

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

October 21, 2021

In Reply Refer to:

EPA File No: 02RNO-21-R2, 03RNO-21-R2, 04RNO-21-R2

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Re: Jurisdictional Determination of Administrative Title VI Complaints

Dear Ms. Wilson, Malhotra, Wilner and Lotto:

This letter is in regard to U.S. Environmental Protection Agency (EPA) Complaint Nos. 02RNO-21-R2, 03RNO-21-R2, and 04RNO-21-R2 filed on August 31, 2021, against the New York State Department of Environmental Conservation (NY DEC), the New York State Department of Public Service (NY DPS), and National Grid, respectively.¹ The complaint alleges that NY DEC, NY DPS, and National Grid discriminated against the predominately African-American and Latinx communities of Brooklyn, New York, on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) *et seq.* (Title VI), and EPA's implementing regulation at 40 C.F.R. Part 7, when they bypassed federal and state environmental and pipeline safety laws to permit, construct and/or operate a gas pipeline in Brooklyn, NY (North Brooklyn Pipeline).

¹ The complaint was also filed with the U.S. Department of Justice (DOJ), U.S. Department of Transportation (DOT), and U.S. Department of Energy (DOE).

Pursuant to EPA's nondiscrimination regulation, EPA's External Civil Rights Compliance Office (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 is taking the actions described below.

NY DPS

ECRCO is not accepting EPA Complaint No. 03RNO-21-R2 for investigation because NY DPS is not a recipient of EPA financial assistance and therefore ECRCO lacks jurisdiction. However, ECRCO is coordinating with DOJ, DOT, and DOE to determine how best to proceed with respect to the NY DPS complaint.

National Grid

ECRCO is not accepting EPA Complaint No. 04RNO-21-R2 for investigation because National Grid is not a recipient of EPA financial assistance and therefore ECRCO lacks jurisdiction. However, ECRCO is coordinating with DOJ, DOT, and DOE to determine how best to proceed with respect to the National Grid complaint.

NY DEC

ECRCO is accepting EPA Complaint No. 02RNO-21-R2 for investigation because the administrative complaint filed against the NY DEC meets the four jurisdictional requirements. First, the complaint is in writing. Second, it alleges that discrimination occurred in violation of EPA's nondiscrimination regulation. Third, the alleged discriminatory acts occurred within 180 days of the filing this complaint. Finally, it alleges discriminatory acts by the NY DEC, which is a recipient of EPA financial assistance.

Accordingly, ECRCO will investigate the following issues:

1. Whether NY DEC discriminated on the basis of race and national origin in violation of Title VI and 40 C.F.R. Part 7 when on March 2, 2021, NY DEC issued a "negative declaration" for National Grid's Article 19 Air State Facility permit application to expand its Greenpoint gas processing center.

2. Whether NY DEC 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 the NY DEC's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the NY DEC 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 7.²

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 you and NY DEC, 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.

ECRCO is providing NY DEC 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 NY DEC of the acceptance of Administrative Complaint No. 02RNO-21-R2. *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 you and NY DEC within 10 days of the date of this letter to provide information about ECRCO's complaint process, and to offer and discuss the alternative dispute resolution (ADR)³ and

² *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. (2017).

³ EPA ECRCO's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or

informal resolution agreement⁴ processes as potential options for resolution of the issues which ECRCO has accepted for investigation. If NY DEC (and you with respect to ADR) agrees to engage in either of these potential resolution processes, ECRCO will suspend its formal complaint investigation. In the event that either of these potential resolution processes fails to result in an agreement, ECRCO will notify you as well as NY DEC 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.⁵

Please be advised that a copy of the complaint is being released to NY DEC, 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 7.⁶

The EPA regulation prohibits applicants, recipients, and others persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have 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 at (202)564-9649, by email at dorka.lilian@epa.gov, or Katelyn Liesner, Case Manager, at (202)564-2035, by email at liesner.katelyn@epa.gov.

Sincerely,



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

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).

⁴ Informal Resolution occurs between ECRCO and the recipient. *See* Case Resolution Manual, Section 3.12; https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf; p. 22.

⁵ *See* 40 C.F.R. § 7.115(c).

⁶ 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.

cc: Ariadne Goerke
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