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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

August 9, 2019

Return Receipt Requested
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In Reply Refer To:
Complaint No. 34NO-16-R10

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

Dear Mr. Hurley:

This letter is to inform you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the Yakima Regional Clean Air Agency (YRCAA). On February 11, 2019, the ECRCO accepted for investigation an administrative complaint brought under Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's implementing regulation at 40 C.F.R. Part 7, which alleged that the YRCAA engaged in discrimination based on national origin. The complaint against the YRCAA was assigned EPA Complaint No. 34NO-16-R10. Specifically, the issues accepted for investigation were:

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.[1]

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

[1] *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

individuals with limited-English proficiency and individuals with disabilities, and whether the 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.[2]

During the course of EPA's investigation, the YRCAA agreed to enter into an Informal Resolution Agreement in order to resolve EPA Complaint No. 34NO-16-R10. The enclosed Agreement is entered into by EPA pursuant to authority granted to EPA under the federal nondiscrimination laws, including Title VI and EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7. It resolves EPA Complaint No. 34R-16-R10. It is understood that the Agreement does not constitute an admission by the YRCAA any violation or a finding by EPA of compliance or noncompliance with applicable federal non-discrimination laws and regulation, including 40 C.F.R. Parts 5 and 7.

The enclosed Agreement does not affect the YRCAA's continuing responsibility under Title VI or other federal non-discrimination laws, and EPA's regulation at 40 C.F.R. Parts 5 and 7, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth EPA's disposition of the complaint. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such.

EPA is committed to working with the YRCAA as it implements the provisions of the Agreement. If you have any questions regarding the Agreement between EPA and the YRCAA, please contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

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

Enclosure

cc: Kirk A. Ehlis
Attorney
Menke Jackson Beyer, LLP

[2] *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

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

INFORMAL RESOLUTION AGREEMENT
between the
YAKIMA REGIONAL CLEAN AIR AGENCY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
External Civil Rights Compliance Office

EPA COMPLAINT NO. 34RNO-16-R10 (YRCAA)

I. PURPOSE AND JURISDICTION

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI"), and other federal nondiscrimination laws, and United States Environmental Protection Agency's ("EPA") implementing regulation at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance[1] The Yakima Regional Clean Air Agency (YRCAA) receives federal financial assistance from EPA and, therefore, must ensure nondiscrimination in programs and activities pursuant to the provisions of Title VI, the other federal nondiscrimination laws and EPA's implementing regulation.

B. The Yakima Regional Clean Air Agency (YRCAA) receives federal financial assistance from EPA, and therefore is subject to the provisions of Title VI, and other federal nondiscrimination laws, and 40 C.F.R. Parts 5 and 7.

C. On February 11, 2019, EPA's External Civil Rights Compliance Office (ECRCO) accepted for investigation an administrative complaint brought under Title VI and EPA's implementing regulation at 40 C.F.R. Part 7, Subpart D, which alleged that YRCAA engaged in discrimination based on race and national origin. The complaint against YRCAA was assigned EPA Complaint No. 34RNO-16-R10. EPA accepted for investigation the following issues:

1. Whether YRCAA provides meaningful access to information and their programs and activities, to Spanish speaking residents of the Lower Yakima

[1] Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

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.[2]

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 the 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.[3]

D. During the course of EPA's investigation of EPA Complaint No. 34RNO-16-R10, YRCAA and EPA agreed to enter into an Informal Resolution Agreement (Agreement).

E. This Agreement is entered into voluntarily by YRCAA and EPA and resolves EPA Complaint No. 34RNO-16-R10. It is understood that this Agreement does not constitute an admission of guilt, liability, or wrongdoing by YRCAA. EPA is not making any finding of compliance or noncompliance with federal non-discrimination laws and EPA's regulation at 40 C.F.R. Parts 5 and 7.

F. YRCAA continues to be committed to carrying out its responsibilities in a nondiscriminatory manner consistent with the requirements of Title VI and the other federal non-discrimination laws and regulations. The activities detailed in this Agreement, which YRCAA has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

II. BACKGROUND

A. In July 1967, the YRCAA, formerly known as Yakima County Clean Air Authority which is a municipal corporation, became an activated local air authority per RCW 70.94.081 by the Board of Yakima County Commissioners. In February 1968, an official fund for the YRCAA was established with the County Treasurer and Auditor. The YRCAA is delegated to enforce certain federal regulations, the Washington Clean Air Act, State regulations, and the YRCAA regulations, within the boundaries of Yakima County. This applies to all areas of Yakima County except for Yakama Indian

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[2] *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

[3] *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

Reservation lands, which are overseen by the Environmental Protection Agency and fall under the Federal Air Rules for Reservations (FARR) regulations.

