

body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Board of Scientific Counselors, Executive Committee—February 2006 Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the ORD Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** The Designated Federal Officer via mail at: Lorelei Kowalski, Mail Code 8104-R, Office of Science Policy, Office of Research and Development, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via phone/voice mail at: (202) 564-3408; via fax at: (202) 565-2911; or via email at: [kowalski.lorelei@epa.gov](mailto:kowalski.lorelei@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### General Information

Any member of the public interested in receiving a draft BOSC agenda or making a presentation during the conference call may contact Lorelei Kowalski, the Designated Federal Officer, via any of the contact methods listed in the **FOR FURTHER INFORMATION CONTACT** section above. In general, each

individual making an oral presentation will be limited to a total of three minutes.

The purpose of this conference call is to review, discuss, and potentially approve a draft report prepared by the BOSC Water Quality Subcommittee. Proposed agenda items for the conference call include, but are not limited to: Discussion of the Subcommittee's draft responses to the charge questions, and general report content. The conference call is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564-3408 or [kowalski.lorelei@epa.gov](mailto:kowalski.lorelei@epa.gov). To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: March 14, 2006.

**Kevin Y. Teichman,**

*Director, Office of Science Policy.*

[FR Doc. E6-4067 Filed 3-20-06; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

[FRL-8007-3]

### Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Guidance.

**SUMMARY:** EPA's Office of Civil Rights is publishing the *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)* as final. This guidance revises the previous *Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance)* issued for public comment in March 2005. The revisions made in this document reflect and include public involvement considerations suggested in written comments the Office of Civil Rights (OCR) received on the *Draft Final Recipient Guidance*. This guidance has been developed for recipients of EPA assistance that implement environmental permitting programs. It

discusses various approaches and suggests tools recipients may use to help enhance the public involvement aspects of their current permitting programs and address potential issues related to Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's regulations implementing Title VI.

**DATES:** *Effective Date:* March 21, 2006.

**ADDRESSES:** Copies of the written comments received on the Draft Final Recipient Guidance as well as EPA's responses to the written comments may be obtained by contacting the Office of Civil Rights at: U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-1000.

**FOR FURTHER INFORMATION CONTACT:** Karen Randolph, U.S. Environmental Protection Agency, Office of Civil Rights (1201A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460-1000, telephone (202) 343-9679.

#### SUPPLEMENTARY INFORMATION:

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##### A. Preamble

Today's **Federal Register** document contains the guidance document entitled, the *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)*. It offers recipients of U.S. Environmental Protection Agency assistance, suggestions on public involvement approaches they may use to help enhance their current environmental permitting programs to better address potential issues related to Title VI of the Civil Rights Act of 1964, as amended, (Title VI) and EPA's Title VI implementing regulations.<sup>1</sup> The *Recipient Guidance* addresses and incorporates public involvement suggestions EPA's Office of Civil Rights (OCR) received on the *Draft Final Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Final Recipient Guidance)*. This Recipient Guidance will replace the *Draft Final Recipient Guidance* which was issued in March 2005.<sup>2</sup> Much of the

<sup>1</sup> Title VI of the Civil Rights Act of 1964, Public Law 88-352, 78 Stat. 252 (codified as amended at 42 U.S.C. 2000d to 2000-7); 40 CFR part 7.

<sup>2</sup> 70 FR 10625 (2005).

information in this Recipient Guidance is based on EPA's commitment to early and meaningful public involvement throughout the entire permitting process.

The *Draft Final Recipient Guidance* was developed to revise the *Draft Title VI Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Draft Recipient Guidance)* published in June 2000. Prior to issuing the *Draft Recipient Guidance*, EPA considered public input, the work of the Title VI Implementation Advisory Committee of EPA's National Advisory Council for Environmental Policy and Technology (NACEPT)<sup>3</sup>, the work of the Environmental Council of States (ECOS)<sup>4</sup>, particularly its October 9, 1998 draft *Proposed Elements of State Environmental Justice Programs*, and input from available state environmental justice programs. The *Draft Recipient Guidance* discussed approaches to complaints alleging discrimination during the public participation portion of the permitting process, as well as complaints alleging discriminatory human health effects, environmental effects and adverse disparate impacts resulting from the issuance of permits. The *Draft Recipient Guidance* also discussed how these approaches could be used to address concerns before the filing of complaints.

EPA also published the *Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigative Guidance)* in June 2000. The *Draft Revised Investigation Guidance* discussed how OCR would process complaints alleging adverse disparate health impacts from the issuance of environmental permits. To avoid redundancy, OCR decided that the *Recipient Guidance* would only focus on approaches recipients can use to enhance the public involvement portion of their permitting programs. Discussions on disparate and other

<sup>3</sup>NACEPT consists of a representative cross-section of EPA's partners and principle constituents who provide advice and recommendations to the Administrator of EPA on a broad range of environmental policy, technology, and management issues regarding new strategies that the Agency is developing. The Council is a proactive, strategic panel of experts that identifies emerging challenges facing EPA and responds to specific charges requested by the Administrator and the program office managers.

<sup>4</sup>The mission of ECOS involves championing the role of the States in environmental protection and articulating state positions to Congress, Federal agencies and the public on environmental issues. This mission is often advanced by writing letters, making presentations, and working in coalition with other groups to advocate on behalf of the states on environmental matters.

adverse impacts may be included in guidance to be published at a later date. Today, EPA is issuing the *Recipient Guidance* as final.

## B. Review of Public Comments and Revisions to the Draft Guidance

EPA received few comments regarding the *Draft Final Recipient Guidance*. Some of the comments received pertained to the public involvement practices suggested in the *Draft Final Recipient Guidance*. Other comments focused on how OCR should interpret and implement EPA's Title VI regulations. OCR only addressed comments that pertained to the focus of this guidance, which is suggested public involvement practices recipients can use to help ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations. As a result of some of the comments received, OCR revised the document to include a discussion on the need and importance of ensuring a level playing field for all stakeholders before coming to the table to negotiate issues in the Alternative Dispute Resolution (ADR) process, further explanations regarding some of the suggested approaches to help address potential siting issues, revisions on how OCR intends to conduct their "due weight" analysis, and an additional section on The Interface Between Public Involvement and The Rehabilitation Act. OCR has decided to address the comments by revising and incorporating new language into the final version of this guidance.

## C. Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)

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## I. Introduction

### A. Purpose of This Guidance

This guidance is written for recipients<sup>5</sup> of U.S. Environmental Protection Agency assistance<sup>6</sup> that administer environmental permitting programs. It offers suggestions on approaches and ways to address public involvement situations to ensure that federal funding is used in compliance with the provisions of Title VI of the Civil Rights Act of 1964, as amended (Title VI)<sup>7</sup> and EPA's Title VI implementing regulations.<sup>8</sup> The approaches discussed in this guidance may be used to create new public involvement activities or to enhance existing public involvement activities to address allegations of discriminatory public participation practices during the permitting process.

