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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 9, 2018

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In Reply Refer to:
EPA File No. 03R-12-R9

Patrick Mathews, General Manager/CAO
Salinas Valley Solid Waste Authority
128 Sun Street, Suite 101
Salinas, CA 93901

Re: Closure of Administrative Complaint, EPA File No. 03R-12-R9

Dear Mr. Mathews:

This letter is to notify you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is administratively closing, as of the date of this letter, the complaint received by EPA on March 2, 2012 (dated February 28, 2012), against the Salinas Valley Solid Waste Authority (SVSWA), currently known as Salinas Valley Recycles (SVR).[1] The complaint generally alleged that SVSWA violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq*. (Title VI) and the EPA's nondiscrimination regulation found at 40 Code of Federal Regulations (C.F.R.) Part 7.

ECRCO is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency), disability, sex, and age in programs or activities that receive federal financial assistance from the EPA. On January 14, 2013, EPA's ECRCO[2] accepted for investigation the following issue:

> Whether SVSWA has discriminated against Latinos in Gonzales, CA by limiting public notification and participation during the permitting process for the Plasco Project.[3]

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[1] While SVSWA currently does business under the name Salinas Valley Recycles (SVR), this letter utilizes the original name of SVSWA throughout for consistency with the complaint as filed and initial intake by EPA.
[2] The External Civil Rights Compliance Office (ECRCO) was, at the time, identified as the Office of Civil Rights, (OCR).
[3] Letter from Rafael DeLeon, Director, OCR to Patrick Mathews, Director, SVSWA (January 14, 2013). This letter also notified the complainants that OCR was rejecting the second allegation (that the Plasco facility would have discriminatory and adverse impacts on the Gonzales Latino community) without prejudice as premature and unripe

ECRCO is administratively closing this complaint as of the date of this letter for several reasons. First, ECRCO has made multiple attempts to contact the Complainants by mail and email, writing to them in both English and Spanish, but the Complainants have not responded. ECRCO has determined that its ability to complete the investigation is substantially impaired by the Complainants' loss of contact. Moreover, the investigation completed to date has not raised systemic issues that warrant continuing the investigation. The proposed Plasco plasma arc gasification facility opposed by the Complainants during the public engagement process, which was the impetus for the subject complaint, was never built and plans for its construction appear to have since been abandoned.[4] In addition, SVSWA is not currently an EPA recipient, and EPA's ability to seek the full panoply of relief extends only to recipients of EPA financial assistance. Given the totality of these circumstances, ECRCO is exercising its discretion to administratively close this complaint as of the date of this letter.

It is important to note, however, that Title VI compliance is required if SVSWA chooses to receive assistance in the future from any federal agency, either directly or indirectly by way of another federal financial assistance recipient. Furthermore, during the pendency of the investigation, as is ECRCO's current practice, ECRCO reviewed SVSWA's compliance with the requirements of EPA's non-discrimination regulation, which sets forth the foundational elements of a recipient's non-discrimination program. These include: continuing notice of non-discrimination under 40 C.F.R. § 7.95; adoption of grievance procedures that assure the prompt and fair resolution of complaints alleging civil rights violations under 40 C.F.R. § 7.90; and the designation of at least one person to coordinate its efforts to comply with non-discrimination obligations under 40 C.F.R. § 7.85(g).

ECRCO has made it a priority to develop guidance pieces that can be referred to by recipients of federal financial assistance as they develop their nondiscrimination safeguards. On June 25, 2004, EPA published its *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons* (LEP Guidance). On March 21, 2006, EPA published its *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs* (Public Involvement Guidance). These documents and additional information can be found at https://www.epa.gov/ocr/epas-title-vi-policies-guidance-settlements-laws-and-regulations, and at https://www.epa.gov/ocr/assisting-people-limited-english-proficiency. The LEP Guidance as published in the Federal Register is directly available at

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for investigation.

[4] *See* SVSWA Press Release, "Suspension of Environmental Review for Plasma Arc Gasification Facility" (November 16, 2012), available at http://svswa.org/wp-content/uploads/Press-Release.pdf; *see also* SVSWA, "Steam Autoclave Clean Fiber and Organics Recovery System", available at http://svswa.org/government/special-projects/steam-autoclave-clean-fiber-and-organics-recovery-system/; *and see* SVSWA Press Release, "Grant to Help Reduce Agricultural Waste in the Salinas Valley" (September 28, 2017). In short, these items indicate that the Plasco project has been suspended for long enough that SVSWA has effectively moved on to entirely different uses for the Johnson Canyon site initially under consideration and that SVSWA does not reasonably envision restarting the Plasco project.

https://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf. The Public Involvement Guidance as published in the Federal Register is directly available at https://www.gpo.gov/fdsys/pkg/FR-2006-03-21/pdf/06-2691.pdf.

ECRCO would welcome the opportunity to provide SVSWA with technical assistance on the development of robust nondiscrimination safeguards. Please consider ECRCO's offer of technical assistance if you contemplate receiving direct EPA assistance, or indirect EPA assistance provided via CalRecycle, other CalEPA-affiliated entities, or any other federal financial assistance recipient in the future.

This letter sets forth EPA's disposition of complaint number 03R-12-R9. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such. If you have any questions about this correspondence, please contact me, or Jonathan Stein, Case Manager, at 202-564-2088, or via email at *Stein.Jonathan@epa.gov*.

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

Deborah Jordan
Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 9

Thomas Bruen
Law Offices of Thomas M. Bruen, P.C.
1990 N California Blvd
Suite 608
Walnut Creek, California 94596-3744
By Email: tbruen@tbsglaw.com