BOARD MEETING DATE: March 4, 2016 AGENDA NO. 18

PROPOSAL: Approve SCAQMD Comments on U.S. EPA's Proposed Amendments to Regulation Governing U.S. EPA Procedures for Investigating Title VI Complaints

SYNOPSIS: U.S. EPA has released for public comment its proposed amendments to its regulation governing U.S. EPA procedures for investigating complaints under Title VI of the Civil Rights Act of 1964, which prohibits discrimination by federally-funded agencies on the basis of race, color, or national origin. U.S. EPA proposes to eliminate specific deadlines for individual steps in the complaint investigation process. Comments are due March 12, 2016. This action is to approve SCAQMD comments and the transmittal of those comments to U.S. EPA.

COMMITTEE: Stationary Source, February 19, 2016; Recommended for Approval

RECOMMENDED ACTION:
Approve SCAQMD comments regarding U.S. EPA's Proposed Rule Amendment: *"Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency,"* 80 Fed. Reg. 77,284 (Dec. 14, 2015), and direct the Executive Officer to submit approved comments to U.S. EPA by the March 12, 2016, deadline for public comments.

Barry R. Wallerstein, D.Env.
Executive Officer

BBB:pa

Background
The SCAQMD Board has long taken a leadership role in adopting and implementing environmental justice initiatives designed to help ensure equitable environmental policymaking and enforcement to protect all SCAQMD residents from the health effects of air pollution. An important federal environmental justice statute is Title VI of the Civil Rights Act of 1964, which prohibits any agency receiving federal funding from discriminating in the administration of its programs.

Title VI of the Civil Rights Act of 1964 provides in pertinent part:

"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.)

SCAQMD receives an annual grant from U.S. EPA under section 105 of the Clean Air Act, (42 U.S.C. § 7405), and other grants under section 103, (42 U.S.C. § 7403), and is therefore subject to Title VI. U.S. EPA has issued regulations under Title VI which prohibit programs having a discriminatory effect ("disparate impact") as well as those that are intentionally discriminatory. If U.S. EPA finds an agency in violation, U.S. EPA will initiate procedures to suspend or terminate U.S. EPA funding until the violation is corrected. Other federal funding agencies have similar regulations.

U.S. EPA's Proposal

In 2010, U.S. EPA initiated a review of the activities of its Office of Civil Rights, which investigates Title VI complaints as well as complaints regarding internal U.S. EPA actions such as employment discrimination complaints. U.S. EPA retained Deloitte Consulting, which issued a report in 2011 noting a lack of timeliness in U.S. EPA's handling of complaint investigations. U.S. EPA adopted a program for improving its handling of these complaints through fiscal years 2015-2020. One of its proposals for improvement was to make its regulations more consistent with those of other federal funding agencies.

As part of its 2015-2020 program, U.S. EPA has proposed to amend its regulations governing its procedures for investigating complaints under Title VI, located at 40 C.F.R. §§ 7.10, et seq. The amendments would eliminate U.S. EPA's specific deadlines for taking actions during a complaint investigation and replace them with a general requirement to investigate "promptly." According to U.S. EPA, this proposed language is similar to that found in the regulations of a number of other federal funding agencies. U.S. EPA's stated reason for this proposal is to allow it to devote appropriate time and resources to individual cases rather than taking a cookie-cutter approach. U.S. EPA also notes that the complexities of many of its investigations make compliance with existing deadlines unrealistic.

Proposal: Summary of Draft Comments

Staff has drafted proposed SCAQMD comments (Attachment 1) for approval. In brief, the comments recommend that instead of entirely eliminating deadlines that may be unrealistic, U.S. EPA should amend those deadlines to provide a more realistic timeframe for action, while still ensuring expeditious investigations. The comments note that U.S. EPA can address the concern about the complexity of some cases by establishing a category of cases which U.S. EPA will identify as "complex" and

providing a longer deadline for completion of those investigations. U.S. EPA also is concerned that a strict deadline could hamper efforts at informal or innovative alternative dispute resolution processes. The proposed comments suggest that U.S. EPA can include in its regulations a provision for tolling (i.e. conditionally pause or delay) the running of the deadline if dispute resolution is ongoing and all parties agree to the tolling.

