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Big Agriculture and Harm to Minority Communities: How Administrative Civil Rights Complaints Are the Solution

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Big Agriculture
and Harm to Minority Communities:
How Administrative Civil Rights Complaints
Are the Solution

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INTRODUCTION

As a child, Juana crossed the border into Arizona each morning
with her parents, who were farmers.1 Juana, like her parents, began
working on farms when she was young.2 In her early twenties,
during her first pregnancy, Juana was working on a lettuce field
packing boxes with heads of lettuce.3 She lost her baby well into her

1. Farmworker Justice, Exposed and Ignored: How Pesticides are Endangering Our
   Nation’s Farmworkers 17 (2013), https://www.farmworkerjustice.org/sites/default/files/
   aExposed%20and%20Ignored%20by%20Farmworker%20Justice%20singles%20compressed.
pdf [hereinafter Exposed and Ignored].
2. Id.
3. Id.
pregnancy. She often wonders if her miscarriage resulted from working on the pesticide-laden lettuce farm. Juana described:

I just had to be quick. At that time, I didn’t know how important it was to wear gloves and protect myself from those pesticide residues. I would lean right into the boxes, breathing those residues in. I thought it was important to do the work as quickly as possible; I didn’t realize it was more important to think about protecting myself and my baby.

Ten years later, Juana was diagnosed with lymphoma, and shortly after her diagnosis, her son was diagnosed with the same disease. Although both Juana and her son have been cancer free for many years, she still fears for their health. Her home sits adjacent to the lettuce fields. “When we started living there I still didn’t know about how dangerous pesticides could be. I would hang the clothes outside to dry in the fresh air, and my son would play in the water that collected in the irrigation ditches. We didn’t know the risks.” To help avoid future harm, Juana wears more protective clothing when working on the farm, drinks water from bottles, and ensures her son plays in areas safe from pesticides. “If you are living in our community or any other farming community in this country, you could be at risk because pesticides don’t have boundaries. They can freely cross wherever they want . . . “

Stories like Juana’s are not limited to minority farmworkers. Rene Miller lives in North Carolina on land that her great-grandmother inherited in a post-slavery land grant. Her family’s cemetery is located just down the street from her home. “How long have we lived here? Always,” Miller says, “And we always

4. Id.
5. Id.
6. Id.
7. Id.
8. Id.
9. Id.
10. Id.
11. Id.
12. Id.
14. Id.
will. Nobody else will ever live on this land.”15 Within a mile of her home is a farm with 5,280 hogs.16 Within two miles are more than 80,000 hogs at seven different locations.17 Boxes of rotting hogs located near Miller’s family cemetery attract swarms of gnats and large, black flies.18 And just fifty yards from her family’s cemetery is an open-air pool full of hog manure.19 The sprinkler system that liquifies and sprays the manure from the open-air pool onto open fields is just across the street from Miller’s house, about 200 feet away.20 The mist from the sprinklers drifts liquified manure onto her property.21 Miller says “her eyes burn and her nose waters” after being outside.22

Juana and Rene Miller’s stories illustrate how minority communities across the United States disproportionately bear the burden of pollution by big agriculture.23 Indeed, both excessive pesticide use and large livestock farms in big agriculture are civil rights issues. Big agriculture operations receive federal funds from the Environmental Protection Agency (EPA) through state agencies and are consequently subject to Title VI of the Civil Rights Act of 1964. Title VI prohibits discrimination by any program or entity that receives federal funding. Under Title VI, minority communities suffering from disproportionate harms of big agriculture have two options: directly sue the federal fund recipient—such as the state agency—or file an administrative civil rights complaint with the federal agency issuing the federal funds—such as the EPA.

Minority communities have few resources to bring suit, and many states across the nation are captured by the highly political and influential big agriculture lobbyists. Because of these

15. Id.
16. Id.
17. Id.
18. Id.
19. Id.
20. Id.
21. Id.
22. Id.
23. Big agriculture is “characterized by large-scale monoculture, heavy use of chemical fertilizers and pesticides, and meat production in CAFOs (confined animal feeding operations).” Hidden Costs of Industrial Agriculture, UNION CONCERNED SCIENTISTS (July 11, 2008), https://www.ucsusa.org/food_and_agriculture/our-failing-food-system/industrial-agriculture/hidden-costs-of-industrial.html.
barriers, minority communities harmed by big agriculture need stronger protection from the federal government. Filing administrative civil rights complaints with the EPA’s External Civil Rights Compliance Office is the best solution for minority communities to fight civil rights injustices by big agriculture. In order for minority communities to be able to fight discriminatory impacts by big agriculture, the EPA must begin following its regulatory process for handling administrative civil rights complaints. The EPA must issue formal findings of discrimination to big agriculture when warranted. Because big agriculture has continuously shown that it is unwilling to voluntarily fix its discriminatory harm, the EPA must start withholding its federal funds so big agriculture is incentivized to remedy its discriminatory impacts on minority communities.

