



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

Jamie Rahn Ballay
Regional Manager
Office for Civil Rights
U.S. Department of Health and Human Services
801 Market Street, Suite 9300
Philadelphia, PA 19107
jamie.rahn@hhs.gov

Re: Referral of Administrative Complaints

Dear Ms. Ballay:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC),¹ 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 the complaints for lack of jurisdiction and referring both complaints to the U.S. Department of Health and Human Services (HHS) for appropriate action.

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.² The Wyoming Complainants also claim that DOH retaliated against them based on their disability and age.

¹ 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.

² See Environmental Health Board Amended Notice of Appeal (Exhibit A), July 14, 2021, at page 10. <https://ehb.courtapps.com/efile/documentViewer.php?documentID=53165>.

EPA has advised Wyoming Complainants that, pursuant to the Age Discrimination Act, Complainants have a right to file a civil action following the exhaustion of administrative remedies.³ 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.⁴

EPA Complaint No. 03Dr-22-R3 (Susquehanna Complaint) alleges that DOH subjected three landowners in Bridgewater Township in 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.⁵ The Susquehanna Complaint also claims that DOH retaliated against the Complainants based on their disability.

EPA is rejecting the referenced complaints for lack of jurisdiction because DOH is not a recipient of EPA financial assistance. However, DOH may be a recipient of HHS financial assistance. Therefore, OECRC is referring the complaints to HHS for appropriate action. OECRC has simultaneously notified Complainants’ Attorney and DOH that these complaints have been forwarded to your office and provided them your contact information. The complaints, as well as EPA’s rejection and referral letter, are attached.

For your awareness, the complaints refer to materials contained within Environmental Hearing Board (EHB) appeal dockets. For more information regarding the docket pertaining to Complaint 01DAr-22-R3, see

https://ehb.courtapps.com/public/document_shower_pub.php?csNameID=6007. For more information regarding the docket pertaining to Complaint 03Dr-22-R3, see

https://ehb.courtapps.com/public/document_shower_pub.php?csNameID=5969.

In light of the above, OECRC is rejecting, referring, and closing the referenced 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, or Jonathan Stein, Case Manager, at (202) 564-2088, by email at stein.jonathan@epa.gov.


³ 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.”

⁴ EPA also provided 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>).

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

Sincerely,

ANHTHU
HOANG

 Digitally signed by
ANHTHU HOANG
Date: 2023.04.08
20:32:34 -04'00'

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

Enclosures (as email attachments):

Complaints to EPA

Complainant Rejection and Referral Letter issued by EPA

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

Diana Esher
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3

Cecil Rodrigues
Regional Counsel