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AUGUST 13, 2009

United States Dept. of Justice
Civil Rights Division
Coordination and Review Section – NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

RE: New Rosemont Homeowners Association
Environmental Justice Complaint

Dear Sir or Madam:

Enclosed please find an Environmental Justice Complaint filed on behalf of the New Rosemont Homeowners Association. Should you have any questions, please do not hesitate in calling upon us. We look forward to working with you as you proceed forward with your investigation.

Kind regards.

Very Truly Yours,

John F. Martin

JFM/smp

enclosure

cc: Nancy Button, with enclosure

1. State your name and address.

John F. Martin, as Attorney for the New Rosemont Homeowners Association
The Martin Law Firm
113 Wappoo Creek Drive
Charleston, SC 29412
843-762-2121

2. Person(s) discriminated against, if different from above:

Rosemont Neighborhood (c/o Nancy Button, Neighborhood Association President)
1841-B Doscher Avenue, Charleston SC 29405
843-744-3306

3. Agency and department or program that discriminated:

South Carolina State Ports Authority (SCSPA)

* Board Chairman **David J. Posek o**f Greenville
* SCSPA interim president & CEO John F. Hassell III
* Current Board members

Mailing Address: P.O. Box 22287 Charleston, SC 29413
Street Address: 176 Concord Street Charleston, SC 29401
(843)723-8651

South Carolina Department of Health and Environmental Control (DHEC)

* S.C. DHEC

2600 Bull Street, Columbia, SC 29201
803-898-3432

* **Carl Richardson**, DHEC's permitting liaison, is responsible for coordinating the permits that businesses and industries need from any of DHEC's program areas, and serves as the primary contact and advocate for the regulated community.
803-896-8983, or richarcw@dhec.sc.gov

* Office of Ocean and Coastal Resource Management (OCRM)
Charleston Office: 843-953-0200

* Bureau of Environmental Quality Control (EQC)

South Carolina Department of Transportation

* The SCDOT intends to use available Federal, State, and local funding to complete the detailed roadway design and construction. FEIS 3-3 p. 85

955 Park Street, P.O. Box 191, Columbia, SC 29202-0191
803-737-2314

Other Agencies involved throughout the permitting process include:

* Federal Highway Administration (FHWA)
* US Department of Transportation (USDOT)
* Environmental Protection Agency (EPA)
* U.S. Fish and Wildlife Service (USFWS)
* National Marine Fisheries Service (NMFS)
* S.C. Department of Natural Resources (DNR)
* State Historic Preservation Office (SHPO)

4A. Non-employment: Does your complaint concern discrimination in the delivery of services or in other discriminatory actions of the department or agency in its treatment of you or others? If so, please indicate below the base(s) on which you believe these discriminatory actions were taken.

Race/Ethnicity: the Rosemont Neighborhood is comprised of African American citizens who have lived in the community for generations, often times inheriting their homes from parents and/or grandparents. This neighborhood is tightly-knit, and has dealt with an abundance of toxic neighbors, including polluting industry and the placement of I-26. The port is engaging in discriminatory behavior by failing to include this African American Community in its required mitigation plan.

4B. Employment: Does your complaint concern discrimination in employment by the department or agency? If so, please indicate below the base(s) on which you believe these discriminatory actions were taken.

Does not concern employment.

5. What is the most convenient time and place for us to contact you about this complaint?

Monday through Friday, from 9am to 5 pm, by phone at 843-762-2121

6. If we will not be able to reach you directly, you may wish to give us the name and phone number of a person who can tell us how to reach you and/or provide information about your complaint:

John F. Martin, Attorney
843-762-2121

7. If you have an attorney representing you concerning the matters raised in this complaint, please provide the following:

John F. Martin, Attorney
113 Wappoo Creek Drive, Charleston SC 29412
843-762-2121

8. Dates of alleged discrimination:

2005 to current

9. Complaints of discrimination must generally be filed within 180 days of the alleged discrimination. If the most recent date of discrimination, listed above, is more than 180 days ago, you may request a waiver of the filing requirement. If you wish to request a waiver, please explain why you waited until now to file your complaint.

The South Carolina Department of Health and Environmental Control (SCDHEC) issued water quality permits for the terminal and road October 30, 2006. Subsequently, the port realized $167 million in state funding for the Port Access Road appropriated by the South Carolina General Assembly to South Carolina Department of Transportation. In April 2007, the U.S. Army Corps of Engineers issued permits for the new three-berth, 280-acre container terminal on the former Charleston Naval Complex.

Demolition of buildings and structures on the site was approved in August 2007 and other preliminary work to prepare the site for consolidation and construction is underway. The SCDHEC's decision on a general permit for stormwater was made March 12, 2008. Although several of the permit dates are more than 180 days ago, the discriminatory effects and disparate impacts on the Rosemont community are only now manifesting themselves as construction on the port and connector roads move forward. The impact to Rosemont and will increase with the completion of each phase.

