

COMMONWEALTH OF VIRGINIA

DHRM

Office of Employment Dispute Resolution

Re: Grievance of (Case No. 12333)

**Decision**

Grievant:

[REDACTED]

Grievant Advocate:

Pro Se

Advocate for Agency:

[REDACTED]

Administrative Hearing Officer:

Polly Chong, Esq.

732 B Thimble Shoals Blvd., Ste 201

Newport News, Virginia 23606

Tel: (757) 599-8400

Facsimile: (757) 599-8592

E-mail: pcattyinc@gmail.com

**I. BACKGROUND**

Grievant is an employee of Department of Environmental Quality (“DEQ or Agency”) with a job title of Water Compliance Inspector. Grievant timely filed a grievance to challenge the Agency’s disciplinary action by submitting the Grievance Form A on July 23, 2025, from the date of the discipline. The Grievant believes the discipline was not warranted. The Grievant requested relief was “fair and equitable treatment in the form of at the very least changing the decision from termination to being laid off.” (Agency Exhibit 20).

The Agency Written Notice, issued on July 9, 2025, stated a Group III violation of DHRM Policy 1.60 Standards of Conduct, DHRM Policy 2.35, DEQ 5-2019 Civility in the workplace and DEQ Code of Ethics, with a disciplinary action of termination.

EDR appointed the undersigned as Hearing Officer on August 11, 2025.

A teleconference call was conducted on August 11, 2025. Present were: the Hearing Officer; Attorney for the Agency; an agency representative; and the Grievant. The purpose of the teleconference was to set the trial date, location and the date for the exchange of documents.

A Scheduling Order was entered on the same date. The trial date was set for September 4, 2025, at the Tidewater Regional Office in Virginia Beach and the date for exchange of documents was August 28, 2025, by 5 p.m.

On September 4, 2025, a hearing was conducted at the Tidewater Regional Office (TRO) starting at 9 a.m. The binder of exhibits from each party was submitted at the outset of the hearing without objection. Case Number 12333.

**II. APPEARANCES**

Grievant

Agency Attorney

Agency Representative

Witnesses: 4 for the Agency and Grievant testified on her own behalf. All witnesses were sworn in at one time at the outset of the hearing and separated until they called to testify.

### **III. ISSUES PRESENTED**

This Hearing Officer considered the following issues as presented.

1. Whether Grievant engaged in the behavior described in the Written Notice.
2. Whether the behavior constituted misconduct.
3. Whether the agency's discipline was consistent with law and policy; that is, properly characterized as a Group III offense.
4. Whether there are mitigating circumstances justifying a reduction or removal of the disciplinary action and if so whether aggravating circumstances existed that would overcome the mitigating circumstance.

### **IV. BURDEN OF PROOF**

The burden of proof is on the Agency to show by a preponderance of the evidence that its disciplinary action against the Grievant was warranted and appropriate under the circumstance. The employee has the burden of raising and establishing any affirmative defenses to the discipline and any evidence of mitigation circumstances related to the discipline. Grievance Procedure Manual ("GPM") § 5.8. A preponderance of the evidence is evidence which shows what is sought to be proved is more probable than not. (GPM § 9)

### **V. FINDINGS OF FACT, DISCUSSION AND CONCLUSION OF LAW**

All proposed exhibits submitted by the Agency and the Grievant were admitted. After reviewing the evidence presented, observing the demeanor of each witness, hearing the closing statement of each party, the Hearing Officer makes the following Findings and Decision:

Grievant has been employed at DEQ with a role title of Water Compliance Inspector with a length of employment for approximately 8 years with the Agency and approximately 8 years with the Commonwealth of Virginia at the time of the Written Notice.

Written Notice dated July 9, 2025, states "on Monday June 16, 2025, you and one of our summer interns were scheduled to conduct a training inspection at Dockside Seafood at 2001 Newport Street. During the travel time to the inspection site, you made multiple comments about protected classes of citizens based on ethnicity, hinting at racial stereotypes, and specifically asking about the potential races of citizens who were involved in an active police and animal control situation that you witnessed on the drive to the facility, as well as back to the office when you passed the same incident. You asked the intern to determine if the citizens involved were Native Americans or Asian and made comments about religious rituals with horses and other animals performed by Native Americans, and that Asians kill and eat horses and 'eat weird animals' and stated, 'You know they look at horses and they see glue' and want to eat them or were potentially turning horses into glue. Your actions and comments in reference to Native Americans and Asians on June 16, 2025, demonstrated willful misconduct, use of obscene or disrespectful language, hostile work environment, and performance that is of the most serious nature that could significantly impact the agency's operations, workplace,

customer relations and credibility. This action violated DHRM Policy 1.60, Standards of Conduct, the DEQ Code of Ethics and DHRM Policy 2.35 and DEQ Policy 5-2019, Civility in the workplace.” As a result of the Written Notice, the consequence was termination.

In the Grievant response via email submitted July 1, 2025, Grievant advised “I did not realize the words were negative or hurtful at the time. I sincerely apologize to (Intern) and DEQ. This has given me the opportunity to learn as I have started researching and doing the work to show up better.” (Agency Exhibit 3)

#### FIRST WITNESS

The first witness was the summer Intern. She was selected for the summer intern program from June 2 through August 8, 2025. Her role was to shadow, observe senior employees, and to get experience working under the guidance of senior staff. Her immediate supervisor was the Deputy Regional Director (DRD). She testified on direct, cross and re-direct examination that on June 16, 2025, she and the Grievant were traveling to Smithfield which is approximately an hour away from the DEQ office. They came upon a house and saw a “big event” involving officials, sheriffs, multiple vehicles and animal control along with a family. Grievant, without any prompting, asked about the race of the family standing outside of the house as to whether they were Native American or Asian or if it was a horse seizure. Grievant began commenting “are they Native American? or Asian?” That Native Americans do religious ritual practices doing “things to animals”. Intern testified that although it was not a direct quote, it was “one of the first things that came out of her (Grievant) mouth.” Intern tried to ignore and not engage as she was scared, uncomfortable, did not know what to say and that it was an approximately 2 hour drive to and from the site. Notably, Intern identifies as Native American. Then Grievant commented that if they were Asians, they eat “weird animals”. They got to the site and conducted their inspection. On the way back, they again came upon the house when Grievant continued to make comments that “they make them into glue. They see horses and want to make them into glue”. Intern knew the comments were wrong, harmful and filed a complaint about 2 days later as the DRD was not there on Tuesday and the incident happened on Monday. (Agency Exhibit 1) On cross examination, the Intern acknowledged the words were not direct quotes and when asked if she could have misunderstood the words, the Intern said “no, I did not misunderstand what you said in that moment. In this situation I did not misunderstand”. The Grievant asked the Intern if she thought the Grievant was friendly and if there was any confusion as to what was said would the Intern ask for clarification. The Intern testified that she thought the Grievant was friendly but would ask for clarification as to work related information. The Intern testified that the comments came at the beginning of the conversation regarding the race of the family. Grievant asked the Intern if she- Grievant had ill intentions getting into the car that morning or any intent to harm. Intern replied that she was not aware of any intentions. On redirect, the Intern testified that she considered senior staff to be leaders/mentors and that she was “just an Intern” so she was scared to speak out. The Grievant’s comments were not prompted.

