UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

July 2, 2019

Return Receipt Requested
Certified Mail#: 7015 3010 0001 1267 1432

In Reply Refer To:
Complaint Nos 03R-15-R4 and 08R-15-R4

David A. Ludder
9150 McDougal Court
Tallahassee, Florida 32312-4208

Dear Mr. Ludder:

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 the Jefferson County Department of Health (JCDH). On March 6, 2015 and August 10, 2015, ECRCO[1] accepted for investigation two administrative complaints brought under Title VI of the Civil Rights Act of 1964 (Title VI) and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7, which alleged that JCDH engaged in discrimination based on race. The complaints against JCDH were assigned EPA Complaint Nos. 03R-15-R4 and 08R-15-R4, respectively. Specifically, the issues accepted for investigation were:

1. JCDH's approval on August 11, 2014 of ABC Coke's Major Source Operating Permit No. 4-07-001-03 to operate a major source of air pollution in Jefferson County, Alabama, which has the effect of adversely and disparately impacting African American residents in the adjacent community. [2]

2. Whether JCDH's October 3, 2014 issuance of Major Source Operating Permit Number 4-07-0355-03 to Walter Coke, Inc. resulted in discrimination on the basis of race against African American residents in the adjacent community in violation of Title VI.[3]

During the course of EPA's investigation, JCDH agreed to enter into an Informal Resolution Agreement in order to resolve EPA Complaint Nos. 03R-15-R4 and 08R-15-R4. The enclosed Agreement is entered into by EPA pursuant to authority granted to EPA under the federal nondiscrimination laws, including Title VI and EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7. It resolves EPA Complaint Nos. 03R-15-R4 and 08R-15-R4. It is understood that the Agreement does not constitute an admission by JCDH of any violation or a finding by EPA

1 Formerly Office of Civil Rights (OCR).
2 Accepted allegation for investigation for EPA Complaint No. 03R-15-R4.
3 Accepted allegation for investigation for EPA Complaint No. 08R-15-R4.

of compliance or noncompliance with applicable federal non-discrimination laws and regulation, including 40 C.F.R. Parts 5 and 7.

The enclosed Agreement does not affect JCDH's continuing responsibility under Title VI or other federal non-discrimination laws, and EPA's regulation at 40 C.F.R. Parts 5 and 7, 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 JCDH as it implements the provisions of the Agreement. If you have any questions regarding the Agreement between EPA and JCDH, 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
U.S. Environmental Protection Agency

Enclosure

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

Beverly Banister
Acting Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 4

Leif Palmer
Regional Counsel
EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

INFORMAL RESOLUTION AGREEMENT
between the
JEFFERSON COUNTY DEPARTMENT OF HEALTH
and the
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ECRCO Complaint Nos. 03R-15-R4 and 08R-15-R4

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 civil rights laws, and United States Environmental Protection Agency's (EPA) regulation 40 C.F.R. Parts 5 and 7, prohibit discrimination on the basis of race, color, or national origin, sex, age and disability in any programs or activities receiving federal financial assistance.

B. Jefferson County Department of Health (JCDH) is a recipient of federal financial assistance from the EPA and is subject to the provisions of Title VI and 40 C.F.R. Parts 5 and 7.

C. On March 6, 2015, EPA's External Civil Rights Compliance Office (ECRCO) accepted complaint No. 03R-15-R4 for investigation. On August 10, 2015, ECRCO accepted complaint No. 08R-15-R4 for investigation. Both complaints, brought under Title VI and EPA's regulations at 40 C.F.R. Part 7, alleged discrimination based on race. In response to the complaints, EPA accepted for investigation the following issues:

1. Whether JCDH's approval of Major Source Operating Permit No. 4-07-0001-03 on August 11, 2014 for ABC Coke, A Division of Drummond Company, Inc. (ABC Coke)[1] to operate a major source of air pollution located at Alabama Street and Huntsville Avenue in Tarrant (Jefferson County), Alabama, had the effect of adversely and disparately impacting African American residents in the adjacent community.

[1] On April 17, 2019, after completing the required application and review process, JCDH's Air Program issued a new permit to ABC Coke. The new permit (Major Source Operating Permit No. 4-07-0001-04) is the current, valid permit. The old permit (Major Source Operating Permit No. 4-07-0001-03) is of no force or effect.

