UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

December 19, 2019

Return Receipt Requested
Certified Mail#: 7015 3010 001 1267 2026

In Reply Refer To:
Complaint No. 18RD-16-R5

Ted Henry, Chairperson
Genesee County Board of County Commissioners
Genesee County Administration Building
1101 Beach Street
Room 223
Flint, Michigan 48502-1470

Dear Chairperson Henry:

This letter is to inform you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is resolving this complaint based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and Genesee County (the County). On August 23, 2016, ECRCO accepted for investigation an administrative complaint brought under Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1973 (Section 504), and EPA's nondiscrimination regulation at 40 C.F.R. Part 7, which alleged that the County engaged in discrimination based on race, national origin, including limited-English proficiency (LEP), and disability. The complaint was assigned EPA Complaint No. 18RD-16-R5. Specifically, the issues accepted for investigation were:

1. Whether Genesee County discriminated against the complainant and other similarly situated individuals in Flint, Michigan, on the bases of race, national origin, including LEP, and disability with respect to the administration of the Safe Drinking Water Act of 1974, including public notification and involvement; and

2. Whether Genesee County discriminated against individuals in Flint, Michigan on the bases of race, national origin, including LEP, and disability by failing to have in place procedures for addressing compliance with the nondiscrimination requirements of EPA's nondiscrimination regulation.

During the course of EPA's investigation, the County agreed to enter into an Informal Resolution Agreement in order to resolve EPA Complaint No. 18RD-16-R5. The enclosed Agreement is entered into by EPA pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI, Section 504 and 40 C.F.R. Part 7. It resolves EPA Complaint No. 18RD-16-R5. It is understood that the Agreement does not constitute an

admission by the County 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 the County's continuing responsibility under Title VI, Section 504, 40 C.F.R. Parts 5 and 7 and other federal nondiscrimination laws, nor does it affect EPA'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.

EPA is committed to working with the County as it implements the provisions of the Agreement. If you have any questions regarding the Agreement between EPA and the County, please contact me at (202) 564-9649, by e-mail at dorka.lilian@epa.gov, or U.S. mail at U.S. EPA, Office of General Counsel, External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosure

Cc: Angelia Talbert-Duarte
Acting Associate General Counsel
EPA Civil Rights and Finance Law Office

Cheryl Newton
Acting Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 5

Nelson T. Leverett
Regional Counsel
EPA Region 5

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

AGREEMENT
between the
Genesee County, Michigan
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint No. 18RD-16-R5

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 United States Environmental Protection Agency's (EPA) implementing regulation at 40 C.F.R. Part 7 prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance.

B. Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C §794 (Section 504) and 40 C.F.R. Part 7 prohibit discrimination on the basis of disability in any programs or activities receiving federal financial assistance.

C. Genesee County (the County) is a recipient of federal financial assistance from the EPA and is subject to the provisions of Title VI, Section 504 and 40 C.F.R. Part 7, and other federal nondiscrimination laws.[1]

D. On August 23, 2016, EPA's External Civil Rights Compliance Office (ECRCO) (formerly Office of Civil Rights) accepted for investigation EPA Complaint No. 18RD-16-R5 and opened an investigation into whether the Michigan Department of Environmental Quality (MDEQ)[2], Genesee County, and the City of Flint

[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 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.

[2] The Michigan Department of Environmental Quality is now known as the Michigan Department of Environment, Great Lakes, and Energy (EGLE).

discriminated against the complainant and other similarly situated individuals in Flint, Michigan, on the bases of race, national origin, including limited-English proficiency (LEP), and disability with respect to the administration of the Safe Drinking Water Act of 1974, including public notification and involvement, in violation of Title VI and 40 C.F.R. Part 7; and whether MDEQ, Genesee County, and the City of Flint discriminated against individuals in Flint, Michigan, on the basis of race, national origin, including limited-English proficiency, and disability by failing to have in place procedures for addressing compliance with the non-discrimination requirements, per by 40 C.F.R. Part 7.

