

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

August 12, 2022

In Reply Refer to:

EPA Complaint No. 02R-22-R4

Oz Nesbitt Sr., Chairman
Board of Commissioners for Rockdale County
962 Milstead Avenue
Conyers, GA 30012

Sent via email:
oz.nesbitt@rockdalecountyga.gov

Re: Acceptance of Administrative Complaint

Dear Chairman Nesbitt:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation the administrative complaint filed against Rockdale County (County) received by the EPA on October 8, 2021.¹ The complaint alleges that the County discriminates on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* and EPA's nondiscrimination regulation at 40 C.F.R. Part 7, against the predominantly Black residents of Nob Hill, Conyers, GA. Specifically, the complaint alleges that the County subjects the Nob Hill residents to discrimination on the basis of race as a result of the County's continued failure to appropriately address the frequent sanitary sewer overflow (SSO) events and local development actions that exacerbate existing negative impacts on the quality of nearby surface and drinking water resources.

Pursuant to EPA's nondiscrimination regulation, 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

¹ On October 8, 2021, ECRCO received a complaint alleging the City of Conyers, GA, and Rockdale County GA, discriminated on the basis of basis of race in violation of Title VI of the Civil Rights Act of 1964. On January 24, 2022, the Complainants amended their complaint to include the Georgia Department of Environmental Resources (DNR). ECRCO is also accepting for investigation the complaint filed against the DNR, EPA Complaint No. 03R-22-R4.

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financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO has determined that the complaint meets all of the jurisdictional requirements described above. First, the complaint was submitted in writing. Second, the complaint alleges discriminatory acts that, if true, may violate the EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the County which is a recipient of financial assistance from the EPA.

Accordingly, ECRCO will investigate the following issues:

1. Whether Rockdale County's failure to address surface and drinking water concerns, particularly with respect to ongoing sanitary sewer overflow events, have the effect of subjecting residents of the Nob Hill community to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 CFR Part 7; and
2. Whether Rockdale County has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the Rockdale County's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the Rockdale County has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.²

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 further with you and the Complainants, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in

² *See* Title VI, 42 U.S.C. 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 FR 35602 (June 25, 2004) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients, at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf. (2017).

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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 the County 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 the County of the acceptance of Administrative Complaint No. 02R-21-R3. *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 Rockdale County and the 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 agreement⁴ processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If Rockdale County (and Complainants with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its 180-day timeframe for issuing Preliminary Findings for the duration of the IRA process. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify Rockdale County as well as the Complainants that ECRCO has resumed its process to issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁵

Please be advised that a copy of the complaint is being provided to the County, 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 7.⁶

The EPA regulation prohibits applicants, recipients, and others 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 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 Jonathan Stein, Case Manager, at stein.jonathan@epa.gov.

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

⁴ Informal Resolution occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.1, p.22 (https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

⁵ *See* 40 C.F.R. § 7.115(c).

⁶ 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.

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Sincerely,



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

Enclosure Provided to the County: Via Email, Redacted Copy of Complaint

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

Fred Thompson
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
US EPA Region 4

Leif Palmer
Regional Counsel
US EPA Region 4