

DEPARTMENT OF ENVIRONMENTAL PROTECTION

- Letter of Preliminary Determination October 29, 2009
- Agency Response February 5, 2010
- Letter of Final Determination April 12, 2010
- Agency Response May 12, 2009



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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October 29, 2009

Steven W. Lawitts

Acting Commissioner

Department of Environmental Protection

59-17 Junction Boulevard

Flushing, NY 11373-5103

Re: Resolution #09/23-826/Preliminary Determination Pursuant to the Audit of the Department of Environmental Protection (DEP) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2007.

Dear Commissioner Lloyd:

Pursuant to Chapter 36 of the New York City Charter, the Equal Employment Practices Commission (EEPC) is empowered to audit and evaluate the employment practices, programs, policies and procedures of city agencies and their efforts to ensure fair and effective equal employment opportunity for minority group members, and women. (New York City Charter, Chapter 36, sections 831(d)(2) and (5).)

Pursuant to Chapter 35, Section 814(a)(12) of the New York City Charter, the City established the Citywide Equal Employment Opportunity Policy (EEOP), a set of uniform standards and procedures designed to ensure the equality of opportunity for municipal government employees and job applicants, and, consistent with federal, state and local laws, identified other groups for protection from discrimination in employment by city agencies.

The Charter defines city agency as any "city, county, borough or other office, administration, board, department, division, commission, bureau, corporation, authority, or other agency of government, where the majority of the board members of such agency are appointed by the mayor or serve by virtue of being city officers or the expenses of which are paid in whole or in part from the city treasury..."

This letter contains the preliminary determinations of the EEPC pursuant to its audit of compliance by the Department of Environmental Protection (DEP) during the twenty-four month period commencing January 1, 2006 and ending December 31, 2007. Requests for corrective actions and/or recommendations are included where the EEPC has determined that DEP has failed to comply in whole or in part with the City's EEO Policy.

All recommendations for corrective actions are consistent with both the audit's findings and the parameters set forth in the EEO Policy, which, in accordance with section 815 of the City Charter, holds agency heads responsible for the effective implementation of Equal Employment Opportunity. Therefore, the Department of Environmental Protection should incorporate these recommendations in its agency-specific EEO Plan. The relevant sections of the City's EEO Policy are cited in parenthesis at the end of each recommendation. In addition, this Commission is empowered by Section 831 of the City Charter to recommend all necessary and appropriate actions to ensure fair and effective affirmative employment plans for minority group members and women.

The purpose of this audit is to evaluate the agency's compliance with the EEOP, not to issue findings of discrimination pursuant to the New York City Human Rights Law.

Scope and Methodology

Audit methodology included analysis of the DEP's responses to an EEPC Document and Information Request Form. EEPC staff also analyzed Citywide Equal Employment Database System (CEEDS) data prepared by the Department of Citywide Administrative Services (DCAS) which determines underutilizations and concentrations of targeted groups within the agency's workforce. These designations represent imbalances between the number of employees in a particular job category and the number that would reasonably be expected when compared to their availability in the relevant labor market. CEEDS data is critical in identifying underutilization in the city's workforce. Where underutilization is revealed within an agency's workforce, auditors determine whether an agency has undertaken reasonable measures for addressing underutilization.

At present, the CEEDS data requires updating in order for the underutilization analysis to provide an accurate measure of the employment practices of city agencies; the DCAS is currently updating this data. Upon completion, the EEPC will review the data and make supplemental recommendations pursuant to this audit, if necessary.

EEPC auditors also conducted in-depth, on-site interviews with DEP's co-EEO officers, two EEO investigators, three EEO liaisons, and the career counselor.

A survey of 2,500 people employed by the DEP during the audit period was distributed. (This number excludes 53 surveys that were returned as undeliverable.) Seventy-eight people (3%) responded. Survey findings are attached. (Appendix 1)

Description of the Agency

The Department of Environmental Protection (DEP) protects the environmental health, wealth, and natural resources of the City and its residents.

The DEP manages, maintains, and renovates the City's water supply, distribution and wastewater systems, carries out Federal Clean Water Act and Clean Air Act regulations, handles hazardous material emergencies and toxic site remediation, oversees asbestos monitoring and removal, enforces the City's Noise & Air Codes, bills and collects water and sewer charges and manages citywide conservation programs.

Personnel Activity During the Audit Period

According to data provided by the DEP, during the audit period, 1,484 people were hired: 590 Caucasians, 469 African-Americans, 184 Hispanics, 217 Asians, 5 Native Americans, and 19 unknown. Of the individuals hired, 574 were female. 1,242 individuals were promoted during the audit period: 645 Caucasians, 258 African Americans, 142 Hispanics, 178 Asians, 2 Native Americans; and 17 unknown. Of the employees promoted, 437 were female. (Appendix 4)

The DEP reports that 505 full-time employees were involuntarily separated during the audit period: 221 African Americans, 151 Caucasians, 65 Asians, 62 Hispanics, 4 unknown, and 2 Native Americans. Of the employees separated, 254 were female. Between January 2006 and December 2007, the total number of employees increased by 283 from 6,094 to 6,377. The number of African-American employees increased from 1,265 to 1,362, Hispanic employees increased from 645 to 706, and Asian employees increased from 696 to 771. Female employees increased from 1,574 to 1,641. (Appendices 2 and 3)

Discrimination Complaint Activity During the Audit Period

During the audit period, 111 internal discrimination complaints were filed. The EEO Officer completed and issued reports for 94 of these complaints, in which 23 received a probable cause determination, 31 received a no probable cause determination, 33 were administratively closed, six were withdrawn, and one was resolved. Seventeen of the 111 complaints are pending. Of the complaints that received probable cause and no probable cause determinations, 14 were based on race, 14 were based on sexual harassment, 4 were based on national origin, 4 were based on retaliation, 1 was based on disability, 1 was based on gender, 1 was based on religion, 1 was based on marital status, 1 was based on sexual orientation, and 13 had multiple bases. Twenty-five external complaints were filed against the DEP during the audit period, however 14 of these complaints were dually filed with the EEOC, the SDHR or the CCHR, which would bring the total number of complaints filed to 39. Of these complaints, two received a probable cause determination, 10 were dismissed, 7 were administratively dismissed, and 20 are still pending. Two complaints were based on sexual harassment, four were based on disability, 3 were based on race, 2 were based on gender, and 28 had multiple bases.

PRELIMINARY DETERMINATION

Following are our preliminary determinations with required corrective actions and recommendations pursuant to the audit.

