



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

November 27, 2020

Renee McGhee-Lenart, Acting Director
Office of Audit and Evaluation
EPA Office of Inspector General
1200 Pennsylvania Avenue, NW (2410T)
Washington, D.C. 20460
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RE: Final Report- "Improved EPA Oversight of Funding Recipients ' Title VI Programs Could Prevent Discrimination" - Project No. OA&E- FY19-0357

Dear Ms. McGhee-Lenart:

Over the last several years, EPA has prioritized improvement of its external civil rights (Title VI) program. We are proud of the significant progress and achievements accomplished by our External Civil Rights Compliance Office (ECRCO). EPA, including the Office of General Counsel (OGC), will continue to prioritize the work of ECRCO, and we are pleased to submit for public disclosure this formal response to OIG's Final Report .

Thank you for the opportunity to meet with OIG staff on September 9, 2020, to review preliminary written technical comments to the Draft OIG Report. Although OIG incorporated a number of these comments in its Report, we continue to have significant concerns regarding some of the assumptions, analysis, and conclusions in the Report. In short, the Report is built on faulty assumptions and reaches flawed conclusions that fail to account for the significant progress made over the last several years. We have summarized our significant concerns in this letter and have attached additional comments in the Final Technical Comments to this letter.

Overall, we found that the Report does not appropriately credit the significant strides that ECRCO has made since Fiscal Year 2017 in performing its enforcement and oversight functions and by achieving a significant number of goals, including those identified in its Strategic Plan. For example, since Fiscal Year 2017, ECRCO has:

- cleared all of its overaged cases;
- issued its first-ever foundational tools - Strategic Plan, Case Resolution Manual and Compliance Toolkit;
- launched updates and revisions of the Strategic Plan and Case Resolution Manual;
- implemented a "Competency Framework" and individual development plans that emphasize training and development for ECRCO staff;

Ms. Renee McGhee-Lenart

- used EPA's LEAN Management System (ELMS) tools to identify internal accountability measures to facilitate timely processing of complaints;
- continued to implement and refine its ELMS process, resulting in more timely processing of all new complaints and improved docket management;
- implemented a proactive and systematic plan to review EPA financial assistance recipients' foundational nondiscrimination programs whenever a complaint is accepted for investigation (even though the issue may not have been raised in the complaint);
- implemented a plan for improving the pre-award Form 4700-4 review process; and
- collaborated and coordinated with the EPA's Offices of Regional Counsel and the Deputy Civil Rights Officials to launch three proactive initiatives to provide technical assistance to the states in those regions, two formal compliance reviews in FY 2020, as well as to resolve numerous complaints since FY 2017 .

In addition to glossing over ECRCO's important advances, the Report is based largely on inaccurate assumptions about the nature of ECRCO's work and its function within the Agency. For example, the Report perpetuates the erroneous conclusion that the best way to judge the success of a civil rights program is by the number of findings of noncompliance. EPA fundamentally disagrees with that conclusion. In reality, issuance of such decisions reflects a breakdown of a system that requires the Agency to work in cooperation with recipients and applicants to achieve compliance, per EPA's regulation. Indeed, there are numerous references within the regulation for the Agency to attempt informal resolution, alternative dispute resolution or voluntary compliance. In other words, findings of noncompliance were never intended to be the primary avenue for resolving these complaints. In the last three years alone, ECRCO has entered into 21 Informal Resolution Agreements with recipients to resolve complaints and supported additional resolutions through Alternative Dispute Resolution Settlements. There are several additional examples of OIG's misunderstandings and misstatements that are specifically addressed through our technical comments on the enclosed Report .

Also, the Report fundamentally misunderstands how ECRCO conducts its work. The Report erroneously concludes that ECRCO does not conduct proactive compliance reviews to determine funding recipients' compliance with Title VI and instead will only review the foundational elements of the recipient's nondiscrimination program using a checklist. ECRCO's current practice of self-initiating reviews of recipients' nondiscrimination programs within the context of every complaint investigation is thorough and complete. This process utilizes the Checklist *only* as an initial assessment tool. ECRCO then fully investigates the nondiscrimination program and proposes an Informal Resolution Agreement (IRA) with the recipient to address any identified program deficiencies. Should an IRA be executed, ECRCO monitors implementation of the terms in the IRA. In fact, this is the same thorough and complete investigation, resolution, and monitoring process that ECRCO uses when it conducts compliance reviews outside of the context of an existing complaint .

We acknowledge that there is more work to do to continue the momentum of the last several years. To that end, ECRCO is planning additional proactive reviews and initiatives and has already begun to implement a plan for training, such as videotaped trainings that ECRCO can post on its website for viewing by recipients and interested stakeholders. ECRCO recently conducted training for regional staff regarding the pre-award Form 4700-4 review process.

As to the specific recommendations included in the Report, please see our responses below.

For the Associate Deputy Administrator:

- 1. Develop and implement a plan to coordinate with relevant Agency program offices to develop guidance on permitting and cumulative impacts.*

Response: With respect to "permitting," it is not clear what additional guidance the OIG recommends. Existing OGC guidance (ECRCO's Compliance Toolkit, Chapter 1) details the process for investigating civil rights cases involving alleged discriminatory permitting practices. The standard investigatory process is evident in the case-related decisions posted on ECRCO's webpage. These publicly posted decisions allow anyone to see how the agency has approached cases involving permitting issues. With respect to "cumulative impacts," EPA welcomes additional collaboration between program offices to improve the integration of civil rights and environmental justice perspectives related to cumulative impacts.

For the General Counsel:

- 2. Develop and implement a plan to complete systematic compliance reviews to determine full compliance with Title VI program.*

Response: As part of its ongoing project to review, revise, and update ECRCO's Strategic Plan (which was issued in final form for the first time in 2017), ECRCO will continue to develop "Goal 2 - Proactive Initiatives." ECRCO also intends to conduct additional proactive initiatives, including additional compliance reviews of state agencies to determine compliance with the federal civil rights laws. ECRCO intends to issue a revised Strategic Plan for 2021-2025 within one year of this letter. More details and projected timeframes will be identified in the updated Strategic Plan.

- 3. Develop metrics to assess the effectiveness of the Cooperative Federalism pilot and other technical assistance efforts, such as the procedural safeguards checklist. Revise these tools and programs as needed based on the metrics.*

Response: OGC will develop additional tools and internal metrics to evaluate the progress and effectiveness of ECRCO's continued proactive initiatives with the states and regions. In the interest of continuous improvement, ECRCO will revise these tools and initiatives, and even the metrics, as needed. We have begun this process.

- 4. Verify that EPA funding applicants address potential noncompliance with Title VI with a written agreement before the funds are awarded.*

Response: The Agency will not arbitrarily restrict its enforcement discretion by addressing "potential noncompliance ... with a written agreement before the funds are awarded," regardless of fact-specific circumstances. Per 40 CFR 7.110, the Agency's pre-award compliance determination is based on the assurances submitted under 40 CFR 7.80, *e.g.*, EPA Form 4700-4, and any other information EPA receives during this time (including complaints) or has on file about the applicant. The regulations do not direct ECRCO to look beyond whether an assurance reflects an entity's attestation that it will comply with the federal non-discrimination obligations and has affirmatively identified elements of a non-discrimination program in its submission to the Agency. Nonetheless, ECRCO has used its enforcement discretion since FY 2017 to examine, depending on the nature of the answers presented, applicants' websites to determine what material about their non-

discrimination program is posted and to provide technical assistance, as appropriate. This provision of technical assistance is already maintained in agency records. Because ECRCO has recognized previously that it could improve this process, it is revising its review process for Form 4700-4 and has begun implementing those revisions in FY 2020. Specifically, ECRCO has revised the process and developed training for regional partners who will review Form 4700-4. On October 21, 2020, ECRCO conducted the first of its ongoing training for regional staff regarding the pre-award Form 4700-4 review process. A follow-up session has been scheduled for December 1, 2020.

5. *Develop or update and implement policy, guidance, and standard operating procedures for collecting, reviewing, and using data to aid the External Civil Rights Compliance Office, EPA regions and programs, and recipients in assuring Title VI compliance.*

Response: The regulation at 40 CFR §§ 7.8S(a) and (b) & 7.IIS(a) identifies what data is authorized to be collected and under what circumstances. Also, EPA may seek data through the submission of form 4700-4, as well as undertake other data collection arising in the context of a compliance review and/or complaint investigation. Consistent with ECRCO's CRM, ECRCO routinely collects data and information from both recipients and complainants within the context of complaint investigations and compliance reviews. The regulation along with existing OGC guidance provide for a robust process to facilitate the collection, review, and use of relevant information. As a result, there is no need to collect additional data or revise the process for data collection, review, and use.

