UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Beaumont, TX

DEC 21

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RETURN RECEIPT REQUESTED

In Reply Refer to:
EPA File No: 1R-00-R6

Mr. Robert J. Huston, Chairman
Texas Natural Resources Conservation Commission
P.O. Box 13087
Austin, Texas 78711

Permit No. 19566/PSD-TX-768M1

Re: Partial Acceptance / Partial Rejection of Administrative Complaint

Dear Mssrs. Malveaux, Carman and Alvarez,

On April 13, 2000, Rev. Roy Malveaux, Dr. Neil Carman and Raul Alvarez mailed a complaint to the U.S. Environmental Protection Agency, Office of Civil Rights on behalf of the African American residents of the City of Beaumont, Texas. The complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.*, and EPA's regulations implementing Title VI found at 40 C.F.R. Part 7 by the Texas Natural Resource Conservation Commission. The purpose of this letter is to inform you that the complaint has been partially accepted for investigation by OCR.

The complaint has four allegations. The first allegation states that in issuing a Hydrocracker Upgrade permit amendment to Exxon-Mobil's Beaumont, Texas Refinery, the TNRCC denied the affected community, which is predominantly African-American, "the opportunity to participate in a contested hearing." The permit amendment was issued on December 2, 1999. According to the complaint, "[t]he community's opportunity to request a Contested Case Public Hearing was denied when TNRCC circumvented the 30-Day Public Notice and Public Comment period . . . through the inappropriate use of mainly federally required refinery emission decreases as offsets." The second allegation states that TNRCC's issuance of the Hydrocracker Upgrade permit amendment to Exxon-Mobil will lead to "increases in hydrogen sulfide and other emissions" which will have an adverse health impact on the African-American residents of the community surrounding the refinery. The third allegation states that TNRCC failed to take an enforcement action against Mobil Oil's Beaumont Refinery for exceedences documented on August 25 and 27, 1999, SO_2 Monitoring Program Monthly Report. The fourth allegation states that TNRCC failed to take an enforcement action against Mobil Oil's Beaumont Refinery for H_2S exceedences documented in a July 15, 1999, report. The complaint also states that TNRCC's failure to take an enforcement action for both the SO_2 and H_2S exceedences "has placed residents of the affected community at a disproportionate risk of toxic exposure in direct violation of their civil rights." The first two allegations of the complaint are accepted for investigation. The third and fourth allegations of the complaint are rejected.

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Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). The first two allegations of the complaint meet the jurisdictional requirements described in EPA's Title VI regulations for investigations. First, the complaint is in writing. 40 C.F.R. § 7.120(b)(1). Second, the first and second allegations claim that TNRCC, in issuing a Hydrocracker Upgrade permit to Exxon-Mobil's Beaumont, Texas Refinery, discriminated against members of the African American community in Beaumont, Texas, in violation of Part 7 as described above. 40 C.F.R. § 7.120(b)(1). Third, the alleged discriminatory acts occurred on December 2, 1999, which is within 180 days of the date on which you filed your complaint with EPA. 40 C.F.R. § 7.120(b)(2). Fourth, TNRCC was a recipient of EPA financial assistance at the time of the alleged discriminatory acts. 40 C.F.R. § 7.15. Based on these facts, the first two allegations described in the second paragraph of this letter are accepted for investigation.

The third and fourth allegations in the complaint fail to satisfy the timeliness requirement in 40 C.F.R. Part 7. The exceedences on which the third allegation is based were documented on August 25 and 27, 1999. The exceedences on which the fourth allegation is based were documented on July 15, 1999. All of these dates are more than 180 days before the date on which the complaint was filed with EPA. The complainants request that EPA waive the 180 day requirement and accept these allegations because they allege that they are continuing violations on which TNRCC has not acted upon and, therefore, are not subject to the 180 day limit. However, in order for a continuing violation to be timely, there has to be a discrete, documented act or omission by a recipient of federal funds within 180 days of the filing of a complaint. The continuing effects of a prior act are not sufficient. Based on these facts, both allegations are rejected for investigation.

EPA's Title VI regulations provide that OCR must attempt to resolve complaints informally whenever possible 40 C.F.R. § 7.120(d)(2). Accordingly, OCR will discuss offers to informally resolve the complaint, and will, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders. If you are interested in an informal resolution of the complaint, please inform Yasmin Yorker within 30 days of receipt of this letter. Ms. Yorker can be reached at (202) 564-7296.

If you have any questions, please contact Eva Hahn by phone at (202) 564-8186, or by mail to the U.S. EPA, Office of Enforcement and Compliance Assurance (Mail Code 2201A), Title VI Task Force, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Karen D. Higginbotham
Acting Director

cc: Rev. Roy Malveaux
Executive Director
People Against Contaminated Environments
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Beaumont, Texas 77705

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