2. Whether JCDH's October 3, 2014 issuance of Major Source Operating Permit Number 4-07-0355-03 to Walter Coke, Inc. – Coke Plant/Utilities/Wastewater (Walter Coke[2]) located at 3500 35th Avenue in Birmingham, Alabama resulted in discrimination on the basis of race against African American residents in the adjacent community in violation of Title VI.

D. This Agreement does not constitute an admission by JCDH of a violation of, or a finding of compliance or noncompliance by EPA with, Title VI or the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Parts 5 and 7.

E. EPA has not made a finding of compliance or noncompliance with 40 C.F.R. Parts 5 and 7 for any of the issues ECRCO accepted for investigation in response to the complaints. This Agreement does not constitute an admission by JCDH of a violation.

F. During the course of EPA's investigation, JCDH agreed to enter into an Informal Resolution Agreement (Agreement) in order to resolve these complaints.

G. This Agreement is voluntarily entered into by JCDH and the EPA.

H. This Agreement is entered into pursuant to the authority granted EPA under the federal non-discrimination laws, including Title VI of the Civil Rights Act of 1964, and EPA regulation found at 40 C.F.R. Parts 5 and 7, and resolves complaint numbers 03R-16-R4 and 08R-16-R4 and additional concerns identified by EPA.

I. JCDH is committed to carrying out its responsibilities in a nondiscriminatory manner, in accordance with the requirements of Title VI and the other federal non-discrimination laws enforced by EPA regulation at 40 C.F.R. Parts 5 and 7. The activities detailed in Sections III and IV of this Agreement are in furtherance of JCDH's ongoing commitment.

II. BACKGROUND

A. EPA promulgated a Clean Air Act final full approval of the JCDH operating permit program effective November 28, 2001.[3]

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[2] After Walter Coke's renewal permit was issued, Walter Coke transferred ownership of the facility to ERP Compliant Coke, which now holds the permit to operate the facility. For convenience's sake, this Agreement refers to the facility as "Walter Coke."

[3] Code of Federal Regulations, Title 40, Chapter I, Subchapter C, Part 70, Appendix A —Approval Status of State and Local Operating Permits Programs. Federal Register, Vol. 66, No. 209, Monday, October 29, 2001, pp. 54444-54447.

B. On January 24, 2018, EPA provided technical assistance to JCDH related to its nondiscrimination program consistent with the requirements of Title VI and the other federal non-discrimination laws and EPA regulation at 40 C.F.R. Parts 5 and 7.

C. As is ECRCO's current practice, during the course of this investigation, ECRCO reviewed JCDH's nondiscrimination program to assess whether it had procedural safeguards in place, such as: a non-discrimination policy, a non-discrimination coordinator, and a grievance procedure, as well as whether it had taken steps to ensure that all individuals had equal access to JCDH's programs and activities by ensuring that the public had meaningful access and opportunities to participate in environmental decision-making, including meaningful access for persons with disabilities and limited-English proficiency (LEP) individuals.

D. JCDH operates several ambient air monitors in Jefferson County, Alabama for a variety of monitoring objectives. These objectives include: (1) determining whether areas of the state meet the National Ambient Air Quality Standards (NAAQS); (2) providing public information such as participation in EPA's AirNow program; (3) reporting the Air Quality Index (AQI) for larger Metropolitan Statistical Areas (MSAs); (4) assisting in the development and use of air quality models; and (5) providing data to air quality researchers. JCDH's air monitors collect data and information on the six criteria pollutants for which NAAQS have been set. Criteria pollutants include: Carbon Monoxide (CO), Lead (Pb), Nitrogen Dioxide (NO2), Ozone (O3), particulate matter (PM10, PM2.5, and PM10-2.5), and Sulfur Dioxide (SO2). There are other non-criteria pollutants, such as PM2.5 speciated compounds, that are also monitored by JCDH for special purposes. In addition, meteorological data is also collected by JCDH to support the monitoring and aid in the analysis of the ambient air monitoring data.

E. The Birmingham area is currently in attainment with all of the NAAQS.

F. JCDH's Carbon Monoxide (CO) air monitoring sites are the Near Road site [located at 1110 5th Street West in Birmingham], the Fairfield site [located at 5229 Court B in Fairfield], and the North Birmingham site [located at 3009 28th St. North in Birmingham].

G. JCDH's Nitrogen Dioxide (NO_2) Network includes air monitors at the Near Road site, Shuttlesworth, and North Birmingham.

