



U.S. Department  
of Transportation

## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

### Pipeline and Hazardous Materials Safety Administration

January 3, 2024

**INFORMAL RESOLUTION AGREEMENTS between (1) the MASSACHUSETTS EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA COMPLIANCE REVIEW NO. 01CR-20-R1), (2) the UNITED STATES DEPARTMENT OF TRANSPORTATION (DOT) PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA) and the MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES (DOT COMPLAINT NO. 2020-0264), and (3) DOT PHMSA and the ENERGY FACILITIES SITING BOARD (EFSB) (DOT COMPLAINT NO. 2020-0264).**

#### 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 and U.S. Department of Transportation (“DOT”) implementing regulation at 49 C.F.R. Part 21 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and retaliation in the programs, services, and activities of applicants for or recipients of federal financial assistance.<sup>1</sup> The Massachusetts Executive Office of Energy and Environmental Affairs (“EEA”) receives federal financial assistance from, among other sources, EPA. The Massachusetts Department of Public Utilities (“DPU”) receives federal financial assistance from, among other sources, DOT Pipeline and Hazardous Materials Safety Administration (“PHMSA”). As a recipient of federal financial assistance from EPA, EEA must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA’s implementing regulations. Similarly, as a recipient of federal financial assistance from DOT, DPU must ensure nondiscrimination in its programs and activities pursuant to federal

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<sup>1</sup> Title VI of the Civil Rights Act of 1964, 42 United U.S.C. §§ 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 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 and 49 C.F.R Part 21.

nondiscrimination laws and DOT's implementing regulations. EFSB is committed to ensuring nondiscrimination in its programs and activities as required in this Agreement and as embodied in the federal nondiscrimination laws.<sup>2</sup>

- B.** EEA contains six departments: DPU, the Department of Energy Resources, the Department of Agriculture Resources, the Department of Fish and Game, the Department of Environmental Protection, and the Department of Conservation and Recreation. Additionally, within EEA there are a number of offices, divisions, and other organizational units.
- C.** The DPU, among other activities, oversees investor-owned electric power, natural gas, and water companies in Massachusetts.
- D.** The Energy Facilities Siting Board ("EFSB") is a nine-member, independent state board. EFSB has statutory authority to make decisions on the siting of enumerated large energy infrastructure. The EFSB is housed administratively within the DPU but is not subject to DPU's control.
- E.** On August 10, 2020, the EPA Office of External Civil Rights Compliance ("OECRC") initiated a Compliance Review investigation of EEA, pursuant to the federal civil rights laws, including Title VI and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.<sup>3</sup> OECRC's Compliance Review Initiation letter noted that the investigation would focus on the following issues:<sup>4</sup>
  - 1. Whether EEA has and is taking reasonable steps, including implementing specific policies and procedures, to ensure meaningful access for individuals with limited English proficiency (LEP) to EEA programs and activities in compliance with the requirements of Title VI of the Civil Rights Act of 1964 and 40 C.F.R. Part 7; and
  - 2. Whether EEA has and is implementing the procedural safeguards recipients of federal financial assistance must have in place to comply with their general nondiscrimination obligations as set forth in 40 C.F.R. Parts 5 and 7. Those safeguards include, but are not limited to, those with respect to public participation and specific policies and procedures to ensure meaningful access to EEA programs and activities for individuals with disabilities under Section 504 of the Rehabilitation Act of 1973.
- F.** On August 19, 2020, EEA agreed to engage in this Informal Resolution Agreement process.
- G.** On April 15, 2021, the PHMSA Civil Rights Office ("CRO") accepted for investigation the Complaint<sup>5</sup> filed against the DPU and EFSB focusing on the following issues:

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<sup>2</sup> DOT has not made a determination of whether EFSB is a recipient of federal financial assistance or whether it is a program or activity of a recipient of FFA.

<sup>3</sup> 40 C.F.R. § 7.115(a); 40 C.F.R. § 5.605.

<sup>4</sup> These issues were identified for the compliance review when OECRC completed its jurisdictional review of EPA Complaint No. 01NO-20-R1.

<sup>5</sup> On June 29, 2020, EPA rejected a nearly identical complaint against EFSB and DPU for lack of jurisdiction, as neither the EFSB nor DPU receives financial assistance from EPA.

1. Whether LEP individuals were denied access to the “East Eagle Reliability Project” public participation process;
  2. Which entities/officials were responsible for ensuring nondiscrimination in that process; and
  3. The nature of the relationships between DPU, EFSB, and the EEA.
- H. On July 6, 2021, the CRO, DPU, and EFSB agreed to engage in this Informal Resolution Agreement process. Accordingly, DPU and EFSB have not responded to the allegations in the Complaint.
- I. These Informal Resolution Agreements (“Agreements”) resolve all issues identified in the letter initiating Compliance Review number 01CR-20-R1 and DOT’s acceptance letter for Complaint No. 2020-0264. These Agreements are entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and the EPA regulation found at 40 C.F.R. Parts 5 and 7, and resolves EPA Compliance Review No. 01CR-20-R1. DOT Complaint No. 2020-0264 is resolved by this agreement under the authority granted DOT by Title VI of the Civil Rights Act of 1964 and DOT regulation at 49 C.F.R. Part 21. The Agreements are intended to codify and specify the obligations of EEA and DPU under Title VI and other applicable federal nondiscrimination laws, as well as EPA’s and DOT’s implementing regulations, respectively, and to memorialize EFSB’s commitment to meet those same obligations.
- J. The Agreements are entered into voluntarily by EPA, DOT, EEA, DPU, and EFSB and do not constitute an admission by EEA, DPU, or EFSB of a violation of, or a finding of compliance or noncompliance by EPA or DOT with Title VI or other federal nondiscrimination laws enforced by EPA or DOT through implementing regulations at 40 C.F.R. Parts 5 and 7 or at 49 C.F.R. Part 21, respectively. As to EFSB only, the agreement does not constitute an admission that EFSB receives federal funding.

## II. BACKGROUND

### OECRC’s Stakeholder Process and Feedback

As part of the compliance review, OECRC conducted three virtual information gathering meetings with members of the community from December 2020 through January 2021. The participants who were willing to speak with EPA were identified with assistance from EPA’s Region 1 Office, EEA, and by individuals who live in or represent residents of Scituate and Malden, Massachusetts, and residents interested in historical tribal access to Deer Island. As part of OECRC’s outreach efforts, OECRC created an invitation with information about the meetings, which was translated into the ten most prominent languages spoken by persons with LEP in Massachusetts. In the invitation, OECRC asked individuals who preferred to speak privately with OECRC to arrange individual meetings. OECRC reviewed the feedback received and communicated the substance of that information, but not the individual sources of the information, to EEA, DPU and EFSB. Stakeholder feedback from the listening sessions and other outreach efforts informed the Agreements, both during the negotiations

and in developing the final language. OECRC received feedback to enhance EEA's, DPU's and EFSB's accessibility and nondiscrimination programs, including implementing measures to improve community engagement, taking steps to enhance transparency, and diversity and cultural competency trainings for agency staff.

### EEA, DPU, and EFSB Environmental Justice Efforts

In September 2020, EEA convened the 20-member EEA Environmental Justice Task Force (EJTF), consisting of representatives from each EEA agency and office. The EJTF members are tasked by EEA with developing EJ Strategies that are tailored to the specific mandates of their organizations. Since 2020, these strategies have evolved through stakeholder input, staff discussion, management approval, and EEA EJ Program guidance. Drafts of the strategies for these entities have been combined into a single EEA-wide EJ Strategy containing guidance for community outreach and engagement, language access, hiring policy, EJ training content and schedules, gathering and maintenance of EJ metrics and data, and policy goals specific to each entity. EEA released this draft document for public comment and discussion on November 9, 2022. After incorporation of public comments into a final document, the EEA EJ Strategy will provide on-going guidance for EEA agency actions. Additionally, EEA plans to update its EJ Strategy every two years through a stakeholder process. EEA's EJ team has already developed a list of approximately 300 potential participants from a variety of sectors, including EJ advocacy organizations, community-based organizations, social justice organizations, and individuals for the purpose of outreach and notification. This list is routinely updated. EEA's EJ team also maintains a list of media outlets that facilitate communication with EJ populations, including non-English-speaking media outlets. As part of its commitment to enhancing public participation in its activities across the secretariat, EEA has created some new positions, including the Undersecretary of Environmental Justice and Equity, that was filled on February 13, 2023, and Deputy Director of Environmental Justice for Stakeholder Coordination, that was filled on September 28, 2022. The new Undersecretary will work with EEA's EJ team to further advance EJ in the Commonwealth.

