UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

May 06, 2020

In Reply Refer To:
Compliance Review No. 01CR-19-R4

Ed Kerwin
Executive Director
Orange Water and Sewer Authority
400 Jones Ferry Road
Carrboro, NC 27510

Dear Executive Director Kerwin:

This letter is to inform you that the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO) is resolving EPA compliance review No. 01CR-19-R4 based on the enclosed Informal Resolution Agreement (Agreement) entered into between EPA and the Orange Water and Sewer Authority (OWASA). On September 27, 2019, the ECRCO initiated a compliance review under EPA's nondiscrimination regulation at 40 C.F.R. Parts 5 and 7. The compliance review was focused on:

> Whether OWASA has and is implementing the procedural safeguards recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, and the specific policies and procedures to ensure meaningful access to OWASA services, programs and activities, including for individuals with disabilities and individuals with limited English proficiency (LEP), in compliance with requirements set forth in 40 C.F.R. Parts 5 and 7.

During the course of ECRCO's compliance review, the OWASA agreed to enter into an Informal Resolution Agreement in order to resolve identified issues. 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 Compliance Review 01CR-19-R4.

It is understood that the Agreement does not constitute an admission by the OWASA of any violation or a finding by EPA 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 the OWASA'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 compliance review. This letter is not a formal statement of EPA policy and should not be relied upon, cited, or construed as such.

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

Sincerely,

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

Enclosure

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

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

Leif Palmer
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
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INFORMAL RESOLUTION AGREEMENT between the ORANGE WATER AND SEWER AUTHORITY AND THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY EPA COMPLIANCE REVIEW NO. 01CR-19-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 nondiscrimination laws, and United States Environmental Protection Agency's ("EPA") implementing regulation at 40 C.F.R. Parts 5 and 7 prohibit discrimination on the basis of race, color, national origin, disability, sex, age, and retaliation in the programs, services and activities of applicants for or recipients of federal financial assistance.[1] Orange Water and Sewer Authority (OWASA) receives federal financial assistance from EPA and, therefore, must ensure nondiscrimination in its programs and activities pursuant to federal nondiscrimination laws and EPA's implementing regulation.

B. On September 27, 2019, the EPA External Civil Rights Compliance Office within the Office of General Counsel (ECRCO) initiated a Compliance Review investigation of OWASA, pursuant to Title VI and EPA's implementing regulation at 40 C.F.R. Parts 5 and 7.[2] ECRCO's letter noted that the investigation would focus on the following issue:

> Whether OWASA has and is implementing the procedural safeguards recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, and the specific policies and procedures to ensure meaningful access to OWASA services, programs and activities, including for individuals with disabilities and individuals with limited English proficiency (LEP), in compliance with requirements set forth in 40 C.F.R. Parts 5 and 7.

C. On October 10, 2019, OWASA agreed to engage in this Informal Resolution process.

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[1] Title VI of the Civil Rights Act of 1964, 42 United U.S.C. §§ 2000d to 2000d-7 (Title VI); Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794; Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. § 1681 et seq.; Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq.; Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 § 13, 86 Stat. 903 (codified as amended at 33 U.S.C. § 1251 (1972)); 40 C. F.R. Parts 5 and 7.

[2] 40 C.F.R. § 7.115(a): 40 C.F.R. § 5.605.

D. This Informal Resolution Agreement (Agreement) resolves all issues identified in the letter initiating Compliance Review number 01CR-19-R4. 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 the EPA regulation found at 40 C.F.R. Parts 5 and 7,[3] and resolves Compliance Review number 01CR-19-R4.

E. This Agreement is entered into voluntarily by OWASA and does not constitute an admission by OWASA 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 through implementing regulations at 40 C.F.R. Parts 5 and 7.

II. BACKGROUND

A. OWASA was established in North Carolina in 1976 as a water and sewer authority under state statutes to acquire and operate utilities within Orange County, including service for the University of North Carolina, and the towns of Chapel Hill and Carrboro, and commenced operations on February 16, 1977 as a public, non-profit agency that provides water, sewer (wastewater) and reclaimed water services to the community. OWASA is governed by a Board of Directors which adopts the annual budget; sets rates, fees and charges based on cost-of-service principles; approves bond issues to fund capital projects; makes policy decisions; and appoints the Executive Director, General Counsel and independent auditor.

B. Since its inception, OWASA has been, and remains 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 OWASA's ongoing commitment.

C. During the course of negotiations OWASA has taken the following action:

1. Designation of Stephanie Glasgow as OWASA's Non-Discrimination Coordinator, per III. C below. In the event that OWASA designates a different person as Non-Discrimination Coordinator all posted information will be updated immediately.

