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

DEC 2 1998

OFFICE OF
CIVIL RIGHTS

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IN REPLY REFERENCE NO:
1R-95-R6

Honorable Barry McBee, Chairman
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

Dear Mr. McBee:

I am writing regarding the above-referenced administrative complaint filed with the Office of Civil Rights (OCR) by People Organized in Defense of Earth and her Resources (PODER) and Montopolis Area Neighborhood Improvement Council (MANIC) on October 11, 1995. This complaint was amended by a letter from Mr. Richard Lowerre, PODER and MANIC's attorney, dated September 23, 1997 and clarified by letter dated January 13, 1998 (copy enclosed). For the reasons discussed below, OCR is accepting for investigation the allegations outlined below which were contained in PODER's letter of January 13, 1998.

The complaint centers around the Tokyo Electron America, Inc. (now Tokyo Electron Texas, Inc.) (hereinafter Tokyo Electron) facility located at 2400 Grove Boulevard in Austin, Texas. Specifically, the January 13, 1998 letter alleges that the Texas Natural Resource Conservation Commission (TNRCC) violated Title VI of the Civil Rights Act of 1964, as amended, and EPA's implementing regulations found at 40 C.F.R Part 7, which prohibits recipients of EPA financial assistance from discriminating on the basis of race, color, or national origin in their programs or activities. Specifically, the complaint alleges that:

1. TNRCC's use of standard exemptions for the Tokyo Electron Texas, Inc. facility in Austin, Texas authorizes the construction of new sources of air pollution resulting in cumulative impacts of air emissions which create disparate environmental and human health impacts on Hispanics and African Americans in East Austin and Montopolis.

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2. TNRCC's pattern of using standard exemptions is both intentionally discriminatory and has the effect of discriminating against minority communities, which in Texas are most often Hispanic communities. The standard exemption process does not require public notice or involvement which has the effect of discriminating against Hispanics by denying them access to the permitting process.

3. TNRCC's pattern of granting air pollution permits before the resolution of appeals of denials of Texas Open Record Act requests is both intentionally discriminatory and has the effect of discriminating against minority communities, which in Texas are most often Hispanic communities. This practice has the effect of discriminating by denying minority communities the ability to participate meaningfully in the permitting process.

In order for a Title VI administrative complaint to be accepted for investigation by OCR, the complaint must describe the act(s) that allegedly has the purpose or effect of discriminating against a person or class of persons based on race, color, or national origin and it must be filed within 180 days of the alleged discriminatory act(s) unless OCR waives this time limit. 40 C.F.R. §7.120(b)(1) and (2).

While the September 23, 1997 amended complaint, filed approximately 209 days after TNRCC's February 25, 1997 letter notifying Tokyo Electron of issuance of the standard exemptions, is untimely, PODER and MANIC have requested a waiver of the 180-day time limit. The Complainant's allege that there was no general public notice or notice to PODER or MANIC at any point during the standard exemption process, including when the standard exemptions were granted. Further, Complainant's allege that documents relating to this matter were not filed in TNRCC's public files a timely manner impeding their ability to file their amended complaint in a timely manner. Given the lack of public notice and notice to the Complainants, who had been active in the Tokyo Electron permitting process beginning in 1996, and short time period after the ending of the 180-day time limit within which the amended complaint was filed, OCR will waive the 180-day time limit and accept the allegations in the September 23, 1997 amended complaint and the January 13, 1998 letter of clarification for investigation.

The January 13, 1998 letter also alleged that the "use of a series of standard exemptions to authorize essentially the same activities as the permit would have authorized is contrary to the agency's policies and approved SIP." Insofar as these allegations relate to the sufficiency of TNRCC's programs under its State Implementation Program (SIP), rather than Title VI, OCR has forwarded this issue to EPA's Office of Air and Radiation for appropriate action.

Under 40 C.F. R. §7.120(d)(1)(iii), you have an opportunity to make a written submission to OCR responding to, rebutting, or denying the allegations raised in the complaint within thirty (30) calendar days of receiving it. If you have any questions, please feel free to contact Mary O'Lone at (202) 260-1487.

Sincerely,

Ann E. Goode
Director
Office of Civil Rights

cc: Susana Almanza, Director (w/o attachments)
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