#### SECOND WITNESS

The agency’s second witness was the Regional Director (RD) for the Tidewater Regional Office. He testified on direct, cross and redirect examination. He described the relationship with the Grievant as “good” but that there were problems with effective performance like understanding mapping, understanding roles and plans. Dialogues between the Grievant and her supervisor would be heated as well as disruptive at times when there were discussions with Grievant about performance issues. The RD testified that he would sometimes sit in on these

meetings to make sure everyone was being treated fairly. The RD then testified about a July 16, 2021, incident in which Grievant was a witness to an event where racial slurs were used by a coworker. In this 2021 incident, the Grievant was overseeing/mentoring a different Intern. The RD testified there was a growth on the side of a landfill and the coworker-solid waste inspector said, "You should get a bunch of Mexicans to clean the side of the landfill". The Intern in this 2021 incident, who is of Hispanic descent, raised the concern and reported it. This Intern was offended by the comment. The RD testified that Grievant did not report the incident in accordance with policy. Thereafter, the agency conducted an investigation interviewing approximately 5 individuals. In two separate interviews, the Grievant told the agency that she could not remember what was said and viewed the coworker's comment as "just the way he is." (Agency Exhibit 17-18) The others that were interviewed gave information regarding the incident. As a result of a Standards of Conduct meeting, Grievant was required to go through additional training, reminded of the duty to report (Exhibit 15 p. 6) and reminded of the policies on Civility. The concern for the agency was the impact it would have on the internship program and the reputation of the agency. The RD noted that the initial training on Civility occurred in 2019 shortly after the promulgation of the policy. On March 11, 2024, the Grievant received a Group II Notice for failure to follow instructions by not completing her assigned inspections for FY 2023 and FY 2024, which could have jeopardized the ability of the agency to meet federal requirements. The RD explained "not following specific instructions has an immediate impact on the regional planning of inspections schedules." (Agency Exhibit 19) As a result, the Grievant received a Needs Improvement document and instructed to finalize three inspections within 30 days. Instead, Grievant took vacation and did not timely complete the inspections. Regarding the June 16, 2025, incident, the RD was made aware of the incident through the DRD who oversees the summer internship program. The Grievant is a field inspector and 85% of her job is site visits to conduct inspections. Grievant serves in a diverse community of citizens. The summer Intern who raised the concern "felt attacked." He described the Grievant's verbiage as derogatory and demeaning where Grievant referenced "Native Americans worshipping and idolizing animals. And do weird things to animals. Asians eat them and turn animals into glue." He testified that Grievant admitted to the verbiage and was sorry. But when interviewed, the Grievant said those were not her exact words. The agency gave Grievant the opportunity to provide additional information to explain. The RD described Grievant's written response of July 1, 2025, as "non-sincere, no remorse, no explanation of how her words could impact someone else and flip." (Agency Exhibit 3 p.2) That it consisted of about two sentences with no explanation of the impact of her statements on the agency or on others. Grievant violated agency policies DHRM 1.60, DHRM Policy 2.35, DEQ 5-2019 and DEQ Code of Ethics. (Agency Exhibit 4) The RD testified that the agency developed the Civility Policy in 2019, spent time on the training of its employees, and the Grievant signed documentation that she received the training. The concern was that public trust would be violated if someone is uncivil or is inappropriate with their words. It impacted on the ability of citizens to have trust that the person can do the job effectively without being demeaning. That the Grievant is required to engage with others as part of her duties. Grievant's comments significantly affected the agency operations because *"I cannot trust what comes out of the inspector's mouth on the job. The agency cannot trust her for future site visits. It impacts on the emotional safety of our staff. We need to ensure that the agency is offering services in a civil manner. An Intern is a subordinate and customers as well as coworkers have an expectation that senior employees will act in accordance with leadership roles. Because of this incident, the Intern may not come back to work at the agency due to her*

*experiences.*” with the Grievant. The RD took this June 16, 2025, incident as one of a serious nature as it involved communication, agency operations and performance. He supported this as Group III with termination as it was a violation of the policies, it was unethical conduct and the behavior is defined as an act of misconduct. (Agency Exhibit 6) He testified that Human Resources was consulted before the finding was made and the agency relies on their policies for guidance. This particular internship program was a two year pilot program to recruit young college students in a career with the agency. It is a salaried position with the first year generally involving shadowing a senior employee and the next year being more “hands on.” Grievant was responsible for the Intern. Grievant’s comments on June 16, 2025, disrupted the workplace in that the Intern was made to feel uncomfortable and demeaned. In addition, the Grievant had an active Group II in place which contributed to the decision to terminate. When asked if reinstatement could be an option, the RD testified that “it sends a message to others that the policy does not matter. The agency cannot have her back.” The RD testified that he was unaware if the Grievant had a disability as no disability claim/form had been filed, nor had Grievant notified them of a disability. On cross examination, Grievant asked if management looked into her disability. The RD clarified that the Grievant never identified her disability and management worked with Human Resources to see if there was a disability on file to see if any accommodations needed to be put in place. When asked about the 2021 incident, the RD reiterated Grievant’s duty to report as part of the policy. That the 2021 Intern ended up looking for new employment as a result; therefore, the agency lost an Intern as the Intern was significantly impacted by the incident. The Grievant asked if there was another reason why that Intern left the agency referencing that the Intern went to California for a job opportunity with her fiancé. The RD reiterated that that Intern left because she was impacted by the incident. The RD was asked in comparison to the June 2025 incident, if that coworker-inspector in 2021 was treated differently. The RD responded that the inspector in the 2021 incident showed remorse writing a detailed response to his Due Process showing that he knew the policy and how his conduct impacted the agency. In comparison, he described the Grievant’s actions as avoidable as she has received training in civility and he testified that policy is implemented equally among all employees. Grievant provided no mitigating information for management to consider. The agency applied the reasonable person standard, that her statements were not oblivious but deliberate and intentional as she made the statements “out loud” referencing stereotypes against Native Americans and Asians. A reasonable person would consider these comments to be inappropriate. Grievant asked him about cultures eating animals and he responded that cultures eat what is available to them. The Grievant asked if she violated policy in 2021 as Grievant believed the policy was “if you see something then stop it and if it continues, then report it.” The RD responded that Grievant did violate policy by not reporting the incident. Grievant was then required to review the policy to make sure she understood. Grievant asked why this 2025 incident was not a Group II and why the 2021 incident was not a Group I. Grievant asked about bias in “grouping me up” where she alleged the RD stood up and pointed his finger at her when she alleged bias at a face to face meeting. The RD denied that he ever stood up and pointed his finger and referenced Attachment A as the management guidelines for determining standards of conduct. (Exhibit 30). He also could not remember details of her 2024 Written Notice and how the decision was made that it would be a Group II as he did not have his notes with him. Grievant questioned him about his bias and whether he was lying under oath. The RD responded that he was not lying and that the Grievant had knowledge of the policy in 2019 and should have learned from having to review the policy in 2021 that her comments were inappropriate. He

further testified that Grievant admitted to the offense by written email that her behavior was hurtful. Grievant asked if he had given any advice to any of the witnesses. He denied giving any advice to any of the witnesses, nor did he receive any advice. However, he reiterated that he did consult with Human Resources. Grievant asked about the June 30, 2025, Memorandum and why she was not provided with the Intern's email statement. The RD responded that the Summary cites what the Intern submitted in her email statement and in the Summary of Violations it states, "eat weird animal and you know they look at horses and they see glue." (Agency Exhibit 4 & 34) Grievant asked him about page 4 where it states "your actions were avoidable..." The RD responded that the action was avoidable because the Grievant had the training, the language was disrespectful, hostile, deliberate and intentional. He emphasized that the agency wanted to give Grievant an opportunity to respond to the allegation but there was no mitigating information given except for two sentences which was not enough information to demonstrate that Grievant understood policy. On redirect, the RD testified that the Grievant had previous understanding along with the training as to what is not acceptable behavior. He explained that she had a duty to report the 2021 incident yet did not. (Agency Exhibit 15 p.6) (Grievant made facial expressions during direct, cross and redirect)

