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

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 23, 2017

Return Receipt Requested

In Reply Refer to:
EPA File No. 01R-00-R6

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Neil J. Carman, Ph.D.
Clean Air Program Director
Lone Star Chapter of Sierra Club
1202 San Antonio Street
Austin, Texas 78701

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Reverend Roy Malveaux
People Against Contaminated Environments
Shining Star Baptist Church
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Marianne Engelman-Lado, Esq.
Visiting Clinical Professor of Law
Yale Law School
127 Wall Street
New Haven, Connecticut 06511

Certified Mail #70153010000112675867
Jonathan J. Smith, Esq.
Earthjustice
48 Wall Street
19th Floor
New York, New York 10005

Re: Resolution of Administrative Complaint, EPA File No. 01R-00-R6

Dear Dr. Carman, Reverend Malveaux, Ms. Engelman-Lado, and Mr. Smith:

This letter is to inform you that the U.S. Environmental Protection Agency's (EPA) External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the Texas Commission on Environmental Quality (TCEQ). On December 21, 2000, EPA accepted complaint No. 01R-00-R6, that alleged discrimination based on race in violation of Title VI and EPA regulation at 40 C.F.R. Part 7, relating to the 1999 issuance of a modification of a Clean Air Act (CAA) Permit for a hydrocracker unit at the ExxonMobil refinery in Beaumont, Texas.

Accordingly, EPA accepted for investigation:

> Whether TCEQ discriminated on the basis of race by allowing ExxonMobil to use inappropriate decreases in its netting calculations for the modification, thereby avoiding a permit hearing, and thus disproportionately denying African Americans the opportunity to participate in the permit process; and
>
> Whether TCEQ issued a permit modification that resulted in disparate distribution of adverse health impacts from increased air pollution emissions, specifically VOCs, SO_2, PM_{10}, NO_x, and H_2S.

During the course of EPA's investigation, TCEQ agreed to enter into an Informal Resolution Agreement in order to resolve this complaint.[1] The enclosed Agreement is entered into by TCEQ and the EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7. It resolves complaint No. 01R-00-R6. It is understood that the Agreement does not constitute an admission by TCEQ or a finding by EPA of violations of 40 C.F.R. Part 7.

The enclosed Agreement does not affect TCEQ's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and EPA's regulation at 40 C.F.R. Part 7 nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth ECRCO's disposition of the complaint. This letter is not a formal statement of ECRCO policy and should not be relied upon, cited, or construed as such.

It is important to note that minimizing both the number and duration of emissions events from the ExxonMobil Beaumont refinery due to process or equipment upsets presents an ongoing opportunity for TCEQ to address the concerns raised by the residents in this complaint. EPA encourages TCEQ's efforts to track and investigate emissions events or upsets at the refinery, as appropriate, where reportable quantities of hydrogen sulfide and other air contaminants are released, in order to minimize the potential exposure of residents in neighborhoods adjacent to the facility.

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[1] See ECRCO's Case Resolution Manual regarding informal resolution of complaints, at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf .

In closing, as is ECRCO's current practice, during the course of this investigation ECRCO reviewed TCEQ's policies and procedures regarding its foundational nondiscrimination program, including the procedural safeguards required by EPA's nondiscrimination regulation, public participation policies and procedures, as well as required policies and procedures to ensure meaningful access to TCEQ programs and activities for persons with disabilities and limited-English proficiency. The details of this work will be addressed under a separate process.

If you have any questions, please feel free to contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (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

Enclosure

Cc:

Kenneth Redden, Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Samuel Coleman, Acting Regional Administrator
U.S. EPA Region 6

David Gray, Acting Deputy Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 6

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHT COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

INFORMAL RESOLUTION AGREEMENT
between the
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ECRCO Complaint No. 01R-00-R6

I. PURPOSE AND JURISDICTION

A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), and United States Environmental Protection Agency's (EPA) regulation at 40 C.F.R. Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Texas Commission on Environmental Quality (TCEQ, formerly the Texas Natural Resource Conservation Commission) is a recipient of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Part 7.

B. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, brought under Title VI and EPA's regulation at 40 C.F.R. Part 7, that alleged discrimination based on race in violation of Title VI. In response to the complaint, EPA began an investigation of TCEQ's compliance with Title VI and EPA regulation. During the course of EPA's investigation, TCEQ agreed to enter into an Informal Resolution Agreement (Agreement) in order to resolve this complaint.

C. This Agreement is entered into by TCEQ and EPA's External Civil Rights Compliance Office (ECRCO).

D. This Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Part 7, and resolves complaint No. 01R-00-R6 and additional concerns identified by EPA. It is understood that this Agreement does not constitute an admission by TCEQ of a violation of, or a finding of compliance or noncompliance by EPA with, Title VI and EPA's regulation at 40 C.F.R. Part 7.

