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#### Recommended Citation

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# Civil Rights Enforcement and Fair Housing at the Environmental Protection Agency

Jennifer Thomson

## ABSTRACT

This article analyzes the Environmental Protection Agency (EPA) within the broader history of federally sponsored residential segregation, as well as the criminalization of and disinvestment from urban areas contemporaneous with the agency's founding. It offers a detailed analysis of EPA's first decade of recalcitrance regarding its own obligations under Title VI of the 1964 Civil Rights Act and Title VII of the 1968 Fair Housing Act. The EPA developed a pattern of responding to scrutiny by rearranging its internal office structure and launching new initiatives tangential to the substantive issues of civil rights. Through this detailed interpretation, the article demonstrates how EPA's first 10 years were crucial in laying the groundwork for subsequent decades of inaction on racial residential segregation, one of the primary causes of ill-health in the United States. Ultimately, the article argues that EPA's early paternalism and intransigence furthered the structural racism at the heart of the U.S. national project and mitigated against the agency taking substantive action on the key demands of environmental justice voiced by activists in the 1990s.

**Keywords:** EPA, environmental justice, civil rights, fair housing, residential segregation, history

## INTRODUCTION

A WIDESPREAD NARRATIVE holds that the Environmental Protection Agency (EPA) did not recognize environmental racism until it faced pressure from environmental justice activists in the early 1990s. This article demonstrates to the contrary that the agency was well aware of environmental racism from its founding. Despite repeated criticism from the United States Commission on Civil Rights (USCCR), activists, states, and EPA employees, the agency repeatedly refused to take meaningful action to enforce its civil rights and fair housing obligations. EPA's early recalcitrance mitigated against the agency later taking substantive action on environmental justice. Ultimately, EPA's behavior in its 50 years furthered the structural racism at the heart of the U.S. national project.

In its 1971 report, *Our Urban Environment and Our Most Endangered People*, EPA's Task Force on En-

vironmental Problems of the Inner City addressed itself to the "total environmental breakdown" of cities.<sup>1</sup> Acknowledging that urban residents, many of whom were poor and non-white, faced serious health consequences from their disproportionate exposure to pollution, noise, and garbage, the Task Force equated such exposures to the indelibly racialized social issues of "poverty, racial inequality, crime, disease and drugs." It then characterized urban residency as a choice born of "opportunity or stimulation ... success or failure." In these rhetorical moves, the report brought an environmental dimension to an ongoing conversation about urban neighborhoods as spaces of decay, danger, disorder, and crisis. Notably absent from its analysis was the true history: specifically, decades of cooperation between the federal government and the private sector to confine the nation's poor and

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<sup>1</sup>United States Environmental Protection Agency Task Force on the Environmental Problems of the Inner City. "Our Urban Environment and Our Most Endangered People." September 1971 (unpublished).

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non-white residents to ghettoized urban neighborhoods zoned (or otherwise structured) to produce deleterious health and environmental conditions.<sup>2</sup>

The Task Force, convened by EPA Administrator William Ruckelshaus in July 1971, reflected EPA's stated goal to ameliorate the environmental conditions faced by urban residents. Chaired by motor vehicle emissions specialist Louis V. Lombardo, the Task Force comprised representatives from across the agency. It was charged with assessing the environmental burdens faced by the urban poor and the extent to which the EPA was alleviating these burdens. Its general recommendations fell into two categories: internal agency reorganization and urban youth involvement projects. The Task Force stressed voluntary compliance as essential to ensuring industry participation, and education as a key to public involvement in pollution abatement. Tellingly never published, the report's disposition foreshadowed the largely rhetorical nature of EPA's concern with urban inequality and poverty.<sup>3</sup>

Founded by an executive order of President Nixon in December 1970, the EPA was charged with protecting the health of the entire ecological chain. Yet in its 50 years of existence, the EPA has failed to directly challenge, much less remediate, a primary cause of ill-health in the ecological chain: residential segregation. In a country within which neighborhood strongly predicts life outcomes, neither the health nor the environment of humans can be protected without addressing the segregation structuring their differential expression in the lives of the country's residents.<sup>4</sup> Moreover, over the past 50 years,

the exposure of non-white Americans, particularly black Americans, to environmental hazards and their attendant health effects has increased.

Residential segregation, enabled by racially motivated zoning and racial capitalism, exposes black, brown, indigenous, and poor residents of the United States to environmental hazards and their attendant health consequences at drastically higher rates than white and affluent residents. This outcome was guaranteed by the Federal Housing Administration's (FHA) *Underwriting Manual* (1938), the original policy framework for residential segregation. The *Manual* identified African Americans (and other "non-white populations") as well as pollution as "adverse influences" on the financial and aesthetic stability of neighborhoods.<sup>5</sup> The FHA's conflation of people and pollution continued a centuries-long national history of defining black people as primitive and pathological. It also enabled white Americans to amass intergenerational wealth through homeownership at the knowing and deliberate expense of the health and well-being of the nation's black and brown residents.

