UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

August 30, 2018

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

In Reply Refer to:
EPA No: 42D-16-R9

Jack P. Broadbent
Chief Executive Officer/APCO
Bay Area Air Quality Management District
375 Beale Street,
Suite 600
San Francisco, CA 94105

Re: Rejection of Administrative Complaint

Dear Mr. Broadbent:

On August 31, 2016, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) received a complaint alleging that the Bay Area Quality Management District (BAAQMD) discriminated on the basis of disability by failing to respond to a request to investigate, test, or require removal of the toxic mulch throughout the Wyndover Apartments complex, which a complainant with disabilities stated was making her ill, in violation of Section 504 of the Rehabilitation Act of 1973 and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7. After careful review, ECRCO has concluded that an investigation in this case is not justified for prudential reasons. 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 general, ECRCO will accept, reject, or refer a complaint after considering the four fundamental factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject a complaint allegation. For example, ECRCO may reject a complaint if it obtains credible information indicating that the allegations raised by the complaint have been resolved and "there are no systemic issues" [1], that is, broader issues such as the recipient does not have discrimination policies and procedures in place.

Complainant is a person with disabilities who requested BAAQMD provide her with a reasonable accommodation by investigating, testing, and removing mulch surrounding her housing complex, which she believed to be toxic and aggravating the symptoms of her disability. ECRCO conducted several interviews with the Complainant to obtain more information about her request and interaction with BAAQMD staff. In these discussions, Complainant stated that the mulch placed around her apartment complex was toxic and included hazardous chemicals such as methyl bromide. She also stated that the mulch has since been removed from her residential complex.[2]

In July 2018, ECRCO contacted BAAQMD to conduct a preliminary investigation into Complainant's allegation. BAAQMD representatives stated that BAAQMD could not fulfill Complainant's request for reasonable accommodation because BAAQMD lacks the legal authority to test mulch toxicity or remove mulch. Based on this information, ECRCO has determined that an investigation into BAAQMD's alleged failure to provide a reasonable accommodation to Complainant is not justified. As such, the only issue remaining for ECRCO's review is whether BAAQMD has in place policies and procedures for ensuring nondiscrimination with respect to persons with disabilities.

In 2016, ECRCO worked with BAAQMD to bolster its general nondiscrimination program, including its procedural safeguards, as required by EPA's nondiscrimination regulation, and under Section 504 of the Rehabilitation Act of 1973, with respect to persons with disabilities. During ECRCO's July 2018, conversation with BAAQMD, BAAQMD assured ECRCO that their nondiscrimination procedures remain in place and that they continue to be responsive to requests for reasonable accommodations by persons with disabilities. As such, ECRCO has no current concerns regarding broader Section 504 issues. Accordingly, ECRCO is rejecting this complaint for investigation and is closing this complaint as of the date of this letter.

By way of this letter, ECRCO is alerting the California Environmental Protection Agency's Department of Pesticide Regulation (DPR) of the Complainant's allegation that mulch containing toxic substances (including methyl bromide), was placed in her residential complex, Wyndover Apartments, (b) (6) Privacy Novato, CA. Although the Complainant has stated that the allegedly toxic substances may no longer be in use, ECRCO wanted to bring this to DPR's attention in light of its role in regulating the use of hazardous substances.

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[1] *See* ECRCO's Case Resolution Manual at Section 2.6, page 12, at: https://www.epa.gov/ogc/case-resolution-manual.

[2] Complainant reported during a conversation with ECRCO on September 8, 2017, that the mulch in question was removed.

ECRCO would like to thank BAAQMD for its cooperation in resolving this case. ECRCO remains available to provide technical assistance to BAAQMD to ensure a robust nondiscrimination program and its continued adherence to federal nondiscrimination laws and EPA's nondiscrimination regulation. If you have any questions about this letter, please contact Dale Rhines, Deputy Director, at (202) 564-4174, by e-mail at Rhines.Dale@epa.gov, or by mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office, Mail Code 2310A, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460.

Sincerely,

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Brian R. Leahy
Director
California Environmental Protection Agency
Department of Pesticides

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