### THIRD WITNESS

The third witness was the Deputy Regional Director (DRD). The DRD described Grievant as "in my reporting line" of management and that the Grievant "does the minimum level required – does not go above and beyond." The DRD testified that site visits are crucial to the job where 85% of it entails field work. The DRD explained that the Hampton Roads and Tidewater areas are diverse communities with individuals who speak different languages. The facility can range from the Shipyard to a homeowner. Therefore, "everyone has to be treated with respect. As an inspector, the inspector has power over people like the ability to cite violations or ability to fine people." The DRD explained that the agency has always had an Intern Program but this pilot summer program was an executive initiative to try to recruit young people and allow them to be embedded with staff with the hope that the Interns would come back. Those selected are the "cream of the crop". In regards of the June 16, 2025, incident, she testified that the Intern did not know how to handle the incident and wanted to speak to the DRD about it. The Intern was in her first year as part of the pilot program and first year Interns report to the DRD. That the Intern expressed her concern as she-the Intern and the Grievant were traveling to the site and passed a police incident on the side of the road at a residence. Grievant then asked the Intern about the race of the people, if they were Asian or not. Then Grievant referenced Native Americans and rituals with animals. The DRD testified "it threw her (Intern) as it was upsetting because the comment had nothing to do with the work that was being done for the agency", the Intern interpreted the comment as racial stereotyping, and the Intern identifies as Native American. On the way back to the agency, they came upon the same event and it became more uncomfortable as the Grievant continued to make the same comments. The Intern became scared, upset, uncomfortable, unsure of how to handle the incident and embarrassed. The DRD thanked the Intern for coming forward and assured her of the confidentiality of the inquiry that would follow. The DRD asked the Intern to write a statement about the incident which was transmitted via email. (Agency Exhibit 1) At that time, the Grievant took leave for about a week and would not return until the following week. Management was notified along with the Grievant's supervisor regarding the incident. Management gave Grievant the opportunity to respond, which was transmitted via email on July 1, 2025. (Exhibit 3) The DRD viewed the Grievant's response as an admission, that it was very short and provided no further explanation.

In Exhibit 3, the DRD confirmed receipt, but “wasn’t sure if you (Grievant) might have missed an attachment” as she wanted to be sure this was the complete response. In addition, management met with the Grievant to allow her to provide additional information. Management went over the June 30, 2025, Memorandum with the Grievant, but all management had was the Grievant’s three sentence email. On July 3, 2025, Grievant was put on leave with pay so that the management could finalize the investigation regarding the June 16, 2025, incident. (Agency Exhibit 7) The DRD supported the decision for a Group III finding and to terminate as the Grievant failed to conduct herself with integrity in a manner deserving of public trust. In addition, the Grievant violated Civility policy having completed trainings, failed to use good judgement, did not understand the seriousness of the offense and did not provide information to allow for mitigation. The DRD specifically cited violations of DHRM Policy 1.60, Policy 2.35, DEQ 5-2019, and DEQ Code of Ethics. (Exhibit 4, 11, 29, 30) The DRD further explained that these policies are reviewed at the annual trainings and the agency utilizes best practices. Because Grievant had the training and made the racial comments, it demonstrated a deliberate disregard of policy. Standards of Conduct require conduct to uphold public trust and making racial comments is a violation of Standards of Conduct and Civility. Grievant’s comments were “devastating to the reputation of the agency. Avoiding racial remarks is a simple component of the rules” and Grievant was afforded training. Regarding the 2021 incident where the Grievant was a witness, there was discussion with the Grievant about her duty to report and the Civility policy. In March 2024, Grievant received a Group II Written Notice for failure to follow instructions. When the DRD was asked to distinguish between the 2021 incident and the June 16, 2025, incident, the DRD testified that in the 2021 incident where the Grievant was a witness, the coworker-inspector provided a “robust” response to the Due Process that demonstrated that he understood the importance of the policy giving details of where he had gone wrong and having a 28 year service record with no active Standards of Conduct on file. That inspector received a three day suspension without pay. Whereas the Grievant’s 2025 incident was different in that it was her second offense, Grievant did not provide mitigating information, and Grievant made a deliberate choice to make the comments. The DRD explained that the Grievant did not show she knew the seriousness of the offenses. It was deliberate because Grievant chose to make those comments when Grievant could have chosen to talk about anything else like ask the Intern how school was going or why the Intern was interested in the program. The DRD further testified that the Grievant was intentional in making the comments and disrespectful because the comments upset the Intern. When asked if the agency “would take her back”, the DRD responded that it would be a “bad message” to employees that policy “does not matter.” There was serious doubt as to Grievant’s judgment in the field. Lastly, employees count on the agency to apply its policies and rely on management to enforce the policies. The DRD was unaware of any disability associated with the Grievant. On cross examination, Grievant asked a few times about the 2021 inspector’s “inactive stuff on file “ or if he “has similar stuff on file” in regard to the 2021 incident. The Agency objected as the information was not relevant and the agency cannot reveal the personnel records of other employees. The undersigned advised the parties that the rules of evidence are relaxed in administrative hearings and that the Grievant would be given leeway in her cross examination. Grievant asked about the differences in the punishment between that inspector in 2021 and the punishment she- Grievant received in 2025. The DRD testified that the Standards of Conduct speaks to the active notices on file citing Attachment A. The DRD testified that Grievant’s comments were intentional as Grievant was “aware of the policy and ignored it”. The agency applied the reasonable person standard as to the comments.

The DRD reiterated that the agency provided an opportunity for the Grievant to give additional information to allow for mitigation. The Intern gave a detailed statement. Grievant asked how her words were marginalizing. The DRD responded that Grievant's comments were disrespectful as well as marginalizing because Grievant referred to a protected class causing a hostile work environment saying, "stereotypical things you just don't say." Grievant then asked DRD to clarify what she meant in describing the Grievant as "doing the minimum". The DRD testified that the agency utilizes a risk based management strategy system. When the DRD evaluated the Grievant, Grievant had the least number of inspections completed. Grievant questioned if she-Grievant was assigned more inspections than her peer in 2024 as well as in her entire period at DEQ. The DRD testified that Grievant met the assigned number "often at the last minute" and similar to the amount of another peer. Grievant asked why she was rated "below contributor". The DRD testified that Grievant did not finish the assigned inspections on time. (Grievant Exhibit C) When asked if she gave advice to the Intern, the DRD testified that she did not give advice to the Intern and that the investigation was confidential. Regarding the Grievant's prior Group II Notice, the Grievant was given a corrective action plan to conduct the inspections within a given period of time. Grievant failed to do that. Grievant asked what more the DRD wanted in her response to the June 16, 2025, incident. The DRD testified that Grievant did not provide additional information, explain how this incident may have an effect on the agency, respond to the allegations and tell her side of the story. The response did not show an understanding of policy. Grievant asked DRD if she thought Grievant did not understand the policy and if giving more details would have caused more confusion. The DRD testified "we will never know". The agency got a detailed statement from the Intern which gave insight and got three sentences from the Grievant. The DRD testified that the management met with Grievant face to face and went over the June 30, 2025, Memorandum word for word and asked the Grievant to give details since Grievant told them that is not what exactly happened. Grievant then cited the Memorandum and asked if the agency wanted her side of the story and the DRD said yes they wanted her side of the story. Grievant then asked how her comments were hurtful, hostile and deliberate. The DRD testified that Grievant started the conversation, Grievant was in a senior role having been trained, made racial comments, and could have avoided the entire incident by not commenting at all. The DRD testified that it was disrespectful because the Intern who identified as Native American was upset by the comments targeting a protected class. Further, that it was marginalizing by talking about "rituals and eating animals that people with manners just don't say". Lastly, the DRD testified that she did not give the Intern any advice. Grievant asked if this could have been a misunderstanding. The DRD testified that she did not view this as a misunderstanding as the Grievant had training and was aware of the policy. On redirect, the DRD testified that intentional means that "you are aware" of the policy and "you deliberately ignore it" saying, "any reasonable person would know that the comments were inappropriate and there is no reason for anyone to make a racial comment at all in these circumstances".

