



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D C. 20460

Office of Environmental Justice and External Civil Rights
Office of External Civil Rights Compliance

INFORMAL RESOLUTION AGREEMENT
between the
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA COMPLAINTS NO. 01R-22-R6 AND 04R-22-R6

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 regulations at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and intimidation or retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance.¹
- B. The Louisiana Department of Environmental Quality (LDEQ) receives federal financial assistance from the EPA and, therefore, must ensure nondiscrimination in its programs or activities pursuant to federal nondiscrimination laws and EPA's implementing regulations.
- C. On January 20, 2022, EPA received Complaint No. 01R-22-R6, which alleged discrimination by LDEQ based on race. In response to the complaint, on April 6, 2022, EPA accepted for investigation the following issues:
1. Whether LDEQ uses criteria or methods of administering its air pollution control program that have the intent and/or effect of subjecting persons to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7 § § 7.30 and 7.35, including, but not limited and with respect to, LDEQ's acts or failures to undertake certain actions related to the Denka facility in connection with its air pollutant emissions, and the predominantly Black residents of St.

¹ Title VI of the Civil Rights Act of 1964, 42 United States Code §§ 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 Act 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.

John the Baptist Parish.

2. Whether LDEQ has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that 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 LDEQ services, programs and activities for individuals with limited-English proficiency and individuals with disabilities, and whether the LDEQ 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.
- E. On February 2, 2022, EPA received Complaint No. 04R-22-R6, which alleged discrimination by LDEQ based on race. In response to the complaint, on April 6, 2022, EPA accepted for investigation the following issues:
1. Whether LDEQ uses criteria or methods of administering its air pollution control program that have the intent and/or effect of subjecting persons to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7 § § 7.30 and 7.35, including, but not limited and with respect to, LDEQ's decision to reaffirm issuance of 14 new air permits for the Formosa facility, and the predominantly Black residents of St. James Parish.
 2. Whether LDEQ has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that 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 LDEQ services, programs and activities for individuals with limited-English proficiency and individuals with disabilities, and whether the LDEQ 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.
- F. During EPA's investigation into Complaint Nos. 01R-22-R6 and 04R-22-R6, LDEQ agreed to engage in the voluntary Informal Resolution Agreement (Agreement) process in order to resolve the complaints.
- G. This Agreement is entered into by LDEQ and EPA.
- H. This Agreement is entered into pursuant to the authority granted to EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and the EPA's implementing regulation found at 40 C.F.R. Parts 5 and 7, and resolves Complaint Nos. 01R-22-R6 and 04R-22-R6.

I. This Agreement is entered into voluntarily by LDEQ and does not constitute an admission by LDEQ of a violation of, or a finding of compliance or noncompliance by the EPA with, Title VI or 40 C.F.R. Parts 5 and 7.

J. [Factual Background]

II. Commitments Regarding LDEQ's Methods of Administration (Issue 1)

A. Process to Identify and Address Potential Adverse Disparate Effects of Air Permitting Decisions

1. CAA SOURCE PRE-APPLICATION – INITIAL SCREENING

When an Applicant approaches the LDEQ expressing interest in obtaining an air permit (*e.g.*, new permit, permit modification, renewal), LDEQ will conduct an initial screening, which:

- a. Characterizes the community potentially adversely affected by the proposed permit action to identify populations vulnerable to impacts of pollution (for example, considering age, disabilities, health status, access to critical services such as food, transportation, health services, etc.); populations identifiable on the basis of race, color or national origin including limited English proficient populations; and already existing environmental burdens;
- b. Ensures that public involvement efforts will be tailored to the demographics and needs of the community;
- c. Compares the demographics, vulnerabilities, and environmental burdens of the affected area with those of an appropriate region (*e.g.*, county, city, LDEQ region) and/or state as a whole. This comparison may be conducted using a screening tool;
- d. Evaluates readily available additional information about potential impacts; and
- e. Seeks input from the impacted community about the potential adverse impacts and potential mitigation measures.

2. POST APPLICATION ADDITIONAL ANALYSIS AND EVALUATION

After the application has been submitted to LDEQ and if the initial analysis in Section II.A. above indicates that the permitting action could cause or contribute to adverse disparate impacts on the basis of race, color or national origin, LDEQ will conduct additional analysis, as needed, to evaluate:

- a. Any potential adversity/harm (this can examine not only the burdens and harms resulting from each individual policy, decision or action, and borne disproportionately on the basis of race, but also on the total or cumulative burdens including exposures throughout a person's lifetime borne disproportionately by a community, especially in light of the characteristics of that community);
- b. Whether the adversity/harm identified in B.1. above is borne disproportionately by individuals on the basis of race, color or national origin; and,
- c. Whether there is a causal connection between the permitting action and the adversity/harm identified in B.1. above (that are "sufficiently substantial to raise an inference of causation"^{S O R U}).