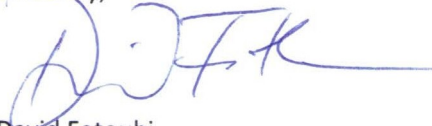
6. *Develop and deliver training for the deputy civil rights officials and EPA regional staff that focuses on their respective roles and responsibilities within EPA's Title VI compliance program.*

Response: ECRCO regularly engages with other EPA staff, including DCROs and Regional Counsels, with respect to the investigation and resolution of complaints and when conducting proactive activities such as compliance reviews and technical assistance. During these engagements, ECRCO generally provides an overview of the non-discrimination investigatory process and describes how the DCRCO, Regional Counsels, and regional staff involved in the external civil rights program can partner with ECRCO to resolve the matter. In addition, in FY 2021, ECRCO plans to expand its training relative to its Form 4700-4 review improvement project. Also in FY 2021, following the rollout of a revised CRM, ECRCO plans to conduct conversations as well as trainings regarding complaint processing for regional and program office DCROs, Regional Counsels, and all regional staff involved in the external civil rights program. At that time, ECRCO will include additional training on ECRCO's compliance standards and its Compliance Toolkit Chapter 1, as a refresher and also for any new staff who joined the agency after ECRCO's prior training on these standards.

Again, we appreciate OIG's willingness to discuss, consider, and address our concerns raised here and in the enclosed final technical comments on the Report. Please feel free to reach out to us if you have any questions or need further information.

Ms. Renee McGhee-Lenart

Sincerely,



David Fotouhi
Acting General Counsel

**ELISE
PACKARD**

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Elise B. Packard
Deputy General Counsel for Operations



Lilian S. Dorka, Director
External Civil Rights Compliance Office

Enclosure: Final Technical Comments

OIG Final Report -
OGC Final Technical C



U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

*Compliance with the law
Operating efficiently and effectively*

Improved EPA Funding Recipient Programs Could Discrimination

Report No. 20-E-0333

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2020-10-15 18:42:00

OGC
2020-10-15 18:43:00

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2020-10-15 18:43:00

Later in the report you identify a more complete list of prohibited discrimination that ECRCO enforces. It may be appropriate to drop a footnote here, that OIG is only focusing this report on Title VI enforcement.

TITLE VI

"No person... shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Civil Rights Act of 1964

Report Contributors:

Julie Narimatsu
Kevin Good
Gabby Fekete
James Hatfield
Renee McGhee-Lenart

Abbreviations

C.F.R.	Code of Federal Regulations
DCRO	Deputy Civil Rights Official
ECRCO	External Civil Rights Compliance Office
EPA	U.S. Environmental Protection Agency
OIG	Office of Inspector General
U.S.C.	United States Code
USCCR	United States Commission on Civil Rights

Cover Image: The EPA's External Civil Rights Compliance Office is responsible for enforcing Title VI of the Civil Rights Act of 1964 at the EPA, which requires it to ensure that any program or activity receiving the Agency's financial assistance does not discriminate based on race, color, or national origin. (EPA OIG image)

Are you aware of fraud, waste, or abuse in an EPA program?

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At a Glance

Why We Did This Project

The U.S. Environmental Protection Agency's Office of Inspector General conducted this evaluation to determine

whether the EPA has implemented an oversight system to provide reasonable assurance that organizations receiving EPA funding comply with Title VI of the Civil Rights Act of 1964. All federal agencies are responsible for enforcing

Title VI, which requires them to ensure that any program or activity receiving federal financial assistance does not discriminate based on race, color, or national origin. The public can use the Title VI complaint process to report alleged discrimination by EPA funding recipients. Under this process, the EPA's External Civil Rights Compliance Office, known as ECRCO, has the authority to withdraw financial assistance to compel a recipient to comply with Title VI.

This report addresses the following:

- Compliance with the law.
- Operating efficiently and effectively.

This report addresses these top EPA management challenges:

- Integrating and leading environmental justice.
- Complying with internal control (policies and procedures).

Address inquiries to our public affairs office at (202) 566-2391 or OIG_WEBCOMMENTS@epa.gov.

Improved EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination

What We Found

ECRCO has not fully implemented an oversight system to provide reasonable assurance that organizations receiving EPA funding are properly implementing Title VI. As an initial matter, ECRCO does not conduct proactive compliance reviews to determine funding recipients' compliance with

Title VI. Instead, only once an investigation has been lodged will ECRCO review the foundational

elements of the recipient's nondiscrimination checklist documents the existence of a nondiscrimination program. ECRCO does not necessarily document the successful implementation of the checklist to conduct a limited review of the nondiscrimination program in all 50 states and three territories. We found that 81 percent lacked some of the required foundational elements on their websites. Meanwhile, ECRCO does not systematically collect program data from EPA funding recipients. ECRCO personnel told us they need training and guidance on how to collect and analyze discrimination complaints related to permits. Seven states we interviewed indicated that they do not have a formal Title VI program at ECRCO.

Since ECRCO assumed management of the Title VI program in December 2016, it has focused its efforts on responding to discrimination complaints while simultaneously updating its foundational documents. It resolved a backlog of 61 cases by December 2019. Improved oversight could prevent future cases and assure funding recipients comply with Title VI.

Recommendations and Planned Agency Actions

To improve oversight of the Title VI program, ECRCO should develop a plan to coordinate and develop guidance on permitting and cumulative impacts. We also recommend that ECRCO use systematic compliance reviews, develop performance measures to assess its ongoing pilot program working with the states on foundational elements of nondiscrimination, address potential noncompliance with funding applicants, develop guidance on the use of data collection, and outline a plan to ensure that the staff take Title VI training. The Agency did not provide a formal response to our draft report but did provide informal written technical comments. We considered the comments and revised the report, as appropriate. The EPA intends to issue a formal response to this report, which we will post on our website upon receipt. The six recommendations are unresolved.

OGC
2020-10-15 18:44:00

OGC
2020-10-16 16:18:00

The Report concludes that "ECRCO does not conduct proactive compliance reviews to determine funding recipients' compliance with Title VI. Instead, only once an investigation has been lodged will ECRCO review the foundational elements of the recipient's nondiscrimination program in all 50 states and three territories. We found that 81 percent lacked some of the required foundational elements on their websites. Meanwhile, ECRCO does not systematically collect program data from EPA funding recipients. ECRCO personnel told us they need training and guidance on how to collect and analyze discrimination complaints related to permits. Seven states we interviewed indicated that they do not have a formal Title VI program at ECRCO."

OGC
2020-10-15 18:46:00

As we previously shared with OIG, the Title VI program is overbroad according to both the regulation and in practice. The regulation identifies what data is authorized to be collected and how it should be used.

OGC
2020-10-15 18:46:00

ECRCO did not "assume management" in 2014. 40 CFR 1.25(b), OCR already had separate staff working on internal and external civil rights program issues. Then in December 2016, the external program took on a new name - ECRCO - and a functional realignment occurred on staff.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 28, 2020

MEMORANDUM

SUBJECT: Improved EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination
Report No. 20-E-0333

FROM: Sean W. O'Donnell


TO: Doug Benevento, Associate Deputy Administrator

David Fotouhi, Acting General Counsel

This is our report on the subject evaluation conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. The project number for this evaluation is OA&E-FY19-0357. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

The Office of the Administrator and the Office of General Counsel are responsible for the issues discussed in this report.

Action Required

We made six recommendations in this report. Your offices  not provide acceptable corrective actions for any of the recommendations. Therefore, the recommendations are unresolved. We request a written response to the final report within 60 days. Your response will be posted on the OIG's website, along with our memorandum. Your response should be provided as an Adobe PDF file that complies with the requirements of Section 508 of the Rehabilitation Act of 1973, as amended. The final report that you do not want to be released to the public; if your response contains the data for redaction or removal along with corresponding justification. The Office of the Administrator and the Office of General Counsel are required to complete and submit a dispute resolution request to the chief financial officer.

OGC
2020-10-15 18:48:00
This response, that is, the cover letter and technical comments, constitutes OGC's formal written response. Our response to OGC's recommendations is included in the cover letter accompanying these technical comments.
Resolution is still not reached.

We will post this report to our website at www.epa.gov/oig.

Table of Contents

Chapters

1	Introduction	1
	Purpose	1
	Background.....	1
	Responsible Offices	7
	Scope and Methodology	7
2	Improved Oversight Needed to Assure Compliance with Title VI to Prevent Discrimination.....	10
	Oversight Should Include Compliance Reviews to Identify Weaknesses in Funding Recipients’ Title VI Programs.....	10
	Oversight Should Include Collecting Information from EPA Funding Recipients to Target Compliance Reviews.....	12
	Regions and States Would Benefit from Additional Guidance and Training from ECRCO	13
	Conclusions	17
	Recommendations	17
	Agency Response and OIG Assessment.....	18
	Status of Recommendations and Potential Monetary Benefits	19

Appendices

A	Past Actions to Address Title VI Compliance at EPA.....	20
B	Procedural Safeguards Checklist	22
C	Distribution	30

Chapter 1

Introduction

Purpose

The U.S. Environmental Protection Agency’s Office of Inspector General conducted this evaluation to determine whether the EPA has implemented an oversight system to provide reasonable assurance that organizations receiving EPA funding are complying with Title VI requirements.