The DPU is actively developing its environmental justice strategy through its work with the EJTF as described above. As part of this process, DPU is finalizing its environmental justice strategy, its public participation plan, and an updated language access plan ("LAP"). In addition to its work on the EJTF, the DPU opened a Notice of Inquiry (DPU 21-50) in April 2021. That inquiry is examining potential enhancements to increase public awareness of and participation in the DPU's proceedings. Specifically, the DPU is exploring ways to increase the visibility of its public notices and promote further equitable and meaningful public and stakeholder involvement throughout its proceedings. This inquiry is part of DPU's ongoing efforts to enhance meaningful involvement of all people and communities with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies, including climate-change policies, and the equitable distributions of energy and environmental benefits and burdens, consistent with the EEA EJ Policy. A goal of the Notice of Inquiry is to increase access to and transparency of DPU proceedings by continuing to reduce barriers to participation, including a lack of proficiency in English.

Similarly, in an effort to build on its current practices, the EFSB has instituted a Notice of Inquiry proceeding (EFSB 21-01) to examine procedural enhancements to increase public awareness of and participation in its proceedings. Specifically, the EFSB is exploring avenues to increase both the visibility of its public notices and promote further equitable and meaningful public and stakeholder involvement throughout its proceedings. The EFSB opened this inquiry as part of its ongoing development of an EJ strategy, including public participation and language access components, enhancing meaningful involvement of all people and communities with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies, including climate change policies, and the equitable distributions of energy and environmental benefits and burdens, consistent with the EEA EJ Policy. Additionally, the EFSB continues to recognize the importance of ensuring that persons with LEP are provided with meaningful opportunities to participate in EFSB proceedings. The goal of these proceedings is to increase access to and transparency of EFSB proceedings by further reducing barriers to participation, including a lack of proficiency in English.

# Subpart A

**INFORMAL RESOLUTION AGREEMENT between the MASSACHUSETTS EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS and the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY (EPA COMPLIANCE REVIEW NO. 01CR-20-R1)**

**III. SPECIFIC EEA COMMITMENTS**

- A.** EEA will serve in a leadership role to provide guidance to the other state energy and environmental agencies (“the departments”), (i.e., Department of Agricultural Resources, Department of Conservation and Recreation, Department of Energy Resources, Department of Environmental Protection, Department of Fish and Game, Department of Public Utilities). EEA will use its leadership role to help improve the departments’ nondiscrimination policies and procedures, including policies and procedures to ensure meaningful access for persons with LEP.
- B.** Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (LEP)
1. EEA will ensure that it conducts an appropriate analysis, as described in EPA’s LEP Guidance,<sup>6</sup> to identify the appropriate language groups in the Commonwealth and specific areas within the Commonwealth that may need language services and determine what language services or mix of language services EEA needs to provide (e.g., qualified interpreters and translators), to ensure that individuals with LEP can meaningfully participate in EEA’s programs and activities.
  2. EEA will review, revise, publicize, and implement its written Language Access Plan (“LAP”) to ensure meaningful access to all EEA services, programs, and activities for individuals with LEP, at no direct cost to those individuals. The LAP will provide information on how EEA will:
    - a. Translate vital documents<sup>7</sup> of interest to the general public into the appropriate languages, as identified through the process outlined above, for individuals with LEP who are served by or likely to be encountered by EEA programs and activities, including any public notices that are vital documents;
    - b. Translate vital documents of interest to a particular individual with LEP or group of individuals with LEP (e.g., an individual with LEP wishing to file a grievance);

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<sup>6</sup> Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 F.R. 35602, <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>

<sup>7</sup> Whether or not a document (or the information it disseminates or solicits) is “vital” may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurate or in a timely fashion. (See EPA’s 2004 Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons at <https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>).

- c. Provide for simultaneous oral interpretation, by qualified interpreters of live proceedings (e.g., community engagement meetings and public hearings) and programs and activities in appropriate and other requested languages to allow individuals with LEP to meaningfully participate in those proceedings, programs, and activities (e.g., provide comments during public hearings, proceedings, programs, and activities hosted or provided by EEA);
  - d. Consider the best way to receive feedback on the accuracy and quality of the language assistance services (e.g., create survey forms after provision of language access services; survey link on website after provision of language access services);
  - e. Utilize EEA's social media platform to provide translated vital information and increase messaging to populations with LEP;
  - f. Strive to hire staff with diverse bilingual capabilities to better serve the public; and
  - g. Provide qualified language services through qualified employees or through a contract for such services.
3. Within 90 days of the effective date of this Agreement, EEA will submit a draft copy of its LAP to OECRC. OECRC will review the draft LAP and provide any comments within 30 days.
  4. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV.D, EEA will submit its draft LAP, including a translated draft LAP in all appropriate languages, for public comment for 60 days. After the public comment period ends, EEA will review comments and finalize the LAP within 45 days and publish the final LAP, translated in all appropriate languages, on its website and in print.
- C. Notice of Non-Discrimination under Federal Non-Discrimination Laws<sup>8</sup>**
1. EEA will ensure that its notice of non-discrimination is accessible to the public, including individuals with LEP and individuals with disabilities.
  2. This notice will contain, at a minimum, the following statements:
    - a. EEA does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and it does not retaliate against or intimidate any individual because they have exercised their rights to participate in actions protected by 40 C.F.R. Parts 5 and 7; oppose actions prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights. EEA 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-

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<sup>8</sup> 40 C.F.R. § 7.95; 40 C.F.R. § 5.140.



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 statutes”).

- b. If you have any questions about this notice or any of EEA’s non-discrimination programs, policies or procedures, you may contact:

[Name]  
 Non-Discrimination Coordinator  
 [Address, E-mail, and Phone Number]

- c. If you believe that you have been discriminated against with respect to an EEA program or activity, you may contact [Name], Non-Discrimination Coordinator, identified above or visit our website at [enter website address] to learn how and where to file a complaint of discrimination.
3. Within 30 days after the effective date of this Agreement, EEA will submit to EPA for review a copy of its notice of non-discrimination. EPA will provide comments within 30 days.
4. Within 30 days of receiving OECRC’s comments, or within the timeframe specified in Section IV.D, EEA will prominently publish in print and on its website the final of Nondiscrimination in its office and on a link to the notice on its website homepage, titled “Notice of Nondiscrimination” including translated versions in all appropriate languages consistent with its LAP. A link to the Notice of Nondiscrimination will also be included in any appropriate EEA publications distributed to the general public.

**D. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws<sup>9</sup>**

1. EEA will ensure that it has prominently published online its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes and EPA’s implementing regulations at 40 C.F.R. Parts 5 and 7. EEA will review the grievance procedures on an annual basis, and revise as necessary, to allow for prompt and fair resolution of discrimination complaints.
2. The grievance procedures will, at a minimum, include the following features:
- a. Identify by name the Non-Discrimination Coordinator, including contact information.

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<sup>9</sup> 40 C.F.R. § 7.90; 40 C.F.R. § 5.135(b).

