



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

April 16, 2025

In Reply Refer to:

EPA Complaint No. 10NOD-24-R6

James C. Kenney, Secretary
New Mexico Environment Department
1190 St. Francis Drive, Suite N4050
Santa Fe, NM 87505
James.Kenney@env.nm.gov

RE: Acknowledgement & Rejection of Administrative Complaint

Dear Secretary Kenney:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights, Office of External Civil Rights Compliance (OECRC), received an administrative complaint (Complaint) involving the New Mexico Environment Department (NMED) on August 12, 2024.¹ The Complaint alleges that NMED discriminated against Spanish-speaking persons with limited English proficiency (LEP) in the public participation processes associated with permits for the Waste Isolation Pilot Plant (WIPP) hazardous waste facility. Specifically, the Complaint alleges that: 1) in 2021 NMED failed to provide meaningful access to two WIPP hearings for Spanish-speaking persons with LEP, including by failing to adequately train hearing officers to conduct hearings in accordance with NMED's federal nondiscrimination obligations (Claim 1); and 2) NMED fails to, ensure that WIPP permittees provide meaningful access for Spanish-speaking persons with LEP and equal opportunity for persons with disabilities to the WIPP Community Forums, including in the June 27, 2024 Community Forum notice and July 30, 2024 Community Forum.² (Claim 2).

¹ The Complainant shared a copy of a letter emailed to NMED on September 23, 2024, and emailed additional information on October 8, 2024, in support of the allegations. The allegations in the August 12, 2024, administrative complaint, the October 8, 2024, email, and the September 23, 2024, letter to NMED collectively make up the complaint referenced in this letter. OECRC assessed these allegations for incorporation into the monitoring of the Informal Resolution Agreement signed on January 19, 2017, which resolved a complaint about the Triassic Park hazardous waste facility, EPA Complaint 09R-02-R6. As NMED had already taken steps to implement a training plan, language access plan, and a disability access plan under that Informal Resolution Agreement, OECRC did not consider these allegations to be applicable to its monitoring.

² The hazardous waste permit for the WIPP facility requires the permittees to establish and implement a

Pursuant to EPA's nondiscrimination regulation, 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.

In general, OECRC will accept, reject, or refer a complaint after considering the jurisdictional factors above. However, if OECRC obtains information leading OECRC to conclude that an investigation is unwarranted for prudential reasons, OECRC may reject the complaint.³

OECRC has determined that Claim 1 is not timely. The hearings that the Complaint references occurred in 2021, almost three years prior to Complainant's filing of the current complaint. Therefore, these allegations do not meet EPA's jurisdictional requirement that a complaint must be filed within 180 days of the last alleged discriminatory act. The Complainant has not requested, and the circumstances do not warrant, a waiver of this requirement.

OECRC has determined that Claim 2 meets all four jurisdictional requirements. However, after careful consideration, OECRC has determined that an investigation is not warranted at this time because NMED is taking steps to address the allegation regarding meaningful access for Spanish-speaking persons with LEP and equal opportunity for persons with disabilities in the WIPP Community Forums. The Complaint allegations regarding the WIPP Community Forums were sent as a letter emailed to NMED on September 23, 2024. In response to the letter, NMED sent a letter on October 24, 2024, directing the WIPP permittees to address the language and disability access concerns in a revised Community Relations Plan (CRP)⁴ and reiterated this directive in comments on the WIPP facility's 2025 CRP on November 21, 2024.⁵ The WIPP

Community Relations Plan that will "keep communities and interested members of the general public . . . informed of Permit related activities," including through WIPP Community Forum public meetings three times per year. *See* Waste Isolation Pilot Project Hazardous Waste Facility Permit Part 1 General Permit Conditions at 18-19 (June 2024), available at <https://www.env.nm.gov/hazardous-waste/wipp-permit-page/>.

³ *See* U.S. EPA, OECRC Case Resolution Manual, Section 1.9 "Other Factors That May Be Considered Before Accepting a Complaint for Investigation," p. 14 available at: https://www.epa.gov/system/files/documents/2025-01/case-resolution-manual-update_final_jan-2025.pdf.

⁴ Letter to Mark Bollinger, Manager, U.S. Department of Energy Carlsbad Field Office and Ken Harrawood, Program Manager, Salado Isolation Mining Contractors LLC from Rick Shean, Director of Resource Protection Division NMED: *WIPP Community Relations Plan* (October 24, 2024).

⁵ Letter to Bobby St. John, Salado Isolation Mining Contractors LLC, from JohnDavid Nance, Chief of Hazardous

facility submitted a revised CRP to NMED on January 22, 2025.⁶ The revised CRP provides in pertinent part that the WIPP permittees: will include information in public notices “about how individuals may request non-English speaker language assistance and accommodations for persons with disabilities;” may make arrangements for “document translation, interpretation, or disability services related to the activity, as necessary;” and provide notice of public meetings, in English and in Spanish, in a local newspaper where the community forum is to be held, if available, and in the same five newspapers.⁷ Given NMED’s recent actions, OECRC is rejecting this allegation for investigation because an investigation is not warranted at this time.

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.

If you have questions about this letter, please feel free to contact Kurt Temple, Senior Advisor, by email at temple.kurt@epa.gov; or Hayley Cormack, Case Manager, by email at cormack.hayley@epa.gov.

Sincerely,

Susan Park
Deputy Assistant Administrator
Office of Environmental Justice and External Civil Rights

Waste Bureau NMED: *NMED Comments on the 2025 Draft Hazardous Waste Facility Permit Community Relations Plan Waste Isolation Pilot Plant EPA I.D. Number NM4890139088* (November 21, 2024).

⁶ *See* Letter to JohnDavid Nance, Chief, Hazardous Waste Bureau NMED, from Mark Bollinger, Manager, U.S. Department of Energy Carlsbad Field Office and Kenneth Harrawood, Program Manager, Salado Isolation Mining Contractors, LLC: *Response to the Request for Amended WIPP Community Relations Plan* (January 22, 2025), available at <https://hwbdocs.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/250118.pdf>.

⁷ *See id.* On March 28, 2025, NMED sent a letter to the WIPP permittees recommending further improvements to their CRP, including translation of the CRP into Spanish, linking to the CRP from the WIPP website homepage during the public comment period for the annual draft CRP, providing a link for meeting registration purposes instead of a QR code, and providing radio advertisements in English and Spanish. *See* Letter to Mark Bollinger, Manager, U.S. Department of Energy Carlsbad Field Office and Kenneth Harrawood, Program Manager, Salado Isolation Mining Contractors, LLC, from JohnDavid Nance, Chief, Hazardous Waste Bureau NMED: *NMED Response to Amended WIPP Community Relations Plan, dated January 22, 2025 Waste Isolation Pilot Plant EPA I.D. Number NM4890139088* (March 28, 2025), available at <https://hwbdocs.env.nm.gov/Waste%20Isolation%20Pilot%20Plant/250311.pdf>.

cc: Angelia Talbert-Duarte
 Associate General Counsel
 Civil Rights and Finance Law Office

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 Deputy Regional Administrator
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