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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 15, 2017

Return Receipt Requested:
Certified Mail#: (b) (6) - Privacy [redacted]

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

(b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy [redacted]
Barbourville, KY 40906

Re: Rejection of Administrative Complaint

Dear (b) (6) - Privacy, (b) (7)(C) - Enforcement Privacy [redacted]

The U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO), initially received correspondence from you on November 29, 2016, alleging that Kentucky Energy and Environment Cabinet (KY EEC) discriminated against you based on your disability. In your complaint, you alleged that KY EEC failed to investigate your report of fumes emanating from the auto body shop near your home. Specifically, you stated that KY EEC failed to accommodate your disability when you attempted to submit evidence to support your claim. 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 your November 30, 2016 email expressing concern over whether EPA had received all the material you submitted to the Department of Justice and prior to making its jurisdictional determination, ECRCO contacted you on December 6, 2016 and April 20, 2017 to discuss your complaint and request additional information. Specifically, ECRCO requested an explanation of when and how KY EEC discriminated against you based on your disability. You explained the interaction with KY EEC and reiterated points from your original correspondence. You alleged that the, failure of the KY EEC investigator to remain in your home and watch your footage of the fumes in its entirety discriminated against you on the basis of your disability.

However, in evaluating your description of the alleged discriminatory act and the facts you have presented, ECRCO cannot accept your administrative complaint for investigation, as the allegation is not sufficiently grounded in fact. Specifically, your complaint alleged that due to your lack of mobility the KY EEC investigator's departure from your home without watching the video discriminated against you because it left you with no alternate way to provide the video to KY EEC. However, your complaint stated that you had previously submitted a similar video to KY EEC via a URL in an email and that KY EEC staff confirmed for you that they could view that 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