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# DRAFT LIMITED ENGLISH PROFICIENCY PLAN

North Carolina Department of Environmental Quality

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## Contents

Limited English Proficient Language Access .....	1
Legal Authority.....	1
NC DEQ Approach .....	2
NCDEQ Program Assessment.....	2
Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered .....	2
Factor 2: The frequency of contact with LEP individuals.....	2
Factor 3: The nature and importance of the program.....	3
Factor 4: The resources available .....	3
LEP Plan.....	3
1) Identifying LEP Individuals Who Need Language Assistance.....	4
2) Language Assistance Measures .....	4
3) Training of NCDEQ Staff .....	4
4) Providing Notice to LEP Persons .....	4
5) Monitoring and Updating the LEP Plan.....	5

## Limited English Proficient Language Access

Across North Carolina, it is estimated that over one million individuals speak a language other than English (U.S. Census American Community Survey 2011-2015). Individuals who have a limited ability to read, write, speak, or understand English are considered limited English proficient (LEP). This document seeks to provide employees at the North Carolina Department of Environmental Quality (NCDEQ or the Department) with resources and a protocol for interacting with identified LEP individuals or communities. It is DEQ's policy that when communities need language assistance to meaningfully participate in DEQ's programs or events, opportunities for such assistance will be identified and pursued when deemed appropriate through the guidelines of this Plan.

## Legal Authority

The Department is a recipient of financial assistance from multiple federal agencies, including U.S. EPA. As a recipient of federal funding, DEQ must comply with applicable provisions of federal civil rights laws and policies prohibiting discrimination including Title VI of the Civil Rights Act of 1964 (Title VI). 42 U.S.C. § 2000d. Title VI specifically prohibits recipients from discriminating on the basis of race, color, or national origin. The U.S. Supreme Court held in *Lau v. Nichols*, 414 U.S. 563 (1974), that actions by a federally-funded program that have a disproportionate effect on LEP persons are barred by the Title VI prohibition against national origin discrimination. Thus, recipients of federal financial assistance have an obligation to reduce language barriers that can preclude meaningful access by LEP persons to government services.

Additionally, Executive Order 13166 (August 11, 2000), *Improving Access to Services for Persons with Limited English Proficiency*, requires each federal agency that provides financial assistance to recipients to develop guidance regarding their obligations under Title VI to provide meaningful access to LEP persons. The U.S. Department of Justice (DOJ) simultaneously issued general guidance (DOJ Guidance) to federal agencies on implementation of the Executive Order. 65 FR 50123 (August 16, 2000). Subsequently, U.S. EPA issued its own guidance (EPA Guidance) to federal funding recipients on the Title VI prohibition against national origin discrimination affecting LEP persons. (69 FR 35602, June 25, 2004).

## NC DEQ Approach

In developing this LEP Plan, NCDEQ has generally followed the recommendations provided in the EPA Guidance. The EPA Guidance addresses and incorporates the principal elements in the DOJ Guidance, and it focuses on activities that are common at NCDEQ, including development of rules and policy, reviewing and issuing permits, enforcement of environmental laws, and responding to inquiries from private citizens. The EPA Guidance makes clear that recipients like NCDEQ “have considerable flexibility in determining how to comply with their Title VI legal obligation in the LEP setting.” (69 FR 35613). Therefore, NCDEQ has elected to adopt the following two-step framework from the EPA Guidance:

- Step One: Program Assessment
- Step Two: Developing an Effective LEP Plan With the Following Elements:
  - Identifying LEP Individuals Who Need Language Assistance
  - Language Assistance Measures
  - Training Staff
  - Providing Notice to LEP Persons
  - Monitoring and Updating the LEP Plan

## NCDEQ Program Assessment

Title VI and its implementing regulations require federal recipients like NCDEQ to take reasonable steps to ensure meaningful access to agency programs and activities for LEP persons. There is no prescriptive method for accomplishing this goal. Instead, agencies are encouraged to determine the extent of their Title VI LEP obligations by performing an individualized assessment in accordance with a four-factor analysis described in the DOJ Guidance. The ultimate purpose of the assessment is to achieve an appropriate balance of the four factors. The full guidance document can be found at [https://www.lep.gov/guidance/guidance\\_DOJ\\_Guidance.html#DOJR](https://www.lep.gov/guidance/guidance_DOJ_Guidance.html#DOJR)

As set forth below, NCDEQ has performed a preliminary analysis following the four factors presented in the DOJ Guidance.

