

Brandywine/TB, Southern Region Neighborhood Coalition

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FOR IMMEDIATE RELEASE

Title VI Complaint 'Informal Resolution' with DOT, PHMSA, EPA, ECROC

DATE: February 1, 2019

FROM: BTB Coalition President, Kamita Gray

Subject: June 14, 2016 Title VI Compliant EPA|DOT Informal Resolution Agreement

- Kamita Gray– President of BTB Coalition
- Executive Community Citizen’s Board (ECCB)— Community “Citizens” Representatives

As the President, of the Brandywine | TB Southern Region Neighborhood Coalition we are elated to announce that The U.S. Department of Transportation (DOT), Pipeline and Hazard Materials Safety Administration (PHMSA), and the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECROC) is resolving our complaint based on there internal 'Informal Resolution' process. An agreement was entered into and executed on January 30, 2019 between the Maryland Public Service Commission (“PSC” or “Commission”), Maryland Department of the Environment (“MDE”), Maryland Department of Natural Resources (“DNR”) (together, the “Agencies”), an behalf of the Brandywine TB Southern Region Neighborhood Coalition (“BTB Coalition”), regarding the Title VI complaint (“Standing Complaint”) filed with the U.S. Environmental Protection Agency (“U.S. EPA”) and the U.S. Department of Transportation (“U.S. DOT”) on June 14, 2016.

The ADR negotiations were unsuccessful and ended on October 19, 2017, since that time I’ve been actively working in view of the active Title VI complaint. While it is true that everyone involved with the ADR process sent his or her signature page voting in agreement thereof the ADR final draft; I myself did not because I represented the Brandywine community for which I felt deserved more along with the ECCB Committee. While I was the only holdout on the final ADR draft agreement enduring much backlash I was of the opinion that the Agencies could do better. I do feel this informal resolution agreement has accomplished just that through this EPA|DOT informal review process. By no means is this or should this be the end; more can and should be done with this being a magnificent milestone of accomplishments for the BTB Coalition and the Brandywine community with many environmental Health Disparities and risk factors in Prince George’s County then across communities in the State of Maryland.

The informal resolution agreement represents the countless hours of work that I put in especially throughout the ADR process and then the informal resolution process with agencies in working for the greater good of our communities. In consultation with long standing key members of the ECCB whom fully supported my decision.

We have to secure protection from environmental degradation for all citizens, especially African-American communities being it is a fact that life-threatening burdens and Health Impacts of Air Pollution from Oil & Gas Facilities are greater on African American Communities. As a result, many African American communities face an elevated risk of cancer due to air toxics emissions from natural gas development: Over 1 million African Americans live in counties that face a cancer risk above EPA’s level of concern from toxics emitted by natural gas facilities.

Serious health risks are caused by air pollution with Prince George’s County having serious air quality issues makes it imperative that Title VI factors are considered by our federal permitting agencies, as well as state or local agencies with delegated permitting responsibilities in the decision-making prior to allowing new pollution-generating facilities to operate in a minority and/or low income communities as with the State of Maryland that already has a number of such facilities. Communities deserve regulations,

behaviors, policies, planning and zoning decisions that support sustainable communities where people can interact with confidence that their environment is safe, nurturing, and productive.

As the President of the BTB Coalition I was of the opinion the final ADR draft Agreement did not come up to the mark and that Brandywine warranted more as did the communities across the State of Maryland. It was not easy in making the decision that the complaint be sent back to go through the EPA|DOT internal review Title VI process. More should have been on the table in the ADR Title VI final agreement. More has now been accomplished in this EPA|DOT informal resolution agreement. The June 14, 2018 BTB Coalition Title VI Complaint entered into this informal review process in November 2017.

I want to thank the State of Maryland agencies in the acceptance of the Governmental Agencies informal resolution agreement and the State of Maryland agencies in making no changes... while ones could have supplemented additions being there where many other particulars left on the table with addressing every aspect of the issues that plague African-American, minority and low-income communities but overall the BTB Coalition is very pleased with the signed informal resolution agreement that was formulated through the EPA|DOT internal review Title VI process.

In providing a brief history of these past four years of my life advocating for a community for which my family has lived for over twelve decades it was with much blood sweat and tears not to mention the many sleepless nights in my work concerning the BTB Coalition Title VI filed June 14, 2016 for which my work began months earlier in February of 2015 with the preparation of the Title VI then the many consultations with Earthjustice. I want to personally thank Dr. Sacoby Wilson for the contact reference with Earthjustice then for further support and technical assistance in the preparation of our Title VI environmental health data.

There was much Monday morning quarter backing and we are sure there will be more to come being it has from the beginning we do not expect the exploitation to end now. As with Earthjustice in conference with Marianne Engelman-Iado stating our "Title VI would never be accepted", as was the position throughout with Fred Tutman on behalf of Patuxent Riverkeeper and his view of the EPA for which we had a difference of opinion. The situation in Brandywine MD has **only** three (3) **NOT FIVE**, power plants in a 2.9 radius in Prince George's County being the subject matter of the heavy pollutant industrial industries. The BTB Coalition along with Brandywine community and myself overcoming some very big hurdles to now obtaining this EPA|DOT informal resolution an outcome that I feel the BTB Coalition can be proud of along with the ECCB and the Brandywine Community.

Once Earthjustice agreed to represent Brandywine in the filing of the Title VI it was then that Fred Tutman was brought on without option as a component of the representation by Earthjustice, Neil Gormley Staff Attorney. Understanding that Brandywine, Maryland has three (3) power plants that sit within the **Potomac** Watershed.

The Departure of Earthjustice was imminent being on the horizon from the beginning the BTB Coalition and Patuxent Riverkeeper had very different views of the magnitude of our Title VI and our expectations as to what could be accomplished with the EPA through the filing of our Title VI complaint process but the BTB Coalition never wavered. No difficulty though at times was frustrating, annoying, exasperating, an right out maddening an obstacles of dismay which did not discourage, or troubles that dishearten us enough to quit. I've been motivated in overcoming challenges and overcoming hurdles and obstacles that have faced me. My dad always said to me nothing beats a failure but a try... and sometimes the hurdles aren't really hurdles at all.

