



ROSEMERE NEIGHBORHOOD ASSOCIATION

P.O. Box 61471, Vancouver, WA 98666 www.RosemereNA.org (360) 281-4747

July 17, 2012

Lisa Jackson
Administrator
Attn: Plan EJ 2014
USEPA
Office of Environmental Justice
Mail Code 2201-A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson,

In March 2010, the US District Court of Washington entered a Stipulated Judgment in favor of the Rosemere Neighborhood Association, concluding a seven year stretch of administrative Title VI complaints and litigation in *Rosemere v. EPA*.

In February 2003, Rosemere first filed a Title VI administrative complaint with EPA's Office of Civil Rights ("OCR") alleging that the City of Vancouver, WA had discriminated in the provision of municipal services in violation of the Civil Rights Act of 1964. Rosemere alleged that Vancouver failed to use EPA funds to address fairly long-standing problems in low-income and minority neighborhoods in West Vancouver.

Soon after, the City of Vancouver began an investigation into the internal operations of Rosemere and then revoked Rosemere's status as a "recognized" neighborhood association. The city also stripped the neighborhood of its historical name, actions later deemed "suspicious" by EPA in an investigative report. Rosemere filed a second Title VI complaint with the EPA in December 2003 alleging retaliation by the City of Vancouver. Rosemere filed suit against EPA on two separate occasions citing EPA's failure to accept, investigate, and issue findings on Rosemere's complaints. Each time, EPA responded to Rosemere only after the litigation was filed and EPA sought to dismiss the cases as "moot."

In September 2009, the Ninth Circuit reversed the District Court's ruling to dismiss Rosemere, citing EPA's "consistent pattern of delay." The appellate court substantiated the claim that Rosemere is in "realistic danger of sustaining a direct injury as a result of the agency's [EPA's] disregard of its own regulations" by failing to investigate Title VI complaints. In the subsequent settlement agreement for that case, EPA's Office of Civil Rights admitted that its actions were unlawful when it failed to process Rosemere's complaint of retaliation against the City of Vancouver in accordance with the law. During the lawsuits, discovery showed that EPA investigators were either biased against Rosemere or did not follow investigative protocols to produce an informed ruling. In our experience, this lack of integrity in the investigative process only exacerbated the impacts brought to light in the Title VI complaints.

Despite Rosemere's lawsuit and the subsequent national debate of the failures of the OCR, and despite your continued promises for EPA to increase efficiency in that office to make Environmental Justice a national priority, the OCR continues to fail in its intake and investigation guidelines in regard to Title VI complaints. To date, the EPA has ignored Rosemere's various requests to meet with you and to voice our concerns and share

our experiences in order to offer suggestions to improve OCR's operations. And to date, only one case has ever attained a ruling of discrimination in support of Title VI claims [Angelita C. v. California Department of Pesticide Regulations] and it took more than ten years to achieve that result. Most cases are dismissed outright, claiming jurisdictional issues or other bureaucratic problems. Many groups across the country wonder why the OCR functions under such a dismal record, and this points succinctly to how OCR is disconnected from the disparate impacts that can be suffered by Environmental Justice populations nationwide.

Environmental Justice Enforcement is a very important tool that should be used to address discrimination that can cause adverse health impacts and environmental harm to neighborhoods where low income and minorities live and work. Whereas we appreciate the Title VI Supplement's attempt to begin to fine tune the various agency failures, we feel that the timelines are vague and deficient and that they need to be more detailed to ensure future compliance success. We offer the general comment that EPA's enforcement model under the supplement attempts only gentle compliance -- collaboration, and conciliation rather than the promise of clearly defined relief. For example, in the Angelita case, the state of California did not experience the withholding of federal funds as required under Title VI guidelines when a real first-time case discrimination was established. We acknowledge that the state of California is currently experiencing a serious budgetary crisis, and that a freeze of federal funds as mandated under Title VI could be very serious, but without consistent penalties for discriminatory behavior there can be no success in altering the on-the-ground conditions that contributed the disparate impacts.