### Factor 1: The number or proportion of LEP persons eligible to be served or likely to be encountered

The DOJ Guidance indicates that determining reasonable steps for providing meaningful access depends on the number or proportion of people who would be excluded due to language barriers. The greater the number or proportion of LEP persons in an area, the more likely language services are needed. NCDEQ’s service area extends across the state of North Carolina, where approximately ten percent of the population speaks a language other than English. Thus, there is reason to expect that LEP persons may be encountered by NCDEQ programs. Because there is often public interest in NCDEQ actions within specific communities, the actual number or proportion of LEP persons will likely vary depending on the location. Further information related to site-specific LEP needs may be available from the following sources: NCDEQ employees with experience in the community, local government, community organizations, and census data. These sources may assist in identifying populations for whom additional language services are needed and for which populations translation services would be most beneficial.

### Factor 2: The frequency of contact with LEP individuals

According to the DOJ Guidance, the LEP obligations of a recipient such as NCDEQ are greater if there is more frequent contact with LEP individuals when compared to unpredictable or infrequent

contact. The EPA Guidance further indicates that the frequency of LEP contact and the resulting need for agency assistance can be assessed on a language-specific basis. In other words, the more frequent contact that NCDEQ has with a particular language group, the more likely that enhanced language services in that language are needed.

The frequency of contact with LEP individuals may vary significantly across the NCDEQ programs and the specific locations where they conduct activities. As this Plan is implemented, it will provide NCDEQ programs with more relevant data on this issue.

#### Factor 3: The nature and importance of the program

The EPA Guidance indicates that the need for language services is related to the importance of the action by a recipient like NCDEQ. For example, EPA states that the obligation to communicate information to a person who may be adversely impacted by an immediate water source contamination or to a sudden release of airborne toxic chemicals differs from those related to providing information on efforts to increase recycling. With this guidance in mind, the need for LEP services could vary significantly, as actions by NCDEQ programs cover a broad spectrum in terms of urgency and potential consequences. As this Plan is implemented, it will provide NCDEQ programs with more relevant data on this issue.

#### Factor 4: The resources available

The DOJ Guidance discusses the potential impact of available agency resources in determining what would constitute reasonable steps to address LEP concerns. In summary, DOJ states that agencies with larger budgets would be expected to provide more language services than those with smaller budgets. In addition, the EPA Guidance states that “reasonable steps” may cease to be reasonable where the costs substantially exceed the benefits. Thus, recipients such as NCDEQ are expected to seek cost-effective options, such as technology-based solutions.

NCDEQ has already been exploring effective language service options that are commensurate with the Department’s available resources. For example, NCDEQ has successfully initiated translations and community outreach by bilingual, Spanish-speaking NCDEQ staff, including document translations for agency actions when analysis of the specific area shows a need, webpages in Spanish to provide to general agency activities and a phone line to allow public access to bilingual staff.

## LEP Plan

Based on the four-factor assessment above, NCDEQ has developed an initial plan for implementation of reasonable steps to achieve its LEP goals. NCDEQ anticipates that the plan will be subject to further evaluation and revision over time based on NCDEQ’s actual experience and feedback from the public on this initiative. NCDEQ’s goal is to implement steps based on its best judgment, and then to refine those steps to advance the success of its LEP assistance program. Such an iterative approach is consistent with the requirements of Title VI. The EPA Guidance states: “While all recipients should work toward building systems that will ensure access for LEP individuals, EPA acknowledges that the implementation of a comprehensive system to serve LEP individuals is a process and that a system will evolve over time as it is implemented and periodically reevaluated.” 69 FR 35612.

### 1) Identifying LEP Individuals Who Need Language Assistance

The analysis under the first and second factors above provides a preliminary view of individuals who may be eligible for language assistance. Because NCDEQ's actions and public outreach are often community-based, the identification of LEP individuals will depend on the population in the specific community. Building on its past experience with numerous communities across the state, NCDEQ plans to take reasonable steps to enhance its awareness of the LEP individuals within the potentially-impacted communities. These steps will likely involve coordination between NCDEQ program staff, the NCDEQ Office of Public Affairs, and the NCDEQ Environmental Justice Program.

### 2) Language Assistance Measures

The EPA Guidance states that the two principal methods of serving LEP individuals are providing oral and written language services. Oral language services consist of interpretation by listening to something in one language and orally translating it into another language. This may include providing on-site interpreters when a high volume of LEP individuals are in or expected to be in attendance at a significant public event. Written language services consist of translation by replacing written text from one language into equivalent written text in another language. It may range from translation of an entire document to translation of a short descriptive summary of the document.

NCDEQ is developing methods for providing language assistance in various ways. Written Spanish translation or interpretation services from NCDEQ bilingual staff are available to NCDEQ programs. NCDEQ also uses third-party translation and interpretation services when appropriate. These services can be tailored to meet community-specific LEP needs that are identified under item 1 above.

NCDEQ staff may be contacted directly by LEP individuals seeking assistance. This may occur through in-person contact, by phone, or by written communication. For the purpose of responding to in-person contact, NCDEQ intends to provide its offices and vehicles with a supply of language assistance flashcards and materials translated into the languages of the five most commonly needed languages. When approached by an LEP person, NCDEQ staff can present the individual with a flashcard to facilitate the choice of the appropriate language.

### 3) Training of NCDEQ Staff

Training will be offered to NCDEQ staff, with particular focus on employees who are likely to encounter LEP individuals. The training will include information about the LEP Plan and the related policies and procedures. Staff who routinely encounter LEP persons will be offered refresher training and the opportunity to provide feedback on the Department's LEP Plan.

### 4) Providing Notice to LEP Persons

NCDEQ seeks to inform LEP individuals that language services are available. NCDEQ has created a Spanish webpage to better reach the increasing Spanish-speaking population. This webpage has an application that allows for online messaging to Spanish speaking employees for direct assistance. This webpage also contains broad information about the Department and will continue to be expanded and enhanced. An anonymous tool to submit comments,

complaints, or concerns will be available on the webpage. A drop-down list with language preference will show the top 20 languages spoken in NC. This will enable the comment to be written in the preferred language while allowing for a faster translation from DEQ (as the language will already be known).

NCDEQ is exploring other options for communicating with LEP persons. These options include providing notice of available language assistance services in public announcements, media releases, and communications with community groups.

#### 5) Monitoring and Updating the LEP Plan

NCDEQ intends to periodically review this LEP Plan to determine if language assistance measures and staff training are effective. In evaluating the effectiveness of the Plan and the need for additional measures, NCDEQ will assess the feedback from agency staff and the public, including LEP individuals. NCDEQ may also consider the availability of its own resources, and ways to deliver language services in a more cost-effective manner.

References: FEDERAL LEP GUIDANCE DOCUMENTS

- Environmental Protection Agency (EPA): <https://www.gpo.gov/fdsys/pkg/FR-2004-06-25/pdf/04-14464.pdf>
- Department of the Interior (DOI): <https://www.gpo.gov/fdsys/pkg/FR-2003-12-24/pdf/03-31693.pdf>
- Department of Commerce (DOC): <https://www.gpo.gov/fdsys/pkg/FR-2003-03-24/pdf/03-6835.pdf>
- Department of Justice (DOJ): <https://www.gpo.gov/fdsys/pkg/FR-2002-06-18/pdf/02-15207.pdf>
- Department of Homeland Security (DHS): <https://www.gpo.gov/fdsys/pkg/FR-2011-04-18/pdf/2011-9336.pdf>
- Department of Defense (DOD): As of May 17, 2016: Pending
- Department of Health and Human Services (DHHS): <https://www.gpo.gov/fdsys/pkg/FR-2003-08-08/pdf/03-20179.pdf>
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