This is a guidance document, not a regulation. This document offers suggestions to recipients about enhancing public involvement processes in environmental permitting, and addressing potential Title VI issues before complaints arise. Recipients remain free to use approaches other than the ones suggested here. In addition, EPA recipients may consider other approaches and ideas, either on their own or at the suggestion of

<sup>5</sup>"Recipient" is defined as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, other entity, any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance." 40 CFR 7.25.

<sup>6</sup>EPA assistance is defined as "any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of personnel; or (3) Real or personal property or any interest in or use of such property, including (i) Transfers or leases of such property for less than fair market value or for reduced consideration; and (ii) Proceeds for a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA."

<sup>7</sup>Public Law 88-352, 78 Stat. 252 (codified as amended at 42 U.S.C. 2000d to 2000d-7).

<sup>8</sup>40 CFR part 7, Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency.

interested parties. Interested parties are free to raise questions and objections regarding this guidance and the appropriateness of using these recommendations in a particular situation. EPA will take into consideration whether the recommendations are appropriate in that situation. This document does not change or act as a substitute for any legal requirements. Rather, the sources of authority and requirements for Title VI programs are the relevant statutory and regulatory provisions.

#### B. Title VI of the Civil Rights Act of 1964

Title VI of the Civil Rights Act of 1964 prohibits discrimination based on race, color, or national origin under any program or activity of a Federal financial assistance recipient. Title VI itself prohibits intentional discrimination. However Congress directed that its policy against discrimination by recipients of Federal assistance be implemented, in part, through administrative rulemaking. Since 1964, regulations promulgated by Federal agencies implementing Title VI have uniformly prohibited conduct or actions by a recipient which have the effect of discriminating on the basis of race, color or national origin. Title VI "delegated to the agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the Federal grantees that had produced those impacts."<sup>9</sup>

EPA initially issued Title VI regulations in 1973 and revised them in 1984.<sup>10</sup> Entities applying for EPA financial assistance submit assurances with their applications stating that they will comply with the requirements of EPA's regulations implementing Title VI with respect to their programs or activities.<sup>11</sup> When the recipient receives EPA assistance, they accept the obligation to comply with EPA's Title VI implementing regulations. Recipients must also adopt grievance procedures that assure the prompt and fair

resolution of complaints which allege violations of EPA's Title VI regulations.<sup>12</sup> When an applicant receives EPA assistance, they may not issue permits that are intentionally discriminatory, or use "criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, or national origin."<sup>13</sup> Persons, or their authorized representatives, who believe Federal financial assistance recipients are not administering their programs in a nondiscriminatory manner may file administrative complaints with EPA or other relevant Federal agencies. The complaint must be filed within 180 calendar days of a particular action taken by the recipient (for example, the issuance of an environmental permit) that allegedly has a discriminatory purpose or effect.<sup>14</sup>

The filing or acceptance for investigation of a Title VI complaint does not suspend an issued permit. Title VI complaints concern the programs and activities being implemented by Federal financial assistance recipients, and any EPA investigations of such a complaint primarily concerns the actions of recipients rather than permittees. While a particular permitting decision may act as a trigger for a complaint, allegations may involve a wider range of issues or alleged adverse disparate impacts within the legal authority of recipients. The primary means of enforcing compliance with Title VI is through voluntary compliance agreements. Suspension or termination of funding is a means of last resort.

Executive Order 12250 directs Federal agencies to issue appropriate Title VI implementing directives, either in the form of policy guidance or regulations consistent with requirements prescribed by the Department of Justice's Assistant Attorney General for Civil Rights.<sup>15</sup> This guidance was developed as a result of the nature of Title VI complaints received in EPA's Office of Civil Rights coupled with requests for guidance from state and local agencies. This guidance focuses on public involvement approaches recipients may use to ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations.

<sup>12</sup> 40 CFR 7.90.

<sup>13</sup> 40 CFR 7.35(b).

<sup>14</sup> 40 CFR 7.120(b)(2).

<sup>15</sup> Executive Order 12250, 45 FR 72995 (1980) (section 1-402).

#### C. EPA's Guiding Principles for Title VI and the Recipient Guidance

To ensure stakeholder involvement in the development of the *Draft Recipient Guidance*, EPA established a Title VI Implementation Advisory Committee (Title VI Advisory Committee) under the National Advisory Council for Environmental Policy and Technology (NACEPT) in March 1998. The Title VI Advisory Committee was comprised of representatives from communities, environmental justice groups, state and local governments, industry, and other interested stakeholders. EPA asked the committee to review and evaluate existing techniques that EPA funding recipients could use to administer environmental permitting programs in compliance with Title VI. Techniques evaluated could include tools for assessing potential Title VI concerns and mitigating impacts where they occur.

Core components of the Recipient Guidance are based on several threshold principles NACEPT included in their April 1999, *Report of the Title VI Implementation Advisory Committee: Next Steps for EPA, State, and Local Environmental Justice Programs*.<sup>16</sup> EPA established guiding principles for implementing Title VI and developing the *Draft Recipient Guidance*. In implementing Title VI and developing this final guidance, EPA is reaffirming its commitment to the following principles:

- All persons regardless of race, color or national origin are entitled to a safe and healthful environment.
- Strong civil rights enforcement is essential in preventing Title VI violations and complaints.
- Enforcement of civil rights laws and environmental laws are complementary, and can be achieved in a manner consistent with sustainable economic development.
- Early, preventive steps, whether under the auspices of state and local governments, in the context of voluntary initiatives by industry, or at the initiative of community advocates, are strongly encouraged to prevent potential Title VI violations and complaints.
- Meaningful outreach and public participation early and throughout the decision-making process is critical to identify and resolve issues, and to also assure proper consideration of public concerns.
- Intergovernmental and innovative problem-solving provide the most comprehensive response to many concerns raised in Title VI complaints.

<sup>16</sup> For a copy of this report, see: <http://www.epa.gov/civilrights/t6faca.htm>.

<sup>9</sup> *Alexander v. Choate*, 469 U.S. 287, 293-294 (1985).

<sup>10</sup> See memo dated October 26, 2001 from Ralph F. Boyd Jr., Assistant Attorney General for the Civil Rights Division, to the "Heads of Departments and Agencies General Counsels and Civil Rights Directors" which states the Department of Justice's position that the *Sandoval* decision at 532 U.S. 286 does not alter the validity of enforcing Title VI regulations or limit the authority and responsibility of Federal grant agencies to enforce their own implementing regulations.

