Create Control - Data Entry

Control Number: OCR-14-000-4371

Alternate Number:

Citizen Information

Citizen/Originator: 1). [redacted] Street, New York, NY 10011 **Search Citizen**

Constituent: **Search Constituent**

Committee:

Sub-Committee:

Control Information

Status: Pending *

Letter Date: Jan 27, 2014 *

Received Date: Jan 28, 2014

Contact Type: LTR (Letter) *

Priority Code: Normal *

Addressee: US/EA Office of Civil Rights (+)

Addressee Org: 1200 Avenue, N.W.

File Code: 108-025-08_497_a Discrimination Complaints - External Record Copy *

Signature: (+)

CC: **Search CC**

Signature Date: Date

Primary Subject: Civil Rights Complaint Unde Title 6 (+) *

Secondary Subject: (+)

Instructions: NRN-No Response Necessary (+) *

Instruction Notes:

General Notes: This control is assigned to title 6 for appropriate action.

*: Required field
(+): Lookup field, press space bar for complete list

Save **Continue and Assign** **Cancel**

NRDC
THE EARTH'S BEST DEFENSE

NATURAL RESOURCES DEFENSE COUNCIL

Helena Wooden-Aguilar
External Civil Rights - Assistant Director
Office of Civil Rights (1201A)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

January 27, 2014

Re: Civil Rights Complaint under Title VI of the Civil Rights Act of 1964 and 40 C.F.R. Part 7

Dear Ms. Wooden-Aguilar:

Enclosed is a Title VI complaint regarding the ongoing construction on the North Shore of Staten Island to raise the Bayonne Bridge roadway. The Natural Resources Defense Council (NRDC) files this complaint on behalf of Complainant, the North Shore Waterfront Conservancy of Staten Island and its Executive Director and President, Beryl Thurman. In response, the Environmental Protection Agency (EPA) Office of Civil Rights must promptly investigate this complaint to ensure that the Port Authority of New York and New Jersey fully complies with its duties under Title VI of the Civil Rights Act of 1964 and EPA's Title VI implementing regulations.

Complainant would like to meaningfully participate in the Title VI investigation, resolution, and compliance process. Please contact NRDC with any questions. Pursuant to EPA's instructions, this complaint will be submitted by FedEx mail, email, and fax. Thank you for your attention, we look forward to your prompt response.

Sincerely,

Albert Y. Huang
Senior Attorney
212-727-4534
ahuang@nrdc.org

Sara E. Imperiale
Legal Fellow
212-727-4562
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RECEIVED
JAN 28 2014

COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964
42 U.S.C. § 2000d and 40 C.F.R. Part 7

I. INTRODUCTION

This is a civil rights complaint by the North Shore Waterfront Conservancy of Staten Island, Inc. ("NSWC"; "Complainant") under Title VI of the Civil Rights Act of 1964 and 40 C.F.R. Part 7, alleging adverse and discriminatory impacts in connection with the Port Authority of New York and New Jersey ("Port Authority") project to raise the roadway of the Bayonne Bridge ("Project"). The Port Authority is a bi-state agency that is governed by a Board of Commissioners, appointed by the governors of New York and New Jersey. The United States Coast Guard ("Coast Guard") authorized the Project when it issued a Permit Amendment to the Port Authority on or around May 23, 2013.

This Complaint demonstrates that the Port Authority's actions constitute a *prima facie* violation of Title VI under the U.S. Environmental Protection Agency's ("EPA") implementing regulations. The discriminatory action first occurred in September 2013 when Skanska Koch-Kiewit Joint Venture began the pre-construction phase of the Project pursuant to its contract with the Port Authority. Pre-construction activities included surveying, soil boring tests, and paint removal.[1] Primary construction began on Staten Island on November 4, 2013 with the closing of the Trantor Place access ramps and remains ongoing at the time of filing.[2]

The Bayonne Bridge ("Bridge") connects Staten Island, New York and Bayonne, New Jersey. The Bridge crosses the Kill Van Kull, which is the primary shipping channel between the Port of New York and New Jersey ("Port") and several major cargo terminals. More than 2,000 vessels passed beneath the Bridge en route to and from these cargo terminals in 2010, and the Port

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[1] James Yates, Staten Island residents can now watch Bayonne Bridge construction project on webcam, STATEN ISLAND ADVANCE (Sept. 25, 2013, 9:04 AM), http://www.silive.com/news/index.ssf/2013/09/staten_island_residents_can_no.html.
[2] Michael Sedon, Richmond Terrace/Trantor Place on and off ramps to Bayonne Bridge to be closed until 2015, STATEN ISLAND ADVANCE (Oct. 31, 2013, 4:50 PM), http://www.silive.com/news/index.ssf/2013/10/richmond_terracetrantor_place.html.

Authority seeks to raise the vertical clearance of the Bridge to accommodate larger vessels coming from foreign ports.

Construction of the Project is exposing communities of color on the North Shore of Staten Island to a variety of hazardous contaminants. The Project is projected to take at minimum four years to complete, and will occur on properties that have historically been used for industrial purposes. The Coast Guard admits that the construction zone properties on both sides of the Bridge may contain lead, arsenic, asbestos, and polychlorinated biphenyls ("PCBs"), among other contaminants. Construction activities are likely exposing nearby residents to these and other hazardous substances through a variety of pathway media including groundwater and surface water runoff, but most immediately through airborne inhalation and ingestion.

While these exposure pathways are creating adversity in the residential study areas surrounding the construction zones on both the New York and New Jersey sides of the Bridge, the Project further exacerbates existing cumulative adversity borne by the communities of color on the North Shore of Staten Island in conflict with EPA policy that "potential adverse disparate cumulative impacts from stressors should be assessed, and reduced or eliminated wherever possible."[3] These cumulative burdens considered in conjunction with the communities' demographics, when compared to both the Bayonne study area population and the rest of Staten Island, establishes a pattern of racially discriminatory behavior appropriate for remedy under EPA's Title VI regulations.

Around the Bridge, the North Shore of Staten Island consists of densely populated communities of color already overburdened by a disproportionate number of polluting industries and facilities. Approximately 10,100 Staten Island residents comprise the affected population around the Project construction zone, along with several schools and community facilities. In addition to the Project's expansive construction, stretching almost a mile under the Bridge through

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[3] Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits, 65 Fed. Reg. 39669 (June 27, 2000) [hereinafter Draft Revised Investigating Guidance].

the North Shore, affected residents are surrounded by a radiological site, four factories, a power plant, several contaminated spill sites, and active port terminals.[4] The North Shore of Staten Island is a National Ambient Air Quality Standard ("NAAQS") nonattainment area for particulate matter 2.5.[5] EPA has recognized the North Shore's status as an environmental justice community, selecting it as one of ten EPA "Environmental Justice Showcase Communities" in the United States because of the number of children in the community with elevated levels of lead in their blood due to the area's industrial legacy.[6] Unique to the majority-white, more sparsely populated borough of Staten Island, the people of color living on the densely populated North Shore are more likely than their white counterparts to be affected by Project construction and the array of cumulative burdens already present in their communities.

Commencing and continuing construction with such an adverse, disparate, and unjustified impact on communities of color constitutes a *prima facie* violation of EPA's Title VI regulations.

II. JURISDICTION

A. The Complainant

The North Shore Waterfront Conservancy of Staten Island is a not-for-profit membership corporation organized under the laws of the State of New York. NSWC is a community-based grassroots organization. Its mission is to advance and promote safe and sustainable access to the waterfront; build healthier, greener communities along the Kill Van Kull; and advance public policies and laws that are inclusive of the needs of Staten Island's North Shore environmental justice communities. NSWC has over 100 members, many of whom are people of color who live

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[4] North Shore of Staten Island – Environmental Justice Profile: Toxic Sites, URBAN STUDIES 252/710: THE CHANGING URBAN ENV'T/ENVTL. POLICY, QUEENS COLLEGE, CITY UNIV. OF N.Y. (last visited Dec. 5, 2013), http://northshoreprofile.commons.gc.cuny.edu/toxic-sites/.

[5] Green Book: Currently Designated Nonattainment Areas for All Criteria Pollutants, U.S. ENVTL. PROT. AGENCY (last visited Dec. 5, 2013), http://www.epa.gov/oaqps001/greenbk/ancl.html.

[6] Region 2 EJ Showcase Community: Staten Island NY, U.S. ENVTL. PROT. AGENCY (last updated May 24, 2012), http://www.epa.gov/environmentaljustice/grants/ej-showcase-r02.html.

within the affected population.[7] NSWC is a complainant on behalf of its members of color who live, work, and recreate near the Project and who are experiencing the adverse, discriminatory impacts of Project construction.

NSWC has engaged with the Coast Guard and the Port Authority throughout the Project's development, including by submitting comments to the Coast Guard's Draft Environmental Assessment ("Draft EA"), Final Environmental Assessment ("Final EA"), and filing a complaint in coordination with other not-for-profit organizations under the National Environmental Policy Act ("NEPA")[8] for injunctive relief against the Coast Guard.[9]

B. Federal Financial Assistance

The Port Authority must comply with EPA's Title VI implementing regulations because it receives federal financial assistance from the agency.[10] EPA awarded the Port Authority nearly $12.5 million for its Clean Truck Program between 2009 and 2010.[11] While no additional disbursements have been made, grants for this program are slated to continue through 2013.[12]

Under Title VI of the Civil Rights Act of 1964:

> No 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.[13]

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[7] *See infra* Part IV.B.1 (defining the "affected population" as those residents living within the quarter-mile perimeter or study area surrounding the mile-long construction zones on both sides of the Bridge).
[8] 42 U.S.C. §§ 4321 *et seq.*
[9] EPA has similarly participated in the NEPA process for the Project, expressing written concerns about the Draft EA on Mar. 5, 2013 and about the Final EA on Jun. 27, 2013. *See, e.g.*, Letter from John Filippelli, Director, U.S. EPA Region 2 Clean Air and Sustainability Div., to Gary Kassof, Commander, First Coast Guard Dist., 1 (Mar. 5, 2013) ("As EPA also noted throughout the EA development process, we believe that changes in cargo movement associated with the project could result in some change in community impacts, particularly related to port traffic and air quality. We also have concerns that any such impacts would likely be borne disproportionately by the minority and low-income communities...").
[10] 40 C.F.R. § 7.15.
[11] Prime Award Spending Data for Port Authority of New York and New Jersey for 2008-2013, U.S. OFFICE OF MGMT. & BUDGET (last visited Dec. 5, 2013), http://usaspending.gov/advanced-search (search "Recipient DUNS Number" for "001794205*, 015901770*, 040766917*, 118865294*"; select 2008 through 2013 for "Fiscal Year"; export "Spending Type" as "Assistance").
[12] *Id.*
[13] 42 U.S.C. § 2000d.

While the Project has not been financed directly by EPA, amendments made to Title VI by the Civil Rights Restoration Act of 1987 clarify that discrimination is prohibited across all activities of recipient institutions if any part of that institution receives federal financial assistance.[14] As a recipient institution, the Port Authority has a duty to comply with the requirements of Title VI in all of its decisions.

C. Timeliness of the Complaint

A complaint must be filed within 180 days of the discriminatory act, inclusive of continuing violations as long as action subject to Title VI has occurred within the 180-day period.[15] The construction occurring under contract with the Port Authority constitutes an ongoing discriminatory action. Skanska Koch-Kiewit Joint Venture began pre-construction of the Project, including soil boring and paint removal, in September 2013.[16] Primary construction began on Staten Island on November 4, 2013 and remains ongoing at the time of filing.[17] This Complaint is thus timely filed.

III. STATEMENT OF FACTS

A. The Project to Raise the Bayonne Bridge Roadway

The Panama Canal is currently undergoing construction that will enable larger ships to travel from Asia, through the Canal, to the east coast of the United States. This expansion is expected to be completed in 2015. The larger ships carry more than double the amount of cargo that can be carried by the largest ships that currently travel the Panama Canal to the east coast. The new "post-Panamax" ships are 1,200 feet long and have a keel-to-mast height of 190 feet.

The Port Authority has repeatedly relied on the economic necessity of the Project, representing to federal authorities including President Obama and the U.S. Department of

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[14] S. Rep. No. 100-64, at 4 (1987), *reprinted in* 1988 U.S.C.C.A.N. 3, 6.
[15] 40 C.F.R. § 7.120(b)(2); Draft Revised Investigating Guidance, 65 Fed. Reg. at 39672.
[16] Yates, *supra.*
[17] Sedon, *supra.*

Transportation ("DOT") that the Port Authority will lose business to other ports equipped to handle post-Panamax ships if the Bridge is not raised.[18]

In 2010, the Port Authority submitted a TIGER grant application to DOT, requesting funding to analyze the environmental impacts of modifying the Bridge. The application provided that the Project "is crucial for maintaining and developing the regional economies of New York and New Jersey," and that failure to raise the roadway "may damage the economies of New York and New Jersey, as shipping companies will divert to ports capable of handling larger, economically efficient vessels."[19]

This explanation for the Project was maintained in the Final EA's "Purpose and Need" chapter. It characterizes the increase in vertical clearance of the Bridge roadway as "necessary to adapt to this current trend in the shipping industry and allow these larger vessels to pass beneath the Bridge to the Port of New York and New Jersey."[20]

B. Project Construction

The Bayonne Bridge is located over the Kill Van Kull, the primary shipping channel between the Port and several major cargo terminals. More than 2,000 vessels passed beneath the Bridge in 2010. The Bridge carries state highway 440 and connects Staten Island, New York and Bayonne, New Jersey. The Project will take nearly four years to complete, and will occur on properties on Staten Island and in Bayonne that have historically been used for industrial activities.

Construction will raise the Bridge by approximately 65 feet at its centerline, build new piers on both sides of the Bridge, and increase the grade of the approaches and interchanges from New

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[18] *See* Letter from Patrick J. Foye, Executive Director, the Port Auth. of N.Y. & N.J., to the Honorable Janet Napolitano, Secretary, U.S. Dep't of Homeland Sec. and the Honorable Ray LaHood, Secretary, U.S. Dep't of Transp., 2 (Mar. 23, 2012); TIGER II Planning Grant Application: Bayonne Bridge Navigational Clearance Program, Prepared for Submission by the Port Auth. of N.Y. and N.J., 3, 5 (2010), *available at* http://cleanandsafeports.org/wp-content/uploads/2012/07/PANYNJ-TIGER-Application-for-Bayonne-Bridge.pdf [hereinafter TIGER II Planning Grant Application].

[19] TIGER II Planning Grant Application, *supra*, at 3.

[20] Bayonne Bridge Navigational Assessment Program: Final Environmental Assessment, Prepared by the U.S. Coast Guard in consultation with the Port Auth. of N.Y. and N.J., 1-2 (May 2013), *available at* http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0118 [hereinafter Final EA].

York and New Jersey. Construction will take place on the Bridge and almost a mile in each direction along the roadway into Staten Island and Bayonne. Construction entails demolition of parts of the existing Bridge structure, excavation and removal of soil, and groundwater dewatering.[21]

Pre-construction began in September 2013. Primary construction began on Staten Island on November 4, 2013 with the closing of the Trantor Place access ramps and remains ongoing at the time of filing.

C. Permit Issuance and the NEPA Process

In September 2011, the Coast Guard issued a NEPA Workplan ("Workplan") for the Project. The Workplan provided an overview of the Project, including its purpose, alternatives, and anticipated environmental effects.

On November 8, 2011, the Port Authority filed an application with the Coast Guard for a Permit Amendment to raise the Bridge pursuant to the Rivers and Harbors Act of 1899.

On January 4, 2013, the Coast Guard issued its Draft EA. Complainant provided oral comments to the Coast Guard on the Draft EA.[22] The comments requested that the Coast Guard complete a full Environmental Impact Statement ("EIS") for the Project rather than the proposed Final EA.[23] Complainant also requested that greater opportunity for participation in the permitting process be afforded to the affected North Shore environmental justice communities, including by providing documents in languages other than English.[24]

On May 16, 2013, the Coast Guard issued a Final EA and a Finding of No Significant Impact. The Final EA largely adopted the conclusions made in the Draft EA. In light of the Final EA, Complainant again submitted comments, expressing similar and ongoing concerns about the

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[21] *Id.* at 16-7, 15-9.
[22] *See* Oral Comments of Beryl Thurman, Bayonne Bridge Raising Project Draft Environmental Assessment/Section 106 (Evening Session) Public Meeting Transcript, Issued by the U.S. Coast Guard, 40–43 (Feb. 7, 2013), *available at* http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0094.
[23] *Id.* at 40.
[24] *Id.* at 41–42.

Project.[25] As with the Draft EA, Complainant requested that a more thorough EIS be done for the Project and specifically noted that the Final EA ignores the effects of disturbing historically contaminated land in the construction zone and the array of cumulative burdens faced by the North Shore environmental justice communities.[26] Specifically, the comments point to Complainant's experience with historic fill material containing indiscriminately used contaminants, the ongoing problems with high levels of lead exposure among children on the North Shore, and Complainant's interest in using Project construction as an opportunity to consider mitigation approaches to the cumulative adversity borne disproportionately by the communities of color.[27]

Meanwhile, on April 24, 2013, the Port Authority awarded a construction contract for the Project to Skanska Koch–Kiewit Joint Venture. On or about May 23, 2013, the Coast Guard issued the Bridge Permit Amendment to the Port Authority.

On July 31, 2013, Complainant, in coordination with the Natural Resources Defense Council, Elm Park Civic Association, and Coalition for Healthy Ports, filed a complaint against the Coast Guard in U.S. District Court for the Southern District of New York. The Complaint alleges that the Coast Guard failed to prepare an adequate Final EA, failed to provide meaningful public participation by relying on non-public information in preparation of the Final EA, and failed to prepare an EIS in violation of the Administrative Procedure Act ("APA")[28] and NEPA.

Under the constraints of available remedies, the NEPA Complaint asked the District Court to declare that the effects of the Project require a full EIS and failure to prepare one violates the APA and NEPA; order the Coast Guard to prepare an EIS; and stay the effect of the Bridge Permit Amendment granted to the Port Authority until NEPA requirements are fulfilled.

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[25] *See* Comments on Coast Guard Final Environmental Assessment, Submitted by the Northshore Waterfront Conservancy of Staten Island, Inc. (June 27, 2013), *available at* http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0121.
[26] *Id.* at 2.
[27] *Id.* at 7–9.
[28] 5 U.S.C. §§ 701 *et seq.*

Although this Complaint shares a party and factual background with the NEPA Complaint, EPA's Title VI regulations offer substantive remedies not available to Complainant under NEPA. The following Title VI analysis focuses in large part on issues of discriminatory impact not central to the NEPA analysis and unlikely to be reached by the District Court. Therefore, EPA should not dismiss this Title VI Complaint despite the pending NEPA claim.

IV. ARGUMENT

The Port Authority's decision to award a construction contract to raise the Bridge roadway violates its statutory and regulatory duties under Title VI and EPA's implementing regulations, which prohibit federal funding recipients from making decisions that have a discriminatory effect on people of color.[29] Project construction is likely creating new sources of contamination exposure and exacerbating the existing cumulative burdens borne disparately by communities of color on the North Shore of Staten Island, thereby creating an adverse and discriminatory outcome. Raising the Bridge to provide access to larger foreign vessels may increase the Port's economic competitiveness, but Project benefits will not be felt by the communities of color further burdened to achieve that end. Therefore, the Port Authority's economic justification for the Project does not negate the need for mitigation to overcome the adverse and disparate impact created by its construction.

A. Project Construction Is Causing Significant Adverse Health Impacts

As discussed in Chapter 14 of the Final EA, contaminated materials are frequently encountered during construction in historically industrial areas that have previously been disturbed through construction, excavation, or fill.[30] The Project is no exception, as the Final EA notes that "the project site and vicinity were historically developed with industrial activities that are known to have caused subsurface contamination."[31] In particular, Project construction requires

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[29] 40 C.F.R. § 7.35(b)-(c).
[30] Final EA, *supra,* at 14-4.
[31] *Id.*

disturbance of structures and soil containing lead, asbestos, and PCBs.[32] Construction entails demolition of parts of the existing Bridge structure, excavation and removal of soil, and groundwater dewatering.[33]

1. Project Construction Disturbs Contaminated Materials and Creates Exposure Pathways

According to the Final EA, PCBs were detected in Bayonne site soils at concentrations above New Jersey Department of Environmental Protection ("NJDEP") soil remediation standards.[34] Arsenic plumes have been identified in both soil and groundwater.[35] Lead was detected above NJDEP remediation standards in at least one location, while found in other varying concentrations at eleven different testing sites.[36]

Similarly on the North Shore, the Final EA reports a test from the 1990s that detected lead at nine locations, with concentrations ranging from 166 mg/kg to 5,810 mg/kg, all above typical New York Soil Cleanup Objectives.[37] Suspect asbestos containing materials exist throughout the Staten Island construction zone in building materials located below the Bridge.[38] Information dating back to 1917 identifies an underground storage tank associated with a former filling station, and the Port Authority has no updated information on the presence or status of the tank.[39] The Richmond Terrace Radiological Site, previously used to store high-grade uranium ore for the Manhattan Project, is located adjacent to the construction zone.[40] Radiological contamination was first identified at the site in 1980 and has since been confirmed by subsequent testing.[41]

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[32] *See id.* at 14-6–14-8.
[33] *See id.* 16-7, 15-9.
[34] *Id.* at 14-6.
[35] *Id.* at 14-7.
[36] Final EA, *supra*, at 14-6.
[37] *Id.*
[38] *Id.* at 14-6, 14-7.
[39] *Id.* at 14-7.
[40] *Id.* at 14-8.
[41] *Id.*

At both sites, the Final EA describes soil stockpiles of unknown origin or environmental quality.[42] Known filling events occurred on construction zone lots and "typical historic fill material may contain contaminants, such as metals and polynuclear aromatic hydrocarbons (PAHs)."[43] There are also groundwater monitoring wells of unknown origin that are highly suggestive of preexisting groundwater contamination, which would create problems during the dewatering process, whereby groundwater is pumped from excavations to keep the construction area dry.[44] The Bridge has not been repainted since its construction in 1931, and areas of the Bridge are peeling lead-based paint.[45] Railroad tracks and spurs were historically located at both sites and "railroad bedding material is known to contain a variety of contaminants including metals, PCBs, and pesticides."[46]

Independent visits to the construction zone and surrounding study area revealed that by November 5, 2013, excavation had begun in areas of known PCB contamination without any precautions in place to contain runoff from the soil piles. Similarly, in areas of known lead contamination, there is evidence of soil disturbance and that excavated materials from the site are being carried onto public sidewalks by construction vehicles. On a construction zone site with recognized lead, PCB, and historic fill conditions, a large roll-off container labeled "Adler" sat next to a soil pile, indicating that the Port Authority has been generating contaminated material requiring off-site disposal.

With respect to the Richmond Terrace Radiological Site, the Final EA cites investigations subsequent to 1980 that have isolated the contaminated area to the northwest corner of the Site's current property line, and suggests that engineering controls are in place to prevent disturbance of

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[42] Final EA, *supra*, at 14-7.
[43] Bayonne Bridge Navigational Assessment Program: Phase 1 Environmental Site Assessment, Appendix G: Hazardous and Contaminated Materials, prepared by Hatch Mott MacDonald on behalf of the Port Auth. of N.Y. and N.J., 1 (May 2013), *available at* http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0118 [hereinafter Appendix G]; Final EA, *supra*, at 15-9.
[44] Final EA, *supra*, at 14-7.
[45] *Id.* at 14-6.
[46] *Id.* at 14-7.

the known radioactive contamination.[47] Because the Richmond Terrace Radiological Site is not directly disturbed by the Port Authority's construction plans, Appendix G to the Final EA specifies that the radioactive contamination does not pose a threat, "conditioned on the Richmond Terrace Site's engineering controls being maintained and that no disturbance to the impacted area occur."[48] However, there are no published reports that reference the engineering controls relied upon by the Final EA, suggesting none are in place. This is supported by a recent Wall Street Journal site evaluation quoting the current Richmond Terrace Radiological Site occupants and operators as not knowing anything about the presence of nuclear materials on the property.[49]

Further, the current Richmond Terrace Radiological Site is not the full extent of the radioactive contamination's historical footprint.[50] What are now known as three separate sites, the current Richmond Terrace Radiological Site waterfront property ("Parcel 1"), a site which begins at Richmond Terrace and extends south along Nicholas Avenue ("Parcel 2"), and the adjacent Port Authority owned property encompassing the construction zone around the Bridge and a substantial portion of John Street ("Parcel 3"), were originally one property owned by the Archer-Daniels Midland Company when the Belgian Union Minière Du Haut-Katanga Company stored its high-grade uranium ore there from 1939-1942.[51] The ore was stored in thousands of steel drums in a warehouse located at the east foot of the Bridge.[52] An independent investigation revealed that since

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[47] *Id.* at 14-8.
[48] Appendix G, *supra*, at 10.
[49] Waste Lands: America's Forgotten Nuclear Legacy, Staten Island Warehouse, WALL STREET J. (last updated Oct. 29, 2013), http://projects.wsj.com/waste-lands/site/442-staten-island-warehouse/ ("Sal Mazzio of Apple Towing said he had never heard anything about past work involving nuclear materials at the site. Steve Margarella of Margarella Asphalt said he had heard of the past nuclear work but had been assured when he leased his portion of the site that it didn't have any contamination problems.").
[50] Appendix G, *supra*, at 10.
[51] B. A. Berven & C. Clark, Preliminary Radiological Survey Report of the Former Staten Island Warehouse Site (Archer-Daniels Midland Company) at Port Richmond, New York, the Health & Safety Research Div., Oak Ridge Nat'l Lab., 1 (Oct. 1980); *see id.* at figure 2 (providing the location of the three parcels formerly owned by Archer-Daniels Midland Company); *but see* Appendix G, *supra*, at 10 (classifying the same three parcels as more geographically limited and citing the Belgian Union Minière Du Haut-Katanga Company as owning the original, unified property in conflict with the Berven & Clark survey).
[52] Edmund A. Vierzba, Authority Review for the Former Staten Island Warehouse (Archer-Daniels Midland Company) Port Richmond, New York, the Aerospace Corp., 1 (Aug. 1985).

1980, no further surveys have been conducted to determine whether additional portions of the historical property footprint are contaminated, despite the 1980 survey specifying that the original radiological scan was "very limited and yielded information only about a 2 to 3 [meter] strip around the perimeter" of Parcels 2 and 3.[53] This raises the possibility that the Port Authority owned property being disturbed by Project construction shares the radiological contamination characteristics known to exist on neighboring Parcel 1, the current Richmond Terrace Radiological Site.[54]

Although current data is unavailable for several sources of contamination historically found in the construction zone, scientific understanding of these hazardous materials is strong enough to draw reliable conclusions about the present state of contamination. The normal processes that can decrease pollutants in soil include biodegradation, volatilization, dissolution, and dissipation in ground water. However, PCBs, lead, and arsenic are all persistent contaminants with long half-lives. PCBs are resistant to biodegradation, are water soluable, and are not highly volatile. Lead is poorly dissolved in water. While arsenic can dissolve in water, it would take decades to diminish the concentrations last measured in 2012 in the absence of active remediation efforts.

Since primary construction began, residents living on streets adjacent to the North Shore construction zone, including John Street, Newark Avenue, Lasalle Street, Walker Street, Winant Street, and Forest Avenue, have reported that their vehicles are covered with an unknown dust or particulate matter blowing over from the Port Authority properties. Complainant NSWC has received updates from its member residents that they are experiencing increased coughing, throat irritation, and difficulty breathing. There have been increased asthma attacks in the environmental justice communities. There are also complaints about strong chemical odors permeating the neighborhoods on particular days.

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[53] *Id.* at 2; Berven & Clark, *supra*, at 3.
[54] *See infra* Title VI Administrative Complaint Exhibit A.

This evidence from the affected North Shore residents highlights the likelihood and dangerousness of an inhalation or ingestion pathway for the contaminants made airborne by Project construction. As EPA's publications report, the primary source of early childhood lead exposure is lead-contaminated house dust, due to children's frequent contact with surfaces where dust gathers and hand-to-mouth activity.[55] Two major sources of lead-contaminated house dust are lead-contaminated soil and airborne lead.[56] Direct contact with lead-contaminated soil and inhalation of lead in ambient air also contribute to exposure.[57] Similarly, the presence of PCBs in indoor dust and air constitute an important exposure pathway, particularly for younger children.[58] When asbestos-containing materials are disturbed, they can release hazardous fibers into the air and water, leading to serious lung conditions.[59]

Across the board, these pollutants that originate outdoors can penetrate the indoor environment through cracks and other entry points, with contaminants from public sidewalks and streets often being carried into the home on residents' shoes and clothing.[60] "In areas where groundwater is contaminated, chemicals may enter indoor environments via vapor intrusion."[61] On the North Shore, these exposure pathways are even more likely to reach highly vulnerable children because there are seven schools with outdoor play areas within the affected study area.[62]

Therefore, the ongoing Project construction presents a serious likelihood of exposure for the surrounding communities on both the Bayonne and Staten Island sides of the Bridge. However, the status of the North Shore as a cumulatively burdened Environmental Justice Showcase

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[55] America's Children and the Environment, U.S. Envt'l Prot. Agency, EPA 240-R-13-001, 118 (3d. ed. Jan. 2013), *available at* http://www.epa.gov/ace/pdfs/ACE3_2013.pdf.
[56] *Id.*
[57] *Id.*
[58] *Id.* at 152.
[59] *Id.*
[60] *Id.* at 59.
[61] *Id.*
[62] Final EA, *supra*, at 4-2.

Community means that the additional adversity created by Project construction is being felt even more acutely by the communities of color adjacent to the Staten Island construction zone.

2. Project Construction Exacerbates Cumulative Adversity on the North Shore

As highlighted by EPA in the preamble to its 2000 Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits ("Draft Revised Investigating Guidance"), Title VI concerns are often raised because communities are suffering from adverse effects caused by multiple sources, and they seek to use modification of an existing permit to focus attention on the cumulative impacts stemming from a long-term pattern of discriminatory decisions.[63] Earlier iterations of EPA policy for investigating Title VI administrative complaints anticipate this use of Title VI, noting that "[EPA] will entertain cases only in which the permitted facility at issue is one of several facilities, which together present a cumulative burden or which reflect a pattern of disparate impact."[64]

One of EPA's newest Title VI Draft White Papers, Adversity and Compliance with Environmental Health-Based Thresholds, strengthens the position of Title VI complainants generally by eliminating the rebuttable presumption that attainment of health-based environmental standards like NAAQS means no adverse impacts exist for the relevant pollutants.[65] Even under the stricter standard, however, Project construction would not benefit from the presumption because the North Shore of Staten Island is a NAAQS nonattainment area for particulate matter 2.5.[66] Although this Complaint targets construction exposure rather than the anticipated increase in operational emissions associated with eventually opening the Port to larger

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[63] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39653.
[64] Interim Guidance for Investigating Title VI Administrative Complaints Challenging Permits, Issued by the U.S. Envtl. Prot. Agency, 9 (Feb. 1998), *available at* http://www.environmentalandenergylawblog.com/uploads/file/Interim%20Guidance(1).pdf [hereinafter Interim Guidance].
[65] Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Health-Based Thresholds, 78 Fed. Reg. 24741 (Apr. 26, 2013).
[66] Green Book: Currently Designated Nonattainment Areas for All Criteria Pollutants, *supra.*

and more cargo traffic, the lack of attainment for health-based environmental standards underscores the severity of the cumulative burdens borne by these communities of color.

Beyond the historic industrial uses found within the construction zone and described in Part IV.A.1., study area residents are surrounded by a variety of modern sources of pollution including four factories, a power plant, several contaminated spill sites, and the active port terminals.[67] In 2012, EPA recognized the North Shore's environmental justice status, selecting it as one of ten EPA "Environmental Justice Showcase Communities" in the United States because of the number of children in the area with elevated levels of lead in their blood.[68] As the funding committed to alleviate this problem winds down nearly two years later, Project construction may once again expose the children of these communities of color to hazardous lead.[69]

These historic and ongoing sources of contaminant exposure are exacerbated by the density and residential nature of the surrounding communities. The Project's expansive construction stretches almost a mile under the Bridge through an area of the North Shore that consists of densely populated communities of color. Approximately 10,100 Staten Island residents live within the quarter-mile perimeter surrounding the North Shore construction zone, along with seven schools with outdoor playgrounds and other community facilities.[70] The Final EA's "Indirect and Cumulative Effects" chapter does not take into consideration any of these preexisting North Shore realities, instead limiting the analysis for the construction period to future planned projects that might overlap with Project construction.[71]

Because older soil tests revealed extensive contamination and so little updated information is available for many likely sources of ongoing contamination, including the underground storage tanks, soil stockpiles, groundwater contamination, and historic railroad bedding, there is

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[67] North Shore of Staten Island – Environmental Justice Profile, *supra.*
[68] Region 2 EJ Showcase Community: Staten Island, NY, *supra.*
[69] *See supra* Part IV.A.1.
[70] Final EA, *supra*, at 4-3, 4-2; *see infra* Title VI Administrative Complaint Exhibit B.
[71] *Id.* at 18-23–18-26.

insufficient information to protect Complainant from airborne, ingestion, groundwater, and surface water exposure pathways. Adding the risk of hazardous contaminant exposure during Project construction to the preexisting cumulative burdens faced daily by the North Shore study area communities demonstrates adversity under EPA's Title VI regulations.

B. Project Construction Disproportionately Impacts People of Color on the North Shore

As established in the preceding section, the population of the North Shore of Staten Island is experiencing Project construction as an Environmental Justice Showcase Community, already extensively burdened by exposure to cumulative impacts. While Project construction creates adversity and therefore an affected population on both the New York and New Jersey sides of the Bridge, the Project exacerbates existing conditions on the North Shore of Staten Island. These cumulative burdens considered in conjunction with the communities' demographics, when compared to both the Bayonne study area population and the rest of Staten Island, establishes a longstanding pattern of racially discriminatory behavior in violation of Title VI.

1. The Affected Population: Residents of Staten Island, NY and Bayonne, NJ living within a quarter-mile of the Project construction zone

According to the Draft Revised Investigating Guidance, the affected population is "that which suffers the adverse impacts of the stressors from assessed sources" dependent upon the sources or pathways of the adverse impacts.[72] In the absence of detailed models or samples for pollution like plumes that may travel from a construction site, proximity to the impact of concern is "a reasonable indicator of where impacts are concentrated."[73]

The Coast Guard's Final EA identified the relevant study area for land use and social conditions as the quarter-mile perimeter surrounding the limit of the construction work zone.[74] Following EPA's guidance and relying on the Coast Guard's approach, for the purposes of this Complaint the affected population is the "study area population," those residents living within the

[72] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39681.
[73] Interim Guidance, *supra*, at 8; Draft Revised Investigating Guidance, 65 Fed. Reg. at 39681.
[74] Final EA, *supra*, at 4-1.

quarter-mile perimeter surrounding the mile-long Project construction zone on both sides of the Bridge. Due to their proximity to the Project and historic sources of contamination, these residents are most likely to be exposed to the hazardous materials disturbed by construction.

On Staten Island, the affected population extends north to the Kill Van Kull waterfront; south to Forest Avenue, Monsey Place, and Riegelmann Street; east to Treadwell Avenue, Port Richmond and Decker Avenue; and west to Simonson Avenue.[75] In Bayonne, the affected population extends north to 10th Street; South to the Kill Van Kull waterfront; east to Avenue C; and west to the Newark Bay waterfront.[76]

2. Threshold Risk Ratio: The probability of being affected by Project construction is higher for people of color

The discriminatory nature of the adversity faced by the North Shore study area communities is made apparent by examining the two most relevant demographic factors across the entire affected population: population density and population of color percentage. The threshold risk ratio, used as part of EPA's formula to make a *prima facie* finding that a Title VI violation occurred in *Angelita C.*, asks whether there is a greater probability of members in a Title VI protected population group being affected than members of an unprotected group.[77] Across the affected populations in Bayonne and Staten Island, the probability of being affected as a protected resident of color is higher than the probability of being affected as an unprotected white resident.

As determined by the Coast Guard's Final EA, the Staten Island affected population has 10,100 residents with 3,065 households.[78] Approximately 22 percent of that population is white.[79] The study area is predominantly residential, with six zoning districts in the quarter-mile perimeter

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[75] *Id.* at 4-1, 4-2.
[76] *Id.* at 4-7.
[77] Jonathan Cohen & Arlene Rosenbaum, ICF INT'L, INC., Exposure Assessment and Disparity Analysis for Administrative Complaint 16R-99-R9, 30 (Apr. 21, 2011), *available at* http://www.epa.gov/civilrights/TitleVIcases/exposure-disparity-analysis-20110421.pdf.
[78] Final EA, *supra*, at 4-3.
[79] *Id.* at 4-4.

designated as strictly residential or mixed commercial and residential.[80] Community facilities include four public schools at the high, intermediate, and elementary levels; three private schools including one for children with special needs; a senior housing facility; and three places of worship.[81]

In contrast, the affected population in Bayonne is approximately 69 percent white, and has only 7,000 residents with 2,764 households.[82] There are also fewer community facilities in Bayonne, with four schools and three places of worship.[83] While the unprotected class that makes up the vast majority of Bayonne's population is also experiencing the adversity described in Part IV.A.1 of this Complaint, the significantly lesser residential density renders exposure less probable than on the North Shore where protected residents of color make up most of the population.[84]

Therefore, due to the dramatic differences in population density and the corresponding population of color percentages across the affected area, the probability of being affected as a protected resident of color is higher than the probability of being affected as an unprotected resident. The threshold risk ratio indicates a violation of EPA's Title VI regulations.

3. Demographic Ratio: People of color comprise a substantially greater proportion of the affected population than the general population

The other ratio relied upon by EPA in *Angelita C.* is the demographic ratio, which asks whether members of the protected class comprise a substantially greater proportion of the affected population than of the unaffected, general population.[85] As established by the Draft Revised Investigating Guidance, a comparison population should be drawn from a relevant reference area, such as a political jurisdiction.[86] The Draft Revised Investigating Guidance anticipates that a reliable

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[80] *Id.* at 4-2, 4-3.
[81] *Id.* at 4-2; *see infra* Title VI Administrative Complaint Exhibit B.
[82] *Id.* at 4-8, 4-9.
[83] *Id.* at 4-7.
[84] *See infra,* Title VI Administrative Complaint Exhibit C.
[85] Cohen & Rosenbaum, *supra.*
[86] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39681.

comparison population will be larger than the affected population, and may include the general population of the jurisdiction reference area, inclusive of the affected population.[87]

The affected North Shore communities are demographically distinguishable from the entirety of Staten Island. The population of color percentage of the affected North Shore communities is significantly higher than the population of color percentage across Richmond County, the Staten Island Borough.[88] As determined by the Final EA, the North Shore affected population of 10,100 residents within the quarter-mile radius of the mile-long construction site is approximately 22 percent white.[89]

In contrast, the Staten Island Borough, inclusive of the affected North Shore population, is approximately 78 percent white with an overall population density of approximately 8,030 persons per square mile.[90] The Borough is a reliable comparison because it is larger than the affected population, includes an entire political jurisdiction, and consists of the general population, inclusive of the affected population.

These statistics indicate that there are comparatively more people per square mile within the affected population and that the vast majority of them are people of color in comparison to the predominantly white, less dense, general population of Staten Island. Therefore, members of the protected class comprise a substantially greater proportion of the affected population than of the unaffected, general population. The demographic ratio indicates a violation of EPA's Title VI regulations.

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[87] *Id.*
[88] *See infra* Title VI Administrative Complaint Exhibit C.
[89] Final EA, *supra*, at 4-3, 4-4.
[90] State and County QuickFacts: Richmond County (Staten Island Borough), New York, U.S. CENSUS BUREAU (June 27, 2013), http://quickfacts.census.gov/qfd/states/36/36085.html.

C. Justification Offered for the Project Does Not Negate the Need for Mitigation to Achieve a Less Discriminatory Outcome

1. The Project's Economic Development Justification Does Not Directly Benefit the North Shore Affected Population

Under EPA's Draft Revised Investigating Guidance, justification is defined largely by the legitimacy of the permitted action given the recipient's mission.[91] Economic development is included as an acceptable justification "if the benefits are delivered directly to the affected population and if the broader interest is legitimate, important, and integral to the recipient's mission."[92] The guidance makes clear that EPA will consider the views of the affected community when determining whether economic benefits will be delivered directly.[93]

Created in consultation with the Port Authority, the Final EA describes the Port Authority as "a bi-state governmental entity created by a compact between New York and New Jersey to maintain and modernize interstate transportation facilities such as bridges, and to sustain the Port of New York and New Jersey as modern, efficient, and competitive."[94] The Final EA legitimately characterizes the increase in vertical clearance of the Bridge roadway as "necessary to adapt to this current trend in the shipping industry and allow these larger vessels to pass beneath the Bridge to the Port of New York and New Jersey."[95] This reflects a longstanding position held by the Port Authority that the Project "is crucial for maintaining and developing the regional economies of New York and New Jersey," and that failure to raise the roadway "may damage the economies of New York and New Jersey, as shipping companies will divert to ports capable of handling larger, economically efficient vessels."[96] However, this economic development justification falls short

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[91] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39683.
[92] *Id.*
[93] *Id.*
[94] Final EA, *supra*, at 1-1.
[95] *Id.* at 1-2.
[96] TIGER II Planning Grant Application, *supra*, at 3.

under EPA's guidance, which gives substantial consideration to whether the economic benefits are directly delivered to the affected population.[97]

In contrast to the studies used to demonstrate the Project's projected national economic development benefits, the Final EA merely assumes regional benefits will follow.[98] Economic benefits directed toward the local, affected communities are neither discussed nor demonstrated in the Final EA. According to the Final EA, increasing the vertical clearance of the Bridge roadway will have national economic benefits in terms of reduced shipping costs.[99] Relying on a 2009 U.S. Army Corps of Engineers analysis, these national benefits are projected to be more than $3 billion over the life of the Project.[100] The primary beneficiaries will be shippers with reduced costs from using larger vessels to increase carrying capacity. The Final EA suggests that some portion of these savings could be passed on to the region served by the Port, but acknowledges that the "percentage cannot be determined because it is subject to the shipper's discretion."[101] No analysis is considered for the low-income communities of color adjacent to the North Shore construction zone apart from a vague reference to "temporary jobs for construction workers."[102]

Therefore, EPA should weigh the economic benefits of the project according to the benefits delivered to the affected population, inclusive of the communities' input. According to the Draft Revised Investigating Guidance, the Port Authority's justification, however legitimate and mission appropriate, falls short of providing grounds to move forward with the Project construction absent mitigation measures to achieve a less discriminatory outcome.

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[97] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39683.
[98] Final EA, *supra*, at 1-2.
[99] *Id.*
[100] *Id.*
[101] *Id.*
[102] *Id.* at 16-11.

2. Practicable Mitigation Measures Exist As Less Discriminatory Alternatives

The Draft Revised Investigating Guidance demonstrates a willingness by EPA to consider practicable mitigation measures as less discriminatory alternatives.[103] These mitigation measures should be designed to reduce or eliminate impacts that are tailored to contributing sources, including the particular permit at issue.[104] Specifically, measures may include changes in policies or procedures, pollution control and prevention, or offsets.[105] The Draft Revised Investigating Guidance indicates EPA openness to broader approaches that address cumulative impacts, developed in consultation with the affected communities during either informal resolution prior to a Finding of Noncompliance or voluntary compliance after such a finding is made.[106]

i. Alternative Dispute Resolution

This specific case would benefit from EPA supported and mediated alternative dispute resolution ("ADR") to open a constructive dialogue between Complainant and the Port Authority in order to prevent Project construction from unleashing any further hazardous burdens on the affected North Shore communities. Although the Port Authority is not responsible for each source of historic contamination surrounding the Bridge, the permitted Project provides an important opportunity for these environmental justice communities to address longstanding dangers in a safe, comprehensive manner. For Complainant, important outcomes of this informal resolution ADR mechanism would include the Port Authority adopting more comprehensive monitoring and sampling procedures for Project construction. Recent data is unavailable for much of the contamination described in Part IV.A.1., including the underground storage tanks, soil stockpiles, groundwater contamination, and historic railroad bedding. This raises serious concerns about the Port Authority having sufficient information to effectively remediate the construction zone and

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[103] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39683.
[104] *Id.*
[105] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39674.
[106] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39674, 39683.

protect Complainant from demonstrated airborne, ingestion, groundwater, and surface water exposure pathways.

ii. Sampling and Monitoring

Similar to the remedy developed by EPA and the funding recipient in *Angelita C.*, sampling and monitoring policies are important mitigation tools.[107] Maintenance of comprehensive monitoring techniques throughout Project construction will minimize the risk of adding to cumulative burdens on the North Shore, while also providing updated information about the contaminants in the communities and important exposure pathway data that can be relied upon in subsequent remediation efforts.

The Final EA does include a monitoring scheme for construction, in the form of procedures for addressing existing structure contamination and a Construction Health and Safety Plan ("CHASP") for surface and subsurface disturbance.[108] The standards required of the Port Authority and Skanska Koch-Kiewit Joint Venture by the CHASP are difficult to discern, however, because the Final EA speaks in terms of what the CHASP is expected to include, but is otherwise vague about virtually all aspects of the plan: responsible personnel, monitoring or mitigation schedules including frequency and scope, procedures for evaluating known and suspected contamination, and actions to be taken if exposure occurs.[109] The only facet of construction that gets a more thorough treatment in the publicly available Final EA is dust control, with options for limiting airborne emissions described as "water spray, dust retardant, and/or truck wheel wash."[110] The CHASP has never been released to the public.

Beyond these immediate gaps in executing a monitoring strategy, the CHASP only superficially accounts for construction induced contaminant exposure on the North Shore because

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[107] Title VI Settlements: Angelita C. Settlement, U.S. ENVT'L PROT. AGENCY (last updated Nov. 4, 2013), http://www.epa.gov/ocrpage1/TitleVIcases/index.html#angelita.
[108] Final EA, *supra*, at 16-77–16-78.
[109] *Id.* at 16-78–16-80.
[110] *Id.* at 16-79.

the plan fails to meaningfully address cumulative adversity. By itemizing existing air quality as distinct from likely contaminant exposure and background pollutant concentrations as distinct from cumulative effects, the plan at the center of Project construction fails to account for the tremendous burden created by any additional adversity on the North Shore.[111] The Final EA's conclusion that the only significant long-term impact of the Project will be the effect on the historic Bridge is followed by the summation that "while localized adverse effects would occur in the study area during the construction phase of the project, these effects would be temporary and would end once construction is complete."[112] This makes apparent that the long-term risks associated with cumulative contaminant exposure for the highly vulnerable communities of color on the North Shore is being minimized and ineffectively dealt with by the current monitoring plan.[113]

Further, as discussed in Part IV.A.1, study area visits and accounts from affected North Shore residents make clear that any protective measures provided for by the CHASP are being insufficiently implemented. Soil from areas of likely lead and PCB contamination has been carried as airborne dust onto residents' cars and onto public sidewalks where it's easily tracked into homes.[114] There are also concerning discrepancies about the integrity of the controls on the radiological contamination adjacent to the construction zone and whether that contamination extends into property owned by the Port Authority.[115]

iii. Meaningful Complainant Involvement

In contrast to *Angelita C.*, however, and pursuant to EPA's recently published Draft White Paper, Role of Complainants in the Title VI Complaints and Resolution Process ("Role of Complainants White Paper"), EPA should meaningfully include Complainant in each stage of the

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[111] *See id.* at ch. 11, 14 and 18-23–18-26.
[112] *Id.* at 17-6.
[113] *Id.*
[114] *See infra* pp. 12–13.
[115] *See infra* pp. 11–12.

resolution and compliance process.[116] This includes soliciting Complainant input on potential remedies and facilitating Complainant inclusion in any ADR, settlement negotiations, or other resolution mechanisms. Project construction offers an important opportunity for EPA and Complainant to work with the Port Authority, a major landowner on the North Shore, to achieve mitigation measures that address the cumulative adversity that disparately impacts communities of color.

V. REMEDIES

EPA regulations require a funding recipient who has discriminated on the basis of race to take affirmative action to provide remedies to those injured.[117] As clarified by the Draft Revised Investigating Guidance, "EPA believes it will be a rare situation where the permit that triggered the complaint is the sole reason a discriminatory effect exists; therefore, denial of the permit at issue will not necessarily be an appropriate solution. Efforts that focus on all contributions to the disparate impact...will likely yield the most effective long-term solutions."[118]

To that end and in order to provide effective remedies for the discriminatory adversity set forth in this Complaint, EPA should require as a condition of continuing to provide federal financial assistance that the Port Authority:

(1) Adopt less discriminatory alternatives to achieve the economic development goals articulated for the Project, including the mitigation measures i-iii described in Part IV.C.2.

To facilitate compliance with its regulatory requirements, EPA should:

(1) Sue to compel compliance with Title VI, to the extent that imposition of the foregoing remedies proves in any way to be ineffectual;
(2) Provide Complainant with copies of all documents related to the investigation, including but not limited to all correspondence to or from the Port Authority throughout the course of the investigation, deliberation, and disposition of this Complaint; and

[116] *See* Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaints and Resolution Process, 78 Fed. Reg. 24742 (Apr. 26, 2013).
[117] 40 C.F.R. § 7.35(a)(7).
[118] Draft Revised Investigating Guidance, 65 Fed. Reg. at 39674.

(3) Pursuant to EPA's Role of Complainants White Paper, notify Complainant of, and meaningfully include Complainant in, any resolution mechanism including ADR, settlement negotiations, or voluntary compliance negotiations with the Port Authority.

VI. CONCLUSION

The ongoing construction to raise the roadway of the Bayonne Bridge under contract with the Port Authority of New York and New Jersey inflicts a significant adverse and disparate impact on the affected communities of color on the North Shore of Staten Island. This violates Title VI and EPA's implementing regulations.

DATE: January 27, 2014

Respectfully submitted,

Natural Resources Defense Council (NRDC)

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Natural Resources Defense Council
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Attorneys for Complainant
North Shore Waterfront Conservancy of
Staten Island.

Title VI Administrative Complaint
Exhibit A

Figure 2. Location of three property parcels forme
Archer-Daniels Midland Company in
Port Richmond, New York.

Title VI Administrative Complaint
Exhibit B

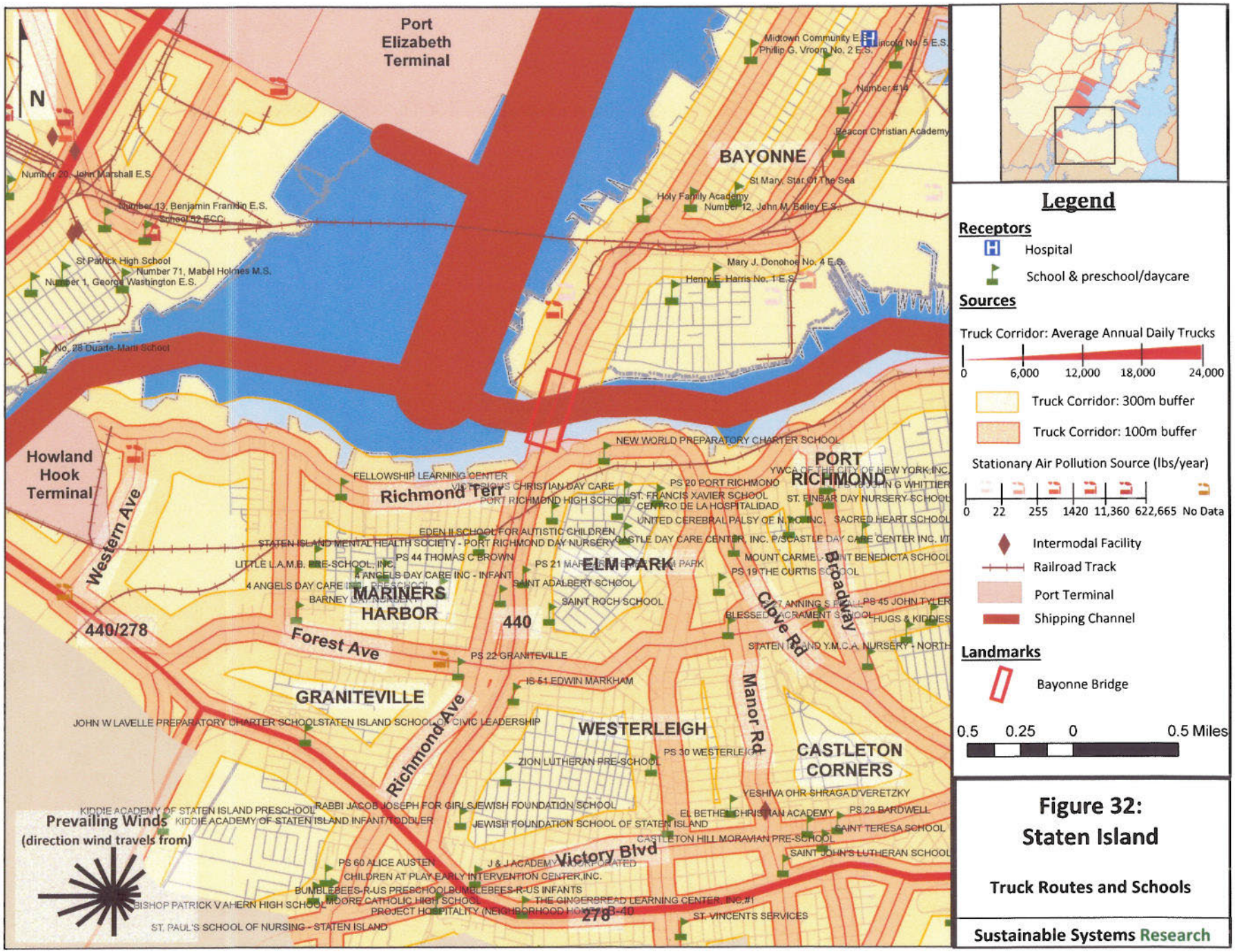

Figure 32: Staten Island

Truck Routes and Schools

Sustainable Systems Research

Title VI Administrative Complaint
Exhibit C

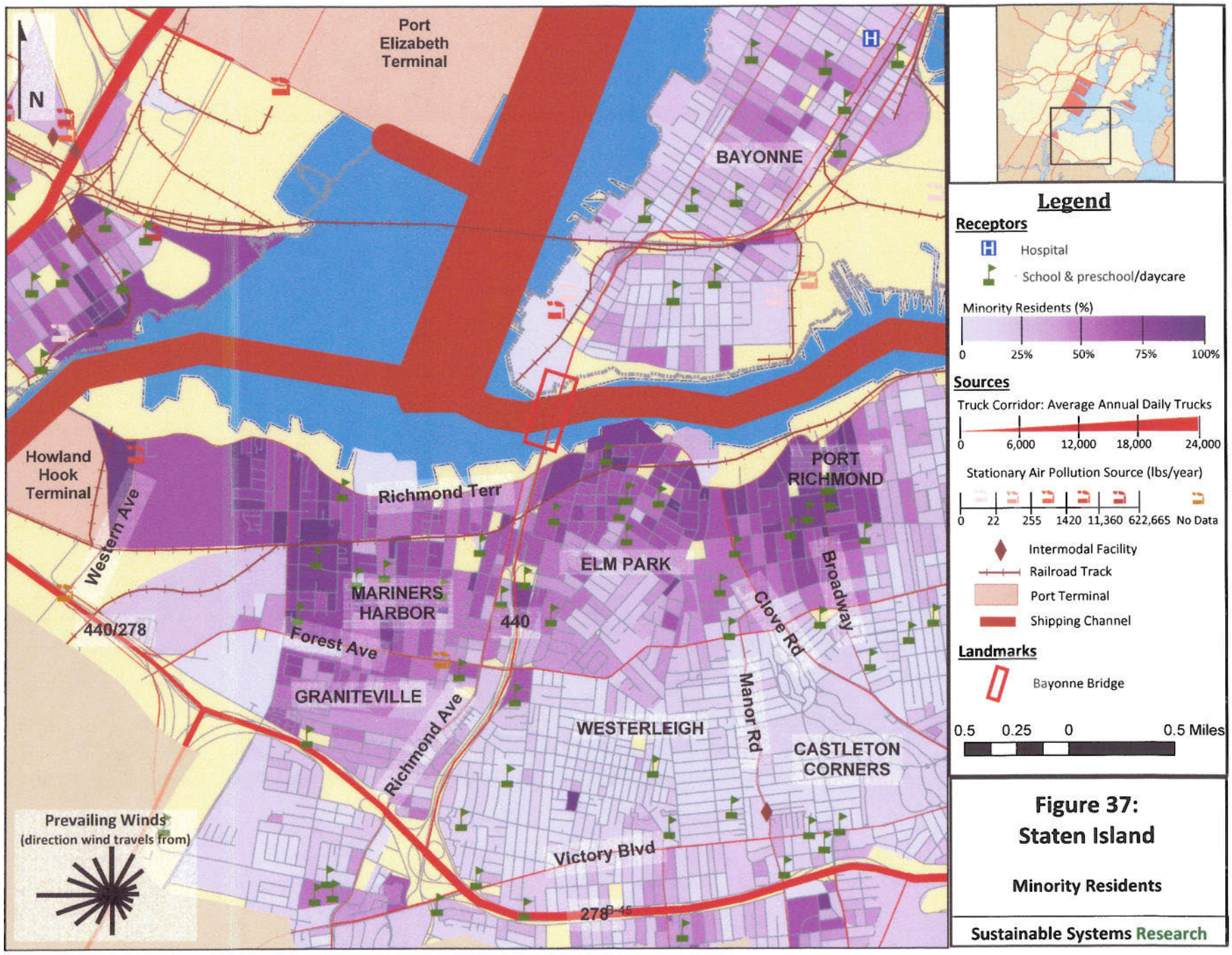

Figure 37: Staten Island

Minority Residents

Sustainable Systems Research

00107

00500

FedEx Express Package US Airbill

FedEx Tracking Number 8041 4492 9573

1 From

Date

Sender's Name Phone 212 727-2700

Company NATURAL RESOURCE DEFENSE CNCL

Address 40 W 20TH ST FL 11

Dept./Room/Suite/Room

City NEW YORK State NY ZIP 10011-4231

2 Your Internal Billing Reference

3 To

Recipient's Name Phone

Company

Address

We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Room/Suite/Room

Address

Use this line for the HOLD location address or for continuation of your shipping address.