10. Please explain as clearly as possible what happened, why you believe it happened and how you were discriminated against. Indicate who was involved. Be sure to include how other persons were treated differently from you.

A three-berth marine container terminal is scheduled to be built at the Charleston Naval Complex (CNC) in North Charleston, SC. The Rosemont neighborhood, which is located in Charleston, SC, sits nearly adjacent to the proposed project site and is directly adjacent to the proposed site for the major connector road leading to I-26. This project will substantially increase the level of truck traffic and diesel exhaust in the surrounding areas. Population in the area surrounding the CNC is approximately 75% minority with lower-than-average household incomes. All of these minority neighborhoods will face negative environmental impacts from the construction and operation of this facility.

However, the Rosemont neighborhood, due to its immediate proximity to the access road, faces inordinately high levels of environmental hazards and their accompanying adverse health effects. Discriminatory behavior is present in the omission of Rosemont from the mitigation required in order to obtain the required permits.

The negative, discriminatory health impacts facing Rosemont are unacceptable.

10(1) The FEIS dismisses the Environmental Justice implications associated with the port expansion project.

Executive Order 12898, issued by President Clinton on February 11, 1994, requires that,

> "*To the greatest extent practicable and permitted by law* . . . each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States." (emphasis added).

By refusing to acknowledge the environmental justice aspects of this project, and there are many, the FEIS fails to comply with this order. The Rosemont case contains several discriminatory red flags which ought to have triggered environmental justice scrutiny, and the justifications for not considering environmental justice concerns are lacking.

Presently, the North Charleston study area's population is approximately 75 percent minority. Ongoing development and revitalization projects nearby may result in more racially mixed neighborhoods and the FEIS suggests that the potential change in the residential mix will cause the Environmental Justice study area to no longer be an Environmental Justice area. FEIS 3-13, 3-14 p. 107-108. This is IRRELEVANT as the impacts will only be to the minority and low-income residents for several years as other proposed developments span 20+ years for full development. Furthermore, it is unlikely that other demographics will consider moving to an area that has poor air quality. In other words, the current port expansion plan, if carried forward, will ensure that the Rosemont community maintains its present minority composition. This is all the more reason for the FEIS to have considered the Environmental Justice implications of the proposal.

Furthermore, the FEIS fails to consider the Environmental Justice concerns raised by the recent history of port expansion plans in the Charleston area. Before the proposal in North Charleston came a proposal to locate the facility on Daniel Island. After strong public outcry the Daniel Island plan was scrapped. Only then did expansion proponents set their sights on North Charleston. It's conceivable that the North Charleston site, and the Rosemont community, were selected due to the area's reduced affluence and political sway, as compared to that of Daniel Island and downtown Charleston. At any rate, the FEIS ought to have examined with sensitivity the Environmental Justice concerns surrounding the decision making process that led to the selection of the North Charleston site.

10(2) Community meetings prior to submission of permit applications did not include meetings with the Rosemont community, which is located just outside of North Charleston city limits.

Title VI of the Civil Rights Act mandates that, "[n]o person in the United States shall, on the ground of race, color, or national origin, *be excluded from participation in*, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (emphasis added).

Unfortunately, Rosemont was not included in the neighborhood outreach process. Therefore, neighborhood leaders' and residents' voices were not heard with regards to the port expansion proposal. Consequently, ineffective feedback was submitted, and many residents probably were unaware of the proposal.

Since 2006, every Public Information Workshop held was in North Charleston.

PUBLIC OUTREACH PROCESS
Neighborhood Outreach Meetings

These neighborhood meetings were a means for the USACE to go to the communities that are within the study area of the EIS and provide information on the Proposed Project and the process of developing an EIS. These meetings were a valuable opportunity for community residents to meet with the USACE in a familiar setting, ask questions relevant to their needs, and submit scoping comments/feedback. The neighborhood meetings that the USACE attended are listed below:

Liberty Hill Neighborhood Association, March 18, 2004; Felix Pinckney Community Center, North Charleston, SC
Glenn Terrace/Oak Ridge Neighborhood Association, April 5, 2004; Collins Park Road Community Center, North Charleston, SC
City of North Charleston Neighborhood Association Presidents, April 13, 2004; City of North Charleston City Hall, North Charleston, SC
Chicora-Cherokee Neighborhood Association, April 14, 2004; Chicora Elementary School, North Charleston, SC
Union Heights Neighborhood Association, April 16, 2004; Gethsemane Community Center, North Charleston, SC
Olde North Charleston Neighborhood Council, May 11, 2004; Olde North Charleston Meeting Place, North Charleston, SC
Citizens Advisory Group Meeting, August 4, 2005; City of North Charleston City Hall, 1st Floor Meeting Room.

