



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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

March 26, 2021

In Reply Refer to:

EPA Complaint No. 02R-21-R3

Kassahun Sellassie, Ph.D., P.E.
Director
Air Management Services
321 University Avenue
Second Floor
Philadelphia, PA 19104

Re: Acceptance of Administrative Complaint

Dear Director Sellassie:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Philadelphia Department of Public Health's Air Management Services and received by the EPA on February 26, 2021. The complaint was filed on behalf of Philadelphians Organized to Witness, Empower and Rebuild (POWER) and signed by (b)(6) Privacy, (b)(7)(C) Enf. Privacy [REDACTED] alleges that the Philadelphia Department of Public Health's Air Management Services (AMS) discriminated against the predominantly African American community in the Nicetown neighborhood of Philadelphia, Pennsylvania on the basis of race in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7 when it issued on November 29, 2017, AMS issued Plan Approval No. IP17-000009 (Plan Approval) to the Southeastern Pennsylvania Transportation Authority (SEPTA) for the construction of a natural gas fired combined heat and power facility.

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., 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, unless ECRCO waives

¹ The complaint (02R-21-R3) was submitted by (b)(6) Privacy, (b)(7)(C) Enf. Privacy [REDACTED] representing POWER by email on February 25, 2021 hereinafter the Complainant.

the time limit for good cause. *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, ECRCO has determine, based on the specific facts of this case, that it will waive the timeliness requirements. Finally, it alleges a discriminatory act by Philadelphia AMS, which is a recipient of EPA financial assistance.

In granting a waiver, ECRCO examined the record to determine whether the complainant filed proceedings that satisfy the waiver provisions as discussed in ECRCO's Case Resolution Manual (CRM).² Based on a review of the record, ECRCO has determined it is appropriate to grant a waiver and that it is appropriate to accept this complaint for investigation.

Accordingly, ECRCO will investigate the following issues:

1. Whether the Philadelphia AMS discriminated against the predominantly African American community in the Nicetown neighborhood of Philadelphia, Pennsylvania on the basis of race and national origin in violation the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7, when it issued Air Permit No. IP17-000009 on November 29, 2017.
2. Whether the Philadelphia AMS 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 Philadelphia AMS' services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether the Philadelphia AMS 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 Case Resolution Manual, Section 1.5 (4) (b) "Determine whether a waiver should be granted" at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf

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

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 the Complainant and Philadelphia AMS, if appropriate, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

In the intervening time, ECRCO is providing the Philadelphia AMS with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying Philadelphia AMS of the acceptance of Administrative Complaint #02R-21-R3. *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 Philadelphia AMS within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the informal resolution agreement process with Philadelphia AMS as a potential path for resolution of the issues which ECRCO has accepted for investigation. If Philadelphia AMS agrees to engage in the informal resolution agreement process, ECRCO will suspend its complaint investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and Philadelphia AMS, ECRCO will notify Philadelphia AMS and the Complainant 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 the informal resolution agreement process. *See* 40 C.F.R. § 7.115(c).

Please be advised that a copy of the complaint is attached (via email), consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁴

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 Waleska Nieves-Muñoz (Case Manager) at (202) 564-7103 or by email at waleska.nieves-munoz@epa.gov.

Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf. (2017).

⁴ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Attached Via Email: Redacted Copy of Complaint

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

Paul Leonard
Senior Advisor
Alternate Deputy Civil Rights Official
U.S. EPA, Region 3

Cecil Rodrigues
Regional Counsel
U.S. EPA Region 3