City State ZIP

HOLD Weekday

HOLD Saturday

0110831159

8041 4492 9573

fedex.com 1.800.GoFedEx 1.800.463.3339

0215 8041 4492 9573 STANDARD OVERN

EP RDVA 204

FID 404657 27JAN14 TSSA 51AC1/06EC/65DD

FedEx First Overnight

4 Exp

NOTE

Next

FedEx Express **EXCEPTION / SEND A**

Customer's Package/Shipment was delayed

FOR IN STATION USE ONLY

- ☐ Package Researched Date: _____ Initial: ____
- Comments: Rm 2450
- ☐ Address is correct/Recipient no longer at this address
- ☑ Incorrect recipient address/Incomplete recipient addre
- ☑ Need apartment or suite number
- ☐ Recipient moved and left no forwarding address or ph number
- ☐ Not in / Business closed / Not authorized to leave ship without a signature
  - ☐ 1st Attempt ☐ 2nd Attempt ☐ 3rd Attempt
- ☐ Signature required, please contact shipper for disposi
- ☐ Holiday - Closed
- ☐ Package not attempted (reason): _____
- ☐ Refused (reason): _____
- ☐ Future delivery. Reattempt on (date): _____
- ☐ Recipient requested hold for pickup
- ☐ Collect on Delivery. Payment not available. Reattempt made on (date): _____
- ☐ Bill recipient shipment, Payment not available. Reatte be made on (date): _____
- ☐ Other: _____

Date: 1/28/14 Employee #: _____

POD MUST BE OBTAINED WHEN DELIVERY IS COMPLETED

UPDATE ALL INFORMATION AND POD INTO COSMOS

Peel here

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

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-6796

In Reply Refer to:
EPA File No.: 01R-14-R2

Albert Huang, Senior Attorney
Sara Imperiale, Legal Fellow
Natural Resources Defense Council
40 West 20th Street
New York, New York 10011

Re: Rejection of Administrative Complaint

Dear Mr. Huang and Ms. Imperiale,

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting the administrative complaint filed against the Port Authority of New York and New Jersey (Port Authority) received by the EPA on January 27, 2014. The complaint alleges adverse and discriminatory impacts in connection with the Port Authority's construction project to raise the roadway of the Bayonne Bridge (the Bayonne Bridge Navigational Clearance Project).

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency (See 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1)). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing (See 40 C.F.R. §7.120(b)(l)). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (See 40 C.F.R. §7.120(b)(2)). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15). For your reference, a copy of the EPA's nondiscrimination regulations are enclosed.

The OCR is rejecting your complaint as untimely. Under the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. Complaints alleging discriminatory effects arising out of a permit should be filed with the EPA within 180 calendar days of issuance of that permit. Because the Bayonne Bridge Navigational

Clearance Project was authorized pursuant to the Permit Amendment issued on May 23, 2013, and your Title VI complaint was filed with the EPA on January 27, 2014, the OCR cannot accept your complaint for investigation.

The OCR does not agree that the Bayonne Bridge Navigational Clearance Project constitutes an ongoing discriminatory action. A statute of limitations begins to run when the facts that would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights.[1] The Port Authority applied to the U.S. Coast Guard for the Bayonne Bridge Navigational Clearance Project Permit Amendment on or about November 8, 2011. When the Coast Guard approved the Permit Amendment on May 23, 2013, there was no obvious factual contingency that put construction in doubt.[2] The record in this matter demonstrates that impacts alleged in your complaint were raised during the permit issuance process.[3] Therefore, the public (and Complainants) had sufficient notice of facts that would support a cause of action upon the issuance of the Permit Amendment.

If you have questions regarding this letter, please contact Helena Wooden-Aguilar (202) 564-0792 or by electronic mail at wooden-aguilar.helena@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director

Enclosures

cc: Elise Packard, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

---

[1] *Del. State College v. Ricks,* 449 US 250, 258 (1980) (holding that the proper focus for statute of limitations periods is upon the time of the discriminatory act, not upon the time that the consequences of the act became most painful. That is, the denial of tenure was the discriminatory act and not the termination of employment which was the natural consequence of that act); *Rozar v. Mullis*, 85 F.3d 556, 561-562(11th Cir. 1996) (determining in the environmental permitting context that the statute of limitations does not begin to run until the facts which would support a cause of action are apparent or should be apparent, so the time period was triggered when the county vote selecting a landfill site occurred and was known as evidenced by one plaintiff voicing protest prior to that vote).

[2] *Franks v. Ross*, 313 F.3d 184, 195 (4th Cir 2002) finding that the statute of limitations did not begin to run until the landfill permit was issued because there was no "obvious factual contingency that put construction seriously in doubt").

[3] *See Transcript of Newark, New Jersey Session about Bayonne Bridge Raising Project Draft Environmental Assessment/Section 106 Public Meeting(First Session)*, pgs. 128-129 (February 13, 2013), available at http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0096; *See Transcript of Newark, New Jersey Session about Bayonne Bridge Raising Project Draft Environmental Assessment/Section 106 - Public Meeting (Second Session), pgs. 39-43* (February 13, 2013) (comments of McDERMOTT and THURMAN), available at http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0094.

Richard J. Manna, Deputy Civil Rights Official, U.S. EPA Region 2
290 Broadway
Mail Code: 26TH FL
New York, NY 10007-1866

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

FEB - 2 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-6789

In Reply Refer to:
EPA File No.: 01R-14-R2

Mark A. Chertok
Sive Paget & Riesel, P.C.
460 Park Avenue
10th Floor
New York, New York 10022

Re: Rejection of Administrative Complaint

Dear Mr. Chertok,

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting the administrative complaint filed against the Port Authority of New York and New Jersey (Port Authority) received by the EPA on January 27, 2014. The complaint alleges adverse and discriminatory impacts in connection with the Port Authority's construction project to raise the roadway of the Bayonne Bridge (the Bayonne Bridge Navigational Clearance Project).

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency (See 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1)). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing (See 40 C.F.R. §7.120(b)(l)). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (See 40 C.F.R. §7.120(b)(2)). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15). For your reference, a copy of the EPA's nondiscrimination regulations are enclosed.

The OCR is rejecting your complaint as untimely. Under the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. Complaints alleging discriminatory effects arising out of a permit should be filed with the EPA within 180 calendar days of issuance of that permit. Because the Bayonne Bridge Navigational

Clearance Project was authorized pursuant to the Permit Amendment issued on May 23, 2013, and your Title VI complaint was filed with the EPA on January 27, 2014, the OCR cannot accept your complaint for investigation.

The OCR does not agree that the Bayonne Bridge Navigational Clearance Project constitutes an ongoing discriminatory action. A statute of limitations begins to run when the facts that would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his or her rights.[1] The Port Authority applied to the U.S. Coast Guard for the Bayonne Bridge Navigational Clearance Project Permit Amendment on or about November 8, 2011. When the Coast Guard approved the Permit Amendment on May 23, 2013, there was no obvious factual contingency that put construction in doubt.[2] The record in this matter demonstrates that impacts alleged in your complaint were raised during the permit issuance process.[3] Therefore, the public (and Complainants) had sufficient notice of facts that would support a cause of action upon the issuance of the Permit Amendment.

If you have questions regarding this letter, please contact Helena Wooden-Aguilar (202) 564-0792 or by electronic mail at wooden-aguilar.helena@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director

Enclosures

cc: Elise Packard, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

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[1] *Del. State College v. Ricks,* 449 US 250, 258 (1980) (holding that the proper focus for statute of limitations periods is upon the time of the discriminatory act, not upon the time that the consequences of the act became most painful. That is, the denial of tenure was the discriminatory act and not the termination of employment which was the natural consequence of that act); *Rozar v. Mullis*, 85 F.3d 556, 561-562(11th Cir. 1996) (determining in the environmental permitting context that the statute of limitations does not begin to run until the facts which would support a cause of action are apparent or should be apparent, so the time period was triggered when the county vote selecting a landfill site occurred and was known as evidenced by one plaintiff voicing protest prior to that vote).

[2] *Franks v. Ross*, 313 F.3d 184, 195 (4th Cir 2002) finding that the statute of limitations did not begin to run until the landfill permit was issued because there was no "obvious factual contingency that put construction seriously in doubt").

[3] *See Transcript of Newark, New Jersey Session about Bayonne Bridge Raising Project Draft Environmental Assessment/Section 106 Public Meeting(First Session)*, pgs. 128-129 (February 13, 2013), available at http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0096; *See Transcript of Newark, New Jersey Session about Bayonne Bridge Raising Project Draft Environmental Assessment/Section 106 - Public Meeting (Second Session), pgs. 39-43* (February 13, 2013) (comments of McDERMOTT and THURMAN), available at http://www.regulations.gov/#!documentDetail;D=USCG-2012-1091-0094.

Richard J. Manna, Deputy Civil Rights Official, U.S. EPA Region 2
290 Broadway
Mail Code: 26TH FL
New York, NY 10007-1866

Attn: Environmental Protection Agency, Federal Office. Please Help me I am being Harrassed for filing Complaint Urgent

Urgent

JANUARY 07, 2014 THE YEAR OF OUR LORD

Dear Most Honorable & Beloved President Obama,

My name is [redacted] of Sebastian, Florida and I am a friend **of** [redacted] **who gave you bear hug!! I desperately need your help here on Treasure coast. I am part of "Save The Lagoon" & in process *of doing researched I discovered that "THELARGEST ENVIRONMENTAL FRAUD IN OUR NATION'S HISTORY IS BEING ORCHESTRATED HERE IN THE GREAT STATE OF FLORIDA. THE FRAUD AS YOU HEARD UTILIZES THE GUISE OF NON-PROFIT 501C3'S COAST ECOLOGICAL & GCRA BY A DR BRIAN LAPOINTE OF FAU/ HBOI MARINE INSTITUTE IN AN ATTEMPT TO DEFRAUD THE US GOVERNEMNET AND PEOPLE OUT OF HUNDREDS OF BILLIONS OF EQUIVALENT NATURAL GAS IN CRUDE BARRELLS TRANSLATED 55.5 BILLION BARRELS EQUIVALENT OF PLEASE HELP ME AS THIS FRAUD IS UTILIZING FEDERAL LEGEISLATION WHICH PASSED FOR PERMITTING EXPEDITTED GASLINE PERMITS. PLEASE ALSO BE ADVISED THAT INVOLVEMENT OF THE EVERGLADES FOUNDATION MAY ALSO BE IN VOLVED AS STANLEY BOYTON IS AN EXECUTIVE DIRECTOR FOR EVERGLADES AND I BELIEVE HIS BROTHER CHARLES BOYTON IS THE CFO OF SUNPOWER WHICH HAS PURSE STRINGS TO THE 20 BILLION DOLLAR RESTORATION FUND WHICH WILL BE UTILIZED BY NON PROFITS I BELIEVE FOR THE THEFT AND EXPLOTATION OF NATURAL GAS WHICH RIGHTFULLY BELONGS TO THE AMERICAN PEOPLE AND THE FEDERAL GOVERNMENT.*** I BELIEVE WORD GOT TO YOU BEFORE YOU AND THE FIRST LADY AND YOUR BEAUTIFUL FAMILY WENT ON HOLIDAY? I AM THAT MAN AND I AM UNDER ATTACK AND INTENSE SURVELLANCE. I ASK YOU DEAR MOST BELOVED & HONORABLE PRESIDENT FOR WHISTLE BLOWER PROTECTION & SECRET SERVICE PROTECTION AS I AM THE FINDER OF FACTS FOR THESE INVESTIGATIONS. I BELIEVE MY LIFE AND MY CHERYL'S LIFE ARE IN DANGER PLEASE HELP US SIR I AM WITH YOU TO THE END PLEASE HELP ME NOW SIR I NEED YOU AND SECRECT SERVICE NOW. RESPECTFULLY & WITH GRATTITUDE AND HEART FULL OF LOVE AND ADMIRATION. PLEASE HELP ME SIR I HAVE STOOD WITH YOU I DISCOVERED THE FRAUDS THROUGH ALMOST A 1000 HOURS OF RESEARCH AND DILLIGENCE PLEASE HELP ***US*** [redacted]

RESPECTFULLY & WITH GRATITUDE,

[redacted] NATIVE SON, BELOVED RETRIEVER OF THE GREEK ORTHODOX EPIPHANY CROSS, BELOVED WINNER OF FREEDOMS FOUNDATION AWARD TO VALLY FORGE, BELOVED UNITED STATES AIR FORCE VETERAN, BELOVED HONOR GRADUATE OF THE UNITED STATES AIR FORCE 1997. HELP US NOW PLEASE!!!!!!!

Urgent!!

CC: TO BE DISTRIBUTED TO ALL MEMBERS OF THE UNITED STATES CONGRESS

Urgent!!

CC: TO BE DISTRIBUTED TO ALL MEMBERS OF THE UNITED STATES SENATE

CC: TO BE DISTRIBUTED TO ALL MEMBERS OF THE FLORIDA HOUSE OF REPRESENTATIVES

Help Me!!

CC: TO BE DISTRIBUTED TO ALL MEMBERS OF THE FLORIDA SENATE

Please help me. I am Whistle Blower who discovered GCRA 501c3 & Coast Ecological 501c3, Stanley Boyton Everglads Charles Boyton Sun Power CEO

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

APR 24 2014

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-9407

In Reply Refer to:
EPA File No.: 02R-14-R4

[redacted]
Sebastian, FL 32958-6483

RE: Notification and Rejection of Administrative Complaint

Dear [redacted]:

This letter is in response to your administrative complaint that was received by the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) on January 13, 2014. Your complaint alleges that you are being harassed and that [redacted], a research professor at the Florida Atlantic University, is defrauding the Federal government and perhaps violating the EPA nondiscrimination regulations.

Pursuant to the EPA's nondiscrimination regulations, the Office of Civil Rights (OCR) conducts a preliminary review of discrimination complaints to determine acceptance, rejection, or referral (See 40 C.F.R. § 7.120(d) (1)). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's Part 7 regulations (nondiscrimination regulations).

First, the complaint must be in writing. Second, the complaint must describe an alleged discriminatory act that, if true, would violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, or disability). Third, the complaint must be filed within 180 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act. For your reference, a copy of the EPA's nondiscrimination regulations is enclosed.

After careful consideration by OCR, the EPA cannot accept your allegations for investigation because they do not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The EPA has concluded that Florida Atlantic University is not a recipient of the EPA's financial assistance. Moreover, you must describe a discriminatory act that, if true, would violate the EPA's nondiscrimination regulations. You do not state a specific discriminatory act in your letter, other than alleging you are being harassed. Further, you do not specifically identify the entity harassing you.

Pursuant to our nondiscrimination regulations, the EPA finds that it lacks legal jurisdiction to investigate your complaint further and is rejecting the complaint on such grounds. If you have questions regarding this letter, please contact Ericka Farrell of the OCR External Compliance Program at (202) 564-0717, or via electronic mail at farrell.ericka@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director

Enclosure

cc: Kevin Redden, Assistant General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Ken LaPierre, Deputy Civil Rights Official
EPA Region 4

Naima Halim-Chestnut, EEO Officer
EPA Region IV

U.S. Department of Justice
Civil Rights Division
Coordination and Review Section

COMPLAINT FORM

FAX: 202-307-0595

Attn: FCS
February 14, 2013

1. Name and Address

(b) (6) - Privacy [redacted]

or (b) (6) - Privacy [redacted] Hempstead Texas 77445

Waller, Texas 77484

(b) (6) - Privacy [redacted] Home (b) (6) - Privacy [redacted] Cell

2. Person discriminated against

Citizens of the city of Hempstead, TX., Waller Co TX off Hwy 290 and Hwy 6, Contact Mayor Michael Wolfe and Prairie View A&M University, Prairie View, TX. Attn: Kelvin Kirby, Waller Co TX off Hwy 290.

The city of Hempstead is a minority city with approximately 60 or 75% minorities. This part of the county is mostly farm, cattle, watermelons, and the sale of vegetables from their land. These citizens that I have become to know from helping us with our farm equipment repairs and of buying their items are hardworking and family loving people. Their children go to the schools, go to the churches and they play football at school and are in FFA and other school activities. They all seem hardworking citizens.

Prairie View University is one of the oldest Universities in Texas and is approximately 96% minorities. This school had adult classes on Pond Management, the Protein in Hay, and other studies of Cattle. These classes were for farmers of Waller Co. I was able to attend many classes.

Also while living in Houston, my Cardiologist Doctor wanted to start an urgent care center or small hospital at the University. This wonderful Doctor came to Prairie View to tell the officials his plan and how it would be run. Before this Doctor could return to his office in Houston, the Superintendent's office had called and told the Doctor he could not have an urgent care center and for him not to come back. The Governor of Texas appoints the superintendent of Prairie View School. In my opinion, the Governor had ordered this ruling against the Doctor...

There is no medical care in the county, no urgent care center, no county hospital, and no help for the county people. You have to go out of county to get medical help. The last time there was a hospital of any kind of medical help was in 1985. The Commissioners Court since 1985 have seen no reason for medical help only Landfills where, I believe, they will receive funds.

This discrimination against is the citizens in the City of Hempstead and The University of Prairie View.
The University contact Kelvin Kirby, PhD 936-261-9798 and address 689Anne Preston St. Prairie View, TX. 77446. The City of Hempstead to contact The City Mayor Michael Wolfe PhD 979-826-2486. Hempstead, Texas 77445.

3.
Agency and department or program that discriminated:

In my opinion, discriminations are from our elected county officials, the Commissioners Court of Waller Co. Two commissioners and the County Judge. There were two commissioners that were voted out as of Jan 1, 2013. These commissioners had full knowledge of all discrimination. Also, from TCEQ Texas Commission on Environmental Quality in Austin that has the right to allow this discrimination to go on. Also, the Governor of Texas that controls TCEQ and appoints them.

The County Judge and Commissioners have allowed Georgia Green Group Holdings Propose Landfill (Permit No. 2377) to come on 740 acre land for a landfill. Also, TCEQ has not taken into consideration of Human Justice or Human Rights for this Landfill and have allowed this Landfill to proceed as planned. Also, with letters of rights to stop this Landfill to the Governor have not been answered.

The proposed site is approximately one or one or two miles from Hempstead with a large overpass from Hwy. 290 onto Hwy. 6. The proposed site is to be on Hwy. 6, which goes to Texas A&M and President Brush's Library in Bryan College Station. This overpass is right over this little city. I was told they will allow 500 to 700 trucks a day from Houston to use this landfill. Also, I was told this Landfill is going to be the largest in Texas.

The University is approximately 4 or 5 miles from the proposed site on Hwy 290. The smell, the filth and bacteria, viruses and possible even cancer from the landfill will cause the school to lose students and revenue that is so badly needed. Also, the little city will be in more danger because they are right under the overpass. They would be subject to developing certain types of cancer, seizures, eye irritation, skin rashes, abdominal pain, and respiratory symptoms and of having children with birth defects. Additional studies reported findings of excess leukemia, kidney disorders, and spontaneous abortions.

The life span of the proposed Pintail Landfill is 49 years; therefore TCEQ decision will impact this community of Minorities and their descendants into the next five decades. The Minorities that will work in the landfill have an increase exposure to potentially life threatening illnesses. The County Judge, the Commissioners, Texas Governor and TCEQ allowing this proposed landfill to these minorities will only destroy the growth, wealth and prosperity of their future.

I was not aware about the Landfill due to my heart condition and age; therefore I had to learn to fight for these people rights and to stop the corruption and collusion against innocent citizens. The only reason, I believe they had chosen this part of the county because of the minorities and the poor citizens.

To one of the Commissioner that I had called and expressed concerns regarding the Landfill could possibly cause personal injury to the citizens of this county. These citizens could acquire an attorney and fill charges for injury to a child. "He laughed and said these people could not do anything they have no money and didn't know what to do."

Also, talking to the County Judge over the phone, I told him what was he doing selling our souls to the devil? He replied, "That he was very glad for the landfill and that this County needed one and was glad to go home and tell his grandchildren." The County Judge lives in the south part of the County (approximately 95% white) and I was told Pintail Landfill had wanted that land. In my opinion, the Judge persuaded Pintail to come to Hempstead part of the County. He told others there was an airport nearby. But the location where the landfill was proposed was far from the airport. In my opinion, it was the race of people that had changed his mind.
Someone has to help the people from the devil in Texas.

4a
Race Non-employment

4b
Not employment

5 Most convenient time to call.
Please call anytime on my house phone or cell phone. If I do not answer please call back.

6 If I can't be reach
My husband can be reached but he works in Houston and my daughter is a director at a hospital in Bryan, Texas. Also, my neighbors are working for the minorities and the school.
My Daughter's No. (b) (6) - Privacy

7
No Attorney

8
Earliest date of discrimination I believe 2010
Recent Date On going

9
Waiver

The Commissioners Court had secret meetings with TCEQ and to Pintail. There were talks that commissioners made trips to the Landfill home office and was planning on this without the general public knowing of it. This I don't think I could prove or the commissioners said I would be unable to prove. I feel the Judge and Commissioners had planned this landfill and this location for a long time.

I have written or called to the following for Help:

The President of the US
Gov Perry
Dateline NBC, 30 Rockeffer in New York
Ron Curry, EPA
Golam Mustafa, PhD
Terry Stonecker, PhD
TCEQ
The FBI,
Senator Glenn Hegar
James Bradley Law Firm Houston
Atty Marisa Perales
Several from EPA
State of Texas Commission on Judicial Conduct

10 What Happened

The County Officials have discriminated on the elderly and weak citizens. I have insurance, and I was able to have life with medical around me. These citizens of Waller County do not or rather in the little city have insurance, money for the sick, not even a Medical Care in this entire County. We are going to have a huge Landfill but no medical care when the big ball of filth comes down from Hwy 290's overpass onto Hwy 6 falls down on these Minorities. I think the students and staff at the University have medical help but being discriminated because of their race.

This is my own opinion as to what happened to this county's poor and minorities citizens. I'm calling them poor citizens because I do believe the County Judge and his commissioners worked hard to find a certain part of this county to fit into so they could do what they wanted to without the least amount of resistance from the public. It was rumored; the Governor was part of it also because the Governor controls all TCEQ and the environment. The talk was the Judge would receive $1.50 for every ton of dump from the landfill and the Governor would receive $1.25 for every ton of dump from the landfill. These funds, they say, goes into their slush funds to be spent however they want. This is all hear say. I believe the Judge, Commissioners, and TCEQ did not except this much resistance from the general public. I feel certain, they were thinking we felt as they did and to mash the minorities into the ground and maybe they will just go away.

Sirs, this will not happen as long as I am alive.

One does wonder because when TCEQ came for our public meeting, TCEQ looked as if they were bored out of their minds from talking to Waller Co citizens. Also, some from TCEQ actually went to sleep and almost fell from their chairs while the citizens were trying to talk to them to stop the landfill. (We have a video). Whenever it was my turn to talk to TCEQ, the TCEQ announcer told me that I had to sit down, I told her to shut up, that my three minutes was not up. She became upset because I was questioning their duties for all citizens of Waller Co. Their environment, their health, their way of life and I believe these citizens are treated differently from me because as to who they are, the way they live, and the way they look. Please help them.

Please see attached copy of my daughter's complaint to TCEQ regarding the landfill. She has a master's degree in medical.

11
No retaliation at this time but I do except retaliation later.

12
Other witnesses, fellow citizens

Group CALH Citizens Against the Landfill in Hempstead
The city of Hempstead written resolution, City of Prairie View A&M, the students of Prairie View A&M, resolution, and (b) (6) - Privacy

(b) (6) - Privacy

13
Other information relevant

The commissioner (a realtor) that was voted out Jan.1, 2013, in 2012 sold land behind the Waller Co. Fairground to people that was building homes. Several families bought and build homes on these roads. The Commissioner told the home owners that the unsold land of 25 acres would always be sold as residential. He would never sell a business land behind the fairground and nowhere near their home

The next month, the commissioner sold the 25 acres to Pro Line Material, Inc. Wholesale Asphalt Co. 22010 Fairground Rd Hempstead, Tex 77445. (the fairgrounds is 22000 Fairground Rd) Later the Asphalt Co. was hauling trucks loaded with material and they had a dump site that had a large ridge around. There were calls and calls to different origination about the smell and hot oil but no answer with TCEQ beside them, they didn't have to answer.
The Asphalt Plant is approximately.. Four miles from downtown Hempstead and about six miles from the University. TCEQ approved this contamination in a residential area that a Commissioner had sold.

Again, TCEQ has approved a contaminated plant in the same area.

On January 30, 2013, The Waller Times posted Notice of Application and Preliminary Decision for an Air Quality Standard Permit of Concrete Batch Plant Registration Proposed Registration Number 105651.

Clearstream Wastwater Systems, Inc. P.O. Box 7568, Beaumont, Texas 77726-7568.

The executive director of TCEQ has completed the technical review of the application and determined that the application meets all of the requirements of a Standard Permit. The proposed facility will emit the following air contaminants: particulate matter including (but not limited to) aggregate cement, road dust, and particulate matter with diameters of 10 microns or 2.5 microns of less.

This proposed Concrete Batch Plant is located 42727 Old Houston Highway, Waller, Texas 77484 in Waller Co, Texas. This location is about 4 or 5 miles from the Asphalt Plant and about 5 to 6 miles from the large Landfill. Also, this proposed plant is across the Highways from the University with only Hwy 290 and business 290 to filter the dust and anything that is coming out of the concrete plant.

We have three air and water contamination all around us that has been all approved by TCEQ. I do believe this maybe just the beginning of others coming on in because with a Governor appointed environmental control, we will have others. With the high percentage of minorities, they are saying come on in.

14
What Remedy

TO HELP THIS COUNTY WITH THE FULLEST EXTENT OF THE LAW. STOP THIS TERRIBLE LANDFILL AND OTHER CONTAMINATION OF OUR WATER AND LAND. STOP ALL THE DISCRIMINATION, MINORITIY ABUSE, PREJUDICE, AND LET OUR ENTIRE CITIZENS HAVE PEACE AND A HAPPY LIFE TOGETHER FREE FROM ALL WHAT THE COUNTY JUDGE, THE TWO COMMISSIONERS, TCEQ, AND OUR GOVERNOR WOULD LIKE FOR THEM TO HAVE. I PRAY THIS WILL HAPPEN. WE NEED HELP TO STOP THIS DISCRIMINATION FROM OUR ELECTED OFFICIALS. TO STOP OFFICIALS THE POWER TO ALLOW LANDFILLS TO COME TO MINORITY CITIES OR WHERE EVER THEY CHOOSE TO THE HIGHEST BIDDER. THESE COUNTY OFFICIALS HAVE VIOLATED CITIZENS CIVIL RIGHTS.

15 Complaints to other office
No

16

I will leave all complaints and matters to U.S. Department of Justice Civil Right Div.
And I feel confident that the Justice Dept. will take charge.

17
Have not filed a charge

18
Aid that the agency or others receives from the Federal Government
Unknown

(b) (6) - Privacy

Signature

2/14/13
Date

Additional Sheets to Explain

20
How did I learn that I could fill this complaint?

From the FBI

21
None

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

OCT 2 0 2014

Return Receipt Requested
Certified Mail#: 7009-2820-0002-1759-0844

In Reply Refer to:
File No.: 03A-14-R6

(b) (6) - Privacy
[redacted]
Waller, Texas 77484

Re: Rejection of Administrative Complaint No. 03A-14-R6

Dear (b) (6) [redacted]

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is rejecting administrative complaint No. 03A-14-R6 filed against the Texas Commission on Environmental Quality (TCEQ) and Frank Pokluda Precinct 2 Commissioner, Waller County Texas received by the EPA on March 12, 2014. The complaint alleges that the respondents violated Title VI of the Civil Rights Act of 1964, as amended 42 United States Code (U.S.C.) 2000d *et seq*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulation (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to another Federal agency. 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. *Id.* Third, it must be received within 180 calendar days of the alleged discriminatory act. 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, the EPA financial assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15.

After careful consideration, the OCR is rejecting without prejudice the following allegations for investigation:

Allegation 1

> The TCEQ discriminated against African Americans and older residents by inappropriately approved the permit for "Pintail Landfill development, Solid Waste Permit #2377 which comes with the entrance off Highway 6."[1] The approval of the permit "will affect the human health of the residents from Hempstead and the environment."[2]

Allegation 2

> The TCEQ discriminated against African Americans and older residents by inappropriately approved the "Air Quality Standards Permit for concrete batch plant which would result on the release of the following contaminants: particulate matter (10 and 2.5), aggregate, cement, and road dust jeopardizing the health of the residents."[3]

The OCR will generally dismiss complaints without prejudice if the issues raised in the complaint are the subject of either ongoing administrative permit appeals or litigation in Federal or state court because outcome of such permit appeals or litigation could affect the circumstances surrounding the complaint and any investigation that the OCR may conduct. 65 Fed. Reg. 39673.

On March 20, 2013, the City of Hempstead filed suit against Waller County in state court seeking to enjoin Resolution 2013-001 due to various deficiencies in its construction. This case, City of Hempstead v. Waller County *et al* (Case No. 13-03-21872), is ongoing. Due to the fact that this litigation could affect the circumstances surrounding a potential investigation against the TCEQ, the OCR is rejecting allegations one and two.

After the litigation is completed, the complaint can be re-submitted within sixty (60) calendar days of the conclusion of the suit. However, the OCR may choose not to proceed with a complaint investigation if the allegations in the complaint were actually litigated and substantively decided by a Federal court. 65 Fed. Reg. 39673.

If you have questions regarding this letter, please contact Waleska Nieves-Muñoz of the Office of Civil Rights External Compliance Program at (202) 564-7103, via e-mail

---

[1] Letter to TCEQ Ms. Bohac, Chief Clerk, from (b) (6) - Privacy Re: *Pintail Landfill/Solid Waste Permit #2377* (March 25, 2013)
[2] *Id*
[3] Letter to (b) (6) - Privacy from (b) (6) - Privacy Re: Sorry I have no up date you as to what is going on (February 2, 2013)

at nieves-munoz.waleska@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise B. Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Samuel Coleman
Deputy Regional Administrator - Region VI
1445 Ross Avenue
Suite 1200
Mail Code: 6RA
Dallas, Texas 75202-2733

Nellie Roblez
U.S. EPA – Region VI
1445 Ross Avenue
Suite 1200
Mail Code: 6MD
Dallas, Texas 75202-2733

U.S. Department of Justice
Civil Rights Division

Federal Coordination and Compliance Section-NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

Doc (b) (6) - Privacy

APR 08 2013

(b) (6) - Privacy

Waller, TX 77484 (b) (6) - Privacy (b) (6) - Privacy

Dear (b) (6) - Privacy

Your letter was received by the Federal Coordination and Compliance Section of the Civil Rights Division of the U.S. Department of Justice. We have considered carefully the information you have provided, but the matter does not appear to be within the jurisdiction of our office.

However, by the enclosed letter, we have referred the matter to the agency that is most likely to assist you. If you have any questions, please contact the U.S. Environmental Protection Agency (EPA) at (202) 564-7272.

Sincerely,

for Deeana Jang
Chief
Federal Coordination and Compliance Section
Civil Rights Division

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

OCT 29 2014

Return Receipt Requested
Certified Mail#: 7009-2820-0002-1759-0851

In Reply Refer to:
EPA File No.: 03A-14-R6

Frank Pokluda
Precinct 2 Commissioner
Waller County Texas
836 Austin Suite 203
Hempstead, Texas 77445

Re: Rejection of Administrative Complaint No. 03A-14-R6

Dear Mr. Pokluda:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is rejecting administrative complaint No. 03A-14-R6 submitted by (b) (6) - Privacy to the EPA on March 12, 2014. The administrative complaint was filed against the Texas Commission on Environmental Quality (TCEQ) and Frank Pokluda Precinct 2 Commissioner, Waller County Texas. The complaint alleges that the respondents violated Title VI of the Civil Rights Act of 1964, as amended 42 United States Code (U.S.C.) 2000d *et seq*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulation (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to another Federal agency. 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. *Id.* Third, it must be received within 180 calendar days of the alleged discriminatory act. 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, the EPA financial assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15.

After careful consideration, the OCR is rejecting without prejudice the following allegations for investigation:

Allegation 1

> The TCEQ discriminated against African Americans and older residents by inappropriately approved the permit for "Pintail Landfill development, Solid Waste Permit #2377 which comes with the entrance off Highway 6."[1] The approval of the permit "will affect the human health of the residents from Hempstead and the environment."[2]

Allegation 2

> The TCEQ discriminated against African Americans and older residents by inappropriately approved the "Air Quality Standards Permit for concrete batch plant which would result on the release of the following contaminants: particulate matter (10 and 2.5), aggregate, cement, and road dust jeopardizing the health of the residents."[3]

The OCR will generally dismiss complaints without prejudice if the issues raised in the complaint are the subject of either ongoing administrative permit appeals or litigation in Federal or state court because outcome of such permit appeals or litigation could affect the circumstances surrounding the complaint and any investigation that the OCR may conduct. 65 Fed. Reg. 39673.

On March 20, 2013, the City of Hempstead filed suit against Waller County in state court seeking to enjoin Resolution 2013-001 due to various deficiencies in its construction. This case, City of Hempstead v. Waller County *et al* (Case No. 13-03-21872), is ongoing. Due to the fact that this litigation could affect the circumstances surrounding a potential investigation against the TCEQ, the OCR is rejecting allegations one and two.

After the litigation is completed, the complaint can be re-submitted within sixty (60) calendar days of the conclusion of the suit. However, the OCR may choose not to proceed with a complaint investigation if the allegations in the complaint were actually litigated and substantively decided by a Federal court. 65 Fed. Reg. 39673.

If you have questions regarding this letter, please contact Waleska Nieves-Muñoz of the Office of Civil Rights External Compliance Program at (202) 564-7103, via e-mail

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[1] Letter to TCEQ Ms. Bohac, Chief Clerk, from (b) (6) - Privacy *Re: Pintail Landfill/Solid Waste Permit #2377* (March 25, 2013)
[2] *Id.*
[3] Letter to (b) (6) - Privacy from (b) (6) - Privacy Re: Sorry I have no up date you as to what is going on (February 2, 2013)

at nieves-munoz.waleska@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise B. Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Samuel Coleman
Deputy Regional Administrator - Region VI
1445 Ross Avenue
Suite 1200
Mail Code: 6RA
Dallas, Texas 75202-2733

Nellie Roblez
U.S. EPA – Region VI
1445 Ross Avenue
Suite 1200
Mail Code: 6MD
Dallas, Texas 75202-2733

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

APR 0 2 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7006-3450-0003-3868-5448

In Reply Refer to:
EPA File No.: 04D-14-R10

(b) (6) - Privacy
Kendrick, Idaho 83537 (b) (6) - Privacy

RE: Rejection of Administrative Complaint

Dear (b) (6) - Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting your administrative complaint No. 04R-14-R10 filed against the Idaho Department of Environmental Quality (DEQ), the Orofino/Whiskey Creek Water and Sewer District, Mr. Howard Eugene Averett, the City of Orofino, and Clearwater County received on March 24, 2014. The complaint alleges that the named entities and individual violated Title VI of the Civil Rights Act of 1964, as amended, (Title VI), 42 United States Code (U.S.C.) 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. §7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

After careful consideration, the OCR is rejecting the following allegations for investigation:

Allegation 1

> The seller, Howard Eugene Averett, did not install sewer lines on the complainants' recently purchased property. He failed to disclose information prior to the complainants' purchase in 2007.[1]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). The allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the allegation does not specify a precise date of the alleged discriminatory acts, referring only to the years 2007-2008.[2] *See* 40 C.F.R. §7.120(b)(2). The OCR cannot accept a complaint for investigation if the alleged discriminatory act occurs more than 180 days prior to filing a complaint. *Id.*

Additionally, Mr. Averett is not a recipient of EPA financial assistance. "Recipient" is defined as:

> any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

40 C.F.R. § 7.25. Mr. Averett, a private landowner with no official connection to the State or the EPA, does not meet this definition. Hence, his actions cannot be the basis for a Title VI complaint.

Allegation 2

> The Orofino/Whiskey Creek Water and Sewer District, the City of Orofino, or Clearwater County have not adequately responded to the complainants' requests to repair or install proper sewer lines on the complainants' property.[3]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color,

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[1] March 17, 2014 letter from the Complainants to the OCR; September 11, 2014 letter from the Complainants to the OCR; September 25, 2014 letter from the Complainants to the OCR; September 30, 2014 letter from the Complainants to the OCR; November 18, 2014 letter from one of the Complainants to the OCR.

[2] March 17, 2014 letter from the Complainants to the OCR.

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national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Additionally, the Orofino/Whiskey Creek Water and Sewer District, the City of Orofino, and Clearwater County are not recipients of EPA financial assistance.

Allegation 3

> The Clearwater County District Court system has failed to remedy Mr. Averett's alleged fraudulent sale of the mobile park home. Cases CV-2012-117 and CV-2013-522. Judge Michael Griffin did not consider the complainants' evidence and the local prosecutors will not prosecute Mr. Averett in criminal court.[4]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Additionally, the Clearwater County District Court is not a recipient of EPA financial assistance.

Allegation 4

> The Idaho Department of Environmental Quality (DEQ) has not responded to the complainants' complaint in an appropriate manner. It has failed to investigate the pipes or speak with any park tenants. "The DEQ official simply tells us all to spread lime on the overflows [sic] of human sewage."[5]

The OCR cannot accept this allegation for investigation because it does not meet all of the jurisdictional requirements described in the EPA's nondiscrimination regulations. The Idaho Environmental Quality (DEQ) is a recipient of EPA funding. However, allegation 4 does not meet the discriminatory act and date requirements. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory

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[5] March 17, 2014 letter from one of the Complainants to the OCR.

acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Pursuant to our nondiscrimination regulations, the EPA finds that it lacks legal jurisdiction to investigate this complaint further and is thus rejecting it for the reasons noted.

If you have questions regarding this letter, please contact Jonathan Stein of the Office of Civil Rights External Compliance Program at (202) 564-2088, via e-mail at *stein.jonathan@epa.gov*, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Michelle Pirzadeh, Deputy Civil Rights Official
U.S. EPA Region 10
1200 Sixth Avenue
Mail Code: RA-210
Seattle, Washington 98101

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

APR 0 2 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7006-3450-0003-3868-5431

In Reply Refer to:
EPA File No.: 04R-14-R10

Don Ebert
John Smith
John T. Allen
Clearwater County Board of Commissioners
150 Michigan Avenue
Orofino, Idaho 83544

RE: Rejection of Administrative Complaint

Dear Commissioners:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting administrative complaint No. 04R-14-R10 filed against the Idaho Department of Environmental Quality (DEQ), the Orofino/Whiskey Creek Water and Sewer District, Mr. Howard Eugene Averett, the City of Orofino, and Clearwater County received on March 24, 2014. The complaint alleges that the named entities and individual violated Title VI of the Civil Rights Act of 1964, as amended, (Title VI), 42 United States Code (U.S.C.) 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. 40 C.F.R. § 7.120(b)(l). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. §7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

After careful consideration, the OCR is rejecting the following allegations for investigation:

Allegation 1

> The seller, Howard Eugene Averett, did not install sewer lines on the complainants' recently purchased property. He failed to disclose information prior to the complainants' purchase in 2007.[1]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). The allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the allegation does not specify a precise date of the alleged discriminatory acts, referring only to the years 2007-2008.[2] *See* 40 C.F.R. §7.120(b)(2). The OCR cannot accept a complaint for investigation if the alleged discriminatory act occurs more than 180 days prior to filing a complaint. *Id.*

Additionally, Mr. Averett is not a recipient of EPA financial assistance. "Recipient" is defined as:

> any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

40 C.F.R. § 7.25. Mr. Averett, a private landowner with no official connection to the State or the EPA, does not meet this definition. Hence, his actions cannot be the basis for a Title VI complaint.

Allegation 2

> The Orofino/Whiskey Creek Water and Sewer District, the City of Orofino, or Clearwater County have not adequately responded to the complainants' requests to repair or install proper sewer lines on the complainants' property.[3]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color,

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national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Additionally, the Orofino/Whiskey Creek Water and Sewer District, the City of Orofino, and Clearwater County are not recipients of EPA financial assistance.

Allegation 3

> The Clearwater County District Court system has failed to remedy Mr. Averett's alleged fraudulent sale of the mobile park home. Cases CV-2012-117 and CV-2013-522. Judge Michael Griffin did not consider the complainants' evidence and the local prosecutors will not prosecute Mr. Averett in criminal court.[4]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Additionally, the Clearwater County District Court is not a recipient of EPA financial assistance.

Allegation 4

> The Idaho Department of Environmental Quality (DEQ) has not responded to the complainants' complaint in an appropriate manner. It has failed to investigate the pipes or speak with any park tenants. "The DEQ official simply tells us all to spread lime on the overflows [sic] of human sewage."[5]

The OCR cannot accept this allegation for investigation because it does not meet all of the jurisdictional requirements described in the EPA's nondiscrimination regulations. The Idaho Environmental Quality (DEQ) is a recipient of EPA funding. However, allegation 4 does not meet the discriminatory act and date requirements. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory

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[5] March 17, 2014 letter from one of the Complainants to the OCR.

acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Pursuant to our nondiscrimination regulations, the EPA finds that it lacks legal jurisdiction to investigate this complaint further and is thus rejecting it for the reasons noted.

If you have questions regarding this letter, please contact Jonathan Stein of the Office of Civil Rights External Compliance Program at (202) 564-2088, via e-mail at *stein.jonathan@epa.gov*, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Michelle Pirzadeh, Deputy Civil Rights Official
U.S. EPA Region 10
1200 Sixth Avenue
Mail Code: RA-210
Seattle, Washington 98101

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

APR 0 2 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#:7006-3450-0003-3868-5455

In Reply Refer to:
EPA File No.: 04R-14-R10

Curt Fransen
Director
Idaho Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706

RE: Rejection of Administrative Complaint

Dear Mr. Fransen:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting administrative complaint No. 04R-14-R10 filed against the Idaho Department of Environmental Quality (DEQ), the Orofino/Whiskey Creek Water and Sewer District, Mr. Howard Eugene Averett, the City of Orofino, and Clearwater County received on March 24, 2014. The complaint alleges that the named entities and individual violated Title VI of the Civil Rights Act of 1964, as amended, (Title VI), 42 United States Code (U.S.C.) 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

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After careful consideration, the OCR is rejecting the following allegations for investigation:

Allegation 1

> The seller, Howard Eugene Averett, did not install sewer lines on the complainants' recently purchased property. He failed to disclose information prior to the complainants' purchase in 2007.[1]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). The allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the allegation does not specify a precise date of the alleged discriminatory acts, referring only to the years 2007-2008.[2] *See* 40 C.F.R. §7.120(b)(2). The OCR cannot accept a complaint for investigation if the alleged discriminatory act occurs more than 180 days prior to filing a complaint. *Id.*

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40 C.F.R. § 7.25. Mr. Averett, a private landowner with no official connection to the State or the EPA, does not meet this definition. Hence, his actions cannot be the basis for a Title VI complaint.

Allegation 2

> The Orofino/Whiskey Creek Water and Sewer District, the City of Orofino, or Clearwater County have not adequately responded to the complainants' requests to repair or install proper sewer lines on the complainants' property.[3]

The OCR cannot accept this allegation for investigation because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color,

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national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

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Allegation 3

> The Clearwater County District Court system has failed to remedy Mr. Averett's alleged fraudulent sale of the mobile park home. Cases CV-2012-117 and CV-2013-522. Judge Michael Griffin did not consider the complainants' evidence and the local prosecutors will not prosecute Mr. Averett in criminal court.[4]

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Additionally, the Clearwater County District Court is not a recipient of EPA financial assistance.

Allegation 4

> The Idaho Department of Environmental Quality (DEQ) has not responded to the complainants' complaint in an appropriate manner. It has failed to investigate the pipes or speak with any park tenants. "The DEQ official simply tells us all to spread lime on the overflows [sic] of human sewage."[5]

The OCR cannot accept this allegation for investigation because it does not meet all of the jurisdictional requirements described in the EPA's nondiscrimination regulations. The Idaho Environmental Quality (DEQ) is a recipient of EPA funding. However, allegation 4 does not meet the discriminatory act and date requirements. The discriminatory act must, if true, violate the EPA's nondiscrimination regulations. *See* 40 C.F.R § 7.120(b)(1). This allegation does not identify a discriminatory act that is based on race, color, national origin, sex, or disability. *See id.* Although in writing, the claim does not specify a precise date of the alleged discriminatory

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acts. *See* 40 C.F.R. §7.120(b)(2). Due to the absence of this information, OCR is unable to assess the timeliness of this claim.

Pursuant to our nondiscrimination regulations, the EPA finds that it lacks legal jurisdiction to investigate this complaint further and is thus rejecting it for the reasons noted.

If you have questions regarding this letter, please contact Jonathan Stein of the Office of Civil Rights External Compliance Program at (202) 564-2088, via e-mail at *stein.jonathan@epa.gov*, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Michelle Pirzadeh, Deputy Civil Rights Official
U.S. EPA Region 10
1200 Sixth Avenue
Mail Code: RA-210
Seattle, Washington 98101

Create Control - Data Entry

Control Number: OCR-14-001-5092 Alternate Number:

Citizen Information

Citizen/Originator: 1). (b) (6) - Privacy [redacted], Kendrick, ID 83537 Search Citizen

Constituent: Search Constituent

Committee:

Sub-Committee:

Control Information

Status: Pending *

Letter Date: Sep 11, 2014 * Received Date: Sep 15, 2014

Contact Type: LTR (Letter) * Priority Code: Normal *

Addressee: US/EPA Office of Civil Rights (+) Addressee Org: 1200 Penn Avenue, NW WD

File Code: 108-025-08_497_a Discrimination Complaints - External Record Copy *

Signature: (+)

CC: Search CC

Signature Date: Date

Primary Subject: Discrimination Complaint (+) *

Secondary Subject: (+)

Instructions: NRN-No Response Necessary (+) *

Instruction Notes:

General Notes: This control is assigned to title 6 for appropriate action

*: Required field
(+): Lookup field, press space bar for complete list

Save Continue and Assign Cancel

Copy for EPA case file
Complaint
#04D-14-R10

September 11, 2014

(b) (6) - Privacy [redacted]

Dear Chairman Owsley and board members,

This letter is to let you know that we are not going to stop trying to get you to do your job and inspect the portion of the public sewer collection system in the Averett's Mobile Home park.. We also want you to know that the EPA Civil Rights of Washington, D.C. has answered our pleas for help and they have began an investigation. Please stop ignoring us and refusing to respond! This is a serious public health and safety issue and it is the board's duty to resolve in the district.

Since our unlawful foreclosure and illegal eviction from the property, Steve Laws of Clearwater Realty falsely advertised the property for sale on the INTERNET as **being served by public sewers, which is false.** Averett's testimony under oath verifies that he never put in a new system in 1984. We are trying to prevent another innocent victim from losing their life savings as we did do by purchasing the misrepresented property with so many unusable mobile home rental spaces because no public sewer stubs exist at all. You never would help us find even one stub! We have been billed for years for sewer service we did not receive and the city is still billing us, over a year after the foreclosure.! The sewer district officials are breaching their duty and ignoring the standards that **mandate** the board take us to court LONG AGO over this bill so we may dispute it and resolve. The sewer bill is to be a lien on the land, and Averett's were to pay that bill in full at foreclosure, but did not. Averett's attorneys and title company did not do a proper foreclosure due to that and many other reasons. We will not pay that bill!

Our letters to you begging for help over the years and no response clearly show how you have refused to do your job and locate any stubs, yet you claim in the district's letter to us, that there are (12) twelve hookups/stubs somewhere on the property. Averett had unlawfully abandoned four of the original sixteen (16) spaces, another violation of your district STANDARDS. Averett's attorney claims now in court and in court documents that there were **23 connected to the public sewer** and he easily uncovered sixteen (16) in one hour. That digging up of the collection system is illegal without the boards authorization per district STANDARDS. The board is the only authority to authorize Averett's closure of any rental spaces since 1984,but did not even look into those violations either. The board should, by law, authorize an inspection by the City of Orofino to be performed on the Averett's old septic lines and find the unlawful five septic tanks and illegal overflow tank that lead to the Orofino

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Creek. Averetts testimony under oath disclosed that the illegal original old septic system in the mobile home park was NEVER replaced at all, which is a on going crime since 1984 No public sewer was ever installed, including no mandatory mainline, laterals, clean-outs or stubs within two feet of each residence, including to each of the sixteen (16) rnobile home rental lots. Averett was in charge of the district when he violated the STANDARDS and this former long time board chairman still seems to control the board for some unjust reason. Why is the board granting Averett such special privileges? Why won't the board make Averett's install public sewers to the seventeen (17) legal 911 county addresses in the mobile home park? We were deceived and robbed by Averett, with the sewer district board's help. Now another buyer will face the same discrimination and loss because you refuse to do your critically important job. Why is the board promoting this crime against the public and the environment? Averett's violations of laws and illegal SSO's are jeopardizing the treatment facility's permit. We hope the EPA cares and makes Michael Camin do his job and get this serious matter lawfully resolved by the DEQ.

We will warn others who may consider purchasing this terrible polluted, seriously defective property from the Averett's and inform everyone of how the district board will not help tenants or purchasers, rather you assist the lawbreakers and don't care that you are violating the laws of the district and State of Idaho that are meant to protect the public and environment.

Please help us be granted protection under the district standards and state statutes that apply. Please stop discriminating against us and our two tenants who remain in our mobile homes in Averett's contaminated property. Please ask the board to at least take a vote to see if the other board members will finally help us have protection under the district laws that are being unconstitutionally denied to us, and authorize an underground inspection immediately. Conduct a smoke test as the Riverside Sewer District is now doing and as the City of Orofino did do. The Orofino Creek Whiskey Creek portion of the collection system needs to be inspected, too, and the violations, such as the Averett's, be remedied by district laws! The district's attorney should advise you to obey the law. Please forward the district's current attorney our complaint....please. We want to hear from him "WHY" you won't do your job and are you following his advise in not performing your duties? We need you to respond at last!
The DEQ official, Michael Camin, was to direct the DISTRICT BOARD to comply with the district STANDARDS when Judge Robinson informed him the **sewer district is the only proper authority in the matter**. Why are you making us hire civil rights attorneys and don't care about the EPA or our disabled tenants in the mobile park? Why won't you enforce the district public health and safety

standards and instead continue to protect and assist the violator and former long time chairman himself, Howard Eugene Averett. The board members are also guilty of misdemeanors by Idaho law for allowing these violations to continue.! Read your own laws and apply them in the district. You shouldn't pick and choose who deserves protection or immunity, as Averett's have been granted. Why are Averetts excused from obeying district, state and federal public health and safety laws in Clearwater County, with the prosecutors blessing?? The human sewage from their commercial property should not be allowed to overflow onto the children's play yards from the mysterious five septic tanks that were never removed and non-code broken septic tank service lines that still remain and were never upgraded in 1984 to a modern public system.

PLEASE STOP DISCRIMINATING AND HELP US GET THE PUBLIC SEWER INSTALLED IN THE MOBILE HOME PARK AS WAS TO BE LAWFULLY DONE IN 1984. STOP HARMING THE DISABLED TENANTS WHO LIVE IN HOMES WE OWN IN THE CONTAMINATED MOBILE HOME PARK BY YOUR APATHY AND BREACH OF DUTY.

Why won't you respond? The City refuses to obey the Laws of Idaho, too, and refuses to even respond to our requests for protection under your laws. We won't give up until laws protect and apply to us also! You are jeopardizing the NPDES permit for the Orofino Sewage Treatment facility by not remedying the serious SSO's (Sanitary Sewage Overflows) in the public sewer collection system portion on Averett's property, **allowing massive amounts of illegal surface and storm water to enter the treatment center.** This causes a great expense to the citizens and is not allowed in the treatment facility. Please finally act and do SOMETHING ! We must subpoena the entire board and City of Orofino officials to be in court for the next hearing, and hopefully, you ALL will have to respond at long last on the witness stand as to why you won't allow us protection under the laws.
Why do we have to start a lawsuit to get you to do your job? This inaction by the board is seriously wrong behavior. Please finally do your job! Enforce Public Health and Safety Laws in your district before someone else is further harmed. (b) (6) [redacted] mobile home lot is in the worst shape and no one cares. It has never been rent-able since his death and the terrible situation was then discovered. We will never stop seeking justice in this great loss and wrong we are suffering since purchasing the misrepresented, defective property. We have been slandered and libeled for seeking help under good laws, and failed so far but will not give up seeking protection under laws in Clearwater County. Your STANDARDS are meant to protect us, but we are denied every plea for help under those laws. We are sorry you simply won't perform a single job duty the board is required by law to do. You

mock us and mock the district laws for years. WHY? **How many others in the district have not connected to the public sewer? Please conduct a Smoke test and find out how many others, like Averett's, did not lawfully connected to the public sewer in 1984. Were others allowed to bypass the district STANDARDS also? Please find out at last with a simple smoke test. We would gladly pay for the test of the Averett's three acre portion of the public sewer collection system.**

Sincerely,

(b) (6) - Privacy

[redacted]

(b) (6) - Privacy

[redacted]

Kendrick, Idaho 83537

Date Sept 11, 2014

cc: EPA Civil Rights, Washington, D.C. File # 04D – 14 - R10
Governor Butch Otter
Idaho State Attorney General Lawrence Wasden
DEQ Michael Camin
City of Orofino Administer, Rick Laam
Orofino City Council
Mr. Martin, Orofino Sewage Treatment Facility
Lewiston Morning Tribune
Howard Eugene and Betty Averett
Clearwater Tribune

(b) (6) - Privacy

Kendrick, Idaho
83537

File #
04D-14-R10

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EPA Civil Rights
MC- 1201A
Washington, D.C.
20460

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West Oakland Environmental Indicators Project

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Margaret Gordon, Co-Dir.
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Henry Gardner
Interim City Administrator
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Chris Lytle, Exec. Dir.
Port of Oakland
530 Water St.
Oakland, Ca. 94607

Clement Chin
Kevin Shimamoto
North American 3PL
1700 20th St.
Oakland, CA 94607

MAY 9, 2014

Subject: Federally funded development increases burden of trucks on West Oakland's residents and violates Civil Rights Act

This letter serves to outline our complaint and notify the City of Oakland, a recipient of federal transportation funding, of its violation of Title VI of the U. S. Civil Rights Act of 1964. The basis of our complaint is that the city failed to produce a comprehensive Truck Management Plan as called for in the 2002 Environmental Impact Report for the Oakland Army Base redevelopment project. This failure has led to the introduction of additional truck traffic in the Prescott neighborhood, a community with a more than significant population of low-income people of color. It is a violation of Title VI for a grantee to use federal funds for a project that increases the environmental, health or economic burden on communities of color.

We contend that the City of Oakland, through the actions of its Planning Commission, violated the Civil Rights Act when it approved the permit for a U.S. Customs Examination Station to operate in the Prescott neighborhood. This permit approval serves to facilitate the introduction of thousands of truck trips each year into the community. This port-related truck traffic could have been avoided if a Truck Management Plan had been produced prior to eviction of trucking tenants and the start of construction on the OAB logistics center.

As a recipient of federal contracts, the CES operator, North American 3PL, is also in violation of Title VI due to the truck traffic that their new operation will bring into the community. Customs and Border Patrol had no protocols for civil rights or public safety in the selection of a new site for CES operations and relied solely on the contactor's understanding of City of Oakland zoning regulations to protect the public from increased impacts deriving from the CES contractor's activities.

We add the Port of Oakland to this complaint due to that entities failure to plan for the transition of port-related businesses resident on port land during construction of the port's portion of the OAB redevelopment project. This failure to plan for the port-serving trucking industry led Three Rivers Trucking to relocate from port property and into the Prescott neighborhood. The Port further exacerbated this discriminatory situation by refusing to provide an adequate lease term for the U.S. Customs Examination Station formerly housed at the Oakland Army Base. As a recipient of federal funds, the Port's failure to create a transition plan, and failure to participate with the City in creation of the mandated Truck Management Plan, constitutes a violation of Title VI and must disqualify for the Port of Oakland for further federal funding.

Being reasonable people, and in the spirit of our broader support for the overall potential value of the OAB development project, we offer the City and Port of Oakland 5 business days from the receipt of this letter to contact us and engage is discussions intended to rectify these violations. If that window of opportunity passes without remediation or opening of discussions intended to rectify this added burden we will file a formal complaint with the Departments of Transportation, Customs and Border Patrol and the U.S. Department of Justice in its role of enforcing the Civil Rights Act.

BACKGROUND ON THE COMPLAINTANT

The West Oakland Environmental Indicators Project (WOEIP) is a community-based, resident-led environmental justice organization located in the western-most section of the city of Oakland, Ca. Our leadership and staff are all low-income Oakland residents and two-thirds of our staff is African American. West Oakland residents experience some of the highest levels of asthma and cancer in the state. We are a "fenceline" community, sharing a freeway as the dividing line between residents and the Port of Oakland; fifth largest port in the U.S. Our study of living conditions in West Oakland, "Knowledge for Change", established 17 indicators of community health and set the tone for planning based change here in 2002. Our studies of port-related truck traffic in 2003 and 2008 established the baseline understanding of freight-related trucking impacts on local residents. In 2005, we established a formal partnership with Region 9 of the U.S. Environmental Protection Agency and, through that partnership, designed a model for collaboration with government and business. Our Collaborative Problem-Solving Model has been used to develop the Port of Oakland's Maritime Air Quality Improvement Plan and as a tool to reduce conflict between residents, housing developers and the industrial recycling industry. In short, we are experts at collaboration and have deep understanding of regulatory processes and data-based decision making.

Since 2005 we have provided leadership and technical assistance to numerous community groups working to assure a local vision for the redevelopment of the decommissioned Oakland Army Base. We co-chair the West Oakland Community Advisory Group, which was originally commissioned 16 years ago to guide the redevelopment plans for the base. Until the elimination of the Redevelopment Agency, we co-chaired the West Oakland Project Area Committee empowered to advise the City on local goals for urban development in the seven neighborhoods that make up this community. We and our allies serve on the resident advisory and technical advisory committees for the TIGER funded West Oakland Specific Plan.

We are part of an engaged community with great knowledge of our history and the common interests of our neighbors. With this background we are deeply concerned about the permitting by the City of the United States Customs and Boarder Patrol cargo examination station being relocated into our community and the civil rights violations accompanying these actions. We hold the Port of Oakland complicit in these violations due to its failure to provide a suitable location for CES activities during the development of the joint City/Port logistics center.

STUDIES AND STATISTICS

It has long been recognized and acknowledged by local, state and federal agencies that West Oakland is a community over-burdened by pollution from the freight industry in general and from the Port of Oakland specifically. The impacts of the trucking industry on our community are clear and well documented. County health agencies proclaim the extremely elevated incidence of asthma in children and families. Oakland city Public Works decried their inability to repair the damaged streets, curbs and sidewalks ruined by heavy-duty trucks plying streets to narrow for modern freight haulers. Streets are blocked; passenger vehicles damaged and pedestrians are killed in interactions with port trucks. In a cityscape already blighted by municipal indifference and capital disinvestment, the port freight industry uses West Oakland like its own private parking lot.

In 2003, with support from the US Environmental Protection Agency, West Oakland community groups undertook a truck traffic study. That study, published by the Pacific Institute and titled, “Clearing the Air”, determined that an average of 10,000 truck trips per day were made to and from the Port of Oakland and OAB logistics companies through and around the neighborhoods of West Oakland.

In 2008, The California Air Resources Board conducted a health assessment of the community of West Oakland in order to determine the impact of freight-related diesel emissions from the Port of Oakland on the neighboring residents. That study determined that West Oakland residents suffer 2 -4 times the average cancer risk from diesel emissions as compared to typical residents of the state.

The Port of Oakland’s own truck registry program contains records on over 6,000 separate trucks servicing the port, yet the city and port provide less than 1,000 parking spaces for port related trucks.

Years of effort by the community led to the creation of truck parking areas at the OAB and the incidence of trucks parking and operating on neighborhood streets was significantly reduced. In the fall of 2013, eviction actions by the City of Oakland caused an increase in trucking activity in our neighborhoods. This increase was documented by city staff and reported to City Council and the city administration. The Assistant City Administrator for Oakland, Fred Blackwell, stated publicly that the lack of a transition plan for the tenants at the OAB has led to increased impacts in the neighboring community.

In December of 2013, our organization petitioned the City to block the reintroduction of port-related trucking activities into our neighborhood. The City Planning Department first rejected an application to operate a CES warehouse in the Prescott neighborhood, and then reversed their decision. In April of this year our appeal of that decision was rejected and the customs inspection warehouse, previously housed at the OAB, was cleared to begin operations in West Oakland.

BACKGROUND

In July, 2012, the Oakland City Council approved the plan for its Master Developer to begin redevelopment of the former Oakland Army Base (OAB). The plan for a modern logistics center called for the clearing of all existing structures and the investment of nearly $400,000,000 of public funds for site preparation. The raising of the existing facilities required that all of the long-time tenants at the OAB be evicted. Over a period of two years the City of Oakland evicted or refused to renew leases for over a dozen logistics companies that were tenants at the OAB. Despite our continued requests, no transitional plan was made to manage the truck traffic generated by the eviction of these businesses.

ONE CLEAR EXAMPLE

One of those businesses, PCC Logistics, held the contract to provide secure warehouse space for cargo inspections by the U.S. Customs Service. Their eviction caused the San Francisco division of Customs and Border Patrol (CBP) to publish a notice seeking new space for their operations. Even though PCC Logistics had acquired new space in the immediate port area, they were disqualified for the contract. Due to the lack of transition planning, the city was unaware that their eviction of PCC Logistics would impact CBP operations.

About August, 2013, we were contacted by a local business person who had recently purchased the shuttered warehouse facility at 1700 20th St. Oakland. This was the former site of a beverage distributor that closed and relocated to another city in the region. When that facility closed, over a thousand truck trips a month were eliminated from the local neighborhood. It is very important to note that this facility is directly across the street from the most popular youth sports fields in Alameda County and less than two blocks from family housing. This community is very poorly zoned, with little separation between housing and industry.

During our meeting with the new property owner, he informed us of several business opportunities that he hoped to bring to the building. He spoke of LED lighting manufacturing and hearing aid manufacturing. He also expressed his interest in pursuing the contract with U.S. Customs for their inspection station. We stated at that time our dislike of the Customs business due to the large volume of trucks that it would reintroduce into the neighborhood. We encouraged him to pursue the light-manufacturing business despite the trucks needed to service that business because of the much lower volume of traffic that would be created by non-port trucks in exchange for better quality manufacturing jobs. Unfortunately, he casually dismissed our concerns. A few weeks later we were informed that his company, North American 3PL, was a finalist in the competition for the Customs contract. That contact has since been awarded to NA3PL and the facility is expected to generate on average 1200 truck trips per month.

We contend that U.S. Customs and Border Patrol, a division of the Federal office of Homeland Security, is allowing a violation of Title VI of the Civil Rights Act of 1964 by letting a contract with federal funds to a vendor who will increase the burden of truck traffic and emissions in our community.

CITY ACTION

The Environmental Impact Report (EIR) for the OAB was certified by the Oakland City Council in 2002. That report called for a series of specific planning documents to be produced, among them a Truck Management Plan. That plan was never produced. The City's development team has stated that since all the truck businesses were evicted there is no need for a truck management plan. They also state that the Truck Management Plan will be produced after the new logistics facilities are constructed. This strategy misses the point of a truck management plan, ignores the impact of actions already taken and increases the burden of trucks in our community.

The failure by the City to produce a transition plan for its own tenants on the Oakland Army Base left those trucking businesses to fend for themselves. The nearest available sites are in the West Oakland community. The added failure by the City to protect the community with appropriate zoning controls exacerbates the first wrong action. Ultimately, the lack of a comprehensive Truck Management Plan, as called for in the project EIR, has led to hundreds more truck trips each week into the South Prescott neighborhood with one of the highest concentrations of low-income people of color in the city.

Compounding these decisions, the City decided not to revisit the 2002 EIR with a formal Supplement, instead opting for an Addendum, which does not require a public process. As an alternative to the certified EIR environmental mitigations, the City development team created a set of Standard Conditions of Approval and mitigation requirements, which fall to the City's contracted Master Developer to fulfill. Contained in those requirements include a Truck Management Plan for the project. The 2002 EIR mitigations did not specify that the required Truck Management Plan applied only to the eventual operations that would follow the redevelopment of the OAB. We contend that all truck activity, from the relocation of the evicted businesses, to the truck traffic generated by site preparation and construction, and the eventual logistics operations at the

new Oakland Global Logistics Center must be thought through and planned for in such a way that the already overburdened community of West Oakland does not experience even greater impacts from the Port and OAB expansion.

We contend that the failure by the City and Port of Oakland, and its Master Developer, Oakland Global, LLC (CCIG/Prologis) to create a transition plan as part of a comprehensive Truck Management Plan has already increased port related trucking impacts on our community.

We contend that the federal Department of Transportation in its oversight role in the use of TIGER funds must suspend federal funding to the City and Port project until these increased burdens have been rectified.

We contend that the permitting of the Customs Examination Station in West Oakland by the Oakland Planning Commission constitutes a clear bad act by the City as federal grantee under the terms of Title VI of the Civil Rights Act of 1964.

We contend that the Port of Oakland, also a recipient of federal funds, aided in this civil rights violation by not providing an adequate site for CES activities and failing to engage the City in the creation of a Truck Management Plan that would have avoided the increased burden on our community.

The City and Port of Oakland are recipients of federal funds through the TIGER transportation stimulus program and the City is now seeking additions TIGER funds to support the OAB redevelopment project. The City's use of previous federal funds is increasing the health and environmental burden on the low-income people of color in West Oakland. The City of Oakland must be denied additional federal funding until these civil rights violations have been rectified.

We contend that Customs and Border Patrol, a federal agency, failed in its oversight role under Title VI of the CRA when it made a contract, despite extensive community pressure against the action, with a firm that will bring port-related trucking into West Oakland and increase this burden on our residents.

DOCUMENTED IMPACTS

Documents provided by US Customs include a chart of monthly container volumes inspected by CES in 2013. Those numbers demonstrate that average operations at the CES generate about 1,200 truck trips in and out of the facility each month. These numbers rise and fall based on seasonal cargo volumes. The closing of the former beverage distribution operation at the West Oakland site eliminated slightly less than this volume of diesel truck traffic from the community. Consequently, any new truck traffic must be credited to the Customs service as an increase in this burden. And, since the Customs service was evicted from the OAB in order to begin the redevelopment, the responsibility for this significant increase in port-related truck traffic can only be place on the City. However, as a federal agency, Customs and Border Patrol must take care not to expend federal dollars under contracts to violate the Civil Rights Act.

AN ENVIRONMENTAL JUSTICE VIOLATION

The West Oakland Specific Plan (WOSP), funded by a federal TIGER grant, recommends the elimination of trucking and warehousing from the commercial zoning code, which covers part of the proposed CES warehouse. The WOSP recognizes that West Oakland cannot overcome its economic disadvantages and become a clean, health, modern urban community as long as heavy-duty trucks rumble through our streets.

In this year, the 20th anniversary of President Clinton's Executive Order 12898, which established environmental justice as a responsibility of federal agencies, President Obama reaffirmed that principle. It is clearly the responsibility of federal agencies to consider the health and environmental impact of their actions in the communities in which they act. By introducing more than a thousand trucks to West Oakland, CBP and the City of Oakland are clearly adding to the environmental and public health burden on this already overburdened community.

TITLE VI CIVIL RIGHT VIOLATION

Title VI of the Civil Rights Act of 1964 clearly requires federal agencies to take whatever steps are necessary to avoid discriminatory effects of their actions through their contractors or grantees. The law is clear that Federal agencies may not knowingly, *or effectively*, increase the burden on communities that are already disproportionately burdened by industrial, environmental, economic or social impacts. By allowing the introduction of more than a thousand new truck trips into West Oakland, a low-income community of color well documented by state and federal agencies to be disadvantaged and overburdened, the Customs and Border Patrol and Office of Homeland Security have clearly failed to fulfill their obligations under Title VI of the CRA. We have further described numerous actions above that contribute to this violation of the Civil Rights Act by both Customs and Border Patrol and the Department of Transportation. The City of Oakland is a recipient of federal funds for the Oakland Global project, which evicted the CES warehouse without a contingency plan, and shares this civil rights obligation with DOT, DHS and CBP.

IMMEDIATE RELIEF SOUGHT

Of the Department of Transportation: As the agency providing the transportation funding to support the OAB development, we demand that you place an immediate hold on all funding being provided to the City and/or Port of Oakland. We further seek that funding be withheld until the City, Port and OAB Master Developer create a comprehensive Truck Management Plan in collaboration with the residents and businesses in West Oakland. Such a plan must implement the reduction of port-related truck trips through our community.

Of Customs and Border Patrol: We demand that the Customs Examination Station contract to North American 3PL be rescinded or placed on hold until such time as a suitable location outside any disadvantaged community is located. We also demand that the Department of Homeland Security, as the parent agency of CBP, determine protocols

for the placement of CES facilities that will take into account the health, safety and civil rights of nearby communities.

We are copying this document to your sister federal agencies, including the Department of Justice in its role of overseeing enforcement of Title VI across the federal government, as well as, our federal representatives and request that they take up the critical issue of the increasing health and safety burden brought about by the actions of these federal grantees. In the mean time, we expect that, in light of the evidence supplied here, the US Department of Transportation and the Customs and Border Patrol will take immediate action to stop this civil rights violation against our community.

We look forward to your prompt response.

Sincerely,

Brian Beveridge, Co-Director

Margaret Gordon, Co-Director
West Oakland Environmental Indicators Project

cc:

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70 Washington Street,
Suite 203
Oakland, CA 94607
(510) 286-8537
(202) 224-0454 fax

Senator Diane Feinstein
One Post Street, Suite 2450
San Francisco, CA 94104
Phone: (415) 393-0707
Fax: (415) 393-0710

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Mr. Howard Hill, Senior Policy Analyst
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Ricardo Scheller, Port Director
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Congress member Barbara Lee, barbara.lee@mail.house.gov
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Markus Niebank, WOSP Technical Advisory Committee, markus@amicusenv.com
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Brent Bucknam, WOSP Technical Advisory Committee, brent@hyphae.net
Patricia Velveta Golightly-Howell, Director Office of Civil Rights, USEPA,
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wooden-aguilar.helena@epa.gov
Jim Kenney, Acting Assistant Director for Title VI, USEPA, kenney.james@epa.gov

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

OCT 10 2014

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-9575

In Reply Refer to:
EPA File No.: 05R-14-R9

Brian Beveridge, Co-Director
Margaret Gordon, Co-Director
West Oakland Environmental Indicators Project
349 Mandela Parkway
Oakland, California 94607

Re: Referral of Administrative Complaint

Dear Mr. Beveridge and Ms. Gordon:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is referring your administrative complaint filed against the City of Oakland (California), the Port of Oakland, Customs and Border Protection, and a private company named North American 3PL to the U.S. Department of Transportation (DOT). EPA's OCR received this administrative complaint from you on May 9, 2014. You generally alleged that the four entities named in the administrative complaint violated Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. See 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. See 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. See 40 C.F.R. §7.120(b)(1). Third, it must be received within 180 calendar days of the alleged discriminatory act. See 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. See 40 C.F.R. § 7.15.

OCR has carefully reviewed your complaint and concluded that none of the entities that you identify are current recipients of EPA grants that relate directly to the discrimination allegations. However, the U. S. Department of Transportation (DOT) has

apparently issued TIGER grants to the Port of Oakland and may have subject-matter expertise over your allegations. Therefore, this complaint is being referred to U.S. DOT for review and investigation as it deems appropriate. A copy of our letter to the U.S. DOT is enclosed with this correspondence. The contact is Mr. Joseph Austin, Associate Director, U.S. DOT, 1200 New Jersey Avenue, S.E., Washington, D.C., 20590. Mr. Austin's telephone number is (202) 366-4070.

Please note that OCR is still awaiting the return of the Complainant Consent/Release form we enclosed in the notification letter sent to you on June 16, 2014, and re-sent on July 10, 2014. We must have this form returned to us with your signature so that we can release an unredacted copy of your complaint letter to the U.S. DOT.

If you have any questions for the EPA about the handling of your complaint, please contact Katsumi Keeler of my staff at (202) 564-2347, or by e-mail at keeler.katsumi@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, Mail Code, 1201A, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

Enclosure

cc: Elise Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)
U.S. EPA Office of General Counsel

Alexis Strauss
Deputy Civil Rights Official
U.S. EPA Region IX

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

OCT 10 2014

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-9582

In Reply Refer to:
EPA File No.: 05R-14-R9

Camille M. Hazeur, Director
U.S. Department of Transportation
Office of Civil Rights
1849 C St NW, MS-5214
Washington, D.C. 20240-0036

Re: Referral of Administrative Complaint

Dear Director Hazeur:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is referring an administrative complaint filed against the City of Oakland (California), the Port of Oakland, Customs and Border Protection, and a private company named North American 3PL to the U.S. Department of Transportation (DOT). EPA's OCR received this administrative complaint on May 9, 2014. The complainant generally alleges that the four entities named in the administrative complaint violated Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. See 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. See 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. See 40 C.F.R. § 7.120(b)(1). Third, it must be received within 180 calendar days of the alleged discriminatory act. See 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. See 40 C.F.R. § 7.15.

OCR has reviewed the complaint and concluded that none of the entities identified by the complainant are current recipients of EPA grants that relate directly to the complaint allegations. However, the U.S. DOT has apparently issued TIGER grants

to the Port of Oakland, and may also have subject matter expertise over the allegations in this complaint. Therefore, it is being referred to U.S. DOT to review and investigate as it deems appropriate.

A copy of the subject-complaint is enclosed with this correspondence. If you have any questions about this complaint, please contact Katsumi Keeler of my staff at (202) 564-2347, by e-mail at keeler.katsumi@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, Mail Code, 1201A, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

Enclosure

cc: Elise Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)
Environmental Protection Agency

Alexis Strauss
Deputy Civil Rights Official
U.S. EPA Region IX

[redacted]
P.O. Box 2000
Vacaville, CA. 95696

May 25, 2014

Civil Rights
1200 Pennsylvania Ave NW, MC 1201 A
Washington, DC. 20460

- Re: Discrimination

- Dear Civil Rights —. I'm writting to see if there are any organization to help poor people of color protect there civil rights from the courts.

- Poor people of color are given ineffective assistance of counsel to help them protect there rights in a criminal case, the courts call it a "reasonable" amount of representation.

- The court appointed that I was given, did not even learn about what happen the night in question, from my point of view until seven days before the bench

trial he coerced me into was to start. But he held a readiness conference, and a preliminary hearing on my behalf.

- The first time I met the public defender was at the readiness conference, he introduced himself, then told me there offering you eight years, then said, he thought that was too much, were gonna take this to trial. This was all he said, then turned and walked away, the next time I seen the public defender was at the preliminary hearing. There was no evidence presented nor any defense on my behalf, because he never took the time to ask me myside of what happen the night in question. I felt like a fish out of water at the preliminary hearing.

- Now at our next meeting is where the public defender coerced me into a bench trial, after telling me we were going to trial. He could not, and did not, investigate or prepare for my case, because he had another trial he was preparing for at the same time that he had my case. So he coerced me into a bench trial without any investigation, there was no evidence presented, nor any witnesses called on my behalf.

I was taken into a closed courtroom where this 'illegal conviction took place, before the trial started, the judge told the deputy district attorney "too not be dragging her feet on this one".

- The prosecutor made misstatement after misstatement, presented false evidence with no objection from the public defender, and gave an unfair summerization of my bench in her closing arguments

- The judge overlooked the overwhelming evidence in support of my self-defense claim in the testimony of the victim. He over looked the CAL JIC 5.30 - 5.50, and 5.51. I wrote this judge over 11 letters about not being represented, and pointed out some overwhelming evidence in my favor. It was during my appeal that I notice that the evidence I spoke of in some of my letters had been deleted from the transcript. The appellate attorney I was given would not raise any of my issues nor investigate the alteration and deletions I complained about. In fact she was applying for a job with the public defender's office at the same time she was handling my appeal. She try'd to get me to drop my appeal. I was illegally convicted and being held aaginst my will, this is an ongoing violation of poor people

of color, civil rights. So therefore I wanted to see if you knew of any organizations that help poor people of color fight for there rights, after being illegally convicted by an unjust justice system.

- Christopher Dooner was in the Military and a member of the Los Angel Police Dept, and you see how he was done. He made allegations that were being made 20years before he was even born. Who's standing up for are rights, because the Federal government prohibits any organization that recieves federal funding from assisting people who are incarcerated. Poor People of Color are being denied there rights in the courts because they can't afford to hire someone to protect there rights, the federal government prohibits organizations from assisting people who are incarcerated. and poor people of color have limited education. An enormous amount of minorities are in education to try and get a G.E.D., and people with limited education don't even know how to file an appeal exceptable to the courts, or become frustrated an just choose to due the time.

- The 13th Amendment section 1. states neither slavery nor involuntary servitude, except as a punishment for

crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

- The 14th Amendment section 1. states all persons born or naturalized in the United States, and subject there of, are citizens of the United States and of the state werein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

- These right are being violated at a high rate of speed, there are studies that project the anormous amout of discrimination and violation of poor people of color rights. In California there's a study that shows Private Prison are 89% people of color, the Public Prison's are 75% filled with people of color. There's overwhelming evidence that a "LARGE" amount of poor people of color are being discriminated against, and there rights are being violated by the courts. Overcrowding

made people look at the prison system, even the Attorney General Eric Holder stated, that there are far too many people in prison for long periods of time, for no good reason!

- I seen the way the courts orchestrate these illegal convictions first hand, the judge the prosecutor, the court stenographer, as well as the public defender all played there part in violating my rights in this fraudulent act. Thank you for your time and concerns

Sincerely;

[redacted]

[redacted]

P.O. BOX 2000
Vacaville, CA, 95696

JUN 06 2014

[redacted]

SACRAMENTO CA 9

CA MEDICAL FACILITY

FIRST CLASS

RALPH ELLISON

PITNEY BOWES

$00.00⁰

0004225987 MAY 28 2014

MAILED FROM ZIP CODE 95687

Civil Rights
1200 Pennsylvania Ave NW, MC 1201A
Washington, DC. 20460

20460

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

OCT 01 2014

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-8998

In Reply Refer to:
EPA File No.: 06R-14-R9

(b) (6) - Privacy
[redacted]
Vacaville, California [redacted]

Re: Rejection and Referral of Administrative Complaint

Dear Mr. Moses,

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting your complaint filed against the California Medical Facility received by the EPA on June 6, 2014. OCR is referring the complaint to the U.S. Department of Justice's Civil Rights Division.

In your complaint you allege that the California Medical Facility violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.,* and the EPA's nondiscrimination regulations implementing Title VI found at 40 Code of Federal Regulations (C.F.R.) Part 7. Your complaint alleges that you were denied effective counsel in violation of your civil rights based on your race and socioeconomic status.

Pursuant to the EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. *See* 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. *See* 40 C.F.R. §7.120(b)(1). Second, it must describe alleged discriminatory acts that violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. *See* 40 C.F.R. §7.120(b)(1). Third, it must be received within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. *See* 40 C.F.R. § 7.15.

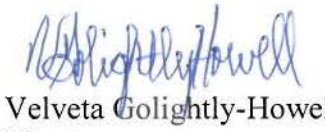
After careful review, OCR is rejecting your complaint because the allegations you describe do not meet the EPA's jurisdictional requirements. One of OCR's jurisdictional requirements to be accepted for investigation is that the complaint must be filed against a

recipient of EPA assistance that allegedly committed the discriminatory act(s). The California Department of Corrections and Rehabilitation and the California Medical Facility are not recipients of EPA financial assistance and therefore do not fall within the EPA OCR's investigative jurisdiction. As a result, OCR is unable to accept the complaint.

However, because the U.S. Department of Justice (DOJ) may have subject-matter expertise over the allegations in the subject complaint, it is being referred to the DOJ's Civil Rights Division to review and investigate as the DOJ deems appropriate. A copy of the letter to the DOJ and a copy of the EPA's nondiscrimination regulations implementing Title VI are enclosed with this correspondence. Please contact the U.S. DOJ Civil Rights Division via telephone at (202) 514-6255 or via mail at U.S. Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, N.W., Washington, D.C., 20530.

If you have any questions regarding this letter, please contact Jonathan Stein of the OCR External Compliance Program at (202) 564-2088, via e-mail at stein.jonathan@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, Washington, D.C., 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, D.C. 20460. Alternatively, please contact Helena Wooden-Aguilar, Acting Deputy Director of the Office of Civil Rights, at (202) 564-0792, or at wooden-aguilar.helena@epa.gov.

Sincerely,



Velveta Golightly-Howell
Director

Enclosures

cc: Elise B. Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Alexis Strauss
Deputy Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
Mail Code: ORA-1
San Francisco, California 94105

U.S. Department of Justice
Jonathan M. Smith, Chief
Civil Rights Division
Special Litigation Section, PHB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

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

OCT 01 2014

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-9001

In Reply Refer to:
EPA File No.: 06R-14-R9

U.S. Department of Justice
Jonathan M. Smith
Chief, Civil Rights Division
Special Litigation Section, PHB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Re: Rejection and Referral of Administrative Complaint

Dear Mr. Smith,

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting a complaint filed by an inmate against the California Medical Facility received by the EPA on June 6, 2014. The EPA OCR is referring this complaint to the Department of Justice's Civil Rights Division.

In the complaint, the inmate alleged that the California Medical Facility violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations implementing Title VI found at 40 Code of Federal Regulations (C.F.R.) Part 7. The inmate's complaint alleges that the inmate was denied effective counsel in violation of the inmate's civil rights based on the inmate's race and socioeconomic status.

Pursuant to the EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. *See* 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. *See* 40 C.F.R. §7.120(d)(1). Second, it must describe alleged discriminatory acts that violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. *See* 40 C.F.R. §7.120(d)(1). Third, it must be received within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. *See* 40 C.F.R. § 7.15.

After careful review, OCR is rejecting the inmate's complaint because the allegations described do not meet the EPA's jurisdictional requirements. One of OCR's jurisdictional requirements is that the complaint must be filed against a recipient of EPA assistance that

allegedly committed the discriminatory act(s). The California Department of Corrections and Rehabilitation and the California Medical Facility are not recipients of EPA financial assistance and therefore do not fall within the EPA OCR's investigative jurisdiction. As a result, OCR is unable to accept the complaint.

In addition, because the allegations in the subject complaint stem from issues relating to the civil rights of prison inmates in which the Special Litigation Section may have expertise, we are referring it to your office for review and action. A copy of the complaint is enclosed.

If you have any questions regarding this letter, please contact Jonathan Stein of the OCR External Compliance Program at (202) 564-2088, via e-mail at stein.jonathan@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, Washington, D.C., 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, D.C., 20460. Alternatively, please contact Helena Wooden-Aguilar, Acting Deputy Director of the Office of Civil Rights, at (202) 564-0792, or at wooden-aguilar.helena@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director

Enclosure

cc: Elise B. Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)
U.S. Environmental Protection Agency

Vimal Singh, Warden
California Medical Facility
California Department of Corrections and Rehabilitation
Vacaville, California 95696

Alexis Strauss
Deputy Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
Mail Code: ORA-1
San Francisco, California 94105

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

OCT 01 2014

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-9599

In Reply Refer to:
EPA File No.: 06R-14-R9

Vimal Singh, Warden
California Medical Facility
California Department of Corrections and Rehabilitation
Vacaville, CA 95696

Re: Rejection and Referral of Administrative Complaint

Dear Mr. Singh,

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting a complaint filed by an inmate against the California Medical Facility received by the EPA on June 6, 2014. The EPA OCR is referring it to the U.S. Department of Justice's Civil Rights Division.

In the complaint, the inmate alleged that the California Medical Facility violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.,* and the EPA's nondiscrimination regulations implementing Title VI found at 40 Code of Federal Regulations (C.F.R.) Part 7. The inmate's complaint alleges that the inmate was denied effective counsel in violation of the inmate's civil rights based on the inmate's race and socioeconomic status.

Pursuant to the EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. *See* 40 C.F.R. §7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. *See* 40 C.F.R. §7.120(d)(1). Second, it must describe alleged discriminatory acts that violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age or disability. *See* 40 C.F.R. §7.120(d)(1). Third, it must be received within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. §7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act. *See* 40 C.F.R. § 7.15.

After careful review, OCR is rejecting the inmate's complaint because the allegations described do not meet the EPA's jurisdictional requirements. One of OCR's jurisdictional requirements is that the complaint must be filed against a recipient of EPA assistance that

allegedly committed the discriminatory act(s). The California Department of Corrections and Rehabilitation and the California Medical Facility are not recipients of EPA financial assistance and therefore are not subject to the EPA OCR's investigative jurisdiction. As a result, OCR is unable to accept the complaint.

However, because the U.S. Department of Justice (DOJ) may have subject-matter expertise over the allegations in the subject complaint, it is being referred to the DOJ's Civil Rights Division to review and investigate as deemed appropriate. A copy of the letter to the DOJ is enclosed with this correspondence. If you have any questions, please contact the U.S. DOJ's Civil Rights Division via telephone at (202) 514-6255 or via mail at U.S. Department of Justice, Civil Rights Division, 950 Pennsylvania Avenue, N.W., Washington, D.C., 20530.

If you have any questions regarding this letter, please contact Jonathan Stein of the OCR External Compliance Program at (202) 564-2088, via e-mail at stein.jonathan@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, Washington, D.C., 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, D.C., 20460. Alternatively, please contact Helena Wooden-Aguilar, Acting Deputy Director of the Office of Civil Rights, at (202) 564-0792, or at wooden-aguilar.helena@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director

Enclosure

cc: Elise B. Packard, Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)
U.S. Environmental Protection Agency

Alexis Strauss
Deputy Regional Administrator
U.S. Environmental Protection Agency Region 9
75 Hawthorne Street
Mail Code: ORA-1
San Francisco, California 94105

U.S. Department of Justice
Jonathan M. Smith, Chief
Civil Rights Division
Special Litigation Section, PHB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

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

OFFICE OF
CIVIL RIGHTS

JUN 10 2015

Return Receipt Requested
Certified Mail #7009 2820 0002 1759 1698

In Reply Refer To:
EPA File No: 07A-14-R9

(b) (6) - Privacy
Eureka, California 95503

Re: Rejection of Administrative Complaint

Dear (b) (6) - Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) is rejecting your complaint of discrimination against the North Coast Regional Water Quality Control Board ("the Board"), and the case is closed as of the date of this letter. The EPA received your complaint on June 19, 2014. On October 14, 2014, the OCR sent you a letter requesting clarification regarding your administrative complaint. We received your response on November 5, 2014. Your complaint and subsequent clarification allege that the Board violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 United States Code (U.S.C.) §§ 2000d *et seq.;* the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; and the EPA's regulations implementing both Title VI and the Age Discrimination Act at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to another federal agency. 40 C.F.R. § 7.120(d)(1). For the OCR to accept a complaint for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that violates the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15. In addition, there are certain circumstances, such as,

pending litigation and ripeness, when it would not be appropriate for an agency to investigate a matter over which it may have jurisdiction.[1]

Your complaint alleges that the Board discriminated against persons living near the South Fork of Elk River, who you describe as being disproportionately poor and elderly. Specifically, your complaint and subsequent clarification allege that the Board has discriminated against these residents in its regulation of the water quality of the Elk River through the Total Maximum Daily Load (TMDL) process and associated public participation activities.

The OCR has since learned that the TMDL process that forms the basis of your complaint is not yet complete.[2] Indeed, the Board held public workshops on May 7 and June 19, 2014, to inform the public on the status of the process and solicit comment, both of which you attended.[3] The Board has not taken any formal action related to the TMDL subsequent to that meeting. Accordingly, the TMDL that you allege is discriminatory has not yet been enacted by the Board.

Under these circumstances, as a preliminary jurisdictional matter and without addressing its merits, the OCR finds that this complaint is not ripe. The allegations in the complaint are speculative in nature and anticipate future events that may not occur. The allegations here also involve the same facts that are currently before the Board as part of the public involvement and decision-making process associated with it eventually making a TMDL determination. In other words, the Board's action is not yet final, so the Board's final decision resulting from completion of its administrative process could potentially address the concerns raised in this complaint or otherwise alter how the water quality of the Elk River is regulated. Accordingly, the OCR must reject your complaint as premature. Naturally, you may file a new complaint, if your discrimination concerns remain, once the Board's actions are final.

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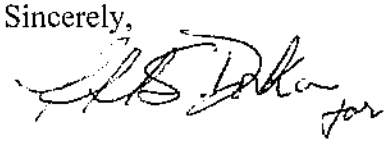
[1] Department of Justice's Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and other Non Discrimination Statutes, Chapter III. B. (September 1998); http://www.justice.gov/crt/about/cor/Pubs/manuals/complain.pdf

[2] Email from Janet Parrish, EPA Region 9, Memorializing Her Call with North Coast Regional Water Quality Control Board (May 14, 2015) (on file); *see also* Email from Janet Parrish, EPA Region 9, Providing Details of Final Delivery Order for Tetra Tech (May 21, 2015) (on file) (setting forth schedule of deliverables for contractor working on TMDL).

[3] *See* North Coast Regional Water Quality Control Board, Minutes of Meeting at 4 (June 19, 2014), *available at* http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/06_2014/140619_June19_2014_minutes.pdf (listing (b) (6) - Privacy as offering comments on the "Draft Elk River Total Maximum Daily Load"); North Coast Regional Water Quality Control Board, Minutes of Meeting at 2 (May 7, 2014), *available at* http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/05_2014/140507_May_2014_minutes.pdf (listing (b) (6) - Privacy as offering comments on the "Upper Elk River TMDL and Waste Discharge Requirements Update").

If you have any questions, please contact Jonathan Stein of the OCR External Compliance Program by telephone at (202) 564-2088, via email at *stein.jonathan@epa.gov*, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Velveta Golightly-Howell
Director

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Alexis Strauss
Deputy Civil Rights Official
U.S. EPA Region 9 (MC ORA-1)

Michael Shapiro
Deputy Civil Rights Official
U.S. EPA Office of Water (MC 4101M)

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

OFFICE OF
CIVIL RIGHTS

JUN 10 2015

Return Receipt Requested
Certified Mail #7009 2820 0002 1759 1704

In Reply Refer To:
EPA File No: 07A-14-R9

Matthew St. John
Executive
North Coast Regional Water Quality Control Board
5550 Skylane Boulevard, Suite A
Santa Rosa, California 95403-1072

Re: Rejection of Administrative Complaint

Dear Mr. St. John:

This letter is to notify you of actions the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) has taken concerning a complaint filed against the North Coast Regional Water Quality Control Board ("the Board") by residents of Eureka, California. The EPA received this complaint on June 19, 2014. On October 14, 2014, the OCR sent the complainants a letter requesting clarification regarding the complaint and received a response on November 5, 2014. The complaint and subsequent clarification allege that the Board violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 United States Code (U.S.C.) §§ 2000d *et seq.;* the Age Discrimination Act of 1975, 42 U.S.C. §§ 6101 *et seq.*; and the EPA's regulations implementing both Title VI and the Age Discrimination Act at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to another federal agency. 40 C.F.R. § 7.120(d)(1). For the OCR to accept a complaint for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that violates the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15. In addition, there are certain circumstances, such as,

pending litigation and ripeness, when it would not be appropriate for an agency to investigate a matter over which it may have jurisdiction.[1]

The complaint alleges that the Board discriminated against persons living near the South Fork of Elk River, who are described as being disproportionately poor and elderly. Specifically, the complaint and subsequent clarification allege that the Board has discriminated against these residents in its regulation of the water quality of the Elk River through the Total Maximum Daily Load (TMDL) process and associated public participation activities.

The OCR has since learned that the TMDL process that forms the basis of the complaint is not yet complete.[2] Indeed, the Board held public workshops on May 7 and June 19, 2014, to inform the public on the status of the process and solicit comment, both of which were attended by the Complainants.[3] The Board has not taken any formal action related to the TMDL subsequent to that meeting. Accordingly, the TMDL that the complaint alleges is discriminatory has not yet been enacted by the Board.

Under these circumstances, as a preliminary jurisdictional matter and without addressing its merits, the OCR finds that this complaint is not ripe. The allegations in the complaint are speculative in nature and anticipate future events that may not occur. The allegations here involve the same facts that are currently before the Board as part of the public involvement and decision-making process associated with it eventually making a TMDL determination. In other words, the Board's action is not yet final, so the Board's final decision resulting from completion of its administrative process could potentially address the concerns raised in this complaint or otherwise alter how the water quality of the Elk River is regulated. Accordingly, the OCR must reject the complaint as premature.

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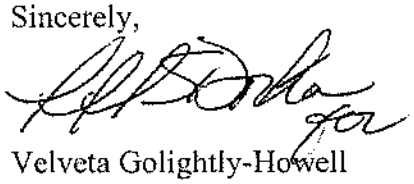
[1] Department of Justice's Investigation Procedures Manual for the Investigation and Resolution of Complaints Alleging Violations of Title VI and other Non Discrimination Statutes, Chapter III. B. (September 1998); http://www.justice.gov/crt/about/cor/Pubs/manuals/complain.pdf.

[2] Email from Janet Parrish, EPA Region 9, Memorializing Her Call with North Coast Regional Water Quality Control Board (May 14, 2015) (on file); *see also* Email from Janet Parrish, EPA Region 9, Providing Details of Final Delivery Order for Tetra Tech (May 21, 2015) (on file) (setting forth schedule of deliverables for contractor working on TMDL).

[3] *See* North Coast Regional Water Quality Control Board, Minutes of Meeting at 4 (June 19, 2014), *available at* http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/06_2014/140619_June19_2014_minutes.pdf (listing (b) (6) - Privacy among those offering comments on the "Draft Elk River Total Maximum Daily Load"); North Coast Regional Water Quality Control Board, Minutes of Meeting at 2 (May 7, 2014), *available at* http://www.waterboards.ca.gov/northcoast/board_info/board_meetings/05_2014/140507_May_2014_minutes.pdf (listing Complainant among those offering comments on the "Upper Elk River TMDL and Waste Discharge Requirements Update").

If you have any questions, please contact Jonathan Stein of the OCR External Compliance Program by telephone at (202) 564-2088, via email at *stein.jonathan@epa.gov*, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,



Velveta Golightly-Howell
Director

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office (MC 2399A)

Alexis Strauss
Deputy Civil Rights Official
U.S. EPA Region 9 (MC ORA-1)

Michael Shapiro
Deputy Civil Rights Official
U.S. EPA Office of Water (MC 4101M)

May 27, 2014
To: Matt St.John, NCRWQCB E.O.
: Region VIIII EPA Ad9/25/14ministrator

RWQCB HAS FAILED TO DEVELOP AND IMPLEMENT TMDLS FOR THE POLLUTANTS CAUSING THE IMPAIRMENT OF DOMESTIC USE SUPPLY, CHANNEL INFILL, AND FLOODING IN A TIMELY MANNER.

California's policies, as implemented by the North Coast Regional Water Quality Control Board agency, deny equal protection under the Clean Water Act to the class of persons reliant on "domestic use" of water in Elk River. This discrimination is well documented, and well supported with a two-decades long record. All "performance reviews" of the North Coast Regional Water Quality Control Board will reveal an abject failure to achieve its own performance objectives. RWQCB's performance does not implement the terms of the State Water Board Glossary. Instead, RWQCB persistently places the burden of the negative environmental impacts onto the same battered community that has been suffering for over twenty years. That is not a stated performance objective.

RWQCB has also failed to provide effective and rational Basin Plan Objectives. The Bacteria Objective does not include a margin of safety sufficient to provide protection for domestic supply use (the indicator is insufficient for other pathogens such as Cryptosporidium parvum) particularly where little or

inadequate monitoring is conducted. Furthermore, the Bacteria Objective is vague: it fails to incorporate the 40 CFR 131 anti-degradation policy, Health and Safety Code section 116995, or the controllable factors language of the Basin Plan. This discriminatory policy violates Executive Order 12898 and EO 12630; no federal funding should be used to carry out RWQCB's discriminatory policy. Therefore, we petition for an audit of all funding used to carry out NCRWQCB's regulation in Elk River.

The following quotes are illustrative of RWQCB's failure to provide protection for domestic supply uses; they source from a Winzler and Kelly Report. "Treatment in a septic tank is anaerobic, (without oxygen) and produces a fairly raw effluent that is still very high in bacteria and pathogens, dissolved solids and organics, ammonia and organic nitrogen."…. ."the presence of high ground water has significantly reduced their performance. Once in the groundwater, pollutants can travel up to 100 times the distance in unsaturated soils, before achieving the same level of treatment." (Draft Water Resources Technical Report for: Humboldt County Community Development Division, 2007, Winzler and Kelly Consulting Engineers 443-8326, print out page 28)

"A current issue that faces RWQCB and Humboldt County is the protection of 'all' groundwater for potential reuse as drinking water. While protecting our drinking supply is essential, for a number of reasons including geology and water quality…. .Currently, this concern is

driving the RWQCB to require removal of nitrogen such that advanced technologies are needed at considerable expense… . The State Health and Safety Code require an appropriate means of sewage disposal for all homes and businesses. It also prohibits discharge of sewage on the ground surface." Health and Safety Code 116995 requires that no person (Humboldt County and Water Board are persons) shall cause or permit livestock to pollute the drinking water supply (surface waters) of any inhabitant of this state.

RWQCB improperly refuses to carry its duty to implement the **mandatory** requirement of Section 116995 or 40 CFR 131.12 and instead has a policy stated by Rich Fadness in a 2010 report: **"There is a reasonable expectation that any water supply will be treated/filtered prior to use as drinking water."** RWQCB knows that Calf/cow pairs are dumping the equivalent raw sewage (additionally loaded with highly infectious to humans Cryptosporidium parvum cysts), year round, of 750 persons (according to the metrics of Winzler/Kelly, or 2,500-5,000 persons using the metrics of EPA [120lbs/day]) onto the surface of the ground immediately adjacent to domestic supply intakes. Both flooding and overland flows convey this sewage into the supply intakes. Human infections can occur via aerosol vectors due to the tiny size of the cysts, and infections have been documented to result from as low as two cysts.

So, the Elk WWDR and the proposed TMDL permit continued sediment discharge resulting in continued

channel infill, while RWQCB acts or inactions do not require CAOs to remedy the channel infill for the next 10 or 20 years and then only by voluntary efforts or grants. RWQCB is knowingly causing or permitting the pollution of existing domestic water supplies from intentionally inundated septic systems, cattle, and forestry workers by its actions or inactions.

"Once a water body has been deemed impaired, the State of California and or USEPA are required to develop a TMDL. A TMDL must be developed for each water body and each pollutant or group of pollutants that are causing the impairment to beneficial uses...." .... "Beneficial uses are designated under the CWA Section 303 in accordance with regulations contained in 40 CFR 131. "

RWQCB knows that domestic supply intakes are polluted by both sediment and bacteria and cattle pathogens including C.parvum. Section 131 is a **mandatory** anti degradation policy which protects the existing riparian rights, domestic use, as well as health and safety and the public trust. RWQCB as trustee, does not have authority to harm, or waste, the public trust; and the people have declared that the priority use of water in this state is domestic use.

"California ranks TMDLs as low, medium, or high priority based on the number and severity of the impairments and the importance of the beneficial uses." According to Table 13-4. TMDL Listed Water Bodies in California: Elk River is listed as Priority High. (see

printed page 35) "The degradation due to sediment is so severe the watershed are no longer able to attain their intended beneficial uses." (see printed page 36)

Therefore, because RWQCB has failed to develop and implement TMDLs for the pollutants causing the impairment of domestic supply in a timely manner we have no alternative than to petition the USEPA to develop the TMDLs in a procedure consistent with environmental justice and equity.

To the extent that NCRWQCB intends to not exercise its CAO and Cease and Desist authority, and/or seeks to immunize or protect polluters from successor liability under Civil Code Section 3483 and/or 3334(b) (avoided costs of compliance), we also petition for sediment cap and trade approach to be implemented, in the stream reaches where nuisance flooding occurs, immediately pursuant to EPA's Water Quality Trading Policy for Nonpoint Source.

Sincerely,

[redacted]
Eureka, CA 95503

PCL XL error

Subsystem: KERNEL

Error: IllegalOperatorSequence

Operator: EndChar

Position: 876

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

APR 13 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 1001

In Reply Refer to:
EPA File No.: 08R-14-R9

Mayor Eric Garcetti
The City of Los Angeles
200 North Spring Street
Los Angeles, California 90012

Re: Notification of Receipt and Rejection of Administrative Complaint

Dear Mayor Garcetti:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received correspondence from an individual on June 7, 2014, with subsequent written clarification received on December 29, 2014. In both letters, the individual alleged that the County of Los Angeles; the City of Los Angeles; the Los Angeles Regional Water Quality Control Board; the Los Angeles Unified School District; and the Shell Oil Company discriminated. More precisely, the letters included allegations that the failure of these entities to address underground pollution and contaminated soil removal in the Watts neighborhood of Los Angeles has a discriminatory impact on the adjacent African American community. Because the OCR is responsible for processing and investigating complaints alleging discrimination by EPA recipients of federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq,* as amended, and EPA implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 7, we construed the correspondence as such a complaint. The OCR, however, has concluded that it cannot accept the complaint for investigation.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1)). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that

allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful review of the provided information, the OCR is rejecting the subject complaint because it is untimely. Pursuant to the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. The information provided identifies incidents that allegedly occurred from the 1950s through 2002.

If you have any questions, please contact Brittany Martinez of the OCR's External Compliance Program by telephone at (202) 564-0727, via e-mail at Martinez.Brittany@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

for

Velveta Golightly-Howell
Director

Enclosure

Create Control - Data Entry

Control Number: OCR-14-001-1285 **Alternate Number:**

Citizen Information

Citizen/Originator: 1). [redacted] Irvine, CA 92614 **Search Citizen**

Constituent: **Search Constituent**

Committee:

Sub-Committee:

Control Information

Status: Pending *

Letter Date: Jun 7, 2014 * **Received Date:** Jun 23, 2014

Contact Type: LTR (Letter) * **Priority Code:** Normal *

Addressee: US/EPA Office of Civil Rights (+) **Addressee Org:** 1200 Penn Avenue NW WD(

File Code: 108-025-08_497_a Discrimination Complaints - External Record Copy *

Signature: (+)

CC: **Search CC**

Signature Date: Date

Primary Subject: Discrimination Complaint (+) *

Secondary Subject: (+)

Instructions: NRN-No Response Necessary (+) *

Instruction Notes:

General Notes: This control is assigned to title 6 for appropriate action

*: Required field
(+): Lookup field, press space bar for complete list

Save **Continue and Assign** **Cancel**

June 07, 2014

[redacted]
Irvine, CA. 92614
[redacted]

US Environmental Protection Agency
Office of Civil Rights
1200 Pennsylvania Ave. NW Room 1201A
Washington, D.C. 20460

Dear sir,

DISCRIMINATION BASIS ON RACE // BLACK & BROWN CHILDRENS // PEOPLES WITH KNOWLEDGE OF THE PROBLEM:
STATE GOVERNMENT / JERRY BROWN / MATTHEW RODRIQUEZ /KAMULA HARRIS / ALL SUPERVISORS COUNTY OF LOS ANGELES / /REP. JANIS HAHN / REP. KAREN BASS / MAYOR ERIC GARCETTI / ALL CITY COUNCIL / JIM MARXEN 916-324-6544 TOXIC SUBSTANCE/ /SANDRA THOMPSON 916-341-5849 WATER BOARD / DR. JOHN DEASY LAUSD / FED. & STATE EPA /

RE: Toxic release and abandoned underground Tank on School Site in Watts (Grape Street) (on Old Federal Land) . Student dies from cancer!
Griffith Joyner School: Before 2000 / 3 Dies from cancer. After 2000 / 2 Dies from cancer. One office worker has breast cancer. Students in High School who went to this school has Tumor & Leukemia. (State in IEP)
Another teacher has cancer. /

How many people will get cancer before something is done!!! (The number 10)
Mr. Bob Colangelo of the Army Corp. Engr. told me his department had the money to remove the tanks. (Still No Clean Up) !!!

Site 2. Appear Shell Oil Fail to Remove Contamination Soil From the Property Across the Street From The School!!! See Study!!! Los Angeles Fire Department Fail To Sign Off!!! Children Service Fail To Address Problem!!! Health Department Fail To Address Problem Because People Are Still Getting Cancer!!!

RECEIVED
JUN 23 2014

Cover up by LAUSD /Fail To Tell Parent / From Three Schools & Learning Center/ Shell Oil Fail To Tell Public About Leaking Tanks Half Mile Radius Of The Subject Site / Groundwater Contamination / Public Drinking Water / Drinking Water Act Amendments of 1986 / Public Garden Within Half Mile Radius Of The Subject Site / City Government Sold 15+ Houses Within Half Mile Radius Without Telling Public or Buyer / Federal Government Fail Tell Location Of Underground Tanks On Old Government Land / Plant Manager point out locations of tanks / I am still fighting about this matter. Thank you.

Sincerely,

[redacted]

[redacted]
Irvine, California 92614

US Environmental Protection Agency
Office of Civil Rights
1200 Pennsylvania Ave. NW Room 1201A
Washington, D.C. 20460

JUN 23 20

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

APR 1 8 2

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 0936

In Reply Refer to:
EPA File No.: 08R-14-R9

(b) (6) - Privacy

Irvine, California 92614 (b) (6) - Privacy

Re: Rejection of Administrative Complaint

Dear (b) (6) - Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received your correspondence on June 7, 2014, and your subsequent clarification on December 29, 2014. In both letters, you allege that the County of Los Angeles; the City of Los Angeles; the Los Angeles Regional Water Quality Control Board; the Los Angeles Unified School District; and the Shell Oil Company discriminated. More precisely, you allege that the failure of these entities to address underground pollution and contaminated soil removal in the Watts neighborhood of Los Angeles has a discriminatory impact on the adjacent African American community. Because the OCR is responsible for processing and investigating complaints alleging discrimination by EPA recipients of federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq,* as amended, and EPA implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 7, we construed your correspondence as such a complaint. The OCR, however, has concluded that it cannot accept your complaint for investigation.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful review of the information you provided, the OCR is rejecting your complaint for investigation because it is untimely. Pursuant to the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. The information that you provided identifies incidents that allegedly occurred from the 1950s through 2002. In addition, please note that the Los Angeles Regional Water Quality Control Board and the Shell Oil Company are not applicants for, or recipients of, EPA financial assistance, as required by the nondiscrimination regulations.

If you have any questions, please contact Brittany Martinez of the OCR's External Compliance Program by telephone at (202) 564-0727, via e-mail at Martinez.Brittany@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

for

Velveta Golightly-Howell
Director

Enclosure

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

APR 13 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 0998

In Reply Refer to:
EPA File No.: 08R-14-R9

Jeffrey Gunzenhauser, MD, MPH
Interim Health Officer
The County of Los Angeles
Department of Health Services
313 North Figueroa Street
Los Angeles, California 90012

Re: Notification of Receipt and Rejection of Administrative Complaint

Dear Dr. Gunzenhauser:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received correspondence from an individual on June 7, 2014, with subsequent written clarification received on December 29, 2014. In both letters, the individual alleged that the County of Los Angeles; the City of Los Angeles; the Los Angeles Regional Water Quality Control Board; the Los Angeles Unified School District; and the Shell Oil Company discriminated. More precisely, the letters included allegations that the failure of these entities to address underground pollution and contaminated soil removal in the Watts neighborhood of Los Angeles has a discriminatory impact on the adjacent African American community. Because the OCR is responsible for processing and investigating complaints alleging discrimination by EPA recipients of federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq,* as amended, and EPA implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 7, we are processing the correspondence as such a complaint. The OCR, however, has concluded that it cannot accept the complaint for investigation.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the

complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful review of the information provided, the OCR is rejecting the subject complaint because it is untimely. Pursuant to the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. The information provided identifies incidents that allegedly occurred from the 1950s through 2002.

