

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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| IN THE MATTER OF |) | |
| G-P GYPSUM CORPORATION |) | ORDER RESPONDING TO |
| ASSOCIATES FACILITY |) | PETITIONER'S REQUEST THAT |
| |) | THE ADMINISTRATOR OBJECT |
| Permit Activity No.: BOP990001 |) | TO ISSUANCE OF A STATE |
| Program Interest No.: 51611 |) | OPERATING PERMIT |
| |) | |
| Issued by the New Jersey |) | Petition No.: H-2005-05 |
| Department of Environmental Protection |) | |
| _____ |) | |

ORDER GRANTING IN PART AND DENYING IN PART
PETITION FOR OBJECTION TO PERMIT

On September 15, 2005, the Environmental Protection Agency ("EPA") received a petition from the South Jersey Environmental Justice Alliance ("SJEJA"), dated September 14, 2005, requesting that EPA object to the issuance of a state operating permit, pursuant to title V of the Clean Air Act ("CAA" or "the Act"), CAA §§ 501-507, 42 U.S.C. §§ 7661-7661f, to the G-P Gypsum Corporation, located in Camden, New Jersey.¹

The G-P Gypsum permit was issued by the New Jersey Department of Environmental Protection ("NJDEP") on July 28, 2005, pursuant to title V of the Act, the federal implementing regulations, 40 C.F.R. part 70, and the New Jersey State implementing regulations at N.J.A.C. 7:27-22.

G-P Gypsum is a gypsum wallboard manufacturing facility. It also manufactures screened gypsum rock, ground gypsum and calcined gypsum. The emission units that emit air contaminants include process dryers, kettles, mills, bins, silos, and material-handling equipment. There are also two distillate oil storage tanks, a process storage vessel, a process water heater, a board dryer, a boiler, and printing equipment. The facility is a major source of several air pollutants, including nitrogen oxides (NO_x), volatile organic compounds (VOC), and sulfur dioxide (SO₂).

¹ The deadline for filing a petition with EPA to object to the G-P Gypsum permit was September 20, 2005. Therefore, EPA considers this petition to be timely.

Petitioner requests that EPA object to the G-P Gypsum permit on the following grounds: 1) the draft permit was not accompanied by a statement of basis that provides a rationale for certain permit conditions in general and monitoring provisions in particular; 2) the facility failed to file a compliance plan with its application and NJDEP failed to include a compliance schedule in the permit; 3) the NJDEP failed to address past violations of G-P Gypsum in the title V permit; 4) its lacks an explanation for eight newly added monitoring and reporting provisions and the monitoring provisions in general need to be strengthened; 5) NJDEP failed to reduce facility emissions to ensure a safe ambient level of PM 2.5 and air toxins in the Camden area; and 6) the NJDEP did not adequately address the environmental justice issue raised by petitioner as is required by state and federal environmental justice executive orders and title VI of the Civil Rights Act. The Petitioner has requested that EPA object to the issuance of the G-P Gypsum permit, pursuant to CAA § 505(b)(2) and 40 C.F.R. § 70.8(d) for any or all of these reasons.

EPA reviewed these allegations pursuant to the standard set forth in section 505(b)(2) of the Act, which places the burden on the Petitioner to “demonstrate to the Administrator that the permit is not in compliance” with the applicable requirements of the Act or the requirements of part 70. *See also*, 40 C.F.R. § 70.8(c)(1); *New York Public Interest Research Group v. Whitman*, 321 F.3d 316, 333 n.11 (2^d Cir. 2002).

Based on a review of all the information before me, I deny the petitioner’s request in part and grant in part for the reasons set forth in this Order.

STATUTORY AND REGULATORY FRAMEWORK

Section 502(d)(1), 42 U.S.C. § 7661d(d)(1), of the Act calls upon each state to develop and submit to EPA an operating permit program to meet the requirements of title V of the CAA. EPA granted interim approval to the title V operating permit program submitted by the State of New Jersey effective June 17, 1996. 61 *Fed. Reg.* 24715 (May 16, 1996); 40 C.F.R. part 70, Appendix A. On November 30, 2001, EPA granted full approval to New Jersey’s title V operating permit program. 66 *Fed. Reg.* 63168 (Dec. 5, 2001). Major stationary sources of air pollution and other sources covered by title V are required to apply for an operating permit that includes emission limitations and such other conditions as are necessary to assure compliance with applicable requirements of the Act. *See*, CAA §§ 502(a) and 504(a), 42 U.S.C. §§ 7661a(a) and 7661c(a).

