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

AUG 25 2014

Return Receipt Requested
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In Reply Refer to:
EPA File No.: 10R-14-R10

Beyond Toxics
c/o Christopher Winter
Crag Law Center
917 SW Oak Street, Suite 417
Portland, Oregon 97205

Re: Partial Acceptance of Administrative Complaint

Dear Mr. Winter:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is accepting in part and rejecting in part the Administrative Complaint No. 10R-14-R10[1] filed against the Lane Regional Air Protection Agency (LRAPA) received on August 5, 2014. The complaint generally alleges that LRAPA violated Title VI of the Civil Rights Act of 1964, as amended 42 United States Code 2000d *et seq*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. (See 40 C.F.R. § 7.120(d)(1).) For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (See 40 C.F.R. § 7.120(b)(1).) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar 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 a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15.)

[1] The "Notification of Receipt of Administrative Complaint" that the OCR sent on August 8, 2014, erroneously referenced the case number as 10R-14-R9.

The EPA is accepting the following allegation for investigation:

> LRAPA's approval of a modification to Seneca Sustainable Energy's Permit No. 206470 had a disparate and adverse impact on Latino residents in the vicinity of the facility in violation of Title VI of the Civil Rights Act.

This allegation is accepted for investigation because it meets the EPA's four jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against LRAPA, an applicant for or recipient of EPA financial assistance.

While your complaint also alleges disproportionate impacts on "low-income communities," this allegation, if true, would not violate Title VI because income level is not a protected class under Title VI. The OCR also does not investigate alleged noncompliance with Executive Order 12898, which is generally applicable only to Federal agencies and is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Thus, the OCR cannot accept these allegations for investigation. The OCR will evaluate the remaining allegations related to LRAPA's compliance with procedural requirements of 40 C.F.R. Part 7, including maintenance of proper Title VI grievance procedures, in a compliance review. The OCR will provide further information on this compliance review under separate letter.

Pursuant to the EPA's nondiscrimination regulations, LRAPA may make a written submission to the OCR responding to, rebutting, or denying the allegations raised in the complaint. 40 C.F.R. § 7.120(d)(l)(ii). LRAPA may respond within thirty (30) calendar days of receiving this notice. 40 C.F.R. § 7.120(d)(l)(iii). Additionally, the EPA's nondiscrimination regulations provide that the OCR will attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

If you have any questions about the status of your complaint, please contact Jerett Yan of my staff at (202) 564-3113, via e-mail at yan.jerett@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise Packard, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Michelle Pirzadeh, Deputy Civil Rights Official
EPA Region 10