UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 19, 2017

Return Receipt Requested
Certified Mail No.:7015 3010 0001 1267 5638

In Reply Refer to:
EPA File No: 49X-16-R5

Nichole McWhorter
Coordination & Compliance Program Manager
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Eighth Floor E81 – 105
Washington, D.C. 20590

Re: Referral of Administrative Correspondence

Dear Ms. McWhorter:

On February 25, 2016, the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) received a comment in response to the Notice of Proposed Rulemaking to Amend EPA's Nondiscrimination Regulation. The commenter, (b) (6) - Privacy included a document alleging that an Indiana Department of Transportation (INDOT) project is not in compliance with Title VI of the Civil Rights Act of 1964. As INDOT is not a recipient of EPA financial assistance, ECRCO lacks jurisdiction over this matter and has closed this complaint as of the date of this letter.

Based on correspondence on April 7, 2017, between Brittany Martinez, ECRCO Case Manager, and Kevin Ressler, National Title VI Coordinator for the U.S. Department of Transportation Federal Highway Administration (FHWA), it is ECRCO's understanding that FHWA may have jurisdiction over the matters alleged by (b) (6) - Privacy Accordingly, we are referring this matter to your office for appropriate action. A copy of ECRCO's closure letter to (b) (6) - Privacy and a copy of her original comment and email exchange with EPA are enclosed. We have notified (b) (6) - Privacy that her complaint has been forwarded to FHWA for appropriate action and have provided her your contact information.

If you have any questions regarding this letter, please contact Brittany Martinez at (202) 564-0727 or by mail at the U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460-1000.

Sincerely,

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure

cc: Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office

Cheryl Newton
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
EPA, Region 5

PUBLIC SUBMISSION

As of: 3/9/16 10:37 AM
Received: February 25, 2016
Status: Posted
Posted: March 02, 2016
Tracking No. 1k0-8o5j-jlki
Comments Due: March 12, 2016
Submission Type: API

Docket: EPA-HQ-OA-2013-0031
Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency

Comment On: EPA-HQ-OA-2013-0031-0001
Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency

Document: EPA-HQ-OA-2013-0031-0025
Comment submitted by (b) (6) - Privacy

Submitter Information

Submitter's Representative: (b) (6) - Privacy
Organization: Greater Mooresville Area Citizens Committee

General Comment

Federal recipients of transportation funds have been empowered to self-regulate and develop outreach and reporting methods without specific REQUIRED parameters which would assure compliance and accuracy, currently lacking. The attached two documents provides a brief summary and includes an Environmental Justice and Title VI complaint recently filed with specifics and public documents for support. Reform to reporting, compliance documentation and language changes are necessary to implement the intent of the law and guidelines established by NEPA. Unfortunately when laws like MAP21 are passed and State recipients are allowed to disregard NEPA oversight to streamline initiatives outlined in MAP21, these problems become even more convoluted.

Attachments

Comment

Letter date November 24, 2015

Attachments A-P

February 12, 2016

Attention EPA committee

Changes and reform is much needed to assure the intent of the law is followed and protection measures to those subjected to EJ and Title VI issues will be implemented and enforced as intended. My community has been plagued by actions during an FHWA/DOT INDOT process to develop a new transportation project which has caused considerable disregard for the application and intent of the regulations you are trying to implement. This program is riddled with loop holes which allow these processes to continue without regard for the civil rights of the citizens impacted as well as supporting methods which do not protect or promote environmental justice concerns. Specific to our issue is a community which has been blindsided by incorrect serious EJ disregards; inadequate public notices, non-engagement of public officials, disregard for EJ and Title VI requirements to allow our community a voice in a federal funded project called I69, Section 6. Allowing an agency to develop and implement their own programs without enforcing adequate methods of compliance have left those these laws are designed to protect, disregarded and lost in the loophole. Discrimination and problems continue because of the inadequate reporting oversight, quality assurance, and lack of enforceable compliance methods when rules are only suggestions. Please change the current policy!