Methodology for Additional Analysis and Evaluation

- d. LDEQ will develop a methodology to conduct additional analysis and evaluation described in Section II.B. above. Information relevant to the additional analysis and evaluation may include but is not limited to:
 - i. Anticipated health effects of proposed permit emissions on potentially impacted populations, taking into account all potential pathways of exposure to the air pollutants of concern (e.g., inhalation, ingestion of contaminated soil, drinking water contamination);
 - ii. Non-health effects of proposed facility operation on those living in proximity to the facility including quality of life

E.g., *S. Camden Citizens in Action v. N.J. Dep't of Env'tl. Prot.*, 145 F. Supp. 2d 446, 487, *opinion modified and supplemented*, 145 F. Supp. 2d 505 (D.N.J.) (discussing the methods used to "evaluate the 'adversity' of the impact" and considering whether the impacts at issue were "sufficiently adverse" to establish a prima facie case), *rev'd on other grounds*, 274 F.3d 771 (3d Cir. 2001). *See also Bryan v. Koch*, 627 F.2d 612, 617 (2d Cir. 1980) (indicating that adversity exists if a fact specific inquiry determines that the nature, size, or likelihood of the impact is sufficient to make it an actionable harm).

EPA's Office of Research and Development defines cumulative impacts as "the totality of exposures to combinations of chemical and non-chemical stressors and their effects on health, well-being, and quality of life outcomes. Cumulative impacts include contemporary exposures to multiple stressors as well as exposures throughout a person's lifetime. They are influenced by the distribution of stressors and encompass both direct and indirect effects to people through impacts on resources and the environment. Cumulative impacts can be considered in the context of individuals, geographically defined communities, or definable population groups. Cumulative impacts characterize the potential state of vulnerability or resilience of a community." U.S. EPA, *Cumulative Impacts Research: Recommendations for EPA's Office of Research and Development*. U.S. Environmental Protection Agency, Washington, D.C., EPA/600/R-22/014a, 2022. p. 4, https://www.epa.gov/system/files/documents/2022-09/Cumulative%20Impacts%20Research%20Final%20Report_FINAL-EPA%20600-R-22-014a.pdf.

^{S O R U} *Smith v. Xerox Corp.*, 196 F.3d 358, 364 (2nd Cir. 1999), citing *Watson v. Fort Worth Bank & Trust*, 487 U.S. 977, 994-995 (1988), *NAACP v. Town of East Haven*, 70 F.3d 219, 225 (2nd Cir. 1995).

(*e.g.*, noise, odor, lights), safety (*e.g.*, industrial truck traffic), and economic impacts;

- iii. Existing burdens, which may include:
- a. a range of activities that impact quality of life (*e.g.*, odor, noise, lights), safety (*e.g.*, industrial truck traffic), and/or
 - b. community exposure or vulnerability from multiple sources of pollution including:
 - i. sources permitted by EPA, LDEQ or local governments;
 - ii. other regulated sources – such as those subject to federal or state requirements for reporting of waste generation or emissions (*e.g.*, Toxics Release Inventory reporters, Resource Conservation and Recovery Act hazardous waste generator sites);
 - iii. unregulated but usually unpermitted sources, including fugitive emissions and nonpoint sources (*e.g.*, some paint stripping or metal finishing operations, mobile sources, sources of surface water runoff); and
 - iv. unregulated sources (*e.g.*, household lead paint, highways, railroads);
 - v. Public health data on health conditions with significant environmental determinants (*e.g.*, asthma, heart disease, lead poisoning, low birth weight);
 - vi. Other indicators of population vulnerability including social determinants of health;
 - vii. Location of sensitive populations or places near the proposed facility, including:
 1. Schools,
 2. Hospitals,
 3. Day care centers (*e.g.*, children, elders),
 4. Culturally significant resources (*e.g.*, cemeteries, places of worship);
 - viii. Residence locations affected by the proposed facility, including identifying public housing, jails/prisons, communal living facilities (*e.g.*, assisted living, nursing home);
 - ix. Factors that may increase community member exposure or vulnerability as compared to other

[https://health.gov/healthypeople/objectives-and-data/social-determinants-health#:~:text=Social%20determinants%20of%20health%20\(SDOH,of-life%20outcomes%20and%20risks.](https://health.gov/healthypeople/objectives-and-data/social-determinants-health#:~:text=Social%20determinants%20of%20health%20(SDOH,of-life%20outcomes%20and%20risks.)

