



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; 03DRr-22-R5

Liesl Eichler Clark, Director
The Michigan Department of Environment,
Great Lakes and Energy
525 West Allegan Street
Post Office Box 30471
Lansing, MI 48909-7973
ClarkL20@michigan.gov

Re: Acceptance of Administrative Complaints

Dear Director Clark:

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, and EPA Complaint No. 03DRr-22-R5 filed with ECRCO on December 31, 2021, (collectively “the Complaints”) against the Michigan Department of Environment, Great Lakes and Energy (EGLE). The Complaints allege that EGLE discriminated on the basis of race, color, national origin, disability and age against the Black, Latino (Hispanic), residents as well as residents with disabilities and 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), Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504), 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 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

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.

² In EPA Complaint No. 03DRr-22-R5, the Complainant refers to the Permit #90-21 rather than the PTI Application No. listed above.

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 and partially accepting EPA Complaint No. 03DRr-22-R5 for investigation because the Complaints meet ECRCO's four jurisdictional requirements. First, the Complaints are in writing. Second, they allege that a discriminatory act occurred in violation of EPA's nondiscrimination regulation. Third, the Complaints were filed within 180-days of the allegedly discriminatory act. Finally, EGLE is a recipient of EPA financial assistance.

Accordingly, ECRCO will investigate the following issues:

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.

EPA Complaint No. 03DRr-22-R5 also alleged that EGLE retaliated against and intimidated the Complainant by, "acting in concert with the Detroit Federal District Court Clerk's office... sought to aid in preventing [the Complainant] from bringing further light and having "proper" notation as to a potential ... pattern of race based environmental injustice." However, through email dated January 26, 2022, the Complainant stated that he "now believe[s] [he] was most likely mistaken" given that the Detroit Federal District Court has now accepted two motions he filed in the court, and he is withdrawing this allegation. As such, ECRCO is not accepting this allegation for investigation.

The initiation of an investigation of these issues 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 further with you and Complainants, 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. I 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 Complaints No. 01RNO-22-R5 and No. 03DRr-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 EGLE and Complainants 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)³ and informal resolution agreement processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If EGLE (and the Complainant 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 EGLE as well as the Complainants that ECRCO has resumed its process for issuance of preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁴

Please be advised that redacted copies of the complaints are enclosed, consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaints 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 7.⁵

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

³ 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 3.3, at 24. (Available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

⁴ *See* 40 C.F.R. § 7.115(c).

⁵ 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.

We look forward to discussions with EGLE as we investigate and resolve this complaint. 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,



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

Enclosure Provided: Via Email, Redacted Copy of Complaints

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