Top Management Challenges

This evaluation addresses the following top management challenges for the Agency, as identified in OIG Report No. [20-N-0231](#), *EPA’s FYs 2020–2021 Top Management Challenges*, issued July 21, 2020:

- Integrating and leading environmental justice.
- Complying with internal control (policies and procedures).

Background

Pursuant to Title VI of the Civil Rights Act of 1964, “no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Agencies providing financial assistance are “authorized and directed to effectuate the provisions of [42 U.S.C.] section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability” to ensure that the goals and objectives of Title VI are achieved.

Title VI requirements apply to EPA funding recipients. Every year, the EPA awards more than \$4 billion in funding for assistance agreements to recipients, such as state governments and nonprofit agencies. These funding recipients are prohibited from using EPA funds in ways that would discriminate on the basis of race, color, or national origin. Title VI allows agencies to achieve compliance by “termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement.” Title VI requires agencies to “first determine[] that compliance cannot be secured by voluntary means.”

EPA’s Regulatory Framework for Title VI

In 1984, the EPA amended 40 C.F.R. Part 7 to implement Title VI and other nondiscrimination statutes. The EPA’s regulations state, “No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance” on the basis of race, color, or national origin. Specifically, the regulations prohibit:

- Denying any service or benefits on the basis of race, color, or national origin.
- Offering services that are different or are provided differently on the basis of race, color, or national origin.
- Using “criteria or methods” that have the “effect of subjecting individuals to discrimination.”
- Choosing a “site or location of a facility that has the purpose or effect of excluding individuals from, denying them benefits of, or subjecting them to discrimination on the grounds of race, color, or national origin.”

The EPA’s Title VI regulations direct the External Civil Rights Compliance Office, or ECRCO,¹ under the Office of General Counsel, to explain Title VI obligations to EPA funding recipients and to provide technical assistance and guidance as requested. New EPA financial assistance applicants have a different set of requirements than those who already receive financial assistance (Table 1).

Table 1: Title VI requirements for applicants and recipients of EPA financial assistance

Applicants	Recipients
<ul style="list-style-type: none"> • Provide assurance that they will comply with requirements. • Disclose any pending lawsuits alleging discrimination. • Describe other federal assistance and pending applications to other federal agencies for assistance. • Describe other civil rights compliance reviews conducted during the previous two years. 	<ul style="list-style-type: none"> • Collect, maintain, and, upon request, provide: <ul style="list-style-type: none"> ◦ Description of any pending lawsuits that allege discrimination. ◦ Racial or ethnic, national origin, and age data that were submitted with the application. ◦ EPA Form 4700-4. ◦ Log of discrimination complaints. ◦ Compliance review reports conducted by other agencies. • Keep records for three years after completing the project. • Post notice of nondiscrimination in a prominent place; provide the notice in a language other than English, if appropriate; and include a point of contact. • Adopt grievance procedures, unless certain conditions apply. • Submit other data and information, as required, “where there is reason to believe that discrimination may exist,” that is relevant to determining compliance.

Source: OIG summary of 40 C.F.R. Part 7. (EPA OIG table)

Before financial assistance is awarded, the regulations direct ECRCO to review compliance information and, in its discretion, conduct an on-site review if it has “reason to believe” discrimination may be occurring. If ECRCO finds potential

¹ The regulations state that this responsibility lies with the EPA Office of Civil Rights, but the responsibilities for implementing Title VI at the EPA moved to ECRCO in December 2016.

noncompliance, ECRCO “must approve” steps to correct it before an award is given.

After financial assistance is awarded, the EPA investigates Title VI complaints from the public to determine whether entities that receive federal financial assistance are fulfilling their civil rights obligations. The EPA’s regulation states that EPA shall resolve discrimination complaints through approaches whenever possible. EPA funding recipients

for informal resolution of Title VI concerns at several points, including after an investigation ends but before a formal decision is made. ECRCO also has the authority to “periodically” reviews of any recipient’s programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews when it has reason to believe that discrimination may be occurring.”² Ultimately, the EPA may withhold funding from recipients found to have discriminated on the basis of race, color, or national origin.

² 40 C.F.R. § 7.115(a).

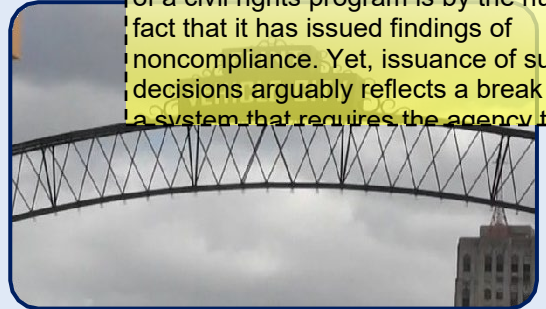
Case Study: EPA's First and Only Final Finding of Discrimination

OGC

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1992: Community Discrimination Complaint Filed Against the State of Michigan

In 1992, the St. Francis Prayer Center of Flint, Michigan, filed a discrimination complaint with the EPA after learning that the State of Michigan, a recipient of EPA financial assistance, was considering permitting the Genesee Power Station in a primarily low-income, African American neighborhood in Flint. According to the complaint, the community surrounding the proposed facility had concerns about the potential emissions from this facility, including lead, mercury, and arsenic. The complaint alleged discrimination in both the location of the facility and in the process of permitting the facility. The complaint cited, among other examples, the burden of attending the state hearings in Lansing, 65 miles away from Flint, and alleged that members of the community received fewer opportunities to speak than others.



The St. Francis Prayer Center in Flint, Michigan, filed a discrimination complaint with the EPA. (EPA OIG photo)

This language serves to perpetuate the ~~error~~ that the only way to judge the value of a civil rights program is by the number or fact that it has issued findings of noncompliance. Yet, issuance of such decisions arguably reflects a break down in a system that requires the agency to work in

EPA Response Delayed

The EPA had 180 days to respond to the 1992 Genesee Power Station complaint and did not meet this deadline. The power station began operating in 1995, despite the EPA not yet resolving the discrimination complaint. In 2015, Earthjustice filed an "unreasonable delay" lawsuit on behalf of the St. Francis Prayer Center.

2017: EPA Issues First and Only Final Finding of Discrimination

OGC

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In January 2017, 25 years after the complaint's submission, the EPA made its first "discriminatory treatment of African Americans by the State of Michigan in the permitting of the Genesee Power Station. The EPA found that the State of Michigan treated communities surrounding the proposed plant differently than similarly situated communities. For example:

OGC

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See comment above.

- During one public hearing in 1992, the state gave African Americans fewer opportunities to speak and less time to review documents related to the Genesee Power Station permit than non-African Americans.
- The state unnecessarily sent armed security to a hearing in Flint. This EPA finding was based, in part, on the historic use of police forces to intimidate African Americans attempting to exercise their rights.

The EPA recommended that the state address problems found in its public participation process, such as developing a policy to ensure that appropriate decisions are made regarding time, location, duration, and security at public hearings. The EPA also recommended that the state establish a compliant nondiscrimination program, post a nondiscrimination notice on its website, and adopt grievance procedures to address discrimination complaints.

³ "State," in this section, refers specifically to the then-Michigan Department of Environmental Quality, now the Michigan Department of Environment, Great Lakes, and Energy.

Important Past Actions to Address Title VI Compliance at EPA

Both internal and external entities reviewed the EPA’s Title VI program a total of six times between 1999 and 2019. These entities issued reports containing recommendations on how to operate a “model civil rights program,” as well as reviews of specific issues, such as how to operate permitting programs that are Title VI-compliant. See Appendix A for a list of past actions, including descriptions of these reports.

In 2013, in response to a recommendation by the EPA’s Civil Rights Executive Committee—an internal group of EPA senior managers tasked to develop a “model civil rights program”—the Agency issued EPA Orders 4700 and 4701. Order 4700 established deputy civil rights officials, or DCROs, in all its program and regional offices to assist ECRCO and provide oversight for the implementation of the civil rights program within their respective region or office consistent with national policy and guidance. Table 2 explains the responsibilities of the DCROs.

Table 2: DCRO roles outlined in EPA Order 4700

Management function	Responsibilities
Staffing	Identifying and requesting adequate funding and resources from Agency management for Title VI work.
Controls	Ensuring their organizations have well-functioning policies, processes, and management controls.
Training	Training Title VI civil rights staff in their offices or regions.
Performance reviews	Incorporating Title VI language into performance agreements as required for managers and for certain other positions as necessary.
Investigations	Effectively participating in or leading activities, including investigations, for the purposes of implementing EPA Order 4701, <i>Title VI Case Management Protocol</i> .
Implementation	Effectively participating in the Agency’s implementation of external civil rights policies for financial assistance monitoring, compliance, grant reviews, and other external civil rights laws activities consistent with EPA Order 4701.