E. During the course of ECRCO's investigation into EPA Complaint No. 18RD-16-R5, Genesee County agreed to enter into a voluntary informal resolution agreement in order to resolve the complaint.

F. This Agreement is entered into by Genesee County and ECRCO.

G. This Agreement is entered into pursuant to the authority granted to EPA under the federal nondiscrimination laws, including Title VI, Section 504 and 40 C.F.R. Part 7, and resolves EPA Complaint No. 18RD-16-R5 and additional concerns identified by ECRCO.

H. This Agreement does not constitute an admission by Genesee County or a finding by ECRCO of violations of Title VI, Section 504 or 40 C.F.R. Part 7.

I. Genesee County is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI, Section 504, 40 C.F.R. Part 7, and other federal nondiscrimination laws. The activities detailed in Section III of this Agreement, which Genesee County has voluntarily agreed to undertake and implement, are in furtherance of this commitment.

Not Addressed by this Agreement

J. Other than the alleged discrimination issues, which are being specifically addressed in this Agreement, the issues related specifically to Flint drinking water raised in EPA Complaint No. 18RD-16-R5 are being or have been addressed between EPA, EGLE, and the City of Flint through other channels.

II. SPECIFIC GENESEE COUNTY COMMITMENTS

Genesee County agrees to undertake the following commitments:

A. *Notice of Nondiscrimination*

1. Genesee County will prominently post its Notice of Nondiscrimination on the County's Website, in the County's offices or facilities and general publications distributed to the public.

2. Genesee County will have its Notice of Nondiscrimination in (insert prominently spoken LEP languages, as applicable) also prominently posted on the County's Website.

3. The Notice of Nondiscrimination will be made accessible to individuals with disabilities, including ensuring that the Notice as posted on its Website Homepage is accessible to visually impaired persons.

4. The Notice will contain, at a minimum, the following statements or assurances:

   a. Genesee County does not discriminate on the basis of race, color, national origin, disability, age, or sex in the administration of its programs or activities, as required by applicable laws and regulations.

   b. Intimidation and retaliation are prohibited and claims of intimidation and retaliation will be handled promptly if they occur.

   c. Genesee County is responsible for coordination of compliance efforts and receipt of inquiries concerning nondiscrimination requirements implemented by 40 C.F.R. Parts 5 and 7 (Nondiscrimination 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.

   d. If you have any questions about this notice or any of Genesee County's non-discrimination programs, policies or procedures or if you believe that you have been discriminated against with respect to a County program or activity, you may contact:

      Joshua M. Freeman
      1101 Beach Street, Room 312
      Flint, MI 48502
      Phone: 810-257-3020

Fax: 810-257-3008
Email: jfreeman@co.genesee.mi.us

Or, you may visit our website at https://www.ge4me.com/ and click the link for Nondiscrimination Policy and Procedure to obtain a copy of the County's procedures to file a grievance/ complaint of discrimination.

5. If the identity of Nondiscrimination Compliance Coordinator changes, then the County will update materials as appropriate.

6. Within 45 days of the effective date of this Agreement, Genesee County will forward to ECRCO a final draft of its Notice of Nondiscrimination for review, as well as information about the planned location and accessibility of the Notice, such as a link to its Website. ECRCO will review the draft Notice and provide comments within 14 days of receipt. Once the Notice is posted as specified in this Section III.A. above and according to Section IV.C. below, this will be sufficient to complete the Notice of Nondiscrimination commitment of Section III.A. of this Agreement.

B. *Grievance Procedures*

1. Genesee County will prominently publish in print and on-line its Grievance Procedures to process discrimination complaints filed under federal nondiscrimination statutes, and will do so on a continual basis, to allow for prompt and fair resolution of those discrimination complaints.

