UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 16, 2017

Return Receipt Requested
Certified Mail #: 7009 2820 0002 1759 2442

In Reply Refer to:
EPA File No. 36R-16-R9

Robert J. Kroning
Director
City and County of Honolulu Department
of Design and Construction
650 South King Street, 11th Floor
Honolulu, Hawaii 96826

Re: Referral of Complaint of Employment Discrimination

Dear Mr. Kroning:

This is to notify you that a complaint of employment discrimination filed with the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) against your office is being referred to the U.S. Equal Employment Opportunity Commission (EEOC). The complaint generally alleges that an individual was discriminated against by the Wastewater Division in the Department of Design and Construction of the City and County of Honolulu (Honolulu) in the individual's employment duties because of their race. After careful review, ECRCO has concluded that it lacks jurisdiction to accept the complaint for investigation. Accordingly, the case is closed as of the date of this letter.

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

The complaint alleges employment discrimination on the basis of race against a recipient of EPA financial assistance. However, ECRCO's jurisdiction over employment complaints is limited by

EPA's nondiscrimination regulation. EPA's nondiscrimination regulation, at 40 C.F.R. § 7.35(a)(6), states that:

> As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of race … [d]iscriminate in employment on the basis of … race … in any program or activity whose purpose is to create employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of EPA assistance, or subject the beneficiaries to prohibited discrimination.

The allegation of employment discrimination in this complaint does not fall within EPA's limited jurisdictional authority relating to employment complaints as it does not allege race discrimination in a program or activity whose purpose is to create employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of EPA assistance, or subject the beneficiaries to prohibited discrimination.

ECRCO is therefore closing this complaint and referring it to the Equal Employment Opportunity Commission (EEOC), which may have authority to address the complaint allegations. Accordingly, please direct further communication regarding this matter to EEOC's Honolulu Local Office Director, Glory Gervacio, who can be reached by telephone at 1-800-669-4000, or email at *glory.gervacio@eeoc.gov*. In addition, the EEOC Honolulu office's mailing address is 300 Ala Moana Blvd., Room 7-127, P.O. Box 50082, Honolulu, Hawaii, 96850-0051.

If you have any questions, please contact Jonathan Stein by telephone at (202) 564-2088, via e-mail at *stein.jonathan@epa.gov*, or by mail at U.S. EPA Office of General Counsel External Civil Rights Compliance Office (MC 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Lilian S. Dorka
Director
External Civil Rights Compliance Office

cc: Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official, U.S. EPA Region 9

Rosa Viramontes, Los Angeles District Office Director
U.S. Equal Employment Opportunity Commission (EEOC)
Roybal Federal Building
255 East Temple St., 4th Floor
Los Angeles, California 90012

Glory Gervacio, Honolulu Local Office Director
U.S. Equal Employment Opportunity Commission (EEOC)
300 Ala Moana Blvd
Room 7-127, P.O. Box 50082
Honolulu, Hawaii 96850-0051