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

MAY 24 2011

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail# 7004-2510-0004-2241-5841

In Reply Refer To:
EPA File No: 26r-10-R9

[redacted]

Re: Rejection of Administrative Complaint

Dear [redacted]

This is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) received your complaint on December 29, 2010, alleging that the Hawaii Department of Health (HDOH) retaliated against you and violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000 *et seq*., and EPA's implementing regulations found at 40 C.F.R. Part 7. In your complaint, you also requested "that EPA investigate…to ascertain if these three events constitute violations by the [Hawaii] Department of Health of Title VI of the Civil Rights Act." Specifically, you allege that:1) HDOH retaliated against you based on your activities as a whistle blower and union steward ; 2) On May 27, 2010, there was a pushing/hitting incident between the complainant and a co-employee, after which the Sheriff's Office was contacted and complainant was asked to leave the Office of Environmental Quality Control; 3) On November 3, 2010, an email was sent to the complainant indicating that there would be a new Acting Director of the Office of Environmental Quality Control who would terminate the complainant; 4) On November 9, 2010, the proposed Acting Director of Environmental Quality Control visited the Office and confirmed her new position. After careful review, OCR is rejecting your complaint.

Pursuant to EPA's implementing regulations, OCR conducts a preliminary review of complaints to determine acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's implementing regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, age, sex (gender), or disability). Third, it must be filed within 180 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act.

Federal Financial Assistance

Title VI statutorily restricts discrimination claims with respect to employment practices by a recipient of Federal financial assistance to instances where the "primary objective" of the financial assistance is to provide employment. 42 U.S.C. § 2000d-3. At the time of the alleged conduct, HDOH did not receive EPA financial assistance whose primary objective was to provide employment and, therefore, the allegations are not subject to Title VI or EPA's implementing regulations. Because this allegation does not meet the jurisdictional requirements, EPA cannot accept it for investigation.

Alleged Retaliation

Your first allegation that HDOH retaliated against you based on your activities as a whistle blower and union steward is not protected by the EPA's implementing regulations. EPA's implementing regulations provide, "No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either: (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or (b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation". 40 C.F.R. § 7.100. Your alleged whistle blower and union steward activities relate to your employment with HDOH and do not concern violations of Title VI. Accordingly, OCR has determined that your complaint does not describe an activity that would be protected under 40 C.F.R. §7.100. Therefore, EPA cannot accept your allegations for investigation.

Timeliness

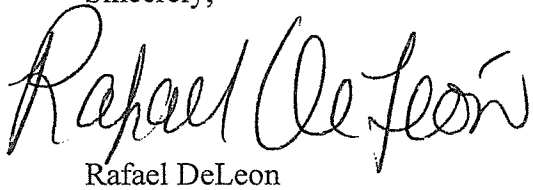
Regarding allegation #2, the jurisdictional requirement that the complaint be filed within 180 days of the discriminatory act, your complaint alleges the initial act that you complained of occurred on May 27, 2010. However, the complaint was filed on December 29, 2010, which exceeds the 180 day filing deadline. Therefore, the complaint regarding this allegation was untimely and cannot be accepted for investigation.

Alleged Discriminatory Acts

Regarding allegations #3 and #4, even if they are deemed timely and were found to be true, they would not constitute discriminatory acts in violation of EPA's implementing regulations. Therefore, EPA cannot accept these allegations for investigation.

If you have any questions, please contact Helena Wooden-Aguilar, Assistant Director of OCR's External Compliance Program, by telephone at (202) 564-0792, via e-mail at wooden-aguilar.helena@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460-1000.

Sincerely,



Rafael DeLeon
Director

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights and Finance Law Office (2399A)

Jo Ann Asami, EPA Region 9