

## **Title VI Complaint 16R-99-R9**

### **FACT SHEET**

<b>Title VI of the Civil Rights Act of 1964</b>	<p>Title VI of the Civil Rights Act of 1964 and implementing regulations prohibit recipients of Federal financial assistance from discriminating on basis of race, color or national origin – both intentional discrimination and discriminatory effects from neutral policies.</p> <p>Federal regulations allow filing of complaints alleging discrimination and place investigative responsibility on the relevant federal agency. EPA's Title VI implementing regulations are codified at 40 C.F.R. Part 7. EPA's Office of Civil Rights (OCR) reviews these complaints in accordance with 40 C.F.R. Part 7, Subpart E (§§ 7.105-7.135). In 40 C.F.R § 7.120, the regulations emphasize the use of informal (negotiated) resolution of complaints.</p>
<b>Evaluation and Resolution of Title VI Complaints</b>	<p>OCR first conducts a jurisdictional review to determine whether a complaint meets the regulatory requirements to be accepted for investigation. If so, an investigation of the accepted allegations is conducted. After evaluating the evidence gathered, EPA must determine whether it is sufficient to preliminarily conclude that a violation of Title VI has occurred, e.g., because of intentional discrimination or an unintentional adverse disparate impact. If EPA concludes there is not sufficient evidence of intentional discrimination or an adverse disparate impact, a complaint is dismissed. If EPA concludes that there is sufficient evidence, EPA discusses its preliminary findings with the recipient in an attempt to address the issues. EPA's Title VI implementing regulations (40 C.F.R. Part 7) state that it is EPA's policy to seek informal resolution of Title VI complaints whenever possible. If attempts to seek informal resolution or achieve voluntary compliance fail, EPA may seek court action to achieve compliance, or initiate a process to withhold Federal financial assistance from a recipient.</p>
<b>Complaint 16R-99-R9</b>	<p>Complaint 16R-99-R9 was filed in June 1999 by the Center for Race, Poverty &amp; the Environment, California Rural Legal Assistance, Inc., California Rural Legal Assistance Foundation, and Farmworker Justice Fund, Inc. on behalf of Latino parents and children at 6 schools in California. EPA investigated the California Department of Pesticides Regulation (CDPR)'s renewal of the registration of methyl bromide (MeBr), which complainants alleged discriminated against Latino school children based on the disproportionate percentage of Hispanic children in schools near fields where MeBr was applied and the health impacts of this pesticide.</p>
<b>Evaluation of Complaint 16R-99-R9</b>	<p>To show discriminatory effects under Title VI, an impact must be both adverse and disparate. In order to determine adversity, OCR developed a MeBr exposure analysis to predict daily air concentrations of MeBr at different distances from an application site, based on information concerning the amount of MeBr applied in the years 1995-2001. The analysis relied on data concerning timing, locations, and amounts of MeBr used in California to predict airborne</p>

concentrations of MeBr at the 8400 public schools in the state.

The analysis was based on one originally developed by CDPR to predict exposures from multiple nearby fumigant applications. OCR revised the CDPR analysis to predict daily concentrations based on nearby MeBr usage for the same day as well as previous days, modified by factors including proximity, wind speed, wind direction and temperature. The exposure levels were then compared to health-based concentration thresholds derived by EPA's Office of Pesticide Programs (OPP), and exceedances identified for the period of 1995-2001.

To evaluate whether impacts were disparate, OCR examined the estimated number and demographic composition of children from each school's enrollment during the years of predicted exceedances. The demographic data for schools with predicted exceedances of target exposure thresholds were compared with those from schools with lower predicted concentrations, and an analysis of the data was performed. Based on an extensive investigation into the specific circumstances that existed from 1995 to 2001, the EPA OCR preliminarily found an unintentional adverse and disparate impact on Latino children from the registration of MeBr for that period. This preliminary finding was based on the high percentage of Hispanic children in schools near to fields where MeBr was applied for the period of 1995-2001. EPA communicated those preliminary findings to CDPR on April 22, 2011.

**What is methyl bromide and how is it used?**

Methyl bromide is a broad-spectrum fumigant chemical that can be used as an acaricide, antimicrobial, fungicide, herbicide, insecticide, nematicide, and vertebrate control agent. Methyl bromide's most prevalent use pattern is as a soil fumigant. It is also used as a post harvest treatment of commodities and for structural fumigation. Structural non-food treatments (e.g., residential buildings) are reportedly no longer performed.

To prepare soils for planting crops, MeBr is typically injected in to the soil using tractors equipped with shanks at various depths, shapes, sizes, and orientations. Applications have historically been done with and without tarps, but tarp use is prevalent. Applications can be made as broadcast treatments to an entire field, in user created raised beds, for individual tree sites in an orchard, or in greenhouses.

Under the Clean Air Act and the Montreal Protocol on Substances that Deplete the Ozone Layer, MeBr has been undergoing a phase-out since 1995. Between 1999 and 2009, the national use of methyl bromide for soil fumigation dropped substantially (i.e., over 75%). Fumigation for orchards and perennial crops were reduced by over 95% while the use on strawberries (the single largest use) dropped by 60%.

**Did the**

EPA's preliminary finding was based on predictions that Latino school children

**children who brought the complaint suffer health effects at the time of the pesticide applications?** from 1995 to 2001 were exposed to MeBr levels above a health target at a higher rate than other school children. These predicted exposures indicate a possible risk of impact, but does not confirm any instances of actual health effects on individuals at the schools. This is due in part to uncertainty factors included in deriving health targets. Adverse impact may be established under Title VI by a statistically significant disparate exposure to a risk of harm that exceeds a target threshold. It's not possible to determine whether any actual health effects resulted from the predicted exposures.

**Are kids safe today?** Since 2001, both EPA and the State of California have implemented stringent regulations that address exposure levels. For example, the State of California instituted a cap in 2010 that limits total usage within specified geographic areas in each calendar month. Additionally, in accordance with the Montreal Protocol (which addresses ozone depleting chemicals), the use of MeBr has been significantly reduced (including in California). As mentioned, CDPR is currently conducting additional long-term monitoring in several MeBr high usage areas, and has agreed to place another long-term monitor at or near a school named in the Title VI complaint to confirm no recurrence of the earlier conditions. In addition, the Agency has required the manufacturers of MeBr to conduct ambient air monitoring studies in major use areas including California and Florida.

**Resolution of the complaint** EPA is required to ensure that its recipients are complying with Title VI. EPA and CDPR entered an Agreement to resolve the issues identified in the complaint investigation, and ensure that exceedances will not recur. With this Agreement, CDPR has committed to expand on-going monitoring of methyl bromide air concentrations by adding a monitor at or near one of the schools named in the original complaint. The purpose of the additional monitor is to confirm that there will be no recurrence of earlier conditions. CDPR will also extend its data collection activities at two other monitors through 2013. CDPR has also agreed to share the monitoring results with EPA and the public and will also increase its community outreach and education efforts to schools that are in high methyl bromide usage areas.

By entering into this Agreement, EPA is delivering on its steadfast commitment to protecting and advancing civil rights, reforming the Agency's Title VI program, addressing the backlog of complaints and providing effective enforcement of Title VI. EPA remains committed to demonstrating leadership on civil rights and ensuring the Title VI process better serves the American people.

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