The Civil Rights Act of 1968, known better as the Fair Housing Act, was the first substantive attempt to remediate federally sponsored residential segregation. Title VIII of the Act, which prohibits discrimination in all housing-related transactions, committed the United States to affirmatively providing for fair housing in most circumstances. Alongside Title VI of the 1964 Civil Rights Act, which prohibited any form of discrimination among those receiving federal funding, Title VIII became a potent weapon for enforcing civil rights compliance and beginning to remedy historic discrimination.<sup>6</sup>

As a federal agency, the EPA was bound by these mandates. In its early years, 90% of its funding comprised grants for final sewage treatment facilities. As such, the EPA wielded substantial authority against communities discriminating in public works access. Yet as this article documents, the EPA systematically denied its mandate to enforce civil rights and therefore to advocate for fair housing using the means at its disposal. Moreover, the agency disingenuously deferred responsibility to the Department of Housing and Urban Development (HUD), which itself was uncommitted to substantive civil rights enforcement.

The EPA was born into a centuries-long national relationship between environmental hazard and racial residential segregation. In its 50 years of existence, the EPA has failed to utilize either its executive or legislative

<sup>2</sup>Other mechanisms of producing racial residential segregation included restrictive deed covenants, white political domination of local government, eminent domain, "urban renewal" initiatives, and the actions of real estate agents and banks. Robert D. Bullard. "Dumping on Houston's Black Neighborhoods." In *Energy Metropolis: An Environmental History of Houston and the Gulf Coast*. Martin V. Melosi and Joseph A. Pratt (eds). (Pittsburgh: University of Pittsburgh Press, 2007), 207–222; Dorceta E. Taylor. *Toxic Communities: Environmental Racism, Industrial Pollution, and Residential Mobility* (New York: New York University Press, 2014), 123–261.

<sup>3</sup>The EPA began some of these local demonstration projects in the early 1970s, including a youth-led environmental survey crew in Chicago's West Garfield neighborhood, grants to the cities of Gary and Cleveland to involve youth in environmental programs, and another grant for Chicago to expand Spanish-language "community renewal services." Francis T. Mayo. "and for the region...." In *Region V Public Report*, EPA Region V (February 1973): 3, 16.

<sup>4</sup>Liam Downey and Brian Hawkins. "Race, Income, and Environmental Inequality in the United States." *Sociological Perspectives* 51 (December 2008): 757–781; Anthony Nardone, Joey Chiang, and Jason Corburn. "Historic Redlining and Urban Health Today in U.S. Cities." *Environmental Justice* 13 (August 2020): 109–119; John Voorheis. "Air Quality, Human Capital Formation, and the Long-Term Effects of Environmental Inequality at Birth." Working Paper, December 2017, <<https://www.census.gov/content/dam/Census/library/working-papers/2017/adrm/carra-wp-2017-05.pdf>>. (Last accessed on December 30, 2020); David R. Williams and Chiquita Collins. "Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health." In *Race, Ethnicity, and Health: A Public Health Reader*. Thomas A. LaVeist and Lydia A. Isaac (eds). (San Francisco, CA: John Wiley & Sons, Inc., 2013), 331–354.

<sup>5</sup>United States Federal Housing Administration. *Underwriting Manual: Underwriting Analysis Under Title II, Section 203 of the National Housing Act*. (Washington, DC: U.S. Government Printing Office, 1938), sections 935–939, 1412 (3).

<sup>6</sup>It is important to note that the enforcement provisions of the Fair Housing Act were weakened by the Republican minority leader Everett Dirksen and further hampered by Congress' refusal to give HUD the necessary funding for investigators. Kent James. "Fair Housing Act." In *Encyclopedia of American Urban History*. David Goldfield (ed). (Thousand Oaks, CA: SAGE Publications, 2007), 253–254.

mandates to take meaningful remedial or preventative action regarding this relationship. This article connects EPA's failure to affirmatively enforce civil rights in the 1970s with the political culture of its founding: in particular, federally sponsored denigration and defunding of cities and by extension their black inhabitants. Certainly, the EPA faced real, and often punitive, Congressional constraints on its funding. Notwithstanding Congressional actions, EPA's decisions reflected the broader refusal by successive presidential administrations to directly confront the connection between race and neighborhood, as well as the priorities of the overwhelmingly white mainstream environmental movement.<sup>7</sup> Given these broader layers of significance, EPA's early record on civil rights deserves thorough analysis for what it reveals about the agency's present inaction on environmental justice.

