ARTICLES

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Civil Rights, Environmental Justice and the EPA: The Brief History of Administrative Complaints Under Title VI of the Civil Rights Act of 1964

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I

INTRODUCTION: A NEW TOOL FOR THE MOVEMENT

The national environmental justice movement has discovered a new tool in its struggle against environmental racism: administrative complaints to the United States Environmental Protection Agency (EPA) under Title VI of the Civil Rights Act of 1964, as amended.1 Long used in civil rights struggles, the Title VI administrative complaint is a tool which had, until recently, seen little use in communities' fights against polluters and unresponsive governments.2 Until September 1993, it was a largely untested avenue of appeal in the environmental justice context; since then, more than a dozen Title VI complaints have been filed with EPA.3 This article explores this new and growing field of environmental justice advocacy and discusses each of the seventeen complaints filed with EPA between September 1993 and September 1994. Through this discussion, the article illustrates what environmental justice activists and their advocates have learned in the short time we have used the Title VI approach.

2 One prominent exception is a Title VI administrative complaint to the United States Department of Transportation (DOT), filed by the Durham, North Carolina-based Crest Street Community Council (CSCC). Residents of the African American Crest Street neighborhood challenged the siting of a freeway which the North Carolina Department of Transportation had planned to build through their community. After CSCC's administrative complaint was filed, the DOT informed North Carolina that the construction of the freeway would be a prima facie violation of Title VI. CSCC and the state then negotiated a settlement which rerouted the freeway and redesigned one interchange to save a church and park. See North Carolina Dep't of Transp. v. Crest St. Community Council, 479 U.S. 6, 9-10 (1986).
3 This article does not examine Title VI complaints to EPA that are not related to environmental justice in the facility siting and permitting context; a series of complaints has been filed against EPA in recent years alleging discrimination on the basis of disability. Nita Chilton McCann, EPA complaints, lawsuit mark hazardous waste facilities in Noxubee County, 15 Miss. Bus. J. 8 (Dec. 6, 1993). Those complaints are beyond the scope of this article.
Some might consider this article premature: EPA has yet to make a formal decision on any of the claims it has accepted for investigation. However, I believe that an examination of the claims themselves, regardless of their outcome, can be both interesting and instructive. What we can see by examining these situations is how the law works on the ground at the community level and in the context of broader community struggles.

The primary sources for this article are the relatively informal letters of complaint from activists to EPA and EPA's responses to those letters. This article also relies heavily on interviews with many of the participants in the complaints to learn more about individual community struggles and hear firsthand the lessons learned. From these communities' stories I relate a series of vignettes, and draw out certain themes from them.

The article has three sections. The first briefly reviews the nuts and bolts of Title VI administrative advocacy: what EPA's regulations specify, how to file a complaint, and what the benefits and drawbacks are. The second discusses, case by case, those complaints accepted by EPA for investigation and those rejected. Through the discussion of the accepted and rejected cases, it explores the role of Title VI claims in the context of local environmental justice struggles, asking questions such as, Who is bringing the claims? What is their goal? What role has the Title VI claim played within a local struggle? Finally, the third section distills some of the lessons learned using this particular tool of environmental justice advocacy.

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4 I thank Rodney Cash and Rich Albores of the EPA's Office of Civil Rights for their help in providing me copies of all such documents.

5 For the generous sharing of their time, experience and wisdom, I thank Lanell Anderson (Citizens Environmental Council, Channelview, TX); Lynn Battle (Total Awareness Group, Birmingham, AL); Pat Bryant (Gulf Coast Tenants Organization, New Orleans, LA); Charles Ellis and Robert Kuehn (Tulane Environmental Law Clinic, New Orleans, LA); Deeohn Ferris (Washington Office on Environmental Justice, Washington, DC); Phyllis Glazer (Mothers Organized to Stop Environmental Sins, Winona, TX); Grover Hankins (Texas Southern University, Houston, TX); Leonard Jackson (Neighbors Assisting Neighbors, Carrville, LA); Rose Johnson (Newtown Florist Club, Gainesville, GA); Bill Kilmartin (Office of Assembly Member William Bianchi, Patchogue, NY); Elizabeth Marsh (Lewisburg Prison Project, Lewisburg, PA); Kary Moss and Lamont Satchel (Sugar Law Center, Flint, MI); George Munchus (Alabama Community Reinvestment Alliance, Birmingham, AL); Earl Sims (Northwest Civic Coalition, Jacksonville, FL); Paul Sonn (NAACP Legal Defense and Education Fund, New York); Nathalie Walker and Robert Wygul (Sierra Club Legal Defense Fund, New Orleans, LA); and Rich Albores, Rosezella Canty-Letsome, Rodney Cash, Mike Mattheisen and Mary St. Peter (U.S. EPA Office of Civil Rights, Washington, DC).
II

THE NUTS AND BOLTS OF TITLE VI
ADMINISTRATIVE ADVOCACY: A PRIMER

Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color, or national origin in programs or activities receiving federal financial assistance. It is a potentially powerful tool for community groups engaged in local environmental justice struggles because, under EPA regulations, it bars disproportionate impact in the administration of environmental programs, including siting and enforcement. By contrast, the Equal Protection Clause of the Fourteenth Amendment dauntingly requires a showing of discriminatory intent. This section sets out the language of the relevant EPA regulations, goes through the relatively simple steps necessary to file a complaint, and explores the potential benefits and drawbacks of such complaints.

A. EPA Regulations Implementing Title VI

The EPA's regulations under Title VI explicitly codify the disproportionate impact, or discriminatory effect, standard. Under 40 C.F.R. § 7.35(b),

A recipient [of federal funds] shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of substantially defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

The siting of facilities is specifically mentioned in 40 C.F.R. § 7.35(c):

A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

Subsection (b) gives activists more latitude in filing complaints than subsection (c): if there is discriminatory impact, then necessarily something in the “criteria or methods of administering [a local] program” is arguably leading to that impact.

The challenge to the environmental justice complainant under subsection (c) is making the case that the funding recipient, generally a state or local agency, is “choosing” the site. Historically, agencies have defended against charges of environmental racism by stating that it is not the government agency’s choice of location, but a private party’s; the government agency merely processes the application for a permit submitted by the facility proponent. This narrow reading of “choose” should be rejected, however, as government agencies are “choosing” whether or not a facility can operate in a particular location. Further, government agencies are in a better position than facility proponents to see the totality of local and regional land uses, and thus be aware of patterns of disproportionate placement in particular communities or neighborhoods; many of the other polluting facilities in the neighborhood were probably permitted by the very government agency in question.

It is important to note, however, that “Title VI prohibits only projects with unjustified disparate impacts, rather than all projects that simply have a differential impact upon one sector of a community.”

B. How to Do It, and Then What Happens . . .

The actual process of filing a Title VI administrative complaint with EPA is surprisingly simple: one merely writes a letter to any EPA office, but preferably to the EPA’s Office of Civil Rights alleging a discriminatory action or impact by a recipient of fed-

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8 The reaction of Mississippi regulators to the Title VI complaint filed by African Americans for Environmental Justice was typical. “State officials point out that the state did not select the site: A private company did, and it is the state’s job to evaluate it.” Don Melvin, Group Challenges Hazardous Waste Site, Complaint Charges Environmental Racism, 22 PESTICIDE & TOXIC CHEMICAL NEWS (Nov. 24, 1993). See infra text accompanying notes 183, 406.


eral funds, and EPA does the rest. Behind this simplicity are a couple of key hurdles: making a successful case and timing.

There are two elements to making a successful *prima facie* claim under EPA's Title VI regulations, and a complaint must include both to be accepted and processed by EPA. A complaint should allege, at a minimum, discrimination on the basis of race, color, or national origin, including a description of the discriminatory acts, and that the discriminatory program or activity receives EPA assistance.

The first element should ideally be backed up with allegations of specific incidents or situations of discrimination, or statistical analysis of discriminatory impact. The second element should be thoroughly researched before filing the complaint. If the target is a state agency, then the nexus to federal funding should be relatively easy to document. For example, from 1982-1986, EPA grants funded 47 percent of state air programs, 38 percent of water quality programs, and 54 percent of hazardous and solid waste programs.

There is an additional procedural hurdle: complaints must be filed within 180 days of the action complained about, or allege an ongoing violation of Title VI. If the action complained

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12 If a complaint contains just one of the elements, or neither, it may be either denied for processing, or the EPA may contact the complainant for further details.
14 See 40 C.F.R. § 7.120 (1993). "EPA assistance" is defined at 40 C.F.R. § 7.25 as "any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of: (1) Funds; (2) Services of personnel; or (3) Real or personal property[.]
15 See infra text accompanying notes 443-44, 462. This requirement is not actually in the implementing regulations under Title VI, but is a basic jurisdictional requirement. If the EPA does not give an offending agency money, it has no jurisdiction to investigate claims against that agency.
16 Colopy, supra note 9, at 155 (citing U.S. ENVTL. PROTECTION AGENCY, A PRELIMINARY ANALYSIS OF THE PUBLIC COSTS OF ENVIRONMENTAL PROTECTION 1981-2000 8 (1990)).
18 Thus far, EPA has read this statute of limitations narrowly and has not accepted any complaints for processing filed after the 180-day statute of limitations even if they allege ongoing discrimination on their face. The Flint-Genesee Neighborhood Coalition (United for Action) has recently challenged this policy by refiling their Title VI complaint which had been previously rejected by the EPA. See infra text accompanying note 423-26. The discussion on continuing violations in this footnote is largely drawn from the important work of Kary Moss and Lamont Satchel at the Sugar Law Center in Flint, Michigan. See Letter from Kary Moss, Executive Direc-
about occurred more than 180 days before the complaint is to be filed, complainants can ask for a waiver of the 180-day limitation for "good cause."¹⁹

Once a complaint is filed, it is largely out of the complainant's hands. The EPA must accept or deny the complaint within 20 days,²⁰ although in practice it often takes longer.²¹ If EPA denies the complaint for processing, it sends a letter to the complainant informing her so. If the complaint is accepted, however, the complainant is not directly informed. Rather, EPA writes to the

itor, Sugar Law Center, and Lamont Satchel, Program and Litigation Coordinator, Sugar Law Center, to Dan J. Rondeau, Office of Civil Rights, U.S. Env'tl. Protection Agency (Oct. 19, 1994) [hereinafter Flint appeal]. (The Flint appeal letter and other source material for Title VI challenges is available from the Center on Race, Poverty and the Environment, 631 Howard, Suite 300, San Francisco, CA 94105.)

Thelma Crivens identifies three categories of continuing violations which apply to actions under Title VI. Thelma Crivens, The Continuing Violation Theory and Systemic Discrimination: In Search of a Judicial Standard for Timely Filing, 41 Vand. L. Rev. 1171 (1988) (Although Crivens' article focuses on Title VII, she, and the courts, have extensively analogized Title VI to Title VII). These categories of violations are:

1. The "date of notification/injury" standard. A violation is considered to be a single act pursuant to a policy which affects a person and requires her to file charges within 180 days of that act. Id. at 1175. This is the standard used by EPA. Flint appeal, supra, at 7.

2. The "manifestation/enforcement" standard. A person can bring a civil rights action if she challenges an unlawful practice within 180 days of the enforcement or manifestation of the policy against her or someone in her protected class. Crivens, supra, at 1194. "Pursuant to this theory, the statute of limitations should be interpreted in a manner consistent with eliminating the discriminatory policy." Flint appeal, supra, at 8. The Supreme Court embraced this standard in Havens Realty Corp. v. Coleman, 455 U.S. 363 (1982):

[W]here a plaintiff... challenges not just one incident of conduct violative of the Act, but an unlawful practice that continues into the limitations period, the complaint is timely when it is filed within 180 days of the last asserted occurrence of that practice. Id. at 380-81.

3. The "ongoing policy" standard. An aggrieved person may bring an action challenging an alleged policy, if she remains subject to the policy. Crivens, supra, at 1198. "[T]he existence of the formal policy is proof of the existence of a present alleged violation. Because the policy is the present alleged violation, the only remaining issue is whether that policy is in fact discriminatory." Crivens, supra, at 1201 (emphasis added).

The issue of which standard the EPA will continue to use is raised explicitly in Flint-Genesee Neighborhood Coalition v. Michigan Department of Natural Resources, infra text accompanying notes 423-26.

¹⁹ Crivens, supra, note 18. Complainants who miss the 180-day deadline should state why they missed the deadline and give a compelling reason why EPA should consider the case anyway. If the complaint is alleging an ongoing discriminatory policy, the arguments in n.18, supra, apply.


²¹ See infra text accompanying notes 429-37.
party complained against, advising that EPA has accepted the complaint for investigation; a copy is sent to the complainant.\textsuperscript{22}

At this point, EPA investigates the allegations in the complaint. "The agency, in a way, acts as your lawyer once the complaint has been accepted," says one of the EPA attorneys assigned to Title VI detail at EPA's Office of Civil Rights.\textsuperscript{23} That investigation entails data gathering and getting a response from the party complained against.\textsuperscript{24} The EPA has also begun conducting site visits as part of its investigations. The first such visit involved meetings with activists, government officials, and facility proponents.\textsuperscript{25}

It remains to be seen how EPA will respond if it finds discriminatory effect in one of the nine complaints currently under investigation. Under Title VI, EPA can enforce the non-discrimination requirement by cutting off financial assistance to the offending recipient, or "by any other means authorized by law."\textsuperscript{26} According to EPA lawyers and others familiar with the process, there are four possible courses of action:

1. Attempt to resolve the problem informally. This is the explicit policy found in the Title VI regulations.\textsuperscript{27} This could mean informal negotiations with the offending party to change a state regulation, for example, to allow for greater public participation. According to public statements, EPA prefers to promote conciliation rather than issue a finding that could reduce a state's EPA grants.\textsuperscript{28}

2. Terminate funding to the offending party.\textsuperscript{29} This process involves notifying the party of EPA's preliminary findings, and if the party does not agree or respond, making a formal determination of noncompliance with Title VI.\textsuperscript{30} Upon such a finding, the

\textsuperscript{22} 40 C.F.R. § 7.120(d)(1)(ii) (1994).
\textsuperscript{24} The regulations provide the respondent/recipient the chance to submit written response to the complaint. 40 C.F.R. § 7.120(d)(1)(ii) (1993).
\textsuperscript{25} \textit{See infra} text accompanying note 263.
\textsuperscript{27} 40 C.F.R. § 7.120(d)(2)(i) (1994).
\textsuperscript{28} Don Melvin, \textit{Group Challenges Hazardous Waste Site Complaint Charges, SUN- SENTINEL} (Fort Lauderdale, Fla.), Mar. 20, 1994, at 1F.
\textsuperscript{29} 40 C.F.R. § 7.130(a) (1994).
offending party may request an evidentiary hearing before an 
EPA administrative law judge.\textsuperscript{31} If the ALJ rules against the dis- 
criminating party, that party may appeal to the EPA Administrator, 
who makes the final determination.\textsuperscript{32}

3. Refer the case to the Justice Department.\textsuperscript{33} While no one is 
quite sure what such referral might mean, it could lead to a civil 
suit under state or federal law.\textsuperscript{34}

4. Do nothing.\textsuperscript{35} If the agency determines that there is dis- 
criminatory impact in a federally funded program, and does 
nothing, it risks a lawsuit.

When EPA decides a few of the pending complaints, the 
course of action it takes should inform future Title VI advocacy.

\textbf{C. The Benefits and Drawbacks of Administrative 
Complaints}

There are several benefits to using administrative complaints 
rather than resorting to litigation under Title VI; there are also 
several drawbacks. Whether the benefits outweigh the draw- 
backs is a question that can only be answered on a case-by-case 
basis, depending on the individual community’s specific facts and 
available resources. Note that the benefits and drawbacks are 
weighed here \textit{vis a vis litigation} under Title VI or environmental 
laws; the benefits and drawbacks of pursuing a strategy using 
civil rights laws, or legal challenges at all, are not explored here, 
but should be discussed and analyzed by communities facing en-

\textsuperscript{31} 40 C.F.R. § 7.130(b)(2) (1994).
\textsuperscript{32} 40 C.F.R. § 7.130(b)(3) (1994).
\textsuperscript{33} 40 C.F.R. § 7.130(a) (1994).
\textsuperscript{34} 28 C.F.R. § 42.108(a) (1994); see also Colopy, \textit{supra} note 9, at 155 n.134 (1994) 
(“By any other means authorized by law” has been interpreted by the Department 
of Justice (DOJ) to mean ‘appropriate’ proceedings brought by the DOJ and any 
proceeding under state or local law.”).
\textsuperscript{35} See, e.g., \textit{Cannon v. University of Chicago}, 441 U.S. 677, 707 n.41 (1979)(“Fur-
thermore, the agency may simply decide not to investigate—a decision that often 
will be based on a lack of enforcement resources, rather than any conclusion on the 
merits of the complaint.”).
Civil Rights, Environmental Justice and the EPA

The discussion below relies heavily on Alan Jenkins' excellent primer on Title VI law.37

1. The Benefits

The process is informal. A letter outlining two points—the alleged discriminatory activity, and the receipt of federal funds—is enough to get an investigation started.38 There is no need for formal evidence to be offered, although such evidence may speed the inquiry.

A community group does not need a lawyer to file a complaint. In keeping with one of the central tenets of the environmental justice movement, communities can speak for themselves in administrative complaints.40 Most of the complaints filed to date, including five of the nine complaints accepted for processing, have not been filed by lawyers. This benefit stands in marked contrast to the primacy of the lawyer’s role in litigation under civil rights and environmental laws.

The process can be inexpensive. An important corollary to the first two benefits is that complaints can cost nothing but postage to file.

The process allows the community group to name names. Unlike filing suits under environmental laws, filing civil rights complaints (as well as civil rights suits) allows a community to call a problem what it is: a violation of a community’s civil rights. Civil

36 In many situations, political or community action can be more effective than legal action. For more information on how to make the decision, see Luke W. Cole, Empowerment as the Means to Environmental Protection: The Need for Environmental Poverty Law, 19 ECOLOGY L.Q. 619, 668 (setting out three questions for analyzing tactics).


38 In EPA's own words,

A Title VI complaint must allege discrimination on the basis of either race, color or national origin; and must identify the discriminatory program or activity receiving EPA assistance. The complaint should also describe the discriminatory action or activity that spawned the complaint.


39 See, e.g., We Speak For Ourselves (Dana Alston, ed., 1992).

40 Jenkins, supra note 37; Telephone Interview with Pat Bryant, Executive Director, Gulf Coast Tenants Organization (Oct. 14, 1994).

41 See infra text accompanying notes 189-207, 230-279, 303-327.
rights challenges have great symbolic value. The value is often gleaned in the moment of filing the claim rather than in its ultimate resolution. Id.

Complaints are handled by EPA. Community groups using the administrative complaint tool know that their complaints will be handled by staff in the EPA’s Office of Civil Rights, and that under the Clinton Administration, EPA has at least paid lip service to the idea of environmental justice. It may be the case that complaints will be vigorously investigated and heard with a sympathetic ear. In a move that bodes well for getting some action on Title VI complaints, EPA has recently hired four attorneys in its Office of Civil Rights specifically to address these claims. The jury is still out on Clinton’s EPA and its record on environmental justice issues, but at least a complainant knows who will handle the case. By contrast, it is often difficult, if not impossible, to predict what judge will be assigned to a case in state or federal court if a group chooses litigation; often, the as-

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44 See, e.g., Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, Exec. Order No. 12,898, 59 Fed. Reg. 7629 (1994). As one reporter characterized the situation, “Recent moves by the Clinton administration indicate a new seriousness about the impact of hazardous pollution on minority communities, but civil rights advocates at the same time see signs that the federal government remains unsure of its role in addressing the issue.” Mariannne LaVelle, Clinton Pushes on Race and Environment, Nat'L L.J., Dec. 6, 1993, at 1.

[T]he EPA has been facing mounting criticism from these activists on an issue they believe is key to how the agency will deal with toxins in minority communities; they are protesting the removal of an environmental- medicine physician from his job in the EPA’s Southeastern regional office in Atlanta.

According to a report Nov. 11 in the Atlanta Journal-Constitution, Dr. John Stockwell charged he was being “muzzled” and “censored” by the EPA for his studies on how toxic waste emissions disproportionately affect minorities in Chattanooga, Tenn.

Id.
signment of a particular judge can mean the success or failure of the litigation.

2. The Drawbacks

There are no realistically enforceable time limits within which EPA must respond to a complaint once it has been accepted for investigation. Although EPA is required to make preliminary findings on a complaint within 180 days,\(^{45}\) it has never met this statutory deadline in environmental justice cases. For an indication on how long the process could take, EPA has yet to formally decide on a single claim it has accepted for investigation; the earliest claims were filed in September 1993, more than 18 months ago. Administrative complaints in other contexts have taken years to resolve.\(^{46}\)

Complainants are largely left out of the investigation. While EPA may consult with complainants during the investigation of a claim, the agency might not involve the complainants at all. In fact, EPA could informally resolve the complaint with the local agency that is the target of the complaint.\(^{47}\)

The remedies available to affected communities are indirect. As James Colopy notes, “There are greater possibilities for remedies in a lawsuit against a funding recipient . . . [Because] the administrative process does not provide any direct relief to complaints beyond promised compliance or termination of funding.”\(^{48}\)

Filing a complaint does not toll the statute of limitations for a later lawsuit. One potential pitfall for the unwary complainant is thinking that because an administrative complaint has been filed, the statute of limitations for a later court suit has been tolled. This is not the case.\(^{49}\) Under EPA regulations, a Title VI administrative complaint must be filed within 180 days of the alleged discriminatory action.\(^{50}\) Under most civil rights laws, the state personal injury statute of limitation applies to Title VI lawsuits.\(^{51}\)


\(^{46}\) See Jenkins, supra note 37, at 11. See also text accompanying notes 429-37.

\(^{47}\) See Jenkins, supra note 37, at 11.

\(^{48}\) Colopy, supra note 9, at 167.


\(^{50}\) 40 C.F.R. § 7.120(b)(2) (1994).

