U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

United States Environmental Protection Agency

External Civil Rights Compliance Office
Office of General Counsel

January 30, 2019

Return Receipt Requested
Certified Mail#: (b) (6) Privacy

In Reply Refer To:
DOT# 2016-0361
EPA File Nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3

(b) (6) Privacy
Patuxent Riverkeepers
17412 Nottingham Road
Upper Marlboro, MD 20772

Dear (b) (6) Privacy

This letter is to inform you that the U.S. Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA), and 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 DOT and the Maryland Public Service Commission (PSC) and entered into between EPA and the Maryland Department of Environment (MDE) and the Maryland Department of Natural Resources (MDNR). On June 14, 2016, DOT and EPA accepted Complaint No. DOT #2016-0361 and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3, which alleged violations of Title VI of the Civil Rights Act of 1964 (Title VI) and its implementing regulations, including Title VI regulations administered by DOT (49 Code of Federal Regulations, Part 21) and EPA (40 Code of Federal Regulations, Parts 5 and 7), respectively. Specifically, the issues accepted for investigation were:

1. Whether the process and decision to issue a Certificate of Public Convenience and Necessity (CPCN) to Mattawoman Energy, LLC for the construction of a natural gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

2. Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

During the course of DOT and EPA's investigation, PSC, MDE, and MDNR agreed to enter into an Informal Resolution Agreement in order to resolve this complaint. The enclosed Agreement is entered into by the PSC with the DOT and by MDE and MDNR with EPA pursuant to the authority granted to DOT and the EPA under the federal nondiscrimination laws, including Title VI of the Civil Rights Act of 1964, and DOT regulation found at 49 C.F.R., Part 21 and EPA

regulation at 40 C.F.R. Parts 5 and 7, respectively. It resolves complaint numbers: DOT #2016-0361; and EPA Complaint nos. 28R-16-R3, 29R-16-R3, and 30R-16-R3 and additional concerns identified by DOT and EPA. It is understood that the Agreement does not constitute an admission by PSC or a finding by DOT of violations of 40 C.F.R., Part 21 or an admission by MDE and MDNR or a finding by EPA of violations of 40 C.F.R. Parts 5 and 7.

The enclosed Agreement does not affect PSC, MDE, and MDNR's continuing responsibility under Title VI or other federal non-discrimination laws, DOT's regulation at 40 C.F.R. Part 21, and EPA's regulation at 40 C.F.R. Parts 5 and 7, nor does it affect DOT and 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 PHMSA's and ECRCO's disposition of the complaint. This letter is not a formal statement of PHMSA's or ECRCO's policy and should not be relied upon, cited, or construed as such.

DOT is committed to working with PSC and EPA is committed to working with MDE and MDNR as they implement the provisions of the Agreement. If you have any questions regarding the Agreement between PHSMA and PSC, please feel free to contact Rosanne Goodwill at (202) 366-6580, by e-mail at rosanne.goodwill@dot.gov, or U.S. mail at Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, S.E., (PH-20, E25-340), Washington D.C. 20590. If you have any questions regarding the Agreement between EPA and MDE or EPA and MDNR, please contact Lilian Dorka 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,

Rosanne Goodwill

Rosanne Goodwill, Director
Office of Civil Rights
Pipeline and Hazardous Materials
Safety Administration
U.S. Department of Transportation

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel
U.S. Environmental Protection Agency

Enclosure

Cc:

Angelia Talbert-Duarte
Acting Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA Office of General Counsel

Cecil Rodriques
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 3

U.S. Department of Transportation

Pipeline and Hazardous Materials Safety Administration

United States Environmental Protection Agency

External Civil Rights Compliance Office
Office of General Counsel

INFORMAL RESOLUTION AGREEMENT BETWEEN THE **U.S. DEPARTMENT OF TRANSPORTATION PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION** AND THE **MARYLAND PUBLIC SERVICE COMMISSION**; AND, THE **U.S. ENVIRONMENTAL PROTECTION AGENCY**, AND THE **MARYLAND DEPARTMENT OF THE ENVIRONMENT**, AND THE **MARYLAND DEPARTMENT OF NATURAL RESOURCES.**