Part II of this Note describes how big agriculture is a civil rights issue because of its disproportionate harm on minority communities. Like in Juana’s story, excessive pesticide exposure in minority communities from working on crops or simply living near a farm encumbered with pesticides can result in both short-term and life-threatening health issues. Living near a large cattle farm can cause a plethora of health issues and, as was illustrated by Rene Miller’s story, force minority neighbors to become prisoners in their own homes. Part III introduces Title VI of the Civil Rights Act of 1964 and the process for filing an administrative civil rights complaint with the EPA’s External Civil Rights Compliance Office. The EPA’s failure to respond to administrative civil rights complaints under Title VI is also highlighted and exemplified by excessive pesticide use disproportionally near Native Hawaiian communities in Hawai’i and high concentrations of large cattle farms disproportionally located near minority communities in North Carolina. Part IV concludes by arguing that, along with following its regulatory procedures for receiving administrative civil rights complaints under Title VI of the Civil Rights Act of 1964, the EPA must begin utilizing its regulatory procedure of formally finding discrimination and withholding its federal funds if voluntary compliance is not reached. Withholding federal funds will force big agriculture to acknowledge its discriminatory impacts on minority communities and minimize its civil rights violations.
I. BIG AGRICULTURE IS A CIVIL RIGHTS ISSUE

The harmful effects of big agriculture pollution are disproportionately felt by minority communities across the United States. This Note focuses on two main facets of big agriculture that exploit minority communities: hazardous pesticide use and concentrated animal feeding operations (CAFOs). Pesticide exposure in big agriculture results in harm to both minority farmworkers and their families, who have few resources to report workplace violations and seek medical care. CAFOs aggregated in minority communities force neighbors to be sequestered in their homes to avoid the unhealthy environment. And, because the unhealthy conditions decrease property values, the minority community members have no escape. Both of these practices contribute to race discrimination at the hands of big agriculture.

A. Pesticide Use in Big Agriculture
Disproportionately Harms Minority Communities

The majority of big agriculture farmworkers are undocumented, poor immigrants belonging to minority communities.24 Although citizenship data of farmworkers is difficult to gather, one estimate is that 50% to 80% of farmworkers are undocumented.25 Many farmworkers do not have a formal education and do not speak fluent English.26 Approximately 60% of farmworkers and their dependents live in poverty.27 Eighty-eight percent of farmworkers are Hispanic, 20% of farmworkers are women, and 12% of farmworkers are adolescents.28

Because big agriculture farmworkers often belong to minority communities, minority populations are most affected by the

26. Lincoln, supra note 24; Exposed and Ignored, supra note 1, at 8, 10. Farmworkers not fluent in English are especially susceptible to higher levels of pesticide exposure because safety information on pesticide labels are only in English. Id. at 10. “The following statement appears buried in the labels of the two most toxic categories of pesticides: ‘Si usted no entiende la etiqueta, busque a alguien para que se la explique a usted en detalle.’ [If you do not understand the label, find someone to explain it to you in detail.]” Id.
27. Exposed and Ignored, supra note 1, at 8.
28. Id.
dangerous amounts of pesticides used in big agriculture. An estimated 5.1 billion pounds of pesticides are used on crops each year, the majority of which can be attributed to big agriculture.\(^{29}\) A pesticide is “any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any [crop-damaging] pest.”\(^{30}\) Because they are “[d]esigned to kill living organisms,”\(^{31}\) pesticides are the leading cause of chemical-related injuries among U.S. workers.\(^{32}\) In short, big agriculture is “one of the most hazardous occupations in the United States.”\(^ {33}\) Farmworkers are exposed to levels of pesticides hundreds of times greater than consumers\(^ {34}\) and are almost twenty-five times more likely than a consumer to have an illness linked to pesticides.\(^ {35}\)

Pesticide harm includes both short-term and long-term health risks. Short-term risks of pesticides include nausea, dizziness, headaches, stinging eyes, shortness of breath, rashes, blisters, and seizures.\(^ {36}\) Long-term risks include chronic illnesses such as cancer, neurological disorders, and reproduction issues like infertility, birth defects, and learning disabilities.\(^ {37}\) In fact, farmworkers suffer elevated levels of prostate, esophageal, and oral cavity cancer.\(^ {38}\) And farmworkers develop stomach cancer at a rate 70% greater than the general population.\(^ {39}\) Of the 1.4 million farmworkers in the nation, up to 20,000 are harmed by pesticides annually.\(^ {40}\)

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29. Lincoln, supra note 24, at 387; Exposed and Ignored, supra note 1, at 14.
32. Exposed and Ignored, supra note 1, at 6.
34. Exposed and Ignored, supra note 1, at 3.
35. Cunningham-Parmer, supra note 25, at 442.
37. Lincoln, supra note 24, at 383; Exposed and Ignored, note 1, at 4; Geer, supra note 36.
38. Exposed and Ignored, supra note 1, at 8.
39. See Cunningham-Parmer, supra note 25, at 443 (study done on Hispanic fieldworkers in California).
Compounding this problem, minority farmworkers employed by big agriculture and their families cannot escape the harms of pesticides after leaving the crops and returning home. Farmers working on pesticide-laden fields often unknowingly bring pesticides home on their tools, clothing, and skin. And residential areas close to big agriculture crops can suffer from aerial drift of pesticides into schools, playgrounds, and homes. Many of those living in the residential areas are the families of farmworkers themselves. For farmworkers and their families, pesticides end up in their air, water, and food. Higher levels of leukemia, brain cancer, birth defects, and developmental delays are found in children of farmworkers due to this exposure.

Undocumented minority farmers working for big agriculture have less power to report workplace violations. Minority farmworkers are unlikely to report hazardous pesticide exposure or violation of workplace safety laws in fear of repercussions based on their alien status—for example, being reported to Immigration and Customs Enforcement (ICE). Even if farmworkers successfully report unhealthy or illegal pesticide exposure, they may face employer retaliation in the form of not being able to return to the same grower the next season.