- populations (*e.g.*, cultural practices, subsistence fishing, hunting, foraging information);
- x. Compliance information on facilities in the area (*e.g.*, EPA’s Enforcement and Compliance History Online (ECHO)²);
 - xi. Community supplied information such as complaints submitted through, for example:
 - 1. LDEQ’s civil rights grievance procedure,
 - 2. LDEQ’s Citizen Environmental Complaint system,
 - 3. EPA’s ECHO;
 - xii. Drinking and surface water quality;
 - xiii. Census data (*e.g.*, race, national origin, limited English proficiency, population density);
 - xiv. Information relevant to assessment of disparities, including appropriate comparison populations will depend on the action and the facts involved;
 - 1. Relevant comparison populations may be those who live within a reference area in LDEQ’s jurisdiction (*e.g.*, the state, an area of responsibility for a branch office), within a political jurisdiction (*e.g.*, town, county, state), or an area defined by environmental criteria such as an airshed.
 - 2. The legally relevant “population base” for a statistical measure of adverse disparate impact is generally all persons the policy or practice affects or who could possibly be affected by some change in (or the elimination of) the policy or practice;
 - 3. disparities by comparing the demographic characteristics of the population potentially adversely affected by the permitting decision to an appropriate comparison population;
 - xv. Information about the adversely affected population, including the proportion of persons in the protected class who are adversely affected by the challenged policy or practice and the

² <https://echo.epa.gov/>

proportion of persons not in the protected class
who are adversely affected;

**Analysis of Substantial Legitimate Justification and Less
Discriminatory Alternatives**

- e. Once LDEQ has completed the additional analysis above, if LDEQ determines that the permitting action likely causes or contributes an adverse disparate impact, LDEQ will determine:
 - i. Whether the policy or practice in question has a substantial legitimate justification that is “necessary to meet a goal that is legitimate, important, and integral to [its] institutional mission.”
 - ii. Whether the justification is demonstrably related to its mission.
- f. If LDEQ determines that there is a substantial legitimate justification, LDEQ will need to determine:
 - i. Whether there are less discriminatory alternatives, and
 - ii. Whether any mitigation measures implemented can reduce or eliminate the adverse disparate impacts and demonstrate there are no less discriminatory alternatives.¹ If there are no mitigation measures that can address the disparate impacts, the only “less discriminatory alternative” is denial of the permit.
- g. When identifying and evaluating potential mitigation measures and less discriminatory alternatives, LDEQ will:
 - i. Identify and exercise all available legal authority under:
 - a. environmental laws and regulations to include enforceable permit terms that mitigate or avoid creating identified disparate impacts.
 - b. other laws (*e.g.*, state civil rights laws, state environmental justice laws) to mitigate or avoid creating identified disparate impacts.
 - ii. Seek public comment on appropriate mitigation measures/less discriminatory alternatives during the permit review process and consider the input when developing permit conditions.

In analyzing disparity under Title VI, EPA looks at whether a disproportionate share of the adversity/harm discussed above is borne by individuals based on their race, color, or national origin. Disparity is a fact-specific inquiry that involves identifying an appropriate measure.

“EPA utilizes the “preponderance of the evidence” (more likely than not) standard in its investigations to determine whether or not a recipient has violated federal civil rights laws.” EPA Civil Compliance Toolkit Chapter 1 at https://www.epa.gov/sites/default/files/2017-01/documents/toolkit-chapter1-transmittal_letter-faqs.pdf

¹ A less discriminatory alternative is a comparably effective practice that causes less of a disparate impact than the challenged practice. Mitigation measures that would lessen or eliminate the demonstrated adverse disparate impacts, could be part of a less discriminatory alternative; however, alternatives may also include practices or policies of a different manner or other actions that ameliorate the adverse disparate impact.

- iii. Potential mitigation measures to address disparate impacts might include:
- a. enhancing compliance assurance provisions, including monitoring, recordkeeping and continuous reporting (*e.g.*, SCADA system) to assure the facility is meeting its permitted limits and following industry best practices;
 - b. developing a fugitive particulate matter operating program/plan (or enhancements to existing program/plan);
 - c. requiring increased emission testing;
 - d. health monitoring;
 - e. community based participatory research;
 - f. evaluating whether a proposed permit warrants air quality modeling scrutiny as part of the permit review, particularly where EJ community has experienced historical impacts from existing or recently constructed projects;
 - g. requiring enforceable modeling assumptions (*e.g.*, hours of operation, meteorological assumptions like wind direction or speed);
 - h. requiring odor monitoring of third-party complaints and system to address such complaints;
 - i. ensuring data regularly generated by the facility to comply with the permit are made publicly available on an easily accessible website;
 - j. developing new and revised regulations that consider sources contributing to local impacts;
 - k. prioritizing grant funding for projects that reduce emissions in impacted areas;
 - l. conducting special studies to measure and model local pollution impacts;
 - m. requiring conditions on permits of other facilities contributing to the impacts;
 - n. negotiating with applicant over site selection;
 - o. using pollution prevention techniques; and
 - p. requiring the development and implementation of enforceable agreements (*e.g.*, community benefit agreements).