Plan Dissemination – Internally

The DEP is in compliance with the following requirements:

1. The Citywide EEO Policy, EEO Policy statement, EEO Policy Handbook and addendums were distributed to all new and current employees on September 5, 2006 and January 24, 2007. The citywide EEO policy, EEO policy statement, and EEO policy handbook is distributed annually with paychecks and during EEO training sessions. The policies are also included in the DEP's new hire handbook which is given to all employees during orientation.
2. The Citywide EEO Policy, EEO policy statement, and EEO policy handbook is posted on the agency's intranet and bulletin boards at each DEP location. The EEO liaisons continually check and maintain the boards to ensure the EEO information is clearly posted and current.

Plan Dissemination – Externally

The DEP is in compliance with the following requirement:

All five city-wide job vacancy notices (Assistant Commissioner of Engineering, Assistant Commissioner of Program Management and Support, Customer Service Representative, Staff Attorney, and Expense/Budgeting Analyst) submitted by the agency indicate that the DEP is an equal opportunity employer. Five job advertisements (Director of Environmental Remediation, Digital Media Production Manager, Executive Director, Deputy Agency Compliance Officer, and Attorney) that the DEP listed in the NY Times, NY Law Journal, and on careerbuilder.com indicate that the City of New York is an equal opportunity employer.

EEO and Reasonable Accommodation for Persons with Disabilities

The DEP is in compliance with the following requirements:

1. The DEP participates in the Section 55-A program. There are currently twenty-nine Section 55-A program participants.
2. The DEP's EEO training sessions include a section on the 55-A program.
3. The DEP has formally appointed a disability rights coordinator to handle reasonable accommodation requests. There were 21 reasonable accommodation requests made during the audit period.

4. The DEP has the EEO policy statement and the citywide EEO Policy Handbook in an alternate format for persons with disabilities. The EEO Officer is aware that the policies are available in alternate formats from DCAS.

The DEP is in partial compliance with the following requirement:

The DEP's response to the EEPC's accessibility for persons with disabilities checklist indicates that its office headquarters at 59-17 Junction Blvd, which is privately-owned, is accessible to, and useable by, persons with disabilities. There is a street accessible entrance, wheelchair accessible elevators, Braille and a bell in elevators, wide restroom stalls, grab bars, low sink and fixtures in the bathrooms. In addition to its headquarters, the DEP has 86 other facilities; 57 of them not accessible to persons with disabilities. A large number of these facilities are water and sewer repair facilities, trailers, and machine shops.

Recommendation: The DEP should determine whether it is readily achievable to make at least one and not less than five percent of their workstations at the remaining facilities accessible to and usable by employees and applicants for employment with disabilities, to be in compliance with the ADA and Local Law 58. (29 C.F.R. §1630.2 (o) (2), Local Law 58 §27-292.10(a)(3))

Discrimination Complaint and Investigation Procedures

The DEP is in compliance with the following requirements:

1. The EEO officers maintain and update a monthly log of discrimination complaints filed against the agency. During the audit period, 111 internal discrimination complaints were filed.
2. The DEP's EEO officers and EEO investigators have attended the basic training course for EEO professionals conducted by the Department of Citywide Administrative Services (DCAS).
3. The DEP appointed two EEO representatives who are not of the same gender (female EEO officer and male EEO investigator) to receive and investigate discrimination complaints.

The following section refers to the ten latest internal discrimination complaint files (74071, 72071, 77071, 75071, 73071, 69071, 63071, 65071, 62071, and 78071) submitted by the DEP.

The DEP is not in compliance with the following requirements:

1. Five of the ten complaint files provided to the EEPC were missing discrimination complaint intake forms. Corrective action is required.

Recommendation: All complaint files should contain a complaint intake form. (DCPIG, Sect. 12(b))

2. Three of the ten complaint files were missing a written notice of discrimination complaint to the respondent. Corrective action is required.

Recommendation: A written notice of discrimination complaint should be sent notifying the respondent of the complaint filed. (DCPIG, Sect. 12(b))

3. Four of the ten complaint files did not contain a confidential written report with the agency head signature. Corrective action is required.

Recommendation: At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines. (DCPIG, sect. 12b)

Recommendation: The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. Such sign off may be in written or electronic form. (Sect. VB, EEOP and DCPIG, sect. 12b)

4. One of the ten complaint files does not contain investigation interview notes. Corrective action is required.

Recommendation: It is the Commission's position that all relevant complaint files should include word processed notes of the discrimination investigation interviews.

5. Two of the ten complaints that took longer than 90 days to investigate, do not contain a delay notification letter. Corrective action is required.

Recommendation: In the event that a complaint investigation takes longer than 90 days to complete, the complainant should be notified in writing of the delay. (DCPIG, 4/2/96 Amendment)

6. Two of the ten complaint files do not contain a written notice to the complainant/respondent regarding the determination. Corrective action is required.

Recommendation: A written notice should be sent to the complainant and respondent regarding the determination of the complaint investigation. (DCPIG, Sect. 12(b))

EEO Training

The DEP is in compliance with the following requirement:

The DEP has a plan to train all employees annually. Each fiscal year, the DEP incorporates the EEO training plan in its agency EEO plan. The DEP provides EEO training and new employee EEO training on an ongoing basis. In 2006, a total of 1,564 employees were trained: 147 managers, 557 supervisors, 685 line employees, and 175 new employees. In 2007, a total of 1,418 employees were trained: 12 managers, 245 supervisors, 701 line

employees, and 460 new employees. The training topics were based on the training standards outlined in the Citywide EEO Policy and DCAS' training curriculum.

Selection and Recruitment

The DEP is in compliance with the following requirements:

1. The agency provided Structured Interview training to employees who are involved in employment interviewing.
2. The EEO officers are involved in developing recruitment strategies and selecting recruitment media.
3. In an effort to enhance recruitment, during the audit period, the DEP attended several recruitment fairs at colleges and universities including Baruch College, Cooper Union, City College of New York, Pace University, York College, Manhattan College, New York Maritime College, and Polytechnic College NYU Wagner School of Public Affairs, and Columbia University. The DEP also attended the Trade Show & Professional Women in Construction Job fair, the Government Services Career fair, the Fleet Week Job Education & Information Fair, and the Senator Kevin Parker Community Job fair.

The DEP is not in compliance with the following requirement:

The agency did not conduct adverse impact studies during or after the audit period. During the audit, the EEO officer informed EEPC auditors that she is working on conducting adverse impact studies. Corrective action required.

Recommendation: Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group, the DEP should conduct an adverse impact study. In cases where adverse impact is determined, the DEP should evaluate the validity and relevancy of its selection criteria and develop strategies to eliminate such impact. The DEP can use, and may modify, the DCAS/DCEEO's online internet based Disparate Impact Analysis application for this purpose. (Section IV, EEOP).

Promotional Opportunities

The DEP is in compliance with the following requirements:

1. The agency's managerial performance evaluation form contains a rating for EEO.
2. The DEP formally appointed a career counselor. An agency-wide memo notifying employees of the name and telephone number of the counselor was distributed.

