



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

JUL 29 2008

OFFICE OF  
CIVIL RIGHTS

**Return Receipt Requested**

Certified Mail #7004-1160-0002-3622-5232

**In Reply Refer To:**

EPA File No. 04R-08-R6

Spring A. Miller, Esq.  
Southern Migrant Legal Services  
311 Plus Park Blvd.  
Suite 135  
Nashville, TN 37217

**Re: Acceptance of Administrative Complaint**

Dear Ms. Miller:

This letter is in response to your clients' administrative complaint received by the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on May 27, 2008. The complaint was filed by the Southern Migrant Legal Services ("SMLS") on behalf of fourteen H-2A migrant agricultural workers ("migrant workers"). The complaint alleges that the Louisiana Department of Agriculture and Forestry ("LDAF") 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 implementing Title VI, found at 40 C.F.R. Part 7. This is to notify you that after careful consideration, OCR is accepting your administrative complaint for investigation.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of complaints 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 alleged discriminatory acts that violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

## **Allegation I**

**Whether LDAF's requirement for in-person interviews before initiating the investigation of complaints brought under the Worker Protection Standard intentionally discriminates against migrant agricultural workers based upon their national origin status.**

You allege that LDAF's Worker Protection Standard ("WPS") investigation policy, which requires a complainant to provide an in-person interview before an investigation may be initiated, uses the national origin of migrant agricultural workers as an unlawful classification.<sup>1</sup> You further allege that LDAF would not initiate an investigation until your clients "presented themselves at the Department's office in Baton Rouge, Louisiana, for an in-person interview."<sup>2</sup> Finally, you claim that LDAF's General Counsel, J. Marvin Montgomery, told you by phone on April 29, 2008, that it was "the Department's policy to initiate WPS investigations only after conducting in-person interviews of complainants."<sup>3</sup>

OCR will accept this allegation for investigation because it meets all four of EPA's jurisdictional requirements. The complaint is in writing and describes an alleged discriminatory act that may violate EPA's Title VI regulations. The alleged discriminatory act occurred within 180 days of the filing of this complaint. (The complaint was filed on May 27, 2008, and the alleged discriminatory act first occurred in a letter dated April 28, 2008.) Finally, LDAF is an EPA financial assistance recipient.

## **Allegation II**

**Whether LDAF's Worker Protection Standard investigation policy and, specifically, the requirement for in-person interviews, created a disparate impact against migrant agricultural workers based on their national origin.**

You allege that LDAF's Worker Protection Standard investigation policy, which requires in-person interviews, has an "unlawful effect" on migrant agricultural workers.<sup>4</sup> Specifically, you allege that LDAF's policy serves to protect only native-born citizens,<sup>5</sup> restricts migrant workers' access to protections and rights,<sup>6</sup> and "substantially" limits their "opportunities for redress."<sup>7</sup> In addition, you claim that the in-person interview policy would "create an insurmountable barrier to migrant workers accessing WPS protections in Louisiana."<sup>8</sup>

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<sup>1</sup> Administrative Complaint (04R-08-R6) at pg. 4. (May 20, 2008).

<sup>2</sup> *Id.* at pg. 2.

<sup>3</sup> *Id.*

<sup>4</sup> *See* fn. 1.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

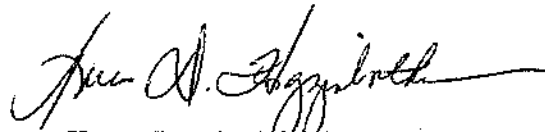
<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at pg. 2.

OCR will accept this allegation for investigation because it meets all of EPA's jurisdictional requirements. The complaint is in writing and describes alleged discriminatory acts that would violate EPA's Title VI regulations. The complaint also describes an alleged discriminatory act that occurred within 180 days of the filing of this complaint. (The complaint was filed on May 27, 2008, and the alleged discriminatory act first occurred on April 28, 2008.) Finally, the LDAF is an EPA financial assistance recipient.

If you have any questions, please contact Ms. Helena Wooden-Aguilar of my staff by telephone at (202) 343-9681, by e-mail at [Wooden-Aguilar.Helena@epa.gov](mailto:Wooden-Aguilar.Helena@epa.gov), or by mail to U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen D. Higginbotham", written in a cursive style.

Karen D. Higginbotham  
Director

Enclosure(s)

cc: Sherry Brown-Wilson, Title VI Coordinator  
U.S. EPA Region 6

Stephen G. Pressman, Associate General Counsel  
Civil Rights and Finance Law Office (MC 2399A)