

#CP-76/ Federal Civil Rights Nondiscrimination Policy and Complaint Procedures for Non-Employment-Related Complaints

New York State Department of Environmental Conservation

Issuing Authority:

Date

Issued: DRAFT

Latest Date Revised:

I. Summary: The New York State Department of Environmental Conservation (DEC or Department) is committed to ensuring that no person is excluded from participation in, denied the benefits of, or subjected to discrimination under any program, activity, or service that the agency or any entity receiving funding from the agency provides. This policy fully incorporates, throughout all the Department's operations, the requirements of applicable State and Federal laws and executive orders to prohibit any discriminatory practices, procedures, and policies. All administrators, managers, supervisors, and employees are directed to comply with these laws and orders. For employment-related discrimination matters, the New York State policy is available from the New York State Office of Employee Relations (<https://oer.ny.gov/anti-discrimination-investigations>).

II. Policy: Title VI of the Civil Rights Act of 1964 is the overarching federal civil rights law that prohibits discrimination based on race, color, or national origin, in any program, service or activity that receives federal assistance. Specifically, Title VI assures 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 benefit of, or be otherwise subjected to discrimination under any program or activity receiving federal assistance.” Nondiscrimination prohibitions have been further broadened and supplemented by related federal and state statutes, regulations, and executive orders to include sex, age, disability, or limited-English proficiency. A list is available at Section VI, Related References. Throughout this policy, “Title VI” or “Title VI/Nondiscrimination requirements” will refer to all related federal Nondiscrimination authorities.

As a recipient of federal assistance from, *inter alia*, the Environmental Protection Agency (EPA), the Department of Homeland Security (DHS), the Department of Interior (DOI), the Department of Commerce, and the Federal Emergency Management Agency (FEMA), this policy is issued in accordance with Federal Title VI regulations and related Nondiscrimination authorities and explains how DEC will comply with its Federal Title VI/Nondiscrimination requirements. It is the policy of the Department to prevent and eliminate discrimination in all its operations and services as well as all aspects of employment. All Department Divisions, Offices, Bureaus, and Regions shall plan, develop, and implement their programs and activities so that no person is subjected to unlawful discrimination. Subrecipients of Federal funds that flow through DEC are also required to comply with Title VI/Nondiscrimination requirements.

This policy will be conspicuously placed on Department bulletin boards and websites and made available to all organizations and entities doing business with the Department. A copy shall also be provided to contractors as well as grant recipients.

Any person who believes they have suffered from prohibited discrimination when accessing a program, service or activity of DEC may contact the Nondiscrimination Coordinator. If a written complaint is filed,

an informal resolution may be requested at any point before the issuance of a closure letter or letter of finding. The Nondiscrimination Coordinator can be contacted at federal.rights@dec.ny.gov and (518) 402-8044.

Any written complaints involving allegations of discrimination should be sent to the DEC Office of Internal Investigations at:

Internal.Investigations@dec.ny.gov

or

Department of Environmental Conservation
Office of Internal Investigations
625 Broadway
Albany NY
12233-1060

DEC will not restrict an individual in any way based on race, color, national origin, sex, or age from the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under any of its programs, regardless of the funding source for the program. Individuals may not be subjected to criteria or methods of administration which cause adverse impact, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program, because of their protected class. DEC will not tolerate intimidation, threats, coercion, or discrimination against any individual or group, either (1) for the purpose of interfering with any right or privilege guaranteed under law or regulations or (2) because the individual has filed a complaint or has testified, assisted, or participated in any way in an investigation, proceeding or hearing or has opposed any DEC action or decision. DEC will take reasonable measures to provide access to Department services to individuals with limited ability to speak, write, or understand English and/or to those with disabilities.

Employment discrimination complaints are not covered by this policy. Complaints filed by employees and applicants involving employment discrimination should be sent to the New York State Office of Employee Relations, Anti Discrimination Investigations Division, Empire State Plaza, Agency Building 2, Albany, New York 12223 or via email to: antidiscrimination@oer.ny.gov.

