

# A Right without a Remedy

How the EPA Failed to Protect the Civil  
Rights of Latino Schoolchildren



The Center on Race, Poverty & the Environment

<http://www.crpe-ej.org/crpe/>

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**Cover Image** : Workers pick strawberries in the fields next to Rio Mesa High School in Oxnard, California. Credit: Talia Buford/The Center for Public Integrity

# A RIGHT WITHOUT A REMEDY

## INTRODUCTION

Rural California has the most fertile and productive farmland in the United States, providing the nation with a cornucopia of fruits, vegetable, nuts, meat, and dairy products. This source of food comes at a heavy cost to those rural, majority Latino communities living among, and providing essential labor for, California's industrial agriculture system.

That system relies on the heavy use of pesticides and fumigants, toxic chemicals applied to soil and crops to prevent disease and maximize yields. But the worst of these fumigants – methyl bromide, methyl iodide, chloropicrin, 1, 3-dichloropropene (“Telone”), and metam sodium – inflict a heavy burden on nearby communities and schools.

Application of these chemicals inevitably results in off-site movement – called “drift” – into neighboring schools, homes, workplaces, bus stops, and playgrounds. Drift results in both short-term (acute) and long-term (chronic) exposures to these known toxics.

Oxnard, California lies on a fertile coastal plain northwest of Los Angeles in Ventura County with perfect growing conditions for strawberries. Conventionally produced strawberries, however, require some of the heaviest use of fumigants in the state. Those delicious, juicy strawberries served with whipped cream on top of shortcake, or just plain by the handful, arrives at your table at a drastic cost.

In Oxnard and elsewhere in rural California, heavy pesticide use happens adjacent to schools, while Latino children suffer discriminatory pesticide exposures.<sup>1</sup> Imagine children running track, practicing football, playing at recess, or just studying in an area where long term and short term pesticide exposures threaten their health and well-being. California law does not prevent this. Rather, those laws and the Department of Pesticide Regulation allow this to happen.

In 1999, Maria Garcia joined several other parents who wanted to protect their children from pesticides. Maria's son, David, was fourteen years old and attended Rio Mesa High School in Oxnard, California. The parents called on the U.S. Environmental Protection Agency to use the federal Civil Rights Act as the means to stop the discrimination. By the time EPA made a preliminary finding of discrimination in 2011 – the first in the agency's history – David had long since graduated from the school surrounded by toxic strawberry fields. EPA compounded that delay by failing to provide any protections for current students.

The purpose of this report is to document and expose the institutional barriers blocking EPA from effectuating civil rights guarantees. The report relies on the history of EPA's enforcement program and documents from the "*Angelita C. v. California Department of Pesticide Regulation*" investigation. Those documents show that EPA's Office of Pesticide Programs blocked the Office of Civil Rights from providing additional civil rights-based protections, denying Maria and David the justice they sought and Congress required.

It has been said that a right without a remedy is no right at all. Unfortunately for communities suffering environmental racism in the United States, the EPA has for decades abdicated its responsibility to protect them, effectively eliminating the rights guaranteed by Title VI of the Civil Rights Act. EPA has institutionally failed to prevent environmental injustices despite having broad authority under this law to prevent racial discrimination.

“When we ask for help, EPA will not help us. EPA follows the laws that protect the growers, but ignores the law that protects people from discrimination.”

“Latino children are still attending these schools, the strawberry fields are still there, the growers are still spraying fumigants, and now my grandchildren attend the same schools David did,” said Maria after learning about the documents discussed in this report. “When we ask for help, EPA will not help us. EPA follows the laws that protect the growers, but ignores the law that protects people from discrimination.”

Ironically, while we were preparing this report, the EPA proposed to amend its Title VI regulations to give itself discretion to not investigate environmental injustices and to remove the deadlines to act if the agency actually chose to investigate. In other words, *if* EPA made the political decision to investigate a civil rights issue, it could then lawfully drag out that investigation for years to the point where EPA's delay equals an outright denial of rights. EPA should not decimate civil rights protections. The agency should instead rescind the proposed regulations, dedicate more resources for civil rights enforcement, and eliminate its internal institutional barriers blocking enforcement.