Furthermore, the overwhelming majority of big agriculture farmworkers belonging to minority communities are not provided the proper resources to adequately seek medical care for pesticide-

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41. Exposed and Ignored, supra note 1, at 6; Geer, supra note 36.
42. Lincoln, supra note 24 (describing pesticide drift as particles moving through the air beyond targeted areas of application as “dust or droplets”); Exposed and Ignored, supra note 1, at 6.
43. See Exposed and Ignored, supra note 1, at 6.
44. Id.
45. Cunningham-Parmeter, supra note 25, at 447.
46. Id.
related injuries. Less than 20% of farmworkers receive health insurance through their employer. And for those few who do receive health insurance, obstacles exist such as language barriers and lack of transportation—many minority farmworkers live in poorer, rural areas far away from health clinics or hospitals. Seasonal farmworkers are especially at risk because they do not often receive paid sick leave, so seeing a doctor can result in loss of pay. Just as with reporting workplace violations of pesticide use, minority farmworkers fear seeking medical services for pesticide-related injuries because of employer retaliation and immigration status.

Hazardous pesticide-related injuries in big agriculture, and the short-term and long-term health effects of pesticide exposure on farmworkers and their families, disproportionately burden minority communities. These disproportionate harms are further exacerbated by the inability of minority farmworkers to report workplace safety violations and seek medical services for pesticide injuries. Farmworkers employed by big agriculture are in desperate need of a reachable remedy to fight these civil rights violations. The federal government needs to provide a reasonable way for minority farmworkers to report discriminatory impact at the hands of big agriculture.

B. CAFOs in Big Agriculture
Disproportionately Harm Minority Communities

Multiple studies across the United States have found that CAFOs are disproportionately located near minority communities. A 2002 study in Mississippi found that a “number of non-White and poor communities have disproportionate numbers of CAFOs in their communities.” A 2014 study in North Carolina found that CAFOs disproportionately affect “African Americans, Hispanics, [and] Hispanics.”

48. Exposed and Ignored, supra note 1, at 8.
49. Id.
50. Id.
51. Id.
52. Sacoby M. Wilson et al., Environmental Injustice and the Mississippi Hog Industry, 110 ENVTL. HEALTH PERSP. 195, 199–200 (2002) (“There are 3.64 times more hog operations in the high African American, low-poverty group compared with the referent group. There are 2.4 times more operations in the high African American, high poverty block groups compared with the referent group.”).
and Native Americans.”53 New Jersey Senator Cory Brooker described the CAFO industry as “evil” for exploiting African American communities, stating the agriculture industry is “outsourcing its pain, its costs, on to poor black people.”54

Since the mid-1980s, meat production has dramatically shifted in the United States from small family farms to large corporate operations.55 Large cattle farms today, known as CAFOs or factory farms, raise livestock in confined quarters until they are ready to be slaughtered.56 CAFOs “are facilities where animals are confined together in a small area, along with ‘feed, manure and urine, dead animals, and production operations.’”57 Over 99% of the ten billion animals slaughtered in the United States each year come from CAFOs.58 CAFOs house hundreds, sometimes thousands, of livestock.59 This can equal as much waste as a city of over 200,000 people.60 But unlike cities that treat waste, slatted floors in CAFOs allow waste to be pumped into open-air lagoons.61 A lagoon, or cesspool, is “a stagnant pool containing [cattle] feces, urine, blood and other bodily fluids.”62 When lagoons become too full, their upper layer contents are liquified and sprayed through sprinkler systems onto open fields.63 The manure is supposed to be sprayed on crops to absorb the nitrogen and phosphorus, but often

53. Christine Ball-Blakely, CAFOs: Plaguing North Carolina Communities of Color, 18 SUSTAINABLE DEV. L. & POL’Y 4, 5 (2017) (“[T]he proportion of African American, Hispanic, and Native American people living within three miles of a North Carolina pig CAFO are 1.54, 1.39, and 2.18 times higher, respectively.”). See generally Hellerstein & Fine, supra note 13 (providing insight into a North Carolina community near a pig CAFO).
55. Id.
58. Id.
60. Id. (“According to the EPA, ‘a single dairy cow produces approximately 120 pounds of wet manure per day,’ which is ‘equivalent to that of 20–40 people.’”).
61. Id.; Hellerstein & Fine, supra note 13.
63. Ball-Blakely, supra note 53; Hellerstein & Fine, supra note 13. These sprinklers have also been described as high-pressure guns. Christina Cooke, North Carolina’s Factory Farms Produce 15,000 Olympic Pools Worth of Waste Each Year, CIV. EATS (June 28, 2016), http://civileats.com/2016/06/28/north-carolinas-cafos-produce-15000-olympic-size-pools-worth-of-waste/.
the manure is sprayed onto open fields with no plants to capture the nutrients.64

CAFOs release poisonous gases and a strong stench into the air—both are harmful to the health and environment of the disproportionate number of minority communities near them. Pathogens, hydrogen sulfide, ammonia, and heavy metals make their way from the CAFO manure into the surrounding air.65 Up to 300 different chemicals have been found to permeate the air around a CAFO.66 Research has found that air pollution from CAFOs can result in headaches, stomachaches, runny nose, runny eyes, nausea, increased blood pressure, reduced lung function, and respiratory issues like wheezing, asthma, and bronchitis.67 Other studies have found impaired memory and higher rates of infant mortality from mothers breathing in the poisonous air.68 Not only does the air pollution cause physical health concerns, it disrupts the daily life of those close to the CAFOs and can result in trouble sleeping and mental health concerns such as stress and anxiety.69

CAFOs also cause human health concerns and environmental harm by releasing contaminants into groundwater and surface water. Lagoons can overflow, leak, rupture, and reach groundwater and waterways in stormwater runoff.70 This can result in major pollution and large fish kills.71 Spraying the liquid manure can cause nitrates, parasites, and harmful bacteria to drain into groundwater.72 In 2015, researchers found levels of ammonia