The title V operating permit program does not generally impose new substantive air quality control requirements (which are referred to as “applicable requirements”), but does require permits to contain monitoring, recordkeeping, reporting, and other conditions to assure compliance by sources with existing applicable requirements. *See* 57 *Fed. Reg.* 32250, 32251 (July 21, 1992). One purpose of the title V program is to enable the source, EPA, states, and the public to better understand the applicable requirements to which the source is subject and whether the source is meeting those requirements. Thus, the title V operating permit program is a vehicle for ensuring that existing air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.

Under CAA §§ 505(a), 42 U.S.C. §§ 7661d(a), and 40 C.F.R. §§ 70.8(a), states are required to submit all proposed title V operating permits to EPA for review. Section 505(b)(1) of the Act, 42 U.S.C. § 7661d(b)(1), authorizes EPA to object if a title V permit does not contain provisions that assure compliance with all applicable requirements, including the requirements of the applicable State Implementation Plan (SIP). *See also* 40 C.F.R. § 70.8(c)(1).

Section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), states that if the EPA does not object to a permit, any member of the public may petition the EPA to take such action, and the petition shall be based on objections that were raised during the public comment period unless it was impracticable to do so. *See also* § 70.8(d). If EPA objects to a permit in response to a petition and the permit has been issued, EPA or the permitting authority will modify, terminate, or revoke and reissue such a permit consistent with the procedures in 40 C.F.R. §§ 70.7(g)(4) or (5)(i) and (ii) for reopening a permit for cause.

ISSUES RAISED BY THE PETITIONER

I. Statement of Basis

Petitioner alleges that the G-P Gypsum draft permit was not accompanied by a statement of basis. Petitioner asserts that the failure to issue a statement of basis is a violation of the title V regulations and unnecessarily prohibits the public from adequately participating in the public review and comment period for the draft permit. Petitioner also stated that the statement of basis must include the following: (1) a description of the facility including information on emission units, pollutants emitted, and pollution control equipment; (2) an explanation of NJDEP's periodic monitoring decisions (especially when the monitoring required deviates from the norm); (3) a discussion on past violations including a discussion on the fines paid/corrective actions taken to resolve the violations; and (4) a discussion on how the compliance schedule will bring the facility into compliance. Petition at page 3. Petitioner also notes on page 5 of the petition that "there is no indication that eight new monitoring provisions are in response to G-P Gypsum's violations or how they will prevent violations in the future. The eight new provisions that Petitioner refers to were added to the permit after the close of the comment period and are set out on page 14 of NJDEP's Hearing Report. *See* "Responses to Public Comments on Draft Air Permit for the G-P Gypsum Corporation Facility in Camden, New Jersey" at page 14. Except for Petitioner's claim with respect to the eight new monitoring requirements, the basis for which arose after the comment period, Petitioner failed to raise these issues concerning statement of basis in comments, and thus did not satisfy the procedural requirements of § 505 (b)(2) and 40 C.F.R. § 70.8(d).

EPA's title V regulations state that "the permitting authority shall provide a statement that sets forth the legal and factual basis for the draft permit conditions (including references to the applicable statutory or regulatory provisions). The permitting authority shall send this statement to EPA and to any other person who requests it, 40 C.F.R. § 70.7(a)(5). Commonly referred to as

a “statement of basis” this provision is not part of the permit itself, but rather a separate document which is to be sent to EPA and to interested parties upon request.

A statement of basis establishes the legal and factual basis for the draft permit condition or exemption. It is not a short form of the permit; it should highlight elements that EPA and the public would find important to review. Rather than restating the permit, it should list anything that deviates from simply a straight recitation of the applicable requirements. The statement of basis should highlight items such as the permit shield, streamlined conditions, any monitoring that is required under 40 C.F.R. § 70.6(a)(3)(i)(B), etc. Thus, its primary purpose is to not merely reiterate the rule citation for each permit condition but include a discussion of the decision-making that went into the development of the title V permit. It ought to provide the permitting authority, the public, and EPA a record of the applicability and technical issues surrounding the issuance of the permit. *See, e.g., In Re Port Hudson Operations, Georgia Pacific*, Petition No. 6-03-01, at pages 37-40 (May 9, 2003) (“*Georgia Pacific*”); *In Re Fort James Camas Mill*, Petition No. X-1999-1, at page 8 (December 22, 2000) (“*Ft. James*”).

