



## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

### INFORMAL RESOLUTION AGREEMENT

between

**THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL (DNREC)**

and

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
EPA COMPLAINT NO. 02RNO-23-R3**

#### I. PURPOSE AND JURISDICTION

- A. Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 (Title VI), other federal nondiscrimination laws, and the United States Environmental Protection Agency's (EPA) implementing regulation at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation and retaliation in the programs, services, and activities of applicants for or recipients of federal financial assistance.<sup>1</sup>
- B. The Delaware Department of Natural Resources and Environmental Control (DNREC) receives federal financial assistance from the EPA and, therefore, must ensure non-discrimination in programs, services, and activities pursuant to the provisions of Title VI, the other federal non-discrimination laws, and the EPA's implementing regulations.
- C. On December 22, 2022, the EPA's Office of External Civil Rights Compliance (OECRC) received EPA Complaint No. 02RNO-23-R3, which alleged discrimination by DNREC on the basis of race, color, and national origin.

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<sup>1</sup> Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*; Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C.F.R. Parts 5 and 7.

- D. On September 8, 2023, OECRC accepted for investigation the following issues:
1. Whether DNREC's permit application review process for the Bioenergy Development Company's (BDC) Bioenergy Innovation Center Project,<sup>2</sup> including its public participation process, discriminated against the Black, Latino, and Haitian individuals living near BDC's facility on the basis of race, color, and national origin in violation of Title VI of the Civil Rights Act of 1964 and 40 C.F.R. Part 7;
  2. Whether DNREC's permit application review process for the BDC Bioenergy Innovation Center Project, including its public participation process, discriminated against Spanish speaking and Haitian Creole speaking individuals with limited English proficiency living near BDC's facility on the basis of national origin in violation of Title VI of the Civil Rights Act of 1964 and 40 C.F.R. Part 7; and
  3. Whether DNREC has in place and is appropriately implementing procedural safeguards required under 40 C.F.R. Parts 5 and 7, that all recipients of EPA financial assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to the DNREC's services, programs, and activities for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether DNREC has a public participation policy and process that is consistent with Title VI and other federal civil rights laws, including EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.<sup>3</sup>

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<sup>2</sup> At the time the Complaint was filed, the five state environmental permits had not been approved yet. Since the filing of the Complaint, DNREC has approved and issued the five state environmental permits. The permits are available on DNREC's website. See Resource Recovery Permit #SW-23/07, <https://documents.dnrec.delaware.gov/dwhs/CAPS/Permits/Resource-Recovery/23-0906-02A-SW-Permit-SW-23-07.pdf>; see also Permit: APC-2022/0049-Construction, [https://documents.dnrec.delaware.gov/Air/permits/JGM23074-BioEnergy-Development-Group-LLC-Permit-APC-2022\\_0049-Final-9.6.23.pdf](https://documents.dnrec.delaware.gov/Air/permits/JGM23074-BioEnergy-Development-Group-LLC-Permit-APC-2022_0049-Final-9.6.23.pdf); see also Permit: APC-2022/0048-Construction, [https://documents.dnrec.delaware.gov/Air/permits/JGM23073-BioEnergy-Development-Group-LLC-Permit-APC-2022\\_0048-Final-9.6.23.pdf](https://documents.dnrec.delaware.gov/Air/permits/JGM23073-BioEnergy-Development-Group-LLC-Permit-APC-2022_0048-Final-9.6.23.pdf); see also Permit Number: WPCC 3007/22, <https://documents.dnrec.delaware.gov/Water/Permits/2023-09-06-Wastewater-Construction-Permit-BioDev-WPCC-3007-22.pdf>; see also Permit Number: WPCC 3005/22, <https://documents.dnrec.delaware.gov/Water/Permits/2023-09-06-Wastewater-Construction-Permit-BioDev-WPCC-3005-22.pdf>.

<sup>3</sup> See Title VI, 42 U.S.C. 2000(d) *et seq.*; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). See also U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June

- E. During the course of OECRC’s investigation, DNREC engaged in discussions with OECRC to resolve the complaint informally.
- F. This Informal Resolution Agreement is entered into by DNREC pursuant to the authority granted to OECRC under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964 and EPA’s implementing regulation found at 40 C.F.R. Parts 5 and 7, and resolves complaint No. 02RNO-23-R3.
- G. This Agreement is entered into voluntarily by DNREC and OECRC. This Agreement does not constitute an admission by DNREC of a violation of, or a finding of compliance or noncompliance by OECRC with Title VI or 40 C.F.R. Parts 5 and 7. As such, subject to DNREC’s good faith implementation of this Agreement, EPA is closing its investigation of this Complaint and will not issue preliminary findings.
- H. DNREC is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and other federal nondiscrimination laws and the EPA regulation at 40 C.F.R. Parts 5 and Part 7, and the other federal nondiscrimination laws enforced by EPA. The activities detailed in Section III of this Agreement, which DNREC has voluntarily agreed to undertake and implement, are in furtherance of this ongoing commitment.