The Informal Resolution Agreement between the U.S. Department of Transportation ("DOT") Pipeline and Hazardous Materials Safety Administration ("PHMSA") and the Maryland Public Service Commission ("PSC"), a recipient of PHMSA's federal financial assistance, and the U.S. Environmental Protection Agency ("EPA"), and the Maryland Department of the Environment ("MDE"), a recipient of EPA's federal financial assistance, and the U.S. Environmental Protection Agency and the Maryland Department of Natural Resources ("MDNR"), a recipient of EPA's federal financial assistance sets forth the terms of the mutual resolution of DOT/PHMSA's and EPA's investigation into the recipient agencies' permitting of the Mattawoman power plant in Brandywine, Maryland, pursuant to DOT's regulations at 49 C.F.R. Part 21 and EPA's regulations at 40 C.F.R. Part 7, implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI").

I. BACKGROUND AND PURPOSE

A. Title VI and the federal agencies' implementing regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. Each recipient agency is a recipient of federal financial assistance from DOT/PHMSA or EPA and is subject to the provisions of Title VI and either DOT's or EPA's implementing regulations.

B. On June 14, 2016, DOT's Pipeline and Hazardous Materials Safety Administration Office of Civil Rights ("OCR"), with DOT's Departmental Office of Civil Rights ("DOCR"), jointly accepted a complaint with EPA's External Civil Rights Compliance Office ("ECRCO") that alleged discrimination based on race, color and national origin in violation of Title VI. In response to the complaint, DOCR/OCR and ECRCO began an investigation of the following issues:

(1) Whether the process and decision to issue a Certificate of Public Convenience and Necessity ("CPCN") to Mattawoman Energy, LLC, for the construction of a natural

gas-fired power plant in Brandywine, Maryland discriminated on the basis of race, color, or national origin, in violation of Title VI; and

(2) Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.

C. During the course of the federal agencies' investigation, the recipient agencies agreed to enter into an Informal Resolution Agreement ("Agreement") in order to resolve this complaint.

D. This Agreement is entered into voluntarily by the recipient agencies jointly, and by PHMSA's OCR and EPA's ECRCO.

E. It is understood that this Agreement does not constitute an admission by the recipient agencies of a violation of, or a finding of compliance or noncompliance by PHMSA and/or EPA with, applicable federal non-discrimination laws and regulations.

F. It is understood that PHMSA and EPA will cease investigation of DOT Complaint #2016-0361 and EPA complaints 28R-16-R3, 29R-16-R3, and 30R-16-R3 upon the signing of this Agreement and will provide technical assistance to support the recipient agencies in the implementation of the commitments contained herein.

G. The PSC, MDE, and DNR agree to fully implement their specific responsibilities under the corresponding sections of this Agreement and the recipient agencies understand that a failure to satisfy any term in this agreement may result in the EPA and PHMSA re-opening an investigation.[1]

H. The recipient agencies are committed to carrying out their responsibilities in a nondiscriminatory manner, consistent with the requirements of Title VI and the other federal non-discrimination laws and regulations enforced by PHMSA and EPA. The activities detailed in this Agreement, which the recipient agencies have voluntarily agreed to undertake and implement, are in furtherance of this commitment.

II. APPLICABILITY

The federal agencies assert jurisdiction over this matter under their Title VI regulations. Title VI provides that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. §§ 2000d et seq.

The federal agencies represent that they have authority under their Title VI regulations to initiate an investigation in this matter to determine the recipient agencies'

[1] EPA Complaint Number 28R-16-R3 will close upon the signing of this Agreement, as PSC is not a recipient of EPA financial assistance.

compliance with Title VI, to issue findings, and where appropriate, to negotiate and secure voluntary compliance. 49 C.F.R. Part 21.11; 40 C.F.R. Part 7.120.

III. DEFINITIONS

- Affected Communities – refers to the residential individuals, organizations and other entities located within a one (1)-mile radius of the proposed facility fence line for an urban area, as defined by the United States Census Bureau, and within a three (3)-mile radius of the proposed facility fence line for a rural area, as defined by the Census Bureau.

- Qualifying Generating Station – refers to a proposed fossil fuel generation facility over 70 megawatts (MW) in nameplate capacity that is subject to the CPCN requirements under COMAR 20.79.01 et seq.

