



OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

December 10, 2024

In Reply Refer to:

EPA Complaint No: 01RNO-20-R7

Dru Buntin, Director
Missouri Department of Natural Resources
Lewis and Clark State Office Building
Jefferson City, MO 65101
Dru.Buntin@dnr.mo.gov

Re: Resolution of EPA Complaint No. 01RNO-20-R7

Dear Director Buntin:

This letter is to notify you that the U.S. Environmental Protection Agency ("EPA"), Office of Environmental Justice & External Civil Rights ("OEJECR"), Office of External Civil Rights Compliance ("OECRC"), has resolved EPA Complaint No. 01RNO-20-R7 based on the enclosed Informal Resolution Agreement ("Agreement"), which is entered into between EPA and the Missouri Department of Natural Resources ("MoDNR").

On September 29, 2020, EPA accepted for investigation a complaint filed against MoDNR alleging discrimination on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964 ("Title VI") and EPA's nondiscrimination regulation, at 40 C.F.R. Parts 5 and 7. Specifically, EPA accepted for investigation the following issues:

1. Whether MoDNR discriminated against a community of color, collectively hereinafter referred to as "Dutchtown," located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's implementing regulation, 40 C.F.R. Part 7, by issuing Part 70 Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations; and
2. Whether MoDNR 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 MoDNR's services, programs, and activities for individuals with LEP and individuals with disabilities, and whether the MoDNR 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.

During the course of EPA's investigation, MoDNR agreed to enter into the IRA process in order to resolve EPA Complaint No. 01RNO-20-R7. The enclosed Agreement, signed on December 9, 2024, is entered into by EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI and 40 C.F.R. Parts 5 and 7. It is understood that the Agreement does not constitute an admission by MoDNR of any violation or a finding by EPA of compliance or noncompliance with applicable federal non-discrimination laws and regulation.

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

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

Sincerely,



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

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

Cecilia Tapia
Acting Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 7

Leslie Humphrey
Regional Counsel
U.S. EPA Region 7

INFORMAL RESOLUTION AGREEMENT
between
MISSOURI DEPARTMENT OF NATURAL RESOURCES
and
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint No. 01RNO-20-R7

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 civil rights laws, and United States Environmental Protection Agency's (EPA) implementing regulations at 40 C.F.R. Parts 5 and 7, prohibit discrimination on the basis of race, color, national origin, disability, sex and age in the programs or activities of applicants for or recipients of federal financial assistance.¹
- B. The Office of External Civil Rights Compliance (OECRC) is responsible for enforcing several federal civil rights laws that prohibit discrimination on the bases of race, color, national origin (including limited-English proficiency (LEP)), disability, sex, and age in programs or activities that receive federal financial assistance from the EPA.
- C. The Missouri Department of Natural Resources (MoDNR) receives financial assistance from EPA and, therefore, must ensure nondiscrimination in programs and activities pursuant to the provisions of Title VI, and other federal civil rights laws, and EPA's implementing regulations.
- D. On September 4, 2020, OECRC received Complaint No. 01RNO-20-R7, relating to the issuance of Permit Number OP2020-008, from Great Rivers Environmental Law Center on behalf of the National Association for the Advancement of Colored People, Missouri State Conference ("Missouri NAACP"), the NAACP St. Louis City Branch ("St. Louis City NAACP"), and the Dutchtown South Community Corporation (DSCC),² which alleged MoDNR discriminated on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7.
- E. On September 29, 2020, OECRC determined that the Complaint met the jurisdictional requirements and identified the following issues for investigation:

¹ 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.

² The complaint identifies that the DSCC represents the communities of Dutchtown, Mt. Pleasant, Marine Villa and Gravois Park located in South St. Louis City, MO and is collectively hereinafter referred to as Dutchtown.

1. Whether MoDNR discriminated against a community of color, collectively hereinafter referred to as “Dutchtown,” located in St. Louis, MO, on the basis of race, color and/or national origin in violation of Title VI of the Civil Rights Act of 1964, and EPA’s implementing regulation, 40 C.F.R. Part 7, by issuing Part 70 Intermediate Operating Permit Number OP2020-008 to the Kinder Morgan Transmix Company, LLC operations;³ and
 2. Whether MoDNR 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 MoDNR’s services, programs, and activities for individuals with LEP and individuals with disabilities, and whether the MoDNR 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 7.⁴
- F. On March 30, 2021, OECRC issued “Partial Preliminary Findings for EPA Complaint No. 01RNO-20-R7: Non-Compliance” that addressed Issue No. 2 above regarding implementation of the procedural safeguards as required under 40 C.F.R. Parts 5 and 7, except for MoDNR’s public participation policy.
- G. OECRC continued to investigate Issue No. 1 of Complaint No. 01RNO-20-R7, and on November 22, 2021, MoDNR agreed to engage in the Informal Resolution Agreement (“Agreement”) process to resolve Issue No. 1 and any outstanding parts of Issue No. 2.

