



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

MAR 11 1999

Dear Honorable Tribal Leader,

The purpose of this letter is to inform you that the United States Environmental Protection Agency ("EPA") is seeking to consult with federally-recognized Indian Tribes ("Tribes") about whether Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI"), applies to Tribes. Title VI prohibits discrimination based on race, color, or national origin by recipients of federal financial assistance such as EPA grants and cooperative agreements. Its applicability to Tribes is an issue that has arisen at EPA recently in several contexts, including the issuance of EPA's *Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits* ("Interim Guidance"). As a first step in working to resolve this issue, EPA is consulting with Tribes to obtain any views they may have about the applicability of Title VI.

In particular, EPA is interested in any views and information that Tribes may have that bear on the following two questions:

- 1) Whether Tribes that receive financial assistance from EPA are subject to the requirements of Title VI and EPA's regulations implementing Title VI at 40 C.F.R. Part 7; and
- 2) Whether members of Tribes in Indian country are persons who are protected from discrimination under Title VI and EPA's regulations implementing Title VI.

EPA welcomes any general views that Tribes may have on any other aspects of Title VI and EPA's implementation of it.

As described more fully below, EPA's process for consulting with Tribes about Title VI includes three regional meetings and a national meeting at which EPA will present the Title VI topic for discussion. The meetings begin in March and end in June 1999. The schedule for those meetings is enclosed as Enclosure 1. In addition to the opportunity to participate in the meetings to discuss Title VI, representatives of Tribes may submit comments to EPA throughout the consultation process to make their views known. To help inform your views, a packet of informational materials is enclosed as Enclosure 2. It includes a copy of the Title VI statute, EPA's regulations that implement Title VI, and EPA's *Interim Guidance*. Each of these items also is discussed briefly below.

A. Background on Title VI and EPA's Regulations

In 1964, Congress passed the Civil Rights Act, a major and comprehensive piece of civil rights legislation. Title VI of the Act bans discrimination based on race, color, or national origin by recipients

of federal financial assistance. Specifically, section 601 of Title VI provides that:

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. Like other provisions of Title VI, section 601 contains no specific reference to Tribes or its applicability in Indian country.

Title VI establishes a national policy to ensure that federal financial assistance is not used to subsidize illegal discrimination. Title VI itself prohibits intentional discrimination. However, the United States Supreme Court has ruled that section 602 of Title VI allows federal agencies, including EPA, to adopt implementing regulations that prohibit unintentional discriminatory effects.

EPA's Title VI regulations prohibit recipients of EPA assistance from engaging in intentional discrimination or causing discriminatory effects based on race, color, or national origin. EPA's Title VI regulations, which were last amended in 1984, define the term "*EPA assistance*" to include, among other things, grants and cooperative agreements made by EPA (see 40 C.F.R. § 7.25). They also broadly define the term "*Recipient*" as any entity that receives assistance directly or through another entity, without any specific mention of Tribes (see 40 C.F.R. § 7.25). However, EPA's Title VI regulations expressly include American Indians and Alaska Natives in the definition of "*Racial classifications*" (see 40 C.F.R. § 7.25). The regulations allow persons who believe that they have been discriminated against by a recipient of EPA assistance to file a Title VI administrative complaint with EPA's Office of Civil Rights (see 40 C.F.R. § 7.120).

Courts have interpreted Title VI to prohibit a broad range of discriminatory activities including denial of services; differences in the quality, quantity, or manner of services; different standards for participation; discrimination in any activity conducted in a facility built even in part with federal funds; and discriminatory employment practices, if the primary purpose of the program is to provide employment. As noted above, under EPA's Title VI regulations, persons may file administrative complaints with EPA that allege discrimination under programs or activities of EPA assistance recipients. It is important to note that, under amendments to Title VI made by the Civil Rights Restoration Act of 1987, Title VI applies to all of a recipient's programs and activities, and not just those specific portions getting EPA assistance.

#### B. EPA's Interim Guidance on Title VI and Permits

On February 5, 1998, EPA's Office of Civil Rights (OCR) issued the enclosed *Interim Guidance*. It provides a framework to guide OCR's processing of Title VI administrative complaints that allege discriminatory effects resulting from the issuance of pollution control permits by state and local governments that receive EPA grant funding.

Footnote three in the *Interim Guidance* briefly addresses the issue of the applicability of Title VI

to Tribes as recipients of EPA assistance. It reads as follows:

Title VI applies to Indian Tribes as EPA recipients only when the statutory provision authorizing the Federal financial assistance is not exclusively for the benefit of Tribes. Otherwise, Tribes are exempt from Title VI.