H. JCDH's Sulfur Dioxide (SO_2) Network includes air monitors at North Birmingham, Fairfield, and the Shuttlesworth site [located at 4113 Shuttlesworth Drive in Birmingham].

I. PM_{10} has been a criteria pollutant since 1987. Since that time there has been widespread monitoring of the PM_{10} levels in Jefferson County, Alabama. All monitors in the state, including JCDH's air monitors in Jefferson County, have recorded PM_{10} levels that meet the NAAQS. JCDH operates PM_{10} monitors at five

sites: North Birmingham: Leeds Elementary School [located at 201 Ashville Rd. in Leeds]; Wylam [located at 1242 Jersey St. in Birmingham]; Tarrant Elementary School [located at 1269 Portland St. in Tarrant]; and the Shuttlesworth site.

J. JCDH operates air monitors at six sites to determine compliance with the NAAQS for ozone: North Birmingham: Fairfield: McAdory School [located at 4800 McAdory School Rd. McCalla, AL, 35111]; Leeds Elementary School; Corner High School [located at 10005 Corner School Rd., Empire, AL, 35063]; and Tarrant Elementary School.

K. There are no longer any significant point sources of lead emissions greater than the half ton threshold in Jefferson County. Based on past air monitoring, emissions inventory data, and the relevant regulations, a lead source monitoring site is not required in Jefferson County.

L. JCDH operates air monitors at five sites to determine compliance with the NAAQS for $PM_{2.5}$: North Birmingham; McAdory School; Leeds Elementary School; Wylam; and the Near Road site.

M. Several of JCDH's air monitoring sites are located near the ABC Coke and Walter Coke facilities. The North Birmingham site is approximately 0.7 miles from Walter Coke's facility. The Shuttlesworth site is less than 100 feet from Walter Coke's facility. The Tarrant air monitoring site is less than 0.4 miles from ABC Coke's facility.

N. JCDH's website includes many documents regarding its air monitoring network. JCDH's Ambient Air Monitoring 2018 Network Review is available here: https://www.jcdh.org/SitePages/Misc/AirProgReports.aspx . Also available at that site are JCDH's annual air quality reports dating back for decades. Monthly air quality reports are available for each month during the past five years (approximately).

O. Between July 2005 and June 2006, JCDH conducted an air monitoring study of a large number of toxic air pollutants at four locations in the Jefferson County, Alabama, area. The four sites were North Birmingham, East Thomas [located at 817 21st Avenue West in Birmingham], Providence [located at 1801 Bruce Shaw Road in Adger], and Shuttlesworth. The purpose of this study, designated the Birmingham Air Toxics Study (BATS), was to assess the potential health effects resulting from the local population's exposure to chemicals in ambient air. JCDH conducted a risk assessment of the air monitoring data collected in the BATS, and this report details the methods and findings of this assessment. The BATS is available here: https://www.jcdh.org/SitePages/Misc/AirProgReports.aspx

P. The North Birmingham Air Toxics Risk Assessment reports on ambient air toxics monitoring and the resulting human health risk assessment in four North Birmingham, Alabama, communities. This study was designed as an extension of a previous effort, the national School Air Toxics (SAT) study, which focused on

assessing outdoor air pollution near schools. The SAT results from data collected at two of the Birmingham schools suggested a need for additional monitoring in the four communities to better assess the long term potential risks of airborne contaminants in the neighborhoods. This monitoring and risk study is part of a larger initiative, the North Birmingham Pilot Community Air Toxics Initiative, which was designed in early 2011 by EPA and JCDH to address the overall air quality concerns in the four North Birmingham communities. This document is available here: https://www.jcdh.org/SitePages/Misc/AirProgReports.aspx .

Q. The Agency for Toxic Substances and Disease Registry (ATSDR) evaluated EPA's and JCDH's air sample results. ATSDR's fact sheet regarding these results is available here: https://www.jcdh.org/SitePages/Misc/AirProgReports.aspx.

R. JCDH's website includes a link to near real-time air quality data from across Jefferson County. This website (https://www.nsstc.uah.edu/bhamaq/) provides the public with access to real-time criteria air pollution data in the Birmingham area. This website also provides information on air quality forecasts, regional air quality, archived data, and other air quality related information.