³ Title VI of the Civil Rights Act, 42 U.S.C. 2000(d) et seq. (prohibiting discrimination on the basis of race, color or national origin); 40 C.F.R. Parts 5 and 7. See also U.S. EPA, Chapter 1 of the U.S. EPA’s External Civil Rights Compliance Office Compliance Toolkit: Chapter 1, transmittal letter, and FAQs (https://www.epa.gov/sites/production/files/2020-02/documents/toolkit_ecrco_chapter_1-letter-faqs_2017.01.18.pdf). (2017).

⁴ See Title VI, 42 U.S.C. 2000(d) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient’s Title VI obligations not to discriminate based on national origin); 40 C.F.R. § 7.35(a). See also U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 FR 14207 (March 21, 2006) (https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf); U.S. EPA, Procedural Safeguards Checklist for Recipients, (https://www.epa.gov/sites/production/files/2020-02/documents/procedural_safeguards_checklist_for_recipients_2020.01.pdf); U.S. EPA, Disability Nondiscrimination Plan Sample (https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf). (2017).

- H. On June 8, 2022, OECRC entered into a Voluntary Compliance Agreement to resolve the partial preliminary findings.
- I. This Agreement is entered into pursuant to the authority granted to OECRC under the federal nondiscrimination laws, including 40 C.F.R. Parts 5 and 7, and resolves Issue No. 1 and the remaining parts of Issue No. 2 of Complaint No. 01RNO-20-R7.
- J. This Agreement does not constitute an admission by MoDNR of a violation of, or a finding of compliance or noncompliance by OECRC with Title VI or 40 C.F.R. Parts 5 and 7.
- K. MoDNR is committed to carrying out its responsibilities in a nondiscriminatory manner consistent with Missouri laws and in accordance with the requirements of Title VI and other federal nondiscrimination laws and the EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7. The activities detailed in Section III of this Agreement, which MoDNR has agreed to undertake and implement, are solely for the purposes of this Agreement consistent with the above referenced requirements.

II. BACKGROUND

- A. The Missouri Department of Natural Resources' Air Pollution Control Program works to maintain and improve the quality of Missouri's air to protect the health and general welfare of the people. The department protects our air by issuing permits to facilities to control air pollution, monitoring air pollutants, making rules and enforcing laws to maintain air quality.

The department issues different types of permits: construction permits and operating permits. Construction permits are required before construction or modification of an emission source and contain all the applicable emission limits for that emission source. Operating permits compile, rather than add, all the air quality control requirements for the entire facility.

There are two types of operating permits issued by the department: intermediate operating permits, and Part 70 operating permits. Intermediate operating permits are issued through the department's intermediate permit program which was approved into the department's State Implementation Plan under Section 110 of the CAA. Part 70 permits are issued by the department's Title V operating permit program which was submitted and approved by EPA pursuant to Section 502(d)(1) of the CAA.⁵

The department's operating permit programs generally do not impose new substantive air quality control requirements. Rather, the operating permit programs compile the air quality control requirements as they apply to the source's emission units and provide

⁵ See CAA § 504(c), 42 U.S.C. § 7661c(c).

monitoring, recordkeeping, and reporting requirements to assure compliance with such requirements. In addition, the Intermediate Operating Permit program can add restrictions requested by the source.

Public participation is an important part of air quality permitting. Missouri's implementing regulations require that all operating permits have a public comment period, during which anyone can submit written comments on the proposed permits to the Air Pollution Control Program. The public may also request a public hearing to discuss issuance of the permit. Additionally, the public may petition the EPA to object to the issuance of a Title V permit.

- B. The Dutchtown South community is located within zip codes 63111, 63116 and 63118, and within the 9th, 11th, 13th, 20th and 25th wards of the City of St. Louis. It is an agglomerate of four (4) neighborhoods located on the southside of the City of St. Louis that include Dutchtown, Gravois Park, Mount Pleasant, and Marine Villa. The Dutchtown South area includes a mixture of residential, retail, commercial and industrial land uses bound by "Cherokee Street or Chippewa Street to the north, Bates Street to the south, the Mississippi River to the east, and the Missouri Pacific railroad tracks to the west." Dutchtown South has a population of approximately 93,865. The percentages of people of color within the zip codes for the Dutchtown community are 60%, 39%, and 64% and the percentages for populations 5 years or older who speak English less than very well are 4%, 11%, and 5%. Currently, there are seven (7) Part 70 major source air permits, five (5) intermediate synthetic minor source air permits, and 18 permitted construction air emission sources located within the Dutchtown South neighborhoods.

