UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

March 9, 2017

Return Receipt Requested
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In Reply Refer to:
EPA File Nos. 44RNO-16-R9 (HDOA)
and 45RNO-16-R9 (ADC)

Scott Enright, Director
Hawaii Department of Agriculture &
Hawaii Agribusiness Development Corporation
Office of the Chairperson
1428 South King Street
Honolulu, Hawaii 96814-2512

Re: Acceptance of Administrative Complaint 44RNO-16-R9 and 45R-NO-16-R9

Dear Director Enright:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed by Earthjustice on behalf of the Moms on a Mission Hui and Pō' ai Wai Ola/West Kaua' I Watershed Alliance against the Hawaii Department of Agriculture (HDOA), and the Hawaii Agribusiness Development Corporation (ADC). The complaint alleges that HDOA and ADC discriminated against farm workers and residents in West Kaua'i and on Moloka'i, on the basis of race and/or national origin with respect to the administration of the pesticides program and the leasing and licensing of the state land program, in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d et seq., the EPA's nondiscrimination regulation found at 40 Code of Federal Regulations (C.F.R.) Part 7. In addition, the complaint alleges that HDOA and ADC lack a Title VI compliance program as required by EPA's nondiscrimination regulation.

Pursuant to EPA's nondiscrimination administrative regulation, ECRCO conducts preliminary reviews of administrative complaints received for acceptance, rejection, or referral to the appropriate Federal agency. *See* 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. *See* 40 C.F.R. § 7.120(b)(1). Second, it must allege a discriminatory act that if true, may violate EPA's nondiscrimination regulation (*e.g.* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act, unless this time limit is waived for good cause shown. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint

must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, ECRCO has determined that the subject complaint meets the jurisdictional requirements stated above. First, the complaint is in writing. Second, the complaint alleges that discrimination occurred, in violation of EPA's nondiscrimination regulation. Third, the complaint describes alleged discriminatory acts that occurred within 180 days of filing, or for which there is good cause to waive this time limit. And finally, the complaint was filed against HDOA and ADC, which are applicants for, or recipients of EPA financial assistance.

Accordingly, ECRCO will investigate the following:

> Whether in administering the pesticides program and the leasing and licensing of the state land program the HDOA and/or ADC discriminated on the basis of race and/or national origin (Native Hawaiians) against farm workers and residents of West Kaua'i and Moloka'i, in violation of Title VI of the Civil Rights Act, and EPA's implementing regulation; and
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> Whether the HDOA and/or ADC is complying with the procedural safeguard provisions in 40 C.F.R. Part 7 Subpart D which require recipients of EPA financial assistance to have specific policies and procedures in place to comply with their non-discrimination obligations.

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin the process of gathering the relevant information, discuss the matter further with you and the complainants, as appropriate, and determine next steps utilizing our internal procedures. In the intervening time, ECRCO will provide HDOA and ADC with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that ECRCO will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. 7.120(d)(2). Accordingly, ECRCO is willing to discuss, at any point during the process, offers to informally resolve the subject complaint. ECRCO may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at https://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi. ECRCO may also contact the complainants to discuss their interest in entering into informal resolution discussions. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process, available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

We would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO. Our office would investigate such a complaint if the situation warranted.

Finally, we note that this complaint was also filed with the U.S. Department of Agriculture (USDA), Office of the Assistant Secretary for Civil Rights (OASCR). As the EPA and USDA share jurisdiction over Title VI protections in this matter, EPA has agreed to share the results of any resolution, determinations, or findings with the Director, Office of Adjudication, OASCR, USDA.

If you have questions about this letter, please feel free to contact me at 202-564-9649 (Dorka.Lilian@epa.gov) or Brittany Martinez, Case Manager at 202-564-0727 (Martinez.Brittany@epa.gov).

Sincerely,

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

cc: Carl-Martin Ruiz
Director
Office of Adjudication
OASCR, USDA

Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office, EPA

Deborah Jordan
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Acting Deputy Civil Rights Official
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