



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 22 2011

The Honorable Christopher Reardon, Acting Director
California Department of Pesticide Regulation
1001 I Street
P.O. Box 4015
Sacramento, CA 95812-4015

OFFICE OF
CIVIL RIGHTS

Re: Title VI Complaint 16R-99-R9

Dear Director Reardon:

The United States Environmental Protection Agency (EPA) Office of Civil Rights (OCR) has completed its investigation of the above-referenced complaint, entitled *Angelita C., et al. v. California Department of Pesticide Regulations (CDPR)*. This letter is to advise you of OCR's preliminary finding, recommend further action, and invite you to engage in discussions. As described below, OCR's preliminary finding is that the evidence demonstrates a *prima facie* violation of Title VI for the period from 1995 to 2001 for which we propose a number of recommended measures for your consideration.

Title VI of the Civil Rights Act of 1964

Title VI prohibits discrimination based on race, color, or national origin under any program or activity of a recipient of federal financial assistance. Section 601 of Title VI prohibits intentional discrimination. It provides:

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. 42 U.S.C. § 2000d.

In addition, Section 602 of Title VI provides, in relevant part:

Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. 42 U.S.C. § 2000d-1.

EPA's Title VI implementing regulations are codified at 40 C.F.R. Part 7. Under these regulations, recipients of EPA assistance may not intentionally discriminate or use criteria or methods of administering its program that have a discriminatory effect based on race, color, or national origin. As provided at 40 C.F.R. § 7.120, individuals who believe they have been discriminated against by a recipient of EPA assistance may file a complaint with OCR. OCR reviews these complaints in accordance with 40 C.F.R. Part 7, Subpart E (§§ 7.105-7.135), which emphasize the use of informal (negotiated) resolution of complaints.

It is important to bear in mind that compliance with federal and/or state environmental regulations, does not, by itself, ensure compliance with Title VI. OCR is aware of the important role that CDPR performs in the development of pesticide regulation. However, OCR is also aware of the unique challenges faced by CDPR in regulating pesticides in California, particularly as it relates to fumigants such as methyl bromide, and, as discussed further below, seeks to reach a mutually satisfactory resolution as it relates to these issues.

Title VI Complaint 16R-99-R9

On June 30, 1999, a complaint was filed with OCR on behalf of children and parents of children attending schools near locations where methyl bromide was applied. This complaint alleged that CDPR discriminated against Latino children by renewing the registration for methyl bromide in January 1999, without taking into consideration the health impacts that this pesticide would have on children attending schools that were within a 1.5 mile radius of the areas in which methyl bromide was applied. The complaint also alleged that greater amounts of methyl bromide were applied in areas surrounding schools with high percentages of Latino schoolchildren (in comparison to areas surrounding schools with lower percentages of Latino schoolchildren). The complaint relied, in large part, on a study performed by the Environmental Working Group, a nonprofit environmental organization. According to the complainants, the study relied on 1995 pesticide use data. OCR accepted the complaint for investigation on December 11, 2001. The same day, OCR notified CDPR of the acceptance of this complaint by letter. In September 2002, EPA staff met with representatives of CDPR as part of its investigation.

OCR Investigation and Findings

In order to thoroughly investigate these allegations, OCR developed a methyl bromide exposure model to predict air concentrations at schools in California. The results were used to determine if there was an adverse impact upon Latino schoolchildren from agricultural methyl bromide applications. OCR's exposure model employed CDPR methyl bromide use data for the years 1995-2001. This model was based on an approach originally developed by CDPR (the methyl bromide township cap usage threshold identification model).

OCR revised the CDPR model to predict daily concentrations based on nearby methyl bromide usage for the same day as well as previous days, modified by factors including proximity, wind speed, wind direction and temperature.

OCR evaluated several exposure averaging periods and exposure scenarios in order to assess any adverse impact. The assessment included consideration of both intermediate- and long-term exposure periods. These levels were then compared to health-based concentration thresholds derived by EPA's Office of Pesticide Programs (OPP), and exceedances identified for the period of 1995–2001. During the investigation, OCR conferred with OPP and advised them of the findings of this investigation.

OCR also examined the estimated number and demographic composition of children from each school's enrollment during the years of predicted exceedances. OCR predicted estimated exposure levels for public schools throughout the state for the period of 1995-2001. The demographic data for schools with predicted exceedances of target exposure thresholds were compared with those from schools with lower predicted concentrations, and a statistical analysis of the data was performed.

OCR's recently completed analysis found:

1. exceedances, to a limited extent, for short-term exposures (1 day to 30 days) above EPA's threshold of concern (35 ppb);
2. exceedances, to a wider extent, for chronic exposure (more than 6 months) above EPA's threshold of concern (1.3 ppb) and;
3. an adverse disparate impact upon Latino schoolchildren with respect to the application of methyl bromide between 1995 and 2001.