III. SPECIFIC MoDNR COMMITMENTS

MoDNR commits to take the following specific actions:

- A. Public Participation Plan⁶. MoDNR will develop and implement a Public Participation Manual (PPM) that serves as an effective Public Participation Plan that will:
 - 1. Ensure that its public involvement process is available to all persons regardless of race, color, national origin (including limited-English proficiency), disability, age, sex or prior exercise of rights or opposition to actions protected under federal nondiscrimination laws;
 - 2. Ensure that the factors used to determine the time, place, location, duration, and security at public meetings are developed and applied in a nondiscriminatory manner;
 - 3. Develop, publicize, and implement written public participation procedures (consistent with MoDNR's previously developed and implemented Limited

⁶ See EPA Guidance: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>

English Proficiency Policy, the federal civil rights laws and the EPA's Public Involvement Guidance),⁷ that include implementation of the following steps for effective public participation that is accessible to all persons regardless of race, color, sex, national origin (including LEP), age, and disability each time MoDNR engages in a public participation or public involvement process:

- i. State how MoDNR will meaningfully engage the public in general about its programs, activities, and services;
- ii. Distinguish between processes that do or do not involve public engagement beyond public notice;
- iii. Specify communication of public notice methodologies used, clearly communicating the criteria used for determining whether to have any discretionary public engagement events;
- iv. Address how MoDNR will communicate and engage with the public prior to and during its programs, activities, and services (e.g., communicating how the public can request to participate during public engagement opportunities such as community meetings, etc.), establish procedures for submitting written public comments, and how to request to participate in hearings;
- v. Describe the methods MoDNR will implement to ensure the public can access publicly available information and vital documents regarding its programs, activities, and services. This should include clear instructions about where and how to efficiently access MoDNR's existing electronic and hardcopy public records;
- vi. Provide access to numbers and email addresses on the MoDNR's website, to allow the public to communicate via phone or email.⁸ Develop a list or checklist of equitable considerations when scheduling public meetings and engagement;
- vii. Develop and maintain a list of contact name(s) for obtaining, at no cost, reasonable accommodations for individuals with disabilities and language assistance services for limited English proficient persons, consistent with MoDNR's Limited English Proficiency Policy and ADA Policy. Provide a MoDNR contact from the Communications Office for access to a list of appropriate local media contacts.

⁷ 71 F.R. 14207, 14210-11 (March 21, 2006) (located at <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>).

⁸ <https://dnr.mo.gov/about-us>

4. MoDNR will ensure that any public meetings hosted by MoDNR that occur virtually are held in such a manner as to ensure the meaningful participation/involvement of persons with limited English proficiency and persons with disabilities. If a virtual meeting is held in lieu of an in-person public hearing, such meetings will be held on platforms allowing for the same equivalent transcription to occur that would generally be mandatory for an in-person public hearing and will ensure that transcripts and/or video recordings are made available in the same manner as would occur for an equivalent in-person hearing.
5. MoDNR will ensure that a Public Engagement Plan (PEP) is developed for each action that necessitates a PEP. The criteria for what will necessitate a PEP will be detailed in the PPM. A PEP will include the following, as necessary:
 - i. Plain language summary;
 - ii. Description of the known community/stakeholder groups, including geographic and demographic information, known community/stakeholder groups, and history/background;
 - iii. A detailed plan of public outreach activities the program will take to reach the affected public (for example, what information will be available online and/or available in hard copy; who to contact; if a public meeting is expected, how it will be held; languages present);
 - iv. Contact information for special services needed, reasonable accommodations, interpretation services; and
 - v. Contact information for the program taking the action necessitating the PEP.
6. In addition to providing the public with online information relating to that activity, consistent with Missouri Laws and regulations, and as deemed appropriate by MoDNR based on available resources, MoDNR may provide a mechanism for residents to access relevant hard copy information in a centralized public location near where the proposed MoDNR activity will be carried out. Following the principles outlined above, MoDNR will consider whether the action may merit expanded public notice.
7. Within 90 days of the effective date of this Agreement, MoDNR will post a draft of the PPM developed for a 30-day public comment period for the public and stakeholders to provide comments and suggestions. MoDNR will ensure that the draft PPM is accessible to all individuals including persons with limited English proficiency and persons with disabilities and that the notice requesting public comment is also available for translation into non-English languages and

provides a contact person(s) the public may reach if they have questions, consistent with the MoDNR Limited English Proficiency Policy.

8. Within 60 days following the end of the 30-day public comment period, MoDNR will submit a final draft of the PPM incorporating, as appropriate, any changes in response to public comment and a summary of the public comments received to OECRC. OECRC will review the final draft PPM and provide comments to MoDNR within 30 days of receipt of the final draft PPM. MoDNR will respond to OECRC comments and discuss with OECRC any concerns, if necessary. Within 120 days of receiving OECRC's comments, MoDNR will incorporate changes, as the parties deem appropriate, based on OECRC's comments and prominently publish in print in publicly accessible locations and on its website the final PPM in English and translated in the applicable LEP languages identified in MoDNR's LEP plan and consistent with MoDNR's LEP plan.

