



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

January 30, 2024

In Reply Refer to:

EPA Complaint No. 05R-23-R9

Philip Fine, Ph.D.
Executive Officer
Air Pollution Control Officer
Bay Area Air Quality Management District
375 Beale Street Suite 600
San Francisco, CA 94105
pfine@baaqmd.gov

Re: Rejection of Administrative Complaint Without Prejudice

Dear Dr. Fine:

The U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC), is rejecting for investigation an administrative complaint filed against the Bay Area Air Quality Management District (BAAQMD). EPA received the complaint on September 11, 2023. The complaint alleges that BAAQMD discriminated against the non-white residents of the Bay Area on the basis of race 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, when on March 15, 2023, BAAQMD adopted amendments to Regulation 9, Rule 4 and Rule 6, requiring the elimination of Nitrogen Oxide emissions from natural gas-fired water heaters and furnaces. For the reasons identified below, OECRC is rejecting this complaint without prejudice and closing this case as of the date of this letter.¹

Pursuant to EPA's nondiscrimination regulation, OECRC conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate

¹ OECRC has not evaluated the Complainants' allegations regarding "federal preemption." Such allegations are beyond the jurisdiction of OECRC, which is to enforce the applicable federal civil rights laws.

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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. 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.

OECRC has determined that the complaint has met the jurisdictional factors explained above. In general, OECRC will accept, reject, or refer a complaint after considering the jurisdictional requirements described above. However, if OECRC obtains information leading OECRC to conclude that an investigation is unwarranted for prudential reasons, OECRC may reject the complaint. In accordance with the Case Resolution Manual (CRM), OECRC may reject a complaint if “[t]he same complaint allegations have been filed, are currently pending, and/or are already resolved with . . . another. . . State or local agency, or through a recipient's internal grievance procedures, . . . and ECRCO anticipates that the agency will provide the complainant with a comparable resolution process.”²

On March 21, 2023, the Complainant filed the same civil rights allegations in the current EPA Title VI complaint (EPA Complaint No. 05R-23-R9) with BAAQMD (the BAAQMD Title VI Complaint) through BAAQMD's Nondiscrimination Complaint Procedures.³ BAAQMD investigated and subsequently issued a decision on the BAAQMD Title VI Complaint on September 25, 2023. OECRC has determined that the Nondiscrimination Complaint Procedures provided by BAAQMD offered the Complainant a “resolution process” for their Title VI allegations “comparable” to that offered by OECRC.⁴ The BAAQMD complaint process included an investigation of the Complainant's civil rights claims which resulted in a determination and resolution of the Complainant's civil rights allegations. Therefore, OECRC has determined that, pursuant to the CRM, an investigation of the complaint filed with OECRC is unwarranted for prudential reasons. As such, OECRC is rejecting this complaint without prejudice as of the date of this letter.

The OECRC complaint is rejected without prejudice because OECRC's CRM also provides that if OECRC's rejection is based on the prudential factor that the same civil rights allegations were filed through a recipient's internal grievance procedure, OECRC may allow the complainant to

² See OECRC Case Resolution Manual, Section 1.8 “Other Factors That May Be Considered Before Accepting a Complaint for Investigation,” p. 11 available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

³ See (*CARE v. BAAQMD, BAAQMD Case No. 23-001*) (“BAAQMD Title VI Complaint”).

⁴ As part of a previous EPA Administrative Complaint, No. 01RNO-21-R9, BAAQMD entered into a Voluntary Compliance Agreement with EPA that included a commitment to adopt nondiscrimination grievance procedures to provide for the prompt and fair resolution of complaints which allege civil rights violations under EPA's nondiscrimination regulation. OECRC has determined that this commitment has been implemented.

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re-file the complaint with OECRC if the other agency's action (in this case, BAAQMD's action) "... does not resolve complainant's civil rights allegations or provide complainant with a comparable resolution process."⁵ As such, if the Complainant believes BAAQMD's determination following its complaint process "does not resolve complainant's civil rights allegations or provide complainant with a comparable resolution process," the Complainant may refile their complaint with OECRC within 60 calendar days of the date of this letter. Please note that the Complainant will need to provide material information that disputes the presumption that BAAQMD's September 25, 2023, determination following its nondiscrimination complaint process "does not resolve complainant's civil rights allegations or provide complainant with a comparable resolution process," respectively.

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 questions about this letter, please feel free to contact me at (202) 809-3297, by email at hoang.anhthu@epa.gov.

Sincerely,

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

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

Cheree Peterson
Deputy Regional Administrator
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U.S. EPA Region 9

Sylvia Quast
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⁵ See OECRC Case Resolution Manual, Section 1.8, at page 11.