### FAIR HOUSING AND EPA

The EPA was founded amidst federal handwringing over urban crisis. The Kerner Commission, appointed by President Johnson in 1968, had indicted the "socioeconomic roots of urban unrest," chief among those substandard housing and racial residential segregation.<sup>8</sup> Yet rather than enacting any of the Commission's recommendations for fundamental social transformation, Johnson instead launched what Elizabeth Hinton describes as a "punitive counterrevolution." He significantly increased federal funding for policing and embedded surveillance within the social welfare programs of the Great Society.<sup>9</sup> Johnson's well-resourced counterrevolution, given legislative imprint with the 1968 Omnibus Crime Control and Safe Streets Act, was inherited by the abrasive advocate for law and order, Richard Nixon.

Nixon disparaged and criminalized urban residents to scapegoat black Americans for the problems they faced. To do so he made extensive use of proxy discourses for race: most notably "urban decay" and "economic integration." Nixon's 1970 State of the Union address illustrated this strategy. He began by denouncing bloated federal budgets and then announced a significant increase in federal funding for local law enforcement to tackle rising urban crime rates. From a conversation about "respect for law," Nixon pivoted to a lengthy discussion of environmental quality. He used a discourse of urban decay

to connect supposed lawlessness to pollution, noting that "the violent and decayed central cities of our great metropolitan complexes are the most conspicuous area of failure in American life today."<sup>10</sup> Nixon's skillful pivot from maligning lawlessness to advocating environmental protection as a cause "beyond party and beyond factions" reflected (as well as crafted) the interests of the white silent majority he so assiduously courted.<sup>11</sup>

Nixon claimed that rising crime rates, drug abuse, and poverty in cities proved that the social welfare programs of the 1960s had failed.<sup>12</sup> In a June 11, 1971, speech on fair housing, he employed a proxy discourse of economic integration to play upon stereotypes about the inferiority and criminality of poor black Americans. Specifically, he denounced racial discrimination in housing, while simultaneously avowing that his administration would not force any community to build low-income housing. In Keeanga-Yamahtta Taylor's analysis, "When Nixon publicly pledged not to use the power of the federal government to make local authorities comply with the mandate of the Fair Housing Act that required the federal government to take *affirmative actions* to further fair housing or end housing discrimination, he consigned Black buyers and renters to an inferior status in the housing market."<sup>13</sup> Nixon's opposition to the so-called economic integration in housing was a feint, which denied the evident entanglement of race and poverty in the United States as well as the federal government's standing commitment to remediate housing segregation.

HUD carried out the day-to-day work of rolling back federal civil rights enforcement in housing. Secretary of HUD George Romney had initially "attempt[ed] to use water and sewage grants as leverage over newly developed suburbs to prevent their use of racial zoning."<sup>14</sup> Yet by the fall of 1970, withholding funding to compel action on integration had become politically untenable.<sup>15</sup> That same year, the USCCR alleged that HUD had "'regressed' since the passage of the Fair Housing Act," and in the year following, that HUD's housing policies reinforced and in some cases exacerbated existing patterns of residential segregation.<sup>16</sup> During Romney's tenure, HUD demonstrated no substantive enforcement of its legislative obligations under either Title VI or Title VIII.

From its founding, the EPA consistently placed itself in a deferential relationship to HUD. In 1971 testimony

<sup>7</sup>For more on post-Earth Day environmentalism, see Robert Gottlieb. *Forcing the Spring: The Transformation of the American Environmental Movement*. (Washington, DC: Island Press, 2005); Jennifer Thomson. *The Wild and the Toxic: American Environmentalism and the Politics of Health*. (Chapel Hill, NC: University of North Carolina Press, 2019); James Morton Turner. *The Promise of Wilderness: American Environmental Politics Since 1964*. (Seattle, WA: University of Washington Press, 2012).

<sup>8</sup>Elizabeth Hinton. *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America*. (Cambridge, MA: Harvard University Press, 2016), 125.

<sup>9</sup>Hinton, *From the War on Poverty to the War on Crime*, 133. Nixon gutted the social welfare programs while preserving and militarizing their surveillance component.

<sup>10</sup>Richard M. Nixon. "Annual Message to the Congress on the State of the Union." January 22, 1970. <<https://www.presidency.ucsb.edu/documents/annual-message-the-congress-the-state-the-union-2>>. (Last accessed on March 25, 2021).

<sup>11</sup>Jedediah Purdy. "Environmentalism's Racist History." *The New Yorker*, August 13, 2015 <<https://www.newyorker.com/news/news-desk/environmentalisms-racist-history>>. (Last accessed on January 23, 2021).

<sup>12</sup>Keeanga-Yamahtta Taylor. *Race for Profit: How Banks and the Real Estate Industry Undermined Black Homeownership*. (Chapel Hill, NC: The University of North Carolina Press, 2019), 22.

<sup>13</sup>Taylor, *Race for Profit*, 131.

<sup>14</sup>*Ibid.*, 130.

<sup>15</sup>*Ibid.*, 120.

