

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

(b) (6), (b) (7)(C)
and
CONSERVATION LAW FOUNDATION, INC.,

Complainants,

v.

MASSACHUSETTS EXECUTIVE OFFICE
OF ENERGY AND ENVIRONMENTAL
AFFAIRS
And
MASSACHUSETTS DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Respondents.

**AMENDMENT
COMPLAINT UNDER TITLE VI
OF THE CIVIL RIGHTS ACT
OF 1964**

COMPLAINT NO. 04NO-23-R1

Amendment to Title VI Complaint #04NO-23-RI

Complainants Conservation Law Foundation (“CLF”) and (b) (6), (b) (7)(C) (“(b) (6), (b) (7)(C)”) hereby amend Complaint #04NO-23-R1, previously filed on February 24, 2023, to include an additional respondent: the Massachusetts Department of Environmental (“MassDEP”) Protection. The grounds for the amendment are as follows:

I. JURISDICTION

1. MassDEP is a “program or activity” which receives federal financial assistance, making it subject to Title VI and EPA’s implementing regulations. *See* 42 U.S.C. § 2000d. MassDEP is a Massachusetts state agency per 40 C.F.R. § 7.25, and from

Fiscal Year 2019 to Fiscal Year 2024, MassDEP received \$175.47 million in grants from EPA. *Advanced Search (Keywords: Massachusetts Department of Environmental Protection; Time Period: FY 2024, FY 2023, FY 2022, FY 2021, FY 2020, FY 2019)*, USASPENDING.GOV (last visited Aug. 21, 2024). MassDEP itself admits that it is subject to the strictures of Title VI: “MassDEP is a state agency that receives federal funds and is therefore required to comply with Title VI, other federal nondiscrimination laws and the United States Environmental Protection Agency’s (EPA) regulations.” *Massachusetts Department of Environmental Protection Civil Rights and Non-Discrimination Plan 4*, MASS. DEP’T OF ENV’T PROT. (December 2022), available at <https://www.mass.gov/doc/massdep-civil-rights-and-non-discrimination-plan-english>.

2. This amendment is timely filed, as the relevant discriminatory acts show a pattern or practice of discrimination and represent a continuing violation. *See Doe v. Brown Univ.*, 327 F. Supp. 3d 397, 408 (D.R.I. 2018) (continuing violation doctrine applies to Title VII, Title IX and Title VI cases).
3. This amendment to Complaint #04NO-23-R1 satisfies all other jurisdictional criteria under Title VI and EPA’s implementing regulations. Specifically, this written amendment describes the alleged discriminatory acts in writing, identifies the challenged practice, and is filed with EPA by CLF and [REDACTED] who assert and allege that MassDEP’s actions with respect to New Bedford’s LEP speakers amounts to discrimination on the basis of national origin, violating Title VI and associated EPA regulations. 40 C.F.R. §7.120(a), (b).

II. ADDITIONAL FACTS

Complainants reiterate and incorporate here all the facts as stated in Complaint #04NO-23-

R1. Complainants further state as follows:

██████████ (b)(6) Privacy, (b)(7)(C) Enf. (the “Project Proponent”) filed its Site Suitability Application with MassDEP on February 22, 2023. After requesting additional information, MassDEP determined the Application was complete on June 9, 2023. Public comments were due on August 23, 2023, and both Complainants in this matter filed comments with MassDEP. Shortly thereafter on August 31, 2023, the Project Proponent requested additional time to respond to the public comments. MassDEP granted the Project Proponent a thirty-day extension and indicated that it would issue its decision on the Application by November 1, 2023. A series of extensions ensued for both MassDEP and the Project Proponent to address MassDEP’s concerns around traffic and noise, and the Project Proponent submitted additional information, including a supplemental traffic memorandum and culminating in a revised sound study submitted on March 5, 2024. Both Complainants requested enlargement of the public comment period during this time, but MassDEP did not respond to those requests.