As a result of a Stationary Source Committee motion, staff has added a recommendation that U.S. EPA modify its regulations to allow U.S. EPA to grant a 30-day period to amend a complaint which may not initially appear to allege sufficient facts. If the complainant does not cure any defects within 30 days, the complaint would be dismissed. This process would be similar to the process used in court, and would be used where U.S. EPA has reason to believe that the defect in the complaint is curable. It would potentially save time in the long run as U.S. EPA already does in some cases informally allow the complainant to submit additional information, but without a clear deadline to do so.

The attached proposed comments explain that having specific deadlines is important to all stakeholders, including the complainant, the agency receiving funding, and any permit applicant or permit holder whose permit is at issue. (Many Title VI complaints challenge individual permits.) Finally, the proposed comments explain that replacing the specific deadlines with a requirement that U.S. EPA investigate "promptly" is not an adequate solution. Such a requirement would create undesirable uncertainty for all parties, be difficult to enforce, and potentially lead to increased litigation over whether U.S. EPA was acting promptly, compared to enforcing specific deadlines. Existing case law interpreting the word "promptly" illustrates that court decisions would likely vary widely and the results would be unpredictable. U.S. EPA held a "listening session" in Oakland on January 20 at which staff provided general comments opposing the complete removal of deadlines.

Staff requests that the Board approve the attached proposed SCAQMD comments and direct the Executive Officer to file them with U.S. EPA by the deadline of March 12, 2016.

Public Process
Staff presented a summary of the draft comments to the SCAQMD's Environmental Justice Advisory Group at its meeting on January 29, 2016, and did not receive any comments from the Advisory Group.

Attachment
Draft Comment Letter to U.S. EPA dated March 4, 2016

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Office of the Executive Officer
Barry R. Wallerstein, D. Env.
909.396.2100, fax 909.396.3340

March 4, 2016

via Federal Rulemaking Portal

Ms. Jeryl Covington
Ms. Helena Wooden-Aguilar
U.S. Environmental Protection Agency
Office of Civil Rights
(Mail Code 1201A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Re: Proposed Rule Amendment: "*Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency,"* 80 Fed. Reg. 77,284 (Dec. 14, 2015); EPA Docket No. EPA-HQ-OA-2013-0031

Dear Ms. Covington and Ms. Wooden-Aguilar:

Introduction

This letter presents the comments of the South Coast Air Quality Management District ("South Coast District" or "District") regarding the above-cited proposed rule amendments. The South Coast District is the regional agency primarily responsible for air pollution control in the South Coast Air Basin, which includes the Los Angeles area. The air basin encompasses all of Orange County and the non-desert portions of Los Angeles, Riverside, and San Bernardino Counties. In addition, the District has responsibility for parts of Riverside and San Bernardino Counties located in the adjacent Salton Sea and Mojave Desert Air Basins, including the Palm Springs area. The District is home to about 17 million people and encompasses more than 10,000 square miles. The District regulates over 26,000

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permitted stationary sources ranging from small neighborhood drycleaners and auto body shops to major refineries and power plants.[1]

The South Coast District is strongly committed to implementing environmental justice within its jurisdiction. In 1997, the District's Chairman, Dr. William A. Burke, proposed a series of 10 Environmental Justice Initiatives which were adopted by the Governing Board. The purpose of these initiatives was to ensure equitable environmental policymaking and enforcement to protect all residents of the District from the health effects of air pollution. All of these initiatives have been implemented, and the District continues to implement additional programs to further environmental justice goals. Key accomplishments in implementing environmental justice include:

1) Forming an Environmental Justice Advisory Group to provide input into District policies and programs, focusing on environmental justice concerns and impacts on communities;

2) Holding frequent town hall meetings throughout the District in the evening or on weekends where Board members and executive staff listen to and respond to community concerns and follow up on issues raised;

3) Completing a ground-breaking series of basin-wide air toxics exposure studies to identify the sources of toxic exposure and relative levels of exposure in different communities; and adopting or amending rules to address identified sources of toxics, such as a hexavalent chromium rule for cement plants and a clean fleets rule to reduce diesel pollution, which causes over 80% of the cancer risk from air toxics in the region;

4) Adopting and implementing an Air Toxics Control Plan and Clean Communities Plan to identify all feasible measures to reduce exposure to air toxics,

5) Forming a Cumulative Impacts Working Group and developing strategies to reduce such impacts including adopting more stringent requirements for permitting facilities near sensitive receptors;

6) Requiring at least 50% of incentive funding to reduce mobile source air pollution to be spent in disproportionately impacted areas that have high levels of poverty and exposure to either PM_{10} or toxic air contaminants;

[1] A state agency, the California Air Resources Board, is primarily responsible for regulating mobile sources in California and is the only state agency authorized to adopt emission standards for motor vehicles and non-road engines, with EPA's approval.