**1999**

June 30, 1999: *Angelita C.* complaint filed

December 11, 2001: EPA accepts *Angelita C.* complaint for investigation

June 9, 2002: 180-day deadline for EPA to complete *Angelita C.* investigation and issue preliminary findings

2004: EPA re-registers methyl bromide for use

2008: EPA attempts to settle *Angelita C.*

2009: EPA re-registers methyl bromide for use

February 22, 2010: EPA re-start's investigation

February 22, 2010: EPA lead investigator sends email acknowledging current fumigant use in California

June 7, 2010: EPA lead investigator sends email acknowledging current fumigant use in Oxnard and in California

June 9, 2010: Meeting with Diane Thompson which acknowledges Office of Pesticide Program's objections

June 14, 2010: Meeting with Lisa Jackson regarding *Angelita C.*

March 21, 2011: Deloitte Report issued

April 19, 2011: Diane Thompson acknowledges that *Angelita C.* investigation delay is "tragic"

April 22, 2011: *Angelita C.* preliminary finding of racial discrimination

July 2011: EPA approves DeLeon plan to eliminate 180-day deadline to issue preliminary findings

August 9, 2011: EPA lead investigator sends email acknowledging decline in methyl bromide use

**2011**

August 24, 2011: EPA and California Department of Pesticide Regulation sign *Angelita C.* settlement; inform complainants

|| EPA has a long history of failing to investigate and resolve Title VI complainants.

***“I feel like we are being treated like pests. We are not animals; we are human beings.”***



Maria Garcia holds a photograph of herself as a campesina in the Oxnard fields. She joined a civil rights complaint filed with the EPA that asked for more protections from pesticide exposure for Latino students. After an unsatisfactory settlement 10 years later, she sued the agency, alleging it mishandled the civil rights investigation. Credit: Talia Buford/The Center for Public Integrity

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## THE ANGELITA C. COMPLAINT

With heavy use of methyl bromide near Rio Mesa High School, Maria and the other parents sought EPA's assistance on June 30, 1999. They filed a written request for EPA to enforce Title VI of the Civil Rights Act – called an administrative complaint – contending that California pesticide use in general, and as exemplified by methyl bromide use, results in racial discrimination. In 1999 and continuing today, Latino children represent a significant majority of public school students in California's intensive agricultural areas. With pesticides and fumigants used in close proximity to schools, Latino children have exposures to these harmful chemicals while other, majority white schools do not face such harm. Because of this "disparate impact," the complaint charged that the California Department of Pesticide Regulation violated the Civil Rights Act's prohibition on racial discrimination by allowing such use.

*"The agricultural use of pesticides in California has a disproportionate impact on people of color, primarily Latinos. To demonstrate this disproportionate impact, this complaint focuses on methyl bromide, due to its particularly deadly characteristics, as an example of overall use of and exposure to highly toxic pesticides in the state."* <sup>2</sup>

The complaint asked EPA to ban methyl bromide and require less toxic alternatives.<sup>3</sup> The complaint also asked EPA to prevent the use of highly toxic pesticides within five miles of schools, place limits on methyl bromide use to protect children, and consider the use of methyl bromide in combination with other pesticides and other environmental contaminants.<sup>4</sup> Finally, the complaint asked EPA to impose similar remedies on other pesticides that have a racially discriminatory impact, including Telone and metam sodium.<sup>5</sup>

EPA's own regulations require EPA to decide whether it would accept the complaint for investigation within 20 days of acknowledging receipt of the complaint.<sup>6</sup> Instead, Maria and David waited until December 11, 2001 – for more than two years – when EPA misread the complaint and chose only to investigate whether methyl bromide use violated the Civil Rights Act.<sup>7</sup>

## TITLE VI PROTECTS LATINO CHILDREN FROM PESTICIDE DISCRIMINATION

One of the crowning achievements of the civil rights movement came to pass on July 2, 1964 when President Lyndon Johnson – with Dr. Martin Luther King Jr. at his side – signed the Civil Rights Act into law. Title VI of the Civil Rights Act flatly declared that “no person” shall suffer racial discrimination by any entity that receives federal financial assistance, commanded federal agencies like EPA to effectuate that right, and empowered agencies to cure racial discrimination by withholding federal funding or by any other means authorized by law.<sup>8</sup> EPA’s regulations which implement Title VI prohibit intentional racial discrimination as well as any programs or policies that have a “discriminatory effect.”<sup>9</sup> A discriminatory effect occurs when a program or policy does not expressly discriminate on the basis of race but rather has a racially disparate impact regardless of intent.

The regulations also specify that EPA shall investigate all complaints and must issue preliminary findings within 180 days of accepting a complaint for investigation.<sup>10</sup> Because of a 2001 Supreme Court decision, anyone like Maria seeking to protect their families and themselves from discriminatory effects may only file an administrative complaint with an agency and may not go to court to obtain relief.<sup>11</sup>

In other words, unless Maria could prove that California regulators intended to discriminate against David and other Latino children, then her only Civil Rights Act remedy is hoping and praying that EPA would do what Congress commanded.

Tragically, EPA has a long history of failing to investigate and resolve Title VI complainants. Nearly 20 years ago, the complainants in 16 Title VI complaints languishing at EPA wrote a letter to former EPA Administrator Carol Browner to ask for help.<sup>12</sup> Of the sixteen complaints referenced in the letter, eleven had been accepted for investigation and five had yet to be accepted, rejected, or referred for investigation. EPA failed to adhere to its deadlines to act on all sixteen complaints.

