



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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 25, 2020

Return Receipt Requested

Certified Mail #: 70153010000112672927

In Reply Refer to:

EPA Complaint No. 02NO-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 January 31, 2020, 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) E}Tribe of Indians ("Tribe"), on the basis of race/national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation, 40 C.F.R. Part 7. Specifically, the complaint alleges PSCAA discriminated when, on December 10, 2019, PSCAA issued a Final Order of Approval for an air permit for Tacoma Liquified Natural Gas (Tacoma LNG) that adversely impacts Tribal residents. For the reasons 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 jurisdiction and/or the appropriate referral to another 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 if the same complaint allegation has been filed or is currently pending with another Federal, State or local agency, and it is anticipated that the agency will provide the complainant with a comparable resolution process.¹

The complaint concerns PSCAA's issuance of Order of Approval for Notice of Construction No. 11386 ("the Permit"). ECRCO met in person with the Tribe's representatives on February 20, 2020, to discuss the complaint in further detail and was informed that the Tribe and other parties filed an appeal of the subject permit with the State of Washington Environmental and Land Use Hearings Office's Pollution Control Hearings Board (PCHB). The Tribe's appeal contends that "PSCAA's action wholly failed to account for the fact that impacts from the construction and operation of the Project will impact tribal members, minority and low-income populations by causing disproportionately high and adverse effects."² Additionally, the Tribe filed a motion to stay the issuance of the Permit pending the resolution of the appeal.³ Although the PCHB will not be making a determination with respect to alleged violations of Title VI, the factual and environmental issues and harms alleged in the appeal and motion to stay are substantially similar and material to those raised in the complaint filed with ECRCO.⁴

The appeal has been scheduled for a pre-hearing conference on March 1, 2021, at which the Tribe will submit a list of proposed legal issues including possible witnesses and exhibits. The appeal process affords the Tribe, PSCAA, and other interested parties the opportunity to develop a full evidentiary record by conducting formal discovery, presenting oral arguments, and examining witnesses.⁵ The PCHB will issue a written decision either denying the appeal or remanding the permit to PSCAA for further processing. The PCHB's decision may be appealed to State of Washington superior court.

¹ *See* Case Resolution Manual, available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

² (b) (6) Privacy, (b) (7)(C) Enforce Tribe of Indians' Notice of Appeal of Puget Sound Clean Air Agency's Order on NOC Application No. 11386 (December 19, 2019).

³ ECRCO reviewed the motion to stay which states that (1) the Permit erroneously fails to require that PSE comply with emission and monitoring requirements applicable to the LNG facility's emergency generators set forth at 40 C.F.R. Subparts IIII and ZZZZ; (2) the Permit erroneously fails to require PSE to comply with the requirements at 40 C.F.R. Subpart OOOOa to monitor and control fugitive Greenhouse Gas (GHG) and Volatile Organic Compound (VOC) emissions; and (3) the Permit erroneously fails to require PSE to submit a Risk Management Plan and other Hazard Management Plans as required under 40 C.F.R. Part 68. The PCBH has not yet issued a decision on the Tribe's motion.

⁴ The motion to stay contains paragraphs identical to the portion of the complaint describing harm arising from the Permit.

⁵ *See* PCHB Rules of Procedure, Ch. 371-08 WAC, available at <https://apps.leg.wa.gov/WAC/default.aspx?cite=371-08>

In light of this information, ECRCO has determined that an investigation is premature at this time because the Permit may change or be remanded as a result of the appeals process. Accordingly, ECRCO is rejecting this complaint without prejudice. As stated in the Case Resolution Manual, a complaint may be re-filed with ECRCO within 30 days of the completion of the PCHB's appeal proceeding.⁶ If the complaint is re-filed, ECRCO will then proceed with its preliminary review to determine acceptance, rejection, or referral.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or 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. 20460-1000.

Sincerely,



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

cc: Angelia Talbert-Duarte
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⁶ See fn 1.