## II. Background

- A. Beginning in early 2023—predating OECRC’s acceptance of the Complaint—and throughout the investigation of the Complaint, DNREC has taken the following steps to improve compliance with procedural safeguards required under 40 C.F.R. Parts 5 and 7 and has worked to strengthen public engagement processes, including:
  - 1. On February 1, 2023, DNREC appointed Dr. Katera Moore as DNREC’s first Environmental Justice Coordinator.<sup>4</sup>

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25, 2004) (available at [https://www.epa.gov/sites/production/files/2020-02/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)); U.S. EPA, 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/2020-02/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)); U.S. EPA, Civil Rights Guidance on Procedural Safeguards: Requirements and Best Practices, <https://www.epa.gov/system/files/documents/2024-08/civil-rights-guidance-on-procedural-safeguards-august-2024.pdf> (Aug. 2024) (which provides a more detailed explanation of nondiscrimination obligations and best practices); U.S. EPA, Disability Nondiscrimination Plan Sample, at <https://www.epa.gov/system/files/documents/2023-04/Disability%20Nondiscrimination%20Sample%20TA%20Policy.pdf> (2022).

<sup>4</sup> DNREC Appoints Dr. Katera Moore as State’s First Environmental Justice Coordinator, <https://news.delaware.gov/2023/02/01/dnrec-appoints-dr-katera-moore-as-states-first-environmental-justice-coordinator/>.

2. DNREC has implemented an environmental justice screening tool called EJ Area Viewer<sup>5</sup> that allows DNREC staff to analyze the demographics of an area to determine if additional methods of outreach and/or translation of written materials are warranted.
3. DNREC adopted an Environmental Justice Compliance Policy (EJ Policy)<sup>6</sup> on February 27, 2023, that contains procedures for DNREC staff to use the EJ Area Viewer prior to making any decisions in order to identify if additional outreach and/or translation is needed. If a site falls within an “Equity Focus Area,”<sup>7</sup> the EJ Policy requires DNREC staff to physically visit the area, plan a public workshop in the community, identify local media in which to advertise the workshop, and host a public workshop to discuss the issue/decision. If a site falls within a “Language Isolation Neighborhood,”<sup>8</sup> the EJ Policy requires any written materials to be translated into all prevailing languages in the area.
  - i. DNREC held twenty-two (22) training and consultation sessions with staff to support the implementation of the February 2023 EJ Policy. The EJ Policy acknowledgment and recorded training are assigned as part of the DNREC onboarding process for new staff.
4. DNREC developed a Community Engagement Outline to help DNREC staff take steps to improve engagement with the communities DNREC serves.<sup>9</sup>
5. DNREC developed a one-page instruction sheet for DNREC staff to use for the procurement of professional translation services.<sup>10</sup>
6. DNREC created an “Environmental Justice at DNREC” webpage that provides information on DNREC’s nondiscrimination policy, community resources, data, and information DNREC uses, and ways for the public to participate in DNREC activities and programs.<sup>11</sup> The webpage also explains the availability of translations and how the public can obtain translation and/or interpretation services.<sup>12</sup>

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<sup>5</sup> See Data and Information, <https://dnrec.delaware.gov/environmental-justice/data/>.

<sup>6</sup> DNREC Response to EPA Complaint No. 02RNO-23-R3, Exhibit G.

<sup>7</sup> The EJ Policy uses the percentage of population in poverty compared to the state average or the number of Blacks or Hispanics or Asians or American Indians compared to the state average to define an Equity Focus Area.

<sup>8</sup> The EJ Policy defines a Language Isolation Neighborhood as an area where over 15% of households are without a person over the age of 5 who speaks English only or very well.

<sup>9</sup> DNREC Response to EPA Complaint No. 02RNO-23-R3, Exhibit I.

<sup>10</sup> DNREC Response to EPA Complaint No. 02RNO-23-R3, Exhibit H.