\(^{51}\) Wilson v. Garcia, 471 U.S. 261, 280 (1985) (civil rights claims are best characterized as personal injury claims, thus the personal injury statute of limitations governs where available); Almond v. Kent, 459 F.2d 200, 204 (4th Cir. 1972). In states where there is no statute of limitation governing personal injury actions, the circuits have
in most states that statute of limitation is one year.\textsuperscript{52} Because filing an administrative complaint does not toll a statute of limitations, a community may be forced to prepare and file suit while awaiting the outcome of its administrative appeal. It is almost certain that EPA will not complete the investigation and processing of most complaints within six months. At the same time, getting a final outcome in an administrative complaint is not a necessary precursor for those who wish to file suit directly (i.e., it is not an administrative remedy which must first be exhausted).\textsuperscript{53} Although it is not required that potential litigants wait for the outcome of the administrative complaint, courts are divided on


\textsuperscript{53} Cannon v. University of Chicago, 441 U.S. 677, 707 n.41 (1979). In Cannon, the U.S. Supreme Court held that parties can go directly to court without a final action on an administrative civil rights complaint. The court based its holding on three grounds:

First, complainants under Title VI do not get to “participate in the investigation or subsequent enforcement proceedings.” \textit{Id.} at 707 n.41.

Second, Title VI administrative actions do not provide direct relief to a complainant. \textit{Id.} The court noted that “even if those [administrative] proceedings result in a finding of a violation, a resulting voluntary compliance agreement need not include relief for the complainant.” \textit{Id.} For example, in the context of complaints to EPA, as Colopy points out, “complainants under the EPA’s nondiscrimination regulations cannot directly participate in the administrative process and are eligible only for the indirect remedy of terminated funding to the recipient.” Colopy, supra note 9 (citing 40 C.F.R. § 7 (1992)).

And third, an agency may not investigate an administrative complaint at all. Cannon, 441 U.S., at 707 n.41.
whether or not one can go to court without ever taking part in the administrative process.  

Complainants may lose their day in court. While filing an administrative complaint does not bar a lawsuit, if a complainant waits to sue until after the administrative agency has reached a decision on the complaint, then she may be barred from presenting new evidence in court. As Colopy explains,

In the administrative process, the plaintiffs’ input is dictated by strict agency procedures for collecting information; judicial review of an agency decision examines only the record as developed by the agency. In a trial against a state environmental agency, on the other hand, the plaintiffs can present witnesses and evidence of their own selection.

If a group is ultimately planning to file suit, the way around this potential disadvantage is to file the suit before the administrative agency has reached a final decision.

The process is informal. This benefit can also be a drawback to complainants who may never be informed by EPA as to the status of their case. As Jenkins points out, “Although complainants are often afforded informal access... they may just as easily be shut out of the process, learning only much later that the agency has found no violation or adopted a compliance agreement that the plaintiff views as deficient.”

A lawsuit may provide a more sustained rallying point than an administrative complaint. Because the investigation and handling of an administrative complaint is largely out of the hands of the complainant, it may be difficult to use an administrative complaint as an ongoing organizing tool in the affected community. A trial in court in the affected community, on the other hand, can be a useful educational and mobilizing tool.

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54 Compare Pushkin v. Regents of Univ. of Colo., 658 F.2d 1372, 1380-82 (10th Cir. 1981) (no need to initiate administrative complaint to file lawsuit) and Camenisch v. Univ. of Tex., 616 F.2d 127, 135 (5th Cir. 1980) (same) with Scelsa v. City Univ. of N.Y., 806 F. Supp. 1126, 1138-39 (S.D.N.Y. 1992) (Title VI complainants need not exhaust administrative remedies, but they do need to attempt to use administrative process before filing suit). There is an extensive and useful discussion of this issue in Colopy, supra note 9, at 156-58.

55 See supra text accompanying notes 49-54.

56 Colopy, supra note 9, at 167.

57 Jenkins, supra note 37, at 11.

58 Colopy, supra note 9, at 167.

The course of action is available only if the target agency gets federal financial assistance. Title VI complaints are largely useless against private parties, and against many local government agencies, because of the requirement of a nexus to federal funding.

If a complaint is resolved at the administrative level without litigation, complainants' attorneys may not be entitled to attorneys' fees. While this will not discourage many community groups from pursuing the administrative complaint, it may make it more difficult for such groups to find private attorneys to represent them in such proceedings. However, as mentioned above, attorneys are not necessary to file such complaints. Further, most attorneys who have represented client groups in such claims work for non-profit advocacy groups (such as environmental groups or Legal Services programs) for whom attorneys' fees should not be the primary motivation for undertaking a case.

III

TELLING COMMUNITIES' STORIES: THE FIRST YEAR OF TITLE VI COMPLAINTS TO EPA

There were seventeen complaints filed between September 13, 1993 and September 13, 1994 that EPA deemed to implicate Title VI. For purposes of discussion, I have separated the complaints into two categories: those accepted by EPA for investigation, and those rejected. This is admittedly an arbitrary and artificial distinction, as an examination of the cases reveals that EPA has rejected complaints in some of the most compelling situations. Nonetheless, the accepted/rejected distinction gives us one way to separate the cases for analysis.


61 Several of the complainants were not explicitly writing to EPA to file a Title VI complaint, but were merely writing letters complaining generally to EPA about action or lack thereof by local authorities. In at least two situations, EPA accepted the letter of complaint as a Title VI complaint, and wrote a letter to the complainant informing them of that acceptance. In one instance, the Flint case, see infra text accompanying notes 421-22, a general letter of complaint was rejected as a Title VI challenge although it was not filed as such.

62 I have only included in this article Title VI complaints that involved environmental justice issues. For example, EPA has received several Title VI complaints in recent years about discriminatory employment practices which are beyond the scope of this article.
Several things emerge from looking at the complaints as a whole. Interestingly, few of the complaints have emerged from broad-based, local organizing efforts against environmental racism, and even fewer were brought self-consciously as part of the environmental justice movement. Many complaints, at least a third of all complaints filed thus far, appear to be filed by disgruntled individuals expressing frustration with a local agency. This is not to discount the efforts and discriminatory situations faced by the individuals or ad hoc groups, but instead to demonstrate that the environmental justice movement, as a movement, has yet to invest a serious amount of energy in the Title VI avenue.

Examining the geographic distribution of the complaints reveals that more than two-thirds of them are from the Deep South and Texas. Fourteen of the seventeen complaints are from six southern states—Alabama, Florida, Georgia, Louisiana, Mississippi, and Texas—with five from Alabama alone. This geographical pattern may be a result of three related factors. First, the Civil Rights Movement began in the South, so Southern activists have a history and familiarity with civil rights laws and may be more likely to use them. Second, the Environmental Justice Movement began in the South, so activists there have been in the struggle longer and may have developed new approaches

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63 While this is a subjective judgment, it is based on several observable measurements of participation in the national Environmental Justice Movement. These include membership and participation in regional environmental justice networks and listing in Robert D. Bullard, *People of Color Environmental Groups, 1994-95 Directory* (1994). Of the 17 complaints filed, 11 were filed by community or advocacy groups. Of these 11 groups, only five were members of regional environmental justice networks, and just five (African American Network for Environmental Justice, Coalition for Environmental Consciousness, Flint-Genese United for Action, Gulf Coast Tenants Organization, and Newtown Florist Club) were listed in the directory. Id. at 28, 54, 61, 65, 66.

64 It is important to note, however, that many of these individuals were aware of national developments in the environmental justice arena, such as President Clinton's Executive Order on Environmental Justice.

65 The other cases are from Michigan, New York, and Pennsylvania.

66 However, four of the Alabama complaints were filed by the same individual. See infra text accompanying notes 340-64.

before other parts of the country. Finally, the situation in the South is particularly dire: "in the South, the environmental agencies operate pretty much like the Ku Klux Klan," says Pat Bryant of Gulf Coast Tenants Organization. "They're all white men who are not regulating the polluters, but are allowing poisonous activities to go on in people of color and low income communities."  

A. Complaints Accepted by EPA for Processing

From September 1993 to September 1994, nine Title VI administrative complaints have been accepted by EPA for processing.  
This section examines each case in chronological order of filing. The first two complaints, from Louisiana and Mississippi, came as part of long-term community organizing efforts in communities of color. Because these two struggles have the longest histories, their case studies are somewhat longer and more in depth than the stories from other communities chronicled below.

I. Jackson et al. v. Louisiana Department of Environmental Quality

Leonard "Buck" Jackson and a coalition of community groups filed two Title VI administrative complaints with EPA in September and November 1993. Jackson's complaint was the first such

68 Telephone Interview with Pat Bryant, Executive Director, Gulf Coast Tenants Organization (Oct. 14, 1994). Bryant suggests initiating Title VII complaints, as well, to remedy this.

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complaint EPA had ever received. The target of these actions, which are being investigated as a single complaint, was the Louisiana Department of Environmental Quality (LDEQ), which was considering a permit application by Supplemental Fuels, Inc. (SFI). SFI sought a permit to build a massive hazardous waste storage facility in the Carrville/St. Gabriel area, about an hour west of New Orleans.

(a) The Community, the Company and the Campaign

St. Gabriel and Carrville, predominantly African American communities in Iberville Parish, are already home to ten large, heavily polluting chemical plants. The town is nestled in the midst of “Cancer Alley,” the industrial corridor along the lower Mississippi from Baton Rouge to New Orleans which is home to some 175 chemical plants. The annual per capita toxics load in the area, 352 pounds, is significantly higher than the state average of 105 pounds and the Parish average of 168 pounds. Can-

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70 Jackson v. La. Dep't of Env'tl. Quality, No. 1R-93-R4 (filed with the EPA Sept. 13, 1993; accepted Oct. 8, 1993); Letter from Charles Ellis, Mc Clinchey Stafford Lang, to Bob Knox, Office of Environmental Equity, U.S. Env'tl. Protection Agency (Sept. 10, 1994) (on file with author) [hereinafter Jackson complaint]; Letter from Steven Michael Staes and Robert R. Kuehn, Tulane Environmental Law Clinic, to Dan J. Rondeau, Office of Civil Rights, U.S. Env'tl. Protection Agency (Nov. 8, 1993) (on file with author) [hereinafter Tulane complaint] (alleging Title VI violations in the SFI permitting process on behalf of Neighbors Assisting Neighbors, East Iberville AWARE, the Louisiana Coalition for Tax Justice, the Ascension Parish Residents Against Toxic Pollution, the Gulf Coast Tenants Organization, and the Louisiana Environmental Action Network). As explained below, see infra note 117, the Jackson complaint was actually the second Title VI environmental justice complaint to be filed, but the first to reach the EPA's Office of Civil Rights. Both Jackson and the other complaint, African Americans for Env'tl. Justice v. Mississippi Dep't of Env'tl. Quality, were accepted by the EPA on the same day.

71 According to the most recent census data, St. Gabriel is 54.8 percent, and Carrville is 76.2 percent, African American. Tulane complaint, supra note 70, at 2.

72 Scott Bronstein, Around the South, Environmental Racism? U.S. Opens Probe of Toxic Dump Sites in South, SUN-SENTINEL (Fort Lauderdale, Fla.), Mar. 20, 1994, at 1F.


Cancer death rates in the area have been found to be among the highest in the United States.\textsuperscript{75}

Residents of Carrville/St. Gabriel suspected why SFI was choosing their community. "They just continue picking the black communities to stick these facilities in, and frankly we've had enough of it," said Leonard "Buck" Jackson, a St. Gabriel high school teacher who is a leader in the fight against SFI. "The law says that if they get federal funds, their decisions cannot be racist. Well, that's just what's happening to us."\textsuperscript{76}

Residents first became aware of the SFI proposal when, as they describe it, "two guys from Memphis, Tennessee arrived and wanted to build a chemical facility in the community."\textsuperscript{77} According to residents, the two did not have the consent of the community, but went to the Louisiana DEQ and were given draft permits for the facility.\textsuperscript{78} Locals realized that they were currently living within an almost complete ring of toxic chemical facilities. "We're already within about a 340-degree circle. The SFI plant would have completed the circle," says Jackson.\textsuperscript{79} "When we found out about the plant, we decided to try to do something to stop it."\textsuperscript{80}

People in Carrville/St. Gabriel were already well organized politically, a fact which made their efforts around SFI effective.\textsuperscript{81} A community group, Neighbors Assisting Neighbors (NAN), had been organized several years earlier to initiate community programs and inform residents what was going on with local industries, in order to improve living conditions in the area.\textsuperscript{82} NAN was thus the natural group to take on the fight against SFI, and spearheaded local activity, organizing regular community meetings, call-ins,\textsuperscript{83} and letter writing campaigns.

The community also engaged in protest actions. Neighbors Assisting Neighbors led a march from Mount Bethel Baptist

\textsuperscript{75} Bronstein, supra note 72, at 1F.

\textsuperscript{76} Bronstein, supra note 72, at 1F.

\textsuperscript{77} Telephone Interview with Leonard "Buck" Jackson (Oct. 29, 1994).

\textsuperscript{78} Id.

\textsuperscript{79} Id.

\textsuperscript{80} Id.

\textsuperscript{81} Telephone Interview with Robert Wiygul, Sierra Club Legal Defense Fund (Oct. 27, 1994).

\textsuperscript{82} Telephone Interview with Leonard "Buck" Jackson, supra note 77.

\textsuperscript{83} A "call-in" is an action in which a group targets a particular decision-maker (whether a politician, bureaucrat or corporate official) and arranges for dozens or hundreds of people to call that decisionmaker on a particular day.
Church in Carrville to the New Jerusalem Baptist Church in nearby Jerusalem. NAN held a candlelight vigil march from the Jerusalem Baptist Church to the SFI facility site. A group of almost 200 residents and supporters also marched on the Louisiana Governor's mansion. "We went up there in full force and tried to talk to the governor, but he refused to talk to us," reports Jackson.

Louisiana is a hotbed of environmental justice activity, and the community group quickly formed coalitions with two statewide activist groups, the Louisiana Coalition for Tax Justice and Louisiana Environmental Action Network, both of which brought more organizing and technical resources to the fight. Neighbors Assisting Neighbors also secured the assistance of the Tulane Environmental Law Clinic at Tulane Law School, which advised them on how to most effectively take part in the state administrative process to oppose SFI's permit.

On the local political front, Leonard Jackson, as well as being one of the chief organizers, was a member of the Police Jury, the thirteen-member governing body of Iberville Parish (a parish is Louisiana's equivalent of a county). Jackson drafted a resolution against the SFI facility and the groups involved put together an in-depth guide explaining why the SFI facility should not be put in the Carrville/St. Gabriel community. This package was presented to the Police Jury which accepted the proposal unanimously and sent a letter to the Louisiana DEQ opposing the facility.

Jackson and a small group of Carrville/St. Gabriel residents have also worked to ensure that a similar situation does not occur again in their community. He and four others came up with a proposal to incorporate the area, which would mean that zoning authority over the town would be in local hands, so that similar facilities could not move in. After much local activity, their plan

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84 Telephone Interview with Leonard "Buck" Jackson, supra note 77.
85 Telephone Interview with Leonard "Buck" Jackson, supra note 77.
86 Telephone Interview with Robert Wiygul, supra note 81.
87 One attorney involved feels that the Tulane Environmental Law Clinic played a key role: "The folks in the community would not have been able to be on the same playing field as the hazardous waste industry or state regulators if they did not have the ability to get into those state administrative hearings." Telephone Interview with Robert Wiygul, supra note 81.
88 Telephone Interview with Leonard "Buck" Jackson, supra note 77.
was successful, and the new municipality, the Town of St. Gabriel, was incorporated July 16, 1994.89

(b) The Title VI complaint

How did the community come up with a Title VI complaint? Leonard Jackson tells the story:

I was in Houston, Texas with my wife, and I had a lot of time to think. The community where I live is 90 percent black, 10 percent white. The whole community is 60 percent white and 40 percent black. In the whole area of Carrville, St. Gabriel and Sunshine, we have 11 chemical facilities. Of the 11, 10 are located in black zip code areas. The other one is in a white zip code area, but it's located in the black neighborhood. I started thinking that there had to be something sticky about this situation. This has been happening since I was a young kid. All these minority people have been run out of their homes. I wrote this proposal up and gave it to my attorney. He decided to use it as a Title VI complaint.90

That attorney was Charlie Ellis, a young New Orleans lawyer who lived near Carrville91 and who was a part of Neighbors Assisting Neighbors. Ellis knew that attorneys with the Sierra Club Legal Defense Fund were preparing a Title VI challenge in neighboring Mississippi,92 and thought the situations sounded similar. Ellis knew the state agency received federal funding because early in the SFI permitting process Louisiana DEQ had

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89 Telephone Interview with Leonard "Buck" Jackson, supra note 77.
90 Telephone Interview with Leonard "Buck" Jackson, supra note 77. See also Letter from Leonard Jackson to Thelma Jenkins-Anthony, Louisiana Department of Environmental Quality (July 25, 1993) (on file with author) (table listing the 11 facilities in Carrville/St. Gabriel area, 10 in African American zip codes); Letter from Charles Ellis to Bob Knox, Office of Environmental Equity, U.S. Envtl. Protection Agency 1-2 (Sept. 13, 1993) (11th facility in white zip code but in black neighborhood).

Jackson set forth his whole Title VI argument, including documented allegations of disproportionate impact and the federal financial assistance received by LDEQ, in an August 10, 1993 letter to the local NAACP. Letter from Leonard Jackson to George Washington Eames, Baton Rouge Branch, NAACP (Aug. 10, 1993) (on file with author). That letter, which was carbon copied to EPA administrator Carol Browner and also to EPA Region 6, id. at 3, could have been accepted by EPA as the first Title VI complaint, as it fully laid out all the elements necessary under the EPA's regulations. Why it was not accepted and treated as a complaint remains unknown.

92 See infra text accompanying notes 117-88.
said it needed to process the permit quickly because of federal grant commitments.93

Ellis put together a complaint on behalf of Leonard Jackson and filed it with EPA's Office of Environmental Equity, which referred it to the agency's Office of Civil Rights. It was the first Title VI environmental justice complaint that EPA had ever acknowledged receiving; the African Americans for Environmental Justice complaint, described below, had been filed with the United States Commission on Civil Rights previously, but was not referred to EPA until two weeks after the Jackson complaint was filed.

The Jackson complaint emphasized that the intent of the parties did not matter:

Evidence presented at both an adjudicatory and public hearing clearly shows that the permitting of the SFI facility would aggravate the discriminatory effects on a minority community already disproportionately impacted by permitted polluting facilities. In fact, the discriminatory effect of polluting industries in Louisiana is well documented and has been acknowledged by the current Secretary of LDEQ (although he seems to be under the misguided impression that discriminatory intent must also be present before LDEQ is under a legal obligation to consider, at all, the issue of environmental equity).94

The complaint asked EPA in Washington to intervene with LDEQ and EPA Region 6, to force those agencies to look at environmental justice concerns.95

Ellis filed on behalf of Leonard Jackson individually.96 Less than two months afterward, the Tulane Environmental Law Clinic filed a broader complaint alleging Title VI violations in the SFI case, on behalf of a broad range of local and statewide environmental justice groups: Neighbors Assisting Neighbors, East

93 Telephone Interview with Charlie Ellis, Tulane Environmental Law Clinic (Sept. 20, 1994); Jackson complaint, supra note 70, at 1.
94 Jackson complaint, supra note 70, at 2. "Because these programs would allow this concentration of hazardous waste in communities of color without consideration of the social and economic impacts and cumulative risks, they are being administered with a discriminatory effect," says Wiygul. "We are not alleging intentional discrimination. That's a different question for a different day. The issue here is if you're going to run programs with federal taxpayer dollars, you need to do it in a non-discriminatory fashion." LaVelle, supra note 44, at 1.
95 Jackson complaint, supra note 70, at 2-3.
96 Ultimately, Ellis' work on behalf of Leonard Jackson did not sit well with partners in his law firm, so he asked Robert Wiygul of the Sierra Club Legal Defense Fund to take over the case.
Iberville AWARE, the Louisiana Coalition for Tax Justice, the Ascension Parish Residents Against Toxic Pollution, the Gulf Coast Tenants Organization, and the Louisiana Environmental Action Network.\textsuperscript{97} While the initial complaint filed on behalf of Leonard Jackson sought merely to stop the SFI facility, the \textit{Tulane} complaint, by contrast, was much broader in its scope:

Unfortunately, the LDEQ's disregard for its legal obligations under [EPA's Title VI regulations] has not been limited to its consideration of the SFI permit application. For this reason, we suggest that a full review by your office of all the public participation and hearing processes and procedures at the LDEQ would be in order . . . . We have represented these 90 community organizations on over 110 cases, including over 40 proceedings involving the LDEQ. Therefore, we have witnessed firsthand for a number of years the programmatic problems at the LDEQ that result in discrimination against minorities.\textsuperscript{98}

The \textit{Tulane} complaint went beyond allegations of disproportionate impact and included specific actions or inactions by LDEQ which Tulane alleged "have had the effect, if not the purpose, of discriminating against our clients."\textsuperscript{99} These included insufficient and untimely notice in the SFI case and others; insufficient time to prepare for hearings; assigning LDEQ staff to handle the SFI permit who had demonstrated bias in favor of SFI; refusing to provide free copies of the administrative record in permitting decisions, thus barring low-income community groups from taking part; and failing to implement state laws which would consider the social and economic impacts of siting toxic waste facilities such as SFI, with the consequence that facilities ended up disproportionately in communities of color.\textsuperscript{100}

The Title VI complaints were bolstered by a report from the United States Commission on Civil Rights' Louisiana Advisory Committee, issued in September 1993, which found evidence of environmental racism in the state permitting process:

The Louisiana Advisory Committee found that black communities in the corridor between Baton Rouge and New Orleans are disproportionately impacted by the present State and local

\textsuperscript{97} \textit{Tulane} complaint, \textit{supra} note 70, at 1.

\textsuperscript{98} \textit{Tulane} complaint, \textit{supra} note 70, at 2.

\textsuperscript{99} \textit{Tulane} complaint, \textit{supra} note 70, at 1.