- h. If LDEQ exercises all legal authority and implementation of mitigation measures/less discriminatory alternatives such as those described above and they do not adequately mitigate disparate impacts, then

LDEQ should evaluate whether compliance with Title VI can only be achieved by¹⁰:

- i. not issuing or renewing the permit, or
- ii. siting the facility in alternate locations.

3. **OBTAINING PERMIT SPECIFIC PUBLIC COMMENT ON TITLE VI ANALYSIS**

LDEQ will obtain public comment on LDEQ's Title VI Analysis, including for permits that do not require notice and comment under the Clean Air Act and/or Louisiana's Clean Air Act Program. LDEQ will:

- a. Issue a public notice that it is undertaking a Title VI analysis; and
- b. Provide meaningful public comment opportunities, including holding a public meeting in the affected community on its Title VI analysis (*e.g.*, potential adverse impacts, potential mitigation measures) and addressing those public comments prior to issuing a final decision.

4. **POST PERMITTING**

LDEQ will conduct post-permitting activities which will include:

- a. Establishing a point of contact within LDEQ for the community;
- b. Providing an explanation of requirements/enforceable provisions in the permit (*e.g.*, monitoring, record keeping, web reporting);
- c. Monitoring of all mitigation measures implemented but not included in the issued permit including those that require the participation of other federal, state, and local authorities;
- d. Providing information as appropriate, about how community members can use that information to assess compliance; and
- e. Providing periodic public updates.

5. **DUE DATES FOR SECTION II – PROCESS FOR TITLE VI ANALYSIS IN THE LDEQ CAA PERMITTING PROGRAM**

- a. Within 90 days of the date of this agreement, LDEQ will submit to EPA for review and approval the draft process for Title VI analysis in the CAA Permitting as outlined in Section III.A-D above (Process).
- b. Within 30 days of EPA approval of the draft Process, LDEQ will publish the draft Process for public comment.
- c. Within 60 days of end of the public comment period LDEQ will submit to EPA a copy of all public comments received and the LDEQ draft response to public comments.

¹⁰: Failure to exercise all available discretion to substantially reduce or eliminate the disparate impacts, including denial of the permit, if necessary, may leave LDEQ vulnerable to a finding of discrimination if the exercise of available discretion would have resulted in a comparably effective alternative that would result in less adverse impact.

- d. Within 30 days EPA will provide any comments to the draft response to comments.
- e. Within 30 days of receipt of EPA comments, LDEQ will submit to EPA its final draft of the Process for approval.
- f. Within 30 days of approval by EPA, LDEQ will publish the final Process.

6. **EVALUATION OF IMPLEMENTATION**

Annually for five years after this Agreement, LDEQ shall submit to EPA and publish on its website an evaluation of the results of the implementation of the Process in its CAA permitting program.

- B. Cumulative Impacts Assessments
- C. Community Meetings
- D. Scientific Integrity and Risk Communication
- E. Air Emissions Monitoring
- F. Actions to Reduce Emissions
- G. Actions Regarding Other Facilities in the Industrial Corridor
- H. Responding to Reports of Odors and Other Incidents

III. Commitments Regarding LDEQ's Procedural Safeguards Issue 2

LDEQ agrees to the following commitments

- A. **Notice of Non-Discrimination under the Federal Non-Discrimination Laws**³
 1. LDEQ will post a notice of non-Discrimination (Notice) on LDEQ's website homepage, in all LDEQ's offices and facilities, and in future general publications that are distributed to the public (*e.g.*, public outreach materials, such as brochures, notices, fact sheets or other information on rights and services; applications or forms to participate in or access LDEQ programs, processes or activities). LDEQ will ensure that its Notice is accessible to individuals with limited-English proficiency (LEP) and individuals with disabilities, including ensuring that the Notice as posted on its Website Homepage is accessible to persons who are blind or have low vision.
 2. The Notice will contain, at a minimum, the following recommended text:

³ 40 C.F.R. §7.95

- a. LDEQ does not discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex in administration of its programs or activities.
 - b. For LDEQ programs that are covered by 40 C.F.R. Parts 5 and 7, the notice shall also contain text that LDEQ does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights.
 - c. [Insert name and title of non-discrimination coordinator] 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-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 laws).
 - d. If you have any questions about this notice or any of LDEQ's non-discrimination programs, policies or procedures, you may contact:
 - (Name)
 - (Position)
 - (Organization/Department)
 - (Address)
 - (Phone Number)
 - (Email)
 - e. If you believe that you have been discriminated against with respect to an LDEQ program or activity, you may contact the [insert title of non-discrimination coordinator] identified above or visit our website at [insert Recipient website address] to learn how and where to file a complaint of discrimination.
3. Within 30 days after the effective date of this Agreement, LDEQ will submit to the EPA for review a draft copy of its Notice of Non-Discrimination that is consistent with 40 C.F.R. Parts 5 and 7. EPA's review of the draft Notice of Non-Discrimination will be in accordance with Paragraph IV.C. of this Agreement. Following final approval by EPA, LDEQ will prominently publish in print and on its website the Notice of Non-Discrimination.

4. If the identity of the Non-Discrimination Coordinator changes, then LDEQ will promptly update materials as appropriate.

B. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws⁴

1. LDEQ will post Grievance Procedures to promptly and fairly process and resolve discrimination complaints filed under federal nondiscrimination statutes and, where applicable, the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7 on LDEQ's website homepage(s), in all LDEQ's offices and facilities, and in its general publications as appropriate that are distributed to the public. LDEQ will ensure that its Grievance Procedures are accessible to individuals with LEP and individuals with disabilities, including ensuring that the Grievance Procedures posted on LDEQ's Website Homepage is accessible to individuals who are blind or have low vision.
2. The Grievance Procedures will:
 - a. Clearly identify the Non-Discrimination Coordinator, including name and 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 Grievance Procedures and describe the appropriate bases for filing a complaint;
 - d. Describe the processes available for filing complaints;
 - e. State that the preponderance of the evidence standard will be applied during the 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 your Grievance Procedures in the same manner as other claims of discrimination;
 - g. Assure the prompt and fair resolution of complaints which allege violations 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.

⁴ 40 C.F.R. §7.90

- i. Be reviewed on an annual basis (for both in-print and online materials), and revised as necessary, to ensure prompt and fair resolution of discrimination complaints.
3. Within 120 days after the effective date of this Agreement, LDEQ will submit to EPA for review a draft copy of its Grievance Procedures. EPA will review the draft Grievance Procedures in accordance with Paragraph IV.C. of this Agreement. LDEQ will prominently publish in print and on its website the final Grievance Procedures in print and on its website.

C. Designation of Non-Discrimination Coordinator⁵

1. LDEQ will designate at least one Non-Discrimination Coordinator to ensure compliance with the federal non-discrimination laws, who will:
 - a. Provide information to individuals internally and externally that LDEQ does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of LDEQ's programs or activities, and, where applicable, the EPA's implementing regulations at 40 C.F.R. Parts 5 and 7;
 - b. Provide information to individuals both internally and externally that LDEQ does not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected/prohibited by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights;
 - c. Provide notice of LDEQ's grievance processes and the ability to file a discrimination complaint;
 - d. Establish a mechanism (*e.g.*, an investigation manual) for implementation of LDEQ's Grievance Procedures to ensure that all discrimination complaints filed with LDEQ under federal non-discrimination laws and the 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 providing meaningful access for individuals with limited English proficiency and individuals with disabilities to LDEQ's programs and activities;
 - e. Track all complaints filed with LDEQ under federal nondiscrimination laws, in order to identify any patterns or systemic problems;
 - f. Conduct semiannual reviews/analysis of all complaints filed with LDEQ under the federal non-discrimination laws, identified in 40 CFR Parts 5 and 7 to identify and address any patterns, systematic problems or any trends identified;

⁵ 40 C.F.R. §7.85(g)

- g. Ensure that appropriate training is provided for LDEQ staff in the processes available to resolve complaints filed with LDEQ under federal non-discrimination laws;
 - h. Ensure that appropriate training is provided for LDEQ staff and all relevant contractors on LDEQ's non-discrimination policies and procedures, as well as the nature of LDEQ's obligation to comply with federal non-discrimination laws;
 - i. Ensure that complainants are updated on the progress of their complaints filed with LDEQ under federal non-discrimination laws and are promptly informed as to any determinations LDEQ has made;
 - j. Undertake periodic evaluations of the efficacy of LDEQ's efforts to provide services, aids, benefits, and participation in any of LDEQ'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.
 - k. Coordinate with the LDEQ's designated Point of Contact for completion of the Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance (Form 4700-4) to ensure that an accurate Form is submitted with applications for EPA assistance.
2. The Non-Discrimination Coordinator will not have other responsibilities that create a conflict of interest (*e.g.*, serving as LDEQ's Non-Discrimination Coordinator as well as its legal advisor or representative on civil rights issues).
 3. Within 90 days after the effective date of this Agreement, LDEQ will identify at least one individual who will serve as Non-Discrimination Coordinator(s) consistent with the regulatory requirements of 40 C.F.R. §5.135, §7.85(g), and §7.95(a).
 4. Within 90 days of appointment of a Non-Discrimination Coordinator, LDEQ will forward to EPA proof that the responsibilities have been included in the incumbent's statement of duties and that the incumbent has accepted the duties.