64. Steph Larsen, If You Can’t Stand the Smell, Tough Luck, GRIST (Oct. 4, 2008), https://grist.org/article/tour-de-pig/.
66. Larsen, supra note 64.
70. Ball-Blakely, supra note 53; Olson-Sawyer, supra note 65.
71. See Ball-Blakely, supra note 53.
72. Bernard, supra note 65.
and nitrates in water near CAFOs that are dangerous to human health.\textsuperscript{73} The following year, researchers found waters near CAFOs contaminated with fecal bacteria like E. coli.\textsuperscript{74} Many residents near CAFOs stop drinking groundwater because they no longer feel it is safe.\textsuperscript{75}

Not only do CAFOs disproportionately harm surrounding minority communities through pollution, they also create greater economic harms for these already vulnerable communities. In the 1980s, corporate CAFOs bought out independent, family-owned farms in minority communities and subsequently impaired local economies.\textsuperscript{76} “Economic concentration of agricultural operations tends to remove a higher percentage of money from rural communities than when the industry is dominated by smaller farm operations, which tend to circulate money within the community.”\textsuperscript{77} CAFOs further economically burden minority communities by decreasing property values. Studies have found that properties within three miles of CAFOs decrease in value by 6.6\%, and properties within one-tenth of a mile from CAFOs decrease in value by 88\%.\textsuperscript{78} Properties downwind from CAFOs are especially subject to decreased property value.\textsuperscript{79}

The rise of big agriculture CAFOs in the last thirty years has brought extreme human health and environmental hazards to the disproportionate number of minority communities living near them. CAFOs have bought out local family farms which has in turn hurt local minority community economies and decreased property values. Minority community members disproportionately bearing the burdens of CAFO pollution are left with poor health and living conditions without adequate resources for recovery. The minority communities living near CAFOs need a fair and reliable remedy provided by the federal government to fight against big agriculture’s civil rights injustices.

\textsuperscript{73} Cooke, supra note 63.
\textsuperscript{74} Id.
\textsuperscript{75} Biron, supra note 67.
\textsuperscript{76} Id.
\textsuperscript{77} Larsen, supra note 64.
\textsuperscript{78} Ball-Blakely, supra note 53, at 6.
\textsuperscript{79} Id.
II. TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Big agriculture is a civil rights issue. Discrimination against minority communities by big agriculture should, therefore, be enforced using the Civil Rights Act of 1964. Title VI of the Civil Rights Act allows two options for enforcement against those who receive federal funds. A complainant may (1) sue the federal fund recipient directly, or (2) file an administrative civil rights complaint with the agency issuing the federal funds. Because minority communities have fewer political and economic resources compared to big agriculture, their most viable remedy is to file administrative civil rights complaints with the EPA’s External Civil Rights Compliance Office. Although filing administrative civil rights complaints with the EPA is the best means for minority communities to seek protection from the discriminatory impacts of big agriculture, the EPA has continuously failed to follow its regulatory procedures for handling complaints. Not only must the EPA begin enforcing its regulatory procedure for formally finding discrimination, but it must also begin withholding federal funds if big agriculture does not voluntarily reach compliance in a timely manner. Withholding federal funds will force big agriculture to acknowledge its discriminatory impacts on minority communities and minimize its civil rights harm.

A. Title VI: How It Works

Title VI prohibits discrimination by any entity that receives federal funding.80 “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”81 A program or entity includes

a department, agency, special purpose district, or other instrumentality of a State or of a local government[] or the entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local

government entity) to which the assistance is extended, in the case of assistance to a State or local government . . . .

If any department within an entity receives federal funds, then the whole entity is covered under Title VI.

Title VI has been deployed in two major ways: directly suing federal fund recipients and filing administrative civil rights complaints with the federal agency issuing the funds. Filing a suit against a federal fund recipient requires evidence of discriminatory intent. Filing an administrative civil rights complaint, however, does not require a showing of discriminatory intent: unjustified or unequal racial impacts are sufficient. Because of the higher bar of evidence required to sue federal fund recipients, advocates fighting against the civil rights injustices of big agriculture have more recently focused on filing administrative civil rights complaints with the federal agency issuing funds.

**B. Title VI and Federal Suits: A Nonviable Option for Minority Communities**

Even if there is sufficient evidence of discriminatory intent, minority and low-income communities face greater barriers to bringing claims due to their lack of political clout compared to big

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82. *Id.* § 2000d-4a(1)(A)–(B).

83. *Ass’n of Mexican-Am. Educators v. California*, 195 F.3d 465, 474–75 (9th Cir. 1999), *rev’d in part, on other grounds*, 231 F.3d 572 (9th Cir. 2000).

84. *Guardians Ass’n v. Civil Serv. Comm’n of N.Y.*., 463 U.S. 582, 609–10 (1983); *Cannon v. Univ. of Chi.*, 441 U.S. 677, 702–15 (1979) (holding that, like Title IX, Title VI provides plaintiffs an implied private right to directly sue recipients of federal funds but does not provide plaintiffs a private right to sue the federal fund providing agency).

85. *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 287 (1978) ("In view of the clear legislative intent, Title VI must be held to proscribe only those racial classifications that would violate the Equal Protection Clause or the Fifth Amendment."). Discriminatory intent "implies more than intent as volition or intent as awareness of consequences. It implies that the decisionmaker . . . selected or reaffirmed a particular course of action at least in part ‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group." *Pers. Adm’r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979) (citation omitted).