With the consent of the Project Proponent, MassDEP once again extended its deadline to issue a determination until March 13, 2024. On March 12, 2024, MassDEP extended its deadline to issue a determination until April 3, 2024, informally allowing the public to submit comments until March 27, 2024. That same day, Complainant ██████████ (b)(6) Privacy, (b)(7)(C) Enf. sent a letter to MassDEP requesting an extension of the determination deadline to April 12, 2024. Complainant CLF also requested an extension of the determination deadline to April 17, 2024, and an extension of the public comment

(b)(6) Privacy, (b)(7)(C) Enf. Privacy

period to April 10, 2024. MassDEP did not respond to these requests by March 27, 2024. Accordingly, CLF submitted an independent sound study to MassDEP by the March 27, 2024, deadline. The next day, on March 28, 2024, MassDEP extended the deadline for informal public comment to April 3, 2024, and extended its deadline to issue a determination until April 12, 2024. On April 12, 2024, MassDEP extended its determination deadline to April 29, 2024. When April 29, 2024 arrived, MassDEP did not issue a determination, but communicated to the New Bedford Board of Health (not the public or the (b) (6), (b) (7)(C) Stakeholders List maintained by MassDEP) that the agency would continue its internal review of the application, but would not give a deadline as to when a decision would be made.

MassDEP provided no further communication to the public until July 11, 2024, when it publicly shared a letter it sent to the Project Proponent on July 10, 2024, requesting the Project Proponent submit additional information regarding its traffic study based on a peer review submitted by Complainant (b) (6), (b) (7)(C). No deadline was given for the Project Proponent to submit this information. On July 29, 2024, Complainants, along with twenty other organizations and government officials, submitted a letter to MassDEP requesting that once the Project Proponent submits its information, that MassDEP reopen the comment period, conduct a listening session, and provide appropriate and necessary translation and interpretation services so that all members of the community can adequately access the site suitability process. As of the filing of this amendment, to the best of Complainants' knowledge, MassDEP has not responded to the letter, nor has the Project Proponent submitted any information to MassDEP.

III. VIOLATIONS

Since the Project Proponent filed its Site Suitability Application on February 22, 2023, the Project Proponent has consistently failed to engage New Bedford's Limited English Proficiency

(“LEP”) speakers about the Project and its impact on their community. The process has lacked community participation in multiple ways. **First**, the Project Proponent failed to provide adequate outreach to the community, as well as notice and accessible registration processes for public meetings. For the two public meetings that were held, the Project Proponent provided little to no interpretation services for residents who required them. **Second**, the Project Proponent and MassDEP failed to make translated copies of factual and important documents available to LEP speakers in their own languages on the Project’s public portal. Each of these obstacles is discussed in more detail below.

A. Barriers to LEP Speakers Were Created by Inadequate Outreach, as Well as Limited to No Interpretation Services.

The Project Proponent and MassDEP failed to conduct sufficient community outreach throughout the site suitability review process. Since the filing of the Site Suitability Application on February 24, 2023, MassDEP only held two public meetings about the Application. The first meeting, which occurred on March 1, 2023, was held in the evening at the site of the proposed facility, 100 Duchaine Blvd, New Bedford, Massachusetts. There were no interpretation services provided and the meeting was minimally advertised beforehand; as a result, the meeting was sparsely attended.

The second meeting occurred on June 13, 2023, at Normandin Middle School in New Bedford. Complainant (b) (6), (b) (7)(C) was aware of this meeting beforehand and was able to share it widely with the public, so the meeting had much better attendance. However, there were still no interpretation services provided.

No additional public meetings have been held since the June 13, 2023, meeting which is now well over a year ago—despite MassDEP requesting, and the Project Proponent submitting, numerous supplements on important topics such as traffic and noise.

B. Barriers to LEP Speakers Were, and Continue to Be, Created By the Lack of Materials Translated Into Other Languages Available on MassDEP’s Public Access Portal.

Many of MassDEP’s discriminatory acts relating to the translation of documents, or lack thereof, mirror the allegations against the Executive Office of Energy and Environmental Affairs (“EEA”) as laid out in the Complainants’ original Complaint.