How could this happen, you might ask, with all of the rules regulations, guidelines and manuals produced to assure these discriminations could not occur? Please consider these:

1. *Allowing an agency to self-police and establish policies not in concert with the intent of national oversight.* In the 2015 Federal Highway Administration Environmental Justice Reference Guide on page 15 the statement "Agencies may make their own determinations and assumptions to identify persons or populations and then document their assumptions in planning and environmental documents." (See # 5 below for further details) This is only one of many "softly" written guidelines that support and condone an agencies disregard or manipulation of programs. Verbiage throughout guidance documents use words like MAY, SHOULD, DEVELOP INTERNAL METHODS – The crux of the problem is that guidance documents allow for arbitrary interpretations. Although considerable suggestions and references are identified to prevent EJ injustices by involving the many planning agencies(MPO, STP, Etc) these oversight agencies are not a part of the early planning stages which leave those entitled to EJ and Title VI participation and engagement to fall through the cracks. This vague wording and casual reference does not provide the specific oversight and guidance federal agencies need as is evident by the issues at hand now. **Establish Federal RULES for all agencies, enforce COMPLIANCE, establish SEVERE PENTALTIES, and remove internal SELF-POLICING.**
2. *Not establishing a proactive compliance review and reporting method which insures a reporting agency is reporting the facts.* As we reviewed documents submitted to NEPA regarding public outreach and engagement it was obvious that no detail was required. Only statements and

statistic numbers – total number of programs, efforts, programs. This information was and continues to be inaccurately reported specific to a project in our community I-69 section 6. When the document is read, it appears as though adequate measures were taken – but without out facts, a spread sheet with specific milestone or reportable dates along with details are needed for an accurate determination of compliance. Too much is left up to each project to develop their own reporting a compliance documents. **Standardize documents and reports for all projects, by EPA not the agency receiving the funds.**

3. *Establishment of arbitrary deadlines for reporting problems.* This is critical to understanding the scope and magnitude of project manipulation; by the time we learn of an issue we have exceeded the time allowed to report the problem. Eliminate deadlines!
4. *Not having a real time liaison of the federal government to address immediate compliance questions, compounds the problem.* As a brief example, in a recent public meeting to discuss route issues NO ATTEMP WAS MADE TO reach out to those which would be impacted by these decisions. We requested attempts be made to reach out to LEP, ethnic, low income, and EJ areas which do not have access to the internet or paper. Even the most basic request to have an option on the phone system to direct LEP or other demographics to another method to reach out. These were all denied. When the project manager was asked what efforts were made to reach out and engage these demographics we were informed there was none done nor were they required to until after decisions are made about where the routes will go. This conversation is document in writing and will be included in supportive attachments by one citizen when they file their comments. It was not until a week after the meeting any material was made available in Spanish – and it was brief, incomplete and not public. **Projects should have an outside agency liaison with EPA to address questions and receive answers. In our project, there is no one who can help. We can write comments – but there is no method to return answers! This process is not proactive in preventing problems, regardless of demographics. We have no communications process for other than English speaking citizens with computers or phones, but help or responses are not available regardless.**
5. *Reporting incorrect or subjective data, not objective data!* When INDOT was asked specifically how they were obtaining their demographics I was directed to a form passed out in public meetings, and only available in English on their web link. I asked why the questions asked were presented in such a manner that incorrect data would be reported (example age – they do not list 60 and above but combine 65 and under which would report age demographics other that directed by EJ) I also asked why this does not ask LEP or Nationality questions. I was told this was the approved NEPA form. EPA can refer to information obtained 15 years ago, not current nor representative of issues at hand. Look at the specifics of our I69 project. Demographics, Water, air, flora and fauna information used to refine route selection to the best options was grossly misrepresented. A tighter window of data validity would require updated reporting of facts. Again, relating to No.4 above, we have no method to report problems or ask for intervention when we see problems occurring. As an example for I69 section 6 INDOT stated they asked the members of the CAC committee to identify persons and populations and had circulated a survey. Considering INDOT hand selects the members of the CAC, did not include members from impacted areas until after decisions were made, and that those selected did not represent any community organization which might have this information – they system is flawed. There should be clear and concise requirement to identify, engage and include