S. Prior to the issuance of the 2014 major source operating permits for the ABC Coke, and Walter Coke facilities, JCDH held several public meetings with residents of the adjacent communities. Neither state nor federal environmental law required JCDH to hold these public meetings. JCDH held the following meetings:

- June 22, 2013: JCDH's Air and Radiation Protection Division held a permit training session titled "The Proof is in The Permit." This session offered training and instructions to members of the public on how to comment effectively, and how the public participation process works. At this session, JCDH provided the public with a tentative timeline for the issuance of both coke plant permits. Questions were taken and answered during the session. Written responses to written questions were sent out to all attendees.
- March 19, 2014: JCDH held a coke plant and permit training for community leaders and coordinated how best to communicate with the community.
- March 31, 2014: EPA and JCDH held a public information meeting in Tarrant, AL, to provide information on the permitting process and the boundaries of the Title V permit.
- April 12, 2014: EPA and JCDH held a public information meeting in North Birmingham, AL, to provide information regarding the permitting process.
- April 14, 2014: JCDH held a public hearing for ABC Coke's draft permit to give the public an opportunity to provide comments verbally and in writing.[4]
- April 15, 2014: EPA and JCDH held another public information meeting in North Birmingham, AL, to aid the public in understanding the permitting process.

[4] 40 C.F.R. 70.7(h).

- May 20, 2014: JCDH held a public hearing for Walter Coke's draft permit to provide the public an opportunity to provide verbal and written comments.[5] This public hearing was held at the North Birmingham Public Library in Birmingham, Alabama.
- June 24, 2018: JCDH held a permit training workshop for the community.

T. In accordance with the Alabama State Implementation Plan[6], JCDH included fugitive dust control requirements within the 2014 ABC Coke, and Walter Coke Title V permit renewals. Some of the dust controls include operational provisions which shall include, but not be limited to, specifically requiring ABC Coke's, and Walter Coke's usage of vacuum trucks/street sweepers/water trucks on paved surfaces, wet suppressions system on unpaved surfaces and piles, maintenance of the existing roof/cover over the coal conveyance systems, and the usage of water spray systems in conjunction with the coke load belts and rotary pumps.

U. All JCDH coke battery observers will continue to be trained in accordance with any applicable regulations (as indicated in the 2014 permit), including the test methods of Appendix A to 40 CFR Part 60, to the extent any such methods may apply to coke battery oven inspections.

V. Although not required by Title V regulations, JCDH has used and continues to use environmental justice tools (including EPA's EJSCREEN) when issuing/renewing any Title V permit. EJSCREEN is an environmental justice mapping and screening tool that provides a nationally consistent dataset and approach for combining environmental and demographic indicators. EJSCREEN users choose a geographic area; the tool then provides demographic and environmental information for that area. All of the EJSCREEN indicators are publicly-available data. EJSCREEN provides a way to display this information and includes a method for combining environmental and demographic indicators into EJ indexes. JCDH uses EJSCREEN to identify minority and/or low-income populations, potential environmental quality issues, and other environmental and demographic indicators. As part of this process, JCDH sends letters to elected officials who represent the areas where the plant is located and/or borders.

W. JCDH is currently developing an online database of its public documents. When this database is complete, the public will be able to view (online) all public documents relating to the Air Program. Until this online database is complete, all public documents are available at JCDH's office and upon request.[7]

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[5] Ibid.

[6] 55 FR 10062 March 19, 1990 (EPA Approval); and 83 FR 13658 Air Plan Approval; Alabama; Update to Materials Incorporated by Reference, March 30, 2018.

[7] Any reference to the release of public documents in this Agreement is not intended to alter any JCDH legal obligations. This Agreement does not require the Health Department to disclose any documents or information in violation of state or federal laws or confidentiality agreements.

X. The public comment period for 2014 ABC Coke's draft permit began on February 9, 2014. The public comment period was advertised in the Birmingham News. In addition, an electronic copy of the 2014 draft permit was placed on JCDH's website, along with a copy of the notice. Copies of the 2014 draft permit were also placed within the community at sites including the Tarrant City Hall. The 2014 draft permit was available for review at JCDH, and copies of the 2014 draft permit were provided to requestors via mail or email. JCDH extended the public comment period until April 18, 2014, which allowed for a public comment period that was significantly longer than the required 30 days.

Y. On April 14, 2014, JCDH held a public hearing on ABC Coke's draft permit. The public hearing provided the public with an opportunity to provide comments verbally and in writing. Notice of this public hearing was published in The Birmingham News on Sunday, March 9, 2014.