Subpart A

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND PUBLIC SERVICE COMMISSION,
and the
UNITED STATES DEPARTMENT OF TRANSPORTATION
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION
DOT Complaint Number 2016-0361

I. SPECIFIC COMMITMENTS FROM THE PSC

A. Community Outreach and Public Participation

1. PSC is committed to providing an opportunity for meaningful and full public participation by communities affected by a CPCN application consistent with Title VI and other applicable non-discrimination authorities. This includes providing meaningful access to persons with limited English proficiency ("LEP") and those with disabilities, as described in Section D. below.

2. CPCN Pre-Application Process. Within six (6) months of the signing of this agreement, PSC will submit to its formal rulemaking process a proposed rule that modifies the CPCN application requirements under Code of Maryland Regulations (COMAR) 20.79.01 to include and implement a pre-application process for Qualifying Generating Stations, which shall include the following requirements:

   a. Notice to the Maryland Department of Natural Resources Power Plant Research Program ("PPRP"). The prospective applicant shall notify PPRP in writing of the applicant's intent to file a CPCN application to construct a Qualifying Generating Station and provide PPRP with information (e.g., type, source, location) on the proposed generating station no less than 90 days prior to the filing of the application.

   b. Community Engagement. The prospective applicant shall meaningfully offer to engage the participation of the Affected Communities for the purpose of educating the Affected Communities concerning the project and soliciting their feedback. The prospective applicant shall at minimum:

      i. Designate a Community Liaison Officer who will serve as the prospective applicant's point of contact for community inquiries about the application;

      ii. Identify actual community members and community organizations within the Affected Communities (as the term is defined in Section III.) and provide notification of the project

and any public meeting invitation on the subject to the community members and organizations consistent with Section A(3) below;

iii. Hold a minimum of one (1) public meeting within the county or municipal corporation in which any portion of the construction of the Qualifying Generating Station is proposed to be located, in accordance with the following requirements:

a. The public meeting must be scheduled at least 60 days before the filing of a CPCN application;

b. In addition to the notification requirements in Section A(3), the public meeting notice must be submitted to the governing body, and if applicable the executive, of each county or municipal corporation of the proposed location of the generating station; and

c. The prospective applicant must provide notification of the public meeting(s) by:

1. Placing an invitation on the applicant's website, if any, or on the applicant's parent corporation's website;

2. Placing an invitation on at least two types of social media platforms; and

3. Publishing an advertisement in a newspaper of general circulation in the county or municipal corporation in which the proposed Qualifying Generating Station will be located.

iv. The prospective applicant shall prepare a Public Engagement and Participation Certification Form for New Applications, which shall describe the applicant's efforts to provide notice to and engage the Affected Community and shall include a summary discussion of what, if any, actions the applicant has agreed to take to address public concern(s) raised at the public meeting.

c. Environmental Justice Screen.[2] The prospective applicant shall use the U.S. EPA EJSCREEN environmental justice screening tool to identify Affected Communities that may be subject to additional impacts from a

[2] See Purpose and Uses of EJSCREEN (https://www.epa.gov/ejscreen/purposes-and-uses-ejscreen), EJSCREEN Environmental Justice Mapping and Screening Tool EJSCREEN Technical Documentation August 2017 (https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf).

proposed Qualifying Generating Station. The numerical thresholds for identifying sensitive areas susceptible to disparate, adverse impacts as a result of permitting certain industrial facilities shall be where the U.S. EPA EJSCREEN demographic index is at or more than the 80th percentile as compared to the state of Maryland for any single census block group within a three-mile circular buffer centered at the GIS coordinates of the proposed Qualifying Generating Station.[3] The demographic index is the average of the percentage of the population that is minority and the percentage of the population that is low income, which is hereby defined as a household income less than or equal to twice, or 200 percent of, the federal "poverty level."