If you have any questions, please contact Brittany Martinez of the OCR's External Compliance Program by telephone at (202) 564-0727, via e-mail at Martinez.Brittany@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

for

Velveta Golightly-Howell
Director

Enclosure

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

APR 1 3 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 0943

In Reply Refer to:
EPA File No.: 08R-14-R9

Charles Stringer
Chair
The Los Angeles Regional
Water Quality Control Board
320 West Fourth Street, Suite 200
Los Angeles, California 90013

Re: Notification of Receipt and Rejection of Administrative Complaint

Dear Mr. Stringer:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received correspondence from an individual on June 7, 2014, with subsequent written clarification received on December 29, 2014. In both letters, the individual alleged that the County of Los Angeles; the City of Los Angeles; the Los Angeles Regional Water Quality Control Board; the Los Angeles Unified School District; and the Shell Oil Company discriminated. More precisely, the letters included allegations that the failure of these entities to address underground pollution and contaminated soil removal in the Watts neighborhood of Los Angeles has a discriminatory impact on the adjacent African American community. Because the OCR is responsible for processing and investigating complaints alleging discrimination by EPA recipients of federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq,* as amended, and EPA implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 7, we construed the correspondence as such a complaint. The OCR, however, has concluded that it cannot accept the complaint for investigation.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed

the discriminatory act. *See* 40 C.F.R. § 7.15. For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful review of the information provided, the OCR is rejecting the subject complaint because it is untimely. Pursuant to the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. The information provided identifies incidents that allegedly occurred from the 1950s through 2002. In addition, the Los Angeles Regional Water Quality Control Board is not a financial recipient of the EPA, as required by the nondiscrimination regulations.

If you have any questions, please contact Brittany Martinez of the OCR's External Compliance Program by telephone at (202) 564-0727, via e-mail at Martinez.Brittany@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

for

Velveta Golightly-Howell
Director

Enclosure

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

APR 13 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 0929

In Reply Refer to:
EPA File No.: 08R-14-R9

Dr. John E. Deasy
Superintendent of Schools
The Los Angeles Unified School District
333 South Beaudry Avenue
Los Angeles, California 90017

Re: Notification of Receipt and Rejection of Administrative Complaint

Dear Dr. Deasy:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received correspondence from an individual on June 7, 2014, with subsequent written clarification received on December 29, 2014. In both letters, the individual alleged that the County of Los Angeles; the City of Los Angeles; the Los Angeles Regional Water Quality Control Board; the Los Angeles Unified School District; and the Shell Oil Company discriminated. More precisely, the letters included allegations that the failure of these entities to address underground pollution and contaminated soil removal in the Watts neighborhood of Los Angeles has a discriminatory impact on the adjacent African American community. Because the OCR is responsible for processing and investigating complaints alleging discrimination by EPA recipients of federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq,* as amended, and EPA implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 7, we construed the correspondence as such a complaint. The OCR, however, has concluded that it cannot accept the complaint for investigation.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed

the discriminatory act. *See* 40 C.F.R. § 7.15. For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful review of the information provided to the OCR, the OCR is rejecting the subject complaint because it is untimely. Pursuant to the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. The information provided identifies incidents that allegedly occurred from the 1950s through 2002.

If you have any questions, please contact Brittany Martinez of the OCR's External Compliance Program by telephone at (202) 564-0727, via e-mail at Martinez.Brittany@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

for

Velveta Golightly-Howell
Director

Enclosure

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

OFFICE OF
CIVIL RIGHTS

APR 1 3 2015

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 0912

In Reply Refer to:
EPA File No.: 08R-14-R9

Shell Oil Company
P.O. Box 2463
Houston, Texas 77252

Re: Notification of Receipt and Rejection of Administrative Complaint

Dear Sir or Madam:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), received correspondence from an individual on June 7, 2014, with subsequent written clarification received on December 29, 2014. In both letters, the individual alleged that the County of Los Angeles; the City of Los Angeles; the Los Angeles Regional Water Quality Control Board; the Los Angeles Unified School District; and the Shell Oil Company discriminated. More precisely, the letters included allegations that the failure of these entities to address underground pollution and contaminated soil removal in the Watts neighborhood of Los Angeles has a discriminatory impact on the adjacent African American community. Because the OCR is responsible for processing and investigating complaints alleging discrimination by EPA recipients of federal financial assistance in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d *et seq,* as amended, and EPA implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 7, we construed the correspondence as such a complaint. The OCR, however, has concluded that it cannot accept the complaint for investigation.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. § 7.120(d)(1). For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed

the discriminatory act. *See* 40 C.F.R. § 7.15. For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful review of the information provided, the OCR is rejecting the subject complaint because it is untimely. Pursuant to the EPA's nondiscrimination regulations, a complaint must be filed within 180 calendar days of the alleged discriminatory act. The information provided identifies incidents that allegedly occurred from the 1950s through 2002. In addition, Shell Oil Company is not a financial recipient of the EPA, as required by the nondiscrimination regulations.

If you have any questions, please contact Brittany Martinez of the OCR's External Compliance Program by telephone at (202) 564-0727, via e-mail at Martinez.Brittany@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

for

Velveta Golightly-Howell
Director

Enclosure

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

MAY - 5 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7009 7820 0002 1759 1629

In Reply Refer to:
EPA File No.: 09R-14-R4

(b) (6) - Privacy

Greene CI (b) (6) - Privacy
(b) (6) - Privacy
Maury, North Carolina 28554

Re: Rejection and Referral of Administrative Complaint

Dear (b) (6) - Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) received your correspondence on July 7, 2014. Because the OCR is responsible for processing complaints containing allegations of discrimination by recipients of EPA financial assistance pursuant to Title VI of the Civil Rights Act and the EPA implementing regulations, we have assumed that you intended to file a Title VI complaint and are processing your complaint in this manner. In the complaint, you alleged the Green Correctional Institute has failed to stop polluting the air, in part, because it allows non-licensed individuals to work on the HVAC system. The complaint is dismissed and the case closed as of the date of this letter.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. (See 40 C.F.R. § 7.120(d)(1).) For the OCR to accept a complaint for investigation, the complaint must meet the four jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (See 40 C.F.R. § 7.120(b)(1).) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations *(i.e.,* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). (See 40 C.F.R. § 7.120(b)(1).) Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (See 40 C.F.R. § 7.120(b)(2).) Finally, the complaint must be filed against an applicant for, or a recipient of, the EPA's financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15.) For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful consideration, the EPA/OCR has concluded that it cannot accept the complaint for investigation because it does not meet the jurisdictional requirements described in EPA's nondiscrimination regulations. Specifically, Greene Correctional Institution is neither an applicant for nor a recipient of EPA assistance. In addition, the complaint does not allege a discriminatory act that may violate EPA's non-discrimination regulations. Therefore, the OCR must reject the complaint for investigation because it does not fall within the EPA/OCR's jurisdiction.

However, it appears that your complaint may fall within the jurisdiction of the U.S. Department of Justice (DOJ), Office of Civil Rights, Office of Justice Programs. Therefore, the EPA/OCR is referring your complaint to the DOJ for appropriate action. A copy of the letter to the DOJ is enclosed. The DOJ contact person is Michael Alston, and his contact information is U.S. Department of Justice, 810 Seventh Street, N.W., Washington D.C., 20531, (202) 354-4380, askOCR@ojp.usdoj.gov.

If you have any questions regarding this letter, please contact Ericka Farrell of my staff at (202) 564-0717, via e-mail at farrell.ericka@epa.gov, or mail at U.S. EPA, Office of Civil Rights, Washington, D.C., 1200 Pennsylvania Avenue, N.W., Mail Code 1201A, Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

Enclosures

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

OFFICE OF
CIVIL RIGHTS

MAY - 5 2015

RETURN RECEIPT REQUESTED
Certified Mail # 7009 2820 0002 1759 1636

In Reply Refer to:
EPA File No: 09R-14-R4

Mr. Michael Alston
U.S. Department of Justice
810 Seventh Street, N.W.
Washington, D.C. 20531

Re: REFERRAL OF ADMINISTRATIVE COMPLAINT

Dear Mr. Alston:

On July 7, 2014, the U.S. Environmental Protection Agency's (EPA) Office of Civil Rights (OCR) received the attached correspondence from (b) (6) - Privacy [redacted] which OCR construed as a complaint The complaint alleges that the Green Correctional Institute fails to stop polluting the air, in part, because it allows non-licensed individuals to work on the HVAC system.

EPA does not provide financial assistance to the Green Correctional Institute and therefore cannot accept the complaint for investigation. However, during EPA's preliminary review of this complaint, OCR became aware that the Green Correctional Institute may receive financial assistance from the U.S. Department of Justice (DOJ). Therefore, OCR is referring it to your office for your review and any action that you believe is appropriate. A copy of the complaint is enclosed and the Complainant is copied on this letter to notify him that we are forwarding it DOJ.

If you have any questions about this letter, please contact Helena Wooden-Aguilar, Assistant Director, OCR External Compliance, or have your staff contact Ericka Farrell at 202-564-0717, via email at farrell.ericka@epa.gov or by mail to the U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Velveta Golightly-Howell
Director

Enclosure

cc: (b) (6) - Privacy

Greene CI (b) (6) - Privacy
(b) (6) - Privacy
Maury, North Carolina 28554

Create Control - Data Entry

Control Number: OCR-14-001-1884 **Alternate Number:**

Citizen Information

Citizen/Originator: 1) [redacted] - P.O. Box 39, Maury, NC 28554 **Search Citizen**

Constituent: **Search Constituent**

Committee:

Sub-Committee:

Control Information

Status: Pending *

Letter Date: Jun 27, 2014 * **Received Date:** Jul 7, 2014

Contact Type: LTR (Letter) * **Priority Code:** Normal *

Addressee: US/EPA Office of Civil Rights (+) **Addressee Org:** 1200 Penn Avenue, NW WD

File Code: 108-025-08_497_a Discrimination Complaints - External Record Copy *

Signature: (+)

CC: **Search CC**

Signature Date: Date

Primary Subject: Discrimination Complaint (+) *

Secondary Subject: (+)

Instructions: NRN-No Response Necessary (+) *

Instruction Notes:

General Notes: This control is assigned to title 6 for appropriate action

*: Required field
(+): Lookup field, press space bar for complete list

Save **Continue and Assign** **Cancel**

U.S. Environmental Protection Agency
Office of Civil Rights
1200 Pennsylvania Avenue, NW, Room 2540
Washington, D.C. 20460

[redacted]

PO Box 39
Maury, N.C. 28554

Re: Pollution Control and prevention,

They have a inmate doing "HV AC" none license releasing freon into the air is it not against the law to release freon into the air. This go on regular in the "HV AC". This need to be look at as soon as possible.

This place is own by the State of North Carolina. You might need to send one of your people hear at Greene CI. The building are design for AC and only one is working because of the leak. The need to stop polluting the air.

RECEIVED JUL - 7 2014

I HEREBY CERTIFY that the above stated matter are true and correct to the best of information, knowledge and belief.

[redacted]

This the 27 day of June 2014

[redacted]

Greene C.I.
P.O. Box 39
Maury, N.C. 28554

"Legal Mail"

COASTAL CAROLINA AREA
NC 283
MAILED FROM GREENE CORRECTIONAL INSTITUTION

JUN 07 2014

U.S. Environmental Protection Agency
Office of Civil Rights 1201A
1200 Pennsylvania Avenue, NW, Room 2540
Washington, D.C. 20460

Christopher Winter, OSB # 984355
Crag Law Center
chris@crag.org
(503) 525-2725
917 SW Oak Street, Suite 417
Portland, OR 97205
Fax: (503) 296-5454

Attorney for Complainant

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEYOND TOXICS, Complainant, vs. **LANE REGIONAL AIR PROTECTION AGENCY**, Respondent.	COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, 42 U.S.C. Section 2000d, 40 C.F.R. Part 7, and 59 C.F.R. 7629. *In Re: the February 11, 2014 modification of Seneca Sustainable Energy's Permit No. 206470.*

I. INTRODUCTION

This is a complaint by Beyond Toxics under Title VI of the Civil Rights Act of 1964 and the U.S. Environmental Protection Agency's implementing regulations, alleging discrimination by Lane Regional Air Protection Agency in its February 11, 2014 modification of Standard Air Contaminant Discharge Permit number 206470. The permit allows Seneca Sustainable Energy ("SSE") to emit fine particulate matter ("$PM_{2.5}$"), a pollutant that is harmful to human health. Lane Regional Air Protection Agency ("LRAPA") is responsible for permitting emissions of $PM_{2.5}$ and other pollutants in Lane County, Oregon. LRAPA, a recipient of financial assistance from the United States Environmental Protection Agency ("EPA"), approved the issuance and subsequent

modification of SSE's permit for the emission of $PM_{2.5}$ without analyzing the potential for disproportionate environmental and human health effects on nearby environmental justice communities. LRAPA was required by Title VI and EPA's implementing regulations to consider these disproportionate effects. To comply with Title IV, LRAPA should have conducted air quality modeling and a disproportionate impacts analysis with respect to the emissions but did not do so in this case.

LRAPA's action has an adverse impact that is discriminatory on the bases of race, color, or national origin, and on the basis of economic status. Under the permit approved by LRAPA, residents living near and within the West Eugene Industrial Corridor will be exposed to $PM_{2.5}$ in amounts that are likely to threaten human health. $PM_{2.5}$ emissions are linked to numerous health concerns including early death, cardiovascular and respiratory diseases, and cancer. West Eugene Industrial Corridor residents are disproportionately Latino and low-income compared to other areas of Eugene.[1] Therefore, LRAPA's decision to approve the permit modification disparately impacts minority and low-income communities in violation of Title VI.

II. THE COMPLAINANT

Complainant Beyond Toxics is an Oregon non-profit membership organization that works for environmental justice for vulnerable communities. Founded in 2001, its constituents include urban minority and low-income communities, such as those in the West Eugene Industrial Corridor. Beyond Toxics works for just solutions that involve

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[1] *See* Livability Lane, *Equity and Opportunity Assessment: Social and Demographic Characteristics, Latino Population*. http://www.livabilitylane.org/files/FULL%20MAPS/SocialDemographics/EOA_SocialDemMaps_6dec13%201.pdf (last visited July 17, 2014); *see also*, Livability Lane, *Equity and Opportunity Assessment, Income and Poverty*. http://www.livabilitylane.org/files/FULL%20MAPS/Income_Poverty/OEA_Income_poverty_Ma ps_6dec13%202.pdf (last visited July 17, 2014).

and empower impacted communities. Beyond Toxics documents environmental injustices and uses community-based research to empower communities receiving disproportionate exposures to toxics pollutants. The group has been a community organizer in West Eugene since 2004. In 2010, Beyond Toxics received an U.S. Environmental Protection Agency environmental justice grant to gather environmental health data in the West Eugene Industrial Corridor. A second environmental justice grant was awarded in 2011. The environmental justice project resulted in a number of accomplishments that increased civic participation and gathered important environmental health data. In 2012, Beyond Toxics organized the first Environmental Justice Bus Tour project, which brought elected officials into industrial communities to meet low-income and Latino families fighting for an equal right to clean air and struggling to reduce high asthma rates amongst Latino school children. The environmental justice project also canvassed over 400 West Eugene families to gather data for the Beyond Toxics report, "Environmental Justice in West Eugene: Families, Health and Air Pollution."[2] The report provides evidence of significant health disparities between children in the Eugene 4-J School District and the West Eugene Bethel School District, and discusses correlations between schools with higher asthma rates and proximity to industrial pollution point sources. Beyond Toxics also documented minority populations and proximity to brownfield and industrial areas in the report "Brownfield Redevelopment and Community Involvement: A Case Study in the

[2] Beyond Toxics and Centro Latino Americano, "Environmental Justice in West Eugene: Families Health and Air Pollution, 2011-2012" http://www.beyondtoxics.org/wp-content/uploads/2013/07/EnvJusticeWestEugene-FamiliesHealthAirPollution_FULLreport_FINALwebres.pdf

City of Eugene, Oregon."[3] These reports provide detailed data about environmental justice and recommendations to state and local agencies to improve environmental and public health for the residents in West Eugene. Beyond Toxics is a partner with the City of Eugene and the Brownfield Coalition to assess potential brownfield sites, a project funded by the U.S. EPA. In 2013-2014, the organization is partnering with local civic groups, Bethel neighborhood association and the U.S. EPA to test soils in West Eugene for heavy metals, a project developed in response to residents' request to determine if soils are safe for gardening. This project benefits vulnerable residents by providing soil analysis paired with bilingual gardening workshops and education about nutrition, environmental health and local food security.

III. TIMELINESS OF COMPLAINT

This compliant is timely filed because LRAPA's most recent discriminatory action occurred on February 11, 2014, when it approved the modification of SSE's Standard Air Contaminant Discharge Permit. This filing is within the 180-day filing period for a Title VI complaint as required under 40 C.F.R. § 7.120(b)(2) and 24 C.F.R. § 1.7(b).

IV. FINANCIAL ASSISTANCE

LRAPA must comply with EPA's Title VI implementing regulations because LRAPA regularly receives federal funding. LRAPA received a federal grant of $284,088 in the year 2012-2013, and expects to receive $278,458 in 2013-2014.[4]

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[3] Groth, Kelly for Beyond Toxics and Centro Latino Americano, June, 2013. Brownfield Redevelopment and Community Involvement: A Case Study in the City of Eugene, Oregon (A Environmental Justice White Paper).

[4] Exhibit A, LRAPA, *Annual Budget 2014-2015* 17, http://www.lrapa.org/downloads/s/ADOPTED_BUDGET_POST_WEB.pdf (last visited July 10, 2014).

V. FACTS

A. The Community

Approximately 30,000 people live in the West Eugene Industrial Corridor, which is comprised of three neighborhoods: Bethel-Danebo, Trainsong, and parts of River Road.[5] This area has a disproportionately high percentage of minority residents and a disproportionately high poverty rate compared to minority and poverty rates in Eugene's overall population.[6]

In Eugene as a whole, 7.8 percent of the population is of Hispanic or Latino ethnicity.[7] In the West Eugene Industrial Corridor, this percentage rises to between 11 and 37 percent.[8] The Eugene-Springfield 2010 Consolidated Plan identifies "Areas of Racial and Ethnic Concentration" based on data from the 2000 Census.[9] These concentrations exist along the West Eugene Industrial Corridor.[10] This area has an overall Latino / racial minority population in the 50 to 73.5 percent range.[11] Furthermore, the current number and proportion of Latinos in West Eugene may be higher than these

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[5] *See* Exhibit B: *Map of Eugene/Springfield.*

[6] *See* City of Eugene et. al., *2005 Eugene-Springfield Housing, Homeless, and Community Development Five-Year Strategic Plan* ("2005 Consolidated Plan") at 27, 32 http://www.ci.springfield.or.us/dsd/housing/img/ConPlan2005-2.pdf (last visited July 10, 2014).

[7] U.S. Census Bureau, *Eugene City Census Designated Place, Oregon* http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=DEC_10_SF1_QTP3 (last visited July 18, 2014).

[8] Livability Lane, *Equity and Opportunity Assessment: Social and Demographic Characteristics, Latino Population*. http://www.livabilitylane.org/files/FULL%20MAPS/SocialDemographics/EOA_SocialDemMaps_6dec13%201.pdf (last visited July 17, 2014).

[9] City of Eugene et. al., *Adopted Eugene-Springfield Consolidated Plan 2010* 28-9, http://www.ci.springfield.or.us/dsd/housing/img/ConPlan2005-2.pdf (last visited July 10, 2014).

[10] *Id.* at 29.

[11] Cities of Eugene and Springrield, *Eugene-Springfield One-Year Action Plan 2013-14: An Action Plan for Housing and Community Development.* Appendix G at 169 (October 2012). http://www.ci.springfield.or.us/dpw/HousingBlockGrants/SupportFiles/2013_OYAP_Complete.pdf (last visited July 17, 2014).

figures indicate due to underreporting of undocumented residents.

West Eugene is economically depressed, and a disproportionately high number of its residents live in poverty. The average poverty rate in Eugene is 23.1 percent.[12] In areas of the West Eugene Industrial Corridor, the rate rises between 40-68% below the poverty line.[13] Overall, residents of the West Eugene Industrial Corridor are disproportionately economically vulnerable.[14]

Residents of the West Eugene Industrial Corridor are also disproportionately affected by industrial pollution: they are exposed to 99% of all the air pollution in Eugene.[15] The majority of the industrial uses are located in west Eugene or the Highway 99 corridor. In 2013, of the thirty-one facilities reporting to the City's Toxics Right-to-Know Program, all but one facility is located in the West Eugene area. In 2013, 705,168 pounds of chemicals released through the environment (air, water, on-site disposal) in West Eugene, which accounts for over 99% of the City's entire air toxic emissions captured by the Toxics Right-to-Know Program. A total of 486,292 pounds of chemicals (69% of environmentally-released chemicals) were released into the air.[16]

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[12] United States Census, Quickfacts on Eugene, Oregon, http://quickfacts.census.gov/qfd/states/41/4123850.html (last visited July 30, 2014).

[13] Livability Lane, *Equity and Opportunity Assessment, Income and Poverty*, http://www.livabilitylane.org/files/FULL%20MAPS/Income_Poverty/OEA_Income_poverty_Maps_6dec13%202.pdf (last visited July 17, 2014). (Showing that parts of Trainsong fall into a census tract that is in the high range with 40-68% of the population below the poverty line.)

[14] Livability Lane, *Equity and Opportunity Assessment: Income and Poverty: Economic Vulnerability* composite map. http://www.livabilitylane.org/files/FULL%20MAPS/Composites/EOA_Composites_2_14_2IncomePoverty.pdf (last visited July 17, 2014).

[15] Beyond Toxics and Centro Latino Americano, *Environmental Justice in West Eugene: Families, Health and Air Pollution* 18 (2011-12), http://www.beyondtoxics.org/wp-content/uploads/2013/07/EnvJusticeWestEugeneFamiliesHealthAirPollution_FULLreport_FINALwebres.pdf (last visited July 18, 2014).

[16] City of Eugene, 6/30/ 2014. Environmental Justice Issue Briefing: Urban Growth Boundary Expansion Analysis: Clear Lake Road Area-Draft. p. 3

This disproportionate exposure to pollution is reflected in the high rate of illness among West Eugene communities. In the Bethel school district in Northwest Eugene, for example, the rate of asthma prevalence is 14.3%. By comparison, the average rate of asthma prevalence in the 4J school district, which includes most of Eugene, is 8.1%.[17]

West Eugene residents have for many years expressed their concern over the health effects of the pollutants in their neighborhoods. A 2010 report on air quality in the Trainsong neighborhood, prepared by the Oregon Department of Human Services' Environmental Health Assessment Program, reported that residents complained of high rates of ailments including asthma; difficulty breathing; eye, nose, and throat irritation; allergies; sinus infections; nausea; headaches; dizziness; anemia; immune system impairment; brain cancer; and acute myeloid leukemia.[18] Residents have raised concerns over contaminants including creosote; pentachlorophenol, polycyclic aromatic hydrocarbons, and dioxins; hazardous air pollutants including benzene, toluene, PCE, TCE, and formaldehyde; diesel particulate; metals including arsenic, lead, chromium, and manganese; and herbicides and pesticides; as well as particulate matter.[19]

B. The Regulatory History and Health Effects of Fine Particulate Matter ("$PM_{2.5}$")

The Clean Air Act ("CAA") requires EPA to establish national air quality standards to protect public health and welfare.[20] The CAA established the National

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[17] *Id.* at 30.

[18] Oregon Dept. of Human Services, *Health Consultation: Trainsong Indoor Air Assessment* (2010), http://www.atsdr.cdc.gov/HAC/pha/UnionPacificRailroadCompany0121201 0/UnionPacificRailroadCoFinalHC01-21-2010.pdf (last visited July 10, 2014).

[19] *Id.* at 9.

[20] *Id.* at 3088; *see also Whitman v. Am. Trucking Associations*, 531 U.S. 457, 473 (2001).

Ambient Air Quality Standards ("NAAQS") for pollutants considered harmful to human health and the environment.[21] EPA has recognized $PM_{2.5}$ as a uniquely harmful category of pollutant since 1997, when it determined that PM_{10} (coarse particulate matter) standards alone were inadequate to protect public health and established annual and 24-hour NAAQS for $PM_{2.5}$.[22] EPA cited data showing that $PM_{2.5}$ poses unique health risks and is more dangerous to human health than PM_{10}.[23] EPA noted that significant adverse health effects occurred even in areas where the existing PM_{10} standards were met, and stated that public health concerns required the addition of the fine particulate matter standard.[24]

Exposure to $PM_{2.5}$ affects human heart and lung function. $PM_{2.5}$ is composed of particles less than 2.5 micrometers in diameter, making it the most dangerous type of particulate matter because these particles travel easily into the lungs and can also enter the bloodstream.[25] Both long- and short-term exposure to $PM_{2.5}$ can result in numerous negative health effects, including premature death.[26]

$PM_{2.5}$ exposure harms the cardiovascular system. Long-term exposure has been

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[21] 42 U.S.C.A. § 7409.

[22] National Ambient Air Quality Standards for Particulate Matter, 62 Fed. Reg. 38,652 (July 18, 1997) ("1997 Final Rule").

[23] National Ambient Air Quality Standards for Particulate Matter: Proposed Decision, 61 Fed. Reg. 65,638, 65,648-9 (December 13, 1996).

[24] 1997 Final Rule at 38,657.

[25] United States Environmental Protection Agency, *Particulate Matter: Health* (2014), http://www.epa.gov/airquality/particulatematter/health.html (last visited July 10, 2014).

[26] National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3086, 3103 (Jan. 15, 2013) (codified at 40 C.F.R. Parts 50, 51, 52, 53 and 58) ("2013 Final Rule").

linked to health effects including heart attacks, congestive heart failure, stroke, and cardiovascular-related mortality. Short-term exposure is similarly associated with effects "ranging from subtle changes in indicators of cardiovascular health to serious clinical events, such as increased hospitalizations and emergency department visits due to cardiovascular disease and cardiovascular mortality."[27]

$PM_{2.5}$ exposure likely also harms the respiratory system. Long-term exposure is linked to increased asthma development and respiratory symptoms including death. Even short-term $PM_{2.5}$ exposure is associated with increased emergency room visits and hospital admissions for chronic obstructive pulmonary disease and respiratory infections.[28]

In addition, the scientific data suggests a causal relationship between long-term $PM_{2.5}$ exposure and developmental and reproductive effects. This exposure is associated with low birth weight and infant mortality, particularly as a result of respiratory problems.[29] Studies have also shown a positive association between $PM_{2.5}$ exposure and carcinogenic, mutagenic, and genotoxic effects; for example, $PM_{2.5}$ exposure is linked to lung cancer mortality.[30]

Certain groups are particularly at risk for experiencing adverse health effects as a result of $PM_{2.5}$ exposure. In addition to populations traditionally identified as vulnerable, such as children and older adults, current data supports the identification of additional at-

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[27] 2013 Final Rule; 78 Fed. Reg. at 3103.

[28] *Id.*

[29] *Id.* at 3104.

[30] *Id.*

risk groups, including people with lower socioeconomic status.[31] This compounding factor is particularly relevant for environmental justice communities.[32] When entire communities are affected by $PM_{2.5}$ emissions, the public health costs can be significant.[33]

Today, the EPA states that "[i]nhalable particles, particularly fine particles, have the greatest demonstrated impact on human health."[34] In addition to EPA's annual and 24-hour primary standards, set to protect public health, EPA also regulates $PM_{2.5}$ through annual and 24-hour secondary standards, which are calibrated to protect public welfare (including protection against decreased visibility and damage to property or vegetation).[35] These standards are complemented by EPA's regulation of coarse particulate matter, which is between 2.5 and 10 micrometers in diameter. The agency sets an allowable maximum level of $PM_{2.5}$, measured in micrograms per cubic meter of air (μ g/m^3).[36]

Since its initial regulation in 1997, EPA has continued to study the effects of $PM_{2.5}$ and revise its regulations periodically. In 2006, the agency decreased the primary 24-hour $PM_{2.5}$ standard from 65 to 35 μ g/m^3 and revised the Air Quality Index to reflect this change, directing states to revise their implementation plans accordingly.[37] States are

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[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] United States Environmental Protection Agency, *Particulate Matter (PM) Research* (2013), http://www.epa.gov/airscience/air-particulatematter.htm (last visited July 10, 2014).

[35] United State Environmental Protection Agency, National Ambient Air Quality Standards (2012), http://www.epa.gov/air/criteria.html (last visited July 10, 2014).

[36] 2013 Final Rule at 3088.

[37] *Id.*

required to submit appropriate revisions of their State Implementation Plans within three years of NAAQS revisions.[38]

Following the 2006 promulgation, litigants challenged EPA's explanation of why its standards provided adequate health protection from $PM_{2.5}$, including protection for vulnerable subpopulations such as children.[39] The court remanded the primary annual $PM_{2.5}$ standard to EPA for reconsideration. As a result, EPA initiated a comprehensive review of the science on fine particulate matter.

EPA prepared multiple drafts of Integrated Science Assessments, Risk and Exposure Assessments, and Policy Assessments, which were peer reviewed by the independent Clean Air Scientific Advisory Committee.[40] In 2013, EPA promulgated a rule strengthening the regulation of $PM_{2.5}$, lowering the primary annual standard for $PM_{2.5}$ emissions from 15.0 to 12.0 $\mu g/m^3$.[41] EPA retained the 24-hour $PM_{2.5}$ standard established in 2006 (35 $\mu g/m^3$).[42]

C. Permitting History

The Lane Regional Air Protection Agency is responsible for issuing permits for, among other pollutants, $PM_{2.5}$ emissions. LRAPA's mission is "[T]o protect public health, community well-being, and the environment as a leader and advocate for the

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[38] Environmental Protection Agency, *State Implementation Plan Development Process* http://www.epa.gov/airquality/urbanair/sipstatus/process.html (last visited July 18, 2014).

[39] *Id.*; *see also Am. Farm Bureau Fed'n v. E.P.A.*, 559 F.3d 512 (D.C. Cir. 2009).

[40] 2013 Final Rule at 3088.

[41] *Id.*; *see also* United States Environmental Protection Agency, *Revised Air Quality Standards for Particle Pollution and Updates to the Air Quality Index* (2013), http://www.epa.gov/airquality/particlepollution/2012/decfsstandards.pdf (last visited July 10, 2014).

[42] 2013 Final Rule at 3088.

improvement and maintenance of air quality in Lane County."[43]

In October 2009, LRAPA issued a permit for Seneca Sustainable Energy's cogeneration power plant ("the facility"), which would house a wood-fired boiler and steam turbine power plant and emit fine particulate matter and other hazardous pollutants. In reviewing the original pre-construction permit, LRAPA did not conduct an analysis to determine whether the facility would have a disproportionate impact on communities in the nearby Industrial Corridor area, as required by Title VI of the Civil Rights Act and EPA's implementing regulations.[44] The original permit allowed SSE to emit a total of 14 tons of PM/PM_{10} per year.[45] As discussed below, LRAPA did not separately regulate $PM_{2.5}$ at the time it issued the original permit for SSE. Beyond Toxics participated extensively in this original permitting process.

On May 3, 2013, SSE submitted a Permit Modification Application. This application stated that the power plant would produce 16.6 tons of $PM_{2.5}$ per year and 16.6 tons of PM_{10} per year.[46] LRAPA provided public notice of the completed application on June 10, 2013, and the public comment period extended to November 22, 2013. A public hearing was held on October 16, 2013.[47] Beyond Toxics submitted comments on

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[43] LRAPA, *About LRAPA* (2014), http://www.lrapa.org/about_LRAPA/index.php (last visited July 10, 2014).

[44] Exhibit C: LRAPA, Standard Air Contaminant Discharge Permit Review Report for Permit No. 206470 at Attachment A: Responses to Comments Received 7 (2014), http://www.lrapa.org/downloads/permits/SSE_206470_Adden_No._1_and_Review_Report_ with_Attach_A_and_B.pdf (last visited July 10, 2014) ("2014 Review Report").

[45] Exhibit D: LRAPA, Modified Standard Air Contaminant Discharge Permit No. 206470 6 (2014), http://www.lrapa.org/downloads/permits/SSE_206470_Adden_No._1_and_Permit.pdf.

[46] Exhibit E: Seneca Sustainable Energy, Request for Revisions to Standard Air Contaminant Discharge Permit No. 206470 (2013).

[47] 2014 Review Report at 19.

the environmental justice and public health concerns raised by the proposed modification, requesting that LRAPA conduct a disproportionate impacts analysis under Title VI.[48] In February, 2014, LRAPA approved a modification of the permit that allows SSE to emit 16 tons of $PM_{2.5}$ per year, an increase of at least 2 tons per year.[49] LRAPA again did not conduct a disproportionate impacts analysis when reviewing SSE's application for the permit modification.

VI. ARGUMENT

Recipients of federal funding are prohibited from taking actions that have a discriminatory impact on minority populations. Title VI of the Civil Rights Act of 1964 states:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving any Federal financial assistance.[50]

EPA's implementing regulations further prohibit recipients of EPA funding from discriminating. Specifically, EPA's Title VI regulations provide that an EPA funding recipient

> ...shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex.[51]

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[48] *See* Exhibit F: Beyond Toxics, Comments on Application for Modification of Air Contaminant Discharge Permit for Seneca Sustainable Energy, LLC (November 22, 2013).

[49] *Id.*

[50] 42 U.S.C. Section 2000d.

[51] 40 C.F.R. §7.35(b).

In addition to these protections, Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority and Low-Income Populations," provides:

> 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….[52]

LRAPA's decision to approve SSE's permit modification violates the Agency's statutory and regulatory duty to administer all programs and activities in a nondiscriminatory manner. Furthermore, LRAPA failed to satisfy E.O. 12898's requirement that federal agencies identify disproportionate affects because it failed to even conduct an analysis of the effects of the $PM_{2.5}$ emissions.

A. LRAPA unlawfully approved SSE's permit application without addressing the disproportionate impact of $PM_{2.5}$ emissions on Latino and low-income communities.

Despite the well-known and unique health threats posed by emission of $PM_{2.5}$, LRAPA approved the permit modification, and the addition of two tons of $PM_{2.5}$ per year into the West Eugene community, without conducting any analysis of health effects from exposure to $PM_{2.5}$ or any disproportionate impacts analysis. LRAPA failed to conduct any modeling of air quality impacts relative to $PM_{2.5}$, nor did LRAPA require the permittee to conduct any such modeling. Instead, LRAPA assumed that the project would not have a disproportionate impact on environmental justice communities based on its arbitrary conclusion that "…there would be no significant adverse impacts to any community, regardless of demographic makeup," a statement that was issued by the

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[52] Exec. Order No. 12898, 59 C.F.R. 7629 (1994).

agency after Beyond Toxics had raised this issue during the public comment period.[53] The draft permit documents published by LRAPA did not raise or identify the issue of disproportionate impacts at all.

Instead of conducting a disproportionate impacts analysis for $PM_{2.5}$, LRAPA asserts it only had an obligation to regulate for PM_{10} and therefore can ignore the unique health threats posed by $PM_{2.5}$. The Agency does not contest that it failed to model and analyze the impact of $PM_{2.5}$ emissions on Industrial Corridor neighborhoods. LRAPA asserts that the facility was originally permitted in 2009, "prior to adoption of the $PM_{2.5}$ as a regulated pollutant in LRAPA's rules and regulations."[54] On that basis, even though the permit modification was authorized in 2014, LRAPA states that due to its own policy regarding particulate matter, it had no obligation to consider the unique threats from $PM_{2.5}$. LRAPA argues that it did not have to conduct a disproportionate impacts analysis because it complied with its own existing policy regarding particulate matter.[55]

LRAPA's attempt to rely on compliance with an outdated NAAQS for PM_{10} is flatly inconsistent with the Office of Civil Rights ("OCR's") recently issued draft guidance document, OCR's preliminary findings from a recent Title VI case, and persuasive authority from the Environmental Appeals Board. Furthermore, LRAPA cannot avoid its responsibility to conduct a disproportionate impacts analysis by arguing that it purchased offsets as emissions reductions credits.

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[53] 2014 Review Report at Attachment A: Responses to Comments Received 2.

[54] *Id.*
[55] *Id.*

1. LRAPA's decision is inconsistent with OCR's guidance document "Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental Health-Based Thresholds".

Prior to 2013, OCR's draft guidance documents reflected a rebuttable presumption that compliance with the NAAQS indicated that the adverse effects required for a Title VI complaint were not present. In a draft guidance document issued in 2013, OCR explicitly eliminated this presumption, stating that EPA "will no longer presume an absence of adversity if a NAAQS (or another health-based threshold) is satisfied."[56] Instead, compliance with such standards is now evaluated along with other relevant factors. EPA explained "presuming compliance with civil rights laws wherever there is compliance with environmental health-based thresholds may not give sufficient consideration to other factors that could also adversely impact human health."[57]

Therefore, even if LRAPA had relied on its compliance with the current NAAQS, this fact alone would not be sufficient to ensure compliance with Title VI requirements under OCR's draft policy, because low income communities are considered to be at particularly high risk for exhibiting health impacts from exposure to $PM_{2.5}$ and because West Eugene communities are already struggling with the cumulative effects of multiple sources of pollution. Here, however, the facts are even more egregious, as LRAPA has assumed the absence of adverse health effects based on standards that are many years out of date without performing any analysis of impacts attributable to exposure to $PM_{2.5}$. There is simply no factual basis in the record for this permit modification for LRAPA's

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[56] Environmental Protection Agency, *Title VI of the Civil Rights Act of 1964: Adversity and Compliance with Environmental and Health-Based Thresholds* 4, January 24, 2013, http://www.epa.gov/ocr/docs/pdf/t6.adversity_paper1.24.13.pdf (last visited July 18, 2014).

[57] *Id.*

assumption that the emissions of an additional 2 tons per year of fine particulate matter in a residential community in West Eugene will not result in disproportionate effects.

2. LRAPA's decision is inconsistent with OCR's preliminary findings with regard to a similar environmental justice complaint.

In its preliminary findings pursuant to an environmental justice complaint concerning the disparate impacts of the pesticide methyl bromide, OCR explained that "compliance with federal and/or state environmental regulations, does not, by itself, ensure compliance with Title VI."[58] The complainants in *Angelita C. et. al. v. California Department of Pesticide Regulation* alleged that the Department's renewal of the registration for methyl bromide imposed a disproprotionate impact on Latino schoolchildren who attended schools that were within 1.5 miles of where methyl bromide was applied.[59] After noting that compliance with state law is not determinative, OCR then conducted its own independent analysis through preparation of a methyl bromide exposure model, reaching a preliminary finding of a *prima facie* violation of Title VI. OCR's analysis did not rely upon whether or to what extent CDPR complied with state regulations.

Similarly, LRAPA is subject to Title VI and its implementing regulations, and supposed compliance with its own out of date regulations on fine particulate matter does not equate with compliance with Title VI. LRAPA was required to make an independent assessment of and conclusion regarding disproportionate impacts, and complainants here request that OCR conduct that analysis where LRAPA has failed to do so in resolving

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[58] United States Environmental Protection Agency, Re: Title VI Complaint 16R-99-R9 (prelim) (2011), http://www.epa.gov/ocr/TitleVIcases/title6-c42211-preliminary-finding.pdf (last visited July 10, 2014).

[59] *Angelita C. et. al. v. California Dept. of Pesticide Regulation*, 5.

this complaint.

3. LRAPA's decision is inconsistent with the Environmental Appeals Board's decision in *In Re Shell Gulf of Mexico, Inc.*

The Environmental Appeals Board has determined that when the EPA Administrator has proposed a more stringent standard, compliance with the previous standard is not sufficient to demonstrate that a population will not experience disproportionate effects from the permitted activity.[60]

In *In Re Shell Gulf of Mexico, Inc.*, the permitting agency maintained that it did not have to conduct an environmental justice analysis because the permitted activity did not exceed the pollutant levels allowed by the existing NAAQS, even though the Administrator had proposed, but not finalized, a stricter standard.[61] The EPA Environmental Appeals Board found that technical compliance was inadequate for compliance with Executive Order 12898, and ordered the agency to complete an environmental justice analysis.[62]

As the Board noted in *Shell*, EPA sets the NAAQS using scientific expertise to ensure that the primary standard protects public health within an adequate margin of safety.[63] The 2006 $PM_{2.5}$ NAAQS revision was based on rigorous scientific study, and the Administrator determined that the previous, 65 $\mu g/m^3$ 24-hour primary standard was inadequate to protect human health.[64]

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[60] *See In re Shell Gulf of Mexico Inc.*, No. 1550, 2010 WL 9564110 (Environmental Appeals Board 2010).

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] 2006 Final Rule.

The *Shell* decision pointed out that information concerning the health risks of the pollutant was made available to the public prior to the permit's issuance. Here as well, EPA published the information on health effects of $PM_{2.5}$ that prompted the new standard in 2006, more than 7 years before the permit modification at issue here.[65] LRAPA issued SSE's original permit in 2009, and approved its permit modification in 2014. LRAPA was well aware of the unique health risks posed by $PM_{2.5}$ and yet made no effort to address squarely those risks in approving the modification of SSE's permit.

In *Shell*, the Board stated that the agency's environmental justice analysis was insufficient because the permitting agency relied on its compliance with the earlier standard. Here, LRAPA claims, on the same basis, that it is not required to conduct an environmental justice analysis because it complied with the applicable (and outdated) standards that it asserts applied at the time the original permit was issued in 2009. Just as in the *Shell* case, technical compliance with an outdated standard does not excuse the permitting authority from conducting a reasoned disproportionate impacts analysis.

4. LRAPA is required to conduct a disproportionate impacts analysis despite SSE's purchase of PM_{10} offsets.

LRAPA argues that air quality modeling and impacts analysis are unnecessary because SSE purchased offsets as emissions reductions credits.[66] LRAPA states that SSE purchased offsets at a ratio of two offsets per each unit of emissions.[67] However, the

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[65] *Id.*

[66] 2014 Review Report at Attachment A: Responses to Comments Received 5 (2014), http://www.lrapa.org/downloads/permits/SSE_206470_Adden_No._1_and_Review_Report_with_Attach_A_and_B.pdf (last visited July 10, 2014).

[67] *Id.* at 6.

purchase of offsets, without more, is not a substitute for air quality modeling and a disparate impacts analysis. Furthermore, the facility from which the offsets were purchased by SSE is located in Springfield, Oregon, approximately thirteen miles from the impacted communities.[68] The community in which the offset facility is located is predominantly white, with the proportion of Latino residents at 8.8 percent, much lower than in the West Eugene Industrial Corridor communities.[69] LRAPA is affirmatively and knowingly approving a shift in pollution from a predominantly white neighborhood to a heavily Latino community. The offsets relied upon by LRAPA here increase the severity of the disproportionate impacts – they do not eliminate those impacts. Finally, the offsets are for PM_{10} rather than $PM_{2.5}$, and therefore do not mitigate the unique health impacts of $PM_{2.5}$.[70]

B. The $PM_{2.5}$ emission increase will have adverse effects that will disproportionately impact Latino and low-income populations.

$PM_{2.5}$ is the most dangerous form of particulate matter because its small size allows it to pass easily into the bloodstream and the lungs.[71] Scientific studies of $PM_{2.5}$ exposure show that it is associated with numerous negative health effects, including mild and severe cardiovascular and respiratory symptoms and early death.[72] Even short-term exposure to $PM_{2.5}$ can cause problems such as chronic obstructive pulmonary disorder,

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[68] *See* Exhibit B, *Map of Eugene/Springfield.*

[69] US Census Bureau, *Zip Code Tabulation Area 97478* http://factfinder2.census.gov/faces/tables ervices/jsf/pages/productview.xhtml?pid=DEC_10_DP_DPDP1.

[70] Max Hueftle, LRAPA Permit Section Manager (ACDP/Title V), Statement at Seneca Sustainable Energy Public Hearing (Oct., 13, 2013).

[71] United States Environmental Protection Agency, *Particulate Matter: Health* (2014), http://www.epa.gov/airquality/particulatematter/health.html (last visited July 10, 2014).

[72] 2013 Final Rule at 3104.

respiratory infections, and cardiovascular disease.[73] Long-term exposure, which would be imposed on residents by SSE's facility, causes asthma, heart attacks and congestive heart failure, and stroke.[74] $PM_{2.5}$ exposure can cause early death as a result of harm to either the respiratory or cardiovascular systems.[75] $PM_{2.5}$ exposure is associated with early death as a result of harm to both the respiratory and cardiovascular systems. Studies have also linked $PM_{2.5}$ exposure to cancer and birth defects.[76] Vulnerable populations such as children and older adults are particularly at risk for these effects.[77] In establishing the $PM_{2.5}$ standard, EPA noted that there was no evidence of a threshold below which $PM_{2.5}$ exposure does not produce adverse health effects.[78] EPA adopted a regulatory framework reflective of this fact.[79]

Existing data demonstrates that air quality in the vicinity of the SSE facility is already worse than the air quality standard many days out of the year. The 2013 mean 24-hour $PM_{2.5}$ level in the region of the SSE facility was 8.3 $\mu g/m^3$.[80] The highest 24-hour level in 2013 was 54.6 $\mu g/m^3$, and the annual 98% percentile level was 40.2 μ

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[73] *Id.* at 3103.

[74] *Id.*

[75] *Id.*

[76] *Id.* at 3104.

[77] *Id.*

[78] National Ambient Air Quality Standards for Particulate Matter: Proposed Decision. 61 Fed. Reg. 65,638, 65,648-9 (December 13, 1996).

[79] 1997 Final Rule at 38670.

[80] LRAPA, *2013 Annual Report* 12, http://www.lrapa.org/downloads/annual_reports/'13_Annual_Report_web.pdf (last visited July 17, 2014); *see also* Oregon Department of Environmental Quality, *2013 Oregon Air Quality Data Sumaries* (July 2014) at 45 (Table 6).

g/m^3.[81] Because $PM_{2.5}$ is a "non-threshold"[82] pollutant, any increase the amount of $PM_{2.5}$ will increase the risk of adverse health effects. Here, the increase in $PM_{2.5}$ emissions by SSE means that some members of the West Eugene Industrial Corridor will experience adverse effects, particularly in light of the cumulative threats from other pollution in this community.

SSE's facility is located near the homes and schools of West Eugene Industrial Corridor residents. The nearest home is 1,500 feet away, and there are four elementary schools within three miles of the facility.[83] Because of this proximity the $PM_{2.5}$ emissions from SSE's facility will primarily impact these nearby communities, because they are in closest proximity to the facility. Residents of these neighborhoods are disproportionately Latino and low-income, so the effects of $PM_{2.5}$ emission will have a disproportionate impact on communities that are protected by Title VI.

Furthermore, the available data suggests that people with lower socioeconomic status might be particularly at risk of experiencing adverse health effects related to $PM_{2.5}$ exposure.[84] This compounding factor is particularly relevant for environmental justice communities, where families typically lack economic resources and access to health care.

C. LRAPA lacks a grievance procedure as required by law.

EPA's Title VI implementing regulations state that each recipient of EPA funding shall "adopt grievance procedures that assure the prompt and fair resolution of complaints

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[81] *Id.*

[82] *Id.* at 38688.

[83] *See* Exhibit B: *Map of Eugene/Springfield* (showing that Clear Lake Elementary School, Irving Elementary School, Howard Elementary, and Fairfield Elementary School are within three miles of the facility).

[84] *Id.*

which allege violation of this part."[85] LRAPA has adopted no such procedures and is therefore in violation of this regulation.

VII. REMEDIES

The resolution process as well as the outcome must treat impacted communities fairly. For justice to be done, impacted communities must have substantial involvement in the resolution process. EPA regulations authorize EPA to use any means authorized by law to obtain compliance with Title VI, including the termination of EPA funding.[86] The regulations also require any recipient of federal assistance that has previously discriminated to take affirmative action to remedy that discrimination.[87]

While the termination of federal funding is the ultimate remedy, we are aware that OCR attempts to identify other means of addressing possible violations of Title VI. In this instance, EPA should first ensure independent analysis of the disproportionate effects of the $PM_{2.5}$ emissions approved by LRAPA, ideally providing the Complainant and communities with the resources to review and assess the air quality modeling to be performed by OCR.

Once that modeling is completed with the input of the impacted communities and preliminary findings are issued, we would recommend that OCR consider requiring, at a minimum, the following steps in order to resolve this Title VI Complaint:

(1) Require that LRAPA revoke approval of the SSE permit modification;

(2) Require that LRAPA in any future consideration of a permit modification for

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[85] 40 C.F.R. § 7.90(a).

[86] 40 C.F.R. § 7.130(a).

[87] 40 C.F.R. § 7.35(a)(7).

SSE conduct a robust analysis of disproportionate impacts to West Eugene Communities, including cumulative impacts from other nearby permitted facilities regulated by LRAPA under the CAA and allow public comment on that disproportionate impacts analysis; and

(3) Require that LRAPA notify OCR of any proposed modifications to the SEE permit and allow OCR an opportunity to review and provide comments the disproportionate impacts analysis.

We are aware that EPA's regulations impose mandatory timelines for the issuance of preliminary findings.[88] We request that EPA complete its preliminary investigation within this time frame before engaging in discussions with LRAPA on informal resolution of this complaint.

EPA's regulations also authorize EPA to conduct a periodic compliance review of recipients' programs and activities.[89] In light of the serious Title VI violations described in this complaint, Beyond Toxics requests that EPA initiate a broader review of LRAPA's programs and activities to ensure compliance with Title VI of the Civil Rights Act. While we recognize that the revocation of EPA funding is an unusual remedy, in this case we believe that a broader compliance review of LRAPA's programs and activities may very well identify many other instances of civil rights violations, not the least of which is the original issuance of the SSE permit and other recent air quality permitting decisions. We believe that if OCR engages in this periodic compliance review that it may identify a pattern and practice of LRAPA ignoring its obligations under Title VI of the Civil Rights Act, and we strongly recommend that OCR consider exercising its

[88] 40 C.F.R. § 7.115(c)(1).

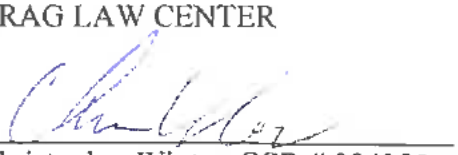
[89] 40 C.F.R. § 7.115(a).

discretion to revoke funding from LRAPA to ensure that West Eugene Communities are protected from discrimination moving forward and to ensure the LRAPA complies with federal civil rights law.

DATE: August 5, 2014

Respectfully submitted,

CRAG LAW CENTER



Christopher Winter, OSB # 984355
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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 25 2014

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-9025

In Reply Refer to:
EPA File No.: 10R-14-R10

Beyond Toxics
c/o Christopher Winter
Crag Law Center
917 SW Oak Street, Suite 417
Portland, Oregon 97205

Re: Partial Acceptance of Administrative Complaint

Dear Mr. Winter:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is accepting in part and rejecting in part the Administrative Complaint No. 10R-14-R10[1] filed against the Lane Regional Air Protection Agency (LRAPA) received on August 5, 2014. The complaint generally alleges that LRAPA violated Title VI of the Civil Rights Act of 1964, as amended 42 United States Code 2000d *et seq*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. (See 40 C.F.R. § 7.120(d)(1).) For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (See 40 C.F.R. § 7.120(b)(1).) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (See 40 C.F.R. §7.120(b)(2).) Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15.)

[1] The "Notification of Receipt of Administrative Complaint" that the OCR sent on August 8, 2014, erroneously referenced the case number as 10R-14-R9.

The EPA is accepting the following allegation for investigation:

> LRAPA's approval of a modification to Seneca Sustainable Energy's Permit No. 206470 had a disparate and adverse impact on Latino residents in the vicinity of the facility in violation of Title VI of the Civil Rights Act.

This allegation is accepted for investigation because it meets the EPA's four jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against LRAPA, an applicant for or recipient of EPA financial assistance.

While your complaint also alleges disproportionate impacts on "low-income communities," this allegation, if true, would not violate Title VI because income level is not a protected class under Title VI. The OCR also does not investigate alleged noncompliance with Executive Order 12898, which is generally applicable only to Federal agencies and is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Thus, the OCR cannot accept these allegations for investigation. The OCR will evaluate the remaining allegations related to LRAPA's compliance with procedural requirements of 40 C.F.R. Part 7, including maintenance of proper Title VI grievance procedures, in a compliance review. The OCR will provide further information on this compliance review under separate letter.

Pursuant to the EPA's nondiscrimination regulations, LRAPA may make a written submission to the OCR responding to, rebutting, or denying the allegations raised in the complaint. 40 C.F.R. § 7.120(d)(l)(ii). LRAPA may respond within thirty (30) calendar days of receiving this notice. 40 C.F.R. § 7.120(d)(l)(iii). Additionally, the EPA's nondiscrimination regulations provide that the OCR will attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

If you have any questions about the status of your complaint, please contact Jerett Yan of my staff at (202) 564-3113, via e-mail at yan.jerett@epa.gov, or via mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise Packard, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Michelle Pirzadeh, Deputy Civil Rights Official
EPA Region 10

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

AUG 25 2014

Return Receipt Requested
Certified Mail#: 7004-1160-0002-3622-9018

In Reply Refer to:
EPA File No.: 10R-14-R10

Mike Fleck
Chair, Board of Directors
Lane Regional Air Protection Agency
1010 Main Street
Springfield, Oregon 97477

Re: Partial Acceptance of Administrative Complaint

Dear Mr. Fleck:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) is accepting in part and rejecting in part Administrative Complaint No. 10R-14-R10[1] filed against the Lane Regional Air Protection Agency (LRAPA) received on August 5, 2014. The complaint generally alleges that LRAPA violated Title VI of the Civil Rights Act of 1964, as amended 42 United States Code 2000d *et seq*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations Part 7.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. (See 40 C.F.R. § 7.120(d)(1).) For a complaint to be accepted for investigation, the complaint must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (See 40 C.F.R. § 7.120(b)(1).) Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (See 40 C.F.R. §7.120(b)(2).) Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (See 40 C.F.R. § 7.15.)

[1] The "Notification of Receipt of Administrative Complaint" that the OCR sent on August 8, 2014, erroneously referenced the case number as 10R-14-R9.

The EPA is accepting the following allegation for investigation:

> LRAPA's approval of a modification to Seneca Sustainable Energy's Permit No. 206470 had a disparate and adverse impact on Latino residents in the vicinity of the facility in violation of Title VI of the Civil Rights Act.

This allegation is accepted for investigation because it meets the EPA's four jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against LRAPA, an applicant for or recipient of EPA financial assistance.

While the subject complaint also alleges disproportionate impacts on "low-income communities," this allegation, if true, would not violate Title VI because income level is not a protected class under Title VI. The OCR also does not investigate alleged noncompliance with Executive Order 12898, which is generally applicable only to Federal agencies and is intended only to improve the internal management of the executive branch and is not intended to, nor does it create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies, its officers, or any person. Thus, the OCR cannot accept these allegations for investigation. The OCR will evaluate the remaining allegations related to LRAPA's compliance with procedural requirements of 40 C.F.R. Part 7, including maintenance of proper Title VI grievance procedures, in a compliance review. The OCR will provide further information on this compliance review under separate letter.

