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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 19, 2018

Return Receipt Requested
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In Reply Refer To:
EPA File No. 26R-16-R6

Matthew Miller
Supervising Attorney
Environmental Justice
Legal Aid of Northwest Texas
1515 Main Street
Dallas, TX 75201

Re: Rejection of Administrative Complaint

Dear Mr. Miller:

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting for investigation the complaint filed by the Legal Aid of Northwest Texas against the City of Dallas (the City). The complaint alleges the City discriminated on the basis of race and national origin by facilitating the relocation of a cement batch plant to a majority Hispanic and African-American neighborhood in West Dallas, in violations of Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7. Specifically, the complaint alleges that the relocation action will cause "significant adverse impact" to these residents, and that the City has also engaged in acts of "intentional discrimination", such as failing to allow for "meaningful public participation." 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.[1]

Your complaint alleges that the decision by the City to facilitate the relocation of the Argos batch cement plant from Singleton Blvd. to West Commerce St. will cause "significant adverse impact" to the predominantly minority (Hispanic and African-American) residents of West Dallas. Based on ECRCO's preliminary review, it appears that the permitted air emissions for the West Commerce St. facility are significantly lower than the air emissions previously permitted for the Singleton Blvd. site. In fact, available information shows that the permit action associated with the relocation of the facility that triggered this complaint will result in a 80% reduction of pollutants introduced into West Dallas by Argos cement batching operations.[2] With respect to the allegation raised in the complaint related to "intentional discrimination", such as the City's alleged failure to allow for "meaningful public participation," based on our preliminary review of available information, including the information provided in the complaint and through communications with you about the notice and public participation process, as well as relevant City Council meeting records, ECRCO has determined that the allegation is not sufficiently grounded in fact.

Given these circumstances and after careful consideration, ECRCO has concluded that it will not accept this complaint for investigation, and is rejecting and closing this complaint as of the date of this letter. If you have questions about this letter, please contact ECRCO Team Lead Debra McGhee, by phone at (202) 564-4646, by email at mcghee.debra@epa.gov or by mail at 1200 Pennsylvania Avenue, NW, Mail Code 2310A, Room 2524, Washington, DC, 20460-1000.

Sincerely,

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

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[1] *See* ECRCO Case Resolution Manual, Section 2.6, pp. 12-13, available at: https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf

[2] In December 2012, the 240 Singleton Blvd Plant, which was then owned by Southern Star Concrete, was permitted to emit 7.47 tons per year of particulate matter, of which the permit allowed 3.19 tons to be particulate matter with a size of or below 10 micrometers or microns (referred to in permits as PM_{10}.). The new plant, located at 2900 West Commerce, received a construction permit in September 2015 with a permit limit with maximum emissions of .93 tons of total particulate matter, of which .90 tons may be PM_{10}. An amended permit issued on April 13, 2018, lowered the permissible emissions from .90 to .29 PM_{10}. The permit which had applied to the old facility at 240 Singleton Blvd. was voided. *See* Air Quality Permit 62 issued to Southern Star Concrete, Inc., for concrete plant number 1519, issued May 20, 2004, and Construction Permit #126203 issued to Argos USA LLC on September 28, 2015, as amended April 13, 2018, to reduce the amount of PM permitted.

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

David Gray
Deputy Regional Administrator
Deputy Civil Rights Official
US EPA Region 6