Notice that all neighborhood outreach meetings were for North Charleston neighborhoods, while meetings were not held in Rosemont or Four Mile Hibernian, which are as close, or closer, than other neighborhoods more adequately addressed in the FEIS and Mitigation Plan. Within the Rosemont Community is a community center which would have been available for outreach meetings.

10(3) Mitigation discussions between the City of North Charleston, SCSPA, and the Lowcountry Alliance for Model Communities (LAMC) did not adequately include discussions with, or for the benefit of, residents of Rosemont.

The Lowcountry Alliance for Model Communities (LAMC) was established in 2005 to represent several North Charleston Communities to deal with port expansion issues. These communities are Union Heights, Accabee, 5 Mile, Liberty Hill, Windsor and Howard Heights. LAMC participated in the permitting process, by reviewing the FEIS submitting comments, and mitigation suggestions. Rosemont, being in the City of Charleston, was not included in this process.

LAMC's suggestions include monitoring (but no suggestion of reduction) noise and air emissions and vibrations through environmental receptors in LAMC communities during construction but not operation. They also asked to address (but not remedy) concerns related to emissions, expanded health care, and providing for fitness amenities for LAMC communities.

10(4) Transportation impacts will have the most effect on Rosemont.

The expansion proposal has the greatest effect on Rosemont, because the access road will be sighted right through the neighborhood. No other neighborhood in the area will be so directly and substantially impacted by the plan.

At build-out in 2025, the proposed terminal would generate an estimated 10,920 trips per day under peak conditions, and 7,700 daily trips under average conditions, of which 63% will be made by trucks. The greatest percentage of port related traffic would occur at the location of the new interchange on Interstate 26 (p.47 FEIS), which is located in Rosemont.

Noise from the proposed roadway improvements will affect approximately 129 sensitive receptors where the existing noise levels already approach or exceed the noise abatement criteria (Table 5.2-10). The majority of these impacted sites (71 sites) are found in the Rosemont neighborhood located just south of the proposed "Semi-Direction Tee" type interchange along the west side of I-26. These impacts include two recreational facilities in Rosemont: Rosemont Field and the Freddie Whaley, Sr. Community Center (1-38). The roadway will be located adjacent to the Community Center and Rosemont Field (3-25, p. 119).

The SCDOT identified Alternative 1D as the recommended roadway alignment to provide direct travel between the port terminal and I-26. Since Alternative 1D will close Exit 218 (Spruill Avenue), a local connector road will be constructed to provide continued eastbound access to I-26. The direct route goes right through Rosemont. Rosemont will bear most of the brunt of the Proposed Project and the Access Road. The absence of specific projections for these areas inappropriately de-emphasizes the importance of the impacts of the Proposed Project on that community (1-161).

The Van Ness Sign and Leasing site is located on Austin Avenue in North Charleston, within the Rosemont neighborhood and was listed in the SCDHEC voluntary cleanup database during 2003 to address soil, sediment, and groundwater contamination on the site, including the presence of arsenic, toxaphene, benzo(a)pyrene, and iron at sufficient levels to warrant further investigation and action. The site consists of 5.65 acres of undeveloped land having elevated concentrations of arsenic and lead within surface soils and groundwater. As of May 5, 2006 no remedial actions had been completed at the site. The Van Ness Sign site may be impacted by ramp construction associated with the proposed access roadway. Even though earthwork and other construction would be completed with knowledge that elevated arsenic and lead is present within soils and groundwater, contaminant are likely to be spread during construction of the access road.

10(5) Although air quality at the port was a factor in analyzing the proposed port expansion, the air quality impact on Rosemont from the access road was not weighed as it should have been. Proposed mitigation does not reduce or adequately address the impact that poor air quality will have on the neighborhood since Rosemont is not receiving mitigation.

Title VI of the Civil Rights Act mandates that, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, *or be subjected to discrimination* under any program or activity receiving Federal financial assistance." (emphasis added).

Serious and substantial environmental hazards associated with port expansion disproportionately affect Rosemont residents. The FEIS fails to adequately address these concerns or consider the discriminatory dimension of the proposal.

The FEIS claims that there will be minimal increases in noise, light, and mobile source air emissions impacting existing neighborhoods (p.100 FEIS), and no adverse impact to ambient Air Quality, but admits that mobile emissions will increase with traffic increases and delays. The FEIS also acknowledges that the terminal will generate up to 10,920 trips per day made by trucks (p.102). Short-term adverse impacts during construction will include PM2.5 impact from fugitive dust, and increases from diesel fuel combustion emissions (i.e., NOx, SO2, CO, VOCs, PM10), and long-term impacts will include increased fuel combustion emissions caused by terminal operations (i.e., trucks, vessels, container handling equipment).

