



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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

November 24, 2021

In Reply Refer to:

EPA File No: 04R-21-R5

Liesl Eichler Clark, Director
The Michigan Department of Environment,
Great Lakes and Energy
525 West Allegan Street
Post Office Box 30471
Lansing, MI 48909-7973
ClarkL20@michigan.gov

Re: Acceptance of Administrative Complaint

Dear Director Clark:

This letter is in regard to U.S. Environmental Protection Agency (EPA) Complaint No. 04R-21-R5 filed with the External Civil Rights and Compliance Office (ECRCO) on September 1, 2021, against the Michigan Department of Environment, Great Lakes and Energy (EGLE). The complaint alleges that EGLE discriminated against the predominately African American community adjacent to the Graphic Packaging International (GPI) facility in the City of Kalamazoo 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.* (Title VI), and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7 when EGLE approved Permit to Install (PTI) No. 133-19A for the GPI facility on November 24, 2020 despite several reported alleged violations of the National Ambient Air Quality Standards (NAAQS) and alleged failure to conduct appropriate oversight of the GPI facility. In addition, Complainant alleges EGLE retaliated against or intimidated her in violation of Title VI and 40 C.F.R. § 7.100 when on November 13, 2020, EGLE allegedly asked her not to file a civil rights complaint against EGLE.

Pursuant to EPA's nondiscrimination regulation, EPA's 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 is accepting EPA Complaint No. 04R-21-R5 for investigation because the administrative complaint filed against EGLE 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, although the complainant did not contact ECRCO within 180 days of the allegedly discriminatory act, ECRCO has determined that a waiver is appropriate in this situation because the record indicates that the Complainant has been in regular contact with EPA Region 5 since July 27, 2020 regarding EGLE's issuance of the permit and alleged failure to conduct appropriate oversight of the GPI facility, as well as with respect to the allegation that ELGE instructed Complainant not to file a civil rights complaint against EGLE. Finally, EGLE is a recipient of EPA financial assistance.

Accordingly, ECRCO will investigate the following issues:

1. Whether EGLE discriminated on the basis of race in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7, when it approved Permit to Install (PTI) No. 133-19A for Graphic Packaging International (GPI) and with respect to its oversight of the GPI facility; and
2. Whether EGLE retaliated against or intimidated the Complainant in violation of Title VI and 40 C.F.R. § 7.100 when on November 13, 2020, EGLE allegedly asked the Complainant not to file a civil rights complaint against EGLE.

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

ECRCO is providing EGLE 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 EGLE of the acceptance of Administrative Complaint No. 04R-21-R5. *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 EGLE and the Complainant within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)¹ and informal resolution agreement² processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If EGLE (and the Complainant with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its formal complaint investigation. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify EGLE as well as 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 either of these potential resolution processes.³

Please be advised that a copy of the complaint is enclosed, consistent with 40 C.F.R. § 7.120(e). ECRCO 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 7.⁴

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 ECRCO.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or Jack Pantziris, Case Manager, at (202) 564-2466, by email at pantziris.jack@epa.gov.

Sincerely,



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

¹ EPA ECRCO'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, ECRCO Case Resolution Manual, Section 3.3, at 24. (Available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

² Informal Resolution occurs between ECRCO 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)

³ *See* 40 C.F.R. § 7.115(c).

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.

Enclosure Provided: Via Email, Redacted Copy of Complaint

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

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

Robert Kaplan
Regional Counsel
US EPA Region 5