Message

From: Matt Strassberg [matts@emcenter.org]
Sent: 2/24/2017 8:47:39 PM
To: Miller, Amy [Miller.Amy@epa.gov]
CC: Johnson, Kathleen [Johnson.Kathleen@epa.gov]
Subject: Fwd: HDOA and mediation [WARNING: DKIM validation failed]

Amy:

Ouch. I am not sure my efforts to check in with the parties and evaluate the possibility of using mediation was well received by HQ.

Should I step away from this case or still contact the investigator assigned to this case?

Matt

Sent from my iPad

Begin forwarded message:

> **From:** "Dorka, Lilian" <Dorka.Lilian@epa.gov>
> **Date:** February 24, 2017 at 12:55:48 PM EST
> **To:** "matts@emcenter.org" <matts@emcenter.org>
> **Cc:** "Martinez, Brittany" <Martinez.Brittany@epa.gov>, "O'Lone, Mary" <OLone.Mary@epa.gov>, "Temple, Kurt" <Temple.Kurt@epa.gov>, "Johnson, Kathleen" <Johnson.Kathleen@epa.gov>, "Miller, Amy" <Miller.Amy@epa.gov>, "McGhee, Debra" <mcghee.debra@epa.gov>
> **Subject: RE: HDOA and mediation**
>
> Hello Mr. Strassberg,
> Thank you for your note. EPA's External Civil Rights Compliance Office has a pending Title VI civil rights complaint involving the HI Department of Agriculture. This office is in the process of evaluating this complaint consistent with our nondiscrimination regulation and our Case Resolution Manual (CRM) to determine if ECRCO has the required jurisdiction to accept this complaint for investigation. (See CRM at: https://www.epa.gov/ocr/case-resolution-manual) Please note that, as this is an open complaint, we cannot share any additional information with you regarding this case. With respect to your email below, please note that, as you are not a party to this Title VI civil rights complaint and do not represent EPA, we cannot engage in any further discussion with you about this pending ECRCO civil rights complaint.
> Sincerely,
> Lilian Sotolongo Dorka
> Director, External Civil Rights Compliance Office
> EPA, Office of General Counsel
> 202-564-9649
> WJC-N Room 2450
>
> **From:** Miller, Amy
> **Sent:** Friday, February 24, 2017 11:56 AM
> **To:** matts@emcenter.org; Johnson, Kathleen <Johnson.Kathleen@epa.gov>
> **Cc:** Martinez, Brittany <Martinez.Brittany@epa.gov>; Dorka, Lilian <Dorka.Lilian@epa.gov>
> **Subject:** HDOA and mediation

Dear Matt:
Thank you for your email and sorry for the delay in response. It has been a hectic week. As I mentioned to you when we met the Office of Civil Rights is the lead on civil rights investigations. I am not familiar with the process but I suspect it is similar to enforcement mediation and has a set of existing mediators. I think it would be best for you to talk to the investigator assigned to this case, Brittany Martinez at (202) 564-0727. When you talk to Brittany please make sure to explain your relationship between USDA and HDOA.
On a programmatic front I hope you will stay in touch regarding Kauai issues. I would be curious to know if Scott is planning to take the recommendations from your report and implement them as he moves forward with a state-wide Good Neighbor program.
Regards,
Amy C. Miller
Senior Policy Advisor
Office of Regional Administrator
U.S. Environmental Protection Agency, Region IX
(415) 947-4198
miller.amy@epa.gov