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7) Holding a Forum entitled "Environmental Justice for All: A Conversation with the Community" and forming an Environmental Justice Community Partnership to strengthen and build the District's relationships and alliances with community organizations and to hold events and workshops to facilitate open dialogue and information-sharing on air quality issues.

The South Coast District appreciates and supports EPA's efforts to strengthen and improve its procedures for investigating Title VI complaints. The District also supports EPA's goals to devote appropriate time and resources to individual investigations, rather than using a cookie-cutter approach, and to allow for innovative voluntary dispute resolution processes.

However, the District believes that the proposal to eliminate all deadlines for EPA actions in conducting investigations is the wrong way to address EPA's goals. Moreover, replacing the existing deadlines with a requirement that EPA act "promptly" is not a workable solution. Instead, EPA should modify its regulations to modestly lengthen deadlines that are unrealistically short, create a category of cases which are complex and need a longer (but still expeditious) deadline for resolution, and allow for a "tolling" of the deadline if the parties are in the process of exploring voluntary dispute resolution and agree to the tolling.

Eliminating All Deadlines for Complaint Investigations Will Hamper the Process Rather than Assist It

We believe that the proposal to eliminate all EPA regulatory deadlines for conducting investigations is misguided. Even if EPA establishes internal deadlines, which may vary by each case, these will likely not be as effective as enforceable external guidelines. Our experience has been that parties to disputed matters are far less likely to complete assignments in a timely manner if there is no associated deadline that has consequences. Moreover, with no external deadline, there is nothing to prevent EPA from extending its internal deadlines, again to the detriment of timely investigations. A 2013 article in Psychology Today entitled "Here's What Really Happens When You Extend a Deadline" (copy attached) explained the frequently-adverse consequences of extending deadlines. In many cases, the work simply gets delayed commensurately.

Instead of entirely eliminating deadlines, EPA can address all of its concerns by appropriately adjusting its regulatory deadlines. Notably, the 2011 Deloitte Consulting Report on EPA's Office of Civil Rights contained a number of recommendations for improving the program, but did not recommend eliminating any deadlines. Nor did the January 18, 2012 EPA Civil Rights Executive Committee Report, "Recommendations for Developing a Model Civil Rights Program at the Environmental Protection Agency" include a recommendation to eliminate deadlines.

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EPA Can Meet its Goals by Establishing Reasonable Deadlines for Each Stage of Complaint Investigation

A. Deadline for Acknowledging the Complaint and Notifying the Affected Agency

The first deadline EPA proposes to eliminate is the existing deadline for notifying the complainant and the agency that is the subject of the complaint that the complaint has been received. The current deadline is five calendar days. 40 C.F.R. § 7.120(c). EPA recognizes that acknowledging receipt of a complaint is a "purely administrative task" and can be done quickly. 80 Fed. Reg. 77,287 col. 3. If 5 calendar days proves unrealistic in some cases, EPA should adopt a longer but still expeditious deadline, such as 10 days. Otherwise, complainants will be worried that their complaint has not been received, while agencies that are the subject of complaints will be deprived of the opportunity to quickly begin their own investigation of the allegations in the complaint. We do not believe EPA has articulated a basis for needing additional flexibility beyond a slight increase in time to acknowledge receipt of a complaint, since this task is substantially similar for all complaints.

B. Deadline for Jurisdictional Review

The next deadline EPA proposes to eliminate is the twenty days after acknowledgement of receipt of the complaint to review the complaint for acceptance, rejection, or referral to another federal agency. 40 C.F.R. § 7.20(d)(1). EPA calls this the "jurisdictional review." EPA has explained that the jurisdictional requirements are for a complaint to be accepted are: (1) it must be in writing, (2) it must describe an alleged discriminatory act, (3) it must be filed within 180 calendar days of the alleged discriminatory act, and (4) it must be filed against an applicant for or a recipient of, EPA financial assistance. (See, e.g., EPA File No. 14R-06-R6; Jan. 26, 2009 rejection letter attached). According to the Deloitte Report, page 26, only 6% of complaints have been accepted or rejected within the currently-required 20 days, and half of the complaints have taken a year or more to be accepted or rejected.