Supervisory Responsibility in EEO Plan Implementation

The DEP is in compliance with the following requirement:

Managers and supervisors were instructed to discuss the department's EEO policies with their subordinates during normal staff meetings. Documentation of these meetings is maintained.

EEO Officer Reporting Arrangement

The DEP is in compliance with the following requirements:

1. The EEO officer reports to the agency head and meets with her on EEO matters. Documentation of these meetings is maintained.
2. The EEO officer meets with the EEO professionals periodically to review their work and keep them abreast of EEO developments. Documentation of these meetings are maintained.
3. The DEP submitted its EEO plans and quarterly reports to the EEPC for the period in review.

EEO Officer Responsibilities

The DEP is in compliance with the following requirement:

The EEO officer spends 100% of her time on EEO.

Special Problems/Contingencies

During the audit interviewing stage, the EEPC auditors were informed that the DEP's EEO office does not have adequate staff and resources to meet its obligations. At the end of the audit period, the DEP had 6,377 employees and an EEO staff of 21: EEO officer, Deputy EEO officer, three EEO investigators and 16 EEO Bureau Liaisons. Currently, there are 26 EEO professionals: EEO officer, Deputy EEO officer, two EEO investigators and 22 EEO Bureau Liaisons. The EEO professionals suggested that additional resources be provided to strengthen the DEP's EEO program and that the DEP hire additional EEO investigators and a staff attorney to deal exclusively with EEO matters. Corrective action is required.

Recommendation: It is the Commission's position that the DEP appoint additional EEO professionals and acquire additional resources as a means to strengthen the EEO program and to meet the DEP's EEO office obligations.

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. The DEP should determine whether it is readily achievable to make at least one and not less than five percent of their workstations at the remaining facilities accessible to and usable by employees and applicants for employment with disabilities, to be in compliance with the ADA and Local Law 58. (29 C.F.R. §1630.2 (o) (2), Local Law 58 §27-292.10(a)(3))
2. All complaint files should contain a complaint intake form. (DCPIG, Sect. 12(b))
3. A written notice of discrimination complaint should be sent notifying the respondent of the complaint filed. (DCPIG, Sect. 12(b))
4. At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines. (DCPIG, sect. 12b)
5. The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. Such sign off may be in written or electronic form. (Sect, VB, EEOP and DCPIG, sect. 12b)
6. All relevant complaint files should include word processed notes of the discrimination investigation interviews.
7. In the event that a complaint investigation takes longer than 90 days to complete, the complainant should be notified in writing of the delay. (DCPIG, 4/2/96 Amendment)
8. A written notice should be sent to the complainant and respondent regarding the determination of the complaint investigation. (DCPIG, Sect. 12(b))
9. Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group, the DEP should conduct an adverse impact study. In cases where adverse impact is determined, the DEP should evaluate the validity and relevancy of its selection criteria and develop strategies to eliminate such impact. The DEP can use, and may modify, the DCAS/DCEEO's online internet based Disparate Impact Analysis application for this purpose. (Section IV, EEOP)
10. It is the Commission's position that the DEP appoint additional EEO professionals and acquire additional resources as a means to strengthen the EEO program and to meet the DEP's EEO office obligations.

In addition to the above recommendations, during the compliance process, the Commission requires that the agency head distribute a memorandum to all staff informing them of the changes that are being implemented in the agency's EEO program pursuant to the audit.

This memorandum should re-emphasize the agency head's commitment to the agency's Equal Employment Opportunity Program.

Audit Exit Meeting

At the audit exit meeting held on October 22, 2009 and attended by the DEP's Acting Commissioner Steven W. Lawitts, Director of EEO Martha Osenni, Deputy Commissioner Zoe Ann Campbell, the EEPC's Commissioner Malini Cadambi Daniel, Executive Director Abraham May, Jr., Deputy Director Charise Hendricks, Auditor/Compliance Officer Adrienne Smith, and EEO Auditor Alex Salta, the DEP presented a response to our draft Preliminary Determination which contained a summary of the actions taken to ensure compliance with the audit recommendations. The DEP made one factual correction to the draft. We informed the DEP staff that the documentation they provided will be accepted as addenda to their formal response to the Preliminary Determination.

Conclusion

Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of the DEP's compliance with its Equal Employment Opportunity Policy, and EEO standards expressed in the Citywide EEO Policy, we respectfully request your response to the aforementioned preliminary determinations.

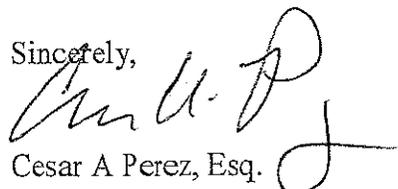
Your response should indicate what corrective actions your office will take to bring the agency in compliance with the aforementioned policies and which recommendations it intends to follow. Please forward your response within thirty days of receipt of this letter.

Pursuant to Section 832 of the New York City Charter, as amended in 1999, if you do not implement all of these recommendations for corrective actions during a compliance period not to exceed six months, this Commission may publish a report and recommend to the Mayor the appropriate corrective actions that you should implement in your agency's EEO Plan.

In closing, we want to thank you and your staff for the cooperation extended to the Equal Employment Practices Commission's auditors during the course of this audit. We thank the DEP for its diligence in preparing its response and commend its dedication to addressing the requirements of the City's Equal Employment Opportunity Policy.

If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,



Cesar A Perez, Esq.
Chair

APPENDIX - 1

Department of Environmental Protection
EMPLOYEE SURVEY RESULTS

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
Yes (46) No (32)
2. Is your agency's EEO Policy Statement posted on your agency's bulletin boards?
Yes (52) No (26)
3. Were you given the EEO Policy Statement?
Yes (53) No (11) Do not remember (14)
4. Were you given a copy of the EEO Policy Handbook – *About EEO: What You Need to Know*?
Yes (55) No (23)
5. Do you agree with the principles of equal employment opportunity?
Yes (69) No (9)
6. Do you believe your agency practices equal employment opportunity?
Yes (61) No (17)
7. Do you know what the City's Equal Employment Opportunity Policy (EEOP) is?
Yes (59) No (19)
8. Has your supervisor emphasized his/her commitment to the agency's EEO policies at any staff meeting during the past 8 months?
Yes (53) No (13) Do not remember (12)
9. When you started working at your agency, did you attend an orientation session?
If No, please skip to question #11.
Yes (46) No (21) Do not remember (11)
10. If hired within the past 12 months, did your orientation session include information on your rights and responsibilities under the EEO Policy?
Yes (8) No (1) Do not remember (11)

