



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

December 26, 2023

In Reply Refer to:

EPA Complaint No: 02R-21-R6

Kelly Keel
Executive Director
Texas Commission on Environmental Quality
kelly.keel@tceq.texas.gov

Re: Administrative Closure of EPA Complaint No. 02R-21-R6

Dear Executive Director Keel:

This letter is to advise you that the U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights (OEJECR), Office of External Civil Rights Compliance (OECRC) is administratively closing EPA Complaint No. 02R-21-R6 (Complaint). The Complaint, filed by the Port Arthur Community Action Network, Texas, Lone Star Legal Aid, and Environmental Integrity Project alleged that residents of West Port Arthur, Texas are subjected to increased exposure to air pollutants, including SO₂ emissions, from sources such as the Oxbow Calcining, LLC's coke calcining facility (Oxbow). Specifically, the Complaint alleges that emissions of air pollutants in the West Port Arthur are inadequately monitored or quantified and therefore not appropriately considered in the Texas Commission on Environmental Quality's (TCEQ) regulatory decisions, including permitting and enforcement actions. The basis for the decision to administratively close this complaint is explained below.

Summary

On October 15, 2021, OECRC initiated an investigation of the Complaint under the authority 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. OECRC accepted the following issue for investigation:¹

Whether TCEQ discriminated in violation of Title VI and EPA's regulation at 40 C.F.R. Part 7 by using methods of administering a program, with respect to its oversight of Oxbow, with the effect of subjecting individuals to discrimination or defeating or substantially impairing the objectives of the program or activity on the basis of race.

On February 4, 2022, TCEQ agreed to engage in negotiations toward the execution of an Informal Resolution Agreement (IRA).² On October 20, 2023, TCEQ informed OECRC of TCEQ's withdrawal from the IRA process. Until October 20, 2023, OECRC's focus was primarily on informally resolving the complaint. On October 24, 2023, OECRC notified TCEQ and the Complainants that, in light of TCEQ's withdrawal, EPA would terminate the IRA process and would continue to process this Complaint consistent with EPA's regulation at 40 C.F.R. Part 7 and OECRC's Case Resolution Manual (CRM).

Section 2.5 of the CRM provides that if, after accepting a complaint for investigation, OECRC obtains information leading OECRC to conclude that an investigation is not warranted for prudential reasons, OECRC may administratively close the complaint. One of the prudential reasons for administratively closing a complaint is if the issues raised in the complaint are not ripe for review because there may be future related events, such as when there are pending administrative proceedings that could have an impact on the issue under investigation. This type of administrative closure is considered to be closed "without prejudice," which means the complainant may re-file within 60 calendar days of the termination of the proceeding.³

During the time OECRC and TCEQ were pursuing informal resolution, Port Arthur Community Action Network and Environmental Integrity Project (Petitioners) continued to pursue various administrative challenges to permits TCEQ issued to Oxbow. Most recently, on August 8, 2023, Port Arthur Community Action Network and Environmental Integrity Project filed a petition requesting that EPA object to TCEQ's proposed operating permit No. O1493, which authorizes

¹ Title VI and EPA's implementing regulations prohibit intentional discrimination as well as actions that have a discriminatory effect based on race or national origin.

² The Complainants and Recipient were informed by letter on February 16, 2022, that the 180-day timeframe for issuing Preliminary Findings (40 C.F.R. § 7.115(c)(1)) would be tolled as of February 4, 2022, for the duration of the IRA process.

³ See U.S. EPA, Office of External Civil Rights Compliance (formerly, External Civil Rights Compliance Office) *Case Resolution Manual* (CRM) Section 2.5 at p. 20, available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

the operation of the Oxbow facility.⁴ OECRC has determined that the resolution of the above referenced pending proceeding is sufficiently related to the Complaint at hand that it is prudent for OECRC to close the complaint/investigation until the conclusion of the administrative proceedings. As such, OECRC is closing this Complaint administratively as of the date of this letter. As previously stated, the Complainant may refile the complaint within 60 days of the termination of the proceedings.

Factual Background

Since OECRC accepted the Complaint for investigation, OECRC conducted initial fact finding including submitting requests for information to TCEQ; a May 2023 trip to Texas which included both a May 9, 2023 visit to West Port Arthur, which is directly adjacent to and north of the Oxbow facility, and to Austin to meet with TCEQ staff on May 11, 2023; and gathering data and information relevant to the complaint's allegation of discrimination, including about the health, environmental and other non-health effects that are being experienced by residents of West Port Arthur, the community directly adjacent to and north of the Oxbow facility.⁵

In addition to Oxbow, the area hosts three oil refineries,⁶ two liquefied natural gas facilities,⁷ and two main shipping channels on the Port Arthur and Sabine Neches rivers. All refineries in the area have fence-line benzene air monitors. EPA's Environmental Justice Screening and Mapping Tool⁸ (EJScreen) shows West Port Arthur⁹ is in the 95th percentile for the Air Toxics Cancer Risk, Particulate Matter 2.5, and Risk Management Plan (RMP) Facility Proximity EJ Indices; in the 90th percentile for the Air Toxics Respiratory Hazard EJ Index; and in the 85th percentile for the Asthma EJ Index.