The BTB Coalition would like to make it clear that the departure situation with Earthjustice **not** a withdrawal did not in any way reflect on Earthjustice's or our Title VI principled and practical position on the presumed merits of our complaint, but rather a community being of the considered humble opinion a conflict that disenfranchised an African-American community, the intentional maligning of myself, and our organization was not in the best interest of the Brandywine community moving forward. Furthermore, in light of the situation the BTB Coalition was of the considered humble opinion that it was not in the best interest to continue in an adversarial situation and differences with legal representative. Being ones at the table did not represent the views of the community in it's best interest rather for the "greater good as to the public interest" of **all** to propagate our confidential intellectual data to spread far and wide was continuously a controversy.

With the departure of Earthjustice being they were asked to elevate through a series of emails to substantiate our position in rectifying the conflict with Fred Tutman was not an option for us being he was the registered CEO of Clean Air Prince George's. Earthjustice was not able to alleviate the conflict then withdrew on April 20, 2017. While I will say that Neil Gormley, Earthjustice Staff Attorney work was extraordinary with his dedication with his brilliance and work on our Title VI Complaint to its filing is to be admired. Brandywine, Maryland is a 72% African-American minority community and its issues should never have been whitewashed, demeaned, pimped for one's own self-interests or any NGO's Agenda for its grants their funding being "Accomplices Not Allies: Abolishing the Ally Industrial Complex along with the Trickle-Down Community Engagement (TDCE), a frustrating phenomenon. Enduring the colluding of such cohorts in the ignominious smear campaigns of myself with the pimpology to the detriment of the Brandywine community for ones own self-gain and seen throughout many other communities.

The NGO's parachuting of African-American communities pain does not help and/or facilitate change in our African-American communities whether direct or indirect. These organizations are not about a community-based leadership in solidarity, but division, having self-serving agendas of self-importance, not mutual aid and respect of as equals between forces fighting for the same objective and respect of community-based fence-line hosts as the leaders and community-oriented organizations in support thereof.

Only through the strength of GOD did I withstand in this place of giving four (4) years of my life work on this Title VI for the protection thereof of the Brandywine community and now throughout the State of Maryland.

While I'm elated that we have completed this part of the agreement there is still much work that needs to be done within fence-line hosting communities as lead in advocating on their own behalf and being empowered. African-American communities deserve to be respected and the BTB Coalition Title VI is about the permitted pollution that will affect our health and welfare with a 35% increase in asthma incidents. Additionally, in relation to a community and its own self-determination, to effect policy changes that integrates Title VI, inequity formation in obtaining equality, health and justice.

In providing this overview through trials and tribulations we now have a momentous conclusion through the EPA|DOT 'Informal Resolution' agreement. I will leave it here for now with this short description. A fully documented depiction of this Title VI exercise, experience, the experiences, our development, the processes, our course of action and our guiding principles throughout this Title VI evolution will be imminent in helping others achieve.

Respectfully yours,


BTB Coalition In solidarity, Kamita Gray, President

Brandywine/TB Southern Region Neighborhood Coalition (Executive Community Citizen's Board (ECCB))

Subject Matter Expert (SME) Expertise

- The Law of Environmental Justice and Policy Fellow
- Participatory participation for the involvement and engaging of authentic community empowerment
- Disproportionate Risk and Exposures on Impacted Environmental Justice Communities
- Certified IRB Professional (CIP) Collaborative Institutional Training in research ethics education to the research community. Community Case Study (IRB administrator) Assist the Principle Investigator (PI) with the administrative oversight and coordination of research projects at University of Maryland and collaborators.
- Community Advocate & DAC Sustainability Coach
- Data Scientist Interdisciplinary
- Community Engagement, Environmental Justice, and Health (CEEJH)/Maryland Institute for Applied Environmental Health/School of Public Health/University of Maryland-College Park— Prince George's County Environmental Justice 2025 Plan Contributor

Reference Documents: Initial ADR Final Draft Agreement (failed negotiations)
Final (DOT), (PHMSA), (EPA), (ECROC) internal 'Informal Resolution' Agreement.

Unsuccessful ADR Mediation Settlement Results

Brandywine Title VI Complaint Settlement Agreement

This Settlement Agreement (“Agreement”) is made, entered into and executed this _____ day of _____ 2017, by and between the Maryland Public Service Commission (“PSC” or “Commission”), Maryland Department of the Environment (“MDE”), Maryland Department of Natural Resources (“DNR”) (together, the “Agencies”), Brandywine TB Southern Region Neighborhood Coalition (“BTB Coalition”), and Patuxent Riverkeeper (collectively, the “Parties”) regarding the Title VI complaint (“Complaint”) filed with the U.S. Environmental Protection Agency (“U.S. EPA”) and the U.S. Department of Transportation (“U.S. DOT”).

Title VI of the Civil Rights Act of 1964 (“Title VI”), 42 U.S.C. §§ 2000d to 2000d-7, and the U.S. EPA and the U.S. DOT Title VI implementing regulations, 40 C.F.R. Part 7 and 49 C.F.R. Part 21, respectively, prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. The Commission, MDE, and DNR are each recipients of financial assistance from either the U.S. DOT or the U.S. EPA and are subject to the provisions of Title VI and the aforementioned implementing regulations.

RECITALS

WHEREAS, the Commission is an independent administrative agency authorized by the Maryland General Assembly to issue (or deny) a Certificate of Public Convenience and Necessity (“CPCN”) to an entity planning to construct or modify a generation plant or transmission line in Maryland, in accordance with the Public Utilities Article of the Maryland Annotated Code; and

WHEREAS, MDE is the state’s environmental protection and enforcement agency, which also participates in the CPCN review process; and

WHEREAS, DNR’s Power Plant Research Program (“PPRP”), pursuant to Maryland Annotated Code, Natural Resources Article, §§3-301-307, is charged with coordinating the State’s response to all applications for a Certificate of Public Convenience and Necessity (“CPCN”) submitted to the PSC; and

WHEREAS, in reviewing a CPCN application, PPRP coordinates the independent review of seven State agencies—DNR, MDE, the Maryland Department of Planning, the Maryland Department of Transportation, the

Maryland Department of Agriculture, the Maryland Department of Commerce, and the Maryland Energy Administration--provides recommendations to the PSC as to whether the proposed project can be built in accordance with State law, and further provides recommended licensing conditions to the PSC that contain requirements that will ensure that any CPCN issued by the PSC comports with State law.

WHEREAS, the Agencies work to improve continually their respective internal operations and processes and to reduce inequitable impacts and to raise the quality and fairness of the outcomes associated with siting fossil fuel power plants in communities or locales where they would increase quality of life disruptions and exposure to increased public health risks.

