

Environmental Justice, Denied

Report slams EPA civil rights compliance

Center investigation cited in review by U.S. Commission on Civil Rights

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A sign welcomes motorists to Uniontown, Alabama. John Brecher/NBC News

The nation's top environmental regulator has failed to meet its civil-rights obligations, forcing communities to endure extreme delays or inaction when seeking respite from polluters, the U.S. Commission on Civil Rights found.

In a [report](#) released Friday, the commission zeroed in on what it called the U.S. Environmental Protection Agency's lackluster compliance with both the Civil Rights Act of 1964 and an executive order requiring agencies to consider environmental justice when creating rules -- as well as its track record on clearing cases.

The 230-page report cites and reinforces the findings of a 2015 [Center for Public Integrity investigation](#). The series found that the EPA's Office of Civil Rights had dismissed nine out of every 10 complaints alleging environmental discrimination and had never formally found a violation of Title VI of the Civil Rights Act, which prohibits recipients of federal funding from acting in discriminatory ways

“Environmental justice is an issue that, one would think, we would have made much more progress on since this has been around for more than a generation,” Commissioner Michael Yaki said during a teleconference Friday. “Much ado was made about EPA putting into effect an environmental justice component into what it did. If anything, this report shows that, as it applies to EPA - which has done many great things over the years - in this particular instance, it has fallen very short. One can say it is practically toothless in its ability to protect the poorest and minority populations of our country from things such as coal ash.”

The report, sent to the White House and congressional leaders, found that the Office of Civil Rights has a “long history” of not effectively enforcing Title VI, dating to 2003, when the commission first dug into the agency’s case backlog.

The commission’s latest review found that of the 25 complaints lodged with the Office of Civil Rights between December 2015 and July 2016, 14 were rejected due to lack of jurisdiction, two were withdrawn by complainants and two were closed for lack of evidence.

As of June, the office had 32 cases pending jurisdictional review, the oldest from 2013, the commission found. Its report said the lingering backlog shows “the Office of Civil Rights is not fulfilling its mission to become ‘a model civil rights’ program.”

“When we look at this issue, it is one of urgency,” commission Chairman Martin R. Castro said during the teleconference. “It affects individuals’ daily lives. It affects our ability and the community’s ability to enjoy and value and really exercise many of the other civil rights.” Castro said the EPA had “woefully failed” to meet its civil-rights obligations.

The EPA reviewed the report prior to publication and said it found “serious and pervasive flaws” that were not corrected in the final document. The agency said in an email to the Center that these included “factual inaccuracies, material omissions, mischaracterizations [of] EPA findings, and conclusions not supported by evidence; as well as fundamental misunderstandings about EPA legal obligations and regulatory authorities across a number of the Agency’s programs...”

Mustafa Ali, senior advisor for environmental justice to EPA Administrator Gina McCarthy, said in a statement that the commission did not adequately consider the work the agency has done to make environmental justice a priority.

“EPA has a robust and successful national program to protect minority and low-income communities from pollution,” Ali said. “This work, coordinated across our federal, state and tribal partners, has achieved strong results in reducing exposure to serious health threats that overburdened communities face.”

Ali said the EPA is working to address shortcomings in its consideration of environmental justice, including developing the [EJ 2020 Action Agenda](#). In addition, the Office of Civil Rights has announced [plans](#) to do more frequent compliance reviews and publish an annual report to chart the office’s progress. In December, it [issued](#) a notice of proposed rulemaking removing certain complaint-processing deadlines and put out a case manual for investigators examining civil-rights claims.

In its report, the civil-rights commission echoed critics who say this change would actually weaken protections for complainants. Commissioners recommended that the agency maintain statutory deadlines that require it to decide within 20 days whether to accept a complaint for investigation and allow it another 180 days to complete an inquiry.

The Center found that the office took nearly a year, on average, just to determine whether to accept a complaint.

Marianne Engelman-Lado, a senior attorney at the environmental law firm Earthjustice, called the commission's report "a clarion call for change," which has "the power of the bully pulpit and of moral persuasion." She praised its call for EPA officials to open up what many regard as an opaque Title VI investigative process. In their report, the commissioners recommend that the EPA make sure complainants have a seat at the table during any settlement negotiations.

"We're pleased the commission is recognizing that environmental justice is a space lacking in civil-rights enforcement," Engelman-Lado said.

The commission's report recommends that the EPA add staff to the Office of Civil Rights and that Congress study environmental justice requirements under civil rights law and give EPA funds to fulfill those duties. It calls for the EPA to provide minority, tribal and low-income communities with technical assistance to enforce a federal rule governing disposal of often-toxic coal ash.

Most notably, it recommends that the EPA classify coal ash as "special waste"; test drinking water wells near coal ash lagoons; assess the soundness of high-risk coal ash dams and disposal sites; and fund research on the ash's health effects.

Across the country, coal ash has fouled water sources and endangered public health. In 2014, the agency set national disposal standards that amount to guidelines for the states that call for treating the ash as if it were household trash. Weakened by **loopholes**, the EPA rule was the product of vigorous lobbying by the utility industry.

The report found that the EPA's decision to allow coal ash from a massive Tennessee spill to be dumped in a landfill in the predominantly black community of Uniontown, Alabama, was "made for economic reasons." It said the EPA's coal ash rule fails to protect minority or low-income communities in that it forces residents to file often-costly lawsuits against the government, businesses or individuals to address alleged violations.

"The commission's report confirms what we've known for years: government is failing to protect America's most vulnerable communities from dangerous pollution," Pete Harrison, an attorney for the Clean and Safe Energy Campaign at Waterkeeper Alliance, said in a statement. "Hopefully this will give officials at all levels of government pause to consider that their chronic avoidance of effective safeguards for coal ash dumps continues to put people in harm's way, especially people in communities of color or low-income areas."

Ben Eaton, who lives in Uniontown and whose Title VI complaint over the **Arrowhead landfill** was detailed by the Center, called the commission's report "a breath of fresh air" for residents who have argued for years that the state permitting process for the landfill violated their civil rights. The report mentions Uniontown some 70 times.

"Finally, someone is trying make those accountable recognize our problems," Eaton said.

Those who live near the landfill say they must contend with pungent odors and nagging ailments. Some no longer sit on their porches, grow gardens or let children play in their yards.

The EPA's civil-rights office launched an investigation into the community's complaint in 2013 but has yet to announce the outcome.