



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

July 30, 2024

In Reply Refer To:

EPA Complaint No. 06R-22-R5

Thomas Hovel
Commission President
Madison Metropolitan Sewerage District (MMSD)
1610 Moorland Drive
Madison, WI 53713
thomash@madsewer.org

RE: Rejection of Administrative Complaint

Dear Commission President Hovel:

This letter serves 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 the referenced complaint against the Madison Municipal Sewer District (MMSD) which OECRC received a complaint on April 21, 2022.¹ The complaint alleges that MMSD's failure to take appropriate action to address per- and polyfluoroalkyl substances (PFAS) contamination in the surface and drinking water resources around the Dane County Regional Airport-Truax Air Base (DCRA) subjects residents in the Black, Latino, and Asian communities living near the DCRA to discrimination based on race, color, and national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7. For the reasons described below, OECRC is rejecting the complaint and administratively 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

¹ The complaint raised allegations against several Wisconsin state entities: the Office of the Wisconsin Governor, the Wisconsin Office of the Attorney General, the Wisconsin Department of Natural Resources (DNR), the Wisconsin Air National Guard, the United States Air National Guard, Dane County, the Truax Air National Guard Base (also known as the Dane County Regional Airport), and the City of Madison, Wisconsin. On April 21, 2022, the Complainants amended the complaint to include allegations against the Madison Metropolitan Sewer District. Apart from DNR and MMSD, the other entities are not EPA financial assistance recipients; therefore, OECRC does not have jurisdiction to review the allegations made against them.

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.

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.² In an effort to determine jurisdiction, OECRC engaged with the Complainants to clarify the allegations raised,³ examined all documents provided, and considered publicly available information to verify facts relevant to allegations made.

At Complainants' request, OECRC agreed to allow Complainants to submit clarifying information to supplement the complaint for OECRC's consideration.

The Complainants allege that the MMSD took the following discriminatory actions:

1. MMSD has failed to update its webpage relating to PFAS contamination at the DCRA in violation of baseline requirements for public participation because the affected communities around the DCRA are comprised of racial minorities; and
2. MMSD did not update the PFAS standards described on MMSD's webpage to align with EPA's June 2022 guidance that no PFAS levels in drinking water are safe⁴ because the affected communities around the DCRA are comprised of racial minorities. The Complainants noted that the last post on the webpage was September 21, 2021. The Complainants claim that MMSD will need to revise its PFAS enforceable limits to reflect EPA's new guidance.⁵

On April 10, 2024, the EPA announced the final National Primary Drinking Water Regulation (NPDWR) for six PFAS.⁶ The final rule requires that Public water systems must monitor for these PFAS and have three years to complete initial monitoring (by 2027), followed by ongoing compliance monitoring. Water systems must also provide the public with information on the levels of these PFAS in their drinking water beginning in 2027.⁷ Public water systems have five years (by 2029) to implement solutions that reduce these PFAS if monitoring shows that

² *See* Case Resolution Manual, Section 1.8, pp. 10-11 at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual.pdf.

³ OECRC staff held conference calls with Complainants on April 4, June 14, and August 25, 2022.

⁴ *See* <https://www.epa.gov/sdwa/drinking-water-health-advisories-pfoa-and-pfos>

⁵ According to Region 5's water expert, the [June 2022 EPA Guidance](#) is meant to serve as an advisory to the public and may be used to inform future regulatory and enforcement action; however, it is non-binding and non-enforceable at this time.

⁶ *See* <https://www.epa.gov/sdwa/and-polyfluoroalkyl-substances-pfas>

⁷ *Id.*

drinking water levels exceed these Maximum Contaminant Levels (MCL). Beginning in five years (2029), public water systems that have PFAS in drinking water which violates one or more of these MCLs must take action to reduce levels of these PFAS in their drinking water and must provide notification to the public of the violation.⁸

After careful consideration and review of all submitted information, OECRC has determined that an investigation is not appropriate because the information provided in the allegations did not sufficiently describe facts which, if true, would violate Title VI and our nondiscrimination regulation at 40 C.F.R. Part 7. Therefore, OECRC is rejecting EPA Complaint No. 06R-22-R5 and administratively closing this matter as of the date of this letter.

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 acted 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.

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
U.S. EPA Civil Rights & Finance Law Office

Cheryl Newton
Deputy Regional Administrator
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⁸ *Id.*

Commission President Thomas Hovel