B. EEO COMPLAINTS

11. Do you know how to file an EEO complaint?
Yes (49) No (29)
12. If you had an EEO complaint, would you bring it to your agency's EEO Office?
Yes (43) No (15) Undecided (20)

DEP SURVEY RESULTS CONTINUED

13. Would you prefer to file an EEO complaint with an office outside your agency?
Yes (19) No (36) Undecided (23)

14. Did you ever file an EEO complaint with your agency's EEO Office?
If No, please skip to question #18.
Yes (5) No (73)

15. What was the basis of the complaint?
Age (0) Partnership Status (0)
Alienage or Citizen Status (0) Predisposing genetic characteristic (0)
Arrest or Conviction Record (0) Race (0)
Color (0) Sexual Harassment (0)
Creed (0) Sexual Orientation (0)
Disability (1) Veteran's Status (0)
Gender (incl. gender identity) (1) Victim of Domestic Violence,
Marital Status (0) Stalking, and Sex Offenses (0)
Military Status (0) Other (3)
National Origin (0)

16. Were you satisfied with the manner in which your complaint was managed?
Yes (2) No (3)

17. Was your manager or supervisor supportive of your right to file a complaint?
Yes (0) No (2) Not Applicable (3)

C. EEO TRAINING

18. Did you receive EEO training? If No, please skip to question #20.
Yes (60) No (18)

19. Did you find this training helpful?
Very (23) Somewhat (22)
Not really (15) Waste of time (10)

D. JOB PERFORMANCE/ADVANCEMENT

20. Did you see your agency's job postings on agency bulletin boards for vacant positions prior to the application deadline?
Yes (51) No (14) Do not remember (13)

21. If you were employed at your agency for over one year, did you receive annual evaluations?
If No, skip to question #24.
Yes (53) No (5) Not employed for >1 year (20)

22. Did your evaluation contain recommendations for improving your job performance?
Yes (19) No (34)

DEP SURVEY RESULTS CONTINUED

23. Did your evaluation contain recommendations for career advancement with your agency?

Yes (9) No (44)

24. Do you know the name of the person in your agency who is responsible for providing career counseling?

Yes (11) No (67)

E. AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

25. Are your agency's facilities accessible for persons with disabilities?

Yes (69) No (2) Don't Know (7)

26. Did you ever ask for an accommodation for a physical or mental disability?

If No, skip to question #28.

Yes (2) No (76)

27. Did the agency accommodate you?

Yes (1) No (1)

OPTIONAL

28. What is your race/ethnicity?

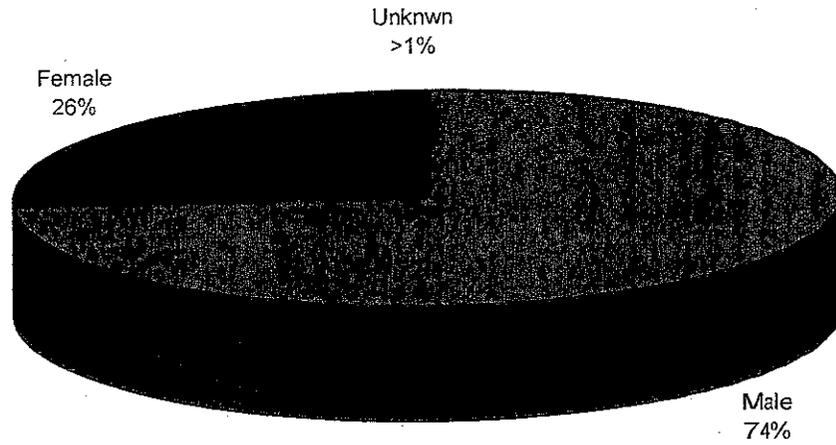
Asian (8)	Native American (0)
Black (6)	White (41)
Hispanic (6)	Other (6)

29. What is your gender?

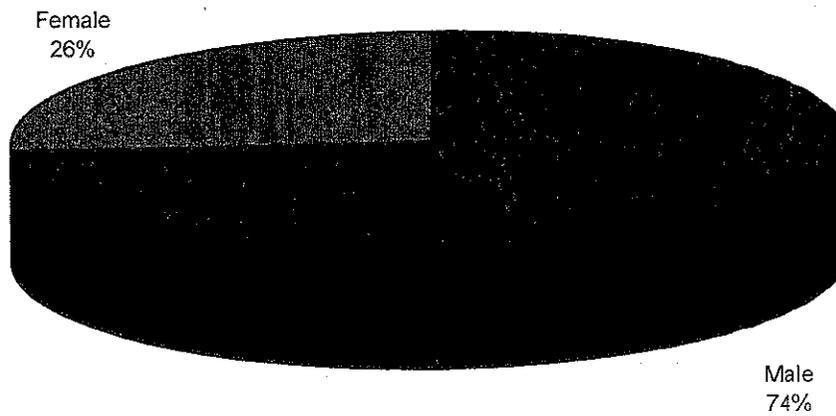
Male (49) Female (19)