E. TCEQ is committed to carrying out its responsibilities in a nondiscriminatory manner and in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Part 7.

II. BACKGROUND

A. On December 21, 2000, EPA accepted complaint No. 01R-00-R6, that alleged discrimination based on race in violation of Title VI and EPA regulation at 40 C.F.R. Part 7, relating to the 1999 issuance of a modification of a Clean Air Act (CAA) Permit for a hydrocracker unit at the ExxonMobil refinery in Beaumont, Texas.

B. In response to the complaint described in Section I Paragraph B, EPA initiated an investigation of TCEQ's compliance with Title VI and EPA regulation at 40 C.F.R. Part 7. The investigation addressed allegations that TCEQ discriminated on the basis of race by allowing ExxonMobil to use inappropriate decreases in its netting calculations for the modification, thereby avoiding a permit hearing, and thus disproportionately denying African Americans the opportunity to participate in the permit process; and issuing a permit modification that resulted in a disparate distribution of the adverse health impacts from the increased air pollution emissions, specifically VOCs, SO2, PM_{10}, NO_x, and H_2S.

C. TCEQ has responded to all inquiries from EPA regarding the complaint and, in addition to numerous meetings and teleconferences, has provided EPA with:

1. Over 500 pages of supporting documentation in two letters in response to an EPA inquiry in the latter part of 2010;

2. ExxonMobil's Standard Operating Procedure for Personal H_2S Monitors and Community Action Panel Guidelines; and

3. Information on TCEQ's environmental complaints process, data on the type and quantity of historical environmental complaints, and TCEQ response times in the Beaumont area.

D. EPA acknowledges that since the initiation of this investigation, TCEQ has made changes to public notice requirements which have increased the opportunity for public engagement in the permitting process. Additionally, TCEQ has revised and clarified definitions relating to netting and New Source Review requirements since 2000 to ensure that both industry and the public know what is required during the permitting process. Information is carefully reviewed by TCEQ to ensure that all relevant state and federal requirements are met, including those relating to netting. Changes to the State Implementation Plan (SIP) – approved public participation requirements that have occurred since the complaint was originally filed, including the requirement for two notice periods for both minor and major New Source Review case-by-case permitting actions, have increased opportunities for interested persons to review and comment on such permitting applications.

E. EPA acknowledges that since the initial Title VI complaint was filed, a significant reduction in NOx, SO2, and VOC emissions has occurred at the ExxonMobil Beaumont refinery, based on company reported emission inventories. Some of these

emissions reductions are due in part to EPA's National Petroleum Refinery Initiative, which began in 2000, and resulted in a National Settlement (Consent Decree) with ExxonMobil in December 2005. The Consent Decree required the Beaumont refinery to operate a Wet Gas Scrubber and Thermal DeNOx system on the Fluidized Catalytic Cracking Unit (FCCU) to control sulfur dioxide, particulates, and nitrogen oxides. The Consent Decree included provisions that reduced nitrogen oxide emissions from selected larger heaters and boilers and enhancement to the existing Flare Gas Recovery System to minimize routine flaring.

F. Based on emissions inventory reports that the ExxonMobil Beaumont refinery submits to TCEQ every year, actual emissions of H_2S have decreased overall since the initial Title VI complaint was filed in 2000. Additionally:

1. The ExxonMobil Beaumont refinery has reduced its allowable permitted levels of SO2 under its transition to a flexible permit, reducing the SO2 permitted allowable emissions in 1999 from 13,874 tons per year (tpy) to 2,163 tpy in 2013. The ExxonMobil refinery consolidated six construction permits in the 2010-2011 timeframe which resulted in an H_2S permitted allowable emissions cap of 16.31 tpy for 550 emission points.

2. The Beaumont area has achieved attainment of NAAQS, including the one-hour ozone NAAQS, which was replaced in 1997 by the eight-hour ozone standard and the 1997, 2008, and 2015 eight-hour ozone NAAQS; and

3. TCEQ established the Air Pollutant Watch List (APWL) to monitor and address areas in the state where air emissions were persistently monitored at levels above TCEQ regulatory standards and are of potential concern. TCEQ uses the APWL to reduce levels of air emissions of concern by focusing its resources on areas in the state with the greatest need. Beaumont was on TCEQ's APWL for H_2S from 2002 until 2009 and for SO2 from 2003 until 2016. Beaumont was removed from the APWL for both pollutants because there were no exceedances of the Texas regulatory standard for either pollutant over a significant period of time.

4. Also, since the filing of the Title VI complaint, EPA has updated the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for the petroleum refinery sector several times requiring maximum achievable control technology for hazardous air pollutants (HAP) emissions, and more recently the petroleum refinery sector risk and technology review updated the NESHAP rules to require continuous monitoring of benzene concentrations at the fence line to ensure that refineries appropriately manage HAP emissions from fugitive emission sources, such as leaking equipment and wastewater treatment operations. This requirement applies to the ExxonMobil Beaumont refinery and other refineries in Texas.