D. Public Participation

1. LDEQ understands that meaningful public participation consists of informing, consulting, and working with potentially affected communities at various stages of the environmental decision-making process to address their questions and concerns. Therefore, LDEQ will:

- a. Ensure that its public involvement process is available to all persons regardless of race, color, national origin, disability, age, sex, or prior exercise of rights protected, or opposition to actions prohibited, by 40 C.F.R. Parts 5 and 7 and the federal non-discrimination laws;
- b. Ensure that the factors used to determine the appropriate time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner;
- c. Develop, publicize, and implement written public participation procedures (consistent with the federal civil rights laws and the *Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs (Recipient Guidance)*⁶), that include implementation of the following steps for effective public participation that is accessible to all persons regardless of race, color, national origin (including LEP), disability, age, and sex each time LDEQ engages in a public participation or public involvement process:
- d. Develop a description of the relevant/affected community based on the action being considered (including demographics, history, and background, for example/such as, percentage of the service area that is minority, has less than a high school education, has members of households who speak a language other than English and/or speak English less than very well, has a history of filing complaints, has an inability to access traditional communication channels or the internet);
- e. Provide a contact list for relevant staff members on LDEQ's website, including phone numbers and email addresses, to allow the public to communicate via phone or internet;
- f. Develop a list of past and present community concerns (including any complaints filed under the federal nondiscrimination laws), and actions undertaken in response to such concerns;
- g. Develop and implement a detailed plan of action (including outreach activities) LDEQ will take to address concerns raised by the public;
- h. Develop and implement a contingency plan for unexpected events that may impact public meetings or other public participation avenues;
- i. Identify location(s) where public meetings will be held (considering the availability and schedules of public transportation), and ensure that the

⁶ 71 Fed. Reg. 14207 (March 21, 2006), available at https://www.epa.gov/sites/default/files/2020-02/documents/title_vi_public_involvement_guidance_for_epa_recipients_2006.03.21.pdf

location(s) will allow for meaningful participation/involvement by individuals with LEP and individuals with disabilities;

- j. Develop and maintain a list of contact names for obtaining reasonable accommodations at no cost for individuals with disabilities and language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings;
 - k. Develop and maintain a list of appropriate local media contacts (based on the cultural and linguistic needs of the community).
2. LDEQ will, during times of national, state, or local emergency, ensure that any public meetings occurring virtually are held in such a manner as to ensure the meaningful participation/involvement of individuals with limited English proficiency and individuals with disabilities. LDEQ may seek technical assistance from EPA about how it may achieve this outcome.
3. LDEQ will ensure that a Public Participation Plan is developed and prominently highlighted on the LDEQ website, which will explain how residents can participate in LDEQ's programs, activities, and services. LDEQ will also solicit and consider public input into development of the Public Participation Plan. This plan will also be posted in other publicly accessible locations such as local public libraries, and LDEQ will ensure that it incorporates the following elements:
 - a. A description of how LDEQ will meaningfully engage the public prior to and during LDEQ programs, activities, and services (*e.g.* how the public can request to participate during LDEQ public engagement opportunities such as public hearings, townhalls, etc., including criteria on how these events are determined);
 - b. A description of what methods LDEQ will implement to ensure the public can access publicly available information and documents regarding LDEQ programs, activities, and services, which includes providing clear instructions for public users on how and where to access LDEQ's electronic and hardcopy documents and information.
4. The Non-Discrimination Coordinator(s) will ensure that appropriate LDEQ staff and all relevant contractors receive training in best practices related to public involvement in all processes undertaken by LDEQ that include public engagement.
5. LDEQ will provide a mechanism for residents to access relevant hard copy information in a centralized public location near to a proposed LDEQ activity (*e.g.* proposed health report or study) in addition to providing the public with access to internet and digitally provided information relating to that activity;

6. LDEQ will provide a mechanism for obtaining public feedback and answering inquiries about any information regarding a LDEQ activity or public health issue;
7. Within 120 days of the effective date of this Agreement, LDEQ will prepare a draft copy of its Public Participation Plan(s). LDEQ will submit its draft Public Participation Plan(s), including a translated Public Participation Plan(s) in all appropriate languages, for public comment for thirty days. After the public comment period ends, LDEQ will review comments and finalize the Public Participation Plan(s) within 30 days and submit it to EPA for review in accordance with Paragraph IV.C. of this Agreement. Within 30 days of EPA's review, LDEQ will review and incorporate comments and will publish the final Public Participation Plan(s), translated in all appropriate languages, on its website and in print.
8. Within one year after the effective date of this Agreement, the Non-Discrimination Coordinator(s) will coordinate and host regional panels for each of the following parishes: St. John the Baptist Parish, St. James Parish, Ascension Parish, East Baton Rouge Parish, West Baton Rouge Parish, Iberville Parish, and St. Charles Parish. These panels will include representatives from communities affected by environmental and human health risks, and possibly a facilitator, to gather information from affected community members, including any expressions of community concerns, experiences, engagement needs and requests. LDEQ will prominently advertise requests for participation on these regional panels to interested community members and will publish a summary of the discussions, including recommendations for actions.

E. LDEQ Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (LEP)⁷

1. LDEQ will conduct an appropriate analysis as described in EPA's LEP Guidance, to identify the appropriate language groups and determine what language services or mix of language services LDEQ needs to provide (e.g., interpreters and translators), to ensure that individuals with limited-English proficiency can

⁷ See Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) (prohibiting discrimination on the basis of national origin,) *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.) On June 25, 2004, EPA issued Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (LEP Recipient Guidance). The LEP Recipient Guidance clarifies recipients' existing legal obligations to provide meaningful access to limited English proficient persons in all programs and activities that receive federal financial assistance from EPA. The LEP Recipient Guidance also provides a description of the factors recipients should consider in fulfilling their responsibilities to persons with limited-English proficiency to ensure meaningful access to recipients' programs and activities and the criteria EPA uses to evaluate whether recipients are in compliance with Title VI and the Title VI implementing regulation. LEP Recipient Guidance, 69 FR 35602, 35606-35607 (June 25, 2004), at <https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf>; 40 C.F.R. § 7.35(a) (prohibiting discrimination on the basis of national origin in the programs or activities of a recipient of EPA assistance).

meaningfully participate in LDEQ's programs and activities.

2. LDEQ will develop, publicize, and implement a written Language Access Plan to ensure meaningful access to all LDEQ services, programs and activities for individuals with LEP, at no cost to those individuals. LDEQ shall also solicit and consider public input into development of the Language Access Plan. LDEQ will:
 - a. Translate vital documents⁸ of general interest into prominent languages for individuals with LEP who are served or likely to be encountered by LDEQ's programs and activities;
 - b. Translate vital documents of individual interest to a particular individual with LEP or group individuals with LEP (*e.g.*, an individual or group of individuals with LEP wishing to file a grievance or complaint);
 - c. Provide for simultaneous oral interpretation of live proceedings (*e.g.*, town hall meetings and public hearings) in prominent languages, and the ability for individuals with LEP to participate in those proceedings to the same extent as persons with English proficiency can participate; and
 - d. Provide for simultaneous interpretation of proceedings, meetings, etc., for an individual LEP person(s) participating in LDEQ programs or activities (*e.g.*, an individual with LEP wishing to provide comments during a hearing).
3. Within 120 days of the effective date of this Agreement, LDEQ will prepare a draft copy of its Language Access Plan. LDEQ will then submit its draft Language Access Plan, including a translated Language Access Plan in all appropriate languages, for public comment for thirty days. After the public comment period ends, LDEQ will review comments and finalize the Language Access Plan within **XX** days and submit it to EPA for review in accordance with Paragraph IV.C. of this Agreement. Within 30 days of EPA's review, LDEQ will review and incorporate comments and LDEQ will publish the final Language Access Plan, translated in all appropriate languages, on its website and in print.

F. LDEQ Plan to Ensure Meaningful Access to Programs and Activities for Persons with Disabilities⁹

1. LDEQ will develop, publicize and implement a Disability Access Plan to ensure meaningful access to all LDEQ programs, services and activities for individuals

⁸ Whether or not a document (or the information it disseminates or solicits) is "vital" may depend on the importance of the program, information, encounter or service involved, and the consequence to individual(s) with the LEP if the information in question is not provided accurately or in a timely manner. (*See* EPA's LEP Recipient Guidance).

⁹ *See* 40 C.F.R. §§ 7.45 - 7.75; Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794(a). Section 504, and EPA's implementing regulation prohibit discrimination on the basis of disability in any programs or activities receiving federal financial assistance.

with disabilities.¹⁰ As part of the development, LDEQ shall also solicit and consider public input into development of the Disability Access Plan.