<sup>11</sup> 40 CFR 7.80, EPA Form 4700-4 and Standard Form 424.

#### D. *The Interface Between Public Involvement and Title VI*

Public involvement should be an integral part of the permit decision-making process to help the public understand and assess how issues affect their communities. The degree of public involvement in the permitting process can directly affect the likelihood of the filing of complaints alleging discrimination. Meaningful public involvement consists of informing, consulting, and working with potentially affected and affected communities at various stages of the permitting process to address their concerns. Appropriate collaboration during the permitting process can foster trust, and help establish credible, solid relationships between permitting agencies and communities. Such collaboration may serve to ensure that concerns are identified and addressed in a timely manner to possibly reduce the filing of some Title VI complaints.

The fundamental premise of EPA's 2003 Public Involvement Policy is that "EPA should continue to provide for meaningful public involvement in all its programs, and consistently look for new ways to enhance public input. EPA staff and managers should seek input reflecting all points of view and should carefully consider this input when making decisions. EPA also should work to ensure that decision-making processes are open and accessible to all interested groups, including those with limited financial and technical resources, English proficiency, and/or past experience participating in environmental decision-making. Such openness to the public increases EPA's credibility, improves the Agency's decision-making processes, and can impact final decision outcomes. At the same time, EPA should not accept any recommendation or proposal without careful, critical examination."<sup>17</sup> OCR suggests that EPA recipients consider using a similar approach when implementing their environmental permit programs.

The interface between public involvement and Title VI often arises when racial or ethnic communities believe that they've been discriminated against as a result of a decision made in the permitting process. OCR believes that many of these assertions of discrimination arise from a failure to adequately involve the public in the pre-decisional process prior to permit issuance. Violations of Title VI or EPA's Title VI regulations can be based solely

on discriminatory actions in the procedural aspects of the permitting process. Many Title VI complaints center around allegations of discrimination that may have been prevented, mitigated, or resolved if certain public involvement practices had been implemented by recipient agencies. OCR believes that having recipients focus on early, inclusive and meaningful public involvement throughout the entire permitting process will help ensure that Federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations.

In 1999 the Office of Solid Waste conducted a series of seven case studies to determine if the redevelopment of EPA Brownfields<sup>18</sup> Pilots had been impeded by Title VI complaints, and to address concerns of whether these complaints may deter businesses from redeveloping Brownfields sites. The study, "Brownfields Title VI Case Studies,"<sup>19</sup> indicated that community residents are not likely to file Title VI complaints when the redevelopment process provides for early and meaningful community involvement, and creates a benefit for the local community. In several of the case study Pilots, communities were involved in identifying and helping to resolve issues during the early stages of the process which helped build trust between stakeholders and a sense of ownership for community members. According to those interviewed, community outreach and involvement served to prevent the filing of Title VI complaints and other opposition to development projects.

#### E. *The Interface Between Public Involvement and the Rehabilitation Act*

It is important that recipients provide access and accommodation to individuals with disabilities who wish to take part in public involvement activities. Recipients may consult Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, and EPA's implementing regulations, 40 CFR Part 7. Additional documents which list information to assist recipients in providing access and accommodation are included in Section VII of this

<sup>18</sup> EPA defines Brownfields as real property that is expanded, redeveloped, or reused which may contain or potentially contain a hazardous substance, pollutant or contaminant. Cleaning and reinvesting these properties takes development pressures off of undeveloped, open land which help to improve and protect the environment. For more information on Brownfields Cleanup and Redevelopment, see:

<http://www.epa.gov/swerosps/bf/index.html>

<sup>19</sup> For a copy of this report, see: <http://www.epa.gov/oswer/ej/ejindx.htm#titlevi> or call the hotline at 1-800-424-9346.

guidance, "Bibliography." Many of the documents listed in the bibliography refer to Title II of the Americans with Disabilities Act, 42 U.S.C. 12131 *et seq.*, but also have applicability to Section 504.

#### F. *Scope and Flexibility*

This guidance was written at the request of the states and is intended to offer suggestions to help EPA state and local recipients develop and enhance the public involvement portion of their existing permitting programs. This guidance offers a flexible framework of public involvement approaches. The information and tools discussed in this guidance include proactive approaches to enhance the public involvement aspects of their current permitting program and to help ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations.

EPA knows that because recipients may have different Title VI concerns in communities within their jurisdiction, different levels of resources, and different organizational structures, a "one-size-fits-all" Title VI public involvement approach will not adequately address every program's needs. Recipients are therefore encouraged to use the activities or approaches in this guidance that will be most beneficial in addressing each situation accordingly. While this guidance is intended to focus on issues related to public involvement in environmental permitting, recipients may also consider developing proactive approaches to promote equitable compliance assurance and enforcement of environmental laws within individual jurisdictions. However, compliance with environmental laws does not ensure compliance with Title VI. Even though recipients are not required to implement the Title VI public involvement approaches described in this guidance, they are required to operate their programs in compliance with the non-discrimination requirements of Title VI and EPA's implementing regulations.<sup>20</sup>

## II. *Approaches to Meaningful Public Involvement*

This guidance suggests a number of public involvement approaches recipients may want to adopt and implement to help address Title VI related concerns in their permitting programs. The approaches described here are not intended to be mutually exclusive. The objective of these

<sup>20</sup> 42 U.S.C. 2000d to 2000d-7, 40 CFR 7.30 and 7.35.

<sup>17</sup> For a copy of this report, see:

<http://www.epa.gov/publicinvolvement/policy2003/finalpolicy.pdf>

approaches is to have recipients fully engage as many members of the affected community as possible in the discussions and decisions made regarding issues in their community. Because of differences in culture, levels of experience, knowledge, and financial resources, recipients are encouraged to combine portions of several, or use as many approaches to the extent appropriate to satisfy their program needs. Recipients may couple these approaches with practices already in use to better implement their Title VI programs. Recipients are also encouraged to develop and implement additional approaches not mentioned in this guidance. OCR may consider the outcomes of any approaches in the analysis of a Title VI complaint that relate to programs, activities or methods of administration.<sup>21</sup> Suggested approaches are listed below.

