

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

August 23, 2018

Return Receipt Requested

Certified Mail #:7015 3010 0001 1267 0541

In Reply Refer to:

EPA Complaint No: 02R-18-R3

Kassahun Sellassie, Ph.D
Director
Air Management Services
321 University Avenue
Second Floor
Philadelphia, PA 19104

Re: Rejection without Prejudice of Administrative Complaint

Dear Dr. Sellassie:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is in receipt of a complaint against the Philadelphia Department of Public Health's Air Management Services (AMS), dated August 1, 2018, alleging discrimination based on race in violation of Title VI of the Civil Rights Act of 1964. The Complaint alleges that by issuing Air Permit Approval No: IP17-000009 to the Southeastern Pennsylvania Transportation Authority (SEPTA) to build and operate a gas-fueled electricity generation facility (Plant ID: 01573) located at 4391 Wissahickon Avenue, Philadelphia, PA 19140, AMS took an action that would impose adverse and disparate air pollution and health impacts on the predominantly African-American community of Nicetown. 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 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. 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, or when the same complaint allegations are currently pending with a local agency, or have been raised through a recipient's internal grievance procedures.¹ A dismissal 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.

The complaint concerns the issuance of Air Permit Approval No: IP17-000009. Our preliminary investigation revealed that an appeal of the subject air permit is currently pending before the Licensing and Inspections Review Board of the City of Philadelphia. In light of this information, ECRCO has determined that an investigation is premature at this time because the permit may change, or be rescinded. Accordingly, ECRCO is rejecting this complaint without prejudice and closing this case as of the date of this letter.

The complainant may refile this complaint within sixty (60) days of the completion of the appeal process by the Licensing and Inspections Review Board. If the complaint is refiled, ECRCO will conduct another preliminary investigation to determine acceptance, rejection, or referral.

If you have questions about this letter, please contact Case Manager Waleska Nieves-Munoz, at (202) 564-7103, via email at Nieves.Waleska@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

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

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

¹ See ECRCO Case Resolution Manual, Section 2.6, pp. 12-13, *available at* https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf