



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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 29, 2020

In Reply Refer to:

EPA Complaint No. 01RNO-20-R7

Carol S. Comer, Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102
Carol.Comer@dnr.mo.gov

Re: Acceptance of Administrative Complaint

Dear Director Comer:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Missouri Department of Natural Resources (MDNR) received by the EPA on September 4, 2020. The complaint was filed by the Great Rivers Environmental Law Center on behalf of the National Association for the Advancement of Colored People, Missouri State Conference ("Missouri NAACP"), the NAACP St. Louis City Branch ("St. Louis City NAACP"), and the Dutchtown South Community Corporation (DSCC)¹ alleging that the MDNR discriminated against a community of color on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, 40 C.F.R. Part 7, when on March 10, 2020, MDNR issued Part 70 Intermediate Operating Permit OP2020-008 to Kinder Morgan Transmix Company, LLC.

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.,

¹ The complaint identifies that the DSCC representing the communities of Dutchtown, Mt. Pleasant, Marine Villa and Gravois Park located in South St. Louis City, MO and is collectively hereinafter referred to as Dutchtown.

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.

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 acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the MDNR which is a recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether MDNR discriminated against a community of color, collectively hereinafter referred to as "Dutchtown" located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's implementing regulation, 40 C.F.R. Part 7, by issuing Part 70 Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations;² and
2. Whether MDNR 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 the MDNR's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the MDNR 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 7.³

² 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. (2017).

³ *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); 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); 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 (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. (2017).

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 further with you and the complainant, if appropriate, and determine next steps utilizing ECRCO's internal procedures. In the intervening time, ECRCO will provide the MDNR with the opportunity to make written submissions responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copies of the letter notifying them of the acceptance of Administrative Complaint No. 01RNO-20-R7. *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 the MDNR within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)⁴ and informal resolution agreement⁵ processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If the MDNR (and the complainant with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its complaint investigation. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify the MDNR as well as the Complainants' representative 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 either of these potential resolution processes.⁶

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 me at (202)564-9649, by email at dorka.lilian@epa.gov, or Aaron Bell, Case Manager, at (202)564-1044, by email at bell.aaron@epa.gov; or Jeryl Covington, Case Manager, at (202)564-7713, by email at covington.jeryl@epa.gov.

Sincerely,



Lilian S. Dorka, Director

⁴ EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.11, at 21 (2017) (available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).

⁵ EPA ECRCO's Informal Resolution Agreement process occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.12, at 22.

⁶ *See* 40 C.F.R. § 7.115(c).

External Civil Rights Compliance Office
Office of General Counsel

cc: Chuck Adamson
General Counsel
Missouri Department of Natural Resources

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

Edward H. Chu
Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 7

Leslie Humphrey
Regional Counsel
EPA Region 7