Within the twelve Census blocks located closest to Oxbow,¹⁰ there are 7,398 residents, 91.15% of whom identify as Black (compared to the 38.2% who identify as Black in the larger area of Port Arthur, and 12.9% in the State of Texas).¹¹ Of the four schools nearest to Oxbow (*i.e.*, those

⁴ In addition, on December 7, 2023, the TCEQ denied a request for hearing from the Port Arthur Community Action Network and Sierra Club and issued the renewal of Air Quality Permit No. 45622, as recommended by the Executive Director of TCEQ, authorizing the continued operation of Oxbow's existing petroleum coke calcining plant located in Port Arthur, Texas. While not currently under appeal, the petitioners may file a motion for a rehearing before January 2, 2024.

⁵ Analysis of such effects is relevant to consideration of a variety of theories of discrimination. See, e.g., *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266–68 (1977).

⁶ These refineries are owned and operated by Valero, Motiva, and Chevron.

⁷ These LNG facilities are owned and operated by Sempra.

⁸ EPA's Environmental Justice Screening and Mapping Tool (Version 2.2), available at: <https://ejscreen.epa.gov/mapper/>. (Last accessed on October 18, 2023).

⁹ West Port Arthur is defined as the twelve census blocks located closest to Oxbow.

¹⁰ The complaint identified the following census block groups 482450051001, 482450051002, 482450059002, 482450059001, 482450061003, 482450061002, 482450061001, 482450118002, 482450118001, 482450054002, 482450063002, and 482450063001.

¹¹ U.S. CENSUS BUREAU, Quick Facts, Port Arthur city, Texas, <https://www.census.gov/quickfacts/portarthurcitytexas>.

located 2.00-4.20 miles away from Oxbow's fence line), the proportion of Black students ranges from 60.99%-92.16%.¹²

As part of EPA's approval of TCEQ's 2022 Air Monitoring Network Plan, EPA Region 6 recommended in its March 3, 2023, approval letter to TCEQ that:

In response to ongoing community concerns, we are recommending TCEQ install an additional SO₂ monitor in Jefferson County (Port Arthur, Texas) giving primary consideration of the siting towards further characterizing air quality in the neighborhood nearest the large SO₂ sources in the area.

TCEQ's Continuous Ambient Monitoring Station (CAMS) 1071 monitoring site, which monitors SO₂, is located 0.63 mile north from Oxbow and outside the nearest West Port Arthur neighborhood immediately north of the largest SO₂ source in the area. There are two additional air monitoring sites in and around Port Arthur: (1) TCEQ's West Port Arthur monitor located 4.5 miles NNW from Oxbow which monitors ozone and SO₂; and (2) the Southeast Texas Regional Planning Commission's monitor located 2.4 miles NNE of Oxbow which monitors ozone, SO₂, H₂S, PM (coarse), NO_x, and CO. An additional SO₂ monitor in Jefferson County (Port Arthur, Texas) giving primary consideration of the siting towards further characterizing air quality in the West Port Arthur neighborhood nearest the large SO₂ sources in the area has not been installed.

On May 9, 2023, during its onsite visit to West Port Arthur, the OECRC case team interviewed West Port Arthur residents who expressed concerns about the lack of an additional air monitor sited closer to the community. The case team also observed areas of community concern and air pollution sources in the area. The community representatives pointed out areas of concern that had a high concentration of air pollution sources located in close proximity to one another and close to local schools, residential neighborhoods, and community centers in West Port Arthur. The EPA case team also met with representatives of TCEQ in Austin on May 11, 2023, to discuss concerns raised by community members and OECRC's observations from the onsite visit.

As part of the investigation of the complaint, OECRC issued a Request for Information (RFI) to TCEQ on March 24, 2023, requesting information about Oxbow's permitting history – including a 2018 permit action, an Agreed Order entered into between TCEQ and Oxbow to resolve exceedances of the SO₂ national primary one-hour ambient air quality standard from January through May 2017,¹³ as well as an explanation of Oxbow's decision to treat Oxbow's permit

¹² These schools are Lincoln Middle School, Washington Elementary, Tekoa Academy, and Dequeen Elementary.

¹³ On August 14, 2019, TCEQ and Oxbow entered into a negotiated Agreed Order to resolve the exceedances of the national primary one-hour annual ambient air quality standard for SO₂ in the 2010 SO₂ NAAQS between January 10, 2017, and May 26, 2017 (referenced in Background Section D, above). TCEQ assessed an administrative penalty of \$39,000 against Oxbow as part of the Agreed Order (TCEQ, Agreed Order, Dkt. No. 2018-1687-AIR-E, In the Matter of an Enforcement Action Concerning Oxbow Calcining LLC, RN 100209287 (Aug. 14, 2019), at 2.

application as a permit alteration under the Texas Administrative Code §§ 116.116(b)(1)(A-C). TCEQ responded to this RFI on May 23, 2023.¹⁴ OECRC issued follow-up inquiries to TCEQ on July 13, 2023, seeking clarification on TCEQ's responses to the OECRC RFI. TCEQ responded to these inquiries on August 14, 2023.

