



OFFICE OF CIVIL RIGHTS AND ADJUDICATION

WASHINGTON, D.C. 20460

December 29, 2025

Bonnie Heiple, Commissioner
Massachusetts Department of Environmental Protection
One Winter Street, Second Floor
Boston, MA 02108
via email: Bonnie.Heiple@mass.gov

Re: Dismissal of Claim 2 and Claim 3 of EPA Complaint No. 02R-22-R1

Dear Commissioner Heiple:

Pursuant to 40 C.F.R. §7.120(d)(2)(i) and 40 C.F.R. §7.120(g), the U.S. Environmental Protection Agency's (EPA), Office of Civil Rights and Adjudication (OCRA), External Civil Rights Division (ECRD) is dismissing Claims 2 (retaliation) and 3 (procedural safeguards) of EPA Complaint No. 02R-22-R1.¹ ECRD will continue to process Claim 1 in accordance with applicable laws.

I. ECRD Authority

ECRD is responsible for enforcing federal civil rights laws that prohibit discrimination on the bases of race, color, national origin, disability, sex, and age in programs or activities that receive financial assistance from EPA. Pursuant to 40 C.F.R. § 7.120(d)(1), ECRD determined that it had jurisdiction over the above-referenced complaint and accepted it for investigation.²

II. Background

On December 5, 2022, ECRD initiated an investigation of the complaint and EPA accepted the following claims for investigation:

1. Whether MassDEP subjects Black and Cape Verdean residents, living nearest to Stockbridge Road Dump to discrimination on the basis of race and national origin, in violation of Title VI of

¹ In August 2025, EPA disestablished the Office of Environmental Justice and External Civil Rights. The Office of External Civil Rights Compliance (OECRC) was subsumed in what is now the Office of Civil Rights and Adjudication (OCRA) and renamed the External Civil Rights Division (ECRD). This letter refers to ECRD even for OECRC actions.

² See 12/5/22 EPA Acceptance letter to MassDEP.

the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R Part 7, by failing to conduct appropriate oversight and site remediation actions;³

2. Whether MassDEP retaliated against Complainants, in violation of Title VI and 40 C.F.R. § 7.100, by intentionally delaying its response to Complainants' records requests pursuant to the Massachusetts Public Records Law and by failing to go onsite and conduct testing on the issues they raised; and
3. Whether MassDEP has in place and is appropriately implementing the procedural safeguards required under 40 C.F.R Parts 5 and 7.

On December 19, 2022, MassDEP's General Counsel informed ECRD that MassDEP agreed to participate in the Informal Resolution Agreement (IRA) process and engage in facilitated dialogue (IRA-Plus) toward the execution of an IRA. On December 30, 2022, ECRD received formal correspondence from former Commissioner Martin Suuberg affirming MassDEP's agreement to initiate the IRA process.⁴

Over the ensuing months, ECRD gathered facts, held three facilitated IRA sessions (March 21, 2024, April 18, 2024, and April 19, 2024), and conducted two information sessions with MassDEP (July 30, 2024 and July 31, 2024). ECRD issues the following conclusions regarding Claim 2 and Claim 3 pursuant to 40 C.F.R. §7.120(d)(2)(i) and 40 C.F.R. §7.120(g).

III. Legal Standards

Federal civil rights laws and EPA's Title VI implementing regulation prohibit recipients from intentionally discriminating in their programs and activities based on race, color, or national origin, disability, sex or age. This is referred to as disparate treatment.⁵ The regulation, at 40 C.F.R. §7.35 (a), states that "a recipient shall not on the basis of race, color, or national origin provide a person any service, aid, or other benefit that is different, or is provided differently from that provided to others under the program or activity."

Intentional discrimination requires a showing that a "challenged action was motivated by an intent to discriminate."⁶ Evidence in a disparate treatment case must generally show that the recipient was not only aware of the complainant's protected status but that the recipient acted, at least in part, because of the complainant's protected status.⁷

³ ECRD revised the statement of issues/claims in this letter to clarify the scope of its investigation consistent with applicable Federal civil rights statutes, regulations, and executive orders.

⁴ On February 22, 2023, EPA informed Complainants and Recipient that it was tolling the 180-day timeframe for issuing Preliminary Findings effective December 30, 2022. See 40 C.F.R. § 7.115(c)(1).

⁵ 40 C.F.R. § 7.35(a); *Alexander v. Choate*, 469 U.S. 287, 292-293 (1985); *Guardians Ass'n. v. Civil Serv. Comm'n.* 463 U.S. 582, 593 (1983).

⁶ *Elston v. Talladega City Bd. of Educ.*, 997 F.2d 1394, 1406 (11th Cir. 1993).

⁷ *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011).

