



UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
WASHINGTON, D C. 20460

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

January 4, 2023

In Reply Refer to:

EPA Complaint No. 01NO-22-R10

Christine Cooley
Executive Director
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 105
Seattle, WA 98101
cooleyc@psccleanair.gov

Re: Rejection of Administrative Complaint

Dear Executive Director Cooley:

The U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC),¹ is rejecting without prejudice an administrative complaint filed against the Puget Sound Clean Air Agency (PSCAA) received by the EPA on January 11, 2022. The complaint alleges that PSCAA discriminated against a federally recognized Native American Tribe (Tribe) on the basis of race/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 complaint alleges that PSCAA discriminated when, on December 10, 2019, PSCAA issued the Order of Approval for Notice of Construction No. 11386 ("the Permit") for the Puget Sound Energy's Liquefied Natural Gas facility ("PSE" or "Tacoma LNG") that adversely impacts Tribal and non-native minority residents.²

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 in accordance with the procedure described in its 2021 Case Resolution Manual.

² Complainant initially filed a complaint under Title VI alleging PSCAA discriminated on the basis of national origin in its review of the permit in November 2019. OECRC (then OECRC) rejected the complaint without prejudice, citing ripeness concerns because the permit was not yet issued and advising the complainant to refile the complaint within 30 days of the completion of the permitting action. PSCAA subsequently issued the permit in December 2019, and complainant refiled the complaint in January 2020. On February 25, 2020, OECRC again rejected the complaint without prejudice citing ripeness concerns because complainant had simultaneously filed an administrative appeal and a motion to stay the permit with the Pollution Control Hearings Board (PCHB). At that time, OECRC advised the complainant to refile the complaint within 60 days of the completion of the appeal process. The PCHB appeal matter was resolved on November 19, 2021, and complainant filed an action in the Superior Court of the State of Washington (Pierce County) on December 16, 2021. On or about July 28, 2022, the Superior Court held hearings on the complaint but has not issued a judgment on the complaint. As far as OECRC is aware, the Superior Court has not yet rendered a decision on the complaint.

Pursuant to EPA's nondiscrimination regulation, 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.

In general, OECRC will accept, reject, or refer a complaint after considering the four jurisdictional factors described in the regulation. However, if OECRC obtains information leading OECRC to conclude that an investigation may not be justified for prudential reasons, OECRC may reject a complaint allegation or the complaint as appropriate.³

After careful consideration, OECRC has determined that an investigation is premature at this time because a claim has been filed by Complainants in the Superior Court of the State of Washington in Pierce County challenging the legality of the Permit. The Permit may change or be remanded as a result of the appeals process. In such a scenario, the Washington state court's decision may moot the Title VI complaint, which is based largely on the operation of the LNG facility. Accordingly, OECRC is rejecting this complaint without prejudice. As stated in the Case Resolution Manual, a complaint may be re-filed with OECRC within 60 days of the completion of the Superior Court's proceeding.⁴ If the complaint is re-filed, OECRC will then proceed with its preliminary review to determine acceptance, rejection, or referral.

The EPA's 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.

Sincerely,

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

³ *See* the OECRC Case Resolution Manual at Section 1.8, available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

⁴ *Id.*

cc:

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