



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

March 11, 2022

In Reply Refer to:

EPA File No: 01RNO-22-R5

Debbie Chizewer
Managing Attorney, Midwest Office
Earthjustice
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Nick Leonard
Executive Director
Great Lakes Environmental Law Center
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Re: Acceptance of Administrative Complaints

Dear Ms. Chizewer and Mr. Leonard:

This letter is in regard to U.S. Environmental Protection Agency (EPA) Complaint No. 01RNO-22-R5¹ filed with the External Civil Rights Compliance Office (ECRCO) on November 8, 2021, against the Michigan Department of Environment, Great Lakes and Energy (EGLE). The Complaint alleges that EGLE discriminated on the basis of race, color, national origin, and age against the Black, Latino (Hispanic), residents as well as residents who are elderly, living near the proposed site for the Ajax hot asphalt facility (Ajax) to be located in Flint, Michigan, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* (Title VI), the Age Discrimination Act of 1975, 42 U.S.C. §6101-§6107, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7, when it approved Permit to Install (PTI) No. APP-2021-00192 for

¹ In EPA's acknowledgement letter sent to EGLE on November 12, 2021, the Complaint No. was listed as 01R-22-R5, ECRCO has since updated the Complaint No. to 01RNO-22-R5.

the Ajax Asphalt Plant on November 15, 2021.

Pursuant to EPA's nondiscrimination regulation, EPA's ECRCO conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO is accepting EPA Complaint No. 01RNO-22-R5 for investigation because the Complaint meets ECRCO's four jurisdictional requirements. First, the Complaint is in writing. Second, it alleges that a discriminatory act occurred in violation of EPA's nondiscrimination regulation. Third, the Complaint was filed within 180-days of the allegedly discriminatory act. Finally, EGLE is a recipient of EPA financial assistance.

Accordingly, ECRCO will investigate the following issues³:

1. Whether EGLE discriminated on the basis of race, color and national origin in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7, when it approved Permit to Install (PTI) No. APP-2021-00192 for the Ajax Asphalt Plant;
2. Whether EGLE discriminated on the basis of, race, color or national origin, disability, and age in violation of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 and EPA's implementing regulation at 40 C.F.R. Part 7, by failing to provide meaningful public participation in connection with the approval of the application for PTI No. APP-2021-00192 for the Ajax Asphalt Plant; and
3. Whether EGLE's criteria and methods of administering its air permit program, including its exercise of authority under Rule 228, has the intent and/or effect of subjecting persons to discrimination the basis of race, color, and national origin in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter

³ The issues accepted for investigation address both EPA Complaint Nos. 01RNO-22-R5 and 02DRr-22-R5, related to the Ajax Asphalt Plant.

further with you and EGLE, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

ECRCO is providing EGLE with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying EGLE of the acceptance of EPA Complaint No. 01RNO-22-R5. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact you and EGLE within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)⁴ and informal resolution agreement⁵ processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If EGLE (and you with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its issuance of preliminary findings within 180 days. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify you as well as EGLE that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁶

Please be advised that a copy of the complaint is being released to EGLE, consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁷

The EPA regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or

⁴ EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.11, at 21 (2017) (available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).

⁵ Informal Resolution occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.12; https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf; p. 22.

⁶ *See* 40 C.F.R. § 7.115(c).

⁷ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact me at (202) 564-9649, by email at dorka.lilian@epa.gov, or Jack Pantziris, Case Manager, at (202) 564-2466, by email at pantziris.jack@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read 'LSD', is positioned above the typed name of Lilian S. Dorka.

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cheryl Newton
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 5

Robert Kaplan
Regional Counsel
U.S. EPA Region 5