III. SPECIFIC OWASA COMMITMENTS

A. Notice of Non-Discrimination under the Federal Non-Discrimination Laws[4]

1. Within 60 days, OWASA will post an updated notice of non-discrimination on the OWASA website homepage. and in its publications that are distributed to the general public. OWASA will ensure that its notice of non-discrimination is

[3] 40 C.F.R. § 7.95; 40 C.F.R. § 5.140.
[4] 40 C. F.R. § 7.95; 40 C.F.R. § 5.140.

accessible to individuals with limited English proficiency and individuals with disabilities.

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

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

   b. OWASA 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 OWASA's non-discrimination programs, policies or procedures, you may contact:

      Stephanie Glasgow
      Non-Discrimination Coordinator/
      Director of Human Resources and Safety
      Orange Water and Sewer Authority
      400 Jones Ferry Road
      Carrboro, North Carolina 27510
      (919) 968-4421
      sglasgow@owasa.org

   d. If you believe that you have been discriminated against with respect to an OWASA program or activity, you may contact Stephanie Glasgow, Non-Discrimination Coordinator, identified above or visit our website at www.OWASA.org to learn how and where to file a complaint of discrimination.

3. Within 30 days after the effective date of this Agreement, OWASA will submit to EPA for review a copy of its notice of non-discrimination.

B. Grievance Procedures to Process Discrimination Complaints filed under the Federal Non-Discrimination Laws[5]:

1. OWASA will ensure that it has prominently published online its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes and EPA's implementing regulations at 40 C.F.R. Parts 5 and 7. OWASA will review the grievance procedures on an annual basis, 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 procedures;

   d. Describe the formal process available, and the options for complainants in pursuing it;

   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[6] 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;

   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.

3. Within 90 days after the effective date of this Agreement, OWASA 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).

C. Designation of Non-Discrimination Coordinator[7]

[5] 40 C.F.R. § 7.90; 40 C.F.R. § 5.135(b).
[6] *See* 40 C.F.R. § 7.100.
[7] 40 C.F.R. § 7.85(g): 40 C.F.R. § 5.135(a).

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

   a. Provide information to individuals internally and externally that OWASA does not discriminate on the basis of race, color, national origin, disability, age, or sex in administration of its programs or activities, and, OWASA 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. Provide notice on the OWASA website of OWASA's formal grievance process and the ability to file a discrimination complaint;

   c. Establish written grievance policies and procedures or mechanisms to ensure that all discrimination complaints filed with OWASA under federal non-discrimination statutes and EPA implementing regulations 40 C.F.R. Parts 5 and 7 are processed promptly and appropriately. One element of any policy and procedure or mechanism must include meaningful access for limited-English proficient individuals and individuals with disabilities to these grievance policies and procedures;

   d. Track all discrimination complaints filed with OWASA's Non-Discrimination Coordinator under federal non-discrimination statutes and/or any other complaints independently investigated by OWASA. Also, regularly review the issues raised and outcomes achieved to evaluate whether there are any trends indicating any patterns or systemic problems. Address any trends identified.

   e. Ensure that appropriate training is provided for OWASA staff in the formal process available to resolve complaints filed with OWASA under federal non-discrimination laws;

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

   g. Undertake periodic evaluations of the efficacy of OWASA efforts to provide services, aids, benefits, and participation in any of OWASA's programs or activities without regard to race, color, national origin, disability, age, sex or prior exercise of rights or opposition to actions protected under federal non-discrimination laws; and,

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

2. Within 90 days of the effective date of this Agreement OWASA 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.

D. Public Participation:

1. OWASA believes that meaningful public involvement consists of informing, consulting, and working with the entire community at various stages of its decision-making processes to address the community's needs as well as the needs of OWASA. Therefore, OWASA 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 prohibited under federal non-discrimination laws;

   b. Ensure that the factors used to determine the time, place, location, duration, and security at public meetings are developed and applied in a non-discriminatory manner;

   c. Ensure that OWASA's public participation procedures are implemented consistent with the federal civil rights laws and EPA's Public Participation Guidance found at 71 F.R. 14207, 14210 (March 21, 2006),[8] that include implementation of steps for effective public participation that is accessible to all persons without regard to race, age, color, national origin (including Limited English proficiency), disability or sex each time OWASA engages in a public participation or public engagement process.

   d. OWASA will consider the following steps to ensure that its public involvement and communication process is available and accessible to all persons regardless of race, color, national origin, disability, sex and age:

      i. develop a description of the community (including demographics, history, and background);
      ii. post contact information for relevant staff members on its website, including phone numbers and email addresses, to allow the public to communicate via phone or internet;
      iii. maintain records regarding past and present community concerns (including any complaints filed under the federal non-discrimination laws);
      iv. develop and implement a detailed plan of action (outreach activities) you will take to address concerns;
      v. develop and implement a contingency plan for unexpected events;

[8] https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf

vi. identify location(s) where public meetings will be held (consider the availability and schedules of public transportation);
vii. maintain a list of contact names for obtaining language assistance services for limited-English proficient persons, including translation of documents and/or interpreters for meetings;
viii. maintain a list of appropriate local media contacts (based on the culture and linguistic needs of the community); and
ix. provide the location of the information repository.

