



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

July 30, 2024

In Reply Refer to:

EPA Complaint No: 01NO-23-R10

Marc Thornsbury
Executive Director & Air Pollution Control Officer
Yakima Regional Clean Air Agency
186 Iron Horse Court, Suite 101
Yakima, WA 98901
marc@yrcaa.org

Re: ACCEPTANCE OF ADMINISTRATIVE COMPLAINT

Dear Director Thornsbury:

This letter serves as notification that the United States Environmental Protection Agency (EPA) Office of External Civil Rights Compliance (OECRC) is accepting for investigation EPA Complaint No. 01NO-23-R10 (Complaint), which was filed on behalf of the Friends of Toppenish Creek (FOTC) on March 6, 2023, against the Yakima Regional Clean Air Agency (YRCAA). The Complaint alleges that YRCAA discriminates against Hispanic/Latino residents of Yakima County, Washington, on the basis of race and national origin (including limited English proficiency) in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 42 USC § 2000d *et seq.*, and EPA's nondiscrimination regulation at 40 C.F.R. Part 7. Specifically, the complaint alleges that the YRCAA enforces the Clean Air Act differently based on race and national origin (including limited English proficiency) with respect to air emissions testing and complaint investigations, and further alleges that YRCAA fails to ensure meaningful access to its programs and activities, including but not limited to the environmental decision-making process, for individuals with limited English proficiency.

Pursuant to EPA's nondiscrimination regulation, EPA's 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.

After careful consideration, OECRC is accepting EPA Complaint No. 01NO-23-R10 for investigation because the Complaint meets OECRC's four jurisdictional requirements. First, the Complaint is in writing. Second, it alleges discriminatory acts that occurred in violation of EPA's nondiscrimination regulation. Third, the Complaint was filed within 180 days of the alleged discriminatory acts. Finally, YRCAA is a recipient of EPA financial assistance.

Accordingly, OECRC will investigate the following issues:

1. Whether YRCAA discriminated on the basis of race and/or national origin (including limited English proficiency) when implementing its Clean Air Act permit program, specifically with respect to methods of air emissions testing and complaint investigations, in violation of Title VI of the Civil Rights Act of 1964 (Title VI), 42 USC § 2000d et seq., and EPA's nondiscrimination regulation, 40 C.F.R. Part 7; and
2. Whether YRCAA discriminated on the basis of national origin in violation of Title VI and 40 C.F.R. Part 7 by failing to ensure meaningful access to its programs and activities, including but not limited to the environmental decision-making process, for individuals with limited English proficiency.¹

The initiation of an investigation of the issues above is not a decision on the merits. OECRC is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with YRCAA and the Complainants, and determine next steps utilizing OECRC's internal procedures. OECRC follows the investigation procedures identified in EPA's nondiscrimination regulation, 40 C.F.R. Part 7. We invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at: https://www.epa.gov/sites/production/files/202101/documents/2021.1.5_final_case_resolution_manual_.pdf

YRCAA may send a written submission to OECRC responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of the letter notifying YRCAA of the acceptance of EPA Complaint No. 01NO-23-R10. *See* 40 C.F.R. § 7.120(d)(1) (ii-iii).

¹The Complaint requests that OECRC re-open EPA Complaint No. 34RNO-16-R10, which was resolved through an informal resolution agreement (IRA) that included specific commitments involving language access. OECRC declines to re-open the IRA, which was deemed resolved on August 19, 2020, and instead will investigate the new allegations raised.

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. See 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact you and YRCAA within 10 days of the date of this letter to provide information about OECRC's complaint process, and to offer and discuss the informal resolution agreement (IRA)² processes as potential options for resolution of the issues which OECRC has accepted for investigation. If YRCAA agrees to engage in either of the informal resolution processes, OECRC will suspend the timeframe to issue preliminary findings within 180 days initiating the investigation. In the event that either of the informal resolution processes fails to result in an agreement, OECRC will notify you as well as YRCAA that OECRC has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.³

Please be advised that a copy of the Complaint is being released to YRCAA, consistent with 40 C.F.R. § 7.120(e). OECRC is releasing the Complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁴

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 any questions, please feel free to contact me by telephone at (202) 564-3357 or by email at wilson.adam@epa.gov, or Charity Johnson, Case Manager, at (202) 564-4325 and by email at johnson.charity@epa.gov.

Sincerely,

Adam Wilson
Acting Deputy Director
Office of External Civil Rights Compliance
Office of Environmental Justice and External Civil Rights

² Informal Resolution occurs between OECRC and the recipient. See Case Resolution Manual, Section 3.1; https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf; p. 22.

³ See 40 C.F.R. § 7.115(c).

⁴ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

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