



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

January 2, 2024

In Reply Refer to:

EPA Complaint Nos: 05RNO-22-R6, 06RNO-22-R6

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

Re: Administrative Closure without prejudice

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, Office of External Civil Rights Compliance (OECRC) is administratively closing, without prejudice, its investigation of EPA Complaint Nos: 05RNO-22-R6 and 06RNO-22-R6 (the Complaints). The Complaints alleged the Texas Commission on Environment Quality (TCEQ) discriminated against Black and Latinx residents of Harris County, Texas, on the basis of race and national origin with respect to its Concrete Batch Plant (CBP) standard permit, including its adoption of the 2021 Amended CBP Permit by failing to consider the health and non-health impacts of CBP facilities. The Complaints also alleged that Hispanic/Latinx residents of Harris County, Texas, with limited English proficiency (LEP), were denied meaningful public participation in connection with the issuance of the 2021 Amended CBP Standard Permit on the basis of race and national origin. The basis for the decision to administratively close this complaint is explained below.

On August 3, 2022, OECRC initiated an investigation of the Complaints under the authority of federal civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI), and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7, accepting for investigation the following issues:

1. Whether TCEQ's criteria or methods of administering its Concrete Batch Plant permitting process for concrete batch plants in Harris County Texas, including its

adoption of the 2021 Amended Concrete Batch Plant Permit, has the effect of subjecting persons to discrimination on the basis of race or national origin in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7; and

2. Whether TCEQ discriminated on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7 by failing to provide meaningful public participation to persons with limited English proficiency in connection with the issuance of the 2021 Amended CBP Standard Permit.

On November 18, 2022, TCEQ informed OECRC that TCEQ agreed to engage in informal resolution negotiations toward the execution of an Informal Resolution Agreement (IRA).¹ Over the ensuing months [and in order to inform the terms of an IRA], OECRC gathered facts via a Request for Information, interviews with Harris County residents who live near CBPs, discussions with complainants and TCEQ, and an onsite visit. On October 20, 2023, TCEQ informed OECRC that TCEQ was withdrawing from the IRA process. On October 24, 2023, OECRC notified TCEQ and the Complainants that, in light of TCEQ's withdrawal and as described in OECRC's Case Resolution Manual (CRM),² EPA would terminate the IRA process and would continue to process the Complaints in accordance with EPA's regulation at 40 C.F.R. Part 7 and the CRM.

Section 2.5 of OECRC's 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.³ This would include when the issues are not ripe for review based on changed circumstances.⁴ With respect to these Complaints, OECRC has determined that the changed circumstances, described below make continuing the investigation unjustified at this time.

Issue 1

During the IRA process, TCEQ informed OECRC that it was re-opening the CBP standard permit for substantive changes, including undertaking a new Protectiveness Review (PR), conducting an updated Air Quality Analysis (AQA), and revising the CBP standard permit as necessary, consistent with the results of those studies. TCEQ conducted a public engagement process as part of the re-opening of the CBP standard permit; TCEQ's actions included holding three informal stakeholder meetings (both in-person and virtually) in November 2022, as well as a

¹ The Complainant and Recipient were informed by letter on December 21, 2022, that the 180-day timeframe for issuing Preliminary Findings (40 C.F.R. § 7.115(c)(1)) would be tolled as of November 18, 2022, for the duration of the IRA process.

² U.S. EPA, Office of External Civil Rights Compliance (formerly, External Civil Rights Compliance Office) *Case Resolution Manual* (OECRC CRM), Section 3.1, pp. 22-23, available at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

³ OECRC CRM Section 2.5, pp. 19-21.

⁴ *Id.*

public meeting and an informational meeting in May 2023 and an extended 60-day public comment period from April – June 2023. OECRC understands that in early 2024 TCEQ will be issuing a revised CBP standard permit containing significant changes from the previous version of the CBP standard permit issued in 2021. TCEQ conducted a protectiveness review to ensure the standard permit issued in 2021 is “protective” of human health. As stated by TCEQ, “[t]he commission is proposing amendments . . . based on several factors including the length of time since the last review and increasing public comments and concerns associated with the protectiveness of concrete batch plant permits, including crystalline silica emissions.”⁵

Because the CBP standard permit may substantially change as a result of the re-opening and subsequent re-issuance of the CBP standard permit in early 2024, the circumstances described in the complaint have changed. Therefore, this issue is not ripe for review at this time, and OECRC is administratively closing Issue 1 without prejudice, for prudential reasons, because the changed circumstances make continuing the investigation unjustified at this time.⁶

Issue 2

The complaint also alleged that TCEQ failed to provide meaningful access for persons with limited English proficiency (LEP) by failing to provide notice of public meetings in both English and Spanish for public meetings related to the amendment process for the CBP Standard Permit in October 2021.