EPA will evaluate the “totality of the relevant facts” to determine whether intentional discrimination has occurred.⁸ EPA will consider direct, circumstantial, and statistical evidence of discriminatory intent to determine whether intentional discrimination has occurred.

MassDEP is a recipient of EPA financial assistance. As such, the statutory prohibitions referenced above prohibiting discrimination based on race, color, or national origin, disability, sex, and age apply to all MassDEP programs and activities.

IV. MassDEP did not retaliate against Complainants.

ECRD does not find that MassDEP delayed its response to Complainants’ records request or failed to go onsite and conduct testing in violation Title VI and 40 C.F.R. §7.100. EPA’s nondiscrimination regulation at 40 C.F.R. § 7.100 provides the following:

No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:

- (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or
- (b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.

Complainants alleged MassDEP engaged in retaliatory conduct by failing to provide a timely response to the public records request sent by the Scituate Concerned Citizens (SCC) on November 1, 2021. ECRD reviewed email correspondence provided by Complainants and noted MassDEP acknowledged receipt of the records request the next day. ECRD also noted SCC paid the fee for the public records request on January 3, 2022.

According to the Massachusetts Public Records Law, the Records Access Officer (RAO) had to furnish the public records no later than ten business days following receipt of the request provided RAO received payment of a reasonable fee.⁹ As such, MassDEP had to respond to SCC’s public records request by January 17, 2022. MassDEP responded on March 8, 2022; 35 business days after the due date.

To investigate the allegation of retaliation, ECRD reviewed thirty-three email chains between MassDEP and Complainants, six public records requests, and one Freedom of Information Act (FOIA) request exchanged between representatives of SCC and MassDEP staff.¹⁰ ECRD noted that SCC made contact with thirteen MassDEP employees regarding their concerns of the SRLF.

ECRD also confirmed that SCC interacted with seven MassDEP employees regarding its November 1, 2021 public records request. ECRD notes that one employee was included in correspondence involving

⁸ *Washington v. Davis*, 426 U.S. 229, 242 (1976).

⁹ G. L. c. 66, § 10(a)(i-iii).

¹⁰ Email chains consisted of approximately one-hundred three emails.

both the public records request and the SRLF. However, the aforesaid employee did not actively engage in any communication with SCC related to their SRLF concerns.

MassDEP acknowledged their response was delayed but provided explanations for the delay. MassDEP stated that the request occurred during office closures and restrictions related to the COVID-19 pandemic. Specifically, MassDEP explained that its staff had limited access to its offices between March 2020 and January 2022 due to the pandemic and was preparing to reopen its offices to staff and the public when it received the public record request.

MassDEP also stated that request was extensive and complex. MassDEP stated that the response required coordination with several offices, including the Boston Office of Diversity and Civil Rights, the MassDEP Southeast Regional Office (SERO) Solid Waste Program, the SERO Wetlands Program, the SERO management team, and consisted of emails from at least fourteen MassDEP staff members.

In addition, MassDEP stated the request was time consuming because some responsive correspondence and documents were privileged, private, or exempt and required redactions. Finally, MassDEP stated that it temporarily lost access to an e-Discovery tool that expedites the electronic documents review process in January 2022.

ECRD did not find any indication that the delay in MassDEP's response to SCC's public records request was retaliatory. The evidence demonstrates that only one of the numerous MassDEP employees was included in correspondence about the public records request and the Complainant's concerns about the SRLF; however, this employee was merely on the email chain regarding the Complainant's SRLF email and did not actively engage in any communication with SCC. ECRD has determined that MassDEP has provided non-discriminatory explanations for its delay in responding to SCC's records request.

Complainants alleged that the Black and Cape Verdean community had been vocal for years about MassDEP's inaction in closing the SRLF, and, thus, MassDEP retaliated by failing to appropriately respond to Complainants' requests to go on site on August 30, 2021 to conduct testing. ECRD reviewed eighty-nine documents submitted by MassDEP consisting of the SRLF Closure plan approval, aerial photographs, a drinking water report, an SRLF inspection report, census block data, landfill inspection notes, complaints, MassDEP's Nondiscrimination Plan, and additional email correspondence between Complainants and MassDEP.

ECRD confirmed that Complainants had raised concerns to MassDEP about noxious odors coming from the SRLF as early as September 25, 2020. ECRD found that MassDEP responded to the Complainants' concerns by conducting a compliance inspection of the SRLF on November 19, 2020, in which it was accompanied by an EPA Region 1 employee, four Town of Scituate (Town) representatives, and two MassDEP staff members.¹¹

On January 7, 2021, MassDEP sent a letter to Complainants, concluding that the historical landfill groundwater data profile was typical of the types of contaminants found in most unlined landfills of

¹¹ November 2020 SRLF Inspection Report

this era. Further, MassDEP detailed what it learned during the SRLF inspection, actions taken, and its planned next steps.¹²

On June 11, 2021, MassDEP arranged a Zoom meeting with Complainants. In that meeting, Complainants and residents of properties abutting the SRLF discussed the impacts of the landfill and expressed interest in showing MassDEP resultant items of concern on their property.