<sup>16</sup>*Ibid.*, 130, 158.

before the USCCR, Ruckelshaus claimed that although both the EPA and HUD held authority over sewer grants, only HUD could properly exercise Title VI enforcement.<sup>17</sup> In November 1972, Carol M. Thomas, Director of EPA's Office of Civil Rights and Urban Affairs (OCRUA), noted that despite the agency's interest in improving the quality of urban life, cities should look to HUD for guidance and financial assistance.<sup>18</sup> The two agencies signed numerous joint agreements in the 1970s to coordinate sewer grants, metropolitan planning, and land use assessment policies.<sup>19</sup> EPA's deferential attitude to HUD was a clear attempt to shield itself from expectations of civil rights enforcement. As the next section demonstrates, this early pattern of deference produced an agency culture rhetorically supportive of civil rights yet chronically undermotivated to implement those commitments. Instead, EPA's actions concretely advanced a larger array of agendas, from those of presidential administrations and Congressional committees to those of state and local governments, and the corporate interests which profited from citing polluting facilities in communities of color while systematically gutting social services.<sup>20</sup>

### CIVIL RIGHTS ENFORCEMENT AT THE EPA

EPA's first office for civil rights enforcement, the Office of Equal Opportunity (OEO), was housed directly under the Administrator and directed by former Nixon White House aide Norris W. Sydnor, Jr. In January 1972, the Office was renamed as the Office of Civil Rights and Urban Affairs (OCRUA) and headed by OEO staffer Carol M. Thomas until his departure for the Federal Trade Commission in 1978.<sup>21</sup> The OCRUA had three stated goals: increasing the agency's hiring of women and minorities, raising the number of grants awarded to minority contractors, and improving the urban environment.<sup>22</sup> However, in the first years of Thomas' tenure, the office was funded only for administrative costs. Staff positions, particularly that of head of the Equal Opportunity Division, were routinely left unfilled. In fiscal year 1974, only \$35 million of \$6 billion in total EPA contracts were

awarded to minority contractors (a mere 0.5%).<sup>23</sup> Moreover, EPA's commitment to improve the urban environment largely manifested as rhetorical support for the work of other federal agencies. Thomas stated to a November 1972 conference in Baltimore that the EPA admired, although could not itself emulate, the programs of other agencies, such as HUD's Model Cities demonstration projects.<sup>24</sup> And although civil rights offices were created with the regional office structure in 1972, the USCCR observed in November 1975 that only one of these regional offices had consistently maintained a full time Title VI staffer.<sup>25</sup>

In 1971 and 1974, the USCCR critiqued the EPA for its recalcitrance on civil rights enforcement and fair housing. On June 14, 1971, 3 days after Nixon's speech on fair housing, the USCCR convened 3 days of hearings in Washington, D.C., on discrimination in housing and employment. Sydnor, Ruckelshaus, and Alexander Greene (then EPA's director of Grants Administration) appeared for the EPA; however, only Ruckelshaus testified. He admitted that the agency had not yet adopted any regulations pertaining to Title VI but relied instead on those of its predecessor, the Federal Water Quality Administration.<sup>26</sup> He revealed that EPA's sole mechanism for assessing the civil rights compliance of grant recipients was a form that was submitted only after an application had been approved.<sup>27</sup> Although he identified two cases in which the EPA had intervened on Title VI grounds (Sealy, Texas, and Boca Raton, Florida), Ruckelshaus made it clear that the resolution in both instances had stemmed from negotiation rather than protocol.<sup>28</sup>

The most revealing moment in the hearing occurred when Commissioner John Powell asked Ruckelshaus directly about Nixon's statement on fair housing. Ruckelshaus, whose prepared statement indicated that the EPA intended to follow the President's interpretation of fair housing, asserted that "there are limitations as a regulatory agency to the kinds of things that we can do to insure compliance with the Civil Rights Act."<sup>29</sup> He then refused to commit to issuing criteria for the EPA to expand "the supply of low and moderate income housing in a racially nondiscriminatory way."<sup>30</sup> He hoped HUD, as the agency with grant making authority for sewage pipe and connecting lines, might establish criteria giving "preferential

<sup>17</sup>Ruckelshaus' was a specious claim. Title VI placed nondiscrimination obligations on federal agencies as well as recipients of federal financial assistance. Richard J. Lazarus. "Environmental Racism! That's What It Is." *University of Illinois Law Review* (2000): 270.

<sup>18</sup>Carol M. Thomas. "Pollution—An Inner City Crisis." In *Region V Public Report*, EPA Region V (February 1973): 2–3.

<sup>19</sup>Mary E. Brooks. *Housing Equity and Environmental Protection: The Needless Conflict*. (Washington, DC: American Institute of Planners, 1976), 9; United States Commission on Civil Rights. *Hearing Held in Washington, D.C., June 14–17, 1971*. (Washington, DC: U.S. Government Printing Office, 1972), 149.