- 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 procedures.
  - d. Describe the formal process available, and the options for complainants in pursuing it.
  - e. State that the preponderance of the evidence standard will be applied during analysis of the complaint.
  - f. Contain assurances that intimidation and retaliation are prohibited<sup>10</sup> and that claims of intimidation and retaliation will be handled promptly and fairly pursuant to the procedures in the same manner as other claims of discrimination.
  - g. Assure the prompt and fair resolution of complaints that allege violation 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. As part of its grievance procedures, EEA will include a complaint form that can be used by the public to file complaints of discrimination with EEA.
3. Within 30 days after the effective date of this Agreement, EEA will submit to EPA a copy of its grievance procedures. EPA will provide its comments within 30 days.
  4. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV.D, EEA will prominently publish in print and post a direct link to the Grievance Procedures on its website in all appropriate languages consistent with its LAP.

#### E. Non-Discrimination Coordinator<sup>11</sup>

1. EEA will have at least one Non-Discrimination Coordinator to ensure EEA's compliance with the federal non-discrimination statutes, either directly or through utilizing other staff, who will:
  - a. Provide information to individuals internally and externally that EEA does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, and EEA does not retaliate against or intimidate any individual because they have exercised their rights to participate in or oppose actions protected by 40 C.F.R. Parts 5 and 7 or for the purpose of interfering with such rights.

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<sup>10</sup> See 40 C.F.R. § 7.100.

<sup>11</sup> 40 C.F.R. § 7.85(g); 40 C.F.R. § 5.135(a).

- b. Provide notice on EEA's website of its formal grievance process and the ability to file a discrimination complaint.
  - c. Establish written grievance policies and procedures or mechanisms to ensure that all discrimination complaints filed with EEA under federal non-discrimination statutes and 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 meaningful access for individuals with limited-English proficiency and individuals with disabilities to these grievance policies and procedures.
  - d. Track all discrimination complaints filed with its Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other discrimination complaints independently investigated by EEA. Also, conduct periodic reviews of the issues raised and outcomes achieved to evaluate whether there are ~~any~~ trends indicating any patterns or systemic problems. Address any trends identified. Ensure that appropriate training is provided for its staff and its contractors, as appropriate, in the formal processes available to resolve complaints filed with EEA under federal non-discrimination laws.
  - e. Ensure that complainants are updated on the progress of their discrimination complaints filed with EEA under federal non-discrimination laws and promptly informed as to any determinations made.
  - f. Undertake periodic evaluations of the efficacy of EEA's efforts to provide services, aids, benefits, and participation in any of EEA'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.
  - g. Provide appropriate staff with resources to determine language access needs so that staff may identify language needs for any project requiring public participation, and ensure EEA identifies a qualified language service contractor with capabilities of accurately translating EEA's vital information and interpreting its substantive subject matters, (e.g., work with program offices to create and maintain a glossary of key technical terms and concepts into appropriate languages), and ensure all public participation documents issued to the public in English are simultaneously issued in the appropriate translated languages to the extent practicable.
  - h. Not have other responsibilities that create a conflict of interest (e.g., serving as the non-discrimination coordinator as well as the legal advisor or representative on civil rights issues).
2. Within 120 days of the effective date of this Agreement, EEA will forward to OECRC proof that the responsibilities have been included in the Non-Discrimination Coordinator's statement of duties and that the Non-Discrimination Coordinator has accepted the duties.

#### F. Public Participation Plan

1. EEA's meaningful public involvement consists of informing, consulting, and working with any community member or group that could be impacted by EEA at various stages of its decision-making processes to address the community member or larger community's needs.

Therefore, EEA will draft a Public Participation Plan that will:

- a. Ensure that the factors used to determine the time, place, location, duration, and security at public hearings and meetings are developed and applied in a non-discriminatory manner (e.g., consideration of holidays and unique community needs).
- b. Ensure that EEA's public participation procedures are implemented consistent with federal civil rights laws and EPA's Public Participation Guidance found at 71 F.R. 14207, 14210 (March 21, 2006) and any analogous guidance issued by any other federal agency that provides federal funding to EEA,<sup>12</sup> and include steps for effective public participation that is accessible to all persons without regard to race, age, color, national origin (including limited English proficiency), disability, or sex each time EEA engages in the public participation or public engagement process.
- c. Allow comments to be submitted to EEA: (1) in writing or electronically before, during, and after public comment hearings, and (2) orally at public comment hearings, subject to any reasonable deadlines established by the agency taking into account the nature of the hearings and their relationship to the agency's decision-making process, including deadlines for written and electronic comments that expire before the close of public comment hearings in order to meet a statutory deadline.
- d. Require that programs reviewing applications, petitions, or other submissions consider whether pre-filing statements and/or notice would enhance public participation, including by residents of environmental justice populations, and, if so, adopt requirements for the contents, publication and/or distribution of pre-filing statements consistent with governing law.
- e. Require that programs issuing advisory opinions, rulings, or other decisions that have precedential value make reasonable efforts to publish those opinions, rulings or other decisions online, in a searchable format, including any translations made in accordance with the agency's LAP.
- f. Ensure that EEA's public involvement and communication process is available and accessible to all persons, regardless of race, color, national origin (including limited English proficiency), disability, sex, age, or prior exercise of rights, or opposition to actions prohibited under federal non-discrimination law by:
  - i. providing a process for identifying and describing communities to be impacted by a particular EEA decision-making process;

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<sup>12</sup> <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>

- ii. requiring the posting of contact information for relevant staff members on its website, including phone numbers and email addresses, to allow the public to communicate with appropriate staff;
  - iii. identifying a place to maintain records, consistent with the Massachusetts record retention laws, regarding past and present community concerns (including any complaints filed under the federal non-discrimination laws);
  - iv. providing a mechanism for EEA's community partners to provide input (enhancing community engagement and involvement);
  - v. requiring the consideration of contingency plans for unexpected events;
  - vi. promoting the availability of virtual and remote-option hearings and meetings when consistent with governing law and, when virtual and remote-option hearings and meetings are conducted, providing public notice of procedures, including telephone access instructions or other alternatives for anyone without internet access;
  - vii. when in-person hearings and meetings are conducted, identifying location(s) where public meetings will be held considering the accessibility of the location (e.g., availability and schedules of public transportation);
  - viii. maintaining resources for obtaining translation and interpretation services;
  - ix. ensuring all public hearing notices include instructions for registration (if required), how to make comments, and how to request language assistance services, including if any requests should be submitted by a date certain before an event;
  - x. providing a mechanism for EEA's community partners to provide input regarding posting of public notices in high traffic areas such as, local nonprofits and community organizations, local medical offices, schools, senior centers, bus stop shelters and libraries in the affected communities;
  - xi. maintaining a list of appropriate local free and accessible media platforms and contacts (based on the culture and linguistic needs of the community); and
  - xii. providing for the publication of the location of any information repositories.
2. Within 180 days of the effective date of this Agreement, EEA will submit a copy of its draft Public Participation Plan to OECRC. EEA will also inform OECRC of the publicly accessible location where the Public Participation Plan will be, such as an office and/or a link to its website, after the Plan is approved. OECRC will review the draft Public Participation Plan and provide any comments within 30 days.
  3. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV.D, EEA will submit its draft Public Participation Plan, including a translated draft Public

Participation Plan, in all appropriate languages, for public comment for 60 days. After the public comment period ends, EEA will review comments and finalize the Public Participation Plan within 45 days, and publish the final Public Participation Plan, translated in all appropriate languages, on its website and in print.

**G. Policy on Ensuring Meaningful Access for Persons with Disabilities**

1. EEA will develop and implement policies and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity to fully participate in its programs and activities. Upon request with reasonable notice, EEA will provide, at no cost, appropriate auxiliary aids, and services to individuals with disabilities (including, but not limited to, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication and/or an equal opportunity to participate fully in benefits, activities, programs, and services provided by EEA in a timely manner. In addition, EEA will continue to ensure that its facilities and other facilities utilized by EEA for public engagement activities are accessible to the public and physically accessible for individuals with disabilities.
2. Within 180 days of the effective date of this Agreement, EEA will forward to OECRC its written procedures to ensure meaningful access to all EEA programs and activities by individuals with disabilities. OECRC will provide any comments within 30 days.
3. Within 30 days of receiving OECRC's comments, or within the timeframe specified in Section IV.D, EEA will prominently publish in print and post a direct link to the Disability Policy on its website in all appropriate languages consistent with its LAP.