Attached to this letter are the four supporting technical documents that form the basis of OCR's analysis and preliminary findings described immediately above:

1. Model development/calibration;
2. Peer review report on the model development framework and response to comments;
3. Assessment data preparation; and
4. Exposure/disparity analyses for 1995 – 2001.

Conclusion and Next Steps

Based upon a review of the investigative information, which is summarized above, OCR has initially concluded that there is sufficient evidence to make a preliminary finding of a *prima facie* violation of Title VI as a result of the adverse disparate impact upon Latino schoolchildren in California from the application of methyl bromide between 1995 and 2001.

By regulation (40 C.F.R. § 7.115), OCR is required to provide recommendations for achieving voluntary compliance, and to notify you of your right to engage in voluntary compliance negotiations. As required by the regulation, OCR has also notified the Award Official for CDPR's grant # E 009 15511 DPR FY11-13, and the Assistant Attorney General for Civil Rights of this preliminary finding.

OCR recognizes the significant accomplishments that CDPR has achieved over the years with respect to pesticide regulation. Nonetheless, this investigation has uncovered information that OCR must address. Consequently, OCR seeks CDPR's cooperation in confirming that long term exposure exceedances of methyl bromide do not recur. OCR believes that the two steps outlined below will help ensure that this goal is met.

First, OCR is aware of CDPR's air monitoring network project, which began this year. OCR believes that such additional ambient air monitoring will help determine if current application practices are achieving the expected levels of protection. On a separate track, EPA also notes that the national Reregistration Eligibility Decision (RED) for methyl bromide recognized the need for additional long-term data on methyl bromide levels in air, so EPA has initiated a data call-in (DCI) process with the registrants. This collection of data will be targeted at high-use areas, including those in California. Consequently, we would like to discuss ways to ensure that the DCI and CDPR monitoring efforts will be complementary to confirm that long term exposure exceedances do not recur. In addition, OCR requests confirmation that CDPR's monitoring project is proceeding as planned and requests information about CDPR's data collection. OCR also requests that CDPR develop an outreach component for its air monitoring network project to communicate findings back to the communities.

Second, OCR seeks to expand community understanding and awareness of long term exposures and appropriate fumigant application procedures through education and outreach. OCR is aware of the informative outreach materials prepared by CDPR, such as the *Community Guide to Recognizing & Reporting Pesticide Problems*. OCR is requesting any additional information that CDPR can provide concerning new or ongoing education and outreach efforts that will raise community awareness, particularly at schools, concerning the proper fumigant procedures and how members of the public are to respond if it appears the procedures are not being followed.

OCR believes the preceding items will help reach its desired outcome, but OCR welcomes further discussion and wishes to fully engage CDPR in reaching a mutually satisfactory resolution. Accordingly, OCR is interested in any information CDPR can provide that would indicate that historical exposures of methyl bromide above thresholds of concern will not recur.

In addition, OCR would like to hear CDPR's views about achieving further community-wide exposure reductions through allowing the use of high-barrier, or "virtually impermeable films" (VIF), which are currently prohibited by CDPR regulations for methyl bromide applications.

OCR would also like to share some information about township caps based on the results of its analysis of usage patterns associated with predicted exceedances of local thresholds.

OCR will provide an opportunity for the technical staffs of OCR and CDPR to discuss the underlying documentation as needed. These discussions are solely intended for clarification of technical questions at the staff level and are not intended to constitute settlement discussions. OCR's technical lead for this project is Loren Hall, who can be reached at 202-564-0722, or hall.loren@epa.gov.

Following staff technical discussions, OCR would like to meet again to discuss potential resolution of this matter with CDPR management. In particular, OCR would like to discuss with CDPR management the means of reaching resolution of the issues presented in this letter. OCR would like to conduct these discussions confidentially and hopes that CDPR will also view them in the same way.

In accordance with EPA's regulations (40 C.F.R. § 7.115(d)), CDPR must indicate within fifty days if it agrees with the recommendations contained in this letter or, in the alternative, it must submit a written response sufficient to demonstrate that the preliminary findings are incorrect, or that compliance may be achieved through steps other than those recommended.

OCR is committed to working in partnership with CDPR to reach resolution of the issues presented in this letter. The primary OCR contact for coordination of OCR and CDPR management discussions will be Helena Wooden-Aguilar. She can be reached at 202-564-0792 or wooden-aguilar.helena@epa.gov. Thank you for your attention to these important matters. We look forward to a robust and candid dialogue.

Sincerely,

Rafael DeLeon
Director

Enclosures (4)

Cc: Stephen Pressman, Director
Civil Rights and Finance Law Office

Jared Blumenfeld, Regional Administrator
EPA Region IX

Patrick Chang, Senior Counsel for External Civil Rights
Office of the Administrator