Source: OIG analysis of EPA Orders 4700 and 4701. (EPA OIG table)

Prior to 2016, external and internal civil rights functions were housed in the Office of the Administrator. In 2016, the EPA transferred responsibility for external civil rights to ECRCO in the Office of General Counsel.⁴ According to the Office of General Counsel, the staffing in ECRCO has remained relatively steady at 11 to 12 full-time equivalents from fiscal years 2017 to 2019.

⁴ *External Civil Rights Compliance Office Strategic [Plan](#)*, Fiscal Years 2015–2020.

ECRCO Policy and Guidance

In 2017, ECRCO finalized three policy and guidance documents: a case resolution manual, a strategic plan, and a compliance toolkit. The case resolution process is outlined in the *Case Resolution Manual*, which provides procedural guidance to case managers to ensure the EPA’s “prompt, effective, and efficient resolution of civil rights cases consistent with science and the civil rights laws.”

ECRCO’s *External Civil Rights Compliance Office Strategic Plan* for fiscal years 2015–2020 outlines its goals regarding managing its complaint docket; furthering its mission through systematic compliance reviews; developing strategic policy; engaging EPA, federal, and external partners and stakeholders; and strengthening its workforce. The plan also states that ECRCO is committed to developing “strategic policy guidance on cross-cutting issues.” Chapter 1 of the *Compliance Toolkit* helps funding recipients comply with their federal civil rights obligations.

ECRCO Title VI Program Efforts

ECRCO originally focused its resources on reducing its case processing times. As outlined in the ECRCO direct congressional testimony, by November 2019, these efforts resulted in the resolution of the 61 backlogged cases that existed at the time. In the future timeliness, ECRCO implemented a variety of strategies to improve organizational efficiency and development, as mentioned above.

In addition, ECRCO piloted its Cooperative Federalism program to provide technical assistance and outreach to funding recipients. ECRCO partner ECRCO with EPA regional offices and their regional offices to develop “effective civil rights programs that other states could model.” ECRCO began the program with Region 1, in part, because there were no existing Title VI complaints against the states in that region. The Cooperative Federalism initiative is voluntary. All but one state in Region 1 chose to participate. ECRCO met with and provided training to the staffs of the environmental departments and agencies within the participating states. States in Region 1 provided ECRCO with positive feedback on its voluntary initiative. ECRCO informed us of its plan to engage Regions 5 and 7 in the near future.

ECRCO’s Procedural Safeguards

ECRCO developed a “procedural safeguards” checklist, which contains what the office considers foundational elements of a nondiscrimination program.⁵ The

⁵ These requirements stem from Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 13 of the Federal Water Pollution Control Act, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. The scope of our evaluation is limited to Title VI.

procedural safeguards checklist derives from both explicit regulatory requirements—including posting a nondiscrimination notice in a “prominent place” and adopting grievance procedures—and more general requirements, such as not providing services or benefits differently based on race, color, or national origin. General requirements also include language access, which means ensuring that members of the public with limited-English proficiency have meaningful access to information in the languages they understand, as required by Title VI.

The checklist, which can be found in Appendix B, adds foundational elements, whether a funding recipient has

- Posted a nondiscrimination notice in a prominent place to individuals with limited-English proficiency, and clearly identified a nondiscrimination coordinator as a point of contact for concerns. A nondiscrimination coordinator should ensure compliance with federal nondiscrimination laws.
- Adopted grievance procedures that are prominently published in print and available online.
- Developed, publicized, and implemented written public participation procedures.
- Developed, publicized, and implemented written procedures to ensure meaningful access to all, including access for individuals with limited-English proficiency.

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2020-10-15 19:44:00

As previously stated in our written technical comments on the OIG's Draft Report, the Checklist version you have included at Appendix B is not the most recent version of the "Checklist." The Procedural Safeguards Checklist for Recipients, (marked January 2020), which we have attached, details

Responsible Offices

The Office of the Administrator supports the leadership of the EPA's programs and activities to protect human health and the environment. The Office of General Counsel's ECRCO is responsible for enforcing several federal civil rights laws for applicants and recipients of federal financial assistance from the EPA. This includes discrimination covered by Title VI— race, color, or national origin—as well as discrimination based on sex, disability, retaliation,

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Scope and Methodology

We conducted this evaluation from November 2019 through January 2020. We conducted this evaluation in accordance with the *Quality Standards for Inspection and Evaluation*, published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our objective. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our review.

7.100 makes clear that retaliation is another form of discrimination or basis of a discrimination complaint. The OIG's 2020 update to the *Quality Standards for Inspection and Evaluation* requires that we plan and

To answer our objective, we:

- Reviewed legislation, policies, and guidance regarding Title VI and the EPA’s implementation of:
 - Title VI.
 - U.S. Department of Justice policy guidance.
 - ECRCO’s *Case Resolution Manual*.
 - Chapter 1 of ECRCO’s *Compliance Toolkit*.
 - EPA Orders 4700 and 4701.⁶
- Reviewed external reviews and analyses of the EPA’s Title VI program, including those conducted by the United States Commission on Civil Rights, known as the USCCR, and the EPA-commissioned studies by Deloitte Consulting.⁷
- Reviewed all EPA Title VI cases from fiscal year 2016 through September 30, 2019 or fiscal year 2020.⁸
- Interviewed ECRCO management and staff.
- Interviewed the Office of Grants and Debarment, EPA’s Office of Air and Radiation and all ten EPA Regions.
- Interviewed other federal agencies. We selected these federal agencies from our review of the external reports cited above, as well as on recommendations from experts in the field.
- Interviewed seven states to discuss their knowledge of Title VI program and their work with the EPA on compliance. We selected these states using a judgmental sample focused on getting a range of experiences with ECRCO.

In addition, we reviewed the websites of the environmental agencies for all 50 states and three territories—Puerto Rico, the U.S. Virgin Islands, and Washington, D.C.— although we did not make any determination about the legal sufficiency of what was posted. We recognize that recipients of EPA financial assistance extend beyond the major state and territory environmental agencies to local agencies and municipalities. We used these larger agencies and departments as proxies to determine how consistently the states and territories disseminate nondiscrimination information to the public.

⁶ The purpose of EPA Order 4701 is to provide cross-Agency support for resolving complaints filed under Title VI and other nondiscrimination statutes applicable to recipients of the EPA’s financial assistance and to ensure that EPA resources are supportive of the civil rights mission.

⁷ Our analysis did not include in-depth reviews of relevant court cases.

Further, there were elements that we could not determine from a website review, such as whether the department or agency was, as outlined in the procedural safeguards checklist, “provid[ing] or procur[ing] training services for [their] staff to ensure that they are appropriately trained on ... non-discrimination policies and procedures.” Therefore, our review of websites included only a subset of the procedural safeguards ECRCO included in its checklist—those that we believe we should find online, such as a nondiscrimination notice and grievance procedures. We defined a program “weakness” as the state not having either the notice or the grievance procedure or both.

Chapter 2

Improved Oversight Needed to Assure Compliance with Title VI to Prevent Discrimination

ECRCO has not fully implemented an oversight system to identify and correct weaknesses in EPA funding recipients' Title VI programs. We found that ECRCO

does not proactively conduct compliance reviews and

from funding recipients to target programs with weak

the investigation process. ECRCO developed a proced

assess programs when a complaint is filed. We reviewe

websites of all 50 states and three territories to determin

safeguards existed and found that 81 percent lacked eit

notice or grievance procedures or both. Further, state p

seven states we interviewed told us that they need train

EPA to help them address discrimination complaints re

cumulative impacts, which are the compounding effect

pollution in a certain area. By improving its oversight

compliance reviews and data collection as well as incre

guidance, the EPA will increase its assurance that fund

complying with Title VI requirements. Better impleme

level could help alleviate complaints and prevent future

Oversight Should Include Compliance Reviews to Identify Weaknesses in Funding Recipients' Title VI Programs

Using systematic compliance reviews to identify weak

Title VI programs should be an integral piece of the EP

After the Agency awards funding, ECRCO does not co

compliance reviews to determine funding recipients' co

Instead, ECRCO waits until a complaint is filed to rev

elements of the recipient's nondiscrimination program

Employing the ECRCO's procedural safeguards check

percent of websites of the states and territories we rev

required foundational elements of a Title VI program w

not meeting these minimum requirements. In addition,

Cooperative Federalism pilot, we did not find that the

safeguards than states in other regions.