G. During the negotiation of this Agreement, TCEQ has agreed to add H_2S monitoring to its monitor location near the ExxonMobil refinery in Beaumont. The current site of that monitor had to be moved due to issues with the site lease for the monitor. A new site agreement has been reached for relocation and redeployment of a monitor in the area. The monitor will be in operation within 90 days of the signing of this Agreement. The monitor will be located at 598 Craig Street, Beaumont, Texas. Data for this monitor will be available to the public and can be accessed by visiting TCEQ's website at: http://www.tceq.texas.gov/cgi-bin/compliance/monops/select_curlev.pl?user_param=88502&user_metro=9&user_average. In addition to the H_2S data, the public will have access to data on Volatile Organic Compounds (VOCs).

H. As is ECRCO's current practice, during the course of this investigation, ECRCO reviewed TCEQ's policies and procedures regarding its foundational nondiscrimination program, including the procedural safeguards required by EPA's non-discrimination regulation, public participation policies and procedures, as well required policies and procedures to ensure meaningful access to TCEQ programs and activities for persons with disabilities and limited-English proficiency. The details of this work will be addressed under a separate process.

III. SPECIFIC TCEQ COMMITMENTS

A. Within 1 year after the effective date of this Agreement, TCEQ shall hold at least two community meetings directed at residents of Beaumont Texas, particularly those residing in the Charlton-Pollard neighborhood. TCEQ shall disseminate information about community meetings through mailing or house-to-house distribution of flyers announcing the meetings to, at a minimum, all residents of the Charlton-Pollard neighborhood and posting the time, date, location, and purpose of upcoming meetings on the TCEQ website.

1. TCEQ shall ensure that locations selected for meetings are accessible to persons with mobility impairments and that individuals who require a reasonable accommodation due to disability will be accommodated to participate in such meetings. Additionally, TCEQ will consider whether meeting information needs to be provided in languages other than English and whether any language assistance is necessary during meetings.

2. The planned community meetings will both include a discussion of recent air quality monitoring data. Additionally, the following topics in any order will be covered over the course of the two meetings:

   a. TCEQ's permitting process and opportunities for public involvement;
   b. How to access and interpret air quality monitoring data;
   c. TCEQ's environmental complaints process for members of the public; including how to contact TCEQ; what information must be provided; how

the agency responds to complaints; and how to follow the status of a complaint after it is made;

d. How members of the public may submit useful information to TCEQ; and

e. How evidence collected by members of the public is used by TCEQ in enforcement.

B. At TCEQ's discretion, the agency may hold more than two meetings to address community concerns.

IV. GENERAL

A. In consideration of TCEQ's implementation of commitments and actions described in Section III of this Agreement, EPA will end its investigation of the complaint No. 01R-00-R6 and not issue a decision containing findings on the merits of the complaint.

B. If the terms of this Agreement are satisfied, then within 30 days of TCEQ providing the certification in Section IV Paragraph D below, EPA will issue a letter documenting closure of its monitoring actions in complaint No. 01R-00-R6 and closure of the complaint as of the date of that letter.

C. EPA will, upon request, provide technical assistance to TCEQ regarding any of the civil rights nondiscrimination obligations previously referenced.

D. Within 30 days of completion of the commitments identified under Section III, TCEQ will certify the completion of each commitment consistent with the timeframes in Section III by certified mail to the Director, External Civil Rights Compliance Office, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

V. COMPUTATION OF TIME AND NOTICE

A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

C. Electronic documents submitted by TCEQ to EPA via email shall be sent to the following email address: Dorka.Lilian@epa.gov. Documents submitted by TCEQ to EPA shall be sent to the Director, External Civil Rights Compliance Office, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

D. Documents submitted by EPA to TCEQ shall be sent to the Office of Chief Clerk, Texas Commission on Environmental Quality, Mail Code 105, P.O. Box 13087, Austin, TX 78711-3087.

VI. EFFECT OF THE AGREEMENT

A. TCEQ understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement.

B. TCEQ understands that EPA will not close its monitoring of this Agreement until EPA determines that TCEQ has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening an investigation.

C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to TCEQ's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Executive Director of TCEQ and the Director of ECRCO.

D. This Agreement constitutes the entire Agreement between TCEQ and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by TCEQ and EPA in accordance with the provisions of Section VI Paragraph C above.

E. This Agreement does not affect TCEQ's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulation at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaint or address any other matter not covered by this Agreement.

F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Executive Director, in his capacity as an official of TCEQ, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Texas Commission on Environmental Quality,

Richard Hyde, Executive Director

5-23-2017
(Date)

On behalf of the U.S. Environmental Protection Agency,

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

5.22.2017
(Date)