As was the case with the original Complaint against EEA, the only document translated into a language other than English on the MassDEP public access portal is the *SCR Fact Sheet*. While translated into three languages that are representative of languages spoken in New Bedford (Portugues, Cape Verdean Creole, and Spanish), the linked titles of the documents are in English. Although the *SCR Fact Sheets* provide the public with a basic understanding of the proposed Project in laypersons’ terms, these documents were filed at the very beginning of a process that has now taken over a year and a half. No updates to these documents have been provided, despite numerous additional submittals by the Project Proponent, CLF, and several community members. Additionally, within the *SCR Fact Sheets*, the reader is referred to the portal for more information to previously submitted application documents that are *also* not translated. The Project Proponent’s website fares little better; it contains the same translated *SCR Fact Sheets* from the public access portal, plus an additional document entitled *Air Quality*, that was translated (albeit poorly²) into Spanish and Portuguese, but not Cape Verdean Creole.

² See Complaint #04NO-23-R1, n. 72 (“The fact sheets contain phrases and language that are a literal translation of the text lacking accuracy and precision. For example, in the Spanish fact sheet, the phrase “How could the project impact me?” is translated as “¿Cómo podría impactar el proyecto en mí?” which if it had been translated accurately would have read, “¿Cómo podría impactarme el proyecto?” The phrase used in the fact sheet reads incoherently instead of fluently. Another example of language that fails to accurately convey the intended meaning is found in the phrase, “emisiones presenciales,” which is meant to communicate “on-site emissions,” but actually reads as “in person” or “face-toface” emissions. Relying on computer-generated translation or translators who lack understanding of the English content instead of utilizing trained translators leads to documents that are not immediately accessible or clear to understand.” (citing (b) (6), (b) (7)(C) [redacted] Project, (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted] (b)(6) Privacy, (b)(7)(C) Enf. Privacy [redacted])

While certain documents—primarily communications from MassDEP to the Project Proponent—have been translated and emailed to the (b) (6), (b) (7)(C) Stakeholders List, as maintained by MassDEP, they are not uploaded to the public access portal. In addition, to the Complainants' knowledge, none of the main, technical documents have been translated *at all*. This failure to provide critical information in a manner in which all community members can absorb it essentially forecloses access and participation for those who do not speak English well, and each day that the documents are not on the public access portal represents a discreet, as well as a continuing, violation of Title VI and EPA's implementing regulations, with the most recent violation being the day of submittal of this Amendment.

C. MassDEP's Failure to Provide Language Services to LEP Speakers is Evidence of Discrimination On the Basis of National Origin.

The Project Proponent discriminated against LEP speakers on the basis of national origin when they failed to provide interpretation and translation services during the site suitability review process. The Project Proponent knew about New Bedford's substantial LEP population; they also knew that such population requires written translation of materials and verbal interpretation services at public meetings. Nevertheless, over the course of one and a half years, the Project Proponent consistently failed to provide these materials and services. Adding insult to injury, MassDEP was aware of and ignored the Project Proponent's failures. By allowing the site suitability process to move forward without translated materials and verbal interpretation services, MassDEP has sanctioned the Project Proponent's actions that discriminated against LEP speakers on the basis of national origin in contravention of Title VI of the Civil Rights Act of 1964.

IV. REQUEST FOR RELIEF

Complainants reiterate their request for relief as outlined in Complaint #04NO-23-R1 and further request the EPA's Office of External Civil Rights Compliance ("OECRC"):

1. Suspend the Project Proponent's ongoing site suitability review process with the Massachusetts Department of Environmental Protection until the conclusion of OECRC review;
2. Require MassDEP to re-open the site suitability review process to allow additional public comment opportunities following written translation of project materials into languages spoken by LEP speakers affected by the Project and at least two in-person public meetings with language interpretation services, as well as a fully accessible registration process for public meetings;
3. Suspend any further federal funding disbursements to MassDEP until MassDEP consistently requires environmental justice and language access compliance for all project proponents; and
4. Issue any other remedy that the EPA deems appropriate.

Federal funding from the EPA is supporting MassDEP in its failure to require language access to residents of New Bedford, thus discriminating on the basis of national origin. Therefore, such funding should be suspended until the EPA is confident their funds are being used lawfully.

V. CONCLUSION

For these reasons, Complainants respectfully request that OECRC accept this amendment to Complaint #04NO-23-R1, promptly and thoroughly investigate the allegations set forth herein,

and take all actions necessary to ensure that Respondent is brought into full compliance with the applicable law.

Respectfully submitted,

(b) (6), (b) (7)(C) and Conservation Law Foundation, Inc.

By their attorney,



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