UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 14, 2018

Return Receipt Requested:
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In Reply Refer to:
EPA Complaint No. 19R-15-R2

Catherine R. McCabe
Commissioner
New Jersey Department of Environmental Protection
401 E. State St.
7th Floor, East Wing
P.O. Box 402
Trenton, NJ 08625-0402

Re: Rejection of Administrative Complaint; EPA Complaint No. 19R-15-R2

Dear Commissioner McCabe:

On May 26, 2015, the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) received a complaint alleging that the New Jersey Department of Environmental Protection (NJDEP) discriminated against a predominantly African American and Hispanic community by allowing for the demolition of and re-construction of nearby Trenton High School and exposing that community to air pollutants, 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, 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 by the Complainant, and other considerations noted below regarding the actions taken by state and local agencies, ECRCO has determined that it will not accept the complaint for investigation.

The Complainant asserted that NJDEP subjected the predominantly African American and Hispanic community near Trenton High School to discrimination by failing to address air pollutants being produced by the demolition and reconstruction of Trenton High School and the replacement High School. The Complainant responded to ECRCO's requests for additional information regarding the discrimination claim and the NJDEP's interaction with him during the demolition and construction phases of the Trenton High School project. This information was provided during telephone interviews on August 17, 2017, August 31, 2017 and November 7, 2017 and via e-mail on August 24, 2017. The Complainant also provided copies of environmental complaints filed with the NJDEP, which were investigated by the Mercer County Division of Public Health (Mercer).[2]

Records provided by the Complainant indicate that environmental complaints were filed seven times between 2015 and 2017 and were all resolved by Mercer by August 2017. Those complaints, filed during the demolition and construction phases of the Trenton High School project, indicate that Mercer responded to each complaint in-person and provided a follow-up response to the Complainant. For example, Mercer contacted NJDEP and recommended that NJDEP reach out to the developer to ensure compliance regarding the issue of airborne particles. In another complaint, the inspector reviewed the concerns raised, including a review of video provided by the Complainant, and made a determination as to the source of emissions. These actions, and others taken by Mercer as they investigated the environmental complaints, suggest that Mercer did not ignore the complaints filed and that they provided a prompt response. Mercer went on-site in each instance, and in some cases, spoke with individuals working on the project and reviewed documentation and other sources of information.

After careful consideration, ECRCO has determined that, in light of the actions taken by NJDEP (through its contract with Mercer) to respond to the environmental complaints, ECRCO will not conduct any further investigation. Therefore, ECRCO is rejecting and closing this complaint as of the date of this letter.

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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]Under state statute, NJDEP provides County Environmental Health Grants to support environmental health services undertaken by certified local health agencies on behalf of the NJDEP pursuant to the County Environmental Health Act (N.J.S.A. 26:3A2-21 et seq.).

Please do not hesitate to contact Samuel Peterson, Case Manager in EPA's ECRCO, with any questions about this letter. Mr. Peterson can be reached at (202) 564-5393, or at peterson.samuel@epa.gov.

Sincerely,

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

cc:

Elise Packard
Associate General Counsel
Civil Rights and Finance Law Office

Richard Manna
Assistant Regional Administrator
Deputy Civil Rights Official
EPA, Region 2