**H.** Through its Environmental Justice Strategy, EEA will cause its Departments to adopt plans, notices, and procedures, as appropriate for each Department, that parallel the deliverables addressed in this section.

**I. Community Engagement and Outreach**

1. EEA will establish Environmental Justice stakeholder outreach processes in order to meet with all interested stakeholders, engage with community members to build relationships, create an avenue for information sharing, provide nondiscrimination program information and opportunities for community feedback and public comment. Meetings will be held virtually or in-person, as appropriate, and be accessible in all appropriate languages consistent with EEA's LAP. These processes will include appropriate personnel from EEA's departments. EEA will establish these procedures in its Public Participation Plan.
2. EEA will comply with Executive Order No. 126 (Massachusetts Native Americans) with respect to its outreach to Native American tribes in the Commonwealth.

**J. EEA Training**

1. Within 180 days after implementing the deliverables identified in this Agreement in Section III, EEA will ensure that all staff and contractors, as appropriate, have been appropriately trained on the processes and procedures established by Section III of this Agreement, as well as on the nature of the federal non-discrimination obligations.
2. EEA will continue to offer anti-bias and cultural competency trainings to all EEA staff and contractors, as appropriate.
3. EEA will ensure that such trainings referenced in J.1. and J.2. are a routine part of the on-boarding process for new employees and contractors, as appropriate, and for current employees on an annual basis.

**IV. GENERAL**

- A. In consideration of EEA's implementation of its obligations described in Section III of this Agreement, OECRC will end its investigation of EPA Compliance Review No. 01CR-20-R1 and not issue a decision containing findings of the compliance review.
- B. In committing to the obligations described in Section III of this Agreement, EEA makes no admission that any of its programs or activities are being or have been conducted in violation of Title VI or any other federal non-discrimination law or implementing regulations.
- C. OECRC will monitor the implementation of the obligations in Section III of this Agreement to ensure they are fully implemented. Once the obligations of this Agreement are satisfied, OECRC will issue a letter documenting closure of its monitoring actions in EPA Compliance Review No. 01CR-20-R1 and closure of the Compliance Review as of the date of that letter.
- D. If not otherwise specified herein, OECRC will review and provide feedback about any documentation submitted by the EEA 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 the deliverables above, should there be negotiations and/or edits needed to address OECRC's comments, the parties will resolve those within 30 days and EEA will finalize the deliverable for publication by EEA within 30 days.
- E. EPA will, upon request, provide technical assistance to EEA regarding any of the civil rights obligations previously referenced.

**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 will be made personally via electronic mail 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 EEA to EPA via email will be sent to the following email addresses: [khan.zahra@epa.gov](mailto:khan.zahra@epa.gov) and [hoang.anhthu@epa.gov](mailto:hoang.anhthu@epa.gov)
- D. Documents submitted by EPA to EEA will be sent to the following email address: [kathleen.skarin@mass.gov](mailto:kathleen.skarin@mass.gov). Documents mailed by the EPA to EEA will be mailed to Kathleen Skarin, Chief of Staff, Executive Office of Energy and Environmental Affairs, 100 Cambridge Street, Boston, MA 02114.

## VI. EFFECT OF THE AGREEMENT

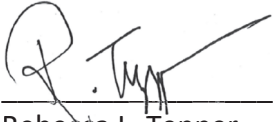
- A. EEA’s obligations under this Agreement are limited to compliance with Title VI and other applicable federal non-discrimination laws and EPA’s regulations at 40 C.F.R. Parts 5 and 7. Nothing in this Agreement shall be construed to prevent EEA from also complying with all requirements of federal and Massachusetts law, including, but not limited to, the Massachusetts Public Records Law, M.G.L. c. 66, §10, the Massachusetts Fair Employment Law, M.G.L. c. 151B, and the Massachusetts Whistleblower Act, M.G.L. c. 149, §185.
- B. EEA understands that, if necessary, OECRC may visit EEA, request that staff submit to interviews, and request such additional reports or data as are necessary for OECRC to determine whether EEA has fulfilled the obligations of this Agreement.
- C. EEA understands that EPA will not close its monitoring of this Agreement until OECRC determines that EEA has fully implemented this Agreement’s obligations and that a failure to satisfy any term in this Agreement may result in the EPA re-opening a compliance review investigation.
- D. If either Party desires to modify any portion of this Agreement, 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 EEA and the Director of OECRC. Notwithstanding the foregoing, the email addresses and mailing addresses specified in Sections V.C and V.D may be modified by the Party receiving submissions or mailings by delivering notice to all counterparties.
- E. This Agreement constitutes the entire Agreement between EEA and 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 parties in accordance with the provisions of Section VI.D above.

- F.** This Agreement does not affect EEA's responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect EPA's investigation of any other Title VI or federal civil rights complaints or address any other matter not covered by this Agreement.
- G.** The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts.
- H.** The Secretary, in her capacity as an official of EEA, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of OECRC has the authority to enter into this Agreement.

On behalf of the Massachusetts Executive Office of Energy and Environmental Affairs,



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Rebecca L. Tepper  
Secretary

1/4/2024

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(Date)

On behalf of the U.S. Environmental Protection Agency,

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

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(Date)

# Subpart B

**INFORMAL RESOLUTION AGREEMENT between the MASSACHUSETTS DEPARTMENT OF PUBLIC UTILITIES and the UNITED STATES DEPARTMENT OF TRANSPORTATION, PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (PHMSA) (DOT COMPLAINT NO. 2020-0244)**

**III. SPECIFIC DPU COMMITMENTS**

**A. DPU Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (“LEP”)**

1. The DPU will review its language access policies and will finalize an updated language access plan (“LAP”). The updated LAP will guide the DPU’s determination of the appropriate language groups in the Commonwealth that may need language services and what language services or mix of language services to provide (*e.g.*, qualified interpreters and translators) to ensure meaningful participation in DPU’s programs and activities.
2. DPU will review, revise, publicize, and implement their written LAP to ensure meaningful access to all DPU services, programs, and activities for individuals with LEP, at no direct cost to those individuals. The LAPs will provide information on how DPU will:
  - a. Translate vital documents<sup>13</sup> of interest to the general public into the appropriate languages as identified through the process outlined above, for individuals with LEP who are served by or likely to be encountered by DPU programs and activities, including any public notices that are vital documents;
  - b. Translate vital documents of interest to a particular individual with LEP or group of individuals with LEP (*e.g.*, an individual with LEP wishing to file a grievance).
  - c. Provide for simultaneous oral interpretation, as practicable, by qualified interpreters of live proceedings (*e.g.*, community engagement meetings and public hearings) and programs and activities in appropriate and other requested languages to allow individuals with LEP to meaningfully participate in those proceedings, programs, and activities (*e.g.*, provide comments during public hearings, proceedings, programs, and activities hosted or provided by DPU).

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<sup>13</sup> Whether or not a document (or the information it disseminates or solicits) is “vital” may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided accurate or in a timely fashion. (See DOT’s Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, <https://www.transportation.gov/civil-rights/civil-rights-library/policy-guidance-concerning-recipients-responsibilities-limited-01/Guidance%20to%20Federal%20Financial%20Assistance%20Recipients%20Regarding%20LEP%20-%20508.pdf>).

- d. Consider the best way to receive feedback on the accuracy and quality of the language assistance services.
  - e. Utilize DPU's social media platforms, if any, to provide translated vital information and increase messaging to populations with LEP.
  - f. Strive to hire staff with diverse bilingual capabilities to better serve the public; and
  - g. Provide qualified language services, for example, whether through qualified employees or through a contract for such services.
3. Within 90 days of the effective date of this Agreement, DPU will submit to DOT a draft copy of its LAP. DOT will review the draft LAP and provide any comments within 30 days.
  4. Within 30 days of receiving DOT's comments DPU will consider the comments, make any appropriate changes, and then post its LAP for public comment, including a translated LAP in all appropriate languages, for 60 days.
  5. At the end of its public comment period, DPU will review and finalize its updated LAP within 45 days. DPU will, publish its final LAP, translated in all appropriate languages, on its website and in print.