Pursuant to the EPA's nondiscrimination regulations, LRAPA may make a written submission to the OCR responding to, rebutting, or denying the allegations raised in the complaint. 40 C.F.R. § 7.120(d)(l)(ii). LRAPA may respond within thirty (30) calendar days of receiving this notice. 40 C.F.R. § 7.120(d)(l)(iii). Additionally, the EPA's nondiscrimination regulations provide that the OCR will attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

If you have any questions about the status of the subject complaint, please contact Jerett Yan of my staff at (202) 564-3113, via e-mail at yan.jerett@epa.gov, or via mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

Sincerely,

Velveta Golightly-Howell
Director

cc: Elise Packard, Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Michelle Pirzadeh, Deputy Civil Rights Official
EPA Region 10

September 3, 2014

By email and Federal Express

Gina McCarthy
Administrator
Environmental Protection Agency
Mail Code 1102A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
mccarthy.gina@epa.gov

Velveta Golightly-Howell
Director, Office of Civil Rights
Environmental Protection Agency
Mail Code 1210A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Title_VI_Complaints@epa.gov

Dear Ms. McCarthy and Ms. Golightly-Howell:

Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, 40 C.F.R. Part 7

The North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help ("REACH"), and Waterkeeper Alliance, Inc. ("Complainants") submit this complaint against the North Carolina Department of Environment and Natural Resources ("DENR") for issuing a general permit that allows industrial swine facilities in North Carolina to operate with grossly inadequate and outdated systems of controlling animal waste and little provision for government oversight, which has an unjustified disproportionate impact on the basis of race and national origin against African Americans, Latinos and Native Americans in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and the United States Environmental Protection Agency's ("EPA") implementing regulations, 40 C.F.R. Part 7.

DENR currently allows more than 2,000 swine operations—with the collective capacity to raise more than 9.5 million swine in confinement—to operate within the state and,

particularly, in the coastal plain in the eastern portion of the state.[1] The permitted swine facilities generate a staggering amount of waste that wreaks havoc on the health and well-being of neighboring communities and the environment. Under the permit, these facilities can continue to store urine and feces in open-air cesspools, called lagoons, before spraying the waste on fields with high volume spreaders. At all steps of this so-called waste management system, waste from the facilities can pollute the air and water and injure human health.

For years, Complainants and other community members in eastern North Carolina have complained to DENR about the adverse effects of the swine industry on their health and environment and have implored the agency to provide greater protection. The eastern portion of the state contains counties that have more industrial swine facilities, and are more densely populated by swine, than anywhere else in the country.[2] Study after study has documented that the swine industry pollutes the air and water, interferes with the enjoyment of property, causes property values to plummet, and takes a toll on human health. Despite the research, and repeated requests that the agency revise the permit program to protect communities, in March of this year, DENR failed to conduct an analysis of the potential disproportionate impact of the permit and issued a permit with essentially the same conditions as previous permits, conditions that proved woefully inadequate to protect the health and environment of the affected communities. DENR did not require facilities to do away with the polluting lagoon and sprayfield system, or to make modifications that would prevent waste from escaping from the confinement houses, the high volume sprayers, the lagoons, the waste application fields, or any other of the many conduits for pollution. DENR also failed to impose rigorous government inspection and oversight to ensure that the swine facilities meet the meager protections in the permit, and to monitor the ways in which the facilities affect the environment and human health.

The effects of the swine industry on the health and environment of communities in eastern North Carolina are all the worse given the growth of the poultry industry in this region, and the cumulative impact of swine and poultry waste. More must be done to protect these communities, yet at the same time, the state has cut the number of inspectors at DENR, limiting the agency's ability to enforce even existing permit terms.

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[1] The current general permit expires on September 30, 2014. At the time this complaint was written, DENR had not published notice of the facilities that are covered under the revised permit, but, as described in footnote 26, *infra*, the number of permitted facilities is not expected to change. Complainants will supplement this complaint when DENR makes available a new list of covered facilities.

[2] *See* Feedstuffs, Hog Density by County (May 24, 2010), *available at* http://fdsmagissues.feedstuffs.com/fds/PastIssues/FDS8221/fds14_8221.pdf and http://fdsmagissues.feedstuffs.com/fds/PastIssues/FDS8221/fds15_8221.pdf (showing that ten counties in eastern North Carolina have the highest density of swine of all counties in the country).

Complainants believe that but for the race and national origin of the impacted population, which is disproportionately African American, Latino, and Native American, DENR would be more responsive to the crying need for stronger permit conditions. Given the high burden required to prove claims of intentional discrimination, however, Complainants do not at this time allege that DENR intentionally discriminated against communities of color in issuing the general permit. Nonetheless, this complaint should be understood in the context of a dynamic where race and ethnicity continue to play a role in governance and DENR's failure to be responsive to the need for improvement in waste management at industrial swine facilities. North Carolina is the birthplace of the environmental justice movement. It is in North Carolina that, in the early 1980s, DENR designated a predominantly African American community to receive soil contaminated with polychlorinated biphenyls ("PCBs"), leading to the formation of the Warren County Citizens Concerned about PCBs. This group turned to acts of civil disobedience to have their voices heard.

Since the early 1990s, African American, Latino, and Native American community members have sought greater protection from the adverse impacts of industrial swine production, but time and again their requests have been unanswered. Complainants hope that in the year 2014, the Office of Civil Rights will enforce Title VI of the Civil Rights Act of 1964 and EPA's implementing regulations, and will respond with the full force of law—withdrawing DENR's funding, if need be—to protect communities of color from the injustice of being forced to live and work near inadequately regulated industrial pollution sources. Complainants request that EPA investigate the complaint and, upon finding discrimination, require that DENR conduct a disproportionate impact analysis and come into compliance with the law by overhauling the general permit to protect African Americans, Latinos, and Native Americans from the adverse disproportionate impacts of industrial swine facilities.

I. NATURE OF THE ACTION

1. This is a complaint for relief under Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7, and the United States Environmental Protection Agency's ("EPA") implementing regulations, 40 C.F.R. Part 7, arising from DENR's decision to issue a permit that allows industrial swine facilities in North Carolina to operate with inadequate and outdated systems of controlling animal waste and little oversight to the detriment of neighboring African American, Latino, and Native American communities.

2. On March 7, 2014, DENR finalized a renewal of the Swine Waste Management System General Permit, AWG100000 (the "General Permit"). The General Permit should protect communities that live and work near the permitted swine facilities from the staggering amounts of waste that the facilities generate; it sets forth the standards that more than 2,000 industrial swine facilities in North Carolina must meet to operate legally within North Carolina. However, the General Permit falls far short of what is needed to protect human health and the environment. Permitted industrial swine facilities are allowed to store animal waste in open-air

pits, called lagoons, that can spill waste into surface waters and leach harmful pollutants into groundwater that feeds drinking water sources, and to spray that waste on fields with high volume spreaders that spew pollutants not only onto the fields, but also into nearby communities. Wastewater from the sprayfields can seep into groundwater or run off into nearby surface waters. The General Permit does not require rigorous government oversight, monitoring, and reporting that would allow the state and the public to understand the full extent to which pollutants from the facilities are getting into the air and water and making people sick.

3. Surface waters in North Carolina are polluted with waste from permitted swine facilities. Communities have lost streams and ponds that they had relied on for fishing and swimming to the runoff and water pollution that comes with the industrial swine industry. After catching fish with open sores and infections, people have had to abandon favorite fishing holes, losing not only a source of recreation but also a way of feeding their families.

4. Pollutants, including nitrates, phosphorus, bacteria, viruses, and parasites can leach from the earthen lagoons that are authorized under the permit into the groundwater. Polluted groundwater, in turn, can feed drinking water sources, including wells. Fearing that their well water is contaminated, people living near permitted industrial swine facilities have been forced to connect to municipal water supplies at personal expense.

5. Air pollution from the permitted swine facilities is a significant problem for human health and welfare. Gases, including ammonia, hydrogen sulfide, volatile organic compounds ("VOCs"), particles from feces, dander, feed, and dead microorganisms, and live bacteria and viruses are emitted from the confinement houses through mechanical ventilation or massive industrial fans. The lagoons and the sprayers that distribute the waste on to the fields also emit gasses into the air. Because of the terrible smell and harmful pollutants, people living near permitted industrial swine facilities experience difficulty breathing when the facilities are spraying. They suffer from asthma attacks, runny noses and eyes, and bronchitis. They have trouble sleeping. They avoid going outside and keep windows closed lest they be inundated with the overpowering smell of the waste and the flies that the waste attracts. Many community members no longer hang their clothes on the line to dry for fear that the clothes will be coated with manure.

6. The permitted swine facilities are located disproportionately in African American, Latino, and Native American communities, and African Americans, Latinos and Native Americans disproportionately bear the burden of the General Permit's failure to control the waste at the permitted swine facilities.

7. Title VI of the Civil Rights Act of 1964, and EPA's regulations, prohibit recipients of federal financial assistance, such as DENR, from taking action that disproportionately burdens persons on the basis of race. DENR's decision to reissue the General Permit without measures to protect African Americans, Latinos, and Native Americans living and working near

the swine facilities from the staggering amounts of pollution the permitted swine facilities generate violates the basic civil rights protections set forth in Title VI.[3]

II. PARTIES

8. Complainant North Carolina Environmental Justice Network ("Environmental Justice Network") is a statewide, grassroots-led organization made up of community members and other organizations that are working to fight environmental injustice. The Environmental Justice Network seeks to promote health and environmental equality for all people in North Carolina through organizing, advocacy, research, and education based on principles of economic equity and democracy for all. The Environmental Justice Network supports the communities that are most impacted by environmental injustice and has worked for over a decade to change the fact that industrial swine facilities in North Carolina are allowed to pollute low-income and African American communities. Declaration of (b) (6) ¶¶ 4-5, 13-48, attached as Exhibit 30 (b) (6)

9. Complainant Rural Empowerment Association for Community Help ("REACH") is an organization that seeks to address social, economic, and environmental inequities in Duplin, Sampson, and Bladen Counties. Through research and advocacy, REACH has worked to change the system that allows industrial swine facilities to pollute the environment and to destroy the health and welfare of the affected communities. Declaration of (b) (6) ¶¶ 4-13, attached as Exhibit 16 (b) (6)

10. Complainant Waterkeeper Alliance, Inc. is a nonprofit organization that unites the more than 200 Waterkeeper organizations that patrol and protect the waterways in North Carolina, across the United States, and around the world. Waterkeeper Alliance's Pure Farms, Pure Waters Campaign recognizes that concentrated animal feeding operations, including swine facilities, and the rise of corporate controlled meat production have nearly destroyed the family farm and severely poisoned the nation's waters. As part of the Pure Farms, Pure Waters Campaign, Waterkeeper Alliance has worked with communities in eastern North Carolina to stop industrial swine facilities from destroying the waters and human health. Declaration of (b) (6), ¶¶ 12-14, attached as Exhibit 6 (b) (6)

11. DENR is an agency of the State of North Carolina. N.C. Gen. Stat. § 143B-279.1. DENR is charged with protecting North Carolina's environment and public health, *id.* § 143B-279.2, and has the power to issue permits to carry out this mission. *Id.* § 143-215.1(a)-(b). The Environmental Management Commission ("EMC") of DENR, *id.* § 143B-282(a)(1)(a), has the authority to regulate animal waste management systems at swine facilities. *Id.* § 143-

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[3] This is not a siting case. Stated simply, DENR's decision to issue a permit that fails to control pollution from the permitted swine facilities has an unjustified disproportionate impact on African American, Latino, and Native Americans in violation of Title VI and its regulations.

215.1(a)(12) (requiring animal waste management systems to obtain a permit from the EMC of DENR); *id.* § 143-212(2).

III. JURISDICTION

A. DENR Is Subject to Title VI

12. Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funds from discriminating against individuals on the basis of race, color, or national origin.

13. Title VI provides 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." 42 U.S.C. § 2000d.

14. Acceptance of federal funds, including EPA assistance, creates an obligation on the recipient to comply with Title VI and EPA's implementing regulations.

15. EPA's Title VI regulations provide that "[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color [or] national origin." 40 C.F.R. § 7.30.

16. EPA's regulations provide the following specific prohibitions, at 40 C.F.R. § 7.35:

> (a) As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, [or] national origin . . . :
>
> > (1) Deny a person any service, aid or other benefit of the program or activity;
> >
> > (2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program or activity;
> >
> > . . .
>
> (b) A recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, [or] national origin, . . . or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, [or] national origin . . . .
>
> . . .

(d) This list of the specific prohibitions of discrimination do not limit the general prohibition of § 7.30.

i. DENR is a Program or Activity Covered by Title VI

17. DENR is a program or activity covered by Title VI. Title VI defines program or activity as "all of the operations of . . . a department, agency, special purpose district, or other instrumentality of a State or of a local government . . . ***any part of which*** is extended Federal financial assistance." 42 U.S.C. § 2000d-4a (emphasis added).

18. Under Title VI, if any part of a listed entity receives federal funds, the whole entity is covered by Title VI. *Ass'n of Mex.-Am. Educ. v. California*, 195 F.3d 465, 474-75 (9th Cir. 1999, *rev'd in part on other grounds*, 231 F.3d 572 (9th Cir. 2000) (en banc).

19. DENR is an agency of the state of North Carolina that, as shown in paragraphs 20 to 26 below, receives federal financial assistance from EPA. DENR, thus meets the definition of program or activity under Title VI and must comply with Title VI in implementing all of its programs, whether or not the particular portion of the program or activity itself specifically received EPA funding.

ii. DENR is a Recipient of EPA Assistance

20. EPA's Title VI regulations define a "[r]ecipient" as "any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient . . . ." 40 C.F.R. § 7.25.

21. EPA's regulations define "EPA assistance" to mean "any grant or corporative agreement, loan, contract . . . , or any other arrangement by which EPA provides or otherwise makes available assistance in the form of funds," among other means. 40 C.F.R. § 7.25.

22. DENR was a recipient of EPA assistance as of March 7, 2014, the time of the alleged discriminatory action, as shown in Exhibit 1.A (EPA award of federal funds to DENR in fiscal year 2014) and Exhibit 1.B (EPA awards of federal funds to DENR extending into fiscal year 2014 and thereafter).

23. USASpending.gov is a searchable website operated by the Office of Management and Budget, which provides the public with information about federal awards, including the name of the entity receiving the award and the amount of the award.

24. According to USASpending.gov, as of August 27, 2014, EPA had awarded DENR at least $19,282,355 in federal funds for fiscal year 2014.[4] Of this amount, $14,899,454 was given as continuations of awards given in previous fiscal years, and $4,382,901 was given to fund new projects. For example, $4,340,904 was earmarked for "Water Pollution Control State, Interstate, and Tribal Program Support," a program that received more than $7 million across five of the disbursements in fiscal year 2014. In fiscal year 2014, EPA also earmarked $3.1 million for "State Public Water System Supervision," $2.2 million for "Hazardous Waste Management State Program Support," and $2.2 million for "Leaking Underground Storage Tank Trust Fund Corrective Action Program."[5] *See* Exhibit 1.A (EPA award of federal funds to DENR in fiscal year 2014) (compiling awards for fiscal year 2014).

25. As of August 27, 2014, 22 of DENR's programs had received or were receiving EPA assistance for programs that extended into 2014 and beyond.[6] *See* Exhibit 1.B (EPA awards of federal funds to DENR extending into fiscal year 2014 and thereafter).

26. Because DENR is a department of the State of North Carolina that receives EPA grants and funding, DENR is subject to Title VI.

B. **The Complaint is Timely**

27. DENR issued the General Permit on March 7, 2014. This complaint is timely as it is filed within 180 days of the discriminatory action, DENR's approval of the General Permit. 40 C.F.R. § 7.120(b)(2).[7]

C. **The Complaint Meets Other Jurisdictional Criteria**

28. This complaint meets all other jurisdictional criteria: it is in writing; it identifies DENR as the entity that allegedly performed the discriminatory act and describes the acts that violate EPA's Title VI regulations; and, should EPA so require, it is also filed by groups that are

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[4] Fiscal year 2014 began on October 1, 2013 and ends on September 30, 2014.

[5] USA Spending, http://www.usaspending.gov (enter "809785280" then select "Environmental Protection Agency" under "By Agency" and "2014" under "By Fiscal Year").

[6] This data reflects only that which is available on usaspending.gov. It is possible that data from some awards made by EPA to DENR were omitted from the data on usaspending.gov, and thus are not included in Exhibits 1.A and 1.B.

[7] In addition, OCR has authority to waive the time limit for good cause, 40 C.F.R. § 7.120(b)(2), and has affirmative authority to conduct post-award compliance reviews when it has "reason to believe that discrimination may be occurring." *Id.* § 7.115(a).

authorized to represent people who were discriminated against in violation of EPA's Title VI regulations.[8]

IV. FACTUAL BACKGROUND

A. The Industrial Swine Industry and the Development of the State Permitting Program

29. The North Carolina swine industry has "changed dramatically since the 1980's from the small farm raising a few hogs to large confinement type operations."[9] In 1982, more than 11,000 swine farms raised approximately 2 million animals.[10] By 1997, the number of farms had dropped to fewer than 3,000, while the swine population had ballooned to nearly 10 million.[11]

30. In 1995, a disaster at a swine lagoon brought the growing industry into the public eye. In the summer of 1995, a lagoon at a swine facility in Jacksonville, North Carolina burst, spilling 28.5 million gallons of swine waste into a tributary to the New River.[12]

31. The spill focused attention on the swine industry, and its significant potential to threaten human health and welfare. Following the spill, in 1995, the North Carolina General Assembly created the Blue Ribbon Study Commission on Agricultural Waste to study "[t]he

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[8] *See* EPA, Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits (Draft Revised Investigations Guidance), 65 Fed. Reg. 39,667, 39,672 (June 27, 2000) (listing jurisdictional criteria applicable to Title VI complaints).

[9] N.C. Dep't of Agric. & Consumer Servs., Agricultural Overview – Commodities, http://www.ncagr.gov/stats/general/commodities.htm (last visited Aug. 28, 2014); *see also* Chris Hurt & Kelly Zering, *Hog Production Booms in North Carolina: Why There? Why Now?, in* Dep't of Agric. Econ., Purdue Univ., Purdue Agric. Econ. Report 11 (1993), *available at* http://www.agecon.purdue.edu/extension/pubs/paer/pre_98/paer0893.pdf; Pew Commission on Industrial Farm Animal Production, Putting Meat on the Table: Industrial Farm Animal Production in America (2008), *available at* http://www.ncifap.org/_images/PCIFAPSmry.pdf, attached as Exhibit 46 [hereinafter, Pew, Putting Meat on the Table] (describing the rise of industrial animal production in America and the effects on public health and the environment); Pew Commission on Industrial Farm Animal Production, Environmental Impact of Industrial Farm Animal Production 1-2 (2008), *available at* http://www.ncifap.org/_images/212-4_EnvImpact_tc_Final.pdf, attached as Exhibit 45 [hereinafter, Pew, Environmental Impact] (same).

[10] U.S. Dep't of Agric., Census of Agriculture 30 tbl. 32 (1987), *available at* http://usda.mannlib.cornell.edu/usda/AgCensusImages/1987/01/33/3/Table-32.pdf.

[11] U.S. Dep't of Agric. 1997 Census of Agriculture – Highlights of Agriculture: 1997 and 1992 North Carolina, http://www.agcensus.usda.gov/Publications/1997/Census_Highlights/North_Carolina/ncst.txt (last visited Aug. 28, 2014).

[12] JoAnn M. Burkholder et al., *Impacts to a Coastal River and Estuary from Rupture of a Large Swine Waste Holding Lagoon*, 26 J. Envtl. Qual. 1451, 1452-53 (1997), attached as Exhibit 2 to Exhibit 14, Declaration of Dr. JoAnn Burkholder [hereinafter, Burkholder, *Lagoon Rupture*].

effect of agriculture waste on groundwater, drinking water, and air quality and any other environmental impacts of agriculture" and "[m]ethods of disposing of and managing agriculture waste that have fewer adverse impacts than those methods currently in use in this State, including positive commercial and noncommercial uses of agriculture waste," among other things.[13]

32. The Blue Ribbon Commission proposed a number of recommendations to reduce the impact that swine facilities have on water, air quality, and human health. The Commission recommended that the State replace the then-existing regulatory system, which deemed swine facilities permitted under the law if they met certain conditions, with a requirement that facilities apply for and obtain a permit to control waste. The general permit was intended to ensure more direct oversight and control.[14]

33. The Blue Ribbon Commission also recommended that the State do more to protect communities against odors from swine facilities,[15] enact programs to monitor swine facilities to prevent heavy metal and phosphorus pollution,[16] work to develop alternatives to the system of storing waste in open air lagoons,[17] and study the impacts that lagoons have on groundwater quality.[18]

34. In 1996, the North Carolina legislature required that the State develop a general permit program to prevent the discharge of waste from animal operations, including swine operations with 250 or more swine.[19]

35. DENR began issuing general permits for controlling swine waste management systems on January 1, 1997.[20] In 2003, the General Assembly extended the expiration date of all general permits until October 1, 2004.[21]

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[13] N.C. Sess. Law 1995-542, sec. 4.1(1), (3) (eff. July 29, 1995), *available at* http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/1995-1996/SL1995-542.html; *see also* Blue Ribbon Study Commission on Agricultural Waste, Report to the 1995 General Assembly of North Carolina, 1996 Regular Session 1 (1996), *available at* http://ncleg.net/Library/studies/1996/st10736.pdf, attached as Exhibit 38 [Blue Ribbon Study Commission].
[14] *Id.* at 24-25.
[15] *Id.* at 16.
[16] *Id.* at 19.
[17] *Id.* at 29.
[18] *Id.* at 29-30.
[19] N.C. Sess. Law 1996-626, sec. 1 (codified as amended at N.C. Gen. Stat. §§ 143-215.10A through .10*I*) (eff. as provided at sec. 19), *available at* http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/1995-1996/SL1995-626.html.
[20] Senate Bill 1217 Interagency Group, Ninth Senate Bill (SB) 1217 Interagency Group Guidance Document 7-1 (Sep. 25, 2009), *available at* http://www.ncagr.gov/SWC/tech/documents/9th_Guidance_Doc_100109.pdf.

36. DENR has since issued revised general permits, first on June 4, 2004, and again on February 20, 2009. These permits were effective from October 1, 2004 until September 30, 2009 and from October 1, 2009 until September 30, 2014, respectively.

B. Finalization of the General Permit and DENR's Failure to Conduct a Disparate Impact Analysis

37. In 2013, DENR published draft state permits to control animal waste, including AWG100000, the Swine Waste Management System General Permit.

38. Since at least the mid 1990s, when North Carolina charged the Blue Ribbon Commission with studying the effects of swine facilities, the State has been on notice that these operations generate massive amounts of waste that threaten the health and environment of communities that are forced to live nearby.

39. Myriad scientific articles describe the ways in which the swine facilities pollute the environment and wreak havoc on human health.[22]

40. Citizens have told DENR, through meetings with the agency and formal complaints, that swine facilities are polluting their waters and air, causing them to feel sick, and preventing them from sitting outside and enjoying their property. (b) (6) [redacted]. ¶¶ 43-46; (b) [redacted] ¶ 12; (b) (6) [redacted] ¶ 16, attached as Exhibit 17 [(b) (6) [redacted] (b) (6) [redacted] ¶¶ 46-48, 50.

41. Citizens, and nonprofits working with them, have demanded stronger controls to protect them from the water and air pollution these facilities generate. *See* (b) (6) [redacted]. ¶¶ 43-46; (b) (6) [redacted] ¶¶ 48, 50.

42. DENR has been invited to attend the Environmental Justice Network's annual summit, where representatives from DENR have sat on a "Community Speak Out and Government Listening" panel that allows the citizens to voice concerns about industries that affect their health and welfare, including the industrial swine industry. (b) (6) [redacted] ¶ 46, 48, 50.

43. Despite repeated protests about the failures in the general permit program, DENR proposed permit terms that were largely the same as the permit that came before it. The draft offered nothing to correct the failures and protect neighboring communities from harmful pollution from permitted swine facilities.

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[21] *See* N.C. Sess. Law 2003-28, sec. 1.

[22] *See* paragraphs 74 to 128, *infra*; *see generally* Pew, Putting Meat on the Table, *supra* note 9, at 96-105 (references); Pew, Environmental Impact, *supra* note 9, at 38-44 (references).

44. On December 6, 2013, (b) (6) [redacted], from the University of North Carolina – Chapel Hill School of Public Health, submitted comments to DENR, raising the "large body of evidence documenting the negative health impacts of industrial swine operations," and calling on DENR "to reduce off-site pollution and increase transparency about animal production activities." Exhibit 2 at 1. This letter called upon DENR to modify the state general permit to prohibit "1) the management of swine waste using lagoons and spray fields, 2) the non-therapeutic use of antibiotics in livestock production, and 3) the location of animal confinements and animal waste storage in flood plains" as "the minimum required to preserve the health and well-being of rural residents near swine operations." *Id.* at 5.

45. Complainants Environmental Justice Network and Waterkeeper Alliance, along with others, also submitted comments to DENR on December 6, 2013, asking DENR to modify the proposed general permit to come into compliance with Title VI. The Comments are attached as Exhibit 3. The Comments made clear that "DENR's failure to require robust waste management technologies as a condition of the permit disproportionately impacts communities of color" and indicated that "the program must be redrawn to avoid this result." *Id.* at 2.

46. These Comments called on DENR "to assess the racial and ethnic impact of the permitting program" before finalizing the general permit and to "adopt measures that protect communities from pollution from the swine facilities." *Id.* at 6. The Comments pointed out that although swine facilities have historically had a disproportionate impact on the basis of race, "there is no evidence that DENR took steps to analyze the disparity its permitting program creates or attempted to address the disparity in any way." *Id*. at 15.

47. On March 7, 2014, DENR finalized the most recent renewal of the general permit. North Carolina, Environmental Management Commission, Department of Environment and Natural Resources, Swine Waste Management System General Permit, Permit No. AWG100000 [General Permit].

48. DENR issued the General Permit with inadequate provisions to protect human health and the environment, after nearly two decades of concern and complaints about the inadequate regulation of swine facilities.

49. On information and belief, DENR finalized the permit without analyzing the potential for disproportionate health or environmental impacts on African Americans, Latinos,

and Native Americans, as required by Title VI and EPA implementing regulations. DENR should have conducted a disproportionate impact analysis but failed to do so.[23]

C. **The Swine Waste Management System General Permit**

50. The General Permit is effective from October 1, 2014 until September 30, 2019. General Permit at 1.

51. The General Permit regulates animal waste management systems at swine facilities in North Carolina that meet the definition of animal operations, which involves 250 or more swine. 15A N.C. Admin. Code § 2T.1304; N.C. Gen. Stat. § 143-215.10B(1). Under North Carolina law, a person must have a permit to construct or operate an animal waste management system. N.C. Gen. Stat. § 143-215.1(a)(12); 15A N.C. Admin. Code § 2T.1304.

52. Animal waste management systems are defined by statute as the "combination of structures and nonstructural practices serving a feedlot[24] that provide for the collection, treatment, storage, [and] land application of animal waste." N.C. Gen. Stat. § 143-215.10B(3).

53. Animal waste management systems refer to the complete system for controlling waste the animal facility generates, from the time the waste is produced until it is utilized.[25]

54. Swine facilities obtain a certificates of coverage to operate under the General Permit.

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[23] 40 C.F.R. § 7.80(a)(1) provides, "Applicants for EPA assistance shall submit an assurance … stating that, with respect to their programs or activities, they will comply with the requirements of this part," Nondiscrimination in Programs or Activities Receiving Federal Assistance from EPA. If assurances are to be at all meaningful, this obligation requires recipients to analyze whether they are complying with Title VI and EPA's implementing regulations and, particularly, whether their programs and activities have an unjustified disproportionate impact. *See* Draft Title VI Recipient Guidance, 65 Fed. Reg. at 39,657.

[24] Under North Carolina law, the term feedlot "means a lot or building or combination of lots and buildings intended for the confined feeding, breeding, raising, or holding of animals and either specifically designed as a confinement area in which animal waste may accumulate or where the concentration of animals is such that an established vegetative cover cannot be maintained. A building or lot is not a feedlot unless animals are confined for 45 or more days, which may or may not be consecutive, in a 12-month period. Pastures shall not be considered feedlots for purposes of this Part." N.C. Gen. Stat. § 143-215.10B(5).

[25] Natural Res. Conservation Serv., USDA, Pt. 651: Agric. Waste Mgmt. Field Handbook 9-1 (2011), *available at* http://directives.sc.egov.usda.gov/OpenNonWebContent.aspx?content=31493.wba (defining animal waste management systems as "planned system[s]" designed "to control and use by-products of agricultural production in a manner that sustains or enhances the quality of air, water, soil, plant, animal, and energy resources").

55. Currently, more than 2,000 swine facilities hold certificates of coverage to operate under the existing general permit, which expires on September 20, 2014. The number of facilities holding a permit is not expected to change significantly under the renewal.[26]

56. The General Permit will not prevent degradation of North Carolina's ground and surface water or air, and will not protect the health of people living, working, and attending school in proximity to permitted swine facilities. (b) (6) ¶ 51; (b) (6) ¶ 41-51, attached as Exhibit 14 (b) (6)

57. Moreover, inadequate enforcement measures all but ensure the meager protections—such as the prohibition against spraying waste in the rain or on oversaturated fields—can go unheeded. (b) (6) ¶¶ 42, 48. The dwindling number of state inspectors, and lack of overtime staffing, exacerbate enforcement issues. *Id.* ¶ 47.

D. The General Permit Does Not Require Robust Waste Management Technologies or Other Provisions to Control Pollution from Permitted Swine Facilities

58. Chief among the failures in the current General Permit is that it continues to allow permitted swine facilities to use a lagoon and sprayfield system to control disposal of

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[26] At the time this complaint was written, DENR had not published notice of the facilities that are covered under the General Permit, however the number of permitted facilities is not expected to change significantly. In 1997, North Carolina enacted moratorium against the construction and operation of new and expanded swine facilities. *See* N.C. Sess. Law 1997-458, sec. 1.2 *available at* http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/1997-1998/SL1997-458.html. The moratorium was extended and changed over the years. *See, e.g.*, N.C. Sess. Law 1998-188, sec. 3 (amending N.C. Sess. Law 1997-458 § 1.2) (eff. Oct. 12, 1998), *available at* http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/1997-1998/SL1998-188.html; N.C. Sess. Law 1999-329, sec. 2.1 (amending N.C. Sess. Law 1997-458 § 1.2) (eff. July 20, 1999), *available at* http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/1999-2000/SL1999-329.html. Under the current law, DENR "shall not issue or modify a permit to authorize the construction, operation, or expansion of an animal waste management system that serves a swine farm that employs an anaerobic lagoon as the primary method of treatment and land application of waste by means of a sprayfield as the primary method of waste disposal." N.C. Gen. Stat. § 143-215.10I(b). Thus, new lagoons and sprayfield systems, which would otherwise be controlled under the General Permit, are prohibited. DENR may issue a permit for the construction, operation, or expansion of an animal waste management system serving a swine facility if it meets certain performance standards designed to protect the environment, *id.*, however the standards in essence prohibit lagoons and sprayfields. Moreover, any new or expanded facility would be required to meet these standards under an individual permit. Thus, the facilities operating under the current general permit represent the upper bound of facilities that will be permitted under the renewal. The number of permitted facilities will decline if an operation closes. Complainants will supplement this complaint when DENR makes available a new list of facilities covered by the General Permit.

animal waste. The lagoon and sprayfield system is a blunt instrument for controlling the staggering amount of waste generated each year at the permitted facilities. Lagoons can spill, threatening surface and groundwater, and leach pollutants into groundwater. The high volume sprayers generate a mist of manure that drifts off the fields, inundating homes, streams, and anything in its path with harmful gases and pathogens and an overwhelming smell.

59. The General Permit also does not ensure that all permitted swine facilities are meeting standards to control phosphorus pollution, focusing instead on those facilities that are "sensitive to nutrient enrichment," General Permit at 2 (Condition I.5). This condition fails to recognize that, in large part because of the swine industry, many of North Carolina's waters are oversaturated with nutrients and are sensitive to nutrient enrichment. (b) (6) [redacted] 39 & Exs. 12-17.

60. The General Permit allows permitted swine facilities to land apply waste as close as 100 feet from a well, General Permit at 3 (Condition 1.8). Far greater setbacks are required to protect drinking water sources from the waste that drifts off the sprayfields. Nitrate from swine facilities, for example, has been found to travel up to 100 meters from swine facilities, and nitrate in water can cause methemoglobinemia, or blue baby syndrome. (b) (6) [redacted] ¶¶ 45, 25.

61. The General Permit provides permitted swine facilities with up to two days to incorporate manure and sludges into bare soil, unless rainfall events are predicted, General Permit at 3 (Condition II.7). For two days, then, manure and sludges are allowed to sit on the ground, where they could run into nearby waters, all the while giving off a terrible smell.

62. The General Permit allows permitted swine facilities to "temporarily lower lagoon levels" in times of drought or wet weather without first obtaining approval and oversight from DENR, General Permit at 6 (Condition II.27). Facilities, thus, can spray additional manure from the lagoon without ensuring that the land can incorporate the additional waste. Without oversight and control, this provision all but ensures that waste will run off the sprayfields and into any nearby streams and leach into groundwater. The additional spraying generates additional manure mist that blankets the community with harmful gasses and pathogens whose presence is known with the putrid smell. *See, e.g.*, (b) (6) [redacted] ¶¶ 16, 23, 24, 36, 42.

E. **The General Permit Does Not Require Sufficient Oversight and Control of Permitted Swine Facilities**

63. The General Permit does not require rigorous oversight and reporting to ensure that permitted swine facilities are not polluting the surface and groundwater, as well as air, to the detriment of human health and welfare.

64. The General Permit does not specify the practices, beyond mere visual inspection, that must be used to ensure that the waste collection, treatment, and storage structures and the runoff control measures in place at permitted swine facilities are in proper working order and are not leaking or otherwise discharging pollutants, General Permit at 6 (Condition III.1).

65. The General Permit does not uniformly require best practices to monitor the lagoons, such as automated lagoon or storage pond waste level monitors and recorders, General Permit at 6-7 (Condition III.2(b)). Only those facilities that have been found to violate requirements to maintain proper lagoon levels for two consecutive years are subject to this heightened requirement. All facilities should rigorously monitor lagoon levels to prevent catastrophic outcomes, like spills in the event of North Carolina's frequent heavy rainfall events.

66. The General Permit does not require permitted swine facilities to submit an amendment to the Certified Animal Waste Management Plan to DENR for approval, and does not publish other major changes and revisions for public review, General Permit at 2 (Condition I.3). DENR, thus, is not carefully monitoring the waste management plans to ensure that swine facilities are subject to best practice.

67. The General Permit does not require rigorous microbial analysis of swine waste that is applied to the fields to provide the state, the scientific community, and the public with sufficient information to understand the scope of impacts in the event of a discharge event, or to assess problems arising from normal operation. (b) (6) [redacted] ¶ 43. Within 60 days of land applying waste, the facility must analyze "a representative sample of animal waste" for nitrogen, phosphorus, zinc, and copper. General Permit at 8 (Condition III.5). The lag time between land application and testing does not ensure that DENR, the scientific community, or the public will have accurate information about the content of animal waste in the event of a discharge. The limited microbial analysis also will not provide enough information to evaluate and respond to citizen complaints and monitor and predict potential problems.

68. The General Permit does not require groundwater monitoring in the event of a "massive burial of animals," but rather makes such monitoring discretionary, General Permit at 4 (Condition I.10). Animal burial is a significant threat to surface and groundwater quality, especially in recent years, as the emergence of the porcine epidemic virus ("PED") threatens to wipe out herds of animals. (b) (6) [redacted] ¶¶ 24, 27, 32.

69. The General Permit does not require public notice of a number of events that threaten human health—including failure of the waste management system causing a discharge to ditches, surface waters, and wetlands; failure of the waste management system that prohibits the system from receiving, storing, or treating additional waste; spills of waste or sludge; deterioration or leaks in the lagoon; failure to maintain storage capacity in the lagoon or below designated freeboard levels; waste application in violation of the animal waste management

plan or that results in runoff to a ditch, surface water, or wetlands; and discharge to ditches, surface waters, or wetlands, General Permit at 9-10 (Condition III.13).

70. The General Permit does not require sufficient public notice in the event of a discharge of more than 1,000 gallons of waste, and even up to 1 million gallons, and does not require rigorous testing of the waste source, the receiving water body, and the soil sediment to determine the potential impact on human health, General Permit at 10-11 (Conditions III.15-17). The permit does not ensure that the waste will be sampled close enough to the discharge event to enable the agency and the public to assess the severity of the threat and the potential impacts to human health. (b) (6) [redacted] ¶¶ 43, 46-48.

71. The General Permit establishes a system of self-monitoring, where the permitted swine facilities create, but do not submit to DENR for review nor make available to the public, the following records:

- Records of inspection of the land application site, General Permit at 5 (Condition II.17)
- Records of testing and calibration of the land application equipment, General Permit at 6 (Condition II.24)
- Records of the waste level in each lagoon, General Permit at 6 (Condition III.2);
- Records of precipitation events, General Permit at 7 (Condition III.3(a));
- Records concerning irrigation and land application events, General Permit at 8 (Condition III.6);
- Records of transfers of waste between waste structures on the same site not typically operated in series, General Permit at 8 (Condition III.7); and
- Monthly stocking records, General Permit at 8 (Condition III.8).

DENR and the public need access to these records to understand and evaluate the extent to which the swine facilities are impacting human health and the environment. (b) (6) [redacted]. ¶¶ 43-44.

72. DENR does not have sufficient inspectors to visit the permitted swine facilities and ensure compliance with the minimum standards to protect the environment and human

health. On information and belief, North Carolina has cut approximately 131 employees from DENR, including inspectors and other regulators, since January 2013.[27]

73. DENR's decision to issue the General Permit without adequate measures to control, dispose of, and monitor the significant amounts of animal waste and pollutants that these facilities generate threatens to pollute the state's water and air. This pollution, in turn, contributes to serious health problems among those in neighboring communities, prevents people from enjoying their land and property, and contributes to declining property values.

V. ADVERSE IMPACTS

A. Swine Facilities Permitted by DENR Contribute to Surface Water Pollution that Adversely Affects Human Health and Welfare

74. The General Permit allows permitted swine facilities to use a lagoon and sprayfield system to dispose of waste.

75. Lagoons are prone to acute pollution problems, including ruptures and spills, which impair surface water quality.[28] Such contamination is also capable of harming human health. (b) (6) [redacted] ¶¶ 6-14.

76. Hurricanes in eastern North Carolina have led to severe flooding of industrial swine facilities, the rupture of lagoons, and the overflow of waste into North Carolina's creeks, rivers, and streams.[29]

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[27] Andrew Kenney & Craig Jarvis, *Cuts to DENR Regulators Jarring in Wake of Dan River Spill, News & Observer*, Mar. 7, 2014, http://www.newsobserver.com/2014/03/07/3683762/cuts-to-denr-regulators-jarring.html.

[28] *See* Michael A. Mallin & Lawrence B. Cahoon, *Industrialized Animal Production—A Major Source of Nutrient and Microbial Pollution to Aquatic Ecosystems*, 24 Population & Env't 369, 371 (2003), attached as Exhibit 41; Burkholder, *Lagoon Rupture*, *supra* note 12, at 1463 (rupture of lagoon at a facility in Jacksonville, North Carolina in 1995, releasing more than 28.5 million gallons of untreated swine waste in the New River, to the detriment of water quality); Mallin & Cahoon at 371 (in 1995, a poultry lagoon breach and a large swine lagoon leak were suspected of causing algal blooms, fish kills, and microbial contamination in North Carolina's Cape Fear River Basin).

[29] *See* Burkholder, *Lagoon Rupture*, *supra* note 12, at 1463 (in 1996, "Hurricane Fran led to severe flooding of [confined animal operations] located in coastal river floodplains, and to rupture of various lagoons in several major watersheds"); Steve Wing, et al., *The Potential Impact of Flooding on Confined Animal Feeding Operations in Eastern North Carolina*, 110 Envtl. Health Perspectives 387, 387 (2002), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1240801/pdf/ehp0110-000387.pdf (describing how the 15-20 inches of rain dropped by Hurricane Floyd turned eastern North Carolina into a fecal flood zone). The flooding following Hurricane Floyd was not an isolated incident. *Id.* ("In 1996, 22 fecal waste pits were reported to have been ruptured or inundated following flooding from Hurricane Fran, and one major spill was reported following Hurricane Bonnie in 1998.").

77. Waste spilled from overflowing lagoons and runoff from application of the waste to fields has been linked to outbreaks of harmful pathogens, such as salmonella and *E. coli* in the environment[30] has led to major freshwater fish kills, and has contributed to toxic algae outbreaks.[31] *See, e.g.*, (b) (6) ¶¶ 6-14.

78. The General Permit allows permitted swine facilities to use sprayfields to disperse the waste stored in their lagoons. Sprayfields also contribute to water quality impacts by introducing various pollutants, including those described in the preceding paragraph, to the water column. For example, waste can run off fields when over-applied, or when it is applied to ground that is already saturated or frozen and cannot absorb the waste.[32] (b) (6) . ¶ 16, 23, 36, 42; (b) (6) ¶ 30; *see also* Declaration of (b) (6) 17, attached as Exhibit 7 [(b) (6) (reporting improper spraying); Declaration of (b) (6) ¶ 13, attached as Exhibit 28 [(b) (6) .]. Contaminants from swine waste also reach receiving waters through runoff and leach through permeable soils to vulnerable aquifers even when the waste is applied at recommended application rates. (b) (6) . ¶ 29. Permitted swine facilities have been reported to apply waste to ditches that lead to surface waters. (b) (6) . ¶ 16, 23, 35, 42. Finally, waste from the sprayers can blow directly into the surface waters. (b) (6) ¶ 23.

79. Over-applying the waste or applying the waste to saturated or frozen ground would violate the General Permit and the associated animal waste management plans, however, many facilities are reported to engage in such practices. Without provisions requiring frequent DENR inspections of the permitted facilities in the General Permit and rigorous self-monitoring and reporting to DENR and the public, combined with increases in DENR staff to handle the additional responsibility, DENR and the public are not in a position to find and prohibit the unlawful waste application practices that threaten water quality. (b) (6) . ¶¶ 45-51.

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[30] Michael Greger & Gowri Koneswaran, *The Public Health Impacts of Concentrated Animal Feeding Operations on Local Communities*, 33 Farm Cmty. Health 11, 13 (2010); Carrie Hribar, Nat'l Ass'n of Local Bds. of Health, Understanding Concentrated Animal Feeding Operations and Their Impact on Communities, Environmental Health 4 (2010), *available at* http://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf, attached as Exhibit 40.

[31] JoAnn M. Burkholder et al., *Impacts of Waste from CAFOs on Water Quality*, 115 Envtl. Health Perspectives 308, 309 (2007), *available at* http://dx.doi.org/10.1289/ehp.8839, attached as Exhibit 3 to (b) (6) . [hereinafter, Burkholder, *Impacts of CAFO Waste*]; *see also* Michael A. Mallin et al., Ctr. for Marine Science Research, Univ. of N.C. at Wilmington, Effect of Organic and Inorganic Nutrient Loading on Photosynthetic and Heterotrophic Plankton Communities in Blackwater Rivers (1998), *available at* http://repository.lib.ncsu.edu/dr/bitstream/1840.4/1880/1/NC-WRRI-315.pdf; Michael A. Mallin et al., *Factors Contributing to Hypoxia in Rivers, Lakes, and Streams*, 51 Limnology & Oceanography 690, 699-700 (2006).

[32] Hribar, *supra* note 30, at 4.

80. Ammonia that is volatilized from the sprayers or the confinement houses at permitted swine facilities also degrades water quality. The airborne ammonia returns to the surface near permitted facilities, where it can land in surface waters or wash into the waters via ditches.[33] (b) (6) ¶ 32-33. For example, researchers found that industrial swine facilities contributed to ammonia pollution in the lower Neuse estuary. *Id.* ¶ 19, 34.

81. High ammonia concentrations can lead to algal blooms that are harmful to aquatic life. (b) (6) . ¶ 34, 19. The algae themselves produce toxins that degrade water quality and impact human health. *Id.* ¶¶ 19, 40. For example, cyanobacteria make toxins that cause liver hemorrhaging as well as neurological and psychological impacts. *Id.* ¶ 40. Cyanotoxins can cause burning eyes and skin irritation, and can even promote tumor growth. *Id.* The Cape Fear River, which is impacted by many swine facilities, has experienced highly toxic cyanobacteria blooms. *Id.* ¶ 41. Scientists at the University of North Carolina, Wilmington recorded levels as high as 390 micrograms of the toxin per liter in Cape Fear, a level that far exceeds the 1 microgram per liter standard for safe drinking water put forward by the World Health Organization. *Id.*

82. Waste from permitted swine facilities has polluted waterways, forcing people to abandon favorite swimming holes and fishing ponds. In some instances, the low dissolved oxygen seen in waters oversaturated with swine waste causes the fish to suffocate, ruining a water body as a potential fishing source. (b) (6) . ¶ 38; *see also* (b) (6) . ¶ 9. People have reported catching fish with skin infections, visible sores, and abrasions that may have been caused by water pollution from the industrial swine facilities.[34] Declaration of (b) (6) ¶¶ 14-15, attached as Exhibit 36 [(b) (6) .]; (b) (6) . ¶ 19; Declaration of (b) (6) ¶¶ 18-20, attached as Exhibit 26 (b) (6) .].

83. Parasites, bacteria, viruses, nitrates, and other components of liquid waste from permitted swine facilities pose threats to human health.[35] Steve Wing & Jill Johnston, Industrial

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[33] *Id.*; *see also* Marion Deerhake et al., *Atmospheric Dispersion and Deposition of Ammonia Gas*, *in* RTI Int'l, Benefits of Adopting Environmentally Superior Swine Waste Management Technologies in North Carolina: An Environmental and Economic Assessment, at 2-32 to 2-34 (2003), *available at* http://www.cals.ncsu.edu/waste_mgt/smithfield_projects/phase1report04/appendix%20c-RTI.pdf, attached as Exhibit 47 (modeling rates of ammonia deposition by county). "The greatest deposition occurs in Sampson and Duplin counties." *Id.* at 2-33.

[34] *See* JoAnn M. Burkholder & Howard B. Glasgow, *History of Toxic Pfiesteria in North Carolina Estuaries from 1991 to the Present*, 51 Biosci. 827, 833 (2001) ("During acute [Pfiesteria] exposure, fish commonly hemorrhage or develop skin lesions that are diffuse or nonfocal, as well as deep, localized or focal, bleeding sores or ulcerations.").

[35] Burkholder, *Impacts of CAFO Waste*, *supra* note 31; *see also* Dana Cole et al., *Concentrated Swine Feeding Operations and Public Health: A Review of Occupational and Community Health Effects*, 108 Envtl. Health Perspectives 685 (2000), *available at* http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1638284/pdf/envhper00309-0041.pdf, attached as Exhibit 39.

Hog Operations in North Carolina Disproportionately Impact African-Americans, Hispanics and American Indians 2 (Aug. 2014), attached as Exhibit 4 [Wing & Johnston Report].

B. Swine Facilities Permitted by DENR Contribute to Groundwater Pollution that Adversely Affects Human Health and Welfare

84. The lagoon and sprayfield system contributes to groundwater pollution that adversely affects human health and welfare.

85. Many of the lagoons in North Carolina were built in the 1990s, before standards requiring that lagoons be lined with plastic and compacted clay were in place.[36] (b) (6) [redacted]. ¶ 34; (b) (6) [redacted] ¶ 29. Lagoons have been shown to leach wastewater into the soil where

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[36] When the swine industry in North Carolina expanded, lagoons were not required to have synthetic liners, allegedly because of the largely unproven assumption that the lagoons would develop a seal. R.L. Huffman, *Seepage Evaluation of Older Swine Lagoons in North Carolina*, 47 Trans. Am. Soc'y Agric. Eng'rs 1507, 1507 (2004) ("[L]agoons were expected to develop a seal at the liquid-soil interface that would impede seepage."); *see also* Danny McCook, Discussion of Background Considerations in the Development of Appendix 10D to the Agricultural Waste Management Field Handbook 1 (2001), *available at* https://prod.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs141p2_024282.pdf ("Prior to about 1990, NRCS engineers commonly assumed that the accumulation of manure solids and the bacterial action resulting from a sludge interface would effectively reduce seepage . . . to an acceptable level."). Assumptions about the effectiveness of natural sealing were inaccurate or overstated. *See* McCook, *supra* at 1 ("[R]esearch . . . demonstrated that . . . manure sealing . . . was not as complete as formerly believed."); *see also* Natural Res. Conservation Serv., USDA, Part 651: Agricultural Waste Management Field Handbook 10D-1 (2009), *available at* ftp.wcc.nrcs.usda.gov/wntsc/AWM/handbook/ch10.pdf ("A rule of thumb supported by research is that manure sealing is not effective unless soils have at least 15 percent clay content for monogastric animal generated waste . . . ."). The General Assembly has prohibited the construction, operation, or expansion of new anaerobic lagoons, stating that DENR is prohibited from "issu[ing] or modify[ing] a permit to authorize the construction, operation, or expansion of an animal waste management system that serves a swine farm that employs an anaerobic lagoon as the primary method of treatment and land application of waste by means of a sprayfield as the primary method of waste disposal. *See* N.C. Gen. Stat. § 143-215.10*I*(b). Furthermore, the performance standards that apply to new or expanded animal waste management systems at swine facilities specify that the system "be designed and constructed with synthetic liners to eliminate seepage." 15A N.C. Admin. Code § 2T.1307(b)(1)(A).

it can reach groundwater.[37] (b) (6) ¶ 34; (b) (6) . ¶ 24. Studies from eastern North Carolina have shown that lagoons at swine facilities can and do contaminate shallow groundwater with antibiotic-resistant *E. coli*[38] and nitrate,[39] and ammonia.[40]

86. Liquid waste that is applied to the fields can also percolate through the sandy soils in North Carolina and into shallow groundwater. (b) (6) 23.

87. Permitted facilities are allowed to operate without proper liners unless and until DENR requires their replacement.[41]

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[37] *See, e.g.*, J.P. Murphy & J.P. Harner, *Lagoon Seepage Through Soil Liners*, *in* Swine Day 1997, at 1, 3 (Kans. State Univ. Agric. Experiment Station & Coop've Ext. Serv.), *available at* http://www.asi.k-state.edu/doc/swine-day-1997/srp795.pdf; *see also* Carol J. Hodne, Iowa Policy Project, Concentrating on Clean Water: The Challenge of Concentrated Animal Feeding Operations 8 (2005), *available at* http://www.iowapolicyproject.org/2005docs/050406-cafo-fullx.pdf. 2005docs/050406-cafo-fullx.pdf (identifying "seepage from earthen manure storage structures" as typical pathway for nitrates entering groundwater); Jerry L. Hatfield et al., Chapter 4: Swine Manure Management, *in* Agric. Research Serv., USDA, Agricultural Uses of Municipal, Animal, and Industrial Byproducts 78, 82 (1998), *available at* http://infohouse.p2ric.org/ref/43/42647.pdf (describing "leakage" as a "major environmental concern").

[38] *See* M.E. Anderson & M.D. Sobsey, *Detection and Occurrence of Antimicrobially Resistant* E. coli *in Groundwater on or near Swine Farms in Eastern North Carolina*, 54 Water Sci. & Tech. 211, 217 (2006), attached as Exhibit 37 ("Overall, the results of this study demonstrated that antibiotic-resistant E. coli were present in groundwaters associated with commercial swine farms that have anaerobic lagoons and land application systems for swine waste management.").

[39] *See* Melva Okun, Envtl. Res. Program, UNC School of Public Health, Human Health Issues Associated with the Hog Industry (1999), *available at* http://www.bape.gouv.qc.ca/sections/mandats/prod-porcine/documents/SANTE5.pdf (discussing 1996 NC DHHS well testing program, which found exceedances of 10 ppm nitrate standard in 9.9% and 22.5% of wells in Duplin and Sampson Counties, respectively); Wendee Nicole, *CAFOs and Environmental Justice: The Case of North Carolina*, 121 Envtl. Health Perspectives A182, A186 (2013), attached as Exhibit 44 ("Even without spills, ammonia and nitrates may seep into groundwater, especially in the coastal plain where the water table is near the surface.").

[40] R.L. Huffman & Phillip W. Westerman, *Estimated Seepage Losses from Established Swine Waste Lagoons in the Lower Coastal Plain of North Carolina*, 38 Trans. Am. Soc'y Agric. Eng'rs 449-453 (1995); Phillip W. Westerman et al., *Swine-Lagoon Seepage in Sandy Soil*, 38 Trans. Am. Soc'y Agric. Eng'rs 1749-1760 (1995); J.M. Ham & T.M. DeSutter, *Toward Site-Specific Design Standards for Animal-Waste Lagoons: Protecting Groundwater Quality*, 29 J. Envtl. Qual. 1721, 1721-32 (2000). Even lagoons that feature liners built to NRCS standards leach some amount of waste into nearby soils. *See* NC-NRCS, Conservation Practice Standard: Waste Treatment Lagoon (Code 359), at 5 (2009) (allowing seepage of up to "1.25×10^{-6} cm/sec (0.003 ft/day)"); McCook, *supra* note 36, at 4 (observing that "clay liners obviously allow some seepage").

88. Burial methods allowed under the General Permit also threaten groundwater. Permitted facilities often bury dead animals in pits on-site. Groups monitoring North Carolina's waters have reported seeing facilities burying animals close to waters of the state and in deep ditches containing groundwater, practices that threaten to contaminate groundwater sources. (b) (6) 32 & Exs. 10 & 11. The recent spread of PED threatens to increase the mortality rate at permitted swine facilities. Greater animal deaths create a need for additional burial sites, each of which could leach pollutants and disease from the decomposing animals into groundwater. (b) (6) ¶¶ 27-28, 32.

89. Groundwater pollution threatens human health in communities that rely on groundwater wells for drinking water.[42] (b) (6) ¶¶ 28-29, 26. A study of the North Carolina swine industry completed in 2000 found that "[a]lmost half of all hog CAFOs are located in block groups where > 85% of households have well water."[43] High nitrate levels found in contaminated groundwater, for example, are hazardous to human health, as they contribute to methemoglobinemia, or blue baby syndrome. *See, e.g.*, (b) (6) . ¶¶ 25-27 (noting studies that have shown that the area near lagoons can be contaminated with levels of high nitrate and high ammonia, and discussing the impact on human health and the environment).

90. The threat of contaminated groundwater also injures human welfare. Many people have switched from well water to municipal water sources for fear that their wells were polluted by industrial swine facilities.[44] Where municipal water is not yet available or

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[41] A lagoon for which a permit was issued prior to 2007 "may continue to operate under . . . that permit, including any renewal [thereof]." *See* N.C. Sess. Law 2007-523, sec. 1(b) (eff. Sep. 1, 2007), *available at* http://www.ncga.state.nc.us/EnactedLegislation/SessionLaws/HTML/2007-2008/SL2007-523.html. Grandfathering is also accomplished via DENR regulations. *See* 15A N.C. Admin. Code § 2T.1304(a)(1) (requiring animal waste management systems to meet "all applicable state statutes and rules *at the time of development or design*") (emphasis added). Where DENR is willing to acknowledge that these lagoons threaten water quality and the environment, it may require facilities to obtain an individual permit, which must remedy that threat. *Id.* § 2T.0111(h)(7) (indicating that DENR can require a facility whose lagoon "has been allowed to deteriorate or leak such that it poses an immediate threat to the environment" to obtain an individual permit).

[42] Hribar, *supra* note 30, at 3-4 (discussing the risk of well water contamination for facilities near industrial animal operations, and explaining that high nitrate levels could harm infants, who are susceptible to blue baby syndrome).

[43] Steve Wing et al., *Environmental Injustice in North Carolina's Hog Industry*, 108 Envtl. Health Perspectives 225, 228 (2000), attached as Exhibit 52 [Wing, *Environmental Injustice*].

