



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

JAN 25 2013

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

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In Reply Refer to:

EPA File No.: 09R-12-R9

Brent Newell
Attorney
Center on Race, Poverty and the Environment (CRPE)
47 Kearny Street, Suite 804
San Francisco, CA 94108-5528

Sofia Parino
Attorney
Center on Race, Poverty and the Environment (CRPE)
47 Kearny Street, Suite 804
San Francisco, CA 94108-5528

Re: Request to Reconsider Decision to Reject Administrative Complaint

Dear Attys. Parino and Newell:

This is in response to your August 6, 2012, letter to the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) requesting that OCR reconsider its decision to reject your Title VI Complaint (EPA File No. 09R-12-R9). Your original Complaint was filed with EPA on June 8, 2012, and alleged that the California Air Resources Board (CARB) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI),¹ and EPA's nondiscrimination regulations at 40 C.F.R Part 7 in approving the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation, including Compliance Offset Protocols (Cap and Trade program).

EPA may reconsider decisions about Administrative Complaints when new and significant information is provided that demonstrates OCR made a major substantive error in its resolution of a Complaint.² After carefully reviewing the petition for reconsideration and the additional information submitted with the letter as attached exhibits, OCR has determined that the request and additional information do not meet these criteria, and therefore are insufficient to alter the July 12, 2012, decision to reject your Complaint. OCR's July 12, 2012, decision determined that your Complaint was premature and unripe for review. Although you state in

¹ 42 U.S.C. §§ 2000d *et seq.*

² Note: There is no specific EPA regulation or guidance establishing a process for OCR to review petitions for reconsideration. These criteria are derived from the Department of Justice *Title VI Investigation Procedures Manual*, p. 165.

your August 6, 2012, letter that the impact of CARB promulgating the Cap and Trade program will be discriminatory, and state in the request for reconsideration that the rejection of the petition will cause the complainants undue hardship, your request for reconsideration does not provide any evidence demonstrating this. Like the Complaint, your request lacks specific information that CARB either discriminated against “communities of color” in promulgating the Cap and Trade program, or that their actions in taking the preparatory steps to initiate the Cap and Trade program have resulted in harm to the complainants, either at the time the complaint was filed or now. Moreover, your request did not include any facts about the actual, real-world implementation of the program that would help to assess whether adverse, disparate impacts will occur.

In your request, you ask that EPA accept your Complaint, but hold its investigation in abeyance, as was done in the *Greenaction* Complaint (EPA File No. 11R-09-R9). However, the specific allegation held in abeyance in *Greenaction* concerned the Clean Air Act Prevention of Significant Deterioration pre-construction permit application for the Avenal power plant, which was pending approval from EPA. This element is distinguishable from the situation in your Complaint. The ripeness issue arising in your Complaint about the Cap and Trade program is not caused by a pending EPA decision.

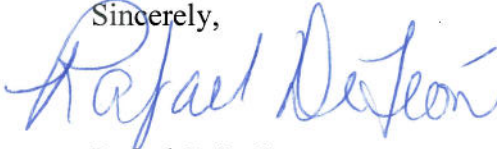
Alternatively, you alleged that this case should be treated in the same manner as the *Communities for a Better Environment (CBE)* Complaint (EPA File No. 10R-97-R9). Yet, the *CBE* Complaint is also distinguishable from the present situation. The *CBE* Complaint highlighted a number of very specific trades that were authorized under the South Coast Air Quality Management District trading program. OCR accepted the *CBE* Complaint because the data regarding impacts of those trades was available at the time *CBE* submitted their complaint in July 1997, whereas that is not the case here. That Complaint was later withdrawn at the request of the complainant.

In this case, as stated in our July 12, 2012, decision, enforceable compliance obligations for greenhouse gas emissions from affected sources have begun on January 1, 2013. CARB has also indicated through the Adaptive Management Plan (AMP) that they will monitor, identify, and address potential adverse impacts of the Cap and Trade program as implementation continues, regardless of where they may occur. This does not indicate that they are in violation of or in compliance with Title VI, only that CARB is aware that there may be potential adverse impacts and that they are prepared to address them if they occur.

With respect to your concerns of whether a future complaint would be timely, OCR encourages continued communication on this matter when CRPE acquires notice of any specific information potentially addressing OCR’s identified reasons for viewing the June 8, 2012, Complaint’s allegations as speculative and uncertain. If CRPE makes a good faith effort to file a complaint in a timely manner, but fails to do so because they couldn’t reasonably have been expected to know the discriminatory act has occurred, then OCR has the discretion to waive the requirement of 180-day timeliness for good cause shown.³

³ 40 C.F.R. § 7.120(b)(2).

If you have any questions about this matter, please contact Helena Wooden-Aguilar, Assistant Director, Office of Civil Rights, by telephone at 202-564-0792, by email at Wooden-Aguilar.Helena@epa.gov, or by mail at U.S. EPA, 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, D.C., 20460.

Sincerely,

Rafael DeLeón
Director

cc: Mr. Stephen G. Pressman, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Ms. Gina Edwards, Civil Rights Contact, U.S. EPA Region 9
75 Hawthorne Street
Mail Code: ORA-1
San Francisco, CA 94105

Ms. Mary D. Nichols, Chairman
California Air Resources Board (CARB)
1001 "I" Street
Sacramento, CA 95814-2828