UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 1, 2019

Return Receipt Requested
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In Reply Refer To:
EPA Complaint No. 01Rr-19-R6

Toby Baker, MC 109
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087

Re: Rejection and Partial Referral of Administrative Complaint

Dear Director Baker:

This letter is to notify you that the Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is rejecting and, in part, referring a complaint filed against the Texas Commission on Environmental Quality (TCEQ). The complaint alleges that: TCEQ discriminated against African American landowners by failing to provide appropriate groundwater contamination notifications; TCEQ failed to compile accurate and complete water quality data; TCEQ discriminated against Complainant based on race, national origin and sex by taking adverse employment actions against Complainant, and TCEQ retaliated against the Complainant for raising discrimination issues by taking adverse employment actions against the Complainant. ECRCO is responsible for processing complaints alleging that recipients of EPA financial assistance have discriminated against individuals or communities under the federal civil rights laws, including Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation found at 40 C.F.R. Parts 5 and 7. After careful consideration, ECRCO has determined that it cannot accept the complaint for investigation.

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 jurisdictional factors discussed above. However, if ECRCO obtains information leading ECRCO to conclude that an investigation is unjustified for prudential reasons, ECRCO may reject the complaint.[1] In an effort to determine jurisdiction, ECRCO sent Complainant a request for clarification on April 15, reviewed Complainant's response, and spoke with Complainant at length during multiple telephone interviews on April 10, April 15, and April 29.

Regarding the allegation that TCEQ failed to provide notification of contaminated groundwater to African American landowners in the vicinity of the Big Brown Electric Utility, ECRCO must reject this allegation for investigation. Complainant acknowledged during interviews that Complainant had personal knowledge of a single landowner who should have received a notification from TCEQ of groundwater contamination but who did not, and the landowner subsequently complained to TCEQ. Complainant was unable to identify the date or a general timeframe upon which Complainant learned of this alleged failure or the date when the landowner contacted TCEQ. Complainant stated that, for the current cycle of notification, decisions regarding which landowners would be notified of contamination or potential contamination were made during a meeting held on March 6, 2019. Complainant acknowledges that Complainant was not present at this meeting and did not observe the process by which landowners are selected for notification. Complainant further was unable to state whether minority landowners were denied appropriate notifications in April 2019, when Complainant explained notifications usually were issued. However, Complainant stated the belief that it was possible that minority landowners were denied notification during the April 2019 cycle. Based on a preliminary review of the available information discussed above, ECRCO is unable to ascertain whether this allegation is timely. Moreover, even after multiple conversations with the Complainant, ECRCO was not able to obtain any specific information in support of this allegation that would raise it above the level of speculation. Therefore, ECRCO cannot accept this allegation for investigation.

Complainant also alleges that TCEQ compiled and reported incomplete and inaccurate water quality data and that TCEQ retaliated against the Complainant for raising this issue by taking certain adverse employment actions. However, Complainant did not allege any discriminatory act that, if true, may violate the EPA's nondiscrimination regulation. In addition, Complainant failed to identify a particular date or timeframe upon which this action occurred. Consequently, ECRCO does not have jurisdiction to investigate these allegations.

Complainant alleges that certain employment actions were taken against Complainant due to Complainant's race, national origin and sex. Complainant also alleges that TCEQ retaliated against the Complainant for participating in the employment discrimination complaint process. Pursuant to EPA's nondiscrimination regulation, ECRCO has limited jurisdiction over employment discrimination claims concerning recipients of EPA financial assistance. *See* 40 C.F.R. §§ 5.500(a)(1), 7.35(a)(6). Complainant's employment discrimination allegations as described above do not fall within ECRCO's jurisdiction.

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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.

Accordingly, ECRCO is referring Complainant's employment claims based on race, sex, national origin and retaliation discrimination to the Dallas District Office of the Equal Employment Opportunity Commission (EEOC). If you have questions about this referral, you may contact the EEOC directly at 1-800-669-4000, or by accessing their public portal at: https://publicportal.eeoc.gov/portal/.

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

cc: Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office

David Gray
Deputy Regional Administrator
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