Furthermore, the agreement that EPA made in this case with the state of California was made absent the citizens that brought the complaint forward. The impacted parties in the Agelita case were left entirely out of the settlement process and their voice was not considered. Rosemere finds this to be an exacerbation of the harms already suffered by the complainants. The Title VI program is the only pathway for the public to address issues of environmental discrimination, and removing the plaintiffs from the settlement discussions is ethically and morally wrong. EPA hailed the Angelita case as a giant step forward, but we disagree with this assessment. Furthermore, the settlement did not require the state of California to stop spraying pesticides that were harming Latino school children, but instead only required additional monitoring of the problem. This outcome does not adequately address the significant Title VI problem brought before the agency. There still appears to be a cerebral disconnect between Washington D.C. and the on-the-ground problems brought forward by the community. Thus, OCR's actions appear to be arbitrary rather than objective, especially without documented investigational protocols in place.

Rosemere generally agrees with the broader goals of the Title VI Supplement, but we feel the necessary details of implementing a successful program are absent. Were OCR to implement better enforcement protocols and more objective investigative procedures that showed better results, the public would be more apt to support the overarching goals of community education for Environmental Justice as envisioned when the program was initiated via President Clinton's Executive Order. It is our opinion that the Title VI Program and the currently vague investigative procedures seem to merely be tailored to support the agency that is being investigated rather than support the complainant. Rosemere experienced this first hand when OCR held in depth interviews with the City of Vancouver, and decided to dismiss our complaint without even interviewing our list of witnesses. The process in the Rosemere case became a political matter rather than a means to achieve relief from discrimination.

It is our understanding that EPA has not responded to public comments submitted by various groups over the years that pertain specifically to Title VI procedural guidelines. The final supplement should be very specific about guidelines and use established protocols to keep investigations objective, similar to the way the Superfund petition process works. For example, if a complaint scores, it moves on to the next investigative level without fail.

It is hard to believe how after 20 years in the Environmental Justice program only one case was found to have merit. Rosemere did establish a prima facie case of retaliation on its face, but the lack of investigation sullied the final report, and the initial Title VI concerns that were the catalyst for the administrative complaint were never addressed. The whole point of Rosemere's original Title VI complaint was that the policies of local government supported the existence of ghettoism, wherein areas of low-income and minority populations did not enjoy the same benefits of more affluent sections of the developed urban area, and the result was substandard living conditions and an increase in environmental harm. There was no investigation into how local governmental decisions contributed to the decline of low-income and minority property values where EPA's Environmental Justice thresholds had been met, and even EPA staff at the regional level were embarrassed that EPA headquarters refused to see the merits of the Rosemere case. Instead, EPA chose to dismiss legitimate concerns using technical deficiency in the Title VI complaint as an excuse. In the end, EPA's behavior in this case (and many others) simply condoned the discriminatory behavior that contributed to reduced standard of living for the impacted Environmental Justice community.

The Title VI Supplement indicates EPA will re-evaluate its Title VI investigative protocols in coordination with the U.S. Department of Justice. This was something that was promised by OCR more than two years ago during litigation with Rosemere. Basic Department of Justice investigative guidelines could have been implemented immediately, and the delay on this important task makes the public question EPA's stated commitment to making the Title VI program a national priority. Simply reshuffling OCR staff while maintaining the status quo is not sufficient to forward the cause. It is reasonable for the community to participate directly in revamping OCR's operations. It is reasonable for the community to request EPA to be more open, to collaborate with the complainants as well as the agencies that are the target of complaints. Please don't let this process degrade further into a debate limited to state's rights of self government v. federal regulation. That argument is easily used to dismiss valid claims of discrimination and only points out how civil rights violations continue unabated in our nation.

Thank you for your consideration of these comments. Rosemere requests the ability to be included in future ongoing dialogue with you in order to help facilitate much needed improvements in OCR's operations.

Sincerely,

A handwritten signature in black ink, appearing to read "Dvija Michael Bertish". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Dvija Michael Bertish
Director of Environment & Conservation
Rosemere Neighborhood Association
360-281-4747
www.rosemerena.org