WHEREAS, the Agencies strive to provide meaningful opportunities for public input and to be responsive to all public inquiries; and

WHEREAS, BTB Coalition's organizational mission is to build active, influential communities based on justice, equality and mutual respect as they advocate for the betterment of their community and aim to influence public policy and resource allocation within the political, economic, and social systems, and

WHEREAS, Patuxent Riverkeeper has as part of its mission the protection of the Patuxent watershed and has members that are affected by the regulatory activities of the responding State agencies and serves people and communities who likewise care about environmental quality of life and environmental equity, and

WHEREAS, on or about May 11, 2016, the BTB Coalition and Patuxent Riverkeeper co-filed a Complaint with the U.S. EPA and U.S. DOT against the Commission, MDE, and DNR, alleging that the issuance of a CPCN on November 13, 2015, for the construction of a nominally-rated 990-megawatt natural gas fired power plant in Brandywine, Maryland ("Brandywine CPCN") will have an unjustified, disproportionate adverse impact on the basis of race in violation of Title VI; and

WHEREAS, following a decision by the U.S. EPA, U.S. DOT, and their respective Offices of Civil Rights ("Federal Agencies") to accept the Complaint for investigation, the Parties subsequently agreed to engage in Alternative Dispute Resolution ("ADR" or "Mediation"), and as a result, the Federal Agencies suspended their investigation of the Complaint for the duration of the ADR process; and

WHEREAS, the Parties agreed to work together through Mediation for the purpose of discussing settlement options regarding the Title VI Complaint, including changes to the process undertaken by the agencies to engage the public and review applications for CPCNs to ensure they do not discriminate on the basis of race, color, or national origin, in violation of Title VI.

WHEREAS, the Parties have settled the Title VI Complaint filed by BTB Coalition and Patuxent Riverkeeper, the terms and conditions of which are memorialized in this Agreement; and

WHEREAS, the Parties acknowledge that this Agreement does not constitute an admission by any Party or a finding by the Federal Agencies that there has been a violation of any applicable law or regulation in connection with the Title VI Complaint; and

WHEREAS, it is the understanding of the Parties that the External Civil Rights Compliance Office of the U.S. Environmental Protection Agency (“ECRCO”) and the Departmental Office of Civil Rights of the U.S. Department of Transportation (“DOCR”), upon notification by the mediator that the Settlement Agreement has been finalized, will promptly issue a letter notifying the Parties that the Settlement Agreement serves to resolve the Complaint fully and that ECRCO and DOCR will issue a letter closing the Title VI investigation as of the date of that letter; and

WHEREAS, it is the understanding of the Parties that the U.S. Department of Transportation and the U.S. Environmental Protection Agency may monitor implementation of the settlement agreement and respond to complaints of a breach or breaches of the settlement agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the covenants, promises, and undertakings set forth herein, the value and sufficiency of which are hereby acknowledged, the Parties agree that the above Recitals are incorporated into this Agreement, and the Parties further agree as follows:

1. General Provisions.

- A. Implementation. The Parties commit to implement the actions and obligations set forth in this Agreement as indicated in the sections that follow.

- B. As recipients of federal financial assistance, the Commission, MDE, and DNR commit to ensure compliance with all Title VI requirements.
- C. Rulemakings. The Parties understand that some executory provisions in this Agreement may require one or more of the state Agencies to consider revisions of the Code of Maryland Regulations (“COMAR”), but that submitting proposed changes to such Rules does not guarantee approval of such changes by the presiding Agency. The Commission will conclude the rulemaking it initiates.

2. Specific Party Commitments.

A. Maryland Public Service Commission.

- i. CPCN Pre-Application Process. The Commission will submit to its formal rulemaking process a proposed rule that modifies the CPCN application requirements under COMAR 20.79.01 to include and implement a pre-application process for fossil fuel generation plants over 70 megawatts in nameplate capacity, which shall include the following requirements:

- a. Environmental Justice Screen. The applicant shall use the U.S. EPA EJSCREEN environmental justice screening tool to identify potentially disproportionately affected communities that may be subject to additional impacts from a proposed fossil fuel generation facility over 70MW. The numerical thresholds for identifying sensitive areas susceptible to disparate, adverse impacts as a result of permitting certain industrial facilities shall be where the U.S. EPA EJSCREEN demographic index is equal to or greater than 35% for either a 1 mile ring or 2 mile ring centered at the GIS coordinates of the proposed fossil-fueled facility greater than 70MW (nameplate capacity). The demographic index is the average of the percentage of the population that is minority and the percentage of the population that is low income, which is defined as 200% of the federal poverty level. (See Exhibit 1 for examples of U.S. EPA EJSCREEN runs with these parameters)

- b. The applicant shall:

- 1. Meaningfully offer to engage the participation of the affected communities within a three (3)-mile radius of the proposed facility fence line for the purpose of educating the affected

communities concerning the project and soliciting their feedback, including but not limited to:

- A. Identifying actual community members and community organizations within the affected communities and provide notification of the project and any public meeting invitation on the subject; and
 - B. Publishing notification of the project and any public meeting invitation on its website and at least two forms of social media;
2. Prepare an Environmental Justice Public Participation Certification Form for New Applications, which shall describe the applicant's efforts to provide notice to and engage the affected community within the above-described 3-mile radius (Exhibit 2: Environmental Justice Public Participation Certification Form for New Applications);
 3. To the extent the applicant reaches any agreement with the affected community pursuant to its community engagement efforts, the applicant shall disclose the agreement terms with its CPCN application (subject to redaction of any confidential documents).
- c. The aforementioned proposed rulemaking in subsection (A)(i) shall also modify COMAR 20.79.02 and 20.79.03 to require the applicant to include with its CPCN application:
 1. A copy of its U.S. EPA EJSCREEN report;
 2. A completed and signed Environmental Justice Public Participation Certification Form; and
 3. Any other documents supporting the Environmental Justice Public Participation Certification Form and as required under COMAR 20.79.03.
 - d. If the proposed rulemaking does not result in the changes to COMAR, the Commission, BTB Coalition, and Patuxent Riverkeeper signatories to this Agreement will meet to discuss next steps.

