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July 31, 2017

Scott Pruitt
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator Pruitt:

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, and national origin in programs and activities that receive federal funding. It provides for the filing of administrative complaints alleging discrimination in a federally funded program or activity and provides federal agencies with the authority to take affirmative actions to ensure compliance. Moreover, if a recipient of federal assistance is found to have discriminated and voluntary compliance cannot be achieved, the federal agency providing the assistance should either initiate fund termination proceedings or refer the matter to the Department of Justice for appropriate legal action. Title VI is an important tool available to both residents and the EPA to address environmental injustice involving discrimination.

Over the years, communities have filed numerous Title VI complaints with EPA, yet there have been only two affirmative findings of racial discrimination in the 46-year history of the agency.¹ Both findings were issued more than 10 years after the complaint was filed. In a 2011 finding the mitigation measure took more than 10 years to render, which is a clear violation of EPA regulations implementing the Civil Rights Act, and was settled without the involvement or consent of the complainants. A 2017 finding was issued more than 20 years after the complaint was filed. The NEJAC believes that communities suffering from racial discrimination have a right to have EPA review and resolve their complaints in a substantive and timely manner with input from the complainants. In this way both sides can move on, either to carry out any agreed-on solution, or to take any further, legally available, appropriate action they deem necessary.

¹ EPA issued a preliminary finding of discrimination in *Angelita C.*, Title VI Complaint 16R-99-99, on April 22, 2011, but never issued a formal written discrimination determination in the case. In *St. Francis Prayer Center*, Title VI Complaint 01R-94-5, EPA issued a finding of discrimination on January 17, 2017. The case was filed in 1993 and accepted for investigation in 1995. It was the oldest pending investigation at EPA when it was decided and the subject of *CARE v. EPA*, litigation filed in federal court to challenge EPA's failure to meet regulatory deadlines on behalf of St. Francis Prayer Center and complainants in four other Title VI cases pending at EPA for more than a decade. *CARE v. EPA*, 4:15o-ocv-03292 (NDCA, filed 2016).

In September 2016, the US Commission on Civil Rights released its report: **Environmental Justice – Examining the Environmental Protection Agency’s Compliance and Enforcement of Title VI and Executive Order 12898.**² The report detailed a number of recommendations including that EPA should:

- include affected communities in the settlement process;
- hire additional staff to meet current and future needs and to clean up the complaint backlog;

With this report and our own concerns in mind, we make the following recommendations:

1. EPA must reaffirm its commitment to fight racial discrimination as an important part of achieving environmental justice and to enforce Title VI when it has been violated. The way EPA has treated Title VI claims in the past could lead to an interpretation by many that fighting racial discrimination is not a priority for the Agency.
2. EPA must take steps to ensure that all states and entities that receive funds from the Agency are in compliance with Title VI. In accepting and using federal funds, recipients acknowledge they will comply with Title VI. Holding states and other agents accountable for compliance also assures there is uniformity across the country in enforcement. Additionally, enforcing Title VI helps to reduce racial discrimination in our society.
3. EPA must resolve its backlog of Title VI cases as soon as possible in a substantive manner and in consultation with complainants. Allowing the backlog to linger would present the Agency in a negative light to all parties, and the public, and paint a picture of an uncaring overly bureaucratic organization. It could also discourage legitimate claims of discrimination under Title VI from being filed. Addressing the backlog in a substantive manner while consulting with complainants should result in community residents understanding that the Agency is responsive to their needs and concerns, and is willing to engage them directly to resolve issues.
4. EPA must ensure that Title VI complainants are involved in settlement discussions that involve their case.³ By doing so, the Agency will be in the best position to make strong, defensible decisions because it will have heard

² (http://www.usccr.gov/pubs/Statutory_Enforcement_Report2016.pdf).

³ Industry representatives on NEJAC encourage EPA to include the relevant permittee in any settlement discussions.

directly from both sides of an issue. It also acknowledges that complainant input is a valuable and necessary part of settlement discussions.

5. EPA must ensure that both parties are allowed adequate time to make and state their case. This is the fair and equitable way to handle concerns and complaints and provides the best chance of achieving a resolution that is acceptable to both parties.
6. The EPA must adhere to Title VI case deadlines. By adhering to existing deadlines, the EPA demonstrates its commitment to being accountable to environmental justice communities with respect to processing Title VI complaints in a timely manner. Maintaining and adhering to existing deadlines would also help to prevent future backlogs.
7. EPA must establish a Title VI Federal Advisory Committee in the Office of Civil Rights. This would allow the Agency to receive consistent advice on Title VI from an interested group of stakeholders that would include people with expertise in this area. It would also be a tangible signal that Title VI is important to EPA and a topic in which it is willing to invest resources.
8. EPA must establish a Title VI NEJAC workgroup. A NEJAC workgroup would provide advice that could be particularly insightful since it would originate from a stakeholder group that works in a field closely related to Title VI. Establishment of the workgroup would also signal that NEJAC believes Title VI is a highly important topic that deserves attention from EPA.

In summary, because racial discrimination has not been resolved, addressing EJ concerns must often still include addressing discrimination based on race or national origin. We have a concern that compliance with Title VI, and when necessary enforcement of Title VI, still does not seem to be an EPA priority. EPA should place a greater emphasis on compliance with and enforcement of Title VI because the lack thereof directly affects the health and welfare of some of our most vulnerable residents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard Moore', with a long horizontal flourish extending to the right.

Richard Moore
Chair

cc: NEJAC Members