On December 9, 1996, Administrator Browner responded, agreeing that “the Agency needs to improve the timeliness of its decisional process, including the process of accepting or rejecting complaints soon after they are filed.”<sup>13</sup> Administrator Browner informed them that EPA has taken steps to “enhance the investigation and processing of Title VI complaints to address the very concerns raised in your letter,” including increasing staff, establishing a Title VI Workgroup and a Title VI Complaint Task Force to address the

Title VI complaint back-log. Browner's reform efforts made little headway.

Some complainants went to court to compel EPA to investigate and act on their complaints, but such moves provoked unintended consequences. For example, the Rosemere Neighborhood Association in Portland, Oregon sought judicial assistance but once the group filed its lawsuit, EPA quickly rejected their complaint and then asked the judge to dismiss the suit. In 2009, the U.S. Court of Appeals for the Ninth Circuit did not let EPA off the hook, however, and observed that EPA's conduct demonstrated a "consistent pattern of delay" and that the agency had not processed a single complaint within its regulatory deadlines during 2006 and 2007.<sup>14</sup>

The Court of Appeals' chastising had some effect within EPA. Administrator Lisa P. Jackson announced to all EPA employees that environmental justice would be a priority under her EPA leadership.

*We must include environmental justice principles in all of our decisions. This is an area that calls for innovation and bold thinking, and I am challenging all of our employees to bring vision and creativity to our programs. The protection of vulnerable subpopulations is a top priority, especially with regard to children.*<sup>15</sup>

Jackson ordered an outside consultant to perform a review of the Office of Civil Rights, the group within EPA charged with enforcing Title VI. On March 21, 2011, Deloitte Consulting

released a report that identified key areas plaguing EPA's Title VI enforcement and offered recommendations to improve EPA's "significant performance challenges."<sup>16</sup> The Deloitte Report found that OCR had consistently not adequately resolved Title VI Complaints and in only 6% of complaints (15 out of 247), EPA complied with its initial regulatory deadline to accept, reject or refer a complaint.<sup>17</sup> The Deloitte Report found that delays in processing complaints are the result of (1) the complexity in determining whether a complaint falls within EPA's jurisdiction; (2) a lack of EPA methods to conduct needed analyses; (3) a lack of standard operating procedures; and (4) a lack of supporting resources from EPA program and regional staff who have no incentive to prioritize Title VI investigations above their own program and region-related work.<sup>18</sup> Like Browner, Jackson convened a committee to develop reforms.

## ANGELITA C. INVESTIGATION EXEMPLIFIES SYSTEMIC PROGRAM CONFLICTS.

At the same time that EPA released the Deloitte Report in the spring of 2011, EPA was finalizing its first-ever preliminary finding of a Title VI violation in *Angelita C.* One would think that, given this historic never-before-seen event and Jackson's environmental justice priority, Maria's eleven-year wait would finally yield a remedy to protect Latino children. Not so fast.

EPA's *Angelita C.* investigation determined that methyl bromide use between 1995 and 2001 exceeded EPA health-based thresholds at majority Latino schools.<sup>19</sup> Rio Mesa High School had the worst exposures, exceeding all twelve of EPA's health thresholds. On April 22, 2011, EPA issued a "preliminary finding" that the *Angelita C.* complaint presented a violation of the Civil Rights Act.<sup>20</sup> EPA never notified Maria or her attorneys that it had made the finding. Instead, EPA and the California Department of Pesticide Regulation conducted confidential negotiations without including Maria or the other parents. The inadequate settlement, reached four months later, provided no remedies for the children. It called for the Department to do pesticide drift community education and monitor methyl bromide levels in the air between 2011 and 2013 at several locations in California.<sup>21</sup> EPA told Maria's attorneys only *after* the ink dried on the settlement.

The settlement made no sense at all. An international treaty – the Montreal Protocol – had banned the use of methyl bromide so that use dramatically declined after the year 2000. In its place growers used other fumigants and EPA had recently approved the use of another highly toxic fumigant called methyl iodide to replace methyl bromide.

Maria's attorneys immediately submitted a Freedom of Information Act request to obtain all of the documents related to the *Angelita C.* investigation and settlement. EPA completely withheld or heavily redacted thousands of documents under claims that they reveal EPA's internal deliberations or communications with EPA's attorneys. Nevertheless, the documents EPA actually disclosed – after a lawsuit compelled disclosure – shed light on what transpired behind EPA's veil of secrecy.

