



UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY
WASHINGTON, D C. 20460

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

July 18, 2023

In Reply Refer to:

EPA Complaint No. 08R-23-R4

Lance LeFleur
Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Post Office Box 301463
Montgomery, AL 36111-2400
llefleur@adem.alabama.gov

RE: Rejection without Prejudice of Administrative Complaint

Dear Director LeFleur:

The U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights, Office of External Civil Rights Compliance (OECRC) received a complaint, dated May 8, 2023, regarding the Alabama Department of Environmental Management (ADEM). The complaint alleges discrimination based on race 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 complaint alleges that ADEM's renewal of five Clean Air Act Title V Permits (Plains Marketing LP, Alabama Bulk Terminal, Kimberly-Clark Corporation, Epic Alabama Maritime Assets, LLC-Alabama Shipyard LLC, and UOP LLC) in Mobile County, Alabama and intentional expediting of the permit approval process for all five permits subjects the nearby community of Africatown to discrimination on the basis of race. For the reason identified below, OECRC is rejecting this complaint without prejudice and closing this case 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. The complaint against ADEM meets all the jurisdictional requirements.

In general, OECRC will accept, reject, or refer a complaint after considering the four jurisdictional factors discussed above. However, if OECRC obtains information leading OECRC

to conclude that an investigation is unjustified for prudential reasons, OECRC may reject the complaint allegation.¹

After careful consideration, OECRC has determined that an investigation is premature at this time, because complainants have filed a Clean Air Act Title V Petition with the Administrator of the EPA (Petition). The Petition objects to the renewal of the Title V Permits on the grounds that it did not comply with procedural safeguards and raises concerns about adverse human health and environmental impacts of the operation of the referenced facilities.² Because the EPA Administrator's decision may narrow the issues to be addressed, OECRC is rejecting this complaint without prejudice. As stated in the Case Resolution Manual, a complaint may be re-filed with OECRC within 60 days of the completion of the Title V Petition proceeding. If the complaint is re-filed, OECRC will then proceed with its preliminary review to determine acceptance, rejection, or referral.

EPA's regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have 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 OECRC.

If you have any questions about this correspondence, please feel free to contact me by telephone at (202) 809-3297 or by email at hoang.anhthu@epa.gov. You may also contact Charity Johnson, Case Manager, at (202) 564-4325 and by email at johnson.charity@epa.gov, or Hayley Cormack, Case Manager, at (202) 250-8851 and by email at cormack.hayley@epa.gov.

Sincerely,

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

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

¹ See OECRC Case Resolution Manual, Section 1.8, pp. 11, available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf

² Complainants raised overlapping allegations regarding violations of Title VI in their Title V petition and their Title VI complaint. The Title V petition alleged that ADEM did not address the disparate impacts of the facilities on the affected Black community in their decision to approve the permits and that ADEM's issuance of the permits within one week hindered meaningful participation by Black residents in violation of Title VI. The Title V petition also alleged that the permits contained several technical deficiencies or errors that violated the Clean Air Act.

L. LeFleur, Director

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Carol Kemker
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

Leif Palmer
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