



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

July 30, 2024

In Reply Refer To:

EPA Complaint No. 05R-22-R5

Steven Little
Deputy Secretary
Wisconsin Department of Natural Resources
101 South Webster Street
PO Box 7921
Madison, WI 53707
steven.little@wisconsin.gov

RE: Rejection of Administrative Complaint

Dear Deputy Secretary Little:

This letter serves to notify you that the U.S. Environmental Protection Agency (EPA), Office of Environmental Justice and External Civil Rights, Office of External Civil Rights Compliance (OECRC) is rejecting the referenced complaint against the Wisconsin Department of Natural Resources (DNR), which OECRC received on March 23, 2022.¹ The complaint alleges that DNR discriminated against residents in the Black, Latino, and Asian communities living near the Dane County Regional Airport-Truax Air Base (DCRA) on the basis of race, color, and national origin, in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7, when it approved the Wisconsin Air National Guard's (WANG) management plan for building construction for the F-35 beddown project at the DCRA in October 2021. For the reasons described below, OECRC is rejecting the complaint and administratively closing this matter as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, OECRC conducts a preliminary review of administrative complaints to determine acceptance, rejection, or referral to the appropriate

¹ The initial complaint raised allegations against several Wisconsin state entities: the Office of the Wisconsin Governor, the Wisconsin Office of the Attorney General, the Wisconsin Department of Natural Resources (DNR), the Wisconsin Air National Guard, the United States Air National Guard, Dane County, the Truax Air National Guard Base (also known as the Dane County Regional Airport), and the City of Madison, Wisconsin. . On April 21, 2022, the Complainants amended the complaint to include allegations against the Madison Metropolitan Sewer District. Apart from DNR and MMSD, the other entities are not EPA financial assistance recipients; therefore, OECRC does not have jurisdiction to review the allegations made against them.

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 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 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.

In general, OECRC will accept, reject, or refer a complaint after considering jurisdictional factors discussed above. However, if OECRC obtains information leading OECRC to conclude that an investigation is unjustified for prudential reasons, OECRC may reject the complaint.² In an effort to determine jurisdiction, OECRC engaged with Complainants to clarify the allegations raised,³ examined all documents they provided, and considered publicly available information to verify facts relevant to the allegations.

At Complainants' request, OECRC agreed to allow Complainants to submit clarifying information to supplement the complaint for OECRC's consideration.

The Complaint alleges that DNR took the following discriminatory actions:

1. DNR's approval in 2020 of the DCRA expansion to accommodate the F-35 beddown action resulted in discrimination against Black, Latino, and Asian residents living near the DCRA;
2. DNR acted more expeditiously to remediate PFAS in parts of Wisconsin, like the Marinette Peshtigo area, where the populations have a lower percentage of residents of color than in the area around the DCRA;
3. DNR's PFAS enforcement program does not provide for public engagement about geographic areas to be prioritized or consideration of existing community vulnerabilities; and
4. DNR does not provide sufficient oversight (such as enforcement, lawsuits) against the DCRA to ensure timely remediation of on-site PFAS remediation.

After careful consideration, OECRC is rejecting the complaint. As to the first allegation, OECRC has determined that DNR's action is outside the 180-day jurisdictional period. As to the second allegation, to the extent the allegation relies on a comparison with remediation in the Marinette Peshtigo area, the sites are not comparable, and the allegation otherwise lacks sufficient facts for OECRC to infer whether discrimination may have occurred or is occurring.⁴ As to the third and fourth allegations, OECRC has determined that the allegations lack sufficient detail for OECRC to infer whether discrimination may have occurred or is occurring. Therefore,

² *See* Case Resolution Manual, Section 1.8, pp. 10-11 at https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

³ OECRC staff held conference calls with Complainants on April 4, 2022; June 14, 2022; and August 25, 2022.

⁴ *See* Case Resolution Manual, Section 1.7

Deputy Secretary Steven Little

OECRC is rejecting the complaint for investigation and closing this matter as of the date of this letter.

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 acted 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, please feel free to contact me by telephone at (202) 564-3357 or by email at wilson.adam@epa.gov.

Sincerely,

Adam Wilson
Acting Deputy Director
Office of External Civil Rights Compliance
Office of Environmental Justice and External Civil Rights

cc: Ariadne Goerke
Deputy Associate General Counsel
U.S. EPA Civil Rights & Finance Law Office

Cheryl Newton
Deputy Civil Rights Official
Deputy Regional Administrator
U.S. EPA Region 5

Robert Kaplan
Regional Counsel
U.S. EPA Region 5