



OFFICE OF CIVIL RIGHTS AND ADJUDICATION

WASHINGTON, D.C. 20460

January 21, 2026

Amanda Lefton, Commissioner
New York State Department of Environmental Conservation
625 Broadway, 14th Floor
Albany, NY 12233-1010
Via email: amanda.lefton@dec.ny.gov, contact@dec.ny.gov

Re: Dismissal of EPA Administrative Complaint No. 02RNO-21-R2

Dear Commissioner Amanda Lefton:

The U.S. Environmental Protection Agency's (EPA), Office of Civil Rights and Adjudication (OCRA), External Civil Rights Division (ECRD)¹ issues this letter regarding the above-referenced complaint. Specifically, ECRD finds no discrimination and is closing the complaint.

Complainants alleged New York State Department of Environmental Conservation (DEC) discriminated in its initial review of a permit application related to natural gas infrastructure in Brooklyn, NY. Specifically, Complainants alleged DEC violated Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, *et seq.* (Title VI) and EPA's nondiscrimination regulations found at 40 C.F.R. Parts 5 and 7.

ECRD is responsible for enforcing federal civil rights laws that prohibit discrimination by applicants for and recipients of EPA financial assistance. On October 21, 2021, ECRD accepted two claims for investigation:

1. Whether DEC discriminated on the basis of race and national origin in violation of Title VI and 40 C.F.R. Part 7 when, on March 2, 2021, DEC issued a "negative declaration" for National Grid's Article 19 Air State Facility permit application to expand its Greenpoint gas processing center.
2. Whether DEC 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.

¹ In August 2025, EPA disestablished the Office of Environmental Justice and External Civil Rights. The Office of External Civil Rights Compliance (OECRC) was subsumed in what is now the Office of Civil Rights and Adjudication (OCRA) and renamed the External Civil Rights Division (ECRD). This letter refers to ECRD even for OECRC actions.

Regarding the first claim, ECRD finds insufficient evidence to conclude that DEC's issuance of the negative declaration violated Title VI or EPA's nondiscrimination regulations. As to the second claim, ECRD finds DEC currently has and is implementing procedural safeguards as required under 40 C.F.R. Parts 5 and 7.²

Background

On May 11, 2020, National Grid submitted an Article 19 Air State Facility (ASF) permit application (DEC ID: 2-6101-0071/00022) to replace Greenpoint Energy Center's existing Clean Air Act permit and to authorize the installation of two new vaporizers. On November 2, 2020, DEC determined that National Grid's permit application was technically and administratively complete and issued the first negative declaration.

On November 10, 2020, DEC issued a Notice of Complete Application.³ On August 30, 2021, Complainants filed the instant complaint with ECRD. Specifically, Complainants alleged DEC engaged in race and national origin discrimination when it issued the negative declaration in their communities but not in similarly situated communities not of their race and national origin. On October 21, 2021, ECRD accepted the complaint against DEC for investigation.

On December 20, 2021, DEC agreed to negotiate an Informal Resolution Agreement (IRA).⁴ EPA's Conflict Prevention and Resolution Center facilitated a series of sessions involving ECRD, DEC, and the Complainants.

On December 15, 2023, ECRD provided the last draft informal resolution term sheet to DEC for its consideration. On February 9, 2024, DEC requested ECRD administratively close the complaint. Ultimately, ECRD and DEC were not able to informally resolve the complaint.

On December 5, 2024, DEC officially withdrew from informal resolution efforts. On December 13, 2024, ECRD issued letters to DEC and the Complainants terminating the IRA process.⁵

In accordance with ECRD jurisdiction and procedures, ECRD engaged in fact-finding before and during the IRA process. As part of these efforts, ECRD received and evaluated information responsive to the investigation.

Some of the pertinent information ECRD reviewed as part of its investigation included the following: DEC's March 11, 2022, response letter to the complaint; DEC's response to ECRD's

² ECRD has offered best practice recommendations for its nondiscrimination program consistent with practices described in ECRD policy guidance. See EPA's "Civil Rights Guidance on Procedural Safeguards" available at: <https://www.epa.gov/external-civil-rights/civil-rights-guidance-procedural-safeguards>.

³ See <https://dec.ny.gov/news/environmental-notice-bulletin/2021-02-03/public-notice/applicant-the-brooklyn-union-gas-company-1-metrotech-ctr-brooklyn-ny-11201-3831>.

⁴ Accordingly, on January 13, 2022, ECRD informed Complainant and DEC that it was tolling the 180-day timeframe to issue Preliminary Findings during the IRA process as of December 20, 2021, pursuant to 40 C.F.R. § 7.115(c)(1).

⁵ https://www.epa.gov/system/files/documents/2025-04/2024.12.13_iraterminationletter_rec_02rno-21-r2_0.pdf

July 20, 2022, Request for Information (RFI); interviews with Complainants; and supplemental information Complainants provided throughout the investigation. In addition, ECRD conducted a site visit on June 28-29, 2022, and a facilitated listening session with Complainants and DEC on October 23, 2023.