In determining whether the Petitioner has properly raised an issue in a petition under CAA § 505(b)(2) and 40 C.F.R. § 70.8(d), EPA first evaluates whether the petition was based on objections/comments that were raised with reasonable specificity by any parties during the public comment period. The statement of basis issues were not raised with reasonable specificity during the public comment period. The only reference to enforcement history and monitoring, reporting and recordkeeping is Petitioner’s December 19, 2003, comment letter at page 3, which states “there is nothing in the permit application or notice to suggest that enforcement history was considered. NJDEP should take this poor record into consideration when establishing permit conditions with regard to monitoring, recordkeeping, reporting, and other enforcement measures.” Petitioner’s June 22, 2004 comment letter does not provide any further specificity. That letter states on page 2 “[t]here is no information in the draft permit or public notice as to whether this enforcement history was considered in drafting the permit. NJDEP should take this poor record into consideration when establishing permit conditions with regard to monitoring, recordkeeping, reporting and other enforcement measures.” and “SJEJA further questions whether NJDEP has identified causes for the violations and whether the permitting conditions protect against future occurrences.” The letter concludes by specifically requesting that “NJDEP investigate the causes for past violations and write in permit conditions that would prevent similar violations from occurring” and “strengthen the monitoring and reporting requirements, especially in light of exceedances of PM 10 emissions levels, so as to make sure that NJDEP can track whether such exceedance is likely to occur again” (June 22 letter at page 3). In responding to public comment, NJDEP agreed that monitoring, recordkeeping and reporting needed to be strengthened and set out eight new provisions that were added to the permit (Responses to Public Comments on Draft Air Permit for the G-P Gypsum Corporation Facility in Camden, New Jersey” at pages 13-14). NJDEP also noted that “[f]or all historic incidents of non-compliance, corrective action and applicable fines, commensurate with the level of violation, that were taken.”

The Petitioner’s argument concerning the statement of basis, as presented in the petition, is sufficiently different from the issues raised in the public comments such that the NJDEP could not

have reasonably anticipated, and could not have been expected to address it. Neither comment letter even refers to a statement of basis or specifies the type of information that must be included in the statement of basis. NJDEP responded to the general allegation that stronger monitoring should be required by adding new provisions and further explained how future violation would be identified and addressed using information contained in required reports. NJDEP also noted that past violations had been addressed. *Id.* NJDEP is not required to imply every possible basis for a commenter's allegation and then refute each one. *See Mossville Env'tl. Action Now v. Environmental Prot. Agency*, 370 F.3d 1232, 1238-40 (D.C. Cir. 2004) (requiring Agency to answer all possible implied arguments in challenges it receives does not meet the standard of "reasonable specificity"; "reasonable specificity requires something more than a 'general [challenge] to EPA's approach'"). (*See, e.g.* In the Matter of Colorado Interstate Gas Company - Latigo Station, Petition No. VIII-2005-01 at pages 4-5 (Feb. 17, 2006).

After evaluating whether an issue was raised with reasonable specificity during the comment period, EPA next evaluates whether the grounds for an objection arose after the close of the public comment period. In this case, the only statement of basis objection which arose after the close of the comment period is Petitioner's claim that there is no explanation for new monitoring provisions that were added to the permit after the close of the comment period. The provisions at issue are set out on page 14 of the Hearing Report. *See* "Response to Comments on Draft Air Permit for the G-P Gypsum Corporation Facility in Camden, New Jersey" at pages 13-14. Petitioner could not have raised this issue before the close of the comment period and thus the issue is properly raised in the petition. Thus, the petition is granted with respect to the claim that NJDEP failed to explain new monitoring provisions added to the permit after the close of the comment period. NJDEP failed to include a rationale for these provisions or explain how each new monitoring provision enhances the enforceability of emission limits stipulated in the permit consistent with 40 C.F.R. § 70.6(a)(3)(i)(B).

