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

JUL 10 2019

OFFICE OF
CONGRESSIONAL AND
INTERGOVERNMENTAL
RELATIONS

The Honorable Ed Case
U.S. House of Representatives
2443 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Case:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your letter dated April 23, 2019, to Troy Lyons, Associate Administrator for Congressional and Intergovernmental Relations, in which you sought information relating to a complaint filed under Title VI of the Civil Rights Act of 1964,[1] (Title VI) against the State of Hawaii's Agribusiness Development Corporation (ADC).

In your letter, you request clarification regarding EPA's finding that it had jurisdiction to investigate a Title VI complaint against ADC. On March 9, 2017, the EPA accepted for investigation a complaint filed by Earthjustice (EPA File No. 45RNO-16-R9) on behalf of Moms on a Mission Hui and Po'ai Wai/West Kaua'i Watershed Alliance against ADC alleging the department engaged in discrimination based on race, color and national origin in violation of Title VI of the Civil Rights Act of 1964 and the EPA's implementing regulation, 40 C.F.R. Parts 5 and 7. Pursuant to EPA's nondiscrimination regulation, EPA conducted a preliminary review of the complaint before accepting it for investigation.[2] 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.[3] 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.[4] Finally, the complaint must be filed against an applicant for, or recipient of, EPA financial assistance that allegedly committed the discriminatory act.[5]

Title VI prohibits discrimination on the basis of race, color or national origin under any program or activity receiving federal financial assistance. EPA determined that it had jurisdiction over the ADC because the ADC is a "program or activity" of the Hawaii Department of Agriculture (HDOA), which is a recipient of EPA financial assistance. The ADC is administratively attached to the HDOA. The HDOA also exerts significant administrative control over and has overlapping operations with the ADC. Thus,

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[1] 42 U.S.C. § 2000d *et seq.*
[2] *See* 40 C.F.R. § 7.120(d)(1).
[3] *See* 40 C.F.R. § 7.120(b)(1).
[4] *See* 40 C.F.R. § 7.120(b)(2).
[5] *See* 40 C.F.R. § 7.15.

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even though the ADC is not a direct recipient of EPA financial assistance, and despite its independent board of directors, EPA determined that it had Title VI jurisdiction over the ADC.[6]

Your letter also asked whether ADC should have access to the "HDOA's Title VI program funds." Title VI of the Civil Rights Act is not a granting statute. Therefore, EPA did not award a grant to the HDOA with the specific purpose of funding HDOA's Title VI program. Rather, a "term and condition" in the grants awarded to HDOA provides that HDOA shall not discriminate in violation of Title VI and other federal non-discrimination laws and EPA's nondiscrimination regulation. In general, EPA provides grants that support the protection of human health and the environment. For example, EPA provided grants to support the HDOA in ensuring that pesticides are manufactured, sold, used, and stored according to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

If you or your staff have any additional questions, please contact Kristien Knapp in EPA's Office of Congressional and Intergovernmental Relations at knapp.kristien@epa.gov or (202) 564-3277.

Sincerely,

Joseph A. Brazauskas
Acting Associate Administrator

[6] See *Starr v. Hawaii* 2007 U.S. Dist. LEXIS 81457, 2007 WL 3254831 (D. Haw. Nov. 2, 2007) (finding agency administratively attached under Hawaii law met the "inclusive" definition of program or activity, despite not directly receiving federal financial assistance and having a separate board, where recipient exerted control over and had various connections with administratively attached agency).