\textsuperscript{100} \textit{Tulane} complaint, \textit{supra} note 70, at 1-3.
government systems for permitting and expansion of hazardous waste and chemical facilities.\footnote{101}

(c) Government response

By threatening the state with cessation of federal funds, Jackson and the community groups involved in the complaint were attempting to force the LDEQ's permitting programs to operate in a non-discriminatory way.\footnote{102}

The state's public response to the complaints was not hostile, but defensive. Kai Midboe, Louisiana's secretary of environmental quality, responded by stating that he understood the residents' anger, but attributed their problems to historic land use patterns. He noted that Louisiana is host to 25 percent of the nation's chemical industry, primarily along the lower Mississippi. "These companies tend to locate where they can buy land cheaply, and they tend to locate in poor neighborhoods. Unfortunately, the black community is disproportionately represented in these areas. And yes, the people living there are going to get more pollution. That's something we're very concerned about."\footnote{103}

The EPA's response to the complaints was big news: EPA accepted the first Louisiana complaint (Jackson) and a similar complaint filed against the Mississippi Department of Environmental Quality,\footnote{104} on the same day.\footnote{105} EPA spokesman John Kasper said that the cases were the first time that any citizens' groups complained to EPA using Title VI.\footnote{106}

(d) Community victory

In January, in what one attorney called "the archetypical, paradigmatic triumph of political organizing,"\footnote{107} the Louisiana DEQ denied Supplemental Fuels, Inc. its permit on the grounds that

\footnote{101 Louisiana Advisory Committee to the U.S. Comm. on Civil Rights, The Battle for Environmental Justice in Louisiana . . . Government, Industry, and the People 63 (Sept. 1993).}
\footnote{102 Telephone Interview with Robert Kuehn, Tulane Environmental Law Clinic (Jan. 10, 1995); Telephone Interview with Nathalie Walker, Sierra Club Legal Defense Fund, (Sept. 20, 1994).}
\footnote{103 Bronstein, supra note 72, at 1F.}
\footnote{104 African Americans for Environmental Justice v. Miss. Dep't of Envtl. Quality (filed Sept. 24, 1991) see infra text accompanying notes 117-88.}
\footnote{105 Telephone Interview with Robert Kuehn, supra note 102.}
\footnote{106 LaVelle, supra note 44, at 1.}
\footnote{107 Telephone Interview with Robert Wiygul, supra note 81.}
the company had not analyzed alternative sites.\textsuperscript{108} Many believe this decision on the environmental merits of the facility was driven by the political opposition to the facility. "The political organizing forced agency officials to look more closely at the application and to acknowledge the obvious flaws with the proposal," says Tulane's Robert Kuehn.\textsuperscript{109} But at the same time, the Louisiana DEQ could not admit that the concept of environmental discrimination had credence. In his decision, the secretary of DEQ explicitly said he was rejecting the idea that increased exposure to pollutants constitutes environmental discrimination:

One very important issue raised in this review is the question of "environmental justice." Claims that minority populations were already receiving inordinate environmental impacts from existing permitted facilities in the area were coupled with claims that the area in which the facility was to operate was environmentally sensitive and therefore required a greater level of protection . . . .

I have seen no data to support a claim that the health of the adjacent communities would be adversely affected if the SFI facility was permitted as requested. Absent a standard that can be applied in a consistent manner to all permit situations, and to all communities, regardless of race or economic condition, I must reject the claim that simply having more emissions, or the potential for more emissions, constitutes either a "disproportionate burden" or "disproportionate impact" on the surrounding communities. The premise that exposure, or potential exposure, is equivalent to an unacceptable impact cannot stand the test of scientific scrutiny.\textsuperscript{110}

Community residents were ecstatic, as their organizing efforts had paid off. Those involved also credited the Title VI claim for raising the stakes in the struggle; according to Robert Wiygul, "The Title VI claim played an important role in letting the political power structure know that there was going to be outside scrutiny, and outside sanctions if they didn't make the right decision."\textsuperscript{111}


\textsuperscript{109} Telephone Interview with Robert Kuehn, supra note 102. Robert Wiygul says "the decision came directly from organizing," because Governor Edwin Edwards was feeling extreme pressure from the Black community, upon which he had relied for his reelection. Telephone Interview with Robert Wiygul, supra note 81.


\textsuperscript{111} Telephone Interview with Robert Wiygul, supra note 81.
SFI, the facility proponent, promptly sued LDEQ in Louisiana Circuit Court, where the case remains today. "We're hoping that the courts allow things to stay as they are," says Leonard Jackson.112

(e) The Aftermath

Although one of the two Title VI complaints posed broad challenges to LDEQ's permitting history, policy and practices, EPA has chosen to treat the claim as pertaining only to the SFI facility. Accordingly, when the SFI permit was denied in January 1994 and when SFI sued LDEQ, EPA suspended its investigation pending the outcome of the litigation.113 With new attorneys on board at EPA, the case may get fresh scrutiny. "Although that particular permit is now in state court, the complainants have made some allegations of systemic discrimination by the state agency. We're evaluating that allegation to determine if there is a basis for investigation. It is one of our highest priorities and we're trying to do it as quickly as possible," according to Mike Mattheisen, the EPA attorney on the case. "It's a very complex case."114 The EPA is also considering conducting a Title VI compliance review to evaluate the state LDEQ's program.

The EPA expects to resolve the complaint in 1995. Affecting the timing of the resolution is a study that is coincidentally being undertaken by another EPA division, the Office of Research and Development, on environmental justice concerns on the Lower Mississippi River industrial corridor. "I expect that we'd wait for the report to come out to compare it against our other information," says EPA's Matthiesen.115

Attorneys involved in the case are hopeful about the outcome. "I think it marks a point at which the Browner EPA and the Clinton administration are turning from rhetoric on environmental justice to some kind of action," says Robert Wiygul of Sierra Club Legal Defense Fund. "How they handle it will tell us whether it is serious action."116

112 Telephone Interview with Leonard "Buck" Jackson, supra note 77.
113 Telephone Interview with Mike Mattheisen, U.S. Envtl. Protection Agency (Oct. 27, 1994).
114 Id.
115 Id.
116 LaVelle, supra note 44.
2. African Americans for Environmental Justice v. Mississippi Department of Environmental Quality

Shortly after the first Title VI complaint was filed against the Louisiana DEQ, a similar complaint against the Mississippi Department of Environmental Quality (DEQ) was filed with EPA by African Americans for Environmental Justice. The complaint alleged that the attempted siting of a hazardous waste facility in Noxubee County in east-central Mississippi had the effect of discriminating against African Americans, in that all of Mississippi’s hazardous waste disposal would take place in predominantly African American areas.

(a) Noxubee County and the Toxic Waste Proposals

Mississippi is approximately 35 percent African American. Noxubee County, by contrast, is approximately 69 percent African American—the fifth highest percentage of any of the state’s 82 counties—with a poverty rate of almost 35 percent. Although the National Solid Waste Management Association ranks Mississippi as the 11th largest generator of hazardous waste in the nation, there are presently no hazardous waste disposal facilities in the state.

That situation would change if two out-of-state firms have their way. Since 1991, Noxubee County has faced proposals from U.S. Pollution Control, Inc. (USPCI) and Hughes Environmental Systems/Federated Technologies, Inc. (Hughes) to site two hazardous waste dumps and a hazardous waste incinerator. One, an incinerator and dump in Brooksville about a mile from an all-black public school, would have a capacity of 390,000 tons per year. The other, a toxic waste dump proposed for Shu-
qualak\textsuperscript{124} Mountain, would take 200,000 tons of hazardous waste per year.\textsuperscript{125} (By comparison, in 1991 Mississippi exported just 38,632 tons of hazardous waste for offsite disposal—the highest figure in the state’s history.)\textsuperscript{126} The sites are just 10 miles apart in Noxubee County, which is itself only 15 miles from the largest toxic waste dump in the United States, Chemical Waste Management’s facility in Emelle, Alabama.\textsuperscript{127} Mississippi DEQ also recently approved an air permit for a cement kiln in adjoining Lowndes County, five miles from the Noxubee County line, allowing the kiln to burn 188,000 tons of toxic waste each year.\textsuperscript{128}

The potential disproportionate impact did not escape Noxubee County residents, or their attorney Robert Wiygul: “If Mississippi’s only hazardous waste dump is in Noxubee County, African-Americans will bear the environmental, social and economic risk for the entire state.”\textsuperscript{129}

(b) Local Resistance: African Americans for Environmental Justice

To fight the proposed facilities, residents of Noxubee County formed African Americans for Environmental Justice (AAEJ). A county-wide organization, AAEJ has instigated and focused the principle resistance to the dumpsites, including filing the Title VI claim.\textsuperscript{130} There is a long history of activism by people of color in Mississippi, including activism around environmental justice,\textsuperscript{131} and AAEJ grew out of that tradition. The group was founded by John Gibson, assistant superintendent of schools for

\textsuperscript{124} Pronounced “Sugar-lock.”
\textsuperscript{125} Melvin, supra note 28, at 1F.
\textsuperscript{126} Gilmer, supra note 122.
\textsuperscript{127} Melvin, supra note 28, at 1F. Like Noxubee County, Emelle is also a poverty-stricken, predominantly African American rural community. See Bullard, supra note 67, at 69-73. The Emelle dump has taken an average of almost 465,000 tons of toxic waste a year for the past eight years. AAEJ complaint, supra note 117, at 2.
\textsuperscript{128} AAEJ complaint, supra note 117, at 2. Although Lowndes County is predominantly white, the area of the county around the cement kiln is predominately African American.
\textsuperscript{130} The actions at the local level have been the key to the success of the community group, according to the attorney who filed the Title VI claim on their behalf. “It has to come from the ground up, rather than the top down,” says Robert Wiygul. Telephone Interview with Robert Wiygul, supra note 81.
\textsuperscript{131} See Jo Ann Wilkerson, Fighing for Community Needs: Restoration Advisory Boards, 45 Race, Poverty & the Env’t 18, 19 (Spring-Summer 1994).
Noxubee County. AAEJ’s campaign against the toxic sites has included holding rallies and marches, running educational campaigns debunking the claims of the facility proponents, electing anti-dump candidates to local offices, building grass-roots opposition to the site, and filing the Title VI complaint.\textsuperscript{132} Others in Noxubee County have fought the proposed facilities with lawsuits. Many of the tactics have been successful; thus far, no toxic waste facilities have been located in Noxubee County.

AAEJ has used public forums and protest rallies to educate local residents and build support for their efforts throughout the South. AAEJ and other groups voiced their concerns over the Noxubee County sites to the EPA at a September 1992 meeting in Atlanta, and in other forums in Louisiana and Mississippi, including at a major gathering of environmental justice activists in New Orleans in December 1992.\textsuperscript{133} Dump opponents held a number of protest rallies, including one in Macon in April 1993 that attracted several hundred people.\textsuperscript{134}

When the facility proponents tried to sell the dump projects on environmental and economic grounds, AAEJ met both arguments head on. For example, USPCI stated repeatedly that it chose Noxubee County for the proposed facility because of "the geology of the area."\textsuperscript{135} According to USPCI spokesperson Wayne Edwards, "The No. 1 reason for selecting these sites is an underground formation of chalk, going down some 700 feet under the sites . . . . When we selected the sites, we weren't even aware of what the demographics of the county were."\textsuperscript{136}

AAEJ researched the claim and identified 22 counties in Mississippi that meet the geological requirements for locating a hazardous waste dump.\textsuperscript{137} Of the 22, Noxubee County is both the poorest and the blackest.\textsuperscript{138} "We look at it as being discrimination," says John Gibson, president of AAEJ. "We don't think that they would have chosen a predominantly white area."\textsuperscript{139}

\textsuperscript{132} Melvin, supra note 28, at 1F.
\textsuperscript{133} McCann, supra note 3.
\textsuperscript{134} Gilmer, supra note 122.
\textsuperscript{135} McCann, supra note 3.
\textsuperscript{136} Bronstein, supra note 72.
\textsuperscript{137} AAEJ complaint, supra note 117, Ex. 4.
\textsuperscript{138} AAEJ complaint, supra note 117, Ex. 4.
\textsuperscript{139} Bronstein, supra note 72, at 1F. Cf. CERELL ASSOCIATES, POLITICAL DIFFICULTIES FACING WASTE-TO-ENERGY CONVERSION PLANT SITING 17-30 (1984) (report for California Waste Management Board identifying rural communities, low-
The facility proponents also talked about the dumps being a form of economic development for Noxubee County: USPCI claimed that construction would be a major economic boost to the county, creating 125-150 jobs, while Hughes said its facility would create 400 jobs.\textsuperscript{140} African Americans for Environmental Justice pointed out that waste disposal facilities depress property values in surrounding communities,\textsuperscript{141} pointing to the case of Emelle, Alabama, just across the state line: because of the massive Chemical Waste Management dump there, “[p]roperty values in Emelle are so low that it has eroded the tax base, increased unemployment and just generally destroyed the county,” according to Diedre McGowan, director of Mississippi’s Environmental Justice Project.\textsuperscript{142} “It’s pretty simple really,” says Macon resident Buzz McGuire. “Who wants to move to an area with a hazardous waste dump?”\textsuperscript{143}

AAEJ and other opponents also made public the history of environmental violations by Hughes and USPCI. A prime example from their campaign was \textit{Smith v. Hughes Aircraft Company Corp.},\textsuperscript{144} in which a federal judge held that Hughes was responsible for contamination at another of its facilities: “The uncontroverted evidence demonstrates that the pollution arises from Hughes’ pattern of waste practices over a span of more than 20 years.”\textsuperscript{145}

The toxic waste dump proposals caused some tension between residents in Noxubee County, with some actually favoring the

\textsuperscript{140} Gilmer, \textit{supra} note 122.

\textsuperscript{141} AAEJ complaint, \textit{supra} note 117, at 4; Desvousges, \textit{The Value of Avoiding a LULU: Hazardous Waste Disposal Sites}, 68 R. OF ECON. AND STATISTICS 293 (May 1986). “The anecdotal experiences of communities such as Emelle, Alabama, and Alsen, Louisiana, both of which are home to huge hazardous waste facilities, also demonstrate that these toxic dumps can drive away other businesses and impact local property owners. Local citizens at Emelle state that their county has become a ‘hazardous waste junkie’, depending on hazardous waste for much of its revenue.” AAEJ complaint, \textit{supra} note 117, at 4.

\textsuperscript{142} McCann, \textit{supra} note 3. “In the long run,” says Buzz McGuire, “a hazardous waste site in Noxubee County would only hurt the economy.” Locals believe that real estate prices would decline and new residents would go elsewhere. Gilmer, \textit{supra} note 122.

\textsuperscript{143} Gilmer, \textit{supra} note 122.


\textsuperscript{145} \textit{Id.} at 1232.
site as an opportunity to bolster a sagging economy. Despite this division, opposition within the county was overwhelming, especially within the African American community. A 1993 survey by the Mississippi State University Department of Sociology found that opponents of the toxic facilities outnumbered proponents by three to one among black respondents in Noxubee County.

Noxubee County residents also got involved in politics, working to elect anti-dump candidates in local races. After the Board of Aldermen in Brooksville endorsed the Hughes facility—which was to be located on 500 acres between Brooksville and Macon, about ten miles north of the USPCI site—the community elected five new aldermen who ran on a platform of blocking the Hughes facility. The newly elected aldermen wrote a letter to EPA Administrator Carol Browner expressing concerns about the proposed incinerator’s impact on the land, air and water. Responding to the local political heat, in its July 25, 1994 meeting, the Noxubee County supervisors voted to reverse their earlier approval of the project and reject a contract with the waste dumpers. The successful political organizing gave dump opponents credibility, because before the change in position by the aldermen and county supervisors, USPCI and Hughes were able to claim the support of local elected officials.

USPCI remained unfazed by the votes. “Their major mistake was making it a political issue. Legal authorization to approve or disapprove our permit application resides strictly with the state and with state and federal laws designed to counter the NIMBY

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146 Gilmer, supra note 122. A December 1993 New York Times article focused on the division, echoing a Mississippi Business Journal piece written some eight months earlier. Keith Schneider, Blacks Oppose Blacks in Mississippi, N.Y. TIMES, Dec. 13, 1993 at A12. The New York Times piece drew an angry response from those involved in opposing the Noxubee County facilities, who pointed out that the only person quoted as favoring the project was a paid consultant to one of the hazardous waste companies. Wiygul Letter, supra note 129, at A16. Wiygul pointed out that the New York Times “implicit assumption seems to be that disparate impacts of environmental risk on African-Americans should not be considered if there is disagreement in the black community—even when it comes from paid consultants to the hazardous waste industry. If that standard were applied, a lot of discrimination would go unchallenged.” Wiygul Letter, supra note 129, at A16.

147 Wiygul Letter, supra note 129, at A16.

148 Gilmer, supra note 121.

149 Nita Chilton McCann, USPCI speaks out on problems in Noxubee County project., 16 Miss. Bus. J. 13 (August 15, 1994).

150 Telephone Interview with Robert Wiygul, supra note 81.
syndrome,” said Wayne Edwards, spokesperson for USPCI. “They are sensitive to all public comment they receive, but they leave the final decision to the experts.”

(c) Lawsuits and Mergers

The Noxubee County fight became a statewide political issue when Mississippi Governor Kirk Fordice tried to implement a toxic waste Capacity Assurance Plan (CAP) for Mississippi that included the Noxubee County sites, without any opportunity for public comment. The CAP is important to the siting process because, under Mississippi law, there must be a “demonstration of need” that is “in conformance with the Mississippi Capacity Assurance Plan.” Several wealthy Noxubee County residents sued Fordice to block what they saw as the Governor’s end run around public participation in formulating the CAP. Hinds County Circuit Judge James Graves ruled in June 1993 that a public hearing was required on the CAP, and ordered the state DEQ to stop issuing permits to companies wanting to build hazardous waste disposal plants.

Fordice appealed, and the case was argued before the Mississippi Supreme Court in July 1994. As of October 1994, the Circuit Court judge’s injunction is still blocking DEQ’s approval of USPCI’s permit. Because there is no valid CAP, there has been no “demonstration of need” as required. Although all progress on the proposal is stopped pending the outcome of the suit, advocates worry that from an organizing standpoint, for the

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151 McCann, supra note 149. “Edwards said he was somewhat puzzled by the supervisors’ rejection of USPCI’s proposal, especially after their approval of the waste facility Hughes/FTI had planned for the area years before the two companies merged. As a matter of fact, USPCI had planned to capitalize on the supervisors’ visible support of the facility until the board dropped this latest bombshell.” McCann, supra note 149.

152 AAEJ complaint, supra note 117, at 13 (citing Mississippi regulations).

153 Gilmer, supra note 121; see also Court hears charge that Fordice tried to hide plan, THE COMMERCIAL APPEAL (Memphis) July 28, 1994, at 3B.

154 Court hears charge that Fordice tried to hide plan, THE COMMERCIAL APPEAL (Memphis), July 28, 1994, at 3B.

155 McCann, supra note 149; Telephone Interview with Robert Wiygul, supra note 81.

156 One element of the AAEJ complaint is that the DEQ has been processing the permit applications in violation of state law because there has been no demonstration of need. AAEJ complaint, supra note 117, at 13.
people in Noxubee County to have two years with no activity may have slowed their momentum.\footnote{157}

In the face of overwhelming community opposition and the lawsuit, in late fall 1993 USPCI and Hughes announced they would merge efforts to try to develop a site together.\footnote{158} The agreement included "a landfill, aqueous treatment facility and solvent recovery facility, which is basically recycling . . . but no incinerator," according to USPCI.\footnote{159}

But further blows to the project were soon to come. Both companies were investigated for violations of state spending laws. USPCI was investigated by the Secretary of State's office in December 1993 for not reporting that it had paid for legislators to visit a company facility in Utah. Just after USPCI and Hughes decided on a joint venture in late 1993, it was revealed that Hughes was being investigated by the United States Attorney's Office for alleged spending violations.\footnote{160} These allegations may have helped turn the tide when the Noxubee County board of supervisors voted down the project in July 1994.\footnote{161}

In addition, in October 1994 the EPA informed Mississippi (and the public) that additional hazardous waste facilities are not needed in the United States at this time.\footnote{162}

\subsection{The Title VI Complaint}

While the two toxic waste projects were stumbling along in the late summer of 1993, local activists and their attorney were ana-

\footnote{157} Telephone Interview with Robert Wiygul, \textit{supra} note 81.
\footnote{158} McCann, \textit{supra} note 3.
\footnote{159} McCann, \textit{supra} note 3. Interestingly, USPCI opposed the idea of a toxic waste incinerator at the site, which was Hughes' first ambition. "We contended all along that there was no need for an incinerator, because if you look at the totals (of such waste) that Mississippi puts out each year, there's not enough to justify an incinerator and, from a marketing standpoint, there's not enough demand," according to Wayne Edwards of USPCI. Edwards pointed out that USPCI already runs a toxic waste incinerator in nearby Eutaw, Alabama. McCann, \textit{supra} note 3. "There is no basis for justifying an incinerator in this state," according to Edwards. Gilmer, \textit{supra} note 121. USPCI also attempted to build a toxic waste incinerator in Allentown, Pennsylvania, a proposal which was the subject of another Title VI administrative complaint. See Lewisburg Prison Project v. Pennsylvania Department of Environmental Resources, \textit{infra} text accompanying notes 208-29.
\footnote{160} McCann, \textit{supra} note 149.
\footnote{161} McCann, \textit{supra} note 149.
lyzing potential new strategies, asking themselves, "How can we get what we want?" and "Who can give it to us?" Through this exercise, they came up with the idea of filing a Title VI administrative complaint.\textsuperscript{163}

The parties involved made a strategic decision to go with an administrative complaint rather than file suit. Ultimately, it was decided that an administrative appeal was a better forum in which to present the case than the courts.\textsuperscript{164} AAEJ's advocates hoped that in an administrative process, the decisionmakers would look forward at what civil rights laws could do and were meant to do—in contrast to a backward-looking judicial focus, based on precedent, on what the law had done.\textsuperscript{165}

Part of the calculus was tactical, part economic. As Robert Wiygul puts it, "Noxubee County has about as few resources as anywhere. It's a classic Deep South rural county. I didn't think that putting alot of money and time into a classic civil rights claim in federal court in Mississippi was going to be a good use of those resources."