[44] Declaration of Anonymous 1 ¶ 12, attached as Exhibit 5 [Anonymous 1 Decl.]; (b) (6) . ¶ 6; Declaration of (b) (6) ¶ 8, attached as Exhibit 8 [(b) (6) .]; Declaration of (b) (6) ¶¶ 10-11, attached as Exhibit 11 [(b) (6) .]; Declaration of (b) (6) ¶ 13, attached as Exhibit 12 [(b) (6) (b) (6) ¶ 21; (b) (6) . ¶ 29; Declaration of (b) (6) ¶ 13, attached as Exhibit 23 (b) (6) .]; (b) (6) ¶ 15, attached as Exhibit 25 [(b) (6) (b) (6) . ¶ 12.

affordable, people are forced to purchase bottled water.[45] Others, however, have stayed on well water and, despite attempts at filtering the water, are forced to deal with water that smells of eggs, a hallmark of sulfur pollution that could be caused by industrial swine facilities.[46]

C. Swine Facilities Permitted by DENR Contribute to Air Pollution that Adversely Affects Human Health and Welfare

91. Permitted swine facilities contribute to air pollution that adversely affects human health and welfare. The confinement houses at swine facilities are equipped with industrial fans that draw in air from outside and vent out air containing hundreds of pollutants, including harmful gases, aerosols, and "particles consisting of swine skin cells, feces, feed, bacteria, and fungi."[47]

92. Decomposing waste in lagoons contributes to air pollution. As the waste sits in the lagoon, it gives off malodorous or toxic gases, including ammonia,[48] nitrous oxide, and other VOCs.[49] Studies have estimated that over time, approximately 70% of the nitrogen in the lagoon will escape to the atmosphere.[50]

93. The range of air pollutants emitted from industrial swine facilities includes hydrogen sulfide, ammonia, a wide array of other VOCs, and bioaerosols including endotoxins

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[45] Declaration of (b) (6) ¶ 14, attached as Exhibit 9 [(b) (6) .]; Declaration of (b) (6) ¶ 10, attached as Exhibit 20 [(b) (6) .]; Declaration of (b) (6) ¶ 10, attached as Exhibit 27 (b) (6) l.]; Declaration of (b) (6) ¶ 7, attached as Exhibit 34 [(b) (6) .].

[46] Declaration of (b) (6) ¶ 5-7, attached as Exhibit 21 (b) (6) .]; Declaration of (b) (6) ¶ 12, attached as Exhibit 32 [(b) (6) .]; *see also* Declaration of (b) (6) ¶ 9, attached as Exhibit 10 (b) (6) (reporting a general concern with well water); Declaration of (b) (6) ¶ 9, attached as Exhibit 15 [(b) (6) .] (concern over well water); Declaration of (b) (6) 11, attached as Exhibit 19 [(b) (6) .].

[47] Cole et al., *supra* note 35, at 685; *see also* Hribar, *supra* note 30, at 5-6.

[48] *See, e.g.*, John T. Walker et al., *Atmospheric Transport and Wet Deposition of Ammonium in North Carolina*, 34 Atmospheric Env't 3,407 (2000); Jennifer K. Costanza et al., *Potential Geographic Distribution of Atmospheric Nitrogen Deposition from Intensive Livestock Production in North Carolina, USA*, 398 Sci. Total Env't 76, 77 (2008); Matias B. Vanotti & Patrick G. Hunt, Ammonia Removal from Swine Wastewater Using Immobilized Nitrifiers, *in* Proceedings of the 8th Int'l. Conf. of the FAO ESCORENA Network on Recycling of Agricultural, Municipal and Industrial Residues in Agriculture, Rennes, France 427, 428 (1998), *available at* http://www.ramiran.net/doc98/FIN-ORAL/VANOTTI.pdf.

[49] *See* James A. Zahn et al., *Air Pollution from Swine Production Facilities Differing in Waste Management Practice* 3, Proceedings of the Odors and Emission 2000 Conference (2000) (listing all types of "emissions released from stored swine manure" mentioned above).

[50] C.A. Rotz, *Management to Reduce Nitrogen Losses in Animal Production*, 82 J. Animal Sci. E119, E129 (2004).

and other respiratory irritants.[51] *See* Wing & Johnston Report at 2; (b) (6) [redacted]. ¶ 31 (discussing ammonia and hydrogen sulfide pollution). These emissions create "zones of exposure . . . for human populations who live near industrial hog operations in Eastern [North Carolina]."[52]

94. High levels of ammonia are a public health concern, as ammonia readily forms fine particulate matter,[53] which "strong epidemiological evidence . . . link[s] . . . with cardiovascular-related and lung cancer mortality."[54]

95. One recent study of the impact of industrial swine operations on adults living in eastern North Carolina found that the odor and chemicals emitted from the operations, including hydrogen sulfide and endotoxins, lead to acute eye, nose, and throat irritation, increased incidents of difficulty breathing, increased wheezing, chest tightness, and nausea.[55]

96. Studies have shown that people living near an industrial swine facility in North Carolina suffered elevated rates of respiratory and gastrointestinal problems, mucous membrane irritation, headaches, runny nose, sore throat, excessive coughing, diarrhea, and

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[51] Cole et al., *supra* note 35, at 686-88; Susan S. Schiffman et al., *Quantification of Odors and Odorants from Swine Operations in North Carolina*, 108 Agric. & Forest Meteorology 213 (2001); Ana M. Rule et al., *Assessment of an Aerosol Treatment To Improve Air Quality in a Swine Concentrated Animal Feeding Operation,* 39 Envtl. Sci. & Tech., 9649, 9649 (2005).

[52] Sacoby M. Wilson & Marc L. Serre, *Examination of Atmospheric Ammonia Levels Near Hog CAFOs, Homes, and Schools in Eastern North Carolina*, 41 Atmospheric Env't 4977, 4985 (2007), attached as Exhibit 49; *see also* Sacoby M. Wilson & Marc L. Serre, *Use of Passive Samplers to Measure Atmospheric Ammonia Levels in a High-density Industrial Hog Farm Area of Eastern North Carolina*, 41 Atmospheric Env't 6,074 (2007).

[53] *See* Marion Deerhake et al., *Generation of Ammonium (NH_4^+) Salt Fine Particulate Matter*, *in* RTI Int'l, *supra* note 33, at 3-2 to 3-3.

[54] EPA, National Ambient Air Quality Standards for Particulate Matter, 78 Fed. Reg. 3,086, 3,103 (Jan. 15, 2013).

[55] Leah Schinasi et al., *Air Pollution, Lung Function, and Physical Symptoms in Communities Near Concentrated Swine Feeding Operations*, 22 Epidemiology 208, 208 (2011), attached as Exhibit 48 (measuring pollutants levels and effect on 101 adults living near hog CAFOs in 16 eastern North Carolina communities); *see also* K.M. Thu, *Public Health Concerns for Neighbors of Large-Scale Swine Production Operations*, 8 J. Agric. Safety & Health 175 (2002) (synthesizing research regarding public health concerns for neighbors of industrial swine facilities, including respiratory issues associated with air pollution).

burning eyes as compared to residents in the control group that did not live near industrial livestock operations.[56]

97. Children going to school near swine facilities report more doctor-diagnosed asthma and more symptoms of wheezing than populations that are not exposed to swine facilities.[57] Adults living near swine facilities also have reported increased incidence of asthma.[58]

98. Children who attend schools where livestock odor is reported at least two times per month experience more wheezing symptoms than children who attended schools where no livestock odor was reported.[59]

99. Living near livestock production facilities has been linked to increased infant mortality due to respiratory disease.[60]

100. People living and working near permitted swine facilities have confirmed the scientific findings above. They have complained about frequent sinus problems, and bronchitis. They have trouble breathing and have suffered through frequent raw throats, runny noses, persistent, hacking coughs, burning or water eyes, and allergy attacks, issues that often

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[56] Steve Wing & Susanne Wolf, *Intensive Livestock Operations, Health, and Quality of Life Among Eastern North Carolina Residents*, 108 Envtl. Health Perspectives 233, 233 (2000), attached as Exhibit 53; *see also* Cole et al., *supra* note 35 (reviewing literature on health effects associated with swine industrial agriculture); Susan S. Schiffman et al., *Symptomatic Effects of Exposure to Diluted Air Sampled from a Swine Confinement Atmosphere on Healthy Human Subjects*, 113 Envtl. Health Perspectives 567 (2005) (finding that those exposed to diluted swine air for two 1-hour sessions were more likely to report headaches, eye irritation, and nausea than the control group that was exposed to clean air); *see also* Hribar, *supra* note 30, at 6-7 & Table 1.

[57] Maria C. Mirabelli et al., *Asthma Symptoms Among Adolescents Who Attend Public Schools That Are Located Near Confined Swine Feeding Operations*, 118 Pediatrics e66 (2006), attached as Exhibit 42 (finding students aged 12 to 14 who attended North Carolina public schools within 3 miles of industrial swine facilities reported increased asthma-related symptoms, more doctor-diagnosed asthma, and more asthma-related medical visits compared to peers at other schools); James A. Merchant et al., *Asthma and Farm Exposures in a Cohort of Rural Iowa Children*, 113 Envtl. Health Perspectives 350 (2005) (finding children living on swine farms, including large facilities with more than 500 head, experienced increased rates of asthma compared to non-exposed children; results more pronounced where swine facilities added antibiotics to feed); *see also* Wing & Johnston Report at 2; *see also* (b) (6) [redacted]. ¶ 11; (b) (6) [redacted] 13; (b) (6) [redacted]. ¶ 27; Declaration of (b) (6) [redacted] 7, attached as Exhibit 35 (b) (6) [redacted].].

[58] (b) (6) [redacted] 17; (b) (7)(A) [redacted]. ¶ 11; Declaration of (b) (6) [redacted] ¶ 12, attached as Exhibit 18 [(b) (6)(b) (6) [redacted]. ¶ 12; Declaration of (b) (6) [redacted] ¶ 6, attached as Exhibit 31 (b) (6) [redacted].

[59] Mirabelli, *supra* note 57.

[60] Stacy Sneeringer, *Does Animal Feeding Operation Pollution Hurt Public Health? A National Longitudinal Study of Health Externalities Identified by Geographic Shifts in Livestock Production*, 91 Am. J. Agric. Econ. 124, 130 (2009).

worsened when they are near swine facilities. Colds seem to last longer for those exposed to air pollution from swine facilities. The smell of the waste is nauseating.[61]

D. **Swine Facilities Permitted by DENR Depress Quality of Life**

101. The overpowering smell associated with swine facilities greatly degrades the quality of life for people living and working in the shadow of these facilities.

102. The smell from the permitted swine facilities is often unbearable. Individuals who live near swine facilities frequently are not able to open their windows, sit outside their homes on their porches or in their yards, have cookouts, or otherwise engage in routine activities because of the intense and putrid odor from the swine facilities.[62] They hold their breaths and cover their mouths if they have to go outside when the facilities are spraying. They plan walks and recreation to avoid the raw, stinking smell. They avoid cooking when the facilities are spraying, because the thought of eating when smelling takes away their appetite. They no longer hang the laundry out to dry for fear that the smell will sink into their clothes. The smell even wakes them up at night.[63]

103. There's no telling when a facility will choose to spray its waste, and neighbors receive no advance notice. Some people who live near permitted swine facilities have resigned themselves to the fact that the spraying might interrupt an outdoor gathering with friends and family, while others have given up on the idea of planning events outside entirely. Without certainty about when a facility will spray, people living near permitted facilities explain that

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[61] Anonymous 1 Decl. ¶ 10; (b) (6) [redacted] ¶¶ 17, 19.

[62] *See, e.g.*, Steve Wing et al., *Air Pollution and Odor in Communities Near Industrial Swine Operations*, 116 Envtl. Health Perspectives 1362 (2008), attached as Exhibit 50 (study participants living within 1.5 miles of swine factory farm reported altering or ceasing normal daily activities when hydrogen sulfide concentrations, and associated hog odor, were the highest) [Wing, *Air Pollution and Odor*]; Wing & Wolf, *supra* note 56; Hribar, *supra* note 30, at 7-8.

[63] Anonymous 1 Decl. ¶¶ 5-7, 9, 13; (b) (6) [redacted] ¶¶ 4-6, 8, attached as Exhibit 13 (b) (6) [redacted]. ¶¶ 8, 10.

they have to leave the windows up, or else face the possibility of returning home to a house that stinks of swine waste.[64]

104. People who are elderly, have disabilities, are sick or recovering from illness, and children are among the most affected of those who are forced to live and work near permitted swine facilities. People who are elderly or recovering from illness have been forced to stay inside, even on hot days, either because they are bedridden or because their doctors have recommended that they avoid breathing in the swine waste. People using crutches have difficulty covering their nose and mouth and thus find it difficult to go outside, even just to get the mail, when the facility is spraying and the smell is overpowering.[65] Families keep their children inside because do not want them exposed to the smell and pollution from industrial swine facilities.[66] Children complain that they would like to be outside, playing in their yards, but they simply can't bear the smell.[67] Children who live near permitted swine facilities, or whose parents work in permitted swine facilities, have been forced to suffer the embarrassment and humiliation of attending school reeking of swine waste.[68] The stench of swine waste can sink into a person's clothes and stay there for days.[69]

105. The smell from the facilities is embarrassing for those forced to live near a permitted swine facility. People who live near permitted swine facilities complain that friends and family who live farther away from the facilities refuse to come and visit because of the smell. If friends and family happen to visit on a day when the smell is particularly bad, their complaints or visible discomfort is humiliating, and the visits are short-lived.[70]

106. The waste from the permitted swine facilities not only smells, it also interferes with the quality of life. Droplets of waste from the automated sprayers form a fine mist that coats everything in its path, from clothes lines, cars parked near the sprayfield or driving by, bedroom windows and sides of homes, playing fields, and even the people themselves. Student athletes have been forced to practice sports near the sprayfields, and breathe in the terrible odor.[71]

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[64] (b) (6) [redacted] ¶¶ 5, 9.
[65] (b) (6) [redacted] Decl. ¶¶ 7-9.
[66] (b) (6) [redacted] Decl. ¶¶ 7, 10.
[67] (b) (6) [redacted]. ¶ 12.
[68] (b) (6) [redacted]. ¶ 11.
[69] *Id.* ¶ 14; (b) (6) [redacted] ¶ 61.
[70] (b) (6) [redacted] Decl. ¶ 9.
[71] Anonymous 1 Decl. ¶ 14; (b) (6) [redacted] ecl. ¶ 11.

107. People living near permitted swine facilities have abandoned their favorite pastimes, like hunting or fishing, because the smell near the swine facilities is simply too much to bear, or the waters are clogged with algae. Others have are concerned that the animals they catch might not be safe to eat because they, too, might be suffering from the pollution.[72]

108. Swine facilities attract bugs and other pests, from flies to buzzards, which swarm to the waste piles and boxes of decomposing animals at swine facilities. The flies make it make it unpleasant to have gatherings outside.[73]

109. For communities impacted by swine facilities, there is little escape. People living and working near permitted swine facilities have complained that they can smell the odor in their cars as they approach a sprayfield, even if their windows are tightly rolled up. In hot summer months, they race to turn off their air conditioning, in an often futile attempt to prevent the putrid air from getting into the car and making it hard to breathe.[74]

110. People attending church or community meetings, too, experience the overpowering smell. Just as at home, people must work to avoid the smell from nearby swine facilities, keeping doors and windows closed, and gathering inside for community celebrations and meetings.[75]

111. The trucks that transport animals between different confinement houses and ultimately to slaughter also interfere with quality of life. Industrial swine operations "grow" their animals in stages until they reach slaughter weight. Some operators grow swine in three stages, "farrow to wean," "wean to feeder," "feeder to finish," while others progress the animals from "farrow to feeder" and "feeder to finish," each with a new confinement house.[76] Often the animals are moved via tractor-trailers that are open to the air in places to prevent suffocation. The open air design, however, allows dust, dander, and other waste to escape, and people living nearby breathe it in. Like the odor from the waste pits and sprayers, the smell of

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[72] (b) (6) [redacted]. ¶ 16.

[73] (b) (6) [redacted]. ¶ 15; *see also* Hribar, *supra* note 30, at 8.

[74] (b) (6) [redacted]. ¶ 14.

[75] (b) (6) [redacted]. ¶ 9.

[76] *See, e.g.*, NCDENR, Animal Feeding Operations, List of Permitted Animal Facilities (showing facilities permitted to manage waste from swine facilities at the different stages of operation); (b) (6) [redacted]. ¶ 38.

the trucks is overpowering. The trucks rumble through communities at all times of day, disturbing people as they try to sleep and enjoy their lives.[77] .

112. Dead boxes, a descriptive term for the dumpsters that permitted swine facilities use to collect mortalities before their ultimate disposal, are another nuisance. Many facilities leave their dead boxes open or ajar, inviting buzzards, other scavengers, and flies, and giving off a powerfully bad smell. Even closed dead boxes smell terrible and invite pests. Many dead boxes are not well sealed and leak a smelly, potentially harmful liquid containing fluids from the decomposing animals and moisture from the environment.[78] The smell from trucks carrying dead animals is another assault on the community's senses.[79]

113. The swine industry divides communities, often pitting those employed by the swine industry who are afraid or unwilling to speak out against friends and family who want better.[80] The swine industry is a constant weight on the community, a frequent topic of conversation among those who wonder why they are forced to fight for basic rights.[81]

114. It should come as little surprise, then, given the many problems described above, that scientists have found that those living near swine facilities report more tension, more depression, more anger, less vigor, more fatigue, and more confusion than control subjects who were not exposed to industrial animal production.[82]

115. Hydrogen sulfide concentrations near swine facilities also have been associated with increased stress and anxiety,[83] as well as acute elevation of systolic blood pressure.[84]

E. **Proximity to Swine Facilities Permitted by DENR Depresses Property Values**

116. Studies across the country, including from North Carolina, have demonstrated a statistically significant relationship between proximity to a swine facility and declining property

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[77] (b) (6) [redacted] Decl. ¶ 8
[78] (b) (6) [redacted] Decl. ¶ 11.
[79] (b) (6) [redacted]. ¶ 9.
[80] (b) (6) [redacted]. ¶ 37.
[81] Anonymous 1 Decl. ¶16; (b) (6) [redacted]. ¶ 5.
[82] Susan S. Schiffman et al., *The Effect of Environmental Odors Emanating from Commercial Swine Operations on the Mood of Nearby Residents,* 37 Brain Research Bull. 369 (1995); *see also* Wing, *Air Pollution and Odor*, *supra* note 62 (finding that when hog odor was the strongest, study participants more frequently reported feeling stressed, gloomy, angry and unable to concentrate).
[83] Rachel Avery Horton et al., *Malodor as a Trigger of Stress and Negative Mood in Neighbors of Industrial Hog Operations*, 99 Am. J. Pub. Health Suppl., S610 (2009).
[84] Steve Wing et al., *Air Pollution from Industrial Swine Operations and Blood Pressure of Neighboring Residents*, 121 Envtl. Health Perspectives 92 (2013), attached as Exhibit 51.

values.[85] Research suggests that property values decline with increasing proximity to a swine facility, and with the increasing number of swine at a facility.[86]

117. Individuals in North Carolina fear that the value of their property has declined and that they will not be able to sell their property and move away because of neighboring industrial swine facilities.[87]

F. Swine Facilities Permitted by DENR Can Spread Antibiotic Resistant Bacteria, which Threatens Human Health

118. Many swine facilities use antibiotics to promote growth and to preemptively ward off the threat of disease.[88] The overuse of antibiotics in livestock production is linked to emergence of antibiotic-resistant bacteria that make infections in humans more difficult to treat. *See* Wing & Johnston Report at 2.[89]

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[85] *See* Raymond Palmquist et al., *Hog Operations, Environmental Effects, and Residential Property Values*, 73 Land Econ. 114 (1997) (studying relationship between swine factory farms and property values in nine southeastern North Carolina counties and finding that effect on price depended on number and distance of nearby factory farms); Katherine Milla et al., *Evaluating the Effect of Proximity to Hog Farms on Residential Property Values: A GIS-Based Hedonic Model Approach*, 17 URISA J. 27 (2005) (finding that values of Craven County, North Carolina homes decreased with increasing local hog populations and decreasing distances from homes to factory farms); Jungik Kim & Peter Goldsmith, *A Spatial Hedonic Approach to Assess the Impact of Swine Production on Residential Property Values*, 42 Envtl & Res. Econ. 509 (2009) (estimating decline in Craven County home property values on per hog basis); Joseph Herriges et al., *Living with Hogs in Iowa: The Impact of Livestock Facilities on Rural Residential Property Values*, 81 Land Econ. 530 (2005).
[86] *See* Palmquist et al., *supra* note 85; Milla et al., *supra* note 85.
[87] Anonymous Decl. ¶ 15; (b) (6) [redacted]. ¶ 9
[88] James M. MacDonald & William D. McBride, USDA, The Transformation of U.S. Livestock Agriculture: Scale, Efficiency, and Risks 32-35 (2009), *available at* http://www.ers.usda.gov/media/184977/eib43.pdf.
[89] *See* EK Silbergeld & LB Price LB, *Industrial Food Animal Production, Antimicrobial Resistance, and Human Health*, 29 Ann. Rev. of Pub. Health 151 (2008).

119. Antibiotic-resistant bacteria capable of causing human disease have been found in air emissions from industrial swine facilities.[90]

120. Antibiotic-resistant bacteria associated with industrial livestock production also can be transmitted through water. A recent water quality study found that samples taken near industrial animal facilities were more likely to contain multi-drug resistant bacteria than water sampled elsewhere.[91]

121. Studies have found a specific strain of methicillin-resistant *Staphylococcus aureus* ("MRSA") in both swine and people who work in the swine industry.[92] In addition, a recent study of medical records in Pennsylvania showed that people living near industrial swine

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[90] Amy Chapin et al., *Airborne Multidrug-Resistant Bacteria Isolated from a Concentrated Swine Feeding Operation*, 113 Envtl. Health Perspectives 137 (2005) (finding multidrug-resistant *Enterococcus*, coagulase-negative staphylococci, and viridans group streptococci in the air of an industrial swine operation at levels dangerous to human health); Shawn G. Gibbs et al., *Airborne Antibiotic Resistant and Nonresistant Bacteria and Fungi Recovered from Two Swine Herd Confined Animal Feeding Operations*, 1 J. Occupational & Envtl. Hygiene 699 (2004) (finding multidrug-resistant bacteria inside and downwind of industrial swine operations at levels previously determined to pose a human health hazard); Julia R. Barrett, *Airborne Bacteria in CAFOs: Transfer of Resistance from Animals to Humans*, 113 Envtl. Health Perspectives A116 (2005) (reviewing literature on cross-species transfer of antibiotic-resistant bacteria); Jochen Schulz et al., *Longitudinal Study of the Contamination of Air and of Soil Surfaces in the Vicinity of Pig Barns by Livestock-Associated Methicillin-Resistant* Staphylococcus aureus, 78 Applied Envtl. Microbiol. 5666 (2012) (detecting MRSA 300 feet from a barn in which animals, air, and workers' plastic boots tested positive for MRSA); Shawn G. Gibbs et al., *Isolation of Antibiotic-Resistant Bacteria from the Air Plume Downwind of a Swine Confined or Concentrated Animal Feeding Operation*, 114 Envtl. Health Perspectives 1032 (2006).

[91] Bridgett M. West et al., *Antibiotic Resistance, Gene Transfer, and Water Quality Patterns Observed in Waterways Near CAFO Farms and Wastewater Treatment Facilities*, 217 Water Air Soil Pollution 473 (2011).

[92] Tara C. Smith et al., *Methicillin-Resistant* Staphylococcus auereus *(MRSA) Strain ST398 Is Present in Midwestern U.S. Swine and Swine Workers*, 4 PLoS One e4258 (2009); Tara C. Smith et al., *Methicillin-Resistant* Staphylococcus aureus *in Pigs and Farm Workers on Conventional and Antibiotic-Free Swine Farms in the USA*, 8 PLoS One e63704 (2013); Jessica L. Rinsky et al., *Livestock-Associated Methicillin and Multidrug Resistant* Staphylococcus aureus *Is Present Among Industrial, Not Antibiotic-Free Livestock Operation Workers in North Carolina*, 8 PLoS One e67641 (2013); Xander W. Huijsdens et al., *Community-Acquired MRSA and Pig-Farming*, 5 Annals Clinical Microbiol. & Antimicrobials 26 (2006) (Netherlands); Ingrid V.F. Van den Broek et al., *Methicillin-Resistant* Staphylococcus aureus *in People Living and Working in Pig Farms*, 137 J. Epidem. & Infection 700 (2009) (Netherlands); Oliver Denis et al., *Methicillin-Resistant* Staphylococcus aureus *ST398 in Swine Farm Personnel, Belgium*, 15 Emerging Infectious Diseases 1098 (2009) (Belgium); T. Khanna et al., *Methicillin Resistant* Staphylococcus aureus *Colonization in Pigs and Pig Farmers*, 128 J. Veterinary Microbiol. 298 (2008) (Canada).

facility liquid waste application sites received treatment for more skin and soft tissue infections and infections caused by MRSA than people who lived further away from application sites.[93]

122. The emergence and proliferation of new strains of antibiotic-resistant bacteria is a significant threat to human health. Each year more than 2 million people in the United States acquire a serious infection that is resistant to antibiotics, and at least 23,000 people die each year as a result of those infections.[94] Among those infections, "MRSA infections can be very serious and the number of infections is among the highest of all antibiotic-resistant threats."[95]

G. Pollution from Swine Facilities Permitted by DENR Adversely Affects Sensitive Populations That Are Exposed to Other Waste Sources

123. Swine facilities are often located in communities that are overburdened with other polluting livestock operations, including poultry operations.[96]

124. Poultry operations are of significant concern for the community. Many poultry operations use a dry waste management system, as opposed to the wet lagoon system favored by the swine industry. The confinement houses are lined with bedding that absorbs the waste. The bedding is stored in piles before it is land-applied as fertilizer. Poultry confinement houses emit significant amounts ammonia and fine particles consisting of bits of manure-laden bedding, animal dander, dust, and feathers.[97] These emissions contribute to the health and welfare problems described above.

125. These same poultry facilities also attract houseflies, which may contribute to the dispersion of drug resistant bacteria.[98]

126. For people living near these facilities, the way the poultry facilities store and apply the waste is a particular concern. Often, facilities store the dry litter waste outside and uncovered, where it can drift or leach pollutants into the soil. In one study, researchers found chemicals from an uncovered litter pile at a turkey facility in the soil up to two feet below the

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[93] Joan A. Casey, *High-Density Livestock Operations, Crop Field Application of Manure, and Risk of Community-Associated Methicillin-Resistant* Staphylococcus aureus *Infection in Pennsylvania*, 173 J. Am. Med Ass'n: Internal Med. 1980 (2013).

[94] Ctrs. for Disease Control, U.S. Dep't of Health and Human Servs., Antibiotic Resistance Threats in the United States, 2013, at 6 (2013), *available at* http://www.cdc.gov/drugresistance/threat-report-2013/pdf/ar-threats-2013-508.pdf.

[95] *Id.* at 20.

[96] (b) (6) [redacted]. ¶ 10.

[97] (b) (6) [redacted] ¶ 25-26, 41.

[98] National Association of Local Boards of Health, Understanding Concentrated Animal Feeding Operations, at 8 (2010), *available at* http://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf.

surface.[99] Ammonium concentrations in the soil were 62 times higher beneath the litter pile than in the soil outside of the litter pile footprint. Arsenic concentrations were also elevated.[100] Soils near industrial swine facilities also can be polluted with metals,[101] thus the comingling of the operations increases the burden on the environment.

127. The facilities land apply the waste, but, because the waste is dry, it can drift off the fields, and over to neighboring houses.[102] The proximity of poultry and swine facilities to one another also raises the risk that land will be oversaturated with applications of swine manure and dry litter.

128. Processing and packaging plants, rendering plants, and slaughterhouses add to the burdens borne by communities near permitted swine facilities. The smell from these facilities is another injury foisted on communities living in near industrial swine facilities.[103]

VI. DISPROPORTIONALITY

A. Permitted Swine Facilities Disproportionately Affect African Americans, Latinos, and Native Americans

129. In North Carolina, permitted swine facilities adversely affect a disproportionate number of African Americans, Latinos, and Native Americans as compared to the general population.[104]

130. More than 2000 swine facilities hold a certificate of coverage allowing them to operate their waste management systems. These certificates were issued under the current swine waste management system general permit, which expires on September 30, 2014. The number and location of swine facilities is not expected to change significantly with this new permitting cycle.

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[99] N.C. Coop. Ext., Poultry Waste Stockpiling Methods: Environmental Impacts and Their Mitigation 4 (2013), *available at* https://www.bae.ncsu.edu/extension/ext-publications/air_quality/ag-788w-waste-stockpiling-shah.pdf.

[100] *Id.*

[101] (b) (6) [redacted]. ¶ 31.

[102] (b) (6) [redacted] 10.

[103] (b) (6) [redacted]. ¶ 21.

[104] *See* Wing & Johnston Report; *see also* Maria C. Mirabelli et al., *Race, Poverty, and Potential Exposure of Middle-School Students to Air Emissions from Confined Swine Feeding Operations*, 114 Envtl. Health Perspectives 591, 595 (2006), attached as Exhibit 43 (finding that North Carolina's swine facilities are located closer to schools enrolling higher percentages of non-white and economically disadvantaged students); Wing, *Environmental Injustice, supra* note 43 (finding that North Carolina's intensive hog confinement operations are located disproportionately in communities with higher levels of poverty, higher proportions of non-white persons, and higher dependence on wells for household water supply).

131. Analyses based on a study area that excludes the state's five major cities and western counties that have no presence of this industry show that the proportion of people of color[105] living within 3 miles of an industrial swine facility is 1.52 times higher than the proportion of non-Hispanic Whites. *See* Wing & Johnston Report at 5, 14 (Table 3). The proportions of African Americans,[106] Latinos,[107] and Native Americans[108] living within 3 miles of an industrial swine facility are 1.54, 1.39, and 2.18 times higher, respectively, than the proportion of non-Hispanic Whites. *Id*. These disparities are statistically significant. *Id*.

132. Analysis of the population statewide yields consistent results. The proportions of African Americans, Latinos, and Native Americans statewide living within 3 miles of an industrial swine facility are 1.4, 1.26, and 2.39 times higher than the percentage of non-Hispanic Whites, respectively. Wing & Johnston Report at 6, 13 (Table 2). These disparities are also statistically significant. *Id.*

133. As shown in the following figure, which depicts the relationship of industrial swine facilities to the racial and ethnic composition of North Carolina, swine facilities are clustered in communities of color. *See* Wing & Johnston Report at 7, 12 (Figure 3).

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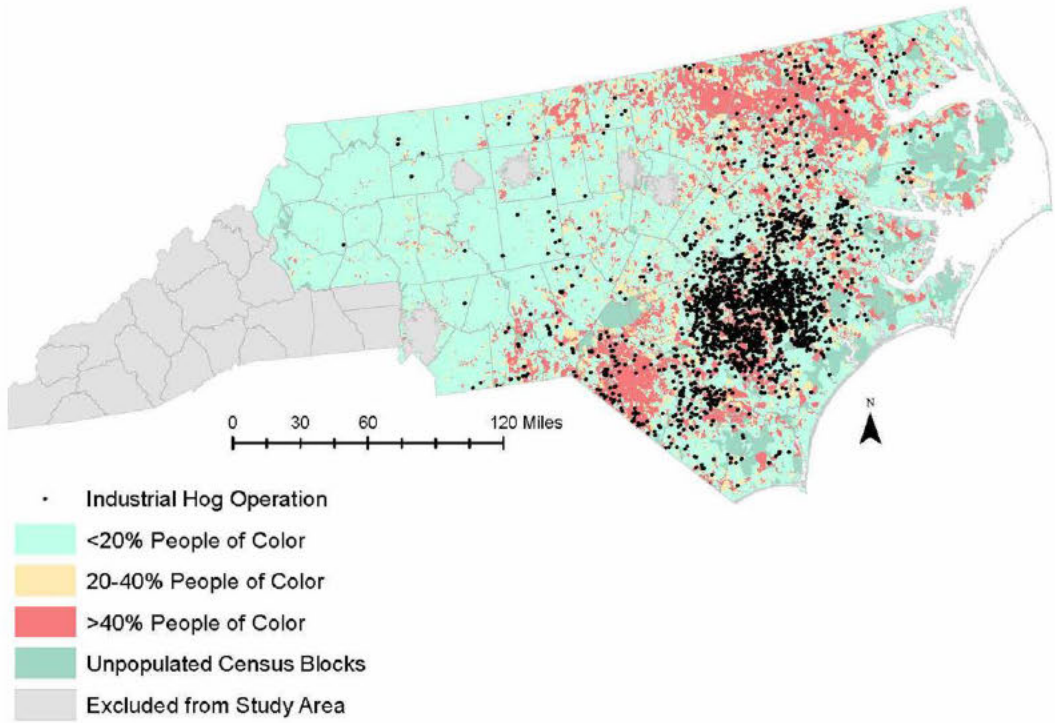
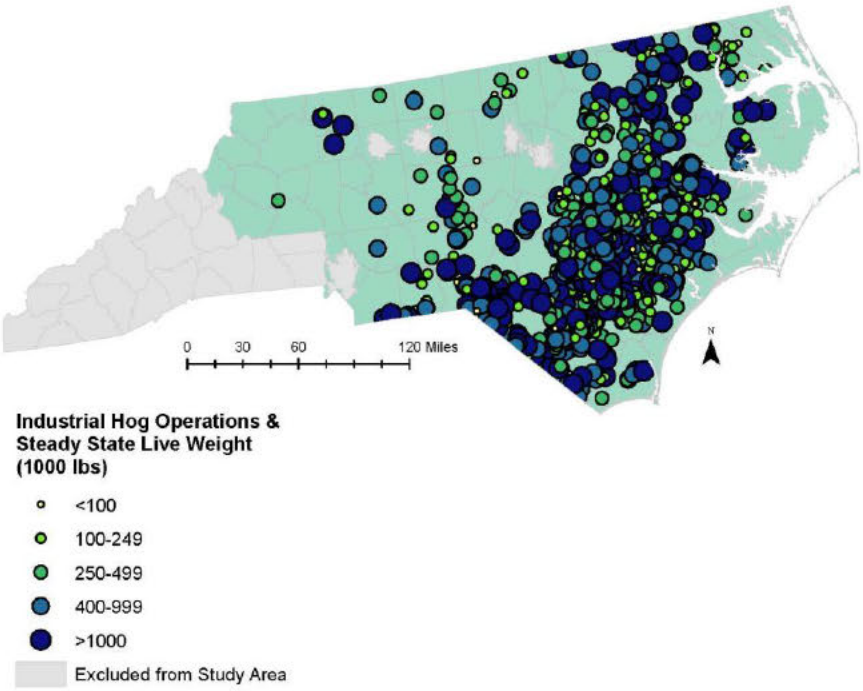
[105] In the Wing and Johnston Report, the term people of color referred to all people who identified as other than non-Hispanic white in the 2010 census data. Wing & Johnston Report at 4.
[106] The term African American used herein corresponds to the term Black as used in the Wing and Johnston Report. In the Report, the Black racial category referred to those who identified as African American or black without any other race in the 2010 census data. Wing & Johnston Report at 4.
[107] The term Latino used herein corresponds to the term Hispanic as used in the Wing and Johnston Report.
[108] The term Native American used herein corresponds to the term American Indian as used in the Wing and Johnston Report. In the Report, the term American Indian referred to those who identified themselves as American Indian without any other race in the 2010 census data. Wing & Johnston Report at 4.

Racial Composition of Census Blocks and the Locations of NC Industrial Swine Facilities Operating Under the General Permit, 2014



134. Moreover, the amount of swine waste is also greater in communities of color. Wing & Johnston Report at 6-7, 16 (Table 7). Each permitted facility is allowed to house a certain number and type of swine, and based on these factors, some facilities can be expected to produce more feces and urine than others. Steady state live weight is an indicator of the amount of waste a facility is likely to produce. The following figure depicts the distribution of steady state live weight across the state.

Industrial Swine Facilities by Steady State Live Weight



135. The swine industry's disproportionate impact on communities of color has long been known and documented. A study examining the relationship between race and the spatial concentration of swine waste in eastern North Carolina between 1982 and 1997 found evidence that "minority communities and localities lacking the political capacity to resist are shouldering

the bulk of the adverse economic, social, and environmental impacts of the pork industry restructuring."[109]

136. A later study found that there were more than seven times more industrial swine facilities in areas where there was more poverty and high percentages of non-white people.[110]

137. Research on school distribution in North Carolina also has shown that swine facilities overburden communities of color. The research has found that schools in lower income areas with a larger non-white population are more likely to be sited near an industrial livestock operation than other schools in the state.[111]

B. **African Americans**

138. African Americans in North Carolina are disproportionately adversely impacted by permitted swine facilities compared to non-Hispanic Whites and the total population.

139. The proportion of African Americans living within 3 miles of an industrial swine facility is 1.54 times higher than the proportion of non-Hispanic Whites in a study area that excludes the state's five major cities and western counties that have no presence of this industry. Wing & Johnston Report at 5, 14 (Table 3).

140. Statewide, the proportion of African Americans living within 3 miles of an industrial swine facility is 1.40 times higher than the proportion of non-Hispanic Whites. Wing & Johnston Report at 6, 13 (Table 2).

141. The ratios of African Americans living within 3 miles of an industrial swine facility as compared to non-Hispanic Whites in the study area and statewide area are statistically significant. Wing & Johnston Report at 5-6.

142. African Americans make up a larger proportion of the population living in proximity to industrial swine facilities than the proportion of the population living more than 3

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[109] Bob Edwards & Anthony E. Ladd, *Race, Class, Political Capacity and the Spatial Distribution of Swine Waste in North Carolina*, 1982-1997, 9 N.C. Geographer 51, 51 (2001).
[110] Wing, *Environmental Injustice, supra* note 43, at 225.
[111] Maria C. Mirabelli et al., *Race, Poverty, and Potential Exposure of Middle-School Students to Air Emissions from Confined Swine Feeding Operations*, 114 Envtl. Health Perspectives 591 (2006) (finding schools in North Carolina with white student population less than 63% and subsidized-lunch eligible population greater than 47% were more likely to be located within 3 miles of a factory farm than were schools with high-white or high-socioeconomic status populations); Paul B. Stretesky et al., *Environmental Inequity: An Analysis of Large-Scale Hog Operations in 17 States, 1982-1997*, 68 Rural Soc. 231 (2003) (finding that between 1982 and 1997 large-scale hog operations in North Carolina were more likely to be sited in areas with a disproportionate number of black residents).

miles away from any facility. The disparities are statistically significant. Wing & Johnston Report at 13 (Table 2).

143. In addition, as more African Americans are represented in a community, it is more likely that all members of the community will be exposed to swine facilities permitted by DENR. For every ten percent increase in the population of African Americans in a community, the proportion of people living within 3 miles of an industrial swine facility increases on average by 9.4%. This relationship between race and living near a facility is statistically significant. Wing & Johnston Report at 6, 15 (Table 6).

144. Adjusted for population density takes into account the fact that African Americans live in less rural areas than non-Hispanic Whites and are therefore less exposed to agricultural operations than they would be if they were more rural. With this adjustment, areas that are more than 80% African American, the proportion of people living within three miles of an industrial swine facility is more than three times the proportion in areas that have no African Americans. This disparity is statistically significant. Wing & Johnston Report at 6, 15 (Table 5).

145. The amount of hog waste in a community also increases as the percent of African Americans in the community increases. Adjusted for population density, areas with more than 40% African American residents have an excess steady state live weight compared to areas with no African American residents—they have between 493,000 and 620,000 more pounds of swine within 3 miles than areas with no African American residents. Wing & Johnston Report at 7, 16 (Table 8). The disparity is statistically significant. *Id.* Adjusted for population density, the steady state live weight of swine within 3 miles of a community increases, on average, over sixty four thousand pounds for every ten percent increase in the percentage of African Americans in a community. Wing & Johnston Report at 7, 16 (Table 9). The larger or more numerous the swine, the more waste they generate. Thus, African American communities are exposed to more detrimental operations than other communities.

C. **Latinos**

146. Latinos in North Carolina are disproportionately adversely impacted by permitted swine facilities compared to non-Hispanic Whites and the total population.

147. Latinos, on average, are more likely to live within three miles of a permitted swine facility than non-Hispanic Whites. Analyses based on a study area that excludes the state's five major cities and western counties that have no presence of this industry show that the proportion of Latinos living within 3 miles of a permitted swine facility is 1.39 times higher than the proportion of non-Hispanic Whites within the same distance of a permitted swine facility. Wing & Johnston Report at 5, 14 (Table 3).

148. Statewide, the proportion of Latinos living within 3 miles of an industrial swine facility is 1.26 times higher than the proportion of non-Hispanic Whites. Wing & Johnston Report at 6, 13 (Table 2).

149. The ratios of Latinos living within 3 miles of an industrial swine facility as compared to non-Hispanic Whites in the study area and statewide area are statistically significant. Wing & Johnston Report at 5-6.

150. Latinos make up a larger proportion of the population living in proximity to industrial swine facilities than the proportion of the population living more than 3 miles away from any facility. The disparities are statistically significant. Wing & Johnston Report at 13 (Table 2).

151. In addition, as more Latinos are represented in a community, it is more likely that all members of the community will be exposed to swine facilities permitted by DENR. For every ten percent increase in the population of Latinos in a community, the proportion of people living within 3 miles of an industrial swine facility increases on average by 8.5%. This relationship between race and living near a facility is statistically significant. Wing & Johnston Report at 6, 15 (Table 6).

152. The amount of swine waste in a community also increases as the percent of Latinos increases. Adjusted for population density, the steady state live weight of swine within 3 miles of a community increases, on average, over two hundred and forty two thousand pounds for every ten percent increase in the percentage of Latinos in a community. Wing & Johnston Report at 7, 16 (Table 9). This relationship is statistically significant. The larger or more numerous the swine, the more waste they generate. Thus, Latinos communities are exposed to more detrimental operations than other communities.

D. **Native Americans**

153. Native Americans in North Carolina are disproportionately adversely impacted by permitted swine facilities compared to non-Hispanic Whites and the total population.

154. Native Americans, on average, are more likely to live within three miles of a permitted swine facility than non-Hispanic Whites. Analyses based on a study area that excludes the state's five major cities and western counties that have no presence of this industry show that the proportion of Native Americans living within 3 miles of a permitted swine facility is 2.18 times higher than the proportion of non-Hispanic Whites within the same distance of a permitted swine facility. Wing & Johnston Report at 5, 14 (Table 3).

155. Statewide, the proportion of Native Americans living within 3 miles of an industrial swine facility is 2.39 times higher than the proportion of non-Hispanic Whites. Wing & Johnston Report at 6, 13 (Table 2).

156. The ratios of Native Americans living within 3 miles of an industrial swine facility as compared to non-Hispanic Whites in the study area and statewide area are statistically significant. Wing & Johnston Report at 5-6.

157. Native Americans make up a larger proportion of the population living in proximity to industrial swine operations than the proportion of the population living more than 3 miles away from any facility. The disparities are statistically significant. Wing & Johnston Report 13 (Table 2).

158. In addition, as more Native Americans are represented in a community, it is more likely that all members of the community will be exposed to swine facilities permitted by DENR. For every ten percent increase in the population of Native Americans in a community, the proportion of people living within 3 miles of an industrial swine facility increases on average by 16.2%. This relationship between race and living near a facility is statistically significant. Wing & Johnston Report at 6, 15 (Table 6).

159. The amount of swine waste in a community also increases as the percent of Native Americans increases. Adjusted for population density, the steady state live weight of swine within 3 miles of a community increases, on average, over ninety two thousand pounds for every ten percent increase in the percentage of Native Americans in a community. Wing & Johnston Report at 7, 16 (Table 9). The larger or more numerous the swine, the more waste they generate, and there are greater quantities of this waste in communities with more Native Americans.

VII. LESS DISCRIMINATORY ALTERNATIVES

160. DENR should exercise its authority to require permitted swine facilities to install and operate waste management systems that protect communities from pollution and include sufficient monitoring and public reporting to ensure that the goals of protecting public health and the environment are met.[112]

161. DENR is charged by state law to protect the environment and human health from pollution from the swine industry. N.C. Gen. Stat. § 143-215(a)(12) (requiring animal waste management systems to obtain a permit from the EMC of DENR for construction and

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[112] *See generally* Doug Gurian-Sherman, Union of Concerned Scientists, CAFOs Uncovered: The Untold Costs of Confined Animal Feeding Operations (2008), *available at* http://www.ucsusa.org/assets/documents/food_and_agriculture/cafos-uncovered.pdf (discussing the substantial cost of confined animal feeding operations and discussing alternatives).

operation).[113] In particular, the North Carolina legislature intended to "establish a permitting program for animal waste management systems that will protect water quality and promote innovative systems and practices." *Id.* § 143-215.10A.

162. DENR has authority to condition the permitting program to achieve the broad purposes of the air and water conservation laws, including "conserv[ing] … [the state's] air and water resources," "maintain[ing] for the citizens of the State a total environment of superior quality," "protect[ing] human health," "prevent[ing] damage to public and private property," and "secur[ing] for the people of North Carolina, now and in the future, the beneficial uses of [the State's] great natural resources." N.C. Gen. Stat. § 143-215.1(b)(4)(a) (authority to condition permits to achieve the goals of Article 21, water and air resources); *id.* § 143-21(a)-(c) (declaring the goals of Article 21); *see also* 15A N.C. Admin. Code § 02T.0108(b)(1) (same).

163. Among its powers, DENR has the authority to "require any monitoring and reporting (including but not limited to groundwater, surface water or wetland, waste sludge, soil, lagoon/storage pond levels and plant tissue) necessary to determine the source, quantity, quality, and effect of animal waste upon the surface waters, groundwaters, or wetlands." 15A N.C. Admin. Code § 02T.0108(c).

164. DENR should condition the operation of swine facilities on practices that are consistent with the protection of public health and the environment.[114] For example, DENR has the authority to require facilities to install controls on the confinement houses that filter the air, which is laden with dust particles consisting of swine skin cells, feces, feed, fungi, gases, and (often antibiotic-resistant[115]) bacteria, before it is emitted to the ambient air.[116] Air pollution is a large byproduct of these animal systems that should be addressed under a comprehensive program to address animal waste.[117]

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[113] The statute requires animal waste management systems to obtain a DENR-issued permit. *See* N.C. Gen. Stat. § 143-212(2); *id.* § 143B-282(a)(1)(a) (creating the EMC of DENR). DENR's regulations further require all animal waste management systems that meet the definition of animal operations, including swine facilities with more than 250 swine, to obtain a state-issued permit. *See* 15A N.C. Admin. Code § 2T.1304; N.C. Gen. Stat. § 143-215.10B(1) (defining animal operation).

[114] *See* Exhibit 3 (list of less discriminatory alternatives to the proposed general permit offered by Complainants Environmental Justice Network and Waterkeeper Alliance, Inc., as well as Southern Environmental Law Center, in December 6, 2013 Comments to DENR).

[115] *See generally* paragraphs 118 to 122, *supra*.

[116] *See* Natural Res. Conservation Serv., USDA Conservation Practice Standard: Air Filtration and Scrubbing (Code 371), at 3 (2010) (describing various "device[s] or system[s] for reducing [air] emissions . . . from a structure via interception and/or collection").

[117] DENR has the authority to control pollutants that are emitted first into the air that later are washed into waters under laws designed to protect water quality. *Rose Acre Farms, Inc. v. NC Dep't of Env't & Natural Res.*, 12-CVS-10, slip op. at 8-9 (Hyde Cnty. Sup. Ct. Jan. 7, 2013).

165. DENR also has the authority to require facilities to improve their waste collection systems by avoiding consolidation of solid and liquid swine waste, which creates harmful ammonia gas.[118] Manure conveyor belts or other systems that drain the urine from the feces have proven effective as retrofits to existing barns.[119]

166. In addition, DENR has the authority to require improvements to waste storage systems. At a minimum, DENR could require facilities to cover existing lagoons to prevent gases from volatilizing.

167. DENR has the authority to require facilities to use alternative treatment methods more appropriate than open-air lagoons.[120]

168. DENR has the authority to prohibit the use of high pressure spray guns, which create fine droplets and aerosols that can drift and cause odor problems, in favor of drip irrigators, or other irrigation mechanisms that do not rely on sprayers.[121] (b) (6) [redacted] ¶ 51.

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[118] A.L. Elliott et al., *Best Management Practices (BMPs) for Ammonia Emissions Reductions from Animal Feeding Operations: A Colorado Case Study*, 7 W. Nutrient Mgmt. Conf. 124, 124 (2007) ("[U]rea nitrogen in urine combines with the urease enzyme in feces and rapidly hydrolyzes to form ammonia gas. The reaction is quick, taking anywhere from 2 to 10 hours for ammonia volatilization to peak after mixing of urine and feces."); Pius M. Ndegwa et al., *A Review of Ammonia Emission Mitigation Techniques For Concentrated Animal Feeding Operations*, 100 Biosys. Eng'g 453, 465 (2008) (assessing several urine-feces segregation methods, all of which "reduced [ammonia] emissions from livestock barns by about 50% compared to the conventional manure handling system").

[119] Ndegwa, *supra* note 118, at 455-56.

[120] *See, e.g.*, Kelsi Bracmort, Cong. Research Serv., Anaerobic Digestion: Greenhouse Gas Emission Reduction and Energy Generation (2010), *available at* http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R40667.pdf (describing digester types and basic operating parameters); Wendy J. Powers & Robert T. Burns, Energy and Nutrient Recovery from Swine Manures 1-3 (2007), *available at* http://www.pork.org/filelibrary/Energy%20and%20Nutrient%20Recovery%20from%20Swine%20Manures.PDF (listing superior efficiency and environmental benefits of digester technologies, compared to lagoons); Philip W. Westerman et al., *Struvite Crystallizer for Recovering Phosphorus from Lagoon and Digester Liquid* (2009), *available at* https://www.bae.ncsu.edu/extension/ext-publications/waste/animal/ag-724w-struvite-westerman.pdf (discussing successful application of "continuous-flow cone-shaped struvite crystallizer" to capture slow-release mineral fertilizer from swine lagoon effluent); Nathan O. Nelson et al., *Struvite Precipitation in Anaerobic Swine Lagoon Liquid: Effect of pH and Mg:P ratio and Determination of Rate Constant*, 89 Biores. Tech. 229, 230 (2003) (reporting success of laboratory batch experiments precipitating struvite from "[a]naerobic swine lagoon liquid . . . collected from two active farms in North Carolina").

[121] *See, e.g.*, Karl A. Shaffer & Sanjay Shah, NCSU Coop. Ext., SoilFacts: Reducing Drift and Odor with Wastewater Application 2 (2008), *available at* http://www.soil.ncsu.edu/publications/Soilfacts/AG439-69W.pdf; Ndegwa, *supra* note 118, at 455-56.

169. DENR has the authority to require improved monitoring, including groundwater monitoring, and reporting, which is critical in light of recent cutbacks in DENR personnel, to ensure that facilities are meeting standards.

VIII. RELIEF

As established above, DENR issued a General Permit that fundamentally fails to protect the health and environment of residents living in proximity to permitted swine facilities, disproportionately affecting African Americans, Latinos, and Native Americans. Despite years of documentation demonstrating how these facilities—and particularly the dense concentration of swine facilities in communities in the eastern portion of the state—have polluted the water and air and affected the daily life of area residents, DENR issued a permit that contains essentially the same conditions as the last permit. This is entirely unacceptable and contrary to federal law.

First, to obtain funds, DENR must offer EPA the assurance that it will not undertake any action that violates Title VI, but DENR issued the General Permit without conducting an analysis of the potential for disproportionate health and environmental impacts on the basis of race and national origin. Complainants request that OCR investigate DENR's failure to satisfy the prerequisites for obtaining EPA funding and require DENR to complete a disproportionality analysis of its permitting program. Complainants further request that EPA require that DENR, in any future consideration of a permit program for industrial animal production in the state, conduct a robust analysis of disproportionate impact on the basis of race and ethnicity, including cumulative impacts from other nearby facilities, to ensure compliance with Title VI and its regulations.

Second, Complainants request that OCR conduct an investigation to determine whether DENR also violated Title VI and EPA's implementing regulations by issuing the revised general permit for swine waste management system in light of its grossly inadequate protections for the health and environment of people living in proximity to swine facilities, a permit that will have a statistically significant disproportionate impact on African Americans, Latinos and Native Americans. The General Permit simply fails to include conditions to prevent these facilities from continuing to injure human health and pollute the water and air. Study after study has shown that permitted swine facilities using the lagoon and sprayfield system in ways that are allowed by the General Permit spew pollution on surrounding communities, degrading air and water quality, injuring human health, and impacting quality of life. People living in proximity to industrial swine facilities, and particularly to multiple operations, have switched from using well water for fear that their water is contaminated with swine waste. They have given up fishing and hunting because they worry about the effect of pollution on the environment and surface water quality. They have complained that the pollution and overwhelming odor from these facilities makes it difficult to breathe, aggravates their allergies, and contributes to respiratory problems. People living in the shadow of permitted swine facilities are careful to

avoid spending time outside when the smell from the facilities is at its worse. They fear that their property values have declined because of proximity to the odors and other effects of swine facilities. Moreover, these long documented adverse effects of DENR's permitting program disproportionately affect African Americans, Latinos, and Native Americans, and they cannot be justified. DENR has alternatives, but has refused to exercise its authority to protect communities who for years have been struggling with the adverse effects of industrial swine facilities.

Community members have long asked why their way of life has been assaulted day in and day out by feces and urine from this industry, why so many industrial swine facilities were allowed to locate, densely packed, on the low lying coastal plain of the state, where soils are sandy and shallow and cannot absorb the massive amounts of waste that the industry creates. As journalist Wendy Nicole wrote in an article appearing in 2013 in Environmental Health Perspectives:

> The clustering of North Carolina's hog CAFOs in low-income, minority communities – and the health impacts that accompany them – has raised concerns of environmental injustice and environmental racism. As one pair of investigators explained, "[P]eople of color and the poor living in rural communities lacking the political capacity to resist are said to shoulder the adverse socio-economic, environmental, or health related effects of swine waste externalities without sharing in the economic benefits brought by industrial pork production."[122]

Today, however, Complainants are focusing on what DENR can do – indeed, has the legal obligation to do -- to protect them, and ask EPA to require, at a minimum, that DENR revise the General Permit to condition the operation of facilities on protections, including the installation and operation of waste management systems to prevent pollution, improved monitoring, and public reporting, among other things, to bring DENR into compliance with Title VI and EPA's regulations. Should DENR fail to come into compliance voluntarily, Complainants request that EPA initiate proceedings to suspend or terminate EPA funding to DENR in accordance with Title VI and 40 C.F.R. §§ 7.115(e), 7.110(c), 7.130(b).

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[122] Nicole, *supra* note 39 (quoting B. Edwards B & AE Ladd, *Race, Poverty, Political Capacity and the Spatial Distribution of Swine Waste in North Carolina*, 1982–1997, 9 North Carolina Geogr 55–77 (2001)).

Sincerely,

Dated: September 3, 2014

EARTHJUSTICE

By: _____

Marianne Engelman Lado
Jocelyn D'Ambrosio

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cc (via email)

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

February 20, 2015

OFFICE OF CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7006-3450-0003-3868-5417

In Reply Refer to:
EPA File No. 11R-14-R4

Marianne Engleman Lado
and Jocelyn D'Ambrosio
Earthjustice
48 Wall Street, 19th Floor
New York, New York 10005

Re: Notification of Acceptance of Administrative Complaint

Dear Ms. Lado and Ms. D'Ambrosio:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is accepting your September 3, 2014, administrative complaint, 11R-14-R4, filed against the North Carolina Department of Environment and Natural Resources (DENR). The complaint generally alleges that DENR violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. §7.120(d)(1). OCR accepts for investigation complaints that meet the four jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. §7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.,* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged act. *See* 40 C.F.R. §7.120(b)(2). Finally, the complaint must be against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. §7.15.

