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

JAN 10 2013

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-5997

In Reply Refer to:
EPA File No.: 16R-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 alleging that the Southport Correctional Facility, which is operated by the New York State Department of Corrections and Community Supervision (NYS DOCCS), provided the complainant with inadequate medical care. 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 nondiscrimination 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. 40 C.F.R. § 7.120(b). Finally, the complaint must be filed against an applicant for, or a recipient of EPA assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience).

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 complaint alleges that the Southport Correctional Facility, which is operated by the NYS

DOCCS, provided the complainant with inadequate medical care. Allegations under Title VI will only be accepted for investigation if the complaint is filed against a recipient of EPA financial assistance. Neither Southport Correctional Facility nor the NYS DOCCS are recipients of EPA financial assistance. Additionally, allegations under Title VI must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulations. The complaint does not allege a discriminatory act that is based on race, color, national origin, sex, age or disability. Therefore, the complaint is not within EPA OCR jurisdiction to investigate, and OCR must reject the complaint for investigation.

It appears that the allegation raised in the complaint may be addressed by the Department of Justice (DOJ), Office of Civil Rights (OCR) of the Office of Justice Programs (OJP). 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, please contact Helena Wooden-Aguilar, Assistant Director at (202) 564-0792, via email at wooden-aguilar.helena@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, DC, 20460.

Sincerely,

Rafael DeLeon
Director

Enclosure(s)

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Melva Hayden
U.S. EPA Region 2
290 Broadway
Mail Code: 16TH FL
New York, NY 10007-1866