UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

February 11, 2019

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

In Reply Refer to:
EPA File No. 34RNO-16-R10

Keith Hurley, Executive Director
Yakima Regional Clean Air Agency
186 Iron Horse Court
Suite 101
Yakima, Washington 98901

Re: Notification of Partial Acceptance of Administrative Complaint

Dear Mr. Hurley:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting, in part, for investigation an administrative complaint filed against the Yakima Regional Clean Air Agency (YRCAA), received by EPA on June 11, 2016. The complaint alleges that YRCAA discriminates on the bases of race and national origin in the administration of its air pollution program in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulation found at 40 C.F.R. Part 7. Specifically, the complaint alleges that YRCAA (1) does not provide the same level of service to people who live in the southern half of Yakima County as it does to those who live in the northern half of the county; (2) has refused citizen requests to take reasonable actions that would mitigate dangerous air pollution; (3) has resisted citizen participation in policymaking and has failed to follow through with promises to include citizens in substantive policy discussions; (4) does not employ people with the requisite credentials to analyze and address major air pollution problems; (5) does not provide information to non-English speaking populations in a language they can understand; and (6) has participated in a campaign to misinform the public and intentionally leads the public to believe that air quality is safe when, in fact, it is often unsafe. As described below, ECRCO will be accepting some of these issues 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 fundamental jurisdictional factors described in the regulation. However, if ECRCO obtains credible information from the complainant, the potential recipient or other credible sources leading ECRCO to conclude that an investigation is unjustified for prudential reasons, for example, that an allegation is not grounded in fact, ECRCO may reject a complaint allegation for that reason.[1]

The administrative complaint raises multiple concerns with respect to how YRCAA operates its air regulation program. After a careful review of the complaint and supplemental materials, ECRCO has determined that our office does not have jurisdiction to investigate most of the concerns raised in the complaint. They either were not raised within 180 days of the alleged act, and thus, not timely, and/or they do not concern acts which, even if true, raise an issue of discrimination over which ECRCO has jurisdiction, that is, on the bases of race, color, national origin, sex, age, or disability.

For example, the complaint alleges that YRCAA's method of air quality monitoring violated Title VI because it favored non-minority residents living in the Upper Yakima Valley. The complaint also contended that the air monitoring data was flawed because the monitors were not located close enough to dairy farms. These issues are untimely because the air monitoring described in the complaint took place ten months prior to the filing of the complaint. In addition, this allegation does not appear to be grounded in fact because two of the three monitors were placed in the Lower Yakima Valley.

Additionally, the complaint alleges that YRCAA discriminated on the basis of national origin and/or race by collecting revenue from the Yakama Reservation while failing to provide equal services, such as offering participation in the YRCAA wood stove replacement program. Our preliminary review found that YRCAA collects fees from *cities* geographically located within the Yakama Reservation but legally designated as components of the YRCAA. In fact, a Washington Attorney General opinion issued in 2007 affirmed the right of the YRCAA to collect fees from these cities lying within the Yakama Reservation, stating, "Cities lying within Indian reservations are subject to assessment for the expenses of a clean air authority in which they are component cities."[2] Therefore, even if the YRCAA collects fees from cities geographically located within the Yakama Reservation but legally designated as components of the YRCAA as alleged, this does not raise an issue of discrimination on the bases of race, color, national origin, sex, age, or disability.

The complaint alleges also that YRCAA is not fully complying with the State Implementation Plan. This allegation, even if true, does not raise an issue of discrimination on the bases of race, color, national origin, sex, age, or disability, as the State Implementation Plan impacts all residents in Yakima County regardless of race, color, national origin, sex, age, or

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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] Washington Attorney General Opinion AGO 2007 No. 2

disability. For example, the alleged failure of the YRCAA to conduct New Source Reviews could have an impact on any resident of Yakima County. While this does not raise a concern of discrimination within ECRCO's jurisdiction, ECRCO brought these concerns to the attention of EPA's Region 10 office. Regional staff have explained that responsibility for air quality in the Yakima Valley is shared among the YRCAA, EPA Region 10, the Yakama Nation and the Washington State Department of Ecology (Ecology). Specifically, on the Yakama Reservation, EPA Region 10 directly implements the Clean Air Act (CAA), partners with the Yakama Nation to protect air quality and implement the CAA, and supports tribal capacity building. With respect to issues not on the Yakama Reservation, the YRCAA and Ecology implement the federal CAA and State CAA, under EPA Region 10 oversight. Regional staff is familiar with the concerns raised by the Complainants and will continue to work with all parties as appropriate.

Finally, the complaint also alleges that YRCAA discriminated against Spanish-speaking residents of the Lower Yakima Valley who have limited-English proficiency by failing to provide information to them in a language they can understand. ECRCO will investigate this issue.

Accordingly, ECRCO will investigate the following issues:

1. Whether YRCAA provides meaningful access to information and their programs and activities, to Spanish speaking residents of the Lower Yakima Valley who have limited-English proficiency as required by Title VI of the Civil Rights Act and EPA's implementing regulation at 40 C.F.R. Part 7.[3]

2. Whether YRCAA has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to YRCAA services, programs and activities for individuals with limited-English proficiency and individuals with disabilities, and whether YRCAA's public participation policy and process provide meaningful public involvement that is consistent with Title VI and EPA's Title VI implementing regulation at 40 C.F.R. Part 7.[4]

The initiation of an investigation of the issues above is not a decision on the merits. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with YRCAA and the complainant, if appropriate, and determine next steps utilizing ECRCO's internal procedures. In the intervening time, ECRCO will provide YRCAA with an

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[3] *See* Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin); *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974); 40 C.F.R. § 7.35(a). *See also* EPA's Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004). https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf

[4] *See* EPA's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. 71 FR 14207 (March 21, 2006). https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf

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 its copy of the letter notifying it of the acceptance of Administrative Complaint 34RNO-16-R10. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO is willing to discuss, at any point during the process, offers to informally resolve the subject complaint. ECRCO may contact the recipient to discuss its interest in entering into Informal Resolution Agreement discussions. We invite you to review ECRCO's Case Resolution Manual for a more detailed explanation of ECRCO's complaint resolution process available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

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* 49 C.F.R. § 21.11(e) and 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with ECRCO.

If you have questions about this letter, please feel free to contact Sam Peterson, Case Manager, at 202-564-5393 by email at Peterson.Samuel@epa.gov, or by mail at U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460.

Sincerely,

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

cc: Michelle Pirzadeh
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 10

Angelia Talbert-Duarte
Acting Associate General Counsel
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