



## OFFICE OF EXTERNAL CIVIL RIGHTS COMPLIANCE

WASHINGTON, D.C. 20460

January 17, 2025

**In Reply Refer to:**

EPA Complaint No. 03R-21-R4

David W. Salyers  
Commissioner  
Tennessee Department of Environment and Conservation  
Davy Crockett Tower  
500 James Robertson Pkwy  
Nashville, Tennessee 37243  
[David.Salyers@tn.gov](mailto:David.Salyers@tn.gov)

**Re: Administrative Closure without Prejudice**

Dear Commissioner Salyers:

This letter is to advise you that the U.S. Environmental Protection Agency's (EPA) Office of External Civil Rights Compliance (OECRC) is administratively closing EPA Complaint No. 03R-21-R4 (Complaint) without prejudice.

**Procedural Background**

This Complaint, filed against Tennessee Department of Environment and Conservation (TDEC), alleged that TDEC discriminated against the predominantly African American neighborhoods in southwest Memphis, Tennessee, on the basis of race in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000(d) et seq., and EPA's nondiscrimination regulation, at 40 C.F.R. Part 7 when it issued Aquatic Resource Alteration Permit and Section 401 Certification NRS20.089 for the Byhalia Connection Pipeline on November 17, 2020.

On May 17, 2021, the EPA's OECRC received Complaint No. 03R-21-R4, which alleged discrimination by TDEC based on race. On June 15, 2021, after determining that the Complaint met the jurisdictional requirements, OECRC accepted the complaint for investigation.

On July 28, 2021, after OECRC accepted the Complaint for investigation, the Applicant Byhalia Pipeline, LLC voluntarily withdrew and relinquished the permit. As a result, TDEC formally revoked the permit. The Byhalia Connection Pipeline was not constructed.

On October 22, 2021, TDEC agreed engage in negotiations toward an Informal Resolution Agreement. On November 2, 2021, EPA issued a revised acceptance and tolling letter identifying the following as remaining issues for resolution:

1. Whether TDEC discriminates on the basis of race in violation of the Civil Rights Act of 1964 (Title VI) and EPA's regulation at 40 C.F.R. Part 7, when, within its environmental permitting program for new and existing facilities, it fails to consider potential adverse disparate impacts on the basis of race and national origin, including, for example, through the use of EJ screening tools and consideration of public input (such as when TDEC issued Aquatic Resource Alteration Permit for the Byhalia Connection Pipeline on November 17, 2020 – permit now revoked).
2. Whether TDEC 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 TDEC's services, programs, and activities, for individuals with limited English proficiency and individuals with disabilities, and whether TDEC has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.<sup>1</sup>

On January 17, 2025, via email, the Complainant withdrew the complaint. OECRC has determined that continuing the investigation of this complaint is not warranted. Consequently, OECRC is administratively closing the complaint without prejudice<sup>2</sup> as of the date of this letter.

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<sup>1</sup> See Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974) (finding that the government properly required language services to be provided under a recipient's Title VI obligations not to discriminate based on national origin); 40 C.F.R. § § 7.30, 7.35. See also U.S. EPA, Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons. 69 FR 35602 (June 25, 2004) (available at [https://www.epa.gov/sites/production/files/2020-02/documents/title\\_vi\\_lep\\_guidance\\_for\\_epa\\_recipients\\_2004.06.25.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_lep_guidance_for_epa_recipients_2004.06.25.pdf)); U.S. EPA, Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs, 71 CFR 14207 (March 21, 2006) (available at [https://www.epa.gov/sites/production/files/2020-02/documents/title\\_vi\\_public\\_involvement\\_guidance\\_for\\_epa\\_recipients\\_2006.03.21.pdf](https://www.epa.gov/sites/production/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf)); Guidance on Procedural Safeguards: Requirements and Best Practices, <https://www.epa.gov/system/files/documents/2024-08/civil-rights-guidance-on-procedural-safeguards-august-2024.pdf> (Aug. 2024).

<sup>2</sup> A closure without prejudice means that the complainant may refile the complaint with OECRC at a later time. See U.S. EPA, OECRC Case Resolution Manual, Section 1.10 "Withdrawing a Complaint," p. 12-13 available at: [https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5\\_final\\_case\\_resolution\\_manual\\_.pdf](https://www.epa.gov/sites/default/files/2021-01/documents/2021.1.5_final_case_resolution_manual_.pdf). If the complaint is refiled, OECRC will proceed with its preliminary review to determine whether the complaint should be accepted, rejected or referred.

OECRC encourages TDEC to continue to find ways to improve its non-discrimination program to ensure that the benefits of its programs and activities, including its environmental permitting program, are available to the public without regard to race, color, national origin, age, gender, or disability status.

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

This letter is not a formal statement of OECRC policy and should not be relied upon, cited, or construed as such. This letter and any findings herein do not affect TDEC's continuing 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 do they affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not addressed in this letter.

I thank you and your staff for your cooperation in this matter. As always, OECRC remains available for additional technical assistance with the continued implementation of TDEC's nondiscrimination program going forward. If you have questions about this letter, please feel free to contact me at (202) 564-8796, or by email at [hoang.anhthu@epa.gov](mailto:hoang.anhthu@epa.gov).

Sincerely,



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

cc:

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