⁵ See “Proposed Amendments to the Air Quality Standard Permit for Concrete Batch Plants Texas Commission on Environmental Quality” at <https://www.tceq.texas.gov/downloads/permitting/air/nsr/nsr-stakeholders/22033-oth-nr-cbpsp23-3-techbckgrnd.pdf>, “The commission is proposing amendments to the air quality standard permit for concrete batch plants under the authority of the Texas Clean Air Act (TCAA), Texas Health and Safety Code (THSC), §382.05195, Standard Permit, and 30 TAC Chapter 116, Subchapter F, Standard Permits. As part of the development of standard permits, an AQA, or protectiveness review (PR), is statutorily required to confirm that air permits are protective of human health and the environment; however, routine updates to the PR are not specifically required or mandated by statute or regulation. The commission voluntarily conducted an updated PR based on several factors including the length of time since the last review and increasing public comments and concerns associated with the protectiveness of concrete batch plant permits, including crystalline silica emissions.” See *id.* at Section II, page 1. Also, “... the commission has performed an updated AQA in support of the concrete batch plant standard permit to address public concern about potential health impacts from concrete batch plants registered under the standard permit. The proposed revisions to the standard permit are a result of the updated AQA, ensure that best available control technology is being utilized, and reflect updated operating requirements.” See *id.* at Section I, page 1. The AQA identified changes necessary to demonstrate that emissions at a concrete batch authorized by the standard permit would not cause or contribute to a violation of the National Ambient Air Quality Standards. Specifically, the updated PR considered representative background concentrations of pollutants authorized by the standard permit in communities throughout the state. The amendment incorporating findings from PR included the following changes: revised operational requirements, additional setback limitations, production limitations, and updated best management practices. The specific changes to setback requirements and production rate limitations vary depending on the geographic location of the CBP and the type of capture technology used for the loading operation. Importantly, the PR and consequent proposed amendments require that if the CBP is located in, among other specified localities in the state, Harris County, the minimum setback distance is 200 feet from any property line (twice the requirement for CBPs in general). See Sections IV and V, pages 6-9.

⁶ OECRC CRM Section 2.5.

In November 2020, OECRC and TCEQ entered into an IRA to resolve EPA Complaint No. 02NO-20-R6, in part to address issues of meaningful access to TCEQ's programs and activities for persons with LEP. As part of fulfilling the commitment in that IRA, TCEQ in August 2021 adopted new public participation rules relating to "alternative language requirements,"⁷ which became effective in May 2022. These changes occurred after the public meetings for the CBP Standard Permit in October 2021.

In light of the adoption of these new public participation rules, OECRC recognizes that TCEQ has new policies and procedures for providing meaningful access for persons with LEP to TCEQ programs and activities. As such, OECRC is administratively closing Issue 2 without prejudice because the changed circumstances make continuing the investigation unjustified at this time.

OECRC expects that for any public meetings pertaining to the CBP Standard Permit amendment process, including the release of the final CBP standard permit that results from the amendment process, TCEQ will provide meaningful access for persons with LEP in compliance with Title VI.⁸ TCEQ is obligated to provide meaningful access for persons with LEP in the affected communities consistent with the Title VI, including to vital documents such as notices of public meetings and other vital information about the CBP Standard Permit and permit amendment process as well as a meaningful opportunity to participate during public meetings. Providing meaningful access for persons with LEP includes, but is not limited to, offering interpretation and translation services by qualified professionals provided by TCEQ at no cost to participants.

OECRC's Fact Finding in Harris County

During OECRC's initial fact-finding, complainants and other community members informed OECRC of continuing concerns that living in close proximity to CBPs had adverse effects on health (including mental health) and quality of life. These concerns included alleged high levels of particulate matter (PM) emissions, water quality impacts from poor run-off management, stormwater and flooding concerns, severe noise and dust, hours of operation that run late into the night and early morning, and deficient public notice about permitting actions and operational changes.

⁷ See

[https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=39&rl=426](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=30&pt=1&ch=39&rl=426).

⁸ See Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) *et seq.* Also, in requesting and receiving EPA financial assistance, recipients agree to provide meaningful access to persons with LEP as required by Title VI, and in implementing that requirement, further agree to use as a guide EPA's; [Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons \(2004\)](#). EPA General Terms and Conditions Effective October 1, 2023, Section 41, at https://www.epa.gov/system/files/documents/2023-09/fy_2023_epa_general_terms_and_conditions_effective_october_1_2023_or_later.pdf.

On May 8 and 10, 2023, OECRC and EPA Region 6 staff (Case Team) visited the communities surrounding the following Concrete Batch Plants located in Harris County: (1) Cherry Crush Concrete; (2) SYMRNA; (3) Yellow Jacket Concrete; and (4) Texas Concrete Ready Mix. Additionally, the Case Team visited the neighborhood around the proposed site for the Avant Garde Construction Company's CBP, which is located next to the James Driver All-Inclusive Park at the Harris County Precinct Two North East Community Center in East Aldine.

The Case Team also met with TCEQ in-person in Austin following the visits to the affected neighborhoods to discuss the issues accepted by OECRC for investigation and concerns expressed by the community members. Prior to this meeting and onsite visit, as part of OECRC's IRA process, OECRC issued a Request for Information (RFI) letter to TCEQ on December 21, 2022, to which TCEQ responded on February 21, 2023.

Conclusion

As discussed above, OECRC is administratively closing Complaint Nos. 05RNO-22-R6 and 06RNO-22-R6 without prejudice as of the date of this letter. With respect to issue 1, concerns related to the CBP standard permit, the Complaints may be re-filed with OECRC within 60 calendar days following publication of the amended CBP standard permit. With respect to issue 2, concerns related to provision of language access for individuals with LEP, the Complaints may be re-filed within 60 calendar days following publication of the amended CBP standard permit. Any new claims of denial of language access in violation of Title VI must be filed within 180 days of the alleged discriminatory act.⁹ OECRC hopes that TCEQ's awareness of the affected communities' concerns in Harris County has and will continue to inform TCEQ's administrative process and, ultimately, the permit terms of the revised CBP standard permit when it is adopted. Additionally, OECRC expects that TCEQ will comply with Title VI and provide Spanish-speaking LEP members of the affected communities with meaningful access to all aspects of the CBP Standard Permit amendment process that are accessible to English-proficient persons.

If you have questions, please feel free to contact me by telephone at 202-809-3297 and by email at hoang.anhthu@epa.gov.

Sincerely,

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

⁹ See OECRC CRM Section 1.5.

cc:

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

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

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

Patricia Welton
Regional Counsel
U.S. EPA Region 6