

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE  
OFFICE OF GENERAL COUNSEL

August 16, 2022

**In Reply Refer to:**

EPA File No: 01RNO-22-R9

**Sent via email**

barbara.escobar@pima.gov

Barbara Escobar, Director  
Pima County Department of Environmental Quality  
33 North Stone Avenue  
Suite 700  
Tucson, AZ 85701

**Re: Acceptance of Administrative Complaint**

Dear Director Nelson:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Pima County Department of Environmental Quality (PDEQ) and received by the EPA on December 19, 2021. The complaint alleges that PDEQ violated Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's implementing regulations at 40 C.F.R. Part 7 by discriminating on the basis of race and national origin. Specifically, the complaint alleges PDEQ subjected communities of color, including Latinx residents, living near the Becton, Dickinson, and Company Product Sterilization Facility (Becton Facility) in Tucson, AZ, to discrimination by failing to conduct an appropriate environmental justice analysis for the Becton Facility and by failing to conduct an appropriate public participation process, including various notice deficiencies, in connection with the air quality permit for the Becton Facility.

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.

After careful consideration, ECRCO has determined that the complaint meets all the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges

discrimination that, if true, could violate 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 PDEQ, which is a recipient of EPA financial assistance.

**Accordingly, ECRCO will investigate the following issues:**

1. Whether PDEQ's criteria and method of administering its air quality permitting process for the proposed Becton, Dickinson and Company Product Sterilization Facility, specifically, with respect to the method used by PDEQ for its environmental justice analysis, subjected persons of color, including Latinx persons, who live "near" the Becton Facility to discrimination on the basis of 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;
2. Whether PDEQ discriminated on the basis of 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, by failing to provide meaningful public participation in the air permit process for the proposed Becton Facility; and
3. Whether PDEQ 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 PDEQ services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether PDEQ has a public participation policy and process that is consistent with Title VI of the Civil Rights Act of 1964 including other federal civil rights laws, and EPA's implementing regulations at 40 C.F.R. Parts 5 and 7.<sup>1</sup>

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 PDEQ and the Complainant and determine next steps utilizing ECRCO's internal

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<sup>1</sup> 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](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](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](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](https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf). (2017).

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](https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

ECRCO is providing PDEQ 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 PCDEQ 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 PDEQ and the Complainant 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)<sup>2</sup> and informal resolution agreement (IRA)<sup>3</sup> processes as potential options for resolution of the issues, which ECRCO has accepted for investigation. If PDEQ (and the Complainant with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its timeframe for issuing Preliminary Findings<sup>4</sup> 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 PDEQ and the Complainant that ECRCO has resumed its complaint investigation and will issue Preliminary Findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.<sup>5</sup>

Please be advised that a copy of the complaint is being provided to PDEQ 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.<sup>6</sup>

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.

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<sup>2</sup> 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](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)).

<sup>3</sup> 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](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)).

<sup>4</sup> *See* 40 C.F.R. § 7.115(c)(1).

<sup>5</sup> *See* 40 C.F.R. § 7.115(c).

<sup>6</sup> 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.

If you have questions about this letter, please feel free to contact me by email at [dorka.lilian@epa.gov](mailto:dorka.lilian@epa.gov) or at (202) 564-9649, or Zahra Kahn, Case Manager, at [khan.zahra@epa.gov](mailto:khan.zahra@epa.gov) or at (202) 564-0460.

Sincerely,



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

Enclosure Provided to PDEQ: Via Email, Redacted Copy of Complaint

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

Deborah Jordan  
Deputy Regional Administrator  
Deputy Civil Rights Official  
U.S. EPA Region 9

Gretchen Busterud  
Acting Regional Counsel  
U.S. EPA Region 9