In filing the very first Title VI complaint explicitly implicating environmental justice concerns, AAEJ made history: "The purpose of this letter is to request that you undertake an investigation of the State of Mississippi's permitting program for commercial hazardous waste treatment, storage and disposal facilities regulated under the Resource Conservation and Recovery Act. We believe that this federally funded program is being administered in a fashion that discriminates against the members of African Americans for Environmental Justice."\textsuperscript{167}

The complaint was originally filed with the United States Civil Rights Commission, which had recently announced the launching of an investigation into whether EPA discriminated by paying less attention to the problems of people of color.\textsuperscript{168} The Civil Rights Commission had also just been sent a major report on

\textsuperscript{163} Telephone Interview with Robert Wiygul, \textit{supra} note 81.
\textsuperscript{164} Telephone Interview with Robert Wiygul, \textit{supra} note 81.
\textsuperscript{165} Telephone Interview with Robert Wiygul, \textit{supra} note 81. The attorneys involved were aware that the courts had focused on the intent of the decisionmakers when deciding equal protection suits in the environmental justice arena. By using Title VI, African Americans for Environmental Justice hoped to avoid the intent hurdle altogether.
\textsuperscript{166} Telephone Interview with Robert Wiygul, \textit{supra} note 81.
\textsuperscript{167} \textit{AAEJ} complaint, \textit{supra} note 117, at 1.
environmental justice in Louisiana by its Louisiana Advisory Commission.  

Bobby Doctor, acting staff director of the Commission, forwarded the complaint to EPA's Office of Civil Rights with a strongly worded letter about Mississippi's siting practices. "[A]lthough the state's siting criteria are facially neutral, they have the effect of discriminating against poor and predominantly African American communities," Doctor wrote in a September 24, 1993 letter to EPA Administrator Carol Browner. Doctor urged EPA to investigate because the Commission on Civil Rights could not give it the priority attention he believed it deserved: "Unfortunately, the commission is not scheduled to complete the project (review of a number of states' compliance with Title 6 in environmental affairs) until the summer of 1994, and thus will be unable to give the Sierra Club's allegations the immediate and intense scrutiny we believe they warrant[]."

The *AAEJ* complaint stressed the nearby location of two other major toxic facilities—the newly-permitted toxic-waste-burning cement kiln in Lowndes County and the mega-dump at Emelle, Alabama—and set forth some of the potential harmful effects of toxic waste dumps.  

It also cited a number of studies documenting the disproportionate impact of environmental hazards, specifically toxic waste disposal facilities, on people of color, and then set forth the relevant EPA Title VI regulations. The complaint was carefully documented with statistical data showing that Noxubee County was the poorest and the most African American of all counties which the state considered suitable for a hazardous waste facility.

After noting Mississippi DEQ's receipt of federal funds—some 58 percent of the entire DEQ budget—the complaint explained its theory of Mississippi's violation of Title VI: that the siting criteria for hazardous waste facilities found in Mississippi law

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172 *AAEJ* complaint, *supra* note 117, at 2-3. The complaint has since been used as a model by several other complainants, including *Moses*. See *infra* text accompanying note 289.

173 *AAEJ* complaint, *supra* note 117, Ex. 4.
pushes such facilities into areas of low population density, which in Mississippi are the areas with the greatest percentage of African American residents. "This means that a disproportionate share of the burdens and risks associated with a hazardous waste facility—or, as seems more likely, facilities—will likely be borne by African-American citizens of Mississippi. These regulations are therefore discriminatory in effect and violate Title VI and the EPA regulations implementing Title VI."  

The complaint then anticipated Mississippi’s potential response, that population density and geological criteria are legitimate, non-discriminatory considerations. After noting that the rationale for these criteria has never been made public by DEQ, and that DEQ has failed to adopt additional criteria that might reach a non-discriminatory result, AAEJ argued that “The potential existence of non-discriminatory reasons for these criteria does not excuse their discriminatory impact, however, because these regulations do not constitute the least discriminatory alternative course of action. This is because they fail to take into account some obvious ways in which their discriminatory effect could be lessened.” Among these would be consideration of the potential discriminatory impacts of siting toxic waste facilities. The siting criteria also do not take into account the potential cumulative effects of siting several facilities in the same area.  

“Despite the fact that [granting the permits] would concentrate every commercial hazardous waste disposal facility in the state of Mississippi in Noxubee County or its immediate area, the Mississippi DEQ apparently intends to continue processing the [Hughes] and USPCI permit applications, and ultimately issue permits to both companies.”  

The EPA responded to the Mississippi and Louisiana complaints at the same time. Such complaints are “the first of their

174 AAEJ complaint, supra note 117, at 6-8.  
175 AAEJ complaint, supra note 117, at 8.  
176 AAEJ complaint, supra note 117, at 8-9.  
177 AAEJ complaint, supra note 117, at 8.  
178 AAEJ complaint, supra note 117, at 8.  
179 AAEJ complaint, supra note 117, at 11.
kind" to go through the EPA's Office of Civil Rights, said EPA spokesperson John Kasper. "Previous cases that were brought to our civil rights division were not about siting," Kasper said. "Somebody would claim a facility had discriminated against them by not employing them or something like that, but there were no complaints of this kind."\textsuperscript{180}

The Louisiana and Mississippi cases received national publicity, which raised consciousness of the issue across the country.\textsuperscript{181} The publicity has also had effects locally: John Gibson of AAEJ reports that although the complaint is about racial discrimination, it has actually \textit{eased} strains between blacks and whites locally. "I think it has brought us together to agree on one major issue," he said. "And that is, that hazardous waste is hazardous."\textsuperscript{182}

\textbf{(e) Regulators' Response}

Mississippi officials have reacted dismissively toward the Title VI complaint. Charles Chisolm, director of pollution control for the Mississippi DEQ, defends his agency's decisions:

\begin{quote}
[W]e don't deal with where an applicant chooses to locate their facility and we do not propose the projects. We evaluate the project and make sure it's up to our standards, and we don't look at the racial or economic makeup . . . . I don't know what's on their minds when they decide where to locate a site, if they think that they have a better opportunity to locate in economically disadvantaged or less educated areas.\textsuperscript{183}
\end{quote}

Chisolm, in identifying his agency's dilemma, points to the crux of the AAEJ complaint:

\begin{quote}
The problem is, right now there are no requirements that say we ought to consider the economic status of a community or the racial status of a community in determining whether or not to approve a permit for a facility . . . . There are just no requirements to address that today in our state. And I don't know of any requirements anywhere in the country.\textsuperscript{184}
\end{quote}

\textsuperscript{180} McCann, \textit{supra} note 3; see also Lavelle, \textit{supra} note 44, at 1.

\textsuperscript{181} The cases were a topic of discussion on newspaper op-ed pages as far away as North Carolina. \textit{See, e.g.}, Chuck Cotter, \textit{Letter to the Editor: Environmental Racism Does Exist}, \textit{News & Record} (Greensboro, NC), Mar. 24, 1994, at A10 (commenting on the Louisiana and Mississippi Title VI complaints).

\textsuperscript{182} Melvin, \textit{supra} note 28, at 1F.

\textsuperscript{183} McCann, \textit{supra} note 3.

\textsuperscript{184} Bronstein, \textit{supra} note 72.
USPCI’s response has been similar. Spokesperson Wayne Edwards has said the Title VI complaint “had more fiction than a John Grisham novel.”

The EPA has made no formal statements about the case. The EPA attorney assigned to the case reports that the case is still in the investigatory phase, with EPA still collecting the facts. The EPA, although moving slowly, is not entirely to blame for the delay: it has yet to receive a response from the Mississippi DEQ.

Community leaders vow to continue the fight against toxic waste dumping in Noxubee County. “Why should we become the toilet of the South? Why should we bear the brunt of the responsibility for the world’s mess?” asks community leader John Gibson. “It’s not burning the crosses, and hanging us out on the trees. But in actuality it’s the same thing. We’re talking about poisons, not clean industries. And it’s going to the minority communities. When you discriminate, you discriminate. It’s racism.”

3. Anderson v. Texas Natural Resources Conservation Commission

The Anderson complaint comes in the context of a long-running regional struggle against a toxic waste incinerator proposal in the Houston Ship Channel area, south of Houston, Texas. Residents, along with the City of Houston and Harris County, have fought for the past six years to block a permit issued by the Texas Natural Resources Conservation Commission (TNRCC) for the American Envirotech commercial toxic waste incinerator in the predominantly white community of Channelview. The area is already host to a Rollins Environmental commercial haz-

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185 McCann, supra note 149. Edwards claims the USPCI facility is in one of two white voting areas in Noxubee County.
187 Id.
188 Bronstein, supra note 72.
190 Texas environmental justice activists pronounce the acronym “TNRCC” as “train wreck,” and have about as much faith in the agency as the nickname implies.
ardous waste incinerator just 1.3 miles from the newly proposed incinerator, and close to 200 chemical plants.\textsuperscript{191}

The American Envirotech toxic waste incinerator was first proposed in 1988 by two former employees of the Texas Water Agency. Because the facility proponents were former state employees, says LaNell Anderson, the local realtor and community activist who filed the Title VI complaint, the state took shortcuts in the permitting process. Anderson and others feared that toxic emissions from the plant would not be closely overseen. As Anderson notes, “We’re talking about a self-reporting regulatory process—who’s going to know what they put in the air?”\textsuperscript{192} Anderson also became concerned when she learned that commercial toxic waste incinerator emissions are not required to be reported under SARA Title III Toxic Release Inventory (TRI) reporting.\textsuperscript{193}

Another problem local residents (and the City of Houston) have with the proposed incinerator site is that it sits directly above a drinking water pipeline which supplies 2.6 million Houston residents. While the pipeline itself might not be in danger, it has an air vent right next to the incinerator property, and local residents are concerned that the incinerator’s emissions of mercury, lead, arsenic, and other heavy metals could be sucked down the ventilation pipe into Houston’s water supply.\textsuperscript{194}

Anderson has been fighting the permit for six years, and has had some success thus far. When TNRCC issued the permit, the City of Houston, Harris County, and citizens appealed it through the administrative agency. When that appeal failed, the three parties pressed forward in state district court. The district court recently ruled against the petitioners, who are currently considering whether or not to take the case to the court of appeals.\textsuperscript{195} During the court battles, however, the site has remained undeveloped.

Anderson began an extensive letter-writing campaign to government agencies several years ago. She found out about Title VI from the EPA, which responded to one of the many letters

\textsuperscript{191} Telephone Interview with LaNell Anderson, local activist who filed the Title VI complaint (Nov. 7, 1994).
\textsuperscript{192} \textit{Id}.
\textsuperscript{193} \textit{Id}.
\textsuperscript{194} \textit{Id}.
\textsuperscript{195} \textit{Id}.
she wrote. Anderson had also heard about the Title VI complaints in Louisiana and Mississippi. This led her to draft and file a Title VI complaint against the TNRCC challenging the state air pollution control permit program and the state solid waste permit program, with specific reference to the proposed American Envirotech toxic waste incinerator. The EPA accepted the complaint, and notified TNRCC.

According to Anderson, her complaint led to action by the local EPA officials, who called her and arranged a meeting among EPA’s permit reviewer and Anderson’s experts, Marvin Legator of the University of Texas at Galveston and Neil Carman, an air pollution specialist with the Sierra Club. Out of the meeting came a series of new, more stringent permit conditions which EPA imposed on top of the TNRCC permit conditions. The new EPA conditions included a year’s ambient air monitoring on the site prior to construction, fenceline monitoring of air emissions, and monitoring around the water line.

But the Anderson case is not without controversy in Texas. While Harris County is approximately 51 percent people of color, the low-income area of Channelview itself—the site of the incinerator—is closer to 20 percent people of color. Anderson argues that “the whole county will be affected by the incinerator.” Adding to the mix is the fact that Anderson is white. According to Anderson, her complaint has raised hackles within TNRCC with John Hall. “John Hall sees me as a radical, as a white, middle-class woman selling real estate, so he thinks I can’t file a Title VI case.” The efficacy of whites using Title VI complaints to protect neighborhoods where people of color live (in this case, in the minority) is certain to be debated within the environmental justice movement.

“This is not just a clear issue of environmental racism," says Anderson. "I think that economics plays a big part of it. Industry comes in and buys properties where they know they will get

196 Anderson complaint, supra note 189, at 1.
197 Anderson complaint, supra note 189, at 1-2.
199 Telephone Interview with LaNell Anderson, supra note 191.
200 Telephone Interview with LaNell Anderson, supra note 191.
201 Telephone Interview with LaNell Anderson, supra note 191.
202 See discussion infra text accompanying notes 453-56.
the least resistance. They start very small and they build very huge, and they take over the community."  

Anderson, who characterizes herself as a "Don Quixote-like activist," has helped start the grassroots group Citizens Environmental Council in Channelview, and has worked with other local groups such as Concerned Citizens Against Pollution and the Peoples Environmental Coalition. She has also been asked to be part of a Houston-wide environmental project known as Houston Environmental Foresight. She has not, however, worked with either of the well-developed networks of environmental justice activists in Texas, the Texas Network for Environmental and Economic Justice and the Southwest Network for Environmental and Economic Justice.

Where is the complaint at this point? The complainant and her attorney know only that EPA is investigating it. The EPA has asked Ms. Anderson and her attorney, Grover Hankins of Texas Southern Law School, for information to substantiate her claim. The EPA will only comment that the claim is still under investigation.

4. Lewisburg Prison Project v. Pennsylvania Department of Environmental Resources

In perhaps the most creative of the complaints, the Lewisburg Prison Project appealed the permitting of a toxic waste incinerator near the Allenwood Federal Corrections Complex on the grounds that the population most affected by the incinerator—federal prisoners at Allenwood—were disproportionately members of minority groups.

The Lewisburg Prison Project complaint opposed the permit application of USPCI of Pennsylvania, Inc., for a hazardous waste incinerator to be located near the Village of Allenwood. The complaint, against the Pennsylvania Department of Environ-

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203 Telephone Interview with LaNell Anderson, supra note 191. Cf. CERELL ASSOCIATES, supra note 139.
204 Telephone Interview with LaNell Anderson, supra note 191.
205 Telephone Interview with LaNell Anderson, supra note 191.
206 Telephone Interview with Grover Hankins, attorney for LaNell Anderson (Oct. 4, 1994).
207 Telephone Interview with Rosezella Canty-Letsome, supra note 186.
mental Resources, was filed "on behalf of numerous minority and other federal prisoners who are now or will in the future be confined at the new Federal Corrections Complex near Allenwood, Pennsylvania, and the economically disadvantaged citizens of Gregg Township and Union County, Pennsylvania." The complaint is unique among the seventeen complaints examined in that it was brought not only by the Lewisburg Prison Project and a community group, Organizations United for the Environment, but also by a local government agency, Gregg Township. The Township Board of Supervisors strongly opposed the incinerator. The economic base of the Township is primarily farming with many farms owned by Amish and Mennonite farmers.

The Lewisburg Prison Project complaint presents a detailed, well-argued case that the 3,300 prisoners at Allenwood Federal Corrections Complex—two-thirds of whom can be expected to

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209 LPP complaint, supra note 208, at 1.
210 The Prison Project's purpose is to advocate for the civil and constitutional rights of prisoners. It has a 20-year history of advocacy on behalf of prisoners, focusing on the federal penitentiary at Lewisburg, PA, some 15 miles from Allenwood. In the complaint, the Prison Project sought to speak "on behalf of the class of persons, Federal prisoners, for whom it is an advocate." LPP complaint, supra note 208, at 3. The Prison Project argued that it was in a unique position to speak for the interests of prisoners, including future prisoners:

Those who would be forced to live at the Allenwood Corrections Complex after the incinerator is in operation may not yet have been convicted of the crimes which would put them there. Those prisoners who are now at Allenwood are not able to speak for those who will come after them. . .

Even if prisoners had been in residence at the time of hearings, Bureau of Prisons policy permits prisoner organizations only under restricted criteria. Policy discourages outside approaches to them which may have a political intent. If today's population of inmates were to rally against the incinerator, their spokespersons might be without standing as they are not now exposed to the hazards and there is a high probability that they would be transferred or released before the facility was built.

Thus, the prisoners who would be affected by the siting of the proposed incinerator at Allenwood have no way to speak for themselves. Unless some outside entity speaks for them, they will have no voice and no protection for their civil rights.

LPP complaint, supra note 208, at 3-4.
211 LPP complaint, supra note 208, at 1. Gregg Township is a rural municipality with about 1,100 residents. Its per capita income in 1990 was $10,769, compared to $14,068 for Pennsylvania as a whole. LPP complaint, supra note 208, at 9.
212 LPP complaint, supra note 208, at 9.
be African American or Latino—would suffer environmental discrimination if the toxic waste incinerator were built. The permit “would allow a hazardous waste incinerator to be located immediately adjacent to the largest agglomerated population of minority residents in any rural county in Pennsylvania.” The gates of the toxic waste incinerator and of the prison entrance are opposite each other across Interstate Highway 15. The Allenwood complex consists of three separate institutions—minimum, medium and maximum security prisons—all within a one-mile radius of the incinerator, which was predicted to accept some 7,000 truckloads of toxic waste each year.

The prisoners were in a particularly vulnerable position, according to the complaint, because they had “no means of egress in the event of an accident, nor any freedom to choose an alternative residence.” The complaint sets forth in detail evidence about the inability of the Federal Bureau of Prisons to evacuate the prisoners in a timely fashion in the event of an accident at the incinerator, including testimony of Bureau officials. But prisoners would not only be trapped in case of an accident, they would also be forced to breathe the emissions from the incinerator on a twenty-four hour a day basis.

The complaint takes issue not only with the impact of the facility, but also with the permitting process, which did not include

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213 While the inmate population shifts continually, on March 15, 1994 it was 44% African American, 26% Latino, 2% “other minorities” and 27% white. LPP complaint, supra note 208, at 9.

214 Included in the complaint as appendices were area maps showing the location of the incinerator and the prison complex, a windrose showing prevailing wind directions, and testimony of Bureau of Prisons officials and local elected officials in opposition to the incinerator. LPP complaint, supra note 208, at App.

215 LPP complaint, supra note 208, at 2.

216 LPP complaint, supra note 208, at 4. The prison site is also surrounded by potential pollution sources on two other sides: one and one-half miles to the north is a large, regional garbage dump, and just to the west is an abandoned munitions depot. LPP complaint, supra note 208, at 5.

217 LPP complaint, supra note 208, at 5.

218 LPP complaint, supra note 208 at 2. Prisoners may be transferred at any time, and thus “have no choice as to where they are incarcerated.” LPP complaint, supra note 208, at 2.

219 “If such an emergency does occur and requires evacuation of the complex, the Bureau does not believe that it could adequately evacuate this many inmates in a timely and secure manner without endangering prison staff, inmates and the community.” Statement of Christopher Erlewine, Deputy Assistant Director for the Information and Policy Division, Federal Bureau of Prisons.
any examination of Title VI concerns. Further, according to the complaint, the prisoners were excluded from meaningful public participation in the permitting process, in violation of federal laws. No prisoner testimony was taken at either of the two public hearings on the matter.

The Title VI complaint came in the context of a broad local organizing drive against the incinerator, including actions by local elected officials from Gregg Township. The community first became aware of the proposed incinerator in 1989, and organized massive opposition to the project, including a letter-writing campaign by the Organizations United for the Environment which generated 10,000 letters against the incinerator. The Commissioners of Union County, the County’s elected governing body, commissioned a study of Pennsylvania’s siting criteria in relation to other states, and found that Pennsylvania had among the least stringent regulations of any state in the country.

Local officials also brought suit against the state in an attempt to block the incinerator. Adding to the legal firepower, the Lewisburg Prison Project filed the Title VI complaint in March 1994 with the United States Commission on Civil Rights, which forwarded the complaint to EPA.

EPA’s Office of Civil Rights (OCR) accepted the complaint in April 1994. Since that time, USPCI has decided to scrap the incinerator project, announcing on June 8, 1994, that “It doesn’t make sense for us, and we’re getting out . . . . We do not see it as

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220 LPP complaint, supra note 208, at 16.
222 LPP complaint, supra note 208, at 14.
223 See, e.g., LPP complaint, supra note 208, Item 2 (Edward Frontz, Chairman, Gregg Township Board of Supervisors, Presentation Before the U.S. Congress Committee on Government Operations (Mar. 25, 1994)).
225 See LPP complaint, supra note 208, Item 4 (citing COMMISSIONERS, UNION COUNTY, PA., AN EXAMINATION OF STATE SITING CRITERIA).
a profitable project." EPA dismissed the complaint in December, 1994 and closed the file.

5. Garden Valley Neighborhood Association v. Texas Natural Resources Conservation Commission

The Garden Valley complaint centers around a cement plant proposed by Texas Industries, Inc. (TXI) in an upper middle class, white and Latino community outside of Austin, Texas. The proposal, called a "rotary aggregate dryer," would produce Sakrete, a dry cement product. A grassroots community group, the Garden Valley Neighborhood Association (GVNA), has been actively opposing the Sakrete plant since it was first announced in August 1993. The neighborhood of about 300 people is 55 percent white and 39 percent Latino. According to GVNA president Barbara Adkins, "We feel that economic and environmental racism is very much a factor in the decision to have this plant in our neighborhood."

