UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

June 15, 2021

In Reply Refer to:
EPA Complaint No: 03R-21-R4

Greg Young
Deputy Commissioner
Bureau of Environment
Tennessee Department of Environment and Conservation
312 Rosa L. Parks Avenue
Tennessee Tower – 2nd Floor
Nashville, TN 37243
greg.young@tn.gov

Re: Acceptance of Administrative Complaint

Dear Deputy Commissioner Young:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is accepting for investigation an administrative complaint filed against the Tennessee Department of Environment and Conservation (TDEC) and received by EPA on May 17, 2021. The Complaint alleges that TDEC discriminated against the predominantly African American neighborhoods in southwest Memphis, Tennessee, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.*, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7 when it issued Aquatic Resource Alteration Permit and Section 401 Certification NRS20.089 for the Byhalia Connection Pipeline on November 17, 2020.

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.

After careful consideration, ECRCO has determined that the complaint meets the jurisdictional requirements stated above. Accordingly, ECRCO will investigate the following issues:

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1. Whether TDEC discriminated on the basis of race in violation of the Civil Rights Act of 1964 (Title VI) and EPA's nondiscrimination regulation at 40 C.F.R. Part 7, when TDEC issued Aquatic Resource Alteration Permit and Section 401 Certification NRS20.089 for the Byhalia Connection Pipeline on November 17, 2020; and

2. Whether TDEC 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 TDEC's services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether TDEC 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.[1]

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 TDEC, 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/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf .

In the intervening time, ECRCO is providing TDEC 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 TDEC of the acceptance of Administrative Complaint #03R-21-R4. *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 TDEC and Complainants within 10 days of the date of this letter to provide information about

[1] *See* Title VI , 42 U.S.C. §§ 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). *See also* U.S. EPA, 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) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (available at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients, at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf (rev. Jan. 2020) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf..

ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)[2] and informal resolution agreement[3] processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If TDEC (and the Complainant with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its complaint investigation. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify TDEC as well as 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 either of these potential resolution processes.[4]

Please be advised that a copy of the complaint is enclosed, consistent with 40 C.F.R. § 7.120(e). ECRCO is releasing the complaint with appropriate redactions consistent with the Freedom of Information Act (FOIA) and the Privacy Act and will only release identifying information to the extent necessary to comply with 40 C.F.R. Parts 5 and 7.[5]

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, Jonathan Stein, Case Manager, at 202-564-2088, or by email at Stein.Jonathan@epa.gov, or Deputy Director, Dale Rhines, at 202-564-4174, or by email at Rhines.Dale@epa.gov.

Sincerely,

Lilian S. Dorka
Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure: Copy of Complaint via Email

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[2] EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations between the complainant and recipient, through the use of a professionally trained mediator. *See* U.S. EPA, ECRCO Case Resolution Manual, Section 3.11, at 21 (2017) (available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf).
[3] EPA ECRCO's Informal Resolution Agreement process occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.12, at 22.
[4] *See* 40 C.F.R. § 7.115(c).
[5] Freedom of Information Act, 5 U.S.C. § 552(b)(6) and (7)(c) and the Privacy Act of 1974, 5 U.S.C. § 552a.

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cc: Angelia Talbert-Duarte
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