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

OCT 18 2001

OFFICE OF
CIVIL RIGHTS

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RETURN RECEIPT REQUESTED

In Reply Refer to:
EPA File No. 05R-01-R6

Anita Moore, Acting City Manager
City of Henryetta
P.O. Box 608
Henryetta, Oklahoma 74437

Re: Partial Rejection and Request for Clarification of Administrative Complaint

Dear Ms. Moore:

On April 25, 2001, a complaint was filed with the U.S. Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) alleging violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d *et seq.* (Title VI), and EPA's regulations implementing Title VI found at 40 C.F.R. Part 7 by the EPA, the City of Henryetta, Oklahoma, and the Oklahoma Department of Environmental Quality concerning the Eagle-Picher Superfund site in Henryetta. Specifically, the complaint alleges (1) adverse impacts from contaminated soil that was improperly placed on Complainant's property, (2) lack of public hearings in Indian communities, (3) lack of technical outreach, and (4) inadequate air monitoring in Indian communities. This letter is to inform you that OCR rejected all allegations against the City of Henryetta.

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). A complaint must meet the jurisdictional requirements described in EPA's Title VI regulations for investigation. First, it must be in writing. Second, it must describe an alleged discriminatory act that violates EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 days of the alleged discriminatory act. 40 C.F.R. § 7.120. Fourth, because EPA Title VI regulations only apply to applicants and recipients of EPA assistance, the complainant must identify an applicant or a recipient of EPA assistance that allegedly committed the discriminatory act.

OCR rejected all allegations against the City of Henryetta and EPA. As noted above, Title VI and EPA's Title VI regulations only apply to recipients of federal financial assistance. The

City of Henryetta was not a recipient of EPA assistance during the time of the events described in the complaint (*i.e.*, 2000). Concerning EPA, federal government agencies are not recipients as defined by Title VI and Title VI regulations. As a result, neither the City of Henryetta nor EPA are subject to Title VI or Title VI regulations, so all allegations against them were rejected.

The complaint also includes four allegations against OKDEQ. First, the complaint alleges that contaminated dirt was pushed onto Complainant's property. It appears that this occurred on or before August 2000, which is more than 180 days before the filing of the complaint on April 25, 2001. As a result, this allegation is untimely and was rejected.

The complaint also alleges violations of Title VI and EPA's Title VI regulations by OKDEQ due to (1) the lack of public hearings in Indian communities, (2) the lack of technical outreach, and (3) inadequate air monitoring in Indian communities. OCR requested the following additional information from Complainant to process these allegations:

- On what date(s) did OKDEQ take an allegedly discriminatory action relevant to each of the three allegations listed in the paragraph above? What additional information can Complainant provide about these three allegations?

- Is Complainant Native American and, if he is not, is he an authorized representative of Native Americans who have been discriminated against?

- Finally, OCR understands that the Complainant's representative has filed a lawsuit concerning this matter. What is the subject matter of the lawsuit (*i.e.*, does the lawsuit address these three allegations) and what is the status of the lawsuit?

Complainant was given forty-five days to respond. If OCR does not receive a response in that time, the complaint will be rejected.

If you have any questions, please contact Patrick Chang by telephone at (202) 564-5614, or by mail at U.S. EPA (Mail Code 2399A), 1200 Pennsylvania Ave., N.W., Washington, D.C., 20460.

Sincerely,

Karen D. Higginbotham
Acting Director

cc: Oklahoma Department of Environmental Quality
707 N. Robinson
Oklahoma City, OK 73101-1677

Robert E. Fabricant, General Counsel
Office of General Counsel (MC 2310A)

Rafael DeLeon, Associate General Counsel
Civil Rights Law Office (MC 2399A)

Sylvia Lowrance, Acting Assistant Administrator
Office of Enforcement and Compliance Assurance (MC 2201A)

Gail Ginsberg, Chair
Title VI Task Force (MC 2201A)

Barry E. Hill, Director
Office of Environmental Justice (MC 2201A)

Sherry Brown-Wilson, Title VI Contact
EPA Region 6

bcc: Phil Givens

[redacted]