



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

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

January 26, 2023

In Reply Refer to:

EPA Complaint No. 01RNO-23-R5

Brian C. Rockensuess
Commissioner
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204

RE: Rejection without Prejudice of Administrative Complaint

Dear Commissioner Rockensuess:

The U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights Compliance, Office of External Civil Rights Compliance (OECRC)¹ received a complaint against the Indiana Department of Environmental Management (IDEM), dated October 22, 2022. The complaint alleges discrimination based on race, color, 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. Specifically, the complaint alleges that in approving the renewal of the Federally Enforceable State Operating Permit (FESOP) and a New Source Construction Permit for the Maya Energy LLC municipal recycling facility (Maya), the FESOP and New Source Construction Permit for the proposed Fulcrum Centerpoint LLC biofuels plant (Fulcrum) in Gary, Indiana, and for failing to translate meeting notification material during the permit review public participation process, IDEM subjected the majority Black and Hispanic residents living nearby the facilities to discrimination on the bases of race, color, and national origin. For the reason identified below, OECRC is rejecting this complaint without prejudice and closing this case as of the date of this letter.

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. § 7.12 (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

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 procedures described in the Case Resolution Manual.

allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. The complaint against IDEM meets all jurisdictional requirements.

In general, OECRC will accept, reject or refer a complaint after considering the four jurisdictional factors described above. However, if OECRC obtains information leading OECRC to conclude that an investigation is unjustified for prudential reasons, OECRC may reject a complaint allegation.²

After careful consideration, OECRC has determined that an investigation is premature at this time, because complainants have filed two separate Petitions for Administrative Review with the Indiana Office of Environmental Adjudication (OEA), objecting to the renewal of the FESOP and New Source Construction Permit for Maya, the issuance of the FESOP and New Source Construction Permit for Fulcrum, and raising concerns about adverse human health and environmental impacts of the operation of the referenced facilities as well as a violation of Title VI. Because OEA's decision could significantly narrow the issues raised in the complaint, which is based largely on the operation of the facilities, 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 OEA proceeding. If the complaint is re-filed, OECRC will then proceed with its preliminary review to determine acceptance, rejection, or referral.

In the interim, if you have any questions about this correspondence, please feel free to contact me by telephone at (202) 809-3297 or by email at hoang.anhthu@epa.gov. You may also contact Charity Johnson, Case Manager, at (202) 564-4325 or by email at johnson.charity@epa.gov.

Sincerely,

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

cc:

Ariadne Goerke
Deputy Associate General Counsel
U.S. EPA Civil Rights & Finance Law Office

Cheryl Newton
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 5

Robert Kaplan
Regional Counsel

² *See* OECRC Case Resolution Manual, Section 1.8, pp. 11, available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf