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

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 8, 2017

Return Receipt Requested
Certified Mail# 70153010000112675287

In Reply Refer to:
EPA File No. 02-NO-16-R4

Citizen Name / Ex. 6
Ms. Solimar Mercado-Spencer
Georgia Legal Service Program
104 Marietta Street, Suite 250
Atlanta, Georgia 30303-2706

Dear Mr. Raisner and Ms. Mercado-Spencer:

This letter is to inform you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the Georgia Department of Agriculture (GDA). On July 6, 2016, EPA accepted your complaint, No. 02NO-16-R4, which alleged discrimination based on national origin in violation of Title VI and the EPA regulation at 40 C.F.R. Part 7 relating to GDA's alleged failure to provide language interpretation services to a national origin minority, limited English proficient worker during certain important proceedings. Specifically, ECRCO accepted for investigation:

> Whether GDA's operation of its Worker Protection Standards Program promulgated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient workers including Latino workers, on the basis of national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation.

During the course of EPA's investigation, GDA agreed to enter into an Informal Resolution Agreement in order to resolve this complaint.[1] The enclosed Agreement is entered into by GDA and the EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7. It resolves complaint No. 02NO-16-R4 and additional concerns identified by EPA. It is

[1] See ECRCO's Case Resolution Manual regarding informal resolution of complaints, at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

understood that the Agreement does not constitute an admission by GDA or a finding by EPA of violations of 40 C.F.R. Part 7.

The enclosed Agreement does not affect GDA's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Part 7, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth ECRCO's disposition of the complaint. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such.

If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460.

Sincerely,

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

Cc:

Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Vicki Tellis
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

AGREEMENT
between the
GEORGIA DEPARTMENT OF AGRICULTURE
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ECRCO Complaint No. 02NO-16-R4

I. PURPOSE AND JURISDICTION

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulation at 40 Code of Federal regulations (C.F.R.) Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Georgia Department of Agriculture (GDA) is a recipient[1] of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.

On July 6, 2016, EPA accepted complaint No. 02NO-16-R4 brought under Title VI and EPA's regulation at 40 C.F.R. Part 7 that alleges discrimination based on race and national origin in violation of Title VI. GDA has agreed to enter into this Informal Resolution Agreement ("Agreement") in order to resolve said complaint.

This Agreement is entered into by the GDA and the EPA's External Civil Rights Compliance Office (ECRCO).

This Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7. It resolves complaint No. 02NO-16-R4 and additional concerns identified by EPA. It is understood that this Agreement does not constitute an admission by GDA or a finding by EPA of violations of 40 C.F.R. Part 7.

GDA is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Part 7. The activities detailed in Section III of this Agreement, which GDA has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

[1] Throughout this Agreement, "Recipient" refers to GDA.

II. BACKGROUND

On July 6, 2016, EPA accepted complaint No. 02NO-16-R4. In response to the complaint, EPA initiated an investigation of GDA's compliance with Title VI and the EPA regulation at 40 C.F.R. Part 7. The Agreement herein relates to the resolution of the issue that EPA accepted for investigation in this matter, that GDA's operation of its Worker Protection Standards Program (WPS) promulgated under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. § 136w discriminated against limited English proficient (LEP) workers, including Latino workers, on the basis of national origin.

We understand that EPA Region 4 is working with GDA regarding compliance with the WPS unrelated to making the program accessible to limited English proficient communities. This Agreement does not address the efforts undertaken by Region 4 on those substantive WPS issues.

In addition, during the course of the investigation, EPA ECRCO reviewed the requirements of 40 C.F.R. Part 7, Subpart D that are foundational elements of a recipient's non-discrimination program and are required for all recipient programs and activities. These include: the designation of at least one person to coordinate its efforts to comply with its non-discrimination obligations under 40 C.F.R. § 7.85(g); adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and, continuing notice of non-discrimination under 40 C.F.R. § 7.95.

III. SPECIFIC GDA COMMITMENTS

GDA agrees to undertake the following commitments and non-discrimination procedural safeguards.

It is ECRCO's understanding that GDA is in the process of reviewing the non-discrimination procedural safeguards and taking steps to bring its program into compliance within the timeframe set out below:

1. ***Access for Persons with Limited-English Proficiency:***

   a. GDA will develop, publish, and implement written procedures to ensure meaningful access to all of GDA's programs and activities by all persons, including access by LEP individuals and individuals with disabilities.

   b. GDA will conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and http://www.lep.gov to determine what language services it may need to provide to ensure that LEP individuals can meaningfully participate in the process. GDA should develop a language access plan consistent with the details found in EPA's training module for LEP. http://www.epa.gov/civilrights/lepaccess.htm

c. Within 120 days of the effective date of this Agreement, GDA will forward to EPA a final draft of its written procedures to ensure meaningful access to all of GDA's programs and activities by all persons, including access by persons with LEP. EPA will review the draft procedures and provide any comments within 60 days of receipt.