GVNA first tried to stop the plant by appealing to the Texas Natural Resource Conservation Commission (TNRCC) and local elected officials. Many of the members of GVNA reported health problems that would be exacerbated by the cement plant: asthma, allergies to dust, chronic bronchitis, lung cancer, emphysema, and other upper respiratory infections. Residents also feared TXI's use of cement containing dioxins and other hazardous wastes. The group urged the Texas Natural Resources Conservation Commission to look further than "facility by facility" in granting air permits, pointing out that the neighborhood already was surrounded by two wastewater treatment plants and

228 Jane P. Frantz and John Beaugé, Burner Dumped, Industrial Park Planned, 9 NE. PA. BUS. J., July 1994, at 38 (quoting Drew Lewis, chair and CEO of Union Pacific, the parent corporation of USPICI).
231 GVNA complaint, supra note 230, at 1.
232 Letter from Barbara Adkins, President, Garden Valley Neighborhood Association, to Anthony Grigsby, Executive Director, Texas Natural Resources Conservation Commission (Oct. 10, 1993).
233 Id. at 3.
234 Id. at 2.
several sand, gravel, and dirt pits. The area has also been mentioned as a possible site for Austin's new airport, the route of a highway, and the terminus of a proposed "bullet train." Residents said, simply, "enough is enough." While GVNA used "environmental justice" and "environmental equity" repeatedly in its complaint to EPA, it does not appear to have connected with the well-developed Texas Network for Environmental and Economic Justice or the regional Southwest Network for Environmental and Economic Justice. GVNA has worked with two other groups, the Chemical Connection and the local chapter of the Sierra Club, to understand the technical aspects of the permit process.

The community group had no luck with elected officials or the TNRCC, and filed a Title VI complaint in March 1994. "It's a community that feels that they haven't been involved in the process in a meaningful way, and that they are being targeted by all these industries which are moving in," says the EPA attorney handling the case.

The complaint was accepted for investigation by EPA, and is currently being processed. The EPA has received a response to its inquiries from the state agency, which it is currently evaluating. The attorney assigned to the complaint intends to do a site visit.

According to GVNA's attorney, the group was heartened when it heard that TXI, the facility proponent, tried to intervene and EPA denied the request. But there are some indications that the community is no longer fighting against the plant. In a move which led one EPA official to describe the community group as "very unsophisticated," the GVNA wrote to the Texas Natural Resources Conservation Commission withdrawing all claims against the cement plant, just two days after filing its Title VI claim in March 1994. GVNA members were frustrated

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235 Id. at 1. The GVNA's complaint to the EPA mentioned a third waste water treatment plant in the vicinity. GVNA complaint, supra note 230, at 2.
236 Letter from Barbara Adkins, supra note 232.
237 GVNA complaint, supra note 230, at 3; Letter from Robert Meek, Garden Valley Neighborhood Association, to Executive Director, Texas Natural Resources Conservation Commission (Mar. 24, 1994).
238 Telephone Interview with Rich Albores, supra note 23.
239 Telephone Interview with Rich Albores, supra note 23.
240 Telephone Interview with Grover Hankins, supra note 206.
241 Because we have had no help from Texas Natural Resources Conservation Commission or our elected officials in resolving this matter and we have neither the
with TNRCC’s handling of their protests: “[W]e have not yet resolved the issue with TXI and already Texas Natural Resources Conservation Commission is issuing permits that we know of to at least another company to have a concrete plant built within a mile of our community.”

GVNA’s experiences with the state regulatory agency parallel those of many grassroots activists: “TNRCC has made it plain to us from day one that they are here for the benefit of industry,” wrote Robert Meek, president of GVNA. “[T]hey really don’t care or want to hear about the concerns of our community or concerns like our ethnic backgrounds, health issues or environmental impact on us.”

The fact that the community is predominantly white makes the case interesting. EPA officials believe that the community is trying every avenue at their disposal to stop the facility, including a Title VI claim, although the GVNA admits the community is at least 55 percent white: “They may be using this as another tool to get some pressure on the state. I’ve got other information that indicates that it [the community] is even more white than they’ve told me,” says the EPA attorney handling the case. But that fact is not dispositive: “They do have identifiable minorities and there is an allegation of discriminatory impact—it doesn’t have to be that they all have to be minorities. If there was one black or Latino family that was experiencing a differential effect from the rest of the white community, that could be a case.”

6. Hyde Park and Aragon Park Improvement Committee, Inc. v. Environmental Protection Division, Georgia Department of Natural Resources

The complaint by the Hyde Park and Aragon Park Improvement Committee comes as part of an ongoing drive by the Hyde Park and Aragon Park neighborhoods in Augusta, Georgia.

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242 Id. at 1.
243 Id.
244 Telephone Interview with Rich Albores, supra note 23.
gia, to clean up pollution from nearby, abandoned and operating industries. Residents organized the Improvement Committee as part of the campaign. After years of health problems, a 1992 report by an Atlanta epidemiologist confirmed what the community had suspected, finding that in the past thirty years, more than 70 percent of deaths were from cancer, skin disease, or circulatory-related and respiratory related ailments—an elevated death rate which sparked further community action. “People are getting sick, people are dying,” says Eunice Jordan, a community leader.

While there are at least seventeen industrial sites in the vicinity, the Improvement Committee has focused on Southern Wood Piedmont (SWP), an abandoned wood treatment plant which closed in 1988, as one of the worst offenders. In 1990, SWP settled a class-action property damage suit brought by its neighbors for $8.6 million, but that suit did not address health problems.

The EPA initially responded to the Hyde Park complaint by requesting clarification. The Improvement Committee responded by sending a much more detailed set of allegations to EPA. The Hyde Park complaint is perhaps the most complex of those filed with the EPA. It includes 14 specific and detailed allegations against the Georgia Department of Natural Resources, Environmental Protection Division (EPD), primarily concerning the Southern Wood Piedmont facility, but also covering other polluting facilities in the Hyde Park and Aragon Park neighborhoods.

Some of the allegations include:

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248 EPA Region IV to Meet with Governmental Interests, Then Community to Present Results of August, GA., Site Investigation, PR Newswire (Sept. 9, 1993).
249 Cancer, Other Diseases Worry Plant’s Neighbors, supra note 246.
250 Cancer, Other Diseases Worry Plant’s Neighbors, supra note 246.
252 Hyde Park complaint, supra note 245.
253 Hyde Park complaint, supra note 245.
- EPD has drilled over 300 monitoring wells to test for groundwater contamination in the white community near SWP, but none in the African American community of Hyde Park.\textsuperscript{254}

- White-owned businesses received corrective action from EPD to alleviate the contamination from SWP, including extraction wells. No such actions were taken in the African American neighborhoods around the site.\textsuperscript{255}

- EPD failed to monitor discharge of wastewater into ditches and drains in the African American community. This includes failing to require SWP to get a water discharge permit as required under federal law although there are some 30 discharge pipes leading from the facility. Test monitoring results have indicated that benzene, chromium, nickel, acetone, arsenic and zinc have been released by SWP in the past; African American employees working next to SWP may be drinking water from wells contaminated by these discharges. In spite of these apparent violations of the law, there have been no EPD enforcement actions.\textsuperscript{256}

- Georgia EPD gave special exemptions to companies to pollute in African American communities, and then did not provide proper oversight for polluters operating in those communities.\textsuperscript{257}

- EPD has allowed contaminated water in ditches to flow into groundwater recharge areas for the African American community.\textsuperscript{258}

Residents of the Hyde Park and Aragon Park neighborhoods had clearly reached the end of their patience with Georgia EPD. “Following the SWP permit process is like following the story of a daily soap opera,” according to the Improvement Committee.\textsuperscript{259}

But the community has looked beyond its local problem to push for global solutions. As part of their campaign, community residents have formed coalitions with other Georgia groups such as the local chapter of Physicians for Social Responsibility to call for the banning of dioxin, which was found at the SWP site.\textsuperscript{260}

\textsuperscript{254} Hyde Park complaint, supra note 245, at 5-6.
\textsuperscript{255} Hyde Park complaint, supra note 245, at 9.
\textsuperscript{256} Hyde Park complaint, supra note 245, at 1-2.
\textsuperscript{257} Hyde Park complaint, supra note 245, at 3-4.
\textsuperscript{258} Hyde Park complaint, supra note 245, at 9.
\textsuperscript{259} Hyde Park complaint, supra note 245, at 7.
Even before the Title VI complaint, the area was the focus of activity by EPA's Region IV office, which conducted an intensive site investigation of the Hyde Park area in 1993. That study involved taking almost 1,000 samples of groundwater, surface water, and soil from 17 different industrial sites in the neighborhood. The report did not draw conclusions or present strategies for clean-up, however, and did not draw any link between the industrial contamination and residents' health problems.\textsuperscript{261}

The EPA accepted the case in August 1994.\textsuperscript{262} Staff from the Office of Civil Rights performed the first site visit as part of a Title VI environmental justice investigation in October, meeting with local residents and state officials, and taking a tour of the facility.\textsuperscript{263} The complaint is currently under investigation.\textsuperscript{264}


The \textit{Bianchi} complaint\textsuperscript{265} concerns the siting of a proposed 56-acre garbage, sludge, and ash landfill next to a middle-income, predominantly white neighborhood in Yaphank, on New York's Long Island.\textsuperscript{266} In his complaint, Assembly Member William Bianchi alleged that the Town of Brookhaven and the New York State Department of Environmental Conservation (DEC) were about to approve the expansion of the Brookhaven Town landfill, which would create a potentially significant, adverse environmental impact upon the adjacent minority community. Furthermore, I believe that the Town has chosen this proposed location in a manner which seeks to violate the constitutionally guaranteed civil rights of the residents of the adjacent community. Finally I believe that this proposal... is one more example of an enduring pattern of discrimination by the Town against the residents of this community.\textsuperscript{267}

\textsuperscript{261} \textit{EPA Region IV to Meet with Governmental Interests, supra} note 248.
\textsuperscript{262} Letter from Dan J. Rondeau, \textit{supra} note 251.
\textsuperscript{263} Telephone Interview with Rich Albores, \textit{supra} note 23.
\textsuperscript{264} Telephone Interview with EPA civil rights official (Nov. 1, 1994).
\textsuperscript{265} Letter from William Bianchi, Member of the Assembly, State of New York, to Dan Rondeau, Office of Civil Rights, U.S. Envtl. Protection Agency, EPA No. 1R-94-R2 (filed May 24, 1994; accepted June 8, 1994) [hereinafter \textit{Bianchi} complaint].
\textsuperscript{266} Id. Testimony submitted to the New York State Department of Environmental Conservation on the Brookhaven Town Application to Build a Fifty Six Acre Landfill, Yaphank, New York, by William Bianchi, Member of the Assembly, April 21, 1994, at 7 [hereinafter, \textit{Bianchi Testimony}].
\textsuperscript{267} \textit{Bianchi} complaint, \textit{supra} note 265.
The dump would accept from 220,000 to 335,000 tons of ash per year from several nearby garbage incinerators,268 and also accept sludge residue from local sewer districts.269 The finished landfill would be 155 feet high—"the same height as a sixteen story building," as Bianchi pointed out270—and five blocks long.271

Bianchi tied his opposition to the dump to a recent research study by the New York State Department of Health which concluded that Long Island women with post menopausal breast cancer were 60 percent more likely to have lived within one kilometer from chemical, plastics, petroleum or rubber manufacturing plants than were cancer free women during the 1960's and 1970's . . . . What may we find out about breast cancer rates in the early 2000's after Brookhaven Town builds a new fifty six acre landfill in the Bellport/Yaphank area[?]272

The EPA accepted the complaint for processing.273 Like all the other claims accepted, it is currently being investigated. The EPA has not received a response to the complaint from the New York Department of Environmental Quality, and the complaint is not yet actively under investigation.274

The Bianchi complaint is interesting for at least five reasons. It is the only complaint by an elected official.275 It is also one of the only complaints to stress a positive solution to the complained about problem as well as simply pointing out discriminatory impact: Bianchi makes a strong case for recycling the ash rather than just dumping it.276 It is also the only complaint accepted by EPA without any allegation of federal financial assistance; other complaints failing to allege federal financial

268 Under a recent U.S. Supreme Court decision, ash from garbage incinerators is considered hazardous. Chicago v. Environmental Defense Fund, 114 S. Ct. 1588 (1994).
269 Bianchi Testimony, supra note 266, at 2.
270 Bianchi Testimony, supra note 266, at 2.
271 Bianchi Testimony, supra note 266, at 2.
272 Bianchi Testimony, supra note 266.
274 Telephone Interview with EPA civil rights official (Nov. 1, 1994).
275 The LPP complaint was filed by a government agency, the Gregg Township, among other complainants. See supra text accompanying note 211.
276 Bianchi Testimony, supra note 266. "[B]urying ash instead of recycling it is seen by many solid waste management experts as a step backward[.]" Bianchi Testimony, supra note 266, at 4.
assistance have been summarily denied.\[^{277}\] And, while Bianchi explicitly complained about the actions of the Town of Brookhaven, EPA characterized the complaint as *Bianchi v. New York Department of Environmental Conservation*, and began investigating the state's role.\[^{278}\]

Finally, *Bianchi* is one of four complaints—of the nine accepted by EPA—to be filed on behalf of predominantly white communities. Whether the complainants in *Bianchi* will be able to show disproportionate impact on people of color, or whether the complaint is merely another example of a white community using all legal tools at its disposal (and some, like Title VI, which are not at its disposal)\[^{279}\] to try to block a dumpsite, will hopefully come to light in the coming EPA investigation.

8. Mothers Organized to Stop Environmental Sins v. Texas Natural Resources Conservation Commission

In the third Title VI complaint against the Texas Natural Resources Conservation Commission, the community group Mothers Organized to Stop Environmental Sins (MOSES) alleged that Texas Natural Resources Conservation Commission "engages in concerted and systematic discriminatory conduct through concealment of information, indifference to environmental regulations and responsibilities, and participation in a conspiracy to deny minorities, including people of color and lower-income citizens, equal protection of the law."\[^{280}\]

MOSES' specific target is a hazardous waste deep-well injection facility operated by Gibraltar Chemical Resources, Inc., in Winona, Smith-County, Texas.\[^{281}\] The Gibraltar site is the second largest deep-well injection facility in the United States. MOSES

\[^{277}\] See, e.g., Bryant (Gulf Coast Tenants Organization) v. Louisiana Department of Environmental Quality, infra text accompanying note 369.

\[^{278}\] Letter from Dan Rondeau, supra note 273, at 1; Telephone Interview with EPA civil rights official (Nov. 1, 1994). The EPA attorney handling the case doubted that there was any federal funding going to the town.

\[^{279}\] Although some within EPA have stated that "it is not clear that white persons may not use Title VI," and that whites "are a color classification that might be covered by Title VI," I reject this reading as unsupported by the law, and contrary to legislative intent.

\[^{280}\] Letter from Frances E. Phillips, Gardere & Wynne, to Daniel J. Rondeau, Office of Civil Rights, U.S. Envtl. Protection Agency at 1 (June 7, 1994) [hereinafter, MOSES complaint].

\[^{281}\] Id. at 1-2. There are 457 residents in Winona. Telephone Interview with Phyllis Glazer, Mothers Organized to Stop Environmental Sins (Nov. 7, 1994).
alleged that it was causing adverse impacts to Winona residents by exposing them to the toxic chemicals associated with deep-well injection. According to the complaint, "Members of M.O.S.E.S. living in the vicinity of Gibraltar have been exposed to hazardous and toxic substances through a variety of pathways, including but not limited to, skin exposure, drinking contaminated water, and breathing contaminated air."282 Mothers in Winona and neighboring Owenton have given birth to babies with birth defects, which they blame on emissions from Gibraltar.283

MOSES is a group of concerned citizens from throughout Smith County, Texas, mostly white but with many black members as well.284 MOSES was formed in 1991 by Phyllis Glazer, who became involved in the fight against the Gibraltar Chemical facility after being poisoned by emissions from an explosion at the facility on October 18, 1991: "I drove my child through a cloud of chemical smoke—I was burned inside and out. My septum disintegrated and fell out. They had had an explosion [at the facility]. They had evacuated their employees, but they never told anyone—not the sheriffs department, not the school of 800 students nearby, no one in the community."285

The MOSES complaint alleged that the effects of Gibraltar's pollution "disproportionately affect minorities and low-income citizens of Winona."286 While Winona itself is 33 percent people of color and 67 percent white, within half a mile of the Gibraltar facility the population is 100 percent black, and within a mile, the population is 57 percent black and 43 percent white. "Some might argue that a population of 33% people of color does not constitute environmental racism in rural Winona as a whole," MOSES points out in its complaint.287 "The fact is, however, that the most disproportionate pollution impacts have occurred more frequently in the area closest to Gibraltar, and certainly

282 MOSES complaint, supra note 280, at 2.
283 Telephone Interview with Phyllis Glazer, supra note 281.
284 MOSES complaint, supra note 280, at 1; Telephone Interview with Phyllis Glazer, supra note 281.
285 Telephone Interview with Phyllis Glazer, supra note 281.
286 MOSES complaint, supra note 280, at 2.
287 MOSES complaint, supra note 280, at 2.
within the 1.0 miles radius, which is 57% black and low income.”

The MOSES complaint was modelled directly on the African Americans for Environmental Justice complaint drafted by the Sierra Club Legal Defense Fund. It is one of the first to be accepted which alleges a Title VI violation because of lack of enforcement of environmental laws; seven of the other eight complaints come in the context of siting disputes (Hyde Park being the exception). The MOSES complaint contains specific allegations against the Texas Natural Resources Conservation Commission regarding underenforcement of the law, including:

- Texas Natural Resources Conservation Commission issued an emergency order in September 1993 ordering Gibraltar to install ambient air monitors at the facility, but the order was allowed to lapse without compliance by Gibraltar.

- An enforcement action against Gibraltar by the Attorney General and the Texas Air Control Board failed to cite hundreds of documented incidents of unauthorized emissions, unreported major upsets, unauthorized outdoor burnings, traffic hazards, unauthorized receipt of PCB wastes, failure to properly maintain pollution control devices, injection of odorous wastes, incorrect and inaccurate permit application representations, construction and operation without a permit, handling of unauthorized wastes, emissions exceeding health based standards, failure to use “good housekeeping practices,” and failure to perform chemical specific analyses. Not only did the State fail to include these egre-

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288 MOSES complaint, supra note 280, at 2. The EPA is closely scrutinizing MOSES’ demographic claims. “From some calls that I’ve made, the ‘100% African Americans within 1/2 mile’ claim basically represents one African-American family.” Telephone Interview with Rich Albores, supra note 23. This fact led attorney Albores to remark, “One can really paint different pictures with the demographic information.” Telephone Interview with Rich Albores, supra note 23.

289 Compare MOSES complaint, supra note 280, with AAEJ complaint, supra note 117. Phyllis Glazer reports that she got the idea for the complaint while attending a conference in Washington, DC, at the same time that President Clinton signed the Executive Order on Environmental Justice. Telephone Interview with Phyllis Glazer, supra note 281.

290 Cf. Unequal Protection: The Racial Divide in Environmental Law, NAT’L L.J. Sept. 21, 1992 at 52 (documenting that fines under Superfund and other environmental laws are significantly less in communities of color than white communities).

291 Note that MOSES also alleges that “the State of Texas’ environmental programs are designed and administered in a fashion that encourages siting of commercial hazardous waste injection wells in areas that are largely African-American and low-income.” MOSES complaint, supra note 280, at 5.

292 MOSES complaint, supra note 280, at 4.
gious violations, but it also failed to diligently prosecute its Petition, as Gibraltar’s violations continued and are still continuing.293

The EPA accepted the complaint on October 14, 1994.294 MOSES is still investigating how it will prove disproportionate impact. “The EPA complaint still has to be proved, and it is for us to prove. Just because EPA accepted it and is starting an investigation, doesn’t mean that our case is proved yet. We have a long way to go yet.”295

MOSES is also considering legal action under a variety of federal environmental laws such as the Clean Air Act, the Resource Conservation and Recovery Act, the Safe Drinking Water Act and the Clean Water Act.296

The MOSES complaint joins several others filed by whites alleging discrimination against people of color in their community.297 Glazer, MOSES’ founder, felt that she had to take the initiative even though she was a wealthier white resident of Winona. “I was one lone person who had some money from an inheritance that I decided to use to try to save lives. We sure have slowed down this facility—it would have been triple the size by now.”298

Glazer suggests that if government and industry took a pollution prevention, toxics-use-reduction approach, there would not be a need for deep-well injection facilities. “Why should it be in anyone’s backyard? Why should anyone’s life be an ‘acceptable risk’? It shouldn’t be in anyone’s backyard—rich, poor, black,

293 MOSES complaint, supra note 280, at 4.
294 Letter from Dan J. Rondeau, Office of Civil Rights, U.S. Env’tl. Protection Agency, to Anthony Grigsby, Texas Natural Resources Conservation Commission (Oct. 14, 1994). Note that the time EPA took to accept the complaint — from June 7 when it was filed to October 14 when it was accepted — is some 125 days, significantly longer (five times longer, in fact) than the 25 days statutorily provided, 40 C.F.R. § 7.120(c), (d) (1994).
295 Telephone Interview with Phyllis Glazer, supra note 281. According to Glazer, coming up with the appropriate measurement of impact is one challenge facing Moses. “At first we thought it had to go by radius. It can go by prevailing winds, or can go by prevailing damage — the subsurface plume.” Telephone Interview with Phyllis Glazer, supra note 281.
296 MOSES complaint, supra note 280, at 5.
297 See Anderson v. Texas Natural Resources Conservation Comm’n, supra text accompanying note 189; Garden Valley Neighborhood Association v. Texas Natural Resources Conservation Commission, supra text accompanying note 230; Bianchi v. New York Department of Environmental Conservation, supra text accompanying note 265.
298 Telephone Interview with Phyllis Glazer, supra note 281.
white or anyone." She is skeptical of EPA's commitment to protecting the environment. "I don't think the government is that interested in doing anything. Ask the EPA how many people they have in the office that is supposed to be processing these claims."  

The series of three civil rights complaints against Texas Natural Resources Conservation Commission has had an influence on the development of EPA's environmental justice policy, in an unexpected way. When EPA constituted the National Environmental Justice Advisory Committee (NEJAC) under the President's Executive Order on Environmental Justice, Administrator Carol Browner named John Hall, of the Texas Natural Resources Conservation Commission—and perhaps the only African American Chairman of a state environmental department—to chair the Committee. At the NEJAC's second meeting, grassroots activists, angry with Browner's choice of a chair whose agency was currently under investigation for multiple complaints of civil rights violations, undertook what one member of the NEJAC called a "coup d'état" and voted to replace Hall with long-time environmental justice activist Richard Moore.  