Z. As required by the Clean Air Act, JCDH submitted ABC Coke's 2014 draft renewal permit to EPA so that EPA could conduct its 45-day review of the draft permit. JCDH included all public comments (and JCDH's responses to all such comments) with its submission to EPA. Upon concluding its 45-day review of the draft permit, EPA offered no significant comments ("[s]ignificant comments are defined as those comments that would trigger an objection"). JCDH issued the final renewed Major Source Operating Permit (No. 4-07-0001-03) to ABC Coke on August 11, 2014.

AA. The public comment period for Walter Coke's draft permit began on April 13, 2014. The public comment period was advertised in the Birmingham News. In addition, an electronic copy of the draft permit was placed on JCDH's website, along with a copy of the notice. The draft permit was available for review at JCDH, and copies of the draft permit were provided to requestors via mail or email. JCDH extended the public comment period until June 16, 2014, which allowed for a public comment period that was significantly longer than the required 30 days.

BB. On May 20, 2014, JCDH held a public hearing on Walter Coke's draft permit. This public hearing was held at the North Birmingham Public Library in Birmingham, Alabama. The public hearing provided the public with an opportunity to provide comments verbally and in writing. Notice of this public hearing was published in The Birmingham News on Sunday, April 13, 2014.

CC. As required by the Clean Air Act, JCDH submitted Walter Coke's draft renewal permit to EPA so that EPA could conduct its 45-day review of the draft permit. Upon concluding its 45-day review of the draft permit, EPA offered no significant comments. JCDH issued the final renewed Major Source Operating Permit (No. 4-07-0355-03) to Walter Coke on October 3, 2014.

DD. EPA received petitions seeking the EPA's objection to ABC Coke's permit and Walter Coke's permit. The petitions alleged, among other things, that the permits did

not comply with the Clean Air Act. On July 15, 2016, the former EPA Administrator Gina McCarthy entered an Order denying the petitions on all claims.

III. SPECIFIC JCDH COMMITMENTS

A. Within one (1) year after the effective date of this agreement, JCDH shall hold at least two (2) community meetings directed at the residents of Collegeville, Harriman Park, and Tarrant area. At a minimum of 30-days in advance, JCDH shall disseminate information about the community meetings through its website, emails, and postal service mailings announcing the meetings to, at a minimum, residents of Collegeville, Harriman Park, and Tarrant area and posting the time, date, location, and purpose of the upcoming meetings on the JCDH website.

1. JCDH shall ensure that the locations selected for the meetings are accessible to persons with mobility impairments and that individuals who require a reasonable accommodation due to disability will be accommodated to participate in such meetings. Additionally, JCDH will consider whether meeting information needs to be provided in languages other than English and whether any language assistance is necessary during the meeting.

2. Each planned community meeting will include a discussion of the following topics:

   a. JCDH's network of air monitoring stations as described in Sections II.D including information to determine compliance with the National Ambient Air Quality Standards;
   b. Guidance on how to access the air monitoring stations' air quality data;
   c. JCDH's permitting process and opportunities for public involvement;
   d. JCDH's air quality complaints process for members of the public; including how to contact JCDH, what information must be provided, how the agency responds to complaints; and how to follow the status of a complaint after it is made;
   e. How members of the public may submit useful information to JCDH; and
   f. How evidence collected by members of the public is considered in permitting or used by JCDH in enforcement.

B. At JCDH's discretion, the agency may hold more than two (2) meetings to address community concerns.

C. JCDH's Air and Radiation Protection Division held a permit training session titled "The Proof is in The Permit" on June 22, 2013, at the Health Department's Central Health Center in Birmingham. This session offered training and instructions to members of the public on how to comment effectively and how the public participation process works. JCDH has provided this education and outreach to

members of the public, including residents of the communities adjacent to the Walter Coke and ABC Coke facilities. On its website, JCDH has two videos of this presentation available for the public to view. These videos are available here: https://www.jcdh.org/SitePages/Programs-Services/EnvironmentalHealth/Air-RadiationProtectionDivision/RegAirFac.aspx. JCDH shall ensure that the "The Proof is in The Permit" presentation will remain available to the public on JCDH's website. JCDH shall provide a copy of the presentation to any member of the public who requests it.

D. To further promote public engagement, and to the extent members of the public submit their email addresses to JCDH, JCDH will revise and update an Email List Subscription to facilitate the submission of air quality information to ensure that members of the public who submit their email address to JCDH for this purpose will receive or have access to same day notices of the openings of public comment periods and in accordance with the regulations [40 C.F.R. § 70.7(h)] a minimum of 30-days advance notice of any public hearings on any proposed permitting actions.

