UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 10, 2020

In Reply Refer to:
EPA Complaint Nos. 02NO-20-R3

Jennifer King, Chair
Susan April
Giuliana Brogna
Rural Agricultural Defenders
Post Office Box 445
Kearneysville, WV 25430

Re: Acceptance of Administrative Complaint

Dear Ms. King, Ms. April and Ms. Brogna:

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 Health and Human Resources (WVDHHR) received by the EPA on March 19, 2020.[1] The complaint was filed by the Rural Agricultural Defenders (RAD) alleging that the WVDHHR's lack of nondiscrimination procedures and polices discriminates against individuals with limited English proficiency (LEP) in Jefferson County, on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.

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] An unsigned copy was received by ECRCO as part of supplemental information pertaining to an unrelated pending matter on March 6, 2020.

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 WVDHHR, which is a recipient of EPA financial assistance.

ECRCO will investigate the following issues:

1. Whether the WVDHHR provides meaningful access to information and their programs and activities, to residents 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 the WVDHHR 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 WVDHHR services, programs and activities for individuals with limited-English proficiency and individuals with disabilities, and whether the WVDHHR'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]

The initiation of an investigation of the issues above is not a decision on merit. 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 WVDHHR, 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.

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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.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf
See Procedural Safeguards Checklist for Recipients, which provides a more detailed explanation of nondiscrimination obligations and best practices, available at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf.

In the intervening time, ECRCO is providing the WVDHHR 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 WVDHHR of the acceptance of Administrative Complaint #02NO-20-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 WVDHHR 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 WVDHHR as a potential path for resolution of the issues which ECRCO has accepted for investigation. If the WVDHHR 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 WVDHHR, ECRCO will notify the WVDHHR 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. *See* 40 C.F.R. § 7.115(c).

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 Aaron L. Bell, Case Manager, at (202)564-1044, by email at bell.aaron@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
Acting Associate General Counsel
Civil Rights & Finance Law Office

Diana Esher
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