



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

January 7, 2025

In Reply Refer to:

EPA Complaint No: 02RNO-23-R3

Lisa Borin Ogden
Acting Secretary
Delaware Department of Natural Resources & Environmental Control
Richardson & Robins Building
89 Kings Highway SW
Dover, DE 19901
Lisa.BorinOgden@delaware.gov

Re: Resolution of EPA Complaint No. 02RNO-23-R3

Dear Acting Secretary Borin Ogden:

This letter is to notify you that the U.S. Environmental Protection Agency (“EPA”), Office of Environmental Justice & External Civil Rights (“OEJECR”), Office of External Civil Rights Compliance (“OECRC”), has resolved EPA Complaint No. 02RNO-23-R3 based on the enclosed Informal Resolution Agreement (“Agreement”), which is entered into between EPA and the Delaware Department of Natural Resources and Environmental Control (“DNREC”).

On September 8, 2023, EPA accepted for investigation a complaint filed against DNREC alleging discrimination on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964 (“Title VI”) and EPA’s nondiscrimination regulation, at 40 C.F.R. Parts 5 and 7. Specifically, EPA 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,¹ including its public participation

¹The five state environmental permits are found in draft form on DNREC’s website. See Bioenergy Innovation Center Project, On file with Del. Dep’t of Nat. Res. & Env’t Control (Sep. 23, 2022), available at <https://dnrec.alpha.delaware.gov/public-hearings/bioenergy/>. See Draft Permit APC-2022/0048-CONSTRUCTION, On file with Del. Dep’t of Nat. Res. & Env’t Control (Aug. 21, 2022), available at <https://documents.dnrec.delaware.gov/Admin/Hearings/2022-P-MULTI-0012/Air/Emergency-Generator-Draft-Permit.pdf>. See Draft Permit APC-2022/0049-CONSTRUCTION, On file with Del. Dep’t of Nat. Res. & Env’t Control (Sep. 23, 2022), available at <https://documents.dnrec.delaware.gov/Admin/Hearings/2022-P-MULTI-0012/Air/Anaerobic-Digester-Draft-Permit-20220923.pdf>. See Draft Permit WPCC 3005/22, On file with Del. Dep’t of Nat. Res. & Env’t Control (Aug. 21, 2022), available at <https://documents.dnrec.delaware.gov/Admin/Hearings/2022-P-MULTI-0012/Water/Draft-Wastewater->

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,² 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 7.³

During the course of EPA's investigation, DNREC agreed to enter into the IRA process in order to resolve EPA Complaint No. 02RNO-23-R3. The enclosed Agreement, signed on January 7, 2025, is entered into by EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI and 40 C.F.R. Parts 5 and 7. It is understood that the Agreement does not constitute an admission by DNREC of any violation or a finding by EPA of compliance or noncompliance with applicable federal non-discrimination laws and regulation.

[Pretreatment-Permit.pdf](#). See Draft Permit WPC 3007/22, On file with Del. Dep't of Nat. Res. & Env't Control (Aug. 21, 2022), available at <https://documents.dnrec.delaware.gov/Admin/Hearings/2022-P-MULTI-0012/Water/Draft-Anaerobic-Digester-Permit.pdf>.

² *Id.*

³ 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 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); 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); U.S. EPA, Procedural Safeguards Checklist for Recipients, at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf (rev. Jan. 2020) (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).

The enclosed Agreement does not affect DNREC's continuing responsibility under Title VI, 40 C.F.R. Parts 5 and 7, and other federal nondiscrimination laws, nor does it affect OECRC's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. This letter sets forth EPA's disposition of the complaint. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such.

If you have any questions regarding this letter and the Agreement between EPA and DNREC, please contact me at (202) 564-8796 or by e-mail at hoang.anhthu@epa.gov.

Sincerely,

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

cc: Ariadne Goerke
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