The construction and operation of the Proposed Project will result in an increase in emissions from mobile sources, such as marine vessels, container trucks, employee automobiles, and support equipment (p.49 FEIS). One public comment in response to the FEIS stated:

> "Degradation of air quality would adversely affect existing residential communities, including Rosemont.... Accurate modeling of impacts to those areas is necessary to evaluate the Proposed Access Road Alternatives. Additionally, without accurate modeling data, it is impossible for the ACE to reasonably conclude that construction of the

proposed Project will not cause the surrounding area to be designated as a non-attainment area under the federal Clean Air Act. A more comprehensive transportation analysis that considers all impacts, including current traffic, future traffic, planned future development and potential relocation of I-26, could avoid this serious environmental impact."

The response was:

"The air quality modeling study results indicate that the Proposed Project will not violate air quality standards in existing residential communities. Also, detailed transportation studies were completed in support of this EIS. The relocation of I-26 was recently added to the CHATS long-range plan. It is being studied by others, but those studies are not yet complete." (1-159).

The implications of the statement in response to this comment are erroneous. The North Charleston traffic study is from 2005. The arterial analysis summary presents vehicles per day data from 2003, and the I-26 mainline volume (vehicles per hour) are also from four years ago. Traffic has grown exponentially since then. Furthermore, if accurate impact studies are not yet complete, then suggestion and approval of the route by SCDOT and DHEC was irresponsible. This irresponsible behavior will have disparate environmental effects on Rosemont though traffic, noise, pollution, and health threats.

Under the proposal, several thousand trucks are forecast to run through Rosemont every day.

Nobody disputes the reality of high levels of diesel exhaust emissions from these vehicles. However, the FEIS fails to take into account the serious health risks associated with this type of air pollution, especially for those situated so closely to the emissions themselves. An understanding of diesel exhaust and its effect on human health paints a disturbing picture for residents, and supports the discriminatory nature of the proposal. A frequently cited study states that, "[d]iesel exhaust is a mixture of harmful gases and solids, including particulate matter, nitrogen oxides (NO_x), toxic metals, and toxic organic substances such as acrolein, polycyclic aromatic hydrocarbons (PAHs), and formaldehyde. Diesel emissions contain 40 hazardous air pollutants (HAPs) listed by EPA, 15 of which are listed by the International Agency for Research on Cancer (IARC) as known, probable, or possible carcinogens."[1] The study goes on to stay that "[e]xposure risks are high to those that live or work near areas where diesel emissions are concentrated such as: highways, busy roadways, freight warehouses or port facilities." Id. at 2. Additionally, "[m]edical studies have also linked roadway proximity and traffic pollution to disease, asthma hospitalizations and shortened life expectancy." Id. at 4. These findings signal serious health concerns for Rosemont residents, but the FEIS failed to take them into account.

[1] Clean Air Task Force, "Diesel Engines: Emissions and Human Exposure" p. 1.

The study also points to a cancer link, namely "[d]iesel exhaust is a major contributor to ambient levels toxic polycyclic aromatic hydrocarbons (PAHs) that are associated with significant cancer risks. PAH in diesel fuels has been increasing except in California where it is limited by law." Id. at 6. "The 1996 National Air Toxics Assessment (NATA) determined that formaldehyde (with a cancer risk of over 10 in a million) affects 100 million people in the U.S.; this is ten times the one-in-a-million protective level for cancer established by EPA in 1989 for hazardous air pollutants." Id. at 6-7.

The body of studies establishing a strong link between diesel exhaust and adverse health impacts increasing in severity with proximity to source are voluminous. As one study summarizing recent scholarship makes clear:

> "The overwhelming weight of evidence to date orients PM pollution among the most harmful and pervasive ambient environmental contaminants to threaten human health. Short-term increases (over hours to days) in particle pollution have been linked to death from respiratory and cardiovascular causes, including strokes; increased numbers of heart attacks and blood clots, especially among the elderly and in people with heart conditions; inflammation of lung tissue in young, healthy adults; increased hospitalization for cardiovascular disease, including strokes; and increased emergency room visits for patients suffering from acute respiratory ailments. Longer term (year-round) exposures to particle pollution have been linked to significant damage to the small airways of the lungs; increased risk of dying from lung cancer; and increased risk of death from cardiovascular disease. Lives may be shortened by 1-2 years on average."[2]

All the more alarming, recent research has indicated that the health hazards are more serious than originally thought. This year, scientists published a study directly attributing 24,000 deaths a year to fine PM pollution.[3] Chief researcher Bart Croes stated that "[PM] particles are 70% more dangerous than previously thought, based on several major studies that have occurred in the last five years." Id. Those exposed to high levels of fine particulates had their life expectancy reduced by 10 years, due to heart attacks, strokes, and other diseases all integrally connected to fine particulate pollution. Id.