9. Northwest Civic Coalition, Inc. v. City of Jacksonville, Florida  

The Northwest Civic Coalition filed a Title VI complaint with EPA after discovering that since 1989, seven solid waste management facilities had been permitted by the City of Jacksonville, Florida to operate in their community, the Northwest Jacksonville area. Two of the facilities had been permitted in the previous six months, while another was in the permitting process at the time the complaint was filed.  

The Northwest quadrant of Jacksonville is a predominantly low-income, African American neighborhood—the heaviest con-

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299 Telephone Interview with Phyllis Glazer, supra note 281.  
300 Telephone Interview with Phyllis Glazer, supra note 281.  
302 Remarks of Robert D. Bullard, Keynote Address, "Environmental Justice: What is it and How do We Get There?" University of California at Berkeley (Nov. 5, 1994).  
304 Id.
centration of African Americans in the Jacksonville area—which the City of Jacksonville has viewed as a dumping ground for some time.\textsuperscript{305} By filing the complaint, Earl Sims, president of the Northwest Civic Coalition, says simply, "We are trying to prevent industrial polluters from intruding into our community."\textsuperscript{306}

The community first became aware of the problem when an Oklahoma corporation, Mulliniks Co., proposed a construction and demolition debris recycling plant. Community organizing began around the Mulliniks landfill site, with residents appearing at various hearings and meetings before the zoning board and city council. "The straw that broke the camel's back was when the Mulliniks representative stood up at a city council meeting and said there was no community near that landfill."\textsuperscript{307} Residents near the site were incensed, and formed the Northwest Civic Coalition—a self-described "grassroots community group" and "watchdog to look after the community and its vital interests"\textsuperscript{308}—to fight the dump proposal.

But the Mulliniks proposal was not the only one in the works. "Ironically enough, we had no knowledge in the community that the Kings Road landfill was going on until Mulliniks was approved. Within a week, here came the Kings Road landfill. But not once when the council was considering the Mulliniks landfill did they ever indicate that there was another landfill site coming just behind it."\textsuperscript{309} The Kings Road Landfill proposal goaded the community into further action. They hired experts to review the proposal and present the findings to local decisionmakers. "Although we have presented evidence from traffic engineers, planners, and other experts demonstrating why the Kings Road Landfill should not be permitted at this site, and the landfill developer has literally presented no evidence, this has become a purely political battle (similar to the permitting of the other facilities)."\textsuperscript{310} The Planning Commission approved the landfill despite local opposition.\textsuperscript{311}

\textsuperscript{305} Telephone Interview with Earl Sims, President, Northwest Civic Coalition, Jacksonville, Fla. (Nov. 7, 1994).
\textsuperscript{306} Id.
\textsuperscript{307} Id.
\textsuperscript{308} NCC complaint, supra note 303, at 1.
\textsuperscript{309} Telephone Interview with Earl Sims, supra note 305.
\textsuperscript{310} NCC complaint, supra note 303, at 2.
\textsuperscript{311} Beth Reese Gravey, Residents resent areas becoming 'waste world,' THE FLORIDA TIMES-UNION (Jacksonville, Fla.), May 23, 1994, at A1, A7.
Civil Rights, Environmental Justice and the EPA

The Kings Road landfill was also approved by the Planning Commission despite serious flaws in the permitting process. The irregularities in the permitting process of the Kings Road landfill were challenged by dump opponents, who managed to overturn the permit approval. The Kings Road landfill is now wending its way through the permitting process again, and the proposal again went before the Planning Commission in early November, 1994.

During the struggle against first Mulliniks and then the Kings Road landfill, NCC members did research and found that there are a total of eight recycling facilities in Jacksonville—and that six of those eight were located in their neighborhood, the Northwest quadrant. One resident pointed out that the area was becoming "waste world." NCC took that information to local decisionmakers, to no avail. "We pointed that out at council meetings, but no one—including our councilperson—took any action against it," reports Sims. The NCC further pointed out that, according to a report prepared by the City of Jacksonville, there was no need for another facility as there was currently adequate capacity with the many existing facilities. These arguments fell on deaf ears with local elected officials.

NCC then pursued a legal strategy, raising money to hire an attorney. The strategy has involved filing a suit in Florida Circuit

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312 NCC complaint, supra note 303, at 2. There is also some question in the community about enforcement. According to the complaint, the Kings Road site currently contains three "borrow pits" from which dirt was excavated and sold in the 1980s. The pits, which cover more than 10 acres, are currently filled with water. Florida regulations allow filling the pits with clean dirt below the water line, but NCC does not believe this is happening. "[B]ased upon eye-witness testimony, many community residents and members of our group believe that unclean debris, including wood and general construction and demolition debris, has been deposited into at least one of the pits below the water line." NCC complaint, supra note 303, at 4.

NCC expressed its frustration at the state agency's response: "If these allegations are true, this would constitute a violation of local and state laws, however we understand from the DEP that they do not have the resources to quickly or adequately investigate the eyewitness reports and that if the materials are under water or if the violations are not witnessed by the DEP, there is nothing they can do to excavate the improper materials from under water and prove the violation." NCC complaint, supra note 303, at 4.

313 Telephone Interview with Earl Sims, supra note 305.
314 Cravey, supra note 311.
315 Telephone interview with Earl Sims, supra note 305. See also Cravey, supra note 311 (detailing local council member's votes against constituents' interests).
316 NCC complaint, supra note 303, at 2.
Court against the various agencies involved in the Mulliniks permitting process, including the zoning commission, the City Council and the Mayor’s office, to set aside Mulliniks’ land use permit.  

NCC believes that the permitting process may have been illegal, and has obtained documents through Florida’s “government in the sunshine” law which indicates that city council members, including their own representative, had met with the dumping companies behind closed doors.  

NCC’s suit is still pending in court.

The NCC also hit on the idea of using a Title VI claim. Why did the community choose the civil rights tack? According to Sims, “Number one, the President had already appointed a commission to look into environmental discrimination. He had signed an executive order to that effect. And, the Florida governor also signed an executive order on environmental justice.”  

So NCC drafted and filed the complaint with EPA.

The complaint points out both Jacksonville’s receipt of federal funds, and the pattern of siting unwanted facilities in the Northwest part of Jacksonville:

We believe that the City of Jacksonville’s repeated siting and permitting of solid waste management, storage and disposal facilities in the Northwest Quadrant is a gross violation of the Civil Rights Act and demonstrates the disparities in the environmental health in our City based upon ethnicity and socio-economic status, and the uneven administration and enforcement of environmental laws.

In its complaint, NCC asked EPA to write a letter to the President of the Jacksonville City Council “indicating that the City’s approval and siting of this landfill might constitute a Title VI violation and warrant a Title VI investigation[.]”  

NCC felt that such a letter would help educate the Council as to the federal laws “which exist to protect communities from this sort of discrimination.”

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317 Telephone Interview with Earl Sims, supra note 305; NCC complaint, supra note 303, at 4.
318 Telephone Interview with Earl Sims, supra note 305.
319 Telephone Interview with Earl Sims, supra note 305.
320 NCC complaint, supra note 303, at 5.
321 NCC complaint, supra note 303, at 2.
322 NCC complaint, supra note 303, at 3.
323 NCC complaint, supra note 303, at 3.
The EPA accepted the complaint and is currently investigating the claims. The agency has sent a copy of the complaint to the three Florida government bodies named in it: the City of Jacksonville, St. Johns River Water Management District, and the Florida Department of Environmental Protection.324

Despite its vigor and activity, the Northwest Civic Coalition has not become part of regional environmental justice networks or reached out to similarly situated communities. The community has not been in contact with other groups trying the Title VI strategy, or with civil rights or environmental justice groups. "We have not spoken to any other groups outside Jacksonville," reports Sims. "We took it upon ourselves, the Northwest Civic Coalition, to research and file this."325

Residents are optimistic about NCC’s chances of beating the landfills, one way or another. "Everything is positively moving in our direction," says Sims.326 "It has become a crusade now," says former City Councilman Rodney Hurst, another community leader.327

B. Those That Haven’t Made It In the Door Yet: The Complaints Rejected by EPA

Of the 17 Title VI claims filed with the EPA, eight have been rejected. The primary reason for EPA rejecting complaints has been lack of jurisdiction, which has been dispositive of five claims; in these cases, EPA either could not find any of its federal funds going to the local agency complained about, or felt the complaint was untimely.328 The three others were dismissed for

324 Telephone Interview with EPA civil rights official (Oct. 27, 1994). Although the U.S. Army Corps of Engineers was also listed by NCC, NCC complaint, supra note 303, at 4, EPA has not listed the Corps as a respondent.
325 Telephone Interview with Earl Sims, supra note 305. Although the complaint was filed directly by the community group, an attorney helped NCC draft it. Telephone Interview with Earl Sims, supra note 305.
326 Telephone Interview with Earl Sims, supra note 305.
327 Cravey, supra note 311.
failure to describe discriminatory activity. The complaints were filed by the same person, an activist in Birmingham, Alabama. These eight complaints, and the stories behind them, are as important to examine as the complaints accepted: they offer us lessons on how to tailor complaints to get them accepted, and also on how to use complaints in the course of environmental justice campaigns. The stories are no less compelling because the EPA has chosen not to act on them; in fact, they may be more compelling for just that reason.

One interesting observation can be made about the eight denied complaints. First, all but one were filed without lawyers. By contrast, of the complaints accepted, four of nine involved lawyers. While there may be no correlation between having a lawyer and getting one's complaint accepted for processing, it appears that some legal help may improve the chances of getting a complaint accepted for processing.

1. Adair (Coalition for Environmental Consciousness) v. Etowah County Solid Waste Board and Etowah County Commission

Residents of the Town of Ridgeville, in northeast Alabama, tried to use the Title VI complaint mechanism to close and clean up a leaking landfill adjacent to their predominantly African American neighborhood. The EPA rejected the complaint on the grounds that the local agency in charge of the leaking dump was not a recipient of EPA funds. The facts of the case indi-

Natural Resources (filed July 6, 1994; denied processing by the EPA Sept. 16, 1994), see infra text accompanying notes 396-427.

Bryant (Gulf Coast Tenants Organization) v. Louisiana Dept't of Envtl. Quality (filed Feb. 21, 1994; denied processing by EPA Apr. 1, 1994), see infra text accompanying notes 365-75; Newton Florist Club, Inc. v. ? (filed Feb. 28, 1994; denied processing by EPA Apr. 28, 1994 (also denied for failing to identify a respondent)), see infra text accompanying notes 376-95; Munchus v. Jefferson County Commission (filed Mar. 23, 1994; denied processing by EPA Apr. 29, 1994), see infra text accompanying notes 357-64.

See Munchus v. City of Leeds, Alabama; Munchus v. City of Hueytown; Munchus v. Browning-Ferris Industries, Inc. of Birmingham; Munchus v. Jefferson County Commission, infra text accompanying notes 340-64.

See infra text accompanying note 445 (discussing using lawyers).

Letter from Charles Adair, Jr., President, Coalition for Environmental Consciousness, to Dr. Clarice Gaylord, Office of Environmental Equity, U.S. Envt'l Protection Agency (Oct. 27, 1994) (on file with author) [hereinafter CEC complaint].

cate one of the limits of the utility of the Title VI strategy: if there is no federal money involved, the EPA won’t investigate.

The dump at issue in the local struggle is run by the Etowah County Solid Waste Board and the Etowah County Commission. According to the complaint,

The landfill has been in continued operation as [sic] the present site for more than twenty years. It is unlined and has no structural containment to control seepage. The well which supplies water to the residents of this and surrounding areas is and has been at risk of possible contamination from the landfill.334

The Coalition for Environmental Consciousness was formed in opposition to Eothera County’s efforts to continue operation of the dump “in spite of both their promise to close it and the mounting evidence which strongly indicates the probability of contamination resulting from the landfill.”335 The Coalition’s Title VI complaint decried the “universal practice of locating undesirable operations, such as this landfill, in or near the communities of minorities and low-moderate income residents.”336

Ridgeville residents like Charles Adair Jr., a former Ridgeville mayor, complain of a range of health problems which they think are a result of pollution from toxics buried at the dump years ago.337 Adair, who filed the Title VI complaint, alleged that the neighborhood “has experienced a disproportionate number of cancer-related deaths and illnesses over the past years,” and called on EPA to investigate any link between those illnesses and the dump.338 But potential toxic poisoning is not the only problem facing Ridgeville residents: activists say they have been harassed and even shot at by the waste haulers.339

Although the story is compelling, under its regulations EPA believed it could take no action. The Coalition for Environmental Consciousness’ situation points out the bind faced by local communities: local agencies don’t help them, and federal agencies won’t help them. This pattern emerges in several of the other complaints rejected by EPA.

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334 CEC complaint, supra note 332, at 1.
335 CEC complaint, supra note 332, at 1.
336 CEC complaint, supra note 332, at 1.
337 Bronstein, supra note 72.
338 CEC complaint, supra note 332, at 1.
339 Bronstein, supra note 72, at 1F.
2. The Munchus Cases

An active resident of Birmingham, Alabama, has been responsible for filing four separate Title VI complaints to EPA. Over a four-month period from November 1993 to March 1994, George Munchus filed complaints against Browning-Ferris Industries of Birmingham, the Cities of Leeds and Hueytown, and the Jefferson County Commission. He used a similar one-paragraph letter for each, changing the allegations and the respondent.\(^{340}\) Each letter is intriguing but cryptic, giving the reader little information to go on and generally challenging the EPA to find the discriminatory activities through investigation. All four have been denied by EPA for various reasons.

(a) Munchus v. Browning-Ferris Industries, Inc. of Birmingham, Alabama

The first complaint,\(^ {341}\) on behalf of the Titusville neighborhood of Birmingham, requested an investigation into Browning-Ferris Industries' "continuous efforts to locate garbage dumps in African-American communities in the State of Alabama."\(^ {342}\) The one-paragraph complaint was based on a newspaper article about the Mississippi and Louisiana Title VI cases,\(^ {343}\) but offered no evidence or any other facts to go on. (It should be noted, however, that Browning-Ferris Industries (BFI) does have a national reputation for locating garbage dumps in communities of color; the very first lawsuit to allege constitutional violations in the siting of a garbage dump was against a BFI subsidiary in Houston,\(^ {344}\) and another one of the few environmental justice federal civil rights lawsuits involved a BFI subsidiary in Virginia.)\(^ {345}\)

The BFI complaint came in the context of a local organizing drive by the Total Awareness Group in Birmingham against a

\(^{340}\) Mr. Munchus also changed the name of the community group at the top of his letterhead: for his first complaint, it was the Center for Research on Human Rights; in the next three, it is the Alabama Community Reinvestment Alliance.


\(^{342}\) Letter from George Munchus, supra note 341, at 1.

\(^{343}\) *EPA Probes Racial Bias Charges*, *Birmingham News* (Nov. 19, 1994).


transfer facility, used by BFI to hold garbage temporarily before it is moved elsewhere for permanent disposal. However, Munchus filed the claim without the knowledge of the group, informing it of the action after the fact.\textsuperscript{346}

The EPA first determined the matter to involve only the local transfer facility in Birmingham;\textsuperscript{347} this is a rather narrow reading of Munchus' request for a \textit{statewide} investigation of BFI's activities in all African American communities. EPA then denied the complaint because it was unable to establish that Browning-Ferris Industries of Birmingham was a recipient of federal financial assistance, and thus deemed itself to have no jurisdiction.\textsuperscript{348} (The Total Awareness Group ultimately defeated the BFI proposal, through a variety of political organizing tactics, and has gone on to work on other environmental justice issues.)\textsuperscript{349}

\textit{(b) Munchus v. City of Leeds, Alabama}

Munchus' second complaint\textsuperscript{350} alleged "disparate impact and disparate treatment" in the building of a sanitary sewer service for the Russell Heights community in the city of Leeds, Alabama. Munchus suggested that "a simple regression analysis would show how the Russell Heights Community has been treated regarding the discriminatory use of these federal dollars since 1964."\textsuperscript{351} In response, the EPA "conducted an extensive inquiry to establish whether and what kind of financial assistance EPA may have provided the City of Leeds,"\textsuperscript{352} and determined that Leeds had not received EPA funds since February 1986. Be-

\textsuperscript{346} Telephone Interview with Lynn Battle, Total Awareness Group, Birmingham, AL, (Oct. 2, 1994).

\textsuperscript{347} Letter from Dan Rondeau, \textit{supra} note 341, at 1. The EPA also noted that neither it nor the Alabama Department of Environmental Management regulated the activities of BFI at the transfer site, pointing out, perhaps inadvertently, that the community had no state or federal agencies to turn to in an attempt to resolve an apparent problem. Letter from Dan Rondeau, \textit{supra} note 341.

\textsuperscript{348} Letter from Dan Rondeau, \textit{supra} note 333.

\textsuperscript{349} Telephone Interview with Lynn Battle, \textit{supra} note 346.

\textsuperscript{350} Letter from George Munchus, Alabama Community Reinvestment Alliance, to Dan Rondeau, Office of Civil Rights, U.S. Evt'l Protection Agency (filed Jan. 26, 1994; denied processing by EPA Apr. 18, 1994).

\textsuperscript{351} \textit{Id}.

\textsuperscript{352} Letter from Dan Rondeau, Office of Civil Rights, U.S. Evt'l Protection Agency, to George Munchus, Alabama Community Reinvestment Alliance at 1 (Apr. 18, 1994).
cause EPA was not currently providing any funding to Leeds, it rejected the complaint on jurisdictional grounds.\(^{353}\)

\(\text{(c) Munchus v. City of Hueytown, Alabama}\)

Munchus' next complaint\(^{354}\) was almost identical to the City of Leeds letter, but instead alleged discrimination in the building of "bridger service" for the Harlem Heights community of Hueytown, Alabama.\(^{355}\) EPA could find no records indicating that Hueytown had received federal financial assistance, and further, told Munchus he "would need to indicate the EPA-assisted program in which alleged discrimination or discriminatory impact occurred and how the discrimination was manifested."\(^{356}\) Because of the lack of federal funds, EPA had no jurisdiction to investigate the claim.

\(\text{(d) Munchus v. Jefferson County Commission}\)

Munchus' fourth complaint\(^{357}\) alleged discrimination against the Russell Heights community in Leeds, Alabama, by the Jefferson County Commission regarding the use of federal EPA funds in building a new sewer.\(^{358}\) It again used the same one paragraph model of the first three. This time, however, EPA found federal funds: $118 million in grants to Jefferson County for wastewater treatment plant construction.\(^{359}\) EPA asked Munchus to clarify

\(^{353}\) \textit{Id}.

\(^{354}\) Letter from George Munchus, Alabama Community Reinvestment Alliance, to Dan Rondeau, Office of Civil Rights, U.S. Envt'l Protection Agency (filed Mar. 23, 1994; denied processing by EPA Apr. 21, 1994).

\(^{355}\) \textit{Id}.

\(^{356}\) Letter from Dan Rondeau, Office of Civil rights, U.S. Envt'l Protection Agency, to George Munchus, Alabama Community Reinvestment Alliance at 2 (Apr. 21, 1994). The EPA also stated, "it is not clear what is meant by the phrase 'the building of bridger service.'" \textit{Id}.


\(^{358}\) \textit{JCC} complaint, supra note 357.

\(^{359}\) April 28, 1994 letter from Dan Rondeau, supra note 357.
his complaint and provide "a description of the discriminatory activity that is the subject of your complaint."\[360\]

Munchus then wrote back to state that his initial letter was "self explanatory," and to expand his complaint to include all African American communities in Jefferson County, and all African American-owned firms in the County which had tried to do business with the County Commission. He placed the onus of investigation squarely back on the EPA, challenging the agency to investigate his allegations that more money was spent in white communities than African American communities, and more money was spent with white businesses than African American businesses. "Just do the analysis on the data you have or the results of spending by this commission since 1970," he exhorted the EPA.\[361\]

The EPA, in a curt letter, summarily refused to process Munchus' complaint. "Your reply... is not responsive to our request," said Office of Civil Rights chief Dan Rondeau.\[362\] The Office of Civil Rights again gave Munchus 21 days to supply clarifying information, and when he did not, dismissed the complaint.

With the exception of the BFI complaint, the Munchus cases do not appear to be filed in the context of local organizing drives. EPA's response in at least two of the claims (BFI, Jefferson County Commission) seems overly narrow, with the agency failing to even investigate allegations of statewide discriminatory activity by a major garbage dumper (BFI) and discrimination in the

\[360\] EPA gave Munchus 21 days to clarify his complaint.

\[361\] JCC Addendum, supra note 357. Munchus continued: "Since your office now knows that at least $118,880,233.00 in EPA grant dollars has been spent by the Commission (we believe it to be much more) why not analyze such by community and vendor to ascertain if what we allege is indeed a basis for liability under the law[?]"

JCC Addendum, supra note 357, at 2.

\[362\] Letter from Dan Rondeau, U.S. Envtl Protection Agency, to George Munchus, Alabama Community Reinvestment Alliance (May 26, 1994). The Office of Civil Rights, Rondeau wrote,

[Is unable to accept and process Title VI complaints, such as yours, that do not disclose the alleged discriminatory program or activity receiving Federal financial assistance and fail to describe the alleged violation. It is not sufficient to "allege that the disparity between the spending of EPA dollars on white communities and neighborhoods will dwarf the spending on African American communities by more than statistical chance." Title VI does not require equal spending between white and African American communities; it requires nondiscrimination in the administration and operation of programs and activities receiving Federal financial assistance.

Id.
spending of federal money on a sewer system (*Jefferson County Commission*).

The whole process of filing four claims, only to have each denied, has been frustrating to George Munchus. "The EPA did nothing and should be shut down. They did not investigate the complaint," according to Munchus.\(^{363}\) What was the lesson he drew from his experiences? "You are going to have to sue the EPA to get them to investigate pursuant to Title VI."\(^{364}\)

3. Bryant (Gulf Coast Tenants Organization) v. Louisiana Department of Environmental Quality

The *Bryant* complaint\(^{365}\) was filed by the Gulf Coast Tenants Organization (GCTO) as a result of U.S. EPA Administrator Carol Browner's intervention to stop the shipment of 150 barrels of mercury waste from a Louisiana chemical company to South Africa for disposal. Commending Browner on her action against Borden's Geismar, LA, plant to protect residents of South Africa, Pat Bryant of the GCTO asked Browner to investigate the health impact of the plant on U.S. residents as well, specifically the predominantly African American neighbors of the Geismar plant.