Appendix - 2

Department of Environmental Protection Workforce by Gender



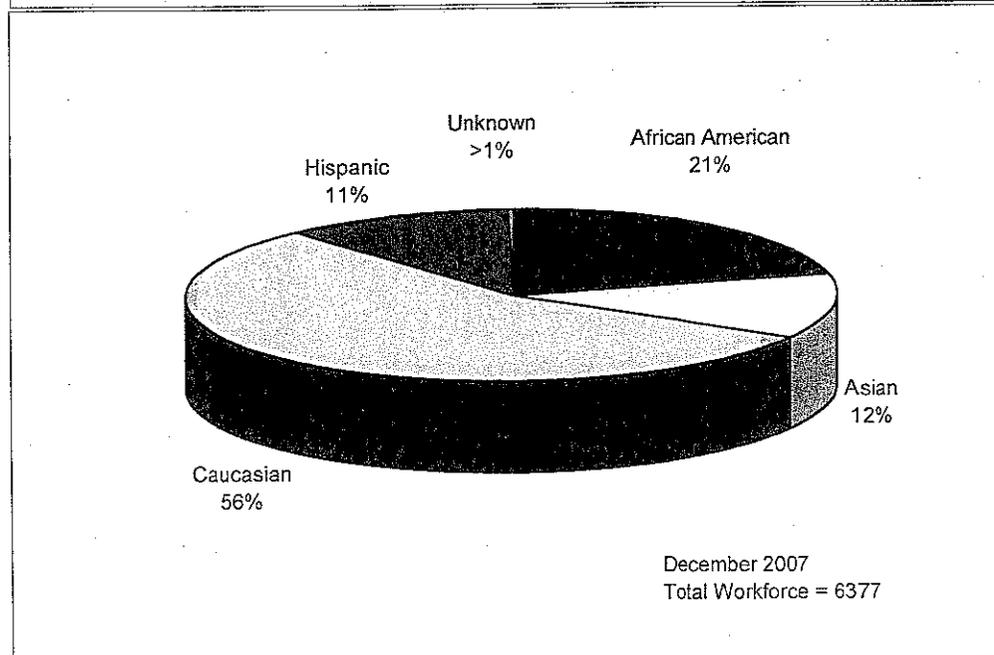
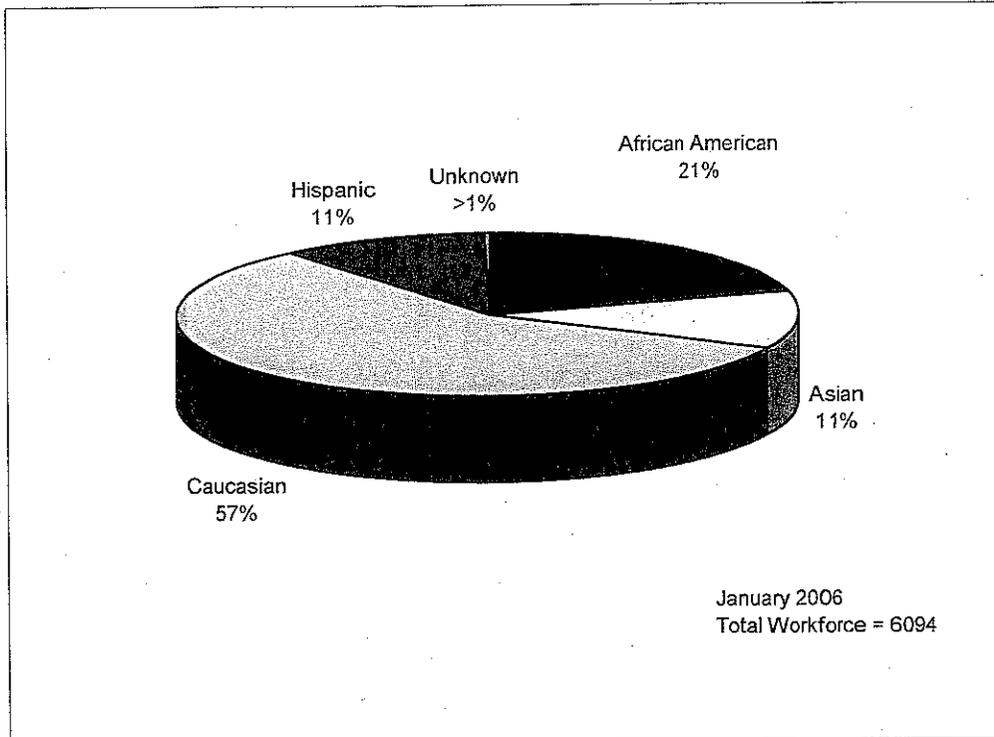
January 2006
Total Workforce = 6094



December 2007
Total Workforce = 6377

Appendix - 3

Department of Environmental Protection Workforce by Ethnicity



APPENDIX – 4

The following table indicates personnel activity during the audit period, January 1, 2006 through December 31, 2007

Department of Environmental Protection

Hires by Gender and Ethnicity

Total Hires: 1,242

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American	Unknown/Other	Total
805	437	1,242	645	258	142	178	2	17	1,242

Promotions by Sex and Ethnicity

Total Promotions: 1,484

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American	Unknown/Other	Total
910	574	1,484	590	469	184	217	5	19	1,484

Source: Audit data supplied by the DEP



CONFIDENTIAL AND PRIVILEGED

Mr. Abraham May, Jr.
Executive Director
Equal Employment Practices Commission
40 Rector Street, 14th Floor
New York, NY 10006

10187

February 5, 2010

Caswell F. Holloway
Commissioner
cholloway@dep.nyc.gov

(718) 595-6565 tel
(718) 595-3525 fax

Dear Mr. May:

The DEP is, in receipt of the EEPC's Final Determination pursuant to the recent audit of the DEP's EEO Office for the time period of January 1, 2006 to December 31, 2007.

Enclosed, please find this Agency's response to the EEPC's final determination and recommendations including initiatives taken by the DEP to ensure compliance with the City's EEO Policy which were submitted on October 22, 2009. The attached report addresses corrective actions to the EEPC's recommendations.

Martha Osenni, EEO Officer, will continue to provide you with updated information in addressing these areas of compliance as required.

Thank you for your attention.

Best regards,

A handwritten signature in black ink, appearing to read 'Caswell F. Holloway', written over a printed name.

Caswell F. Holloway

cc: L. Cole
M. Osenni
File

EEPC AUDIT RESPONSE
RECOMMENDED CORRECTIVE ACTION

1. The DEP should determine whether it is readily achievable to make at least one and not less than five percent of their workstations at the remaining facilities accessible to and usable by employees and applicants for employment with disabilities, to be in compliance with the ADA and Local Law 58. (29 CFR §1630.2 (o) (2), Local Law 58 §27-292.10(a) (3))

As previously stated in the DEP's response to the EEPC's Preliminary Determination, the DEP's EEO Office is currently partnering with this Agency's Facilities Management and Construction Services (FMCS) unit in an effort to identify and resolve issues surrounding accessibility by individual's with disabilities. During the summer of 2009 the EEO Office, in conjunction with FMCS, visited several facilities under the purview of the Bureau of Water & Sewer Operations. It was agreed that the facilities of this Bureau would be the pilot group as they represent the greatest number of field locations with the most diverse populations. These locations were inspected for EEO and ADA compliance but also considering potential Environmental Health and Safety and public access issues. Gender specific concerns were also considered and noted were the lack of equal and adequate facilities (rest rooms, locker rooms) for both genders. Following these inspections, a report was generated by FMCS and provided to the Bureau of Water & Sewer Operations with recommendations of necessary modifications to ensure EEO, ADA, and EHS compliance. FMCS has revealed that it is still awaiting submission by the Bureau of work orders for these recommended changes. When these work orders are received and processed, work can begin to make necessary changes. Following this, the EEO Office will again partner with FMCS and conduct inspections of facilities under the purview of the Bureau of Wastewater Treatment which similarly has several field locations in all five boroughs.

DEP has addressed the EEPC's recommendations as demonstrated in the attached spreadsheets. To highlight the proactive stance being taken by this Agency to address these concerns, I would like to bring to your attention a new initiative currently being implemented. It was brought to the attention of this Agency that individuals who utilize the services of Access-a-Ride are often required to wait for their rides extended periods of time. The time spent waiting may be extended depending upon weather and traffic conditions. Without adequate space in the lobbies to provide seating for these individuals the DEP, in conjunction with Lefrak Building Management, has devised a plan to allow those waiting for Access-a-Ride to wait in the cafeteria seating area. A telephone with two lines providing outside access has also been provided. Employees have been made aware of this via a memorandum issued under Acting Commissioner Lawitts' signature providing this information and telephone numbers for these telephones. (copy attached) Individuals without access to mobile telephones may use these telephones to contact their Access-a-Ride drivers and are permitted to provide these telephone numbers to the drivers so that they may advise the respective passengers of their arrival. This should minimize the amount of time individuals with disabilities are required to spend waiting without appropriate seating inside the buildings.