Furthermore, and most alarming for Rosemont residents, studies have shown that, "[c]hildren living on streets with heavy truck traffic were 60 to 90 percent more likely to report acute and chronic symptoms that include wheezing, phlegm, and diagnoses such as bronchitis and pneumonia. Children raised in areas with higher fine particle levels have reduced lung capacity, prematurely aged lungs, and increased risk of bronchitis and asthma compared to peers living in less urbanized areas." Id. at 4. Long-term exposure to

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[2] Pearson, Wachtel; Robert L. Pearson, and Kristie Ebie. (2000). Distance-weighted traffic density in proximity to a home is a risk factor for leukemia and other childhood cancers. *Journal of Air and Waste Management Association* 50:175-180.

[3] Wilson, Janet. "Up to 24,000 deaths a year in California are linked to air pollution," *Los Angles Times,* May 22, 2008.

PM2.5 causes decreased lung function growth in children, and mortality from cardiopulmonary diseases and lung cancer. Id. at 5-6.

Other studies have conclusively shown a link between cancer and air pollution from heavy, industrial traffic. One study found that children living 250 yards from busy streets and highways were six times more likely to suffer from all types of cancer and eight times more likely to develop leukemia.[4] Another study found that motor vehicle pollution accounts for 90% of the cancer risk posed by air pollution generally.[5] Researchers also noted that diesel soot emitted by trucks servicing nearby industrial centers accounted for 70% of this figure. Id. Additionally, the Journal of the American Medical Association published a study linking lung cancer to regular exposure to soot and fine particulate matter, finding that each 10 microgram elevation in fine particle air pollution leads to an 8 percent increased risk of lung cancer deaths.[6]

Studies have shown a correlation between adolescent asthma and air pollution associated with truck traffic. And the risks increase with proximity to the source of pollution. In one study, researchers have pinpointed diesel exhaust as especially problematic, finding high levels of this pollutant capable of triggering asthma attacks in children with no prior asthmatic history.[7] One study even demonstrated that those children living in neighborhoods less than 220 yards from heavy truck traffic had a higher rate of asthma compared to more removed neighborhoods.[8] And yet another study, focusing on the nitrogen dioxide found in diesel exhaust, found that for those children already predisposed to and suffering from asthma, nearby traffic pollution exacerbates symptoms by more than 200%. [9] Finally, and perhaps most disturbing, in 2007, the New England Journal of Medicine published a study which links particulate matter pollution and death. The study states, that "long term exposure to fine particulate air pollution is associated with the incidence of cardiovascular disease and death among postmenopausal women."[10] It continues:

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[4] See footnote 2.

[5] South Coast Air Quality Management District. Multiple Air Toxics Exposure Study-II. March 2000.

[6] Pope, Clive Arden III; Richard P. Burnett, et al. Lung Cancer, Cardiopulmonary Mortality, and Long-term Exposure to Fine Particulate Air Pollution. *Journal of American Medical Association*, March 6, 2002. Vol. 287, No.92.

[7] Pandya, Rober, et al. "Diesel Exhaust and Asthma: Hypothesis and Molecular Mechanisms of Action." Environmental Health Perspectives Supplements Volume 110, Number 1, February 2002.

[8] Jean Pierre Munsie; Syni-An Hwang; Edward Fitzgerald; and Michael R. Cayo; (2002). Childhood Asthma Hospitalization and Residential Exposure to State Route Traffic. *Environmental Research, Section A*, Vol. 88, pp. 73-81.

[9] Chauhan, A.J., et al. Personal exposure to nitrogen dioxide (NO2) and the severity of virus-induced asthma in children. Lancet. Volume 361 Issue 9373 Page 1939.

[10] Kristin A. Miller, M.S., David S. Siscovick, M.D., M.P.H., Lianne Sheppard, Ph.D., Kristen Shepherd, M.S., Jeffrey H. Sullivan, M.D., M.H.S., Garnet L. Anderson, Ph.D., and Joel D. Kaufman, M.D., M.P.H.

"Our study provides evidence of the association between long-term exposure to air pollution and the incidence of cardiovascular disease. Our study confirms previous reports and indicates that the magnitude of health effects may be larger than previously recognized. These results suggest that efforts to limit long-term exposure to fine particulate pollution are warranted."

Based on EPA models, North Charleston has several schools falling within the absolute worst category for toxic air pollution. It is well known that the schools near the old navy base are in close proximity to industrial sites, but this study pinpointed the fact that these schools ranked among the most toxic in the nation. Every school in North Charleston was ranked within the top tenth percentile for dangerous air quality. This citing means citizens are inhaling dangerous substances potentially leading to asthma, chronic bronchitis, heart and kidney problems, neurological difficulties (including mental and emotional problems), and cancer. The SPA expansion has not taken into account the impact the increased pollution will have on the schoolchildren in the area. If the SPA fails to protect the Rosemont community from toxins, we can expect to see the negative effects to further degrade the air quality around at least six local schools, located no more than four miles away.

