



United States Environmental Protection Agency

External Civil Rights Compliance Office

Office of General Counsel

U.S. Department of Transportation

**Pipeline and Hazardous Materials
Safety Administration**

January 13, 2022

In Reply Refer to:

EPA File No: 02RNO-21-R2; DOT Complaint #2021-0328

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Robert Rosenthal
General Counsel
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Re: Informal Resolution/Tolling of Investigative Timeframe

Dear Mr. Sanza and Mr. Rosenthal,

This letter concerns EPA Complaint No. 02RNO-21-R2, which was accepted for investigation against the New York State Department of Environmental Conservation (DEC) on October 21, 2021, and DOT Complaint #2021-0328, which was accepted for investigation against the New York State Department of Public Service (DPS) on November 26, 2021 (DEC and DPS will hereinafter be referred to as the “State Agencies”).

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 the Deputy General Counsel of DEC during a conversation on November 9, 2021. On December 20, 2021, the Deputy General Counsel of DEC informed ECRCO that it has agreed to engage in negotiations

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.”).

toward the execution of an IRA. Accordingly, as of December 20, 2021, ECRCO and DEC commenced informal resolution agreement discussions. ECRCO, therefore, will suspend its 180-day timeframe for issuing Preliminary Findings (40 C.F.R. § 7.115(c)(1)) for the duration of the IRA process. ECRCO will ensure that this process occurs without undue delay.

The United States Department of Transportation's (DOT) nondiscrimination regulations² provide that Offices of Civil Rights will attempt to resolve complaints informally whenever possible. The process of developing and executing an IRA was described to the General Counsel of DPS during a conversation on December 22, 2021. On December 27, 2021, the General Counsel of DPS informed DOT that it has agreed to engage in negotiations toward the execution of an IRA. Accordingly, as of December 27, 2021, DOT and DPS have commenced informal resolution agreement discussions. DOT, therefore, will also suspend its process for issuing findings for the duration of the IRA process.

DOT and ECRCO (DOT and ECRCO will hereinafter be referred to as the "Federal Agencies") have agreed to commence a joint IRA negotiation process with the State Agencies, the goal of which will be to reach an agreement between the State Agencies and the Federal Agencies that resolves the issues accepted for investigation. If the State and Federal agencies fail to reach an informal resolution agreement, the Federal Agencies will notify the State Agencies and the complainants of that fact and resume the process for issuing preliminary findings.³ To facilitate the informal resolution agreement process, we will continue to engage with you, as well as complainants, to gather the necessary facts and information so that we may provide you with a draft IRA as soon as possible for your review and consideration.

If you have questions about this letter, please feel free to contact us by email at dorka.lilian@epa.gov, or rosanne.goodwill@dot.gov, or Katelyn Liesner, Case Manager by email at liesner.katelyn@epa.gov, or Jack Pantziris, Case Manager at pantziris.jack@epa.gov.

Sincerely,



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

Rosanne Goodwill
Rosanne Goodwill, Director
Office of Civil Rights

² 49 C.F.R. Part 21.11(d).

³ See 40 C.F.R. § 7.115(c). In the event the Federal and State Agencies cannot reach an Informal Resolution Agreement, EPA will resume the process for issuing preliminary findings within 180 days of the start of the investigation – excluding the period spent in the informal resolution agreement process.

Pipeline and Hazardous Materials
Safety Administration, U.S. DOT

cc: Ariadne Goerke
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