B. The YRCAA's mission states that its objective is to protect the people and the environment of Yakima County from the effects of air pollution and is committed to achieving and maintaining healthy air quality throughout its jurisdiction. According to the YRCAA, this is accomplished through a comprehensive program of planning, regulations, enforcement, technical innovation, and promotion of the understanding of air quality issues.

C. YRCAA has provided ECRCO with examples of Spanish-language radio advertisements, television announcements, and outreach material, as well as examples of other translated documents and notices it disseminates to the public in Yakima County.

D. YRCAA has a total of 10 full-time employees.

III. SPECIFIC COMMITMENTS

A. *Providing Meaningful Access to Spanish Speaking Residents with Limited English Proficiency*

1. The YRCAA commits to translate into Spanish (and other languages as appropriate; see section B.2.) and make publicly available any notice and/or documents provided to English-speaking residents both electronically and in hard copies, including any notices and/or documents regarding permitting activity, air quality, and/or other environmental issues (e.g. burn ban announcements), at no cost, in order for Spanish-speaking residents of Yakima County who have limited English proficiency (LEP) to have meaningful access to the YRCAA's programs and activities.

2. The YRCAA also commits to provide Spanish-speaking LEP residents (and other languages as appropriate; see section B.2.) meaningful access to YRCAA's process for filing environmental and public health complaints (both online and via other mechanisms) with the YRCAA.

3. The YRCAA commits to conducting public meetings and/or outreach regarding its permitting, air quality, and/or other environmental programs, services, or activities in a way that ensures meaningful participation for Spanish-speaking LEP residents (and other languages as appropriate; see section B.2.). The YRCAA also commits to provide oral interpretation and to access and participation for Spanish-speaking LEP residents.

B. *Non-Discrimination Procedural Safeguards*

As an agency that employs fewer than 15 employees,[1] YRCAA commits to implement the following non-discrimination program requirements.

1. *Notice of Non-Discrimination under the Federal Non-Discrimination Statutes*

   a. The YRCAA will post a notice of non-discrimination on the YRCAA's s website homepage and in its general publications that are distributed to the public. To ensure effective communication with the public, the YRCAA will ensure that its notice of non-discrimination is accessible to individuals with limited-English proficiency and individuals with disabilities.

   b. This notice will contain, at a minimum, the following statements:

      i. The Yakima Regional Clean Air Agency (YRCAA) does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and the YRCAA does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or opposed actions protected by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights (As prohibited under Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination statutes)).

   c. Within 120 days after the effective date of this Agreement, the YRCAA will submit to EPA for review a copy of its notice of non-discrimination that is consistent with the requirements under 40 C.F.R. Parts 5 and 7.

2. *YRCAA Plan to Ensure Access for Individuals with Limited-English Proficiency*

   a. The YRCAA will provide, at no cost, meaningful access to individuals with limited-English proficiency and will develop, publicize, and implement a Language Access Plan to ensure meaningful access to all YRCAA programs, activities and services for individuals with limited-English proficiency.

   b. In developing a Language Access Plan, the YRCAA will conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and http://www.lep.gov to determine what language services it may need to provide to ensure that individuals with limited-English proficiency can meaningfully participate in the YRCAA programs, activities and services.

   c. Within 120 days of the effective date of this Agreement, the YRCAA will submit to EPA for review a final draft of its written Language Access Plan to ensure

[1] *See* 40 C.F.R. 7.85(g) and 7.90(b).

meaningful access to all YRCAA programs, activities and services for individuals with limited-English proficiency.

3. *YRCAA Plan to Ensure Access for Individuals with Disabilities*

   a. The YRCAA will provide, at no cost, appropriate auxiliary aids and services to individuals with disabilities, including but not limited to, for example, qualified sign language interpreters to individuals who are deaf or hard of hearing, to ensure effective communication and an equal opportunity to participate fully in benefits, activities, programs, and services provided by the YRCAA.

   b. The YRCAA will develop, publicize and implement a Disability Access Plan for providing individuals with disabilities the opportunity for meaningful access to all YRCAA programs, activities, benefits, and services.

   c. Within 120 days of the effective date of this agreement, the YRCAA will submit to ECRCO for review a final draft of its Disability Access Plan to ensure meaningful access to all YRCAA programs, services and activities by individuals with disabilities.

