



UNITED STATES ENVIRONMENTAL PROTECTION
AGENCY

WASHINGTON, D C. 20460

OFFICE OF ENVIRONMENTAL JUSTICE AND EXTERNAL CIVIL RIGHTS
OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

October 20, 2022

In Reply Refer to:

EPA File Nos. 06R-22-R4, 07R-22-R4, and 08R-22-R4:

Text

Mr. Gar S. Guz , Esq.



Carol Browner



Covington & Burling LLP



Janette McCarthy Wallace

General Counsel

NAACP

NAACP National Headquarters



Re: Acceptance of Administrative Complaint

Dear Mr. Guzy, Ms. Browner, and Ms. McCarthy Wallace:

The U.S. Environmental Protection Agency (EPA), Office of Environmental Justice & External Civil Rights, Office of External Civil Rights Compliance (OECRC),¹ is accepting for investigation the administrative complaint (Complaint) filed against the Mississippi Department of Health (MDH) (EPA Complaint No. 06R-22-R4) and the Mississippi Department of Environmental Quality (MDEQ) (EPA Complaint No. 07R-22-R4), which was received by the EPA on September 27, 2022. The Complaint alleges that MDH and MDEQ discriminated against the majority Black population of the City of Jackson on the basis of race in their funding of water infrastructure and treatment programs and activities, 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. As explained later in this letter, EPA is not accepting the allegations against the

¹ On September 24, 2022, EPA announced the establishment of the Office of Environmental Justice and External Civil Rights (OEJECR). The new Office includes the External Civil Rights Compliance Office, which was renamed the Office of External Civil Rights Compliance (OECRC). OECRC continues to enforce and ensure compliance with federal civil rights laws, which prohibit discrimination by applicants for and recipients of EPA financial assistance. OECRC accomplishes in accordance with the procedure described in its 2021 Case Resolution Manual.

Mississippi Department of Finance and Administration (MSDFA) (EPA Complaint No. 08R-22-R4) for investigation.²

Pursuant to EPA's nondiscrimination regulation, OECRC 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, OECRC has determined that the claims against MDH and MDEQ meet the jurisdictional requirements stated above. First, the allegation is in writing. Second, it alleges discrimination that, if true, may violate the EPA's nondiscrimination regulation. Third, the complaint was filed within 180 days of the alleged discriminatory acts as the complaint alleges continuing discriminatory policies or practices. Finally, it alleges discriminatory acts by MDEQ and MDH, both of which are recipients of EPA financial assistance. OECRC is rejecting the allegations against MSDFA because it is not a recipient of EPA financial assistance. Accordingly, EPA Complaint No. 08R-22-R4 is closed as of the date of this letter.

With respect to MDEQ, OECRC will investigate the following issues:

1. Whether MDEQ discriminated against the majority Black population of Jackson, Mississippi, on the basis of race and color, by intent or effect, in funding water infrastructure and treatment programs and activities, in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7; and
2. Whether MDEQ 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 MDEQ's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether MDEQ has public participation policies and processes that are consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.³

² The Complaint identifies MDH, MDEQ, and MSDFA as state entities that have engaged in a pattern and practice of underfunding Jackson and its water facilities. (Complaint at pp. 21-22, paragraph 61).

³ *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;

With respect to MDH, OECRC will investigate the following issues:

1. Whether MDH, including the Local Governments and Rural Water Systems Improvements Board,⁴ discriminated against the majority Black population of Jackson, Mississippi, on the basis of race and color, by intent or effect, in funding water infrastructure and treatment programs and activities, in violation of Title VI and EPA's implementing regulation at 40 C.F.R. Part 7; and
2. Whether MDH 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 MDH's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether MDH has public participation policies and processes that are consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.⁵

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).

⁴ *See* Complaint at p. 9, paragraph 25, regarding the Rural Water System Improvements Board.

⁵ *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. §§ 7.30, 7.35. *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

The initiation of an investigation of the issues above is not a decision on the merits. OECRC is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and MDH and MDEQ, and determine next steps utilizing OECRC's internal procedures. Generally, the investigation and resolution options and procedures identified in EPA's nondiscrimination regulation and OECRC's Case Resolution Manual (CRM) will be utilized for the complaint investigation process. We invite you to review OECRC's Case Resolution Manual for a more detailed explanation of OECRC's complaint resolution process, available at https://www.epa.gov/sites/production/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

OECRC is providing MDH and MDEQ 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 MDH and MDEQ receipt written notification of the acceptance of Administrative Complaint Nos. 06R-22-R4 and 07R-22-R4. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

EPA's nondiscrimination regulation provides that OECRC shall attempt to resolve complaints informally whenever possible. *See* 40 C.F.R. § 7.120(d)(2). Accordingly, OECRC will contact Complainants, MDH and MDEQ within 10 days of the date of this letter to provide information about OECRC's complaint process, and to offer and discuss the alternative dispute resolution (ADR)⁶ and informal resolution agreement⁷ processes as potential options for resolution of the issues which OECRC has accepted for investigation. If MDH and MDEQ (and Complainants with respect to ADR) agree to engage in either of these potential resolution processes, OECRC will suspend the process for issuance of preliminary findings within 180 days of initiating of the investigation. In the event that either of these potential resolution processes fail to result in an agreement, OECRC will notify you as well as MDH and MDEQ that OECRC has resumed its process to issue preliminary findings within 180 days of the start of the investigation – excluding any days spent in either of these potential resolution processes.⁸

Please be advised that a copy of the Complaint is being provided to MDH and MDEQ, consistent with 40 C.F.R. § 7.120(e). OECRC 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 7.⁹

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).

⁶ EPA OECRC'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, OECRC Case Resolution Manual, Section 3.3, p.24 (https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

⁷ Informal Resolution occurs between OECRC and the recipient. *See* Case Resolution Manual, Section 3.1, p.22 (https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

⁸ *See* 40 C.F.R. § 7.115(c).

⁹ 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.

EPA's regulation prohibits applicants, recipients, and other 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 OECRC.

If you have any questions about the status of this correspondence, please contact me by telephone at [REDACTED] or by email at [REDACTED].

Sincerely,

Anhthu Hoang
Acting Director
Office of External Civil Rights Compliance
Office of Environmental Justice &
External Civil Rights

cc: Ariadne Goerke
Deputy Associate General Counsel
Civil Rights & Finance Law Office

Jeaneanne Gettle
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