2. All complaint files should contain a complaint intake form (DCPIG, Sect. 12 (b))

The EEO Office has prepared Discrimination Complaint Intake forms for the five (5) complaints indicated as lacking this document by the EEPC and have made the notation that the intake was received verbally. Four of the notices of complaint have now been submitted to the respondents (Complaint # 73071, 65071, 63071). In one complaint (Complaint #77071) a respondent was not identified.

As often occurs, the EEO Office receives complaints verbally. While it is the EEO Office's usual practice to request that a Complainant put their concerns in writing either by completing the intake form or in another form, as Complainants have at times expressed their reluctance to put their concerns in writing, the intake notes in these matters have been used to serve this purpose. Similarly, in cases where the Complainant is unable to put their concerns in writing or which are received as anonymous complaints, the EEO Office would not require a Complainant to complete an intake form.

The EEO Office has provided an electronic copy of the Complaint of Discrimination intake form to all investigators to be completed when a written or verbal complaint is filed. This form continues to be provided to Complainants to complete when filing internal complaints of discrimination. If the Complainant is unwilling or unable to complete this form, an EEO professional will do so in their stead. Complaint intake forms have been prepared for all complaints presented to the EEPC for this audit. In the case of verbal or anonymous complaints, the Complaint of Discrimination intake form will be prepared utilizing the information provided by the Complainant to the best of the EEO Office's ability. The EEO Office will continue to prepare the complaint of discrimination form in these instances when one has not been submitted.

- 3. A written notice of discrimination complaint should be sent notifying the respondent of the complaint filed. (DCPIG, Sect. 12 (b))**

The EEO Office has prepared written notices of discrimination complaints for the three (3) complaints (# 73071, 65071, 63071) indicated as lacking this document by the EEPC. In one case (#73071), the Respondent was issued an Advisory Memorandum. Lack of service of this Notice of Complaint was an oversight. A notice of complaint was not issued in one complaint as no respondents were identified. This matter was regarding a security concern and a respondent could not be identified by the complainant.

Notices of Discrimination will be issued in all instances, save those with no named respondent or those filed against contract employees; or at the request of the Complainant when expressing concerns for retaliation.

- 4. At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines (DCPIG, Sect. 12 (b))**

At the conclusion of an investigation, the EEO Office prepares a letter of determination to the Complainant and Respondent in a complaint of discrimination. Within this document the EEO Office provides extensive information regarding allegations made; information revealed during the course of the investigation including information provided by the Complainant, the Respondent and any witnesses; our determination into these findings and any recommendations to address the matter and/or to prevent the recurrence of any action deemed to be in violation of the City's and Agency's EEO policies. This information is provided in the Letter of Determinations issued by this office.

In addition, the EEO Officer conducted a meeting with EEO staff and Bureau EEO Liaisons on October 8, 2009 regarding these procedures reiterating the requirements set forth in this process. A memorandum memorializing these procedures was issued to EEO staff and Liaisons on October 21, 2009.

5. The Agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. Such sign off may be in written or electronic form. (Sect, VB, EEOP, and DCPIG, sect. 12b)

Confidential written reports for the Agency head's signature have been prepared for four (4) complaints and not two (2) complaints as originally indicated in the EEPC's Preliminary Determination. Complaints #77071, #74071, #63071, #65071 were found to be lacking this document which has since been prepared and submitted to the Commissioner. As a general practice the EEO Office provides the Agency head with a copy of the proposed letter of determination to be issued to the Complainant and Respondent, and in specific cases also to the Bureau Deputy Commissioner, Managers, and/or Supervisors. Along with this letter of determination is included a Determination Report which indicates the EEO Office's findings (Probable Cause; No Probable Cause; Withdrawn; Administratively Closed) and any recommendations to address the matter at hand. Such recommendations may include additional training; reassignment; or forwarding to the Office of Disciplinary Counsel or the Department of Investigation to address as deemed appropriate. Similarly, the EEO Office also presents Advisory and/or Warning Memoranda to the Commissioner for review and approval which, in certain cases, has served as determination to the respondent. The Commissioner then indicates by affixing his signature that he is in agreement with the EEO Office's findings and recommendations. This report also allows the Commissioner to make further recommendations including his request that the EEO Office proceed in a different manner if necessary. The EEO Officer meets regularly with the Commissioner to discuss EEO case activity and strategies for resolution of these matters.

6. All relevant complaint files should include word processed notes of the discrimination investigation interviews.

The EEO Office has acquired two (2) new laptop computers on February 14, 2008. Whenever possible these laptops are used to take notes during investigations to more easily facilitate the transcription process. The EEO Office is in the process of acquiring two additional laptops computers for this purpose. Also, the EEO Office has received approval to purchase voice recognition software to assist in the transcription of handwritten intake notes. The EEO Office has been advised that following a delivery error, they can now expect delivery of these items in approximately six to eight weeks. (Attachment #2e)

One complaint of discrimination was presented to the EEO Office on three separate occasions. It was originally received as an internal complaint (Complaint # 30071) then again as an Anonymous complaint (Complaint # 72074) and finally as an external complaint of discrimination (Complaint # 67075 / 85). In addressing the external complaint of discrimination, the notes and information gathered previously were inadvertently removed from the Complaint #72074 and included within the external complaint. The EEO Office is in the process of transcribing these notes for inclusion in all relevant files. It is worth noting that the anonymous complaint was forwarded to the attention of the EEO Office by the New York State Division of Human Rights. Information including narratives from respondents was gathered and it was determined that this case was directly related to the original internal complaint and subsequent external complaint, both of which were found to have No Probable Cause.

7. In the event that a complaint investigation takes longer than 90 days to complete, the complainant should be notified in writing of the delay.

Our records demonstrate that of the ten complaints provided to the EEPC, only one exceeded the 90 day time frame by five (5) days. This complaint (Complaint #72074) came from an anonymous source. As such, the EEO Office was unable to issue a delay notification letter as there was no Complainant to which it would have been issued.

The EEO Office has instituted a 90-Day Notice of Delay tracking system and has designated a staff member to be responsible for the creation and dissemination of the Notices of Delay. When the EEO Office receives a complaint of discrimination, it is logged into the EEO Office's tracking system and tickled for 90 working days in the future. When this date is approaching, the designated staff member creates a Notice of Delay for this complaint and the respective EEO professional investigating said complaint will sign it so that it may be issued. The EEO Office will take aggressive measures to ensure compliance with the 90 day requirement.

