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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 15, 2017

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In Reply Refer to:
EPA File No: 03D-17-R4

Aaron Keatley
Commissioner
Department of Environmental Protection
Kentucky Energy and Environment Cabinet
300 Sower Boulevard, 2nd Floor
Frankfort, Kentucky 40601

Re: Rejection of Administrative Complaint

Dear Mr. Keatley:

On November 29, 2016, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) received a complaint alleging that Kentucky Energy and Environment Cabinet (KY EEC) failed to investigate a report of fumes emanating from an auto body shop near a residential home. The Complainant specifically alleges that KY EEC engaged in discrimination by failing to accommodate a person with a disability's attempt to submit evidence supporting the report of fumes. After careful review, ECRCO has concluded that an investigation in this case is not justified in light of the facts presented. Accordingly, this matter is closed as of the date of this letter.

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.

In addition to the above factors, ECRCO will also consider whether a complaint allegation (including any additional information provided by the Complainant) provides information sufficiently grounded in fact. Where a complaint allegation is not sufficiently grounded in fact, ECRCO may conclude that an investigation is unjustified, and may reject a complaint on this basis.

In light of concerns raised by the Complainant over whether ECRCO had received all the material submitted by her prior to making its jurisdictional determination, ECRCO contacted the Complainant to request additional information. Specifically, ECRCO requested an explanation of when and how KY EEC discriminated against the Complainant based on disability. After evaluating the information provided, ECRCO cannot accept this complaint for investigation, as the allegation is not sufficiently grounded in fact. Specifically, the complainant alleged that due to lack of mobility the KY EEC investigator's departure from the home without watching the video discriminated against the Complainant because she was left with no alternate way to provide the video to KY EEC. However, the complainant stated that she had previously submitted a video to KY EEC via a URL in an email and that KY EEC staff confirmed to her that they could watch the video. Accordingly, ECRCO is closing this case as of the date of this letter.

If you have any questions about this correspondence, please contact Zahra Khan, Case Manager, at (202) 564-0460, by e-mail at khan.zahra@epa.gov or by mail at U.S. EPA External Civil Rights Compliance Office, (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, 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 and Finance Law Office

Kenneth Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region 4