Issues #1 and #3 above can be decided merely by looking at the complaint, unless the complaint does not state the date of the discriminatory act. In such a case it may be necessary to contact the complainant for further information. But this could be accomplished quickly and we see no reason why it would take more than 30 days to obtain this information.[2]

[2] In contrast, EPA has not always resolved these simple issues quickly. In the attached rejection letter, 14R-06-06, the complaint was filed on September 18, 2006, but EPA did not request information regarding the date of the incident until over a year later on December 6, 2007. The complainant never provided the date, but it took EPA another year and a half to reject the complaint. (EPA File No. 14R-06-R6 Rejection Letter; Jan. 26, 2009).

DRAFT

Issue #4, regarding whether the complaint is filed against an applicant or recipient of EPA funds, may be apparent on the face of the complaint. Alternatively, it may require EPA to search its funding records, but it seems likely that verifying this information would take no more than 10 days.

Next, EPA needs to decide whether the complaint describes an alleged discriminatory act. We suspect that this issue is the one that currently takes the most time and resources to evaluate. However, it is not overly complicated. In a more recent rejection letter, EPA clarified the nature of this inquiry. EPA stated that the complaint must "describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations." EPA File No. 13R-12-R4 Dec. 7, 2012 rejection letter (attached). That rejection letter explained that the complaint "does not allege that the action resulted in a disparate impact based on race, color, national origin, or other protected basis, and therefore was rejected." *Id.* In other words, the decision to accept is *not* a decision on the merits; it is merely a decision that the complaint alleges facts which, *if true,* would violate EPA's discrimination regulations. It is essentially the same as a court ruling on a motion to dismiss a case for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6). Judges routinely make similar decisions in a short period of time. Such a decision should not take more than 45 days and can be made concurrently with the decision on other jurisdictional issues.[3]

In addition, we recommend that EPA establish a new procedure whereby, if the complaint is initially deemed insufficient for a reason that might be corrected by amendment, EPA would have the discretion to grant the complainant an additional 30 days to allege additional facts to support the complaint. If the complainant fails to amend within this time, or the amended complaint is still insufficient, then EPA would finally reject the complaint. EPA would need to establish a new deadline for accepting, rejecting, or referring the amended complaint. We suggest an additional 30 days would be sufficient for this purpose. We believe this process may actually save EPA time in the long run, since currently it appears that EPA may be spending time contacting the complainant in an effort to clarify the complaint, and that this

[3] The Deloitte Report mentions that Title VI complaints may raise complex issues concerning whether a complaint falls within Title VI jurisdiction because there is little legal precedence for comparison, and because investigations are challenged by a lack of scientific methods to conduct needed analyses. (Deloitte Report, p. 25.) This suggests that EPA may be trying to determine if the complaint is true (i.e., can be scientifically sustained) during the time it is deciding whether to accept a case. Instead, the decision to accept should be based on the facts alleged in the complaint, while the scientific evaluation occurs during the investigation phase. If EPA is uncertain whether a given set of facts, if true, would constitute a violation (due to lack of legal precedent), it could consider accepting the complaint and beginning an investigation. In such a case, an inquiry into the facts may show that the alleged facts did not actually occur, thus mooting the issue. If not, EPA will have more time to finally determine whether a violation occurred following a determination of the facts, during the time period for investigation.

process results in delaying the decision whether to accept the complaint. Under this new procedure, the complainant would be limited to 30 days to try to further support the complaint. This approach might also be fairer to complainants who may have a valid complaint but simply do not know how to state the facts in a way to demonstrate the violation.

C. ***Deadline for Completion of Investigation***

Finally, EPA proposes to eliminate its current deadline for completing its investigation and issuing "preliminary findings," which is 180 calendar days after beginning the investigation. 40 C.F.R. § 7.115(c)(i). EPA states that it remains committed to prompt investigations, and that without the burden of an unrealistic, self-imposed deadline, it will be better able to improve the entire Title VI program. 80 Fed. Reg. at 77,287 col. 1. However, EPA has not explained why it is necessary to completely eliminate investigation deadlines rather than set a more realistic deadline. A review of EPA's list of Title VI complaints indicates that only 16 have been formally accepted since 1993, although some may have been settled or informally resolved that would otherwise have been accepted, and some were dismissed without prejudice due to pending litigation. Thus, the burden of accepted cases can practically be handled by establishing realistic but expeditious deadlines.