III. Purpose and Background: A nondiscrimination policy is necessary because DEC is a direct recipient of Federal financial assistance and distributes federal assistance to subrecipients to carry out various programs. All recipients and subrecipients are required to comply with Title VI of the Civil Rights Act of 1964, as well as related federal nondiscrimination statutes and regulations. This policy fully incorporates, throughout all the Department's operations, the requirements of applicable State and Federal laws and executive orders to prohibit any discriminatory practices, procedures, and policies. In addition, this Policy advises subrecipients of federal assistance of Title VI requirements.

IV. Responsibility:

The Commissioner of DEC will ensure the Department complies with Federal Title VI/Nondiscrimination requirements. All executives, administrators, managers, supervisors, and employees are directed to comply with these laws and orders, and ensure their activities align with this policy.

The DEC Nondiscrimination Coordinator will oversee the continued development and implementation of the Department's external Civil Rights program.

The Office of Internal Investigations will receive and investigate written complaints of Title VI discrimination.

In addition to the Nondiscrimination Coordinator, DEC administers its Title VI program responsibilities with the assistance of Title VI Liaisons designated in each Region, as well as Central Office divisions and program areas identified by the Nondiscrimination Coordinator. The Title VI Liaisons help to support and promote Title VI/Nondiscrimination awareness across DEC. Liaisons in each Region and any program area identified by the Nondiscrimination Coordinator are responsible for tracking and reporting to the Nondiscrimination Coordinator on the implementation of Title VI initiatives. See Appendix A for information on the roles and responsibilities of the Title VI Liaisons.

All employees must assist in the prevention and elimination of any discriminatory practices and are encouraged to report allegations of discrimination to the DEC Nondiscrimination Coordinator for review and appropriate action.

V. Procedure:

DEC will meet its Title VI compliance requirements, as outlined below:

External Civil Rights Team: DEC will maintain an external civil rights team, which includes a Nondiscrimination Coordinator who has a direct reporting relationship to the Deputy Commissioner for Equity and Justice. Each Regional and Central Office division and program area identified by the Nondiscrimination Coordinator will designate a Title VI Liaison, who will also be part of the team. In addition, the Office of Internal Investigation, Office of General Counsel, and Office of Management and Budget Services will provide assistance for issues involving Title VI compliance.

Nondiscrimination Coordinator: The Nondiscrimination Coordinator reports directly to the Deputy Commissioner for Equity and Justice on external civil rights matters. The Nondiscrimination Coordinator also serves as the Agency's overall Title VI Coordinator, and coordinates and oversees compliance with Title VI policies and mandates. The Nondiscrimination Coordinator assists parties pursuing informal resolution of a complaint, supports the Office of Internal Investigations in the review and processing of a written complaint, and monitors implementation of corrective actions and other obligations resulting from an investigation.

Training: The Nondiscrimination Coordinator will conduct and/or coordinate training on Title VI and related nondiscrimination statutes and regulations to ensure DEC staff and sub-recipients understand the Title VI requirements and their related responsibilities.

Complaints Procedures: The Office of Internal Investigations (OII) will maintain procedures for prompt processing and disposition of written Title VI/discrimination complaints and maintain a complaints log. OII will investigate all written complaints in a timely fashion.

Public Information/Outreach: The Nondiscrimination Coordinator will coordinate the development of Title VI information for dissemination to the general public, when appropriate, in languages other than English, and ensure outreach efforts are inclusive and nondiscriminatory.

Data: The Nondiscrimination Coordinator will coordinate the agency's maintenance of data to show compliance with its Title VI requirements (i.e. information about complaints, including basis [race, color, national origin, sex, age, disability]). DEC will also consider data of participants in and beneficiaries of DEC programs to help understand community demographics and guide outreach efforts where required for permitting or project planning processes.

Program Monitoring: The Nondiscrimination Coordinator will perform ongoing monitoring and conduct regular reviews of pertinent DEC program areas and/or regional activities. The reviews will serve as a means of providing technical assistance in the implementation of the Title VI requirements, and a mechanism to identify improvement opportunities. Programs and Regions will also be expected to self-monitor their programs and activities to help ensure nondiscrimination.

Sub-recipient Monitoring: The Nondiscrimination Coordinator will also monitor and conduct reviews of sub-recipients, although due to the large number of sub-recipients that receive Federal funding, DEC intends to use a risk-based approach to identify the sub-recipients to review in a given year. Sub-recipients will also be expected to self-monitor their programs and activities to help ensure nondiscrimination.