II. Compliance Plan and Schedule

The Petitioner claims the G-P Gypsum permit application failed to include a compliance plan and NJDEP failed to include a compliance schedule in the permit in accordance with 40 CFR 70.5(c)(8). The Petitioner specifically refers to a violation in 2002 when G-P Gypsum exceeded the particulate matter (PM) emission level as allowed in its preconstruction permit during a stack test. Petitioner also mentions that this facility has been cited for failure to comply with monitoring and reporting requirements. The Petitioner asserts the application should have provided a narrative description of how it will achieve compliance with those requirements for which it was in violation at the time of permit issuance. Correspondingly, petitioner argues that NJDEP should have included a compliance schedule in G-P Gypsum's permit to bring the facility into compliance. The Petitioner asks that the permit be modified to include a compliance schedule. Petition at page 4.

40 C.F.R. §§ 70.5(c)(8)(iii)(C) and 70.6(3) require that if a facility is in violation of an applicable requirement and it will not be in compliance at the time of permit issuance, its permit must include a schedule of compliance that meets certain criteria. Specifically, the permit must

include “a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance.” If the reported violation has been corrected prior to permit issuance, a schedule of compliance would not be necessary.

The G-P Gypsum title V application was submitted on May 14, 1996 and the final permit issued on July 28, 2005. On August 22 and 23, 2002, G-P Gypsum conducted stack testing as required by its preconstruction permit to demonstrate compliance with the permit’s allowable emission rates. G-P Gypsum did not meet the emission limit for PM. On November 18, 2002, it was cited for a violation of its preconstruction permit. This violation was settled by payment of fines and a modification of G-P Gypsum’s preconstruction permit. G-P Gypsum requested the permit modification to increase the allowable PM emission limit from 1.06 lbs/hr to 1.4 lbs/hr. This emission limit, which is below the SIP limit of 16.1 lbs/hr (*see* N.J.A.C. 7:27-6.2(a)), was approved on November 22, 2002. This violation was settled during a telephone conference between NJDEP and G-P Gypsum on December 19, 2002 when NJDEP determined the violation was corrected as a result of the modified preconstruction permit and reduced the penalty from \$2,000 to \$1,000. The July 28, 2005 Operating Permit issued to G-P Gypsum reflects the new emission limit for PM transferred from the modified preconstruction permit.

Petitioner’s claim that G-P Gypsum’s original application did not include a compliance plan has no merit because the violation at issue did not occur until more than four years after application submittal. Had the violation not been resolved at the time of permit issuance, G-P Gypsum’s application would have been required to be updated with a compliance plan. In this case, however, because the violation was resolved and the source was in compliance at the time of permit issuance, it was unnecessary to append a compliance plan to the application. The violation was resolved prior to operating permit issuance by the payment of fines and a preconstruction permit modification that imposes a PM emission limit attainable by the facility. Based on inquiries to NJDEP, the initial PM emission limit was an estimate based on calculations that was less accurate than stack testing. The revised limit which is still well below the SIP requirement was determined to be acceptable to NJDEP. The violation did not continue at the time of permit issuance.

Petitioner’s claim that G-P Gypsum was cited for failure to comply with monitoring and reporting requirements also has no merit. Based on inquiries made to the NJDEP, monitoring and reporting requirements at the G-P Gypsum facility were not the subject of the November 2002 violation. Based on the above discussion, EPA denies Petitioner’s request for an objection for the lack of a compliance schedule.

III. Past Violations

The Petitioner claims NJDEP must assess penalties against G-P Gypsum for violating its permit. Further, Petitioner asserts that if NJDEP has chosen to enter into an administrative consent order to address violations and exceedances, the statement of basis must provide an explanation as to how NJDEP determined that the violations have been addressed and the

measures taken to avoid further violations or to assure compliance on a continual basis. Petition at page 5.²

EPA disagrees that past violations of the facility's preconstruction permit referred to in the petition constitutes grounds for an objection. The criteria for objection are specified under 40 CFR 70.8(c)(1): "The Administrator will object to the issuance of any proposed permit determined by the Administrator not to be in compliance with applicable requirements or requirement under this part." Petitioner has not demonstrated that the permit is not in compliance with the requirements of the Act or that there was noncompliance by the source with any such requirements related to past violations. Therefore, EPA finds no grounds for an objection relative to this issue.