## THE “DATA SUPPORT A DETERMINATION OF ADVERSITY IN THIS CASE.”

After accepting the complaint for investigation in late 2001, EPA began its investigation and retained an outside consultant to perform modeling of methyl bromide exposure. EPA discussed its model and draft findings with the EPA Office of Pesticide Programs, the entity within EPA responsible for registering pesticides for use and prescribing the manner in which a person may use a pesticide.<sup>22</sup> By 2004, the consultant had developed a model to evaluate pesticide exposures at public schools based on 1995-2001 methyl bromide use data.<sup>23</sup> While the Offices of Civil Rights and Pesticide Programs worked on the investigation during 2004, the Office of Pesticide Programs proceeded to re-register methyl bromide for use in the U.S.

A 2005 internal EPA memorandum addressing the use of multiple fumigants acknowledged that growers frequently use methyl bromide in combination with chloropicrin and Telone.<sup>24</sup> Nevertheless, the investigation only focused on methyl bromide.

By August 2006, the Office of Civil Rights had completed an analysis of methyl bromide exposures but continued to rely only on the 1995-2001 data. A heavily redacted briefing document indicates that the modeled methyl bromide exposures exceeded EPA health thresholds and that staff “believes the data support a determination of adversity in this case.”<sup>25</sup> The briefing paper identified the next step of analyzing the racial composition of affected schools to determine if Latino children suffered discriminatory exposures compared to white majority schools.

## “INVESTIGATION WAS STALLED”

By early 2008, the Office of Civil Rights had prepared a draft Investigative Report.<sup>26</sup> However, during the final year of the Bush Administration, the Office of Civil Rights initiated an effort to resolve several Title VI complaints originating in California, including *Angelita C.*, in a single settlement.<sup>27</sup> EPA released no documents which indicated why this group settlement did not occur. By 2008, however, EPA re-registered methyl bromide use for a second time, and subsequently amended that registration in 2009.<sup>28</sup> A 2009 email from an EPA official to the California Department of Pesticide Regulation acknowledged that the

*Angelita C.* “investigation was stalled.”<sup>29</sup> EPA did not disclose documents describing why or by whom, but the two methyl bromide re-registration decisions allowing continued use during the investigation and later documents describing resistance from the Office of Pesticide Programs indicates that the pesticide arm of EPA had at least partial responsibility for stalling the investigation.



A chain-link fence separates Rio Mesa High School from the strawberry fields that surround it.

Credit: Talia Buford/The Center for Public Integrity

## OFFICE OF CIVIL RIGHTS “TO BEGIN THE INTRA-AGENCY COORDINATION PROCESS.”

In early 2010, one year into the tenure of new EPA Administrator Lisa Jackson, senior EPA staff convened for a briefing led by Patrick Chang, a U.S. Department of Justice civil rights attorney, “to begin the intra-agency coordination process.”<sup>30</sup> Present in the meeting was Deputy Administrator Bob Perciasepe, Chief of Staff Dianne Thompson, and other senior staff from the Administrator’s office and the Office of Pesticide Programs. The same day of the meeting, the lead civil rights investigator sent Wooden-Aguilar and Chang an email describing the current use of fumigants in California.<sup>31</sup> The investigator attached a graph to the email which showed methyl bromide-dominated fumigant use in California prior to 2001, but more recent years showed methyl bromide use dwarfed by chloropicrin, Telone, and metam sodium.<sup>32</sup>

Shortly after the re-start of the investigation, Office of Civil Rights staff began discussing the use of virtually impermeable film as a mitigation option to reduce exposure.<sup>33</sup> A comparison of California and EPA methyl bromide restrictions indicate that neither EPA nor California required the use of virtually impermeable film, which is basically a tarp system to prevent drift.<sup>34</sup> EPA staff also began discussing the newly registered fumigant, methyl iodide, including whether EPA should apply “Angelita methodologies for methyl iodide.”<sup>35</sup> These heavily redacted discussions acknowledged that EPA’s data for the investigation continued to be limited to only methyl bromide during 1995-2001 and set forth seven mitigation options, including requiring virtually impermeable film and larger buffer zones from sensitive locations, such as schools.<sup>36</sup>

## METHYL BROMIDE “ALTERNATIVES . . . HAVE BEEN WIDELY ADOPTED.”

On June 7, 2010, the lead investigator for the Office of Civil Rights shared more data with the investigation team showing the decreasing use of methyl bromide and increasing use of replacement fumigants.