E. JCDH makes all permit documents available to the public. In accordance with applicable regulations[8], and JCDH's current and ongoing practice, JCDH will continue to ensure that the following ABC Coke's and Walter Coke's permit documents are made available to the public by posting on the JCDH website, and/or making the documents available in the JCDH office, and/or in a manner consistent with state and federal regulations. Examples of permit documents include:
   - permit applications;
   - work practice plans;
   - results from source emissions tests; and
   - applications for approval of alternative operating scenarios.

F. As required by delegation to JCDH under the Clean Air Act, JCDH will continue to conduct inspections at the ABC Coke and Walter Coke facilities. JCDH will continue to make publicly available all future documentation of its inspections at the ABC Coke and Walter Coke facilities. In its discretion, JCDH may schedule a community meeting to present the findings from the air quality inspections of the ABC Coke and Walter Coke facilities and provide information on the associated corrective actions.

G. JCDH will continue to make the ABC Coke and Walter Coke facility semi-annual monitoring reports from January 31st and July 31st and the compliance certifications publicly available.

H. JCDH will post the reports of actions required by Section III of this Agreement on its website in in the same manner as it currently posts similar information, which is to

[8] United States Code, 2013 Edition; Title 42 - THE PUBLIC HEALTH AND WELFARE; CHAPTER 85 - AIR POLLUTION PREVENTION AND CONTROL; SUBCHAPTER V – PERMITS; Sec. 7661b (e).

say, in a manner that it is readily accessible to the public and accessible to individuals with limited-English proficiency and individuals with disabilities.

Non-Discrimination Procedural Safeguards

I. Notice of Non-Discrimination under the Federal Non-Discrimination Laws[9]

1. JCDH will post a notice of non-discrimination on the JCDH website homepage, offices and facilities, and in its general publications that are distributed to the public. To ensure effective communication with the public, JCDH will ensure that its Notice of Non-Discrimination is accessible to individuals with limited-English proficiency and individuals with disabilities.

2. This notice will contain, at a minimum, the following statements:

   a. JCDH does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and, JCDH does not retaliate against any individual because they have exercised their rights to participate in or oppose actions protected by 40 C.F.R. Parts 5 and 7 or for the purpose of interfering with such rights.

   b. JCDH 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 statutes).

   c. If you have any questions about this notice or any of JCDH's non-discrimination programs, policies or procedures, you may contact:

      i. [Insert name and title of Non-Discrimination Coordinator]

      ii. Address Line 1

      iii. Address Line 2

      iv. Address Line 3

      v. Phone number

      vi. Email address

[9] 40 C.F.R. § 7.95(a); 40 C.F.R. § 5.140.

d. If you believe that you have been discriminated against with respect to an JCDH program or activity, you may contact the [insert title of Non-Discrimination Coordinator] identified above or visit our website at [insert] to learn how and where to file a complaint of discrimination.

3. Within 30 days after the effective date of this Agreement, JCDH will submit to EPA for review, a copy of its notice of non-discrimination that is consistent with Parts 5 and 7.

J. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws[10]:

1. JCDH will ensure that it has widely and prominently published[11] in print and online its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes. JCDH will review the grievance procedures on an annual basis (for both in-print and online materials), and revise as necessary, to allow for prompt and fair resolution of discrimination complaints.

2. The grievance procedures will at a minimum address the following:

   a. Clearly identify the Non-Discrimination Coordinator, including 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 which formal and/or informal process(es) are available, and the options for complainants in pursuing either;

   e. State that the preponderance of the evidence standard will be applied during analysis of the complaint;

   f. Contain assurances that intimidation and retaliation are prohibited[12] 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 violation of federal non-discrimination laws;

[10] 40 C.F.R. § 7.90; 40 C.F.R. § 5.135(b).
[11] 40 C.F.R. § 5.135(b).
[12] *See* 40 C.F.R. § 7.100.

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; and

i. Review on an annual basis (for both in-print and online materials), and revise as necessary, to ensure prompt and fair resolution of discrimination complaints.

3. Within 90 days after the effective date of this Agreement, JCDH will submit to EPA for review, a copy of its grievance procedures consistent with the requirements 40 CFR § 5.135 and §7.90 (Grievance Procedures).