2. ***Access for Persons with Disabilities:***

a. GDA will provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services provided by GDA in a timely manner and in such a way as to protect the privacy and independence of the individual.

b. Within 120 days of the effective date of this Agreement, GDA will forward to EPA a final draft of its written procedures to ensure meaningful access to all of GDA's programs and activities by persons with disabilities. EPA will review the draft procedures and provide any comments within 60 days of receipt.

3. ***Notice of Non-Discrimination under the Federal Non-Discrimination Statutes***[2]

a. GDA will post a notice of non-discrimination on the GDA website and in general publications that are distributed to the public. In order to ensure effective communication with the public, GDA will ensure that its notice of non-discrimination is accessible to LEP individuals and individuals with disabilities.

b. The notice will contain, at a minimum, the following statements:

i. GDA does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.

ii. GDA is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements of 40 C.F.R. Part 7 (Non-discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI

[2] Title VI, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Section 13 of Federal Water Pollution Control Act of 1972, and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes).

of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, and Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

iii. If you have any questions about this notice or any of GDA's non-discrimination programs, policies or procedures, you may contact:

[GDA to INSERT NAME]
Georgia Department of Agriculture
19 Martin Luther King Jr. Drive, S.W.
Atlanta, Georgia 30334-4201
Email address: [insert]

iv. If you believe that you have been discriminated against with respect to a GDA program or activity, you may contact the Non-Discrimination Coordinator identified above or visit our website at titlevi@agr.georgia.gov or call 404-586-1152, to learn how and where to file a complaint of discrimination.

c. Within 30 days of the effective date of this Agreement, GDA will publish its notice of non-discrimination on its website as specified above. GDA will begin publishing its notice of non-discrimination in general publications that are distributed to the public within 180 days of the effective date of this Agreement.

4. ***Grievance Procedures for Complaints filed under the Federal Non-Discrimination Statutes***

a. GDA will ensure that it has widely and prominently published its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will review them annually to ensure that they remain up to date, in publication at all times, and prominently online, to allow for prompt and appropriate handling of those discrimination complaints.

b. The grievance procedures will at a minimum address the following:

i. Clearly identify the Non-Discriminator Coordinator, including contact information;

ii. Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the grievance procedures;

iii. State who may file a complaint under the procedures;

iv. Describe the grievance process;

v. Explain that an appropriate, prompt and impartial investigation of any allegations filed under federal non-discrimination statutes will be conducted;

vi. State that the preponderance of the evidence standards will be applied during the analysis of the complaint;

vii. Contain assurances that retaliation is prohibited and that claims of retaliation will be handled promptly if it occurs;

viii. State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.

c. Within 120 days of the effective date of this Agreement, GDA will forward to ECRCO a final draft of its grievance procedures for review. ECRCO will review the draft procedures and provide any comments within 60 days of receipt.

5. ***Designation of a Non-Discrimination Coordinator***

a. GDA will ensure that it has designated at least one Non-Discrimination Coordinator to ensure GDA's compliance with the federal non-discrimination statutes.

b. GDA will ensure the notice and the grievance procedure that it widely publishes contains the title, email address, telephone number, and other contact information of the Non-Discrimination Coordinator. GDA will explain the responsibilities of the Non-Discrimination Coordinator in its grievance procedures adopted pursuant to Section III, Paragraph c., iii of this Agreement.

c. GDA will ensure that the Non-Discrimination Coordinator's responsibilities include the following:

i. Providing information to individuals internally and externally regarding their right to services, aids, benefits, and participation in any GDA program or activity without regard to their race, national origin, color, sex, disability, age or prior opposition to discrimination.

ii. Providing notice of GDA's grievance process and the ability to file a discrimination complaint with GDA.

iii. Maintaining grievance policies and procedures or mechanisms (e.g., an investigation manual) to ensure that all discrimination complaints filed with GDA under federal non-discrimination statutes are processed promptly and appropriately and that meaningful access is provided for persons with LEP and disabilities to GDA programs and activities.

iv. Ensuring the tracking of all discrimination complaints filed with GDA under federal non-discrimination statutes including any patterns or systemic problems.

v. Conducting a semiannual review of all discrimination complaints filed with the GDA Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by GDA in order to identify and address any patterns or systemic problems.

vi. Informing GDA staff regarding the GDA's obligations to comply with federal non-discrimination statutes and serve as a resource on such issues.

vii. Ensuring that complainants are updated on the progress of their discrimination complaints filed with GDA under federal non-discrimination statutes and are promptly informed as to any determinations made.

viii. Periodically evaluating the efficacy of GDA's efforts to provide services, aids, benefits, and participation in any GDA program or activity without regard to race, national origin, color, sex, disability, age or prior opposition to discrimination.

ix. Ensuring appropriate training in the formal and informal processes available to resolve complaints filed under federal non-discrimination statutes.

x. Providing or procuring appropriate services to ensure GDA employees are appropriately trained on GDA non-discrimination policies and procedures, as well as the nature of the federal non-discrimination obligations.

d. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (*e.g.*, serving as the Non-Discrimination Coordinator as well GDA legal advisor or representative on civil rights issues).

e. Within 60 days of the effective date of this Agreement, GDA will have designated a Non-Discrimination Coordinator and provided appropriate public notice of such as specified above.

f. Within 30 days of appointment of a Non-Discrimination Coordinator, GDA will forward to ECRCO proof that it has designated a Non-Discrimination Coordinator and that the Non-Discrimination Coordinator has assumed the responsibilities identified in subsection 5(c) above. As proof, ECRCO will accept from GDA a signed statement from the incumbent acknowledging the Non-Discrimination Coordinator responsibilities as outlined in subsection 5(c) above, together with a signed statement from GDA that it has (1) designated the identified incumbent as the Non-Discrimination Coordinator and that it will (2) oversee the Non-Discrimination Coordinator's responsibilities.

6. ***Public Participation***

a. ECRCO recognizes that GDA does not currently administer an environmental permitting program which implicates EPA ECRCO's Public Participation Guidance found at 71 FR 14,207, 14,210 (March 21, 2006). However, should GDA administer such a program in the future, GDA will implement a public involvement process that is available to all persons regardless of race, color, national origin (including LEP), age, disability, and sex; and will develop and implement a public participation policy that contains the following:

i. An overview of the Recipient's plan of action for addressing the community's needs and concerns;

ii. A description of the historical and demographic background of the community to be included in the public participation process;

iii. A contact list of agency officials with phone numbers and email addresses to allow the public to communicate via phone or internet;

iv. A detailed plan of action (outreach activities) Recipient will take to address concerns;

v. A contingency plan for unexpected events;

vi. Location(s) where public meetings may be held; and

vii. Contact names for obtaining language assistance services for LEP persons, including, translation of documents and/or interpreters for meetings;

viii. Appropriate local media contacts (based on the culture and linguistic needs of the community); and

ix. Location of the information repository.

b. Should GDA begin administering environmental permitting programs, within 120 days of doing so GDA will forward to EPA a final draft of its public participation process/procedures for review. EPA will review the draft process/procedures and provide any comments within 60 days of receipt.

7. *Training*

a. Within 90 days after implementing the deliverables identified in this Agreement, including fulfilling the requirements for a Non-Discrimination Coordinator, Non-Discrimination Notice, Grievance Procedures, and Public Participation Process/Procedures, GDA will certify that all appropriate staff have been trained on these processes and procedures and on the nature of the federal non-discrimination obligations.

b. Within 120 days after execution of this Agreement, GDA also will have a plan in place to ensure that such training is a routine part of annual or refresher training to appropriate staff.

IV. GENERAL

1. In consideration of GDA's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 02NO-16-R4 and not issue a decision containing findings on the merits of the complaint.

2. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in complaint No. 02NO-16-R4 and closure of the complaint as of the date of that letter.

3. EPA will, upon request, provide technical assistance to GDA regarding any of the civil rights obligations previously referenced.

4. EPA will review and provide feedback about any documentation submitted by GDA demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-Discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.

5. GDA will report the completion of each commitment identified under Section III, consistent with the timeframes in Section III, by certified mail to the Director, EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by GDA of each commitment.

V. COMPUTATION OF TIME AND NOTICE

1. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

2. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

3. Documents submitted by GDA to EPA shall be sent to the Director, U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

4. Documents submitted by EPA to GDA shall be sent to the Georgia Department of Agriculture, Legal Services Division, 19 Martin Luther King, Jr. Drive, S.W., Atlanta, Georgia 30334.

VI. EFFECT OF THE AGREEMENT

1. GDA understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, GDA understands that during the monitoring of this Agreement, if necessary, EPA may visit GDA, interview staff, and request such additional reports or data as are necessary for EPA to determine whether GDA has fulfilled the terms of this Agreement and is in compliance with the EPA regulation implementing the federal non-discrimination requirements in 40 C.F.R Part 7, which were at issue in this case.

2. GDA understands that EPA will close its monitoring of this Agreement when EPA determines that GDA has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in EPA re-opening the investigation.

3. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to GDA's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this

Agreement shall take effect only upon written agreement by the Commissioner of GDA and the Director of EPA.

4. This Agreement constitutes the entire Agreement between GDA and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by GDA and EPA in accordance with the provisions of Section VI. Paragraph c above.

5. This Agreement does not affect GDA's continuing responsibility to comply with Title VI or other federal non-discrimination laws and the EPA's regulation at 40 CFR Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

6. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Commissioner in his capacity as an official of GDA, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Georgia Department of Agriculture,

Gary W. Black
Commissioner,
Georgia Department of Agriculture

2/8/17
(Date)

On behalf of the U.S. Environmental Protection Agency,

Lilian S. Dorka
Director,
External Civil Rights Compliance Office, Office of General Counsel
U.S. Environmental Protection Agency

2-6-2017
(Date)