UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 17, 2019

Return Receipt Requested
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In Reply Refer to:
EPA Complaint No. 03R-19-R3

Samuel A. Caperton
Cabinet Secretary
West Virginia Department of Environmental Protection
601 57th Street, SE
Charleston, WV 25304

Re: Acceptance of Administrative Complaint

Dear Secretary Caperton:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the West Virginia Department of Environmental Protection (WVDEP) received by the EPA on September 23, 2019. The complaint was filed by the Rural Agricultural Defenders (Complainant) and two individuals, alleges that the WVDEP discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery in Kearneysville, West Virginia, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.[1]

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.

[1] ECRCO has opened a related complaint involving the Jefferson County Commission that is being addressed under separate cover.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the WVDEP, which is a recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether the WVDEP discriminated against African American descendants of those buried at the Boyd Carter Memorial Cemetery on the basis of race 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,

    a. During its public involvement process relating to Mountaineer Gas' application for Registration No. WVR311281 under WV General Permit No. WV0116815, Stormwater Associated with Oil and Gas Related Construction Activities, including, by limiting their participation and providing allegedly misleading information; and

    b. In its process for approving and approval of Mountaineer Gas' registration under the Stormwater Construction General Permit, which allegedly resulted in the disturbance of graves on the Cemetary grounds; and

2. Whether the WVDEP has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all 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 the WVDEP's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the WVDEP has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.

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 the Complainant and the WVDEP, if appropriate, and determine next steps utilizing ECRCO's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and ECRCO's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. 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.

In the intervening time, ECRCO is providing the WVDEP 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 a copy of this letter notifying the

WVDEP of the acceptance of Administrative Complaint #03R-19-R3. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that ECRCO shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, ECRCO will contact the WVDEP within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the informal resolution agreement process with the WVDEP as a potential path for resolution of the issues which ECRCO has accepted for investigation. If the WVDEP agrees to engage in the informal resolution agreement process, ECRCO will suspend its complaint investigation. In the event that the informal resolution agreement process fails to result in an Informal Resolution Agreement between ECRCO and the WVDEP, ECRCO will notify the WVDEP and the Complainant that ECRCO has resumed its complaint investigation and will issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in the informal resolution agreement process.[2]

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 ECRCO.

If you have questions about this letter, please feel free to contact me at (202)564-9649, by email at dorka.lilian@epa.gov, or Jonathan Stein, Case Manager, at (202)564-2088, by email at stein.jonathan@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: Angelia Talbert-Duarte
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Cecil Rodrigues
Regional Counsel
Deputy Civil Rights Official
U.S. EPA Region 3

[2] *See* 40 C.F.R. § 7.115(c).