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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 15, 2018

Return Receipt Requested:
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In Reply Refer to:
EPA Complaint No. 39R-16-R9

Barbara Lee
Director
California Department of Toxic Substances Control
Post Office Box 806
Sacramento, CA 95812-0806

Re: Rejection and Closure of Administrative Complaint

Dear Director Lee:

On August 26, 2016, the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) received a complaint as a referral from Department of Justice's Federal Coordination and Compliance Section. DOJ received the correspondence on February 1, 2016. The complaint alleges that the California Department of Toxic Substances Control (DTSC) discriminated on the basis of race by failing to take action on investigating contaminated sites located near schools and non-white populations, in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation at 40 C.F.R. Part 7. After careful review, ECRCO has determined that it will not accept this case for investigation. 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 jurisdictional factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons (e.g. the allegations have been resolved), ECRCO may reject a complaint on this basis.[1] After conducting a preliminary review of the available information, that is, the description of the alleged discriminatory acts, the facts presented, and other considerations noted below, ECRCO has determined that it will not accept the complaint for investigation.

The Complainant provided an article posted on consumerwatchdog.org dated December 9, 2015, that states that two of DTSC employees participated in racially derogatory email exchanges. These employees, at the time, worked in the Human and Ecological Risk Office (HERO) for DTSC. The complaint stated that one of the employees had the job of reviewing contaminated sites to determine if they required further action by DTSC and that the DTSC employees' behavior indicated that there was racial bias in the "no further action" decisions. The primary example listed was a review of a Redondo Beach elementary school located near a shooting range.

ECRCO's preliminary review found that DTSC conducted a comprehensive internal review of the site decisions made by the two DTSC employees. Subsequently, the California Environmental Protection Agency (California EPA) (the State agency in charge of DTSC) asked EPA Region IX to conduct a "detailed and systematic independent examination of site-specific [DTSC] project files."[2] This review was "to identify any evidence of either intentional or unintentional bias in the risk-based analytical framework that was applied in support of site-specific remedial decisions." [3] EPA reviewed data from DTSC to identify any evidence of bias based upon the site locations or demographics. This review included the Redondo Beach elementary school example included in the complaint. In a September 13, 2017 letter to the Director of DTSC from the Director of the EPA Region IX Land Division, EPA "concluded that DTSC-HERO has adequate peer-review procedures in-place to ensure quality decision-making and that, for the specific sites reviewed, the remedial decisions were consistent with the available site data."[4] In addition, "HERO site-specific comments and recommendations were also consistent with current California EPA and/or U.S. EPA risk assessment guidance, and we observed no evidence of intentional or unintentional bias."[5] EPA Region IX also reviewed the procedures employed by DTSC-HERO for their internal peer-reviews and found them acceptable.

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[1]See ECRCO's *Case Resolution Manual*, Section 2.6 at 12. https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

[2]Memorandum from Patrick Wilson, Senior Regional Toxicologist for US EPA to Jeff Scott, Director of the Land Division for US EPA and Tom Huetteman, Assistant Director, Land Division, US EPA.

[3]Memorandum from Patrick Wilson, Senior Regional Toxicologist for US EPA to Jeff Scott, Director of the Land Division for US EPA and Tom Huetteman, Assistant Director, Land Division, US EPA.

[4] Letter to Barbara Lee, Director, Department of Toxic Substances Control From Jeff Scott, Director Land Division U.S. EPA Region 9 (September 13, 2017) https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/U-S-EPA-Review-of-Specific-DTSC-Project-Files-Work-Products-September-13-2017.pdf

[5] Letter to Barbara Lee, Director, Department of Toxic Substances Control From Jeff Scott, Director Land Division U.S. EPA Region 9 (September 13, 2017) https://www.dtsc.ca.gov/GetInvolved/ReviewPanel/upload/U-S-EPA-Review-of-Specific-DTSC-Project-Files-Work-Products-September-13-2017.pdf

After careful consideration, ECRCO has determined that, based on Region IX's review of the DTSC data and procedures and the actions taken by California EPA and DTSC to request and accept the findings of the review, ECRCO will not conduct any further investigation. The issue raised in the complaint has been resolved and there is no systemic issue.[6] Therefore, ECRCO is rejecting and closing this complaint as of the date of this letter.

Please do not hesitate to contact me or Waleska Nieves-Munoz, Case Manager in EPA's ECRCO, with any questions about this letter. Ms. Nieves can be reached at (202) 564-7103, or at nieves-munoz.waleska@epa.gov.

Sincerely,

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

cc:

Kenneth Redden
Acting Associate General Counsel
Civil Rights and Finance Law Office

Deborah Jordan
Deputy Regional Administrator
Deputy Civil Rights Official
EPA, Region 9

[6] See ECRCO's *Case Resolution Manual*, Section 2.6 at 12. https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf