DEPARTMENT OF SANITATION

• Letter of Preliminary Determination	August 27, 2009
• Agency Response	October 2, 2009
• Letter of Final Determination	November 23, 2009
• Agency Response	January 14, 2010

EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York
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August 27, 2009

John J. Doherty
Commissioner
Department of Sanitation
125 Worth Street
New York, NY 10013

Re: Preliminary Determination Pursuant to the Audit of the Department of Sanitation (DSNY) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2007.

Dear Commissioner Doherty:

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 news, 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 EEPC pursuant to its audit of compliance by the Department of Sanitation (DSNY) 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 the DSNY has failed to comply in whole or in part with the City's EEO Policy.

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 an analysis of the DSNY's Agency Specific Plan (FY 2006), quarterly EEO reports, and responses to an EEPC Document and Information Request Form. The EEPC staff also analyzed Citywide Equal Employment Database System (CEEDS) data by which the DCAS determines underutilizations and concentrations of targeted groups within the workforce. These designations represent imbalances between the number of employees in a particular job group and the number that would reasonably be expected when compared to their availability in the relevant labor market. Where CEEDS data revealed underutilizations within the DSNY workforce, the auditors determined whether the agency had undertaken reasonable measures to correct those underutilizations. (Appendix 5)

The EEPC auditors also conducted in-depth, on-site interviews with the DSNY's EEO director, deputy EEO director/investigator, five EEO counselors and the career counselor.

A survey was distributed to 2,500 people employed by the DSNY during the audit period. (This number excludes 167 surveys that were returned as undeliverable.) One hundred eighty-five people (7.9%) responded. The survey data are attached. (Appendix 1)

Description of the Agency

The Department of Sanitation collects and manages solid waste; clears the streets of litter, snow, and ice; clears debris from vacant lots; tagging and removing derelict vehicles; repairing equipment and enforcing Health and Administrative Code provisions concerning illegal dumping; maintenance, the proper disposal of asbestos and medical waste and the proper operation of solid waste transfer stations. To carry out its waste management function, the Department's responsibilities include recycling, waste reduction, and the operation of waste disposal facilities.

Personnel Activity During the Audit Period

During the audit period, 1,563 people were hired: 722 Caucasians, 453 African-Americans, 300 Hispanics, 62 Asians, 19 Native Americans, and 7 "Unknown." Of the individuals hired, 193 were female. Two hundred eighty-seven individuals were promoted during the audit period: 204 Caucasians, 36 African-Americans, 43 Hispanics, and 4 Asians. Of the employees promoted, 6 were female. (Appendix 4)

Two thousand, six hundred, and thirteen full-time employees were involuntarily separated during the audit period: 1,232 Caucasians, 495 African-Americans, 478 Hispanics, 382 Asians, 8 Native Americans, and 18 "Unknown." Two hundred and one of those individuals were female.

Between January 1, 2006 and December 31, 2007, the total number of the DSNY employees decreased by 1.4%, from 9,664 to 9,531. There were small percentage decreases for Hispanics (17% to 16%) and Asians (3% to 2%). There was also a small percentage decrease for females (9% to 8%). (Appendices 2 and 3)

Discrimination Complaint Activity During the Audit Period

During the period in review, 34 internal discrimination complaints were filed: 8 were based on gender, 2 were based on sex, 2 were based on national origin, 1 was based on religion, 1 was based on race, 1 was based on retaliation, 1 was based on age, and 1 was based on military status. The other 13 internal discrimination complaints were based on multiple categories. One complaint was withdrawn, 2 were conciliated and 1 accommodation was granted. The EEO director completed and issued reports for 33 of these complaints, which received 5 probable cause determinations and 25 no probable cause determination. There was no complaint pending at the end of the audit period.

Twenty-two external complaints were filed during the audit period: 5 were based on disability, 4 were based on race, 2 were based on retaliation, 1 was based on age, and 1 was based on national origin. The other 9 external discrimination complaints were based on multiple categories. One of the complaints filed received a probable cause determination and 12 received a no probable cause determination. One of the complaints was withdrawn; and the 8 remaining complaints, filed with multiple agencies (Equal Employment Opportunity Commission, State Division on Human Rights, and/or City Commission on Human Rights), were pending at the end of the audit period.

PRELIMINARY DETERMINATION

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

Plan Dissemination – Internally

The DSNY is in compliance with the following requirements:

1. The DSNY has issued an EEO Policy memorandum along with a modified version of the EEO Policy Handbook: *What You May Not Know/ What You Need To Know* to staff. Included in the handbook is information on how to obtain the Citywide EEO Policy via the DCAS website. The EEO policies were last distributed on January 15, 2008. The EEO policies were also distributed in 2006 and 2007. The policies are distributed at specific orientation sessions, EEO training sessions, presentations, and discussions. All new employees are advised of the Citywide EEO Policies via the new-hire package.

2. The DSNY has posted electronic and hardcopy revisions of the Citywide EEO Policy, Commissioner's memorandum on EEO and the EEO Policy Handbook. According to the agency's EEO counselors and 75% of the employees surveyed, the DSNY's EEO Policy

memorandum is posted on agency bulletin boards. The EEO professionals continually checks and maintains boards to ensure the EEO information is clearly posted and current.

3. The DSNY's EEO policies are available in alternate formats (large print and audio cassette) for use by applicants and employees with disabilities.

Plan Dissemination – Externally

The DSNY is in compliance with the following requirement:

The six internal job vacancy notices submitted by the DSNY to the EEPC (Agency Attorney, Computer Associate, Certified IT Administrator (LAN), Maintenance Worker, Plumber, and Electrician) and the five newspaper advertisements (Sanitation Enforcement Agent, Agency Attorney I, Administrative Manager II (Deputy Director), Supervisor of Electrical Installations and Maintenance –Level II, and Senior Programmer/Analyst – Computer Systems Manager) contain the EEO tag line.

Affirmative Action and Reasonable Accommodation for Persons with Disabilities

The DSNY is in compliance with the following requirements:

1. In accordance with the reasonable accommodations procedure of the City's EEO Policy the DSNY has provided accommodations for employees with disabilities. The agency provided two examples of such accommodations.

2. The DSNY participates in the Section 55-A Program. The EEO office monitors all efforts the agency has made to employ, promote, or accommodate individuals with disabilities. Currently, 8 employees participate in the program.

3. The DSNY's EEO director is also the agency's disability rights coordinator.

EEO Complaint and Investigation System

The DSNY is in compliance with the following requirements:

1. The EEO director receives and investigates discrimination complaints in conformance with the EEOP's model complaint and investigation procedures and implementation guidelines issued by the DCAS.

2. The EEO director maintains a monthly log of discrimination complaints filed against the agency. A copy of a completed monthly log was provided.

3. The EEO director and the agency head conduct monthly reviews of all EEO complaints; action has been taken as a result of the agency head's review.

4. The general counsel informs the EEO office when external EEO complaints or litigation have been brought against the agency. The EEO director stated, "While the DSNY EEO office

receives a copy of the externally filed EEO complaint, interviews witnesses and gathers documentation concerning the complaint, the DSNY EEO works very closely with and is advised by the Department's Bureau of Legal Affairs and General Counsel in drafting and formulating the Department's written response to all external complaints. The DSNY Deputy Commissioner for Legal Affairs signs off on every external response."

5. The DSNY has individuals not of the same gender available for complaint intake and investigation.

6. The EEO director, deputy director, and investigator have completed the basic training course for EEO professionals at the Department of Citywide Administrative Services/ Office of Citywide Equal Employment Opportunity (DCAS/OCEEO). In addition, the EEO director and deputy director have attended seminars concerning employment discrimination sponsored by the Equal Employment Opportunity Commission, the Institute for Applied Management and Law, Inc., Lorman Education Service, Cornell University ILR School, and Proskauer/Rose Law Firm.

The DSNY is in partial compliance with the following requirement:

The agency does not specifically identify its EEO counselors' names, locations and numbers in the EEO Policy memorandum.

Recommendation: The DSNY should specifically identify its EEO staff including the counselors' names, locations and numbers in the EEO Policy memorandum or distribute the list separately. (Jyll Townes email *Distribution of EEO Policy*, March 2, 2005)

The DSNY is not in compliance with the following requirements:

The DSNY submitted 10 internal discrimination complaint files to the EEPC for review. Two of the complaints filed were anonymous.

1. Even though nine of the ten internal complaint files submitted (#07-013, #07-014, #07-016, #07-017, #07-018, #07-021, #07-024, #07-025, #07-027, and #07-028) contain a "Complaint Tracking Form," none of the files contain a Discrimination Complaint Intake Form or an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form. Corrective action is required.

Recommendation: All discrimination complaint files should include a Discrimination Complaint Form or an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sect. 12(b))

2. Six of the 10 internal complaint files submitted (#07-013, #07-016, #07-017, #07-021, #07-024, #07-025, and #07-027) do not include a written notice of discrimination complaint to the respondent. Corrective action is required.

Recommendation: All respondents should be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must

acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))

3. Three of the 10 internal complaint files submitted (#07-017, #07-021, and #07-027) did not contain any notes of interviews conducted with the complainant, respondent or witness. Corrective action is required.

Recommendation: It is the Commission's position that complaint files should contain clear and thorough word-processed notes of interviews conducted with the complainant, respondent or witnesses.

4. One of the 10 internal complaint files submitted (#07-021) was not closed within 90 days of the date on which the complaint was filed. Corrective action is required.

Recommendation: Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint. In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation. (DCAS, DCPIG, Amendment of April 2, 1996)

5. Four of the 10 internal complaint files submitted (#07-013, #07-017, #07-027, and #07-028) contained "Confidential Written Reports" that were not signed by the agency head. Corrective action is required.

Recommendation: The agency head should sign each EEO investigator's confidential written report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, 1993, Sect. 12(b))

6. Two of the 10 internal complaint files submitted (#07-013 and #07-027) did not contain written notice to the complainant and respondent regarding the determination.

Recommendation: All parties to internal discrimination complaints should be notified in writing of the agency's determination. (DCPIG, sect. 12b)

7. None of the reports were labeled "confidential."

Recommendation: All internal investigative reports should be labeled "confidential" in large bold print.

EEO Training

The DSNY is in compliance with the following requirement:

The DSNY has developed a plan to train all new and existing employees on EEO. The plan is based on the DCAS standards and includes a component on sexual harassment prevention. It also encompasses issues such as ADA, reasonable accommodation, domestic violence and

sexual offenses, gender identity, mediation, recent EEO developments, and rights of Work Experience Program participants. During the audit period approximately 2,000 employees received EEO training. Training is on-going. The EEO director submitted sign-in sheets of all employees who participated.

The Director of Management Training conducts EEO training for staff. This individual's qualifications include over 20 years training and work experience. Prior to joining the DSNY, he conducted EEO training in the private sector. Since joining the DSNY in 1985 he has been involved in planning and conducting EEO training for the various units of the Department covering both uniformed and civilian employees. He holds a certificate in EEO Studies from Cornell University School of Labor Relations. In 2004-2005 he was assigned to the EEO office as the Executive Director of EEO Training and Development.

The DSNY's annual/fourth quarter reports indicated that the agency trained a total of 1,228 (13%) employees in FY 2006, and a total of 776 (8%) employees in FY 2007 (first three quarters only). In addition, 50% of the employees surveyed indicated they had received EEO training.

Underutilization

The DSNY's CEEDS data indicated underutilization of at least four "protected" classes in 9 of the 22 job groups, and persistent underutilization in 8 job groups. (See Appendix 5 for underutilizations at the beginning and end of the audit period.)

Following is an analysis of personnel activity in these categories.

EEO Job Groups / Hires and Promotions:

Managers (002): African-Americans and females were underutilized in this category throughout the audit period. Hispanics were underutilized in this category during the fourth quarter of FY 2007. Fifteen individuals were hired into this category: 5 Caucasians, 2 African-Americans, 7 Asians, and 1 "Unknown"; 1 of those were a female. Sixty-two individuals were promoted to or within this category: 54 Caucasians, 3 African-Americans, 4 Hispanics, and 1 Asian; 3 of those were female.

Health Professionals (005): Native-Americans were underutilized in this category throughout the audit period. No individuals were hired into this category and none were promoted to or within this category.

Lawyers (008): Hispanics were underutilized in this category throughout the audit period. Six individuals were hired into this category: 6 Caucasians; 2 of those were female. No individuals were promoted to or within this category.

Clerical Supervisors (012): African-Americans and Hispanics were underutilized in this category throughout the audit period. No individuals were hired into this category and none were promoted to or within this category.

Personal Services (023): Females were underutilized in this category throughout the audit period. Seventeen individuals were hired into this category: 4 Caucasians, 6 African-Americans, and 7 Hispanics; 6 of those were female. No individuals were promoted to or within this category.

Craft (025): African-Americans and females were underutilized in this category throughout the audit period. One hundred and fifty-three individuals were hired into this category: 87 Caucasians, 26 African-Americans, 23 Hispanics, and 12 Asians, 5 "Unknown; 1 of those was a female. No individuals were promoted to or within this category.

Operators (026): Hispanics and females were underutilized in this category throughout the audit period. One Caucasian was hired into this category. No individuals were promoted to or within this category.

Labor (028): African-Americans and females were underutilized in this category throughout the audit period. No individuals were hired into this category and none were promoted to or within this category.

Paraprofessionals (031): Females were underutilized in this category during the second through fourth quarters of FY 2007. Thirteen individuals were hired into this category: 6 Caucasians, 5 African-Americans, and 3 Hispanics. No Asians or females were hired. One employee was promoted to or within this category: 1 African-American. No Hispanics, Asians or females were promoted.

Addressing Underutilization

The DSNY is in compliance with the following requirement:

> The EEO director reviews the agency's CEEDS quarterly reports to determine if women and/or minorities are underrepresented in particular job groups. He stated that the DSNY has conducted extensive recruitment campaigns to attract those candidates in underrepresented groups. In June 2007 it spent over $150,000 to run advertisements in local newspapers including several minority oriented publications. The ads contained photos of a mixed workforce of various ethnic backgrounds. In addition, radio ads were done, posters on the DSNY trucks and applications were distributed to various venues throughout the city, such as local DSNY garages, libraries, and community centers as well as being available on the DSNY website.

The DSNY is in partial compliance with the following requirement:

> The DSNY placed several advertisements during the audit period. Although it provided a list of recruitment resources, the list is not comprehensive [it included only a few female and minority organizations]. Corrective action is required.

Recommendation: Since females, African-Americans, and Hispanics were underutilized in several job categories, the DSNY should further expand its recruitment efforts by utilizing

female-oriented publications, agencies, or organizations in future job advertisements where underutilization of these protected classes exists. (Sect. IV, EEOP)

Selection and Recruitment

The DSNY is in compliance with the following requirements:

1. The DSNY utilizes a discretionary applicant form, which contains no illegal pre-employment inquiries under the EEO laws.

2. The DSNY provided structured interview training for its hiring personnel.

3. The DSNY's utilizes the adverse impact software program recommended by the DCAS to conduct adverse impact studies. As a result of an assessment of the Sanitation Worker position, the job requirements for the test was revised (it no longer requires the applicant to scale walls).

4. The EEO director and his deputy are involved in developing recruitment strategies and selecting recruitment media. The DSNY has done major recruitment for the Sanitation Worker position.

Promotional Opportunities

The DSNY is in compliance with the following requirements:

1. The DSNY utilizes the citywide managerial performance evaluation form, which includes a rating for EEO.

2. The DSNY has appointed an individual familiar with civil service and provisional jobs to serve as career counselor. Employees are aware of his function through the annual EEO memorandum from the Commissioner. On average, the career counselor handles one career counseling request every two weeks. Corrective action is required.

The DSNY is in partial compliance with the following requirements:

Although the sub-managerial performance evaluation form submitted to the EEPC contain the language "All employees have the opportunity to advance their career paths through open competitive or promotional examinations. Information regarding civil service examinations is available from an employee's supervisor, the DSNY's Human Resources Bureau, the DSNY career counselor, and the DCAS," the form does not specifically have a section for supervisor's recommendations for improving job performance or career advancement. Corrective action is required.

Recommendation: The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and career advancement. (Sect. IV, EEOP)

Supervisory Responsibility in EEO Plan Implementation

The DSNY is not in compliance with the following requirement:

Managers and supervisors have not been directed to conduct meetings with staff, at least twice a year, to reaffirm their commitment to the Citywide EEOP and discuss the right of employees to file discrimination complaints with the EEO office. The deputy EEO director told EEPC auditors that it is difficult to have meetings with its uniform staff. Corrective action is required.

Recommendation: It is the position of the DCAS ("Model Agency EEO Commitment Memo," http://extranet.dcas.nycnet/eep/pdf/model_memo.pdf) and the EEPC that at least twice a year during normal staff meetings, managers and supervisors should emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office.

EEO Officer Reporting Arrangement

The DSNY is in compliance with the following requirement:

The organization chart submitted to the EEPC shows a reporting relationship between the EEO officer and the agency head. The EEO director reports directly to the agency head on EEO matters.

The DSNY is in partial compliance with the following requirement:

Although the EEO director meets with the agency head on a weekly basis, there is no formal agenda and/or notes of those meetings. Corrective action is required.

Recommendation: Appropriate documentation of meetings and other communications between the EEO officer and the agency head regarding EEO decisions should be maintained.

EEO Officer Responsibilities

The DSNY is in compliance with the following requirement:

The DSNY's EEO director spends 100% of his time on EEO matters.

Reporting Standards

The DSNY is in partial compliance with the following requirement:

The agency submitted its agency specific plan (ASP), three quarterly reports and its annual report to the EEPC for FY 2006. However, it did not submit its ASP or its annual report for FY 2007; it only submitted three quarterly reports. The City Charter requires each agency head to file copies of its annual EEO plan each fiscal year with the Mayor, the City Council, the EEPC and the City Civil Service Commission. In addition, each agency head is also required to

submit quarterly to the Mayor, City Council, DCAS and the EEPC reports on the agency's efforts during the previous quarter to implement the agency plan. Corrective action is required.

Recommendation: The agency head should submit an agency specific plan, quarterly reports including annual fourth quarter final report to the appropriate agencies. (Sect(s). IV & VB, EEOP)

Special Contingencies

1. The DSNY has completed its own survey of its facilities and submitted an accessibility checklist for all five lower Manhattan administrative locations (125 Worth Street, 7th & 8th floors; 346 Broadway, 10th floor; 137 Centre Street, 1st thru 6th floors; 51 Chambers, 8th & 11th floors; and 44 Beaver Street) and its 59 sanitation districts throughout the five boroughs. Within each of those districts are the DSNY garages, marine transfer stations, lot cleaning headquarters, and a central repair shop in Queens.

The results of the survey show that all of the administrative locations have a street accessible entrance with the exception of 137 Centre Street, a DCAS building. The 137 Centre Street location also does not have ramp access. All buildings have wheelchair accessible elevators; most have bell indicators and Braille in elevators. The restrooms in these buildings with the exception of 44 Beaver Street have not been updated. The restrooms do *not* have wide stalls, grab bars or low sinks.

The facilities house large trucks and heavy equipment, primarily for their purposes, there is street access and ramp access. However, very few of the field locations have wheelchair accessible elevators and handicap-friendly restroom facilities.

In addition, the EEO director informed the EEPC auditors that while *current* construction (about six new DSNY field locations) of the department's facilities is compliant with ADA accessibility requirements, the majority of the older city buildings and work sites used by the DSNY are non-compliant. The DSNY is evaluating how updates and renovations to those areas can make facilities more accessible for people with disabilities. Corrective action is required.

Recommendation: The DSNY should provide the EEPC with a copy of the results of its evaluation. (Sect. VC, EEOP)

2. The EEO director informed the EEPC auditors that its department had EEO counselors (approximately 24) during the audit period. Each of the Borough Offices has two designated EEO counselors who have been trained in what constitutes an issue of discrimination and works closely with the EEO Office if a situation is reported to them. However, due to conflict of interest and confidentiality issues with the EEO counselors and their respective managers/ supervisors, the EEO office has decided to phase out the EEO Counselor Program. Approximately half of the EEO counselors are currently performing EEO counselor duties. In addition, the four EEO counselors interviewed by the EEPC auditors have only received the DSNY internal EEO training. Corrective action is required.

Recommendation: Given the size of the agency and its responsibility to ensure EEO for more than 10,000 employees, the agency head should direct the EEO director to strengthen the EEO counselor component of its EEO program. This should include appropriate EEO training for counselors/ investigators via the DCEEO or other institution approved by the DCEEO (Sect. VB, Citywide EEO Policy)

SUMMARY OF RECOMMENDED CORRECTIVE ACTIONS

1. The DSNY should specifically identify its EEO staff including the counselors' names, locations and numbers in the EEO Policy memorandum or distribute the list separately. (Jyll Townes email *Distribution of EEO Policy*, March 2, 2005)

2. All discrimination complaint files should include a Discrimination Complaint Form or an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sect. 12(b))

3. All respondents should be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))

4. It is the Commission's position that complaint files should contain clear and thorough word-processed notes of interviews conducted with the complainant, respondent or witnesses.

5. Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint. In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation. (DCAS, DCPIG, Amendment of April 2, 1996)

6. The agency head should sign each EEO investigator's confidential written report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, 1993, Sect. 12(b))

7. All parties to internal discrimination complaints should be notified in writing of the agency's determination. (DCPIG, sect. 12b)

8. All internal investigative reports should be labeled "confidential" in large bold print.

9. Since females, African-Americans, and Hispanics were underutilized in several job categories, the DSNY should further expand its recruitment efforts by utilizing female-oriented publications, agencies, or organizations in future job advertisements where underutilization of these protected classes exists. (Sect. IV, EEOP)

10. The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and career advancement. (Sect. IV, EEOP)

11. It is the position of the DCAS ("Model Agency EEO Commitment Memo," http://extranet.dcas.nycnet/eep/pdf/model_memo.pdf) and the EEPC that at least twice a year during normal staff meetings, managers and supervisors should emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office.

12. Appropriate documentation of meetings and other communications between the EEO officer and the agency head regarding EEO decisions should be maintained.

13. The agency head should submit an agency specific plan, quarterly reports including annual fourth quarter final report to the appropriate agencies. (Sect(s). IV & VB, EEOP)

14. The DSNY should provide the EEPC with a copy of the results of its evaluation. (Sect. VC, EEOP)

15. Given the size of the agency and its responsibility to ensure EEO for more than 10,000 employees, the agency head should direct the EEO director to strengthen the EEO counselor component of its EEO program. This should include appropriate EEO training for counselors/ investigators via the DCEEO or other institution approved by the DCEEO (Sect. VB, Citywide EEO Policy)

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.

Conclusion

Pursuant to Chapter 36 of the New York City Charter and the previously cited preliminary determinations relating to EEPC's audit of DSNY' 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 specify those corrective actions in your response. 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. If you have any questions regarding these preliminary determinations, please let us know.

Sincerely,

Cesar A. Perez, Esq.
Chair

APPENDIX - 1

DEPARTMENT OF SANITATION
EMPLOYEE SURVEY RESULTS

A. GENERAL OVERVIEW

1. Do you know who your agency's EEO Officer is?
   Yes (57) No (124)

2. Is your agency's EEO Policy Statement posted on your agency's bulletin boards?
   Yes (133) No (45)

3. Were you given the EEO Policy Statement?
   Yes (99) No (26) Do not remember (60)

4. Were you given a copy of the EEO Policy Handbook – *About EEO: What You Need to Know*?
   Yes (116) No (64)

5. Do you agree with the principles of equal employment opportunity?
   Yes (165) No (11)

6. Do you believe your agency practices equal employment opportunity?
   Yes (131) No (50)

7. Do you know what the City's Equal Employment Opportunity Policy (EEOP) is?
   Yes (120) No (63)

8. Has your supervisor emphasized his/her commitment to the agency's EEO policies at any staff meeting during the past 8 months?
   Yes (45) No (94) Do not remember (44)

9. When you started working at your agency, did you attend an orientation session?
   If No, please skip to question #11.
   Yes (94) No (44) Do not remember (35)

10. If hired within the past 12 months, did your orientation session include information on your rights and responsibilities under the EEO Policy?
    Yes (36) No (9) Do not remember (13)

B. EEO COMPLAINTS

11. Do you know how to file an EEO complaint?
    Yes (99) No (79)

12. If you had an EEO complaint, would you bring it to your agency's EEO Office?
    Yes (112) No (25) Undecided (46)

13. Would you prefer to file an EEO complaint with an office outside your agency?
Yes (68) No (57) Undecided (59)

14. Did you ever file an EEO complaint with your agency's EEO Office?
If No, please skip to question #18.
Yes (14) No (160)

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 (6)
Color (1)	Sexual Harassment (1)
Creed (2)	Sexual Orientation (0)
Disability (1)	Veteran's Status (0)
Gender (incl. gender identity) (0)	Victim of Domestic Violence, Stalking, and Sex Offenses (0)
Marital Status (0)	Other (1)
Military Status (0)	
National Origin (0)	

16. Were you satisfied with the manner in which your complaint was managed?
Yes (3) No (11)

17. Was your manager or supervisor supportive of your right to file a complaint?
Yes (4) No (9) Not Applicable (1)

C. EEO TRAINING

18. Did you receive EEO training? If No, please skip to question #20.
Yes (87) No (88)

19. Did you find this training helpful?
Very (31) Somewhat (49)
Not really (0) Waste of time (0)

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 (83) No (65) Do not remember (33)

21. If you were employed at your agency for over one year, did you receive annual evaluations?
If No, skip to question #24.
Yes (158) No (21) Not employed for >1 year (0)

22. Did your evaluation contain recommendations for improving your job performance?
Yes (48) No (119)

DEPARTMENT OF SANITATION SURVEY RESULTS CONTINUED

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

Yes (33) No (133)

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

Yes (10) No (170)

E. AFFIRMATIVE ACTION FOR PERSONS WITH DISABILITIES

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

Yes (63) No (76) Don't Know (36)

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

If No, skip to question #28.

Yes (5) No (152)

27. Did the agency accommodate you?

Yes (2) No (9)

OPTIONAL

28. What is your race/ethnicity?

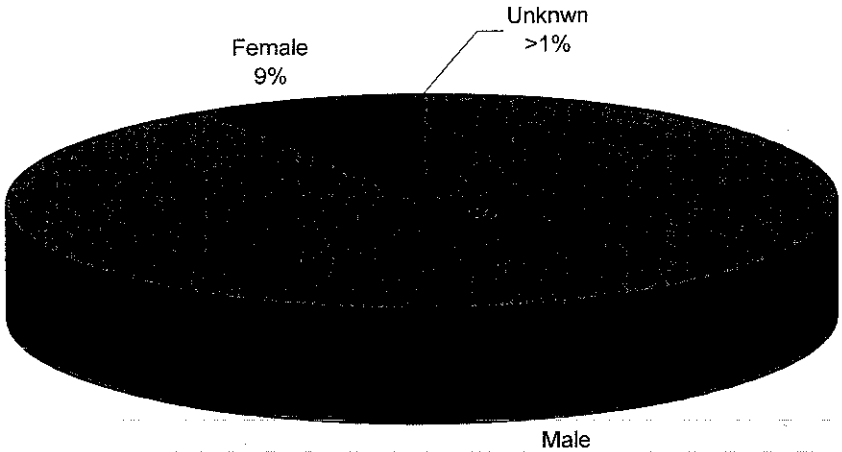
Asian (6)
Black (32)
Hispanic (27)
Native American (3)
White (89)
Other (1)

29. What is your gender?

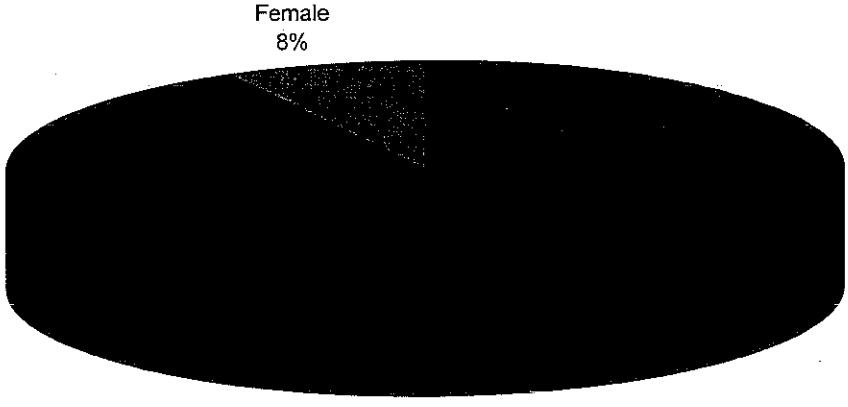
Male (140) Female (24)

Appendix - 2

Department of Sanitation
Workforce by Gender



January 2006
Total Workforce = 9,664

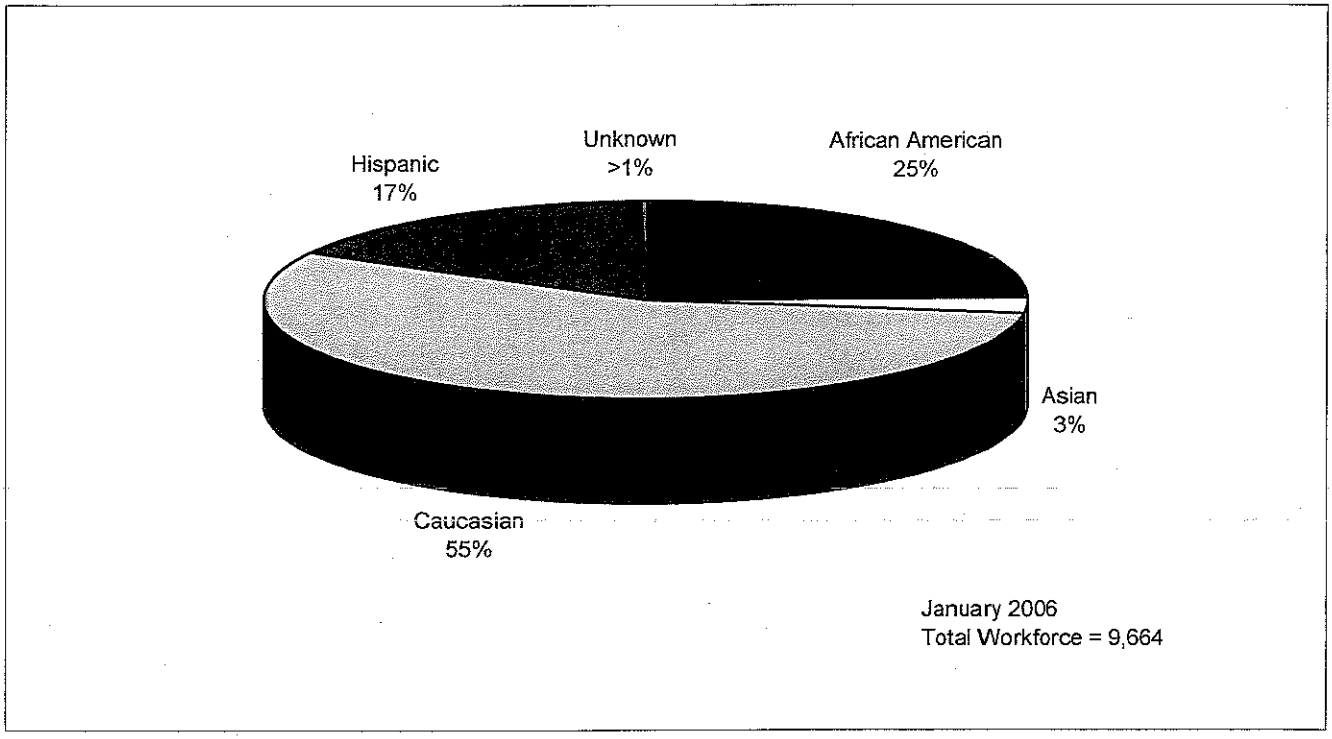


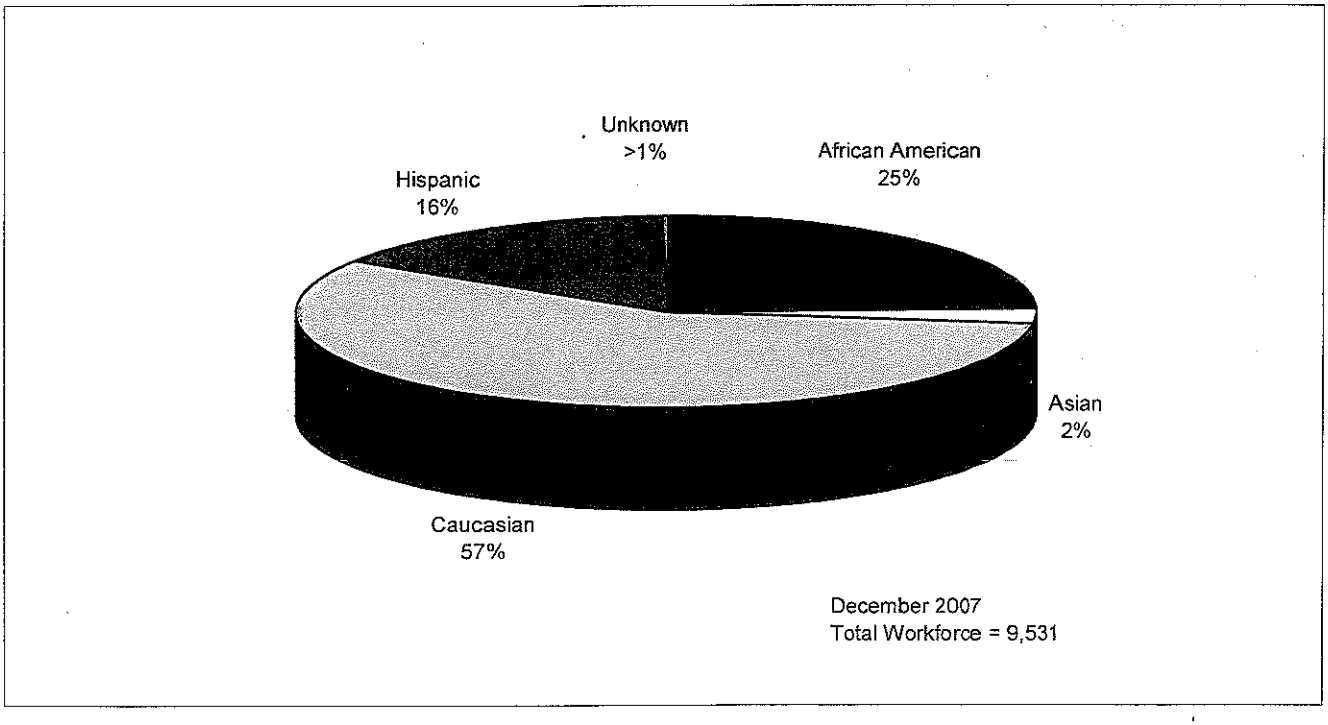
December 2007
Total Workforce = 9,531

Source: DOS

Appendix - 3

Department of Sanitation
Workforce by Ethnicity





Source = DOS

APPENDIX – 4

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

Department of Sanitation

Hires by Sex and Ethnicity

Total Hires: 1563

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American/ Unknown	Total
1370	193	1563	722	453	300	62	26	1563

Promotions by Sex and Ethnicity

Total Promotions: 287

Male	Female	Total	Caucasian	African American	Hispanic	Asian	Native American/ Unknown	Total
281	6	287	204	36	43	4	0	287

Source: Audit data supplied by DOS

sanitation

JOHN J. DOHERTY
Commissioner
125 Worth Street, Room 720
New York, New York 10013

0188

October 2, 2009

Cesar A. Perez, Esq.
Chair
Equal Employment Practices Commission
City of New York
40 Rector Street, 14th Floor
New York, N.Y. 10006

Re: *DSNY's Response to the Recommended Corrective Actions Stated in the Preliminary Determination, Pursuant to the Audit (for the period January 1, 2006 through December 31, 2007).*

Dear Chairman Perez:

I have received and reviewed the EEPC's Preliminary Determination dated August 27, 2009. As equality of opportunity is one of DSNY's highest priorities, I am glad that your agency's determinations find the Department of Sanitation, for the majority of the points of the audit, in compliance with the provisions of the *Citywide EEO Policy.*

My response, which follows, concerns those areas for which the EEPC has found DSNY *not* in compliance. The following addresses the "Recommended Corrective Actions" :

Recommendation 1:
DSNY should specifically identify its EEO staff including the counselors' names, locations and numbers in the EEO Policy memorandum or distribute the list separately.

Response:
DSNY routinely identifies its EEO staff in its annual Commissioner's EEO Memorandum and during the calendar year in other Department messages (e.g., in e-mails, roll call messages, postings and payroll distributions). DSNY will continue to do that.
Additionally, DSNY will explore naming the Borough Chief's Clerks, an individual from each of the seven Borough Offices throughout the City, who are highly competent and extremely well versed in the Department's operation, to work closely with the EEO Office in disseminating EEO information in the field. When the identity of these individuals is confirmed, they too, will be mentioned in the annual memorandum and other periodic communications.

Recommendation 2:
All discrimination complaint files should include a Discrimination Complaint Form or an Agency Complaint of Discrimination Based on Anonymous /Oral Complaint Form completed by the complainant or the EEO investigator.

Response:
DSNY has an agency unique form called the ***EEO Incident Report (DS 1735).*** *It is in a booklet format; the DSNY EEO Policy is stated on the cover and includes specific paragraphs addressing confidentiality and retaliation. Instructions are printed for Managers/Supervisors and for EEO Liaisons. The inner pages require written details of a complainant's allegation. If the complainant is unable to fill out the form, an EEO investigator or designee will complete one for the complainant.*

Recommendation 3:
All respondents should be served with a notice of complaint, along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file.

Response:
While DSNY has always advised respondent(s) in person of the charges made against them, DSNY will now provide the respondent(s) also with a written statement of the charges, which will indicate the bases and issues of the allegation. DSNY EEO will request that the respondent sign in receipt of the charges. DSNY EEO will keep a copy on file.

Recommendation 4:
It is the Commission's position that complaint files should contain clear and thorough word-processed notes of interviews conducted with the complainant, respondent and witnesses.

Response:
The DSNY EEO Office uses microcassette tapes to record all interviews during the course of an EEO investigation. In many cases the case file contains both the tapes as well as transcripts of those tapes; when transcripts have not been completed, the original tape of the interview is always contained in the case folder. (Additional typewritten notes may also be contained in the case folders, e.g., notes concerning telephone interviews or notes about document analysis.)

Recommendation 5:
Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint. In circumstances where the investigation cannot be

completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation.

Response:
DSNY agrees and will notify all parties if the investigation of a complaint takes longer than 90 days.

Recommendation 6:
The agency head should sign each EEO investigator's confidential written report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted.

Response:
It has always been DSNY EEO's policy to have the Commissioner sign off on all EEO confidential written reports.

(In instances where there lacked sufficient prima facie for a formal investigation to be initiated, DSNY EEO may have written only a brief informative memo to the Commissioner; therefore it was not in the usual report format where the Commissioner was required to sign off. However, in the future all EEO-related correspondence to the Commissioner will request the Commissioner to sign off.)

Recommedation 7:
All parties to internal discrimination complaints should be notified in writing of the agency's determination.

Response:
DSNY has and will continue to notify all known parties to internal discrimination complaints. In the instance of anonymous complainants, this is not possible. (When the anonymous complaints come through 311 or the Inspector General's Office, then those entities are advised at the end of an investigation.)

Recommendation 8:
All internal investigative reports should be labeled **"CONFIDENTIAL"** in large bold print.

Response:
*DSNY EEO will label all internal investigative reports, **"CONFIDENTIAL."***

Recommendation 9 :
Since females, African Americans, and Hispanics were underutilized in several job categories, DSNY should further expand its recruitment efforts by utilizing female-

oriented publications, agencies, or organizations in future job advertisements where underutilization of these protected classes exists.

Response:
The EEPC has noted that females, African Americans and Hispanics are underutilized in several job categories. DSNY wishes to offer a reasonable explanation on what appears to be statistical under representation in certain job categories, but what, in actuality, are not issues of underutilization, which may be readily or in some cases practically resolved:

Managers (002):
The job category of Managers is a significant DSNY group with over 300 high-level employees represented agency-wide.

The largest group in this job category, nearly 70% of the total, are the uniformed employees in the General Superintendent title. This is a civil service title that is only achieved by taking the initial Sanitation Worker Civil Service Exam and the subsequent promotional exams for Supervisor and then General Superintendent.

Therefore, the first and foremost way and the most significant means to increase the number of protected groups within the Managers Job Category is to affect the number of protected groups who apply for, take the Sanitation Worker Exam, and then take the subsequent promotional exams.

DSNY has, in the past 20 years, conducted a number of successful outreach recruitment campaigns with the help of professional advertising agencies. With the enlistment of the media as well as the distribution of applications on-line and in public domains such as shopping areas, transportation hubs, libraries, etc. DSNY has affected a significant increase in the numbers of females, African Americans and Hispanics in the uniformed ranks. Members of protected groups, who are successful in achieving a place on the initial sanitation worker list, get hired and work their way up through the ranks of the Department by taking subsequent promotional exams, will be the managers of DSNY's workforce of the future.

An example of such an instance is the rise of female representation in the Department. In 1986, DSNY had no females in the uniformed ranks. Today, over 200 female sanitation workers, approximately 30 female Supervisors, and three female uniformed Managers, or General Superintendents are in the uniformed ranks. Likewise the numbers of other protected groups, African Americans, Hispanics and Asians have increased in the uniformed managerial level over the years because members of these groups have filed for and taken the initial prerequisite civil service exams.

As it has done in the past, DSNY will continue its outreach to protected groups in an effort to encourage individuals to take the civil service exams and thus eventually increase the number of protected groups in the Managerial Job Category.

Clerical Supervisors (012):
This job category contains the civil service title of Principal Administrative Associate (PAA). It is a promotional title from Clerical Associate. Again, individuals working in this title would have taken the initial Clerical exam and then the subsequent PAA exam. Contrary to the EEPC's finding that African Americans and Hispanics are underutilized in this category, according to a recent CEEDS report, African-Americans and Hispanics currently make up approximately 50% of the total individuals currently working in this title. This is a good percentage for protected groups since a civil service exam is a prerequisite for the title.

Laborers (028):
The largest number of employees which fall into this category (95%) are in the title of City Seasonal Aide. This is a title given only to workers who are hired when there is a major snow or ice emergency in the City. City Seasonal Aides usually work only a day or at the most a few days , as needed, to shovel snow or clear crosswalks.

The mayor may make an official announcement or local news may call for the "laborers". Hiring is done at the local Sanitation garages. This is a temporary title that reflects a population which shows up on short notice to do work for a temporary and minimal amount of time.

Another title included in this category is the Job Training Participant. These are individuals who were previously in the WEP Program in the Department and have demonstrated their working potential. The JTPs are another temporary training program which will assist individuals in gaining experience for the transition to the city's workforce.

The reality is that numbers of females and African-Americans did not seek out this type of temporary employment which in reality are not titles which the agency would consider indicative of the overall Sanitation workforce.

DSNY EEO acknowledges that in the ***Crafts (025)*** *categories which contains such titles as auto mechanic, carpenter, electrician, plumber, etc. and* ***Operators (026)*** *categories containing positions such as high pressure plant tender and welder, females have been traditionally underrepresented. The Directors of these Bureaus have and will continue to be advised of the underutilization of females as well as minorities in these areas. New Recruitment sources are being explored and hires in these units will continue to be closely monitored by DSNY EEO.*

The EEPC cites an underutilization of Native Americans in the category of ***Health Professionals (005).*** *In a group of only 10 individuals who work in the positions of DSNY doctors and nurses at the Medical Clinic, the group is relatively diverse with half of the group being African American and Hispanic. However, in a City that has a Native American population that is approximately only .4% of the total city population, it may*

be highly unlikely to find and hire individuals of Native American descent and even more difficult with medical certifications.

Similarly, a total of 12 attorneys work at DSNY in the job category of ***Lawyers (008).*** *DSNY's predominant legal matters, other than disciplinary issues with employees, center around environmental law. This is a highly specialized field. Since, a vast number of City attorneys deal only with criminal law and other types, it is a hard task to locate and hire attorneys with environmental background and it is equally difficult to identify Hispanic attorneys with this specialty.*

Although the issues of underutilization may be difficult to address in some instances, DSNY will continue to explore new recruitment sources and techniques to address the employment of protected groups.

Recommendation 10:
The Agency head should direct supervisors/managers to include in their evaluations, recommendations for improving job performance and career advancement.

Response:
DSNY supervisors/managers do include recommendations to subordinates on their annual performance evaluations for improving job performance and career advancement. Written comments from the Supervisor/Manager may appear in the comments section of the sub-managerial performance evaluation.
Additionally, the following statement appears on all evaluations: "All employees have the opportunity to advance their career paths through open competitive or promotional examinations. Information regarding civil service examinations is available from an employee's supervisor, DSNY's Human Resources Bureau, the DSNY career counselor and DCAS."

Recommendation 11:
It is the position of DCAS and the EEPC that at least twice a year during normal staff meetings, managers and supervisors should emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO Office.

Response:
DSNY will develop a formal Department Message concerning the commitment of all managers and supervisors to the Citywide EEO Policy and affirm the right of each employee to file a discrimination complaint with the EEO Office, which will be read at all uniformed roll calls at least twice annually and posted at all work sites. Outreach to all civilian employees will include a similar bi-annual memo from Bureau Heads to all civilian employees. (The Commissioner also issues an annual memo of commitment to the Citywide EEO Policy and the right of all employees to file an EEO complaint.)

Recommendation 12:
Appropriate documentation of meetings and other communications between the EEO officer [Director] and the agency head regarding EEO decisions should be maintained.

Response:
The DSNY EEO Director will continue, as a member of the Commissioner's Executive Committee, to meet weekly with the DSNY Commissioner. All topics discussed at the Executive Committee Meetings are confidential. To allow for a free flow of ideas and exchange of confidential information, the agenda or topics discusses at these meetings will only be documented on a need to know basis or as a means to disseminate information.
(The EEO Director and the DSNY Commissioner routinely communicate both verbally and in written confidential memos, e-mails and case reports regarding EEO complaints, investigations, findings and recommendations).

Recommendation 13:
The agency head should submit an agency specific plan and quarterly reports including an annual fourth quarter final report to the appropriate agencies.

Response:
DSNY will continue to submit an agency specific plan and quarterly reports including an annual fourth quarter final report to the appropriate agencies as it has done in the past. (During the audit period, however, DCAS/OCEEO did not require DSNY to submit an agency plan for FY '07 – DSNY did submit, and was granted approval for the FY'08 EEO Plan on November 21, 2007 during the audit period.)

Recommendation 14:
The DSNY should provide the EEPC with a copy of the results of its evaluation (regarding accessibility for people with disabilities to the Department's buildings and work sites).

Response:
Enclosed with this document is a copy of the accessibility surveys which were completed throughout the Department. As described in a summary memo from Fernando Camacho, EEO Director, to the EEPC dated August 5, 2008, of the five downtown office buildings occupied by DSNY, some provisions have been made in these city-owned buildings to provide accessibility for persons with disabilities. There are still improvements which are needed but require action on the part of the Department of Citywide Services.

In addition to the downtown office buildings, DSNY has 59 Sanitation Districts throughout the five boroughs. Within those districts are Garages, Marine Transfer

Stations, Lot Cleaning Headquarters, Automotive Shops and a large Central Repair Shop. Due to the nature of Sanitation business, the operation of large multi-ton vehicles and heavy duty equipment for the collection of garbage, waste disposal and snow removal, the public rarely enters a field facility of DSNY; and also because of the nature of the job, DSNY employees must be physically capable to drive, load, lift, etc., therefore, with the exception of accommodations for disabilities, which are not overtly physical in nature, such as hearing or for psychological issues, DSNY has not been presented with the need to have accessibility in these facilities. For example, no DSNY sanitation worker would require wheelchair access, as no sanitation worker would be physically able to qualify for the job if he/she were wheelchair bound.

DSNY will continue to make all new construction of garages and other facilities conform with the requirements of the ADA in providing accessibility for people with disabilities. The Department will also endeavor to work with DCAS to take corrective action in making older city buildings which the Department occupies more compliant with current accessibility standard.

Recommendation 15:
Given the size of the agency and its responsibility to ensure EEO for more than 10,000 employees, the agency head should direct the EEO Director to strengthen the EEO counselor component of the EEO Program. This should include appropriate EEO training for counselors/ investigators via the DCAS/OCEEO or other institution approved by DCAS/OCEEO.

Response:
DSNY has now tried the EEO Counselor Program twice in the past and has found, for issues of confidentiality and control, the program not to be fruitful. Since there is no clear cut evidence that not having a counselor system in place is detrimental to the organization and its employees, DSNY EEO will continue to address employees' EEO rights and responsibilities in other ways.

DSNY EEO will continue to do EEO outreach in the form of Department EEO training, Department messages, postings and payroll distributions. Primarily civilian workers in the downtown area have quick and easy access to the EEO Office which is also located in the lower Manhattan area; all employees have access via telephone, mail and/or e-mails.

However, to increase the accessibility of EEO, specifically to the uniformed workers in the districts and outer boroughs, DSNY EEO will propose that the Borough Chiefs' Primary Clerks, (there are seven (7) throughout the Department) act as EEO depositories and disseminators of EEO information. They will be charged with distributing EEO information, ensuring that EEO complaint forms get confidentially delivered to the EEO Office, and checking Borough Offices for compliance with EEO postings. These individuals who work the most closely with the individual Borough Chiefs, who are high level uniformed managers of the Department, could be instrumental

in disseminating EEO information, being a direct line with the EEO Office and most importantly maintaining EEO confidentiality.

Upon completion of an implementation strategy for some of our new EEO measures, I will issue a memorandum to all DSNY staff informing them of the new features which will be included in the agency's EEO Program. As always, the memorandum will state my commitment to the Equal Employment Opportunity Program.

Equality of opportunity is one of my Department's highest priorities; discrimination of any form is not tolerated. DSNY will continue to be the most proactive City agency in identifying and addressing EEO concerns as well as ensuring the right of every job applicant and employee to equality of opportunity.

Sincerely,

John J. Doherty, DSNY Commissioner

c. Fernando L. Camacho, DSNY EEO Director

JJD/thn

EQUAL EMPLOYMENT PRACTICES COMMISSION

City of New York
40 Rector Street, 14th Floor, New York, New York 10006
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Deputy Director
Judith Garcia Quiñonez
Counsel

November 23, 2009

John J. Doherty
Commissioner
Department of Sanitation
125 Worth Street
New York, NY 10013

Re: Final Determination Pursuant to the Audit of the Department of Sanitation (DSNY) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2007.

Dear Commissioner Doherty:

Thank you for your October 2, 2009 response to our August 27, 2009 Letter of Preliminary Determination pursuant to the audit of the Department of Sanitations' Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2007.

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

Agree

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

Recommendation #1

The DSNY should specifically identify its EEO staff including the counselors' names, locations and numbers in the EEO Policy memorandum or distribute the list separately. (Email *Distribution of EEO Policy*, March 2, 2005, Assistant Commission DCAS/DCCEO) *[Please note that the finding was based on the fact that the EEO counselors were not identified in the Commissioner's memorandum. However, we accept that they will be identified in future Commissioner's EEO memorandums and in other department messages to staff.]*

Recommendation #3

All respondents should be served with a notice of complaint along with a copy of the complaint. Respondent(s) or someone authorized to sign for the respondent(s) must acknowledge receipt of the notice. The receipts should be maintained in the complaint file. (DCPIG, sect. 12(b))

Recommendation #5

Whenever possible, the investigation of complaints should be completed within 90 days of the receipt of the complaint. In circumstances where the investigation cannot be completed within the 90-day timeframe, a notification delay letter, stating the reason for the delay, should be sent to the parties of the investigation. (DCAS, DCPIG, Amendment of April 2, 1996)

Recommendation #6

The agency head should sign each EEO investigator's confidential written report to indicate that it has been reviewed and whether the recommendation, if any, is approved and adopted. (DCAS, Discrimination Complaint Procedures Implementation Guidelines, 1993, Sect. 12(b))

Recommendation #7

All parties to internal discrimination complaints should be notified in writing of the agency's determination. (DCPIG, sect. 12b) *[Please note that recommendations are based on audit findings. We accept your commitment to implement the recommendation.]*

Recommendation #8

All internal investigative reports should be labeled "confidential" in large bold print.

Recommendation #10

The agency head should direct supervisors/managers to include in their evaluations recommendations for improving job performance and career advancement. (Sect. IV, EEOP)

Recommendation #11

It is the position of the DCAS ("Model Agency EEO Commitment Memo," http://extranet.dcas.nycnet/eep/pdf/model_memo.pdf) and the EEPC that at least twice a year during normal staff meetings, managers and supervisors should emphasize their commitment to the agency's EEO policies and affirm the right of each employee to file a discrimination complaint with the EEO office.

Recommendation #13

The agency head should submit an agency specific plan, quarterly reports including annual fourth quarter final report to the appropriate agencies. (Sect(s). IV & VB, EEOP)

Requires Clarification

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

Recommendation #4

It is the Commission's position that complaint files should contain clear and thorough word-processed notes of interviews conducted with the complainant, respondent or witnesses.

Your Response

The DSNY EEO Office uses micro-cassette tapes to record all interviews during the course of an EEO investigation. In many cases the case file contains both the tapes as well as transcripts of those tapes; when transcripts have not been completed, the original tape of the interview is always contained in the case folder. (Additional typewritten notes may also be contained in the case folders, e.g., notes concerning telephone interviews or notes about document analysis).

EEPC Rationale

Your response does not say whether EEO discrimination complaint files will, in the future, contain clear and thorough word-processed notes of interviews conducted with the complainant, respondent and witnesses.

Recommendation #12

Appropriate documentation of meetings and other communications between the EEO officer and the agency head regarding EEO decisions should be maintained.

Your Response

The DSNY EEO Director will continue as a member of the Commissioner's Executive Committee, to meet weekly with the DSNY Commissioner. All topics discussed at the Executive Committee Meetings are confidential. To allow for a free flow of ideas and exchange of confidential information, the agenda or topics discusses at these meetings will only be documented on a need to know basis or as a means to disseminate information. (The EEO Director and the DSNY Commissioner routinely communicate both verbally and in written confidential memos, e-mails and case reports regarding EEO complaints, investigations, findings and recommendations).

EEPC Rationale

Your response did not address the recommendation. Please indicate if documentation of EEO decisions in the administration of the EEO Program will be maintained.

Disagree

For the following reasons, hereafter identified as *EEPC Rationale*, we disagree with your response to the following EEPC recommendations:

Recommendation #2

All discrimination complaint files should include a Discrimination Complaint Form or an Agency Complaint of Discrimination Based on Anonymous/Oral Complaint Form completed by the complainant or the EEO investigator. (DCPIG, sect. 12(b))

Your Response

DSNY has an agency unique form called the **EEO Incident Report (DS 1735).** It is in a booklet format; the DSNY EEO Policy is stated on the cover and includes specific paragraphs

addressing confidentiality and retaliation. Instructions are printed for Managers/Supervisors and for EEO Liaisons. The inner pages require written details of a complainant's allegation. If the complainant is unable to fill out the form, an EEO investigator or designee will complete one for the complainant.

EEPC Rational

This form was not shared with the EEPC during the audit.

Recommendation #14

The DSNY should provide the EEPC with a copy of the results of its evaluation. (Sect. VC, EEOP)

Your Response

Enclosed with this document is a copy of the accessibility surveys which were completed throughout the Department. As described in a summary memo from Fernando Camacho, EEO Director, to the EEPC dated August 5, 2008, of the five downtown office buildings occupied by the DSNY, some provisions have been made in these city-owned buildings to provide accessibility for persons with disabilities. There are still improvements which are needed but require action on the part of the Department of Citywide Services.

In addition to the downtown office buildings, DSNY has 59 Sanitation Districts throughout the five boroughs. Within those districts are Garages, Marine Transfer Stations, Lot Cleaning Headquarters, Automotive Shops and a large Central Repair Shop. Due to the nature of Sanitation business, the operation of large multi-ton vehicles and heavy duty equipment for the collection of garbage, waste disposal and snow removal, the public rarely enters a field facility of DSNY; and also because of the nature of the job, DSNY employees must be physically capable, to drive, load, lift, etc., therefore, with the exception of accommodations for disabilities, which are not overtly physical in nature, such as hearing or for psychological issues. DSNY has not been presented with the need to have accessibility in these facilities. For example, no DSNY sanitation worker would require wheelchair access, as no sanitation worker would be physically able to qualify for the job if he/she were wheelchair bound.

DSNY will continue to make all new construction of garages and other facilities conform with the requirements of the ADA in providing accessibility for people with disabilities. The Department will also endeavor to work with DCAS to take corrective action in making older city buildings which the Department occupies more compliant with current accessibility standard.

EEPC Rationale

The August 5th document submitted during the audit said: "The Department is evaluating how updates and renovations to those areas can make all facilities more accessible for people with disabilities." The EEPC requested a copy of the results of this evaluation. Your October 2, 2009 Response included the same surveys submitted during the audit. In addition, you stated that some provisions have been made in these city-owned buildings to provide accessibility for persons with disabilities. Please submit a copy of the referenced evaluation including the provisions that have been made to provide accessibility for persons with disabilities.

Recommendation #15

Given the size of the agency and its responsibility to ensure EEO for more than 10,000 employees, the agency head should direct the EEO director to strengthen the EEO counselor component of its EEO program. This should include appropriate EEO training for counselors/ investigators via the DCEEO or other institution approved by the DCEEO (Sect. VB, Citywide EEO Policy)

Your Response

The DSNY has now tried the EEO Counselor Program twice in the past and has found, for issues of confidentiality and control, the program not to be fruitful. Since there is no clear and cut evidence that not having a counselor system in place is detrimental to the organization and its employees, DSNY EEO will continue to address employees' EEO rights and responsibilities in other ways.

DSNY EEO will continue to do EEO outreach in the form of Department EEO training, Department messages, postings, and payroll distributions. Primarily civilian workers in the downtown are have quick and easy access to the EEO Office which is also located in the lower Manhattan area; all employees have access via telephone, mail and/or e-mails.

However, to increase the accessibility of EEO, specifically to the uniformed workers in the districts and outer boroughs, DSNY EEO will propose that the Borough Chiefs' Primary Clerks (there are seven (7) throughout the Department) act as EEO depositories and disseminators of EEO information. They will be charged with distributing EEO information, ensuring that EEO complaint forms get confidentially delivered to the EEO Office, and checking Borough Offices for compliance with EEO postings. These individuals who work the most closely with the individual Borough Chiefs, who are high level uniformed managers of the Department, could be instrumental in disseminating EEO information, being a direct line with the EEO Office and most importantly maintaining EEO confidentially.

EEPC Rationale

The use of Borough Chiefs' Primary Clerks presents the same issues of conflict, confidentiality, and control as you identified with the "EEO Counselor Program." In addition, the Borough Chiefs' Primary Clerks do not represent the different levels of the Department as required by section VB of the Citywide EEOP.

The EEPC believes that appropriate EEO training via DCEEO would strengthen the EEO counselor component of your EEO Program. Trained and properly evaluated EEO Counselors would be educated in EEO laws and procedures, will know how to address their responsibilities under the EEOP, and would thereby significantly reduce your concerns regarding "confidentiality and control".

Special Contingency

Recommendation #9

Since females, African-Americans, and Hispanics were underutilized in several job categories, the DSNY should further expand its recruitment efforts by utilizing female-oriented publications, agencies, or organizations in future job advertisements where underutilization of these protected classes exists. (Sect. IV, EEOP

sanitation

JOHN J. DOHERTY
Commissioner
125 Worth Street, Room 720
New York, New York 10013

10148

January 4, 2010

Cesar A. Perez, Esq.
Chair
Equal Employment Practices Commission
City of New York
40 Rector Street, 14th Floor
New York, N.Y. 10006

Re: *The Final Determination Pursuant to the Audit of the Department of Sanitation (DSNY) and its Compliance with the City's Equal Employment Opportunity Policy from January 1, 2006 through December 31, 2007.*

Dear Mr. Perez:

I am writing in response to your Final Determination letter dated November 23, 2009, concerning our EEO Audit.

For those items which **require clarification:**

Recommendation #4
It is the Commission's position that complaint files should contain clear and thorough word-processed notes of interviews conducted with the complainant, respondent or witnesses.
Response: Yes, DSNY EEO discrimination complaint files will contain clear and thorough word-processed notes of interviews conducted with the complainant, respondent and witnesses.

Recommendation # 12
Appropriate documentation of meetings and other communications between the EEO Officer and the agency head regarding EEO decisions should be maintained.
Response: Yes, documentation of EEO decisions in the administration of the EEO Program will be maintained.

For those items for which the Commission has **disagreed with DSNY's response**:

Recommendation # 2
All discrimination complaint files should include a Discrimination Complaint Form or an Agency Complaint of Discrimination Based on Anonymous/Oral complaint Form completed by the complainant or the EEO investigator.

Response: Attached is a copy of the DS 1735, the EEO Incident Form. Much of the same information requested on this form is the same as on the Discrimination Complaint Form and the Complaint of Discrimination Based on an Anonymous/Oral Complaint Form. The difference is added information for the complainant, and directions for the Supervisor or Manager, and/or the EEO Counselor/ Borough Superintendent's Clerk on how to proceed on the tear-off cover sheet.
The DS1735 is yet another tool in the gathering of important information concerning a complaint. Since this form is already distributed throughout the districts, it is yet another vehicle, in addition to the EEPC cited citywide forms, which DSNY will also use in addition to recorded interviews, to gather all the appropriate information necessary to look into complaints of discrimination.

Recommendation #14
The DSNY should provide the EEPC with a copy of the results of its evaluation.

Response: As stated previously, DSNY continues to make all new construction ADA compliant and DSNY will continue to make recommendations to DCAS for corrective actions in city buildings to bring these older city structures into compliance with current accessibility standards.
Attached is a statement from Danny Walsh, the Chief Engineer for DSNY and member of the Commissioner's Executive Committee. Engineer Walsh works closely with the EEO Director/ Disability Rights Coordinator, who is also a member of the Executive Committee.
While Director Camacho wrote in his August 5, 2008, memo that "The Department is evaluating how updates and renovations…can make all facilities more accessible for people with disabilities," this was referring to an ongoing process following the surveying of the Department and not a specific "evaluation" document.

Recommendation #15
Given the size of the agency and its responsibility to ensure EEO for more than 10,000 employees, the agency head should direct the EEO Director to strengthen the EEO counselor component of its EEO Program. This should include appropriate EEO training for counselors/investigators via the DCEEO or other institution approved by the DCEEO (Sect.VB, Citywide EEO Policy).

Response: DSNY has tried to implement the use of EEO Counselors as a pilot program on two occasions. Despite having done specific EEO training for the counselors, conflicts of interests and confidentiality issues unfortunately were evident. This made the

program less than effective and in some cases detrimental to the complaint procedure itself.

Therefore, DSNY firmly believes that the Borough Clerks, a privileged position for which they are specially selected and who have established a reputation of being conscientious and reliable, and using good judgment, within the chain of command, are the logical choice to disseminate information concerning EEO. In a paramilitary organization such as Sanitation, where the greatest portion of the workforce is uniformed, the Borough Clerks will be individuals who hopefully will enhance the Program.

For the civilian population, which is primarily contained in the downtown area, the majority of civilian individuals are only a short physical distance away and/or phone call from the EEO Office. Given the downtown location of the EEO Office, it is easily accessible to the civilian population.

DSNY has always been proactive in its EEO Program and has had, over the years, successful results. While the Department thoughtfully considered all of the recommendations of the EEPC, including the Counselor Program and has made efforts to implement it in the past, DSNY does not believe that the Counselor Program is one which would serve to enhance our agency's EEO Program.

DSNY has always complied with all citywide directives in formulating and implementing our EEO Program. However, as there currently are no mandates in place either in the Citywide EEO Policy nor in the City Charter which require EEO Counselors, the Department will use other means to enhance its Program, such as making use of our Borough Clerks.

Conclusion:

The Department of Sanitation has always had equality of opportunity as one of its highest priorities. I am pleased with DSNY's innovations and accomplishments in this area. With the direction and monitoring of our EEO Office, the Department will continue to move forward in making the DSNY EEO Program one which I and the City of New York is and will continue to be proud of.

Sanitation appreciates the EEPC recommendations following the recent audit. Together with Fernando Camacho, the EEO Director, I have respectfully discussed and thoughtfully considered each and every one. We are proud that the Department is in compliance with the majority of the citywide requirements for a successful EEO Program. In addition, we have already put measures in place to implement some of the recommendations made by the EEPC to make our Program even better.

We will continue to be proactive and in the forefront of promoting equality of opportunity for all of our employees and continually strive for the ongoing success of our EEO Program!

Sincerely,

John J. Doherty

c. F. Camacho

Attachment 1

The EEO Incident Report (DS1735)

(Re: Recommendation # 2)

THE CITY OF NEW YORK Department of Sanitation
EEO INCIDENT REPORT DS 1735 (4-13-05)

Index No. 01370

DSNY EQUAL EMPLOYMENT OPPORTUNITY STATEMENT

The City of New York and DSNY are an equal opportunity employer and prohibit discriminatory employment actions against and treatment of its employees and applicants for employment based on actual or perceived race; color; national origin; alienage or citizenship status; religion or creed; gender (including "gender identity" – which refers to a person's actual or perceived sex, and includes self-image, appearance, behavior or expression, whether or not different from that traditionally associated with the legal sex assigned to the person at birth); disability; age (18 and over); military status; prior record of arrest or conviction; marital status; genetic predisposition or carrier status; sexual orientation; or status as a victim of domestic violence, a sex offense, or stalking.

CONFIDENTIALITY

All complaints, investigations, requests for reasonable accommodation, and records will be handled, to the greatest extent possible, in a manner that will protect the privacy interests of those involved. EEO matters may be discussed with other persons who may have information about a complaint or who are necessary to implement reasonable accommodations for disability, religion, or based on status as a victim of domestic violence, a sex offense, or stalking. Therefore, it may be necessary to disclose information to persons with a legitimate need to know about the matter.

RETALIATION

It is a violation of the EEO Policy to retaliate against or harass any person who asserts his or her rights regarding employment discrimination by 1) opposing discriminatory practices in the workplace; 2) complaining about prohibited conduct; or 3) participating in any way in the complaint, investigation, or reasonable accommodation processes. It is also a violation of the EEO Policy to retaliate against or harass someone because of his or her association with such an individual.

If any employee knowingly makes a false accusation of discrimination or knowingly provides false information in the course of an investigation of a complaint, such conduct may be grounds for discipline. A complaint made in good faith, even if found to be unsubstantiated, will not be considered a false accusation.

INSTRUCTIONS: SUPERVISORS/MANAGERS

Supervisors/Managers have an explicit responsibility to address potential EEO issues in the work place.

Failure to address EEO issues in a timely manner may create liability for the Supervisor/Manager.

Supervisors/Managers in field locations must consult an EEO representative when they become aware of a potential or actual EEO issue.

If an employee seeks assistance regarding an EEO issue, refer the employee to an EEO Counselor or the EEO Office. An employee need not disclose the purpose for or details of the meeting with an EEO representative.

INSTRUCTIONS: EEO COUNSELORS

Meet with the employee who is seeking assistance regarding a potential EEO issue, review the above policies, and complete DS 1735.

Review DS 1735 entries with the employee.

Sign DS 1735 in the space "EEO Counselor/Prepared by."

Request the employee's signature on DS 1735.

Provide the employee with a copy of the completed DS 1735.

Send the completed original form DS 1735 to:

the **EEO Office**, 137 Centre St., Room 505, New York, NY 10013

THE CITY OF NEW YORK Department of Sanitation

EEO INCIDENT REPORT DS 1735 (4-05)

Index No: 01370

Type or print all information (except required signatures.) Attach additional sheet(s) if more space is needed.

EMPLOYEE'S NAME (Last, First, Mi.):	SOC. SEC. NO. (Last 4 digits)	TITLE:

WORK LOCATION / UNIT:	TELEPHONE NO.:

1. I allege that on _____ , 20_____, at approximately _____ am/pm, the following incident occurred:

2. Why do you believe this incident is an EEO matter that should be considered by the EEO Office?

3. Was this incident a *first* occurrence? If there have been similar or prior incidents, please describe, give the date of the occurrence and provide witness information.

4. Were there any witnesses to this incident (i.e., others who were not directly involved, but who may have seen or heard what took place)?

5. Is there any documentation that relates to your claim?

6. When this incident occurred, how did you respond to the other person(s) directly involved?

7. After this incident occurred, did you speak to anyone at work about what happened?

8. Have you witnessed another employee being subjected to similar behavior/conduct by the person(s) directly involved in this incident?

9. What remedy or action would you like taken to correct this situation?

EEO Counselor / Prepared by:	**EMPLOYEE:** I have reviewed the entries in this EEO Incident Report, and I affirm these statements to be true, to the best of my recollection.
NAME (PRINT):	NAME (PRINT):
SIGNATURE:	SIGNATURE:
DATE:	DATE:

Attachment 2

Memo from Danny Walsh, DSNY Chief Engineer, December 9, 2009.

(Re: Recommendation # 14)

sanitation

DANNY WALSH, P.E.
Chief Engineer

Support Operations/
Bureau of Engineering
44 Beaver Street-12th Floor
New York, NY 10004
Telephone: (917) 237-3506
Fax: (212) 785-3952

December 9, 2009

TO: Fernando Camacho

FROM: Danny Walsh D. Walsh

SUBJECT: Accessibility for Persons with Disabilities in DSNY Facilities

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DSNY facilities are designed to provide accessibility for persons with disabilities in compliance with ADA requirements.

Should you require any additional information, please advise.

c: S. Fridman, T. Neal