8. A written notice should be sent to the complainant and respondent regarding the determination of the complaint investigation. (DCPIG, Sect. 12 (b))

In two cases, (Complaint #72074 and Complaint #78071) letters of determination were not prepared as one came from an anonymous source and as such the EEO Office did not have a Complainant to which this would be issued. The second case (Complaint # 78071) was brought to the attention of the EEO Office by a former Bureau EEO Liaison. In this case, which involved the transmission of inappropriate emails using Agency resources, the individual who reported this matter to the Liaison did not wish to file a formal complaint but rather brought it to the attention of the liaison to prevent the misperception that he was generating and disseminating this type of email. In that matter, the email in question appeared to have been forwarded both to and from several individuals both in and outside of the Agency, some of whom served in supervisory capacities. As such it was determined that there may be multiple respondents in this case. In consideration of this, it was deemed more appropriate to bring this matter to the attention of the Office of Disciplinary Counsel; the Office of Information Technology; General Counsel; the Deputy Commissioner for Human Resources and Administration; and the Deputy Commissioner for the Bureau of Customer Services which is the Bureau which employs the majority of those who forwarded this email. By doing so, the Customer Services Bureau head could then address the entire bureau on appropriate use of email and Agency resources. In addition the Agency General Counsel also issued an Agency wide email regarding appropriate use of agency email.

In cases that have been administratively closed and forwarded to another authority to be addressed and for which a "Report to File" has been created indicating such, a letter of determination explaining the circumstances surrounding the referral of the matter to another authority will be prepared and will be disseminated to all concerned parties in all future complaints.

9. The DEP should further expand its recruitment efforts by developing a list of additional recruitment resources geared toward these groups. The DEP should use this list for subsequent recruitment efforts in these job groups until underutilization is eliminated. (Sect. IV, EEOP)

Recruitment efforts will be given top priority in 2010. The EEO Office will continue to collaborate with Human Resources in expanding our efforts to include both local and nationwide searches,

where appropriate, at engineering/architectural colleges and universities as well as the continuance of internal recruitment efforts. In addition to web based recruitment outreach, growth and development of our employees is critical to our mission and the Agency will be incorporating an Intern Program in its recruitment plan. The DEP will implement a pilot program establishing a partnership with a local engineering/architectural college with the intent of developing employees for future management roles. This office will work with DEP's Human Resources office in the identification of an appropriate engineering/architectural college to aid in this effort.

10. Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group, the DEP should conduct an adverse impact study. In cases where adverse impact is determined, the DEP should evaluate the validity and relevancy of its selection criteria and develop strategies to eliminate such impact. The DEP can use, and may modify, the DCAS/DCEEO's online internet based Disparate Impact Analysis application for this purpose. (Section IV, EEOP)

The EEO Office has identified an initial group with which they will begin to conduct an adverse impact study. This group, the Environmental Police Force, consists of 186 individuals serving in the titles of Environmental Police Officer (EPO I), Sergeant (EPO II), and Lieutenant (EPO III). The force is comprised of 177 males and 9 females. Of these 186 officers, 153 are Caucasian (147 male; 6 female); 14 are African American (12 male; 2 female); 17 Hispanic (16 male; 1 female); 1 Asian (male); and 1 Unknown (male). In addition to these titles, there are four (4) additional individuals serving in management positions: two Captains (male white), one Inspector (male white), and one Acting Chief of Department (male white). The Environmental Police Force is under the purview of the newly appointed Deputy Commissioner for the Bureau of Security (white male).

In preparation for this Adverse Impact study, the EEO Office has audited the civil service hiring pools for the Police Academy; been included in promotional interviews for the rank of Sergeant (EPO II) having been provided with interview questions prior to the interviews to ensure their relevancy and appropriateness; and monitored the interviews and physical agility testing for assignment to specialized divisions including the Special Operations, Strategic Patrol, and the Detective divisions. In addition, the EEO Office is notified when command discipline has been recommended to ensure consistency with past practices in these matters. The EEO Office is also incorporated into the Police Academy curriculum providing EEO training to new recruits before graduation from the Academy. Workforce analysis, disparities, and recommendations will be discussed with the Commissioner and members of Human Resources.

EEO Training

In addition to the mandated EEO training sessions already conducted by the EEO Office, the DEP has instituted a DCAS initiated Computer Based Training (CBT) program to further meet its EEO training obligations. This program was launched in May 2009 with 409 individuals serving in Managerial positions completing this training. Subsequently, beginning in October 2009 an additional 1,280 individuals serving in Supervisory positions completed EEO computer based training. A total of 1,689 individuals completed this computer based training module. An additional 125 line and new employees received EEO training via a live presentation in a traditional classroom setting. This brings the Agency's EEO training total to 1,814.

SPECIAL PROBLEMS / CONTINGENCIES

The Commission has stated its position that the DEP appoint additional EEO professionals and acquire additional resources as a means to strengthen the EEO program and meet the DEP EEO Office's obligations. The DEP has appointed Ayana Brooks as Agency Attorney II within the Bureau of Legal Affairs. Ms. Brooks commenced her employment with the DEP on November 3, 2009. Ms. Brooks reports to General Counsel Robin Levine and is responsible for the investigation fact finding in preparation of position statements in response to external complaints of discrimination and EEO based lawsuits. Ms. Brooks will participate in hearings, settlement negotiations, mediations, and the like.

INITIATIVES

In addition to the measures being taken as indicated above, the DEP's EEO Office is in the process of taking further steps to increase the visibility and awareness of its office and its staff members. Such measures include the acquisition of jackets to be worn during field visits and during the conducting of investigations. These jackets will be embroidered with the DEP logo and the words "Equal Employment Opportunity" across the left chest and back of the garment. In addition, the word "Investigator" will also be stitched on the left chest, save that of Martha Osenni's whose jacket will have the word "Director" instead. In addition, the EEO Office has taken the initiative to have an EEO section created on "Pipeline", the Agency's intranet system. Contained within this section will be information regarding EEO policies, including reasonable accommodations, as well as contact information for EEO staff members and Bureau Liaisons, and the necessary forms. This will enable employees who require the assistance of the EEO Office to have faster, easier access to necessary information. Further, the EEO Office is included in the Agency's Diversity Committee. This committee promotes diversity awareness by creating and disseminating information regarding different ethnic, racial, and national origin groups in keeping with the monthly celebration of various ethnicities. Such information includes biographies of prominent members of the current month's highlighted background; film presentations during lunch hours; musical recitals, and similar events. This awareness is bolstered by the EEO Office's seasonal newsletter entitled "Views". In addition to information regarding the diversity committee's activities, the newsletter includes policy information, including any changes in employment laws and newly created protected categories, as well as contact information for EEO personnel; the Agency's 19 Bureau Liaisons; the 55a Coordinator; Reasonable Accommodation Coordinator; and the Agency's Career Counselor.