- ii. **CPCN Notification Improvements.** The Commission will submit to the formal rulemaking process a proposed modification to the rules governing notification of a filed CPCN application under COMAR 20.79.02 to include the following:
 - a. For fossil fuel generation facilities subject to the CPCN requirement, including those for which a waiver has been denied, the applicant shall post at minimum one large sign at the site of the proposed facility that is visible from the street subject to applicable local restrictions and/or regulations.
 - b. For fossil fuel generation plants over 70 megawatts in capacity, the applicant shall also send a letter by postal mail to all residential and business addresses within a one (1)-mile radius of the proposed facility site, which shall include:
 - 1. A fact sheet on the filed application, including the case number and other relevant information;
 - 2. The prehearing conference date;
 - 3. The deadline for filing petitions to intervene; and
 - 4. A fact sheet concerning the CPCN process.
 - c. The applicant shall file with the Commission at least one picture of each posted sign in accordance with subsection (A)(ii)(a) and, where applicable, a signed certification of the notification mailings in accordance with subsection (A)(ii)(b) along with a complete list of recipient names and addresses.

iii. **CPCN Public Comment Hearing Improvements.**

- a. The Commission will revise its internal guidance materials for its hearing examiners or public utility law judges (“PULJs”) to include the following best practices in conducting CPCN public comment hearings:
 - 1. The PULJ shall hold a minimum of two (2) public comment hearings regarding a CPCN application for a fossil fuel generation plant over 70 megawatts in capacity, one of which may be held concurrently with MDE and/or DNR;

2. The PULJ should place time limits on the oral comments offered by attendees at the public hearing, when appropriate;
 3. The PULJ should make available sign-up sheets for those offering oral comments at a public hearing.
 4. When appropriate, the PULJ should alternate calling attendees for oral comments between the sign up sheets; and
 5. Attendees offering oral comments should be asked to state their names and home or local business addresses.
 6. A non-discrimination notice, in accordance with federal policy, shall be posted in the hearing room. The poster shall include the address, email, and telephone number of the state agency where a complaint of discrimination may be made.
- b. The Parties understand that notwithstanding the above best practices, the PULJs will exercise their discretion in managing the public comment hearings.
- iv. Education and Training. The Commission will, through a third-party, provide Title VI and Environmental Justice training for its staff and employees, who shall apply it to all applicable matters.

B. Maryland Department of Environment

- i. Environmental Justice Policy. MDE will complete development of an Environmental Justice Policy within eighteen (18) months of the effective date of this Agreement. The MDE Environmental Justice Policy, which will be applicable to environmental justice communities statewide, shall include, but not be limited to:
 - a. Environmental Justice Screen. MDE will require the internal use of appropriate environmental justice screening tools for certain permit applications (See Exhibit 3 for Illustrative List of Permit Applications Subject to the MDE Environmental Justice Policy.)
 1. MDE will initially use the U.S. EPA EJSCREEN environmental justice screening tool.
 2. MDE shall evaluate multiple environmental justice screening tools to determine if there is a need to use other environmental

justice screening tool components in conjunction with or instead of U.S. EPA EJSCREEN.

3. The appropriate environmental justice screening tool selected will be used by MDE to determine if a proposed project is within an environmental justice community, as determined by MDE in its Environmental Justice Policy.
 4. If upon a run of the environmental justice screening tool, a proposed project is determined to be within an area that contains an environmental justice community, then it will be subject to the MDE Environmental Justice Policy, which at a minimum, will provide for enhanced public notification and engagement as part of the permit review process.
- b. Public Participation Guidelines. As part of its preparation of an Environmental Justice Policy, MDE will review public participation guidelines from federal agencies and other sources.
 - c. Enhanced Compliance Oversight: MDE will consider enhanced oversight of facilities in environmental justice communities pursuant to its Environmental Justice Policy.
 - d. Partner with County Governments: MDE will seek to work with the applicable county governments to coordinate inspection activities and compliance matters where warranted.
 - e. As part of its Environmental Justice Policy, MDE will identify an MDE Environmental Justice Coordinator.
- ii. Environmental Justice Policy Stakeholder Process: MDE will provide the BTB Coalition, the Patuxent Riverkeeper, and other stakeholders with an opportunity to comment on its Environmental Justice Policy.
 - iii. MDE and Maryland Department of Health will make every effort to meet regularly to discuss environmental justice issues.

C. Maryland Department of Natural Resources.

- i. Within thirty (30) days of the effective date of any rule issued by the Commission implementing a pre-application certification requirement, the Secretary of DNR shall issue and PPRP shall post on its website a policy that:
 - a. Upon receiving notice under § 3-306 of the Natural Resources Article of an application for a CPCN for the construction of a fossil fuel-powered electrical generating plant with a name plate capacity over 70 megawatts, PPRP will:
 - 1. Review the pre-application certification completed by the Applicant to identify community groups for outreach during the State coordination process.
 - 2. Identify a liaison to the affected community identified during the pre-application certification, who will serve as the State's point of contact for community inquiries to any of the seven coordinating State agencies about the application and regarding the State coordination process.
 - b. DNR will provide PPRP staff training on EJ Screen within 120 days of the effective date of the policy, and will provide PPRP staff training on any subsequently adopted environmental justice screening tool to be used in the CPCN process within 120 days of the adoption of that screening tool.
- ii. PPRP will request that Mattawoman, at least 15 days in advance of the scheduled initial start-up of the plant, notify the community of the scheduled start-up period.

D. Brandywine TB Southern Region Neighborhood Coalition.

- i. BTB Coalition will encourage communities to use intervener status during CPCN process to raise disparate impacts issues.

- ii. BTB Coalition will encourage groups and individuals to be “interested persons” during CPCN process to receive all available information via email.
- iii. BTB Coalition will encourage the County to serve as an intervener during the CPCN process.
- iv. BTB Coalition will encourage the County to sit with the PULJ during CPCN public hearings.
- v. BTB Coalition will continue its efforts to work with universities to develop a community baseline health assessment.
- vi. BTB Coalition will continue its efforts to work with universities to create a citizen monitoring program to develop baseline of environmental conditions.
- vii. BTB Coalition will work with Mattawoman, accompanied by state and/or country officials, to mitigate effects on the community.

E. Patuxent Riverkeeper.

- i. Patuxent Riverkeeper will encourage use of Office of the People’s Counsel (OPC) role for Title VI compliance issues. OPC is a statutory office for assisting ratepayers during CPCN process. Patuxent Riverkeeper will encourage communities to use intervener status during the CPCN process to raise disparate impacts issues.
- ii. Patuxent Riverkeeper will encourage groups and individuals to be “interested persons” during CPCN process to receive all available information via email.
- iii. Patuxent Riverkeeper will encourage the County to serve as an intervener during the CPCN process.
- iv. Patuxent Riverkeeper will encourage the County to sit with the PULJ during CPCN public hearings.
- v. Patuxent Riverkeeper will work to address traffic issues during construction of the Mattawoman plant.