EPA is concerned that, to date, there is no TCEQ operated SO₂ monitor in West Port Arthur, Texas that gives primary consideration to this Community's concerns regarding the need to further characterize air quality in the West Port Arthur neighborhood nearest the large SO₂ sources in the area, as was previously recommended in EPA's March 3, 2023, approval of the Texas 2022 Annual Network Monitoring Plan. This is particularly concerning given that this West Port Arthur neighborhood is directly adjacent to Oxbow, which is responsible for over 85% of SO₂ emissions in Jefferson County.

EPA's Next Steps in West Port Arthur

As previously stated, OECRC is administratively closing this Complaint for prudential reasons as of the date of this letter. Notwithstanding the administrative closure, OECRC will coordinate with EPA Region 6, and other programs in EPA as appropriate, to continue to gather the data necessary to assess the causes and factors contributing to potential harms experienced by this Community.

OECRC, Region 6, along with other EPA programs as appropriate, is considering and may pursue the following actions to obtain additional information: (1) additional air monitoring in the Community; (2) obtaining stack testing data for the Oxbow facility; (3) exploring the availability of sensor-based air monitoring in the Community through EPA's established air sensor loan programs,¹⁵ and (4) investigating available options to facilitate university and other community led air monitoring projects for this Community. EPA may consider other actions to obtain additional information as appropriate and as resources allow.

¹⁴ In TCEQ's May 23, 2023, response to EPA's March 2023 RFI, TCEQ confirmed that it had received public comments expressing concerns regarding the monitoring for SO₂ in the West Port Arthur community. In addition, the RFI Responses stated TCEQ was in discussions with EPA Region 6 regarding the potential monitor relocation areas for the purpose of measuring peak SO₂ concentrations. From TCEQ's May 23, 2023, RFI response: "LSLA commented that the SO₂ monitor in Port Arthur was no longer sited appropriately to capture peak concentrations due to operational changes at Oxbow. LSLA commented that TCEQ must conduct additional modeling of Oxbow's emissions to determine where SO₂ monitors should be sited to capture peak concentrations and that TCEQ should add SO₂ monitoring to the existing SETRPC Port Arthur site in a residential neighborhood. TCEQ responded that additional modeling was performed based on the current permitted Oxbow emissions, which accounted for Oxbow's current operations, stack parameters, and more recent meteorological data, and that potential monitor relocation areas for the Port Arthur 7th Street SO₂ air monitoring site to measure peak SO₂ concentrations were under discussion with EPA Region 6."

¹⁵ EPA Air Sensor Loan Programs ("EPA has established air sensor loan programs independently and through collaborations with libraries, tribes, museums, and others to enable the public to learn about air quality in their communities. These programs bring air sensor technology to the public for supplemental monitoring and educational purposes"), available at: <https://www.epa.gov/air-sensor-toolbox/air-sensor-loan-programs>.

As the Agency continues to gather the information related to West Port Arthur, OECRC will review the results to determine whether and when, in light of the civil rights laws and EPA's implementing regulations, additional actions such as a compliance review, would be appropriate.¹⁶ Such a compliance review could examine whether TCEQ excluded from participation, denied the benefits to, or subjected to discrimination the West Port Arthur Community on the basis of race. In addition, EPA, including Region 6, will determine whether to take any other appropriate steps under environmental authorities as a result of the data and information gathered.

Conclusion

Based on the information discussed above, OECRC is administratively closing the Complaint without prejudice as described in Section 2.5 of OECRC's CRM.¹⁷ Prior to initiating any of the additional actions discussed above, EPA will meet with residents of West Port Arthur as soon as possible.

If you have questions, please feel free to contact me by email at hoang.anhthu@epa.gov or by telephone at 202-564-8796.

Sincerely,

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

cc:

Erin Chancellor
Director of the Office of Legal Services
erin.chancellor@tceq.texas.gov

¹⁶ OECRC's responsibilities include, among other duties, initiating compliance reviews. *See* 28 C.F.R. § 42.407(c) ("Federal agencies shall establish and maintain an effective program of post-approval compliance reviews" pursuant to Title VI); 40 C.F.R. § 7.115 (Postaward compliance). *See also* Process and Criteria for Prioritizing and Selecting Affirmative Compliance Reviews, January 6, 2022, at <https://www.epa.gov/system/files/documents/2022-01/01-06-20-ecrco-process-for-prioritizing-and-selecting-affirmative-compliance-reviews.pdf>, for more information about OECRC's Compliance Review process.

¹⁷ CRM Section 2.5, available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

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

Stacey Dwyer
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 6

Patricia Welton
Acting Regional Counsel
U.S. EPA Region 6