



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

INFORMAL RESOLUTION AGREEMENT
between the
WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN RESOURCES
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA COMPLAINT NO. 02NO-20-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) and other federal nondiscrimination laws, and 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 or retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance.¹
- B. The West Virginia Department of Health and Human Resources (WVDHHR) receives federal financial assistance from the EPA. As a term of receiving that assistance, WVDHHR agreed to comply with federal nondiscrimination laws, including Title VI, and all applicable civil rights regulations.² WVDHHR also provided assurance that it would "fully comply with all applicable civil rights statutes and EPA regulations."³ Therefore, WVDHHR must ensure non-discrimination in programs and activities pursuant to the provisions of Title VI, the other federal non-discrimination laws and the EPA's implementing regulation.
- C. On March 19, 2020, the EPA received Complaint No. 02NO-20-R3, which alleged discrimination by WVDHHR based on national origin. EPA's Office of External Civil Rights Compliance (OECRC), within the Office of Environmental Justice and External Civil Rights, enforces federal civil rights law, including Title VI of the Civil Rights Act of 1964.

¹ 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 Act 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.

² See, Term and Condition 36, Civil Rights Obligations at https://www.epa.gov/sites/production/files/2019-09/documents/fy_2020_epa_general_terms_and_conditions_effective_october_1_2019.pdf

³ See, Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance, submitted by WVDHHR on April 30, 2020.

- D. In response to the complaint, on April 10, 2020, the EPA accepted for investigation the following issues:
1. Whether the WVDHHR provides meaningful access to information and their programs and activities, to residents with limited-English proficiency as required by Title VI of the Civil Rights Act of 1964 and EPA's non-discrimination regulation found at 40 C.F.R. Part 7.⁴
 2. Whether the WVDHHR has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to WVDHHR services, programs and activities for individuals with limited-English proficiency and individuals with disabilities, and whether the WVDHHR's public participation policy and process provide meaningful public involvement that is consistent with Title VI and EPA's Title VI implementing regulation at 40 C.F.R. Part 7.⁵
- E. During the course of the EPA's investigation into Complaint No. 02NO-20-R3, on June 10, 2020, the WVDHHR agreed to engage in the voluntary Informal Resolution Agreement (Agreement) process in order to resolve the complaint.
- F. This Agreement is entered into by the WVDHHR and the EPA.
- G. This Agreement is entered into pursuant to the authority granted to the EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and the EPA's implementing regulation found at 40 C.F.R. Parts 5 and 7, and resolves Complaint No. 02NO-20-R3.
- H. This Agreement does not constitute an admission by the WVDHHR of a violation of, or a finding of compliance or noncompliance by the EPA with, Title VI or 40 C.F.R. Parts 5 and 7.
- I. The WVDHR is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and other federal non-discrimination laws and the EPA regulation at 40 C.F.R. Parts 5 and 7. The activities

⁴ See Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) *et seq.* (prohibiting discrimination on the basis of national origin); *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 EPA's 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). <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>

⁵ See EPA's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. 71 FR 14207 (March 21, 2006).

[https://www.epa.gov/sites/production/files/2020-](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf)

[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)

See also Procedural Safeguards Checklist for Recipients, which provides a more detailed explanation of nondiscrimination obligations and best practices, available at https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf.

detailed in Section II and Section III of this Agreement, which the WVDHHR has voluntarily agreed to undertake and implement, are in furtherance of this ongoing commitment. OECRC is aware that some efforts are already underway within WVDHHR.

- J. The Safe Drinking Water Act (SDWA) requires EPA to establish and enforce standards that public drinking water systems must follow, including maximum contaminant levels or treatment techniques and monitoring and reporting requirements. EPA delegates primary enforcement responsibility (also called primacy) for public water systems (PWS) to states and Indian Tribes if they meet certain requirements.⁶ EPA has delegated primacy in West Virginia to the WVDHHR. EPA also provides federal financial assistance to WVDHHR requiring it to provide technical assistance to the PWS relating to the SDWA⁷. As a result, WVDHHR interacts with hundreds of local PWS throughout the state on a regular basis. The extent to which this agreement impacts the relationship between WVDHHR and the PWS is addressed in Section III.