<sup>20</sup>Josiah Rector. Email correspondence with author, January 18, 2021.

<sup>21</sup>In 1978, Doris Thompson took over leadership of the OCRUA.

<sup>22</sup>John Dreyfuss. "Black Heads New Office: U.S. Ecology Agency to Push Hiring of Women, Minorities." *Los Angeles Times*, January 28 (1972): A3.

<sup>23</sup>EPA Region V. *Environment Midwest Together*. (Chicago, IL: United States Environmental Protection Agency Office of Public Affairs, 1975): 22.

<sup>24</sup>EPA Region V. "Region V Public Report." (Chicago, IL: United States Environmental Protection Agency, February 1973), 1–2.

<sup>25</sup>United States Commission on Civil Rights. *The Federal Civil Rights Enforcement Effort – 1974*, Volume 6. (Washington, DC: U.S. Government Printing Office, 1975), 795.

<sup>26</sup>USCCR, *Hearing Held in Washington, D.C., June 14–17, 1971*, 145.

<sup>27</sup>*Ibid.*, 146.

<sup>28</sup>*Ibid.*, 1004–1005.

<sup>29</sup>*Ibid.*, 1010.

<sup>30</sup>*Ibid.*, 147–148.

consideration” to communities which “advance equal housing opportunities to people of all income levels on a metropolitan area-wide basis.”<sup>31</sup>

Ruckelshaus’ written and oral testimony to the Commission provide an important glimpse into EPA’s attitude toward its civil rights obligations, a mere 6 months into its existence. Nixon’s June 11 speech had diagnosed housing segregation as the result of individual choices and used a proxy language of economic integration to disguise the reality of enduring racial residential segregation.<sup>32</sup> Ruckelshaus’ endorsement of Nixon’s statement on behalf of the EPA committed it to furthering the administration’s dismantling of civil rights and willful denial of the lived realities of black Americans. When Ruckelshaus simultaneously averred that “we do have an affirmative obligation to insure that Title VI is complied with,” yet argued that “the primary responsibility for enforcing Title VI as it related to discrimination in housing” lay with HUD, he staked out a hypocritical position for the agency. The EPA would rhetorically support civil rights and fair housing yet claim to be incapable of taking substantive action on either.<sup>33</sup> Ruckelshaus, of course, would have been fully aware of HUD’s actual record and therefore of its lack of motivation for issuing any criteria that the EPA might follow.

Three years later, the EPA had demonstrated no substantive improvement other than publishing civil rights compliance procedures.<sup>34</sup> This lackluster performance did not go unnoticed. In a multivolume investigation published in November 1975, the USCCR scathingly assessed civil rights compliance across federal agencies. The Commission asserted that the EPA “has been lax in executing its Title VI mandate,” and “strongly disagreed” with the agency’s attempted separation of its civil rights from pollution abatement responsibilities.<sup>35</sup> The USCCR noted that wastewater treatment was integral to housing and urban development and that “minority communities are often not served by sewers.”<sup>36</sup> It argued that the EPA had a concrete responsibility to remediate past housing discrimination and that it “cannot eliminate discrimination in the programs it funds unless it ensures that the effects of previous discriminatory practices are also eradicated.”<sup>37</sup> Furthermore, “unless EPA takes positive steps to insure [sic] an end to the systematic discrimination which has resulted in inadequate sewer services in many minority communities, EPA will be responsible for perpetuating that discrimination.”<sup>38</sup> Damningly, the USCCR pointed to

specific examples in which the EPA had awarded grants to towns in Connecticut (Darien, Glastonbury, and Avon) whose zoning ordinances explicitly excluded low-income housing.<sup>39</sup>

Thomas, responding for the EPA, took umbrage with the scope and tenor of the Commission’s report. He described it as a distortion that held the agency responsible for issues outside its purview.<sup>40</sup> Thomas reiterated Ruckelshaus’ specious hierarchy between pollution control (mandatory and necessary) and community development programs (optional and discretionary). Thomas appeared particularly piqued by the assertion that the EPA had a responsibility to remedy past discrimination vis-à-vis sewage treatment, “If you are saying that we have a responsibility to go beyond our project to reverse previous discriminatory practices, we hesitate.”<sup>41</sup> He ultimately denied that EPA’s Municipal Wastewater Treatment Works Construction Grants Program was bound by Title VIII, “We most emphatically do not believe we properly may adopt the affirmative action which you have suggested for us pursuant to Title VIII: unilateral withholding of our treatment works construction grant assistance from communities which are charged with having exclusionary zoning ordinances precluding location of low cost and medium income housing within their jurisdictions.”<sup>42</sup>

Thomas’ thinly veiled irritation spoke to EPA’s obstinate refusal to recognize the connection between its grant-making and racial residential segregation. Beyond Thomas’ letter, the EPA neither engaged with USCCR’s critique nor reassessed its own responsibilities. In a February 1976 memo to regional administrators, two Assistant Administrators sought to clarify EPA’s position on Title VI enforcement. Tellingly, they placed the onus for assessing and acting on civil rights violations committed by states on regional administrators, further insulating agency headquarters from responsibility.<sup>43</sup>

