



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

March 27, 2024

In Reply Refer To:

EPA Complaint No. 012R-23-R4

Lance LeFleur
Director
Alabama Department of Environmental Management
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Montgomery, AL 36111-2400
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RE: Rejection of Administrative Complaint

Dear Director LeFleur:

The U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC) is rejecting EPA Complaint No. 012R-23-R4, received on September 9, 2023, against the Alabama Department of Environmental Management (ADEM). The Complaint alleges that ADEM discriminated against the majority African American Shiloh community in Elba, Alabama, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d et seq. (Title VI), and EPA's nondiscrimination regulation at 40 C.F.R. Part 7. Specifically, the complaint alleges that because the Shiloh Community is predominantly African American, ADEM failed to take action to address flooding and stormwater concerns that resulted from the US Highway 84 expansion project adjacent to the Shiloh community and used lack of regulatory authority as a pretextual reason to close the Complainant's environmental complaint about these concerns. The complaint also claims that ADEM rejected Complainant's environmental complaint in retaliation for the Complainant's filing claims with the Alabama Board of Adjustment against the Alabama Department of Transportation (ALDOT) for damages that the Complainant and other members of the Shiloh community suffered as a result of the flooding and stormwater

runoff from Hwy 84. For the reasons described below, OECRC is rejecting the complaint and closing this matter as of the date of this letter.

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). 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, OECRC will accept, reject, or refer a complaint after considering the four jurisdictional factors discussed above. However, if OECRC obtains information leading OECRC to conclude that an investigation is unjustified for prudential reasons, OECRC may reject the complaint.¹

After careful consideration, EPA is rejecting EPA Complaint No. 012R-23-R4. OECRC confirmed that ADEM investigated the Complainant's concerns about the stormwater run-off and flooding allegedly resulting from the Highway 84 construction. In the course of that investigation, ADEM conferred with the Alabama Department of Transportation (ALDOT) and EPA Region 4. ADEM concluded that it lacked the regulatory authority to address the Complainant's flooding and stormwater concerns. ADEM's response to the Complainant's environmental complaint is consistent with its responsibilities under the Clean Water Act. As such, the claims that ADEM used a pretextual reason for closing Complainant's environmental complaint and that ADEM closed the Complainant's complaint in retaliation to the Complainant's filing claims with the Board of Adjustment against ALDOT, as clarified in the evaluation process, are not sufficiently grounded in fact for OECRC to infer that discrimination or retaliation occurred.² OECRC is rejecting the complaint and closing this matter as of the date of this letter.

EPA's nondiscrimination regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they either have 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.

¹ *See* OECRC Case Resolution Manual, Section 1.8, pp. 10-11, https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

² *See id.*

If you have any questions about this correspondence, please feel free to contact me by telephone at (202) 564-7299 or by email at temple.kurt@epa.gov.

Sincerely,

Kurt T. Temple
Acting Director
Office of External Civil Rights Compliance

cc: Ariadne Goerke
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