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

JUN 25 2010

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail #7009-2820-0002-1759-2978

In Reply Refer to:
EPA File No. 03DSr-09-R8

[redacted]

Re: Partial Acceptance of Administrative Complaint

Dear [redacted]:

This letter is in reference to your administrative complaint received by the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on April 27, 2009. Please note that the EPA File Number has changed from 03D-09-R8 to 03DSr-09-R8 to reflect the additional bases of discrimination articulated in your complaint. Your complaint alleges that the National Older Worker Career Center (NOWCC) 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; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*; and Section 14 of the Federal Water Pollution Control Act Amendment, as amended, including the Environmental Financing Act of 1972.

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 a recipient of, EPA assistance that committed the alleged discriminatory act. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

Allegation I

NOWCC violated EPA's nondiscrimination regulations by issuing a letter of warning and subsequently issuing you a notice of separation from the Senior Environmental Employment (SEE) program because of your gender.

Your complaint states that NOWCC discriminated against you by issuing a letter of formal warning on April 8, 2009, on the basis of gender.[1] You allege that NOWCC's letter of warning was in response to a security violation incident that occurred on March 19, 2009, in the shipping and receiving area of the building of which you were employed. Your complaint also states that NOWCC discriminated against you on the basis of gender when it issued you a notice of separation from the SEE program on April 22, 2009.[2] Specifically, on April 21, 2009, NOWCC sent you a letter of separation from the SEE program due to your "failure to abide by the conditions stated in the warning letter you received on April 9, 2009."[3]

This allegation is not accepted for investigation because it does not meet EPA's jurisdictional requirements. In order for an allegation of gender discrimination to be accepted for investigation, the alleged discriminatory act must have occurred in a program or activity receiving EPA assistance under the Federal Water Pollution Control Act as amended. 40 C.F.R. §7.30. The NOWCC does not receive EPA assistance under the Federal Water Pollution Control Act. OCR, therefore, cannot accept this allegation for investigation.

Allegation II

NOWCC violated Section 504 of the Rehabilitation Act of 1973 and EPA's nondiscrimination regulations and retaliated against you by issuing you a notice of separation from the SEE program because of your disability.

Your complaint alleges that NOWCC discriminated against you by issuing you a notice of separation from the SEE program on April 22, 2009, because of your disability. This allegation is accepted for investigation because it meets EPA's jurisdictional requirements. First, your complaint is in writing. Second, your complaint describes an alleged discriminatory act (issuing you a notice of separation because of your disability) that, if true, would violate EPA's nondiscrimination regulations. Third, the complaint was filed in a timely manner. Fourth, NOWCC is a recipient of EPA financial assistance.

---

[1] Letter from Sheila Miner, Director, Western Field Operations, NOWCC to [redacted] (April 8, 2009)

[2] Letter from [redacted] i to External Complaints Resolution Staff, U.S. Environmental Protection Agency. (June 7, 2009)

[3] Letter from Sheila Miner, Director for West Coast Operation, NOWCC to [redacted]. (April 21, 2009)

Your complaint further alleges that you were issued a notice of separation from the SEE program in retaliation for filing an EEO administrative complaint with EPA. This allegation is accepted for investigation because it meets EPA's jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations (retaliation for participating in the 40 C.F.R. Part 7 complaint process or 40 C.F.R. Part 7 proceedings). 40 C.F.R. §7.100(b). Third, the complaint was filed within 180 days of the date of the alleged discriminatory act (April 22, 2009). Therefore, OCR will accept this allegation for investigation.

EPA's nondiscrimination regulations provide that OCR must attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

If you have any questions, please contact Helena Wooden-Aguilar of the External Compliance Program by telephone at (202) 343-9681, via electronic mail at wooden-aguilar.helena@epa.gov or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), Washington, D.C., 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Karen D. Higginbotham
Director

Enclosure

cc: Katherin E. Hall, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Sandra Fusco
EPA Region 8

Gregory Merrill, President
NOWCC