#### FOURTH WITNESS

The fourth witness was the Human Resources Director (HRD) and agency representative. She testified that the RD and DRD reached out to her about this June 16, 2025, incident. The HRD explained that "Policy 1.60 lays out the Standards of Conduct for all employees and levels of discipline. Policy 2.35 and the 2019 Civility Policy of DEQ lays out expected behaviors for civility in the workplace with a list of behaviors that are prohibited like what is discriminatory and not discriminatory. Management will identify the behavior and match it with the standards

of conduct” to determine the Group offenses. (Exhibit 15 Attachment A) The HRD explained in DHRM Policy 1.60 (Agency Exhibit 6 & 15), the Group III description lists the conduct which includes but is not limited to those in the policy; Misconduct is defined in part “ *when an employee’s actions are determined to be avoidable and the employee failed to exercise reasonable care or judgement resulting in a negative impact or the potential for negative impact on Agency business operations and services, workplace, or credibility. The employee has demonstrated the necessary knowledge, skills, and abilities and received training, information and resources to perform duties but did not do so. The employee is capable of proper behavior and action but does not comport with reasonable expectation. Deliberate or intentional actions may be considered as willful misconduct...* ” The HRD testified Grievant’s conduct speaks directly to this language in the policy, that the Grievant’s comments negatively impacted the Intern, negatively impacted the internship program, could have a negative impact on the agency and its operations. All of this rose to the level of a Group III offense. The pilot internship program has been recognized by the Governor with over 300 applicants from colleges and universities. The selection process is competitive. The HRD explained that the DEQ 5-2019 policy “mimics” the DHRM policy saying, “I wrote the policy, I inserted the reasonable person standard so that it would be substantive” versus letting it be interpreted subjectively. The Intern, a college student, identified the behavior that was inappropriate and reported it in accordance to policy. She described the Grievant’s comments as intentional as the Grievant knew the policy, was required to review policy after the 2021 incident, and still made the comments going to the site and coming back from the site. The HRD testified “you read the policy and you still make those comments.... (Grievant) made the comments two separate times going to the site and coming back from the site. It was intentional.” Grievant had prior experience with this type of comment in 2021 and knew that these types of comments are not allowed. Termination was necessary as there were concerns regarding further actions that would affect the agency. The HRD was asked if they would take the Grievant back. The HRD responded “taking her back would be detrimental to the agency and the policies would have no effect. We have a zero tolerance regarding incivility. It would affect the way interns view our agency.” The HRD explained that the RD and DRD took into consideration the entire circumstances. On cross examination, the HRD was asked if having a discussion with the Grievant would have helped or prevent it from happening again. The HRD responded she would have no way of knowing that. Grievant asked if her comments could have been oblivious. The HRD responded there is no way for her to know if Grievant was being oblivious but Grievant provided very little information to mitigate so the agency used the information that they had. The HRD reiterated that “the reasonable everyday person” would understand the comments as disrespectful, (Grievant) was aware of the policy, the comments violated policy, and (Grievant) said it anyway”. The HRD testified that she would find it difficult to interpret the Grievant’s comments as oblivious given Grievant was aware of the policy. Grievant asked how willful misconduct applies citing the last sentence in the policy definition of willful misconduct in Agency Exhibit 6 page 5. The HRD pointed to the word “may” which she said was not “all inclusive”. The HRD also pointed out that “there’s an entire paragraph before that sentence that defines willful misconduct so the agency would not rely on that one sentence”. The HRD testified that the definition is not all inclusive as the agency would look to the entire policy to include what is listed as well as other conduct that applies.

#### GRIEVANT TESTIMONY

Grievant testified on her own behalf. Grievant advised that her only other witness was the

Intern. Grievant did not believe policy was implemented fairly or equally among staff. The undersigned asked for examples and Grievant citing her Exhibit A pages 11-14 (a, b, c) from her binder of exhibits reading in part “*absent mitigating circumstances, termination may occur for the accumulation as follows:.....Three active Group I level offenses and One Group II; \*Two Group II level offenses.... Offenses in this category include acts of misconduct of such a severe nature that at a first occurrence normally should warrant termination...Absent mitigating circumstances...in lieu of termination, the agency may: \*Suspend without pay for up to 30 days and or \* Demote or transfer the employee with a minimum of 5% salary reductions. Under Group III Offenses includes ...unethical conduct....result in disruption in the workplace or other serious violations of policies, procedures or law....unless there are mitigating circumstances that may support an alternative to termination. Under Mitigating Circumstances and Aggravating Factors, Agencies may reduce the level of disciplinary action if there are mitigating circumstances. Aggravating factors may support a higher level offense when the facts and circumstances associated with the employee’s action negatively impacted the employee’s credibility as a supervisor/manager of subordinates, reveals a serious disregard for the safety and well-being of self and others, or damages the credibility and the reputation of the agency... What the final recommendation for corrective action should be to ensure consistency, equity and objectivity.*” In Grievant’s Exhibit B, Grievant points to portions of the policy like Group I “unsatisfactory work performance” citing portions of the language. Grievant then cites failure to follow instructions citing portions of the language like “this offense focuses on the ability of agency managers and supervisors to direct work and the workforce.....demonstrate the employee was given proper, reasonable and lawful instruction and the employees improperly failed to follow the instructions or perform the assigned work....whether intentional or unintentional...” In Exhibit C, Grievant testified that she was rated “below contributor” for the first time; however, was given more assignments than her peers. Grievant read “She was scheduled for 31 CEI inspections and 4 recon inspections. She completed 32 CEI inspections and 12 recon inspections. However, she did not complete the inspections identified in her assigned inspection strategy for FY 23.” Grievant testified that she completed 12 more inspections than her peer. Grievant was “filling in for an inspector who had left”. In Exhibit D, Grievant believes that 2024 Written Notice, which she noted was three months after the offense date, should have been Group I. Grievant cited her Exhibit E but read from a different document as Exhibit E appears to be a listing of inspectors and inspections completed along with their salaries. Grievant was reading from Exhibit F page 4. Grievant testified that she felt like she had to apologize whether she was intentional, oblivious, aware or not and then said her comments were not intentional. She “holds a space that someone in a conversation could ask for clarification”. Grievant described the June 16, 2025 (Grievant Exhibit F) incident, in part, as “it was a long drive. We talked about the inspection and everything that was work related. We came upon an animal control marked horse trailer, horse trucks, police, vehicles, men with helmets and riding boots ..... ‘is this a horse seizure? What could it be?’ I listed the possibilities in my head... ‘are they doing a ritual(s) or are they eating them? Are they not feeding them?’ This is all I was focused on...whatever it was that the horses would be seized ....we could not see the family. As we drove pass, I was thinking out loud... ‘Are they Asian or Native American? ..... Native Americans do rituals in their artwork’. It could be a misunderstanding. I was throwing out possibilities of what it could be....‘do you think they could be eating them?’ I thought I was referencing those being seized... I didn’t realize there was an undertone or that I was referring to a race. My best friend is Vietnamese who makes me eat her cuisines. She knows I’m very intimidated outside of mac and