86. *Lau v. Nichols*, 414 U.S. 563, 569 (1973), *abrogated on other grounds by Guardians Ass’n*, 463 U.S. at 591–93 (holding that although Title VI calls for intentional discrimination, disproportionate-impact discrimination is also subject to Title VI in the context of the implementing regulations).

agriculture. Minority and low-income communities, for example, face greater difficulty obtaining resources to fight injustices through time-consuming and expensive litigation. And big agriculture’s political and financial resources make bringing a successful suit against big agriculture futile because of its ability to hire costly lawyers and to pay off parties through settlement offers. Even supposing that minority communities can more easily bring suit under mechanisms like class actions, big agriculture has considerable political power as one of the largest lobbyists in many of the states in America.88 Many states are captured by the political and economic influence of big agriculture. These barriers are all the more reason why the federal government should intervene and ensure that big agriculture does not continue disproportionately harming minority communities.

Because suing federal fund recipients directly is not a viable option for minority communities suffering from racial discrimination by big agriculture, filing administrative civil rights complaints is largely used today by civil rights advocates. When filing administrative civil rights complaints, complainants typically target state agencies.89 A state agriculture agency receives federal funds from the EPA and, in turn, uses these resources to oversee and help further fund the big agriculture industries within its state.90 This distribution of federal funds leaves big agriculture susceptible to administrative civil rights complaints filed to the EPA’s External Civil Rights Compliance Office. This Note, therefore, focuses on fighting civil rights injustices of big agriculture by filing administrative civil rights complaints with the EPA under Title VI of the Civil Rights Act of 1964.

88. This is why big agriculture is “virtually unregulated by the expansive body of environmental law that has developed in the United States.” Ball-Blakely, supra note 53, at 7. For instance, agriculture runoff is not considered a point source under the Clean Water Act. 33 U.S.C. § 1362(14) (2012).

89. LoPresti, supra note 87, at 766. “Recipient means, for the purposes of this regulation, any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.” 40 C.F.R. § 7.25 (2017).

C. Title VI and Administrative Civil Rights Complaints: Working with the EPA

Any individual or group may submit an administrative civil rights complaint to the EPA’s External Civil Rights Compliance Office alleging violation of Title VI by a federal fund recipient. Title VI requires federal agencies to issue their own requirements to prevent discrimination. The EPA, as mandated, has created a regulatory process and timeline for handling administrative civil rights complaints sent to its External Civil Rights Compliance Office. First, the EPA is required to acknowledge a civil rights complaint within five days of receipt. Next, the EPA must determine if a complaint requires an investigation within twenty days of receiving the complaint. Then, within 180 days of determining if an investigation is required, the EPA must issue a preliminary finding. If the EPA ultimately finds discrimination, the preliminary finding must include recommendations for voluntarily achieving compliance. Within fifty days of receiving the preliminary finding, the federal fund recipient must agree to (1) implement the EPA’s recommendations or (2) submit a response demonstrating that either the preliminary finding of discrimination was incorrect or that compliance can be achieved through other

91. 40 C.F.R. § 7.120(a) “The complaint must be in writing and it must describe the alleged discriminatory acts which violate this part. The complaint must be filed within 180 calendar days of the alleged discriminatory acts, unless the OCR waives the time limit for good cause.” Id. § 7.120(b). For the EPA’s further interpretation of Title VI, see id. § 7.30. In addition to the Civil Rights of 1964, the EPA provides additional guidance on Title VI. “A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex . . . . [And a] recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex . . . .” Id. § 7.35(b)–(c).
92. 42 U.S.C. § 2000d-1 (2018) (“Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 2000d of this title with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken.”); 28 C.F.R. § 42.404 (2017).
94. Id. § 7.120(c).
95. Id. § 7.120(d).
96. Id. § 7.115(c).
97. Id.
means. If the federal fund recipient does not timely pursue one of these options, then the EPA must submit a formal written finding of noncompliance to the recipient and notify the Assistant Attorney General of the United States Department of Justice Civil Rights Division within fourteen days. The federal fund recipient then has ten days to voluntarily reach compliance. Finally, if the federal fund recipient fails to voluntarily fix the discrimination within the ten days, then the EPA can withhold its federal funds to the state agency. An agency issuing federal funds always retains the power to withhold its federal funds, but encouragement of voluntary compliance prior to withholding federal funds is required.

Filing administrative civil rights complaints with the EPA’s External Civil Rights Compliance Office is the most feasible option for minority communities discriminated against by big agriculture. Filing administrative civil rights complaints with the EPA helps notify the agency of civil rights violations and pushes the agency to enforce Title VI of the Civil Rights Act. If followed, the EPA’s regulatory process for handling administrative civil rights complaints can be a strong tool for minority communities to fight against civil rights injustices of big agriculture. The threat of withholding federal funds from state agencies supporting big agriculture industries is a strong mechanism for states to force big agriculture to ensure that its actions do not have a discriminatory impact on minority communities. The EPA, however, has failed in following its regulatory procedures for handling administrative civil rights complaints. This failure strips the ability of minority communities disproportionately burdened by big agriculture pollution to fight against the discrimination. The EPA must, therefore, start following its regulatory procedures for handling administrative civil rights complaints so minority communities have a viable mechanism for fighting this civil rights issue.

98. Id. § 7.115(d).
99. Id.
100. Id. § 7.115(e).
D. Enforcing Title VI: Failures of the EPA

Multiple reports have found that the EPA’s External Civil Rights Compliance Office has consistently failed to follow its regulatory process for handling administrative civil rights complaints. After facing years of criticism, the EPA hired Deloitte Consulting in 2011 to evaluate its handling of administrative civil rights complaints. Deloitte Consulting found that only 6%—fifteen out of 247—of complaints were accepted or dismissed within the set twenty-day period. Overall, Title VI complaints were backlogged to 2001—a whole decade behind schedule. The report also found the following:

[T]here were numerous cases that have been awaiting action for up to four years. Two cases have been in the queue for more than eight years. . . . Half of the complaints have taken one year or more to move to accepted or denied status. One case was accepted after nine years and a second case was accepted only after ten years.

