



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

September 8, 2023

In Reply Refer to:

EPA Complaint No. 03RNO-23-R3

Todd Lawson
County Administrator
Sussex County
2 The Cir (PO Box 589)
Georgetown, DE 19947
tlawson@sussexcountye.gov

RE: Rejection of Administrative Complaint

Dear County Administrator Lawson:

The U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC), received a complaint against Sussex County, Delaware (Sussex County), dated December 22, 2022. The Complaint alleges that Sussex County discriminated against the Black, Haitian, and Latino residents living near Bioenergy Development Company's Bioenergy Innovation Center (BDC's facility), located in Sussex County, Delaware, on the basis of race, color, and national origin in violation of Title VI of the Civil Rights Act of 1964, 43 USC § 2000d et seq. (Title VI), and EPA's nondiscrimination regulation at 40 C.F.R. Part 7. Specifically, the Complaint alleges that Sussex County failed to provide adequate public participation opportunities to the residents living near BDC's facility, including language services for residents with limited English proficiency (LEP), during the county conditional use permit application review process for BDC's facility.

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 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 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 has determined that an investigation is not appropriate based on lack of timeliness. The Complaint did not describe acts of alleged discrimination that occurred within 180 days of the filing of the Complaint.¹ However, the Complaint does meet the other three jurisdictional requirements: the Complaint was submitted in writing; the Complaint alleges discriminatory acts that, if true, may violate the EPA's nondiscrimination regulation; and the Complaint identifies Sussex County, a recipient of EPA funding, as the entity committing the alleged discriminatory acts.

In light of the lack of timeliness, OECRC is rejecting the Complaint and closing the case as of the date of this letter. However, OECRC is considering initiating a compliance review to determine whether Sussex County 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 Sussex County services, programs, and activities, for individuals with LEP and individuals with disabilities, and whether Sussex County 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 7.² Sussex County is invited to reach out to OECRC to discuss these obligations.

EPA's nondiscrimination regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they either have 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. You may also contact Margaret Gérardin, Case Manager, at (202) 564-2491, by email at gerardin.margaret@epa.gov.

¹ *See* 40 C.F.R. § 7.120(b)(2) and OECRC Case Resolution Manual, Section 1.5, p. 5-10.

https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf.

² *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).

Sincerely,

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

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

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