3. CPCN Notification Improvements. Within six (6) months of the signing of this agreement, PSC will submit to the formal rulemaking process a proposed modification to the rules governing notification of a filed CPCN application under COMAR 20.79.02 to include the following:

   a. For fossil fuel generation facilities subject to the CPCN requirement, including those for which a waiver has been denied, the applicant shall post at minimum one large sign at the site of the proposed facility that is visible from the street(s), subject to applicable local restrictions and/or regulations.

   b. For a Qualifying Generating Station, the applicant shall also send a letter by postal mail to all residential and business addresses within a one (1)-mile radius of the proposed facility site for an urban area, and within a three (3)-mile radius of the proposed facility site for a rural area. The letter notification shall include:

      i. A fact sheet on the filed application, including the case number, the applicant's designated Community Liaison Officer (as described above) and other relevant information;

      ii. The prehearing conference date;

      iii. The deadline for filing petitions to intervene; and

---

[3] *See* https://www.epa.gov/ejscreen/frequent-questions-about-ejscreen#q5. See https://www.epa.gov/sites/production/files/2017-09/documents/2017_ejscreen_technical_document.pdf, p. 26, for what a "percentile" means:

> A percentile in EJSCREEN tells us roughly what percent of the US population lives in a block group that has a lower value (or in some cases, a tied value). This means that 100 minus the percentile tells us roughly what percent of the US population has a higher value. This is generally a reasonable interpretation because for most indicators there are not many exact ties between places and not many places with missing data. * * * All percentiles in EJSCREEN are population percentiles, meaning they describe the distribution of block group indicator scores across the population. Note that a population percentile may be slightly different than the unweighted percentile (the percent of block groups, not people, with lower or tied values), because not all block groups have the same population size. In practice they are very similar because very few block groups diverge very much from the average in population size.

iv. A fact sheet concerning the CPCN process.

c. The applicant shall file with the PSC at least one picture of each posted sign in accordance with Section A.3(a) and, where applicable, a signed certification of the notification mailings in accordance with subsection 3(b), along with a complete list of mailing recipient names and addresses.

4. If any formal rulemaking conducted pursuant to Paragraphs I.A.2. and I.A.3., above, results in any amendments to provisions of COMAR which are a part of the Maryland State Implementation Plan ("SIP"), the PSC will coordinate with MDE to ensure that such amended COMAR provisions are submitted to EPA for approval into the Maryland SIP.

5. The PSC will agree to review EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006) which offers important information regarding successful public engagement. PHMSA will also provide appropriate technical assistance.

B. Organization

1. Within three (3) months of the signing of this agreement, PSC will provide a description of the CPCN process on its website and provide links to additional informational resources. PHMSA will review the description of the CPCN process on the website and provide any comments within 60 days.

2. Within six (6) months of the signing of this agreement, PSC shall also propose to modify COMAR 20.79.02 and 20.79.03 to require the applicant to include with its CPCN application:

   a. The identity and contact information for the applicant's designated Community Liaison Officer, as described in Section A.2(b)(i);

   b. If applicable, a copy of the applicant's U.S. EPA EJSCREEN report, which the applicant shall reference and address in the application;

   c. If applicable, a completed and signed Public Engagement and Participation Certification Form. The Certification Form shall include any supporting documentation, including but not limited to any express terms of agreement reached between the applicant and the Affected Community (subject to redaction of any confidential information);

   d. Any supporting documentation identifying zoning approvals by the local government/local environmental review board/district, where available.

3. Within three (3) months of the signing of this agreement, PSC will adopt a formal Title VI policy of nondiscrimination, and sign (See Section D. below)

and comply with its obligations under the Title VI assurances. PHMSA will review the formal Title VI policy of nondiscrimination within 60 days of receipt.

C. Training

1. Within one (1) year of the signing of this agreement, PSC will accept organization-wide training from PHMSA on compliance with Title VI and other non-discrimination authorities for its Commissioners, Public Utility Law Judges, Office of General Counsel, Office of Staff Counsel, Office of External Relations, Transportation Division, and all Division directors and assistant directors. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.

2. PSC will accept the provision of technical assistance from PHMSA on meaningful public engagement centered around the CPCN process. Training should be provided within one year of the effectuation of this agreement. Within 30 days of completion of the training documentation will be submitted to PHMSA.

D. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that the PSC is an independent agency that is committed to enforcing the open access and non-discrimination policies of the State of Maryland and as consistent with federal law.

2. Notice of Non-Discrimination. Within three (3) months of the signing of this agreement, PSC will prominently post a Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, the PSC will include a Notice of Non-Discrimination in general publications that are distributed to the public (e.g., notice for public hearings, entrances to public hearings, public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to PSC's programs, processes, or activities).

