



## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

**In Reply Refer To:**

EPA Complaint No. 05R-22-R3

Richard Jackson  
Interim Director  
Department of Energy and Environment  
1200 First Street, NE  
Washington, D.C. 20002  
Richard.jackson2@dc.gov

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

Dear Director Jackson,

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. 05R-22-R3, which OECRC accepted for investigation on August 22, 2023. OECRC accepted for investigation:

1. Whether DOE's approval of the Facility's Environmental Impact Statement Form (EISF) 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 DOE 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 DOE's services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether DOE 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.<sup>1</sup>

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<sup>1</sup> OECRC notes that on May 10, 2023, DOE entered into an agreement with EPA to take appropriate action to meet the minimum requirements set forth in EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance," within six months of that date.

On September 20, 2023, DOEE confirmed that it is a party to a matter before the District of Columbia 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 DOEE. After careful consideration, OECRC is administratively closing this complaint investigation without prejudice as of the date of this letter. 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>4</sup>

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

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<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> *Id.*

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  
Deputy Civil Rights Official  
U.S. EPA Region 3

Allison Gardner  
Acting Regional Counsel  
U.S. EPA Region 3