

January 7, 2016

Jeryl Covington
Helena Wooden-Aguilar
U.S. Environmental Protection Agency
Office of Civil Rights
Mail Code 1201A
1200 Pennsylvania Ave., N.W.
Washington, D.C.
By email and U.S. mail

Re: Hearings Planned on EPA-HQ-OA-2013-0031, FRL-9933-69-OA, Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency

Dear Ms. Covington & Ms. Wooden-Aguilar:

I'm writing to convey serious concerns about plans for hearings to be held this month in five cities across the United States and to request that EPA address these concerns and schedule additional hearings to provide opportunities for meaningful participation. This letter is submitted on behalf of Alaska Community Action on Toxics, California Environmental Justice Coalition, The City Project, Center for Race, Poverty & the Environment, Community Science Institute – CSI for Toxic Crime, Conservation Law Foundation, Earthjustice, GASP, Greenaction for Health & Environmental Justice, Human Synergy Works, Lawyers' Committee for Civil Rights Under Law, Maurice and Jane Sugar Law Center for Economic and Social Justice, Natural Resources Defense Council, New Mexico Environmental Law Center, Original United Citizens of SW Detroit, Public Interest Law Center, Texas Law Environmental Clinic, UNC Center for Civil Rights, West End Revitalization Association, West Oakland Environmental Indicators Project, Marc Brenman, Dennis Grzezinski, and Vernice Miller-Travis, and it is also intended to share concerns raised by other community-based, regional and national activists and advocates from across the country who have a sincere interest in providing EPA with input on its Notice of Proposed Rulemaking.

First, please note that Earthjustice and our partners are devoting substantial time to outreach, to let people know about the Notice of Proposed Rulemaking (NPR) and the hearings. As you know, EPA's current work exists in the context of years of concern and frustration with EPA's civil rights compliance and enforcement program, and many of the very groups on the ground that are doing the most to address discriminatory actions, policies and practices by recipients of funds from EPA have looked for other means to raise their concerns. Thus, outreach faces even greater challenges than usual, in that EPA needs to reach stakeholders who may have turned away in frustration but have no less at stake and have important perspectives on Title VI compliance and enforcement.

Even without that greater challenge, plans for the hearings fail to meet standards for ensuring meaningful involvement in rulemaking. See EPA, Guidance on Considering of Environmental Justice During the Development of Regulatory Actions, at 32 (May 2015), <http://www3.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-final.pdf>. As EPA's 2015 Guidance states:

Promoting meaningful involvement often requires special efforts to connect with populations that have been historically underrepresented in decision-making and that have a wide range of educational levels, literacy, or proficiency in English. It will likely be necessary to tailor outreach materials to be concise, understandable and readily accessible to the populations that rule-writers are trying to reach.

Id. at 33. EPA's Guidance recognizes that involving environmental justice communities in a meaningful way "presents challenges and opportunities that those presented by the general public" and offers a number of specific ways in which agency rule-makers should overcome barriers, such as disseminating information using local radio stations and newspapers, conveying issues in ways that are tailored to each population (e.g. through timing and location), and various means of developing trust, among others. *Id.*, at 33-34.

Arrangement for these hearings, however, seem to fly in the face of this guidance. As Esther Calhoun, a resident of Uniontown, Alabama and complainant on a Title VI complaint that is currently open for investigation said, "EPA is not thinking of people in poverty." EPA seems to have made scant "special efforts" and its materials – specifically, the eventbrite registration form – are hardly readily accessible. More detail follows:

First, the turnaround time between announcement and the hearings has been too quick, particularly given that the announcement was made in December, just before the holidays, and the first hearing is scheduled for this Monday, January 11th. We request that additional hearings be scheduled for February.

EPA first posted the draft NPR and the tentative dates and locations for the five hearings in early December. Many of us began disseminating the information immediately, but our work should have supplemented EPA's outreach; it should not be the prime mechanism for getting the word out. Indeed, after speaking with partners from across the country in mid-December, I wrote to Lilian Dorka and raised a number of questions and concerns, including the "very short turnaround time for outreach, particularly given the holidays." Marianne Engelman Lado, email to Lilian Dorka (December 16, 2015).¹ The email mentioned that the challenge was not just the holidays, "[S]o many EJ groups and communities have been so discouraged by OCR's record over years, that it takes more effort and education to provide information and encourage stakeholders, and particularly community-based groups, to re-engage." *Id.*

¹ These emails are available upon request.