II. SPECIFIC WVDHHR COMMITMENTS

The WVDHHR agrees to the following regulatory requirements that relate to the programs and services provided to the public directly by WVDHHR:

A. Notice of Non-Discrimination under the Federal Non-Discrimination Laws⁸

1. The WVDHHR will post a notice of non-Discrimination (Notice) on the WVDHHR's website homepage, in all WVDHHR's offices and facilities, and in future general publications that are distributed to the public (*e.g.*, public outreach materials, such as brochures, notices, fact sheets or other information on rights and services; applications or forms to participate in or access WVDHHR programs, processes or activities). The WVDHHR will ensure that its Notice is accessible to individuals with limited-English proficiency (LEP) and individuals with disabilities, including ensuring that the Notice as posted on its Website Homepage is accessible to persons who are blind or have low vision.
2. The Notice will contain, at a minimum, the following recommended text:
 - a. The WVDHHR does not discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex in administration of its programs or activities.
 - b. For WVDHHR programs that are covered by 40 C.F.R. Parts 5 and 7, the notice shall also contain text that the WVDHHR does not intimidate or

⁶ See <https://www.epa.gov/dwreginfo/primacy-enforcement-responsibility-public-water-systems>.

⁷ See *e.g.*, https://www.usaspending.gov/award/ASST_NON_00311621_6800 (stating, in part, that, "Specific activities include... ensuring that public participation occurs regarding drinking water systems [and] providing technical assistance to public water systems....").

⁸ 40 C.F.R. §7.95

retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.

- c. Jason Barnette is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 40 C.F.R. Parts 5 and 7 (Non-Discrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency), including Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; Title IX of the Education Amendments of 1972; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972 (hereinafter referred to collectively as the federal non-discrimination laws).
- d. If you have any questions about this notice or any of the WVDHHR's non-discrimination programs, policies or procedures, you may contact:

Jason Barnette
EEO/Civil Rights Specialist
West Virginia Department of Health and Human Resources
Office of Human Resources Management
One Davis Square, Suite 400
Charleston, West Virginia 25301
304-352-4331
Jason.W.Barnette@wv.gov

If you believe that you have been discriminated against with respect to a WVDHHR program or activity, you may contact the EEO/Civil Rights Specialist identified above or visit our website at <https://dhhr.wv.gov/Pages/default.aspx> to learn how and where to file a complaint of discrimination.

2. Within 30 days after the effective date of this Agreement, the WVDHHR will submit to the EPA for review a draft copy of its Notice of Non-Discrimination that is consistent with 40 C.F.R. Parts 5 and 7. OECRC will review the draft Notice of Non-Discrimination and provide any comments within 30 days. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV. C., , WVDHHR will prominently publish in print and on its website the final Notice of Non-Discrimination.
3. If the identity of the Non-Discrimination Coordinator changes, then the WVDHHR will promptly update materials as appropriate.

B. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws⁹

1. The WVDHHR will post Grievance Procedures to promptly and fairly process and resolve discrimination complaints filed under federal nondiscrimination statutes and, where applicable, the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7 on WVDHHR's website homepage(s), in all WVDHHR's offices and facilities, and in its general publications as appropriate that are distributed to the public. The WVDHHR will ensure that its Grievance Procedures are accessible to individuals with LEP and individuals with disabilities, including ensuring that the Grievance Procedures posted on the WVDHHR's Website Homepage is accessible to individuals who are blind or have low vision. These Grievance Procedures would be applicable to situations arising from public meetings held by PWS where WVDHHR is presenting information or otherwise arranges the meeting in emergency situations, as described in Section III.
2. The Grievance Procedures will:
 - a. Clearly identify the Non-Discrimination Coordinator, including name and contact information;
 - b. Explain the role of the Non-Discrimination Coordinator relative to the coordination and oversight of the Grievance Procedures;
 - c. State who may file a complaint under the Grievance Procedures and describe the appropriate bases for filing a complaint;
 - d. Describe the processes available for filing complaints;
 - e. State that the preponderance of the evidence standard will be applied during the analysis of the complaint;
 - f. Contain assurances that intimidation and retaliation are prohibited and that claims of intimidation and retaliation will be handled promptly and fairly pursuant to your Grievance Procedures in the same manner as other claims of discrimination;
 - g. Assure the prompt and fair resolution of complaints which allege violations of federal non-discrimination laws;
 - h. State that written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found and the description of the investigation process.
 - i. Be reviewed on an annual basis (for both in-print and online materials), and revised as necessary, to ensure prompt and fair resolution of discrimination complaints.