cheese. I wanted someone else to kind of look at this and see....a misunderstanding can blow up so quickly and take your whole career. I have no ill intentions towards anyone of any kind. I have friends of all kinds. I did not realize. Now I am very aware. Be intentional of what you speak and how you say things and know how it's received. Be careful with what you say." On cross examination, Grievant testified she has been with the agency for approximately 8 years as a Water Compliance Inspector and inspects facilities for compliance. As far as interactions with others, Grievant would have an escort on the site. The Grievant admitted that she commented on religious rituals and eating animals. Grievant reiterated these were not direct quotes. Grievant admitted that she received civility training in 2019 and to become familiar with it in 2021. In regards to agency Exhibit 4, Grievant testified "it felt like apologize now" and did not expand on her response because at the meeting she felt like she was being treated unfairly. Grievant read the agency Exhibit 4 page 4 in part "*the agency is considering taking formal disciplinary action against you under the Standards of Conduct Policy 1.60 which may result in the issuance of a Written Notice.*" (Grievant inserts that this language did not mention termination) *Please provide your written response. Your response should address the allegations and any mitigating circumstances you wish for me to consider before making a decision. If you do not provide a response by the above date, I will make a decision based upon the information available*". Grievant testified "I tried to explain....I told them I was being treated unfairly....being made to work more than my peers and he (RD) stood up raised his voice and pointed his finger at me saying I was not being treated unfairly; anytime I tried to explain, the more information given, it felt like they would find something or construe it to get me in more trouble. I did not realize the words were hurtful or negative. Had I known I would have apologized in the moment". In regards to the July 16, 2021 incident, she described the coworker as making his comments and that she told him, at that time, to stop because he cannot say the comments and he did stop. Grievant believed she was following policy in 2021 as she addressed it with him and he stopped. A different inspector reported it. Grievant testified "if you see something stop it... if it doesn't stop, then report it." Grievant testified that even though the coworker in 2021, did not have an active Notice on file, the coworker had a long history having been given prior Written Notices. Grievant testified that the remarks made by the coworker in 2021 were similar and oblivious; that is, saying something that was not intentional. Policy is implemented differently for different employees. Grievant differentiates that her report is short and concise. "He (2021 inspector) is more of a talker. If I hurt anyone, Now that you've told me I apologize and I have done the research. He said the same things in 3 pages and I do not know what more is needed than my three sentences. I did not know what more to say." Grievant argued that she did not mean intentional harm saying, "I'm not sure what more was needed in the apology. I handled the three things I needed to get in there."

#### CLOSING ARGUMENTS

In closing the agency asked the Hearing Officer to affirm the agency decision, that the 2021 coworker was not similarly situated, the Grievant engaged in behavior as set forth in the July 9, 2025 Written Notice, that Grievant violated several policies, DEQ followed law and policy, DEQ has a right to implement its policies, the violation was properly designated as a Group III which can lead to termination and that the agency cannot take her back as it would have a negative impact on the agency. In Grievant's closing, she asked for the Group III offense to be amended to a Group II, properly group the offenses, and implement the policy as it is written.

#### DISCUSSION

In agency Exhibit 4, the agency sets forth DHRM Policy 1.60 Employee Standards of Conduct: Employees covered by this policy are employed to fulfill certain duties and expectations that support the mission and values of their agencies and are expected to conduct themselves in a manner deserving of public trust. The Standards of Conduct are intended to illustrate the minimum expectations for acceptable workplace conduct and performance. Is it the policy of the Commonwealth to promote the well being of its employees by maintaining high standards of work performance and professional conduct with an overall emphasis on diversity, equity and inclusion that promotes equitable treatment of all employees. As part of the Standards of Conduct, employees who contribute to the success of the agency's mission will:

- Perform assigned duties and responsibilities with the highest degree of public trust.
- Demonstrate respect for the agency and behave in a civil and professional manner towards agency coworkers, supervisors, managers, subordinate, students, and customers.
- Support efforts that ensure a safe and healthy work environment.
- Meet or exceed established job performance expectations.
- Make work related decisions and/or take actions that are in the best interest of the agency.
- Comply with the letter and spirit of all state and agency policies and procedures and Commonwealth laws and regulations.
- Work cooperatively to achieve work unit and agency goals and objectives.
- Always conduct themselves in a manner that supports the mission of their agency and the performance of their duties whether on duty or off duty.

Furthermore, the Standards of Conduct Attachment A describes Discrimination, Disparate Treatment or Hostile Work Environment as behaviors, conduct or decisions that are founded upon unjustified distinctions between people based upon the protected groups, classes, or other categories to which they belong or are perceived to belong. Legally protected classes or categories include race, ethnicity, national origin, age pregnancy, disability, religion, veterans, gender, gender expression or sexual orientation/identification. Disparate treatment involves intentional actions, decisions, or conduct directed towards a member(s) of a legally protected class that results in negative outcomes such as hiring practices. Hostile work environment is unwelcome or offensive behaviors that denigrate, alienate, intimidate or abuse/bully an individual (colleague, customers, and other stakeholders) such that performance or services received are negatively impacted.

DEQ Code of Ethics. As employees of the Commonwealth of Virginia Department of Environmental Quality, we are committed to supporting each other and the mission and values of the agency. In the conduct of our work, we will:

- Commit to support our DEQ team members and the mission and vision of the agency.
- Dedicate our efforts toward earning the respect, trust, and confidence of the public, elected and appointed officials, and those with whom we work.
- Commit to support our DEQ members, and the mission and vision of the agency.
- Act with integrity in all relationships.
- Abide by Virginia Standards of Conduct for Employees and related regulations.
- Conduct or condone activity only if it is legal and proper.

- Hold ourselves accountable for adhering to this Code of Ethics. DHRM 2.35 and DEQ 5-2019, Civility in the Workplace. The purpose of the Agency's Civility Policy is to clearly establish DEQ's intent to provide a welcoming, safe, and civil workplace that demonstrates the principles of civility, diversity, inclusion, and equity. DEQ prohibits workplace harassment (including sexual harassment) bullying (including cyber-bullying) and workplace violence. Behaviors that constitute harassment, sexual harassment, bullying, cyber-bullying, and threats or violence related to the workplace are prohibited in state government agencies and will not be tolerated. Employees have the responsibility to conduct themselves in a manner that cultivate mutual respect, inclusion, and a healthy work environment. DHRM and DEQ uses the reasonable person standard, an objective standpoint by which conduct, and behavior will be evaluated, to determine whether it is sufficiently severe or pervasive to create a hostile work environment or substantially affect the work environment.

Prohibited Conduct/Behaviors may include, but are not limited to:

- Demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical, or dishonest.
- Behaving in a manner that displays a lack of regard for others and significantly distresses, disturbs, and/or offends others.
- Making disparaging remarks, spreading rumors, or making innuendos about others in the workplace.
- Swearing or using obscene language or gestures toward another person.
- Humiliating others; making public statements with the intent of embarrassing a targeted person; impugning one's reputation through gossip.
- Making culturally insensitive remarks; displaying culturally insensitive objects, images, or messages
- Making demeaning/prejudicial comments/slurs or attributing certain characteristics to targeted person based on the group, class, or category to which they belong. (Agency Exhibit 4 Summaries of Policies)

### **MITIGATION**

The Grievant requests mitigation of the discipline as Grievant did not believe that the discipline was warranted. In Agency Exhibit 20, Grievant request "fair and equitable treatment in the form of at the very least changing the decision from termination to being laid off." In the Grievant's closing statement, Grievant asked that the July 9, 2025, Group III be amended to a Group II. Although the Grievant asked that the March 11, 2024, Written Notice be amended to a Group I, it was not before the Hearing Officer to change that particular finding from over a year ago. (Agency Exhibit 19)

The EDR Administrative Review Ruling Number 2024-5620 dated November 15, 2023, states as follows:

"By statute, Hearing Officers have the power and duty to receive and consider evidence in mitigation or aggravation of any offenses charged by an agency in accordance with rules established by EDR. The Rules for Conducting Grievance Hearing (Rules) provide that a Hearing Officer is not a 'super-personnel officer'; therefore, in providing any remedy, the Hearing Officer should give the appropriate level of deference to action by agency management that are found to be consistent with law and policy. More specifically, in disciplinary grievances, if the Hearing Officer finds that (1) employees

engaged in the behavior described on the Written Notice, (2) the behavior constituted misconduct, (3) the agency's discipline was consistent with law and policy, then the agency's discipline does not exceed the limits of reasonableness. (§VI 13). Because reasonable persons may disagree over whether and to what extent discipline should be mitigated, a Hearing Officer may not simply substitute his or her judgement for that of agency management. Indeed, the 'exceeds the limits of reasonableness' standard is high. EDR, in turn will review a Hearing Officer's mitigation decision for abuse of discretion, and will reverse the determination only for clear error... The Rules state that 'in making such mitigation decision, the Hearing Officer must give due weight to the agency's discretion in managing and maintaining employee discipline and efficiently recognizing that the Hearing Officer's function is not to displace management's responsibility but to assure that managerial judgment has been properly exercised within the tolerable limits of reasonableness.' (Rules VI (B)(2)) EDR Administrative Review Ruling Number 2023-5432 states "the useful model of the federal Merit System Protection Board for EDR Hearing Officers that 'prohibits interference with management's judgement unless, under the particular facts, the discipline imposed is 'so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion...but may mitigate here the agency failed to weigh the relevant factors or the agency's judgment clearly exceeds the limits of reasonableness.'"