3. Grievance Procedures. Within three (3) months of the signing of this agreement, PSC will prominently publish on-line on its website homepage, and, to the extent practicable, in print, its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow PSC to resolve issues at the lowest level possible.

4. Designation of Non-Discrimination Coordinator. Within six (6) months of the signing of this agreement, PSC will designate a staff member to serve as its non-discrimination coordinator. It is understood that this individual may conduct other duties. PSC will ensure that it has prominently published, in print

and online, the identity of the current non-discrimination coordinator, along with their email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP). Within six (6) months of the signing of this agreement, PSC will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to PSC's programs and activities.

6. Access for Persons with Disabilities. Within six (6) months of the signing of this agreement, PSC will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in PSC's programs and activities.

II. GENERAL

A. In consideration of PSC's implementation of commitments and actions described in Section I of this agreement, PHMSA will end its investigation of DOT Complaint Number 2016-0361 and not issue a decision containing findings on the merits of the complaint.

B. PHMSA will, upon request, provide technical assistance to PSC regarding any of the civil rights obligations previously referenced.

C. PHMSA will review and provide feedback about any documentation submitted by PSC demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-Discrimination Coordinator) and will provide an assessment as the whether the documentation satisfies the commitment.

D. PSC will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Rosanne Goodwill, Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590, within 30 days of the completion by PSC of each commitment.

E. PHMSA will monitor the implementation of the commitments in this agreement to ensure they are fully implemented. Once the terms of this agreement are satisfied, PHMSA will issue a letter documenting closure of its monitoring actions in DOT Complaint Number 2016-0361 and closure of the complaint as of the date of that letter.

III. 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 holiday (State or Federal), the period shall run until the close of business of the next working day.

B. Service of any documents required by this agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

C. Documents submitted by PSC to PHMSA shall be sent to Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590.

D. Documents submitted by PHMSA to PSC shall be sent to Jason M. Stanek, Chairman, Maryland Public Service Commission, William Donald Schaefer Tower, 6 St. Paul St., 16th Floor, Baltimore, MD 21202.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

A. PSC understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, PSC understands that during the monitoring of this agreement, if necessary, PHMSA may visit PSC, interview staff, and request such additional reports or data as necessary for PHMSA to determine whether PSC has fulfilled the terms of this agreement and is in compliance with DOT regulations implementing the federal non-discrimination requirements set forth in 49 C.F.R. Part 21, which were at issue in this case.

B. PSC understands that PHMSA will close its monitoring of this agreement when PHMSA determines that PSC has fully implemented this agreement and that a failure to satisfy any term in this agreement may result in PHMSA re-opening the 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 PSC'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 circumstances justifying the proposed modification. Any modification(s) to this agreement shall take effect only upon written agreement of the Chairman of PSC and the Civil Rights Director of PHMSA.

D. This agreement constitutes the entire agreement between PSC and PHMSA 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 PSC and PHMSA in accordance with the provisions of Section IV. Paragraph C. above.

E. This agreement does not affect PSC's continuing responsibility to comply with Title VI or other federal non-discrimination laws and DOT's regulations at 49 C.F.R. Part 21, nor does it affect PHMSA'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 Chairman, in his capacity as an official of PSC, has the authority to enter into this agreement for purposes of carrying out the activities listed in these paragraphs. The PHMSA Civil Rights Director has the authority to enter into this agreement.

On behalf of the Maryland Public Service Commission

Jason M. Stanek
Chairman

1/28/19
(Date)

On behalf of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration,

Rosanne Goodwill, Director
Civil Rights Office

9-27-18
(Date)

On behalf of the U.S. Department of Transportation, Departmental Office of Civil Rights,

Charles E. James, Sr., Director
Departmental Office of Civil Rights

9-27-2018
(Date)

Subpart B

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF THE ENVIRONMENT,
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 29R-16-R3

I. SPECIFIC MDE COMMITMENTS

A. These commitments apply to a Qualifying Generating Station.

1. MDE will make air quality information publicly available as part of its review of a new CPCN application for any Qualifying Generating Station. The information will include:

    - A summary of the sampling data from MDE's air monitoring station(s) located closest to the site of a proposed electric generating unit.
    - A comparison between the sampling data and the applicable national ambient air quality standards (NAAQS) (40 C.F.R. Part 70).
    - A description of how MDE determines whether the proposed electric generating unit would not cause a violation of any NAAQS for which the State is in attainment and how the proposed project meets applicable Clean Air Act requirements in areas for which the State is not in attainment.
    - A description of any pollution control devices proposed to be installed and how they meet state or federal requirements with respect to controlling emissions of criteria air pollutants.