*In California, the three strawberry producing districts for which [methyl bromide] is nominated are Oxnard, Watsonville/Salinas and Santa Maria, with in 2010 respectively almost 5000 ha, 5800 ha and almost 4000 ha of strawberry fruit (predicted). The most recent [California Pesticide Use Report] data (2003-2008) show that alternatives based on [Telone], [chloropicrin] and [metam sodium] have been widely adopted in these production districts (i.e. excellent adoption in Oxnard and some adoption in Watsonville/Salinas). In California, (the MeBr substitute) [Telone] use has more than doubled from 2,001 ha (2003) to 4,408 ha (2008). [California Pesticide Use Report] data indicate that in Ventura county alone the adoption rate of MB alternatives has been about 800 ha per year (between 2003 and 2007).<sup>37</sup>*

However, even with this data directly discussing Oxnard and Ventura County and the three replacement fumigants’ increased use, a meeting with Chief of Staff Diane Thompson two days later on June 9, 2010 altered the trajectory of the investigation. After that meeting, Patrick Chang called an attorney in the San Francisco EPA office to break the news. That attorney sent an email to other San Francisco EPA staff describing the conversation.

Instead of asking for Lisa Jackson’s approval of the Office of Civil Rights proposed plan, Thompson had directed Chang to brief the Administrator on “internal issues” with the Office of Pesticide Programs. First, the Office of Civil Rights did not want to focus on exposures below the short-term health threshold set by the Office of Pesticide Programs’ 2009 methyl bromide re-registration decision. In other words, the Office of Civil Rights was concerned about a civil rights finding of harm when the Office of Pesticide Programs authorized a higher short-term methyl bromide exposure in the 2009 registration decision. Second, the Office of Pesticide Programs did not want any *Angelita C.* settlement discussions to include mitigation measures such as virtually impermeable films or buffer zones

since those would also call into question the long-term exposure threshold established in the 2009 re-registration.<sup>38</sup>

On June 14, 2010, Thompson and other EPA senior staff briefed Administrator Jackson on *Angelita C.* but EPA disclosed no documents describing the content or outcome. But no question about the outcome remained based on the prior and subsequent proceedings within EPA. The settlement with the Department of Pesticide Regulation would soon reveal that the Office of Pesticide Programs blocked the Office of Civil Rights from insisting on any mitigation measures in the settlement discussions.

In other words, the EPA limited the *Angelita C.* settlement to reflect the agency's implementation of the laws *allowing* the use of pesticides, and blocked additional protections that the Civil Rights Act could have provided. The following excerpt helps to explain discriminatory effects despite compliance with environmental laws:

*To analogize, let us imagine a busy roadway, with cars and trucks whizzing along. A man waiting on one side of the roadway sees his opportunity to cross, and starts to do so. He is hit by a truck. Two “old paradigm”-ers are watching this situation, one liberal, the other conservative. The liberal says, “Oh my gosh! Did you see if the light was red or green?” Because if the light was green – that is, if the truck had permission to be whizzing along – then her response is different than if the light were red, and the truck was violating the law.*

*The conservative says, “He knew what the risk was in crossing the street, and he assumed that risk. That’s the free market.” Though the analyses of liberal and conservative old paradigm thinkers are different in this exaggerated example, their ultimate<sup>39</sup> conclusions are the same.*

Environmental laws thus ignore the structural nature of both pollution and racism in our society. Even EPA acknowledges this factual and legal principle, and did so expressly in the *Angelita C.* preliminary finding. “It is important to bear in mind that compliance with federal and/or state environmental regulations, does not, by itself, ensure compliance with Title VI.”<sup>40</sup>

After the meeting with Administrator Jackson, EPA proceeded with finalizing the investigation, which continued to rely on the 1995-2001 data and continued to ignore the fumigants that the lead investigator had flagged as methyl bromide replacements. No documents disclosed directly explain EPA's narrow approach, even though several documents show EPA knew about, and was internally discussing, the fumigants that had replaced methyl bromide. Based on the totality of the circumstances, we conclude that EPA did not expand the investigation or mitigate pesticide exposures because doing so would have implicated the impropriety of the Office of Pesticide Programs fumigant re-registration decisions and inconsistency with the Civil Rights Act.

### Pounds of Fumigants Applied to Land Adjacent to Rio Mesa High School in 2011



**Fumigants Applied per PLS Section**

- < 2,260 lbs (0-50th percentile)
- 2,260 - 8,620 lbs (50-75th percentile)
- 8,260 - 22,807 lbs (75-90th percentile)
- > 22,807 lbs (> 90th percentile)



