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

JAN 14 2013

OFFICE OF
CIVIL RIGHTS

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In Reply Refer to:
EPA File No.: 15R-12-R2

Brian Fischer
Commissioner
NYS Department of Corrections and Community Supervision
Building 2
1220 Washington Ave
Albany, New York 12226-2050

Re: Rejection and Referral of Title VI Administrative Complaint

Dear Commissioner Fischer,

This letter is in response to the administrative complaint filed with the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) on August 27, 2012 against the Five Points Correctional Facility, which is operated by the New York State Department of Corrections and Community Supervision (NYS DOCCS). The complaint alleged that Five Points Correctional Facility: 1) failed to provide cigarette butt cans in staff smoking facilities, posing a threat to human life and wildlife; 2) disposed of trash in large, cheap trash bags which were left outside overnight, posing a threat to crows and seagulls; and, 3) used mentally disabled inmates to pick up cigarette butts by hand. OCR investigates allegations of violations of 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 found at 40 C.F.R. Part 7. Title VI prohibits discrimination on the basis of race, color, or national origin in all programs or activities receiving federal financial assistance.

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, may violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). Third, it must be filed within 180 calendar days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or a recipient of, EPA assistance that allegedly committed the discriminatory act.

After careful review, OCR is rejecting the complaint for investigation because it does not meet all of the jurisdictional requirements described in EPA's nondiscrimination regulations.

The complainant alleged that Five Points Correctional Facility, which is operated by the NYS DOCCS, threatened human and wildlife health through its practices. Allegations of discrimination will only be accepted for investigation if the complaint is filed against a recipient of EPA financial assistance. Neither the Five Points Correctional Facility nor the NYS DOCCS are recipients of EPA financial assistance. Additionally, allegations must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulations. Two of the complaints allegations do not raise claims on the basis of race, color, national origin, sex, disability, or age. Therefore, the complaint is not within EPA OCR jurisdiction to investigate, and OCR must reject the complaint for investigation.

It appears that the allegations raised in the complaint may be addressed by the Department of Justice (DOJ) Office of Civil Rights of the Office of Justice Programs. Therefore, EPA is referring this complaint to that office for review and action. A copy of the letter to DOJ is enclosed with this correspondence. The contact person at DOJ for the referral of this allegation is: Mr. Michael Alston, U.S. Department of Justice, Office of Justice Programs, Office of Civil Rights, 810 Seventh Street, N.W., Washington, DC, 20531 at (202) 307-2027.

If you have any questions about this letter, please contact Jerett Yan at (202) 564-3113, via email at yan.jerett@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,

Rafael DeLeon
Director

Enclosures

cc: Melva Hayden
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