UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 1, 2019

Return Receipt Requested
Certified Mail #: (b) (6) Privacy [redacted]

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

(b) (6) Privacy, (b) (7)(C) Enforcement Privacy [redacted]
Austin, TX 78729

Re: Rejection and Partial Referral of Administrative Complaint

Dear (b) (6) Privacy, (b) (7)(C) Enforcement Privacy [redacted]

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). Your 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 you based on race, national origin and sex by taking adverse employment actions against you, and TCEQ retaliated against you for raising discrimination issues by taking adverse employment actions against you as well. 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 you a request for clarification on April 15, reviewed your response, and spoke with you 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. You acknowledged during interviews that you 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. You also were unable to identify the date or a general timeframe upon which you learned of this alleged failure or the date when the landowner contacted TCEQ. You 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. You acknowledged that you were not present at this meeting and did not observe the process by which landowners were selected for notification. Furthermore, you were unable to state whether minority landowners were denied appropriate notifications in April 2019, when you explained notifications usually were issued. However, you stated your 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 you, 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.

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

You also alleged that certain employment actions were taken against you due to your race, national origin and sex. You alleged that TCEQ retaliated against you 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). Your employment discrimination allegations as described above do not fall within ECRCO's jurisdiction.

Accordingly, ECRCO is referring your employment claims based on race, sex, national origin and retaliation discrimination to the Dallas District Office of the Equal Employment Opportunity

---

[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.

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,

for

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
Deputy Civil Rights Official
US EPA Region 6

James Payne
Deputy Civil Rights Official
US EPA Region 6