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2020-10-15 19:52:00

Again, this statement represents a fundamental principle of ECRCO's work - how it initiates

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The use of the word "further" implies that this statement results from or is somehow related to the prior statement about recipients' nondiscrimination programs. However, "nondiscrimination program"

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2020-10-15 19:53:00

This conclusion is based on several assumptions and faulty logic. It appears to suggest that the way to avoid "future backlogs" is to receive fewer complaints. EPA believes the way to avoid "future backlogs" is to invest in strategic planning and to put in place internal accountability measures that will

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2020-10-15 19:54:00

Again, this statement represents a fundamental principle of ECRCO's work, how it initiates "reviews" within existing complaints and how it uses the Checklist. Please see EPA's comment in the "At A Glance" Section of

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We continue to work with Region 1 states and the work has not concluded. Also, we note that, per your draft report, the State DEPs you concluded met your review requirements did not include any states in Region 1. However, our review shows that at least one state in Region 1 has in place both a Notice

Review of State Agency Websites Using the ECRCO Checklist Identified Weaknesses in Funding Recipients' Title VI Programs

In our review of state environmental agencies' websites, we found that 43 (81 percent) out of 53 states and territories did not have some of the required foundational elements (Figure 1).

In general, 60 percent of states and territories posted nondiscrimination notices on either their environmental agency's website or on another state-associated website. Of the 32 states with notices, 14 provided notices in languages other than English.

Despite the Cooperative Federalism pilot conducted in Region 1, we did not find Region 1 states to have more procedural safeguards than other states. While ECRCO did receive positive feedback about the Cooperative Federalism pilot, ECRCO does not have a system in place to evaluate the effectiveness

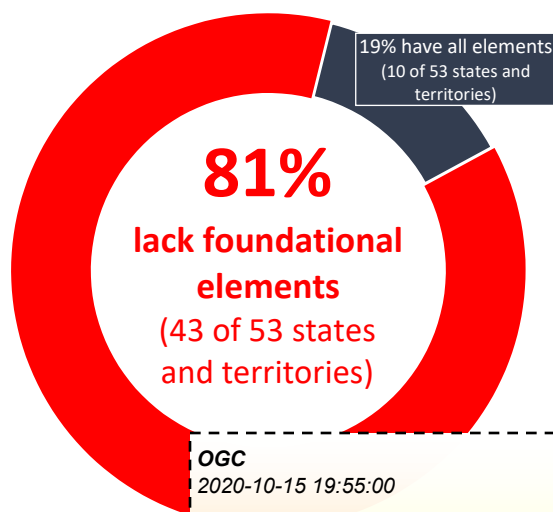
of the program. In addition, it is unclear how ECRCO plans to broaden the Cooperative Federalism initiative into other regions and

Better Oversight Needed to Assure Recipients Implementing Title VI

According to ECRCO, the procedural safeguard reviews are not "labeled as 'compliance reviews'" but accomplish "to address issues of strategic national significance in order to provide an efficient and effective vehicle for providing states and other recipients with important compliance information and assistance."⁸ However, the EPA procedural safeguard reviews only address the existence of a nondiscrimination program and do not determine whether recipients are implementing their Title VI program in accordance with requirements.

If ECRCO conducted compliance reviews, it could assist states in solving these problems. For example, the Alabama Department of Environmental Management's website exhibited four out of the five state

Figure 1: Lack of foundational elements



Source: OIG and ECRCO

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As discussed previously with OIG, ECRCO has begun working with Regions 5 and 7 to reach out to those states in these Regions and to launch similar proactive technical assistance initiatives. Although this statement says "it is unclear", the OIG has never asked for clarification on this point.

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Please see prior comments about the scope of nondiscrimination reviews and how we address any identified deficiencies through Informal Resolution Agreements.

Compliance Office in the EPA's Office of Environmental Policy and Compliance

⁸ [Testimony](#) of Lilian Sotolongo Dorka, director of the External Civil Rights Compliance Office, before the U.S. House of Representatives Committee on Energy and Environment and Climate Change, November 20, 2019.

the nondiscrimination notice posted online and provide grievance procedures, and public participation procedures. Title VI complaints filed with and accepted by ECRCC state, tribe, or territory between fiscal years 2016 and 2017. Alabama's grievance procedures are designed to address complaints filed by the public. If the grievance procedure Alabama would receive and address complaints before. However, Alabama is the subject of 25 percent of the complaints accepted nationwide for review between fiscal year 2016 and March 2020. The high number of complaints received and accepted, along with our interviews with ECRCCO and the State of Alabama, suggest weaknesses in the state's nondiscrimination program despite the existence of the procedural safeguards. ECRCCO is not identifying or targeting nondiscrimination programs that may be noncompliant to review their programs in any proactive or systematic way, as evidenced by the results of our safeguards checklist review. Systematic compliance reviews were recommended by several internal and external entities and are included in ECRCCO's Strategic Plan. Thus, complainants face the burden of filing Title VI complaints rather than provide oversight that would result in recipients' effective Title VI.

Oversight Should Include Collecting Information from Recipients to Target Compliance Reviews

New applicants for EPA funding must fill out EPA Form 4700-4, which requests an assurance that they will comply with all applicable civil rights statutes and EPA regulations. When the forms indicate deficiencies, questions, ECRCCO (or ECRCCO's representatives in the field) goes back to applicants noting any deficiencies in their responses and provides technical assistance to explain nondiscrimination program requirements to address those. ECRCCO has the authority to delay or deny funding to EPA grant recipients based on the results of the pre-award review. Our review of recipients' websites suggests that many do not have Title VI safeguards. This creates a risk that the EPA's review is not successful in identifying these Title VI weaknesses. The Office of Grants and Debarment staff confirmed that ECRCCO has never denied funding or held up an award due to Title VI concerns.

Besides EPA Form 4700-4, ECRCCO does not otherwise collect data from EPA funding recipients, such as program data, information about the composition of the populations they serve. In a 2017 report, it stated that the EPA was not receiving the information it needed to ensure compliance. ECRCCO reported to the USCCR that it does not have procedures to routinely collect data from recipients but does collect information from complainants as necessary to determine the jurisdiction to investigate a complaint or conduct a compliance review. The USCCR reiterated

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The premise of this discussion is based on a misunderstanding of the nature and purpose of a recipient's grievance procedure. There is no jurisdictional requirement of administrative exhaustion at the recipient level before an individual may file a complaint with the EPA. Instead, any member of the public is free to

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First, the premise for this statement is erroneous. Previously communicated to OIG and described in our cover letter and comments above, ECRCCO does proactively conduct reviews and provide oversight of recipient's programs. Secondly, the OIG's conclusion has no reasonable basis. The EPA

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This statement has been rewritten to correct an OIG's explanation of the process. deny financial assistance award compliance review. recipients do not have pre-award reviews are not

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2020-10-15 20:26:00

This statement is based on a misunderstanding of ECRCCO's work. Please refer to EPA's prior comment about the scope ECRCCO's regulatory authority with respect to data collection in the "At A Glance" section of this report.

compliance monitoring and noted that ECRCO lacked policy or guidance for

routine data collection and could benefit from collecting basic data about recipients’ Title VI programs, thereby helping to “ensure that recipients of EPA funding ... take steps to come into compliance.”

The EPA’s Civil Rights Executive Committee recommended in a 2012 report that the Agency require recipients to submit data on [affected] communities and on [limited-English proficiency] communities. Collecting and analyzing these data would support ECRCO’s efforts to target recipient programs that may be at risk for noncompliance with Title VI implementation. ECRCO could also conduct a procedural safeguard checklist review during a compliance review to determine whether the recipient’s program has any weaknesses.

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See comment above about the scope of ECRCO’s regulatory authority for data collection. Also, again, please note that there is no such thing as a “checklist review.” The checklist is one assessment tool used during a compliance review. But there is no “checklist review or a compliance review.”

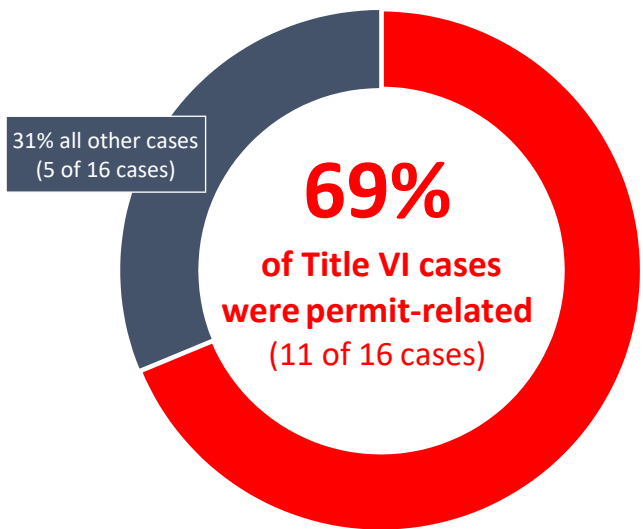
Regions and States Would Benefit from Additional Guidance and Training from ECRCO

Recipients of EPA funding lacked guidance and training from ECRCO to address common cross-cutting environmental concerns that drive a significant percentage of Title VI complaints. For example, regional and state personnel we interviewed cited both permitting and cumulative impacts as concerns.

