

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. 03R-22-R4

Mark Williams
Commissioner
Georgia Department of Natural Resources
2 Martin Luther King, Jr. Drive, SE
Suite 1252, East Tower
Atlanta, GA 30334

Sent via email:

mark.williams@dnr.ga.gov

Re: Acceptance of Administrative Complaint

Dear Commissioner Williams:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Georgia Department of Natural Resources, (DNR), on January 24, 2022.¹ The complaint alleges that the DNR 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 DNR subjects the Nob Hill residents to discrimination on the basis of race as a result of DNR's continued failure to provide appropriate oversight over Rockdale County to 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. The complainant also alleges that DNR staff took actions to retaliate against and intimidate the complainant in violation of 40 CFR § 7.100.

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.*

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. The Complainants subsequently amended their complaint to include DNR. ECRCO is also accepting for investigation the complaint filed against Rockdale County, EPA Complaint No. 02R-22-R4.

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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 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, the complaint alleges discriminatory acts by the DNR which is a recipient of financial assistance from the EPA.

Issues for Investigation:

Accordingly, ECRCO will investigate the following issues:

1. Whether DNR uses criteria or methods of administering its Clean Water Act and the Safe Drinking Water Act oversight authority, including with respect to Rockdale County, GA, that 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;
2. Whether DNR staff retaliated against and/or intimidated the Complainant by taking steps to interfere with their exercise of legal rights in violation of 40 CFR § 7.100; and
3. Whether DNR 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 DNR services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the DNR 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

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

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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 DNR, 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 you 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 DNR of the acceptance of Administrative Complaint No. 03R-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 DNR 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 DNR (and the 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 you and Complainants that ECRCO will 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 released to DNR, 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

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).

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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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.

Sincerely,



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

Enclosure Provided to DNR: 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
U.S. EPA Region 4

Leif Palmer
Regional Counsel
U.S. EPA Region 4