



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

January 17, 2025

In Reply Refer to:

EPA Complaint Nos: 04NO-24-R6, 05NO-24-R6, 06RNO-24-R6, 07RNO-24-R6

Mayor Tim Keller
City of Albuquerque
Office of the Mayor
PO Box 1293
Albuquerque NM 87103
tkeller@cabq.gov

RE: Acceptance and Closure¹ of Administrative Complaints

Dear Mayor Keller:

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 accepting for investigation two separate administrative complaints² (collectively the Complaints) involving the City of Albuquerque (City):

- **EPA Complaint No. 04NO-24-R6** involving the City and the Albuquerque Environmental Health Department (EHD), which was received by the EPA on May 30, 2024;³ and

¹ See *infra* footnotes 3 and 4.

² Complainants in EPA Complaint No. 04NO-24-R6 requested OECRC to either accept the complaint for investigation or, in the alternative, to conduct a compliance review to ensure that the City and EHD are not engaged in discriminatory conduct. See 40 C.F.R. § 7.115(a). Because OECRC has decided to accept the complaint for investigation, OECRC declines to initiate a compliance review on these allegations at this time.

³ As described in Section 1.3 of the Case Resolution Manual (CRM), OECRC may consolidate multiple complaints that raise substantially identical allegations against the same entity. Complainants filed a complaint containing allegations involving the City (04NO-24-R6) and the Albuquerque Environmental Health Department (05NO-24-R6),

- **EPA Complaint No. 06RNO-24-R6** involving the City and the Albuquerque City Council, which was received by the EPA on May 31, 2024.⁴

The Complaints concern the Albuquerque-Bernalillo County Air Quality Control Board's (the "Air Board") rulemaking proceeding and issuance of the Health, Environment, and Equity Impacts (HEEI) Rule on December 19, 2023. The Complaints allege that EHD and the City Council took various actions to prevent the adoption of the HEEI Rule – including but not limited to EHD's opposition to the HEEI Rule during the rulemaking proceeding and the City Council's adoption of a resolution and ordinance that would change the make-up and authority of the Air Board. The Complaints allege that these actions by EHD and the City Council discriminate against residents on the basis of race, color, and national origin.

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 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 act. *See* 40 C.F.R. § 7.15.

After careful consideration, OECRC is accepting the Complaints for investigation because the Complaints meet OECRC's four jurisdictional requirements. First, the Complaints are in writing. Second, the Complaints allege a discriminatory act that, if true, may violate Title VI and EPA's nondiscrimination regulation. Third, the Complaints were filed within 180 days of the allegedly discriminatory act.⁵ Finally, the City, including EHD and the City Council, is a recipient of EPA financial assistance.

which OECRC acknowledged directly to those entities on June 5, 2024, and June 11, 2024, respectively. Through evaluation of the complaint, OECRC has determined that the City is the primary recipient of EPA financial assistance, and the City exercises administrative and budgetary control over EHD. Accordingly, OECRC will proceed to investigate the allegations against both the City and EHD under one case number using Complaint No. 04NO-24-R6 as the complaint number. OECRC has administratively closed Complaint No. 05NO-24-R6 as of the date of this letter.

⁴ Complainants filed a complaint containing allegations involving the City (06RNO-24-R6) and the City Council (07RNO-24-R6), which OECRC acknowledged directly to those entities on June 5, 2024. Through evaluation of the Complaint, OECRC has determined that the City is the primary recipient of EPA financial assistance, and the City Council is the legislative body that governs the City. Accordingly, OECRC will proceed to investigate the allegations against both the City and the City Council under one case number using Complaint No. 06RNO-24-R3 as the complaint number. OECRC has administratively closed Complaint No. 07RNO-24-R6 as of the date of this letter.

⁵ Complainants allege that on December 4, 2023, the City Council overrode the Albuquerque Mayor's veto of a City Council introduced resolution and ordinance that would impede the Air Board's ability to promulgate certain

Accordingly, with respect to **Complaint No. 04NO-24-R6**, OECRC will investigate the following issue⁶:

- Whether the actions of EHD surrounding the Air Board's rulemaking proceeding and issuance of the HEEI Rule discriminated against persons in Albuquerque on the basis of race, color, and national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 USC § 2000(d) *et seq.*, and EPA's nondiscrimination regulation, 40 C.F.R. Part 7.

With respect to **Complaint No. 06RNO-24-R6**, OECRC will investigate the following issue:

- Whether the actions of the City Council surrounding the Air Board's rulemaking proceeding and issuance of the HEEI Rule discriminated against persons in Albuquerque on the basis of race, color, and national origin, in violation of Title VI of the Civil Rights Act of 1964, 42 USC § 2000(d) *et seq.*, and EPA's nondiscrimination regulation, 40 C.F.R. Part 7.

Next Steps

EPA's nondiscrimination 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 retaliation or intimidation may file a complaint with OECRC.

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 the City 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/external-civil-rights/case-resolution-manual>.

regulations in an attempt to prevent the adoption of the HEEI Rule. As the date of this alleged discriminatory act is within 180 days of the filing date for this complaint (May 30, 2024), the allegation is timely.

⁶ Complaint No. 04NO-24-R6 further alleges that the City, through EHD, has failed to provide a mechanism for detecting disparate impacts in its permitting decisions. With the adoption of the HEEI Rule, EHD is now required to increase protections for overburdened communities in Albuquerque. In addition, the legality of the City of Albuquerque and the Air Board's actions with respect to the hearing and adoption of the HEEI Rule is currently being challenged in three pending State court cases. Because the outcome of these cases could impact EHD's efforts to implement the HEEI Rule, OECRC has determined not to accept this issue for investigation at this time.

Mayor Keller

The City 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 the City of the acceptance of EPA Complaint Nos. 04NO-24-R6 and 06RNO-24-R6. *See* 40 C.F.R. § 7.120(d)(1) (ii-iii).

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 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 processes as potential options for resolution of the issues which OECRC has accepted for investigation. If you agree to engage in any informal resolution process, OECRC will suspend the timeframe to issue preliminary findings within 180 days of initiating the investigation. In the event that any informal resolution process fails to result in an agreement, OECRC will notify you 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 any informal resolution process.

If you have any questions, please contact me at (202) 564-8796, or by email at hoang.anhthu@epa.gov. You may also contact Kurt Temple, Case Manager, at (202) 564-7299, or by email at temple.kurt@epa.gov.

Sincerely,



Anhthu Hoang
Acting Director
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Office of Environmental Justice &
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cc: Paul Rogers, Director
Environmental Health Department

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