Only some of EPA's accepted Title VI cases are available on line so we could not evaluate the relative complexity of these cases. However, we recommend that EPA keep the 180-day deadline for investigation of relatively simple cases, and establish a new, longer deadline for cases EPA deems to be complex. We recommend that the new, longer deadline be set at 18 months. EPA's notice describes a situation in which EPA had to develop and implement scientific models to evaluate pesticide exposure, and its analysis was subject to peer review. 80 Fed. Reg. at 77,285 col. 3. Given EPA's new focus on improving its processes, we believe any necessary technical expertise within the agency can be marshalled as needed to complete such an investigation within 18 months. If EPA disagrees, we recommend setting a longer but still expeditious deadline for completing the preliminary investigation rather than eliminating the deadline entirely.

Need for Clear and Specific Deadlines

It is very important to EPA's stakeholders that there be a specific, clear deadline for completion of the process. Complainants who believe they have been subjected to unlawful discrimination do not want to wait years before the violation is remedied. Public agencies that receive EPA funds will find it difficult to do advance planning and budgeting if their access to EPA funding remains uncertain over an extended period of time. Finally, many Title VI complaints involve individual permitted facilities. The permit holders or applicants often cannot afford to wait an extended period of time before beginning construction, and so will be forced to either abandon their project without any determination of a violation being

made, or proceed to construction and operation at the risk that EPA may rule that their permit was issued in violation of law. These are both unacceptable options.

EPA also states that it needs flexibility in order to implement "potential resolution paths, including informal resolution and Alternative Dispute Resolution." 80 Fed. Reg. at 77,285 col. 3. This flexibility can easily be gained by including a provision in the regulations for the tolling of a deadline when a resolution path is initiated and for the duration of negotiations. However, it is imperative that such tolling occur only if agreed to by the complainant, the agency whose funding is challenged, and the permit holder or applicant, if any. Each of these stakeholders has a strong interest in expeditious resolution consistent with the recommendations above, so its consent must be required for a tolling of any deadline.

Moreover, under EPA's existing clear and specific deadlines, it has been held that a stakeholder may bring a legal action to compel compliance with these deadlines. *Rosemere Neighborhood Ass'n. v. EPA,* 584 F.3d. 1169 (9th Cir. 2009). Thus, all parties are assured that in the event of unreasonable delay, they can seek a court order requiring EPA action as soon as practicable.

A Requirement that EPA Act "Promptly" Would Create Undesirable Uncertainty, Be Difficult to Enforce, and Potentially Lead to Additional Litigation

Finally, substituting a requirement that EPA act "promptly" in place of specific deadlines is not a workable solution to EPA's concerns. According to EPA, "the definition of a prompt investigation and resolution turns on the factual context of the complaint" and "any investigatory time frame may be affected by the breadth and complexity of the issues in the complaint." 80 Fed. Reg. at 77,285 col. 3-77,286 col. 1. For this reason, a requirement that EPA act "promptly" does not provide any certainty to affected stakeholders. Even if EPA were to provide stakeholders with an estimate of the time required for investigating a given case, there would be no assurance that this estimate will be met, or that EPA would not extend its internal deadline.

Moreover, with a standard as vague as "promptly," it will be very difficult for any stakeholder to enforce EPA's duty to act expeditiously. First, the meaning of "promptly" may vary according to the circumstances, and the result of litigation will be impossible to predict. For example, in the Clean Air Act Title V permit context, the Court of Appeals ruled that EPA properly approved a period of three months as "prompt reporting" of emissions data for sulfur dioxide and nitrogen oxides, stating that it deferred to the agency's interpretation. *NYPIRG v. Johnson,* 427 F.3d 172, 184 (2005). On the other hand, the court found that EPA's interpretation of "promptly" as "quarterly" could not be sustained for reporting compliance with opacity standards, "in view of the plants' rich history of violating opacity requirements." *Id*. Additionally, the court may find that any delay is not unreasonable where the agency did not act in bad faith and the complexity of the issues

explained some of the delay. *NRDC v. N.Y. State Dept. of Envtl. Cons.,* 700 F. Supp. 173 (S.D.N.Y. 1988).