Lastly, in June of 2009, the EPA decided to strengthen the nitrogen dioxide (NO2) standard after a lengthy and detailed examination of studies that tracked respiratory symptoms, hospital admissions, and emergency room visits—many in areas where NO2 emissions were lower than the current standard. This proposed standard change has come from recommendations after a Risk and Exposure Assessment, an Integrated Science Assessment, and ultimate conclusions from the Clean Air Scientific Advisory Committee—the ultimate determination was that the current standards are not protecting the health of the public, particularly when it comes to short-term (minutes to hours) NO2 exposure, numerous studies of which have been judged "sufficient to infer a likely causal relationship." Further, current air quality monitors are not located properly, and the EPA wants to add monitors closer to mobile sources where NO2 exposure could be anywhere from 40%-80% higher than monitors have been showing. That means commuters and citizens living, working, learning, or playing near large roadways are at a significantly higher risk than initially supposed. The EPA has county-by-county data showing that in Charleston County, the majority (41%) of our NO2 emissions come from non-road mobile sources, mostly from the port, which accounts for 69% of that category's emissions.

The studies just mentioned, especially those noting the increased impacts associated with close proximity to traffic hazards, are all the more alarming given the plans to run the access road adjacent to the Rosemont Community.

(2007), Long-Term Exposure to Air Pollution and Incidence of Cardiovascular Events in Women, *New England Journal of Medicine*, Volume 356:447-458.

10(6) The mitigation plan does not adequately address the environmental impacts on Rosemont.

The construction and operation of the proposed port facility and access roadway will have unavoidable secondary and cumulative impacts on air quality, noise, lighting, navigation, and roadway and railway traffic. Mitigation has been proposed by the SCSPA and SCDOT to offset each of these unavoidable impacts. Additionally, a Memorandum of Understanding (MOU) was executed between SCSPA and City of North Charleston. Neither the City of Charleston nor Rosemont community was involved in the execution of the MOU or are included in the proposed mitigation plan.

The FEIS claims all mitigation will be directly related to the impacts of the proposal, appropriate to the scope and degree of those impacts, and reasonably enforceable, (FEIS 1-15 (p. 68)) but negative noise, light, water quality and air quality will be mitigated by preserving land in and around the Lowcountry, and implementing community programming. Although positive, preserving Morris Island and building community and fitness centers in North Charleston are not directly related to the impacts on the Rosemont residents. Also, the educational and employment initiatives are not appropriate in scope and degree to the amount of diesel particulate matter and pollution that will settle on Rosemont because of the I-26 feeder road.

The mitigation plans provide for the monitoring of air emissions in LAMC communities during construction but not during operation. There is also no specific mention of monitoring stations within Rosemont. The only preventative measures benefiting Rosemont are a noise wall and a landscape buffer in proximity to the noise wall near I-26.

11. The laws we enforce prohibit recipients of Department of Justice funds from intimidating or retaliating against anyone because he or she has either taken action of participated in action to secure rights protected by these laws. If you believe that you have been retaliated against (separate from the discrimination alleged in #10), please explain the circumstances below. Be sure to explain what actions you took which you believe were the basis for the alleged retaliation.

N/A

12. Please list below any persons (witnesses, fellow employees, supervisors, or others), if known, whom we may contact for additional information to support or clarify your complaint.

John F. Martin, Attorney
113 Wappoo Creek Drive, Charleston SC 29412
843-762-2121

13. Do you have any other information that you think is relevant to our investigation of your allegations?

For over a century, events in the Charleston Neck have had negative environmental and social impacts on the Rosemont neighborhood. In the late 19th century, Charleston was the phosphate fertilizer capital of the world. Charleston's phosphate fertilizer industry left a legacy of environmental contamination. According to results of a U.S. Environmental Protection Agency investigation in the late 1990's, the Charleston Neck was one of the most concentrated areas of contamination in the nation. Toxic levels of lead, arsenic, and mercury laced the soil at six former phosphate fertilizer plant sites. In some cases, the levels were tens of thousands times higher than what the EPA considered acceptable and pose a substantial, ongoing threat to the environment.

Because of the contamination, about 175 acres were designated as 6 separate national Superfund sites (one being the Koppers site discussed below). The concentration of acid in water in ditches near former fertilizer plant acid chambers was so high the water could still burn your hands, according to EPA officials. Additionally, radon tests were conducted in homes in the nearby, lower-income community of Rosemont. The groundwater was contaminated. In some areas, phosphorous still coated the mud along the shoreline of the Ashley River. When exposed to air, phosphorous can ignite. A spontaneous "mud ignition" many years ago emitted smoke so dense it threatened to shut down I-26. In the wake of phosphate depletion, ammonia-based based fertilizer became the rage in the industry. In the 1970s, the plants that were left had been sued for air pollution or cited by state health regulators.

