



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

December 5, 2022

In Reply Refer to:

EPA Complaint No: 02R-22-R1

Martin Suuberg, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street
Second Floor
Boston, MA 02108
martin.suuberg@mass.gov

RE: ACCEPTANCE OF ADMINISTRATIVE COMPLAINT

Dear Commissioner Suuberg:

This letter is in regard to U.S. Environmental Protection Agency (EPA) Complaint No. 02R-22-R1, filed with the Office of External Civil Rights Compliance (OECRC)¹ on February 21, 2022, against the Massachusetts Department of Environmental Protection (MassDEP). The complaint alleges that MassDEP's methods of administering the post-closure oversight of the Stockbridge Road Hazardous Waste Dump ("Stockbridge Road dump") in Scituate, Massachusetts, subjects Complainants and other Black, Cape Verdean residents living nearest to the Stockbridge Road dump, to discrimination on the bases of race and national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* (Title VI), and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the Complainants allege that MassDEP's failure to take appropriate action to ensure the proper closure of the Stockbridge Road Hazardous Waste Dump and effectuate the redevelopment of the site, which includes a series of communication failures with respect to Complainants' requests for testing and other correspondences such as emails and records requests pursuant to Massachusetts' Public Records Law, has subjected the Black, Cape Verdean residents to both disparate impact and different treatment.

Pursuant to EPA's nondiscrimination regulation, EPA's OECRC 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.

¹ On September 24, 2022, EPA announced the establishment of the Office of Environmental Justice and External Civil Rights (OEJECR). The new Office includes the External Civil Rights Compliance Office, which was renamed the Office of External Civil Rights Compliance (OECRC). OECRC continues to enforce and ensure compliance with federal civil rights laws, which prohibit discrimination by applicants for and recipients of EPA financial assistance. OECRC accomplishes this in accordance with the procedure described in the Case Resolution Manual.

After careful consideration, OECRC is accepting EPA Complaint No. 02R-22-R1 for investigation because the administrative complaint filed against MassDEP meets the four jurisdictional requirements. First, the complaint is in writing. Second, it alleges that a discriminatory act occurred in violation of EPA's nondiscrimination regulation. Third, the Complaint was filed within 180 days of the allegedly discriminatory act. Finally, MassDEP is a recipient of EPA financial assistance.

Accordingly, OECRC will investigate the following issues:

1. Whether MassDEP subjects Black, Cape Verdean residents, living nearest to the Stockbridge Road Dump to discrimination by intent or effect 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 conduct appropriate oversight and site remediation actions.
2. Whether MassDEP retaliated against the Complainants, in violation of Title VI and 40 C.F.R. § 7.100, by intentionally delaying its response to Complainants' records requests pursuant to the Massachusetts Public Records Law, and by failing to go onsite and conduct testing on the issues they raised; and
3. Whether MassDEP has in place and is appropriately implementing the procedural safeguards required under 40 C.F.R Parts 5 and 7 that all recipients of EPA financial assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to MassDEP's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether MassDEP has a public participation policy and process that is consistent with Title VI and other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

The initiation of an investigation of the issues above is not a decision on the merits. OECRC 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 OECRC's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and OECRC's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. I invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf

MassDEP may send a written submission to OECRC 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 MassDEP of the acceptance of Administrative Complaint No. 02R-22-R1. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact you and the Complainants within 10 days of the date of this letter to provide information about OECRC's complaint process, and to offer and discuss the alternative dispute resolution (ADR)² and informal resolution agreement³ processes as potential options for resolution of the issues which OECRC has

² EPA OECRC'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/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

³ Informal Resolution occurs between OECRC and the recipient. *See* Case Resolution Manual, Section 3.1, at p. 22; (Available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

accepted for investigation. If MassDEP (and the Complainants, with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend the timeframe for issuing Preliminary Findings⁴ for the duration of the IRA process. In the event that either of these potential resolution processes fails to result in an agreement, OECRC will notify you and the Complainants that OECRC 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.⁵

Please be advised that a copy of the complaint (attached for your information), consistent with 40 C.F.R. § 7.120(e). OECRC 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 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 intimidation may file a complaint with OECRC.

If you have questions about this letter, please feel free to contact me at (212) 637-5033, by email at hoang.anhthu@epa.gov, or Suong Vong, Case Manager, at (202) 564-0392, by email at vong.suong@epa.gov.

Sincerely,

ANHTHU
HOANG

Digitally signed by
ANHTHU HOANG
Date: 2022.12.05
12:45 26 -05'00'

Anhthu Hoang
Acting Director
Office of External Civil Rights Compliance
Office of Environmental Justice and External Civil Rights

Enclosure Provided: Via Email, Redacted Copy of Complaint (including Record of Contact with Complainant to Clarify Complaint)

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

Deb Szaro
Deputy Regional Administrator
U.S. EPA Region 1

Carl Dierker
Regional Counsel
U.S. EPA Region 1

⁴ See 40 C.F.R. § 7.115(c)(1).

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.