



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: 06NO-23-R2 and 07NO-23-R2

Rohit T. Aggarwala
Commissioner
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373
raggarwala@dep.nyc.gov

Ashwin Vasana, MD, Ph.D.
Commissioner
New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street
New York, NY 11101
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RE: Rejection of Administrative Complaints

Dear Commissioner Aggarwala and Commissioner Vasana:

On March 2, 2023, 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 involving the New York City Department of Environmental Protection (NYC DEP) and the New York City Department of Health and Mental Hygiene (NYC DOHMH). The complaints allege that NYC DEP and NYC DOHMH discriminate against Caribbean and Latino residents of New York City 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 NYC DEP and NYC DOHMH, despite being made aware of the public health concerns posed by the "magico-religious, ritualistic use of elemental mercury," failed to take action to protect people from mercury exposure in their homes, schools, and from "plumber's manometer spills."

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.

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 NYC DEP or the NYC DOHMH, 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

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

Walter Mugdan
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 2

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

Paul Simon
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U.S. EPA Region 2