K. Designation of Non-Discrimination Coordinator[13]

1. JCDH will ensure that it has designated at least one Non-Discrimination Coordinator to ensure JCDH's compliance with the federal non-discrimination laws, who will:

i. Provide information to individuals internally and externally that you do not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of your programs or activities, and you do not intimidate or retaliate against any individual or group because they have exercised their rights to participate in or oppose actions protected by 40 C.F.R. Parts 5 and 7, or for the purpose of interfering with such rights;

ii. Provide notice of your formal and informal grievance processes and the ability to file a discrimination complaint;

iii. Establish a mechanism (e.g., an investigation manual) for implementation of your grievance procedures to ensure that all discrimination complaints filed with you under federal non-discrimination laws are processed promptly and fairly. One element of any policy and procedure or mechanism must include providing meaningful access for limited-English proficient individuals and individuals with disabilities to your programs and activities;

iv. Track all complaints filed with you under federal non-discrimination laws, including any patterns or systemic problems;

v. Conduct semiannual reviews of all formal and informal discrimination complaints filed with you under federal non-discrimination laws and/or any other complaints independently investigated by you to identify and address any patterns or systemic problems;

[13] 40 C.F.R. § 7.85(g); 40 C.F.R. § 5.135(a).

vi. Ensure that appropriate training is provided for your staff in the formal and informal processes available to resolve complaints filed with you under federal non-discrimination laws;

vii. Provide or procure training services for your staff to ensure that they are appropriately trained on your non-discrimination policies and procedures, as well as the nature of your obligation to comply with federal non-discrimination laws;

viii. Ensure that complainants are updated on the progress of their discrimination complaints filed with you under federal non-discrimination laws and promptly informed as to any determinations you have made;

ix. Undertake periodic evaluations of the efficacy of your efforts to provide services, aids, benefits, and participation in any of your 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; and,

x. Not have other responsibilities that create a conflict of interest (*e.g.*, serving as your non-discrimination coordinator as well as your legal advisor or representative on civil rights issues).

2. Within 30 days after the effective date of this Agreement, JCDH will identify the position/individual that will serve as the designated employee consistent with the regulatory requirements of 40 CFR §5.135, §7.85 (g) and §7.95(a).

3. Within 90 days of appointment of a Non-Discrimination Coordinator, JCDH will forward to ECRCO, proof that the responsibilities have been included in the incumbent's statement of duties and that the incumbent has accepted the duties.

L. <u>Public Participation</u>:

1. JCDH 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, JCDH will:

a. Ensure its public involvement process is available to all persons regardless of race, color, national origin (including limited-English proficiency), age, disability, sex, or prior exercise of rights or opposition to actions protected under 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; and

i. Ensure that JCDH's public participation procedures are implemented consistent with the federal civil rights laws and EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006), that include implementation of steps for effective public participation each time JCDH engages in a public participation or public involvement process with regard to its Air Pollution Control Program. JCDH will consider the following steps to ensure that its public involvement process is available and accessible to all persons regardless of race, color, national origin, disability, sex and age.

ii. develop a description of the community (including demographics, history, and background);

iii. 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;

iv. develop a list of past and present community concerns (including any complaints filed under the federal non-discrimination laws);

v. develop and implement a detailed plan of action (outreach activities) you will take to address concerns;

vi. develop and implement a contingency plan for unexpected events;

vii. identify location(s) where public meetings will be held (consider the availability and schedules of public transportation);

viii. develop a list of contact names for obtaining language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings;

ix. develop a list of appropriate local media contacts (based on the culture and linguistic needs of the community; and

x. provide the location of the information repository.

2. Within 120 days of the effective date of this Agreement, JCDH will forward to ECRCO a final draft of its public participation process/policy for review, as well as information about the location and accessibility of the public participation process/policy, such as a link to its Website. ECRCO will review the draft public participation process/policy and provide any comments within 30 days of receipt.

M. <u>JCDH Plan to Ensure Meaningful Access to Programs and Activities for Persons with Limited English Proficiency (LEP)</u>:

1. JCDH will develop, publicize, and implement written procedures to ensure meaningful access to all JCDH programs and activities by all persons, including access by limited-English proficient individuals and individuals with disabilities at no cost to those individuals.