2. MDE will identify a community resource officer to participate at each CPCN Applicant community educational and outreach meeting associated with the receipt of a new CPCN application for a Qualifying Generating Station. At each community education and outreach meeting, MDE will:

    - provide a description of their regulatory authority;
    - provide a description of the required environmental assessments associated with the CPCN; and
    - provide a description of the environmental permitting requirements associated with the CPCN.

3. MDE's community resource officer will work with Affected Communities to evaluate any "citizen science" monitoring undertaken or proposed to be undertaken by communities or by others on the communities' behalf. MDE will provide a written response to the individual submissions which describe MDE's determinations regarding its information review.

4. In accordance with Subpart A, Paragraph I.A.4., MDE will submit to EPA for approval as an amendment to the Maryland State Implementation Plan any changes to COMAR which are the result of PSC formal rulemaking pursuant to Subpart A., Paragraphs I.A. 2 and I.A.3.

B. Training

1. MDE will accept the provision of organization-wide training from EPA on compliance with Title VI and other non-discrimination authorities. Training should be provided within one year of the effectuation of this agreement.

2. MDE will accept the provision of technical assistance from EPA on meaningful public engagement with regard to the CPCN process, including the creation of Public Engagement Plans (PEPs). Training should be provided within one year of the effectuation of this agreement.

C. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that MDE has an affirmative obligation to not only eliminate discrimination in their organizational processes but to also proactively prevent discrimination, including any that may arise from the CPCN process.

2. Notice of Non-Discrimination: Within three (3) months of the signing of this Agreement, MDE will prominently post its Notice of Non-Discrimination on its website homepage, in 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, as well as in applications or forms to participate in or access to MDE's programs, processes, or activities), and in MDE's offices.

3. Grievance Procedures: Within three (3) months of the signing of this Agreement, MDE will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDE to resolve issues at the lowest level possible.

4. Designation of Non-Discrimination Coordinator: Within three (3) months of the signing of this Agreement, MDE will designate a non-discrimination coordinator staff position. If necessary, this position can also conduct other duties. MDE will ensure that it has prominently published, in print and online, the identity of the current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): Within six (6) months of the signing of this Agreement, MDE will develop and implement a LEP Plan to ensure meaningful access for limited-English proficient individuals to MDE's programs and activities.

6. Access for Persons with Disabilities: Within six (6) months of the signing of this Agreement, MDE will develop and implement a policy and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDE's programs and activities.

II. GENERAL

A. In consideration of MDE's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of EPA Complaint Number 29R-16-R3 and not issue a decision containing findings on the merits of the Complaint.

B. EPA will, upon request, provide technical assistance to MDE regarding any of the civil rights obligations previously referenced.

C. EPA will review and, within 30 days provide feedback, which will include an assessment as to whether documentation submitted to EPA by MDE satisfies the particular commitment for which MDE is making the submittal, to MDE in response to any documentation submitted by MDE demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-Discrimination Coordinator).

D. MDE will report the completion of each commitment identified under Subpart B, Section I consistent with the timeframes set forth in Subpart B, Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within thirty (30) days of the completion by MDE of each commitment.

E. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 29R-16-R3 and closure of the complaint as of the date of that letter.

III. 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 holiday (State or Federal), the period shall run until the close of business of the next working day.

B. Submission of any documents required by Section II. D. of this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

C. Documents submitted by MDE to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

D. Documents submitted by EPA to MDE shall be sent to Ben Grumbles, Secretary, (or any successor) Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

A. MDE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDE understands that during the monitoring of this Agreement, if necessary, EPA may visit MDE, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDE has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.FR. Part 7.

B. MDE understands that EPA will close its monitoring of this Agreement when EPA determines that MDE has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.

C. If either MDE or EPA desire to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDE'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 circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written consent of the Secretary of MDE and the ECRCO Director of EPA.

D. This Agreement constitutes the entire Agreement between MDE and EPA 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 MDE and EPA in accordance with the provisions of Subpart B, Section IV, Paragraph C above.

