



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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

June 24, 2021

James M. Bass
Executive Director
Texas Department of Transportation
125 East 11th Street
Austin, TX 78701
James.Bass@txdot.gov

Re: Rejection (Without Prejudice) of EPA Administrative Complaint No. 01RNO-21-R6

Dear Director Bass:

On May 24, 2021, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received an administrative complaint filed against the Texas Department of Transportation (TxDOT). The complaint alleges that the North Houston Highway Improvement Project (NHHIP) will create disparate, adverse impacts to predominantly African American and Hispanic communities in Houston, Texas on the basis of race and national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation, 40 C.F.R. Part 7. After careful consideration, for the reasons identified below, ECRCO is not accepting this complaint for investigation at this time. Accordingly, this matter is closed without prejudice as of the date of this letter.

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

In general, ECRCO will accept, reject, or refer a complaint after considering the jurisdictional requirements described above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation. For example, if the same complaint allegations have been filed with

another Federal agency and ECRCO anticipates that the agency will provide the complainant with a comparable resolution process, ECRCO may reject the allegation without prejudice.¹

The complaint alleges that TxDOT's NHHIP will create disparate, adverse impacts to the predominantly African American and Hispanic communities within the project area in Houston, in violation of Title VI. ECRCO has been in contact with the United States Department of Transportation, Federal Highway Administration's Office of Civil Rights (FHWA-OCR) and have confirmed that FHWA-OCR is currently investigating a Title VI complaint filed by Air Alliance Houston against TxDOT alleging the same violation of Title VI relative to the NHHIP, as well as, other allegations of discrimination. Based on our conversations with FHWA-OCR, ECRCO has determined that FHWA-OCR's investigation and resolution process is comparable to the process used by ECRCO. As such, to avoid duplication, ECRCO will close this case effective the date of this letter. ECRCO will continue to follow the progress of FHWA-OCR's investigation and provide any support and assistance needed by them.

Please note that ECRCO is rejecting this complaint without prejudice and that the Complainant may refile a complaint within sixty (60) calendar days of the FHWA-OCR's decision or informal resolution if that decision/informal resolution does not resolve the civil rights allegations. If the complaint is refiled, ECRCO will conduct another preliminary review to determine acceptance, rejection, or referral.² Note that ECRCO generally anticipates adopting a decision issued by another federal agency regarding the same allegation. ECRCO may evaluate whether any additional action(s) by EPA is/are needed, in this case, as a result of FHWA-OCR's finding.

If you have questions about this letter, please feel free to contact me, or Deputy Director Dale Rhines at (202) 564-4174 or via email at rhines.dale@epa.gov.

Sincerely,



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

David Gray
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 6

¹ See ECRCO's Case Resolution Manual, Section 1.8 at: https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf

² *Id.*

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