B. MoDNR Training on PPM

1. Within 180 days of the effective date of this Agreement, MoDNR will forward to EPA a plan that ensures all its staff, as applicable, have been appropriately trained on all plans, policies, and procedures created and implemented as part of this Agreement.
2. MoDNR is responsible for holding contractors responsible for not discriminating under 40 CFR 7.35(a). When contractors are responsible for carrying out tasks involving application of the PPM and any PEP, MoDNR is responsible for requiring contractors to follow the PPM and conducting those activities in accordance with its procedures.
3. MoDNR is responsible for adequately training all its staff on federal non-discrimination obligations and other training requirements as mandated and made applicable by the Missouri Human Rights Act, Chapter 213, RSMo9; Title VI and Title VII of the Civil Rights Act of 1964; Title IX of the Education Amendments Act of 1972; Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; the Age Discrimination Act of 1975; and all other applicable laws, regulations, and executive orders.

C. Kinder Morgan Operating Permit Renewal Outreach and Participation.

1. MoDNR will apply the PPM developed in sections A, along with its LEP plan previously developed, to the renewal application for the operating permit for the Kinder Morgan facility located in the Dutchtown South neighborhood in 2025. MoDNR will develop a PEP consistent with its PPM, as a part of implementation of its PPM.

⁹ The citations refer to the most current, amended version of all laws listed in this provision.

2. Within 90 days of the effective date of this Agreement, MoDNR will submit to OECRC for review a draft copy of its PEP for Dutchtown South regarding the Kinder Morgan operating permit renewal consistent with the considerations identified above. OECRC will review the draft PEP for Dutchtown South and will provide any comments within 30 days.

IV. GENERAL

- A. In consideration of MoDNR's implementation of its obligations described in Section III of this Agreement, OECRC will end its investigation of Complaint No. 01RNO-20-R7 and not issue a decision containing findings on the merits of the Complaint.
- B. 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 File No. 01RNO-20-R7 and closure of the Complaint as of the date of that letter.
- C. OECRC will review and provide feedback about any documentation submitted by MoDNR 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.
- D. OECRC will, upon request, provide technical assistance to MoDNR 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 MoDNR to OECRC will be sent to the following email address: garcia.bianca@epa.gov

Documents mailed by MoDNR will be sent to:

Attn: Bianca Garcia
US Environmental Protection Agency

Office of External Civil Rights Compliance
 1200 Pennsylvania Ave. NW
 Mail Code: 2310A
 Washington, DC 20460

- D. Electronic documents submitted by OECRC to MoDNR will be sent to the following email address: jacob.westen@dnr.mo.gov

Documents mailed by OECRC will be sent to:

Missouri Department of Natural Resources
 Lewis and Clark State Office Building
 1101 Riverside Dr.
 Jefferson City, MO 65101

- E. If at any time during the course of this Agreement MoDNR reasonably and in good faith believes it may be unable to meet a deadline established in this Agreement, MoDNR may request and OECRC in its discretion may authorize a reasonable deadline extension. All such deadline extensions may be requested and approved or denied via electronic mail correspondence separate from a modification process contemplated by Section V.C, above.

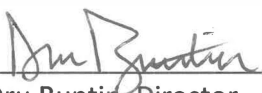
VI. EFFECT OF THE AGREEMENT

- A. The MoDNR understands that, if necessary, OECRC may visit the MoDNR, interview staff, and request such additional reports or data as are necessary for OECRC to determine whether the MoDNR has fulfilled the terms of this Agreement.
- B. The MoDNR understands that the EPA will not close its monitoring of this Agreement until OECRC determines that the MoDNR has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in the EPA reopening an investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to the MoDNR's program or authorities, or for other good cause, the Party seeking a modification will promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement will take effect only upon written agreement by the Director of the MoDNR and the Director of OECRC in accordance with Section V above.
- D. This Agreement constitutes the entire Agreement between the MoDNR and the EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person will be construed to change any commitment or term of this Agreement, except as specifically agreed to by the

MoDNR and the OECRC in accordance with the provisions of Section V above.

- E. The Agreement does not affect MoDNR's obligations to fulfill the Voluntary Compliance Agreement entered into with OECRC on June 8, 2022.
- F. This Agreement does not affect the MoDNR's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and the EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect the EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- 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. The Director, in their capacity as an official of the MoDNR, 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 Missouri Department of Natural Resources:



 Dru Buntin, Director
 Missouri Department of Natural Resources

12-9-24
 (Date)

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



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

12-09-2024
 (Date)