The *Bryant* complaint came in the context of GCTO's organizing work along "Cancer Alley," the polluter-laden stretch of the Mississippi River between Baton Rouge and New Orleans. According to GCTO's Bryant, there are seven clusters of chemical companies between Baton Rouge and the mouth of the Mississippi; GCTO currently has the resources to work in two of those clusters. While the Borden plant was in one of the clusters GCTO was focusing on (and is just miles from the focus of the *African Americans for Environmental Justice* Title VI complaint), at the time GCTO did not have any particular drive

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\(^{363}\) Letter from George Munchus, Atlanta Community Reinvestment Alliance, to Heather Abel, Center on Race, Poverty and the Environment (Sept. 30, 1994).

\(^{364}\) Id.

\(^{365}\) Letter from Pat Bryant, Executive Director, Gulf Coast Tenants Organization, to Carol Browner, Administrator, U.S. Envt'l Protection Agency (Feb. 21, 1994) [hereinafter *Bryant* complaint]; Letter from Dan Rondeau, Office of Civil Rights, U.S. Envt'l Protection Agency, to Pat Bryant, Gulf Coast Tenants Organization (Apr. 1, 1994).
which involved the plant. There had, however, been community concern over Borden's emissions. 366

The complaint charged that "racism is a major factor" behind Louisiana Governor Edwin Edwards' and the Louisiana Department of Environmental Quality's (LDEQ) decision allowing the plant to operate in an African American community. 367 According to GCTO, there are two technologies used to process plastics, one which creates mercury waste and a newer one which does not; GCTO wondered whether the Governor and LDEQ would allow the older, dirtier process, the one used by Borden at Geismar, to be used in a wealthy white neighborhood. The complaint implied that LDEQ's lack of response was in part because of a pattern of racist hiring within LDEQ so that African Americans were not well represented in the Department. 368

The EPA's Office of Civil Rights rejected the complaint, finding no allegation of EPA assistance to either Governor Edwards or the LDEQ, and that the complaint did not describe the alleged discriminatory acts with "sufficient specificity." 369 Perhaps because they were phrased as questions to be answered, 370 rather than statements, EPA remarkably seemed to miss the main allegations of GCTO's letter—racially disparate permitting practices, law enforcement, and hiring practices by LDEQ. Bryant was frustrated by EPA's narrow reading of the complaint, because GCTO had hoped to spur a government investigation that might turn up more evidence of environmental racism: "I think that the government has the responsibility to look for discrimination, particularly when people ask them to." 371 GCTO is currently weighing its options and deciding whether to refile the complaint.

366 "Our complaint was not a part of a campaign in high gear," says Pat Bryant. "It was a shot over the bow, rather than a shot on the bow." Bryant and GCTO looked at the complaint as part of a media campaign to raise issues of environmental racism and highlight both the domestic and international aspects of the problem. Telephone Interview with Pat Bryant, Executive Director, Gulf Coast Tenants Organization (Oct. 14, 1994).
367 Bryant complaint, supra note 365, at 1.
368 Bryant complaint, supra note 365, at 2. ("Would a Louisiana Department of Environmental Quality that is sufficiently staffed with women and African-Americans allow these health changing chemicals to be dumped in white communities in the United States or in predominantly white countries in Europe? We think not.").
369 Letter from Dan Rondeau, supra note 365. EPA called for specific allegations under 40 CFR §7.120(b)(1).
370 See, e.g., supra note 368.
371 Telephone Interview with Pat Bryant, supra note 366.
Two procedural irregularities separate EPA’s handling of the Bryant complaint from most others. Although Office of Civil Rights has almost always given complainants 21 days to submit revised allegations to meet EPA’s reasons for rejecting the complaint,372 in this case they did not, rejecting the complaint outright.373 And although Office of Civil Rights has sometimes read into complaints an allegation of EPA financial assistance374 (not a difficult implication to get from a Title VI complaint explicitly against the Louisiana Department of Environmental Quality, which is already the target of one Title VI complaint accepted by EPA), EPA did not do so in this instance. These differences in handling the GCTO complaint as compared to other Title VI complaints we examined are puzzling, especially since the complainant, Pat Bryant of the Gulf Coast Tenants Organization, is a nationally recognized and respected leader in the Environmental Justice Movement.375

4. Newtown Florist Club, Inc. v. ?

The Newtown Florist Club (NFC) filed a Title VI complaint376 to urge EPA to investigate the causes of the high incidence of cancer in the predominantly black Newtown neighborhood377 of Gainesville, in northeast Georgia. Members of NFC read about the Title VI strategy in an article in the Atlanta Journal and Con-


373 Letter from Dan Rondeau, supra note 365. Note that any complaint can be clarified and refiled even if denied initially by EPA. See infra text accompanying notes 468-69.

374 See, e.g., Bianchi v. New York Department of Environmental Quality, supra text accompanying note 277 (accepted although no allegation of federal financial assistance).

375 Among his many contributions to the environmental justice movement, Bryant was a member of the six-person National Planning Committee of the First National People of Color Environmental Leadership Summit in 1991. PROCEEDINGS: THE FIRST NATIONAL PEOPLE OF COLOR ENVIRONMENTAL LEADERSHIP SUMMIT iii (Charles Lee ed. 1993). GCTO is one of the most important, enduring poor peoples’ organizations in the United States, having made its mark from the 1960s on.


situation, and decided to write a letter to EPA about the environmental justice struggle in their community. 378

According to the complaint, “our issue centers around the onslaught of cancer deaths which has taken place in Newtown.” 379 As the complaint explains,

The Newtown cancer story began in the spring of 1990, when members of the NFC realized that many of their loved ones were dying from the same kinds of cancers. In an attempt to ascertain why, the club conducted a door-to-door survey. When the survey was complete, the residents were shocked to learn that as many as 18 people on the same street had died or were suffering from some form of throat, lung or colon cancer, lupus, respiratory problems and chemically induced heart attacks. That number has risen to 27, since the survey’s completion. 380

The complaint alleged “two distinct factors that represent the best evidence of environmental racism.” 381 First, Newtown is located in “an industrial fallout zone” 382 —of the 16 major industrial sites in the entire Hall County, 13 are located on the African American south side of Gainesville, nine of those within two miles of Newtown. Yet, on the predominantly white northside of Gainesville, there are no polluting industries. 383

Second, Newtown itself is built on top of a landfill formerly owned and operated by the City of Gainesville. 384 The neighborhood was built in the 1940s after a tornado destroyed much of Gainesville. The state rebuilt homes for African Americans on top of a landfill, and called it “New Town.” 385 (The complainant itself has an interesting history: the Newtown Florist Club is a 40-year-old African American women’s group, organized in the early 1950s “to provide support to neighbors in the Newtown community during times of bereavement.” 386 The “Florist” in the club’s name comes from the practice of providing flowers at burials. 387)

378 Telephone Interview with Rose Johnson, Newtown Florist Club (Sept. 25, 1994).
379 NFC complaint, supra note 376, at 1.
380 NFC complaint, supra note 376, at 1.
381 NFC complaint, supra note 376, at 1.
382 NFC complaint, supra note 376, at 1.
383 NFC complaint, supra note 376, at 1.
384 NFC complaint, supra note 376, at 2.
385 Telephone Interview with Rose Johnson, supra note 378.
386 NFC complaint, supra note 376, at 1.
387 Telephone Interview with Rose Johnson, supra note 378.
State studies have found elevated levels of lead, aluminum, chromium and pesticides in some areas of Newtown, but the state agencies have relied on other studies to conclude that no health hazards exist. Community residents, who are suffering from a variety of illnesses, dispute the state’s conclusions.

Although the complaint on its face alleged a discriminatory pattern of the siting of industrial facilities and the siting of an African American community on top of a landfill by the City of Gainesville, the EPA responded narrowly and informed NFC that its complaint did not set out a prima facie Title VI violation. EPA rejected the complaint because it lacked a specific allegation against an entity which had received EPA funding, but gave NFC 21 days to clarify its complaint. (EPA also could not figure out who the target of the complaint was, leading the agency to put a question mark in the caption.)

NFC discussed EPA’s response and decided that because governmental entities were at fault, the group did not want to specifically indict any one company or industrial site. Therefore NFC declined to clarify the complaint. However, NFC is currently working with the Georgia Environmental Policy Institute and the Lawyers Committee for Civil Rights Under Law, and may refile its complaint.

The activities by Newtown residents, even before the Title VI complaint, have attracted national attention. As a result of their efforts Newtown Florist Club leaders Rose Johnson and Fay Bush were invited by the Justice Department to a December 1993 meeting in Washington, D.C., where environmental justice advocates from across the U.S. offered advice on how the Department should investigate and prosecute environmental justice cases.

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388 NFC complaint, supra note 376, at 2.
389 Eisler, supra note 377.
390 Telephone Interview with Rose Johnson, supra note 378.
392 Id.
393 Telephone Interview with Rose Johnson, supra note 378.
394 Eisler, supra note 377.
395 Eisler, supra note 377. “We didn’t come here with the expectation that we were going to come into a meeting and talk about our community’s problems and be told by the Justice Department that they would intervene on our behalf,” Johnson said after the closed-door session. “We did talk to them about our situation specifically,” she said. “. . . There were people around the table who could actually look at
5. Flint-Genesee Neighborhood Coalition v. Michigan Department of Natural Resources

The *Flint-Genesee Neighborhood Coalition* complaint\(^{396}\) centers around a low-income, African American community’s struggle against a wood waste incinerator proposed by Genesee Power in Flint, Michigan. It comes in the context of an ongoing, multi-year community campaign to stop the incinerator.\(^{397}\) The case is especially interesting to environmental justice advocates because long before the Title VI complaint, the *Flint-Genesee* case was setting national precedents in terms of EPA’s handling of environmental racism claims.

The $80 million incinerator, designed to produce electricity, would be the first in Michigan to use demolition wood, which frequently contains lead-based paint and other chemicals. The incinerator siting follows what environmental justice activists now recognize as a familiar pattern: it is in an industrial park across the street from an elementary school and residential neighborhood.\(^{398}\) The neighborhood is 61 percent African American, with 27 percent of its residents living below the poverty level. By comparison, Genesee County is 20 percent African American.

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our complaint and . . . try to determine the best things that can be done from a Department perspective to try to address these kinds of problems.” Eisler, *supra* note 377.


\(^{397}\) The campaign has drawn national support, with early organizing support coming from the SouthWest Organizing Project in Albuquerque, N.M. and legal help coming from Deeohn Ferris in Washington, DC. Telephone Interview with Deeohn Ferris, Washington Office on Environmental Justice (Aug. 20, 1994).

\(^{398}\) *Flint* complaint, *supra* note 396, at 3.
American with 14 percent of the population in poverty, while Michigan is just 14 percent African American as a whole.

Although the International Joint Commission, a binational U.S.-Canadian commission, has for years recommended that all incineration facilities in the region be phased out because of dioxin contamination of the Great Lakes, the Michigan Department of Natural Resources (MDNR) approved the incinerator in December 1992, without even preparing an environmental impact statement.

Following MDNR’s decision, nine appeal petitions were filed with the EPA’s Appeals Board (EAB) by a variety of opponents, including community residents, the American Lung Association, the local NAACP chapter and the Genesee County Medical Office. One of the appeal petitions alleged discrimination in the permitting of the incinerator because white citizens in neighboring Marquette County had opposed the siting of a similar facility, and won. Richard Dicks, executive director of the Society of Afro-American People in Michigan, argued in his petition to the EAB that MDNR’s issuance of the permit represented an instance of “governmental environmental racism.” Dicks noted that as the residents of the Flint-Genesee neighborhood waited for their chance to speak at a December 1, 1992 public hearing on the Flint incinerator, the Michigan Air Pollution Control Commission was considering a different incinerator to be located in Marquette County, Michigan. As the EAB reports it,

According to Mr. Dicks, the Commission denied that permit because the white residents of the surrounding community did not want the incinerator to be built:

Five or six white residents of Marquette, Michigan who addressed the commission just before us [l]ive in a rural

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399 Flint complaint, supra note 396, at 3. The level of poverty in the target neighborhood is almost three times the Michigan poverty rate of 10.2 percent. Flint complaint, supra note 396, at 3. According to one study cited in the appeal letter, “Flint has one of the highest increases in the nation for families and children in poverty during the past decade.” K.R. SAUNDERS & ASSOCIATES, THE QUALITY OF LIFE FOR CHILDREN AND THEIR FAMILIES IN GENESSEE COUNTY 1980-1992: PRIORITY '90S CHILDREN AND FAMILIES (February 1993) at 3.

400 BUNYAN BRYANT AND ELAINE M. HOCKMAN, HAZARDOUS WASTE AND SPATIAL RELATIONS ACCORDING TO RACE AND INCOME IN THE STATE OF MICHIGAN (1994), at 1.

401 Flint complaint, supra note 396.


403 Id.
farm area that was not populated. They told the Commission that they did not want an incinerator built near their property because it might affect their farm animals. At this time one of the commissioners immediately stated that "if the people don't want this in their community we shouldn't put it there, because I sure wouldn't want it in my community." The commission then voted not to issue the permit to build the incinerator and the five or six people from Marquette left.

Mr. Dicks contrasts this treatment with the treatment received by the residents of the Flint/Genesee neighborhood, who expressed strong opposition to the location of the proposed Genesee power plant at the hearing, but failed to persuade the Commission to deny the permit. Mr. Dicks also notes that: "The commissioner that took such a strong stance for the people from Marquette, who said that they just didn't want an incinerator in their community—well he said nothing in support of our plea."404

On September 8, 1993, the EAB denied the petition for review on a variety of grounds—including that the Genesee Power facility "will meet all applicable air quality regulations, which are specifically established to protect human health."405 The board also ruled that the decisions where facilities are sited are local land use or zoning decisions, which "are not to be disturbed under the Clean Air Act."406 According to the National Law Journal, "This language was significant, because it was the first recent

404 Id. at *5.

The hearing in question was also the source of several petitions to the EAB because of the way it was conducted. The time of the hearing, originally set for 10:30 a.m., was unilaterally changed by the Commission with no public notice, with the result that "some opponents of the facility had to wait 16 hours to speak, until after midnight. When opponents of the facility did get their chance to speak, two Commission members apparently talked and laughed while the opponents stated their objections." Id. at *7. The EAB found no serious harm in this behavior by the Commission, though it did say that "the Commission certainly appears to have been somewhat insensitive to the feelings of the people who came out to voice their objections to the proposed facility at that hearing." Id.

405 LaVelle, supra note 44, at 1 (quoting the original, September 8, 1993 version of Genesee Power Station Limited Partnership, PSD Appeal, 93-1 through 93-7). Cf. R.I.S.E. v. Kay, 768 F. Supp. 1141 (E.D. Va. 1991) (one factor in judge ruling against plaintiffs in environmental racism civil rights claim is that local agency's decision was legal under environmental laws).

406 LaVelle, supra note 44, at 1. In its submittal to the EAB, MDNR had not even responded to the environmental racism charge on the grounds that it was "beyond the scope of Air Quality's rules and regulations." In re Genesee Power Station Limited Partnership, 1993 WL 484880, 45 (EPA) (Oct. 1993) (order denying review in part and remanding in part).
legal ruling from the EPA on the scope of its authority to review the racial impact of decisions made by its many delegated state and local authorities in federal environmental programs. The action by the EAB raised the question of whether federal environmental law gives Federal agencies the authority to review decisions to site polluting facilities based on the racial make-up of the communities involved.

EPA's Office of General Counsel immediately filed a "motion for clarification" with the EAB, asking that they reinterpret the law. The EPA General Counsel argued that the law does, indeed, give local authorities the leeway to consider the location of a polluting facility in permit decisions.

The Environmental Appeals Board responded in a novel manner. On Oct. 22, it reissued the Genesee Power decision, noting in an order that it was arriving at the same conclusion, but "excising the portions . . . with which the [EPA general counsel] finds fault."

The board said that it agreed with attorneys for Genesee Power that the issues raised by the motion "are of national importance and should be decided with the full benefit of the adversary process, but are not so presented here, for the issues raised do not . . . affect the outcome of the case."

The EAB removed the September 8 language holding that the Clean Air Act provided no forum for environmental racism arguments. It then held, "[a]ssuming without deciding that [the] environmental racism argument is within the scope of the [Michigan] commission's authority to consider under applicable air quality rules and regulations," the decision was "proper in that there is no basis in the record for concluding that [MDNR] acted with a racially discriminatory intent."

The EAB found that the Commission denied the Marquette permit on three environmental grounds, finding that "These are legitimate, non-discriminatory reasons for denying a permit." The EAB ultimately ruled against all of the issues raised by the petitions except one—that

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407 LaVelle, supra note 44, at 1.
408 LaVelle, supra note 44, at 1. The Flint case "shows that deep division exists within the federal government over the extent of its authority to regulate the location of polluting facilities." LaVelle, supra note 44, at 1.
409 LaVelle, supra note 44, at 1.
410 LaVelle, supra note 44.
412 Id. at *6.
the facility was not going to employ best available air pollution control technology for lead emissions, contrary to the Clean Air Act—and sent the case back to MDNR for reconsideration of that issue.\textsuperscript{413}

MDNR then re-issued the permit to Genesee Power.\textsuperscript{414} A broad coalition of community and other groups appealed to EPA’s Regional Administrator for Region 5 based on MDNR’s non-compliance with the Clean Air Act and MDNR’s ignoring of the Appeals Board’s specific directions.\textsuperscript{415} The appeal set out in detail MDNR’s violations of the Clean Air Act. It also contained a section alleging that MDNR had “engaged in a pattern and practice of race discrimination by siting incinerators almost exclusively in minority communities.”\textsuperscript{416} The appeal alleged violations of Title VI, based on the fact that the neighborhood was overwhelmingly African American (61 percent) while Genesee County as a whole was overwhelmingly white (just 20 percent African American).

The appeal based its discrimination allegations against MDNR on a study performed by Dr. Elaine Hockman of Wayne State University and Dr. Bunyan Bryant of the University of Michigan.\textsuperscript{417} The study examines, among other things, the extent to which racial and economic status predict the placement of Michigan’s incinerators and commercial hazardous waste facilities.\textsuperscript{418} The study had two conclusions relevant to a Title VI complaint regarding the Genesee Power incinerator:

- The largest proportions of people of color live in zip codes that house commercial hazardous waste facilities, zip codes surrounding incinerator sites, and zip codes with incinerators.

\textsuperscript{413} Id. at *1.

\textsuperscript{414} Flint complaint, supra note 396.

\textsuperscript{415} The coalition, represented by the Sugar Law Center of Flint, included the Flint-Genesee Neighborhood Coalition (United for Action), the American Lung Association of Michigan, the Michigan Environmental Council, the NAACP-Flint Chapter, the National Lawyers Guild Toxics Committee, the Mackinaw Chapter of the Sierra Club, and the Center on Race, Poverty & the Environment of San Francisco. Flint complaint, supra note 396, at 2.

\textsuperscript{416} Flint complaint, supra note 396.

\textsuperscript{417} Bryant & Hockman, supra note 400.

\textsuperscript{418} Bryant & Hockman, supra note 400. The study also examined the extent to which racial and economic status predict the incidence of leaking underground storage tanks (LUSTs) and sites required to file Toxics Release Inventory (TRI) reports under state and federal law.
• Zip codes with incinerators and/or commercial hazardous waste facilities have the greatest exposure to environmental pollution from sites required to report emissions to the federal Toxic Release Inventory, and from leaking underground storage tanks.  

Further, race, not income, was the determining factor: “Locations containing and locations near incinerator/hazardous waste sites are more heavily populated with minorities than are locations at a distance from these sites. Income distribution is not significant.”

The attorney filing the appeal letter did not initially intend the letter to be a Title VI appeal to the Office of Civil Rights. Rather, it was filed as an appeal of the permit to EPA generally. However, EPA responded to it as a Title VI complaint and summarily denied the complaint because it was filed on July 6, some 34 days after the 180 day statute of limitations ran under EPA regulations. The EPA thus determined it had no jurisdiction to process the claim. The EPA did not respond to the apparent discriminatory impact in the siting of incinerators in Michigan, or the allegations of ongoing discrimination.

After EPA rejected the Flint complaint, the community group requested that EPA re-evaluate its decision, providing extensive briefing on the issue of ongoing violations of Title VI. While the group’s argument was persuasive, EPA remained unmoved, and rejected the request on January 31, 1995. In an odd twist,

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419 BRYANT & HOCKMAN, supra note 400, at ii. The study also had several conclusions concerning economic and health status:
• The highest proportion of low birthweight babies is found in zip codes housing incinerators and/or commercial hazardous waste facilities.
• Zip codes that house incinerators have the largest proportion of people on public assistance.

420 BRYANT & HOCKMAN, supra note 400, at ii. As Bryant and Hockman conclude, “The statistical results of this research confirm findings from other studies: race—not income—has significant impact on disproportionate incidence of exposure to toxic and hazardous waste.” BRYANT & HOCKMAN, supra note 400, at 13.

421 Telephone Interview with Kary Moss, Executive Director, Sugar Law Center (Oct. 18, 1994).

422 Letter from Dan J. Rondeau, Office of Civil Rights, U.S. Envt'l Protection Agency, to Kary Moss, Executive Director, Sugar Law Center (Sept. 16, 1994); see also 40 C.F.R. §7.120(b)(2) (1993).

however, EPA ruled that one of the documents submitted by the complainants, a letter from the St. Francis Prayer Center of Flint dated December 15, 1992, qualified as a Title VI complaint and had been filed within the applicable statute of limitations. EPA then accepted the St. Francis Prayer Center complaint for investigation on January 31, 1995.\textsuperscript{424} EPA is currently waiting for a response from MDNR.\textsuperscript{425}

The EPA currently has the matter under review.\textsuperscript{426} The community group is still deciding on its options, and the attorneys involved are preparing a Title VI civil rights suit.\textsuperscript{427}

IV

LESSONS LEARNED SO FAR

While it is early on in the game, environmental justice activists have already begun to distill lessons from the Title VI administrative complaint experience. Many of the lessons echo the “benefits” section, above.\textsuperscript{428} Several of the lessons are about administrative complaints generally. Some are about EPA and its ability to respond to such complaints. Still others are about using the complaints in the context of local struggles.

