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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

July 13, 2018

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In Reply Refer to:
EPA File No: 07R-17-R7

Carol S. Comer
Director
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

Re: Rejection of Administrative Complaint

Dear Director Comer:

On December 27. 2016, the U.S. Environmental Protection Agency (EPA), External Civil Rights Office (ECRCO), received a complaint against Missouri Department of Natural Resources (MDNR). The complaint was originally filed with the Department of Justice on July 7, 2016. The complainant alleges discrimination based on race in violation of Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.* (Title VI). Specifically, the complaint states that MDNR discriminated on the basis of race against African American residents of Grandview with respect to MDNR's January 2, 2014 issuance of a permit authorizing Ideker Inc.'s permanent stationary asphalt plant at 5600 East 150 Highway in Kansas City, Missouri, in violation of Title VI and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7. After careful consideration ECRCO cannot accept the complaint for investigation.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints to determine 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 the EPA's nondiscrimination regulation. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate the 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 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 financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

ECRCO has concluded that it cannot accept the administrative complaint for investigation because it does not meet the jurisdictional requirements described in EPA's nondiscrimination regulation. Specifically, the complaint was not filed within 180 days of the acts alleged. The 180-day period to bring a Title VI claim begins "when the Plaintiff knew or should have known of the injury upon which its action is based."[1] Here, the 180-day period began on or about January 2, 2014, when the Complainant became aware its comments were not accepted by MDNR prior to issuance of the permit.[2] The complaint was not filed, however, until July 7, 2016. This is outside of the 180-day timeliness requirement. Based on ECRCO's review of the facts, ECRCO has insufficient basis for granting a waiver of the 180-day filing requirement. As explained above, ECRCO cannot accept this complaint for investigation and is closing this case as of the date of this letter.

ECRCO is committed to helping state recipients establish and implement nondiscrimination programs relative to the requirements of federal nondiscrimination laws and EPA's nondiscrimination regulation. In particular, EPA' s nondiscrimination regulation (40 C.F.R. Part 7) sets forth the foundational elements of a recipient's nondiscrimination program. These include: continuing notice of nondiscrimination (40 C.F.R. § 7.95); the adoption of grievance procedures that assure the prompt and fair resolution of complaints which allege a violation of EPA' s nondiscrimination regulation (40 C.F.R. § 7.90); and the designation of at least one person to coordinate a recipient's efforts to comply with its nondiscrimination obligations (40 C.F.R. § 7.85(g)). ECRCO also works with recipients to implement programs and policies to ensure they provide meaningful access for persons with limited-English proficiency[3] and persons with disabilities[4] to all their programs and activities that receive federal financial assistance from EPA. This includes working with recipients to implement a public participation policy and process to help recipients ensure that their environmental permitting programs provide meaningful public involvement that is consistent with Title VI and EPA's implementing

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[1] Elghali v. DeVry Educ. Grp., Inc., No. 16-5591, 2016 U.S. Dist. LEXIS 156059, at *6 (E.D. Pa. Nov. 10, 2016) (dismissing Title VI claim filed after statute of limitations expired) (citations omitted).

[2] It is apparent that Complainant became aware of the permit on or about this date because Complainant attempted to submit public comment opposing the permit issuance. *See* 07R-17-R7 Complaint, pp. 2-3.

[3] *See* Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin); Lau v Nichols 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin.) Also, on June 25, 2004, EPA issued: Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons 69 FR 35602, 35606-35607 (June 25, 2004), at https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi.

[4] *See* 40 C.F.R. §§ 7.45 - 7.75; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a). Section 504, and EPA's implementing regulation prohibit discrimination on the basis of disability in any programs or activities receiving federal financial assistance.

regulation.[5] Please be aware that ECRCO is available to provide technical assistance to MDNR to help it develop and implement a robust nondiscrimination program.

If you have questions about this letter, please contact Case Manager Zahra Khan, at (202) 564-0460, via email at khan.zahra@epa.gov, or by mail at U.S. EPA, Office of General Counsel, Mail Code 2310A, Room 2524, 1200 Pennsylvania Avenue, NW, Washington, DC, 20460-1000.

Sincerely,

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

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Edward H. Chu
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 7

[5] *See* Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207, at https://www.gpo.gov/fdsys/pkg/ FR-2006-03-2 l/pdf/06-269I.pdf.