A second report by the Center for Public Integrity and NBC News in 2015 found that more than 90% of administrative civil rights complaints to the EPA were dismissed or rejected. Out of the hundreds of complaints the EPA’s External Civil Rights Compliance Office received within twenty-two years, none were formally found to violate anyone’s civil rights. It was also found that, on average, the EPA takes 350 days to determine whether to

104. Id. at 2, 25.
105. Id. at 2.
106. Id.
108. LoPresti, supra note 87, at 775; Lombardi, Buford & Greene, supra note 107.
investigate or dismiss a claim.\footnote{109} A third report in 2016 by the U.S. Commission on Civil Rights reinforced many of these findings.\footnote{110}

Although the EPA’s External Civil Rights Compliance Office has continuously failed to follow its regulatory process for handling administrative civil rights complaints, non-profit community groups, courts, and the general public have fought for the EPA to uphold its regulatory process. For example, in 2015, the EPA tried to eliminate certain deadlines in its regulatory process for handling administrative civil rights complaints, such as the twenty-day limit to determine whether an investigation is warranted and the 180-day limit to issue a preliminary finding.\footnote{111} But the EPA withdrew this proposed rule on January 9, 2017, after receiving backlash from advocates.\footnote{112} In March 2018, Earthjustice and various other non-profit organizations sued to compel the EPA to comply with its regulatory process for handling administrative civil rights complaints.\footnote{113} A federal judge ruled that the EPA violated the law by waiting multiple years to investigate complaints and that the EPA is required to respond to and investigate civil rights complaints within its regulatory process.\footnote{114} The court referred to the excessive delays as “agency action

\footnote{109} Editorial, supra note 107.


\footnote{111} Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency, 80 Fed. Reg. 77284 (proposed Dec. 14, 2015) [hereinafter Nondiscrimination in Programs or Activities Receiving Federal Assistance].

\footnote{112} Id.; Sarah Tory, Why the EPA Fails to Enforce the Civil Rights Act, High Country News (June 2, 2016), https://www.hcn.org/articles/why-the-epa-fails-to-enforce-the-civil-rights-act (“It’s ironic that the one rule they try to advance is to take away the one measure of accountability for conducting a civil rights investigation[.]”).


\footnote{114} Californians for Renewable Energy v. EPA, No. C 15-3292 SBA, 2018 WL 1586211 (N.D. Cal. Mar. 30, 2018); see also Rosemere Neighborhood Ass’n v. EPA, 581 F.3d 1169, 1175 (9th Cir. 2009) (holding that the EPA cannot claim a case is moot by acting before the claim for relief is decided). “Rosemere’s experience before the EPA appears, sadly and unfortunately, typical of those who appeal to OCR to remedy civil rights violations. As indicated earlier, discovery has shown that the EPA failed to process a single complaint from 2006 or 2007 in accordance with its regulatory deadlines.” Id.
unlawfully withheld.”

Suzanne Novak, an attorney at Earthjustice, said:

[This] decision affirms that [the] EPA cannot continue going through the motions without meaningfully attending to serious problems of environmental discrimination . . . . [The] EPA must now secure real changes and ensure civil rights compliance by states and regional authorities that receive EPA funding. How long do communities overburdened with polluting facilities have to wait for justice?

Under pressure from this ruling, the EPA started to timely recognize the administrative civil rights complaints. But most of this attention only resulted in hasty investigations and case dismissals.

The EPA’s External Civil Rights Compliance Office’s failure in properly handling administrative civil rights complaints against big agriculture and enforcing Title VI of the Civil Rights Act is evidenced by the numerous complaints left untouched or mishandled. In recent years, the EPA has mishandled two notable administrative civil rights complaints against big agriculture. First is the excessive use of pesticides in West Kaua’i and on Moloka’i disproportionately near Native Hawaiian communities. Second is the disproportionate concentration of CAFOs in Eastern North Carolina near African American, Hispanic, and Native American communities.

1. Pesticide use in West Kaua’i and on Moloka’i

On September 14, 2016, local non-profit community groups The Moms On a Mission Hui and Po’ai Wai Ola/West Kaua’i Watershed Alliance, represented by Earthjustice, filed an administrative civil rights complaint with the EPA’s External Civil Rights Compliance Office claiming the Hawai’i Department of

118. Id.
Agriculture (HDOA) and Agribusiness Development Corporation (ADC) violated Title VI of the Civil Rights Act. The complaint alleged that the actions of ADC and HDOA had an unjustified and disproportionately harmful effect on Native Hawaiians in West Kaua‘i and on Moloka‘i. Both ADC and HDOA are “programs or activities” under Title VI and receive federal funding from the EPA. ADC and HDOA must, therefore, have a program for ensuring their practices do not have a discriminatory effect.

In the 1990s, Hawai‘i’s agriculture industry moved to big agriculture genetically engineered seed crops. Today, ADC has leased close to 23,728 acres of genetically engineered crops on Kaua‘i, Moloka‘i, O‘ahu, and Maui. Genetically engineered seed crops, sometimes referred to as Genetically Modified Organisms (GMOs), are specifically developed to resist the effects of pesticides. Because these seeds are developed to resist the effects of pesticides, farmers are free to protect their crops by spraying an especially large amount of pesticide. This means that the crops in Hawai‘i are especially pesticide intensive.

