

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE  
OFFICE OF GENERAL COUNSEL

December 22, 2020

**In Reply Refer to:**

EPA Complaint No. 01R-21-R9

Jack P. Broadbent  
Chief Executive Officer  
Air Pollution Control Officer  
Bay Area Air Quality Management District  
375 Beale Street  
Suite 600  
San Francisco, CA 94105  
jbbroadbent@baaqmd.gov

**Re: Acceptance of Administrative Complaint**

Dear Mr. Broadbent:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against Bay Area Air Quality Management District (BAAQMD) and received by the EPA on November 30, 2020.<sup>1</sup> The complaint was filed by Californians for Renewable Energy, Inc. (Complainant) and it alleges that BAAQMD discriminated against the historically Black community of Hunters Point, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.

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

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<sup>1</sup>Complainant also filed this complaint against San Francisco Department of Public Health (SFDPH). By separate letter, ECRCO rejected the complaint against SFDPH due to lack of jurisdiction, as SFDPH is not an applicant for, or recipient of, EPA financial assistance.

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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 the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory act occurred within 180 days of the filing of this complaint. Finally, it alleges a discriminatory act by BAAQMD, which is a recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether BAAQMD discriminated against the residents of the historically Black neighborhood of Hunters Point on the basis of race in violation of Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7, in its response to an air quality complaint and Title VI complaint involving an alleged release of naturally occurring asbestos during excavation work at Hunters Point Naval Shipyard Parcel A<sup>2</sup>.
2. Whether BAAQMD 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 BAAQMD's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether BAAQMD 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<sup>3</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

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<sup>2</sup> Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) *et seq.* (prohibiting discrimination on the basis of race, color or national origin); 40 C.F.R. Parts 5 and 7. *See also* U.S. EPA, Chapter 1 of the U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit: Chapter 1, transmittal letter, and FAQs, at [https://www.epa.gov/sites/production/files/2020-02/documents/toolkit\\_ecrco\\_chapter\\_1-letter-faqs\\_2017.01.18.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf). (2017).

<sup>3</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).

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further with the Complainant and BAAQMD, if appropriate, 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/2017-01/documents/final\\_epa\\_ogc\\_ecrco\\_crm\\_january\\_11\\_2017.pdf](https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).

In the intervening time, ECRCO is providing BAAQMD 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 BAAQMD of the acceptance of Administrative Complaint #01R-21-R9. *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 BAAQMD within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the informal resolution agreement process with BAAQMD as a potential path for resolution of the issues which ECRCO has accepted for investigation. If BAAQMD agrees to engage in the informal resolution agreement process, ECRCO will suspend its complaint investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and BAAQMD, ECRCO will notify BAAQMD 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 the informal resolution agreement process. *See* 40 C.F.R. § 7.115(c).

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has 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 Zahra Khan (Case Manager) at (202)564-0460 or by email at [khan.zahra@epa.gov](mailto:khan.zahra@epa.gov).

Sincerely,



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

cc: Angelia Talbert-Duarte  
Deputy Associate General Counsel  
Civil Rights & Finance Law Office

CEO Jack P. Broadbent

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