⁹ 40 C.F.R. §7.90

3. Within 120 days after the effective date of this Agreement, the WVDHHR will submit to the EPA for review a draft copy of its Grievance Procedures. OECRC will review the draft Grievance Procedures and provide any comments within 30 days. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV. C., WVDHHR will prominently publish in print and on its website the final Grievance Procedures in print and on its website.

C. Designation of Non-Discrimination Coordinator¹⁰

1. The WVDHHR will designate at least one Non-Discrimination Coordinator to ensure compliance with the federal non-discrimination laws, who will:
 - a. Provide information to individuals internally and externally that the WVDHHR does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of the WVDHHR's programs or activities, and, where applicable, the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7;
 - b. Provide information to individuals both internally and externally that the WVDHHR does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights;
 - c. Provide notice of the WVDHHR's grievance processes and the ability to file a discrimination complaint;
 - d. Establish a mechanism (e.g., an investigation manual) for implementation of the WVDHHR's Grievance Procedures to ensure that all discrimination complaints filed with the WVDHHR under federal non-discrimination laws and the EPA implementing regulations 40 C.F.R. Parts 5 and 7 are processed promptly and fairly. One element of any policy and procedure or mechanism must include providing meaningful access for individuals with limited English proficiency and individuals with disabilities to the WVDHHR's programs and activities;
 - e. Track all complaints filed with the WVDHHR under federal non-discrimination laws, in order to identify any patterns or systemic problems;
 - f. Conduct semiannual reviews/analysis of all complaints filed with the WVDHHR under the federal non-discrimination laws, identified in 40 CFR Parts 5 and 7 and/or any other discrimination complaints independently investigated by the WVDHHR covering these laws, to

¹⁰ 40 C.F.R. §7.85(g)

- identify and address any patterns, systematic problems or any trends identified;
- g. Ensure that appropriate training is provided for WVDHHR staff in the processes available to resolve complaints filed with the WVDHHR under federal non-discrimination laws;
 - h. Ensure that appropriate training is provided for WVDHHR staff and all relevant contractors on the WVDHHR's non-discrimination policies and procedures, as well as the nature of the WVDHHR's obligation to comply with federal nondiscrimination laws;
 - i. Ensure that complainants are updated on the progress of their complaints filed with the WVDHHR under federal non-discrimination laws and are promptly informed as to any determinations the WVDHHR has made;
 - j. Undertake periodic evaluations of the efficacy of the WVDHHR's efforts to provide services, aids, benefits, and participation in any of the WVDHHR's programs or activities without regard to race, color, national origin, disability, age, sex or prior exercise of rights or opposition to actions protected under federal non-discrimination laws.
2. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (*e.g.*, serving as the WVDHHR's Non-Discrimination Coordinator as well as its legal advisor or representative on civil rights issues).
 3. Within 90 days after the effective date of this Agreement, the WVDHHR will identify at least one individual who will serve as Non-Discrimination Coordinator(s) consistent with the regulatory requirements of 40 C.F.R. §5.135, §7.85(g), and §7.95(a).
 4. Within 90 days of appointment of a Non-Discrimination Coordinator, the WVDHHR will forward to OECRC proof that the responsibilities have been included in the incumbent's statement of duties and that the incumbent has accepted the duties.

D. Public Participation

1. The WVDHHR understands that meaningful public participation consists of informing, consulting, and working with potentially affected communities at various stages of the environmental decision-making process to address their questions and concerns. Therefore, the WVDHHR will:
 - a. Ensure that its public involvement process is available to all persons regardless of race, color, national origin, disability, age, sex, or prior exercise of rights protected, or opposition to actions prohibited, by 40 C.F.R. Parts 5 and 7 and the federal non-discrimination laws;

