



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

August 27, 2024

In Reply Refer to:

EPA Complaint No. 05R-23-R5

Brian C. Rockensuess
Commissioner
Indiana Department of Environmental Management
100 North Senate Avenue
Indianapolis, IN 46204
brockensuess@idem.in.gov

RE: REJECTION WITHOUT PREJUDICE OF ADMINISTRATIVE COMPLAINT

Dear Commissioner Rockensuess:

This letter serves as notification that the United States Environmental Protection Agency (EPA) Office of External Civil Rights Compliance (OECRC) is rejecting EPA Complaint No. 05R-23-R5, which was filed by the Environmental Law & Policy Center on behalf of the Gary Advocates for Responsible Development (GARD) (collectively, Complainants) on May 15, 2023, against the Indiana Department of Environmental Management (IDEM). The Complaint alleges that IDEM discriminated against the predominantly Black and Latino communities surrounding the proposed Maya Energy LLC waste recycling plant (Maya) on the basis of race, color, 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 nondiscrimination regulation at 40 C.F.R. Part 7 when it approved the renewal of the Federally Enforceable State Operating Permit (FESOP). The Complaint also alleges that IDEM maintains a policy of granting all air permits that comply with CAA permitting requirements and Indiana air quality regulations regardless of whether the permits comply with IDEM's obligations under Title VI. For the reason identified below, OECRC is rejecting this complaint without prejudice and closing this case as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, EPA's 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 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 calendar days of the alleged discriminatory act or refiled within 60 calendar days of the completion of another agency's action if the other agency's action does not resolve the civil rights allegations or provide a comparable resolution process. *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 the four jurisdictional factors described above. However, if OECRC obtains information leading OECRC to conclude that an investigation is unjustified for prudential reasons, OECRC may reject a complaint allegation.¹

After careful consideration, OECRC has determined that an investigation is not appropriate at this time because the allegations of discrimination are speculative in nature and anticipate future events that may or may not unfold as described in the complaint. OECRC notes that the City of Gary rescinded Ordinance No. 9008, which certified the zoning of Maya's recycling facility, meaning that local regulations establishing the land use for the Maya site are no longer applicable and the construction planned for the facility is no longer certain to occur. Because the allegations may not unfold as alleged due to the zoning rescission, OECRC finds an investigation to be unjustified at this time. Complainants may refile a complaint with OECRC within 180 days of zoning approval from the City of Gary for Maya to be constructed at 727 W. 35th Avenue, Gary IN, or of a subsequent act or event that raises an allegation of discrimination. If the complaint is re-filed, OECRC will then proceed with its jurisdictional review to determine acceptance, rejection, or referral.

EPA's nondiscrimination regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they either have 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 this correspondence, please feel free to contact me by telephone at (202) 564-3357 or by email at wilson.adam@epa.gov. You may also contact Charity Johnson, Case Manager, at (202) 564-4325 and by email at johnson.charity@epa.gov.

¹ *See* OECRC Case Resolution Manual, Section 1.8, pp. 10-11, available at: https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf.

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

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