In 1962, I-26 was under construction from US 78 to SC 7 North Charleston. In 1964, construction began on I-26 from SC 7 to Rutledge Ave (current Exit 219). Between 1965-67, I-26 was opened from NC to SC 7. Rosemont is located closest to Exit 218. The construction of I-26 divided the neighborhood of Rosemont at its most densely populated area. The ongoing negative impacts of this interstate are included in question ten (10).

The former Koppers Inc. telephone pole plant is off Milford Road near the community of Rosemont. The area, covering more than 100 acres, was declared a Superfund site by the Environmental Protection Agency in 1992. Koppers treated raw lumber, utility poles and cross-ties with chemical wood preservatives, particularly creosote, which polluted the area years ago. In 1997, the EPA awarded a technical assistance grant of $50,000 for the Superfund site cleanup. Soil, groundwater, sediments and surface waters in drainage ditches were affected, as were sediments in the Ashley River and nearby tidal marshes, according to the U.S. EPA. The Rosemont community sits adjacent to the North Marsh where much of the work was done.

In June 17, 1991, an explosion at the Albright and Wilson plant sent a mushroom cloud of irritating chemicals into the surrounding neighborhoods in the Charleston Neck Area, including Rosemont.

In 1995, Charleston County Council voted on whether to give a poor community an abandoned, run-down school so it could be used as a community center, or get as much money for the building as it could. The Council decided on the latter, agreeing to sell the old Rosemont School in the Charleston Neck Area for $14,100. Rosemont area residents, with the City of Charleston's backing, hoped to convert the building into a

community center. But they only came up with $100, and the City did not submit a bid. The community center would have served five areas including Rosemont. Of the 8,000 residents in those areas, about 42 percent live below the poverty level.

In 1999, SCDHEC discovered through the South Carolina Central Cancer Registry that a true cancer cluster of malignant mesothelioma existed in ZIP code 29405. This rare cancer type, which is of the pleura, is located on the slippery lining between the lung and the rib cage that allows the lungs to move freely during breathing. The link between asbestos and pleural cancer has been well documented. The shipbuilding in the area was a related cause to the cluster. Mesothelioma cases were found to be over three-fold increase statistically. Also found to be high at the time were cancers of the colon/rectum, lung, stomach, and larynx. The occurrence of some of these same cancer types continues to be high in ZIP code 29405. Even though some reports suggest that only people who worked with asbestos appear to run a risk for pleural cancer, residents living in 29405 suffered 25 percent more cancer cases than would be expected. Although the risk for continued exposure is gone, Mesothelioma occurrence continues to be high in this area as a result of asbestos exposure occurring years ago. Pleural cancer develops 20 to 40 years after exposure so new cases will likely be diagnosed.

Later in 1999, 8,000 gallons of oil sludge spewed out from an oil tanker and spread 100 yards down Meeting Street, the backbone of the Charleston Neck industrial area. Oil filling a concrete drainage ditch at the Rosemont neighborhood was linked to Cleaning Specialists Inc, who was storing the waste for the Navy. The oil washed into a storm drain, which apparently led to the ditch at Rosemont several hundred yards away. The EPA spent $15,000 to clean up about 1,000 gallons of waste oil in the Rosemont ditch. Also in 1999, a phosphorus fire at Albright and Wilson's Charleston plant created a vapor cloud that hung over Rosemont. The health hazards posed by the chemical include skin, eye and throat irritation. Rosemont residents were advised to close their windows and turn their air-conditioning fans on high, and were later evacuated.

In 2001, about 30 gallons of phosphorous trichloride spilled at the Rhodia chemical plant (the former Albright and Wilson plant). According to plant managers, this spill produced a cloud of hydrochloric acid. When phosphorous trichloride meets the atmosphere, it reacts with moisture in the air to form a hydrochloric acid mist. Rosemont residents were affected with dizziness and problems breathing. Because the warning siren was not sounded, neighborhood residents were unaware of the need to take precautions. One comment made by a Rosemont association member was that "[e]very time something happens, we are the last to know."

Currently, the Van Ness Sign and Leasing site is located on Austin Avenue in North Charleston (still within the Rosemont neighborhood). This site was listed in the SCDHEC voluntary cleanup database during 2003 to address soil, sediment, and groundwater contamination on the site, including the presence of arsenic, toxaphene, benzo(a)pyrene, and iron.

Lastly, it bears noting that the Rosemont Community is located a half mile from Rhodia Inc.'s industrial chemical plant. Last year this facility released 145 pounds of

volatile organic compounds into the air. A recent study found an increased cancer risk for children living close to facilities emitting this type of pollution.

