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

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy
[redacted]
Novato, California 94947

Re: Rejection of Administrative Complaint

Dear [redacted]

On August 31, 2016, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) received your complaint alleging that the Bay Area Quality Management District (BAAQMD) discriminated on the basis of disability by failing to respond to your request to investigate, test, or require removal of the toxic mulch throughout the Wyndover Apartments complex, which you, a person with disabilities, stated was making you 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.

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

In July 2018, ECRCO contacted BAAQMD to conduct a preliminary investigation into your allegation. BAAQMD representatives stated that BAAQMD could not fulfill your 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 you 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 our letter to BAAQMD regarding the resolution of your complaint, ECRCO is alerting the California Environmental Protection Agency's Department of Pesticide Regulation (DPR) of your allegation that mulch containing toxic substances (including methyl bromide), was placed in your residential complex, Wyndover Apartments, Diablo Avenue, Novato, CA. Although you 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] You reported during a conversation with ECRCO on September 8, 2017, that the mulch in question was removed.

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[redacted]

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, 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

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