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

OFFICE OF
CIVIL RIGHTS

August 2, 2016

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In Reply Refer To:
EPA File No. 11R-14-R4

Donald R. van der Vaart
Secretary
North Carolina Department of Environmental Quality
1611 Mail Service Center
Raleigh, NC 27699-1611

Re: Acceptance of Administrative Complaint (11R-14-R4) (Formerly 37R-16-R4)

Dear Mr. van der Vaart:

This letter is to notify you that the Environmental Protection Agency (EPA), Office of Civil Rights (OCR) is accepting for investigation a claim that the North Carolina Department of Environmental Quality (NCDEQ) retaliated, intimidated or harassed individuals or groups, including the Complainants (the North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help, and Waterkeeper Alliance, Inc.), through its conduct, including its actions and inactions associated with the North Carolina Pork Council and National Pork Producers Council ("Pork Councils") and the January 2016 mediation session. The investigation of this claim will be conducted under EPA File No. 11R-14-R4. The case number that had been assigned to this new complaint, EPA File No. 37R-16-R4, has been closed.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1). Generally, OCR accepts for investigation complaints that meet the four jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(1). Third, the complaint must be filed within 180 calendar days of the alleged act. *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.

As of the date of this letter, OCR has determined that the subject complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the

complaint. And finally, the complaint was filed against NCDEQ, which is an applicant for, or recipient of EPA financial assistance.

After careful consideration, OCR will investigate the following:

> Whether NCDEQ's actions or inactions, including those associated with the presence and activities of the Pork Councils related to the January 2016 mediation session, violated 40 C.F.R. § 7.100 which prohibits intimidating, threatening, coercing, or engaging in other discriminatory conduct against any individual or group because of actions taken and/or participation in an action to secure rights protected by the non-discrimination statutes OCR enforces.

The initiation of an investigation of the issue above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather 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, OCR will provide you 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 a copy of this letter. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the subject complaint and may contact your representatives to discuss the Recipient's interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf

Finally, we would like to remind you that no applicant, recipient nor other person 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 non-discrimination statutes OCR enforces. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have any questions about this letter, please feel free to contact me at (202) 564-9649, or Case Manager Ericka Farrell at (202) 564-0717. You can also contact us by e-mail at dorka.lilian@epa.gov or farrell.ericka@epa.gov, or by U.S. mail at U.S. EPA Office of Civil Rights (Mail Code 1201), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Lilian S. Dorka
Acting Director
Office of Civil Rights

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

Ken Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region IV