Thus, any stakeholder can theoretically seek a court order requiring prompt action under 5 U.S.C. § 706(1), allowing a lawsuit to compel agency action unlawfully withheld or unreasonably delayed. But as a practical matter, such a lawsuit would be difficult to win, given the inherent vagueness and variability of the term "promptly" and the courts' obligation to defer to reasonable agency interpretation.[4]

EPA contends that many other agencies do not have specific deadlines but rather rely on a requirement to "promptly" investigate complaints. 80 Fed. Reg. at 77,287 col. 1. However, there is no showing that these requirements for acting "promptly" can be effectively enforced. Our research revealed one decision regarding an investigation of a claim under a different statute: the Rehabilitation Act of 1973, 42 U.S.C. § 793, which prohibits government contractors from discriminating against individuals with handicaps. *Giaccobbi v. Biermann,* 780 F. Supp. 33 (D.D.C. 1992). That statute requires the Department of Labor ("DOL") to "promptly" investigate complaints filed thereunder. DOL implementing regulations echoed the word "promptly." The Court of Appeals concluded that DOL had not complied with its duty to investigate promptly where the initial investigation took 14 months and the complete investigation took an additional two years. *Giaccobbi, supra*, 780 F. Supp. at 40. However, the plaintiff could not obtain any relief, because the DOL had already completed the investigation and concluded that no enforcement action was warranted by the time the plaintiff sued. (The decision whether to take enforcement action was held to be unreviewable.)

Based on the uncertainty inherent in the requirement to act "promptly," it would be very difficult for stakeholders to successfully enforce this requirement. But on the other hand, this very uncertainty may well subject EPA to more litigation than would occur with a clear and specific deadline, because each individual stakeholder could view EPA's action as insufficiently "prompt" based on his or her own evaluation, and decide to initiate litigation. And the lack of a "bright line" for deciding such cases may actually lead to unexpected rulings against EPA. Thus, replacing a clear deadline with a requirement to act "promptly" will cause uncertainty and unpredictable litigation.

[4] In contrast, under EPA's existing deadlines, a claim for violation of the deadline may be brought to compel EPA to act. *Rosemere Neighborhood Ass'n v. EPA,* 581 F.3d 1169 (9th Cir. 2009).

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Conclusion

Based on the foregoing, we recommend that EPA not eliminate deadlines entirely, but rather revise them so that they are more realistic but still call for expeditious action. This approach will provide greater certainty and potentially less litigation for all stakeholders and for EPA.

Should you have any questions or wish to discuss these comments with us, please feel free to contact me at 909-396-2100 or bwallerstein@aqmd.gov. Thank you for your attention to our concerns.

Respectfully submitted,

Barry R. Wallerstein, D.Env.
Executive Officer

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Attachments:
1) 2013 article in Psychology Today entitled "Here's What Really Happens When You Extend a Deadline"
2) EPA File No. 14R-06-R6 rejection letter (Jan. 26, 2009)
3) EPA File No. 13R-12-R4 rejection letter (Dec. 07, 2012)

ATTACHMENT 1

Heidi Grant Halvorson Ph.D.
The Science of Success

Here's What Really Happens When You Extend a Deadline

Why we don't make good use of extra time, and how we can.

Posted Aug 23, 2013

In June, the Obama administration pushed back (http://www.whitehouse.gov/blog/2013/07/02/we-re-listening-businesses-about-health-care-law) the deadline for employers with fifty or more workers to provide health (/basics/health) insurance for their employees by a full year—until Jan 1, 2015. Admittedly, the implementation of anything as complex as the Affordable Care Act is going to take time, and those involved have been working furiously to try to meet the government (/basics/politics)'s deadlines. So, at least with respect to this particular part of the ACA, everyone has an additional year to get everything just right. Sounds like a good thing, doesn't it?

Only - how furiously do you think everyone with this new, extended deadline is working now? Are they still burning the midnight oil... or are they saying to themselves, Let's take a breather. We've got plenty of time.

What happens when we move back deadlines—once we get past the initial feeling of sweet relief? Research suggests we have a lot of difficulty using our newly-found time wisely. We wind up facing the same problem again—the same time pressure, the same stress (/basics/stress), the same feeling-not-quite ready—only now we've gone an additional week, or month, or year without reaching an important goal.

So why do we squander the time extensions we are given, and what can we do about it? The answer to the latter requires an understanding (/basics/empathy) of the former, so let's start there.

Problem #1: We lose motivation (/basics/motivation)

It was first observed by researchers in the early part of the last century that one's motivation to reach a goal increases as one's distance from the goal decreases. Whether you are a salesperson trying to reach a sales target, or a rat running down a tunnel to get a piece of cheese, the closer you get to success, the more intensely you pursue it. Psychologists call this largely unconscious (/basics/unconscious) mechanism the "Goal Looms Larger Effect," meaning that the nearer you are to the finish line, the larger the goal "looms" in your mind—the more it dominates your thinking, and benefits from your attention.

