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

JAN 14 2013

OFFICE OF
CIVIL RIGHTS

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In Reply Refer to:
EPA OCR File No.: 11R-11-R4

Secretary Herschel T. Vinyard
Florida Department of Environmental Protection
Bob Martinez Building
2600 Blair Stone Road
Tallahassee, FL 32399-2400

Re: Dismissal of Title VI Administrative Complaint Without Prejudice

Dear Secretary Vinyard:

This letter is sent to notify the Florida Department of Environmental Protection (FDEP) that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) is dismissing the Title VI administrative complaint from David Ludder, Esq., dated November 30, 2011, filed against FDEP, without prejudice. The complaint alleges that FDEP violated Title VI of the Civil Rights Act of 1964, as amended, (Title VI), 42 U.S.C. §§2000d *et seq*., and EPA's regulations implementing Title VI, found at 40 C.F.R. Part 7.

Complaint Allegation

The complaint alleges that FDEP committed a discriminatory act by issuing Air Permit No. 0450012-002-AC to Northwest Florida Renewable Energy Center (NWFREC), LLC, and authorizing "the construction of a nominal 55 megawatts (MWnet) biomass fed gasification and combined cycle (BGCC) power plant called the NWFREC." The impacts alleged are: "(1) human exposure to facility emissions, particularly carcinogens; (2) light "pollution" resulting from operation of an elevated flare; and, (3) increased traffic congestion, accident risk, vehicular emissions and noise from increased truck traffic."

OCR accepted the following allegation for investigation:

> FDEP's authorization of the permit for the NWFREC is discriminatory because the alleged adverse impacts will fall disparately upon African Americans within 2.0 kilometers of the facility.

This allegation was accepted for investigation on March 22, 2012 because it met all four of EPA's jurisdictional requirements as outlined in the letter.[1]

Dismissal Without Prejudice

In July 2012, the complainant provided OCR with information that the developer of NWFREC had withdrawn from the project, citing an inability to secure financing.[2] EPA confirmed with FDEP that the developer is unable to build the facility. Because it is unclear whether the developer will obtain financing to build the facility during the permit period, which expires on December 31, 2015, the allegation in the complaint is speculative in nature and anticipates future events that may not occur as outlined in the complaint. Therefore, OCR finds that this complaint is not ripe for review.

It is OCR's general practice to dismiss without prejudice when the complaint is unripe for further investigation. As a result, such complaints are generally closed, but the Complainant may re-file the complaint within 60 calendar days of the developer securing financing. If you have any questions, please contact Helena Wooden-Aguilar by telephone at (202) 564-0792, by email at Wooden-Aguilar.Helena@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C., 20460.

Sincerely,

Rafael DeLeón
Director

cc: Mr. Steve Pressman, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Ms. Naima Halim-Chestnut, Title VI Contact, EPA Region 4
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[1] Letter from Rafael DeLeon to Herschel T. Vinyard. "Re: Acceptance of Title VI Administrative Complaint for Investigation, EPA OCR File No. 11R-11-R4." March 22, 2012.
[2] Email from David Ludder to Helena Wooden-Aguilar. "EPA OCR File No. 11R-11-R4 Northwest Florida Renewable Energy Center." July 27, 2012.