The following measures will ensure internal and external awareness of DEC's implementation of Title VI/nondiscrimination requirements:

A. Public Notice of the DEC's Nondiscrimination Program:

Public notice of DEC's Nondiscrimination Policy and Program will be prominently posted:

1. In DEC offices and internal website; and
2. On DEC's public website.

B. Public Notice/Meeting Planning:

1. The development and distribution of public notices and planning for public meetings or hearings regarding DEC's actions will consider the Limited English Proficiency (LEP) and disabled population density in the area most impacted by DEC's action or program.
2. DEC's public notices will include the following text:

DEC will take reasonable measures to provide access to department services to individuals with limited ability to speak, write, or understand English and/or to those with disabilities.

Requests for language interpretation services or for disability accommodations must be made at least 10 business days in advance by contacting:

- Language Interpretation Services
Bureau of Public Outreach
625 Broadway
Albany, NY 12233
Phone: 518-402-8044
Email: language@dec.ny.gov

- DEC Statewide Accessibility Coordinator (Central Office) or Regional ADA Accessibility Coordinator
 - Central Office:
625 Broadway, 3rd Floor
Albany, NY 12233-5253
Phone: 518-402-9295
Email: accessibility@dec.ny.gov
 - Regional Accessibility Coordinator contact list:
<https://www.dec.ny.gov/outdoor/42324.html>

C. Complaint Procedures: If someone believes they have suffered from discrimination under a DEC program, activity, service, or any entity receiving funding from the agency, they may contact the DEC Nondiscrimination Coordinator for assistance or for information about filing a written complaint. The Nondiscrimination Coordinator may assist the DEC staff and the complainant in reaching a resolution by coordinating contact between them, working with the agency to address the issue(s) raised, or supporting other means of resolution. If the parties resolve the issue(s) informally, Office of General Counsel will prepare a resolution agreement on behalf of the agency.

If the individual prefers to file a written complaint, the following steps will be followed:

1. Within 180 days of the alleged discrimination, a complainant may submit a written complaint to the DEC Office of Internal Investigations or to an appropriate Federal agency as noted on the complaint form. Complaints may use the complaint form on DEC's website at: <https://www.dec.ny.gov/about/126240.html>. If the written complaint is provided to the Nondiscrimination Coordinator, they will forward it to the Office of Internal Investigations.
2. Complaints must include the complainant's name, the nature of the complaint, the dates of the alleged discrimination, requested action, and contact information.
3. The Director of the Office of Internal Investigations will review the complaint with the Nondiscrimination Coordinator and may solicit additional information from the complainant as needed. If additional information is requested and not received, the case may be closed. The case may also be closed if the complainant no longer wishes to pursue their case.
4. The Office of Internal Investigations will keep a complaint log containing the name and address of the complainant, nature of the written complaint, date of written submission and results of the investigation.
5. If the complaint is outside the jurisdiction of DEC, the complainant will be notified of the name and contact information for the appropriate agency with jurisdiction, if known.

D. Complaint Processing: If the written complaint is within the jurisdiction of DEC, it will be promptly investigated. DEC's goal is to address complaints within 60 days of receipt, though the time to carefully investigate complaints may be longer depending on the nature of the complaint and complexity of the issue(s).

E. Preliminary Inquiry: DEC will conduct a preliminary inquiry to determine the need for further investigation.

1. DEC will notify the complainant in writing that a preliminary inquiry is underway to determine the need for further investigation.

2. If the preliminary inquiry by DEC indicates that an investigation is warranted, the complainant will be notified in writing and an interview will be scheduled.
3. If the preliminary inquiry indicates an investigation is not warranted, the complainant will be notified in writing of the reasons why and factors considered and advised that the case will be closed.
4. If the complainant wishes to appeal the decision, they have fifteen (15) business days from the date of the closure letter to make the request and must include any reason(s) why such appeal should be granted.

F. Complaint Investigation:

1. Complaints warranting further investigation will be promptly processed and the preponderance of evidence standard will be applied to all complaint investigations. The results of the investigation will be provided to the DEC Deputy Commissioner for Equity and Justice, General Counsel and Executive Deputy Commissioner for review.
2. The complainant will be notified in writing of the results of the investigation and what actions will be/have been taken in response and a timeline to request review. If the complainant wishes to appeal the decision, they have fifteen (15) business days from the date of the closure letter to make the request and must include any reason(s) why such appeal should be granted.
3. Records and investigative files will be kept for a minimum of ten years.

