



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

JAN 10 2011

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7009-2820-0002-1763-5194

In Reply Refer to:

EPA File No. 14R-10-R3

Roy L. Perry-Bey
Director of Civil Rights
Coalition for Equal Justice
P.O. Box 9901
Norfolk, Virginia 23505

Re: Rejection of Administrative Complaint

Dear Mr. Perry-Bey:

This letter is in response to your administrative complaint filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR). EPA received your complaint on May 31, 2010, and supplemental information on July 4, 2010, July 6, 2010, July 14, 2010, and July 24, 2010. EPA also received your clarification correspondence on July 23, 2010. The complaint alleges that the City of Norfolk and, Norfolk Southern, Virginia Department of Environmental Quality (VDEQ), EPA and Dominion Virginia Power violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. § 2000d *et seq.*, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7. After careful consideration, OCR is rejecting your administrative complaint for investigation.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of the complaint to determine acceptance, rejection, or referral. 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 regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if proven true, may violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). Third, it must be filed within 180 calendar days of the alleged discriminatory act. Finally, it must be filed

against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act.

Your complaint states that the City of Norfolk, Norfolk Southern, VDEQ, EPA, and Dominion Virginia Power violated Title VI and EPA's nondiscrimination regulations by "failing to investigate toxic migration of off-site contamination and waste, emanating from the former Norfolk manufactured Coal Gastrification Plant and City of Norfolk's municipal waste site".¹ You support this allegation by stating that on May 12, 2010, and June 6, 2010, you submitted a pollution complaint and no action was taken. While you raise a number of concerns at this site, that you allege have not been addressed over the course of many years, the only timely allegations are the ones of May 12, 2010, and June 6, 2010. Moreover, you state that the City of Norfolk, Norfolk Southern, VDEQ, EPA, and Dominion Virginia Power have demonstrated a "a total disregard for public safety, civil rights, the health and welfare of the ethnic citizens affected in the vicinity of the toxic zone in denying them meaningful notification of the present dangers."² Your complaint provides a list of all the potential organic hazardous chemicals that have allegedly migrated off-site and contaminated the Young's Terrace Community groundwater and natural environment.

EPA must reject this complaint because it does not meet all of EPA's jurisdictional requirements. Specifically, while you assert that no action was taken following your May 12th and June 6th pollution complaints, OCR has determined that VDEQ sought EPA Region III's assistance in identifying conditions that may pose an imminent and substantial threat to public health, welfare, or the environment at the former Norfolk Town Gas Site in Norfolk, VA. EPA's Region III's Site Assessment Branch is currently conducting a site assessment to determine contamination at the Norfolk Town Gas Site. Since action has been taken based on your pollution complaints, both by VDEQ and EPA, OCR has determined there is not a discriminatory act for OCR to investigate.

Finally, even though VDEQ and City of Norfolk are recipients of EPA assistance, your complaint also names EPA, Norfolk Southern, and Dominion Virginia Power as alleged discriminators. Title VI does not apply to the Federal government. Therefore, EPA cannot be considered an "applicant" or a "recipient" within the meaning of Title VI and its implementing regulations. In addition, OCR has determined that Norfolk Southern and Dominion Virginia Power were not applicants for, or recipients of, EPA assistance at the time of the alleged discriminatory acts. Accordingly, your allegations against Norfolk Southern and Dominion Virginia Power cannot be accepted for investigation.

Although your complaint was not accepted by OCR for investigation, you may contact Reggie Harris, EPA Region III Environmental Justice Coordinator at 215-814-2988 to discuss the status of the site assessment. If you have any questions about this dismissal, please contact Helena Wooden-Aguilar, Assistant Director of the OCR

¹ Complaint to Hon. Jim Webb, U.S. Senator (D-Va.) dated June 1, 2010, which was referred to OCR.

² Complaint to Hon. Jim Webb, U.S. Senator (D-Va.) dated June 1, 2010, which was referred to OCR.

External Compliance Program at (202) 564-0792, via electronic mail at wooden-aguilar.helena@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave. NW, Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rafael DeLeon', written in a cursive style.

Rafael DeLeon
Director

cc: Paul D. Fraim
Mayor
Norfolk, Virginia

David K. Paylor
Director
Virginia Department of Environmental Quality

Reggie Harris, EPA Region III Environmental Justice Coordinator

Stephen G. Pressman, Associate General Counsel

Civil Rights and Finance Law Office (MC 2311)