4. *Plan to Ensure YRCAA's Public Involvement Process is Implemented Consistent with Federal Civil Rights Laws*

   a. The YRCAA will develop a plan to ensure that its public involvement process is accessible to all persons regardless of race, color, national origin, disability, sex, age, and prior exercise of their rights to participate in or oppose actions protected by 40 C.F.R. Parts 5 and 7, consistent with the federal non-discrimination laws.

   b. Within 120 days of the effective date of this agreement, the YRCAA will submit to ECRCO for review a final draft of its plan to ensure that its public involvement process is available and accessible to all persons regardless of race, color, national origin, disability, sex, age and prior exercise of their rights to participate in or oppose actions protected by 40 C.F.R. Parts 5 and 7, consistent with the federal nondiscrimination laws.

5. *Training*

   a. Within 120 days after finalizing the documents identified in Section III of this Agreement, the YRCAA will ensure that all appropriate staff has been trained on the plans, processes and procedures of this Agreement.

   b. Within 120 days after signing of this Agreement, the YRCAA will have a plan in place to ensure that such training is a routine part of the on-boarding process for new employees and is given annually as refresher training to all employees.

IV. GENERAL

A. In consideration of the YRCAA's ongoing commitments and actions described in this Agreement, EPA will end its investigation and consider resolved EPA Complaint No. 34RNO-16-R10 and will not issue a decision on the merits of the Complaint.

B. EPA will, upon request, provide technical assistance to the YRCAA regarding any of the civil rights obligations previously referenced.

C. Once these commitments are fully implemented, EPA will issue a letter to the YRCAA documenting completion of these commitments and closing the monitoring of Complaint No. 34RNO-16-R10.

D. The YRCAA understands that a failure to satisfy any term in this agreement may result in EPA re-opening the investigation.

E. EPA will review and provide feedback about any documentation submitted by the YRCAA demonstrating completion of each commitment identified in Section III and will provide an assessment as to whether the documentation satisfies the commitment within 30 days of receipt of the YRCAA's report.

V. COMPUTATION OF TIME AND NOTICE

A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day that is not a Saturday, Sunday or holiday.

B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

C. Electronic documents submitted by the YRCAA to EPA via email shall be sent to the following email address: Dorka.Lilian@epa.gov. Documents submitted by the YRCAA to EPA shall be sent to Lilian Dorka, Director, U.S. EPA External Civil Rights Compliance Office, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington, D.C. 20460.

D. Documents submitted by EPA to the YRCAA shall be sent to Keith Hurley, Executive Director, Yakima Regional Clean Air Agency, 186 Iron Horse Court, Suite 101, Yakima, Washington 98901.

VI. EFFECT OF INFORMAL RESOLUTION AGREEMENT

A. The YRCAA understands that, if necessary, ECRCO may visit the YRCAA, interview staff, and request additional reports or data as necessary for ECRCO to determine whether the YRCAA continues to meet its obligation to comply with the federal non-discrimination requirements set forth in 40 C.F.R. Part 5 and 7.

B. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to the YRCAA's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement of the Executive Director of the YRCAA and the Director of ECRCO.

C. The YRCAA acknowledges its continuing responsibility to comply with Title VI, 40 C.F.R. Part 5 and 7, and other federal non-discrimination laws, along with its continuing responsibility to comply with State non-discrimination laws. The YRCAA further acknowledges EPA's ongoing obligations to investigate any Title VI or other federal civil rights complaints and to address any other matter not covered by this Agreement.

D. This Agreement constitutes the entire Agreement between the YRCAA and EPA regarding the matters addressed herein, and no other statement, promise, or agreement made by any other person shall be construed to change any commitment or term of this Agreement.

E. The effective date of this Agreement shall be the date by which both Parties have signed the Agreement. The undersigned representatives of the Parties certify that they are fully authorized to consent to the terms and conditions of this Agreement. Signature on a counterpart or authorization of an electronic signature shall constitute a valid signature.

On behalf of the Yakima Regional Clean Air Agency,

Keith Hurley, Executive Director
Yakima Regional Clean Air Agency

August 7, 2019
DATE

On behalf of the U.S. Environmental Protection Agency,

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

August 9, 2019
DATE