See DEC's *Procedures for Filing and Processing a Complaint Alleging a Violation of Federal Nondiscrimination Laws* for additional information about the steps of the complaint process and the DEC Federal Civil Rights Violation Complaint Form.

VI. Related References:

Federal and State nondiscrimination laws are the cornerstones of the Department's strategy to ensure equal opportunity and fair and equitable programs and services to the public.

Federal Laws, Executive Orders, Title VI Implementing Regulations

- **Civil Rights Act of 1964** - Prevents discrimination in federally assisted programs; provides relief against discrimination in public accommodations; protects constitutional rights in public facilities and public education; enforces the constitutional right to vote. **Title VI** - Prohibits discrimination on the grounds of race, color or national origin in programs and activities receiving federal financial assistance.
- **Section 504 of the Rehabilitation Act of 1973** - Prohibits discrimination on the basis of physical or mental disability in every federally assisted program or activity in the country.
- **Age Discrimination Act of 1975** - Prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance.
- **Civil Rights Restoration Act of 1987/1988** - Specifies that recipients of federal funds must comply with civil rights laws in all areas, not just in a particular program or activity that receives federal funding. It applies to all federal laws.
- **Americans with Disabilities Act (ADA) of 1990** – Federal law prohibiting discrimination against people with disabilities in employment, public access to services, transportation, public accommodations, and telecommunications services.
- **Title IX of the Education Amendments of 1972 (Title IX)** – Prohibits sex (including pregnancy, sexual orientation, and gender identity) discrimination in any education program or activity receiving federal financial assistance.

- **Section 13 of the Federal Water Pollution Control Act Amendments of 1972** – Prohibits discrimination, exclusion from participation, or denial of benefits on the ground of sex under any program or activity receiving Federal financial assistance under the Federal Water Pollution Control Act Amendments of 1972, the Federal Water Pollution Control Act, or the Environmental Financing Act.
- **Executive Order No. 12898** – Requires Federal agencies to make achieving Environmental Justice (EJ) part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations.
- **Executive Order No. 13166** – Requires each Federal agency to examine the services it provides and to develop and to implement a system by which persons with limited English proficiency (LEP) can meaningfully access those services; and work to ensure that recipients of federal financial assistance provide meaningful access to their LEP applicants and beneficiaries.
- **40 CFR Part 7** – Nondiscrimination in Programs or Activities Receiving Federal Assistance from the Environmental Protection Agency
- **40 CFR Part 5** – Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Assistance
- **6 CFR Part 21** – Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance from the Department of Homeland Security
- **6 CFR Part 15** – Enforcement of Nondiscrimination on the Basis of Disability in programs or Activities Conducted by the Department of Homeland Security
- **44 CFR Part 7** – Nondiscrimination in Federally-Assisted Programs (FEMA Reg. 5)
- **43 CFR Part 17** – Nondiscrimination in Federally Assisted Programs of the Department of the Interior
- **15 CFR Part 8** – Nondiscrimination in Federally Assisted Programs of the Department of Commerce
- **32 CFR Part 195** – Nondiscrimination in Federally Assisted Programs of the Department of Defense – Effectuation of Title VI of the Civil Rights Act of 1964
- **10 CFR Part 1040** – Nondiscrimination in Federally Assisted Programs or Activities of the Department of Energy
- **7 CFR Part 15, Subpart a** - Nondiscrimination in Federally Assisted Programs of the Department of Agriculture - Effectuation of Title VI of the Civil Rights Act of 1964

New York State Laws

- New York State Human Rights Law Article 15 (1945) - Guarantees nondiscrimination in the State of New York on the basis of race, creed, color, national origin, sex, marital status, age, disability and or sexual orientation.
- New York State Law Article 15-A (1988) - An act to amend the executive law and the state Finance law, in relation to participation by minority group members and women with respect to state contracts.
- New York State Law Article 17-B (2014) An Act to amend the executive law, in relation to expanding opportunities for service-disabled veteran-owned business enterprises.
- Sexual Orientation Nondiscrimination Act (2003) - This Act amends the Executive Law to include sexual orientation.