appropriate demographics. When the funded agency is also the one developing their own guidelines and reporting methods, injustices occur. In our instance of transportation planning, INDOT determined there was no need to comply with early on interactions until a final plan was developed. Although this may be optimal for budgeting, it prevents those most subject to impacts to be a part of the early planning – where alternative routes might go. Language is vague and nonspecific for all types of transportation projects. **EPA should identify specific outreach and engagement criteria and require documentation from county or community leaders to confirm adequate attempts were made. Identify a time window that data can be used – Lingering projects are positioned to violate EJ and Title VI requirements –" A tier 1 was done in SOME areas 15 yrs ago". Laws have changed, current assessments specific to EJ is grossly needed for early stage development. The canned answer is, we will reevaluate during the Tier 2 in the EIS – Routes and decisions are made based on bad or old information presenting the alternative routes process to advance substandard choices with major impacts to EJ. These decisions are made because end users like INDOT are empowered to make their own rules and is allowed to present data in a manner that is misleading and subjective. Develop mandatory procedures, policies, reporting and disclosure methods that allow citizens to review the real facts!**

Although there are guidelines an entity like INDOT should follow, the current system does not provide for program quality assurance or compliance approvals at all development stages. Agencies are allowed to develop their own requirement. Biased involvement of stake holders and agency involvement, which is supposed to provide protection of these civil and environmental rights, have and are continuing during this federal project. Regulatory documents are not inclusive of the full scope of oversight and reporting critical to protect our rights. Yes a document may say a survey of privately owned property requires notice prior to implementation, but it does not identify a time range. Currently notification could have occurred 4 years ago, time frame and limits are inadequate. Documents need to be refined to restrict the scope of public engagements and notifications.

This INDOT I69 project for section 6 has been the perfect storm; MAP 21 negated regulatory requirements of NEPA (per INDOT); preliminary studies critical to protect our community and lands regarding Title VI and EJ which should be identified in Tier 1 – were disregarded as no Tier 1 was required; No State transportation plan, no MPO, no planning agency intervening on our behalf was engaged because INDOT deemed their participation not required until the final routes were approved.

Yes INDOT is meeting EJ and Title requirements by conducting training – but this project has failed to implement the intent and actions necessary to assure our communities rights. The current system has failed, this federal agency has been empowered to make their own regulations, implement what is best for the project and continues to demonstrate a lack of respect or support of methods to allow early engagement and considerations critical to assure Environmental Justice and Title VI rights are a part of the greater picture.

Changes to the EPA regulations are critical to correct these oversights. Implement ongoing quality assurance and regulatory involvements that includes factual specific data and project planning documents that can be reviewed and signed off on prior to allowing the next stage of development. The FDA has a great method in place to assure product and drug safety development. Similar

compliance techniques and audits could be incorporated to protect projects of this nature. Implement a hot line and method to report issues or ask questions outside of the current system. Currently, there is only a method to file a complaint – there is no system in place for a person to call and ask for help to understand what is going on or to report a concern before it becomes a problem.

It is time to empower and assure the citizens that their rights cannot be disregarded by this federal process. Implementing changes addressed in the proposed EPA regulations will be a good step in this direction. Engage local civilians in the process of compliance. Eliminate a federal agencies influence in projects which allows them to hand pick and appoint those who are supposed to represent the community on community action committees. Reporting, accountability, compliance, and community engagement is critical to assuring federal projects are conducted with consideration to those who call this home and pay the taxes to support these projects.

The Greater Mooresville Area Committee was established to represent and inform citizens near northern Morgan County in Indiana regarding the processing surrounding the unexpected route changes which will impact our community during a federal highway project called I-69 Section 6. We are over 1,000 voices strong and on their behalf, file the above comments to be reviewed. The processes which continue to allow this federal program to blindside a community and disregard the EJ and Title VI Civil rights must change. We say enough is enough, please enact changes to assure any federal program follows guidelines and is developed to protect the rights of all.

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