3. Miscellaneous Provisions.

- A. Entire Agreement. This Agreement constitutes the entire agreement between the Parties regarding the Title VI Complaint, and no other statement, promise, or agreement, made by any other person shall be construed to change any term of this Agreement, except as specifically agreed to by the Parties in accordance with the provisions of this Agreement.
- B. Disclosure of Agreement. The Parties understand and agree that this Settlement Agreement is subject to disclosure after it has been signed by all the parties.
- C. Severable Commitments. The Parties understand and agree for the severable commitments herein, non-performance by one Party does not, by itself, affect another Party's ability to perform under this Agreement; nor does it impute non-performance to a performing Party.
- D. Dispute Resolution. The Parties agree to engage in good faith efforts to resolve any disputes arising under this Agreement informally. A dispute shall be considered to have arisen when one party or parties sends another Party a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. Once a Notice of Dispute is received by a party, the Parties shall meet and confer either in person or telephonically in a good faith attempt to resolve the dispute. If the Parties cannot resolve the dispute within thirty (30) days from the date of the first meet and confer session, any party may pursue other available remedies, including notifying U.S. EPA and/or U.S DOT of an alleged breach of the Agreement within the required 180 days of the alleged breach.
- E. Use of Agreement as Evidence. The Parties agree that this Agreement may be used as evidence in a subsequent proceeding in which any of the Parties alleges a breach of the Agreement.
- F. Effective Date. The Effective Date of this Agreement shall be the latest date set forth in the signature lines below.
- G. Voluntary Signature. Signature on this document is voluntary and is done without coercion, duress, or pressure on the part of any party. Furthermore, the undersigned representatives of each Party, with the exception of legal counsel, certify that they are fully authorized to consent to the terms and conditions of this Agreement.
- H. Counterparts. This Agreement may be executed in counterparts, and each of those counterparts shall be deemed an original for all purposes.

Signature page

On behalf of Brandywine TB Southern Region Neighborhood Coalition:

Name Kamita Gray, Founder | President, BTB Coalition

Signature _____

Date _____

Name Al Weaver, Chair ECCB of the BTB Coalition

Signature _____

Date _____

Signature page

On behalf of Patuxent Riverkeeper:

Name Fred Tutman, Riverkeeper & CEO

Signature _____ Date _____

On behalf the State of Maryland these Agencies signatories will remain confidential.

**Title VI Complaint 'Informal Resolution'
Agreement with DOT, PHMSA, EPA, ECROC**



**U.S. Department of
Transportation**

Pipeline and Hazardous
Materials Safety
Administration



**United States
Environmental Protection Agency**

External Civil Rights Compliance Office
Office of General Counsel

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

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

I. BACKGROUND AND PURPOSE

- A. Title VI and the federal agencies' implementing regulations prohibit discrimination on the basis of race, color, or national origin in any programs or activities receiving federal financial assistance. Each recipient agency is a recipient of federal financial assistance from DOT/PHMSA or EPA and is subject to the provisions of Title VI and either DOT's or EPA's implementing regulations.
- B. On June 14, 2016, DOT's Pipeline and Hazardous Materials Safety Administration Office of Civil Rights ("OCR"), with DOT's Departmental Office of Civil Rights ("DOCR"), jointly accepted a complaint with EPA's External Civil Rights Compliance Office ("ECRCO") that alleged discrimination based on race, color and national origin in violation of Title VI. In response to the complaint, DOCR/OCR and ECRCO began an investigation of the following issues:
 - (1) Whether the process and decision to issue a Certificate of Public Convenience and Necessity ("CPCN") to Mattawoman Energy, LLC, for the construction of a natural

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

- (2) Whether the public engagement process prior to the decision to issue a CPCN discriminated on the basis of race, color, or national origin, in violation of Title VI.
- C. During the course of the federal agencies' investigation, the recipient agencies agreed to enter into an Informal Resolution Agreement ("Agreement") in order to resolve this complaint.
- D. This Agreement is entered into voluntarily by the recipient agencies jointly, and by PHMSA's OCR and EPA's ECRCO.
- E. It is understood that this Agreement does not constitute an admission by the recipient agencies of a violation of, or a finding of compliance or noncompliance by PHMSA and/or EPA with, applicable federal non-discrimination laws and regulations.
- F. It is understood that PHMSA and EPA will cease investigation of DOT Complaint #2016-0361 and EPA complaints 28R-16-R3, 29R-16-R3, and 30R-16-R3 upon the signing of this Agreement and will provide technical assistance to support the recipient agencies in the implementation of the commitments contained herein.
- G. The PSC, MDE, and DNR agree to fully implement their specific responsibilities under the corresponding sections of this Agreement and the recipient agencies understand that a failure to satisfy any term in this agreement may result in the EPA and PHMSA re-opening an investigation.¹
- H. The recipient agencies are committed to carrying out their responsibilities in a nondiscriminatory manner, consistent with the requirements of Title VI and the other federal non-discrimination laws and regulations enforced by PHMSA and EPA. The activities detailed in this Agreement, which the recipient agencies have voluntarily agreed to undertake and implement, are in furtherance of this commitment.

II. APPLICABILITY

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

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

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

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

III. DEFINITIONS

- **Affected Communities** – refers to the residential individuals, organizations and other entities located within a one (1)-mile radius of the proposed facility fence line for an urban area, as defined by the United States Census Bureau, and within a three (3)-mile radius of the proposed facility fence line for a rural area, as defined by the Census Bureau.
- **Qualifying Generating Station** – refers to a proposed fossil fuel generation facility over 70 megawatts (MW) in nameplate capacity that is subject to the CPCN requirements under COMAR 20.79.01 et seq.