Guidance Needed to Assist in Title VI Cases Related to Permitting

Permitting is a key concern in Title VI complaints filed with the EPA. We found that the EPA received or resolved 57 Title VI complaints from 2016 through March 2020. The EPA accepted 16 (28 percent) of these 57 cases for investigation. Of the 16 cases accepted and investigated, 11 cases (69 percent) were related to concerns about permits issued to sources that emit or discharge pollutants into the environment (Figure 2).

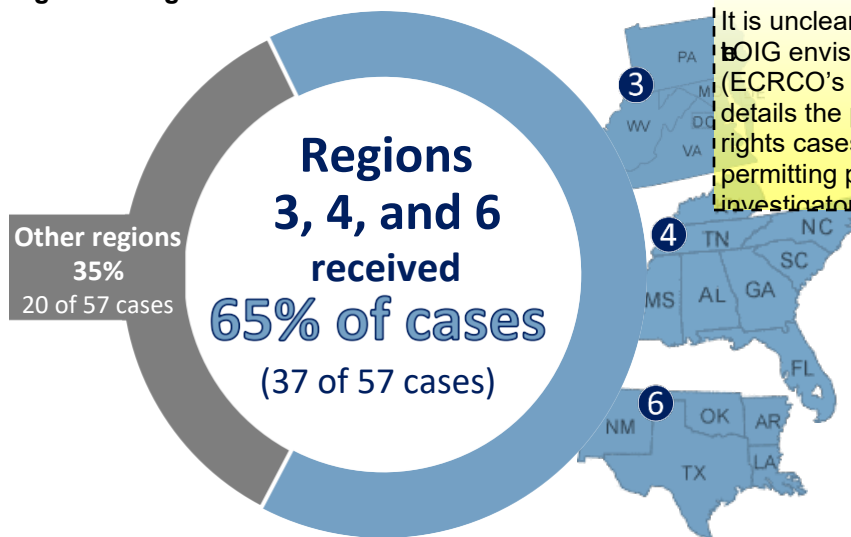
Figure 2: Accepted EPA Title VI cases, 2016–2020



Source: OIG analysis. (EPA OIG figure)

Regions 3, 4, and 6 oversee the states that received Title VI complaints in 37 (65 percent) of the 57 cases received or resolved, and 19 (51 percent) of these 37 cases were related to permits (Figure 3). Regional staff told us that they receive Title VI complaints regarding permitting issues and that more guidance is needed to address permit-related issues.

Figure 3: Regional caseload for Title VI cases from 2016



Source: OIG analysis. (EPA OIG figure)

ECRCO should work with EPA program offices on providing needed guidance on permitting to assist with the large caseload. In 2000, the EPA addressed permit-related Title VI challenges in its notice of two draft guidance documents in the Federal Register, under the single title of *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance) and Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigation Guidance); Notice*. These draft guidance documents specifically targeted permitting programs. According to ECRCO, both documents were rescinded because the information is now contained in the Case Resolution Toolkit Chapter 1, which are both publicly available. On March 21, 2006, the EPA finalized a new version of Title VI guidance, titled *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance)*. This guidance encourages public involvement in the permitting process. However, despite these guidance documents, Title VI challenges remain.

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It is unclear what type of additional guidance the OIG envisions. Existing OGC guidance (ECRCO's Compliance Toolkit, Chapter 1) details the process for investigating civil rights cases involving alleged discriminatory permitting practices. The standard investigatory process is evident in the case-

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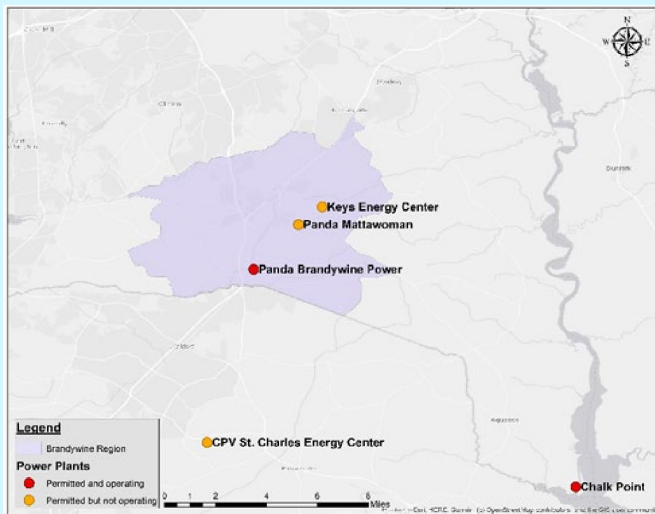
This statement is incomplete and does not reflect prior written comment to OIG's draft Report that the draft Guidances were rescinded this year because the information is now contained in the Case Resolution Manual and Compliance Toolkit Chapter 1, which is a guidance document posted on

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It is not clear what this statement means. What the permit-related "challenges" that remain? No guidance would ever be able to anticipate all questions or "challenges" related to specific permits and their approval. These would be addressed on a case-by-case basis.

Case Study: Brandywine, Maryland



Source: OIG analysis using Esri's ArcMap, a mapping and location analytics platform.

Title VI Complaint Filed with the EPA

In May 2016, Earthjustice filed a Title VI complaint with the EPA against the Maryland Department of the Environment and other state agencies responsible for authorizing the construction of a natural gas-fired power plant—Mattawoman Power Plant. The complaint stated that the population within ten miles of the approved location of the plant is 67 percent Black, according to EPA data. The Brandywine community is bordered by several other fossil fuel-fired power plants and is the site of other types of facilities, including numerous open pit sand and gravel mines; a coal ash disposal facility; a facility that processes soil contaminated with petroleum products and heavy metals; and the Brandywine Superfund site, which was used to store hazardous military waste.

EPA Decision and Resolution

The EPA investigated both the decision to authorize the construction of the plant and whether the public participation process was discriminatory. The EPA did not make a formal finding of discrimination but did enter into an Informal Resolution Agreement with the state agencies in January 2019. The agreement directed the state permitting authority to use the EPA's data to identify "affected communities that may be subject to additional impacts." Maryland agreed to make air quality information publicly available during its review of permit applications as well as to evaluate any citizen science, which is scientific research conducted by the public.

ECRCO Stakeholders Need More Guidance and Training to Address Cumulative Impact Issues

We found that six of the ten regional EPA offices have encountered cumulative impact issues. The 1999 *Report of the Title VI Implementation Advisory Committee*, an EPA-convened group made up of representatives from different stakeholder groups directly affected by Title VI and academia, included several principles for Title VI that highlighted the importance of addressing cumulative impacts. It noted that "community concerns about cumulative impacts are at the heart of many Title VI disputes ... [T]o address the communities' fundamental concerns effectively, appropriate authorities and other responsible parties should recognize the cumulative nature of such impacts and to attempt to take action to reduce and ultimately, eliminate the impacts."

The EPA's environmental screening tool

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2020-10-15 20:50:00

This language below shared by OP and public can be helpful. EPA recommends OIG not deviate from this language as doing so will create confusion. EPA's EJSCREEN is an environmental justice and screening tool that provides EPA with a nationally consistent dataset and racial composition in an area is

imperative to cumulative a

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An EPA regional office attorney stated that cumulative impacts exist. See prior comments about using language to address the Title VI complaints. The misunderstandings that formal findings are the best way to judge the value of a civil rights program.

During our interviews, state environmental departments also noted a need for guidance to help address cumulative impact issues. Three of the seven states we spoke to said that guidance addressing cumulative impact issues would be helpful. One additional state indicated that cumulative impact analysis was done on an ad hoc basis.

ECRCO personnel said that their office is not primarily responsible for developing guidance for permitting and cumulative impacts because those are predominantly environmental issues that should be addressed by the EPA's program offices. In 2012, the EPA's Civil Rights Executive Committee reported, however, that "a stronger cross-connection is needed between program guidance designed to assist states in carrying out delegated authorities under environmental statutes such as monitoring or permitting guidance, with the obligations and grant conditions of Title VI for recipients of federal funds." ECRCO has the authority to provide this type of guidance and leads the Agency's Title VI program. ECRCO should collaborate with the regions and program offices to address the development of policy and guidance for cross-cutting issues, such as permitting and cumulative impacts.

EPA Needs to Increase Training for EPA Staff and State Civil Rights Officers

Most of the states we interviewed indicated that they had not received training from ECRCO on Title VI issues. One state told us that the EPA used to have training videos available online and that it would appreciate something similar being available again to train their staff. In addition, staff from four of the ten regions we interviewed did not recall receiving training or were offered little training from ECRCO. In most cases, DCROs and regional staff are only involved in Title VI if there is an active case in their region. ECRCO is the lead for all cases and relies on regional staff for on-the-ground knowledge and contacts.