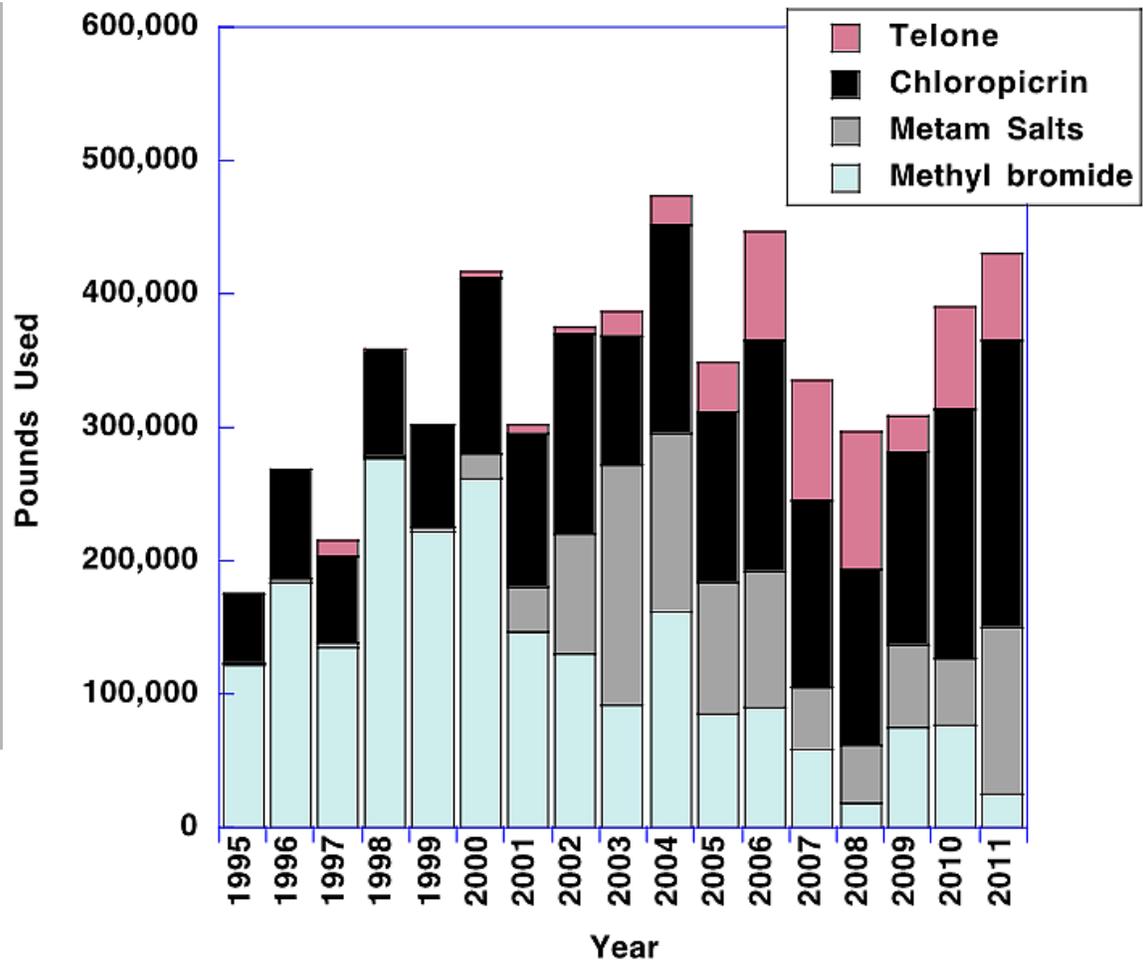
*Data Source:* California Department of Pesticide Regulation, Pesticide Use Reporting (PUR) data. Percentiles of pounds of pesticide per Public Land Survey (PLS) section are relative to all applications in California in 2011.

Prepared by Pesticide Research Institute, August 2013.

Use of soil fumigants in 2011 in the Public Land Survey (PLS) 1x1 mile sections near Rio Mesa High School. Prevailing winds are from the west during fumigation season (July–September), so additional upwind sections were included. Section shading is based on pounds of all fumigants used in the section, with percentiles based on statewide use of fumigants. Data Source: CDPR Pesticide Use Reporting data, <http://www.cdpr.ca.gov/docs/pur/purmain.htm>.

### Fumigant Use Near Rio Mesa High School

Use of all soil fumigants in the MTRS sections near Rio Mesa High School shown in Figure 2. Data Source: CDPR Pesticide Use Reporting



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## "TRAGIC."

On Tuesday, April 19, 2011, civil rights and environmental justice advocates, including one of Maria's attorneys, met with Chief of Staff Diane Thompson and other senior EPA staff to discuss EPA's back-log of Title VI complaints. During the meeting Thompson called the delay in resolving *Angelita C.* "tragic"<sup>41</sup> but did not otherwise discuss the investigation. Three days later on April 22, 2011, EPA secretly finalized its preliminary finding of a Title VI violation in *Angelita C.*<sup>42</sup>

Back-room negotiations followed with the California Department of Pesticide Regulation. EPA requested that the negotiations occur in secret. "[The Office of Civil Rights] would like to conduct these discussions confidentially and hopes that [California Department of Pesticide Regulation] will also view them in the same way."<sup>43</sup> During these negotiations, EPA considered withdrawing the preliminary finding<sup>44</sup> and prepared a communications strategy and plan for when it would release the preliminary finding and settlement to the public.<sup>45</sup>

