



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 9, 2019

Return Receipt Requested

Certified Mail #: 7015 3010 0001 1267 1968

In Reply Refer to:

EPA Complaint No. 01NO-20-R10

Craig T. Kenworthy
Executive Director
Puget Sound Clean Air Agency
1904 Third Avenue, Suite 105
Seattle, WA 98101

Re: Rejection of Administrative Complaint

Dear Executive Director Kenworthy:

On November 15, 2019, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), received an administrative complaint filed against the Puget Sound Clean Air Agency (PSCAA). The complaint alleges that PSCAA discriminated against the ^{(b) (6) Privacy, (b) (7)(C) En}Tribe of Indians in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation, 40 C.F.R. Part 7, when on July 22, 2019, PSCAA issued a proposed order of approval for a liquefied natural gas facility in the Tacoma Tide Flats without first consulting with the ^{(b) (6) Privacy, (b) (7)(C) En}Tribe of Indians and without performing an analysis of disparate impact on nearby residents, including residents of the ^{(b) (6) Privacy, (b) (7)(C) En}Tribe reservation. After careful consideration, for the reasons identified below, ECRCO is rejecting this complaint for investigation because the issue is not yet ripe for investigation. Accordingly, this matter is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO 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 act. *See* 40 C.F.R. § 7.15.

In general, ECRCO will accept, reject, or refer a complaint after considering the jurisdictional requirements described above. However, if ECRCO obtains information leading ECRCO to

conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation. For example, ECRCO may reject a complaint allegation which is not ripe for review because it anticipates future events which may not unfold as outlined in the complaint.¹ A rejection based on lack of ripeness is without prejudice, meaning that a complainant may refile the complaint with ECRCO within sixty (60) days of a subsequent act or event that raises an allegation of discrimination.

Here, the complaint alleges that the PSCAA violated Title VI and 40 C.F.R. Part 7 when on July 22, 2019, it issued a proposed order of approval for a liquefied natural gas facility in the Tacoma Tide Flats without first consulting with the (b) (6) Privacy, (b) (7)(C) En Tribe of Indians and without performing an analysis of disparate impact on nearby residents, including residents of the (b) (6) Privacy, (b) (7)(C) E Tribe reservation. Following the proposed order of approval, however, PSCAA accepted public comments on the draft analysis and permit between July 22, 2019, and September 9, 2019.² The (b) (6) Privacy, (b) (7)(C) En Tribe submitted comments via this process. In addition, PSCAA held a public hearing on August 27, 2019, to allow the public to make comments for PSCAA to consider before taking final action on the permit. PSCAA has committed to review, consider, and respond in writing to “all comments received during the public comment period and at the public hearing”. It is therefore unclear at present whether the PSCAA will issue the final permit without first considering the concerns raised in the complaint.

Accordingly, ECRCO has determined that an investigation is premature because the PSCAA has not issued a final order of approval. The complaint allegation is not ripe for review because it anticipates future events which may not unfold as outlined in the complaint, and, thus, a meaningful review of the allegation cannot be conducted at this time.

ECRCO is rejecting this complaint without prejudice and closing this case as of the date of this letter. The complainant may refile a complaint within sixty (60) days of PSCAA’s final decision. If the complaint is refiled, ECRCO will conduct another preliminary review to determine acceptance, rejection, or referral.

If you have questions about this letter, please contact Case Manager Brittany Robinson, at (202) 564-0727, via email at rodinson.brittany@epa.gov, or by mail at U.S. EPA, Office of General Counsel, Mail Code 2310A, Room 2524, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460-1000.

Sincerely,



Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

¹ See ECRCO Case Resolution Manual, Section 2.6, at 12-13, available at:

https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

² See <https://www.pscleanair.gov/460/Current-Permitting-Projects>.

cc: Angelia Talbert-Duarte
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