



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

SEP 26 2012

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail# (b)(6) Privacy, (b)(7)(C) Enf. Privacy

In Reply Refer to:

EPA File No: 20R-10-R4

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

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Columbus, MS 39704 (b)(6) Privacy, (b)(7)(C) Enf. Privacy

RE: REJECTION OF ADMINISTRATIVE COMPLAINT

Dear (b)(6) Privacy, (b)(7)(C) Enf. Privacy

This letter is in response to your administrative complaints filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR). On August 5, 2010, the U.S. Department of Justice (DOJ) referred your administrative complaints to EPA for review. EPA received your complaints on September 1, 2010.¹ Your complaints alleged that EPA Region 4, Tronox Incorporated, and the Mississippi Department of Environmental Quality (MDEQ) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations implementing Title VI found at 40 C.F.R. Part 7.

OCR is responsible for processing and investigating complaints of discrimination filed against programs or activities that receive financial assistance from EPA. Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of discrimination complaints to determine acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's Part 7 regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, or disability). Third, it must be filed within 180 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

Your complaints state that African Americans living in Columbus, Mississippi are disparately impacted by the toxic exposure in their community due to the alleged failure of EPA Region 4, Tronox Incorporated, and MDEQ to address violations of environmental laws. Specifically you allege that: 1) MDEQ and EPA Region 4 denied

¹ OCR received over three hundred complaints with the same allegations.

public participation in their permitting processes; 2) MDEQ's failed to inspect and investigate Resource Conservation and Recovery Act (RCRA), Clean Air and Clean Water Acts (CAA and CWA) permit violations, resulting in disparate impacts on African Americans in Columbus, MS; 3) EPA Region 4 failed to enforce and implement federal environmental programs for African Americans living in the impacted Columbus community; and, 4) MDEQ, EPA Region 4, and Tronox Incorporated violated the Emergency Planning and Community Right-to-Know Act (EPCRA) by ignoring the contamination and failing to sufficiently inform the community of Columbus, MS of permit violations.

On January 5, 2011, OCR sent you a letter requesting additional information regarding the specific discriminatory actions allegedly committed by each recipient and/or entity and the dates of each alleged discriminatory act. You responded stating that the alleged discriminatory acts were ongoing and continuous from 2007 until January 2011. After careful consideration, OCR has concluded that it cannot accept your complaints for investigation because they do not meet the jurisdictional requirements described in EPA's nondiscrimination regulations.²

Allegation 1

MDEQ and EPA Region 4 denied African Americans public participation in its environmental permitting processes.

You claim that MDEQ and EPA Region 4 denied the African American community public participation in its environmental permitting processes. You also claim that this denial is ongoing and continuous from 2007 until January 2011. OCR has concluded that this allegation against MDEQ cannot be accepted for investigation. Because you have not identified a denial of public participation or an environmental decision that was a part of MDEQ's permitting process within 180 days preceding the filing of your complaint, OCR has determined that your allegation is not timely and therefore must reject it. As stated above, EPA's implementing regulations require that a complaint be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). The allegation against EPA is rejected for investigation. Title VI does not apply to the Federal government and, therefore EPA is not considered a "recipient" within the meaning of Title VI. Therefore, OCR must reject all allegations against the EPA.

Allegation II

MDEQ's failure to inspect and investigate Resource Conservation and Recovery Act (RCRA), Clean Air and Clean Water Acts (CAA and CWA)

² OCR notes that the Department of Justice has filed a lawsuit on behalf of EPA and other environmental and state agencies, claiming that Kerr-McGee fouled 2,772 sites, including Columbus, during seven decades of producing chemicals, fertilizer and plutonium pellets. That litigation did not impact OCR's analysis of the Title VI allegations.

permit violations has had a disparate impact on the African American community in Columbus, MS.

You claim that MDEQ failed to inspect and investigate RCRA permit violations, and CAA and CWA violations. You further state that this failure will have a disparate impact on the public health of the African American community in Columbus, MS. OCR has concluded that this allegation cannot be accepted for investigation. The decision to inspect a facility or to investigate a permit violation is a discrete act. Because you have not identified an instance when MDEQ failed to inspect a facility within 180 days of filing your complaint, OCR determined that this allegation is not timely and therefore must reject it. As stated above, EPA's implementing regulations require that a complaint be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2).

Allegation III

EPA Region 4 has failed to enforce and implement federal environmental programs for African Americans living in the impacted Columbus, MS community.

The allegation against EPA is rejected for investigation. As noted above Title VI does not apply to the Federal government; and, therefore EPA is not a "recipient" within the meaning of Title VI. Thus, EPA OCR must reject this allegation.

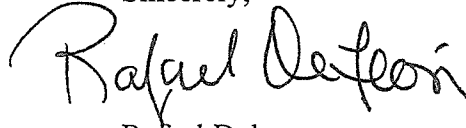
Allegation IV

Finally, you state that MDEQ, EPA Region 4, and Tronox Incorporated violated the Emergency Planning and Community Right-to-Know Act (EPCRA) by ignoring the contamination and failing to sufficiently inform the community of Columbus, MS of permit violations. EPA's nondiscrimination regulations allow for the filing of complaints by those who believe they have been "discriminated against in violation" of EPA's regulations implementing Title VI. 40 C.F.R. § 7.120(a). Because this allegation does not raise a violation of Title VI or EPA's regulations implementing Title VI, it cannot be accepted for investigation under EPA's regulations. In addition, allegations against both EPA and Tronox are rejected because neither is a recipient of EPA assistance. As stated above, Title VI does not apply to the Federal government. Finally, Tronox Incorporated is not a recipient of EPA assistance, and therefore, is not subject to Title VI.

If you have questions regarding this letter, please contact Ericka Farrell of the OCR External Compliance Program at (202) 564-0717, via electronic mail at

farrell.ericka@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC, 20460-1000.

Sincerely,

A handwritten signature in black ink that reads "Rafael DeLeon". The signature is fluid and cursive, with the first name "Rafael" and last name "DeLeon" clearly distinguishable.

Rafael DeLeon
Director

Enclosure

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

Teresa Murray, EEO Officer
EPA Region IV

Naima Halim-Chestnut, Title VI Contact
EPA Region IV