The undersigned finds by a preponderance of the evidence that the Grievant engaged in the behavior described in the July 9, 2025, Written Notice and the behavior constituted misconduct. (Agency Exhibit 5; Grievant Exhibit G) The agency witnesses testified credibly. It is clear from the testimony of the Intern that the words, although not direct quotes, were race based targeting a protected class or category of persons. Using the reasonable person standard as promulgated in the agency policies on Civility, a reasonable person would know that commenting on a particular race, group or class of persons and specifically referencing ritual(s) involving animals or eating animals is inappropriate, unprofessional, and discourteous. The Grievant's response on July 1, 2025, did not challenge the words as described in the Written Notice. Nor did the Grievant cross examine the Intern as to the exact words as testified to. The Grievant asked the Intern if she misunderstood the comments and the Intern said she did not misunderstand the comments. In agency Exhibit 20 under "facts supporting this", Grievant's statement was "as I drove passed an active animal control and police scene with horse trailers, I said 'what could they be seized for, eating, glue or sacrifice?' Then as we passed I was thinking out loud and softly said 'oh are they Asians or Native Americans, cause Native Americans used the hooves for artwork since it has adhesive properties like tree cellulose. As we passed it again on the way back to the office, I said 'or do you think it was an if you see it situation, like they are low on resources and eat weird animals'. In the Grievant's testimony at the hearing, she said, 'is this a horse seizure? What could it be?' I listed the possibilities in my head... 'are they doing a ritual(s) or are they eating them? Are they not feeding them?' This is all I was focused on...whatever it was that the horses would be seized ....we could not see the family. As we drove passed, I was thinking out loud... 'Are they Asian or Native American?..... Native Americans do rituals in their artwork'. It could be a misunderstanding. I was throwing out possibilities of what it could be....'do you think they could be eating them?'" The Intern's email states in part that Grievant "*comments on the potential race of the family. She then immediately said that this had to be a horse seizure because of the amount of people and because of the two officials in helmets but we did not see any animals...any horse trailers or any trucks to pull said trailers. She could not determine if they were Native*

*American or Asian and commented on this. These are not direct quotes but she said, 'Do you think they are Natives, like Native Americans and had a religious thing or ritual with the horses...you know Natives do things with animals....She then went on to comment if the family was Asian ...These are not direct quotes, but she said, 'I couldn't tell if they were Asian or not...Oh my God they eat them. You know Asians eat weird animals, don't they? They look at horses and want to eat them.' She repeated many comments with similar wording....On the way back, we passed the house again. She went on to comment again about them being Asian and killing horses, despite us not seeing any animals at all. She then asks, 'Oh, what if they're turning them into glue?' This is a direct quote from her; 'You know they look at horses and they see glue.' She then continues to repeat similar comments on this family potentially having horses and potentially turning their horses into glue if they are not eating them.'" (Agency Exhibit 1)*

The agency's Civility policy was published in 2019; and Grievant received trainings on the Civility policy, what it means and how it applies in the workplace. In addition, Grievant was required to review the training as a result of an investigation interview for the July 16, 2021, incident in which another co-worker made racial comments based upon a protected class of citizens and Grievant was a witness. Grievant argues that her words were "oblivious, misunderstood, and that she was not aware that her words had the impact it did on the Intern. In Grievant's questioning of witnesses she asked all of them if her comments were oblivious or misunderstood and all witness responded that they did not believe the comments were oblivious nor did they believe the words were misunderstood. Specifically, the Intern who was present at the incident clearly testified that she did not misunderstand the comments. Grievant asked on cross examination about the wording of the narrative in the Notice as "those were not my exact words" but did not provide additional information. The only other report of the incident is from the Intern who provided a written statement about the event. The Intern was a credible witness and the Intern's statement was not challenged by the Grievant. The Written Notice addresses this event, the comments, and how policy was violated.

Grievant's conduct constituted misconduct. In Grievant's Exhibit A page 22, unacceptable conduct/misconduct is defined as "*employee conduct or behavior that is inconsistent with state or agency standards for which specific corrective or disciplinary action is warranted*". The agency developed a policy which they implemented in 2019 to train employees. Grievant received the training, reviewed the training, and the DRD testified that the policy is reviewed in its annual trainings. Using racial remarks or commenting on rituals or eating animals was not consistent with the state or agency policy. In Grievant's Exhibit B page 3 and 5 states in part "*discrimination, disparate treatment or hostile work environment is defined as behaviors, conduct, or decisions that are founded upon unjustified distinctions between people based upon the protected groups, classes, or other categories to which they belong or perceived to belong....include race, ethnicity, national origin, age, pregnancy, disability, religion, veterans, gender...Misconduct- when an employee's actions are determined to be avoidable and the employee failed to exercise reasonable care or judgement resulting in a negative impact or the potential for negative impact on Agency business operations and services, workplace, or credibility. The employee has demonstrated the necessary knowledge, skills, and abilities and received training, information and resources to perform duties but did not do so. The employee is capable of proper behavior and action but does not comport with reasonable expectation. Deliberate or intentional actions may be considered as willful misconduct...*" The comments made by the Grievant speak directly to the Exhibit's language. There was no rationale for the Grievant to make any remarks about race or ritual(s) going to the site or coming from the site.

Grievant's own testimony corroborates the Intern's email statement. On cross examination, the Grievant did not deny remarking about rituals or eating animals. In agency Exhibit 20 as well as Grievant's testimony, Grievant states that she used the words ritual(s), eating animals, Native Americans and Asians. Using Grievant's Exhibit A page 12 in describing a Group III offense it includes termination with examples of unethical conduct or serious violations of policies and procedure unless there are mitigating circumstances in support of an alternative to termination. The Grievant was given the opportunity to explain her side of the story and to give details for management to consider. In the Written Notice issued July 9, 2025, under Section IV – Circumstances Considered, it was stated that *“while the 2021 incident was resolved, and (Grievant) was reminded of the expectations and work instruction to follow the agency's civility policy and expectation of conduct. This was also reiterated to the entire TRO team in an email on February 16, 2024. As a Senior Water Inspector, (Grievant) is expected to follow all agency policies and procedures during the performance of their duties, but especially during an assignment as a trainer to a summer intern. (Grievant) was entrusted with training and mentoring an intern as part of the Summer Intern Program. The goal of internship is to allow young environmental professionals an opportunity to gain insights into our mission, goals, and the various environmental programs we oversee; engage with experienced staff who are responsible for training and mentoring; and to get an exclusive behind-the-scenes look at our regional DEQ offices. In performing the role of a trainer, mentor and colleague, (Grievant) was expected to demonstrate the highest degree of professionalism and civility. (Grievant) failed to do so. The comments were hurtful and upsetting to the coworker and mentee. As an aggravating factor, (Grievant) actions were avoidable; however, (Grievant) failed to exercise reasonable care or judgment resulting in a negative impact on a colleague, and the agency and potentially the community. Additionally, throughout (Grievant's) tenure with DEQ, (Grievant) received training, information, and resources related to expected behaviors in accordance with DEQ and state policies and procedure. (Grievant's) actions were disrespectful, hostile, deliberate, and intentional. The States' Standards of Conduct, Civility in the Workplace and DEQ's Code of Ethics and Values (7Cs) require that DEQ employees fulfill certain duties and expectations that support the mission and values of the agency and conduct themselves in a manner deserving of public trust. As an additional aggravating factor, (Grievant) previously violated the Standards of Conduct and as a result, had an active Group II Written Notice on file which was issued March 11, 2024, and expiring March 11, 2027, for failure to follow supervisor instructions. Due to the severity of (Grievant's) conduct and repeated violations of DHRM policy 1.60 – Standards of Conduct and DEQ Code of Ethics, the decision was made to not mitigate the level of offense and disciplinary action”.*(Agency Exhibit 5 & 19; Grievant Exhibit G)

