UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 17, 2018

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In Reply Refer to:
EPA File No. 03D-16-R2

The Honorable Lovely Warren
Mayor
City Hall
30 Church Street, Room 307A
Rochester, NY 14615

Re: Notification of Acceptance of Administrative Complaint

Dear Mayor Warren:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the City of Rochester, NY (Rochester), received by EPA on October 15, 2015. The complainant alleges that Rochester discriminated against a resident with a disability in the following ways: (1) In June 2014, Rochester failed to provide adequate notice of a public meeting regarding the installation of a speed hump on Field Street, and failed to hold the meeting at an accessible venue for people with disabilities; and (2) Rochester ignored a resident with a disability's request for a reasonable accommodation to employ other means of traffic control, and installed speed humps on the resident's street in August 2015 that allegedly caused air and noise pollution, and which negatively impacted the resident's health in light of her disability. As a result, the complainant alleges that Rochester has discriminated based on disability, in violation of Section 504 of the Rehabilitation Act of 1973 and EPA's nondiscrimination regulations, at 40 C.F.R. Part 7.

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 evaluated each of the allegations to determine whether the jurisdictional requirements have been met. The first allegation stating that Rochester discriminated based on disability by failing to hold a public meeting at an accessible venue occurred in 2014, which is more than 180 days prior to the filing of the complaint with ECRCO on October 15, 2015. As stated above, complaints must be filed within 180 days of the alleged discriminatory act. Accordingly, the first allegation is being rejected as untimely.

After careful consideration, ECRCO has determined that the second allegation meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the second alleged discriminatory act occurred within 180 days of your filing this complaint. Finally, it alleges a discriminatory act by Rochester, which is an applicant for, or recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether the City of Rochester discriminated on the basis of disability in violation of Section 504 of the Rehabilitation Act of 1973 and EPA's implementing regulation at 40 C.F.R. Part 7, by failing to respond to and/or accommodate a reasonable accommodation request submitted to the City by a resident with a disability.

2. Whether the City of Rochester has implemented and adhered to specific procedural safeguards to ensure meaningful access to all City programs and activities by all persons, including access by individuals with disabilities, in compliance with its nondiscrimination obligations set forth in 40 C.F.R. Part 7.

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 its process to gather the relevant information, discuss the matter further with Rochester and the complainant, if appropriate, and determine next steps utilizing ECRCO's internal procedures. In the intervening time, ECRCO will provide Rochester 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 its copy of the letter notifying it of the acceptance of Administrative Complaint 3D-16-R2. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

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. In specific cases involving individual remedies, ECRCO may provide Early Complaint Resolution (ECR). ECR is a process which facilitates the resolution of accepted complaints informally by providing an early opportunity for the complainant and recipient to come to a mutually acceptable agreement. ECRCO may contact the complainant and recipient to offer this resolution option. 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.

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* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact Zahra Khan, Case Manager, at 202-564-0460, by email 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: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Richard Manna
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 2