- b. Ensure that the factors used to determine the appropriate time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner;
- c. Develop, publicize, and implement written public participation procedures (consistent with the federal civil rights laws and the Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs EPA's Public Involvement Guidance), that include implementation of the following steps for effective public participation that is accessible to all persons regardless of race, color, national origin (including LEP), disability, age, and sex each time the WVDHHR engages in a public participation or public involvement process – and is applicable as described within section III for certain public meetings that may be run by the PWS when assisted by WVDHHR:
 - i) Develop a description of the relevant/affected community based on the action being considered (including demographics, history, and background, for example/such as, percentage of the service area that is minority, has less than a high school education, has members of households who speak a language other than English and/or speak English less than very well, has a history of filing complaints, has an inability to access traditional communication channels, internet, etc.);
 - ii) Provide a contact list for relevant staff members on the WVDHHR's website, including phone numbers and email addresses, to allow the public to communicate via phone or internet;
 - iii) Develop a list of past and present community concerns (including any complaints filed under the federal nondiscrimination laws), and actions undertaken in response to such concerns;
 - iv) Develop and implement a detailed plan of action (including outreach activities) the WVDHHR will take to address concerns raised by the public;
 - v) Develop and implement a contingency plan for unexpected events that may impact public meetings or other public participation avenues;
 - vi) Identify location(s) where public meetings will be held (considering the availability and schedules of public transportation), and ensure that the location(s) will allow for meaningful participation/involvement by individuals with LEP and individuals with disabilities;
 - vii) Develop and maintain a list of contact names for obtaining reasonable accommodations at no cost for individuals with disabilities and

- language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings;
- viii) Develop and maintain a list of appropriate local media contacts (based on the cultural and linguistic needs of the community).
- e. The WVDHHR will, during times of national, state, or local emergency, ensure that any public meetings occurring virtually are held in such a manner as to ensure the meaningful participation/involvement of individuals with limited English proficiency and individuals with disabilities. The WVDHHR may seek technical assistance from EPA about how it may achieve this outcome.
- f. The WVDHHR will ensure that a Public Involvement/Participation plan (plan) is developed and prominently highlighted on the WVDHHR website for the benefit of interested residents, which will explain how residents can participate in the WVDHHR's programs, activities, and services. WVDHHR shall also solicit and consider public input into development of the Public Involvement Plan. This plan should also be posted in other publicly accessible locations such as local public libraries, and WVDHHR will ensure that it incorporates the following elements:
- i. How the WVDHHR will meaningfully engage the public prior to and during WVDHHR programs, activities, and services (e.g. how the public can request to participate during WVDHHR public engagement opportunities such as public hearings, townhalls, etc., including criteria on how these events are determined);
 - ii. What methods the WVDHHR will implement to ensure the public can access publicly available information and documents regarding WVDHHR programs, activities, and services, which includes providing clear instructions for public users on how and where to access WVDHHR's electronic and hardcopy documents and information.
2. The Non-Discrimination Coordinator(s) will ensure that appropriate WVDHHR staff and all relevant contractors receive training in best practices related to public involvement in environmental permitting processes and other processes undertaken by WVDHHR that include public engagement.
3. The WVDHHR will provide a mechanism for residents to access relevant hard copy information in a centralized public location near to a proposed WVDHHR activity (e.g. proposed permit application) in addition to

providing the public with access to internet and digitally provided information relating to that activity;

4. Within 120 days of the effective date of this Agreement, the WVDHHR will submit to EPA for review a draft copy of its Public Participation Plan(s). OECRC will review the draft Public Participation Plan(s) and provide any comments within 30 days. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV. C., WVDHHR will prominently publish in print and on its website the final Public Participation Plan(s).

E. WVDHHR Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (LEP)¹¹

1. The WVDHHR will conduct an appropriate analysis as described in EPA's LEP Guidance, to identify the appropriate language groups and determine what language services or mix of language services the WVDHHR needs to provide (e.g., interpreters and translators), to ensure that individuals with limited-English proficiency can meaningfully participate in the WVDHHR's programs and activities.
2. The WVDHHR will develop, publicize, and implement a written Language Access Plan to ensure meaningful access to all WVDHHR services, programs and activities for individuals with LEP, at no cost to those individuals. WVDHHR shall also solicit and consider public input into development of the Language Access Plan. Where indicated, especially within section III below relating to the PWS, or where identified or requested, the WVDHHR will:
 - a. Translate vital documents¹² of general interest into prominent languages for individuals with LEP who are served or likely to be encountered by

¹¹ See Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin,) *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.) On June 25, 2004, EPA issued Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Recipient Guidance). The LEP Recipient Guidance clarifies recipients' existing legal obligations to provide meaningful access to limited English proficient persons in all programs and activities that receive federal financial assistance from EPA. The LEP Recipient Guidance also provides a description of the factors recipients should consider in fulfilling their responsibilities to persons with limited-English proficiency to ensure meaningful access to recipients' programs and activities and the criteria EPA uses to evaluate whether recipients are in compliance with Title VI and the Title VI implementing regulation. LEP Recipient Guidance, 69 FR 35602, 35606-35607 (June 25, 2004), at <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>; 40 C.F.R. § 7.35(a) (prohibiting discrimination on the basis of national origin in the programs or activities of a recipient of EPA assistance).