Interestingly, in looking at the Grievant's September 21, 2021 response where she was a witness to a coworker's racial remarks and required to review the 2019 training, Grievant gave a detailed response saying, “I understood the magnitude of the event that transpired...I feel like honesty is an integral part of any investigation.... I am most welcoming and inclusive....I make sure every person... is welcomed in a way that I would want to be welcomed....I thought it was apparent that I share the same goal as DEQ which includes inclusivity and valuing diversity. I want us to be people who have compassionate bonds with each other that surpass any differences we have. Through this, we can plant seeds of change and influence ....We are who we are because of our lived experiences. It takes a great amount of compassion to understand what it's like to walk a mile in someone else's shoes....I have regard for all humans, despite class or category...I have regard for my coworkers...”(Agency Exhibit 18) In this September 2021

response, the Grievant demonstrated that she understood the severity of the event, that she has compassion for others despite class or category and that she shares the same goals of the agency in regards to diversity and inclusion. In September 2021, Grievant addressed the concerns of the agency and challenged the words as described. On July 1, 2025, the Grievant provided a shorter response saying, *"I did not realize my words were negative or hurtful at the time. I sincerely apologize to (Intern) and DEQ for the impact it caused. This has given me the opportunity to learn as I have started researching and doing the work to show up better."* (Agency Exhibit 3) Given the Grievant's experience in the 2021 incident, it is difficult to fathom that she did not realize her words on June 16, 2025, were not sensitive to diversity and inclusion. It is hard to understand why the Grievant, when given the opportunity to provide more details for mitigation, chose not to give additional information. The agency addressed this with her and told her that if she did not provide the mitigating information, decisions would be made with the information as provided. Grievant argues that she felt like she had already been found "guilty" and "apologize now." Having participated in the training should have prompted the Grievant to respond thoroughly and not allowing one person's narrative of June 16, 2025, to be the interpretation to consider. Grievant did not establish mitigating circumstances justifying a reduction or removal of the disciplinary action at issue and the Grievant did not meet the burden of establishing that the agency abused its discretion.

The agency's discipline was consistent with law, policy, and properly characterized as a Group III. In the June 30, 2025, Memorandum (Agency Exhibit 4) there is a description of the event based upon the Intern's statement. Again, the Grievant never challenged the Intern on what was said and Grievant's own testimony on direct and cross examination corroborated the Intern's statement. Questions were asked about whether or not the Grievant had a disability. The undersigned has no way to determine if any disability came into play as there was no documentary evidence or testimony of any identified disability. In Agency Exhibit 8, RD advised HRD, *"after reading the Due Process Memorandum to Grievant and providing her the printed policies, she asked the following: Are you aware of my disability? You should check with HR."* Grievant did not testify to any disability. Management consulted Human Resources as to any documented disability and none were identified.

Management gave the Grievant an opportunity to respond to the allegation. The DRD reached out to the Grievant when she received the email response thinking the Grievant may have meant to attach something to the email. (Agency Exhibit 3) Grievant chose not to give additional information. Grievant's argument as to the reason for her short response in 2025 was that she felt it would have had no effect. This argument is difficult to comprehend when reading the Grievant's September 21, 2021, response which clearly demonstrated that she understood the nature of that event, the impact of the words, the importance of inclusion and diversity. (Agency Exhibit 18) In the course of the hearing, questions were asked of the witnesses to compare the July 16, 2021, incident and the June 16, 2025, incident. It was important to know if the agency treated Grievant differently from another employee who is comparable in relevant/material respects; that is, to discern if the treatment of a similarly situated employee is attributable to any form of discrimination or was the decision made for legitimate business reasons. The questions were to elicit whether the 2021 inspector, used as a point of comparison, was given differential treatment. In the testimony of the witnesses, whether asked on direct or cross, the RD and DRD testified that the 2021 inspector gave a "robust" or detailed response of how his words impacted the agency, what he did wrong and demonstrated an understanding of policy. Whereas the Grievant in the 2025 incident gave a very short response without providing any details,

mitigation or providing her “side of the story”. The testimony further distinguished that in 2021, Grievant was a witness to the event and in 2025 Grievant was the individual who made the comments. The 2021 inspector was a Solid Waste Inspector while the Grievant was a Water Compliance Inspector. It cannot be determined from the testimony or exhibits if these jobs were similar in task, qualifications, skillsets, experience or responsibilities. The Grievant testified that the 2021 inspector had a long history of Written Notices with the agency, but there was no evidence presented regarding his disciplinary history. Management determined that the Grievant had an active notice on file in 2025 while the 2021 inspector did not have any active notices on file. Notably, there was no testimony that the 2021 inspector was treated differently because of his age, gender or protected class. The Grievant testified that the 2021 inspector was “more of a talker” as an explanation of his response and that she-Grievant was “more concise” basically saying the same thing in three sentences. As far as similarities, in both cases, the Interns reported the incident of a coworker using racial comments.

DHRM Policy 1.60 addresses that management must consider issues with similarly situated employees and how they have been addressed. There may be circumstances when an employee’s conduct requires immediate disciplinary action without employing progressive discipline. As far as Grievant’s argument that she felt she had been “grouped up” and treated unfairly, there was no evidence that the agency had treated her differently from a similarly situated employee. In Agency Exhibit 10, the Grievant signed an acknowledgment that she understood that she has *“a responsibility to conduct myself in a manner that cultivates mutual respect, inclusion, and a healthy work environment.....I understand that should I fail....I will be subject to disciplinary action up to and including termination....”* Again, Grievant’s own testimony corroborated the Intern’s email statement. Grievant testified that she thought the June 16, 2025, event may be a horse seizure. Even if it was a horse seizure, there would be no reason to ask about the race of the people, rituals, or eating of animals. The agency provided notice of intent and gave Grievant an opportunity to respond. The agency documented the nature of the offense and the reason for taking disciplinary measures in the Written Notice. Management applied corrective or disciplinary action consistently and in an objective and equitable manner, while taking into consideration the specific circumstances of Grievant’s case. The DEQ Policy 5-2019 states what is prohibited under DHRM 2.35, but the list of behaviors is not “all inclusive”. DEQ 5-2019 uses the reasonable person standard in *“assessing if behaviors should be considered offensive or inappropriate. Because all potential behaviors cannot be anticipated or listed this list provides some examples....demonstrating behavior that is rude, inappropriate, discourteous, unprofessional, unethical ....behaving in a manner that displays a lack of regard for others and significantly distresses, disturbs, and/or offends others....making culturally insensitive remarks...making demeaning/prejudicial comments/slurs or attributing certain characteristics to targeted persons based upon group, class, or category..”* (Agency Exhibit 11 pages 3-4). The Intern’s statement, the investigative information and the Grievant’s testimony speaks to the language in DEQ 5-2019. Grievant testified that she has a Vietnamese friend who cooks food for her stating that she is intimidated by other foods outside of mac and cheese. The undersigned found little weight in this portion of testimony. Lastly, the Grievant referred a witness at the hearing who saw the RD pointing his finger at her when she accused the agency of bias, but when asked about this witness by the undersigned, the Grievant clarified that the only witness she had was the Intern. The undersigned finds no mitigating factors to remove or amend the discipline.

