



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

January 10, 2024

In Reply Refer to:

EPA File No. 05NO-23-R6

Kelly Keel
Executive Director
Texas Commission on Environmental Quality
Post Office Box 13087, MC 109
Austin, TX 78711-3087
kelly.keel@tceq.texas.gov

Re: Acceptance of Administrative Complaint

Dear Executive Director Keel:

The U.S. Environmental Protection Agency (EPA), Office of Environmental Justice & External Civil Rights, Office of External Civil Rights Compliance (OECRC), is accepting for investigation an administrative complaint filed against the Texas Commission on Environmental Quality (TCEQ), which the EPA received on November 16, 2022. The Complaint alleges TCEQ discriminated against Spanish-speaking, Latino residents on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the complaint alleges that TCEQ failed to provide residents with limited English proficiency meaningful access to the public participation process for the Simmons Valley Wastewater Treatment Facility permit, a facility for treatment and disposal of municipal wastewater (Texas Pollutant Discharge Elimination System [TPDES] Permit No. WQ0016052001).¹

Pursuant to EPA's nondiscrimination regulation, 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.

¹ Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0016052001, was recently granted by TCEQ, See at: https://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=iwr.permitlist&addn_id=404319322021281

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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 the complaint meets the jurisdictional requirements stated above. First, the complaint is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by TCEQ, which is a recipient of EPA financial assistance.

OECRC will investigate the following issue:

1. Whether TCEQ excluded from participation, denied benefits to, or subjected to discrimination on the basis of national origin, residents with limited English proficiency with respect to the permit review process for the Simmons Valley Wastewater Treatment Facility (Texas Pollutant Discharge Elimination System Permit No. WQ0016052001), in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7.

The initiation of an investigation of the issues 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 the Complainant and TCEQ, 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.²

OECRC is providing TCEQ with an opportunity to make a written submission 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 TCEQ of the acceptance of Administrative Complaint No. 05NO-23-R6. *See* 40 C.F.R. §§ 7.120(d)(1)(ii-iii).

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 the Complainant and TCEQ 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

² https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

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

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and informal resolution agreement (IRA)⁴ processes as potential options for resolution of the issue which OECRC has accepted for investigation. If TCEQ (and the Complainant with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend for the duration of the IRA process the timeframe for issuing Preliminary Findings within 180 days of initiating the investigation. In the event that either of these potential resolution processes fails to result in an agreement, OECRC will notify the Complainant as well as TCEQ that OECRC has resumed its process to issue preliminary findings or otherwise resolve 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 provided to TCEQ 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

EPA's 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 any questions, please contact me (hoang.anhthu@epa.gov; 202-809-3297) or Case Managers Al Sweeney (Sweeney.Alfred@epa.gov; 202-564-7949) and Rebecca Gillman (Gillman.Rebecca@epa.gov; 202-564-7969).

mediator. See U.S. EPA, OECRC Case Resolution Manual, Section 3.3, p.24, https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

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

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.

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Sincerely,

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

Enclosure: Via Email, Redacted Copy of Complaint

cc: Erin Chancellor
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