Hawai‘i’s genetically engineered seed operations are concentrated in West Kaua‘i and on Moloka‘i. These two areas have proportionately larger populations of Native Hawaiians. For instance, the Native Hawaiian population in West Kaua‘i significantly exceeds the island-wide percentage and more than doubles the statewide percentage. But West Kaua‘i is also home to the greatest share of Kaua‘i’s genetically engineered seed production—56%, or 13,299 of the 23,728 acres—and 78.1% of this...
production is on the west side of Kaua’i. The genetically engineered seed fields in West Kaua’i also border “the largest tract of Hawaiian Home Lands on the island.”

Figure 1: Seed Production in Kaua’i by Proximity to Hawaiian Populations and Hawaiian Home Lands

The majority of residents on Moloka’i are Native Hawaiian. The Native Hawaiian population on Moloka’i is almost three times the statewide percentage and the pure Native Hawaiian population is greater than four times the statewide percentage. Like in West Kaua’i, the genetically engineered seed crops on Moloka’i border the largest tract of Hawaiian Home Lands on the island.

130. Id. at 5, 23.
131. “The Department of Hawaiian Home Lands is governed by the Hawaiian Homes Commission Act of 1920, enacted by the U.S. Congress to protect and improve the lives of Native Hawaiians. The act created a Hawaiian Homes Commission to administer certain public lands, called Hawaiian home lands, for homesteads. Native Hawaiians are defined as individuals having at least 50 percent Hawaiian blood.” Department of Hawaiian Home Lands, About the Department of Hawaiian Home Lands, HAWAIIOV, http://dhhl.hawaii.gov/about/ (last visited Feb. 15, 2020).
132. Achitoff & Wager, supra note 119, at 23.
135. Id. at 5, 24.
136. Id. at 24.
HDOA and ADC have routinely registered pesticides for use near Native Hawaiian communities without considering the disproportionate harm to the large populations of Native Hawaiians living close to the spraying operations. Malia Chun, member of The Moms On a Mission Hui, described:

I live in a community that is home to the largest population of pure blooded Native Hawaiian, native speakers in Hawai‘i, what many would consider an endangered race and a wealth of cultural knowledge. We also happen to be a community that is inundated daily by exposure to industrial use pesticides. When you consider the danger of frequent, long-term exposure to industrial pesticides, some may consider this to be a form of genocide.

John A‘ana, a Po‘ai Wai Ola member and Makaweli Valley kalo farmer, further described, “Allowing large-scale pesticide use without adequate protective measures is in direct opposition to our basic Hawaiian values of Aloha ʻAina and our tradition of caring for Hawai‘i’s natural resources and building healthy, sustainable

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137. Native Hawaiians Bring Civil Rights Complaint Against State Agencies on Pesticide Use, supra note 133.
138. Id.
139. Id.
Paul Achitoff, managing attorney at Earthjustice, stated, “If anyone began spraying toxic chemicals so that they drifted into homes and schools in one of Hawai‘i’s affluent neighborhoods, there would be outrage and it would be shut down. But not on Kaua‘i’s west side or on Moloka‘i, because the Native Hawaiians there don’t have the political clout.”

The community groups alleged that the State failed to require protective buffer zones between areas of pesticide use and Native Hawaiian communities to help prevent pesticide-related harm. HDOA and ADC allow big agriculture operations in Kaua‘i to apply pesticides in closer proximity to residential areas, surface waters, and schools than is allowed in other parts of the United States. Fieldworkers, schoolchildren, and teachers in Native Hawaiian communities have gone to the hospital because of the side effects. In West Kaua‘i specifically, physicians encounter, almost daily, patients suffering from the pesticides with problems including respiratory illness, nose bleeds, metallic tastes in the mouth, and infertility.

After receiving this complaint, the EPA’s External Civil Rights Compliance Office failed to follow its regulatory procedures. Although the administrative civil rights complaint was brought in September of 2016, the EPA did not open an investigation until March of the following year. It was not until two years later that the EPA reached an informal agreement with HDOA to improve regulations on pesticide use disproportionately near Native Hawaiian population. The complaint against ADC is still pending. Even though the EPA and HDOA reached an agreement three years after the complaint was filed, the EPA never withheld its federal funds from HDOA to expedite this process. The

140. Id.
141. Id.
143. Id. at 8–9.
144. Id. at 17.
147. Id.
federal government must play a stronger role in enforcing Title VI by withholding federal funds when voluntary compliance is not reached in a timely manner. Minority communities, like the Native Hawaiians in West Kaua’i and on Moloka’i, harmed by big agriculture need protective resources from the federal government since states are captured by the political and economic influences of big agriculture. The consistent failure of the EPA to enforce Title VI further harms minority communities. This problem must be remedied to end the civil rights injustices by big agriculture.

2. CAFOs in Eastern North Carolina

On September 3, 2014, local, non-profit community groups North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help (REACH), and Waterkeeper Alliance, represented by Earthjustice, filed an administrative civil rights complaint with the EPA’s External Civil Rights Compliance Office. The groups claimed that the North Carolina Department of Environment and Natural Resources (DENR) violated Title VI of the Civil Rights Act. DENR is a “program or activity” under Title VI and receives federal funding from the EPA. DENR is, therefore, subject to Title VI and must ensure its practices do not have discriminatory racial impacts. The complaint alleged that the actions of DENR have an unjustified, disproportionate impact on African Americans, Hispanics, and Native Americans in Eastern North Carolina.

