



For Immediate Release

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WLF OPPOSES EPA'S ENVIRONMENTAL JUSTICE PROPOSAL

The Washington Legal Foundation (WLF) filed formal objections this week with the Environmental Protection Agency (EPA), opposing EPA's Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits. WLF argued that the draft guidance for processing environmental justice complaints was legally flawed, procedurally improper, unworkable as a matter of policy, and that the guidance should be withdrawn. At a minimum, WLF requested that the agency hold additional public hearings on the draft guidance, because the hearings held earlier this summer shortly after the draft was published did not give the public sufficient time to analyze the guidance and provide meaningful comments.

The draft guidance proposes a framework for processing Title VI environmental justice complaints and modifies EPA's Interim Guidance on the same subject issued in 1998. While the draft guidance is, in some respects, an improvement over the earlier Interim Guidance, WLF argued that both suffer from the same fatal flaw by purporting to base Title VI complaints on disparate impact rather than on intentional discrimination.

Under Title VI of the Civil Rights Act, Congress prohibited recipients of federal funds from engaging in intentional discrimination in the manner in which they administer the federally-funded program. According to EPA, the state permitting agencies, which receive federal funds from EPA, engage in illegal discrimination if they give a permit to a facility that is located in a minority community that allegedly suffers disparate impacts from the pollution generated by the facility. "Discrimination" can be found even if the facility meets all the strict pollution control measures, and even if members of the community favor the facility because it offers better paying jobs.

WLF focused its objections on the proposal's faulty legal basis, namely, that "disparate impact" is sufficient to constitute discrimination under Title VI. WLF presented strong arguments based on Supreme Court decisions that only *intentional* discrimination is prohibited. No one has accused state permitting agencies or companies of intentionally discriminating by locating their facilities in minority areas. WLF has long been in the forefront opposing EPA's misguided environmental justice program.

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