In response, MassDEP agreed to conduct a two-hour site visit with the intention of viewing any concerns on the private properties abutting the SRLF. On August 30, 2021, two MassDEP employees visited Complainant's property in Scituate, MA to conduct the site visit.

During an informational session with ECRD on July 30, 2024, MassDEP stated that it does not itself conduct testing or assessments on landfills but rather has the authority to require landfill owners or operators to carry out such testing when deemed necessary.¹³ MassDEP explained that, following its initial compliance inspection, further testing was warranted and it directed the Town to conduct extensive testing of the SRLF.

During another informational session with ECRD on July 31, 2024, MassDEP stated that during the 2021 site visit, it did not find any evidence that site conditions posed an immediate concern and determined that the landfill cap was intact in most places.¹⁴ MassDEP noted, however, that the historical data and lack of long-term monitoring did not meet the current landfill assessment standards and stated that an additional assessment, including monitoring, was warranted. MassDEP communicated that it would work with the Town to support an additional assessment or corrective actions.

Having reviewed the information, ECRD cannot conclude MassDEP retaliated against Complainant, because there is no evidence MassDEP failed to address Complainant's concern. MassDEP's stated that its actions were aimed to assess whether any conditions existed that could pose a risk to the health, safety, or environment of nearby residents.

Next, Complainants stated that they wanted additional participants to attend the site visit, however, MassDEP explained that the two staff members that conducted the visit were the most familiar with the SRLF and therefore, the most appropriate to carry out the site assessment. The absence of broader staff participation does not, in itself, constitute an adverse action in violation of 40 C.F.R. § 7.100.

Even if it constituted an adverse action, MassDEP has provided a legitimate, nondiscriminatory reason for its decision, *i.e.*, MassDEP sent its two subject matter experts. Complainants have provided no information to suggest this reason is false or that the real reason was to retaliate.

Based on ECRD's review of available information, ECRD finds insufficient evidence to show that an alleged discriminatory act has occurred or is occurring that may violate applicable Federal civil rights

¹² These actions included reviewing Solid Waste files and databases and comparing the concentration of constituents detected in 1988 groundwater samples collected from the monitoring wells near the SRLF to the most current (2019) groundwater cleanup standards promulgated in the Massachusetts Contingency Plan (MCP).

¹³ d'Hedouville, Dan. "MassDEP Presentation EPA Complaint No. 02R-22-R1" (PowerPoint, Virtual, July 30, 2024).

¹⁴ Blackman, Anne. "MassDEP Presentation EPA Complaint No. 02R-22-R1" (PowerPoint, Virtual, July 31, 2024).

statutes or EPA's implementing nondiscrimination regulation with respect to this complaint. The information uncovered does not demonstrate that MassDEP retaliated against Complainants by delaying its response to Complainants' records requests or in handling the onsite visit and testing request. Accordingly, this claim is resolved and ECRD is closing it in accordance with 40 C.F.R. §7.120(g).

V. MassDEP has in place and is appropriately implementing required procedural safeguards.

ECRD reviewed MassDEP's compliance with the requirements of EPA's non-discrimination regulation, which sets forth the foundational elements of a recipient's non-discrimination program.¹⁵ These requirements include the following: providing notice of non-discrimination; adopting grievance procedures that assure the prompt and fair resolution of complaints, which allege a violation of 40 C.F.R. Part 7; and designating at least one person to coordinate MassDEP's efforts to comply with 40 C.F.R. Part 7.

Regarding Notice of Nondiscrimination (Notice), ECRD finds that MassDEP has a Notice posted on the official website of the Commonwealth of Massachusetts through a link titled "MassDEP Notice of Nondiscrimination."¹⁶ In addition, MassDEP reports that it displays the Notice in all MassDEP offices.¹⁷

Regarding grievance procedures, MassDEP's Nondiscrimination & Civil Rights webpage posts a link to its "MassDEP Civil Rights and Nondiscrimination Plan" (Plan). In the Plan, MassDEP includes grievance procedures for complaints filed by individuals against MassDEP.¹⁸

Furthermore, MassDEP has a grievance form linked to the same webpage. The form specifies the requirements for filing a civil rights grievance and identifies the protected bases under which an individual can file such a complaint.