<sup>11</sup> Environmental Justice at DNREC, <https://dnrec.delaware.gov/environmental-justice/>

<sup>12</sup> See *id.*

7. On June 6, 2023, DNREC conducted a staff training session on its EJ Policy, use of the EJ Area Viewer, and an overview of its internal “Environmental Justice at DNREC” webpage (DNREC’s “Intranet”). Video recordings of this and prior staff training sessions on DNREC’s EJ Policy were subsequently uploaded to the Intranet.
  8. DNREC initiated the Community Assets Campaign, a survey that enables individuals to give DNREC information about the community in which they live so that DNREC can engage with local communities in more effective, meaningful ways.<sup>13</sup>
  9. In the six-month period between DNREC’s implementation of the EJ Policy and OECRC’s acceptance of EPA Complaint No. 02RNO-23-R3, DNREC translated 54 vital documents and provided 56 instances of oral interpretation services for Delaware’s communities.
  10. DNREC provided 3 additional interpretation services and translated 55 additional documents between October 2023 and March 2024. During this time, DNREC also took actions to serve LEP persons and persons with disabilities, which include: developing multilingual radio ads; translating the fishing and hunting guides; translating licensing examination documents; and installing braille signage<sup>14</sup> and providing ASL interpretation and multilingual programming at state parks.
- B. Between March and July of 2024, OECRC provided technical assistance to DNREC to help DNREC develop grievance procedures and a language access plan.<sup>15</sup>
- C. In addition to developing the grievance procedures and language access plan with OECRC, DNREC independently developed internal processes, guides, and procedures to ensure consistent implementation and tracking of the plans. DNREC held its first staff training session on its updated Title VI policy on September 11, 2024, and will continue to assign the training to new staff as part of DNREC’s onboarding policy. DNREC will update the training as necessary.

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<sup>13</sup> See Community Assets Campaign, <https://survey123.arcgis.com/share/6f1fce4c07be436abab9604a412f6be7>.

<sup>14</sup> See Delaware State Parks 2023-2026 Capital Plan, <https://destateparks.com/wwwroot/downloads/publications/CapitalPlan2023-2026.pdf>, at 7.

<sup>15</sup> The Language Access Plan is attached as Appendix A to this Agreement.

- D. In furtherance of DNREC's obligation to comply with Section 504 of the Rehabilitation Act of 1973, DNREC continues to improve accessibility for individuals with disabilities to its programs and services and to further develop procedures and best practices for ensuring equal opportunity to its programs and activities for individuals with disabilities.

### III. **SPECIFIC IMPLEMENTATION COMMITMENTS:**

#### A. Grievance Procedures

1. DNREC agrees to implement its new grievance procedures,<sup>16</sup> which are posted on the DNREC website.
2. DNREC will submit to OECRC six and twelve months from the effective date of the IRA, a log of discrimination complaints filed pursuant to DNREC's grievance procedures, if any.<sup>17</sup> The log will state the nature of the complaint, the date it was filed, the date DNREC's investigation was completed, the disposition, and the date of disposition.

#### B. Language Access Plan

1. DNREC agrees to implement its new language access plan (LAP) to ensure meaningful access to DNREC programs and activities for individuals with limited English proficiency (LEP).<sup>18</sup>
2. To demonstrate implementation of the LAP, DNREC will submit to OECRC six and twelve months from the effective date of the IRA, a report that shall include, at a minimum, the following information relating to implementation of the LAP after the date of this Agreement:
  - a. Documentation of DNREC actions to identify the need for language assistance services, including a summary of any four-factor analysis conducted, screening tools used, demographic analyses conducted on a project-by-project basis,<sup>19</sup>
  - b. A description of DNREC's efforts to ensure that any data relied upon to identify LEP communities<sup>20</sup> is current;

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<sup>16</sup> See DNREC Grievance Procedures, <https://documents.dnrec.delaware.gov/Admin/Environmental-Justice/Title-VI-Grievance-Procedures.pdf>.

<sup>17</sup> See 40 C.F.R. § 7.90.

<sup>18</sup> See Appendix A.

<sup>19</sup> See LAP at Section II, attached here as Appendix A.

<sup>20</sup> The term "LEP communities" in this document is used in the same way it is used in DNREC's Language Access Plan. See LAP, attached here as Appendix A.

- c. A written summary of DNREC's efforts to notify individuals with LEP of the availability of language assistance services at no cost including documentation as appropriate (e.g., multilingual posters, signs, brochures, social media posts, website forms, text within materials distributed to the public, and more);<sup>21</sup>
  - d. A log of any requests for written translation of documents. The log will state the nature of the translation request, the date it was submitted, DNREC's response to the request, reasons for DNREC's response, and the date of DNREC's response;
  - e. A log of any requests DNREC received for oral interpretation. The log will state the nature of the request, the date it was submitted, DNREC's response to the request (including the medium of interpretation, e.g., in-person, virtual, etc.), the reasons for DNREC's response, and the date of DNREC's response. Additionally, the log may include a description of DNREC's provision of oral interpretation where no request was received but DNREC determined that the provision of oral interpretation services was appropriate; and
  - f. A brief description of any lawsuits pending against DNREC that allege discrimination based on race or national origin (including limited English proficiency).<sup>22</sup>
3. Within 30 days of the 180 day period following the effective date of this agreement, DNREC will submit to OECRC documentation of training on the LAP received by new staff members who have onboarded within the 180 day period following the effective date of this agreement (e.g., documentation could include a list of trainings provided to new staff members with the participants' names and starting dates). When identifying appropriate staff, DNREC may consider which staff can reasonably be expected to implement the LAP.