#### *A. Developing and Implementing an Effective Public Involvement Plan*

A Public Involvement Plan (PIP) is a document that serves as the basic foundation of any good public involvement program. PIPs serve as early involvement tools to identify community concerns and lay out approaches recipients plan to take to address those concerns through various outreach activities. An effective PIP includes discussions of what recipients plan to do to ensure that the needs and concerns of the affected community are addressed. In addition, an effective PIP strives to keep the community informed of the public involvement opportunities available to them during the decision-making process. An effective PIP expedites the flow of information for unexpected events, answers basic questions on issues related to the community's concerns, and helps ensure better decision outcomes to benefit the affected community. Equally important, an effective PIP provides members of the affected communities with a sense of partnership in the decision-making process underlying the permitting process. For these reasons, communities and other affected groups should be included in the development of the PIP. Recipients may decide to take the lead in contacting the necessary groups and developing their PIP as an agency, or may use a neutral third party to convene the relevant groups and facilitate the process. Either way, communities and all those affected by the decision outcome should be involved in developing the PIP, as well

as ensuring that the planning efforts of the recipient agency address those issues that are important to them.<sup>22</sup> An effective PIP includes the following information:

- (1) An overview of the recipient's plan of action for addressing the community's needs and concerns,
- (2) A description of the community (including demographics, history, and background),
- (3) A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet,
- (4) A list of past and present community concerns (including any Title VI complaints),
- (5) A detailed plan of action (outreach activities) recipient will take to address concerns,
- (6) A contingency plan for unexpected events,
- (7) Location(s) where public meetings will be held (consider the availability and schedules of public transportation),
- (8) Contact names for obtaining translation of documents and/or interpreters for meetings,
- (9) Appropriate local media contacts (based on the culture of the community), and
- (10) Location of the information repository.

A PIP may change from one affected community group to another or for the same community group over time depending on the types of facilities in the community and the environmental issues faced by the community. PIPs are public documents that should always be available for public viewing. PIPs should be living documents that can easily be revised at any time to effectively address the needs and concerns of the affected community. Hard copies of PIPs should be made available for the public in areas that would be easily accessible to the community (e.g., libraries, community centers, etc.). Because of the informative/exchange age in which we live, PIPs should also be made available for the public electronically by way of the internet.

#### *B. Training Staff*

To understand the importance of building relationships with communities, recipients may need to make internal commitments to tailor their programs so that public involvement becomes a part of the

culture of how staff are trained and programs operate. A successful public involvement program should consist of a team of knowledgeable agency staff (possibly from different program offices within the recipient agency e.g., Permitting, Environmental Justice, etc.) who are committed to, and have the ability to reach out and engage the community early in the permitting process. Because the public may sometimes harbor frustration towards public agency officials who may not be certain about how to properly address an issue within the scope of a public meeting, it is critical for those on the public involvement team to have broad-based skills. Such skills include knowing how to communicate, understand, and address concerns of the general public. In addition, the team should be able to work well together and make sure that everyone thoroughly understands and is able to articulate agency policy, perspectives, and operating procedures of their program in a manner which the public can understand. To be most effective, the public involvement team should include at a minimum, staff capable of serving in permitting and community liaison roles. Although some staff may not have readily acquired public involvement understanding or outreach skills to communicate and work out disputes between their agency and the public in a polished manner, through training, many can acquire them.

Training should include ensuring that there is a thorough knowledge of all of the applicable requirements as well as how to engage the public throughout the entire permitting process. Team members or program staff should know and be able to explain 'what to do, how to do it, and when to do it' for the programs they work in. In addition, training should include sessions on how to actively listen to the public's concerns, the importance of seriously considering the public's opinions, and addressing the public's questions in an understandable, prompt and respectful manner. Training that emphasizes these points among others may reduce the likelihood of controversy, permitting delays and the filing of Title VI complaints. While training alone does not guarantee that delays in the permitting process or the filing of Title VI complaints will no longer occur, it is a helpful adjunct to any dispute avoidance and resolution process.

Basic elements for an effective public involvement training program that will help ensure that federal funding is used in compliance with the provisions of Title VI and EPA's Title VI implementing regulations include:

<sup>21</sup> For further discussion of the concept of giving "due weight" to a recipient's compliance efforts in the context of a Title VI complaint, see Section V.

<sup>22</sup> For suggestions on how to develop a Public Involvement Plan, see: <http://www.epa.gov/epaoswer/hazwaste/permit/pubpart/manual.htm>, [http://www.epa.gov/superfund/tools/cag/ci\\_handbook.pdf](http://www.epa.gov/superfund/tools/cag/ci_handbook.pdf), and <http://web.em.doe.gov/ftplink/public/doeguide.pdf>.

- Step by step training on how to explain the applicable environmental program regulations to the public in a clear and concise manner;
- Cultural and community relations sensitization;
- How to engage in a dialogue and collaboration, as well as how to build and maintain trust and mutual respect with communities;
- Skills and techniques to enable staff to effectively address community concerns in a clear and concise manner;
- A basic use of available technological communication tools such as the internet, databases, GIS tools and site maps, etc. to help identify and address potential issues in affected communities that may give rise to Title VI concerns; and
- Alternative dispute resolution techniques to enable staff to design and carry out a collaborative and informal process that can help resolve Title VI concerns.<sup>23</sup>

### *C. Involving the Public Early and Often Throughout the Permitting Process*

Public involvement done early and often, is essential for the success of any permitting program. Public input is a valuable element which can influence decisions made in communities hosting proposed and permitted facilities. Early involvement is not only helpful to communities, but to recipients as well, because it encourages information exchange and gives time for both parties to consider and better understand the others viewpoints before actual decisions are made.

Some regulations require permitting programs to include public involvement opportunities during certain stages of the permitting process.<sup>24</sup> While such requirements are designed to ensure that community input is obtained at critical stages of the process, the public may sometimes feel as though these opportunities do not include them as active, ongoing partners. Consider tailoring and integrating public involvement practices that engage communities into as many stages of the process as appropriate, so that public involvement becomes more of a “culture” of how agencies think and operate, as opposed to a list of measures to check off as they are completed. Examples of ways to encourage early public involvement include:

- When soliciting community input regarding upcoming decisions, take steps to get feedback from as many members of the affected community as

possible, prior to the meeting. This may mean finding out from community members, who will and will not attend the meeting. Based on that information, provide communities with alternate means of participating for those who would not be able to attend the meeting. For example, some members may want to, and have the time to attend every meeting to hear discussions of the issues every step of the way; while others, due to time constraints, would be satisfied submitting written comments or completing agency questionnaires regarding the issues, while trusting that their opinions and concerns will be considered during discussions and when decisions are made.

