



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

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 20, 2018

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 0176

In Reply Refer to:

EPA File No: 01R-18-R4

Michael Regan
Secretary
North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

Re: Rejection without prejudice of Administrative Complaint

Dear Mr. Regan:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Office (ECRCO), is in receipt of a complaint filed against the North Carolina Department of Environmental Quality (NCDEQ), dated March 28, 2018, alleging discrimination based on race in violation of Title VI of the Civil Rights Act of 1964. The Complaint alleges that NCDEQ discriminated against the West Badin African American community and people of color by issuing a permit on September 29, 2017 that does not adequately protect the environment and public health. In addition, the Complainants allege that the issuance of the permit would affect the Badin Lake, which the community uses to swim and fish. For the reasons identified below, ECRCO is rejecting this complaint without prejudice 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 four fundamental jurisdictional factors 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. The Complainant identified in his complaint that a prehearing statement has been filed with the North Carolina Office of Administrative Hearings against NCDEQ. In addition, he asked that the allegations within the prehearing statement be used as the basis for the ECRCO complaint.

We acknowledge the Complainant's request to stay the administrative complaint while his State agency action is pending. However, per the CRM, at Section 2.6 (Other Factors That May Be Considered Before Accepting a Case for Investigation), ECRCO may reject (without prejudice) a complaint allegation when "[t]he same complaint allegations have been filed, are currently pending, and/or are already resolved with another Federal, State, or local agency, or through a recipient's internal grievance procedures, including due process proceedings...".

As stated in the CRM, the Complainant may refile this complaint within 30 days of the completion of the State agency's action. If they choose to re-file the complaint, ECRCO will then proceed with its preliminary review to determine acceptance, rejection, or referral.

If you have questions about this letter, please contact Case Manager Ericka Farrell, at (202) 564-0717, via email at farrell.ericka@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 Office
Office of general Counsel

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Kenneth Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region 4