#### **IV. GENERAL CONSIDERATIONS**

- A. In consideration of DNREC's implementation of commitments and actions described in Section III of this Agreement, OECRC will end its investigation of Complaint No. 02RNO-23-R3 and not issue a decision containing findings on the merits of the complaint.
- B. OECRC will monitor the implementation of the commitments in Section III of this Agreement to ensure they are implemented. Within thirty (30) days of the

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<sup>21</sup> See LAP at Section III, attached here as Appendix A.

<sup>22</sup> See C.F.R. § 7.85(a)(1).

satisfaction of the later of DNREC's required reporting submissions under Sections III(A.2) and (B.2), OECRC will issue a letter documenting completion of the commitments, closure of its monitoring actions and closure of Complaint No. 02RNO-23-R3 as of the date of that letter.

- C. If not otherwise specified herein, OECRC will review and provide feedback about any documentation submitted by DNREC demonstrating completion of each commitment and will provide an assessment, to include verbal and/or written feedback, as to whether the documentation satisfies the commitment within 30 days of receipt of each such submission.
- D. OECRC will, upon request, provide technical assistance to DNREC regarding any of the civil rights obligations previously referenced in this agreement.

**V. COMPUTATION OF TIME AND NOTICE**

- A. As used in this Agreement, "day" will mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period will run until the close of business of the next working day.
- B. Service of any documents required by this Agreement may be made by electronic service as outlined below. Documents forwarded by email for review are to be sent in native format for draft documents and PDF format for documents intended to be final.
- C. Electronic documents submitted by DNREC to the EPA via email will be sent to the following email addresses: OECRC\_IRA@epa.gov; hoang.anhthu@epa.gov; cormack.nell@epa.gov. While OECRC generally disfavors submissions by mail, DNREC may submit physical documents by mail to the following address:

US Environmental Protection Agency  
Office of External Civil Rights Compliance  
1200 Pennsylvania Ave. NW  
Mail Code: 2310A  
ATTN: Anhthu Hoang

- D. Electronic documents submitted by OECRC to DNREC shall be sent to the following email addresses: DNREC\_EJ@delaware.gov; katera.moore@delaware.gov.

Documents mailed by OECRC to DNREC shall be sent to:

ATTN: DNREC Civil Rights Coordinator  
89 Kings Hwy SW  
Dover, DE 19901

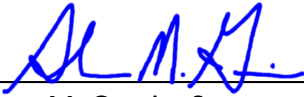


**VI. EFFECT OF THE AGREEMENT**

- A. DNREC's obligations under this Agreement are limited to compliance with Title VI and other applicable federal nondiscrimination laws and EPA's regulation at 40 C.F.R. Parts 5 and 7. Nothing in this Agreement shall be construed to prevent DNREC from also complying with other federal requirements and applicable state laws.
- B. DNREC understands that, if necessary, consistent with the language in 40 C.F.R. 7.85(b) OECRC may conduct site visits, interview staff, and request such additional reports or data as are necessary for OECRC to determine whether DNREC has fulfilled the terms of this Agreement.
- C. DNREC understands that OECRC shall not close its monitoring of this Agreement until OECRC determines that DNREC has implemented the commitments in Section III of this Agreement and that a failure to satisfy any term in this Agreement may result in the OECRC re-opening an investigation.
- D. If either Party desires to modify any portion of this Agreement, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement by the Secretary of DNREC and the Director of OECRC or their designee. Notwithstanding the foregoing, the email addresses and mailing addresses specified in Sections V(C) and V(D) of this Agreement may be modified by the Party receiving submissions or mailings by delivering notice to all counterparties.
- E. This Agreement constitutes the entire Informal Resolution Agreement between DNREC and OECRC regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any obligation or term of this Agreement, except as specifically agreed to by DNREC and OECRC, in accordance with the provisions of Section VI(D) of this Agreement above.
- F. This Agreement does not affect DNREC's continuing responsibility to comply with Title VI of the Civil Rights Act or other federal nondiscrimination laws, and the EPA regulation at 40 C.F.R. Parts 5 and 7, nor does it affect the OECRC's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- G. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in

his capacity as an official of DNREC, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Acting Director of OECRC has the authority to enter into this Agreement.

On behalf of the Delaware Department of Natural Resources and Environmental Control



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Shawn M. Garvin, Secretary  
State of Delaware Department of Natural  
Resources and Environmental Control

12/17/2024

(Date)

On behalf of the U.S. Environmental Protection Agency,



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Anhtu Hoang, Acting Director  
Office of External Civil Rights Compliance  
Office of Environmental Justice and External Civil Rights

12/27/2024

(Date)