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Comments of Congressman José E. Serrano on EPA's Draft Guidance on Title VI of the Civil Rights Act of 1964

August 23, 2000

In response to the solicitation by the Environmental Protection Agency (EPA), I submit this comment on EPA's Draft Guidance on Title VI of the Civil Rights Act of 1964. EPA has released two guidance documents - one for recipients of EPA funds that administer environmental permitting programs and one for administrative challenges to permits. Because I have submitted a complaint that was accepted under the Interim Title VI Guidance, my comments focus on the draft revised guidance for Investigating Title VI Administrative challenges to permits.

In December, 1998, a group of community organizations, residents of the congressional district I represent and myself filed a Title VI administrative complaint[1] with EPA's Office of Civil Rights (OCR), alleging that the New York City Department of Sanitation (DOS) and New York State Department of Environmental Conservation (DEC) engaged in a discriminatory pattern of siting waste facilities in our community. In March, 1999, EPA accepted for investigation the allegations against DEC, and in October, 1999 EPA accepted for investigation the allegations against DOS. To this date, this investigation is pending and no substantial inquiry

[1]See File No. 10R98R2.

has taken place, apparently due to a "backlog" of over two dozen cases filed with OCR.

Despite appropriations language by the House of Representatives directing EPA to deal with the South Bronx complaint "expeditiously,"[2] Over a year has passed without any movement on this matter. Although backlogs may explain why an agency cannot handle all of its caseload, it is troubling that, given the disparities in siting waste facilities throughout the country, EPA has not found one Title VI violation. Therefore, it becomes crucial for EPA to adopt procedures and standards that are reliable, simplify the review process and enable effective analysis.

The adverse disparate impact analysis of the proposed guidance, particularly the impact assessment, impact benchmarks and use of National Ambient Air Quality Standards is problematic. Although it is necessary to examine the context where a particular facility or facilities are proposed, and avoid examining the proposed facility and its impacts in a vacuum, EPA must not impose a cumulative impact analysis so unwieldy that it invites more speculation at its conclusion than when it began. Unfortunately, the proposed guidance sets up this kind of uncertainty.

In addition, the burdens on community residents seeking to file a complaint for investigation or support their complaint with analyses or studies are onerous. Most potential Title VI administrative complainants do not have the resources to provide the technical information and analyses that EPA would give "more weight to" in an investigation.[3] EPA must be careful not to set up standards that could eliminate a complaint essentially because the

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[2]See H.R. Rep. No. 105-769 at 273 (1998)

[3]See Draft Interim Guidance at 24.

complainant's data was not sophisticated or thorough enough.

In conclusion, I recommend that EPA work on streamlining the complaint process and simplifying the adverse impact analysis. Investigation of administrative Title VI complaints should be thorough and based on sound principles. However, it does not have to be rocket science.