With regard to Petitioner's request that NJDEP assess penalties against G-P Gypsum to resolve its preconstruction permit violations or use other means, such as enter into administrative consent order, EPA finds such a request outside the scope of the title V permitting process. It should be noted that issues associated with what mechanism to use to resolve past violations are not appropriately addressed in the title V petition process. Such enforcement actions are taken pursuant to title I of the CAA. The remedy provided in title V of the CAA, as pointed out by the Petitioner, is submittal of a compliance plan by the applicant to address requirements for which it is not in compliance at the time of permit issuance. The State incorporates this plan into the permit with a compliance schedule in an effort to bring the source back into compliance. As explained above, such a schedule is not warranted in this case.

IV. Strengthen Monitoring and Reporting Requirements

The Petitioner questions the reasons for the insertion of eight new monitoring provisions from the draft permit. The Petitioner wants to know whether they were included in response to G-P Gypsum's violations or to prevent future violations. The Petitioner also claims that in order to prevent G-P Gypsum from violating its title V permit, the NJDEP must strengthen the monitoring and reporting requirements. Petition at page 6.

The information sought by the Petitioner regarding the eight new monitoring provisions, that is, whether they were included in response to the facility's violations, is addressed in Section I. As discussed in Section I above, EPA directs NJDEP to provide the rationale or an explanation of these new monitoring provisions in the statement of basis. Since the Petitioner's complaint regarding the monitoring provisions is already addressed in Section I of this Order and the petitioner has not demonstrated to the Administrator that the permit is otherwise not in compliance with the applicable requirements of the Act or the requirements of part 70, EPA denies the petition on this issue.

² Although as noted in Section I, Petitioner did not adequately raise the statement of basis issue in comments, when NJDEP re-issues the statement of basis as required in Section I above, an explanation of the resolution of past violations should be provided.

V. Reduce Facility Emissions

The Petitioner argues that NJDEP must reduce the facility's emissions to ensure that it does not cause unsafe ambient air levels for PM 2.5 and the air toxins as identified in the Air Toxics Study. Petitioner asserts that based on this study conducted by the NJDEP, the Waterfront South neighborhood is generally found to have a high concentration of PM 2.5. Petitioner argues that NJDEP should take action to address the impacts of PM 2.5 now and not wait until 2008. Petition at page 6.

EPA establishes national ambient air quality standard ("NAAQS") for certain pollutants, pursuant to section 109 of the CAA, 42 U.S.C. § 7409, and States are required to attain those standards. The SIP is the means by which States comply with CAA requirements to attain the NAAQS, pursuant to section 110(a) of the CAA, 42 U.S.C. § 7410(a). The national designations for the PM_{2.5} NAAQS were published in the Federal Register on January 5, 2005. *See*, Fed. Reg. 943-1019. Under the Clean Air Act, New Jersey is required to submit its SIP for any area designated by EPA as non-attainment showing how it will attain the new PM 2.5 standard no later than 3 years from the effective date of the non-attainment designation (i.e. by April 5, 2008).

The new PM 2.5 standard does not by itself impose any obligation on sources. A source is not obligated to reduce emissions as a result of the standard until the State identifies a specific emission reduction measure needed for attainment (and applicable to the source), and that measure is incorporated into a SIP approved by EPA. Accordingly, since Petitioner has not identified a current requirement of the Clean Air Act (including a current SIP requirement) that is applicable to this source (and not included in the permit), the petition is denied on this issue.

VI. Environmental Justice - Executive Order 12898

The Petitioner raised the issue of violation of the Executive Orders³ of former New Jersey Governor McGreevy and former President Clinton that protect certain areas from further environmental degradation. Petitioner asserts that the area in which G-P Gypsum is located is one such area, a low income minority community that has a disproportionately high percentage of asthma and other lung related diseases. Petitioner further claims that based on an Air Toxics Study conducted by the NJDEP, the Waterfront South neighborhood is generally found to have a high concentration of PM 2.5. As such, the Petitioner asks EPA to object to the G-P Gypsum permit to curb further air quality degradation in the area. Petition at pages 6-8.