- Requiring facilities to hold pre-application meetings with the public prior to submitting their application to the permitting agency. Such an activity, which is required in the RCRA program,<sup>25</sup> can open the dialogue between the permit applicant and the community in the very early stages of the process. This gives the facility an opportunity to share information with the community and hear and respond to their concerns with greater sensitivity prior to submitting the permit application. Involving the public in identifying potential issues upfront and in discussions regarding possible solutions may help promote “ownership” of decisions and policies made affecting their community. This practice can help maintain community support over the life of the permit. Even though some decisions may not always fully reflect the community’s views, if communities are involved early and throughout the process, they may be more willing to accept the decisions made and continue to participate in discussions to help prevent future issues. Such community involvement may help reduce the likelihood of communities challenging permit decisions toward the end of the permitting process, or filing Title VI complaints alleging discrimination.

### *D. Encouraging Stakeholder and Intergovernmental Involvement*

Stakeholder involvement is the process of bringing together those people or groups who may be affected by decisions made regarding concerns in a community. Stakeholder groups identify, discuss and work toward resolving concerns in a collaborative manner. Groups may include but are not limited to communities, businesses, environmental justice groups, Federal, state and local governments, tribes, academia, and environmental and trade

organizations. Stakeholder involvement is vital in establishing and maintaining a successful public involvement program. Effective stakeholder involvement ensures that diverse interests are considered and gives community members from various backgrounds and cultures opportunities to take active roles to effectively contribute and possibly influence decisions affecting them and their community. As stakeholders continue to work together, they become more familiar with the character of the community and are better able to collaboratively mitigate or resolve issues as they arise.

Depending on the scope of authority, resources and expertise, the representatives in stakeholder groups can be very broad. It is important to plan and carefully consider beforehand, which stakeholders to include in the meetings, and to seek out the groups and individuals who will be most affected by the proposed action. Contacting some groups and individuals may be difficult because of their cultural or economic lifestyles, while locating and including other groups will be easier due to their known interest in the decision outcome. For instance, some Title VI concerns may involve zoning or traffic patterns. Collaborating with the governmental units responsible for regulating zoning and traffic patterns, along with the communities that will be affected by any new potential driving routes, may increase the likelihood of achieving more effective solutions to concerns raised in the Title VI context. The earlier all appropriate parties are identified, and brought into the process, including other governmental agencies, the greater the likelihood of reaching effective solutions

### *E. Equipping Communities With Tools To Help Ensure Effective Public Involvement*

Often the public does not get involved in decision-making because of their lack of understanding or knowledge of issues affecting their community. Alternatively, the public may not articulate or formulate their concerns in a manner that clearly fits into the decision-making process underlying the issuance of a permit. As a result, the public may feel as if their views were not valued or seriously considered when final permit decisions were made. It is important that the public be equipped with necessary tools to allow them to effectively participate in the permit decision-making process. Consider offering training to educate the public on process and basic technical issues that are relevant in making

<sup>23</sup> See section II. G, “Using Alternative Dispute Resolution Techniques”.

<sup>24</sup> See 40 CFR part 25 and part 124, Subpart A.

<sup>25</sup> See 40 CFR 124.31(b).

permitting decisions. Training that emphasizes the procedures, options and available information, may encourage community members to assume a more active role when participating in permitting discussions affecting them and their community. Doing so can affect how issues are resolved at the local and state levels. For instance, the benefits of holding educational workshops that clarify public involvement opportunities in the permitting process would create a greater understanding of the permitting process by the public and may increase the level of public involvement; which could lead to a reduction in the number of Title VI complaints filed. An effective training/information program for communities may include the following:

- An information packet with useful information or fact sheets regarding applicable environmental regulations, the public involvement opportunities in the different environmental permitting programs, and the important role community involvement plays in helping to address community concerns early in the permit decision-making process, as opposed to later in a Title VI complaint.

- Targeted or one-day training sessions on different subject matters relating to public involvement and permitting. These sessions could include presentations/discussions on the importance of public involvement or a walk through of steps included in the permit review stage, while focusing on public involvement options and opportunities in the permitting process. For example, such a session could consist of discussions on the types of information needed to review a pending permit and points on how to prepare effective technical and legal comments.

- Specific “how to” sessions for the public that illustrate through role playing how they can effectively participate and influence decisions during the public involvement process.

#### F. Making Assistance/Grants Available to the Public

The complex and technical nature of many permitting programs may sometimes impede effective public involvement during the permitting process. To help bridge the gap in capacity between community groups and other stakeholders, several agencies have begun to provide resources in the form of grants and free technical assistance. These types of educational resources serve to help empower communities to better equip them to actively participate in discussions and offer solutions to help address potential Title VI issues in their community.

Grants such as Technical Assistance Grants (TAGs)<sup>26</sup> and assistance through programs such as Technical Outreach Services for Communities (TOSC)<sup>27</sup> have been very successful in educating communities on technical and process issues. In addition to grants, local colleges and universities within the communities can also serve as a major resource because of their technical expertise, research capabilities and historical knowledge of issues faced by the affected communities in the past.

#### G. Using Alternative Dispute Resolution Techniques

The ability to address potential impacts in a timely and collaborative fashion is critical to resolving problems that may form the basis for a Title VI complaint. The handling of Title VI concerns through the formal administrative process can consume a substantial amount of time and resources for all parties involved. Therefore, EPA strongly encourages recipients to consider and use Alternative Dispute Resolution (ADR)<sup>28</sup> techniques where appropriate to prevent and address concerns regarding public involvement in the permitting process. ADR refers to voluntary procedures used to prevent and settle controversial issues by developing and implementing an outcome agreeable to all parties. The goal of ADR is for stakeholders to collaborate and resolve issues acceptable to everyone involved.

ADR includes using a wide range of processes to resolve controversial issues. All ADR techniques involve a neutral third party who assists others in designing and conducting a process for reaching possible agreement. The neutral third party should not have a stake in the substantive outcome of the process and is equally accountable to all participants in the ADR process. Often

<sup>26</sup> A TAG provides money for activities that help communities participate in decision making at eligible Superfund sites. An initial grant up to \$50,000 is available to qualified community groups so they can hire independent technical advisors to interpret and help them understand technical information about their site. TAGs may also be used to attend approved training and obtain relevant supplies and equipment. For more information, see: <http://www.epa.gov/superfund/tools/tag/index.htm>.

<sup>27</sup> The TOSC program provides free, independent, non-advocate, technical assistance to communities living near hazardous waste contaminated sites. The goal of the TOSC program is to help communities understand the underlying technical issues associated with contaminated sites in their neighborhoods so that they may be able to substantively participate in the decision-making process regarding issues in their community. For more information on TOSC, see: <http://www.epa.gov/superfund/tools/tosc/index.htm>.