In Grievant’s work profile from October 18, 2022, Grievant was rated “contributor” with

“needs to work on proposing solutions to problems in a way that recognizes the bigger strategic picture...consider best practices” Grievant wrote in item 44 “I propose to meet in 3 months, 6 months, and 9 months to discuss the bigger strategic picture and best practices...to better align our communications and understand expectations.”(Agency Exhibit 27) In October 2023, Grievant’s work profile indicated “below contributor” for not completing inspection identified in her assigned inspection strategy for FY 2023. Grievant was issued 2 Warning letters and 1 Notice of violation. Grievant wrote in item 44 “I completed the assigned number with an additional 12 inspections completed....which included an inspector who left inspections....I propose quarterly meetings to be on track for strong contributor....” (Agency Exhibit 28, 31) On March 11, 2024, Grievant received a Group II Written Notice for failing to follow supervisory instructions. (Agency Exhibit 32) In Grievant’s work profile from September 27, 2024, Grievant was evaluated as “contributor and strong contributor where the DRD thanked Grievant and appreciated her efforts.” (Agency Exhibit 23) From these exhibits, it appears that Grievant was able to improve in her work performance. However, the June 16, 2025, incident revealed that Grievant made culturally insensitive remarks, made demeaning/prejudicial comments/slurs or attributing certain characteristics to targeted persons based upon group, class, or category which is a violation of the Civility policy. (Agency Exhibit 11)

### **AGGRAVATING FACTORS**

This Hearing Officer found the following aggravating factors:

1. The Grievant began her tenure at the DEQ office on or about November 16, 2016. (Agency Exhibit 14) The agency’s Civility policy was published in 2019 and Grievant received trainings on the Civility policy, what it means and how it applies in the workplace. (Agency Exhibit 12)
2. Grievant received training as a result of an investigation interview for a 2021 incident in which another co-worker made racial comments based upon a protected class of citizens and Grievant was a witness. Grievant demonstrated knowledge, skill and abilities in regards to the policy as shown in her September 2021 response. However, Grievant failed to demonstrate her knowledge on June 16, 2025. Grievant’s own testimony of the June 16, 2025, incident clearly show that she made comments referencing ritual(s), eating animals, Asians and Native American. Although Grievant argues those were not her exact words, she testified using those words, wrote a statement using those words, and corroborated the Interns’ statement. (Agency Exhibit 20)
3. Policy was reiterated to the Grievant in the agency email on March 7, 2024, in which it was stated that while the 2021 incident was resolved, Grievant was reminded of the expectations and work instruction to follow the agency’s Civility policy and expectation of conduct. This was also reiterated to the entire TRO team in an email on February 16, 2024. (Agency Exhibit 5, 13, 21, Grievant Exhibit G)
4. As a Senior Water Inspector, Grievant was expected to follow all agency policies and procedures during the performance of her duties. Grievant was entrusted with training and mentoring the Intern as part of the Summer Intern Program. In performing the role of a trainer, mentor and colleague, Grievant was expected to demonstrate the highest degree of professionalism and civility and based upon Grievant’s conduct, Grievant failed to do so.
5. Grievant actions were avoidable. There was no need to make any comment in these

circumstances. Grievant failed to exercise reasonable care or judgment resulting in a negative impact on a colleague, and the agency and potentially the community. The Grievant has had training since 5/19/17, completed the training on DEQ 5-2019 on 7/18/19, completing Valuing Differences on 4/1/20 and completing DHRM – The Road to Cultural Competence on 6/30/21. (Agency Exhibit 12) The DRD testified that policy is reviewed during annual trainings. Therefore, Grievant received training, information, and resources related to expected behaviors in accordance with DEQ and state policies and procedure.

6. Grievant previously violated the Standards of Conduct and as a result, had an active Group II Written Notice on file which was issued March 11, 2024, and expiring on March 11, 2027, for failure to follow supervisor instructions related to work performance.
7. The nature of the violation is an aggravating factor. The Intern on June 16, 2025, was a subordinate who was there to shadow and get experience. The Grievant was in a leadership role to provide the Intern with learning experience and provide guidance. Instead, Grievant made comments related to Native Americans, Asians, ritual(s), and eating animals which have no legitimate business purpose.

### Order

After reviewing the evidence presented, observing the demeanor of each witness, and based upon the above Findings of Fact and Conclusions of Law, the Hearing Officer renders the following decision:

1. That DEQ employed the Grievant as a Water Compliance Inspector.
2. That by a preponderance of the evidence, under the facts of this case and the applicable regulatory standards, stated herein, that the Grievant engaged in the behavior described in the Written Notice, that the behaviors constituted misconduct, significantly impacted the agency's services and operations and that the agency's discipline was consistent with law and policy.
3. The Grievant violated agency and department regulation and policy regarding workplace civility.
4. The Agency Written Notice, issued on July 9, 2025, stated a Group III offense of DHRM Policy 1.60, Policy 2.35, DEQ Code of Ethics and DEQ Policy 5-2019 with a disciplinary action of termination is warranted and consistent with law and policy.
5. Va. Code Section 2.2-3005.1 authorizes Hearing Officers to order appropriate remedies including "mitigation or reduction of the agency disciplinary action." Mitigation must be "in accordance with rules established by the Department of Human Resources Management." Va Code § 3005. Thus, the Hearing Officer may mitigate the agency's discipline only if, under the record evidence, the agency's discipline exceeds the limits of reasonableness. If the Hearing Officer mitigates the agency's discipline, the Hearing Office shall state in the hearing decision the basis for the mitigation." A non-exclusive list of examples includes whether (1) the employee received adequate notice of the existence of the rule that the employee is accused of violating; (2) the agency has consistently applied disciplinary action among similarly situated employees and (3) the disciplinary action was free of improper motives. In light of this standard, the Hearing Officer finds no mitigating circumstances exist to reduce the disciplinary action.

The Grievant received adequate notice as the management went over the June 30 Memorandum, Grievant had prior training, and management gave her an opportunity to respond by providing additional details of the June 16, 2025, incident. The agency has consistently applied discipline among similarly situated employees. The RD and DRD were specific in their testimony to distinguish between the two incidences of 2021 and June 16, 2025. The disciplinary action was free of improper motives. Other than the Grievant saying that she felt that she had been treated unfairly, there was no evidence to support this claim.

For this reason, stated herein, the Agency's issuance to the Grievant of a Group III Written Notice with termination is upheld.

So Ordered.

Dated September 15, 2025.

*Polly Cheng/s/*  
Hearing Officer

#### **NOTICE OF APPEAL**

You may request an administrative review by EDR within 15 calendar days from the date the Decision was issued. Your request must be in writing and must be received by EDR within 15 calendar days of the date the Decision was issued. Please address your request to:

Office of Employment Dispute Resolutions  
Department of Human Resource Management  
101 North 14<sup>th</sup> Street, 12 Floor  
Richmond, Virginia, 23219

Or send email to:

[EDR@dhrm.virginia.gov](mailto:EDR@dhrm.virginia.gov)

Or via fax to 1-804-786-1606

You must provide a copy of your appeal to the other party and the Hearing Officer. The Hearing Officer's Decision becomes final when the 15 calendar days period has expired or then the request for administrative review have been decided.

A challenge to the Hearing Officer's Decision is inconsistent with state or agency policy must refer to a particular mandate in state or agency policy with which the Hearing Officer's Decision is not in compliance.

You may request a judicial review if you believe the Hearing Officer's Decision is contrary to the law. You must file a Notice of Appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose within 30 days of the date when the Hearing Officer's Decision becomes final. Agencies must request and receive prior approval from EDR before filing a Notice of Appeal. (See Sections 7.1 through 7.3 of the Grievance Procedure Manual for a more detailed explanation or call EDR's toll free Line at 888-232-3842 to learn more about appeal rights from an EDR consultant,