**B. Notice of Non-Discrimination under the Federal Non-Discrimination Laws<sup>14</sup>**

1. DPU will ensure that its notice of non-discrimination is accessible to the public, including individuals with LEP and individuals with disabilities.
2. This notice will contain, at a minimum, the following statements:
  - a. DPU does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and it does not retaliate against or intimidate any individual because they have exercised their rights to participate in actions protected by 49 C.F.R. Part 21. DPU is responsible for coordination of compliance efforts and receipt of inquiries concerning non-discrimination requirements implemented by 49 C.F.R. Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of 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; and Title IX of the Education Amendments of 1972 (hereinafter referred to collectively as the “federal non-discrimination statutes”).
  - b. If you have any questions about this notice or any of DPU's non-discrimination programs, policies, or procedures, you may contact:

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<sup>14</sup> 49 C.F.R. Part 21.

[Name]  
 Non-Discrimination Coordinator/  
 [Address, E-mail, and Phone Number]

- c. If you believe that you have been discriminated against with respect to a DPU program or activity, you may contact [Name], Non-Discrimination Coordinator, identified above or visit our website at [enter website address] to learn how and where to file a complaint of discrimination.
3. Within 30 days after the effective date of this Agreement, DPU will submit to DOT for review a copy of its notice of non-discrimination. DOT will provide comments within 30 days.
  4. Within 30 days of receiving DOT's comments, DPU will review the comments, update the document as appropriate, and post its Notice of Non-Discrimination in its office and a link to the notice on its website's homepage, titled "Notice of Non-Discrimination" including translated versions in all appropriate languages consistent with its LAP. A link to the Notice of Nondiscrimination will also be included in any appropriate DPU publications distributed to the general public.
- C. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws<sup>15</sup>
1. DPU will ensure that it has prominently published online its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes and DOT's implementing regulations at 49 C.F.R. Part 21. DPU will review the grievance procedures on an annual basis, and revise as necessary, to allow for prompt and fair resolution of discrimination complaints.
  2. The grievance procedures will, at a minimum, include the following features:
    - a. Identify by name the Non-Discrimination Coordinator, including 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 procedures.
    - d. Describe the formal process available, and the options for complainants in pursuing it.

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<sup>15</sup> 49 C.F.R. Part 21.13.

- e. State that the preponderance of the evidence standard will be applied during analysis of the complaint.
  - f. Contain assurances that intimidation and retaliation are prohibited<sup>16</sup> and that claims of intimidation and retaliation will be handled promptly and fairly pursuant to the procedures in the same manner as other claims of discrimination.
  - g. Assure the prompt and fair resolution of complaints that allege violation 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; and
  - i. As part of its grievance procedures, DPU will include a complaint form that can be used by the public to file complaints of discrimination with DPU.
3. Within 30 days after the effective date of this Agreement, DPU will submit to DOT a copy of its grievance procedures. DOT will provide its comments within 30 days.
  4. Within 30 days of receiving DOT's comments on DPU's grievance procedures, DPU will review the comments, update the document as appropriate, and post a direct link to the Grievance Procedures on its website in all appropriate languages consistent with its LAP.

**D. Non-Discrimination Coordinator**<sup>17</sup>

1. DPU will have at least one Non-Discrimination Coordinator to ensure DPU's compliance with the federal non-discrimination statutes, either directly or through utilizing other staff, who will:
  - a. Provide information to individuals internally and externally that DPU does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and DPU does not retaliate against or intimidate any individual because they have exercised their rights to participate in or oppose actions protected by 49 C.F.R. Part 21 or for the purpose of interfering with such rights.
  - b. Provide notice on DPU's website of its formal grievance process and the ability to file a discrimination complaint.
  - c. Establish written grievance policies and procedures or mechanisms to ensure that all discrimination complaints filed with DPU under federal non-discrimination statutes and DOT implementing regulations 49 C.F.R. Part 21 are processed promptly and fairly. One

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<sup>16</sup> See 49 C.F.R. § 21.11.

<sup>17</sup> 49 C.F.R. Part 21.

element of any policy and procedure or mechanism must include meaningful access for individuals with limited-English proficiency and individuals with disabilities to these grievance policies and procedures.

- d. Track all discrimination complaints filed with its Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other discrimination complaints independently investigated by DPU. Also, conduct periodic reviews of the issues raised and outcomes achieved to evaluate whether there are any trends indicating any patterns or systemic problems. Address any trends identified.
  - e. Ensure that appropriate training is provided for its staff and its contractors, as appropriate in the formal processes available to resolve complaints filed with DPU under federal non-discrimination laws.
  - f. Ensure that complainants are updated on the progress of their discrimination complaints filed with DPU under federal non-discrimination laws and promptly informed as to any determinations made.
  - g. Undertake periodic evaluations of the efficacy of DPU efforts to provide services, aids, benefits, and participation in any of DPU'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.
  - h. Provide appropriate staff with resources to determine language access needs so that staff may identify language needs for any project requiring public participation, and ensure DPU identifies a qualified language service contractor with capabilities of accurately translating DPU's vital information and interpreting its substantive subject matters, (e.g., create and maintain a glossary of key technical terms and concepts into appropriate languages), and ensure all public participation documents issued to the public in English are simultaneously issued in the appropriate translated languages to the extent practicable.
  - i. Not have other responsibilities that create a conflict of interest (e.g., serving as the non-discrimination coordinator as well as the legal advisor or representative on civil rights issues).
2. Within 120 days of the effective date of this Agreement, DPU will forward to DOT proof that the responsibilities have been included in the Non-Discrimination Coordinator's statement of duties and that the Non-Discrimination Coordinator has accepted the duties.

#### **E. Public Participation Plan**

1. DPU's meaningful public involvement consists of informing, consulting, and working with any community member or group that could be impacted by DPU at various stages of its decision-



making processes to address the community's needs. Therefore, DPU will draft a Public Participation Plan that will:

- a. Ensure that the factors used to determine the time, place, location, duration, and security at public hearings and meetings are developed and applied in a non-discriminatory manner.
- b. Ensure that DPU's public participation procedures are implemented consistent with applicable state and federal non-discrimination laws and any analogous guidance issued by any other federal agency that provides federal funding to DPU,<sup>18</sup> and include steps for effective public participation that is accessible to all persons without regard to race, age, color, national origin (including LEP), disability, or sex each time DPU engages in a public participation or public engagement process.
- c. Allow comments to DPU to be submitted: (1) in writing or electronically before, during, and after public comment hearings, and (2) orally at public comment hearings, subject to any reasonable deadlines established by the agency, taking into account the nature of the hearings and their relationship to the agency's decision-making process, including deadlines for written and electronic comments that expire before the close of public comment hearings in order to meet a statutory deadline.
- d. Require that programs reviewing applications, petitions or other submissions consider whether pre-filing statements and/or notice would enhance public participation, including by residents of environmental justice populations, and, if so, adopt requirements for the contents, publication and/or distribution of pre-filing statements consistent with governing law. Require that programs that issue advisory opinions, rulings or other decisions that have precedential value make reasonable efforts to publish those opinions, rulings, or other decisions online, in a searchable format, including any translations made in accordance with the agency's LAP.
- e. Ensure that DPU's public involvement and communication process is available and accessible to all persons regardless of race, color, national origin (including LEP), disability, sex, age, or prior exercise of rights or opposition to actions prohibited under federal non-discrimination law by:
  - i. providing a process for identifying and describing communities to be impacted by a particular DPU proceeding;
  - ii. requiring the posting of contact information for relevant staff members on its website, including phone numbers and email addresses, to allow the public to communicate with appropriate staff;

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<sup>18</sup> <https://www.transportation.gov/sites/dot.gov/files/2020-01/Guidance%20to%20Federal%20Financial%20Assistance%20Recipients%20Regarding%20LEP%20-%20508.pdf>.