Whenever you push back a deadline, you are increasing the distance once again between you and the finish line. Now, more urgent goals will loom large, and your original goal will languish in the back of your mind.

Problem #2: We procrastinate

In 2012, the IRS received over 10 million tax extension forms—a number that increases every year. Also increasing, according to Turbo Tax, is the number of people who wait until the last two weeks of tax season to file. What do we have to thank for these trends? E-filing. That's right — now that it is quicker and easier to file our taxes, or file for an extension, we are waiting even longer to do so. E-filing takes the pressure off, so it's easier for those with a tendency to procrastinate to delay.

But that's ok, because I work better under pressure, says the procrastinator. Well, I'm here to tell you that you don't. No one does. Psychologically, saying your work is better under pressure makes zero sense, because "pressure" is just another way of saying "just barely sufficient time to complete whatever I'm doing." How can less time help you do a better job? This is like claiming that you are more rested when you give yourself fewer hours to sleep (/basics/sleep).

It's really far more accurate to say that if you are a procrastinator, you work because there is pressure. Without pressure, you *don't* work. Which is why pushing back a deadline is absolutely terrible for procrastinators. (Though naturally, they are usually the ones asking for extensions in the first place.)

Problem #3: We are terrible judges of how long things take

Psychologists call this the planning fallacy—a pervasive tendency to underestimate how long it will take to do just about anything—and it can be attributed to several different biases (/basics/bias). First, **we routinely fail to consider our own past experiences while planning.** As any professor can tell you, most college seniors, after four straight years of paper-writing, still can't seem to figure out how long it will take them to write a 10-page paper.

Second, we ignore the very real possibility that things won't go as planned—**our future plans tend to be "best-case scenarios**." And as a consequence, we budget only enough time to complete the project if everything goes smoothly. Which it never really does.

Lastly, we don't think about all the steps or subcomponents that make up the task, and **consider how long each part of the task will take**. When you think about painting a room, you may picture yourself using a roller to quickly slap the paint on the walls, and think that it won't take much time at all—neglecting to consider how you'll first have to move or cover the furniture, tape all the fixtures and window frames, do all the edging by hand, and so on.

If you push back a deadline without addressing the poor time planning that landed you in hot water in the first place, you will likely end up in hot water again down the road.

How to Make Good Use of an Extended Deadline

If we want to solve Problems 1 & 2—keeping motivation high and keeping the pressure on for procrastinators—we need to find ways to shorten the distance between where we are now and where we want to end up. The most effective solution is to **impose interim deadlines**, effectively breaking a larger goal up into discrete sub-goals spaced out strategically in time. These deadlines need to be meaningful as well—if it's no big deal to miss the deadline, then it's not a real deadline.

Research by Dan Ariely and Klaus Wertenbroch suggests that many of us understand this implicitly. In one of their studies, students who had to turn in three papers by the semesters' end. Only 27% of them chose to submit all three on the last day—the majority established earlier deadlines for one or more of the papers voluntarily. In fact, roughly half the students chose to impose deadlines optimally, evenly-spacing them throughout the semester. Those that did turned in superior work and received higher grades. (So much for working best under pressure, eh?)

To solve Problem #3, you need to be very deliberate when it comes to project planning.

Specifically, you need to make sure you explicitly...

a) consider how long it has taken to complete a similar project in the past,

b) try to identify the ways in which things might not go as planned, and

c) break the project down, spelling out all the steps you will need to take to get it done, and estimating the time necessary to complete each step.

If it's not possible to set interim deadlines or make sure actions are taken to avoid the planning fallacy, then you really should try to avoid pushing back your deadline altogether. The odds are good that you'll have little to show for it but wasted time.

For more science-based strategies you can use to reach your goals and get happier and healthier, check out Succeed: How We Can Reach Our Goals (http://www.amazon.com/Succeed-How-Reach-Goals-ebook/dp/B00475AYJG/ref=pd_sim_b_4%22%20target=%22_hplink) and Nine Things Successful People Do Differently (http://www.amazon.com/Things-Successful-People-Differently-ebook/dp/B00607EX1E/ref=sr_1_1?s=books&ie=UTF8&qid=1343827717&sr=1-1&keywords=nine+things%22%20target=%22_hplink).

Trying to figure out where you go wrong when it comes to reaching your goals? Check out the free Nine Things Diagnostics (http://www.9thingsdiagnostic.com/%22%20target=%22_hplink).