Subpart A

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

I. SPECIFIC COMMITMENTS FROM THE PSC

A. Community Outreach and Public Participation

1. PSC is committed to providing an opportunity for meaningful and full public participation by communities affected by a CPCN application consistent with Title VI and other applicable non-discrimination authorities. This includes providing meaningful access to persons with limited English proficiency ("LEP") and those with disabilities, as described in Section D. below.
2. CPCN Pre-Application Process. Within six (6) months of the signing of this agreement, PSC will submit to its formal rulemaking process a proposed rule that modifies the CPCN application requirements under Code of Maryland Regulations (COMAR) 20.79.01 to include and implement a pre-application process for Qualifying Generating Stations, which shall include the following requirements:
 - a. Notice to the Maryland Department of Natural Resources Power Plant Research Program ("PPRP"). The prospective applicant shall notify PPRP in writing of the applicant's intent to file a CPCN application to construct a Qualifying Generating Station and provide PPRP with information (e.g., type, source, location) on the proposed generating station no less than 90 days prior to the filing of the application.
 - b. Community Engagement. The prospective applicant shall meaningfully offer to engage the participation of the Affected Communities for the purpose of educating the Affected Communities concerning the project and soliciting their feedback. The prospective applicant shall at minimum:
 - i. Designate a Community Liaison Officer who will serve as the prospective applicant's point of contact for community inquiries about the application;
 - ii. Identify actual community members and community organizations within the Affected Communities (as the term is defined in Section III.) and provide notification of the project

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

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

- a. The public meeting must be scheduled at least 60 days before the filing of a CPCN application;
- b. In addition to the notification requirements in Section A(3), the public meeting notice must be submitted to the governing body, and if applicable the executive, of each county or municipal corporation of the proposed location of the generating station; and
- c. The prospective applicant must provide notification of the public meeting(s) by:
 1. Placing an invitation on the applicant's website, if any, or on the applicant's parent corporation's website;
 2. Placing an invitation on at least two types of social media platforms; and
 3. Publishing an advertisement in a newspaper of general circulation in the county or municipal corporation in which the proposed Qualifying Generating Station will be located.

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

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

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

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

3. CPCN Notification Improvements. Within six (6) months of the signing of this agreement, PSC will submit to the formal rulemaking process a proposed modification to the rules governing notification of a filed CPCN application under COMAR 20.79.02 to include the following:
 - a. For fossil fuel generation facilities subject to the CPCN requirement, including those for which a waiver has been denied, the applicant shall post at minimum one large sign at the site of the proposed facility that is visible from the street(s), subject to applicable local restrictions and/or regulations.
 - b. For a Qualifying Generating Station, the applicant shall also send a letter by postal mail to all residential and business addresses within a one (1)-mile radius of the proposed facility site for an urban area, and within a three (3)-mile radius of the proposed facility site for a rural area. The letter notification shall include:
 - i. A fact sheet on the filed application, including the case number, the applicant's designated Community Liaison Officer (as described above) and other relevant information;
 - ii. The prehearing conference date;
 - iii. The deadline for filing petitions to intervene; and

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

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

- iv. A fact sheet concerning the CPCN process.
- c. The applicant shall file with the PSC at least one picture of each posted sign in accordance with Section A.3(a) and, where applicable, a signed certification of the notification mailings in accordance with subsection 3(b), along with a complete list of mailing recipient names and addresses.
4. If any formal rulemaking conducted pursuant to Paragraphs I.A.2. and I.A.3., above, results in any amendments to provisions of COMAR which are a part of the Maryland State Implementation Plan ("SIP"), the PSC will coordinate with MDE to ensure that such amended COMAR provisions are submitted to EPA for approval into the Maryland SIP.
5. The PSC will agree to review EPA's Public Participation Guidance found at 71 FR 14207, 14210 (March 21, 2006) which offers important information regarding successful public engagement. PHMSA will also provide appropriate technical assistance.

B. Organization

1. Within three (3) months of the signing of this agreement, PSC will provide a description of the CPCN process on its website and provide links to additional informational resources. PHMSA will review the description of the CPCN process on the website and provide any comments within 60 days.
2. Within six (6) months of the signing of this agreement, PSC shall also propose to modify COMAR 20.79.02 and 20.79.03 to require the applicant to include with its CPCN application:
 - a. The identity and contact information for the applicant's designated Community Liaison Officer, as described in Section A.2(b)(i);
 - b. If applicable, a copy of the applicant's U.S. EPA EJSCREEN report, which the applicant shall reference and address in the application;
 - c. If applicable, a completed and signed Public Engagement and Participation Certification Form. The Certification Form shall include any supporting documentation, including but not limited to any express terms of agreement reached between the applicant and the Affected Community (subject to redaction of any confidential information);
 - d. Any supporting documentation identifying zoning approvals by the local government/local environmental review board/district, where available.
3. Within three (3) months of the signing of this agreement, PSC will adopt a formal Title VI policy of nondiscrimination, and sign (See Section D. below)

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

C. Training

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

D. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that the PSC is an independent agency that is committed to enforcing the open access and non-discrimination policies of the State of Maryland and as consistent with federal law.
2. Notice of Non-Discrimination. Within three (3) months of the signing of this agreement, PSC will prominently post a Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, the PSC will include a Notice of Non-Discrimination in general publications that are distributed to the public (e.g., notice for public hearings, entrances to public hearings, public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to PSC's programs, processes, or activities).
3. Grievance Procedures. Within three (3) months of the signing of this agreement, PSC will prominently publish on-line on its website homepage, and, to the extent practicable, in print, its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow PSC to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator. Within six (6) months of the signing of this agreement, PSC will designate a staff member to serve as its non-discrimination coordinator. It is understood that this individual may conduct other duties. PSC will ensure that it has prominently published, in print

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

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

II. GENERAL

- A. In consideration of PSC's implementation of commitments and actions described in Section I of this agreement, PHMSA will end its investigation of DOT Complaint Number 2016-0361 and not issue a decision containing findings on the merits of the complaint.
- B. PHMSA will, upon request, provide technical assistance to PSC regarding any of the civil rights obligations previously referenced.
- C. PHMSA will review and provide feedback about any documentation submitted by PSC demonstrating completion of each commitment (e.g., evidence of publication of the designation of the Non-Discrimination Coordinator) and will provide an assessment as to whether the documentation satisfies the commitment.
- D. PSC will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Rosanne Goodwill, Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590, within 30 days of the completion by PSC of each commitment.
- E. PHMSA will monitor the implementation of the commitments in this agreement to ensure they are fully implemented. Once the terms of this agreement are satisfied, PHMSA will issue a letter documenting closure of its monitoring actions in DOT Complaint Number 2016-0361 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this agreement, "day" shall mean a calendar day. In computing any period of time under this agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.