- iii. identifying a place to maintain records, consistent with the Massachusetts record retention laws, regarding past and present community concerns (including any complaints filed under the federal non-discrimination laws);
  - iv. providing a mechanism for DPU's community partners to provide input into enhanced community engagement and involvement;
  - v. requiring the consideration of contingency plans for unexpected events;
  - vi. promoting the availability of virtual and remote-option hearings and meetings when consistent with governing law and, when virtual and remote-option hearings and meetings are conducted, providing public notice of procedures, including telephone access instructions or other alternatives for anyone without internet access;
  - vii. when in person hearings and meetings are conducted, identifying location(s) where public meetings will be held considering the accessibility of the location (*e.g.*, availability and schedules of public transportation);
  - viii. maintaining resources for obtaining translation and interpretation services;
  - ix. ensuring all public hearing notices include instructions for registration (if required), how to make comments, and how to request language assistance services, including if any requests should be submitted by a date certain before an event;
  - x. providing a mechanism for DPU's community partners to provide input regarding posting of public notices in high traffic areas such as, local nonprofits and community organizations, local medical offices, schools, senior centers, bus stop shelters and libraries in the affected communities;
  - xi. maintaining a list of appropriate local free and accessible media platforms and contacts (based on the culture and linguistic needs of the community); and
  - xii. providing for the publication of the location of any information repositories.
2. Within 180 days of the effective date of this Agreement, DPU will submit to DOT a copy of its draft Public Participation Plan. DPU will also inform DOT of the publicly accessible location where the Public Participation Plan will be, such as an office and/or link to its website, after the Plan is approved. DOT will review the draft Public Participation Plan and provide any comments within 30 days.
  3. Within 30 days of receiving DOT's comments, DPU will review the comments, update the documents as appropriate, and submit its draft Public Participation Plan, including a translated draft Public Participation Plan in all appropriate languages, for public comment for

60 days. After the public comment period ends, DPU will review comments and finalize the Public Participation Plan within 45 days and publish the final Public Participation Plan, translated in all appropriate languages, on its website and in print.

**F. Policy on Ensuring Meaningful Access for Persons with Disabilities**

1. DPU will develop and implement policies and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity to fully participate in its programs and activities. Upon request with reasonable notice, DPU will provide, at no direct cost, appropriate auxiliary aids, and services to individuals with disabilities, (including but not limited to, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication or an equal opportunity to participate fully in benefits, activities, programs, and services provided by DPU in a timely manner. In addition, DPU will continue to ensure that its facilities and other facilities utilized by DPU for public engagement activities are accessible to the public and physically accessible for individuals with disabilities.
2. Within 180 days of the effective date of this Agreement, DPU will forward to DOT its written procedures to ensure meaningful access to all DPU programs and activities by individuals with disabilities. DOT will provide any comments within 30 days.
3. Within 60 days of receiving DOT's comments, DPU will consider the comments and make any changes to its Disability Policy. DPU will publish its Disability Policy, translated in all appropriate languages, on its website.

**G. DPU Training**

1. Within 180 days after implementing the deliverables identified in this Agreement in Section III, DPU will ensure that all staff and contractors, as appropriate, have been appropriately trained on these processes and procedures as well as on the nature of the federal non-discrimination obligations.
2. DPU will continue to offer anti-bias and cultural competency trainings to all DPU staff and contractors, as appropriate.
3. DPU will ensure that such trainings are a routine part of the on-boarding process for new employees and contractors, as appropriate.

**IV. GENERAL**

- A.** In consideration of DPU's implementation of its obligations described in Section III of this Agreement, DOT will end its investigation of DOT Complaint No. 2020-0264 and not issue a decision containing findings on the merits of the complaint.

- B. In committing to the obligations described in Section III of this Agreement, DPU makes no admission that any of its programs or activities are being or have been conducted in violation of Title VI or any other federal non-discrimination law or implementing regulations.
- C. DOT will monitor the implementation of the obligations in Section III of this Agreement to ensure they are fully implemented. Once the obligations of this Agreement are satisfied, DOT will issue a letter documenting closure of its investigation of DOT Complaint No. 2020-0264.
- D. DOT will review and provide feedback about any documentation submitted by DPU demonstrating completion of each obligation and will provide an assessment as to whether the documentation satisfies the obligations within 30 days of receipt of each such submission.
- E. DOT will, upon request, provide technical assistance to DPU regarding any of the civil rights obligations previously referenced.

#### **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 will be made personally via electronic mail 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 DPU to DOT via email will be sent to the following email address: [rosanne.goodwill@dot.gov](mailto:rosanne.goodwill@dot.gov).
- D. Documents submitted by DOT to DPU will be sent to the following email address: [teddy.echeverria@mass.gov](mailto:teddy.echeverria@mass.gov). Documents mailed by the DOT to DPU will be mailed to Teddy Echeverria, Chief of Staff, Department of Public Utilities, One South Station, Boston, MA 02110.

#### **VI. EFFECT OF THE AGREEMENT**

- A. DPU’s obligations under this Agreement are limited to compliance with Title VI and other applicable federal non-discrimination laws and DOT’s regulations at 49 C.F.R. Part 21. Nothing in this Agreement shall be construed to prevent DPU from complying with all requirements of federal and Massachusetts law, including but not limited to, the Massachusetts Public Records Law, M.G.L. c. 66, §10, the Massachusetts Fair Employment Law, M.G.L. c. 151B, and the Massachusetts Whistleblower Act, M.G.L. c. 149, §185.
- B. DPU understands that, if necessary, DOT may visit DPU, request that staff submit to interviews, and request such additional reports or data as are necessary for DOT to determine whether DPU has fulfilled the obligations of this Agreement. DPU understands that DOT will not close its

monitoring of this Agreement until DOT determines that DPU has fully implemented this Agreement's obligations and that a failure to satisfy any term in this Agreement may result in the DOT opening a compliance review investigation. If either Party desires to modify any portion of this Agreement, 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 DPU Chair and Director of PHMSA Civil Rights Office. Notwithstanding the foregoing, the email addresses and mailing addresses specified in Section V.C and V.D may be modified by the Party receiving submissions or mailings by delivering notice to all counterparties.

- C. This Agreement constitutes the entire Agreement between DPU and DOT 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 parties in accordance with the provisions of Section VI.B above. This Agreement does not affect DPU's responsibility to comply with Title VI or other federal non-discrimination laws and DOT's regulations at 49 C.F.R. Part 21, nor does it affect DOT's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- D. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts.
- E. The Chair of DPU has the authority to enter this Agreement for purposes of carrying out the activities listed in these paragraphs.
- F. The PHMSA Director of Civil Rights has the authority to enter into this Agreement.