Considering our findings with respect to the lack of procedural safeguards on a large number of state environmental agency websites, ECRCO could improve Title VI implementation within the regions and states by providing regular and consistent communication beyond its Cooperative Federalism efforts. ECRCO could improve the implementation of Title VI by developing and implementing greater outreach tools to partners and recipients. This includes issuing guidance to assist EPA regions and states in developing stronger connections between cross-cutting environmental issues—such as permitting and cumulative impacts—to civil rights and to provide Title VI training to more fully integrate Title VI prevention and compliance activities into regular and routine EPA activities across all Agency programs.

Conclusions

The EPA should assure that funding recipients' Title VI programs are compliant and prevent discrimination by conducting more robust, systematic oversight activities. ECRCO could improve the implementation of Title VI by collecting additional data from recipient programs. This will enable it to target vulnerable programs to assess and assure Title VI compliance. In addition, ECRCO could improve Title VI implementation by working with EPA program offices to develop and implement guidance for recipients and training for EPA and state staff. These efforts would assure recipients have the tools they need to carry out delegated programs in compliance with their Title VI obligations. Without better oversight to assure compliant Title VI programs, the primary option for a community seeking relief from discriminatory practices would be to file a Title VI complaint with the EPA.

Recommendations

We recommend that the associate deputy administrator

1. Develop and implement a plan to coordinate regional, and administrative offices with the External Civil Rights Compliance Office to develop guidance on permitting and cumulative impacts related to Title VI.

We recommend that the general counsel:

2. Develop and implement a plan to complete systematic compliance reviews to determine full compliance with the Title VI program.
3. Develop metrics to assess the effectiveness of the Cooperative Federalism pilot and other technical assistance efforts, such as the procedural safeguards checklist. Revise these tools and programs as needed based on the metrics.
4. Verify that EPA funding applicants address potential noncompliance with Title VI with a written agreement before the funds are awarded.
5. Determine how to use existing or new data to identify and target funding recipients for proactive compliance reviews, and develop or update policy, guidance, and standard operating procedures for collecting and using those data.
6. Develop and deliver training for the deputy civil rights officials and EPA regional staff that focuses on their respective roles and responsibilities within the EPA's Title VI program.

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2020-10-15 20:30:00

EPA's response to these recommendations will be in the cover letter accompanying these final technical comments.

External Civil Rights
Permitting and cumulative

Agency Response and OIG Assessment

The Agency did not provide a formal response to the draft report with a corrective action plan and milestones but did provide us with informal written technical comments. On September 9, 2020, we met with the Office of General Counsel to discuss the technical comments. We incorporated them into the final report, as appropriate. In addition, we modified Recommendations 1 and 5. The EPA intends to issue a formal response to this report, which will be posted on the OIG's website.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS

Rec. No.	Page No.	Subject	Status ¹	Action Official	Planned Completion Date	Potential Monetary Benefits (in \$000s)
1	17	Develop and implement a plan to coordinate relevant Agency program, regional, and administrative offices with the External Civil Rights Compliance Office to develop guidance on permitting and cumulative impacts related to Title VI.	U	Associate Deputy Administrator		
2	17	Develop and implement a plan to complete systematic compliance reviews to determine full compliance with the Title VI program.	U	General Counsel		
3	17	Develop metrics to assess the effectiveness of the Cooperative Federalism pilot and other technical assistance efforts, such as the procedural safeguards checklist. Revise these tools and programs as needed based on the metrics.	U	General Counsel		
4	17	Verify that EPA funding applicants address potential noncompliance with Title VI with a written agreement before the funds are awarded.	U	General Counsel		
5	17	Determine how to use existing or new data to identify and target funding recipients for proactive compliance reviews, and develop or update policy, guidance, and standard operating procedures for collecting and using those data.	U	General Counsel		
6	17	Develop and deliver training for the deputy civil rights officials and EPA regional staff that focuses on their respective roles and responsibilities within the EPA's Title VI program.	U	General Counsel		

¹ C = Corrective action completed.

R = Recommendation resolved with corrective action pending.

U = Recommendation unresolved with resolution efforts in progress.

Past Actions to Address Title VI Compliance at EPA

The EPA's Title VI program has been reviewed and evaluated several times from 1999 through 2019 by both internal and external entities. These groups have issued several reports with recommendations on how to operate a "model civil rights program," as well as reviewed specific issues such as how to operate permitting programs that are Title VI compliant.



Source: OIG analysis. (EPA OIG figure)

In 1998, then-EPA Administrator Carol M. Browner commissioned the Title VI Implementation Advisory Committee, which comprised representatives from industry; community advocacy groups; federal, state, and local governments; and academia to review and evaluate "existing techniques" and tools that EPA recipients could use to operate permitting programs that are Title VI compliant and address Title VI concerns. The committee developed eight consensus principles that it believed should guide the EPA's future Title VI efforts. Some of the committee's key consensus principles included "early, proactive intervention ... to deter Title VI violations and complaints;" "transparent and comprehensive standards and decision-making processes;" and the recognition that "cumulative impacts are at the heart of many Title VI disputes" and that they should be researched and addressed to "reduce and ultimately, eliminate the impacts."

Congress established the USCCR in 1957 to, among other things, study and collect information on discrimination and submit reports, findings, and recommendations to the president and Congress. The USCCR has studied the EPA's Title VI and environmental justice programs and has issued reports in 2002, 2003, 2016, and 2019. These reports called on the EPA to provide more guidance to recipients, collect basic program data, and implement formal compliance review programs to ensure nondiscrimination.

In 2010, while trying to address a significant backlog of Title VI cases, then-EPA Administrator Lisa Jackson commissioned an external consulting firm to conduct an "in-depth evaluation" of the EPA's civil rights program. The purpose of the assessment was to "determine the extent to which the structure, policies, procedures, and resources of the [Office of Civil Rights] facilitate

accomplishment of EPA's equal employment opportunity and equal opportunity mission, and to assess whether [the Office of Civil Rights] operates in accordance with applicable laws and regulations."

With respect to the EPA's Title VI program, the firm found that the Agency's Office of Civil Rights had not "adequately adjudicated Title VI complaints" and had "not completed compliance checks of EPA grantees, in a timely or effective manner, to ensure that grantees are not engaging in discrimination in their work." The firm attributed these deficiencies to a lack of qualified and trained staff and limited organizational infrastructure to guide the work of the Office of Civil Rights, including "well-documented policies and procedures, standardized processes, and effective systems." Finally, the firm found that the Office of Civil Rights had operated in an "insular fashion that ... limited its effectiveness" and did not take full advantage of the technical expertise available within the EPA and state governments. Further, the Office of Civil Rights did not conduct much outreach to state environmental entities to build awareness of these entities' civil rights obligations.

In response to the report, the then-EPA deputy administrator was tasked with leading the EPA's Civil Rights Executive Committee, an internal group of EPA senior managers at headquarters and in the regions, to develop a "model civil rights program." The committee's recommendations for the Title VI program included establishing a case management protocol, mobilizing resources across the EPA to address the backlog of cases, and "strengthening Title VI compliance and prevention through grant mechanisms." An April 2012 report by the committee directed the EPA to consider its authorities to improve oversight, including data collection, compliance, monitoring, and reporting, and recognized that recipients' Title VI obligations could be viewed as "pro forma." According to the report:

[S]ignificantly more effort is needed to communicate Title VI responsibilities to recipients of federal funding, and to monitor – through systematic processes – recipient compliance with Title VI requirements. In addition, a stronger cross-connection is needed between "program" guidance designed to assist states in carrying out delegated authorities under environmental statutes (e.g., monitoring or permitting guidance), with the obligations (and grant conditions) of Title VI for recipients of federal funds.

Procedural Safeguards Checklist

ECRCO developed a “procedural safeguards” checklist, which contains what the office considers foundational elements of a Title VI program. It derives from both explicit regulatory requirements—such as posting a nondiscrimination notice in a “prominent place”—and more general requirements—such as not providing services or benefits differently based on race, color, or national origin.



version of the procedural safeguards checklist used in our review, the checklist outlines ECRCO’s recommended text for a nondiscrimination

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2020-10-15 20:32:00

Again, we note that this version is not the most recent version of the “Checklist.” The Procedural Safeguards Checklist for Recipients, (marked January 2020) which provides a more detailed explanation of nondiscrimination obligations and best

(Revised July 2019)

PROCEDURAL SAFEGUARDS CHECKLIST FOR RECIPIENTS FEDERAL NON-DISCRIMINATION OBLIGATIONS

Federal Non-Discrimination Laws: Collectively, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972; and EPA's implementing non-discrimination regulations at 40 C.F.R. Parts 5 and 7.