By Jimmy Carter’s inauguration in 1977, EPA’s lackluster performance on civil rights had attracted attention from activists. Key among these was the Urban Environment Conference (UEC), a nonprofit focused on coalitional work among civil rights, labor, antipoverty, and environmental organizations. On April 8, 1977, the UEC and 27 joint signatories wrote to incoming Administrator Douglas Costle.<sup>44</sup> Referring directly to the USCCR’s scathing assessment, the signatories encouraged Costle to enforce civil rights, abate lead in gasoline, and

<sup>39</sup>Ibid., 599.

<sup>40</sup>Carol M. Thomas to John A. Buggs, July 8, 1975, in USCCR. *The Federal Civil Rights Enforcement Effort – 1974*, 586.

<sup>41</sup>Thomas to Buggs, 588.

<sup>42</sup>Ibid., 589.

<sup>43</sup>Alvin L. Alm and Andrew W. Breidenbach to Regional Administrators I-X, February 11, 1976, Urban Environment Conference Records (hereafter UEC Records), Box 6, Folder 37, Walter P. Reuther Library, Archives of Labor and Urban Affairs, Wayne State University.

<sup>44</sup>Josiah Rector. “The Spirit of Black Lake: Full Employment, Civil Rights, and the Forgotten Early History of Environmental Justice.” *Modern American History* 1 (2018): 55.

<sup>31</sup>Ibid., 1011.

<sup>32</sup>Taylor, *Race for Profit*, 125–126.

<sup>33</sup>USCCR. *Hearing Held in Washington, D.C., June 14–17, 1971*, 151, 1007.

<sup>34</sup>United States Environmental Protection Agency. “Non-discrimination in Federally Assisted Programs.” *Federal Register* 38 (July 5, 1973): 17968–17972.

<sup>35</sup>USCCR. *The Federal Civil Rights Enforcement Effort – 1974*, 591.

<sup>36</sup>Ibid., 597.

<sup>37</sup>Ibid., 592.

<sup>38</sup>Ibid., 595.

develop “social impact criteria” for environmental protection projects.<sup>45</sup> They had reason to be hopeful. Carter espoused strong environmental protection goals during his campaign, and Costle’s career included civil rights litigation with the Department of Justice and extensive involvement with both state and federal environmental protection agencies.<sup>46</sup> Yet following Costle’s friendly acknowledgement of UEC’s letter the following month, the EPA did not formally respond until May 1980, despite persistent attempts by the UEC to engage the agency.<sup>47</sup>

The UEC was not alone in turning a critical eye to EPA’s recalcitrance during the Carter administration. In May 1977, Assistant Deputy Public Advocate Peter A. Buchsbaum from the New Jersey Office of the Public Advocate challenged EPA’s awarding of grants for sewage treatment facilities to two new suburban developments in his state. Buchsbaum decried EPA’s “use of existing zoning patterns and little else for determining population growth projections and sewerage capacity.”<sup>48</sup> Given that “actions which have a disproportionately severe impact on racial minorities are now generally considered to violate the Federal Fair Housing Act,” Buchsbaum alleged that “facilities that are geared to the construction of expensive single family homes on large lots mainly for upper income whites probably constitute a prima facie violation of that Act since blacks are effectively excluded from living in the areas to be serviced by the new sewers.”<sup>49</sup> In New Jersey, EPA’s grant-making had reinforced suburban sprawl for wealthy whites at the expense of higher density affordable housing, effectively illustrating how “sewerage planning can become little more than an extension of exclusionary zoning.”<sup>50</sup>

Regional EPA employees were themselves frustrated. In February 1978, the law firm Public Advocates, Inc., filed a legal petition to President Carter under Article II of the Constitution, alleging that the EPA had “consistently and persistently violated the law, specifically Executive Order 11246 guaranteeing minorities specified equal rights to hold jobs and secure government contracts,” and “harassed and intimidated” two staffers responsible for contract compliance in Region 9.<sup>51</sup> The petition detailed how

the staffers had experienced serious retaliation for issuing violation letters to construction grant recipients that had flouted Title VI, and how the EPA had deflected its responsibility for contract compliance onto the state of California.<sup>52</sup>