2. LDEQ will provide, at no cost, auxiliary aids and services to individuals with disabilities, (including, but not limited to, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication and an equal opportunity to participate fully in benefits, activities, programs, and services provided by LDEQ in a timely manner in such a way as to protect the privacy and independence of the individual.
3. LDEQ will ensure that its facilities and other facilities utilized by LDEQ (*e.g.* if LDEQ holds a public hearing at a school or recreational center) are physically accessible to, individuals with disabilities.
4. Within 120 days of the effective date of this Agreement, LDEQ will submit to EPA for review a draft copy of its Disability Access Plan. EPA will review the draft Disability Access Plan in accordance with Paragraph IV.C. of this Agreement. LDEQ will prominently publish in print and on its website the final Disability Access Plan.

G. Training

1. Within 60 days of the EPA approval of all other deliverables noted throughout the Agreement, LDEQ will ensure all its staff and relevant contractors have training on federal non-discrimination obligations and all plans, policies and procedures created and implemented as part of this Agreement. LDEQ may request assistance from EPA for any of the training required in this Agreement, including having the training be provided by EPA staff. LDEQ should consider the inclusion of community representatives as a part of the staff training. Following the training, LDEQ will provide EPA with a copy of any training materials, a list of staff who received the training and the dates the training was provided.
2. Within 30 days of the initial training implemented following sub-section 1 above, LDEQ will forward to EPA for review a draft plan for ensuring that such training is also a routine part of the on-boarding process for new employees and is given regularly as refresher training to all employees and relevant contractors. EPA will review the draft training in accordance with Paragraph IV.C. of this Agreement. LDEQ will forward a final copy of the training plan to EPA and implement the above plan.

IV. **GENERAL CONSIDERATIONS**

¹⁰ See Disability Nondiscrimination Plan Sample, at https://www.epa.gov/sites/production/files/2020-02/documents/disability_nondiscrimination_plan_sample_for_recipients_2020.01.pdf

- A. In consideration of LDEQ's implementation of commitments and actions described in Sections II and III of this Agreement, EPA will end its investigation of Complaint No. 02R-22-R6 and not issue a decision containing findings on the merits of the complaint.
- B. EPA will monitor compliance with the commitments in Sections II and III of this Agreement, as appropriate, to ensure they are fulfilled. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting completion of the commitments, closure of its monitoring actions and closure of Complaint No. 02R-22-R6 as of the date of that letter.
- C. EPA will review and provide feedback about any documentation submitted by LDEQ 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, should there be negotiations and/or edits needed to address EPA's comments, the parties will resolve those within 30 days and LDEQ will finalize and submit the deliverable within this 30-day period. This 30-day period for negotiations and edits may be extended if agreed to in writing by both the Deputy Assistant Administrator for External Civil Rights, Office of Environmental Justice and External Civil Rights, EPA, and the Secretary of LDEQ.
- D. EPA will, upon request, provide technical assistance to LDEQ regarding any of the civil rights obligations previously referenced. This may be in written or oral form.

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 may be made by electronic service 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 LDEQ to the EPA via email will be sent to Lilian Dorka at Dorka.Lilian@epa.gov, Anhthu Hoang at Hoang.Anhthu@epa.gov, and Zahra Khan at Khan.Zahra@epa.gov.
- D. Documents submitted by the EPA to LDEQ will be sent to [TBD].
- E. Either EPA or LDEQ may change the persons identified above in Paragraphs V.C. and V.D. by providing written notice of such change.

VI. EFFECT OF THE AGREEMENT

- A. LDEQ understands that, if necessary, EPA may visit LDEQ, interview staff, and request such additional reports or data as are necessary for EPA to determine whether LDEQ has fulfilled the terms of this Agreement.
- B. LDEQ understands that the EPA will not close its monitoring of this Agreement until EPA determines that LDEQ has fully complied with this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-opening an investigation.
- C. With the exception of the provisions of Paragraphs IV.C. and V.E., 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 LDEQ'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 Secretary of LDEQ or their designee and the Deputy Assistant Administrator for External Civil Rights, Office of Environmental Justice and External Civil Rights, EPA.
- D. This Agreement constitutes the entire Agreement between LDEQ 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 LDEQ and EPA in accordance with the provisions of Paragraph VI.C. above.
- E. This Agreement does not affect LDEQ'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 EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- 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. The individuals signing this Agreement represent that they are authorized to execute this Agreement and legally bind the parties to the Agreement.

On Behalf of the Louisiana Department of Environmental Quality:

Dr. Chuck Carr Brown, Secretary
Louisiana Department of Environmental Quality

(Date)

On behalf of the Office of External Civil Rights Compliance, Office of Environmental Justice and External Civil Rights, U.S. Environmental Protection Agency:

Lilian S. Dorka
Deputy Assistant Administrator for Civil Rights
Office of Environmental Justice and External Civil Rights

(Date)

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