



## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

June 14, 2024

**In Reply Refer to:**

EPA Complaint No: 03Rr-24-R5

Phil Roos, Director  
Michigan Department of Environment, Great Lakes, and Energy  
525 West Allegan Street  
Post Office Box 30471  
Lansing, MI 48909-7973  
RoosP@michigan.gov

**Re: Rejection of EPA Complaint No. 03Rr-24-R5**

Dear Director Roos:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Environmental Justice & External Civil Rights (OEJECR), Office of External Civil Rights Compliance (OECRC), is rejecting EPA Complaint No. 03Rr-24-R5 (the Complaint) filed against the Michigan Department of Environment, Great Lakes and Energy (EGLE). The complaint alleges that EGLE discriminated against the predominantly African American community adjacent to the Graphic Packaging International (GPI) facility in the City of Kalamazoo on the basis of race in violation of Title VI, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7. Specifically, the complaint alleges discrimination when EGLE approved Permit to Install (PTI) No. 133-19A for the GPI facility on November 24, 2020 despite several reported alleged violations of the National Ambient Air Quality Standards (NAAQS). The complaint also alleges that EGLE failed to conduct appropriate oversight of the GPI facility. In addition, Complainant alleges EGLE retaliated against or intimidated Complainant in violation of Title VI and 40 C.F.R. § 7.100 when on November 13, 2020, EGLE allegedly asked Complainant not to file a civil rights complaint against EGLE.

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 the 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 the 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. See 40 C.F.R. § 7.15.

In general, OECRC will accept, reject, or refer a complaint after considering 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.<sup>1</sup>

In an effort to determine jurisdiction and to clarify the Complainant's allegations, OECRC conducted an interview with the Complainant on April 2, 2024. OECRC also reviewed additional information Complainant submitted via email as well as considered publicly available information. Finally, OECRC examined records related to the Complainant's previous complaint, EPA Complaint No. 04Rr-21-R5, which involved the same matters.<sup>2</sup>

With respect to the complaint allegations, OECRC has determined that changed circumstances, described below, make accepting the complaint for investigation unjustified on prudential grounds.<sup>3</sup>

Regarding EGLE's approval of PTI 133-19A and EGLE's oversight of the GPI facility, OECRC understands that EGLE has taken several actions at the GPI facility since the permit was issued, including approving a Nuisance Minimization Plan for odors on August 18, 2022, and issuing a subsequent permit at the GPI facility (PTI No. 133-19B) on December 13, 2023, that modifies emission limits and adds a continuous emissions monitoring system for the boilers, among other modifications. OECRC also notes that EGLE has taken several enforcement actions, including issuing a violation notice on September 8, 2022, and entering into two consent orders (AQD No. 2022-20, AQD No. 2023-18) on February 1, 2023, and December 14, 2023, respectively, to address alleged exceedances of emissions limits in PTI No. 133-19A, failure to provide records, and installing equipment that did not meet permit requirements. Given the changed circumstances, including that PTI No. 133-19A was superseded by PTI No. 133-19B, and that EGLE has taken several enforcement actions related to its oversight of the GPI facility, OECRC has determined that the investigation of this allegation is unjustified for prudential reasons.

Regarding the allegation of retaliation, OECRC conducted fact-finding on this issue as part of Complainant's previous complaint, EPA Complaint No. 04Rr-21-R5, and OECRC did not find sufficient evidence to infer that retaliation may have occurred or is occurring in violation of

---

<sup>1</sup> U.S. EPA, Office of External Civil Rights Compliance (formerly, External Civil Rights Compliance Office) *Case Resolution Manual*, Section 1.8, pp. 10-11, available at [https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5\\_final\\_case\\_resolution\\_manual\\_.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

<sup>2</sup> The Complainant filed a previous complaint (EPA Complaint No. 04Rr-21-R5), which EPA accepted for investigation on November 24, 2021, and administratively closed without prejudice on September 29, 2023. The Complainant re-filed the instant complaint (EPA Complaint No. 03Rr-24-R5) on April 3, 2024, within 60 days of the entry of a federal court case decision that dismissed substantially similar civil rights issues against the same recipient. Prior to administrative closure of EPA Complaint No. 04Rr-21-R5, OECRC had gathered facts through a Request for Information, discussions with Complainant and EGLE, interviews with Kalamazoo residents who live near the GPI facility, and an onsite visit to Kalamazoo, MI conducted on February 28, 2023.

<sup>3</sup> CRM Section 1.8.

EPA's nondiscrimination regulation. Accordingly, OECRC is rejecting this allegation for investigation.

### **Conclusion**

As discussed above, OECRC is rejecting EPA Complaint No. 03Rr-24-R5 with prejudice as of the date of this letter. Any new claims not previously raised related to alleged violations of EPA's nondiscrimination regulation must be filed within 180 days of the alleged discriminatory act. OECRC hopes that EGLE's awareness of the issues raised by the community in Kalamazoo inform EGLE's air permit decisions related to the GPI facility.

If you have any questions regarding this letter, please contact me at (202) 564-3357 or by e-mail at [wilson.adam@epa.gov](mailto:wilson.adam@epa.gov).

Sincerely,



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

Cheryl Newton  
Deputy Regional Administrator  
Deputy Civil Rights Official  
U.S. EPA Region 5

Robert Kaplan  
Regional Counsel  
U.S. EPA Region 5

James Clift  
Deputy Director  
Michigan Department of Environment, Great Lakes, and Energy