On behalf of the Massachusetts Department of Public Utilities,




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James M. Van Nostrand, Chair  
Massachusetts Department of Public Utilities

1-4-24  
(Date)

On behalf of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration,

ROSANNE M  
GOODWILL

 Digitally signed by ROSANNE M  
GOODWILL  
Date: 2024.01.05 14:08:17 -06'00'

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Rosanne Goodwill, Director  
Office of Civil Rights

1-4-2024

(Date)

# Subpart C

**INFORMAL RESOLUTION AGREEMENT between the MASSACHUSETTS EFSB and the UNITED STATES DEPARTMENT OF TRANSPORTATION PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION (DOT COMPLAINT NO. 2020-0264)**

**III. SPECIFIC EFSB COMMITMENTS**

**A. EFSB Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (“LEP”)**

1. EFSB will develop a language access plan (“LAP”). The EFSB LAP will guide the EFSB’s determination of the appropriate language groups in the Commonwealth that may need language services and what language services or mix of language services to provide (e.g., qualified interpreters and translators) to ensure meaningful participation in EFSB’s programs and activities.
2. EFSB will review, revise, publicize, and implement their written LAP to ensure meaningful access to all EFSB services, programs, and activities for individuals with LEP, at no direct cost to those individuals. The LAP will provide information on how EFSB will:
  - a. Translate vital documents<sup>19</sup> of interest to the general public into the appropriate languages as identified through the process outlined above, for individuals with LEP who are served by or likely to be encountered by EFSB programs and activities, including any public notices that are vital documents.
  - b. Translate vital documents of interest to a particular individual with LEP or group of individuals with LEP (e.g., an individual with LEP wishing to file a grievance).
  - c. Provide for simultaneous oral interpretation, as practicable, by qualified interpreters of live proceedings (e.g., community engagement meetings and public hearings) and programs and activities in appropriate and other requested languages to allow individuals with LEP to meaningfully participate in those proceedings, programs, and activities (e.g., provide comments during public hearings, proceedings, programs, and activities hosted or provided by EFSB).
  - d. Consider the best way to receive feedback on the accuracy and quality of the language assistance services.

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<sup>19</sup> Whether or not a document (or the information it disseminates or solicits) is “vital” may depend upon the importance of the program, information, encounter, or service involved, and the consequence to the LEP person if the information in question is not provided in an accurate or in a timely fashion. [See Policy Guidance Concerning Recipients’ Responsibilities to Limited English Proficient \(LEP\) Persons | US Department of Transportation](#) ).



- e. Utilize EFSB’s social media platforms, if any, to provide translated vital information and increase messaging to populations with LEP.
  - f. Strive to hire staff with diverse bilingual capabilities to better serve the public; and
  - g. Provide qualified language services, for example, whether through qualified employees or through a contract for such services.
3. As part of its pending Notice of Inquiry on Enhancing Public Participation, EFSB 21-01, EFSB will develop a draft LAP. EFSB will post the draft LAP for public comment, including DOT comment. After a 60-day comment period, EFSB will consider all comments received and incorporate improvements to its draft LAP. EFSB will publish its final LAP, translated in all appropriate languages, on its website and in print.

**B. EFSB Notice of Non-Discrimination under the Federal Non-Discrimination Laws**

- 1. EFSB will ensure that its notice of non-discrimination is accessible to the public, including individuals with LEP and individuals with disabilities.
- 2. This notice will contain, at a minimum, the following statements:
  - a. EFSB does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and it does not retaliate against or intimidate any individual because they have exercised their rights to participate in actions protected by applicable state and federal non-discrimination laws.
  - b. If you have any questions about this notice or any of EFSB’s non-discrimination programs, policies, or procedures, you may contact:

[Name]  
Non-Discrimination Coordinator  
[Address, E-mail, and Phone Number]

- c. If you believe that you have been discriminated against with respect to an EFSB program or activity, you may contact [Name], Non-Discrimination Coordinator, identified above or visit our website at [enter website address] to learn how and where to file a complaint of discrimination.
- 3. Within 30 days after the effective date of this Agreement, EFSB will submit to DOT for review a copy of its notice of non-discrimination. DOT will provide comments within 30 days.
- 4. Within 30 days of receiving DOT’s comments, EFSB will review the comments, update the document as appropriate, and post its Notice of Nondiscrimination in its office and ~~on~~ a link

to the notice on its website homepage, titled "Notice of Nondiscrimination" including translated versions in all appropriate languages consistent with its LAP. A link to the Notice of Nondiscrimination will also be included in any appropriate EFSB publications distributed to the general public.

**C. EFSB Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws**

1. EFSB will ensure that it has prominently published online its grievance procedures to process discrimination complaints filed under applicable state and federal non-discrimination laws. EFSB will review the grievance procedures on an annual basis, and revise as necessary, to allow for prompt and fair resolution of discrimination complaints.
2. The grievance procedures will, at a minimum, include the following features:
  - a. Identify by name the Non-Discrimination Coordinator, including 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 procedures.
  - d. Describe the formal process available, and the options for complainants in pursuing it.
  - e. State that the preponderance of the evidence standard will be applied during 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 the procedures in the same manner as other claims of discrimination.
  - g. Assure the prompt and fair resolution of complaints that allege violation 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. As part of its grievance procedures, EFSB will include a complaint form that can be used by the public to file complaints of discrimination with EFSB.
3. Within 30 days after the effective date of this Agreement, EFSB will submit to DOT a copy of its grievance procedures. DOT will provide its comments within 30 days.

4. Within 30 days of receiving DOT's comments on EFSB's grievance procedures, EFSB will review the comments, update the document as appropriate, and post a direct link to the Grievance Procedures on its website in all appropriate languages consistent with its LAP.

**D. Non-Discrimination Coordinator**

1. EFSB will have at least one Non-Discrimination Coordinator to ensure EFSB's compliance with the federal non-discrimination statutes, either directly or through utilizing other staff, who will:
  - a. Provide information to individuals internally and externally that EFSB does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and EFSB does not retaliate against or intimidate any individual because they have exercised their rights to participate in or oppose actions protected by applicable state and federal non-discrimination laws for the purpose of interfering with such rights.
  - b. Provide notice on EFSB's website of its formal grievance process and the ability to file a discrimination complaint.
  - c. Establish written grievance policies and procedures or mechanisms to ensure that all discrimination complaints filed with EFSB under applicable state and federal non-discrimination laws are processed promptly and fairly. One element of any policy and procedure or mechanism must include meaningful access for individuals with limited-English proficiency and individuals with disabilities to these grievance policies and procedures.
  - d. Track all discrimination complaints filed with its Non-Discrimination Coordinator under applicable non-discrimination statutes and/or any other discrimination complaints independently investigated by EFSB. Also, conduct periodic reviews of the issues raised and outcomes achieved to evaluate whether there are any trends indicating any patterns or systemic problems. Address any trends identified.
  - e. Ensure that appropriate training is provided for its staff and its contractors, as appropriate in the formal processes available to resolve complaints filed with EFSB under applicable non-discrimination laws.
  - f. Ensure that complainants are updated on the progress of their discrimination complaints filed with EFSB under applicable non-discrimination laws and promptly informed as to any determinations made.
  - g. Undertake periodic evaluations of the efficacy of EFSB efforts to provide services, aids, benefits, and participation in any of EFSB'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 applicable non-discrimination laws.

- h. Provide appropriate staff with resources to determine language access needs so that staff may identify language needs for any project requiring public participation, and ensure EFSB identifies a qualified language service contractor with capabilities of accurately translating EFSB's vital information and interpreting its substantive subject matters, (e.g., create and maintain a glossary of key technical terms and concepts into appropriate languages), and ensure all public participation documents issued to the public in English are simultaneously issued in the appropriate translated languages to the extent practicable.
  - i. Not have other responsibilities that create a conflict of interest (e.g., serving as the non-discrimination coordinator as well as the legal advisor or representative on civil rights issues).
2. Within 120 days of the effective date of this Agreement, EFSB will forward to DOT proof that the responsibilities have been included in the Non-Discrimination Coordinator's statement of duties and that the Non-Discrimination Coordinator has accepted the duties.

**E. Public Participation Plan**

1. EFSB's public involvement consists of ensuring opportunities for community members to participate in EFSB proceedings in a meaningful way. Therefore, as part of its pending Notice of Inquiry on Enhancing Public Participation the EFSB will adopt a Public Participation Plan that will:
- a. Ensure that the factors used to determine the time, place, location, duration, and security at public hearings and meetings are developed and applied in a non-discriminatory manner.
  - b. Ensure that EFSB's public participation procedures are implemented consistent with applicable state and federal non-discrimination laws and include steps for effective public participation that is accessible to all persons without regard to race, age, color, national origin (including Limited English proficiency), disability, or sex each time EFSB engages in a public participation or public engagement process.
  - c. Allow comments to EFSB to be submitted: (1) in writing or electronically before, during, and after public comment hearings, and (2) orally at public comment hearings, subject to any reasonable deadlines established by the agency taking into account the nature of the hearings and their relationship to the agency's decision-making process, including deadlines for written and electronic comments that expire before the close of public comment hearings in order to meet a statutory deadline.