¹² Whether or not a document (or the information it disseminates or solicits) is "vital" may depend on the importance of the program, information, encounter or service involved, and the consequence to individual(s) with the LEP if the information in question is not provided accurately or in a timely manner. (See EPA's 2004 *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National*

the WVDHHR's programs and activities, including any public notices regarding drinking water concerns that WVDHHR issues following consultation with a PWS on behalf of a PWS, or any other public health and/or environmental notices and violations (if issued by WVDHHR rather than a PWS for any reason), and would also include consumer confidence reports;

- b. Translate vital documents of individual interest to a particular individual with LEP or group individuals with LEP (*e.g.*, an individual with LEP wishing to file a grievance or complaint);
 - c. Provide for simultaneous oral interpretation of live proceedings (*e.g.*, town hall meetings and public hearings) in prominent languages, and the ability for individuals with LEP to participate in those proceedings to the same extent as persons with English proficiency can participate; and
 - d. Provide for simultaneous interpretation of proceedings, meetings, etc., for an individual LEP person(s) participating in one of your programs or activities (*e.g.*, an individual with LEP wishing to provide comments during a hearing).
3. Within 120 days of the effective date of this Agreement, the WVDHHR will submit to EPA for review a draft copy of its Language Access Plan. OECRC will review the draft Language Access Plan and provide any comments within 30 days. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV. C., WVDHHR will prominently publish in print and on its website the final Language Access Plan.

F. WVDHHR Plan to Ensure Meaningful Access to Programs and Activities for Persons with Disabilities¹³

1. The WVDHHR will develop, publicize and implement a Disability Access Plan to ensure meaningful access to all WVDHHR programs, services and activities for individuals with disabilities.¹⁴ As part of the development, WVDHHR shall also solicit and consider public input into development of the Disability Access Plan.
2. The WVDHHR will provide, at no cost, auxiliary aids and services to individuals with disabilities, (including, but not limited to, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to

Origin Discrimination Affecting Limited English Proficient Persons, at https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf).

¹³ See 40 C.F.R. §§ 7.45 - 7.75; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a). Section 504, and EPA's implementing regulation prohibit discrimination on the basis of disability in any programs or activities receiving federal financial assistance.

¹⁴ See Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf

other individuals, as necessary), to ensure effective communication and an equal opportunity to participate fully in benefits, activities, programs, and services provided by the WVDHHR in a timely manner in such a way as to protect the privacy and independence of the individual.

3. The WVDHHR will ensure that its facilities and other facilities utilized by the WVDHHR (*e.g.* if the WVDHHR holds a public hearing at a school or recreational center) are physically accessible to, individuals with disabilities. As provided in Section III, where WVDHHR is acting in concert with a PWS at a public meeting hosted by the PWS, in for example, a Tier 1 scenario, WVDHHR will ensure that those meeting(s) have the same accommodations as meetings WVDHHR ordinarily holds would otherwise have.
4. Within 120 days of the effective date of this Agreement, the WVDHHR will submit to OECRC for review a draft copy of its Disability Access Plan. OECRC will review the draft Disability Access Plan and provide any comments within 30 days. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV. C., WVDHHR will prominently publish in print and on its website the final Disability Access Plan.

G. Training

1. Within 60 days of the OECRC approval of all other deliverables noted throughout the Agreement, the WVDHHR will ensure all its staff and relevant contractors have training on federal non-discrimination obligations and all plans, policies and procedures created and implemented as part of this Agreement. WVDHHR may request assistance from EPA for any of the training required in this Agreement, including having the training be provided by EPA staff. WVDHHR should consider the inclusion of community representatives as a part of the staff training.
2. Within 30 days of the initial training implemented following sub-section 1 above, the WVDHHR will forward to EPA for review a draft plan for ensuring that such training is also a routine part of the on-boarding process for new employees and is given regularly as refresher training to all employees and relevant contractors. OECRC will review the draft training plan and provide any comments within 30 days. WVDHHR will respond to OECRC comments, discuss with OECRC any concerns if necessary, and within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV. C., the WVDHHR will forward a final copy of the training plan to OECRC and implement the above plan.