In July 2011, EPA decided to eliminate its deadlines to act on complaints like *Angelita C.* rather than systemic reform so that EPA could move quickly to prevent discrimination. Other complainants living

in California's San Joaquin Valley facing discrimination from toxic waste dumps filed a lawsuit to compel EPA to act on a California administrative complaint filed in 1994.<sup>46</sup> Within days after the lawsuit was filed to enforce the 180-day deadline to issue preliminary findings for that complaint, Office of Civil Rights Director Rafael Deleon sought and received approval to amend EPA's regulations to eliminate the deadline.<sup>47</sup>

Shortly before EPA and the California Department of Pesticide Regulation signed the settlement agreement in August 2011, the lead investigator sent the Assistant Director of the Office of Civil Rights an email explaining the decline in methyl bromide usage through 2009.<sup>48</sup> The Assistant Director responded, questioned his motive, and told him to work on EPA's communications strategy instead.

*Thank you for your email. Is this document regarding the conversation we had with Patrick [Chang] today? If so, is the purpose to create a record? As you know we are close to the finish line. So I need your attention on the Q/A's and would appreciate if you could have a version ready for Rafael, Patrick, Katherin, and I tomorrow morning.*<sup>49</sup>

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**EPA deliberately excluded Maria and the other parents from both the investigation and the resolution of their complaint, which provided no relief for Latino children from pesticide exposure while at school.**

EPA's flawed investigation and settlement compounded the harm from the decade-long investigation. EPA deliberately excluded Maria and the other parents from both the investigation and the resolution of their complaint, which provided no relief for Latino children from pesticide exposure while at school. The agency never expanded the 1995-2001 data set even though it knew the situation on the ground had changed during the ten-year investigation. The agency also knew that other fumigants had replaced methyl bromide and that EPA had approved methyl iodide, yet EPA kept the investigation focused on a fumigant it knew had been almost completely phased out of use.

One post-settlement email from Patrick Chang to the Director of the Office of Pesticide Programs further punctuated the methyl iodide exclusion.

*Just a heads up that the EJ community started linking the Angelita C settlement to Mel almost immediately. As you know, however, OCR's Angelita C decision and the settlement do not address Mel at all. This is just an FYI.<sup>50</sup>*

Even though EPA redacted and withheld thousands of documents, what information EPA did make available show that the Office of Pesticide Programs did not want EPA's Civil Rights Act enforcement to go beyond the environmental laws that govern pesticide use. The manner in which EPA resolved Angelita C. denied Maria and the other parents the protections Congress wanted for racial discrimination. The conflict between the Office of Civil Rights and the Office of Pesticide Programs resulted in an elimination of civil rights protections because the agency dared not confront its internal inconsistencies. EPA missed its opportunity to implement a model civil rights program that acknowledged and remedied environmental injustice, and instead perpetuated and condoned such injustice.

## THE POST-SETTLEMENT EFFORT FOR JUSTICE

Hispanics were the only racial/ethnic group whose representation increased as pesticide use increased.

Even though David had already graduated from Rio Mesa High School by 2011, Maria did not want to give up after the settlement. Her grandchildren would soon attend the same schools David did, and other students would be at risk as well. Maria's attorneys asked for EPA to reopen the settlement agreement and include Maria and the other parents. EPA refused.

EPA received calls for reform from many in the environmental justice movement immediately after publicly releasing the *Angelita C.* settlement, demanding that EPA give complainants a seat at the table when EPA negotiates a settlement. In response, EPA issued a White Paper in early 2013 where EPA proposed it would use its discretion to decide whether, if at all, to include complainants in the investigation or settlement of a complaint.<sup>51</sup> Tellingly, the draft White Paper showed that EPA did not recognize Maria or others who file

complaints as persons suffering racial discrimination.

*A Title VI complainant is not like a plaintiff in court. Rather, a complainant's role is more like that of a tipster, who reports what he or she believes is an act violating Title VI by an entity receiving federal financial assistance (the recipient) to the associated agency providing such assistance, in this case EPA.*<sup>52</sup>

Maria was certainly no "tipster", but rather the mother of a child attending the school with the worst methyl bromide exposure scenario in EPA's investigation. EPA's final White Paper removed the "tipster" reference but declined to ensure complainants would have a seat at the table.<sup>53</sup>

With no remedy from EPA, Maria, David, and Angelica Guzman (Maria's daughter and mother of children in Oxnard schools) filed a lawsuit in federal court in 2013, asking the judge to review EPA's conduct for compliance with the Civil Rights Act. Maria's case is now before the U.S. Court of Appeals for the Ninth Circuit, which heard oral argument on April 15, 2016.<sup>54</sup>