After careful consideration, the EPA is accepting the following allegation for investigation:

- North Carolina DENR's regulation of swine feeding operations discriminates against African Americans, Latinos, and Native Americans on the basis of race and national origin in neighboring counties and violates Title VI and EPA's implementing regulations.

This allegation is accepted for investigation because it meets the EPA's four jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against North Carolina DENR, an applicant for, or recipient of, EPA financial assistance. This acceptance in no way amounts to a decision on the merits. EPA will begin its process to gather the relevant information, discuss the matter further with the recipients and determine next steps utilizing its internal procedures.

Your complaint also raises an allegation related to North Carolina DENR's failure to enforce its regulatory and/or statutory requirements for swine farms; however, the complaint does not provide enough information to complete the review needed to determine whether OCR can investigate the allegation. Therefore, please provide OCR with the date on which the alleged discriminatory act(s) occurred and describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations. A date must be provided to determine whether the allegation meets EPA's requirement for timeliness. Please provide the requested information within twenty (20) days of your receipt of this letter. If this information is not provided within the referenced period, OCR will not accept the allegation for investigation.

If you have any questions about the information that OCR is requesting, please feel free to contact Helena Wooden-Aguilar, Assistant Director, External Civil Rights Program at (202) 564-0792, by e-mail at wooden-aguilar.helena@epa.gov, or U.S. mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

The EPA's nondiscrimination regulations provide that OCR will attempt to resolve complaints informally whenever possible. 40 C.F.R. §7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders, including alternative dispute resolution (ADR) as described at http://www.epa.gov\civilrights\faq-adrt6.htm. We will be contacting both you and representatives of North Carolina DENR in the near future to discuss your potential interest in pursuing ADR.

If you have any other questions, please do not hesitate to contact us.

Sincerely,

Velveta Golightly-Howell
Director

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

February 20, 2015

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7006-3450-0003-3868-5424

In Reply Refer to:
EPA File No.: 11R-14-R4

Donald R. van der Vaart
Secretary
North Carolina Department of Environment and
Natural Resources
1611 Mail Service Center
Raleigh, NC 27699-1611

Re: Notification of Acceptance of Administrative Complaint

Dear Secretary van der Vaart,

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is accepting an administrative complaint, 11R-14-R4, filed against the North Carolina Department of Environment and Natural Resources (DENR) dated September 3, 2014. The complaint generally alleges that DENR violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, and the EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 C.F.R. §7.120(d)(1). OCR accepts for investigation complaints that meet the four jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. §7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.,* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged act. *See* 40 C.F.R. §7.120(b)(2). Finally, the complaint must be against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. §7.15.

After careful consideration, the EPA is accepting the following allegation for investigation:

- North Carolina DENR's regulation of swine feeding operations discriminates against African Americans, Latinos, and Native Americans on the basis of race and national origin in neighboring communities and violates Title VI and EPA's implementing regulations.

This allegation is accepted for investigation because it meets the EPA's four jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against North Carolina DENR, an applicant for, or recipient of, EPA financial assistance. This acceptance in no way amounts to a decision on the merits. EPA will begin its process to gather the relevant information, discuss the matter further with you and your designees and determine next steps utilizing its internal procedures. As a part of OCR's established investigative process, you will receive a request for information from OCR in the near future. In the intervening time, please feel free to provide OCR with any information that you believe will assist EPA in this matter.

OCR would like to notify you that the complaint raises another allegation related to NC DENR's failure to enforce its regulatory and/or statutory requirements for swine farms. However, the complaint did not provide enough information for OCR to complete its jurisdictional review. As a part of OCR's established jurisdictional review process, OCR has requested the Complainants provide the necessary information within twenty (20) days of their receipt of the enclosed letter. If this information is not provided within this period, OCR will not accept the allegation for investigation.

The EPA's nondiscrimination regulations provide that OCR will attempt to resolve complaints informally whenever possible. 40 C.F.R. §7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders, including alternative dispute resolution (ADR) as described at http://www.epa.gov\civilrights\faq-adrt6.htm. We will be contacting both the Complainants' representative and your designated representative in the near future to discuss potential interest in pursuing ADR. Please provide OCR with the name and contact information of your designated representative at your earliest convenience.

If you have any other questions, please do not hesitate to contact Helena Wooden-Aguilar, Assistant Director, External Civil Rights Program at (202) 564-0792, by e-mail at wooden-aguilar.helena@epa.gov, or U.S. mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Velveta Golightly-Howell
Director

EARTHJUSTICE

Via Email and Fed-Ex

July 11, 2016

Lilian Dorka, Deputy Director, Acting Assistant Director
Office of Civil Rights
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Mail Code 1201-A
Washington, DC 20460

Re: **Title VI Civil Rights Complaint and Petition for Relief or Sanction by North Carolina Environmental Justice Network, REACH, and Waterkeeper Alliance, Inc., Against North Carolina Department of Environmental Quality (EPA OCR File No. 11R-14-R4): Intimidation**

Dear Interim Director Dorka,

This letter is intended to request that the Office of Civil Rights ("OCR") investigate a claim that the North Carolina Department of Environmental Quality ("DEQ"), directly and through the actions of the North Carolina Pork Council and National Pork Producers Council ("Pork Councils") have engaged in and failed to protect Complainants from intimidation, which is prohibited by Title VI and EPA regulations, 40 C.F.R. § 7.100. Members of affected communities in Eastern North Carolina have long been subject to an atmosphere of intimidation by swine facility operators, trade associations such as the Pork Councils and, ultimately, DEQ, formerly the North Carolina Department of Environment and Natural Resources ("DENR"), by its actions and inaction. The most recent specific incident occurred on January 13, 2016, when, apparently at DEQ's invitation and with no notice to North Carolina Environmental Justice Network ("EJ Network"), Rural Empowerment Association for Community Help ("REACH") and Waterkeeper Alliance, Inc. (collectively, "Complainants"), representatives of the Pork Councils showed up at the first session of confidential mediation between Complainants and DEQ. Given Complainants' clear opposition to the Pork Councils' participation in mediation and the manner in which both the Pork Councils' representatives and DEQ behaved, these actions could only have been intended to intimidate. We ask that OCR immediately ensure that DEQ put into place measures to protect against intimidation in its permitting program, consistent with DEQ's obligations pursuant to 40 C.F.R. § 7.35(a), and that OCR fully investigate the specific incident of intimidation on January 13, 2016 described in this letter.

We bring this intimidating conduct to your attention for two reasons. First, this is further evidence of DEQ's inability or unwillingness to address civil rights complaints and to ensure that members of the public are able to raise those concerns safely.

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Second, intimidation is prohibited by Title VI and EPA regulations. *See* 40 C.F.R. § 7.100. We request that OCR investigate whether DEQ has violated Title VI and its regulations, which establish that it is unlawful for anyone—an applicant for federal funds, a recipient of federal funds, or an "other person" —to "intimidate, threaten, coerce, or discriminate against any individual or group" for opposing discriminatory conduct or for participating in a Title VI process. *Id*. Intimidation tactics faced by complainants in this case have risen to this level. [1]

The importance of enforcing the anti-intimidation component of EPA's Title VI regulations cannot be overstated. As an Administrative Law Judge at the U.S. Department of Education stated in an opinion upholding the Department of Education's jurisdiction over a retaliation claim asserted by a complainant exercising rights under Title VI,

> If OCR were unable to offer broad protection to individuals who exercise their rights…, the effectiveness of the statute and the regulations would be severely hampered. Individuals would be discouraged from engaging in any protest activity aimed at encouraging voluntary compliance with the law. Potential complainants might be intimidated into withholding information from OCR or providing false information under the threat of retaliation. OCR's enforcement process would be compromised and a full and fair inquiry into any alleged discriminatory activity could be hampered.

Capistrano Unified Sch. Dist., 75 Ed. Law Rep. 1396, 1420 (Dep't of Educ. Apr. 30, 1992).

I. EPA REGULATIONS PROHIBIT INTIMIDATING CONDUCT.

EPA's Title VI regulations explicitly prohibit intimidation:[2]

> Intimidation and retaliation prohibited

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[1] Complainants focus this letter on the *prima facie* case against DEQ, which has engaged in acts of intimidation directly and "through contractual, licensing, and other arrangements." *See* 40 C.F.R. § 7.35 (a) (prohibiting discrimination "directly or through contractual, licensing, or other arrangements"). EPA's regulations also prohibit intimidation by "other persons," such as the Pork Councils, where such intimidation interferes with the exercise of rights under Title VI and EPA regulations. *Id.* § 7.100. EPA's regulations specifically forbid intimidation by any person against individuals or groups that have "filed a complaint," testified or "participated in any way in an investigation, proceeding or hearing" to enforce Title VI and its regulations, or that have otherwise "opposed any practice made unlawful" by EPA's Title VI regulations. *Id.* § 7.100(b). DEQ cannot evade review by pointing to the involvement of third parties in the intimidating and retaliatory conduct.

[2] EPA's regulations prohibit both "intimidation" and "retaliation", which together include intimidation, threats, coercion and discrimination. 40 C.F.R. § 7.100. The allegations herein focus on intimidating conduct – that is, actions that cause people to be afraid and/or act to compel or deter protected activities. *See* Merriam-Webster, Simple Definition of Intimidate, http://www.merriam-webster.com/dictionary/intimidate (last visited July 11, 2016) (defining intimidate as "to make (someone) afraid").

> No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:
> (a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or
> (b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation.

40 C.F.R. § 7.100. Moreover, Title VI and its regulations establish that DEQ cannot engage in prohibited activities such as intimidation "directly or through contractual, licensing, or other arrangements…." *Id.* § 7.35(a).[3]

As the Title VI Legal Manual published by the Department of Justice ("DOJ") sets forth, "[a] complainant may bring a retaliation claim under Title VI or under a Title VI regulation that prohibits retaliation." Department of Justice, Title VI Legal Manual § VIII(C) (Retaliation), *available at* https://www.justice.gov/crt/title-vi-legal-manual#Retaliation (last updated Aug. 6, 2015).

A *prima facie* case of prohibited retaliation or intimidation includes the following four elements:

> (1) that [the complainant] engaged in a protected activity, (2) that the recipient knew of the complainant's protected activity, (3) that the recipient took some sort of adverse action against the complainant, and (4) that there was a causal connection between the complainant's protected activity and the recipient's adverse actions.

Id., citing *Davis v. Halpern*, 768 F. Supp. 968, 985 (E.D.N.Y. 1991) (Defendant's summary judgment motion to dismiss Title VI retaliation claim denied because plaintiff established evidence of *prima facie* case).

In this case, Complainants filed a complaint under Title VI of the Civil Rights Act of 1964 and EPA regulations, a protected activity pursuant to 40 C.F.R. § 7.100 (a) and (b). Following

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[3] Effective January 23, 2013, EPA has required that grant recipients, including DEQ, acknowledge that they have "an affirmative obligation to implement effective Title VI compliance programs." U.S. Envtl. Prot. Agency, Civil Rights Obligations at 2 (Jan. 25, 2013), *available at* http://www.enviro-lawyer.com/Civil_Rights_Obligations.pdf. Any effective compliance program must include measures to identify, prevent and resolve interference with the exercise of rights under Title VI and EPA regulations. Recipients such as DEQ must further "be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how [they] [are] meeting [their] Title VI obligations." *Id.*

acceptance of the Complaint, Complainants explored and then engaged in voluntary Alternative Dispute Resolution (ADR), from approximately March 2015, when Complainants and DEQ agreed to ADR, until March 2016. The Complainants have also assisted in the investigation by providing declarations and supplementary material. All of these steps constitute protected activity.

There is no doubt that both DEQ and the Pork Councils had actual knowledge of the protected activity: complainants sent DEQ a copy of the Complaint on or about September 3, 2014, and the Pork Councils filed papers on December 18, 2015 seeking to intervene in the investigation and mediation. *See* Letter from Thomas Brugato & Benne C. Hutson, on behalf of Pork Councils, to Velveta Golightly-Howell, Dir., EPA OCR (Dec. 18, 2015), attached hereto as Ex. 1; *see also* Letter from Thomas Brugato & Benne C. Huston, on behalf of Pork Councils, to Velveta Golightly-Howell, Dir., EPA OCR (Feb. 19, 2016), attached hereto as Ex. 2.

DEQ and the Pork Councils engaged in acts of intimidation, *see infra* at II, and interfered with the exercise of Complainants' rights.

Finally, there is clearly a causal connection between the assertion of rights by Complainants and the acts of intimidation by DEQ and the Pork Councils; indeed, the Pork Councils' surprise intrusion into ADR on January 13, 2016, with the approval of DEQ, caused Complainants fear and is inextricably intertwined with this assertion of rights. The DEQ and Pork Councils' actions on January 13, 2016 made clear to Complainants that the agency obligated to protect their communities and the environment from the industry's adverse impacts has and will continue to forsake those obligations for the industry's interests. Without consequence from EPA, those actions undermine the assertion of rights (including through the ADR process).

The remainder of this letter will summarize DEQ's affirmative involvement in intimidating acts on January 13, 2016 as well as its responsibility for those acts based on DEQ's failure to maintain a program that protects Complainants from interference in the exercise of their rights. The letter will then offer background information about the context for these events – that is, the intimidating atmosphere in Eastern North Carolina, which has been exacerbated over time by DEQ's long-standing failure to take effective action to protect the rights of community members.

II. JANUARY 13, 2016 INTIMIDATION BY DEQ DIRECTLY AND THROUGH ITS CONTRACTING, LICENSING AND OTHER ARRANGEMENTS.

In March 2015, Complainants agreed voluntarily to participate in ADR with DEQ, in an attempt to resolve the issues raised in their Complaint. It was Complainants' understanding that the ADR process was confidential and that even the conversations involved in the convening

process were confidential in accordance with the Administrative Dispute Resolution Process Act of 1996, 5 U.S.C. § 574.[4] EPA's own website describes confidentiality in ADR as a "procedural safeguard" to protect the interests of participants in a Title VI complaint EPA, Frequently Asked Questions about the Use of Alternative Dispute Resolution in Resolving Title VI Complaints, https://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi (last updated Feb. 19, 2016). Two sections of this document are applicable. First, in response to the question "What procedural safeguards exist in ADR?", the FAQ indicates that a mediator works with the parties to establish ground rules about confidentiality and other issues and that all participants in mediation must abide by the ground rules. *Id*. Second, in response to a question focused, particularly, on confidentiality, the FAQ states:

> Confidentiality is a critical component of successful ADR processes. Confidentiality protections provided by federal and state laws allow the participants in the ADR process to freely engage in candid, informal discussions about their interests to reach the best possible resolution. Confidentiality allows participants to speak openly without the need for posturing or fear that statements made during an ADR process will be used against them later. At the same time, the public may have an interest in particular Title VI complaints. Thus, the complainant and recipient should work with their mediator or facilitator to craft rules regarding confidentiality in the ADR process….

Id. Complainants had strong reservations about keeping the fact of mediation confidential, given that Complainants have partners, members, constituencies and boards to which they are accountable. See Declaration of Naeema Muhammad at ¶ 16 (June 30, 2016), attached hereto as Ex. 3. Nonetheless, Complainants were willing to abide by terms requiring the parties to keep both the fact and content of mediation confidential until the first mediation session, when confidentiality could be the subject of discussion and negotiation. *See id.* at ¶ 17.[5]

On December 18, 2015, the Pork Councils filed papers with EPA seeking to "intervene" in the administrative complaint filed by Complainants and, surprisingly, in the mediation. *See* Ex. 1. To Complainants' knowledge, neither Complainants nor the mediator informed the Pork Councils about the mediation and it is likely that DEQ conveyed this information. To Complainants' knowledge, DEQ did not respond to the Pork Councils' request to EPA, but Complainants sent a response to EPA strongly objecting to the Pork Councils' attempt to intrude in the administrative process and urging EPA to reject their request in a timely way. *See* Letter from Marianne Engelman Lado, Sr. Staff Att'y, Earthjustice & Elizabeth Haddix, Sr. Staff

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[4] Section 574 of the Administrative Dispute Resolution Act of 1996 limits the disclosure of communication by the neutral to a dispute, as well as by the parties. In any given mediation, additional restrictions under state law, including those applicable to executive agencies within the state, may also apply.

[5] Complainants seek OCR guidance on the availability of a process for submitting evidence from the ADR process supporting Complainants' belief that DEQ was aware that the Parties were under an obligation to keep both the fact and content of mediation confidential.

Att'y, Univ. of N.C. Ctr. for Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 5, 2016), attached hereto as Ex. 4. Complainants explicitly rejected participation by the Pork Councils in ADR:

> [N]either Title VI nor EPA's implementing regulations provide authority for the Pork Council to have a role in the ADR process unless complainants and the recipient consent…. Complainants agreed to participate in ADR under the terms established by EPA. Notwithstanding the Pork Councils' reliance on the 1998 Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits suggesting that OCR "may" seek participation from "others" in a resolution process…the following description of the ADR process offered by EPA's Interim Case Resolution Manual is consistent with the information provided by EPA through the process:
>
>> EPA OCR's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations *between the complainant and recipient*, through the use of a professionally trained mediator…. As appropriate, the EPA may offer *the complainant and the recipient* an opportunity to engage in the ADR process at any stage in the complaint process….
>
> The process is voluntary, and absent mutual agreement by the parties – which has certainly not occurred here – the Pork Councils have no seat at the table.

Ex. 3 at 4 (emphases in original). In response to yet another letter brief by the Pork Councils sent to EPA, *see* Ex. 2, Complainants reiterated their unequivocal opposition to the Pork Councils' request for official status in the administrative proceeding and ADR. Letter from Marianne Engelman Lado, Earthjustice & Elizabeth Haddix, Univ. of N.C. Ctr. on Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 11, 2016), attached hereto as Ex. 5.[6]

The Parties and mediator planned to meet at the offices of the UNC School of Law Center for Civil Rights ("CCR") in Chapel Hill, North Carolina, on January 13, 2016 for two days of negotiation. Representatives for Complainants included their attorneys and Naeema Muhammad from the EJ Network, Melvin Felton from REACH, and Larry Baldwin and Gray Jernigan from Waterkeeper Alliance. On information and belief, neither the Pork Councils nor DEQ informed Complainants in advance that the Pork Councils knew the time and place of ADR, nor that representatives of the Pork Councils planned to attend. When Complainants arrived at the CCR offices for the first mediation session on January 13th, they learned that representatives of the Pork Council were in the parking lot. *See* Decl. of Naeema Muhammad at

[6] OCR rejected the Pork Councils' request for official status on January 15, 2016. Letter from Velveta Golightly-Howell, Dir., OCR to Gerald Yamada et al. (Jan. 15, 2016).

¶ 23. Their presence, as well as the lack of notification, was anxiety-producing for Complainants. Ms. Muhammad worried, for example, about whether the representatives from the Pork Councils might be gathering information about the identities of participants. *Id.* ¶ 24.

Ultimately, five representatives from the Pork Councils came into the building – including Benne Hutson, an attorney for the North Carolina Pork Council from McGuire Woods, LLP,[7] who had apparently traveled from Charlotte, North Carolina, for this purpose, one or two attorneys for the National Pork Producers from Covington & Burling LLP, who had apparently traveled from Washington, D.C., Michael Formica, Chief Environmental Counsel for the National Pork Producers, who had also apparently traveled from Washington, D.C., and two other representatives, and demanded to participate over the objections of Complainants.[8] Representatives of DEQ admonished Complainants about opposing their participation and argued that the Pork Councils should be included in the mediation session, clearly communicating to Complainants that they supported the Pork Councils' engagement. Decl. of Naeema Muhammad at ¶ 26; *see also* Ex. 2 at 1–2 (referring to "NCDEQ's statements to the mediator in support of the Councils' participation."). Representatives from the Pork Councils resisted requests by counsel for Complainants that they leave the building, and instead asked to be seated in a conference room. Ultimately, the Pork Councils' intrusion disrupted ADR: it delayed the start of ADR by nearly two hours and generated an atmosphere of distrust. Moreover, despite requests that they leave the building, Pork Council representatives remained in the hallway as negotiations began, all countenanced by DEQ. *See* Photograph of Pork Council representatives (Jan. 13, 2016), attached hereto as Ex. 6. Neither DEQ nor the Pork Councils had any basis for believing that Complainants would allow the Pork Councils to participate voluntarily, and they should have known that the surprise intrusion of the Pork Councils' representatives would be unwelcome and intimidating to Complainants, creating fear and uncertainty.

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[7] Benne Hutson has been influential with North Carolina's state legislature and, particularly, at DEQ. A bio appearing on the McGuire Woods website provides information about his leading role in the state's environmental regulatory system: "In 2012, the North Carolina Speaker of the House appointed Benne to the state's environmental management commission, which is responsible for all air, water and waste regulations in the state. In 2013, Governor Pat McCrory appointed Benne chairman of the commission. Benne served on the Commission until January 2015." McGuireWoods, Benne C. Huston, https://www.mcguirewoods.com/People/H/Benne-C-Hutson.aspx?pdf=1.

[8] *See* Ex. 2 at 1 ("Client representatives for each Council as well as outside counsel were present and traveled substantial distances to attend….").

III. BACKGROUND: A PERVASIVE ATMOSPHERE OF INTIMIDATION AND DEQ'S HISTORIC FAILURE TO PROTECT THE RIGHTS OF THE AFFECTED POPULATION IN EASTERN NORTH CAROLINA.

The January 13, 2016 event should be viewed in its context. For years, residents of Eastern North Carolina have raised concerns about the adverse impacts of industrial swine operations,[9] and more specifically, about the disparate impact of these facilities on the basis of race and national origin[10] and the atmosphere of intimidation that has served as a barrier for members of the community to assert their rights. Over these many years and continuing to today, DEQ has failed to take action to protect community members against retaliation or intimidation.

The context for raising concerns about intimidation is relevant. Eastern North Carolina, home to the counties where the density of hog operations is greater than anywhere else in the United States, is also home to a large population that has historically been disproportionately disenfranchised and remains disproportionately low-income.

Indeed, as Dr. Steve Wing has reflected, there is a strong correlation between the location of industrial hog farms to the density of slave populations in the 1860s. *See* Laura Orlando, *The Legacy of Slavery: What Inequality and Industrial Hog Operations Have in Common*, In These Times, May 19, 2015, http://inthesetimes.com/rural-america/entry/17771/what-industrial-hog-operations-and-inequality-have-in-common. As described by Dr. Wing, racial injustice and inequality are closely associated with today's conditions: "If workers and residents in rural communities that are most directly impacted had basic political and human rights, industrial agriculture would not have developed with such destructive force because those affected by its side effects would have been able to protect themselves." *Id.* According to the U.S. Census, in Duplin County, which boasts of more pigs per person than any other county in the country, the poverty rate exceeds 27%, as compared to 17.2% for the state as a whole. *See* U.S. Census Bureau, QuickFacts, Duplin County, North Carolina, http://www.census.gov/quickfacts/table/IPE120214/37,37061,00 (enter "North Carolina" and "Duplin County" into search bar, find "Income and Poverty" data, and "Persons in poverty, percent").

The atmosphere of intimidation, which includes fear of both economic and physical harm, has been pervasive in areas such as Duplin County. Murphy-Brown, a regional powerhouse in the

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[9] *See, e.g.*, Joby Warrick & Pat Stith, *North Carolina's Booming Hog Industry is Generating Tax and Revenue. But Some Residents Say the Cost is Too High.* Raleigh News & Observer, Feb. 24, 1995 (part of the Pulitzer Prize winning Boss Hog series on the rise of the industrialized hog industry in eastern North Carolina, including concerns raised by people who live near hog facilities).

[10] *See, e.g.*, NCEJN, *The Rest of the Story*, *available at* http://ncejn.org/ (interview with Cindy Watson, state representative 1995–1998, who heard community concerns); Declaration of Devon Hall (Aug. 30, 2014), at ¶¶ 6—10, originally submitted with Complaint and attached hereto as Ex. 7 (efforts by REACH to create opportunities for residents to testify about the impacts of hog farms and engage in collaborative problem solving with government and industry representatives from 2005 to the present).

pork and poultry sectors, is the leading employer in the county, and the animal industry accounts for three of the top four employers. Duplin County, Major Employers, http://www.duplincountync.com/aboutDuplinCounty/majorEmployers.html (last accessed July 8, 2016). To cite but a few examples, (b) (6) - Privacy, a seventy-year-old African American resident of Duplin County, personally experienced intimidation. (b) (6) - Privacy lives within two miles of ten hog facilities. Though her family had hogs when she was growing up in the region, the impact of industrial hog facilities has adversely affected her life. At one point her water was tested and she was told by a state agency to stop drinking the water. After her water was tested, however, one of the hog famers living near her found out about the results. She couldn't be sure who told the famer about the tests, but, as (b) (6) - Privacy stated, "[T]hat farmer came back with their industry spokesperson and asked me a lot of questions as if they were trying to make it seem like I was out to get the hog farmer." Declaration of (b) (6) - Privacy (Sept. 2, 2014), at ¶ 7, originally submitted with Complaint and attached hereto as Ex. 8. (b) (6) - Privacy describes being upset and feeling vulnerable. She describes feeling like the men were "trying to take advantage" of her. *Id.*

Another community member, (b) (6) - Privacy, also recounts the futility of filing complaints with DEQ and retaliation by the grower whose sprayfields abutted the (b) (6) - Privacy family property. Declaration of (b) (6) - Privacy (Apr. 18, 2014), at ¶¶ 15–20, originally submitted with Complaint and attached hereto as Ex. 9. (b) (6) - Privacy received a letter from a lawyer associated with the hog industry threatening her with jail time if she continued to complain, and she and her mother were subject to threats of physical violence. *Id.* ¶¶ 17–18; *see also* N.C. Envtl. Justice Network, *…The Rest of the Story: Corporate Hog Production in North Carolina* at 4:40, YouTube (Jan. 9, 2013), https://www.youtube.com/watch?v=ReMXawj4oK8 (intimidation and harassment of (b) (6) - Privacy family, including a threat that if (b) (6) - Privacy continued to complain, the grower would sue her, that the grower violently shook her elderly mother, and that the grower blocked her car on the road); Steve Wing, *Social Responsibility and Research Ethics in Community-Driven Studies of Industrialized Hog Production*, 110 Envtl. Health Persp. 437, 443 (2002), attached hereto as Ex. 10 (referencing *Wilmington Star* report that two Duplin County residents who publicly opposed industrial hog production became concerned about their jobs when Murphy Farms representatives contacted their supervisors).

Notably, information released by Murphy-Brown, LLC in discovery in a nuisance lawsuit, *Gillis v. Murphy-Brown, LLC*, No. 7:14-CV-00185-BR (E.D.N.C. Third Amended Complaint filed July 3, 2015), demonstrates that (b) (6) - Privacy continue to be targeted in some manner for attention by Murphy-Brown. *See* E-mail from Gary Pearce, to Keira Lombardo, Senior Vice President of Corporate Affairs, Smithfield Foods, Inc., et al.(Aug. 24, 2015, 2:58 PM), attached hereto as Ex. 11 (listing (b) (6) - Privacy info and strategy" on agenda for call with representatives from Smithfield, the North Carolina Pork Council, and North Carolina Farm Families).

Naeema Muhammad, Community Organizer and Acting Director of the EJ Network describes the intimidating atmosphere in which community members live and work, "which makes it

more difficult to speak up about the problems they face." Decl. of Naeema Muhammad at ¶ 4. Given the weakness of the local economy and reliance of families on the animal industry, Ms. Muhammad believes that "people in the community are worried that if they speak out, their family members may lose their jobs." *Id* ¶ 5. To Ms. Muhammad, the history of racial intimidation and oppression in Eastern North Carolina has a continuing effect on relations and power in the community today, and "it remains hard for African Americans to speak out, particularly in low-income communities." *Id.* ¶ 6. Over time, officials from DENR and now DEQ attended meetings pulled together by REACH and by the EJ Network, which Ms. Muhammad also attended, and heard complaints both about the impacts of industrial hog operations and the atmosphere of intimidation. To her knowledge, DEQ failed to take any action to address acts of intimidation. *Id.*¶¶ 7–8. To the contrary, DEQ employees in regional offices, which receive complaints from the public about whether animal operations are complying with DEQ's standards, on at least one occasion placed a call to an animal operation (which they are supposed to regulate) to notify it that a community member lodged a complaint. *Id* ¶ 8. Ms. Muhammad recounts the experience of REACH Executive Director Devon Hall, who after calling DENR to make a complaint, received a phone call from the operator of the hog facility, who phoned to talk about his complaint. *See id*. To the knowledge of Complainants, DEQ has acted with disregard for the confidentiality of community members and to the present has failed to investigate or protect community members from threats and intimidation.

Individual growers and the pork industry, though its trade organizations the Pork Councils, have tried to intimidate community members directly and through actions taken to get confidential information from research scientists working with community members. See *id.* ¶¶ 10–12. Industry tactics also have a deterrent effect on inquiry into the effects of industrial hog operations, preventing collaborations between researchers working in the field of community-based participatory research and community residents. *Id.* ¶ 12. In the late 1990s, for example, after Drs. Steve Wing and Susanne Wolf finalized a report on the frequency of health symptoms in populations living in proximity to industrial hog operations, the North Carolina Pork Council sent Drs. Wing and Wolf a letter requesting all documentation related to the study including, among other things, "the identities of all persons who worked on or contributed to the Study (including persons interviewed)." Letter from Att'ys for N.C. Pork Council, to Steve Wing & Susanne Wolf (1999), *quoted in* Steve Wing, *supra*. The request raised a number of concerns, not the least of which was that the identities of the people participating in the study were confidential. Wing, *supra*, at 441. Industry representatives also contacted federal funders of Dr. Wing's researchers. *Id.* As Dr. Wing later wrote:

> Breach of confidentiality was a concern not only from a legal and ethical standpoint. The community trust upon which our research depended would be seriously compromised as well, potentially destroying valued professional and personal relationships and threatening the continuation of research into exposures and health of neighbors of swine CAFOs.

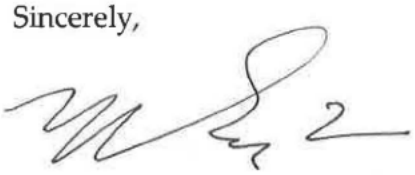
Id. Dr. Wing concluded that although there is a legitimate role in scientific inquiry for evaluating evidence and replicating findings, "the primary purpose of the Pork Council's request appeared to be harassment and intimidation." *Id.; see also* David Kirby, Animal Factory at 262, 338–340 (1st ed. 2010) (describing industry effort to discredit JoAnn Burkholder, currently the William Neal Reynolds Distinguished Professor at North Carolina State University and director of the NCSU Center for Applied Aquatic Ecology). As OCR already is aware, Dr. Wing was recently again served with a subpoena from industry representatives seeking information about the identity of participants in Dr. Wing's community-based participatory research on the effects of living in proximity to industrial swine operations. *See* Decl. of Naeema Muhammad at ¶ 11.[11]

CONCLUSION

We ask that EPA immediately ensure that DEQ put into place measures to ensure that intimidation does not occur in its permitting program "directly or through contractual, licensing, or other arrangements…", 40 C.F.R. § 7.35(a), and that EPA fully investigate DEQ's failure on January 13, 2016 to protect Complainants from intimidation.

Please do not hesitate to contact us for additional information related to this letter.

Sincerely,



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[11] Tactics used to put pressure and intimidate Complainants are also exemplified by a communications campaign developed and implemented by North Carolina Farm Families, an organization recently established for the purpose of organizing against what it calls "anti-agriculture activist groups" and is supported by Smithfield, the North Carolina Farm Bureau and other industry players. N.C. Farm Families, Who Are North Carolina's Farm Families, http://ncfarmfamilies.com/about-us/ (last visited July 8, 2016). In a flyer sent to growers in May 2016, North Carolina Farm Families sought contributions for a campaign to counteract "powerful groups led by Robert Kennedy, Jr.'s Waterkeeper Alliance," which is one of the Complainants. *See* Fundraising Advertisement, Ed Emory, President, N.C. Farm Families (May 18, 2016) (appended to Letter from Zach McCullen III, Vice President – Swine Div., Prestage Farms, Inc.. (May 18, 2016)), attached hereto as Ex. 12. The advertisement boasted of spending two million dollars "to run ads across North Carolina – on television, radio, newspapers and the Internet". *Id.*

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Exhibits

1. Letter from Thomas Brugato on Behalf of the National Pork Producers Council et al. to Velveta Golightly-Howell (Dec. 18, 2015)

2. Letter from Thomas Brugato on Behalf of the National Pork Producers Council et al. to Velveta Golightly-Howell (Feb. 19, 2016)
3. Declaration of Naeema Muhammad (June 30, 2016)
4. Letter from Marianne Engelman Lado, Sr. Staff Att'y, Earthjustice & Elizabeth Haddix, Sr. Staff Att'y, Univ. of N.C. Ctr. for Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 5, 2016)
5. Letter from Marianne Engelman Lado, Earthjustice & Elizabeth Haddix, Univ. of N.C. Ctr. on Civil Rights, to Velveta Golightly-Howell, Dir., EPA OCR (Jan. 11, 2016)
6. Photograph of Pork Council representatives (Jan. 13, 2016)
7. Declaration of Devon Hall (Aug. 30, 2014), originally submitted with Complaint
8. Declaration of (b) (6) - Privacy (Sept. 2, 2014), originally submitted with Complaint
9. Declaration of (b) (6) - Privacy (Apr. 18, 2014), originally submitted with Complaint
10. Steve Wing, *Social Responsibility and Research Ethics in Community-Driven Studies of Industrialized Hog Production*, 110 Envtl. Health Persp. 437 (2002)
11. E-mail from Gary Pearce, to Keira Lombardo, Senior Vice President of Corporate Affairs, Smithfield Foods, Inc., et al.(Aug. 24, 2015, 2:58 PM)
12. Fundraising Advertisement, Ed Emory, President, N.C. Farm Families (May 18, 2016)(appended to Letter from Zach McCullen III, Vice President – Swine Div., Prestage Farms, Inc.. (May 18, 2016)

Exhibit 1

December 18, 2015

By Email & U.S. Mail

Velveta Golightly-Howell
Director, Office of Civil Rights
EPA
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golightly-howell.velveta@epa.gov

Re: National Pork Producers Council and North Carolina Pork Council Motion to Intervene in Administrative Complaint 11R-14-R4 Proceedings

Dear Director Golightly-Howell:

We represent the National Pork Producers Council (NPPC) and the North Carolina Pork Council (NCPC), and write in regards to Title VI Administrative Complaint 11R-14-R4 (the Complaint) relating to the North Carolina Department of Environmental Quality (NCDEQ, formerly known as the North Carolina Department of Environment and Natural Resources) general permit program for swine farms in North Carolina. The Complaint was accepted in part for investigation by EPA's Office of Civil Rights on February 20, 2015.

Please accept this letter as NPPC and NCPC's motion to intervene and participate in the proceedings relating to the Complaint. Specifically, NPPC and NCPC seek and intend to participate in the upcoming mediation and any further proceedings that OCR may conduct in connection with the Complaint against NCDEQ.

NPPC and NCPC are stakeholders in this proceeding because these organizations and their members could be adversely affected by the proceeding's outcome.[1] In addition, NPPC and NCPC will present valuable information to OCR and the mediator that would assist in resolving the Complaint. For these reasons, NPPC's and NCPC's intervention is justified.

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[1] Indeed, because the resolution of this Complaint could potentially have a direct impact on pork producers in North Carolina (and elsewhere in the country), excluding NPPC and NCPC from these proceedings would raise a serious due process concern, as the pork industry would be deprived of notice and an opportunity to be heard on these matters. *See Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950) (touchstone requirement of the Due Process Clause is "notice and opportunity for [a] hearing").

NPPC is an association of 43 state pork producer organizations, which serves as the global voice for the nation's pork industry. The U.S. pork industry represents a significant value-added activity in the agricultural economy and the overall U.S. economy. Nationwide, more than 68,000 pork producers marketed more than 112 million hogs in 2014, and those animals provided total gross receipts of more than $21 billion. According to Iowa State University economists Daniel Otto, Lee Schulz and Mark Imerman, nationwide the U.S. pork industry is directly responsible for the creation of nearly 35,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture, and additional jobs in related sectors. All told, the U.S. pork industry is responsible for more than 550,000 mostly rural jobs in the United States. In North Carolina, the pork industry is responsible for approximately $1.46 billion in gross state product and 24,626 jobs.

Over 2,400 pork producers in North Carolina belong to the NCPC with a large number of them operating under the permits that are challenged in the Complaint. Chartered in 1962, the NCPC is one of the oldest state pork producer organizations in the country whose mission has been and continues to be promoting and educating to ensure a socially responsible and profitable North Carolina pork industry.

With this membership, history and mission, NPPC and NCPC have detailed knowledge of the pork industry (both from a national and state perspective), and can provide OCR useful information and an important perspective that would assist in resolving the Complaint, including:

- Information regarding the North Carolina permitting program and controls regulating the pork industry, including the history of that program and the extensive participation of the public in developing those controls;
- Information as to how the North Carolina permitting program and controls compares to others in the country;
- Information on current operational practices on hog farms subject to this regulation;
- Information on regulatory compliance by permitted farms and their meeting of environmental performance benchmarks, including analysis of how swine farms in North Carolina compare to those elsewhere in the United States;
- The substantial economic benefits of the pork industry in North Carolina, including its benefits to communities of color and low income communities, and the similar national economic benefits of the pork industry;
- The history of the pork industry in North Carolina, including the many improvements to industry practices made over the past two decades;
- Information on siting of these farms and the changing demographics of communities near swine farms in the state;

- Information relating to the nature of the alleged injuries claimed in the Complaint and the experiences of farmers on the ground;

- Analysis relating to the claimed statistical disparities asserted in the Complaint; and

- Information and analysis relating to the demographics of communities located near swine farms nationally.

EPA has repeatedly recognized that permittees and industry representatives have valuable information that may assist with the investigation and potential informal resolution of Title VI complaints. *Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits* at 1 (1998) ("EPA believes that robust stakeholder input is an invaluable tool for . . . informally resolving Title VI complaints when they arise."); *see also* EPA, *Role of Complainants and Recipients in the Title VI Complaints and Resolution Process* at 5 (May 4, 2015) (noting that OCR may "gather additional information from relevant sources (e.g., community members, businesses/industry, and permit holders)"); 65 Fed. Reg. 39,650, 39,693 (June 27, 2000) ("The permittee may also be asked to provide information to assist in the investigation of the complaint. . . . During several investigations, permit applicants have sent information to OCR that they believe is relevant. In those instances, OCR has reviewed the information and placed it in the investigatory file."); EPA, No. 01R-95-R9, *Investigative Report*, at 40 (Aug. 30, 2012) (noting that the administrative file contained "material provided" "by the facilities" at issue).

EPA has also recognized that permittee and industry interests can be adversely affected by the disposition of a Title VI complaint, and so recognizes that they are a stakeholder in the Title VI process. *See, e.g.*, EPA, *Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits* at 1 (1998) ("Title VI environmental permitting cases may have implications for a diversity of interests, including those of the recipient, the affected community, and the permit applicant or permittee.").

For these reasons, NPPC and NCPC desire to participate in the mediation and any other proceedings relating to the Complaint. NPPC and NCPC have vital information essential to a full and fair resolution of this matter. NPPC, NCPC and their respective members also have a direct stake in the outcome of these proceedings, and serious due process concerns would be raised if NPPC and NCPC were excluded from these proceedings. NCPC's and NCPC's participation in these proceedings is fully consistent with EPA's Title VI regulations and guidance, which "encourage the informal resolution of all complaints with the participation of *all* affected stakeholders." EPA, *Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits* at 3 (1998) (emphasis added); *see also* 65 Fed. Reg. at 39,673 (noting that "OCR may seek participation from the complainant, the permittee, or others" in the informal resolution process).

We understand that the mediation is currently planned to take place in January 2016. Accordingly, we would appreciate OCR's confirmation of NPPC's and NCPC's intervention as soon as practicable, so that NPPC and NCPC can adequately prepare for and make arrangements to attend the mediation, and we intend to reach out directly to the mediator regarding NPPC's and NCPC's participation. Please do not hesitate to contact us if you have any questions.

Sincerely,

Thomas Brugato

National Pork Producers Council

By Counsel

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Benne C. Hutson

North Carolina Pork Council

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cc: Michael K. Lewis, Mediator
Jeryl Covington, EPA
Sam Hayes, General Counsel, NCDEQ
Marianne Engleman Lado, Esq., counsel for Complainants
Jocelyn D'Abrosio, Esq., counsel for Complainants
Michael Formica, Assistant Vice-President, Domestic Policy & Counsel, NPPC
Deborah Johnson, Chief Executive Officer, NCPC

Exhibit 2

February 19, 2016

By Email & U.S. Mail

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Re: National Pork Producers Council and North Carolina Pork Council Motion to Intervene in Administrative Complaint 11R-14-R4 Proceedings

Dear Director Golightly-Howell:

We are in receipt of your letter dated January 15, 2016 and appreciate your response regarding our request to participate in these proceedings. In the event mediation between the Complainants and NCDEQ does not result in a resolution, the North Carolina Pork Council and the National Pork Producers Council ("the Councils") stand ready to serve as a resource for OCR as it conducts its investigation. We would plan to submit information that would assist in resolving the allegations in the complaint. Please do not hesitate to contact us if you have any questions or feel that the Councils could provide useful information at any point.[1]

In addition, so you are fully aware, we wanted to provide you a brief update relating to the mediation. As you know, a mediation session took place on January 13 and 14, in Chapel Hill, North Carolina. As stated in the Councils' December 18 motion, both Councils intended and desired to participate in this mediation session, and neither OCR nor the mediator had stated before the mediation that the Councils could not attend. Unfortunately, counsel for the Complainants excluded both Councils from the mediation session, despite the NCDEQ's support for the Councils' participation.

The Councils traveled to the location for the mediation session and arrived well before the scheduled start time. Client representatives for each Council as well as outside counsel were present and traveled substantial distances to attend, demonstrating the Councils' good faith commitment to participating in the mediation.

After several hours of discussion (through the mediator) regarding the Councils' participation, counsel for Complainants stated that the Councils were not welcome at the mediation, despite NCDEQ's statements to the mediator in support of the Councils'

[1] The Councils continue to believe that they have a right to participate in the mediation and investigation and reserve all rights in this respect.

participation. The only rationale provided was a vague reference to the "integrity of the mediation process." The Complainants did indicate that they might be willing to meet separately, outside of the mediation context, with the Councils. They then instructed the Councils to leave the building where mediation was held – the University of North Carolina Law School Center for Civil Rights (who are co-counsel for Complainants).

It is unfortunate that the Councils were excluded from the mediation by Complainants, and the Councils remain puzzled as to why Complainants remain opposed to the Councils' good-faith participation. The Councils are disappointed that, despite being stakeholders with regards to the issues raised by the complaint and having significant expertise and relevant facts that could assist in the resolution of these issues, they have been excluded from good-faith participation in the mediation.

Nevertheless, the Councils remain ready to participate in the mediation in good faith should Complainants change their position on the matter. In addition, as noted above, the Councils would be pleased to serve as a resource for OCR and plan to provide relevant material to OCR at an appropriate time. Please do not hesitate to contact us if we can be of assistance.

Sincerely,

Thomas Brugato

National Pork Producers Council

By Counsel

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cc: Michael K. Lewis, Mediator
Jeryl Covington, EPA
Sam M. Hayes, General Counsel, NCDEQ
Marianne Engleman Lado, counsel for Complainants
Elizabeth Haddix, counsel for Complainants
Michael Formica, Assistant Vice-President, Domestic Policy & Counsel, NPPC
Deborah Johnson, Chief Executive Officer, NCPC

Exhibit 3

DECLARATION OF NAEEMA MUHAMMAD

1. My name is Naeema Muhammad. I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

2. The information I provided in my previous declaration, dated August 29, 2014, is incorporated herein.

3. I have been the Acting Director and a Community Organizer for the North Carolina Environmental Justice Network (the "EJ Network") since October 2013 and currently serve as Acting Director. I have been with the EJ Network since 1999, when I joined as a community organizer.

Atmosphere of Intimidation in North Carolina

4. As an organizer for the EJ Network, I have been made aware of the intimidating atmosphere in which members of the community live and work, which makes it more difficult to speak up about the problems they face.

5. In parts of Eastern North Carolina such as Duplin County, there aren't many jobs and people have family members who work for industrial hog operations. They are worried that if they speak out, their family members may lose their jobs.

6. Eastern North Carolina also has a history of racial intimidation and oppression, from slavery to Jim Crow segregation, to today. The counties where

hog operations are now located historically were places with plantations and the use of slave labor. This history has an effect on relations and power in the community today and it remains hard for African Americans to speak out, particularly in low-income communities.

7. Officials from the North Carolina Department of Environmental Quality ("DEQ"), formerly the Department of Environment and Natural Resources ("DENR") have attended meetings pulled together by REACH and by the EJ Network and have heard complaints both about the impacts of industrial hog operations and, also, this atmosphere of intimidation.

8. To my knowledge, DEQ has failed to take any action to crack down on acts of intimidation. In fact, DEQ employees in regional offices, where community members are supposed to call or send complaints about whether the operations are complying with DEQ's standards, have called the operations and let them know that community members have lodged the complaints. It is my understanding that this happened to Devon Hall: he called DEQ (then DENR) to make a complaint and the next thing he knew, the operator of the hog facility called him up about his complaint.

9. Similarly, it is public knowledge that some hog facility owners have threatened members of the community for speaking out. (b) (6) - Privacy for example, has talked about her experience being threatened by a grower with

violence or litigation if she kept complaining about the hog operation that was spraying waste on her property and affecting her life and the quality of life of her family. To my knowledge, DEQ never opened an investigation or even threatened to withdraw the permit of (b) (6) - Privacy neighbor to protect (b) (6) - Privacy rights. To my knowledge, DEQ took no action to ensure that its programs and activities were conducted in a non-discriminatory and non-intimidating way.

10. Individual growers and the pork industry, through its trade organizations the Pork Councils, have tried to intimidate community members directly and through actions taken to get confidential information from research scientists working with community members. I've worked with Dr. Steve Wing, for example, on a study that included work in the community.

11. In the late 1990s, Dr. Wing conducted a study in which interviewers assured participants that their responses to a questionnaire would be kept confidential. I participated in that study as a recruiter and trainer, and in that capacity, I informed members of the community that their participation would be confidential. But in 1999, attorneys for the North Carolina Pork Council requested documentation of this work including the identities of community members who were interviewed. It's my understanding that this recently happened again when Dr. Wing received a subpoena to release data underlying his work that includes

confidential information about the personal identities of community members who participated in his research.

12. In my opinion, the Pork Council is trying to intimidate members of the community, prevent collaborations between community members and researchers, and to discourage researchers from engaging in community-based research to investigate the effects of the industry. I'm concerned that the way Dr. Wing was treated sends a message to other researchers about what might happen to them if they enter community-based participatory research.

Intimidation by the Pork Councils and DEQ in the Context of Mediation, 2016

13. In the summer of 2015, the EJ Network and other complainants that filed the civil rights complaint with EPA in September, 2013, agreed voluntarily to participate in Alternative Dispute Resolution (ADR) with DEQ, in an attempt to resolve the issues raised in the complaint.

14. It is my understanding that the content of the mediation remains confidential.

15. As a result of conversations in which I participated with the convener of the ADR process, Will Hall, and with the mediator who was selected by complainants and DEQ, it was my understanding that mediation was confidential – both the content and the very fact of mediation was confidential.

16. I was uncomfortable with the idea that we would keep the fact that we were in mediation confidential because I have a responsibility for reporting to the communities that I work with, including the groups that are part of the EJ Network, our Board, Planning Committee, and membership body. It was my understanding that we couldn't tell anyone that we were in mediation unless that person was also bound by the same confidentiality agreement.

17. We brought up these concerns to the mediator, who listened and asked us to keep mediation confidential at least until we had our first negotiation with DEQ and then we could talk about it.

18. We were asked to sign an agreement to keep information about the mediation confidential. We asked to change the language because the mediator was going to come to eastern North Carolina and we had agreed to introduce him to members of the community. We told the mediator that we would keep the mediation confidential but didn't want to break the agreement when we reached out to people in the community to meet with the mediator. The mediator agreed to change the language to avoid this problem but it was our understanding that the mediation was still supposed to be confidential.

19. In December, we found out that the North Carolina Pork Council and the national Pork Council had filed papers with EPA to intervene in our complaint and in our mediation. I didn't tell the Pork Councils about the mediation and to my

knowledge, neither did any of the complainants. It is likely that DEQ staff or people told by DEQ staff about the mediation gave that information to the Pork Councils.

20. The complainants filed papers with EPA objecting to the Pork Councils' involvement in both the complaint and the mediation.

21. I did not want representatives of the Pork Councils in mediation. We filed the complaint against DEQ and the mediation was between the complainants and DEQ.

22. Our first face-to-face mediation session was on January 13th, 2016. To my knowledge, the complainants did not invite or otherwise agree to allow representatives of the Pork Councils to the mediation. To my knowledge, the complainants did not give representatives of the Pork Councils information about when or where the mediation sessions would be held.

23. When I arrived at the offices of the University of North Carolina School of Law Center for Civil Rights for the first mediation session on January 13th, I saw two representatives of the Pork Councils in the parking lot.

24. This didn't make me feel good, to know that they were there. They might have been taking pictures of who was representing the complainants or writing down my license tag number. They could have been writing down all of

our tag numbers. I felt exposed and that other community representatives were exposed.

25. When we got in the conference room where we were supposed to have the mediation, we found out that there were five representatives from the Pork Councils who were insisting that they should be allowed into the mediation.

26. Even then, the representatives of DEQ were either quiet or arguing that these representatives of the Pork Councils should be included in the mediation session. The DEQ representatives were congregating in the hallway with the representatives of the Pork Councils, which sent the message that the DEQ representatives were beholden to the industry and that they didn't even care about maintaining the appearance that they were unbiased and independent.

27. I have no reason to believe that anyone except representatives of DEQ told the representatives of the Pork Councils where the meeting would be held and at what time.

28. I believe that the presence of representatives of the Pork Councils was intended to intimidate the complainants. To my knowledge, neither the representatives of the Pork Councils nor DEQ gave complainants notice that the Pork Councils were planning to attend.

29. Complainants had also filed papers with EPA making it clear that complainants objected to any formal status or participation in the investigation or

mediation for the Pork Councils, so neither the Pork Councils nor DEQ had any basis for believing that the complainants would allow the Pork Councils to participate voluntarily.

Conclusion

30. EPA needs to investigate and do something about the atmosphere of intimidation, which I believe has the effect of preventing researchers from working with communities to analyze the impacts of swine operations and preventing community members from asserting their rights and making complaints. The recent action by the Pork Councils, storming into our mediation uninvited, demonstrates the close relationship they have with DEQ, DEQ's willingness to expose community members. DEQ's behavior went beyond not taking action to stop tactics of intimidation: in this case, DEQ actively pressure complainants to seat representatives of the Pork Councils at the table even though they had come to the meeting uninvited and opposed.

31. I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed June 30th, 2016

Naeema Muhammad

Naeema Muhammad

Exhibit 4

EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

January 5, 2016

By Email & Mail
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Re: ***EPA Complaint No. 11R-14-R4: Opposition to National Pork Producers Council Request to Intervene***

Dear Ms. Golightly-Howell:

We write on behalf of Complainants North Carolina Environmental Justice Network ("NCEJN"), Rural Empowerment Association for Community Help ("REACH"), and Waterkeeper Alliance, Inc., in response to the December 18, 2015 "National Pork Producers Council and North Carolina Pork Council Motion to Intervene in Administrative Complaint 11R-14-R4 Proceedings."

We strongly object to the improper and unprecedented attempt by the National Pork Producers Council and North Carolina Pork Council (collectively, "Pork Councils") to intrude in this administrative process and urge you to reject their request in a timely way. The Pork Councils' self-styled "motion to intervene" is not proper under any legal authority.

EPA's regulations implementing Title VI of the Civil Rights Act of 1964, 40 C.F.R. pt. 7, establish a process whereby complainants may initiate an investigation and EPA's Office of Civil Rights ("OCR") may also conduct compliance reviews. 40 C.F.R. §§ 7.120, 7.115. The regulations contain provisions for notification of complainants and recipients – but afford no formal role for third-parties. *See id.* This process and the roles of complainants and recipients contemplated by the regulations are consistent with guidance provided by the Title VI Legal Manual issued by the Department of Justice:

> The Coordination Regulations require that Federal agencies establish procedures for the "prompt processing and disposition" of complaints of discrimination in federally funded programs. 28 C.F.R. § 42.408(a).... Generally, by regulation, an agency will allow complainants 180 days to file a complaint, although the agency may exercise its discretion and accept a complaint filed later in time. See, e.g., 28 C.F.R. § 42.107(b).... An investigation customarily will include interviews of the complainant, the recipient's staff, and other witnesses; a review of the recipient's pertinent records, and potentially its facility(ies); and consideration of the evidence gathered and defenses asserted. If the agency finds no violation after an investigation, it must notify, in writing, the recipient and the complainant, of this

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> decision. See, e.g., 28 C.F.R. § 42.107(d)(2). If the agency believes there is adequate evidence to support a finding of noncompliance, the first course of action for the agency is to seek voluntary compliance by the recipient. See, e.g., 28 C.F.R. § 42.107(d)(1). If the agency concludes that the matter cannot be resolved through voluntary negotiations, the agency must make a formal finding of noncompliance and seek enforcement, either through judicial action or administrative fund suspension.

U.S. Dep't of Justice, Title VI Legal Manual ("Title VI Legal Manual") § X(C), *available at* http://www.justice.gov/crt/title-vi-legal-manual-0#C (last updated Aug. 6, 2015). While the Title VI Legal Manual contemplates the possibility that an agency may interview "other witnesses," there is no formal status accorded parties other than complainants and recipients.

Indeed, though many aspects of EPA's case management process have been in flux, EPA guidance documents do not afford a role for third-party interveners. *See* EPA, Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaints and Resolution Process (2015), *available at* https://assets.documentcloud.org/documents/2178959/final-roles-of-complainants-and-recipients-issue.pdf; EPA, Interim Case Resolution Manual at 14 (2015) ("Interim Case Resolution Manual"), *available at* https://www.documentcloud.org/documents/2630278-epa-case-resolution-manual.html (describing roles of Complainants and Recipients).

