

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



EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

July 27, 2020

In Reply Refer to:

Complaint No. 01NO-20-R1

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Re: Rejection of Administrative Complaint No. 01NO-20-R1

Dear Ms. Cahn, Ms. Sampson, and Mr. Daniels:

The U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), is rejecting for investigation the administrative complaint filed against the Massachusetts Executive Office of Energy & Environmental Affairs (“EEA”) received by the EPA on June 2, 2020. The complaint alleges that the EEA, Massachusetts Department of Public Utilities (“DPU”), and the Massachusetts Energy Facilities Siting (“Board”) discriminated on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA’s nondiscrimination regulation at 40 C.F.R. Part 7, by failing to provide meaningful language access to the limited English proficient (LEP) residents of East Boston and Chelsea during the “East Eagle Reliability Project” (“Project”) public participation process. ECRCO has determined that it will reject the complaint against EEA, but as explained further below, ECRCO will initiate a compliance review of EEA.¹

¹ On June 29, 2020, ECRCO informed EEA, DPU and the Board of its determination to reject and close the

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Pursuant to EPA's nondiscrimination regulation, 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.

While EEA is a direct recipient of EPA's financial assistance, based on the complaint allegations, discussions with Complainants and Recipients, and ECRCO's review of the relevant state statutes, it is not clear that EEA has direct authority to address the specific issues raised in the complaint regarding the Board's implementation of the public participation proceedings tied to the Project. As a result, ECRCO rejects the complaint against EEA as of the date of this letter. EPA's rejection of this complaint is based solely on the circumstances described in this complaint, and EPA will continue to evaluate any future complaints based on the specific circumstances of those complaints and according to relevant factors, including the presence or absence of federal financial assistance and the nature of the operational relationship between recipients of EPA financial assistance and other governmental entities in the state identified in the complaint. However, based on its authority under 40 C.F.R. § 7.115(a), ECRCO will initiate a compliance review of EEA to ensure that it is fulfilling its obligations under 40 C.F.R. Parts 5 and 7 and the federal nondiscrimination statutes.

As a recipient of EPA financial funding, EEA is required to have a nondiscrimination program in place, including specific policies and procedures to ensure meaningful access to EEA programs and activities for individuals with limited-English proficiency and individuals with disabilities. EEA must also have a public participation policy and process that provide meaningful public involvement consistent with Title VI and EPA's regulation.² During ECRCO's jurisdictional

complaints against DPU and the Board (EPA Complaint Nos. 02NO-20-R1 and 03NO-20-R1, respectively) and that EPA's complaint determination with regard to EEA (EPA Complaint No. 01NO-20-R1) would be sent separately. This letter is the notification of EPA's rejection of the complaint against EEA, and ECRCO will send a separate letter initiating a compliance review of EEA.

² *See* [Disability Policy Nondiscrimination Plan Sample](https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf), available at

[https://www.epa.gov/sites/production/files/2020-](https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf)

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[02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); EPA's 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-](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf)

[02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf)

See Procedural Safeguards Checklist for Recipients, which provides a more detailed explanation of

nondiscrimination obligations and best practices, available at [https://www.epa.gov/sites/production/files/2020-](https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2006.03.21.pdf)

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review of the instant complaint, ECRCO determined that a review of EEA's required programs would be appropriate. ECRCO will issue a separate letter formally initiating a compliance review of EEA, including the specific issues that will be reviewed by ECRCO. Compliance review procedures are identified in EPA's nondiscrimination regulation at 40 C.F.R. §7.115 and ECRCO's Case Resolution Manual (CRM), available at https://www.epa.gov/sites/production/files/2017-01/documents/final_epa_ogc_ecrco_crm_january_11_2017.pdf.

No one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has 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.

ECRCO appreciates EEA's cooperation in this matter and looks forward to EEA's leadership with respect to its nondiscrimination program, including ensuring meaningful access to individuals with limited-English proficiency. 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 Brittany Robinson, Case Manager, at (202) 564-0727, by email at robinson.brittany@epa.gov, or Zahra Khan, Case Manager, at (202) 564-0460, by email at khan.zahra@epa.gov.

Sincerely,



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

cc: Angelia Talbert-Duarte
Associate General Counsel
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