

AGREEMENT
between the
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

PURPOSE AND JURISDICTION

1. This Agreement is entered into by the Illinois Environmental Protection Agency and the United States Environmental Protection Agency Office of Civil Rights. This Agreement resolves certain issues raised in a complaint investigation and compliance review conducted by U.S. EPA under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. EPA's implementing regulations at 40 C.F.R. Part 7.
2. Title VI of the Civil Rights Act of 1964 and U.S. EPA's Title VI regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Illinois EPA is a recipient of federal financial assistance from the U.S. EPA and is subject to the provisions of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7.
3. The Illinois EPA is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and U.S. EPA regulations at 40 C.F.R. Part 7. The activities detailed in Paragraphs 11 and 12 of this Agreement, which Illinois EPA has voluntarily agreed to undertake and implement, are in furtherance of this commitment. The Director, in her capacity as an official of Illinois EPA, has the authority to enter into this Agreement for purposes of carrying out the activities listed in the following paragraphs.
4. This Agreement is entered into pursuant to the authority granted the U.S. EPA, under Title VI and U.S. EPA regulations at 40 C.F.R. Part 7.
5. It is understood that this Agreement does not constitute an admission by Illinois EPA or a finding by the U.S. Environmental Protection Agency of violations of 40 C.F.R. Part 7 regarding the compliance review described in Paragraph 8.

BACKGROUND

6. On September 30, 1998, U.S. EPA accepted a complaint, File No. 14R-97-R5, that alleged discriminatory effects in violation of Title VI of the Civil Rights Act of 1964 and U.S. EPA's implementing regulations at 40 C.F.R. Part 7 as a result of Illinois EPA's permitting of the Robbins Resource Recovery Facility (RRRF). The complaint further alleged discriminatory effects resulting from a general failure to consider Title VI in Illinois EPA's air and solid waste programs.
7. In response to the Title VI complaint described in Paragraph 6, the U.S. EPA has investigated the Illinois EPA's compliance with Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and U.S. EPA's implementing regulations at 40 C.F.R. Part 7. Among other things, this investigation addressed allegations of discrimination resulting from the failure to consider the potential for disparate or disproportionate impacts, including cumulative impacts, in the course of Illinois EPA's permitting and enforcement decisions for RRRF.
8. In the course of investigating and resolving the complaint, U.S. EPA also initiated a compliance review with regard to certain requirements of 40 C.F.R. Part 7, Subpart D that are important elements of a recipient's Title VI program. In particular, the following procedural program elements were identified as being necessary parts of a recipient's Title VI program, and these elements were the subject of U.S. EPA's review: a compliance officer under 40 C.F.R. § 7.85(g); a grievance procedure under 40 C.F.R. § 7.90; and a statement of nondiscrimination under 40 C.F.R. § 7.95.
9. In January 2003, after the complaint in this matter was filed, Illinois EPA issued an "Interim Environmental Justice Policy." Illinois EPA has begun actions under this policy that will have the purpose or effect of enhancing Illinois EPA's capacity to implement Title VI and 40 C.F.R. Part 7 requirements in the course of operating its environmental programs. These program changes are currently being implemented, or will be implemented in the future. These changes will address the issues identified in Paragraph 8, as described below in Paragraph 11.
10. This Agreement between U.S. EPA and Illinois EPA has been entered into without any finding of violation based upon the compliance review described in Paragraph 7. This Agreement addresses requirements for compliance with procedural elements of 40 C.F.R. Part 7, Subpart D; and sets out joint actions of Illinois EPA and U.S. EPA with regard to the ongoing development of Illinois EPA's Title VI program.

