



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

JUL - 2 2014

Return Receipt Requested

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In Reply Refer to:

EPA File No.: 13R-13-R6

Mr. Brian Shaw
Chairman, Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: Rejection of Administrative Complaint No. 13R-13-R6

Dear Chairman Shaw:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is rejecting, without prejudice, the administrative complaint, No. 13R-13-R6, filed against the Texas Commission on Environmental Quality (TCEQ) received on August 12, 2013. The EPA is rejecting the allegations against the Waller County Commissioners Court found in the same complaint. The complaint generally alleges that the respondents violated Title VI of the Civil Rights Act of 1964, as amended 42 U.S.C. 2000d *et seq*, and the EPA's nondiscrimination regulations found at 40 C.F.R Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. (See 40 C.F.R. § 7.120(d)(1).) For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (See 40 C.F.R. § 7.120(b)(1).) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar 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 a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15.) For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

The OCR is rejecting, without prejudice, the following allegation for investigation:

- (1) The TCEQ's approval of a registration application that will allow for the construction and operation of a transfer station located at the Pintail Landfill had a disparate impact on the minority community residents of Hempstead.

In general, the OCR will "dismiss complaints without prejudice if the issues raised in the complaint are the subject of either ongoing administrative permit appeals or litigation in Federal or state court because the outcome of such permit appeals or litigation could affect the circumstances surrounding the complaint and any investigation that OCR may conduct." (65 Fed. Reg. 39673)

On March 20, 2013 the City of Hempstead filed suit against Waller County in state court seeking to enjoin Resolution 2013-001, due to various deficiencies in the resolution. This case, *City of Hempstead v. Waller County, et. al.*, (Case No. 13-03-21872), is ongoing as of the date of this letter. Given that this litigation could affect the circumstances surrounding a potential investigation involving TCEQ, the OCR is rejecting this allegation without prejudice.

The complaint can be refiled for jurisdictional review within sixty (60) calendar days of the conclusion of the litigation. However, if "the state court reviewed evidence presented by both parties and issued a decision, then OCR may consider the outcome of the court's proceedings to determine if they inform OCR's decision making process." *See* 65 Fed. Reg. 39673.

The OCR is rejecting the following allegation for investigation because does not meet the EPA's jurisdictional requirements:

- (2) Waller County's adoption of an ordinance and licensing agreement with Pintail Landfill, LLC, allowing a municipal solid waste landfill and transfer station to be located within Hempstead's extraterritorial jurisdiction discriminated against the minority residents of Hempstead.

This allegation does not meet the EPA's jurisdictional requirements because the Waller County Commissioners Court is not a recipient of the EPA's financial assistance. Thus, this allegation does not meet EPA's jurisdictional criteria, regardless of the ongoing litigation, and the OCR is rejecting it for investigation.

If you have questions regarding this letter, please contact Jerett Yan at (202) 564-3113, or via e-mail at yan.jerett@epa.gov.

Sincerely,


Velveta Golightly-Howell
Director

Enclosures

cc: Kenneth Redden, Acting Assistant General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Samuel Coleman
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U.S. EPA Region VI

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