



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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 28, 2018

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 0930

In Reply Refer to:

EPA File No. 01R-19-R3

David Paylor
Director
Virginia Department of Environmental Quality
Post Office Box 1105
Richmond, VA 23218

Re: Rejection without Prejudice of Administrative Complaint

Dear Director Paylor:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is in receipt of a complaint against the Virginia Department of Environmental Quality (VADEQ), dated November 14, 2018, alleging discrimination based on race and color in violation of Title VI of the Civil Rights Act of 1964. The Complaint alleges that VADEQ discriminated on the bases of race and color in issuing permits and certifications for the proposed Atlantic Coast Pipeline (ACP) as part of the permitting process. For the reason identified below, ECRCO is rejecting this complaint without prejudice and closing this case 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 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. ECRCO has learned that the U.S. Army Corps of Engineers suspended the ACP's authorization to conduct work under Nationwide Permit 12 on November 21, 2018.¹ Subsequently, the U.S. Fourth Circuit Court of Appeals stayed the implementation of the U.S. Fish and Wildlife Service's 2018 Biological Opinion and Incidental Take Statement on December 7, 2018.² In response to the court's order, Dominion Energy sent a letter to the U.S. Federal Energy Regulatory Commission which stated that it had "stopped construction on the entire Projects, except for stand-down activities needed for safety and that are necessary to prevent detriment to the environment."³ Further, on December 13, 2018, the Fourth Circuit issued another decision which vacated the U.S. Forest Service's decisions authorizing construction for the ACP.⁴

Per ECRCO's Case Resolution Manual (CRM), at Section 2.6, after careful consideration, ECRCO cannot accept this complaint for investigation because the discrimination alleged is not "ripe" for investigation. Specifically, there are ongoing judicial proceedings and permit approvals that will need to be made before construction of the ACP may resume. Given the November 21, 2018 decision by the Army Corps of Engineers and the December 7, 2018 and December 13, 2018 decisions by the U.S. Court of Appeals for the Fourth Circuit, ECRCO will not, at this time, proceed on a complaint that does not appear to be ripe for review.

As stated in the CRM, the Complainant may refile this complaint within 60 days of a subsequent act or event that raises an allegation of discrimination. If the complaint is re-filed, ECRCO will then proceed with its preliminary review to determine acceptance, rejection, or referral.

¹Letter from William T. Walker, Chief, Norfolk District Regulatory Section to Leslie Hartz, Atlantic Coast Pipeline, LLC. Re: Notice of Nationwide Permit 12 Verification Suspension (November 20, 2018).

²*Defenders of Wildlife, et al. v. U.S. Dep't of the Interior, et al.*, No. 18-2090 (4th Cir. Dec. 7, 2018).

³Letter from Matthew R. Bley, Director Gas Transmission Certificates, Dominion Energy to Kimberly D. Rose, Secretary, Federal Energy Regulatory Commission. Re: Atlantic Coast Pipeline, LLC & Dominion Energy Transmission, Inc. Atlantic Coast Pipeline & Supply Header Projects Docket Nos. CP15-554-001, & CP12-555-000 Supplemental Information (December 7, 2018).

⁴*Cowpasture River Pres. Ass'n v. Forest Serv.*, 2018 U.S. App. LEXIS 35060 (4th Cir. 2018).

If you have questions about this letter, please feel free to contact Brittany Robinson, Case Manager, at 202-564-0727, by email at robinson.brittany@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale Rhines". The signature is fluid and cursive, with the first name "Dale" and last name "Rhines" clearly distinguishable.

Dale Rhines
Deputy Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3