SPECIFIC COMMITMENTS

11. The Illinois EPA agrees to undertake the following specific commitments for compliance with Title VI and 40 C.F.R. Part 7:
 - a. In order to ensure that the requirements under 40 C.F.R. § 7.85(g) are being met, the Illinois EPA has designated its “Environmental Justice Officer” as the “compliance officer” for purposes of coordinating Illinois EPA’s Title VI compliance efforts under 40 C.F.R. Part 7. However, internal employment related issues are not the responsibility of the Environmental Justice Officer as the Illinois EPA has designated a separate compliance officer to handle such matters. This identification will be made in all materials published by Illinois EPA that describe the functions of its Environmental Justice Officer, or that identify the Environmental Justice Officer as Illinois EPA’s point of contact for concerns related to discrimination in environmental programs administered by Illinois EPA, as well as in the notice of nondiscrimination described in Paragraph 11.c.
 - b. Within 180 days of the effective date of this Agreement, Illinois EPA will complete its ongoing development of a comprehensive system to investigate environmental justice complaints, as provided under its Interim EJ Policy, to include Title VI complaints. In order to ensure that requirements under 40 C.F.R. § 7.90 are being met, in addition to any other program elements that Illinois EPA wishes to include as part of its environmental justice policy, Illinois EPA will develop and apply this system to serve as a grievance procedure that assures the prompt and fair resolution of complaints that allege violations of 40 C.F.R. Part 7. As part of its environmental justice complaint handling system, Illinois EPA will include a process for notifying the permit applicant or permittee of the pending complaint, and asking the applicant or permittee to provide information necessary for Illinois EPA to investigate the complaint. Illinois EPA will use the information provided by the permit applicant to make a determination on the merit of the environmental justice complaint.
 - c. In order to ensure that the requirements under 40 C.F.R. § 7.95 are being met, within 30 days of the effective date of this Agreement, Illinois EPA will post the following notice of nondiscrimination on the Illinois EPA website and on general publications that are distributed to the public. Where appropriate, the notice will be bi- or multi-lingual.

The Illinois Environmental Protection Agency does not discriminate on the basis of race, color, national origin, or income in the administration of its programs or activities, as required by applicable laws and regulations.

Responsibility for coordination of compliance efforts and receipt of inquiries concerning nondiscrimination requirements implemented by 40 C.F.R. Part 7 (Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, has been delegated to:

Ken Page
Environmental Justice Officer
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
888-372-1996

- d. Illinois EPA agrees to report the completion of each commitment described in Paragraphs 11.b and 11.c by certified mail to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by Illinois EPA of each commitment.
12. U.S. EPA Region 5 and Illinois EPA agree to undertake the following joint actions. The objective of these actions is to promote the ongoing development of capacity to consider and address issues related to aggregate and cumulative risk assessment, including evaluations of the potential for disproportionality or disparity in the distribution of such risks.
 - a. Illinois EPA will collaborate with U.S. EPA Region 5 regarding the development and execution of aggregate and cumulative risk assessments. This collaboration will take the Framework for Cumulative Risk Assessment (U.S. EPA Risk Assessment Forum, May 2003) as its starting point for the definition of terms, and for approaches to planning and scoping of cumulative risk assessments.
 - b. Illinois EPA will designate an appropriate official as the principal point of contact for such activities, and with whom U.S. EPA Region 5 will share other developments in guidance on cumulative risk assessment as these become available. U.S. EPA will also share information on methods that it has identified as useful for conducting aggregate and cumulative risk assessments, taking into account the need for systematic and resource-sensitive approaches regarding the consideration of cumulative risks. In addition, Illinois EPA and U.S. EPA Region 5 will, to the extent permitted by available resources, collaborate on such other activities and efforts as may be agreed to.

- c. Illinois EPA will consult with U.S. EPA Region 5 on particular aggregate and cumulative risk concerns identified in the State of Illinois, including concerns identified through citizen complaints, in order to assist in developing appropriate and effective responses to those concerns. The mutual roles of the Agencies in responding to concerns will be determined in the context of particular situations. As particular responses are carried out, the Agencies will periodically review these completed responses in order to identify best practices and contribute to the ongoing development of capacity to address aggregate and cumulative risk issues.