<sup>28</sup> For more information on ADR techniques, contact EPA's Conflict Prevention and Resolution Center at <http://www.epa.gov/adr>.

the use of ADR includes dialogue between parties to reach acceptable solutions. Effective ADR can result in new understandings of and innovative ideas to address issues of concern. It is also particularly helpful in building better relationships that may be important for future interactions between the parties. Typically, all aspects of ADR are voluntary, including the decision to participate, the type of process used, and the content of any final agreement. For actual or potential Title VI matters, ADR can provide parties with a forum to discuss a full range of issues that may not be possible to address through formal administrative processes. Examples of ADR approaches that may be particularly relevant for Title VI concerns include:

- Facilitation—Facilitation is a process used to help parties constructively discuss complex or potentially controversial issues. Facilitators are often used to guide meetings, design approaches for discussing issues, improve communication between parties, create options, keep the parties focused on the issues at hand, and help avoid and overcome contentious situations.

- Mediation—Mediation is a process in which a neutral third party (the mediator) assists the parties in conflict, in reaching a mutually satisfying settlement of their differences. Mediators are very useful in guiding the dynamics of a negotiation especially when discussions are not productive enough to reach a mutual agreement. Good mediators are skillful at assisting parties in constructively expressing emotions, encouraging information exchange, providing new perspectives on the issues at hand, and helping to redefine issues in ways that may lead to mutual gains. Mediators often provide facilitation as well as mediation services.

- Joint Fact-Finding—Joint fact-finding is a process in which parties commit to building a mutual understanding of disputed scientific, technical, legal or other information. A neutral third party assists the group in identifying a mutually agreeable set of questions and selecting one or more substantive experts to provide information concerning the questions.

A number of factors can contribute to a successful ADR process in the Title VI context and help provide all parties with confidence to maximize their opportunity to reach resolution. These factors include:

- Designing a process for selecting a neutral third party who will be able to meet the needs of all parties. For



example, parties may need to engage a neutral third party who is bilingual or who has past experience successfully assisting in the resolution of Title VI complaints.

- Using a neutral third party to conduct a confidential situation assessment; including interviewing all parties to identify the issues and making recommendations for the ADR process prior to beginning any dialogue.

- Using a neutral third party's assistance to develop and agree on a set of guidelines or ground rules for the process to ensure that expectations of all the participants are clear from the beginning.

- Considering participants' needs for information and expertise, before coming to the table and during the process, to enhance their dialogue. For example, design a process that will allow all parties to provide necessary information in good faith and in some cases secure independent technical expertise to assist some of the parties prior to any negotiations.

Incorporating ADR early in the process when developing a Public Involvement Plan, may prevent the need to use ADR at a later stage of the process when conflicts may have escalated. Involving all affected parties in the ADR process can help ensure that the agreements reached provide solutions to reduce or eliminate: (1) Discriminatory effects resulting from the issuance of permits; and/or (2) discrimination during the public involvement process associated with the permitting process.

### III. Suggested Approaches for Reducing Some Common Title VI Complaints

Listed below are four common issues often seen as part of Title VI complaints received in EPA's Office of Civil Rights. A brief statement is included explaining each allegation, along with suggestions for approaches recipients may take to reduce future complaints of a similar nature. In offering these suggestions, EPA is not addressing the merits of any specific complaint or any overarching issue. Rather, EPA is suggesting ways to improve public involvement.

#### A. Language

Issue: Complaints frequently note a failure to provide printed information in other languages or appropriate interpreters at meetings for non-English speaking community members to ensure their full participation in the public involvement process.

Using written translation and oral interpreters in communities with non-English speaking members help ensure broader participation from the affected community. In June 2004, EPA

published the *Guidance to Environmental Protection Agency's Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Guidance)*.<sup>29</sup> According to the LEP Guidance, individuals who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English can be Limited English Proficient, or "LEP" and may be entitled to language assistance with respect to a particular type of service, benefit or encounter. The intent of this guidance is to suggest a balance that ensures meaningful linguistic access to LEP persons to critical services while not imposing an undue burden on small businesses, small local governments, or small nonprofit organizations. The guidance suggests four factors recipients may consider to determine if different language assistance measures are sufficient for the different types of programs and activities administered by the recipient. The use of this guidance would be helpful to recipients when determining what level of measures are needed to accommodate the LEP persons in affected communities to ensure maximum participation in the permitting process. The guidance encourages recipients to develop an implementation plan to address the identified needs of the LEP populations they serve.

Additional suggestions on approaches recipients may use to reduce and possibly avoid complaints regarding language issues include:

- While preparing your Public Involvement Plan, work with the community and consult EPA's LEP guidance to determine if translation and/or interpretation services may be needed to ensure meaningful participation. Examples of populations to consider when planning language services include, but are not limited to, persons near a plant or facility that is permitted or regulated by an EPA recipient, persons subject to or affected by environmental protection, clean-up, and enforcement actions of an EPA recipient, or persons who seek to enforce or exercise their rights under Title VI or environmental statutes and regulations. Consider whether the

<sup>29</sup> For more information regarding improving access to services for persons with limited English proficiency, see Executive Order 13166, 65 FR 50121 (2000), and *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*, 69 FR 35602 (2004). Recipients, Federal agencies and community organizations may also find information at: <http://www.LEP.gov>.

affected community's ability to participate in the process may be limited by the ability of their community members to speak or understand English.

- Plan and budget in advance for translation and interpreter services. If resources are limited, consider the sharing of language assistance materials and services among and between recipients, advocacy groups, Federal grant agencies, and business organizations. Where appropriate, train and/or test the competency of bilingual staff to act as limited or ad hoc interpreters and translators.

- If in-house or local resources are not available, contact nearby colleges or universities for possible assistance for translation of interpreter services and identifying other competent but cost effective resources.

- Use multilingual fact sheets, notices, signs, maps, etc. regularly to provide meaningful access by LEP persons to information in as many aspects of the permitting process as appropriate.

#### B. Siting

Issue: Complaints frequently refer to the siting of facilities in neighborhoods that already host similar and often more facilities than neighborhoods in nearby communities. Complainants believe that many of these siting decisions are based on zoning regulations that are in need of revision.