Item	Yes, with Supporting Documentation	In Progress	No
Notice of Non-Discrimination under the Federal Non-Discrimination Laws¹			
(See Attachment for recommended text of notice.)			
Post the non-discrimination notice in a prominent place:			
• in your offices and facilities			
• on your website's homepage			
• in general publications distributed to the public			
Ensure the non-discrimination notice			
• is accessible to limited-English proficient individuals and individuals with disabilities			
• clearly identifies the non-discrimination coordinator, including name and contact information			
Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws²			
Adopt grievance procedures that are prominently published ³ in print and online and that:			
• clearly identify the non-discrimination coordinator, including name and contact information			
• explain the role of the non-discrimination coordinator relative to the coordination and oversight of the grievance procedures			
• state who may file a complaint under the grievance procedures and describe the appropriate bases for filing a complaint			

¹ 40 C.F.R. § 7.95(a); 40 C.F.R. § 5.140.

² 40 C.F.R. § 7.90; 40 C.F.R. § 5.135(b).

³ 40 C.F.R. § 5.135(b).

Item	Yes, with Supporting Documentation	In Progress	No
<ul style="list-style-type: none"> describe which formal and informal processes are available, and the options for complainants in pursuing either 			
<ul style="list-style-type: none"> state that the preponderance of the evidence standard will be applied during the analysis of the complaint 			
<ul style="list-style-type: none"> contain assurances that intimidation and retaliation are prohibited⁴ and that claims of intimidation and retaliation will be handled promptly and fairly pursuant to your grievance procedures in the same manner as other claims of discrimination 			
<ul style="list-style-type: none"> assure the prompt and fair resolution of complaints which allege violation of federal non-discrimination laws 			
<ul style="list-style-type: none"> state that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process⁵ 			
<ul style="list-style-type: none"> are reviewed on an annual basis (for both in-print and online materials), and revised as necessary, to ensure prompt and fair resolution of discrimination complaints 			
Non-Discrimination Coordinator⁶			
Designate at least one non-discrimination coordinator to ensure compliance with the federal non-discrimination laws, who will:			
<ul style="list-style-type: none"> provide information to individuals internally and externally that you do not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of your programs or activities, and you do not intimidate or retaliate against any individual or group because they have exercised their rights to 			

⁴ See 40 C.F.R. § 7.100.

⁵ Whether ECRCO would consider a recipient's complaint investigation and resolution to be "prompt" will vary depending on the complexity of the investigation and the severity and extent of the alleged discrimination. For example, the investigation and resolution of a complaint involving multiple allegations and multiple complainants likely would take longer than one involving a single allegation of discrimination and a single complainant.

⁶ 40 C.F.R. § 7.85(g); 40 C.F.R. § 5.135(a).

Item	Yes, with Supporting Documentation	In Progress	No
participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights			
<ul style="list-style-type: none"> provide notice of your formal and informal grievance processes and the ability to file a discrimination complaint 			
<ul style="list-style-type: none"> establish a mechanism (<i>e.g.</i>, an investigation manual) for implementation of your grievance procedures to ensure that all discrimination complaints filed with you under federal non-discrimination laws are processed promptly and fairly. One element of any policy and procedure or mechanism must include providing meaningful access for limited-English proficient individuals and individuals with disabilities to your programs and activities 			
<ul style="list-style-type: none"> track all complaints filed with you under federal non-discrimination laws, including any patterns or systemic problems 			
<ul style="list-style-type: none"> conduct semiannual reviews of all formal and informal discrimination complaints filed with you under federal non-discrimination laws and/or any other complaints independently investigated by you to identify and address any patterns or systemic problems 			
<ul style="list-style-type: none"> ensure that appropriate training is provided for your staff in the formal and informal processes available to resolve complaints filed with you under federal non-discrimination laws 			
<ul style="list-style-type: none"> provide or procure training services for your staff to ensure that they are appropriately trained on your non-discrimination policies and procedures, as well as the nature of your obligation to comply with federal non-discrimination laws 			
<ul style="list-style-type: none"> ensure that complainants are updated on the progress of their discrimination complaints filed with you under federal non-discrimination laws and promptly informed as to any determinations you have made 			

Item	Yes, with Supporting Documentation	In Progress	No
<ul style="list-style-type: none"> undertake periodic evaluations of the efficacy of your efforts to provide services, aids, benefits, and participation in any of your programs or activities without regard to race, color, national origin, disability, age, sex or prior exercise of rights or opposition to actions protected under federal non-discrimination laws 			
<ul style="list-style-type: none"> not have other responsibilities that create a conflict of interest (<i>e.g.</i>, serving as your non-discrimination coordinator as well as your legal advisor or representative on civil rights issues) 			
Public Participation			
Ensure your public involvement process is available to all persons regardless of race, color, national origin, disability, age, sex or prior exercise of rights or opposition to actions protected under federal non-discrimination laws.			
Ensure that the factors used to determine the appropriate time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner.			
Develop, publicize and implement written public participation procedures (consistent with EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006)), that include implementation of steps for effective public participation that is accessible to all persons regardless of race, color, national origin (including LEP), disability, age, and sex each time you engage in a public participation or public involvement process. For example:			
<ul style="list-style-type: none"> develop a description of the community (including demographics, history, and background) 			
<ul style="list-style-type: none"> provide a contact list of your relevant staff members, including phone numbers and email addresses, to allow the public to communicate via phone or internet 			
<ul style="list-style-type: none"> develop a list of past and present community concerns (including any complaints filed under the federal non-discrimination laws) 			

Item	Yes, with Supporting Documentation	In Progress	No
<ul style="list-style-type: none"> develop and implement a detailed plan of action (outreach activities) you will take to address concerns 			
<ul style="list-style-type: none"> develop and implement a contingency plan for unexpected events 			
<ul style="list-style-type: none"> identify location(s) where public meetings will be held (consider the availability and schedules of public transportation) 			
<ul style="list-style-type: none"> develop a list of contact names for obtaining language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings 			
<ul style="list-style-type: none"> develop a list of appropriate local media contacts (based on the culture and linguistic needs of the community) 			
<ul style="list-style-type: none"> provide the location of the information repository 			
Meaningful Access to Programs and Activities for Persons with Limited English Proficiency			
Conduct an appropriate analysis described in EPA's LEP Guidance, found at 69 FR 35602 (June 25, 2004) and http://www.lep.gov , to determine what language services or mix of language services you need to provide to ensure that limited-English proficient individuals can meaningfully participate in your programs and activities, and			
<ul style="list-style-type: none"> develop a language access plan consistent EPA's LEP Guidance 			
<ul style="list-style-type: none"> develop, publicize, and implement written procedures to ensure meaningful access to all your programs and activities for all persons, including access for limited-English proficient individuals 			
<ul style="list-style-type: none"> translate vital documents of general interest into prominent languages 			
<ul style="list-style-type: none"> translate vital documents of individual interest to LEP individuals 			
<ul style="list-style-type: none"> provide for simultaneous oral interpretation of live proceedings (<i>e.g.</i>, town hall meetings and public hearings) in prominent languages 			
<ul style="list-style-type: none"> provide for simultaneous interpretation of proceedings, meetings, <i>etc.</i>, for individual LEP person participating in one of your 			

Item	Yes, with Supporting Documentation	In Progress	No
programs or activities (<i>e.g.</i> , a LEP individual wishing to file a grievance or complaint)			
Meaningful Access to Programs and Activities for Persons with Disabilities			
Develop, publicize and implement written procedures to ensure meaningful access to your programs and activities for individuals with disabilities that:			
<ul style="list-style-type: none"> provide, at no cost, appropriate auxiliary aids and services, including but not limited to, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication and an equal opportunity to participate fully in the benefits, activities, programs and services provided by you in a timely manner and in such a way as to protect the privacy and independence of the individual 			
<ul style="list-style-type: none"> ensure that your facilities and other facilities utilized by you (<i>e.g.</i>, if you hold a public hearing at a recreational center) are physically accessible for individuals with disabilities 			

ATTACHMENT – NOTICE OF NON-DISCRIMINATION RECOMMENDED TEXT

[Recipient Name] does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and, [Recipient Name] does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in actions protected, or oppose action prohibited, by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

[Insert name and title of non-discrimination coordinator] is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination laws).

If you have any questions about this notice or any of [Recipient Name]'s non-discrimination programs, policies or procedures, you may contact:

[Insert name and title of non-discrimination coordinator]
[Insert Recipient Name and Address]
[Insert phone number of non-discrimination coordinator]
[Insert email address of non-discrimination coordinator]

If you believe that you have been discriminated against with respect to a [Recipient Name] program or activity, you may contact the [insert title of non-discrimination coordinator] identified above or visit our website at [insert Recipient website address] to learn how and where to file a complaint of discrimination.

Distribution

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Associate Deputy Administrator
Chief of Staff
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Director, Office of Continuous Improvement, Office of the Administrator
Director, External Civil Rights Compliance Office, Office of General Counsel
Audit Follow-Up Coordinator, Office of the Administrator
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Audit Follow-Up Coordinators, Regions 1–10