

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

November 2, 2021

In Reply Refer to:

EPA File No: 03R-21-R4

Greg Young
Deputy Commissioner, Bureau of Environment
Tennessee Department of Environment and Conservation
312 Rosa L. Parks Avenue
Tennessee Tower – 2nd Floor
Nashville, TN 37243
greg.young@tn.gov

Re: Informal Resolution/Tolling of Preliminary Findings Timeframe

Dear Mr. Young:

This letter concerns EPA Complaint No. 03R-21-R4, which was accepted for investigation on June 15, 2021. The U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is required by regulation to seek cooperation with recipients in securing compliance with 40 C.F.R. Parts 5 and 7 through informal and voluntary means.¹ The process of developing and executing an Informal Resolution Agreement (IRA) was described to you as the Deputy Commissioner of Tennessee Department of Environment and Conservation (TDEC) initially during a telephone conversation on July 22, 2021 with further discussion on October 8, 2021. On October 22, 2021, Jeff Zentner, Associate General Counsel, TDEC, informed ECRCO that TDEC has agreed to engage in negotiations toward the execution of an IRA. As such, as of October 22, 2021, ECRCO and TDEC have commenced informal resolution agreement discussions. This is described in further detail below, including an enumeration of issues to be discussed/resolved.

Accordingly, ECRCO will suspend its formal investigation and toll the 180-day preliminary findings timeframe in 40 C.F.R. § 7.115(c)(1) for the duration of the informal resolution agreement process. ECRCO will ensure that this process occurs without undue delay. If the informal resolution process fails to result in an IRA between ECRCO and TDEC, ECRCO will notify you and the Complainants that ECRCO has resumed its 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.² During the informal resolution process our office will continue to communicate regularly with you and the Complainants about the status of this complaint. We may also request your and the Complainants' assistance in accessing pertinent

¹ See 40 C.F.R. § 7.105 (EPA "shall seek the cooperation of applicants and recipients in securing compliance with" 40 C.F.R. Part 7); and 7.120(d)(2) (EPA "shall attempt to resolve complaints informally whenever possible.").

² See 40 C.F.R. § 7.115(c).

records or arranging interviews of witnesses. Information thus obtained will be used in drafting a responsive IRA.

On June 15, 2021, ECRCO accepted the following issues for investigation:

1. Whether TDEC discriminated on the basis of race in violation of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation at 40 C.F.R. Part 7, when TDEC issued Aquatic Resource Alteration Permit and Section 401 Certification NRS20.089 for the Byhalia Connection Pipeline on November 17, 2020; and
2. Whether TDEC 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 TDEC's services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether TDEC 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.

The Byhalia permit (NRS20.089) was relinquished and formally revoked on July 28, 2021. In light of the revocation of the Byhalia permit, ECRCO has revised the issues to be resolved through the informal resolution agreement process (or fully investigated, should the IRA process fail to result in an IRA between ECRCO and TDEC.) The issues currently in informal resolution are:

1. Whether TDEC discriminates on the basis of race in violation of the Civil Rights Act of 1964 (Title VI) and EPA's regulation at 40 C.F.R. Part 7, when, within its environmental permitting program for new and existing facilities, it fails to consider potential adverse disparate impacts on the basis of race and national origin, including, for example, through the use of EJ screening tools and consideration of public input (such as recently when TDEC issued Aquatic Resource Alteration Permit for the Byhalia Connection Pipeline on November 17, 2020 – permit now revoked).
2. Whether TDEC 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 TDEC's services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether TDEC 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.

Mr. Greg Young

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If you have questions about this letter, please feel free to contact me by email at Dorka.Lilian@epa.gov or at (202) 564-9649, Jonathan Stein, Case Manager by email at Stein.Jonathan@epa.gov, or Albert Karmi, Case Manager by email at Karmi.Albert@epa.gov.

Sincerely,



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

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

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

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