E. This Agreement does not affect MDE's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, 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. The Agreement does not affect MDE's right to respond to any such EPA investigation or any defenses to such.

F. The effective date of this Agreement is the date by which both MDE and EPA have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDE, has the authority to enter into this Agreement for the purpose of carrying out MDE's commitments as set forth in this Agreement. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of the Environment

Ben Grumbles
Secretary

1-21-19
(Date)

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

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

9-27-2018
(Date)

Subpart C

INFORMAL RESOLUTION AGREEMENT
between the
MARYLAND DEPARTMENT OF NATURAL RESOURCES
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
EPA Complaint Number 30R-16-R3

I. SPECIFIC COMMITMENTS FROM MDNR

A. Community Outreach and Public Participation

1. Within three (3) months of the signing of this agreement, MDNR shall adopt a policy or procedure that, upon receiving notice of a CPCN application for a Qualifying Generating Station, MDNR's Power Plant Research Program will identify a community resource officer who will serve as a point of contact for members of the public interested in the application. The community resource officer can participate at each CPCN Applicant community educational and outreach meeting associated with the application and may, but need not, be the project manager for the application at issue.

B. Non-Discrimination Procedural Safeguards

1. MDNR is committed to eliminate discrimination in its organizational processes and to proactively prevent discrimination, including any that may arise from its role in the CPCN process.

2. Notice of Non-Discrimination: Within three (3) months of the signing of this agreement, MDNR will prominently post its Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, in 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, as well as in applications or forms to participate in or access to MDNR's programs, processes, or activities).

3. Grievance Procedures: Within three (3) months of the signing of this agreement, MDNR will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDNR to resolve issues at the lowest level possible.

4. Designation of Non-Discrimination Coordinator: MDNR has designated and will maintain a designated non-discrimination coordinator. The employee holding this position may also have other job functions and duties. MDNR will ensure that it has prominently published, in print and online, the identity of the

current non-discrimination coordinator, along with his/her email address and telephone contact information.

5. Access for Persons with Limited English Proficiency (LEP): In January 2011, MDNR adopted an internal policy for Access for Persons with Limited English Proficiency. MDNR will review and update the LEP Plan to ensure it continues to provide meaningful access for limited-English proficient individuals to MDNR's programs and activities.

6. Access for Persons with Disabilities: MDNR maintains an ADA Transition Plan that is updated every 3 years. MDNR will implement the FY 19-21 ADA Transition Plan to ensure the Department is providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDNR's programs and activities.

II. GENERAL

A. In consideration of MDNR's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of Complaint Number 30R-16-R3 and not issue a decision containing findings on the merits of the Complaint.

B. EPA will, upon request, provide technical assistance to MDNR regarding any of the civil rights obligations previously referenced.

C. EPA will review and provide feedback about any documentation submitted by MDNR demonstrating completion of each and will provide an assessment as the whether the documentation satisfies the commitment.

D. MDNR will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by MDNR of each commitment.

E. MDNR has completed the implementation of commitments I.B.4, I.B.5, and I.B.6. EPA will monitor the implementation of the remaining commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 30R-16-R3 and closure of the complaint as of the date of that letter.

III. 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 holiday (State or Federal), the period shall run until the close of business of the next working day.

B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

C. Documents submitted by MDNR to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

D. Documents submitted by EPA to MDNR shall be sent to Mark Belton, Secretary, Maryland Department of Natural Resources, Tawes State Office Building, 580 Taylor Ave, Annapolis MD 21401.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

A. MDNR understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDNR understands that during the monitoring of this Agreement, if necessary, EPA may visit MDNR, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDNR has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.FR. Part 7, which were at issue in this case.

B. MDNR understands that EPA will close its monitoring of this Agreement when EPA determines that MDNR has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the 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 MDNR'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 circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement of the Secretary of MDNR and the ECRCO Director of EPA.

D. This Agreement constitutes the entire Agreement between MDNR and EPA 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 MDNR and EPA in accordance with the provisions of Section IV. Paragraph c above.

E. This Agreement does not affect MDNR's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, 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.

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 Secretary, in his capacity as an official of MDNR, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of Natural Resources

Mark J. Belton,
Secretary

15 January 2019
(Date)

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

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

9-24-2018
(Date)