New York State Executive Orders

- On October 8, 2021, Governor Kathy Hochul issued **Executive Order 6** that authorized the continuation of certain prior Executive Orders related to equal opportunity and nondiscrimination in all State programs, including the following:

- **Executive Order No. 17 (Governor Cuomo, 1983)** - Establishing State policy on private institutions which discriminate. Directs that State officials and employees shall not sponsor, organize, attend, or participate in any meeting or other activity, the purpose of which is related to State business, in any private establishment or facility that does not afford full membership rights and privileges to any person because of age, race, creed, color, national origin, sex, disability or marital status.
- **Executive Order No. 96 (Governor Cuomo, 1987)** - Promotes a New York State policy against age discrimination in the workplace. It requires that all employers within the Executive Branch of State government evaluate and examine their hiring and job retaining standards to ensure their compliance with the age discrimination law.
- **Executive Order No. 33 (Governor Paterson, 2009)** - Prohibiting discrimination in State employment on the basis of gender identity.
- **Executive Order Nos. 26 and 26.1 (Governor Andrew M. Cuomo, 2011, 2021)** - Directs State agencies that provide direct public services to translate vital documents in the ten most common non-English languages spoken by individuals with limited-English proficiency in the State of New York, based on United States census data, and relevant to services offered by each of such agencies. Each of these agencies must provide interpretation services between the agency and an individual in his or her primary language with respect to the provision of services or benefits.
- **Executive Order No. 177 (Governor Cuomo, 2018)** - Prohibiting State contracts with entities that support discrimination.
- **Executive Order No. 187 (Governor Cuomo, 2018)** - Ensuring Diversity and Inclusion and Combating Harassment and Discrimination in the Workplace.

APPENDIX A ROLES AND RESPONSIBILITIES

Deputy Commissioners, Regional Directors and Division Directors are responsible for ensuring agency activities comply with Title VI and must identify a Title VI Liaison for their Regions, Division, and Programs. The Title VI Liaison should have a broad understanding of Regional, Division, or Program activities (as appropriate), as the Title VI Liaison serves as a centralized point of contact to coordinate, gather, and disseminate Title VI information to the Regions, Divisions, and Program areas.

Examples of the roles and responsibilities of Regional, Division, and Program Title VI Liaisons are outlined below.

- Share information related to Title VI, Limited English Proficiency (LEP), Environmental Justice (EJ) and American with Disabilities Act (ADA) with Regional, Divisional, and Program staff and local stakeholder communities/sub-recipients as appropriate.
- Attend training to increase one's understanding of Title VI, LEP, EJ, and ADA.
- Encourage staff and sub-recipients to attend Title VI training; notify the Nondiscrimination Coordinator of training needs.
- Understand DEC's policies and procedures for Title VI/EJ/LEP/ADA compliance to ensure that the Regional, Division, and Program area's practices are consistent with these policies and procedures.
- As applicable to the program area, review program area policies, announcements, manuals, and written procedures to ensure that Title VI language, where appropriate, is included.
- Direct Title VI complaints to the Nondiscrimination Coordinator and Office of Internal Investigations and assist with the effort to gather complaint information, if necessary.
- Encourage (to the degree applicable) outreach and community involvement in planning, permitting, and project development activities.
- Help the Nondiscrimination Coordinator gather and organize Title VI information and data from Regions, Divisions, and Program areas.
- Provide material for inclusion in any DEC Title VI reviews or reports.
- Attend Title VI meetings and conference calls and other Title VI-related meetings as needed.
- Assist the Nondiscrimination Coordinator with Regional, Division, or Program area and/or sub-recipient compliance reviews, if needed.
- Review, comment and contribute to Title VI-related documents that DEC develops.

TRAINING

The DEC Nondiscrimination Coordinator is responsible to provide and/or coordinate training for DEC staff and sub-recipients, including Title VI Liaisons. In doing so, the Nondiscrimination Coordinator will work to ensure that the Title VI Liaisons receive training and guidance to carry out their roles and responsibilities. It will be the responsibility of the Title VI Liaisons to take advantage of these training opportunities and to seek guidance when necessary.

TIME COMMITMENT

Title VI Liaisons are not intended to be full-time positions; however, all Title VI Liaisons should be prepared to devote an appropriate amount of time to their Title VI role and responsibilities.