These effects, past and present, are such that no community ought to withstand more, especially when alternatives are feasible. Unfortunately, the FEIS, in failing to appreciate the Environmental Justice ramifications of the proposed port expansions, also failed to grasp the severity of the situation felt by Rosemont residents. More thorough analysis taking into consideration the aforementioned facts is necessary to prevent the sort of discriminatory impact this complaint seeks to rectify, as well as to uphold the intent of the Civil Rights Division of the Department of Justice.

14. What remedy are you seeking for the alleged discrimination?

Environmental Justice prohibits practices having a disparate impact on protected groups, even if the actions or practices are not intentionally discriminatory. The port must show the necessity of expansion and substantial legitimate justification for the access road through Rosemont. Although there may be economic justification for the port expansion, it is not substantially legitimate when considering the impacts. Furthermore, it is not necessary considering the availability of port expansion in Jasper County. When there are discriminatory effects, alternatives with comparable effects with a less disparate impact must be taken. When there are discriminatory effects, economics should not be a factor in eliminating those effects.

The suggested remedy to prevent discriminatory effects and disparate impacts is to prevent the expansion of the port and subsequent access roads. The port expansion in Jasper is a welcomed project and the population density is much less.

In the alternative, to minimize discriminatory effects and disparate impacts, cargo transport should be made via train. The proposed project does not include the construction of any new rail facilities on the project site, nor does it include constructing improvements to any existing rail facilities located on the remainder of the Charleston Naval Complex property. According to SCSPA, all container cargo entering and exiting the project site will be carried by trucks. (FEIS 3-4 p. 86) This will have a discriminatory effect and disparate impact on Rosemont. Instead, rail should be included in the plan as the majority carrier of cargo, and any local trucks or drayage equipment should be retrofitted with new filtration systems.

In addition to those remedies listed above, the Rosemont Neighborhood has requested several mitigation measures which are on par with the mitigation offers and funding that the adjacent North Charleston neighborhoods (LAMC) have received. These include:

- Property Tax Relief: $750K placed into a trust from which interest is distributed pro-rata for each property in Rosemont. This helps recognize the "stay put incentive." Payments from the trust will go directly to the Charleston County Treasurer.

- Scholarship Plan: $750K placed into a trust which will provide for the educational expenses for Rosemont citizens and their children. A Scholarship Committee of 5 education professionals will oversee the disbursement of interest earned by the trust. This committee will establish the criteria for recipients.

- Health Care Trust: $910K placed into a trust which will offset the costs of Air Quality Monitoring and health care monitoring for residents of the Rosemont Community. A committee of 5 health care and/or environmental consultants will oversee the air quality and health care monitoring. These funds can also be used for the installation of high quality filtration systems in homes.

- Noise Abatement: Rosemont opposes a 15' wall as proposed by the SCDOT. The community does not want to live in a walled-in compound. They would prefer a 25'+ dense vegetation barrier between the realigned I-26 and the community.

- Jobs Programs: Rosemont would like to see a permanent program providing jobs at the Port. The program as set forth in the FEIS only addresses jobs during construction.

- Whaley Center: Rosemont would like to have the Center deeded to the New Rosemont Homeowners Association after renovations are completed. They would also like to see at least $250K placed in a trust for future maintenance.

- Program Grants/Funding: Rosemont is also requesting $750K be given to the New Rosemont Homeowners Association to fund expenses incurred in this matter, senior citizen programs, children's programs and other Homeowners Association-related activities.

The total for these programs and proposals is $3,910,000.00, which is slightly more than 1/3 of the total mitigation package in the permit application. Rosemont is the most severely affected community of those adjacent to the port, both in terms of direct impact and size of the community.

15. Have you (or the person discriminated against) filed the same or any other complaints with other offices of the Department of Justice (including the Office of Justice Programs, Federal Bureau of Investigation, etc.)?

No.

16. Have you filed or do you intend to file a charge or complaint concerning the matters raised in this complaint with any of the following (U.S. Equal Employment Opportunity Commission, Federal or State Court, Your State or local Human Relations/Rights Commission, Grievance or complaint office)?

Rosemont has raised these matters to the United States Army Corps of Engineers, local legislators, a national port conference, and at a SCDHEC hearing, but have not filed any other charge or complaints.

17. If you have already filed a charge or complaint with an agency indicated in #16, above, please provide the following information:

N/A

18. While it is not necessary for you to know about aid that the agency or institution you are filing against receives from the Federal government, if you know of any Department of Justice funds or assistance received by the program or department in which the alleged discrimination occurred, please provide that information below.

Unknown.

19. We cannot accept a complaint if it has not been signed. Please sign and date this complaint form below.

Nancy C. Butler 8/6/09
SIGNATURE DATE

8/6/09
SIGNATURE DATE

20. How did you learn that you could file this complaint?

I asked a local conservation organization for advice.

21. If your complaint has already been assigned a DOJ complaint number, please list it here:

N/A