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

July 19, 2016

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
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In Reply Refer to:
EPA File No. 13R-14-R6

Kelsey Curran, Chairperson
Albuquerque-Bernalillo County Air Quality Control Board
P.O. Box 1293
One Civic Plaza, N.W.
Albuquerque, New Mexico 87103

Certified Mail#: 7015 1520 0002 0019 2953
Ms. Mary Lou Leonard
Environmental Health Director
Albuquerque Air Quality Division
1 Civic Plaza, N.W.
Post Office Box 1293
Albuquerque, New Mexico 87103

Re: Acceptance of Administrative Complaint

Dear Ms. Curran and Ms. Leonard:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is accepting an administrative complaint filed against the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board, received by EPA on September 16, 2014. The complaint alleges that the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board have violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, by not considering cumulative impacts when permitting air polluting facilities and by denying a request for a hearing to adopt a requirement for consideration of cumulative impacts in the permitting process.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for 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 EPA's nondiscrimination regulations. First, it must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must allege a discriminatory act that, if true, may violate EPA's nondiscrimination regulations (*e.g.,* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(1). Third,

the complaint must be filed within 180 calendar 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 a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, OCR has determined that the subject complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint alleges that discrimination occurred, in violation of EPA's nondiscrimination regulations. Third, the alleged discriminatory acts occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board, both recipients of EPA financial assistance at the time of the alleged discrimination.

Accordingly, OCR will investigate the following:

- Whether the Albuquerque-Bernalillo County Air Quality Control Board's and/or the Albuquerque Air Quality Division's permitting process discriminates against minority residents on the basis of race and/or national origin, in violation of Title VI of the Civil Rights Act and EPA's implementing regulations; and

- Whether the Albuquerque-Bernalillo County Air Quality Control Board and/or the Albuquerque Air Quality Division discriminated against minority residents on the basis of race and/or national origin in violation of Title VI of the Civil Rights Act and EPA's implementing regulations by refusing to conduct a hearing on an ordinance to consider cumulative impacts in the permitting process.

The initiation of an investigation of the issues above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the complainant, as appropriate, and determine next steps utilizing our internal procedures. In the intervening time, OCR will provide you with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the subject complaint. OCR may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi. OCR may also contact representatives of the Albuquerque-Bernalillo County Air Quality Board and the Albuquerque Air Quality Division to discuss your interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf

Finally, we would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have questions regarding this letter, please contact Katsumi Keeler, Case Manager, at 202-564-2347, by electronic mail at keeler.katsumi@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,

Lilian S. Dorka
Acting Director
Office of Civil Rights

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

Samuel Coleman
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 6