2. The Grievance Procedures address the following:

   a. Who may file a complaint under the procedures;

   b. Which informal process(es) are available, and the options for complainants to bypass an informal process for a formal process at any point;

   c. That a prompt and fair resolution of discrimination complaints alleging violations of 40 C.F.R. Parts 5 and 7 will be conducted;

   d. That the preponderance of the evidence standard will be applied during the analysis of the complaint;

   e. That retaliation is prohibited and that claims of retaliation will be handled promptly if they occur;

f. That written notice will be promptly provided about the outcome of the investigation, including whether discrimination is found, and a description of the investigation process.

3. Within 45 days of the effective date of this Agreement, Genesee County will forward to ECRCO a final draft of its Grievance Procedures for review, as well as information about the planned location and accessibility of the Grievance Procedures, such as a link to its Website. ECRCO will review the draft Grievance Procedures and provide comments within 14 days of receipt. Once the Grievance Procedures is posted as specified in this Section III.B. above and according to Section IV.C. below, this will be sufficient to complete the Grievance Procedures commitment of Section III.B. of this Agreement.

C. *Designation of Nondiscrimination Coordinator*

1. Genesee County will ensure that the Nondiscrimination Coordinator's responsibilities include the following:

a. Provide information to individuals regarding their right to services, aids, benefits, and participation in any County program or activity without regard to their race, national origin, color, sex, disability, age or intimidation or retaliation against any individual or group because they have exercised their rights to participate in actions protected, or oppose action prohibited EPA's nondiscrimination regulation, or for the purpose of interfering with such rights.

b. Provide information about the County's formal and informal grievance processes and the ability to file a discrimination complaint with the County.

c. Maintain grievance policies to ensure that all discrimination complaints filed with the County under federal nondiscrimination statutes are processed promptly and appropriately. One element of any policy and procedure or mechanism must include the County providing meaningful access for limited-English proficient individuals and individuals with disabilities to the County's programs and activities.

d. Ensure the tracking of all discrimination complaints filed with the County under federal nondiscrimination statutes including any patterns or systemic problems.

e. Conduct an annual review of all discrimination complaints filed with the County's Nondiscrimination Coordinator under federal nondiscrimination statutes in order to identify and address any patterns or systemic problems.

f. Inform and advise County staff regarding the County's obligations to comply with federal nondiscrimination statutes and serve as a resource on such issues.

g. Ensure that complainants are updated on the progress of their discrimination complaints filed with the County under federal nondiscrimination statutes and are promptly informed as to any determinations made.

h. Annually assess the efficacy of the County's efforts to maintain compliance with federal nondiscrimination statutes.

i. Receive training in Alternative Dispute Resolution.

j. Ensure the County's employees are appropriately trained on the County's nondiscrimination policies and procedures, as well as the nature of the federal nondiscrimination obligations.

2. The Nondiscrimination Coordinator will not have other responsibilities that create a conflict of interest with the Nondiscrimination Coordinator responsibilities (*e.g.*, also serving as the County's legal advisor to the County on discrimination claims filed against the County).

3. Within 45 days of the effective date of this Agreement, the County will forward to ECRCO proof that the Nondiscrimination Coordinator has assigned the responsibilities identified in Section III(C)(1).

D. *Public Participation*

1. Genesee County understands that meaningful public involvement consists of informing, consulting, and working with potentially affected communities at various stages of the environmental decision-making process to address their needs. Therefore, Genesee County will ensure its public involvement process is available to all persons regardless of race, color, national origin (including limited-English proficiency), age, disability, and sex. In addition, the County will ensure that the factors used to determine the appropriate time, place, location, duration, and

security at public meetings are developed and applied in a nondiscriminatory manner.

