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

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

September 27, 2019

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In Reply Refer To:
EPA File No. 01CR-19-R4

Ed Kerwin
Executive Director
Orange Water and Sewer Authority
400 Jones Ferry Road
Carrboro, NC 27510

Re: Compliance Review 01CR-19-R4

Dear Executive Director Kerwin:

This letter is to notify you that ECRCO will conduct a compliance review of the Orange Water and Sewer Authority (OWASA) in accordance with the EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7. EPA's regulation at 40 C.F.R. Section 7.115(a) provides ECRCO with authority to conduct periodic compliance reviews of any recipient's programs or activities receiving EPA assistance and to request data and information from recipients as part of that process.

During a recent complaint investigation, ECRCO reviewed publicly available information to determine whether OWASA has a nondiscrimination program that contains the required procedural safeguards as well as the policies and procedures to ensure that persons with limited English proficiency and persons with disabilities have meaningful access to OWASA programs, services and activities, as required by EPA's nondiscrimination regulation at 40 Code of Federal Regulations (C.F.R.) Parts 5 and 7. ECRCO's preliminary review of the information available through OWASA's website has identified a number of deficiencies in light of the federal nondiscrimination requirements. For example, we are not able to identify that OWASA has in place, "prominently" posted and accessible to the public: a complete notice of nondiscrimination, a nondiscrimination coordinator, nondiscrimination grievance procedure, disability policy/processes, or a language access policy/plan or process. (See 40 C.F.R. Parts 5 and 7 (including at Sections 5.135, 5.140, 7.80, 7.90, and 7.95.))

ECRCO has contacted Mr. Robert Epting, as OWASA's representative, on a number of occasions, to afford OWASA an opportunity to address these deficiencies informally with technical assistance from ECRCO. However, to date, ECRCO's offers to engage in informal resolution and to discuss and address these deficiencies have been rejected.[1] As such, ECRCO is initiating a compliance review. ECRCO's investigation will focus on:

> Whether OWASA has and is implementing the procedural safeguards recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, and the specific policies and procedures to ensure meaningful access to OWASA services, programs and activities, including for individuals with disabilities and individuals with limited English proficiency (LEP), in compliance with requirements set forth in 40 C.F.R. Parts 5 and 7.

The initiation of this compliance review should not be considered a decision on the merits as to the issue under investigation. ECRCO is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with OWASA and determine next steps utilizing ECRCO's internal procedures. In the intervening time, ECRCO will provide OWASA with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for review within thirty (30) calendar days of receiving its copy of this letter. *See* 40 C.F.R. §§ 7.115(b)(2).

EPA's nondiscrimination regulation provides that ECRCO shall seek the cooperation of recipients in securing compliance with its nondiscrimination regulation. *See* 40 C.F.R. § 105). Accordingly, ECRCO will contact OWASA within 10 days of the date of this letter to offer and discuss the Informal Resolution Agreement process with OWASA as a potential path for resolution of the issue identified above for investigation. When deficiencies identified as a

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[1] ECRCO invited OWASA to engage in discussion of the EPA's nondiscrimination regulation's requirements, OWASA's compliance therewith, and the informal resolution of any deficiencies on multiple occasions. On July 11, 2018, Jonathan Stein sent a draft Informal Resolution Agreement to OWASA for consideration. Signing of the Informal Resolution Agreement would have brought to conclusion the investigation of complaint No. 13R-07-R4 and eliminated the need for a compliance review. OWASA rejected the agreement as written and did not provide a counter-proposal for consideration (*see* email from Epting to Stein, 08/13/18, "I can say that your draft was not acceptable either to him [the attorney for Orange County, NC] or me," and Epting to Debra McGhee, 08/23/2018 "I cannot imagine any way in which any changes short of what the County proposed would ever be appropriate for or suitable to OWASA."). On April 17, 2019 ECRCO sent a checklist to OWASA to facilitate OWASA's internal audit of compliance with EPA's nondiscrimination regulation (*see* Email from Rhines to Epting, 04/17/2019). Receipt of the checklist was acknowledged via an email on April 17, 2019. (*see* email from Epting to Rhines, 04/17/2019 "Thank you for sending along the checklist attached to your email.... I am forwarding it on to our compliance staff..."). On May 13, 2019, ECRCO sent an email offering to set up a conference call to discuss OWASA's nondiscrimination program and how identified deficiencies could be corrected. ECRCO received no response to this offer (*see* email from McGhee to Epting, 05/13/2019). On June 28, 2019, and July 1, 2019, I wrote to OWASA offering technical assistance and an opportunity to informally resolve outstanding issues (*see* emails from Dorka to Epting, 06/28/19, "we would welcome the opportunity to work with you and provide assistance to OWASA to resolve these issues," and 07/01/19 "ECRCO would be happy to work with OWASA to assist in addressing these deficiencies."). These offers were declined. On September 16, 2019, ECRCO once more offered OWASA an opportunity to engage in informal resolution (*see* email from Lilian Dorka to Epting, "ECRCO is still willing to work collaboratively with OWASA . . . .") In conclusion, all offers of technical assistance and requests to informally resolve the existing deficiencies in OWASA's nondiscrimination program were rebuffed by OWASA.

result of a compliance review cannot be resolved informally, ECRCO shall follow the procedures established by paragraphs (c) through (e) of 40 C.F.R. § 7.115. 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 compliance reviews. We invite you to review the CRM for a more detailed explanation of ECRCO's case resolution process available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

As ECRCO informs all recipients at the start of all investigations, please note that 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 (such as any individual who provides testimony or evidence relevant to this compliance review) or 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.

We appreciate your attention to this matter. If you have any questions, please feel free to contact me at 202-564-9649, or at dorka.lilian@epa.gov, or Dale Rhines, ECRCO's Deputy Director at 202-564-4174, by email at rhines.dale@epa.gov or by U.S. mail at U.S. EPA, Office of General Counsel (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

cc: Angelia Talbert-Duarte
Deputy Associate General Counsel
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