



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights

Office of External Civil Rights Compliance

August 22, 2023

In Reply Refer to:

EPA Complaint No. 05R-22-R3

Richard Jackson
Interim Director
Department of Energy & Environment
1200 First Street, NE
Washington, DC 20002
richard.jackson2@dc.gov

Re: Acceptance of EPA Complaint No. 05R-22-R3

Dear Director Jackson:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC), has completed its jurisdictional review of a complaint that it received on May 25, 2022, filed on behalf of residents of the District of Columbia's (D.C.) Brentwood neighborhood, located in Northeast D.C. (Complaint). The Complaint alleges that the District of Columbia Department of General Services (DGS) and the District of Columbia Department of Energy and Environment (DOEE)¹ discriminated against residents of the Brentwood neighborhood on the basis of race, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) et seq., and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the Complaint alleges that DGS's submission of an Environmental Impact Statement Form (EISF) to DOEE for approval after the construction of the Office of the State Superintendent of Education (OSSE) school bus facility (Facility)² had already begun, and DOEE's approval thereof, subjected Black residents of the Brentwood neighborhood to discrimination.

Pursuant to EPA's nondiscrimination regulation, EPA's 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

¹ The Complaint also named (1) the Office of the District of Columbia Mayor, Muriel Bowser, and (2) the D.C. Office of the State Superintendent of Education. Based on OECRC's jurisdictional assessment, OECRC is not initiating an investigation against these two entities.

² The OSSE school bus facility is intended to house 250 school buses for transporting students with disabilities to schools and other locations in D.C. and potentially to other nearby locations in Maryland and/or Virginia.

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, OECRC is accepting EPA Complaint No. 05R-22-R3 for investigation because it meets the four jurisdictional requirements. First, the Complaint is in writing. Second, it alleges that a discriminatory act occurred in violation of EPA's nondiscrimination regulation. Third, the Complaint was filed within 180 days of the allegedly discriminatory act. Finally, DOEE is a recipient of EPA financial assistance.

Accordingly, OECRC will investigate the following issues:

1. Whether DOEE's approval of the Facility's Environmental Impact Statement Form (EISF) subjected the residents of the Brentwood community to discrimination on the basis of 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; and
2. Whether DOEE 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 DOEE's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether DOEE 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. OECRC is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the Complainant, and determine next steps utilizing OECRC's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and OECRC's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. I invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at

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/system/files/documents/2023-04/Disability%20Nondiscrimination%20Sample%20TA%20Policy.pdf> (2022).

https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

DOEE may send a written submission to OECRC 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 DOEE of the acceptance of Administrative Complaint No. 05R-22-R3.

See 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact you and the Complainants within 10 days of the date of this letter to provide information about OECRC's complaint process, and to offer and discuss the alternative dispute resolution (ADR)⁴ and informal resolution agreement⁵ processes as potential options for resolution of the issues which OECRC has accepted for investigation. If DOEE (and the Complainant, with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend the timeframe for issuing Preliminary Findings⁶ for the duration of the IRA process. In the event that either of these potential resolution processes fails to result in an agreement, OECRC will notify you and the Complainants that OECRC has resumed process for issuing preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁷

Please be advised that a copy of the Complaint is attached for your information, consistent with 40 C.F.R. § 7.120(e). OECRC 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 7.⁸

The EPA 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 questions about this letter, please feel free to contact me at (202) 809-3297, by email at hoang.anhthu@epa.gov, or Zahra Khan, Case Manager, at (202) 564-0460, by email at khan.zahra@epa.gov.

⁴ EPA OECRC's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, OECRC Case Resolution Manual, Section 3.3, at 24. (Available at: https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

⁵ Informal Resolution occurs between OECRC and the recipient. *See* Case Resolution Manual, Section 3.1, at p. 22; (Available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

⁶ *See* 40 C.F.R. § 7.115(c)(1).

⁷ *See* 40 C.F.R. § 7.115(c).

⁸ 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,

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

Enclosure Provided: Via Email, Redacted Copy of Complaint

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

Diana Esher
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3

Cecil Rodrigues
Regional Counsel
U.S. EPA Region 3

