



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

March 27, 2024

In Reply Refer to:

EPA Complaint No. 13R-23-R4

John R. Cooper
Transportation Director
Alabama Department of Transportation
1409 Coliseum Boulevard
Post Office Box 303050
Montgomery, AL 36110
cooperjr@dot.state.al.us

Re: Rejection Without Prejudice of Administrative Complaint

Dear Director Cooper:

The U.S. Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC) is rejecting EPA Complaint No. 013R-23-R4, received on September 9, 2023 involving the Alabama Department of Transportation (ALDOT). The Complaint alleges that ALDOT 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 Complainant claims that ALDOT has failed to adequately address repeated complaints about the flooding and stormwater impacts of the construction and operation of the U.S. Highway 84 expansion project on the Complainant's and other properties in the Shiloh community of Elba, Alabama because the Complainant and Complainant's community members are African American. The Complainant alleges that the most recent discriminatory action was ALDOT's failure to respond to Complainant's July 25, 2023 letter raising these same concerns. In addition, the complaint alleges that ALDOT retaliated against Shiloh residents by forcing them to enter into a misleading settlement agreement. For the reasons described below, OECRC is rejecting this complaint without prejudice 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 review, OECRC has determined that, while the complaint against ALDOT meets the jurisdictional requirements described above, an investigation of EPA Complaint No. 013R-23-R4 is not appropriate for prudential reasons. OECRC has confirmed that the same allegations are under investigation by the U.S. Department of Transportation Federal Highway Administration (FHWA). OECRC's Case Resolution Manual states that if another federal agency is already investigating the claims through a process that provides the Complainant with a comparable resolution process,² OECRC may reject the complaint without prejudice.

A rejection without prejudice means the Complainant may re-file a complaint with OECRC within 60 days of the completion of the FHWA's resolution process, if that resolution does not appropriately address the issues the Complainant raised.³ If the complaint is re-filed, OECRC will proceed with its preliminary review to determine whether the complaint should be accepted, rejected, or referred.

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.

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.

¹See 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.

³ See Id.

Sincerely,

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

cc:

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

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