A. General Lessons About Administrative Complaints

There is no realistically enforceable time limit within which the agency must respond to or act on a complaint. The EPA is required to notify the respondent of its preliminary findings within 180 days.\textsuperscript{429} The EPA has yet to meet this deadline in the short history of environmental justice complaints. The timing issue affects activists in two situations: first, when the complaint is first filed, it may be some time before it is accepted or rejected. Although EPA is required to notify the complainant of the receipt of a complaint within five calendar days\textsuperscript{430} and “review the complaint for acceptance, rejection or referral to the appropriate Federal agency” 20 days after that,\textsuperscript{431} in practice this schedule

\textsuperscript{424} EPA Administrative Environmental Justice Cases, Feb. 16, 1995, at 8, 21.
\textsuperscript{425} Id. at 8.
\textsuperscript{426} Interview with EPA civil rights official (Oct. 27, 1994).
\textsuperscript{427} Telephone Interview with Kary Moss, supra note 421.
\textsuperscript{428} See supra part II.C.1.
\textsuperscript{429} 40 C.F.R. § 7.115(c)(1) (1994).
\textsuperscript{430} 40 C.F.R. § 7.120(c) (1993).
\textsuperscript{431} 40 C.F.R. § 7.120(d)(1)(i) (1993).
has rarely been met. While EPA has done a fairly good job of acknowledging receipt in a timely fashion, in one case, a complainant waited for 10 weeks before hearing that her complaint had been accepted, and in another, the complainant had to wait four months.

Second, and more importantly in local struggles, is that EPA might take years to resolve a complaint. Again, the regulations governing EPA investigations require the Office of Civil Rights to “promptly investigate all complaints filed under section[.]” However, the definition of “promptly” is open to some interpretation. Almost every complainant with whom we spoke reported that the EPA was “slow.” One EPA staffer, when asked about the timeline of the Mississippi case—now over a year in processing—admitted, “We’re just not moving very quickly.”

File a complaint on behalf of a community organization or group of people, if possible. There are several practical and tactical reasons for this. First, as Robert Wiygul points out, “any complaint is not going to be something that is private or dealt with in any kind of quiet way—it is going to be in the papers. It is important for people to know that what you are representing is the community out there and your position is the prevailing sentiment in the community.” This is most easily achieved by filing a complaint as a group, or even as a government agency, as the Gregg Township did in the Lewisburg Prison Project complaint.

Second, filing a complaint on behalf of a group also tells EPA that the complaint is not the selfish whim of just one party. Third, because complaints should come in the context of community-based organizing drives, the complaint can serve as a better

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432 Of the 9 complaints filed thus far which have been accepted, just 5 were responded to within 25 days.
433 Anderson v. Texas Natural Resources Conservation Comm’n (filed Dec. 30, 1993; accepted Mar. 15, 1994), see supra text accompanying note 189.
434 MOSES complaint, supra note 280.
437 Melvin, supra note 28, at 1F.
438 Telephone Interview with Robert Wiygul, supra note 81.
439 See supra text accompanying note 211.
organizing tool if it is on behalf of the group doing the organizing rather than just one individual member of the group.  

Title VI complaints get the attention of state and local officials because they go after an agency’s money. “The great thing about Title VI is that it gets to the one thing that bureaucrats in a state agency care about: their budget. If you get after their budget, they're going to pay attention,” says Robert Wiygul of Sierra Club Legal Defense Fund. Adds Nathalie Walker, “money talks.”

Be sure the target of the complaint receives federal financial assistance. Title VI’s non-discrimination requirement is “part of the contractual cost of accepting federal funding.” Thus, the target of the complaint should be an agency or entity which is “in a position to accept or reject those [non-discrimination] obligations as part of the decision whether or not to ‘receive’ federal funds.”

Although an attorney is not necessary, community groups may be able to marshall a stronger case by consulting with knowledgeable legal counsel. As the EPA’s top Title VI official states, “A potential complainant is advised to contact an attorney knowledgeable in the civil rights/Title VI area to assist in the framing of the complaint.” Consulting with a lawyer in preparing a complaint can help a community group ensure that all procedural requirements are met and that the complaint properly alleges violations of Title VI. Advocates investigating the Title VI route should read, at a minimum, the two pieces directly related to Ti-

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440 As Wiygul concludes, “If you go in and just file a complaint on behalf of one person, without having done the necessary work to get people on board, I don’t think its going to serve you or your clients well in the legal or practical sense.” Telephone Interview with Robert Wiygul, supra note 81.

441 Telephone Interview with Robert Wiygul, supra note 81.

442 Telephone Interview with Nathalie Walker, Sierra Club Legal Defense Fund (Sept. 20, 1994).

443 Colopy, supra note 9.


445 Telephone Interview with Rodney Cash, EPA Civil Rights Official (Oct. 28, 1994). Others are less diplomatic. When asked what single lesson community groups should learn about Title VI, one EPA official told me: “Get an attorney, get an attorney, get an attorney—someone who knows something about the area.” Other EPA officials give the same advice: citizens would be “better served if they had counsel, rather than doing it pro se.” Telephone Interview with EPA civil rights official (Nov. 1, 1994).
tle VI in the environmental justice context, by James Colopy and Kevin Lyskowski. Lazarus and others have mentioned Title VI litigation in passing.

Advocates considering a Title VI complaint should read EPA's Title VI regulations. As noted above, the requirements of Title VI are relatively easy to meet, but according to EPA attorneys handling the complaints, it is clear that "many complainants aren't familiar with the requirements of a Title VI claim." (See the section on EPA regulations for a description of and citation to the relevant regulations.)

Advocates considering a Title VI complaint should consider what evidence they will need to show to prove a case. To help communities understand the strength (or weakness) of their case, such evidence should ideally be marshalled before a complaint is filed. Statistical evidence showing disproportionate impact is a key starting point.

Potential complainants should have a realistic idea of what relief is available under Title VI. As outlined above, EPA has four options in dealing with Title VI complaints: informal resolution of the complaint, termination of funding to the offending agency, referring the case to the Justice Department, or doing nothing. The relief requested should attempt to fit within these parameters; EPA does not believe it has authority beyond the regulations. My advice here is not intended to limit creative proposed remedies, but to urge communities and their advocates to frame that relief in a way that EPA can seek in trying to informally resolve the complaint.

To file a complaint, one does not have to live in the affected community or be a member of a protected class. The rules of standing are broad in administrative Title VI complaints, so that one filing a complaint merely has to allege that discrimination occurred and that EPA money was involved. This has led to interesting—and potentially touchy—situations in actual practice; in one case, a local resident filed a Title VI complaint on behalf of an active community group, without that group's knowl-

446 Colopy, supra note 9.
449 Interview with EPA civil rights official (Nov. 1, 1994).
450 See supra part II.A.
451 See supra text accompanying notes 26-35.
edge.\textsuperscript{452} Another controversial result of the broad rules of standing is discussed in the next lesson, below.

\textit{White people have discovered Title VI complaints and are using them}. Thus far, four out of the nine complaints accepted by EPA are either complaints filed by whites on behalf of communities of color (one complaint) or are calling for investigations of sittings of facilities in predominantly white neighborhoods (three complaints).\textsuperscript{453} By contrast, eight out of the eight complaints rejected are by and for communities of color. In \textit{Anderson v. Texas Natural Resources Conservation Commission}, a white activist living in a predominantly Latino and African American neighborhood filed a complaint which was accepted by the EPA.\textsuperscript{454} In \textit{Garden Valley Neighborhood Association v. Texas Natural Resources Conservation Commission}, \textit{Bianchi v. New York Department of Environmental Conservation}, and \textit{Mothers Organized to Stop Environmental Sins v. Texas Natural Resources Conservation Commission}, white complainants alleged discrimination against people of color living in their predominantly white communities. As discussed above in the individual cases,\textsuperscript{455} there may be discriminatory impact on people of color living in white communities. It remains to be seen, however, if the Title VI tactic is not being used by zealous white NIMBYs ("Not-In-My-Back-Yard") intent on using any tactic to keep an unwanted facility out of a neighborhood.\textsuperscript{456}

\textit{Local agencies and industry will resist}. Local agencies named in Title VI complaints, and the industries implicated in the complaints, will fight the complaints, and the threat of funding cut-

\textsuperscript{452} \textit{Munchus v. Browning Ferris Indus.}, \textit{supra} text accompanying notes 341-349; Telephone Interview with Lynn Battle, \textit{supra} note 346.


\textsuperscript{454} \textit{Anderson v. Texas Natural Resources Conservation Comm'n}, \textit{supra} text accompanying note 189.

\textsuperscript{455} \textit{See supra} text accompanying notes 200-02, 244, 279, 286-88.

\textsuperscript{456} As one white activist who filed a Title VI claim says, "everyone should have civil rights; no one should have to live by these facilities." Telephone Interview with Phyllis Glazer, \textit{supra} note 281. While I agree philosophically with Ms. Glazer's point, it would be a troubling development if it turned out that white communities were trying to use Title VI to their own ends—especially when communities of color continue to have their Title VI claims rejected by EPA.
off, strenuously. What this means in practice is that the potential complainant should carefully and thoroughly document its complaint, and prepare for a concerted attack on its evidence. It is best to anticipate an agency's defense before filing a claim, and attempt to include enough information in the original complaint to pre-emptively rebut the defense.

B. Lessons About the EPA's Handling of Complaints

The EPA Office of Civil Rights is understaffed. Until recently, EPA devoted hardly any resources to Title VI. "In July [1994], the agency realized that we had very few resources devoted to dealing with these complaints. The Office of Civil Rights had one staff person dealing with everything on these complaints—responding to them, doing some investigative work, responding to FOIA [Freedom of Information Act] requests."\(^{457}\) That single staffer was also responsible for all other civil rights complaints to the agency, including those under Title VII and the Americans with Disabilities Act. The Title VI work in Office of Civil Rights is now being handled by four experienced attorneys, brought on board in August 1994 from other parts of EPA.\(^{458}\) In addition, an attorney with the Department of Justice has been assigned to EPA's Office of Civil Rights. It is not yet clear whether the five new attorneys will offer enough staff power to adequately investigate and prosecute complaints in a timely fashion.\(^{459}\)

It is not clear that EPA has any guidelines or procedures in place to deal with Title VI complaints. Attorneys handling complaints before the agency report that the agency has no guidelines or procedures to deal with complaints.\(^{460}\) There are a number of inconsistencies in the handling of the complaints, which may be symptomatic of a lack of such procedures. The EPA seems to be slowly systematizing its response to complaints. One small

\(^{457}\) Telephone Interview with Rich Albores, supra note 23. As one staffer reported, before the new attorneys came on board "it was all we could do to accept the complaints and begin initial investigation." Telephone Interview with EPA Civil Rights official (Oct. 27, 1994).

\(^{458}\) Telephone Interview with Rich Albores, supra note 23.

\(^{459}\) At least complainants know that with five lawyers and less than 10 active cases, EPA OCR has a chance of resolving the claims. Other federal agencies are considerably more understaffed. The Equal Employment Opportunity Commission (EEOC), for example, ended 1994 with 97,000 unresolved cases, 24,000 more than 1993. Peter Kilborn, Anti-Bias Agency is Drowning in Unresolved Complaints, S.F. CHRON. (Nov. 30, 1994).

\(^{460}\) Telephone Interview with Grover Hankins, supra note 206.
change evidencing this is that notification letters for the first five complaints merely asked the respondent agency to reply; some agencies have taken more than a year to do so. The EPA now asks the agency to notify EPA within 21 days if they are planning to respond.\textsuperscript{461} Environmental justice advocates hope that due to the increased volume of Title VI administrative complaints that are being filed, EPA will draft some internal guidelines and make those guidelines available to community groups contemplating filing Title VI complaints.

\textit{Potential complainants should do some homework before filing a complaint.} A number of the complaints have been rejected because of the absence of federal funds, and one has been rejected merely for the failure to allege federal funding. One complaint has been rejected for failure to name a respondent agency that is allegedly discriminating. Another has been rejected for failure to allege a discriminatory activity. Such issues should be investigated thoroughly by activists before they file to maximize their chances of getting a complaint accepted by EPA. According to one EPA attorney handling Title VI complaints, complainants should "do their homework and make sure they file a complaint which is coherent and complete. It is not enough to make a broad allegation and base it on anecdotal information."\textsuperscript{462}

\textit{Include documentation of the alleged discriminatory acts.} While theoretically EPA will investigate claims against a recipient of EPA funding, a complaining group significantly increases the chances of its complaint being accepted if the complaint includes substantial documentation of the alleged discrimination. The facts that should be included obviously differ from community to community, but evidence which demonstrates disproportionate impact should be a starting point. As Robert Wiygul notes, "In Mississippi it is fairly easy to draw statistical conclusions about the location of hazardous waste facilities because there aren't any—all of them were going to be in this one place. The picture may be more complex in other places."\textsuperscript{463}

\textit{The agency appears almost mechanical in its acceptance and rejection of complaints.} The rule seems to be: get the complaint in


\textsuperscript{462} Telephone Interview with Mike Mattheisen, supra note 113.

\textsuperscript{463} Telephone Interview with Robert Wiygul, supra note 81.
on time and allege discrimination against a party receiving federal money, and the complaint will be accepted. The timeliness issue has thwarted several complaints that otherwise on their face allege serious environmental racism. Since EPA has discretion on the timeliness issue,464 its actions in several cases lead the casual observer to wonder about the seriousness of EPA’s commitment to environmental justice. The irony is that well-crafted, well-documented complaints alleging serious, ongoing institutional discrimination, complete with academic studies demonstrating disproportionate impact, such as the Flint-Genesee Neighborhood Coalition complaint,465 have been rejected on strictly jurisdictional grounds, while other complaints which appear vague and may only be a few paragraphs long are accepted for investigation.

Further, while Office of Civil Rights will sometimes read into a claim an allegation of EPA assistance,466 most often they will not. The disparate treatment of complaints is puzzling, as one complaint alleging racially disparate permitting practices, law enforcement, and hiring practices by a statewide Department of Environmental Quality467 was rejected partly on the grounds of not alleging EPA financial assistance—although EPA assistance is obvious in such a situation.468

The EPA will sometimes point out technical flaws in a complaint and allow for refiling. In several cases, complainants who filed general civil rights complaints or complaints under the Executive Order on Environmental Justice were instructed by EPA to refile their complaints as Title VI claims. In many instances in which the EPA has denied complaints, it has given complainants 21 days to clarify their complaints and refile. But complainants should not rely on getting another chance: the complaint filed by the Gulf Coast Tenants Organization was rejected although in this author’s reading the complaint contained serious allegations. (Complainants whose claims are denied should note that even if EPA does not explicitly give a complainant 21 days to refile, if the 180-day statute of limitations has not yet run, or the com-

464 40 C.F.R. § 7.120(b)(2) (1993); but see supra note 18.
465 See supra text accompanying note 396.
466 See, e.g., Bianchi complaint, supra note 265.
467 Bryant complaint, supra note 365.
468 Just how obvious is made clear by the fact that EPA had already accepted a complaint against the same agency by another group. Jackson et al. v. LDEQ, supra note 70.
plaint alleges ongoing discriminatory action, a complainant can clarify a complaint and simply refile anyway.)

Assume EPA will read complaints narrowly. The EPA seems unwilling to look beyond site-specific challenges to investigate allegations of institutional racism—that whole state programs are run in a manner resulting in discriminatory effect. Symptomatic of EPA's tendency to narrow the focus of complaints is one complaint calling for a statewide investigation of Browning-Ferris Industries' alleged placing of garbage dumps in African American communities in Alabama, which EPA decided was really about a single garbage transfer facility in Birmingham, Alabama.\footnote{See Munchus v. BFI, supra text accompanying notes 341-49; Letter from Dan J. Rondeau, Office of Civil Rights, U.S. Envtl Protection Agency, to David Sullivan (Jan. 27, 1994).} Similarly, in other cases, the EPA has missed entirely or considerably narrowed in scope\footnote{In the Jackson complaint, EPA took a challenge to a statewide permitting system and treated it as a challenge to a particular siting decision. See supra text accompanying note 113-14.} broad challenges to state agencies and systemic government policies. Those drafting complaints should be as clear and explicit as possible in framing allegations so there can be no question as to what the allegations are.

Because EPA does not appear to be seriously investigating complaints initially, it is imperative to include evidence of discrimination in the complaint, if possible. In several cases,\footnote{E.g., Munchus v. Jefferson County Comm'n, supra text accompanying notes 357-64; Bryant v. Louisiana Dep't of Envtl Quality, supra text accompanying notes 365-75.} EPA has denied complaints which appear to allege serious institutional discrimination, because the complainant has tried to get the EPA to investigate the situation rather than doing the investigation and setting forth evidence of discrimination in the complaint. EPA attorneys handling the complaints are candid about this. "One thing we do not do," says EPA's Mike Mattheisen, "we do not have the resources to undertake studies for people on the basis of allegations."\footnote{Telephone Interview with Mike Mattheisen, supra note 113.} Again, as with the lesson above, this means those drafting complaints should set forth any existing evidence clearly and explicitly to avoid EPA dismissal.
C. Lessons for Local Struggles

Don’t rely solely on the administrative complaint avenue. In communities which have relied on the administrative complaint as their sole form of activism or opposition to a local facility, community members have been disappointed. “The Title VI strategy creates more pressure from the top,” says Pat Bryant, “but you’ve got to have pressure from the bottom.”

Bryant sees the most successful strategy as a focused local campaign, where the Title VI complaint evolves as one of several tactics.

Legal support groups should develop workshops for local activists on how to use Title VI. Because of its informality and ease of use by laypersons, Title VI advocacy could be radically democratized by the development of a series of workshops for grassroots groups on how to research, document and file their own Title VI complaints. Legal support groups, especially Legal Services programs, should pool their collective knowledge of Title VI complaints and develop training programs for activists on the mechanics of Title VI. This article, setting out the lessons learned so far and the procedures for filing Title VI complaints with EPA, is one step in that direction. Armed with training, people around the country could take up Title VI complaints as a popular strategy.

A Title VI complaint may be the only particular legal avenue open to a community. In some cases, a government agency’s or polluter’s activity may be technically legal under environmental laws, but still be causing harm to a community. In those situations where complaints or causes of action based on environmental laws would fail, but there is discriminatory impact, Title VI complaints may be appropriate. “Sometimes we don’t have any choice. We have to use everything we can for our clients,” says Sierra Club Legal Defense Fund’s Robert Wiygul.

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473 Telephone Interview with Pat Bryant, supra note 366.
474 Telephone Interview with Pat Bryant, supra note 366.
475 This suggestion came from Pat Bryant of the Gulf Coast Tenants Organization.
476 Telephone Interview with Pat Bryant, supra note 366.
477 See, e.g., R.I.S.E. v. Kay, 768 F. Supp. 1141 (E.D. Va. 1991), aff’d, 977 F.2d 573 (4th Cir. 1992) (one factor in judge ruling against plaintiffs in environmental racism constitutional claim is that decision was legal under environmental laws); In re Genesee Power Station Limited Partnership, 1995 WL 484880 (EPA) (Oct. 22, 1993) (facility alleged to be racially discriminatory approved because it met all applicable air quality regulations).
478 See Cole, supra note 43, for an environmental justice litigation hierarchy.
479 Telephone Interview with Robert Wiygul, supra note 81.
Communities facing environmental racism should use the Title VI avenue until EPA and state agencies come up with guidelines which protect communities of color. Leonard Jackson of Carville, Louisiana urges communities to try to protect their rights until some standards are put in place. "These people are taken advantage of, and they reap no benefits from these big industries—they don't get the jobs." Jackson and others think that the EPA and state agencies should start coming up with guidelines which protect all communities.

There are a range of activities which may implicate Title VI. The complaints accepted so far range from challenging specific facilities to broad challenges of entire state permitting processes; these complaints represent just the tip of the Title VI iceberg. "There isn't some kind of legal menu somewhere that you can go down and tick off the boxes and end up with a complaint or not with a complaint—the complaints are very fact specific," says EPA attorney Mike Mattheisen. "There are any number of different scenarios and fact patterns that are possible, and we expect to get a range of them."

These lessons are those which can be drawn from a very limited set of facts. As EPA begins to formally decide cases, and as the new staffers in the Office of Civil Rights get up to speed, some of the lessons—especially those about the EPA—may become outdated. The general lessons on administrative complaints, and on their role in communities' struggles for environmental justice, will hopefully be fleshed out and expanded upon by others as we continue to explore this particular avenue of advocacy.

**Conclusion**

Much remains to be seen in the new area of Title VI administrative complaints to EPA. Primary questions—such as, will EPA decide cases on behalf of complainants?—remain to be an-

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480 Telephone Interview with Leonard "Buck" Jackson, supra note 77. Jackson is the named complainant in Jackson et al. v. Louisiana Department of Environmental Quality. See supra text accompanying note 70.

481 Telephone Interview with Leonard "Buck" Jackson, supra note 77.

482 Telephone Interview with Mike Mattheisen, supra note 113.

483 More than one EPA attorney cautioned me against drawing broad conclusions based on the work of Office of Civil Rights thus far. "It is much too early to draw any lessons," according to one. Telephone Interview with Mike Mattheisen, supra note 113.
sowied. As Grover Hankins, an attorney working on two complaints out of Texas, reports, "nobody knows what's going to happen at the end of the tunnel."\textsuperscript{484} Even so, we in the environmental justice movement have learned a great deal in the last year. Although there are a series of potential drawbacks, Title VI complaints remain a viable if limited tool for community struggles against environmental racism, a tool which seems destined for increased use in the years to come.

\textsuperscript{484} Telephone Interview with Grover Hankins, \textit{supra} note 206.