Regarding a Nondiscrimination Coordinator, on the same webpage, MassDEP identifies its Nondiscrimination Coordinator with their contact information.¹⁹ Within its Notice, MassDEP confirms that its Nondiscrimination Coordinator is the appropriate point-of-contact for any inquiries related to the Notice and filing an applicable civil rights complaint.²⁰

MassDEP reported that its Plan details the responsibilities of the Nondiscrimination Coordinator.²¹ The Plan also specifies that its Nondiscrimination Coordinator reviews all discrimination grievances filed with MassDEP under federal and state nondiscrimination laws semiannually.

¹⁵ 40 C.F.R. Part 7, Subpart D.

¹⁶ Massachusetts Department of Environmental Protection. n.d. "MassDEP Notice of Non-Discrimination English." Mass.Gov. Accessed January 23, 2025. <https://www.mass.gov/doc/massdep-notice-of-non-discrimination-english>.

¹⁷ John, Suela. "MassDEP Presentation EPA Complaint No. 02R-22-R1" (PowerPoint, Virtual, July 30, 2024).

¹⁸ MassDEP Civil Rights and Non-Discrimination Plan English, Appendix 5, found at <https://www.mass.gov/doc/massdep-civil-rights-and-non-discrimination-plan-english>.

¹⁹ See <https://www.mass.gov/info-details/massdep-nondiscrimination-civil-rights#notice-of-nondiscrimination>.

²⁰ See <https://www.mass.gov/doc/massdep-notice-of-non-discrimination-english/download>.

²¹ John, Suela. "MassDEP Presentation EPA Complaint No. 02R-22-R1" (PowerPoint, Virtual, July 30, 2024).

Regarding limited English proficiency (LEP), MassDEP's Plan demonstrates that it provides services to individuals with LEP in a manner consistent with applicable Federal civil rights statutes, regulations, and executive orders.

In addition, MassDEP reports that it has translated vital documents, such as its Notice, its Plan, and its Grievance Form. In fact, MassDEP states it provides these documents in more than a dozen languages, including Cape Verdean Creole. *Id.*

Regarding individuals with disabilities, ECRD finds that MassDEP's Notice states that it complies with the state's Public Accommodation Law. Specifically, this law prohibits making any distinction, discrimination, or restriction in admission to, or treatment in place of public accommodation based on any physical or mental disability.²² Regarding public participation policies and processes, MassDEP reported that its policies and processes are consistent with applicable federal civil rights laws and EPA's implementing regulation at 40 C.F.R. Part 7.²³ Specifically, MassDEP reported that it has had internal public participation guidance since September 2020, which it updated on December 30, 2022.²⁴

ECRD has determined that MassDEP satisfies the minimum requirements to fulfill its general nondiscrimination obligations. Based on the foregoing, ECRD has determined that there is insufficient evidence to substantiate a violation of 40 C.F.R. Part 7. Accordingly, this claim is resolved, and ECRD is closing it in accordance with 40 C.F.R. §7.120(g).

In making this finding, EPA makes no determination regarding MassDEP's effective implementation of its nondiscrimination program. For example, ECRD did not review the application of MassDEP's nondiscrimination policies and procedures, such as, their acceptance, investigation, and resolution of an actual complaint pursuant to its nondiscrimination grievance procedures. ECRD's review was limited to determining whether MassDEP policies met MassDEP's minimum legal requirements.

VI. Conclusion

This letter resolves and closes Claim 2 and Claim 3 of the instant complaint. MassDEP remains under a continuing obligation to comply fully with all applicable federal civil rights statutes and regulations.

If you have any questions regarding this decision, please contact Case Manager Charity Johnson at (202) 564-4325 or at johnson.charity@epa.gov.

²² MassDEP may wish to consider developing a public-facing Disability Access Plan for ensuring compliance with Section 504 of the Rehabilitation Act of 1973 and 40 C.F.R. §7.45, which ECRD considers a best practice.

²³ John, Suela. "MassDEP Presentation EPA Complaint No. 02R-22-R1" (PowerPoint, Virtual, July 31, 2024).

²⁴ ECRD notes that MassDEP's public participation plan is not presently available to the public and suggests it consider making it publicly available to support transparency and engagement. MassDEP may wish to consider taking steps to provide members of the public with information needed to understand MassDEP projects, decision processes, and how public input providing feedback influences decisions. See U.S. Environmental Protection Agency, *Public Participation Guide: Tools to Inform the Public* (Washington, DC: GPO, 2025) <https://www.epa.gov/international-cooperation/public-participation-guide-tools-inform-public>.

Sincerely,

A handwritten signature in black ink that reads "Juan Carlos Hunt". The signature is written in a cursive, flowing style.

JuanCarlos M. Hunt, Director
U.S. EPA, Office of Civil Rights and Adjudication

cc: Karen McGuire, Deputy Regional Administrator/Deputy Civil Rights Official
Cindy Lewis, Acting Deputy Regional Counsel
U.S. EPA, Region 1