- d. Consider whether pre-filing statements and/or notice would enhance public participation, including by residents of environmental justice populations, and, if so, adopt requirements for the contents, publication, and/or distribution of pre-filing statements consistent with governing law.
- e. Ensure that advisory opinions, rulings, or other decisions that have precedential value make reasonable efforts to publish those opinions, rulings, or other decisions online, in a searchable format, including any translations made in accordance with the agency's LAP.
- f. Ensure that EFSB's public involvement and communication process is available and accessible to all persons regardless of race, color, national origin (including limited English proficiency), disability, sex, age, or prior exercise of rights or opposition to actions prohibited under federal non-discrimination law by:
  - i. providing a process for identifying and describing communities to be impacted by a particular EFSB proceeding;
  - ii. requiring the posting of contact information for relevant staff members on its website, including phone numbers and email addresses, to allow the public to communicate with appropriate staff;
  - iii. identifying a place to maintain records, consistent with the Massachusetts record retention laws, regarding past and present community concerns (including any complaints filed under the federal non-discrimination laws);
  - iv. providing a mechanism for EFSB's community partners to provide input into enhanced community engagement and involvement;
  - v. requiring the consideration of contingency plans for unexpected events;
  - vi. promoting the availability of virtual and remote-option hearings and meetings when consistent with governing law and, when virtual and remote-option hearings and meetings are conducted, providing public notice of procedures, including telephone access instructions or other alternatives for anyone without internet access;
  - vii. when in person hearings and meetings are conducted, identifying location(s) where public meetings will be held considering the accessibility of the location (e.g., availability and schedules of public transportation);
  - viii. maintaining resources for obtaining translation and interpretation services;
  - ix. ensuring all public hearing notices include instructions for registration (if required), how to make comments, and how to request language assistance services, including if any requests should be submitted by a date certain before an event;

- x. providing a mechanism for EFSB's community partners to provide input regarding posting of public notices in high traffic areas such as, local nonprofits and community organizations, local medical offices, schools, senior centers, bus stop shelters and libraries in the affected communities;
  - xi. maintaining a list of appropriate local free and accessible media platforms and contacts (based on the culture and linguistic needs of the community); and
  - xii. providing for the publication of the location of any information repositories.
2. As part of its pending Notice of Inquiry on Enhancing Public Participation, EFSB will develop a draft Public Participation Plan. EFSB will post the draft Public Participation Plan for public comment, including DOT comment. After a 60-day comment period, EFSB will consider all comments received and incorporate improvements to its draft Public Participation Plan. EFSB will publish its final Public Participation Plan, translated in all appropriate languages, on its website and in print.

**F. Policy on Ensuring Meaningful Access for Persons with Disabilities**

1. EFSB will develop and implement policies and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity to fully participate in its programs and activities. Upon request with reasonable notice, EFSB will provide, at no direct cost, appropriate auxiliary aids, and services to individuals with disabilities, (including but not limited to, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication or an equal opportunity to participate fully in benefits, activities, programs, and services provided by EFSB in a timely manner. In addition, EFSB will continue to ensure that its facilities and other facilities utilized by EFSB for public engagement activities are accessible to the public and physically accessible for individuals with disabilities.
2. Within 180 days of the effective date of this Agreement, EFSB will forward to DOT its written procedures to ensure meaningful access to all EFSB programs and activities by individuals with disabilities. DOT will provide any comments within 30 days.
3. Within 60 days of receiving DOT's comments, EFSB will consider the comments and make any changes to its Disability Policy. EFSB will publish its Disability Policy, translated in all appropriate languages, on its website.

**G. EFSB Training**

1. Within 180 days after implementing the deliverables identified in this Agreement in Section III, EFSB will ensure that all staff and contractors, as appropriate, have been appropriately trained on these processes and procedures as well as on the nature of the applicable non-discrimination obligations.

2. EFSB will continue to offer anti-bias and cultural competency trainings to all EFSB staff and contractors, as appropriate.
3. EFSB will ensure that such trainings are a routine part of the on-boarding process for new employees and contractors, as appropriate.

#### **IV. GENERAL**

- A. In consideration of EFSB's implementation of its obligations described in Section I of this Agreement, DOT will end its investigation of DOT Complaint No. 2020-0264 and not issue a decision containing findings on the merits of the complaint.
- B. In committing to the obligations described in Section III of this Agreement, EFSB makes no admission that any of its programs or activities are being or have been conducted in violation of Title VI or any other federal non-discrimination law or implementing regulations.
- C. DOT will monitor the implementation of the obligations in Section III of this Agreement to ensure they are fully implemented. Once the obligations of this Agreement are satisfied, DOT will issue a letter documenting closure of its investigation of DOT Complaint No. 2020-0264.
- D. DOT will review and provide feedback about any documentation submitted by EFSB demonstrating completion of each obligation and will provide an assessment as to whether the documentation satisfies the obligations within 30 days of receipt of each such submission.
- E. DOT will, upon request, provide technical assistance to EFSB regarding any of the civil rights obligations previously referenced.

#### **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 will be made personally via electronic mail 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 EFSB to DOT via email will be sent to the following email address: [rosanne.goodwill@dot.gov](mailto:rosanne.goodwill@dot.gov).
- D. Documents submitted by DOT to EFSB will be sent to the following email address: [Andrew.Greene@mass.gov](mailto:Andrew.Greene@mass.gov).

- E. Documents mailed by the DOT to EFSB will be mailed to: Andrew Greene, Director, Energy Facilities Siting Board, One South Station, Boston, MA 02110

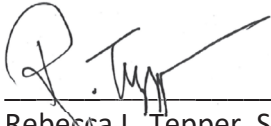
## **VI. EFFECT OF THE AGREEMENT**

- A. EFSB's commitments under this Agreement are limited to compliance with Title VI and other applicable federal non-discrimination laws and DOT's regulations at 49 C.F.R. Part 21. Nothing in this Agreement shall be construed to prevent EFSB from complying with all requirements of federal and Massachusetts law, including but not limited to, the Massachusetts Public Records Law, M.G.L. c. 66, §10, the Massachusetts Fair Employment Law, M.G.L. c. 151B, and the Massachusetts Whistleblower Act, M.G.L. c. 149, §185.
- B. EFSB understands that, if necessary, DOT may visit EFSB, request that staff submit to interviews, and request such additional reports or data as are necessary for DOT to determine whether EFSB has fulfilled the commitments of this Agreement.
- C. EFSB understands that DOT will not close its monitoring of this Agreement until DOT determines that EFSB has fully implemented this Agreement's commitments and that a failure to satisfy any term in this Agreement may result in the DOT opening a compliance review investigation.
- D. If either Party desires to modify any portion of this Agreement, 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 EFSB Chair and Director of PHMSA Civil Rights Office. Notwithstanding the foregoing, the email addresses and mailing addresses specified in Section V.C and V.D may be modified by the Party receiving submissions or mailings by delivering notice to all counterparties.
- E. This Agreement constitutes the entire Agreement between EFSB and DOT 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 parties in accordance with the provisions of Section VI.D above.
- 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.
- F. The Secretary, in her capacity as Chair of the EFSB, and with an affirmative vote of the EFSB, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs.
- G. The PHMSA Director of Civil Rights has the authority to enter into this Agreement.





On behalf of the Massachusetts EFSB,




Rebecca L. Tepper, Secretary  
Chair, EFSB

1/4/2024

(Date)

On behalf of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration,

ROSANNE M  
GOODWILL

 Digitally signed by ROSANNE M  
GOODWILL  
Date: 2024.01.05 14:09:38 -06'00'

Rosanne Goodwill, Director  
Office of Civil Rights

(Date)