



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

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

May 31, 2023

In Reply Refer To:

EPA Complaint Nos: 04NO-23-R2 and 05NO-23-R2

Shawn LaTourette
Commissioner
New Jersey Department of Environmental Protection
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Judith M. Persichilli
Commissioner
New Jersey Department of Health
Department of Health
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RE: Rejection of Administrative Complaints

Dear Commissioner LaTourette and Commissioner Persichilli:

The U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights, Office of External Civil Rights Compliance (OECRC)¹ received complaints against the New Jersey Department of Environmental Protection (NJDEP) and the New Jersey Department of Health (NJDOH), dated February 17, 2023. The complaints allege NJDEP and NJDOH discriminate against Caribbean and Latino residents of New Jersey who engage in cultural and ritualistic practices using elemental mercury, on the basis of 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 complaints allege that NJDEP has been involved in "a series of longstanding civil rights violations relating to elemental mercury contamination," and NJDEP has failed to use the appropriate test methods to detect mercury vapors in dwellings and failed to take appropriate steps to notify Caribbean and Latino apartment dwellers in New Jersey about

¹ On September 24, 2022, EPA announced the establishment of the Office of Environmental Justice and External Civil Rights (OEJEER). 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.

mercury vapors in their homes and to protect them from exposure by removing them from contaminated dwellings. The complaints also allege that NJDOH instructed NJDEP researchers not to report to the occupants of contaminated dwellings that NJDEP had found elevated mercury vapor levels in dwellings that NJDEP tested. For the reason identified below, OECRC is rejecting these complaints and closing these cases 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. § 7.120(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 discussed. After careful consideration, OECRC has determined that an investigation is not appropriate because the complaints do not identify alleged discriminatory acts or omissions by either the NJDEP or the NJDOH, which occurred within 180 days of the filing of the complaints that, if true, would be sufficient to infer discrimination.² Therefore, OECRC is rejecting these complaints and closing these cases as of the date of this letter.

The EPA's regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they either have 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 any questions about this correspondence, please feel free to contact me at dorka.lilian@epa.gov.

Sincerely,



Lilian S. Dorka
Deputy Assistant Administrator for External Civil Rights
Office of Environmental Justice and External Civil Rights

² *See* 40 C.F.R. § 7.120(b)(2) and OECRC Case Resolution Manual, Section 1.5(4) at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf

cc: Ariadne Goerke
Deputy Associate General Counsel
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