In other words, this footnote was intended to mean that Tribes are subject to the nondiscrimination requirements under Title VI, except when the EPA assistance they receive is exclusively for the benefit of Tribes.

EPA now believes that the issue of whether Title VI applies to Tribes as recipients of EPA assistance is more complex than it originally understood. In working to revise the *Interim Guidance* and issue it as a draft final guidance document later this year, OCR plans to delete footnote three and to address separately the question of Title VI's applicability to Tribes. Consulting with Tribes about Title VI is a first step in EPA's approach to resolving the question with the help of the Department of Justice. EPA's process for consulting with Tribes about Title VI is described below.

It is noteworthy that the *Interim Guidance* has no effect on Tribes. This is because no Tribe currently is administering a permitting program under an EPA statute. Moreover, the law providing for EPA's 1999 appropriations contains language that prevents EPA from using funds to implement or administer the *Interim Guidance* for Title VI administrative complaints filed after October 21, 1998. Nonetheless, the question of Title VI's applicability to Tribes is an important one that has arisen in other contexts, including the assurances to comply with applicable federal statutes that Tribes must provide to obtain EPA grants and cooperative agreements.

#### C. EPA's Consultation with Tribes about Title VI

Consistent with the consultation provisions of the 1994 Presidential memorandum on government-to-government relations (59 FR 22951) and Executive Order 13084, entitled "Consultation and Coordination With Indian Tribal Governments" (63 FR 27655), EPA is providing Tribes the opportunity to have meaningful and timely input on the question of Title VI's applicability to them. In designing the consultation process for Title VI, EPA sought advice from its Tribal Operations Committee and representatives of Tribes at several public meetings. Based on feedback from these groups, EPA developed a consultation process that consists of two main components: 1) a series of public meetings with representatives of Tribes, and 2) an opportunity to submit written comments to EPA at any time during the consultation process.

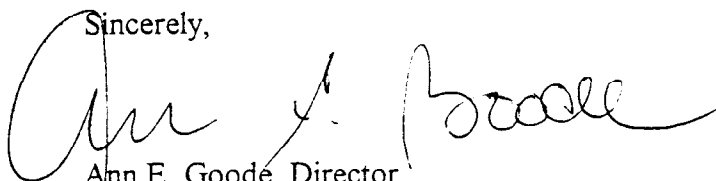
A schedule of the meetings is enclosed (see enclosure 1). They begin later this month and end in June. Two of the meetings are EPA-sponsored. They will be held by two different EPA Regional Offices with Tribes residing in the respective EPA Region. The other meeting is a national one sponsored by the National Tribal Environmental Council, at which EPA has arranged to present the Title VI issue for discussion. It is scheduled to be held on May 19th in Eureka, California. The schedule includes the names and phone numbers of contacts for each of the meetings. It also contains information about submitting comments directly to EPA at its headquarters office in Washington, D.C.

If there is sufficient interest, EPA may add other events at which to consult with Tribes about Title VI. Recently, BIA consulted with Tribes across the United States about whether Title IX of the Civil Rights Act and its implementing regulations apply to BIA-funded educational programs operated by Tribes or Tribal organizations under grants or contracts—a question that the Department of Justice is now considering. Title IX prohibits sex discrimination in the programs or activities of educational institutions that get federal financial assistance. Interestingly, Title IX was modeled on Title VI. Based on the results of BIA's consultation, it is EPA's understanding that Tribes generally view Title IX to be inapplicable. EPA plans to consider the need for adding events to consult further based on interest generated by this letter, which EPA is sending to various persons within each of the 562 federally-recognized Tribes.

After it consults with Tribes about Title VI, EPA plans to develop a position on the issue, working in coordination with the Department of Justice, which plays a special role in the implementation of federal civil rights laws. Subsequently, EPA plans to issue appropriate guidance on Title VI and Tribes.

If you have any questions or would like further information about this matter, please call Karen Higginbotham of EPA's Office of Civil Rights at (202) 260-4575 or Tony Hanson of EPA's American Indian Environmental Office at (202) 260-8106.

Sincerely,



Ann E. Goode, Director  
Office of Civil Rights



Kathy Gorospe, Director  
American Indian Environmental Office

Enclosures (2)

cc: Tribal Environmental Departments  
Tribal Counsels  
EPA Regional Administrators  
EPA Tribal Coordinators  
EPA Regional Counsels  
National Environmental Justice Advisory Council  
Department of Justice (ENRD, CRD, and OTJ)