While the lawsuit progressed, the California Department of Public Health released a report in 2014 that found pesticide use near Latino schools in California was disproportionately high compared to white schools. The Schools Report assessed 2,511 public schools, attended by over 1.4 million students, in the 15 counties with the highest total reported agricultural pesticide use in 2010.<sup>55</sup> The Schools Report found that “Hispanics were the only racial/ethnic group whose representation increased as pesticide use increased.”<sup>56</sup>

While Hispanic children made up 54.1 percent of the population in the public schools in the 15 counties, they comprised 50.3 percent of the population in schools with no pesticide use within ¼ mile, 61.3 percent of the population in schools with any pesticide use within ¼ mile, and 67.7 percent of the population in schools in the highest quartile of pesticide use.<sup>57</sup> In the 15 counties, Hispanic children were 46 percent more likely than White children to attend schools with any pesticides of concern applied nearby and 91 percent more likely than White children to attend schools in the highest quartile of pesticide use.<sup>58</sup> Finally, the Schools Report ranked the fumigants chloropicrin, Telone, methyl bromide, and metam-sodium as the most applied pesticides within a ¼ mile of a public school in California.<sup>59</sup>

A recent UCLA study released in 2016 investigated the combined use of these same fumigants. Researchers documented significant public health concerns about the combined, synergistic impact of chloropicrin, Telone and metam sodium.<sup>60</sup>



The Garcia legal team after oral argument on April 15, 2016. From left to right: Michael Meuter (California Rural Legal Assistance, Inc.), Madeline Stano (CRPE), and Brent Newell (CRPE). Credit: Madeline Stano/CRPE.

## EPA LOOKS FOR COMPLETE DISCRETION TO IGNORE TITLE VI COMPLAINTS

After EPA denied Maria and the other parents a meaningful remedy for pesticide discrimination in California schools, it then sought to amend its regulations in a manner that would deny complainants the benefit of provisions obligating EPA to act. These proposed changes include elimination of EPA's obligation to investigate all complaints. For those administrative complaints that EPA decides to investigate, EPA proposed to eliminate the 180-day deadline for EPA to issue the preliminary findings.

EPA has rationalized its proposal as giving EPA the flexibility to allocate its limited resources to their best use and to reach informal resolutions of complaints without having to perform an investigation.<sup>62</sup> But these reasons do not square with EPA's history of neglect and the plain command by Congress to ensure that no person shall suffer racial discrimination by a recipient of EPA funding. If EPA finalizes the regulation, then a person seeking help to remedy discrimination would find an EPA that may choose to ignore her plight.

” The Angelita C. story  
reveals an internal EPA  
culture that allows  
environmental programs to  
trump civil rights  
enforcement.

## CONCLUSIONS AND RECOMMENDATIONS

One EPA attorney in San Francisco eloquently articulated EPA's internal dysfunction three weeks before EPA and the Department of Pesticide Regulation signed the settlement. Joann Asami and a colleague exchanged emails during a media strategy discussion with the subject line "How has the state changed its registration process so this isn't repeated?" The entire email is redacted except a haiku which she shared with that colleague.

*adverse disparate  
despised but not understood  
until then failure*<sup>63</sup>

The first line identifies the discriminatory effect legal standard. The second line refers to the Office of Pesticide Programs. The final line of Asami's haiku describes the state of EPA's civil rights enforcement record: "Failure."

The *Angelita C.* story reveals an internal EPA culture that allows environmental programs to trump civil rights enforcement. The attorneys working on the *Angelita C.* investigation and EPA civil rights staff demonstrated a commitment to environmental justice and genuinely wanted to investigate and resolve complaints. But EPA senior staff and leadership do not understand the need to prioritize civil rights norms or

provide the political support to allow civil rights staff to succeed when in conflict with EPA program staff.

Furthermore, EPA leadership demonstrated motivation not aligned with Congress's paramount objective in preventing racial discrimination, and have rather sought to avoid transparency and accountability.

Based on our review of the *Angelita C.* documents and experience with Title VI complaints generally, Maria Garcia and the Center on Race, Poverty & the Environment recommend that EPA should disclose all of the *Angelita C.* documents without redactions, rescind its proposed amendments to its Title VI regulations, dedicate more resources for civil rights enforcement, and should eliminate its internal institutional barriers blocking civil rights enforcement. Finally, EPA should use its authority under the Civil Rights Act to remedy the discriminatory effects of fumigant usage in California, including requiring the Department of Pesticide Regulation to use buffer zones and less toxic alternatives. Latino children deserve healthy and safe schools. Congress required no less.

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\*To access digital copies of the supplemental materials noted in the "References" please visit:  
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## TABLE OF KEY EPA AND DEPARTMENT OF PESTICIDE REGULATION PERSONNEL

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**Gina McCarthy**, Assistant Administrator for EPA's Office of Air and Radiation 2009-2013, EPA Administrator 2013-current.

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