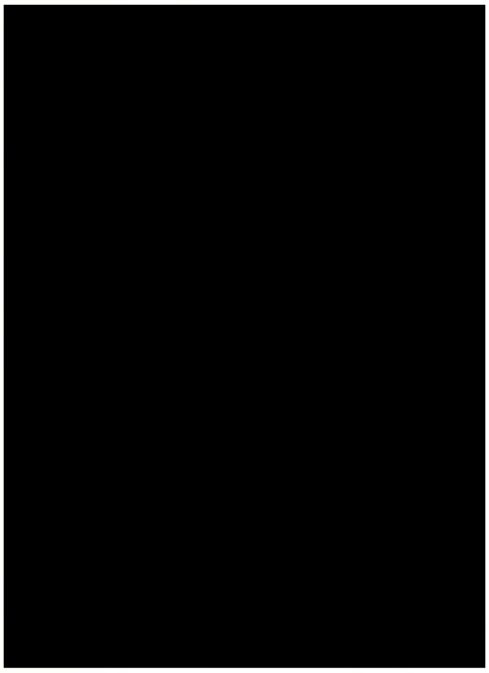
James W. Zion
Attorney for the Complainants
3808 Ladera Drive N.W.
Albuquerque, NM 87120

(505) 839-9549 (Tel)
(505) 352-7352 (Fax)
JZion@aol.com

BEFORE THE OFFICE OF CIVIL RIGHTS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

DOODA DESERT ROCK,
an unincorporated association,



Complainants,

v.

THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

09
000
3130

RECEIVED
3/9/09

I.

FACTUAL ALLEGATIONS

1. This complaint is about the operations of the Four Corners Power Plant, the San Juan Generating Station, and the proposed Desert Rock Power Plant in or near the Four Corners area of the Navajo Nation in New Mexico.

2. Dooda Desert Rock is an unincorporated association in the Navajo Nation.

3. The named complainants are Navajos who are adversely affected by the health situation recited in this complaint.

4. The Four Corners Power Plant and the San Juan Generating Station are reputed to be two of the top ten dirtiest power plants in the United States and among the top 50 dirtiest power plants in the United States, according to the Environment News Service.

5. District 9 of the Environmental Protection Agency is currently considering the grounds for the issuance of an air permit to the Desert Rock Energy Project, and it would be a third power plant in an area where Navajos are already adversely affected by two existing power plants.

6. The San Juan Generating Station has four units, and it is located approximately 15 miles west of Farmington, New Mexico and approximately 15 miles northeast of Shiprock, Navajo Nation.

7. The Four Corners Power Plant has five units it is sited on Navajo Nation lands approximately 25 miles west of Farmington, New Mexico and approximately five miles east of Shiprock, Navajo Nation.

8. The population of Shiprock or Naat'aanii Nez (in Navajo) as of 2000 was estimated to be 8,156 persons, and the population was 96.74% Native American; primarily Navajo.

9. The respondent for this complaint is the Environmental Protection Agency (EPA), and

there may be two regions involved, given that the Four Corners Power Plant is located on Navajo Nation lands, the San Juan Generating Station is on State lands, and the proposed Desert Rock Power Plant would be on Navajo Nation lands, approximately 25 miles southeast of Shiprock.

10. The EPA published notice of a draft Environmental Impact Statement for the proposed Desert Rock Energy Project on June 20, 2007.

11. The EPA issued a permit for the plant under the Clean Air Act in August 2008, but withdrew the permit for reconsideration after the EPA Appeals Board ruled that the basis for the grant of a permit to the "Bonanza" plant in Utah was incorrect; the Desert Rock permit reconsideration is pending.

12. The draft environmental impact statement for the Desert Rock power plant was prepared by the URS Corporation for the Bureau of Indian Affairs.

13. It stated that a review of available literature found that communities in the vicinity of the proposed Desert Rock plant would not have a higher susceptibility to particulate matter emissions than other populations because asthma rates in New Mexico are not significantly different from other populations in the United States.

14. That is according to "EPA Detailed Comments on the Draft Environmental Impact Statement for the Desert Rock Energy Project, August 24, 2007" at pages 7 and 8.

15. The comments concluded, at page 8 *Id.*, that "We note that a study by the U.S. Geological Service noted that people living in Shiprock are more than five times as likely to be seen at the local Indian Health Service clinic for respiratory complaints as are residents of other nearby communities" (footnote omitted).

16. More precisely, the study cited in the comments, *Navajo Coal and Air Quality in*

Shiprock, New Mexico, U.S. Geological Survey Fact Sheet 2006-3084 (July 2006), said that "Our study indicates that people living in Shiprock are more than five times as likely to be seen at the Northern Navajo Medical Center (NNMC) Indian Health Service facility for respiratory complaints as are residents of other nearby communities that are less affected by inversions" (because winter air inversions pull the pollution to the ground).

17. It also said that "Another notable finding is that Shiprock residents under the age of 5 and over 56 are more than twice as likely to be treated at NNMC for respiratory issues as would be expected of the entire Shiprock population," and that would be ten times more likely than people in other communities.

18. Another study, C.C. Van Valin, R.F. Pueschel, E.W. Barrett and G.M. Williams, *Field observations of stratified atmospheric flow above an obstacle.*, 24(3) Boundary Layer Meterology 331 (2004), indicates that a geological feature [located at approximately the eastern boundary of the Navajo Nation in the area], "The Hogback," pulls down the emissions plume from the Four Corners power plant so that it affects the Shiprock population.

19. The documentation and the study of The Hogback shows that the Environmental Protection Agency knew or should have known that emissions from the two existing power plants had an adverse impact on the health of an Indian population; knew or should have known that it had a trust responsibility to take action because of the health risk; and that EPA knew or should have known of the health risk and should not grant a permit for the Desert Rock power plant project.

II.

LEGAL CLAIMS

20. The facts stated above show that the Environmental Protection Agency is in violation

of Title VI of the U.S. Civil Rights Act of 1964, namely the prohibition against the denial of benefits of, and discrimination under, federally assisted programs because of race, color or national origin, in violation of 42 U.S.C. § 2000d.

21. The facts also show that the EPA violated the federal statutory prohibition against age discrimination in 42 U.S.C. § 6102.

22. The activities of the EPA, including the failure of the URS Corporation to get appropriate and available health data from the Northern Navajo Medical Center for the draft environmental impact statement before it was published, and the EPA failure to take action when the U.S. Geological Survey study was noted, violate Title VI of the U.S. Civil Rights Act of 1964, the Clean Air Act and the environmental justice provisions of Executive Order 12898 (February 11, 1994) and related documents.

III.

RELIEF

The complainants seek relief pursuant to 40 C.F.R. §§ 7.120 and 7.130 (2008) as follows:

1. Do a thorough investigation of the discriminatory impact on Navajos due to their race (American Indian), color, and national origin (American Indian with treaties with the United States of America);

2. Make public the results of a thorough investigation;

3. Develop an effective mitigation plan to address the situation under E.O. 12898 and see to its implementation;

4. A prohibition against any new air permit for a mine-mouth, coal-fired power plant until the health issue is effectively addressed;

5. Agency injunctive litigation on behalf of the complainants as appropriate; and

6. Such other and further relief as may be just in law or equity.

Dated this 24th day of February, 2009

James W. Zion, Attorney for the Complainants