From: matts@emcenter.org [mailto:matts@emcenter.org]
Sent: Thursday, February 16, 2017 10:40 AM
To: Miller, Amy <Miller.Amy@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>
Subject: Re: Follow-up to Friday's meeting [WARNING: DKIM validation failed]
Kathleen and Amy:
This week I met with Hawaii Department of Agriculture (HDOA) Chairperson Scott Enright and Earth Justice attorney Paul Achitoff to evaluate whether it would be constructive to engage in mediation to resolve the Title VI action. I did not conduct a full Situational Assessment which would have included several rounds of interviewing stakeholders on Kauai and Molokai and would have been very expensive. However, given my experience working on the Evaluation of the Kauai Agricultural Good Neighbor Program where I spent a week on Kauai in the fall of 2015 interviewing stakeholders (including Native Hawaiians) about restricted use pesticides, I feel comfortable making this recommendation without a more detailed assessment. It is also helpful that I have an established relationship with Scott and can have very frank conversations with him. Paul was also very cooperative and generous with his time.
During my conversations with Scott and Paul, I assessed several factors including prior negotiation history, areas of disagreement, potential areas of agreement, goals for the litigation, other options to achieve those goals, whether mediation would enable the parties to achieve their goals, and their willingness to engage in mediation. In short, I am recommending that the parties consider mediation for the following reasons.
Although Scott and Paul are familiar with each other, they have never sat down together and negotiated past issues or the current Title VI claim. While they disagree on several issues, both parties are willing to engage in a constructive discussion. Paul was able to develop a list of actions that he would find acceptable to resolve the matter and Scott is willing to discuss those action items with Paul. As a result, mediation would allow the parties to achieve their objectives and would likely be a preferable method to address the issues compared to investigating and/or litigating the claim. Importantly, mediation would also enable the parties to tailor the settlement to meet their priorities and also set a precedent for the parties to negotiate rather than litigate their differences.
I presume that EPA needs to approve the use of mediation for the Title VI action and will contact the parties after it makes a decision. If that is not the case, please let me know. I was also very clear with Paul about my prior work with EPA and my current work connection to HDOA. If the parties decide to proceed with mediation but choose a different mediator, I was happy to help get the process started. Either way, I look forward to hearing from you.

Matt
Matt Strassberg
EMC/Ag Mediation
www.emcenter.org
(802) 583-1100 ext 101

On Feb 8, 2017, at 12:29 PM, Miller, Amy <Miller.Amy@epa.gov> wrote:
Thanks for sharing. I look forward to reading it.
Amy C. Miller
Senior Policy Advisor
Office of Regional Administrator
U.S. Environmental Protection Agency, Region IX
(415) 947-4198
miller.amy@epa.gov

From: matts@emcenter.org [mailto:matts@emcenter.org]
Sent: Tuesday, February 7, 2017 6:55 PM
To: Miller, Amy <Miller.Amy@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>
Subject: Re: Follow-up to Friday's meeting [WARNING: DKIM validation failed]
FYI, we just posted the Evaluation of the Kauai Agricultural Good Neighbor Program. http://www.emcenter.org/kauai-agricultural-good-neighbor-program/
Matt
Matt Strassberg
EMC/Ag Mediation
www.emcenter.org
(802) 583-1100 ext 101

On Feb 6, 2017, at 8:16 AM, matts@emcenter.org wrote:
Amy and Kathleen:
It was a pleasure to meet you Amy and see you again Kathleen. Thanks for sending the contact information. I will e-mail Paul and see if I can schedule a time to meet with him next week. Even if he prefers another mediator, I would be happy to suggest the process and see if there is interest in moving forward. I will check back with both of you after I talk with Paul and Scott.
Matt
Matt Strassberg
EMC/Ag Mediation
www.emcenter.org
(802) 583-1100 ext 101

On Feb 6, 2017, at 8:00 AM, Miller, Amy <Miller.Amy@epa.gov> wrote:
Thank you for coming into EPA's office. It was a pleasure to meet you and here about your work. As promised below is the contact information for Paul Achitoff at Earthjustice in Hawaii
Paul H. Achitoff
Managing Attorney
Earthjustice Mid-Pacific Office
850 Richards Street, Suite 400
Honolulu, HI 96813

T: 808.599.2436
F: 808.521.6841
earthjustice.org<http://www.earthjustice.org/>
Please feel free to call me anytime.
Regards,
Amy C. Miller
Senior Policy Advisor
Office of Regional Administrator
U.S. Environmental Protection Agency, Region IX
(415) 947-4198
miller.amy@epa.gov