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

APR 25 2013

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-7847

In Reply Refer to:
EPA File No.: 19R-12-R9

Elvin Valenzuela, Warden (A)
California Men's Colony State Prison
P.O. Box 8101
San Luis Obispo, CA 93409-8101

Re: Rejection and Referral of Administrative Complaint

Dear Warden Valenzuela:

This letter is in regards to the complaint received by the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), on September 19, 2012. The complaint alleged that the California Men's Colony State Prison administration is "acting with deliberate indifference by purposefully and intentionally exposing prisoners to asbestos in their cells."[1] Because OCR has responsibility for processing complaints alleging a violation 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, we have assumed for purposes of processing the complaint that this is why the complaint was filed with this office.

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, age, 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 recipient of, EPA assistance that allegedly committed the discriminatory act. (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 the jurisdictional requirements described in EPA's nondiscrimination regulations. One of OCR's jurisdictional requirements to be able to conduct an investigation is that the complaint must be filed against a recipient of EPA financial

[1] Letter from a prisoner to Lisa Jackson, EPA, "Notice of Hazardous Condition." (September 13, 2012).

assistance. The California Men's Colony State Prison is not a recipient of EPA financial assistance. Additionally, allegations must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulations. The complaint does not allege claims on the basis of 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.

However, because the U.S. Department of Justice (DOJ) may have subject matter expertise over the allegations in this complaint and the California Men's Colony State Prison may be a recipient of DOJ, the EPA is referring this complaint to DOJ for review and investigation as they deem appropriate. 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 correspondence, please contact Helena Wooden-Aguilar at (202) 564-0792, via e-mail 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, D.C., 20460.

Sincerely,

Vicki Simons
Acting Director

Enclosures

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

Gina Edwards, EEO Officer
USEPA REGION 9
75 Hawthorne Street
Mail Code: ORA-1
San Francisco, CA 94105-3920