³ The following discussion focuses on the federal Executive Order, though the analysis also applies to the state order.. *See* CAA § 504(c) (permits must assure compliance with applicable requirements of the Clean Air Act); CAA 505(b)(2) (objection required where petitioner demonstrates the permit is not in compliance with the requirements of the Clean Air Act); 40 C.F.R. § 70.2 (defining "applicable requirement" to include specified standards or requirements promulgated pursuant to the Clean Air Act).

Executive Order 12898, signed by President Clinton on February 11, 1994, focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. The Executive Order is also intended to promote non-discrimination in federal programs substantially affecting human health and the environment, and to provide minority and low-income communities' access to public information on, and an opportunity for public participation in, matters relating to human health or the environment. It generally directs federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations.

Environmental justice issues can be raised and considered in a variety of actions carried out under the CAA, as for example when EPA or a delegated state issues a NSR permit.⁴ Unlike NSR permits, however, title V generally does not impose new, substantive emission control requirements, but rather requires that all underlying applicable requirements be included in the operating permit. Title V also includes important public participation provisions as well as monitoring, compliance certification and reporting obligations intended to assure compliance with the applicable requirements.

In this particular case, the Petitioner's environmental justice concerns do not demonstrate that the G-P Gypsum title V permit fails to properly identify and comply with the applicable requirements of the CAA. Thus, the petition to object to the permit on this particular issue must be denied.

However, as a recipient of EPA financial assistance, the programs and activities of NJDEP, including its issuance of the G-P Gypsum permit, are subject to the requirements of title VI of the Civil Rights Act of 1964, as amended, and EPA's implementing regulations, which prohibit discrimination by recipients of EPA assistance on the basis of race, color, or national origin. 42 U.S.C. 2000d et seq.; 40 C.F.R. part 7. The Petitioner may file a complaint under title VI and EPA's title VI regulations if she believes that the state discriminated against her in violation of those laws by issuing the permit to G-P Gypsum. The complaint, however, must meet the jurisdictional criteria that are described in EPA's title VI regulations in order for EPA to accept it for investigation.⁵ See *In the matter of Camden County Energy Recovery Associates Facility*, Petition Number: II-2005-01 date January 20, 2006.

⁴ Indeed, as indicated in the response to another title V permit petition, section 173(a)(5) of the Act, 42 U.S.C. § 7503(a)(5) requires that a permit for a "major source" subject to the NSR program may be issued only if an analysis of alternative sites concludes that "the benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction or modification." See *Borden Chemical, Inc.*, title V petition No. 6-01-01 (Dec. 22, 2000), pp. 34-44, available at http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/borden_response1999.pdf.

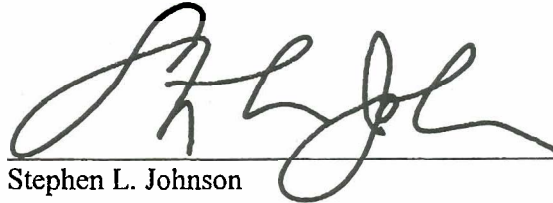
⁵ Under title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's title VI administrative regulations, EPA's Office of Civil Rights conducts a preliminary review of title VI complaints for acceptance, rejection or referral. 40 C.F.R. § 7.120(d)(1). A complaint should meet jurisdictional requirements as described in EPA's title VI regulations. First, it must be in writing.

CONCLUSION

For the reasons set forth above and pursuant to section 505(b)(2) of the Act, 42 U.S.C. § 7661d(b)(2), I deny in part and grant in part the petition requesting an objection to the issuance of the G-P Gypsum title V permit.

APR 4 2006

Date



Stephen L. Johnson
Administrator

bcc: Steven Riva, DEPP-AP
Argie Cirillo, ORC-AB
Suilin Chan, DEPP-AP

Second, it must describe alleged discriminatory acts that may violate EPA's title VI regulations. Title VI does not cover discrimination on the grounds of income or economic status. Third, it must be timely filed. Under EPA's title VI regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Fourth, because EPA's title VI regulations only apply to recipients of EPA financial assistance, it must identify an EPA recipient that allegedly committed a discriminatory act. 40 C.F.R. § 7.15.