address some or all of the concerns that the Title VI advocates raised.”

DeLeon later added a second meeting may take place as soon as February. Activists who attended the meeting with Jackson declined to discuss specifics, and only referenced the issues raised in the letter.

But one activist not at the meeting remains critical of EPA’s efforts to reform OCR, noting the agency has never reached out to plaintiffs in another case brought by the Rosemere Neighborhood Association over its stalled Title VI petition, where the U.S. Court of Appeals for the 9th Circuit in 2009 found OCR had engaged in a “pattern of delay” over responding to petitions, prompting Jackson to vow to reform the program. “Reform has been called for ever since our case. I guess the wheels of progress need more oil. Reform doesn’t mean coming up with arbitrary decisions and excluding the Title VI complainants from the problem solving process,” the source says.

Meanwhile, EPA is seeking nominations for its National Environmental Justice Advisory Council through Jan. 25. It intends to fill vacancies caused by term-limited retirements expected in May. — *Dawn Reeves*