Supporting documentation for the corrective actions as indicated above are provided as addenda to this report and can be found following this document.

I am optimistic that the DEP's EEO Office will continue to address, or put into place mechanisms to address areas in need of continued corrective action.



EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York

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April 12, 2010

Caswell F. Holloway
Commissioner
Department of Environmental Protection
59-17 Junction Boulevard
Flushing, NY 11373-5103

Re: Resolution #09/23-826/Final Determination Pursuant to the Audit of the Department of Environmental Protection (DEP) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2007.

Dear Commissioner Holloway:

Thank you for your February 5, 2010 response to our November 2, 2009 Letter of Preliminary Determination pursuant to the audit of the Department of Environmental Protection's Equal Employment Opportunity Program from January 1, 2006 through December 31, 2007. I apologize for not responding sooner.

After reviewing your response, our Final Determination is as follows:

Agree

We agree with your responses to the following EEPD recommendations, pending documentation that can be attached to your reply or provided during the compliance period:

Recommendation #1

The DEP should determine whether it is readily achievable to make at least one and not less than five percent of their workstations at the remaining facilities accessible to and usable by employees and applicants for employment with disabilities, to be in compliance with the ADA and Local Law 58. (29 C.F.R. §1630.2 (o) (2), Local Law 58 §27-292.10(a)(3))

Recommendation #2

All complaint files should contain a complaint intake form. (DCPIG, Sect. 12(b))

Recommendation #3

A written notice of discrimination complaint should be sent notifying the respondent of the complaint filed. (DCPIG, Sect. 12(b))

Recommendation #4

At the conclusion of a discrimination complaint investigation, the EEO professional should prepare a confidential written report in accordance with the Discrimination Complaint Procedure Implementation Guidelines. (DCPIG, sect. 12b)

Recommendation #5

The agency head should sign each confidential report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. Such sign off may be in written or electronic form. (Sect, VB, EEOP and DCPIG, sect. 12b)

Recommendation #6

All relevant complaint files should include word processed notes of the discrimination investigation interviews.

Recommendation #7

In the event that a complaint investigation takes longer than 90 days to complete, the complainant should be notified in writing of the delay. (DCPIG, 4/2/96 Amendment)

Recommendation #8

A written notice should be sent to the complainant and respondent regarding the determination of the complaint investigation. (DCPIG, Sect. 12(b))

Recommendation #9

Since the EEOP requires that city agencies assess the manner in which candidates are selected for employment to determine whether there is any adverse impact upon any particular racial, ethnic, disability, or gender group, the DEP should conduct an adverse impact study. In cases where adverse impact is determined, the DEP should evaluate the validity and relevancy if its selection criteria and develop strategies to eliminate such impact. The DEP can use, and may modify, the DCAS/DCEEO's online internet based Disparate Impact Analysis application for this purpose. (Section IV, EEOP)

Requires Clarification

For the following reasons, hereafter identified as EEPC Rational, we request clarification of your response to the following recommendations, which can be addressed in your response or during the compliance period:

Special Problems/Contingencies (our Recommendation #10)

It is the Commission's position that the DEP appoint additional EEO professionals and acquire additional resources as a means to strengthen the EEO program and to meet the DEP's EEO office obligations.

Your Response:

The Commission has stated its position that the DEP appoint additional EEO professionals and acquire additional resources as a means to strengthen the EEO program and meet the DEP EEO Office's obligations. The DEP has appointed Ayana Brooks as Agency Attorney II within the Bureau of Legal Affairs. Ms. Brooks commenced her employment with the DEP on November 3, 2009. Ms. Brooks reports to General Counsel Robin Levine and is responsible for the investigation fact finding in preparation of position statements in response to external complaints of discrimination and EEO based lawsuits. Ms. Brooks will participate in hearings, settlement negotiations, mediations, and the like.

EEPC Rationale

It is unclear how the Agency Attorney appointment will strengthen the EEO program and help the DEP's EEO Office to meet its obligations.

Conclusion

Your response number 9 does not address any of the recommended corrective actions listed in our Preliminary Determination dated October 29, 2009; however, we acknowledge your concern for addressing the agency's recruitment efforts to prevent and/or address any underutilization in your agency's job groups. Because the CEEDS data is currently being updated, we anticipate reviewing the updated data during the compliance period to determine if underutilization is present in the agency's job groups.

Pursuant to section 832 of the New York City Charter, this Commission will initiate an audit compliance procedure not to exceed six months. However, you may respond to the aforementioned determinations prior to the initiation of audit compliance.

If you choose to issue a written response, please do so within thirty days. If you choose not to issue a written response, we will initiate audit compliance shortly thereafter. EEPC Counsel/Compliance Director Judith Garcia Quiñonez will contact your EEO Officer in seven days to ascertain your intentions.

In closing, we want to thank you and your staff for your cooperation during the audit process. We look forward to a mutually satisfactory compliance process.

Sincerely,


Abraham May, Jr.
Executive Director

c: Martha Osenni, EEO Officer, DEP
Judith Garcia Quiñonez, Agency Counsel/Compliance Director, EEPC
Adrienne Smith, EEO Auditor/Compliance Officer, EEPC



10339

May 12, 2010

Mr. Abraham May, Jr.
Executive Director
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Caswell F. Holloway
Commissioner
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Re: Resolution #09/23-826/Final Determination Pursuant to the Audit of the Department of Environmental Protection (DEP)

Dear Mr. May:

DEP would like to offer the following clarification to Recommendation #10, as requested in your Final Determination correspondence dated April 12, 2010:

Before the appointment of the Agency Attorney II, the preparation of position statements in response to external complaints of discrimination, and their associated fact finding investigations, were handled by the EEO Office. The elimination of this responsibility permits this office to address backlogs, be more responsive to internal complaints, and other matters directly related to the EEO Office's obligations.

We would also like to offer the following addition to our Response #9:

DEP will conduct adverse impact studies to determine whether selection procedures create adverse impact on any particular groups. If areas of adverse impact are found, the selection criteria for those areas or job titles will be examined, and recommendations will be made for modifications and implementation strategies.

We thank you for the opportunity to present this additional information, and would like to assure you of our continued cooperation during the compliance process.

Sincerely,

Caswell F. Holloway

- c: Judith Garcia Quinonez, EEPC, Agency Counsel/Compliance Director
- Adrienne Smith, EEPC, EEO Auditor/Compliance Officer
- Martha Osenni, EEO Officer