2. Within 180 days of the effective date of this Agreement, OWASA will forward to ECRCO documents demonstrating that its public participation process/policy is consistent with the considerations identified above. OWASA will also forward information about the location and accessibility of the public participation process/policy, such as a link to its Website.

E. OWASA Plan to Ensure Access for Persons with Limited English Proficiency (LEP):

1. OWASA will continue to provide meaningful access to information for individuals with limited English proficiency (LEP), and will develop, publicize, and implement written procedures to ensure meaningful access to all OWASA services, programs and activities by all persons, including access by individuals with limited English proficiency, at no cost to those individuals.

2. OWASA will conduct the appropriate analysis in light of EPA's LEP Guidance found at 69 F.R. 35602 (June 25, 2004)[9] and http://www.lep.gov to determine what language services or mix of language services it may need to provide to ensure that individuals with limited English proficiency can meaningfully participate in your programs and activities. OWASA 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 individuals with limited English proficiency;

   c. translate vital documents of general interest into prominent languages for LEP individuals who are served or likely to be encountered by OWASA's programs and activities;

   d. translate vital documents of individual interest to a LEP individual (s);

[9] https://www.govinfo.gov/content/pkg/FR-2004-06-25/pdf/04-14464.pdf

e. upon request with reasonable notice, 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 persons participating in one of your programs or activities (*e.g.*, a LEP individual wishing to file a grievance or complaint).

3. Within 180 days of the effective date of this Agreement, OWASA will forward to ECRCO a copy of its written procedures to ensure meaningful access to all OWASA programs and activities by all persons, including access by individuals with limited English proficiency.

F. OWASA Plan to Ensure Meaningful Access for Persons with Disabilities

1. Upon request with reasonable notice, OWASA will continue to provide, at no cost, appropriate auxiliary aids and services to individuals with disabilities, (including but not limited to, for example, qualified interpreters to individuals who are deaf or hard of hearing, and to other individuals, as necessary), to ensure effective communication or an equal opportunity to participate fully in benefits, activities, programs and services provided by OWASA in a timely manner. In addition, OWASA will continue to ensure that its facilities and other facilities utilized by OWASA are accessible to the public (e.g. if OWASA were to hold a public hearing at a recreational center) are physically accessible for individuals with disabilities. OWASA will develop and implement policies and procedures for providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in its programs and activities.

2. Within 180 days of the effective date of this Agreement, OWASA will forward to ECRCO for review a final draft of its written procedures to ensure meaningful access to all OWASA programs and activities by individuals with disabilities.

G. Training

1. Within 150 days after implementing the deliverables identified in this Agreement, including a Non-Discrimination Coordinator, Non-Discrimination Notice, Grievance Procedures, and Public Participation Process/Procedures, OWASA will ensure that all staff has been appropriately 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, OWASA 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 OWASA's implementation of commitments and actions described in Section III of this Agreement, ECRCO will end its investigation of Compliance Review No. 01CR-19-R4 and not issue a decision containing findings on the merits of the compliance review.

B. ECRCO will monitor the implementation of the commitments in Section III of this Agreement, as appropriate, to ensure they are fully implemented. Once the terms of this Agreement are satisfied, ECRCO will issue a letter documenting closure of its monitoring actions in Compliance Review No. 01CR-19-R4 and closure of the Compliance Review as of the date of that letter.

C. OWASA 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 electronic 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.

D. ECRCO will review and provide feedback about any documentation submitted by OWASA demonstrating completion of each commitment and will provide an assessment as to whether the documentation satisfies the commitment within 30 days of receipt of each such submission.

E. EPA will, upon request, provide technical assistance to OWASA 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. Electronic service is acceptable as outlined below. Documents forwarded by email for review are to be sent in native format for draft documents and PDF format for documents intended to be final.

C. Electronic documents submitted by OWASA to EPA via email will be sent to the following email address: Dorka.Lilian@epa.gov. Documents mailed by OWASA 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 OWASA will be sent to the following email address: ekerwin@owasa.org. Documents mailed by the EPA to OWASA will be mailed to Ed Kerwin, Executive Director, Orange Water and Sewer Authority, 400 Jones Ferry Road, Carrboro, NC 27510.

VI. EFFECT OF THE AGREEMENT

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

B. OWASA understands that EPA will not close its monitoring of this Agreement until ECRCO determines that OWASA 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 OWASA'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 Director of OWASA and the Director of ECRCO.

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

E. This Agreement does not affect OWASA's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Parts 5 and 7, nor does it affect EPA's investigation of any other Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.

F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Director, in his capacity as an official of OWASA, 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 Orange Water and Sewer Authority,

Ed Kerwin
Director

5/5/2020
(Date)

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

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

5/5/2020
(Date)