

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460



EXTERNAL CIVIL RIGHTS COMPLIANCE  
OFFICE  
OFFICE OF GENERAL COUNSEL

March 2, 2020

**Return Receipt Requested**

Certified Mail #: 7015 3010 0001 1267 2934

**In Reply Refer to:**

EPA File No: 02R-20-R4

Michael Regan  
Secretary  
North Carolina Department of Environmental Quality  
217 West Jones Street  
Raleigh, NC 27603

Certified Mail #: 7015 3010 0001 1267 2941  
Linda Culpepper  
Director  
Division of Water Resources  
North Carolina Department of Environmental Quality  
217 West Jones Street  
Raleigh, NC 27603

**Re: Rejection without Prejudice of Administrative Complaint**

Dear Secretary Regan and Director Culpepper:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received a complaint against the North Carolina Department of Environmental Quality (NCDEQ), on February 6, 2020, alleging discrimination based on race and national origin in violation of Title VI of the Civil Rights Act of 1964. The Complaint alleges that NCDEQ approved and subsequently failed to revoke permits issued to Atlantic Coast Pipeline, LLC (ACP) under § 401 of the Clean Water Act of 1972 (CWA), that have a disproportionate impact on the bases of race and national origin against Native Americans and African Americans.<sup>1</sup> For the reason identified below, ECRCO is rejecting this complaint without prejudice and closing this case as of the date of this letter.

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<sup>1</sup> On May 15, 2018, Friends of the Earth, (also a signatory of the subject complaint), joined other complainants in filing a Title VI complaint against NCDEQ alleging discrimination on the bases of race and color in issuing permits and certifications related to the ACP. ECRCO rejected without prejudice the complaint as unripe for investigation because two permits issued by different federal agencies needed to be modified before there was a Federal Energy Regulatory Commission final order authorizing construction of the pipeline. In the rejection letter, ECRCO noted that Complainants may refile the complaint within 60 days of a subsequent act or event that raises an allegation of discrimination. *See* Rejection Letter for Title VI Complaint No. 02R-18-R4 from Dale Rhines to Complainants (August 24, 2018). This subject complaint raises the same issues as the initial complaint, and also provides information of a petition the Complainants filed with NCDEQ on August 13, 2019 concerning newly discovered

Pursuant to EPA's nondiscrimination regulation, 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.

In general, ECRCO will accept, reject or refer a complaint after considering the four jurisdictional factors described above. However, if ECRCO obtains information leading it to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation. ECRCO recognizes that the permits issued related to the ACP are still subject to change, for example, due to challenges raised in pending court decisions, including the Supreme Court in *United States Forest Service v. Cowpasture River Preservation Association* (Docket No. 18-1584). As per ECRCO's Case Resolution Manual (CRM), at Section 2.6, ECRCO cannot accept this complaint for investigation because the discrimination alleged is still not "ripe" for investigation.<sup>2</sup>

Complainants may refile this complaint within 60 days of a subsequent act or event that raises an allegation of discrimination. If the complaint is re-filed, ECRCO will then proceed with its preliminary review to determine acceptance, rejection, or referral.

If you have questions about this letter, please contact Case Manager Zahra Khan, at (202) 564-0460, via email at [khan.zahra@epa.gov](mailto:khan.zahra@epa.gov), or by mail at U.S. EPA, Office of General Counsel, Mail Code 2310A, Room 2524, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460-1000.

Sincerely,



Dale Rhines  
Deputy Director  
External Civil Rights Compliance Office  
Office of General Counsel

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information to which NCDEQ failed to respond.

<sup>2</sup> *See* Case Resolution Manual, available at [https://www.epa.gov/sites/production/files/2017-01/documents/final\\_epa\\_ogc\\_ecrco\\_crm\\_january\\_11\\_2017.pdf](https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf)

Secretary Michael Regan  
Director Linda Culpepper

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cc: Angelia Talbert-Duarte  
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