



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

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

April 8, 2023

**In Reply Refer To:**

EPA Complaint No. 01DAR-22-R3 and 03Dr-22-R3

Dr. Debra L. Bogen  
Acting Secretary of Health  
Pennsylvania Department of Health  
8th Floor, Health & Welfare Building  
625 Forster Street  
Harrisburg, PA 17120  
dbogen@pa.gov

**Re: Rejection and Referral of Administrative Complaints**

Dear Secretary Bogen:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC),<sup>1</sup> has completed its jurisdictional review of two complaints filed against the Pennsylvania Department of Health (DOH) that OECRC received December 20, 2021. OECRC is rejecting both complaints for lack of jurisdiction. OECRC is referring both complaints to the U.S. Department of Health and Human Services (HHS) for appropriate action.

EPA Complaint No. 01DAR-22-R3 (Wyoming Complaint) alleges that DOH subjected two senior citizen landowners of North Branch Township, Wyoming County, PA to discrimination (Wyoming Complainants) on the basis of disability and age in violation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 et seq., and EPA's nondiscrimination regulation, 40 C.F.R. Part 7. The Wyoming Complaint provided the Amended Notice of Appeal (ANOA) to the Pennsylvania Environmental Hearing Board (EHB) as support for this allegation. The ANOA alleges that DOH failed to advise the Wyoming Complainants that the water supply on their property, which tested positive for *E. coli*, was unsafe for consumption.<sup>2</sup> The Wyoming Complaint claims that

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<sup>1</sup> On September 24, 2022, EPA announced the establishment of the Office of Environmental Justice and External Civil Rights (OEJECR), into which ECRCO was reorganized and 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 federal financial assistance from EPA.

<sup>2</sup> See Environmental Health Board Amended Notice of Appeal (Exhibit A), July 14, 2021, at page 10.

DOH retaliated against the Complainants based on their disability and age.

Pursuant to the Age Discrimination Act, Complainants have a right to file a civil action following the exhaustion of administrative remedies.<sup>3</sup> Under 40 C.F.R. 7.175 (a)(1), “administrative remedies are exhausted” if 180 days have elapsed since the complainant filed the complaint and EPA has made no finding with regard to the complaint.<sup>4</sup>

EPA Complaint No. 03Dr-22-R3 (Susquehanna Complaint) alleges that DOH subjected three landowners in Bridgewater Township, Susquehanna County, PA (Susquehanna Complainants) to discrimination based on disability in violation of Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and EPA’s nondiscrimination regulation, 40 C.F.R. Part 7. The Susquehanna Complainants allege that DOH discriminated against them by failing to appropriately respond to the inquiring Complainant’s personal health concerns raised to DOH.<sup>5</sup> The Susquehanna Complaint also claims that DOH retaliated against the Complainants based on their disability.

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 Code of Federal Regulation (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.

OECRC cannot accept the referenced complaints for investigation because they do not meet the jurisdictional requirements described in EPA’s nondiscrimination regulation. Specifically, DOH is not a recipient of EPA financial assistance. Because the complaints did not describe discrimination by an applicant for, or recipient of, EPA federal financial assistance, OECRC does not have jurisdiction over the claims made. OECRC is referring the complaints to HHS for appropriate action, because DOH may be a recipient of HHS financial assistance. You may direct questions for HHS to:

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<https://ehb.courtapps.com/efile/documentViewer.php?documentID=53165>.

<sup>3</sup> *See* Age Discrimination Act: <https://www.dol.gov/agencies/oasam/regulatory/statutes/age-discrimination-act>. Under Section 6104(f), “With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.”

<sup>4</sup> EPA is also providing notice of the following from 40 C.F.R. 7.175(a) and (b) (*see* <https://www.govinfo.gov/content/pkg/CFR-2014-title40-vol1/pdf/CFR-2014-title40-vol1-part7.pdf>).

<sup>5</sup> *See* Amended Notice of Appeal (Exhibit G), March 8, 2021, at pages 53-58. <https://ehb.courtapps.com/efile/documentViewer.php?documentID=51999>.

Jamie Rahn Ballay, Regional Manager  
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In light of the above, OECRC is officially rejecting, referring, and closing these complaints as of the date of this letter. If you have questions about this letter, please feel free to contact me at (202) 809-3297, by email at [hoang.anhthu@epa.gov](mailto:hoang.anhthu@epa.gov), or Jonathan Stein, Case Manager, at (202) 564-2088, by email at [stein.jonathan@epa.gov](mailto:stein.jonathan@epa.gov).

Sincerely,

ANHTHU  
HOANG

Digitally signed by  
ANHTHU HOANG  
Date: 2023.04.08  
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Anhthu Hoang, Acting Director  
Office of External Civil Rights Compliance  
Office of Environmental Justice & External Civil Rights

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

Diana Esher  
Deputy Regional Administrator  
Deputy Civil Rights Official  
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