2. Genesee County will develop, publicize and implement written public participation procedures (consistent with EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006)), that include implementation of 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 you engage in a public participation or public involvement process; for example, develop an overview of the recipient's plan of action for addressing the community's needs and concerns, develop a description of the community (including demographics, history, and background), provide a contact list of your relevant staff members, including phone numbers and email addresses, to allow the public to communicate via phone or internet, develop a list of past and present community concerns (including any complaints filed under the federal non-discrimination laws), develop a detailed plan of action (outreach activities) recipient will take to address concerns, a contingency plan for unexpected events, location(s) where public meetings will be held (consider the availability and schedules of public transportation), contact names for obtaining translation of documents and/or interpreters for meetings, appropriate local media contacts (based on the culture of the community), and location of the information repository.

3. Genesee County will prominently post its Public Participation Procedures on the County's Nondiscrimination webpage and will include versions translated into the prominently spoken LEP languages, as applicable, and which will be accessible to individuals with disabilities.

4. Within 75 days of the effective date of this Agreement, Genesee County will forward to ECRCO a copy a final draft of its Public Participation Procedures for review, as well as information about the planned location and accessibility of the Public Participation Procedures, such as a link to its Website. ECRCO will review the draft Public Participation Procedures and provide comments within 30 days of receipt. Once the Public Participation Procedures are posted as specified in this Section III.D. above and according to Section IV.C. below, this will be sufficient to complete the Public Participation Procedures commitment of Section III.D. of this Agreement.

E. *Access for Persons with Limited-English Proficiency*

1. Genesee County will develop and implement a LEP Plan to ensure meaningful access to all County programs and activities for limited-English proficient individuals.

2. Genesee County will conduct the appropriate analysis consistent with the analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) to determine what language services or mix of language services it may need to provide to ensure that limited-English proficient individuals can meaningfully participate in the County's programs and activities.

3. Genesee County will make communities it serves aware of its LEP plan and how to access language assistance services at no cost. This information will be provided in appropriate languages other than English based on the appropriate analysis conducted in accordance with Section III.E.2. above.

4. Within 135 days of the effective date of this Agreement, Genesee County will forward to ECRCO for review a final draft of its LEP Plan to ensure meaningful access to all County programs and activities for limited-English proficient individuals, as well as information about the proposed location and accessibility of the LEP Plan, such as a link to its Website. ECRCO will review the draft LEP Plan and provide any comments within 30 days of receipt. Once the final LEP Plan is implemented as specified in this Section III.E. above and according to Section IV.C. below, this will be sufficient to complete the requirements of Section III.E. of this Agreement.

F. *Access for Persons with Disabilities*

1. Genesee County will develop and implement policies and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in its programs and activities, including the following:

   a. Genesee County will provide at no cost appropriate auxiliary aids and services including, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the programs and activities provided by the County in a timely manner.

   b. Individuals with disabilities have a right to request accommodations. Individuals will receive accommodations appropriate to their needs in order to fully participate in or benefit

from the County's programs and activities in an accessible, nondiscriminatory and integrated setting.

2. Genesee County will make communities it serves aware that services for individuals with disabilities are available, at no cost. The County will prominently post its disability policy, on the County website, and will include versions translated into the appropriate prominent LEP languages spoken in the County and will be accessible to individuals with disabilities.

3. Within 75 days of the effective date of this Agreement, Genesee County will forward ECRCO a final draft of its Disability Plan for review, as well as information about the planned location and accessibility of the Disability Plan, such as a link to its Website. ECRCO will review the draft Disability Plan and provide comments within 30 days of receipt. Once the Disability Plan is posted as specified in this Section III.F. above and according to Section IV.C. below, this will be sufficient to complete the Disability Plan commitment of Section III.F. of this Agreement.

G. *Training*

1. Within 135 days after implementing the policies, plans and procedures identified in this Agreement, including those involving Nondiscrimination Notice, Grievance Procedures, Nondiscrimination Coordinator, Public Participation, Access for Persons with Limited-English Proficiency, and Access for Persons with Disabilities, Genesee County will identify and ensure that all appropriate staff have been trained on its internal nondiscrimination policies and procedures and on federal nondiscrimination obligations. Genesee County will provide documentation to ECRCO showing that all appropriate staff have been trained. This will be sufficient to complete the training requirements of Section III.G.1. of this Agreement.