ATTACHMENT 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 26 2009

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail #7004-1160-0002-3622-5423

In Reply Refer to:
EPA File No. 14R-06-R6

[redacted]
P.O. Box 1366
Texas City, TX 77592

Re: Rejection of Administrative Complaint

Dear [redacted]

This letter is in response to your administrative complaint filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR). Your complaint alleges that the Texas Commission on Environmental Quality (TCEQ), Galveston County Health District (GCHD), and EPA violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7. Your complaint was received by EPA on September 18, 2006. The complaint alleged that TCEQ, GCHD, and EPA discriminated against African Americans in Texas City, Texas by allowing exposure to toxic air pollution from Sterling Chemicals, Inc., and by not continuously monitoring air emissions from the Sterling Chemicals, Inc. facility.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of discrimination complaints to determine acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, or disability). Third, it must be filed within 180 calendar days of the alleged discriminatory act. Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

As stated above, a complaint must be filed within 180 calendar days of the alleged discriminatory act. In a December 6, 2007, letter, OCR asked you to provide the date(s) of the alleged discriminatory acts described in your complaint. To date, you have not provided the information requested in that letter. Therefore, since the allegations in your complaint do not satisfy the jurisdictional requirements in EPA's nondiscrimination regulations, OCR must reject your complaint for investigation.

Finally, your complaint named EPA as one of the entities in violation of Title VI and EPA's nondiscrimination regulations. Title VI does not apply to the Federal government. Therefore, a Federal agency cannot be considered a "recipient" within the meaning of Title VI.[1] As a result, a Title VI complaint cannot be filed against EPA.

If you have any questions, please contact Anthony Napoli of my staff via Federal Relay Service 800-877-8339, and provide the relay operator his telephone number 202-233-0652. He may also be reached via electronic mail at Napoli.Anthony@epa.gov, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460-1000.

Sincerely,

Karen D. Higginbotham
Director

Enclosure

cc: Mark R. Vickery, P.G., Executive Director
Texas Commission on Environmental Quality
Mail Code 109
P.O. Box 13087
Austin, TX 78711-3087

Dr. Harlan Guidry, CEO
Galveston County Health District
P.O. Box 939
La Marque, TX 77568

Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (2399A)

Sherry Brown-Wilson, Title VI Coordinator
EPA Region 6

[1] U.S. Department of Justice, Coordination and Review Section, "Title VI Legal Manual" (2001).

ATTACHMENT 3

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 07 2012

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail# 7009-2820-0002-1759-1261

In Reply Refer to:
EPA File No.: 13R-12-R4

Herschel T. Vinyard Jr.
Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard M.S. 49
Tallahassee, Florida 32399-6575

Re: Rejection of Administrative Complaint

Dear Secretary Vinyard:

This letter is in response to the administrative complaint filed with the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), against the Florida Department of Environmental Protection on July 24, 2012. The complaint alleges that the Florida Department of Environmental Protection (FDEP) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations implementing Title VI found at 40 C.F.R. Part 7 by compelling the Charlotte County Public Works Department to replace a drain sheet with a culvert, which has resulted in a disparate impact on the residents living at the end of Little Farm Road.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of discrimination complaints to determine acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's Part 7 regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, or disability). Third, it must be filed within 180 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or a recipient of, EPA assistance that committed the alleged discriminatory act. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

To be accepted for investigation, a complaint must meet the jurisdictional criteria described above. The allegations in the complaint fail to meet these criteria and, the complaint must therefore be rejected for investigation. First, to be accepted for investigation, a complaint must be filed within 180 days of the alleged discriminatory act. The complaint alleges that the

action occurred on or about September 2002, which is outside of the 180 day limitation and is therefore untimely. Second, the complaint alleges that the replacing of the drain sheet with a culvert had a disparate impact on the residents of Little Farm Road by making the road impassable during periods of heavy rain. However, it does not allege that the action resulted in a disparate impact based on race, color, national origin or other protected basis. Thus the complaint does not allege a violation of EPA nondiscrimination regulations and OCR must reject this allegation for investigation.

If you have any questions, please contact Helena Wooden-Aguilar, Assistant Director, External Civil Rights at (202) 564-0792, via email at wooden-aguilar.helena@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C.. 20460.

Sincerely,

Rafael DeLeon
Director

Enclosure

cc: Ms. Naima Halim-Chestnut
US EPA REGION 4
61 Forsyth Street, S.W.
Mail Code: 9T25
Atlanta, GA 30303-8960

Mr. Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)