2. JCDH will conduct the appropriate analysis described in EPA's LEP Guidance found at 69 FR 35602 (June 25, 2004) and http://www.lep.gov 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 your programs and activities. JCDH should:

a. develop a language access plan consistent with EPA's LEP Guidance;

b. develop, publicize, and implement written procedures to ensure meaningful access to all your programs and activities for all persons, including access for limited-English proficient individuals;

c. translate vital documents of general interest into prominent languages;

d. translate vital documents of individual interest to LEP individuals;

e. provide for simultaneous oral interpretation of live proceedings (*e.g.*, town hall meetings and public hearings) in prominent languages; and

f. provide for simultaneous interpretation of proceedings, meetings, *etc.*, for individual LEP person participating in one of your programs or activities (*e.g.*, a LEP individual wishing to file a grievance or complaint).

3. Within 60 days of the effective date of this Agreement, JCDH will forward to ECRCO a copy of its written procedures to ensure meaningful access to all JCDH programs and activities by all persons, including access by limited-English proficient individuals.

N. <u>JCDH Plan to Ensure Meaningful Access for Persons with Disabilities</u>

1. JCDH will develop, publicize and implement written procedures to ensure meaningful access to your programs and activities for individuals with disabilities that:

   a. Provide, at no cost, appropriate auxiliary aids and services, 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 or an equal opportunity to participate fully in benefits, activities, programs, and services provided by JCDH in a timely manner and in such a way as to protect the privacy and independence of the individual; and

   b. ensure that your facilities and other facilities utilized by you (*e.g.*, if you hold a public hearing at a recreational center) are physically accessible for individuals with disabilities.

2. Within 60 days of the effective date of this agreement, JCDH will forward to ECRCO for review a final draft of its written procedures to ensure meaningful access to all JCDH programs and activities by individuals with disabilities.

O. Training

1. Within 120 days after implementing the deliverables identified in this Agreement, including a Non-Discrimination Coordinator, Non-discrimination Notice, Grievance Procedures, and Public Participation Process/Procedures, JCDH will ensure that all appropriate staff has been trained on these processes and procedures as on the nature of the federal non-discrimination obligations.

2. Within 180 days after execution of this Agreement, JCDH will have a plan in place to ensure that such training is a routine part of the on-boarding process for new employees and is given periodically as refresher training to all employees.

IV. GENERAL

A. In consideration of JCDH's implementation of commitments and actions described in Section III of this Agreement, ECRCO will end its investigation of the complaint numbers 03-15-R4 and 08R-16-R4, not issue a decision containing findings on the merits of these complaints, and consider these complaints resolved.

B. ECRCO will monitor the implementation of the non-discrimination commitments in Section III of this Agreement, as appropriate (with respect to the commitments under Section III. ECRCO's intent is not to monitor JCDH's implementation of ongoing responsibilities under the Clean Air Act.)

C. Once these commitments are fully implemented, EPA will issue a letter to JCDH documenting completion of these commitments and closing the monitoring of the commitments contained in this Agreement.

D. JCDH will, within 30 days of the implementation of each commitment in Section III, and consistent with the timeframes in Section III, submit a report documenting their implementation, by certified mail to the Director, External Civil Rights Compliance Office, Office of General Counsel, US EPA, (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

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

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

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 will be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.

C. Electronic documents submitted by JCDH to EPA via email will be sent to the following email address: Dorka.Lilian@epa.gov. Documents submitted by JCDH to EPA will be sent to the Director, U.S. EPA External Civil Rights Compliance Office, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.

D. Documents submitted by EPA to JCDH will be sent to Dolores Johnson, Nondiscrimination Coordinator, Jefferson County Department of Health, 1400 Sixth Avenue South, Birmingham, Alabama 35233, with a copy to Wade Merritt, Spain & Gillon, 505 20th Street North, Suite 1200, Birmingham, Alabama 35203, and David Maxey, General Counsel, Jefferson County Department of Health, 1400 Sixth Avenue South, Birmingham, Alabama 35233 .

VI. EFFECT OF THE AGREEMENT

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

B. JCDH understands that EPA will not close its monitoring of this Agreement until ECRCO determines that JCDH has fully implemented this Agreement and that a failure to satisfy any term in this agreement may result in the EPA re-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 JCDH'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 Health Officer of JCDH and the Director of ECRCO.

D. This Agreement constitutes the entire Agreement between JCDH 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 JCDH and EPA in accordance with the provisions of Section VI(C) above.

E. This Agreement does not affect JCDH's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 CFR 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 Health Officer, in his capacity as an official of JCDH, 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 Jefferson County Department of Health,

MEWilson MD

Mark E. Wilson, MD
Health Officer

7-2-2019
(Date)

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

Lilian S. Dorka

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

7-1-2019
(Date)