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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

August 10, 2020

In Reply Refer To:
EPA File No. 01CR-20-R1

Kathleen A. Theoharides
Secretary
Massachusetts Executive Office of Energy & Environmental Affairs (EEA)
100 Cambridge Street
Suite 900
Boston, MA 02114

Re: Initiation of Compliance Review 01CR-20-R1

Dear Secretary Theoharides:

This letter is to notify you that ECRCO will conduct a compliance review of the Massachusetts Executive Office of Energy & Environmental Affairs (EEA) in accordance with the EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7. Specifically, EPA's regulation at 40 C.F.R. § 7.115(a) provides ECRCO with the authority to conduct periodic compliance reviews of any recipient's programs or activities receiving EPA assistance and to request data and information from recipients as part of that process.[1]

As explained in ECRCO's July 27, 2020 letter, ECRCO rejected Complaint No. 01NO-20-R1[2] but, in doing so, also informed EEA of ECRCO's decision to initiate a compliance review. On June 15th, June 24th, and July 8th, ECRCO had conversations with EEA and has reviewed publicly available information to determine whether EEA has a nondiscrimination program in place and, if so, whether EEA's nondiscrimination program meets the requirements of EPA's nondiscrimination regulation and federal nondiscrimination laws. These requirements include

[1] When ECRCO has reason to believe discrimination may be occurring in one of EEA's programs or activities, it may also do an on-site review as part of the compliance review. *See* 40 C.F.R. § 7.115(a).
[2] Letter from Lilian Dorka, ECRCO Director, EPA, to Secretary Theoharides, EEA, Rejection of Administrative Complaint 01NO-20-R1 (July 27,2020).

policies and procedures to ensure that persons with limited English proficiency and persons with disabilities have meaningful access to EEA programs and activities.[3]

Based on the information gathered to date, ECRCO will review:

1. Whether EEA has and is taking reasonable steps, including implementing specific policies and procedures, to ensure meaningful access for individuals with limited English proficiency (LEP) to EEA programs and activities in compliance with the requirements of Title VI of the Civil Rights Act of 1964 and 40 C.F.R. Part 7; and

2. Whether EEA has and is implementing the procedural safeguards recipients of federal financial assistance must have in place to comply with their general nondiscrimination obligations as set forth in 40 C.F.R. Parts 5 and 7. Those safeguards include but are not limited to those with respect to public participation and specific policies and procedures to ensure meaningful access to EEA programs and activities for individuals with disabilities under Section 504 of the Rehabilitation Act of 1973. (See Footnote 3 below.)

As a neutral fact finder, ECRCO will gather relevant information, discuss the matter further with EEA, and then determine next steps utilizing ECRCO's internal procedures. In the intervening time, EEA has the opportunity to make a written submission responding to, rebutting, or denying the issues enumerated above that have been identified for review within thirty (30) calendar days of receiving its copy of this letter. *See* 40 C.F.R. §§ 7.115(b)(2).

As ECRCO informs all recipients at the start of all complaint and compliance review investigations, please note that 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 (such as any individual who provides testimony or evidence relevant to this compliance review) or 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.

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[3] In reviewing this information, ECRCO was unable to determine, for example, that EEA has implemented the following:

1. A prominently posted Notice of Nondiscrimination that is accessible to persons with limited-English proficiency and individuals with disabilities as required by 40 C.F.R. § 7.95(a) and 40 C.F.R. § 5.140.
2. Grievance procedures that assure the prompt and fair resolution of nondiscrimination complaints. 40 C.F.R. § 7.90; 40 C.F.R. § 5.135(b).
3. Designation of at least one non-discrimination coordinator to ensure compliance with the federal non-discrimination laws, 40 C.F.R. § 7.85(g): 40 C.F.R. § 5.135(a).
4. Written policies and procedures, including those with respect to public participation, that ensure meaningful access to EEA programs and activities for individuals with limited English proficiency as required by Title VI of the Civil Rights Act of 1964. 42 U.S.C. § 2000d *et seq*.[3]
5. Written policies and procedures, including those with respect to public participation, that ensure meaningful access to EEA programs and activities for individuals with disabilities as required by Section 504 of the Rehabilitation Act of 1973. 29 U.S.C. § 794 *et seq*.; 40 C.F.R. §§ 7.45-7.75.

EPA's nondiscrimination regulation provides that ECRCO shall seek the cooperation of recipients in securing compliance with its nondiscrimination regulation. *See* 40 C.F.R. § 105. Based on preliminary conversations between EPA and EEA, ECRCO understands that EEA is committed to working with EPA to meet its nondiscrimination obligations. Accordingly, ECRCO will contact EEA within 10 days of the date of this letter to offer and discuss the Informal Resolution Agreement process with EEA as a potential path for addressing the issues identified above for review. ECRCO also appreciates EEA's desire to assume a leadership role in providing guidance to the other state energy and environmental affairs departments to help improve their nondiscrimination policies and procedures, including ensuring meaningful access to individuals with limited-English proficiency.

If EEA agrees to engage in the informal resolution agreement process, ECRCO will suspend its compliance review investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and EEA, ECRCO will notify EEA that ECRCO has resumed its compliance review investigation and will follow procedures established in paragraphs (c) through (e) of 40 C.F.R. § 7.115. These procedures include issuance of preliminary findings within 180 days of the start of the review – excluding any days spent in the informal resolution agreement process. The investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for compliance reviews. We invite you to review the CRM for a more detailed explanation of ECRCO's case resolution process available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

ECRCO appreciates EEA's attention to this matter and looks forward to working with EEA. If you have any questions, please feel free to contact me at 202-564-9649, or at dorka.lilian@epa.gov, or Dale Rhines, ECRCO's Deputy Director at 202-564-4174, by email at rhines.dale@epa.gov.

Sincerely,

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

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

Deb Szaro
Deputy Regional Administrator
Deputy Civil Rights Official

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