



## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

December 27, 2023

**In Reply Refer To:**

EPA Complaint No. 07R-22-R3

Delano Hunter  
Director  
D.C. Department of General Services  
2000 14<sup>th</sup> Street, NW  
8<sup>th</sup> Floor  
Washington, D.C. 20009  
Delano.hunter@dc.gov

**Re: Notification of Administrative Closure without Prejudice**

Dear Director Hunter,

This letter is to notify you that, for the reasons discussed below, the Environmental Protection Agency (EPA), Office of External Civil Rights Compliance (OECRC) is administratively closing EPA Complaint No. 07R-22-R3, which OECRC accepted for investigation on August 22, 2023. OECRC accepted for investigation the following issues:

1. Whether DGS's submission of the Facility's Environmental Impact Statement Form (EISF) to DOE after construction had begun on the Facility subjected the residents of the Brentwood community to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7; and
2. Whether DGS has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all 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 DGS's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether DGS has a public participation policy and process that is consistent with Title VI and the other federal civil rights

laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.3.<sup>1</sup>

On September 13, 2023, DGS confirmed that it is a party to a matter before the D.C. Court of Appeals (Case Number 2021 CA 003930 B).<sup>2</sup> Pursuant to OECRC's Case Resolution Manual Section 2.5, if after accepting a complaint for investigation OECRC obtains information from a credible source leading OECRC to conclude that an investigation is unjustified for prudential reasons, OECRC may "administratively close" the complaint, including when the same (or similar) civil rights allegations have been filed by the Complainant against the same recipient in state or federal court individually or through a class action.<sup>3</sup>

Here, the litigation pending before the D.C. Court of Appeals (Case Number 2021 CA 003930 B) concerns similar civil rights issues as those raised in the current administrative complaint against DGS. After careful consideration, OECRC is administratively closing this complaint investigation without prejudice as of the date of this letter.<sup>4</sup> Please note that the Complainant may refile the complaint with OECRC within 60 calendar days following termination of the court proceeding if there has been no decision on the merits or settlement of the complaint civil rights issues raised in the current complaint. Dismissal of the court proceeding with prejudice is considered a decision on the merits.<sup>5</sup>

With respect to Issue #2 accepted for investigation regarding DGS's procedural safeguards, OECRC is available to provide technical assistance to DGS to improve DGS's civil rights program

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<sup>1</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. § 7.30, 7.35. 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](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, Procedural Safeguards Checklist for Recipients, at [https://www.epa.gov/sites/production/files/2020-02/documents/procedural\\_safeguards\\_checklist\\_for\\_recipients\\_2020.01.pdf](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/sites/production/files/2020-02/documents/disability\\_nondiscrimination\\_plan\\_sample\\_for\\_recipients\\_2020.01.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf) (2017).

<sup>2</sup> See *Staley v. Bowser*, Case No. 2021 CA 003930 B at p. 30 (stating, "Defendant District of Columbia – At all times relevant, the District of Columbia has been a municipal entity comprised of its agencies, departments and divisions, and the officers and managers of those agencies, departments and divisions[.]")

<sup>3</sup> See OECRC Case Resolution Manual, Section 2.5, Other Factors to Consider After Accepting a Complaint for Investigation, available at: [https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5\\_final\\_case\\_resolution\\_manual\\_.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf).

<sup>4</sup> On August 22, 2023, OECRC accepted EPA Administrative Complaint No. 05R-22-R3 against the Department of Energy and Environment (DOEE). As the litigation pending before the D.C. Court of Appeals (Case Number 2021 CA 003930 B) concerns similar civil rights issues as those raised in the administrative complaint against DOEE, OECRC is also administratively closing Complaint No. 05R-22-R3 without prejudice.

<sup>5</sup> See OECRC Case Resolution Manual, Section 2.5.

and ensure DGS has in place the procedural safeguards that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations. This administrative closure does not impact EPA Region 3's ongoing engagement with the Brentwood community.

EPA's regulation prohibits applicants, recipients, and other persons from intimidating, threatening, coercing, or engaging in other discriminatory conduct against anyone because they have either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. See 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OECRC.

If you have any questions, please contact me by telephone at (202) 809-3297 or by email at [hoang.anhthu@epa.gov](mailto:hoang.anhthu@epa.gov).

Sincerely,

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

cc: Ariadne Goerke  
Deputy Associate General Counsel  
Civil Rights & Finance Law Office  
Office of General Counsel

Diana Esher  
Deputy Regional Administrator  
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Allison Gardner  
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