UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 3, 2017

Return Receipt Requested
Certified Mail #: 7015 1520 0002 0019 3004

In Reply Refer to:
EPA File No: 14R-14-R4

Sarah Mitchell
Process Agent
North Carolina Department of Transportation
Transportation Building
1 S. Wilmington Street
Raleigh, NC 27601

Re: Rejection and Referral of Administrative Complaint

Dear Ms. Mitchell:

On September 18, 2014, the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO), formerly known as the Office of Civil Rights (OCR), received an administrative complaint alleging that North Carolina Department of Transportation (NCDOT) has not taken preventive measures regarding the spread of "arsenic and lead contaminants throughout an 85% low-income African American community," and that this violates Title VI of the Civil Rights Act of 1964 (as amended, 42 U.S.C. 2000d et seq., and the EPA's nondiscrimination regulation found at 40 C.F.R. Part 7.) ECRCO cannot accept this complaint for investigation as it does not meet the jurisdictional requirements set forth in EPA's nondiscrimination regulation. Accordingly, this case is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints for 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 regulation. First, it must be in writing. 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

After careful review, ECRCO is rejecting the complaint for investigation because it was filed against NCDOT, which is not a recipient of EPA assistance. Also, the alleged acts by NCDOT that are identified in the complaint – misrepresentations in the 2009 Record of Decision – are ultimately untimely because they did not occur within 180 days of filing the complaint. Although the complaint makes reference to an EPA recipient, the North Carolina Department of Environment and Natural Resources (NCDENR), now North Carolina Department of Environmental Quality (NCDEQ), it makes no specific or timely allegation of discrimination by NCDENR (now NCDEQ.)

On April 6, 2016, Samuel Peterson, ECRCO Case Manager, contacted the complainant to clarify the complaint and obtain updated information about the issues raised in the complaint. However, ECRCO did not obtain any additional information that would impact the decision to close this complaint for lack of jurisdiction. As a result, ECRCO does not have jurisdiction to investigate this matter and is closing this case as of the date of this letter. It is ECRCO's understanding that the U.S. Department of Transportation, Federal Highway Administration (FHWA) may have jurisdiction over the matters alleged in the complaint. Accordingly, the complaint is being referred to FHWA for appropriate action.

If you have any questions regarding this letter, please contact Samuel Peterson at (202) 564-5393, peterson.samuel@epa.gov, or by mail at the U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

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

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