III. WVDHHR and the Public Water Systems (PWS)

A. WVDHHR Compliance and Enforcement Oversight of Public Water Systems

1. This Agreement does not change existing environmental and public health compliance and enforcement oversight obligations under the Safe Drinking Water Act (SDWA) currently delegated to WVDHHR by EPA as the primacy agency as to the public water systems (PWS). The technical assistance obligations of WVDHHR to PWS as relates to language translation are clarified in more detail in subsection 3 below.
2. This agreement does not purport to supersede any other environmental or health-related statutes enforced by WVDHHR as to the PWS or other entities with the authority of EPA, HHS, or any other federal agency. Compliance with SDWA or other environmental or public health-related statutes by WVDHHR is independent of compliance with Title VI of the Civil Rights Act or the other civil rights laws enforced by EPA, HHS, or other federal agencies of which WVDHHR may be a recipient.
3. The obligations in section B below are triggered because of the Grant language requiring the provision of technical assistance to the PWS,¹⁵ as well as a Civil Rights Act Term and Condition agreed to by WVDHHR upon acceptance of any financial assistance from EPA.¹⁶ Additionally, these are instances relating to imminent danger to public health upon which WVDHHR has at minimum a consultation role.

B. WVDHHR Technical Assistance Obligations to PWS

1. Tier 1 Notifications:
 - a. WVDHHR's technical assistance obligations under the Safe Drinking Water Act grant require the provision of technical assistance to the PWS. While WVDHHR's compliance with civil rights laws is independent of compliance with the SDWA and other environmental laws, WVDHHR is expected to provide technical assistance to PWS relating to their disability access and Limited English Proficiency obligations, which include, but are not limited to contemporaneous provision of written and/or oral notices such as boil water notices, do not drink notices, nitrate exceedance notices, or other such emergency notices with immediate public health implications, generally delineated as Tier 1 notices within the

¹⁵ See, e.g., https://www.usaspending.gov/award/ASST_NON_00311621_6800 (stating, in part, that, "Specific activities include... ensuring that public participation occurs regarding drinking water systems [and] providing technical assistance to public water systems....").

¹⁶ See link at FN 2, *supra*.

existing WVDHHR public notification directives.¹⁷ The languages deemed appropriate for notices to be provided to the PWS are to be determined through the LEP analysis done by WVDHHR in performance of section II. E, for an appropriate geographic area using information such as school-based Department of Education data if possible. Appropriate disability provisions are to be determined by the WVDHHR's analysis in performance of section II. F.

- b. The technical assistance obligations would also extend to WVDHHR's assistance with provision of accommodations for individuals with disabilities, written notice for and oral interpretation at any public meetings held by PWS relating to such Tier 1 notifications when there is contemplated to be actual involvement by WVDHHR in the meeting, or if logistical coordination with WVDHHR is more operationally expedient for the carrying out of the PWS' public health duties in an emergency situation.
- c. After doing the analysis in Section II. E., if the WVDHHR becomes aware that a PWS has failed to timely issue an appropriate Tier 1 notice to the community and WVDHHR is aware of this area having a localized LEP population as a result of the analysis— if WVDHHR issues the notice to mitigate ongoing harm to public health, or if the PWS alternatively seeks WVDHHR's assistance in communicating the notice in an emergency situation, WVDHHR will ensure that the notices are appropriately translated for the community at issue. Additionally, if as a result of the consultation provided for in their own notification directives, the WVDHHR either (1) comes to a public meeting held by the PWS to provide information, or (2) arranges the meeting on behalf of the PWS, or (3) provides the required Tier 1 notice on behalf of the PWS as indicated above, it is to be WVDHHR's responsibility that accommodations are made for any LEP population or persons with disabilities as if they were WVDHHR's own public meeting or public notice. OECRC and WVDHHR will jointly address the technical assistance resources needed for this below in item 3.