2. Within 105 days after the effective date of this Agreement, Genesee County will have a plan in place to ensure that such training is a routine part of its new employee orientation. Additionally, Genessee County will provide such training to current appropriate County employees. Genesee County will forward to ECRCO a final draft of the plan. ECRCO will review the draft plan and provide any comments within 30 days of receipt. Genesee County will submit a final plan within 30 days of receipt of ECRCO's comments. This will be sufficient to complete the training requirements of Section III.G.2. of this Agreement.

III. GENERAL

A. In consideration of the County's implementation of commitments and actions described in Section III of this Agreement, ECRCO will end its investigation and consider resolved EPA Complaint No. 18RD-16-R5 and not issue a decision containing findings on the merits of the complaint.

B. ECRCO will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the commitments in Section III of this Agreement are satisfied, ECRCO will issue a letter documenting closure of its monitoring actions in EPA Complaint No. 18RD-16-R5 and closure of the complaint as of the date of that letter.

C. Genesee County will, within 30 days of the implementation of each commitment in Section III, and consistent with the timeframes in Section III, document and report their implementation, by email to the Director, External Civil Rights Compliance Office, Office of General Counsel, US EPA, at Dorka.Lilian@epa.gov.

D. ECRCO will review and provide feedback about any documentation submitted by the County demonstrating completion of each commitment and will provide an assessment as to whether the documentation satisfies the commitment.

E. ECRCO will, upon request, provide technical assistance to the County regarding any of the civil rights obligations previously referenced.

IV. COMPUTATION OF TIME AND NOTICE

A. As used in this Agreement, "day" shall 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 shall run until the close of business of the next working day.

B. Documents submitted by Genesee County shall be sent by email or mail to the Director of ECRCO at Dorka.Lilian@epa.gov or External Civil Rights Compliance Office, Office of General Counsel, US EPA (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

C. Documents submitted to Genesee County shall be sent by email or mail to the Genesee County Board & Capital Projects Coordinator at JFreeman@co.genesee.mi.us or Joshua M. Freeman, Non-Discrimination Coordinator, 1101 Beach Street, Room 312, Flint, Michigan 48502, with a copy to BMacMillan@co.genesee.mi.us or Corporation Counsel, 900 South Saginaw Street, Suite 102, Flint, Michigan 48502.

V. EFFECT OF THE AGREEMENT

A. Genesee County understands that, if necessary, ECRCO may visit Genesee County, interview staff, and request such additional reports or data as are necessary for ECRCO to determine whether Genesee County has fulfilled the terms of this Agreement.

B. Genesee County understands that ECRCO will not close its monitoring of this Agreement until ECRCO determines that Genesee County has fully implemented the commitments of Section III of this Agreement and that a failure to satisfy any of the commitments of Section III of this Agreement may result in the ECRCO opening 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 Genesee County's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstance justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written Agreement by the Genesee County Board of County Commissioners Chairperson and the Director of ECRCO.

D. This Agreement constitutes the entire Agreement between Genesee County and ECRCO regarding the matters addressed herein, and no other statement, promise, or Agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by Genesee County and ECRCO in accordance with the provisions of Section VI(C) above.

E. This Agreement does not affect Genesee County's continuing responsibility to comply with Title VI, Section 504, 40 C.F.R. Parts 5 and 7, and other federal nondiscrimination laws, nor does it affect ECRCO's investigation of any 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 Chairperson of the Genesee County Board of County Commissioners has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Chairperson of the Genesee County Board of County Commissioners has the authority to enter into this Agreement.

On behalf of Genesee County.

Ted Henry, Chairperson
Genesee County Board of County Commissioners

Dec 18, 2019
(Date)

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

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

December 18, 2019
(Date)