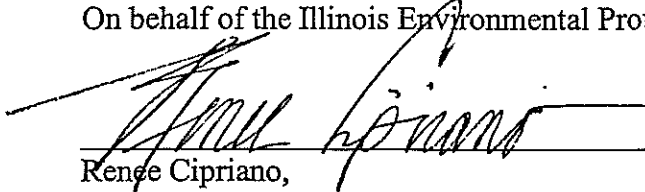
EFFECT OF AGREEMENT

13. Based on its investigation, as described in an Investigative Report, U.S. EPA is dismissing the complaint described in Paragraphs 6 and 7 and accepted for investigation as File No. 14R-97-R5. However, U.S. EPA retains its right to accept and investigate any future Title VI complaint alleging discriminatory acts generally, or specifically with respect to new or resumed operations at any facility located on the site of RRRF.
14. In consideration of Illinois EPA's implementation of, and adherence to, the provisions of this Agreement described in Paragraph 11, the U.S. EPA Office of Civil Rights will not continue any further proceedings with respect to the compliance review initiated in the course of investigating complaint File No. 14R-97-R5 and described in Paragraph 8.
 - a. If the Office of Civil Rights determines that Illinois EPA has not satisfied a term or condition of this Agreement, or that a material change to Illinois EPA's programs or authorities affects Illinois EPA's compliance with Title VI and 40 C.F.R. Part 7, the Office of Civil Rights shall promptly notify Illinois EPA of that determination in writing. The Office of Civil Rights may make this determination in the course of any future review to determine Illinois EPA's compliance with Title VI and 40 C.F.R. Part 7, which may include compliance with matters addressed in Paragraph 11.
 - b. The notification under Paragraph 14.a shall include a statement of the facts and circumstances upon which the Office of Civil Rights has relied in making its determination, and the Office of Civil Rights shall provide an opportunity to resolve any disputed issue(s) by informal means.
 - c. With respect to any report described in Paragraphs 11.b and 11.c that has been submitted by Illinois EPA pursuant to Paragraph 11.d, if the Office of Civil Rights determines that the submission does not satisfy the requirements of Paragraph 11.b or 11.c (as applicable), U.S. EPA shall provide the written notification

required by Paragraphs 14.a and 14.b within 90 days of U.S. EPA's receipt of the submission.

- d. If compliance cannot be assured by informal means, U.S. EPA may use any other means authorized by law, including termination of this Agreement. Except as expressly provided in this Agreement, U.S. EPA retains all rights and authorities to ensure compliance with Title VI of the Civil Rights Act and 40 C.F.R. Part 7, nor is there any waiver, express or implied, of U.S. EPA's right to enforce any provision of this Agreement.
15. If either party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to Illinois EPA's program or authorities, or due to satisfaction or performance of obligations required by this Agreement, or for other good cause, the party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification, and the substance of the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by Illinois EPA and the Office of Civil Rights.
16. This Agreement constitutes the entire Agreement between Illinois EPA and the Office of Civil Rights regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by Illinois EPA and the U.S. EPA Office of Civil Rights in accordance with the provisions of Paragraph 15. This Agreement shall remain in effect until each of the commitments in Paragraphs 11 and 12 are completed, except as otherwise provided in Paragraphs 12, 14 and 15.
17. This Agreement does not affect Illinois EPA's continuing responsibility to comply with Title VI of the Civil Rights Act of 1964 and U.S. EPA's implementing regulations, nor does it affect U.S. EPA's investigation of any allegations in Title VI complaints other than that identified in Paragraph 6, or address any matter not specifically covered by the terms of this Agreement.
18. This Agreement is a public document. A copy of this Agreement and any information contained in it may be made available to any person by Illinois EPA or the Office of Civil Rights on request under the Freedom of Information Act or otherwise.
19. The effective date of this Agreement is the date on which U.S. EPA's Investigation Report and Decision dismissing the complaint identified in Paragraphs 6 and 7 is issued; provided that the Investigation Report and Decision is issued within 60 days of the date of the last signature below. If the Investigation Report and Decision is not issued within the prescribed time period, this Agreement is null and void.

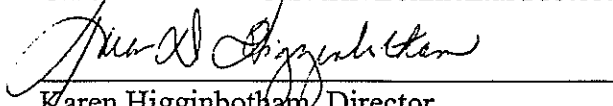
On behalf of the Illinois Environmental Protection Agency,



Renee Cipriano, Director

Date

On behalf of the U.S. Environmental Protection Agency,



Karen Higginbotham, Director
Office of Civil Rights

1-13-05

Date