



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

July 28, 2023

In Reply Refer to:

EPA Complaint No. 07RNO-23-R6

Elizabeth Livingston de Calderon, Senior Attorney
Mike Brown, Senior Attorney
Earthjustice
900 Camp Street, Suite 303
New Orleans, LA 70130
ecalderon@earthjustice.org
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RE: Rejection of Administrative Complaint

Dear Ms. Calderon and Mr. Brown:

The U.S. Environmental Protection Agency (“EPA”), Office of Environmental Justice and External Civil Rights Compliance, Office of External Civil Rights Compliance (“OECRC”) received your complaint involving the Louisiana Department of Environmental Quality (“LDEQ”), dated May 31, 2023. The complaint alleges discrimination based on race and national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA’s implementing regulation at 40 C.F.R. Part 7. Specifically, the complaint alleges LDEQ’s use of Significant Impact Levels (“SILs”) in its Clean Air Act (“CAA”) Prevention of Significant Deterioration (“PSD”) permitting program discriminates against communities in Louisiana on the basis of race in violation of Title VI of the Civil Rights Act of 1964; and that the latest examples of this practice are LDEQ’s December 5, 2022 extension of the Formosa Plastics major source air permits’ deadlines to commence construction, and its March 28, 2023 grant of the Commonwealth LNG major source air permits.

Pursuant to EPA’s nondiscrimination regulation, OECRC 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 EPA’s nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.12 (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.

In general, OECRC will accept, reject, or refer a complaint after considering the four jurisdictional factors described above. However, if OECRC obtains information leading OECRC to conclude

that an investigation is unjustified for prudential reasons, OECRC may reject a complaint allegation.¹

After careful consideration, OECRC has determined that, although the complaint meets the four-factor jurisdictional test, an investigation is premature. OECRC's preliminary investigation revealed that Sierra Club, one of groups that filed the subject Title VI complaint, has filed several related petitions in federal and Louisiana state court challenging LDEQ's use of SILs in its PSD permitting program.² The petition regarding the Formosa Plastics air permit, which a Louisiana state district court granted, is now pending with a state court of appeals.³ Sierra Club also filed petitions for review of the Commonwealth permits with both the U.S. Court of Appeals for the 5th Circuit and Louisiana state district court.⁴ These lawsuits significantly overlap with the subject Title VI complaint. The petition for review filed with the LA state court contends that LDEQ's decision to issue the permits violates the CAA, Louisiana Environmental Quality Act, Louisiana air regulations, and article IX, section 1 of the Louisiana Constitution. Of particular note, the petition argues that the court should invalidate the permits because the permits will result in disproportionately high and adverse impacts on low-income communities of color.⁵

As we discussed by telephone on July 27, 2023, OECRC is rejecting this complaint because a decision in any of the referenced litigation could significantly affect the issues raised in the complaint.⁶

Separate and apart from its Title VI authorities, EPA is currently working with LDEQ to address modeled National Ambient Air Quality Standards violations with new and/or existing sources in the new source review PSD air permitting program. This may reduce the impacts of LDEQ's use of the SILs in its PSD permitting program.

EPA's nondiscrimination 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 intimidation may file a complaint with OECRC.

¹ *See* OECRC Case Resolution Manual (CRM), Section 1.8, pp. 11, available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf

² Complaint at 21-22; *RISE St. James, et al. v. LDEQ*, La. 19th JDC, Docket No. 694,029.

³ Complaint at note 79, Exhibit 28.

⁴ *Sierra Club v. LA Dep't of Env'tl Quality*, La. 19th JDC, Docket No. C731-515, filed April 27, 2023, available at https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/2023-04-27_Petition%20for%20Judicial%20Review_Final.pdf; *Sierra Club v. LA Dep't of Env'tl Quality*, Docket No. C731-515 (5th Cir.) (filed Apr. 27, 2023), available at <https://www.sierraclub.org/sites/www.sierraclub.org/files/2023-04/04.27.23%20%20Petition%20for%20Review%20Commonwealth.pdf>

⁵ *Sierra Club v. LA Dep't of Env'tl Quality*, La. 19th JDC, Docket No. C731-515, filed April 27, 2023, at 13-14, 23, 28.

⁶ CRM Section 1.8, p. 11.

E. Calderon, Counsel
M. Brown, Counsel

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If you have any questions, please feel free to contact me by telephone at (202) 809-3297 or by email at hoang.anhthu@epa.gov.

Sincerely,

Anhthu Hoang
Acting Director
Office of External Civil Rights Compliance
Office of Environmental Justice and External Civil Rights

cc:

Ariadne Goerke
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