



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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

July 9, 2021

In Reply Refer to:

EPA Complaint No. 02R-21-R5

Kirsten Wallace
Executive Director
Upper Mississippi River Basin Association
7831 East Bush Lake Road
Bloomington, MN 55439
kwallace@umrba.org

Re: Acceptance of Administrative Complaint

Dear Executive Director Wallace:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Upper Mississippi River Basin Association (UMRBA) received by the EPA on May 26, 2021. The complaint, filed by (b)(6) Privacy [REDACTED] Upper Mississippi River Basin, American Rivers Organization, alleges that UMRBA discriminated against communities of color living in the Mississippi River floodplain area based on race and national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7 by knowingly and deliberately excluding the Black, Hispanic, and Hmong communities who live and work in the Mississippi River Basin floodplain areas from participating in the development of programs, projects and policies related to flooding along the Mississippi River.¹ In addition, ECRCO had two phone calls with the Complainant in which Complainant clarified that she alleges that lack of meaningful public participation has been "ongoing" and occurred most recently with UMRBA's draft "Keys to the River Report" issued in April 2021.²

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.,

¹ Administrative Complaint submitted by (b)(6) Privacy [REDACTED] via email on May 26, 2021.

² Phone calls with ECRCO and (b)(6) Privacy [REDACTED] were conducted on June 3rd and 17th, 2021.

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.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory act occurred within 180 days of the filing of this complaint. Finally, it alleges a discriminatory act by UMRBA, which is a recipient of EPA financial assistance.

In addition to the jurisdictional requirements noted above, ECRCO takes into consideration any relevant prudential factors³ that could affect the determination. ECRCO is aware that a complaint has been filed with the Illinois Department of Natural Resources and the Illinois Ethics Commission and contains the same allegations as the complaint filed with ECRCO. ECRCO has contacted both entities and confirmed that neither agency is processing the complaint under its respective grievance procedures. ECRCO has determined that it is appropriate to accept this complaint for investigation.⁴

Accordingly, ECRCO will investigate the following issues:

1. Whether the Upper Mississippi River Basin Association (UMRBA) discriminates on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq.*, and 40 C.F.R. Part 7, by allegedly excluding Black, Hispanic, and Hmong communities from participating in the development of programs, projects and policies related to flooding along the Mississippi River floodplain.
2. Whether UMRBA has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of EPA financial assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the UMRBA's services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether the UMRBA has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.⁵

³ Case Resolution Manual, Section 1.8 Other Factors to Consider After Accepting a Complaint for Investigation at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf

⁴ ECRCO notes that Region 5 EPA employees participate as federal liaisons and in information sharing collaborative roles with UMRBA, in non-voting capacities and not as official members. ECRCO's investigation of the accepted issues will be independent from any such roles that EPA has with UMRBA.

⁵ *See* Title VI, 42 U.S.C. 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). *See also* U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with the Complainant and UMRBA, if appropriate, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

ECRCO is providing UMRBA with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter notifying UMRBA of the acceptance of Administrative Complaint #02R-21-R5. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact UMRBA and the Complainant within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)⁶ and informal resolution agreement⁷ processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If UMRBA (and the complainant with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its complaint investigation. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify UMRBA as well as the Complainant that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁸

Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients, at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf. (2017).

⁶ EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.11, at 21 (2017) (available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).

⁷ EPA ECRCO's Informal Resolution Agreement process occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.12, at 22.

⁸ *See* 40 C.F.R. § 7.115(c).

Please be advised that a copy of the complaint is enclosed, consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.⁹

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact me or Brittany Robinson (Case Manager) at (202) 564-0727 or by email at robinson.brittany@epa.gov.

Sincerely,



Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure: Via Email, Redacted Copy of Complaint

cc: Ariadne Goerke
Deputy Associate
Civil Rights & Finance Law Office
Office of General Counsel

Cheryl Newton
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 5

T. Leverett Nelson
Regional Counsel
US EPA Region 5

⁹ Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.