2. Less-Urgent Notifications such as Consumer Confidence Reports:

In addition to obligations related to Tier 1 notices as described above, WVDHHR will ensure that information concerning language access and disability access are part of the technical assistance provided to PWS by WVDHHR relating to other types of less-urgent public notifications by the

¹⁷ See West Virginia Manual of Environmental Health Procedures at p 2, https://www.wvdhhr.org/phs/manual/Drinking_Water/DW-37%20PN%20gm%2009-10-09.pdf

PWS that may not require WVDHHR's involvement for issuance. These would include other tiers of notices in the existing WVDHHR public notification directives and use of existing phrases in the annual Consumer Confidence Reports (CCRs) provided by PWS, relating to drinking water quality, that urge individuals who may be unable to understand the CCR notice to seek assistance from others. The languages deemed appropriate for Tier 1 notices to be provided to the PWS are to be determined through the LEP analysis done by WVDHHR in performance of section II. E, at an appropriate geographic level, because certain PWS may have higher percentages within their customer base that are not easily detected at a county level. A potential localized information source for this is Department of Education's school-based data. This analysis should be used for these less-urgent notifications as well. Appropriate disability provisions are to be determined by the WVDHHR's analysis in performance of section II. F.

3. OECRC Assistance:

- a. OECRC will assist WVDHHR with the disability, written language translation and oral interpretation elements of technical assistance provided to the PWS by WVDHHR. This may consist of written and/or oral technical assistance, for example, sample translations. However, OECRC technical assistance to WVDHHR does not include actual provision of the assistance to the PWS, nor does it include additional funding from OECRC, as this technical assistance is already WVDHHR's responsibility under the SDWA grant. If WVDHHR attends a public meeting put on by a PWS to provide information, or arranges a meeting on behalf of the PWS, WVDHHR has the same obligations described in this Agreement as if the meeting were sponsored by WVDHHR.
- b. Within 90 days of signing this agreement, OECRC and WVDHHR will agree upon what written items are to be provided to the PWS by WVDHHR. Within 30 additional days of resolving any potential disagreement as to items to be provided to the PWS, WVDHHR will deliver said items to the PWS.

IV. GENERAL CONSIDERATIONS

- A. In consideration of the WVDHHR's implementation of commitments and actions described in Sections II and III of this Agreement, OECRC will end its investigation of Complaint No. 02NO-20-R3 and not issue a decision containing findings on the merits of the complaint.
- B. OECRC will monitor compliance with the commitments in Sections II and III of this Agreement, as appropriate, to ensure they are fulfilled. Once the terms

of this Agreement are satisfied, OECRC will issue a letter documenting completion of the commitments, closure of its monitoring actions and closure of Complaint No. 02NO-20-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 the WVDHHR 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. Following that, as noted throughout the sections relating to deliverables above, should there be negotiations and/or edits needed to OECRC's comments, the parties will resolve those within 30 days and WVDHHR will finalize the deliverable for publication by WVDHHR within 30 days.
- D. EPA will, upon request, provide technical assistance to the WVDHHR regarding any of the civil rights obligations previously referenced. This may be in written or oral form.

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 the WVDHHR to the EPA via email will be sent to the following email address: Hoang.Anhthu@epa.gov, as well as a copy to the Case Manager, Jonathan Stein, at Stein.Jonathan@epa.gov.
- D. Documents submitted by the EPA to WVDHHR will be sent to Jason Barnette, EEO/Civil Rights Specialist, at Jason.w.barnette@wv.gov.

VI. EFFECT OF THE AGREEMENT

- A. The WVDHHR understands that, if necessary, OECRC may visit the WVDHHR, interview staff, and request such additional reports or data as are necessary for OECRC to determine whether the WVDHHR has fulfilled the terms of this Agreement.
- B. The WVDHHR understands that the EPA will not close its monitoring of this Agreement until OECRC determines that the WVDHHR has fully complied with this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-opening an investigation.

- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to the WVDHHR's program or authorities, or for other good cause, the Party seeking a modification will promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement will take effect only upon written agreement by the Secretary of the WVDHHR or their designee and the Director of OECRC.
- D. This Agreement constitutes the entire Agreement between the WVDHHR and the EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person will be construed to change any commitment or term of this Agreement, except as specifically agreed to by the WVDHHR and the EPA in accordance with the provisions of Section VI(C) above.
- E. This Agreement does not affect the WVDHHR's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and the EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect the EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. 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 individuals signing this Agreement represent that they are authorized to execute this Agreement and legally bind the parties to the Agreement.

On Behalf of the West Virginia Department of Health and Human Resources:



Jeffrey H. Coben, MD (Date)
Interim Cabinet Secretary
West Virginia Department of Health and Human Resources

On behalf of the Office of External Civil Rights Compliance, Office of Environmental Justice and External Civil Rights, U.S. Environmental Protection Agency:

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