More than 2,000 CAFOs are permitted to operate in North Carolina by DENR, and the majority are concentrated in the eastern part of the State. This number of CAFOs has the capacity to raise more than 9.5 million hogs. The CAFOs, thus, create a staggering amount of waste that harms both human health and the


149. Id. at 1.

150. Id. at 7.

151. Id. at 8.

152. Id. at 1.

153. Id. at 1–2.

154. Id. at 1.
environment of surrounding communities through air and water pollution.\textsuperscript{155}

CAFOs in Eastern North Carolina are disproportionately concentrated in minority communities. On average, minority communities are 1.52 times more likely to live within three miles of a CAFO in Eastern North Carolina.\textsuperscript{156} Indeed, the proportion of African Americans, Hispanics, and Native Americans living within three miles of a CAFO in Eastern North Carolina are respectively 1.54, 1.39, and 2.18 times greater than the proportion of white communities.\textsuperscript{157}

Figure 3: Industrial Hog Operations in North Carolina by Proximity to Minority Communities\textsuperscript{158}

Because CAFOs in Eastern North Carolina are concentrated in minority communities, these communities disproportionately bear the burden of pollution from the CAFO manure.\textsuperscript{159} For instance, adjusted for population density, communities with a 40% or greater African American population are more likely to experience greater

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\textsuperscript{155} Id. at 2.
\textsuperscript{156} Id. at 35.
\textsuperscript{157} Id.
\textsuperscript{158} Id. at 36.
\textsuperscript{159} Id.
\end{flushright}
than half a million more pounds of waste compared to communities with no African Americans.\footnote{Id. at 39.}

DENR has routinely granted CAFO permits in predominately minority communities in Eastern North Carolina. “They’re absolutely taking advantage, because we don’t have any money, and we don’t have political clout. . . . The people with authority who are supposed to protect us are not listening,” stated Elsie Herring, who has been protesting the CAFOs in North Carolina since 1994.\footnote{Id. at 37.} Kemp Burdette, an advocate for water quality in North Carolina explained, “The poor people, they literally get shit on.”\footnote{Cooke, supra note 63.}

In their civil rights complaint, the community groups alleged that DENR failed to require protective measures to prevent the CAFO pollution from poisoning groundwater. Many of the lagoons in North Carolina were built before protective standards were in

\footnote{Kuo, supra note 68.}
Big Agriculture and Harm to Minority Communities

place that require plastic lining and compacted clay to prevent leaking. Lagoons in North Carolina, therefore, often leach into the soil and reach groundwater. Spraying the liquidized manure from the lagoons onto open fields can also reach groundwater through North Carolina’s sandy soils. The groundwater can become contaminated with high levels of nitrates and ammonia. Close to half of the CAFOs in North Carolina are located near regions where over 85% of residents use well water. The CAFOs have, therefore, forced residents to switch to municipal water or live off of bottled water where municipal water is not yet available.

Minority communities have sought protection from the discriminatory impacts of the CAFOs in Eastern North Carolina since the early 1990s. In 2015, the EPA began investigating whether CAFOs were disproportionately affecting minority health in North Carolina. After an additional administrative civil rights complaint was filed to push the EPA to act, the EPA’s External Civil Rights Compliance Office sent a twenty-five page letter to the State expressing concerns of human health and the environment with recommendations for improvement. To this day, however, DENR is allowing big agriculture CAFOs to store manure in open-air lagoons and spray the liquidized manure onto open fields in the same unhealthy manner as before. And the EPA has yet to withhold its federal funds from DENR to force big agriculture to stop harming African American, Hispanic, and Native American

165. Id. at 21–22.
166. Id. at 22.
167. Id. at 23.
168. Id.
169. Id. at 23–24.
170. Id. at 3.
communities. When states are captured by big agriculture and show no evidence of voluntarily fixing discriminatory impacts, the federal government must step in and put pressure on the state agencies. The EPA must enforce Title VI of the Civil Rights Act so the civil rights injustices by big agriculture can be remedied.

Because the EPA’s External Civil Rights Compliance Office continuously fails to enforce Title VI by mishandling administrative civil rights complaints, federal fund recipients that support big agriculture know that their funding is not in real jeopardy. Marianne Engelman Lado, an Earthjustice attorney, explained, “The EPA has not done a good job of enforcing Title VI. So, states and other recipients of federal funds have become accustomed to them doing a terrible job and are not used to having anyone ask about disproportionate impact.” The EPA has placed too much trust in big agriculture fixing its discrimination voluntarily and has failed to force big agriculture to change by formally finding discrimination and withholding federal funds from the state agencies supporting it. Because of the EPA’s failure, minority communities continue to disproportionately suffer from the harms of pollution by big agriculture.

CONCLUSION

Big agriculture is a civil rights issue. Excessive pesticide use and CAFOs in big agriculture disproportionately harm minority communities. Minority communities have significantly fewer resources compared to big agriculture to fight civil rights injustices. Minority communities burdened by big agriculture need protective resources from the federal government, since states are captured by the political and economic influences of big agriculture. Filing administrative civil rights complaints with the EPA’s External Civil Rights Compliance Office should serve as a viable tool for minority communities. The failure of the EPA, however, in following its timeline and regulatory procedures for handling administrative civil rights complaints further exacerbates the civil rights injustices that minority communities disproportionately face from big agriculture. The EPA must begin utilizing its regulatory authority

174. LoPresti, supra note 87, at 786.
175. Biron, supra note 67.
by formally finding discrimination on the part of states supporting big agriculture and by withholding its federal funds. Withholding federal funds will provide strong incentive for states to force big agriculture to remedy its discriminatory impacts on minority communities. The federal government should no longer allow big agriculture to freely discriminate at the cost of minority community health.

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