



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

March 11, 2024

In Reply Refer to:

EPA Complaint No: 06R-24-R4

Lance LeFleur
Director
Alabama Department of Environmental Management
1400 Coliseum Boulevard
Post Office Box 301463
Montgomery, AL 36111-2400
llefleur@adem.alabama.gov

Re: ACCEPTANCE OF ADMINISTRATIVE COMPLAINT

Dear Director LeFleur:

This letter serves as notification that the United States Environmental Protection Agency (EPA) Office of External Civil Rights Compliance (OECRC) is accepting for investigation EPA Complaint No. 06R-24-R4 (Complaint), which was filed by Laumann Legal, LLC and Smith Environmental Law, LLC on behalf of (b)(6) Privacy, (b)(7)(C) Enf. Privacy

(collectively, Complainants) on December 26, 2023, against the Alabama Department of Environmental Management (ADEM). The Complaint alleges that ADEM discriminates against the residents of the Africatown community and other communities in the City of Mobile, Alabama on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* (Title VI), and EPA's nondiscrimination regulation at 40 C.F.R. Part 7. Specifically, the Complaint alleges that ADEM's policies or practices for reviewing and issuing Clean Air Act (CAA) Title V Permits, including ADEM's review and issuance of permits for Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP's permits, discriminate against the communities, on the basis of race.

This Complaint is a refiling of an initial complaint submitted to EPA on May 8, 2023 (May 2023 Complaint), which EPA rejected because Complainants filed Clean Air Act (CAA) Title V

administrative petitions (Title V Petitions) that were pending at the time OECRC was reviewing the May 2023 Complaint to determine jurisdiction. In the rejection letter, EPA informed Complainants that they may re-file the complaint within 60 days of the completion of the Title V Petitions proceeding. EPA published the Notice of final order on petitions in the Federal Register on October 24, 2023,¹ notifying the Complainants that their Title V Petitions were granted in part and denied in part. Therefore, Complainants' re-filing of this Complaint is timely.

Pursuant to EPA's nondiscrimination regulation, EPA's OECRC 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 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 EPA's nondiscrimination regulation (*i.e.*, 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, OECRC is accepting EPA Complaint No. 06R-24-R4 for investigation because the Complaint meets OECRC's four jurisdictional requirements. First, the Complaint is in writing. Second, it alleges discriminatory acts that, if true, may violate Title VI and EPA's nondiscrimination regulation. Third, the Complaint was initially filed within 180 days of the allegedly discriminatory acts, and the refiled Complaint was filed within 60 days of the conclusion of the EPA TV Petitions process. Finally, ADEM is a recipient of EPA financial assistance.

Accordingly, OECRC will investigate the following issue:

Whether ADEM's policies or practices implementing its CAA Title V permit program, as applied in, but not limited to, ADEM's review process and issuance of the permits for Plains Marketing, AL Bulk Terminal, Kimberly-Clark, Alabama Shipyard, and UOP, excludes from participation, denies benefits to, or subjects to discrimination, residents of the Africatown community and other communities in the City of Mobile, Alabama, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 43 USC § 2000d et seq., and EPA's nondiscrimination regulation, 40 C.F.R. Part 7.²

The initiation of an investigation of the issues above is not a decision on the merits. OECRC is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with ADEM and the Complainants, and determine next steps utilizing OECRC's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and OECRC's Case Resolution Manual (CRM)

¹ *See* 88 Fed. Reg. 73017 (Oct. 24, 2023).

² *See* 40 C.F.R. § 7.30.

will be utilized for the complaint investigation process. We invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at:

https://www.epa.gov/sites/production/files/202101/documents/2021.1.5_final_case_resolution_manual_.pdf

ADEM may send a written submission to OECRC responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of the letter notifying ADEM of the acceptance of EPA Complaint No. 06R-24-R4. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact Complainants and ADEM within 10 days of the date of this letter to provide information about OECRC's complaint process, and to offer and discuss the alternative dispute resolution (ADR)³ and informal resolution agreement (IRA)⁴ processes as potential options for resolving the issues which OECRC has accepted for investigation. If ADEM (and Complainants with respect to ADR) agrees to engage in either of these potential resolution processes, OECRC will suspend the timeline for issuing preliminary findings within 180 days of initiating the investigation. In the event that either of these potential resolution processes fail to result in an agreement, OECRC will notify ADEM as well as Complainants that OECRC has resumed its process to issue preliminary findings or otherwise resolve the Complaint within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁵

Please be advised that a copy of the Complaint is being released to ADEM, consistent with 40 C.F.R. § 7.120(e). OECRC 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 7.⁶

EPA's regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have 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 OECRC.

³ EPA OECRC'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, OECRC Case Resolution Manual, Section 3.3, p.24

https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

⁴ Informal Resolution occurs between OECRC and the recipient. *See* https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

⁵ *See* 40 C.F.R. § 7.115(c).


⁶ 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.

Lance LeFleur, Director

If you have any questions, please feel free to contact me by telephone at (202) 809-3297 or by email at hoang.anhthu@epa.gov, or Charity Johnson, Case Manager, at (202) 564-4325 and by email at johnson.charity@epa.gov.

Sincerely,

ANHTHU
HOANG

 Digitally signed by
ANHTHU HOANG
Date: 2024.03.11
18:48:34 -04'00'

Anhthu Hoang
Acting Director
Office of External Civil Rights Compliance
Office of Environmental Justice and External Civil Rights

Enclosure: Via Email, Redacted Copy of Complaint

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

César Zapata
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

Leif Palmer
Regional Counsel
U.S. EPA Region 4