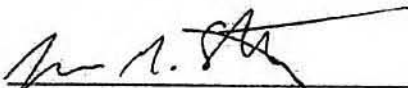
- B. Service of any documents required by this agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by PSC to PHMSA shall be sent to Civil Rights Director, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave, SE, (PH-20, E25-340), Washington D.C. 20590.
- D. Documents submitted by PHMSA to PSC shall be sent to Jason M. Stanek, Chairman, Maryland Public Service Commission, William Donald Schaefer Tower, 6 St. Paul St., 16th Floor, Baltimore, MD 21202.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. PSC understands that by signing this agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this agreement. Further, PSC understands that during the monitoring of this agreement, if necessary, PHMSA may visit PSC, interview staff, and request such additional reports or data as necessary for PHMSA to determine whether PSC has fulfilled the terms of this agreement and is in compliance with DOT regulations implementing the federal non-discrimination requirements set forth in 49 C.F.R. Part 21, which were at issue in this case.
- B. PSC understands that PHMSA will close its monitoring of this agreement when PHMSA determines that PSC has fully implemented this agreement and that a failure to satisfy any term in this agreement may result in PHMSA re-opening the investigation.
- C. If either Party desires to modify any portion of this agreement because of changed conditions making performance impractical or impossible, or due to material change to PSC's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this agreement shall take effect only upon written agreement of the Chairman of PSC and the Civil Rights Director of PHMSA.
- D. This agreement constitutes the entire agreement between PSC and PHMSA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this agreement, except as specifically agreed to by PSC and PHMSA in accordance with the provisions of Section IV. Paragraph C. above.

- E. This agreement does not affect PSC's continuing responsibility to comply with Title VI or other federal non-discrimination laws and DOT's regulations at 49 C.F.R. Part 21, nor does it affect PHMSA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this agreement.
- F. The effective date of this agreement is the date by which both Parties have signed the agreement. This agreement may be signed in counterparts. The Chairman, in his capacity as an official of PSC, has the authority to enter into this agreement for purposes of carrying out the activities listed in these paragraphs. The PHMSA Civil Rights Director has the authority to enter into this agreement.

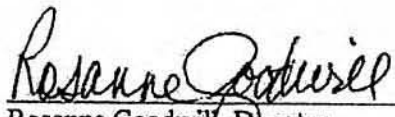
On behalf of the Maryland Public Service Commission



Jason M. Stanek
Chairman

1/28/19
(Date)

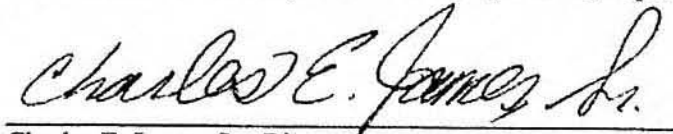
On behalf of the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration,



Rosanne Goodwill, Director
Civil Rights Office

9-27-18
(Date)

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



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

9-27-2018
(Date)

Subpart B

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

I. SPECIFIC MDE COMMITMENTS

A. These commitments apply to a Qualifying Generating Station.

1. MDE will make air quality information publicly available as part of its review of a new CPCN application for any Qualifying Generating Station. The information will include:
 - A summary of the sampling data from MDE's air monitoring station(s) located closest to the site of a proposed electric generating unit.
 - A comparison between the sampling data and the applicable national ambient air quality standards (NAAQS) (40 C.F.R. Part 70).
 - A description of how MDE determines whether the proposed electric generating unit would not cause a violation of any NAAQS for which the State is in attainment and how the proposed project meets applicable Clean Air Act requirements in areas for which the State is not in attainment.
 - A description of any pollution control devices proposed to be installed and how they meet state or federal requirements with respect to controlling emissions of criteria air pollutants.
2. MDE will identify a community resource officer to participate at each CPCN Applicant community educational and outreach meeting associated with the receipt of a new CPCN application for a Qualifying Generating Station. At each community education and outreach meeting, MDE will:
 - provide a description of their regulatory authority;
 - provide a description of the required environmental assessments associated with the CPCN; and
 - provide a description of the environmental permitting requirements associated with the CPCN.
3. MDE's community resource officer will work with Affected Communities to evaluate any "citizen science" monitoring undertaken or proposed to be undertaken by communities or by others on the communities' behalf. MDE will provide a written response to the individual submissions which describe MDE's determinations regarding its information review.

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

B. Training

1. MDE will accept the provision of organization-wide training from EPA on compliance with Title VI and other non-discrimination authorities. Training should be provided within one year of the effectuation of this agreement.
2. MDE will accept the provision of technical assistance from EPA on meaningful public engagement with regard to the CPCN process, including the creation of Public Engagement Plans (PEPs). Training should be provided within one year of the effectuation of this agreement.

C. Non-Discrimination Procedural Safeguards

1. This Agreement recognizes that MDE has an affirmative obligation to not only eliminate discrimination in their organizational processes but to also proactively prevent discrimination, including any that may arise from the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this Agreement, MDE will prominently post its Notice of Non-Discrimination on its website homepage, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDE's programs, processes, or activities), and in MDE's offices.
3. Grievance Procedures: Within three (3) months of the signing of this Agreement, MDE will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDE to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: Within three (3) months of the signing of this Agreement, MDE will designate a non-discrimination coordinator staff position. If necessary, this position can also conduct other duties. MDE will ensure that it has prominently published, in print and online, the identity of the current non-discrimination coordinator, along with his/her email address and telephone contact information.

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

II. GENERAL

- A. In consideration of MDE's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of EPA Complaint Number 29R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDE regarding any of the civil rights obligations previously referenced.
- C. EPA will review and, within 30 days provide feedback, which will include an assessment as to whether documentation submitted to EPA by MDE satisfies the particular commitment for which MDE is making the submittal, to MDE in response to any documentation submitted by MDE demonstrating completion of each commitment (*e.g.*, evidence of publication of the designation of the Non-Discrimination Coordinator).
- D. MDE will report the completion of each commitment identified under Subpart B, Section I consistent with the timeframes set forth in Subpart B, Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within thirty (30) days of the completion by MDE of each commitment.
- E. EPA will monitor the implementation of the commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 29R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Submission of any documents required by Section II. D. of this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDE to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDE shall be sent to Ben Grumbles, Secretary, (or any successor) Maryland Department of the Environment, 1800 Washington Boulevard, Baltimore, MD 21230.

IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDE understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDE understands that during the monitoring of this Agreement, if necessary, EPA may visit MDE, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDE has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7.
- B. MDE understands that EPA will close its monitoring of this Agreement when EPA determines that MDE has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either MDE or EPA desire to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDE's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written consent of the Secretary of MDE and the ECRCO Director of EPA.