Legal Standard

Federal civil rights laws and EPA's implementing regulation at 40 C.F.R. Part 7 prohibit recipients from intentionally discriminating in their programs and activities based on race, color, or national origin, disability, sex, or age. Pursuant to 40 C.F.R. §7.35 (a), "a recipient shall not on the basis of race, color, or national origin provide a person any service, aid, or other benefit that is different, or is provided differently from that provided to others under the program or activity."⁶

A claim of intentional discrimination under Title VI alleges that a recipient intentionally treated individuals differently or otherwise knowingly caused them harm because of their race, color, or national origin. Intentional discrimination requires a showing that a "challenged action was motivated by an intent to discriminate."⁷ Evidence of bad faith, ill will, or any evil motive on the part of the [recipient] is not necessary.⁸

Evidence must generally show that the recipient was not only aware of the complainant's protected status, but that the recipient acted, at least in part, because of the complainant's protected status.⁹ EPA must evaluate the "totality of the relevant facts" to determine whether intentional discrimination has occurred. EPA considers direct, circumstantial, and statistical evidence in making this determination.¹⁰

Claim 1: Negative Declaration

To reiterate, the claim arose from DEC's issuance of a negative declaration for National Grid's Article 19 Air State Facility (ASF) permit application (Permit ID 2-6101-00071/00024) to expand its Greenpoint Energy Center. On March 24, 2023, however, National Grid withdrew the permit application it had pending before DEC.

The facility continues to operate under its standing permit. In the event National Grid submits a new permit application to DEC in the future for a vaporizer project at the Greenpoint Energy Center, and Complainants believe DEC is violating civil rights laws, they may file a new complaint.

⁶ 40 C.F.R. § 7.35(a); 40 C.F.R 7.50(a); 40 CFR 7.145(a); *see, also, Alexander v. Choate*. 469 U.S. 287, 292-293 (1985); *Guardians Ass 'n. v. Civil Sem.*

Comm 'n. 463 U.S. 582, 593 (1983).

⁷ *Elston v. Talladega Cty. Bd of Educ.* 997 F.2d 1394, 1406 (11th Cir. 1993).

⁸ *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984).

⁹ *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011).

¹⁰ *See Washington v. Davis*, 426 U.S. 229, 242 (1976).

As there is insufficient evidence to support a finding of discrimination, ECRD is dismissing Claim 1.

Claim 2: Procedural Safeguards

EPA's nondiscrimination regulations at 40 C.F.R. Parts 5 and 7 and related guidance describe the requirements and best practices (collectively known as "procedural safeguards") to ensure compliance with Title VI.¹¹ As part of the investigation, ECRD conducted an independent review of DEC's nondiscrimination program and requested information from DEC about its procedural safeguards using publicly available information.

When ECRD began its investigation, ECRD found DEC was noncompliant with EPA's nondiscrimination regulations.¹² Over the course of the open matter, DEC has voluntarily come into compliance with EPA's nondiscrimination regulations.

In or around October 2022, DEC finalized a "Language Access Plan for Limited English Proficient Individuals." On January 25, 2023, DEC issued its "Federal Civil Rights Nondiscrimination Policy and Complaint Procedures for Non-Employment-Related Complaints" (CP-76) to comply with federal civil rights obligations.¹³ CP-76 includes information related to DEC's Nondiscrimination Program, the role of DEC's Nondiscrimination Coordinator, public notice requirements for persons with limited English proficiency and/or disabilities, and DEC's nondiscrimination complaint procedures.

Additionally, DEC published a website titled "DEC's Federal Civil Rights Nondiscrimination Program," which provides more information on DEC's nondiscrimination policy and complaint procedures.¹⁴ DEC also has published "Procedures for Filing and Processing a Complaint Alleging a Violation of Federal Nondiscrimination Laws" to provide more information about due process for complainants and respondents related to allegations of discrimination.¹⁵

Based on the actions that DEC has taken since the filing of the instant complaint, ECRD finds DEC has implemented procedural safeguards as required under 40 C.F.R. Parts 5 and 7.

¹¹ See <https://www.epa.gov/system/files/documents/2025-01/civil-rights-guidance-on-procedural-safeguards-august-2024-001.pdf>

¹² This conclusion is based on ECRD's independent review and DEC's RFI response dated July 16, 2022.

¹³ See https://extapps.dec.ny.gov/docs/administration_pdf/cp76.pdf

¹⁴ <https://dec.ny.gov/about/contact-us/federal-civil-rights-nondiscrimination-program>

¹⁵ https://extapps.dec.ny.gov/docs/administration_pdf/titlevi/complaintprocedures.pdf

Conclusion

For the reasons set forth above, ECRD finds that there is insufficient evidence to conclude DEC's issuance of the negative declaration violated Title VI or EPA's nondiscrimination regulation, and that DEC has implemented appropriate procedural safeguards. Accordingly, ECRD is closing EPA Complaint 02RNO-21-R2 as of the date of this letter.

This letter and any findings herein do not affect DEC's continuing responsibility to comply with Title VI or other federal nondiscrimination laws and EPA's regulations at 40 C.F.R. Parts 5 and 7. This letter has no precedential bearing on any EPA investigation of a federal civil rights complaints, and it strictly limited to the matters and parties at issue in this complaint.¹⁶

Finally, if you have any questions, please contact Case Manager Al Sweeney by email at sweeney.alfred@epa.gov.

Sincerely,



JuanCarlos M. Hunt, Director
U.S. EPA, Office of Civil Rights and Adjudication

cc: Alyssa Arcaya, Deputy Regional Administrator/Deputy Civil Rights Official
Patricia Hick, Deputy Regional Counsel, Performing the Duties of the Regional Counsel
U.S. EPA, Region 2

¹⁶ ECRD notes that Complainants jointly filed this instant complaint with the U.S. Department of Justice, U.S. Department of Transportation (DOT), and U.S. Department of Energy, against the New York Department of Public Service, DEC, and National Grid. Within the complaint, Complainants raised concerns with respect to the safety of the construction and operation of the National Grid Metropolitan Reliability Infrastructure Project (MRI). DOT, not EPA, has jurisdiction to adjudicate those allegations.