



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

November 15, 2023

In Reply Refer to:

EPA File No: 04RD-22-R4

Elisabeth Biser
Secretary of Environment
North Carolina Department of Environmental Quality
217 W Jones St.
Raleigh, NC 27603
<mailto:elisabeth.biser@nc.gov>

RE: ACCEPTANCE OF ADMINISTRATIVE COMPLAINT

Dear Secretary Biser:

This letter is regarding U.S. Environmental Protection Agency (EPA) Complaint No. 04RD-22-R4 filed with the Office of External Civil Rights Compliance (OECRC)¹ on March 17, 2022,² alleging the North Carolina Department of Environmental Quality (DEQ) discriminated against, residents of the Anderson community who live within a one-mile radius of the Sunrock-Burlington North asphalt cement plant (Facility), on the basis of race and disability, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et. seq.* (Title VI) and Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794 (Section 504). Specifically, the complaint alleges that DEQ's permitting process to approve the construction and operation of the Facility and public participation process discriminated against black residents and residents with disabilities in the Anderson community.

¹ On September 24, 2022, EPA announced the establishment of the Office of Environmental Justice and External Civil Rights (OEJEER). The new Office includes the External Civil Rights Compliance Office, which was renamed the Office of External Civil Rights Compliance (OECRC). OECRC continues to enforce and ensure compliance with federal civil rights laws, which prohibit discrimination by applicants for and recipients of EPA financial assistance. OECRC accomplishes this in accordance with the procedures described in the Case Resolution Manual.

² On April 11, 2022, and again on September 30, 2022, the Complainants submitted supplemental claims and information to the complaint.

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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 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. 04RD-22-R4 for investigation because the complaint 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 alleged discriminatory act. Finally, NC DEQ is a recipient of EPA financial assistance.

Accordingly, OECRC will investigate the following issue:

Whether NC DEQ's implementation of its air permitting program with respect to the issuance of the Burlington North asphalt cement plant permit (Permit No. 10693R00), including its public participation process and practices, excluded from participation, denied benefits to, or subjected to discrimination, residents of the Anderson community who live near the facility on the basis of race and disability in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and EPA's implementing regulation at 40 C.F.R. Part 7.

The initiation of an investigation of the issue 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 complainants, 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. We invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at [https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual .pdf](https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf)

DEQ 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 you of the acceptance of EPA Complaint No. 04RD-22-R4. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

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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)³ and informal resolution agreement (IRA)⁴ processes as potential options for resolution of the issues which OECRC has accepted for investigation. If DEQ (and the Complainants with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend the timeframe to issue preliminary findings within 180 days. In the event that either of these potential resolution processes fails to result in an agreement, OECRC will notify you as well as the Complainants that OECRC has resumed its process to issue preliminary findings, or otherwise resolve the matter, within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁵

Please be advised that a copy of the complaint is being released to you, 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 7.⁶

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 (220) 809-3297, by email at hoang.anhthu@epa.gov, or Priyanka Ghosh, Case Manager, at (212) 637-3405, by email at ghosh.india@epa.gov.

Sincerely,

On behalf of
Anhthu Hoang, Acting Director
Office of External Civil Rights Compliance

³ 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 (2021) (available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf)

⁴ Informal Resolution occurs between OECRC and the recipient. *See* Case Resolution Manual, Section 3.1; https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf; p. 22.

⁵ *See* 40 C.F.R. § 7.115(c).

⁶ 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.

Secretary Biser

Office of Environmental Justice and External Civil
Rights

Enclosure: Via Email, Redacted Copy of Complaint

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Carol Kemker
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

Leif Palmer
Regional Counsel
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