As of December 18, 2015, EPA's plans for outreach were still in the works. At that point, EPA was still finalizing registration logistics and it wasn't yet possible for people to sign up to participate. In response to my request for information, Luseni Pieh wrote that EPA was planning to circulate registration information to people with whom OCR has been most engaged on Title VI work. Luseni Pieh, email to Marianne Engelman Lado (December 18, 2015).

Over the holidays, EPA listed the locations for the hearings and on December 28, I received an email from EPA with links to the registration pages run by Eventbrite. EPA subsequently also modified the list, given low initial registration in Chicago.² We forwarded this information and scheduled activities to get the word out soon after the New Year, but the timeline – particularly for hearings that are scheduled for next week and over the Martin Luther King holiday – is just too short to enable community members to learn about the event and make arrangements (for example, for travel, child care, etc.). This schedule – not only the short turnaround time but also the fact that information became available over the holidays – is in no way calculated to meet the goal of meaningful participation. It will, instead, result in low turnout.

Second, we don't have full information about EPA's outreach efforts, but local, regional and national advocates working on Title VI report that they heard about the hearings through Earthjustice's dissemination of the information and the networking of our partners. Even long-time Title VI advocates had not been contacted directly by EPA. As you know, posting information on EPA's website is grossly inadequate and I assume that EPA is taking additional actions. While I appreciate notice and we are willing to supplement EPA's outreach activities, EPA should have a robust outreach plan. As but one example, I may have missed it, but I participate in EPA's epa-ej listserve and didn't see an announcement of the hearings on that listserve. See List of Announcements on epa-ej listserve at <https://lists.epa.gov/read/?forum=epa-ej>. In order to make recommendations for this set of hearings and for rulemaking in the future, it would be helpful to know more about EPA's outreach plan for these hearings and we request such information.³

Third, arrangements for these hearings ignore the need to ensure accessibility and to tailor the means to the population – for example, in location. We appreciate that hearings were scheduled for the daytime and in the evening, to account for the schedules of people who work during the day. At the same time, notification seems to have relied primarily on the posting on EPA's website, which isn't effective for people who aren't online. Moreover, it seems that the only mechanism for registration is through Eventbrite, which again ignores the digital divide. In many places across this country – including, for

² Indeed, the status of the remaining Chicago hearing appears uncertain. One of my colleagues attempted to sign up today and the link no longer seemed to be functional.

³ If needed, we can also submit a request under the Freedom of Information Law. Please let us know.

example, the rural Black Belt – there are many stakeholders who do not have computers and are not online.

Moreover, the use of federal buildings as the location for the hearings poses its own barriers. These buildings are not always in accessible locations and they require identification, perhaps even federally recognized identification. Many in this Administration are fighting ID requirements in the voting context, recognizing that they are barriers to democratic participation, and yet the North Carolina hearing was placed in Research Triangle Park. The location sends the wrong message about inclusion and accessibility and poses a concrete barrier for those without federally recognized ID. We request that EPA schedule additional hearings in locations that don't pose these barriers to accessibility.

Finally, we also want to raise a concern about the failure of EPA to hold hearings in broad swaths of the country where people are overburdened by environmental contamination. We understand that EPA's resources are limited and that stakeholders can also send written comments. Yet North Carolina and Texas are unreasonably far from communities in Alabama and other black belt states that are particularly disenfranchised and overburdened by environmental hazards. The hearings aren't sufficiently close to this population, many of whom are on fixed incomes and have difficulty traveling long distances. Similarly, there is no mechanism for oral testimony for, or participation by Alaska Native communities that are deeply disenfranchised and disproportionately harmed by exposure to contaminants. EPA has not made public any mechanism for such communities to participate remotely, an effort which would take some lead time. For this reason, again, we request that EPA schedule additional hearings, including one in Alabama and, also, arrange for remote access.

Many thanks for your consideration. I look forward to hearing from you.

A handwritten signature in black ink, appearing to read 'M. Engelman Lado', with a stylized flourish at the end.

Marianne L. Engelman Lado
On behalf of the following signatories:



Bradley Angel
Greenaction for Health & Environmental
Justice, San Francisco and Kettleman City,
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Brian Beveridge
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Kelly Haragan
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Thomas Helme
California Environmental Justice Coalition

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Pamela Miller
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Vernice Miller-Travis
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Brent Newell
Center for Race, Poverty & the Environment

John Philo
Maurice and Jane Sugar Law Center
for Economic and Social Justice

Joseph Rich
Lawyers' Committee for Civil Rights
Under Law

Omega & Brenda Wilson
West End Revitalization Association

*For identification only