- D. This Agreement constitutes the entire Agreement between MDE and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any commitment or term of this Agreement, except as specifically agreed to by MDE and EPA in accordance with the provisions of Subpart B, Section IV, Paragraph C above.
- E. This Agreement does not affect MDE's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement. The Agreement does not affect MDE's right to respond to any such EPA investigation or any defenses to such.
- F. The effective date of this Agreement is the date by which both MDE and EPA have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDE, has the authority to enter into this Agreement for the purpose of carrying out MDE's commitments as set forth in this Agreement. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of the Environment



Ben Grumbles
Secretary

1-21-19
(Date)

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



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

9-27-2018
(Date)

Subpart C

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

I. SPECIFIC COMMITMENTS FROM MDNR

A. Community Outreach and Public Participation

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

B. Non-Discrimination Procedural Safeguards

1. MDNR is committed to eliminate discrimination in its organizational processes and to proactively prevent discrimination, including any that may arise from its role in the CPCN process.
2. Notice of Non-Discrimination: Within three (3) months of the signing of this agreement, MDNR will prominently post its Notice of Non-Discrimination in its offices, on its website homepage, and, to the extent practicable, in general publications that are distributed to the public (e.g., public outreach materials such as brochures, notices, fact sheets, or other information on rights and services, as well as in applications or forms to participate in or access to MDNR's programs, processes, or activities).
3. Grievance Procedures: Within three (3) months of the signing of this agreement, MDNR will prominently publish in print and on-line its grievance procedures to process discrimination complaints filed under federal non-discrimination statutes, and will do so on a continual basis to allow for appropriate, prompt, and impartial handling of those discrimination complaints, which may allow MDNR to resolve issues at the lowest level possible.
4. Designation of Non-Discrimination Coordinator: MDNR has designated and will maintain a designated non-discrimination coordinator. The employee holding this position may also have other job functions and duties. MDNR will ensure that it has prominently published, in print and online, the identity of the

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

5. **Access for Persons with Limited English Proficiency (LEP):** In January 2011, MDNR adopted an internal policy for Access for Persons with Limited English Proficiency. MDNR will review and update the LEP Plan to ensure it continues to provide meaningful access for limited-English proficient individuals to MDNR's programs and activities.
6. **Access for Persons with Disabilities:** MDNR maintains an ADA Transition Plan that is updated every 3 years. MDNR will implement the FY 19-21 ADA Transition Plan to ensure the Department is providing individuals with disabilities the opportunity for meaningful access and opportunity for full participation in MDNR's programs and activities.

II. GENERAL

- A. In consideration of MDNR's implementation of commitments and actions described in Section I of this Agreement, EPA will end its investigation of Complaint Number 30R-16-R3 and not issue a decision containing findings on the merits of the Complaint.
- B. EPA will, upon request, provide technical assistance to MDNR regarding any of the civil rights obligations previously referenced.
- C. EPA will review and provide feedback about any documentation submitted by MDNR demonstrating completion of each and will provide an assessment as to whether the documentation satisfies the commitment.
- D. MDNR will report the completion of each commitment identified under Section I consistent with the timeframes in Section I by certified mail to Lilian Dorka, Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460, within 30 days of the completion by MDNR of each commitment.
- E. MDNR has completed the implementation of commitments I.B.4, I.B.5, and I.B.6. EPA will monitor the implementation of the remaining commitments in this Agreement to ensure they are fully implemented. Once the terms of this Agreement are satisfied, EPA will issue a letter documenting closure of its monitoring actions in Complaint Number 30R-16-R3 and closure of the complaint as of the date of that letter.

III. COMPUTATION OF TIME AND NOTICE

- A. As used in this Agreement, "day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or holiday (State or Federal), the period shall run until the close of business of the next working day.
- B. Service of any documents required by this Agreement shall be made personally, by certified mail with return receipt requested, or by any reliable commercial delivery service that provides written verification of delivery.
- C. Documents submitted by MDNR to EPA shall be sent to Director, EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue N.W., Washington D.C. 20460.
- D. Documents submitted by EPA to MDNR shall be sent to Mark Belton, Secretary, Maryland Department of Natural Resources, Tawes State Office Building, 580 Taylor Ave, Annapolis MD 21401.

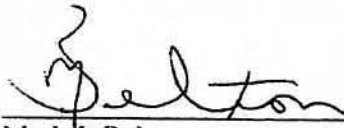
IV. EFFECT OF INFORMAL RESOLUTION AGREEMENT

- A. MDNR understands that by signing this Agreement, it agrees to provide data and other information in a timely manner in accordance with the reporting requirements of this Agreement. Further, MDNR understands that during the monitoring of this Agreement, if necessary, EPA may visit MDNR, interview staff, and request such additional reports or data as necessary for EPA to determine whether MDNR has fulfilled the terms of this Agreement and is in compliance with EPA regulations implementing the federal non-discrimination requirements in 40 C.F.R. Part 7, which were at issue in this case.
- B. MDNR understands that EPA will close its monitoring of this Agreement when EPA determines that MDNR has fully implemented this Agreement and that a failure to satisfy any term in this Agreement may result in EPA re-opening the investigation.
- C. If either Party desires to modify any portion of this Agreement because of changed conditions making performance impractical or impossible, or due to material change to MDNR's program or authorities, or for other good cause, the Party seeking a modification shall promptly notify the other in writing, setting forth the facts and circumstances justifying the proposed modification. Any modification(s) to this Agreement shall take effect only upon written agreement of the Secretary of MDNR and the ECRCO Director of EPA.
- D. This Agreement constitutes the entire Agreement between MDNR and EPA regarding the matters addressed herein, and no other statement, promise, or agreement, made by any other person shall be construed to change any

commitment or term of this Agreement, except as specifically agreed to by MDNR and EPA in accordance with the provisions of Section IV. Paragraph c above.

- E. This Agreement does not affect MDNR's continuing responsibility to comply with Title VI or other federal non-discrimination laws and EPA's regulations at 40 C.F.R. Part 7, including § 7.85, nor does it affect EPA's investigation of any Title VI or other federal civil rights complaints or address any other matter not covered by this Agreement.
- F. The effective date of this Agreement is the date by which both Parties have signed the Agreement. This Agreement may be signed in counterparts. The Secretary, in his capacity as an official of MDNR, has the authority to enter into this Agreement for purposes of carrying out the activities listed in these paragraphs. The Director of ECRCO has the authority to enter into this Agreement.

On behalf of the Maryland Department of Natural Resources



Mark J. Belton,
Secretary

15 January 2019
(Date)

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



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

9-24-2018
(Date)