



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

OFFICE OF
CIVIL RIGHTS

September 13, 2016

Return Receipt Requested

Certified Mail#: 7015 1520 0002 0019 3189

In Reply Refer to:

EPA File No. 09R-15-R9

Matthew Rodriguez
Secretary for Environmental Protection
California Environmental Protection Agency
1001 I Street
P.O. Box 2815
Sacramento, California 95812-2815

Return Receipt Requested

Certified Mail#: 7015 3010 0001 1267 6093

Barbara A. Lee, Director
Department of Toxic Substances Control Headquarters
P.O. Box 806
Sacramento, California 95812-0806

Re: Closure of Administrative Complaint

Dear Mr. Rodriguez and Ms. Lee:

This is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is closing the administrative complaint filed with OCR on March 19, 2015, on behalf of Greenaction for Health and Environmental Justice (Greenaction), against the California Environmental Protection Agency (CalEPA) and the Department of Toxic Substances Control (DTSC). The complaint generally alleged that CalEPA and DTSC violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.* and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

EPA OCR is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance from the EPA.

On April 17, 2015, EPA OCR accepted the following issues for investigation relative to this complaint:

1. Whether CalEPA and DTSC violated Title VI of the Civil Rights Act and EPA's implementing regulations by approving a permit modification to expand the Kettleman Hills Hazardous Waste Facility (Kettleman Hills facility) that discriminates against Latinos in neighboring communities on the basis of national origin.
2. Whether CalEPA and DTSC violated Title VI of the Civil Rights Act and EPA's implementing regulations during the Kettleman Hills facility permit modification process by relying on reports developed through the public participation processes that discriminated against limited-English proficient, Spanish speaking residents on the basis of national origin and that subjected them to a hostile environment on the basis of National Origin.
3. Whether CalEPA and DTSC violated Title VI of the Civil Rights Act and EPA's implementing regulations by refusing to consider information about alleged discrimination on the basis of national origin in their "Petition for Review" process.

On August 10, 2016, Greenaction and El Pueblo Para el Aire y Agua Limpia/People for Clean Air & Water of Kettleman City (El Pueblo) reached a "Settlement Agreement" with CalEPA and DTSC through EPA OCR's Alternative Dispute Resolution Process (ADR) with the assistance of a mediator provided by EPA OCR.

Among its terms, the "Settlement Agreement" contains provisions designed to improve public health and environmental quality for people in Kettleman City. Specifically, DTSC has agreed to help facilitate Greenaction and El Pueblo's efforts to conduct a community-based public health assessment, improve third-party and community-based environmental monitoring, and establish an asthma intervention program for residents of Kettleman City. In addition, CalEPA and DTSC agree to enhance compliance with civil rights laws in permitting hazardous waste disposal facilities and oversight of those processes and through the implementation and adherence to civil rights policies, including language access policies and procedures. Both recipients will also enhance meaningful public participation in their programs and activities. See, e.g., Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 Fed. Reg. 14207 (March 21, 2006), at https://www.epa.gov/sites/production/files/2013-09/documents/title6_public_involvement_guidance.3.13.13.pdf

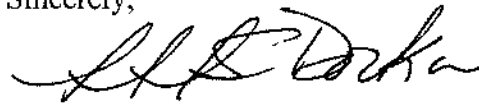
EPA OCR reviewed and found the terms in the August 10, 2016, "Settlement Agreement" to be a reasonable resolution of issues identified in the complaint acceptance letter in EPA File No. 09R-15-R9. EPA OCR is not a party to the "Settlement Agreement" and OCR will not monitor the implementation of the ADR "Settlement Agreement." However, OCR will respond to complaints by the complainants and recipients of "Settlement Agreement" breaches, as appropriate, pursuant to the procedures set forth in its Interim Case Resolution Manual.

https://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf. (See Sections 3.11 and 3.9.)

The EPA OCR wants to remind both DTSC and CalEPA that nothing in the terms of the "Settlement Agreement" prevents OCR from accepting other complaints or pursuing compliance reviews unrelated to those issues that have been resolved, through this process. For instance, the EPA also wants to remind both DTSC and CalEPA that, as recipients of EPA financial assistance, both are required to comply fully with the requirements of each of the civil rights laws enforced by OCR, and the non-discrimination regulation, including the provisions at 40 C.F.R. Part 7, Subpart D requiring recipients to establish civil rights non-discrimination programs through the development of foundational procedural elements such as, non-discrimination grievance procedures, non-discrimination coordinator, and notice of non-discrimination, and the provision of meaningful access to all of your programs and activities for persons with limited English proficiency and persons with disabilities.

We would like to thank the recipients and complainants for working collaboratively to reach this agreement. In light of the above, EPA OCR is closing the complaint effective the date of this letter without further action. If you have any questions regarding this letter, please contact me at (202)564-9649, or dorka.lilian@epa.gov.

Sincerely,



Lilian S. Dorka
Acting Director
Office of Civil Rights

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

Deborah Jordan
Acting Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 9