In May 1980, less than a year before the incoming Reagan administration would thoroughly gut federal civil rights enforcement and mount a pointed attack on the EPA, the agency finally responded to the UEC.<sup>53</sup> Robert J. Knox, then acting director of the Office of Civil Rights (OCR), asserted that the EPA had made great strides under the Carter administration in reorganizing and augmenting its civil rights programs in response to the USCCR report.<sup>54</sup> Knox highlighted EPA’s creation of the Minority Business Enterprise program, the Women Business Enterprise Program, and the External Compliance Program. His letter continued an entrenched agency pattern of responding to criticism by rearranging its internal office structure and launching new initiatives tangential to the substantive issues of civil rights. EPA’s reduction of civil rights enforcement to the hiring of minoritized individuals and the granting of contracts reflected a distinctly neoliberal mindset. At no point in its first decade of existence did the EPA forthrightly reckon with the integral role its grant making played in the perpetuation of historical patterns of racial residential segregation. From Thomas to Knox, the EPA remained committed to sidestepping responsibility for historical and ongoing residential segregation. Importantly, EPA’s sidestepping of responsibility was tacitly supported by the large environmental non-profits that dominated national environmental activism by the end of the 1970s, each of which turned a blind eye to the environmental needs and concerns of urban and non-white populations.<sup>55</sup>

## CONCLUSIONS

EPA’s disposition toward civil rights and fair housing was steeped in the proxy discourses for race and the

<sup>45</sup>UEC *et al.* to Douglas Costle, April 8, 1977, UEC Records, Box 6, Folder 36.

<sup>46</sup>Jeffrey K. Stine. “Environmental Policy during the Carter Presidency.” In *The Carter Presidency: Policy Choices in the Post-New Deal Era*. Gary M. Fink and Hugh Davis Graham (eds). (Lawrence, KS: University Press of Kansas, 1998), 179–201; U.S. Environmental Protection Agency. “Costle, Blum Named to Lead EPA.” *EPA Journal* 3 (March 1977): 2.

<sup>47</sup>A February 27, 1980, UEC chronology documents repeated attempts to engage EPA via telephone, letter, and in-person meetings. Urban Environment Conference, “Chronology of UEC-EPA Correspondence Concerning EPA’s Social Equity Policy,” undated, UEC Records, Box 6, Folder 38.

<sup>48</sup>Peter A. Buchsbaum to Edgar J. Jenkins, October 7, 1977, UEC Records, Box 6, Folder 38.

<sup>49</sup>Buchsbaum to Jenkins.

<sup>50</sup>Peter A. Buchsbaum to Jeffrey Zelikson, May 27, 1977, UEC Records, Box 6, Folder 38.

<sup>51</sup>Inderjit Badhwar. “EPA Cheats Minority Groups of \$300 Million, Law Firm Charges.” *Federal Times* (February 6, 1978): 3.

<sup>52</sup>The Region 9 employees were not alone in confronting widespread racism within the agency. As Marsha Coleman-Adebayo asserted, “this agency is run like a twenty-first century plantation.” Marsha Coleman-Adebayo. *No Fear: A Whistleblower’s Triumph Over Corruption and Retaliation at the EPA*. (Chicago: Chicago Review Press, 2011), 322.

<sup>53</sup>On Reagan’s assault on the EPA and environmental regulations, see Andrew C. Isenberg and James Morton Turner. *The Republican Reversal: Conservatives and the Environment from Nixon to Trump*. (Cambridge, MA: Harvard University Press, 2018), 101–112.

<sup>54</sup>Robert J. Knox to UEC, May 12, 1980, UEC Records, Box 6, Folder 38.

<sup>55</sup>For more on the transformation of environmentalism in the 1970s, see Jennifer Thomson. “Surviving the 1970s: The Case of Friends of the Earth.” *Environmental History* 22 (2017): 235–256.

emergent neoliberalism of the Nixon years. The Task Force's 1971 report had encouraged voluntary compliance for states and industries and voiced a deeply paternalistic attitude toward urban residents that occasionally shaded into the "broken homes" language used by Daniel Patrick Moynihan in his infamous 1965 report *The Negro Family: A Case for National Action*. In the Task Force's rendering, these pitiable urbanites, suffering from illness, broken homes, and streets filled with trash, nonetheless posed a "heavy economic burden" to taxpayers. Such paternalism permeated EPA's civil rights noncompliance throughout its first decade and into the 1980s.

By 1992, the grassroots environmental justice movement exercised a measurable impact on the EPA. Activists and communities began filing Title VI complaints with the agency.<sup>56</sup> The March/April 1992 issue of the *EPA Journal* explored high-profile environmental justice cases such as Kettleman City, California, the specific challenges faced by farmworkers, and featured reporting from notable activists and scholars such as Robert D. Bullard, Ronald V. Dellums, and Dorceta Taylor.<sup>57</sup> That November, the EPA created an Office of Environmental Equity under the Assistant Administrator for Enforcement and Compliance Assurance, renamed as the Office of Environmental Justice in 1994.<sup>58</sup> President Bill Clinton's Executive Order 12898 of February 1994 mandated that all federal agencies account for the environmental justice impacts of their decisions. At the same time, black EPA employees, prominent among them Marsha Coleman-Adebayo, went public with allegations of entrenched racism within the agency's culture. Coleman-Adebayo and the EPA Victims Against Racial Discrimination organization documented the racialization of grade levels, the demeaning treatment of black and women professionals, and a generally hostile workplace environment that produced ill-health and psychological distress among the EPA employees of color.<sup>59</sup>

Despite some changes in administrative structure and public engagement, the EPA continued its record of failing to either enforce civil rights or accept that its work affected fair housing.<sup>60</sup> The OCR received

247 Title VI complaints between 1993 and 2013, yet neither issued a single violation nor once initiated its own Title VI investigation.<sup>61</sup> To date, the EPA has only made two findings of discrimination.<sup>62</sup> According to a September 2020 report from EPA's Office of the Inspector General, the OCR has not yet implemented either an oversight system to ensure that grantees follow Title VI or to collect data from grantees.<sup>63</sup> In other words, the EPA is still failing to fulfill basic responsibilities, which the USCCR questioned Ruckelshaus about in 1971.<sup>64</sup>

The roots of EPA's current failures lie in patterns it established in its first decade. Its embrace of voluntary compliance, and petulant refusal to admit that its grants could be leveraged to enforce civil rights, were enabled by a broader federal retreat from civil rights enforcement, embrace of neoliberal governance, and the tacit endorsement of the environmental lobby. The larger political context of EPA's creation suggests that the EPA never had a chance to truly ensure the health of the entire ecological chain. This contextual reality, however, neither absolves the agency of responsibility for its past actions, nor for changing its current course, particularly given the frequency with which its contemporaries called its behavior into question. The EPA certainly possesses the tools to begin making a forceful intervention into residential segregation, and by extension, environmental racism.

<sup>61</sup>Tony LoPresti. "Realizing the Promise of Environmental Civil Rights: The Renewed Effort to Enforce Title VI of the Civil Rights Act of 1964." *The Administrative Law Review* 65 (Fall 2013): 757, 773.

<sup>62</sup>Jill Lindsey Harrison. *From the Inside Out: The Fight for Environmental Justice Within Government Agencies*. (Cambridge, MA: The MIT Press, 2019), 45–47; Naveena Sadasivam. "Report: Environmental Agencies Are Violating Civil Rights Laws—and the EPA is Letting Them." *Grist*, October 6, 2020 <<https://grist.org/justice/report-environmental-agencies-are-violating-civil-rights-laws-and-the-epa-is-letting-them/>>. (Last accessed on December 10, 2020). In Dorceta Taylor's analysis, "filing Title VI administrative complaints ... has been an ineffective way for environmental justice activists to challenge permits granted to facilities." Taylor, *Toxic Communities*, 120.

<sup>63</sup>United States Environmental Protection Agency Office of the Inspector General. *Improved EPA Oversight of Funding Recipients' Title VI Programs Could Prevent Discrimination*, Report No. 20-E-0333, September 28, 2020. Appendix A of the report documents the many rounds of internal and external review to which EPA's Title VI compliance has been subjected since 1984, each of which arrived at the same conclusions. For more on EPA's internal assessments, see Harrison, *From the Inside Out*, 45–47; Taylor, *Toxic Communities*, 120–121.

<sup>64</sup>Meanwhile, racism within the agency's culture continues to thrive. Olivia Rosane. "Environmental Racism at EPA: First Policy, Now Racist Messages Written at Headquarters." *EcoWatch* November 6, 2018 <<https://www.ecowatch.com/epa-environmental-racism-policy-messages-2618309116.html>>. (Last accessed on January 21, 2021).

<sup>56</sup>Ellen Griffith Spears. *Rethinking the American Environmental Movement Post-1945*. (New York: Routledge, 2020), 176.

<sup>57</sup>United States Environmental Protection Agency. "Environmental Protection—Has it Been Fair?" *EPA Journal* 18 (March/April 1992).

<sup>58</sup>Spears, *Rethinking the American Environmental Movement*, 177.

<sup>59</sup>Coleman-Adebayo, *No Fear*, 3; Michelle Murphy. "Uncertain Exposures and the Privilege of Imperception: Activist Scientists and Race at the U.S. Environmental Protection Agency." *Osiris* 19 (2004): 270, 280. Jill Lindsey Harrison documents the persistence of racism within the agency culture today as an important factor mitigating against the real implementation of environmental justice goals. Harrison, 99–102.

<sup>60</sup>Taylor, *Toxic Communities*, 121.

**ACKNOWLEDGMENTS**

The author thanks John Enyeart and Josiah Rector for their careful feedback on this article, and Kristen Chinery for help locating archival materials.

**AUTHORSHIP STATEMENT**

Jennifer Thomson is the sole author of this article.

**AUTHOR DISCLOSURE STATEMENT**

No competing financial interests exist.

**FUNDING INFORMATION**

This work was supported by the Mellon Confounding Problems Faculty Research Fellowship at Bucknell University.

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