



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

June 27, 2024

In Reply Refer to:

EPA Complaint No. 05NO-24-R9

Eric Oppenheimer
Executive Director
California State Water Resources Control Board
1001 I Street, Post Office Box 100
Sacramento, CA 95812-0100
Eric.Oppenheimer@waterboards.ca.gov

RE: Rejection of Administrative Complaint

Dear Director Oppenheimer:

This letter is to notify 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 rejecting for investigation an administrative complaint (Complaint) filed against the California State Water Resources Control Board (State Board), which OECRC received on March 19, 2024. The complaint alleges that the State Board discriminated against the Latinx communities of the Central Coast Region of California in the counties of Santa Cruz, San Benito, Monterey, San Luis Obispo, and Santa Barbara, on the basis of national origin, in the following ways: i) the failure to adopt regulations that would effectively reduce nitrate contamination in groundwater and drinking water wells in Latinx communities, including reducing nitrate concentrations to levels below the State maximum contamination level for nitrate in drinking water in some communities; ii) the decision to eliminate the California Regional Water Quality Control Board, Central Coast Region's (Regional Board) enforceable numeric nitrate limitations for irrigated lands in the Central Coast from the Regional Board's 2021 General Waste Discharge Requirements for Discharges from Irrigated Lands; and iii) the State Board's practice of inappropriately interpreting its previous decision in its review of Waste Discharge Requirements for Growers Within the Eastern San Joaquin River Watershed that are Members of the Third-Party Group (ESJ Order) as a precedent for prohibiting enforceable numeric nitrate limitations in California regional boards' waste discharge requirements for discharges from irrigated lands.

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. 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 meets the jurisdictional requirements described above.¹ In general, OECRC will accept, reject, or refer a complaint after considering the jurisdictional factors above. However, if OECRC obtains information leading OECRC to conclude that an investigation is unwarranted for prudential reasons, OECRC may reject the complaint.²

After careful consideration, OECRC has determined that an investigation is premature at this time, because two of the complainant groups have filed a petition for writ of mandate with the Superior Court of the State of California for the County of Sacramento (Petition) against the State Board. The Petition objects to the State Board's 2023 Order directing the Regional Board to eliminate enforceable numeric nitrate limits from the Regional Board's 2021 waste discharge requirements for growers because, among other alleged improper reasons, the State Board allegedly relied improperly on its previous ESJ Order as precedent to preclude the inclusion of enforceable numeric nitrate limits in waste discharge requirements and the State Board allegedly failed to make findings on the potential environmental justice, tribal impact and racial equity considerations from its decision. Because the outcome of the Petition could impact the allegations in the Complaint and remedy the harms the Complainants allege, OECRC is rejecting this 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 court proceeding, 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.

¹ According to OECRC's Title VI Complaints inbox, the Complaint was received at 2:56 AM on March 19, 2024. OECRC operates in the Eastern time zone according to the Case Resolution Manual. See Case Resolution Manual, Section 1.3, p. 4 at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf. However, OECRC recognizes that the Complaint was filed from California, which is in the Pacific time zone, and thus its filing date in California was 11:56 PM on March 18, 2024. Therefore, OECRC considers this good cause to grant a waiver of the 180-day filing requirement.

² See U.S. EPA, 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 *id.*

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) 564-3357, by email at wilson.adam@epa.gov; or Hayley Cormack, Case Manager, at (202) 250-8851, by email at cormack.hayley@epa.gov; or Nell Cormack, Case Manager, at (202) 565-2242, by email at cormack.nell@epa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Wilson', with a stylized flourish at the end.

Adam Wilson
Acting Deputy 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
Deputy Civil Rights Official
US EPA Region 9

Suzanne Andrews
Acting Regional Counsel
US EPA Region 9