Local zoning and planning authorities typically make land use zoning decisions and approve development plans to ensure they conform with existing zoning regulations. Some of the zoning regulations were enacted several decades ago. State and local environmental permitting agencies are responsible for minimizing the environmental impacts to local communities and ensuring that their practices and policies are implemented in a nondiscriminatory manner. However, some of the environmental permitting agencies may not be involved in local zoning decisions. To improve the relationship between communities and state/local governments, some permitting agencies have begun working with their local land use and planning boards to try to integrate the environmental, social and economic needs of communities early in the process, beginning in the site planning stage.<sup>30</sup>

<sup>30</sup> For examples on how some state and local agencies are working together to address community concerns regarding siting, see the National Academy of Public Administration's July 2003 report entitled "Addressing Community Concerns: How Environmental Justice Relates to



Some approaches that may be considered to help address potential siting issues include:

- Acknowledging concerns communities have with existing facilities near residential areas and working with those communities to develop outreach strategies to address their concerns.
- Working with the appropriate authorities to ensure that data regarding the demographics and location of existing facilities in communities are considered before making local land-use and planning decisions. Understanding the existing environmental and health impacts as well as the demographics, in the areas under consideration for the siting of new facilities, may help recipients ensure they do not issue permits in a discriminatory manner.
- Revising or developing state level regulations or policies that list land-use objectives and practices to guide local zoning agencies when making siting decisions.
- Working with appropriate authorities to identify locations for new facilities that avoid net increases of pollution in communities with disproportionately high exposures or that already host a number of facilities. Title VI and EPA's implementing regulations do not expressly prohibit the siting of facilities in facility-dense areas. Recipients may choose to consider making facility density one criterion in their siting and permitting analysis to help identify communities where the potential environmental and health impacts could be significant.
- Working with local land-use and planning boards to review current land use practices in heavily populated areas, and begin developing strategies to reduce future impacts on those affected communities.
- Having state environmental agencies provide outreach and technical assistance (through training workshops) to local governments on how to engage communities in siting decisions made.
- Sharing environmental data with local governments to help them project and evaluate future impacts of proposed land use plans on existing communities before decisions are finalized.

### C. Insufficient Public Notices

Issue: Complaints frequently allege the lack of meaningful opportunities for communities to participate in the public involvement process because notices are not publicized broadly enough to reach all communities.

Land Use Planning and Zoning" at <http://www.napawash.org>.

Community input plays an integral role in any successful permitting program. Public notices serve as a means to inform the public and ensure community input. Inadequate public notices can result in a lack of trust between communities and state/local agencies, permitting delays, and the filing of Title VI complaints.

Suggested approaches for reducing future complaints regarding insufficient public notices include:

- Seeking community input to find the most effective ways of getting information out to particular communities.
- Choosing outlets that are most widely used by members of the affected community (e.g., community-based church bulletins, culturally-based community newspapers, grocery stores, libraries, foreign-language radio for reaching non-English-speaking communities, the internet and other places frequently visited by members of the affected community).
- Notifying communities multiple times prior to the event (e.g., 10 to 14 days before, one week before and one day before the event is held via radio, phone, email, newspaper, etc.) to ensure the greatest level of participation.
- Announcing times, dates and locations of events clearly in the appropriate languages.
- Providing sufficient information on the purpose and scope of the meeting by listing the types of information to be discussed, along with the type of feedback/input the agency is seeking from the public.
- Providing names, addresses (including email addresses), and telephone numbers of agency contact persons.

### D. Information Repository

Issue: Complaints frequently discuss the lack of an information repository or insufficient notice regarding the location and/or hours for reviewing permit information in the repository, or selection of an inconvenient location for the repository.

Information repositories should provide the public with access to accurate, detailed, and current data about facilities in their community.<sup>31</sup>

<sup>31</sup> Federal, state and local government officials may access risk management plans (RMP) (describing potential accidental releases) and Off-site Consequence Analysis (OCA) information for official use by contacting their Implementing Agency or EPA's contractor-operated RMP Reporting Center at 301-429-5018 (e-mail: [userrmp.usersupport@csc.com](mailto:userrmp.usersupport@csc.com)). OCA information is available to the public at Federal reading rooms located throughout the United States and its territories. EPA also makes available RMPs without the OCA data elements that might significantly

Although states have the authority to require that facilities establish information repositories, many states do not include it as a mandatory activity in their regulations. The existence of an information repository in a community shows a responsiveness and commitment to the community's needs for comprehensive information regarding a facility. Information repositories greatly improve public participation by making important information readily accessible to communities interested in participating in the permitting process or merely wanting to keep abreast of activities at facilities in their neighborhoods. Suggestions on approaches recipients may use to reduce complaints regarding information repositories include:

- Establishing, or requiring that facilities establish information repositories, especially in cases where a significant amount of public concern is expected or has surfaced, or when the community has unique information needs;
- Choosing locations for information repositories in places most convenient and accessible to the public (e.g. local public libraries, community centers, churches, etc.);
- Establishing an online information repository for public access;
- Ensuring that the existence of the information repository is well publicized;
- Ensuring that repositories are placed in well lit and secure locations;
- Ensuring that the hours for reviewing information in the repository are convenient to the public;
- If a permitting activity is controversial or is expected to raise a lot of community interest, suggesting that the facility consider providing several copies of key documents in the repository so many people can review the information at the same time; and
- Ensuring that the repository is updated as new information is generated regarding the facility.

### IV. Evaluating Approaches for Meaningful Public Involvement

It is important to periodically evaluate any implemented public involvement approach from the beginning stages of the process to identify and address areas

assist someone in targeting a chemical facility. State Emergency Response Commissions and Local Emergency Planning Committees may also provide the public with read-only access to OCA information for local facilities. Private individuals can find contact information for a local committee or get a list of facilities that have opted to make their OCA information available to the public without restriction at <http://www.epa.gov/ceppo/lepclist.htm> or by calling the EPA hotline at (800) 424-9346.

in need of improvement. The evaluation process is a fundamental part of any public involvement process. Evaluating the public involvement program on an ongoing basis gives the recipient a sense of where things are, and an indication of where things are going. Evaluating the program can also help the recipient determine whether set goals were met, make sure that the process stays on track, and allow for changes as the process moves forward.

Tools used for evaluating public involvement programs may include:

- *Informal Feedback*—Informal feedback is unstructured communication on a routine basis between the recipient agency, the community, and facilities to give everyone a chance to express how the process went, is going, and how it can be improved.
- *Questionnaires*—Questionnaires are very useful and usually consist of short to-the-point questions to determine whether the participants felt the activity was useful. Questionnaires are often used at the end of an event such as a public meeting.
- *Interviews*—Interviews are usually done under a more formal setting when feedback is needed from a larger group. Feedback obtained from interviews may be used to help construct additional and more defined tools (e.g., PIPs).
- *Debriefs*—Debriefs are very useful methods for receiving internal feedback from staff members on a process. Debriefs are most successful when done shortly after the process concludes to ensure that all major issues are addressed, and suggestions for improvements can be implemented into future activities.
- *Surveys*—Surveys are very useful to obtain data or statistical information.

