

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

January 25, 2021

In Reply Refer to:

EPA Complaint No. 01RNO-21-R5

John J. Kim
Director
Illinois Environmental Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
John.j.kim@illinois.gov

Re: Acceptance of Administrative Complaint

Dear Director Kim:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Illinois Environmental Protection Agency (IL EPA) and received by the EPA on December 17, 2021. The complaint was filed by Mr. Keith Harley and Ms. Nancy Loeb on behalf of the Southeast Environmental Task Force (SETF) and the Chicago Southeast Coalition to Ban Petcoke (Coalition) and it alleges that IL EPA discriminated against the “LatinX and African American” communities in southeast Chicago on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA’s nondiscrimination regulation, at 40 C.F.R. Part 7.

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. *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

Director John J. Kim

discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory act occurred within 180 days of the filing of this complaint. Finally, it alleges a discriminatory act by IL EPA, which is a recipient of EPA financial assistance.

In addition to the jurisdictional requirements noted above, ECRCO takes into consideration any relevant prudential factors¹ that could affect the determination. ECRCO is aware that the complaint has been previously filed and processed through the IL EPA's grievance procedures. ECRCO has determined that it is appropriate to accept this complaint for investigation.

ECRCO will investigate the following issues:

1. Whether IL EPA discriminated against the predominantly Latino and African American community in southeast Chicago on the basis of race and national origin in violation of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7, in its permitting process and issuance of a Construction Permit to General III, LLC.²
2. Whether IL EPA 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 IL EPA's services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether the IL EPA 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

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a

¹ Case Resolution Manual, Section 2.5 Other Factors to Consider After Accepting a Complaint for Investigation at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf

² Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) *et seq.* (prohibiting discrimination on the basis of race, color or national origin); 40 C.F.R. Part 7. *See also* U.S. EPA, Chapter 1 of the U.S. EPA's External Civil Rights Compliance Office Compliance Toolkit: Chapter 1, transmittal letter, and FAQs, at https://www.epa.gov/sites/production/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf. (2017).

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

Director John J. Kim

neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with the Complainant and IL EPA, 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 IL EPA 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 IL EPA of the acceptance of Administrative Complaint #01R-21-R9. *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 IL EPA 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 IL EPA as a potential path for resolution of the issues which ECRCO has accepted for investigation. If IL EPA 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 IL EPA, ECRCO will notify IL EPA 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 enclosed, consistent with 40 C.F.R. § 7.120(e). ECRCO released 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 Brittany Robinson (Case Manager) at (202) 564-0727 or by email at robinson.brittany@epa.gov.

Sincerely,

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.

Director John J. Kim



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

Enclosure (Complaint Attached Via E-Mail)

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

Cheryl Newton
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 5

Nelson T. Leverett
Regional Counsel