## V. Due Weight

Many recipients, have asked OCR to provide “incentives” to help them develop proactive Title VI related approaches. Some recipients have asked OCR to recognize, and to the maximum extent possible, rely on the results of any such approaches in assessing Title VI complaints filed with EPA. While EPA encourages efforts to develop proactive Title VI-related approaches, under the Civil Rights Act of 1964, the Federal government is charged with assuring compliance with Title VI. Consequently, OCR cannot completely defer to a recipient’s own assessment of whether Title VI or EPA’s Title VI implementing regulations have been violated. In addition, OCR cannot rely entirely on an assertion that a Title VI approach has been followed or delegate its responsibility to enforce Title VI to

its recipients.<sup>32</sup> Thus, regarding the processing of Title VI complaints, EPA retains the ability to:

- Decide whether to investigate the complaint using the recipient’s analysis as supplemental information;
- Investigate a complaint or initiate a compliance review notwithstanding any informal resolution reached by the recipient and complainant; and
- Initiate its own enforcement actions as a general matter.

Nevertheless, EPA believes that it can, under certain circumstances, recognize the results of information submitted by recipients and give it appropriate due weight. For example, if during the course of an investigation, results of adopted approaches are submitted as evidence that EPA’s Title VI regulations have not been violated, EPA will review the approach and results to determine how much weight to give the submission in its investigation.<sup>33</sup>

Some recipients may develop procedures for their permitting programs that meet certain criteria designed to ensure a nondiscriminatory public involvement process. The weight given any evidence related to the public involvement process and the extent to which OCR may rely on it in its decision will likely vary depending upon:

- Whether the criteria that formed the basis for the program were sufficient to ensure a nondiscriminatory process;
- If the overall permitting process met those criteria; and
- The relevance of the recipients’ public involvement programs to the allegation(s) and the thoroughness of documentation of how the recipient’s process addresses the allegations.

The value that OCR expects to give public involvement approaches will likely range from no weight for procedures that have significant deficiencies, to significant weight for procedures depending on the outcome of OCR’s review. Some weight would

<sup>32</sup> See 28 CFR 50.3(b) (“Primary responsibility for prompt and vigorous enforcement of Title VI rests with the head of each department and agency administering programs of Federal financial assistance.”); Memorandum from Bill Lann Lee, Acting Assistant Attorney General, U.S. Department of Justice, to Executive Agency Civil Rights Directors (Jan. 28, 1999) (titled *Policy Guidance Document: Enforcement of Title VI of the Civil Rights Act of 1964 and Related Statutes in Block Grant-Type Programs*) (“It is important to remember that Federal agencies are responsible for enforcing the nondiscrimination requirements that apply to recipients of assistance under their programs.”).

<sup>33</sup> In addition to the analyses and procedures described in this section, OCR also intends to consider other available and relevant evidence from both the recipient and complainant, such as meeting minutes, correspondence, empirical data, interviews, etc., as appropriate.

likely be given to procedures that fall between these two extremes, such as recipient efforts to resolve specific allegations before the complaint was filed with EPA. If OCR finds that a recipient’s public involvement process warrants the greatest weight, then OCR would consider the recipient’s input in subsequent decisions. However, OCR reserves the right to investigate future allegations regarding complaints against recipients with comprehensive public involvement programs, without relying exclusively on input from those recipients when making subsequent decisions. In addition, OCR may conduct an investigation in cases where there is an allegation or information reveals that the public involvement process used was inadequate or improperly implemented.

## VI. Conclusion

This guidance suggests approaches that recipients of EPA financial assistance may use to help enhance the public involvement aspects of their current permitting program and ensure that federal funding is used in compliance with the provisions of Title VI of the Civil Rights Act of 1964 and EPA’s Title VI regulations. It emphasizes community involvement early and often in the permitting process. It examines four common allegations in Title VI complaints and offers suggestions on how to reduce the likelihood of future complaints of a similar nature. EPA believes that the approaches suggested in this guidance will help improve relations between EPA recipients and communities, enable communities to better participate in the public involvement portion of the permitting process, and give direction to EPA recipients and local decision-makers on possible ways to ensure that EPA funding is used in compliance with the provisions of Title VI and EPA’s Title VI implementing regulations.

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**Karen D. Higginbotham,**  
Director, Office of Civil Rights.

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- U.S. Department of Labor Job Accommodation Network, <http://www.jan.wvu.edu> ("State and Local Government Employers").
- U.S. Access Board, <http://www.access-board.gov>.
- The New Freedom Initiative's Online Resource for Americans with Disabilities, <http://www.DisabilityInfo.gov>, ("Community Life-Accessibility and State and Local Governments").

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## **ENVIRONMENTAL PROTECTION AGENCY**

[FRL-8046-9]

### **Adequacy of Wisconsin Municipal Solid Waste Landfill Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final determination of adequacy.

**SUMMARY:** The U.S. Environmental Protection Agency Region 5 is approving a modification to Wisconsin's approved municipal solid waste landfill (MSWLF) permit program. The modification allows the State to issue research, development and demonstration (RD&D) permits to owners and operators of MSWLF units in accordance with its state law.

**DATES:** This final determination is effective March 21, 2006.

**FOR FURTHER INFORMATION CONTACT:** Susan Mooney, mailcode DW-8J, Waste Management Branch, U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone (312) 886-3585, [mooney.susan@epa.gov](mailto:mooney.susan@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

On March 22, 2004, EPA issued a final rule amending the municipal solid waste landfill criteria in 40 CFR part 258 to allow for research, development and demonstration (RD&D) permits (69 FR 13242). This rule allows for variances from specified criteria for a limited period of time, to be implemented through state-issued RD&D permits. RD&D permits are only available in states with approved MSWLF permit programs which have been modified to incorporate RD&D permit authority. While States are not required to seek approval for this new provision, those States that are interested in providing RD&D permits to owners and operators of MSWLFs must seek approval from EPA before issuing such permits. Approval procedures for new provisions of 40 CFR part 258 are outlined in 40 CFR 239.12.

Wisconsin's MSWLF permit program was approved on November 20, 1996 (61 FR 59096). On November 8, 2005, Wisconsin applied for approval of its RD&D permit provisions. On January 20, 2006, EPA published a proposed determination of adequacy (71 FR 3293) of Wisconsin's RD&D permit requirements. The notice provided a public comment period that ended on February 21, 2006. EPA received no comments on the proposed adequacy determination.

##### **B. Decision**

After a thorough review, EPA Region 5 has determined that Wisconsin's RD&D permit provisions as defined under NR 514.10 are adequate to ensure compliance with the Federal criteria as defined at 40 CFR 258.4.

**Authority:** This action is issued under the authority of section 2002, 4005 and 4010(c)