The Pork Councils have other more appropriate means at their disposal to inform an investigation and influence North Carolina Department of Environmental Quality ("DEQ") policy, and their suggestion that "due process" is implicated carries no weight. First, as the DOJ Legal Manual describes, the investigation into a claim under Title VI "will include interviews of the complainant, the recipient's staff, *and other witnesses*; a review of the recipient's pertinent records, and potentially its facility(ies)." Title VI Legal Manual (emphasis added). Should EPA find that the Pork Councils or their members have relevant information to provide, it is within EPA's authority to interview or otherwise collect information from them. Moreover, the Pork Councils can continue to lobby DEQ throughout this process and in the event that DEQ issues any proposal to modify its policies and practices. Under state law, DEQ would also be required to comply with notice requirements should it seek to modify or revoke a general permit. N.C.G.S. § 143-215.1(b)(4)(c). Of course, the Pork Councils are also welcome to send relevant information to complainants so that we can take their positions into account.[1]

It would be ironic, indeed, if EPA were to succumb to industry pressure to carve out a new role for so-called interveners, particularly given the limited role EPA has historically

[1] The Pork Councils' reliance on *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), to prop up its request for intervention based on due process concerns reflects the weakness of their argument. This 1950 decision focused on the sufficiency of notice in the context of a judicial settlement of accounts where the final judicial decree would close off rights that trust beneficiaries would otherwise have. *Id.* at 655-66. The ways in which this case is inapposite are too numerous to detail: *Mullane*, for example, involved a judicial settlement, not ADR. Moreover, the outcome of the judicial settlement in *Mullane* was dispositive of interests, whereas the nature and terms of any agreement arising from ADR are speculative at this point, and should due process rights be implicated, DEQ will have the opportunity to comply with any applicable notice and comment requirements.

recognized for complainants in Title VI administrative actions. Perhaps most controversially, EPA referred to complainants as "tipsters" in a draft white paper entitled "Role of Complainants and Recipients in the Title VI Complains and Resolution Process," released on January 25, 2013:

> A Title VI complainant is not like a plaintiff in court. Rather, a complainant's role is more like that of a tipster, who reports what he or she believes is an act violating Title VI by an entity receiving federal financial assistance (the recipient) to the associated agency providing such assistance, in this case EPA. EPA is not in an adjudicatory role, evaluating evidence produced by opposing sides, but instead investigates allegations about its recipient, and reaches a conclusion regarding whether a violation of Title VI has occurred.

EPA, Title VI of the Civil Rights Act of 1964: Role of Complainants and Recipients in the Title VI Complaints and Resolution Process at 1 (drft. 2013), *available at* http://cchealth.org/hazmat/hmc/pdf/2013-0208-Title-VI-of-the-Civil-Rights-act-of-1964.pdf. Of course, complainants are not just "tipsters" but people who have been subject to exclusion or discrimination and are asserting their rights or groups representing those individuals. Indeed, comments submitted to EPA by community-based, regional and national groups in response to the January 25, 2013 white paper called for more meaningful engagement of complainants in the investigation and resolution processes: "EPA must meaningfully involve those suffering discrimination in the investigation of their complaints, including proactively involving them in the investigation, providing full and free access to documents, and providing the resources to even the playing field during Alternative Dispute Resolution..." Comments on U.S. Environmental Protection Agency Draft Policy Papers filed by California Rural Legal Assistance Foundation et al. at 22 (March 20, 2013), *available at* http://www.prrac.org/pdf/Title_VI_Comments_2013-03-20.pdf. Although EPA's recently released Interim Case Resolution Manual no longer refers to complainants as "tipsters," the role of complainants proposed by recently released Interim Case Resolution Manual remains circumscribed:

> An OCR complainant is not like a plaintiff in court. Rather, a complainant's role is to report what s/he believes is an act violating nondiscrimination statutes by an entity receiving federal financial assistance to the associated agency. The EPA is not in an adjudicatory role, evaluating evidence produced by opposing sides, but instead investigates allegations about its recipient, and reaches a conclusion regarding whether that recipient is in compliance with its civil rights obligations to the EPA.

Interim Case Resolution Manual at 14. In this context, where the agency does not even recognize complainants and recipients as having equivalent status as parties in a judicial action, it is nonsensical to accord the Pork Council party status, with the rights and obligations of a "party."

Finally, neither Title VI nor EPA's implementing regulations provide authority for the Pork Council to have a role in the ADR process unless complainants and the recipient consent. Complainants filed their Title VI complaint against the North Carolina Department of

Environment and Natural Resources (now DEQ) on September 3, 2014. That Complaint, 11R-14-R4, was accepted for investigation by OCR on February 20, 2015. In March 2015, Complainants and DEQ began the Alternative Dispute Resolution ("ADR") process with the assistance of EPA's Conflict Prevention and Resolution Center. Our good faith participation in this process represents the culmination of years of effort by NCEJN, REACH and Waterkeeper to remedy the racially discriminatory of DEQ's permitting policies and, particularly, DEQ's decision to permit more than 2,000 swine facilities in eastern North Carolina without adequate protections for the health and welfare of already overburdened communities. Complainants agreed to participate in ADR under the terms established by EPA. Notwithstanding the Pork Councils' reliance on the 1998 Interim Guidance for Addressing Title VI Administrative Complaints Challenging Permits suggesting that OCR "may" seek participation from "others" in a resolution process, see National Pork Producers Council and North Carolina Pork Council Motion to Intervene in Administrative Complaint 11R-14-R4 Proceedings at 3 (filed Dec. 18, 2015), the following description of the ADR process offered by EPA's Interim Case Resolution Manual is consistent with the information provided by EPA through the process:

> EPA OCR's Alternative Dispute Resolution (ADR) process involves the formal mediation of a complaint or complaint allegations *between the complainant and recipient*, through the use of a professionally trained mediator.... As appropriate, the EPA may offer *the complainant and the recipient* an opportunity to engage in the ADR process at any stage in the complaint process....

Interim Case Resolution Manual at 20 (emphasis added). The process is voluntary, and absent mutual agreement by the parties – which has certainly not occurred here – the Pork Councils have no seat at the table.

Complainants further urge EPA to reject the Pork Councils' request quickly and to ensure that it does not result in any delay of the January 13-14 mediation. Throughout last spring and summer, we worked with DEQ and William Hall to select a mediator. During the first week of September 2015, DEQ and the Complainants agreed to work with (b) (6) - Privacy as mediator, and since that time have engaged in several preliminary conferences with (b) (6) - Privacy to reach agreement on the mediation terms and conditions. We rescheduled the mediation from early December 2015 to accommodate conflicts in DEQ counsel's schedule, and have been preparing to proceed with mediation on January 13-14, 2016. Our clients have already waited too long for vindication of their rights to be free from race discrimination as promised under Title VI. Given the timetable, we would appreciate your response to this letter this week so we can finalize travel plans and other arrangements for negotiations. To be clear, complainants do not consent to the participation of the Pork Councils in the mediation.

One other issue bears mention. Pursuant to our conversations with Mr. Hall and initial discussions with (b) (6) - Privacy the fact that Complainants and Respondent were participating in the ADR process was to remain confidential. Complainants have raised concerns about the scope of confidentiality and on multiple occasions suggested that confidentiality extend only to the content of mediation and not the fact that the parties are engaging in ADR. It was our understanding that this was an issue that would be on the table when we began mediation. It was not until Friday, December 18th – the same day that we received the letter from the Pork

Councils – that we heard from (b) (6) - Privacy that we were no longer bound to keep the fact of mediation confidential.

The Pork Council's intrusion into our long-awaited ADR negotiations represent a breach of the confidentiality agreement between counsel, our clients and DEQ or, in the alternative, miscommunication by EPA to those involved in this process. We are troubled by this breach: complainants complied with EPA and (b) (6) - Privacy requests that we maintain secrecy despite our interests in providing information to community-based stakeholders. The Pork Councils' knowledge of the ADR process raises serious questions about the ground rules for this process and whether both sides will play by the rules.

In sum, we strongly oppose the Pork Councils' ungrounded request to "intervene" in the administrative complaint and ADR process. Please feel free to reach me or our co-counsel at the UNC Center for Civil Rights, Elizabeth Haddix, to discuss this matter. We look forward to hearing back from you in the coming days.

Sincerely,

Marianne Engelman Lado
Senior Staff Attorney
Earthjustice
212 845-7393
mengelmanlado@earthjustice.org

Elizabeth Haddix
Senior Staff Attorney
UNC Center for Civil Rights
919 445-0176
emhaddix@unc.edu

CC: Naeema Muhammed, NCEJN
Devon Hall, REACH
Gray Jernigan, Larry Baldwin, Waterkeeper Alliance, Inc.
Sam Hayes, General Counsel, NC DEQ
(b) (6) - Privacy Mediator
Jeryl Covington, EPA
Gerald Yamada, Thomas R. Brugato, Covington & Burling LLP
Benne C. Hutson, Eugene E. Matthews, III, Christopher E. Trible,
Mcguire Woods LLP
Michael Formica, NPPC

Exhibit 5

January 11, 2016

By Email & First-Class Mail
Velveta Golightly-Howell
Director, EPA Office of Civil Rights
Mail Code 1210A
1200 Pennsylvania Ave., NW
Washington, DC 20460
Email: golightly-howell.velveta@epa.gov

Re: EPA Complaint No. 11R-14-R4

Dear Ms. Golightly-Howell:

We write on behalf of Complainants North Carolina Environmental Justice Network (NCEJN), Rural Empowerment Association for Community Help (REACH), and Waterkeeper Alliance, Inc., in response to a letter submitted by the National Pork Producers Council and North Carolina Pork Council (the "Pork Councils") on January 7, 2016 in support of their effort to "intervene" in proceedings related to Administrative Complaint 11R-14-R4.

The Pork Councils' attempt to coopt "basic precepts of environmental justice" to justify their effort to inject themselves into the process for investigating and resolving the civil rights complaint is riddled with irony. See Pork Councils Letter at 1. The Principles of Environmental Justice were developed by a growing grassroots movement "to fight the destruction and taking of our lands and communities" and secure freedom for those who have been oppressed and colonized. *See* First National People of Color Environmental Leadership Summit, The Principles of Environmental Justice (1991), *available at* http://www.ejnet.org/ej/principles.pdf; *see generally* Unequal Protection: Environmental Justice and Communities of Color (Robert D. Bullard, ed.) (1993). It is beyond a stretch to argue that these precepts require that EPA grant industry novel "intevenor" status or that industry must be allowed to participate in mediation of a race discrimination complaint against the state agency charged with protecting the environment and public health.

Moreover, the Pork Councils' misplaced reliance on various authorities pertaining to hearings ignores the current status of this investigation and ADR process. We are not currently before an Administrative Law Judge or in a judicial proceeding where an evidentiary record is circumscribed and limited by rules of evidence. Regulations promulgated by various federal agencies regarding the conduct of hearings are simply inapposite. The Pork Councils are currently free to submit information to complainants, the recipient and to EPA, but they have no "party" status in the investigation or in ADR. Their self-styled "motion to intervene" is improper and unprecedented and should be rejected.

Finally, it's worth noting that time and again, members of communities living in proximity to confined animal feeding operations (CAFOs) have struggled to gain access to information. The Pork Councils have not stood up for transparency during those efforts. Recently, for example, the Pork Councils failed to support community opposition to House Bill 405, a bill that penalizes whistle-blower activities on CAFOs, Property Protection Act, H.R. 405, Gen. Assemb., Sess. 2015 (N.C. 2015) (enacted), or Compact/Balanced Budget, H.R. 366, Sess. 2015 (N.C. 2015), which prohibited disclosure of records related to the investigation of complaints concerning agricultural operations. N.C.G.S. § 143-215.9D (2014).

Please feel free to reach either of us to discuss this matter.

Sincerely,

Marianne Engelman Lado
Earthjustice

Elizabeth Haddix
UNC Center on Civil Rights

CC:

Naeema Muhammed, NCEJN
Devon Hall, REACH
Gray Jernigan, Larry Baldwin, Waterkeeper Alliance, Inc.
Sam Hayes, General Counsel, NC DEQ
(b) (6) - Privacy Mediator
Jeryl Covington, EPA
Gerald Yamada, Thomas R. Brugato, Covington & Burling LLP
Benne C. Hutson, Eugene E. Matthews, III, Christopher E. Trible, McGuire Woods LLP
Michael Formica, NPPC

Exhibit 6

(b) (6) - Privacy

Exhibit 7

DECLARATION OF DEVON HALL

1. My name is Devon Hall. I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

Background

2. I am African-American. I live at 2584 West Wards Bridge Road in Warsaw, Duplin County, North Carolina. (See Attached Map.) I have lived at this address for thirty-two years and I own my home. I live alone. I am fifty-nine years old.

3. I am a co-founder, Program Manager and Interim Director at the Rural Empowerment Association for Community Help (REACH) organization. The REACH office is located at 2398 West Wards Bridge Road in Warsaw.

4. REACH strives to improve the quality of life for families and people of color in rural eastern North Carolina. In particular, REACH addresses social, economic and environmental issues of families and people of color in Duplin, Sampson and Bladen counties in eastern North Carolina. REACH's programs include environmental awareness, sustainable agriculture, small business development, and homeownership, among other things.

5. My primary goals as Program Manager and Interim Director for REACH are to protect, educate and collaborate with the people that I serve.

REACH serves over 800 southeastern residents through its various programs. In my current role at REACH, among many other tasks, I act as a liaison between REACH and the surrounding community; build relationships between REACH and other non-profits, as well as county and state government; make presentations at local and regional meetings; plan meetings; and coordinate studies and testing relating to the effects of industrial hog farming on the surrounding community and environment. Those studies include testing for hog related MRSA (Methicillin-resistant Staphylococcus aureus) among hog farm workers and water sampling.

REACH's Efforts to Change Hog Farm Practices in North Carolina

6. In 2005, I submitted a grant proposal to U.S. EPA to address the impacts of CAFOs on people and the environment in southeastern North Carolina. The project title was Duplin Environmental Health Awareness Project (DEHAP). With this funding, myself and the then Executive Director of REACH, were able to have a listening session where we asked what people's concerns were and they shared their experiences with living near industrial hog farms in eastern North Carolina.

7. Under DEHAP, twelve individuals were selected to act as Advisors to REACH to be our environmental eyes and ears in the community. They act as concerned citizens with a strong sense of stewardship and caring for the water, earth and air. When the grant ended a year later, the group decided to continue with

or without funding. The group meets regularly with approximately 20-30 other grassroots community members.

8. Originally, DEHAP arose out of organizing that I did in collaboration with Steve Wing, a professor of epidemiology at the University of North Carolina in Chapel Hill. Before I started organizing, I knew it smelled bad where I lived, but I didn't know about other places. It was only until after I talked to people in different areas within Duplin County that I realized how bad it was for so many people. Residents were angry because of the stench that they endure, that is not caused by them. From my own observation, it appears that the hog growers don't care about how bad the smell and pollution from their farms effect their neighbors.

9. In 2006, REACH received an EPA Collaborative Problem Solving Grant to join together the grassroots community with businesses and government to address environmental problems. Under this grant, DEHAP constituents met with other stakeholders to discuss how industry has contributed to pollution in eastern North Carolina.

10. On April 10, 2007, REACH invited our membership to come along with the organization leadership to testify about the impacts of hog farms on the environmental and their personal well-being. The testimony was delivered at a convening of the National Commission on Industrial Animal Production in Durham, North Carolina. Five REACH members testified at the meeting. Other

EJ partners, including Naeema Muhammad from the North Carolina Environmental Justice Network, and Larry Baldwin, the then Lower Neuse Riverkeeper and now CAFO coordinator for the Waterkeeper Allicance testified as well regarding the effects of industrial hog farms on communities and the environment. The transcript of the hearing is accessible here: http://www.ncifap.org/_images/NC_Public_Meeting_Transcript_.pdf. Because of events like this and REACH's work investigating more about the issue, I know people who have suffered terribly living near industrial hog farms. I know about hog related MRSA (Livestock-Associated Methicillin and Multidrug Resistant Staphylococcus Aureus) and its impacts as well from a study I worked on. I'd like to see better use of available technology, like wastewater treatment plants, to clean up the wastewater associated with the hog farms. I am concerned about the cost to the environment from the industrial hog farms and the health of the people who live nearby.

11. I believe that additional work needs to take place to make significant systemic changes in how industrial farms operate and how they are regulated. DEHAP Advisors and other concerned citizens have agreed to continue to meet until the water, air and soil are cleaned up and are no longer affecting people's health. Right now, DEHAP meets monthly to discuss these issues and to reach out to the community.

12. REACH water sampling includes testing for markers that we think indicate diminished water quality in the watershed. Specifically, we have tested streams in the watershed for E. Coli., MRSA, fecal coliform and enterococcus. We informally submitted this data to the North Carolina Department of Environment and Natural Resources (DENR) to have one watershed in particular, Maple Branch, added to the 303(d) list. As of today, that water body has not been added to the state's list of impaired water bodies, and REACH plans to continue to advocate for its inclusion.

13. Through REACH, I have traveled extensively in neighboring communities and across the country, to New York, New Orleans, Denver, Washington, D.C., Los Angeles, Atlanta, and to meetings of the National Environmental Justice Advisory Council ("NEJAC") with other members of the community to voice our concerns regarding the negative impact of industrial hog farms in eastern North Carolina.

Personal Experience with Hog Facilities

14. Nearly everywhere I am, whether at home, or at the REACH office, the hog farms are around me.

15. The closest Concentrated Animal Feeding Operations (CAFO) to my home and my office are less than a mile away.

16. My home and office at REACH are about a mile apart. There are at least 13 hog facilities within a two-mile radius of my home and the REACH office.

17. There are many industrial animal operations, including but not limited to hog houses, near the REACH office. There are five farms south of the office. From a two-mile radius west of the office, there are two hog farms. There are about four hog farms southeast of the office. Going east, up Wards Bridge Road, there are six hog farms. Northward, there are about five more. I know this because I have conducted tours, and because I was born and raised in the area.

18. We hold DEHAP meetings at the REACH office and we almost always hold the meetings inside because of the smell. If we serve food, we have to come inside because we don't want to eat food that smells as bad as the air.

19. I also know the area well because I have walked along the creeks, in the woods, and I've hunted and fished in the area. I have a few dogs and I also still hunt. I used to take pride in freshwater fishing and catching fish. A while ago I started to see fish with sores on them. I threw them back in the water. I believe these negative changes can be attributed to the industrial farms in the area.

20. In the past, before expansion of the industrial hog farms, my family had a lot of cookouts outside at my home. I am from a large family, and am the middle child of seven siblings. All of us live in Duplin County. I have several nieces and nephews. I even have a heavy duty picnic table because of all the

cookouts. Now, even with family reunions, we have to find a place indoors because of the flies and the stench. We also have visitors who can't tolerate the smell.

21. I have been on county water for about 15 years. I was on well water before that. I switched over to the county water when they were installing the lines because they local government offered a discounted rate on the meter. I paid the application fee and although I wasn't planning on using it, I knew it was there. One day my well-water pump wasn't working properly. It was easier to cut my line to the pump and get hooked up to the county water than to fix it. Even though I have a choice, I would not go back to using well water in Duplin County. There are so many CAFOs close by and so many lagoons in Duplin County, that I don't think it is a good idea to drink the water from the well. I believe that the lagoons leak into the aquifer. If the well is shallow — which I believe it is because when I drilled the well, I found that I could get water at 38 feet — I think that the hog waste pollution leakages would enter the aquifer and pollute my well.

22. The outreach I've done and the research I've read has made me more concerned about the negative health impacts that CAFOs bring to my community

23. It's my understanding that there are over 500 active hog farms in Duplin County. Out of these, very few are owned by Black people. There is nowhere in this part of the county that people can get away from the stench of a

CAFO. The bad smells also come from trucks that haul the hogs around. Sometimes there are trucks filled with dead hogs that pass by and the trucks smell even worse than the swine lagoons.

24. I strongly believe that anything that smells this bad cannot be healthy. If I drive to church, to a school, or to the store, the odor gets in my car. I don't have to be a lawyer to know that something is wrong with this picture. I have children and grandchildren, and I want for them to have a better life. I think it's a God-given right to have clean air and clean water. No one should be able to profit at the expense of their neighbor's health and well-being, which I believe is happening due to the poor regulation of industrial hog farms in eastern North Carolina.

25. It is my understanding that there are bacterial and other viral problems associated with CAFOs that my neighbors and I may be exposed to. There are also health issues from the super viruses that are created which need to be addressed.

26. Being raised in an agricultural county, and having seen other agricultural facilities operate, I know that there are drain tiles underneath the ground of the fields which, when combined with hog waste, also concern me. On any new ground that's been cleared, before they plant, drain tiles are installed to have excess water run downhill. This prevents the crops from drowning. If the farmer sprays hog waste on a field and there are subsurface drain tiles, the water

seeps through the ground to the drain tiles and into ditches. This water then runs into a bigger ditch and keeps running until it reaches a nearby creek or stream.

27. I think the hog industry is very influential in the local and state government. The permits are issued without enough questions and clarity from DENR. I don't think DENR analyzes the permits well enough. To be specific, hog lagoons should not be in a flood plain. In addition, using clay alone as a lining for the lagoons definitely allows leaching, as they do currently.

28. The smell and pollution from CAFOs are problems that DENR should better address.

29. Within the last year I have seen overrun dead hog boxes that attract buzzards.

30. I believe that the way that the state allows the hog facilities to operate is a civil rights issue because, as stated previously, of the over 500 farms that I know of, only two or three are owned by Blacks, but the location of the hog farms are all near Black communities. These hog farms are not near gated communities and golf courses. It is an injustice to people of color. I believe that communities of color have been targeted because the power structure assumes that communities of color won't pull together to address this issue. Because it is our land, I believe that the current laws are intentionally lax to support the industry.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in Warsaw, North Carolina on August 30, 2014.

Signed: Devon J. Hall
Devon Hall

Address: (b) (6) - Privacy Warsaw, NC 28398

Addressee: (b) (6) - Privacy

Map radius: Approximately 2 miles

Source: Google Maps

(b) (6) - Privacy

Exhibit 8

DECLARATION OF (b) (6) - Privacy

1. My name is (b) (6) - Privacy I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

Background

2. I am African-American. I live at (b) (6) - Privacy in Warsaw, Duplin County, North Carolina. (See Attached Map.) I am seventy years old. I have lived at this residence since I was born. The property is in my name. I do not work because I have a disability.

Experience Living Near the Hog Facilities

3. There are at least ten hog farms within two miles of where I live.

4. I remember when farmers used to raise hogs in the field. My mom and dad had plenty of hogs when I was growing up. My family had about 40 hogs. I remember being able to smell the hogs when I was near their pen or when I went out to feed them, but I couldn't smell them when I went outside the house, like I can with the large, industrial hog farms that moved in near my home.

5. I have told the hog farm owners near me about my concerns on many occasions, but it hasn't changed things.

6. I want them to clean up and to stop spraying waste where it gets into my yard and my water, and to make it not smell so bad.

7. When I found out that I could get my water tested for free by the state, I called and had it tested. This was several years ago. Within a week after my water was tested, the state told me that I couldn't drink or cook with it, and I couldn't let my pets drink the water. I don't recall the individual who did the testing, or the specific problems that were discovered, but I know I was told to discontinue using the water. After my water was tested, the same hog farmer near me found out about the results. I am not sure how he found out, but soon after the state tested my water and told me that it was unsafe to use, that farmer came back with their industry spokesperson and asked me a lot of questions as if they were trying to make it seem like I was out to get the hog farmer. This upset me a great deal. I think that the farmers were trying to intimidate me. They went behind my house and told me that the source of contamination came from my two month-old puppies. They also tried to make it seem like I had hogs on my land now, but I did not have any farm animals on my land. I felt like these men were trying to take advantage of me because I am a woman. They said that I did not know anything about farming, but I do know about farming because my family farmed.

8. The industry spokesperson asked me if I have ever thought about moving. I felt that they were telling me that if I didn't like the hog farms, then I

should move. I lived here before them, however, since 1943, and I have no intention of moving.

9. When I was growing up, in the forties, I never could have imagined that waste lagoons would be near people's churches or homes. That has all changed now. I attend Smith Chapel and we can smell the hog waste inside and outside the church. There's also a bad fly problem near the church, which I think is related to the hog farms.

10. I'd like to be able to relax outside of my home, but I can't sit on the porch due to the strong hog waste odor. Every morning I start out by seeing how strong the smell is outside, to see if I will be able to go outside. Whenever I have visitors, the length of their stay depends on how strong the smell is that day. There are always big flies associated with the smell.

11. Sometimes I need to hang my clothes outside to dry. When the farmer sprays the hog waste, however, I always have to rewash my clothes if I don't get the clothes in off the line soon enough. This is because the smell of the waste gets into my clothing if I leave it on the clothesline.

Health Concerns Regarding the Hog Facilities

12. (b) (6) - Privacy [redacted]

13. (b) (6) - Privacy [redacted]

14. My home is hooked up to county water now. We used to have well water until it was tested and found to be contaminated. It was tested out of Wilmington with the Division of Water Quality. After my well water was turned off due to the contamination, county water was not yet available at my house. I had to buy water at the store, or get water from other people who did not have contaminated water. Each time I did this I had to carry 10-15 lbs. of water. On top of all this, it was a financial hardship to purchase water. It wasn't in the budget then and it still isn't now. I had to buy water or find a way to get safe water for free for about a year. When a county water hook-up was accessible, I had to pay to hook up to it. The

fee was between $50 and $100 for that service. I still question if there could possibly be breaks in the line where hog farm runoff could enter the pipes. Because of this, I am still afraid to drink my water.

My Efforts to Change Hog Farm Practices in North Carolina

15. I have participated in legislative activities and vigils in Raleigh, North Carolina with the Rural Empowerment Association for Community Help (REACH) organization. This was in 2007.

16. I also attend meetings at REACH about the hog farms. I have attended meetings about the issue at my church as well. I have talked to others in my community about the issues caused by the hog facilities.

17. If there was one thing I could do to fix the problems created by hog farms, including the smells, the flies, and the water quality damage , it would be to bring back family farms. I don't want to put large farmers out of business—I just want them to be good neighbors.

18. Hog farming has a greater negative impact on Black families. From what I have seen and heard from talking to others who live in eastern North Carolina, and from my own personal experience, the hog facilities are always set up around Black families and Black communities.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in Warsaw, North Carolina on September 02, 2014.

Signed (b) (6) - Privacy

Address: (b) (6) - Privacy [redacted], Warsaw, NC 28398

Addressee: (b) (6) - Privacy

Map radius: Approximately 2 miles

Source: Google Maps

(b) (6) - Privacy

[redacted]

Exhibit 9

DECLARATION OF (b) (6) - Privacy

1. My name is (b) (6) - Privacy I am of legal age and competent to give this declaration. All of the information herein is based on my own personal knowledge unless otherwise indicated.

Background

2. I am African American. I live at (b) (6) - Privacy in Wallace, North Carolina. My house is built on land that my family has owned since 1891. I was raised on this land with my family and have lived here for more than half of my life. After graduating high school, I moved to New York City to work in the banking industry and stayed for 27 years. I returned to Wallace in March of 1993 to care for my mother and have lived here ever since.

3. My family owns over 60 acres of land in Wallace, North Carolina. My grandfather purchased one tract of land in 1891, and three tracts of land in 1897. Our land stretches from (b) (6) - Privacy to the north and (b) (6) - Privacy to the south, as shown in the map attached as Exhibit 1.

4. In the late 1980s, a hog facility was built next to our homes on land we believe is ours. As shown in the map attached as Exhibit 2, the hog facility is located between River Road and Mail Route Road, off an unmarked road west of Beulah Herring Lane. The hog facility consists of two hog houses, a manure storage lagoon, and sprayfields. The sprayfields are located a few feet south of

River Road, the waste lagoon is south of the sprayfields, and the hog houses are south of the lagoon, near Mail Route Road.

5. A few of my family's homes are close to the sprayfields.

6. My now-deceased mother's house is located a few yards east of the sprayfields. Her house is marked as number 2 on the map attached as Exhibit 3. My mother lived in the house with my now-deceased brother, Jesse, who had Down Syndrome and was not able to care for himself.

7. My house is a few feet north of my mother and sister's houses. My house is marked as number 1 on the map attached as Exhibit 3. My yard joins my mother's yard and my sister's yard. Although I own the house marked as number 1, I currently live in my mother's house. My niece, (b) (6) - Privacy lives in my house.

8. My now-deceased sister's house is a few feet east of my mother's home. My sister's house is marked as number 3 on the map attached as Exhibit 3. My sister's daughter, my niece, now lives in this house.

9. My nephew, (b) (6) - Privacy lives in a mobile home to the east of my house. (b) (6) - Privacy

10. My nephew, (b) (6) - Privacy lives on the north side of River Road, directly across from the sprayfields. (b) (6) - Privacy

11. Given how close my family lives to the hog facility, and the sprayfields in particular, many members of my family, myself included, have been exposed to the odor and harmful pollutants that come with raising animals in confinement.

Experience Living Next to the Hog Facility: Early 1990s

12. The hog facility was built in 1986, but the farmer did not begin spraying waste on the sprayfields next to my mother's house until the mid-1990s. Before that time, he sprayed the waste farther away from our homes. In those early years, the farmer used a large sprayer that was hooked up to a tractor. It was difficult to control where the spray would land with this system. Back then, there were no trees separating our houses from the sprayfield. As a result, when the wind picked up, the manure, urine, and other waste that was being sprayed on the field was easily carried over to where my mother, sister, nephews, and I live.

13. I remember the first time we experienced the farmer spraying the waste. It was a Saturday, and I was with my mother, brother, and nephew (b) (6) - Privacy at my mother's house. We were sitting on my mother's screened-in porch, enjoying being outside as we had done for years. As we were sitting there, I noticed the farmer bring over the tractor with the sprayer hooked up, then disappear. Just as I was thinking to myself that there was no way that he would begin spraying so close to us, I heard a bursting sound. The sprayer had begun to

pump waste in our direction. We had to scramble to get out of the way. My mother, brother, and I took refuge in my mother's house, and [redacted] retreated to his house across River Road. The waste had this terrible, raw, stinking odor that we had never before experienced. We could still smell it when we were inside. The spraying continued, and the waste was blown right onto the side of my mother's house. My mother's kitchen, my brother's room, and the bathroom all face the sprayfields. If the windows were open, the waste would have landed in the house.

14. My mother's house was not the only one inundated with the waste in those years. The waste also blew into the storm door near the front of my house. I had to keep my door closed otherwise the waste would get into my home. My sister and I couldn't hang our clothes out in our yards because when the farmer sprayed, we could feel the waste mist on the clotheslines.

15. In those years, I spoke to the hog farmer about my concerns about the foul smelling hog waste that he was spraying on the fields. I told him that the waste was blowing over to our property, landing in our yards, and pounding our homes. The farmer told me that the hog houses were his investment and that he had to spray to protect that investment. He seemed mad that I had approached him with our concerns.

16. Because the farmer did not do anything to stop the waste from blowing onto my family's property, I called the Sherriff's Department, who informed me that they could not get involved in the matter. They told me that the Health Department in Kenansville would handle my complaint. When I spoke with someone at the Health Department, I was informed that I would have to call the Department of Environment and Natural Resources ("DENR") in Wilmington, because they dealt with problems like mine. In total, I called or wrote letters, or both, to the Governor, the State and Local Health Department Directors, the Attorney General of the State of North Carolina, the United States Justice Department, DENR, the local Sherriff, the County Commissioners, the United States Environmental Protection Agency, and United States Representative Mike McIntyre's office.

17. I made so many complaints that the county lawyer, who also was working with the hog industry in Duplin County, wrote me a letter saying that if I continued to make what he called groundless complaints, particularly to DENR, that I could be made to serve time in jail or would have to pay the hog farmer the money he was losing because of my complaints.

18. The hog farmer and his son also threatened me and my family and tried to get us to stop making complaints. One time in the late 1990s, or early 2000s, the hog farmer came over waving a stick, warning me not to make what he

called baseless claims. His son came over twice with a gun. One Saturday, the hog famer's son entered my mother's house, uninvited, and shook the chair that my mother was sitting in and started cursing at her. He yelled that he could do anything to me that he wanted to and get away with it. At the time, my mother was 98 years old, so needless to say this was traumatic for her and my family.

19. In my attempt to stop the hog farmer from spraying waste on me and my family, I collected evidence of the spraying. One day, when the farmer was spraying, I stood in front of my house, near where my yard and my mother's yard meet, and began to videotape the spraying. As I was taking the video, the hog waste being sprayed on the fields hit me in the face, landing on my lip. I was immediately concerned about the bacteria and chemicals in the waste, so I ran inside and scrubbed it off.

20. The farmer has made changes that are supposed to allow us to co-exist. In the late 1990s the hog farmer started using a stationary sprayer, with a pivoting head, instead of the tractor sprayer. The stationary sprayer is supposed to control the flow of waste better. In 1999 or 2000, at the urging of my local government representative, Carrol's Foods, which supplied animals to the farmer, planted trees between my family's houses and the sprayfield. Later, in April 2002, the hog farmer had a v ditch dug to separate what he believed is the property line, to settle a dispute about whether I had been trespassing on land that he claimed was

his. The changes are supposed to make it easier for us to live peacefully next to the hog facility, but my family and I are still suffering.

Experience Living Next to a Hog Facility: 2003 to present

21. I was told that the stationary sprayer would prevent the waste from coming on to our land, but the spray still reaches my family's homes to this day. At times, River Road is wet with waste from the sprayer. Cars driving by the sprayfield and my house have to be careful to keep their windows closed to keep the waste out. When the wind picks up, the waste can blow across River Road into my nephew [redacted]s yard.

22. The trees also do not keep the waste from coming on to our property. The wind still carries the waste to our homes, and I still smell the terrible, raw odor of the waste. In fact, in recent years, the trees have been dying, and I can see right through to the sprayfields.

23. Even with the stationary sprayer and the trees, my family and I are still exposed to harmful pollution. People in the health field continue to warn me not to open the windows when the farmer is spraying, especially when I am cooking. Scientists at the University of North Carolina, including Dr. Steve Wing, and at Johns Hopkins University, including Dr. Chis Heaney, have cautioned me that particles that are too small for me to see or feel can travel through the tree line, and make me sick.

24. It's challenging just living near a hog facility. When the farmer is spraying, I try to stay indoors as much as I can, but sometimes I need to leave my house and run errands and live my life. If I have to go to my car when the farmer is spraying, I will hold my breath, cover my mouth with a perfumed mask or perfumed paper towel, and run to my car as fast as I can.

25. I can't stay outside for very long when the farmer is spraying. I get headaches, have trouble breathing, and get depressed that no one is trying to understand what we are dealing with, living next to a hog facility that sprays waste on us. Clean air is a God given right, but it's a right that my family and I are being denied.

26. I know that pollution from a hog facility can cause respiratory and heart problems, and am lucky that I have not yet suffered from these problems. I try to take precautions to make sure that I stay healthy, and counteract any of the effects of living so close to the hog facility. I avoid spending any time outside when the farmer is spraying, and make sure to keep my windows and doors tightly closed. I also eat right and exercise.

27. Although I like to exercise and stay active, I have to adjust my exercise schedule to account for spraying at the hog facility. I enjoy taking long walks or biking, often with my nephew, [redacted], who lives across the street. If the farmer is spraying when we want to go for a walk or a bike ride, we will change

our route, making sure to walk or bike in the opposite direction of the sprayfield and the wind that could carry the spray towards us. We also make sure to wear a mask to protect us from the spray. Sometimes we will set out on a bike ride or for a walk when the farmer is not spraying, but, by the time we return, he might be. We plan for those occasions, always making sure to bring along something to cover our faces, like a perfumed mask or a perfumed paper towel, so that if the farmer is spraying when we get back, we will be protected.

28. Living next to a hog facility also has affected my family's health and quality of life. My mother lived on the land from the time she was born in 1902 until she passed away in 2001. My brother, [redacted] lived on this land from the time he was born until he passed away in 2006. When the spraying began in the 1990s, both my brother's and mother's lives changed for the worst. Both my mother, who was advanced in age, and my brother, who had Down Syndrome and was crippled with gout, had trouble getting around and often stayed in or near the house. Although we had window air conditioners, they enjoyed sitting outside in the summer when there was a breeze. But when the hog facility moved in, it was not safe to be outside. In the early years, the waste from the sprayers hit the house and could have hit us if we were outside. Even after the farmer changed his sprayers, it was not safe to sit outside and breathe in the pollution from the facility. This is especially true for my brother, who breathed through his mouth, and could have

gotten sick if he inhaled the airborne pollution. So, after the hog facility moved in, to avoid the terrible smell and dangerous pollution, my family was forced to stay inside in the summer and spend the extra money to run our window air conditioners.

29. Since the hog facility moved next door, my family and I have been concerned about our water supply. We used to get our water from a shallow well on our property, but we knew the hog waste was blowing over the well and could be contaminating our water. When we finally had the opportunity to connect to the County's water supply, we immediately signed up. Because we signed up early, we only had to pay $50 for the connection. But now instead of using the well for our water supply we have to pay a monthly water bill.

30. My family used to be able to live off this land. We would hunt on the land, and fish in Rockfish Creek. Since the hog facility moved in, our way of life has changed. We lost access to a lot of our land, which we are fighting to regain. For right now, given that the farmer has taken over a lot of our land, we don't have access to the Rockfish Creek anymore, and we can't get to the land where we used to go hunt. Putting aside issues of access, even when we see animals, like deer, we are concerned about the contaminants that they might have been exposed to, and if they are safe to eat. Since the hog facility moved in, I also have noticed that there are fewer squirrels and rabbits than when I lived here as a child. I am not sure if

the animals are dying because of the pollution from the hog facility, but I do know that the environment has changed.

My Efforts to Change Hog Farming Practices in North Carolina

31. Given all of the problems my family and I have experienced living next to a hog facility, I have long worked with others, including the North Carolina Environmental Justice Network ("NCEJN") and the Association for a Responsible Swine Industry ("ARSI"), to change the way hog farms are allowed to operate. I started working with NCEJN around 2000 or 2001. I have worked with ARSI since the late 1990s, around the time when North Carolina enacted the moratorium against constructing or expanding hog farms of a certain size.

32. With NCEJN and ARSI, I have lobbied the Capitol and asked our legislators to control the toxic pollution from the hog farms. On one trip in June 2007, we camped out on the lawn in front of the Capitol and kept vigil. We brought along a mock hog facility, complete with a mini lagoon holding actual swine waste and a sprayfield. The elected officials began avoiding us on the lawn, noting the terrible smell. One security officer even threatened to have us removed for bringing the swine waste, which he claimed was "toxic material." He even told us that if we spilled any of the waste, we would be fined $1,000. I want everyone to recognize that hog farms are spewing toxic material on me and my family and others who live next to hog farms.

33. I know that there's a better way to raise livestock and dispose of the waste than simply digging a hole in the ground. As far back as the early 2000s, the Smithfield Study came up with five alternatives to the lagoon and sprayfield system, but the industry complained about the cost. Those of us living near these facilities need the industry to adopt better waste controls. The industry cannot be allowed to continue to dump toxic material into our air and water.

I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed in Wallace, North Carolina on April 18, 2014

(b) (6) - Privacy

EXHIBIT 1

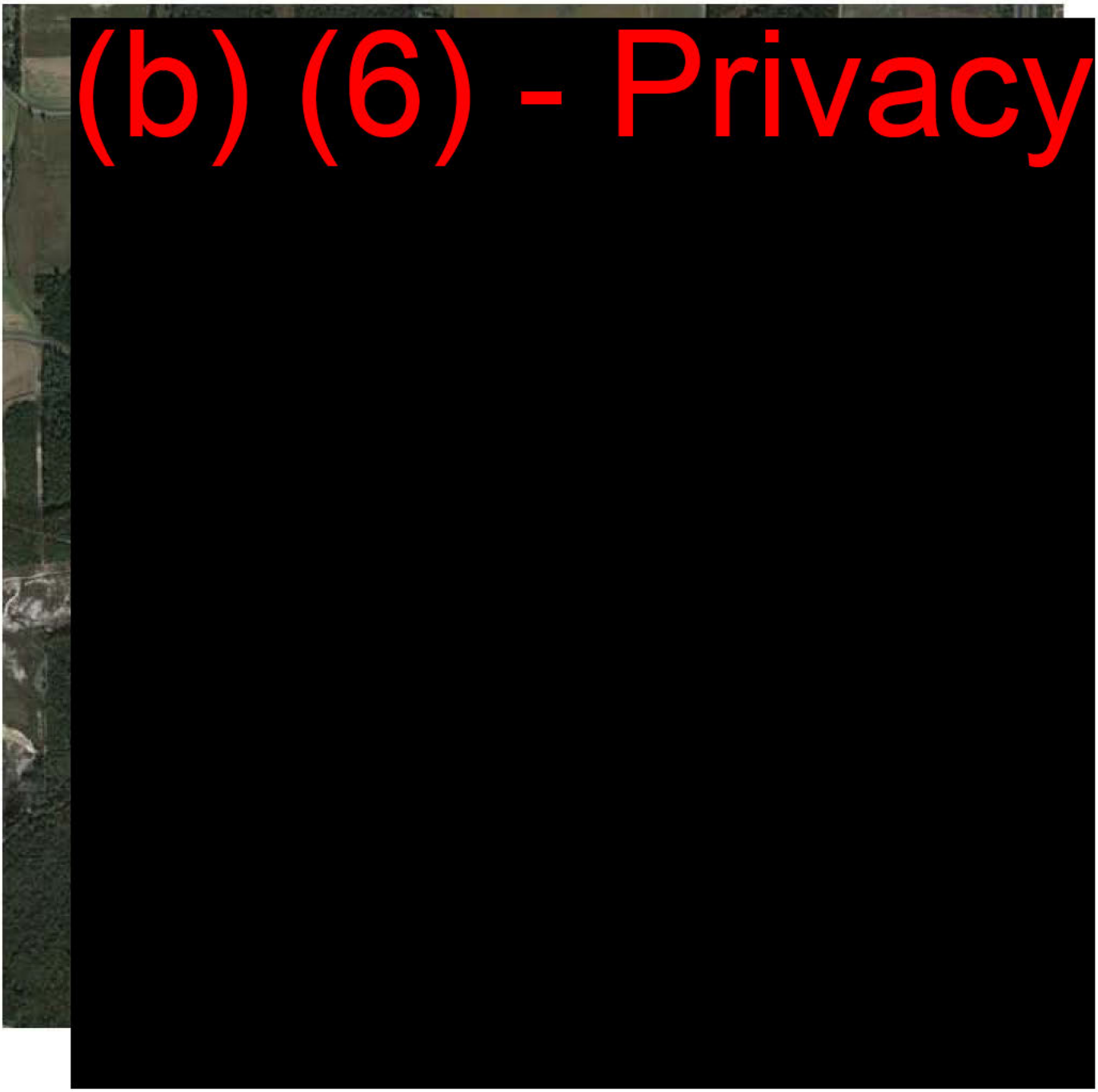

EXHIBIT 2

EXHIBIT 3

NOTE: Hog Facility extent drawn from tax parcel information found on Duplin County Tax Administration's website and may not be 100% accurate

Exhibit 10

Social Responsibility and Research Ethics in Community-Driven Studies of Industrialized Hog Production

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Environmental health research can document exposures and health effects that result from inequitable relationships between communities of low income or people of color and the institutions that derive benefits (profits, federal and state funding or services, avoidance of wastes) from activities and policies that burden these communities. Researchers, most of whom work in relatively privileged institutions, are placed in situations of conflicting loyalties if they conduct research in collaboration with, or on behalf of, communities burdened by environmental injustices. These conflicts can threaten the self-interest of researchers and may raise social and ethical issues that do not typically arise in research projects that respond to the agendas of institutions. This article describes how we addressed issues of research ethics and social responsibility in environmental health research on industrialized hog production in North Carolina. Researchers and institutional review boards are not well prepared to address ethical issues when interests of entire communities, as well as individual research participants, are involved. Community-driven research partnerships can help address problems in research ethics and can enhance the social responsibility of researchers and their institutions. *Key words:* African Americans, agriculture, confidentiality, environmental justice, livestock, swine, water pollution. *Environ Health Perspect* 110:437–444 (2002). [Online 22 March 2002]
http://ehpnet1.niehs.nih.gov/docs/2002/110p437-444wing/abstract.html

Most environmental health research has been conducted in relation to problems identified by governments, industries, health professionals, and the scientific community. These institutions have some degree of prestige and power; they have played an active role in developing environmental health science itself, and their members are seldom forced to live with serious environmental contamination. In contrast, communities of low income and people of color seldom have had access to researchers; they have been underrepresented in the research professions (*1*), they have been used as test subjects for biomedical research (*2*), and they sometimes have had no choice but to live and work in the presence of contaminants (*3*). Environmental health research that takes as its starting point the experiences and concerns of communities of low income and people of color raises numerous questions regarding methodology (the formation of study hypotheses, research design, analysis, interpretation, and communication of findings) as well as ethical issues related to the role of professionals and academic and government institutions, responsibilities for communication, respect, collaboration, protection of human subjects, and protection of the communities in which research is conducted.

In this article I describe environmental health studies of industrial swine production facilities conducted by a community-driven research and education partnership. I use these examples to explore ethical issues that arise in community-driven research conducted in the setting of gross inequalities between powerful institutions and communities exposed to environmental injustices. Industrial agriculture in general, and pork producers in particular, have strong ties to government and academic institutions (*4*). Researchers can face ethical and legal dilemmas that arise from conflict between groups that create and permit industrial operations and their contaminants, and the communities living with the industries and contaminants. Recognizing the distinction that epidemiologists have drawn between biomedical research focused on individuals and public health research conducted from a population perspective (*5*), I conclude that community-driven research involves analogous ethical dimensions regarding autonomy and risk of harm to entire communities, not simply to individual research subjects whose welfare is the traditional domain of institutional review boards (IRBs).

Background

In the early 1990s, news stories appeared in rural Halifax County in northeastern North Carolina (*6,7*) announcing that the historically underdeveloped southeast region of the county was slated for 17 new industrialized hog production facilities that would bring economic development to a predominantly African-American and low-income population.

Public reaction was slow to emerge. Most rural residents of this area are familiar with raising hogs on family farms. However, citizens soon began to learn that industrialized production operations are nothing like family farms. Far from being independent businesses, confined animal feeding operations (CAFOs) are generally owned by or run under contracts with large corporations that control the animals, feed, veterinary supplies, and management plans (*8*). If the operation is run under contract, the contractor owns the buildings, equipment, land, and waste but not the animals. Some CAFOs raise hogs from birth to market weight, whereas others are designed for only one stage of an animal's life: birth to weaning, weaning to about 40 pounds, or 40 to about 250 pounds, the weight at which hogs are typically slaughtered. The corporate integrator trucks its hogs between CAFOs that are specialized for growing animals of each size.

Swine CAFOs house thousands of hogs in close confinement in large buildings (Figure 1). Subtherapeutic doses of antibiotics are used to control infection and promote growth. Large ventilation fans exhaust dusts and gases that pose health risks to the animals and workers. Animal waste falls through slats in the floor and is washed into cesspools called lagoons. There the waste undergoes anaerobic decomposition; the remaining liquids are subsequently sprayed on nearby fields (Figure 1).

The rapid growth of industrialized hog production in North Carolina occurred between the middle 1980s and the late 1990s (*9*). As hog production in the state expanded from less than 3 million to approximately 10 million hogs per year, the number of operations shrank dramatically as smaller independent family farmers were replaced by industrial-style operations. At the same time, hog production, which had previously been distributed across the state, became concentrated in eastern North Carolina (*9*). Expansion of industrial operations occurred under regulatory controls strongly influenced by hog producers and other agribusiness interests in the North Carolina General Assembly. State legislation was enacted to

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prevent local and county governments from zoning agriculture, and research support was provided by state universities closely allied with agribusiness concerns (*10*).

As citizens of Halifax County began to learn about industrialized hog production, many became deeply concerned about local impacts of such "economic development." They worried about air pollution and noxious odors. They feared that groundwater could be contaminated in an area with sandy soils and high water tables where most residents depend on private wells for drinking water. They learned of the potential for surface water pollution from spray field runoff and lagoon failures. They were concerned about loss of independent family farmers and the land that they had farmed, and they were concerned about the vitality of their churches, schools, and communities. They felt they had been targeted for this kind of "economic development" because their primarily African-American, low-income communities lacked political power (*11*).

The Concerned Citizens of Tillery (CCT), a grassroots organization in southeast Halifax County, worked with county officials to develop an intensive livestock ordinance that would impose stricter environmental controls than state regulations. In that effort, and in the course of providing assistance to other communities in the path of corporate pork production, CCT sought support from environmentalists, social activists, and researchers who could help document economic, social, environmental, and public health issues affecting communities living with swine CAFOs (*11*). Although university scientists had conducted many studies related to agricultural technologies, veterinary health, and health of agricultural workers, relatively little research had addressed environmental, social, and health concerns of communities affected by industrial hog production.

Environmental Injustice in North Carolina's Hog Industry

The siting of a landfill for polychlorinated biphenyls (PCBs) not far from Tillery in predominantly African-American Warren County, North Carolina, in 1982 is often cited as an event that introduced the term "environmental racism" to a national audience (*12*). Ten years later, CCT and other community-based organizations in eastern North Carolina were beginning to see industrial hog production as an environmental justice and public health issue. During 1982–1997, leading hog-producing areas experienced greater loss of family farms than did other areas of North Carolina (*13*). This raises concerns for rural communities because family farms keep money in local economies and help maintain local businesses and services. Biologic and chemical contaminants from swine CAFOs, including bacteria, viruses, nitrates, hydrogen sulfide, and endotoxins, threaten community health when they contaminate air, aquifers used for drinking water, and streams and rivers used for subsistence fishing and recreation (*14*). Ironically, any health effects occurring from these exposures would be difficult to detect by examining medical records because the communities affected most have little access to medical care. Residents also distrust local health departments and other medical care institutions because of a history of segregation, exclusion, and prejudice (*15,16*).

A Community-Driven Research Partnership

Noxious odors—so severe that residents who can afford it sometimes leave their homes to spend especially bad nights in

Figure 1. Confined animal feeding operations in eastern North Carolina showing fecal waste pits in the foreground, confinement structures (left and right middle), spray fields, and neighboring homes.

motels—prevent neighbors of CAFOs from enjoying their homes and the outdoors. Odorant chemicals can penetrate clothing, curtains, and upholstery, affecting people long after plumes of emissions pass and subjecting them to possible ostracism at school or in public. One study suggested that hog odors can affect the mental health of nearby residents (*17*); another suggested that neighbors experience respiratory effects similar to those seen among workers in the confinement buildings (*18*). Mothers in eastern North Carolina report that their asthmatic children experience episodes of wheezing in the presence of strong plumes from nearby hog operations.

I met numerous residents of low-income, African-American communities who told me that industrial hog operations were increasingly being located in their communities. In one area residents had marked locations of churches, schools, and hog operations on a large map to demonstrate the proximity of African-American communities to swine CAFOs. However, when residents spoke to journalists and government officials about discriminatory patterns in the siting of these facilities, they were frustrated by responses that community observations were anecdotal and did not prove any consistent pattern. African-American and white neighbors of swine CAFOs, frustrated by lack of action from local governments, kept diaries to document odors and health problems, took photographs of waste spills and rotting hog carcasses, and wrote to state and federal officials.

In late 1996, a partnership formed by CCT with the Halifax County Health Department and the University of North Carolina (UNC) School of Public Health received funding from the National Institute of Environmental Health Sciences' (NIEHS) Environmental Justice: Partnerships for Communication program (*11*). Along with environmental justice education and outreach to communities and medical providers, we were funded to conduct research that, using official records, could quantify systematically the extent to which hog CAFOs and their potential impacts on health and quality of life disproportionately affected communities of low income and people of color (primarily African Americans) in the state. Our aims were to evaluate data for local communities, to consider possible alternative explanations for observed patterns, and to consider data on household water source (well or municipal), because groundwater contamination is an important public health concern.

Although data analyses were conducted at the university, the study questions originated in the exposed communities. Community members participated in evaluating data quality through their knowledge of local CAFOs. In consultation with our community partners, we made decisions about how to define the study population and data sources, how to choose and define variables for the analysis, and how to interpret results. We augmented our statistical analyses with maps and charts. And we found that hog CAFOs were far more common in poor communities and communities of people of color, that this concentration was more extreme for integrator-owned or contracted CAFOs than for independent operations, and that the pattern was explained only partly by differences in population density. Furthermore, we found that hog operations were concentrated in areas where most people depend on household wells for drinking water (*19*).

Reactions to the Environmental Justice Study

We were invited to present our findings at an environmental justice session sponsored by the NIEHS during the annual meeting of the Society of Toxicology in March 1999. The North Carolina General Assembly recently had passed a moratorium on construction of new hog CAFOs (except those using "new technologies"), the governor's office was developing a plan to address environmental problems from the lagoon and spray field system, and industrial hog producers were in the news because of waste spills and impacts of nutrient loading on fish, shellfish, and a recently discovered toxic dinoflagellate, *Pfiesteria piscicida*. The CCT had worked in partnership with numerous grassroots groups and traditional environmental organizations to educate the public about effects of industrial hog production and to provide organizational support to local affected communities. To support these efforts and contribute to the ongoing policy debate, we decided to release information about our findings to the press in conjunction with my presentation at the national meeting. The release was coordinated with the UNC News Service, which routinely prepares stories about topical research when it is publicly presented or published. Several major state newspapers ran stories on our findings.

I immediately received calls from representatives of industry groups who wanted to explain to me how the pork business is run. In their view, it was just good business to select the cheapest land for hog CAFOs—and that just happened to be areas that were rural, poor, and disproportionately African American. I soon learned that one of the industry representatives who called me was a member of the UNC Board of Governors. In early April I received an invitation to appear before the House Agriculture Committee of the North Carolina General Assembly. I was pleased by their interest and excited about the opportunity to address a group of policy makers interested in our findings. However, when I told CCT Executive Director Gary Grant about the invitation, he explained that the committee included a number of hog producers, was friendly to agribusiness concerns, and was probably not very pleased with our research. I asked Gary to appear with me before the committee.

The UNC-Chapel Hill Associate Vice Chancellor for Government Relations set up a meeting to discuss my impending appearance at the General Assembly with the Associate Dean of the School of Public Health. The administrators stated that they did not want to tell me how to present our research, but they were clearly concerned that I make a good impression at the legislature, which, after all, votes on UNC appropriations. Meanwhile, in Tillery, at the weekly meeting of the Open Minded Seniors, one of CCT's most active member organizations, Gary Grant announced that I had been called to the General Assembly to present our findings on environmental justice, and that I was not likely to be warmly received. Many members of the group were interested in attending the session to support Gary and me as we presented our research. About 30 CCT members traveled to Raleigh to attend the meeting of the House Agriculture Committee on 27 April 1999.

The Associate Vice Chancellor accompanied me to the hearing. The Open Minded Seniors had filled most of the public seating when we entered the hearing room; a couple of dozen lobbyists, staffers, environmentalists, activists, and other spectators stood at the back of the room. After staff members finished setting up the slide projector and providing water for the committee members, the CCT members were the only African Americans remaining in the room. Some committee members had a few technical questions about my presentation, such as why we didn't use more recent income data, and made other remarks about the business logic of locating hog CAFOs in poor areas. Committee members also wanted to know whether state funds had been used for our research. Next, Gary Grant spoke about the policy implications of our work and the urgent need for the North Carolina General Assembly to help citizens of eastern North Carolina living with air and water pollution from hog CAFOs. At one point the Open Minded Seniors began to applaud, which prompted the committee chair to use his gavel to quiet the room with the statement that applause was not permitted. Despite this admonition, the Open Minded Seniors had made their support for us clear to all present.

At the end of the hearing, I spoke cordially with the committee chair and a number of spectators, including one industry lobbyist.

Then I was approached by another industry lobbyist who introduced himself by handing me his business card. He refused my offer to shake his hand, demanded a copy of our full report, and said that if I did not send him one immediately I would be facing a lawsuit. I was startled by his hostility but shrugged it off as an overreaction.

The Rural Health Survey

In addition to the environmental justice study, we were also involved in more traditional health effects research. In the fall of 1998, with support from the North Carolina State Health Department, we initiated a survey of rural residents in eastern North Carolina. Reports of odor problems and respiratory effects had been coming in from hog CAFO neighbors across eastern North Carolina, and the State Health Department was interested in obtaining more information. To our knowledge, only one small study, from Iowa, had been published on respiratory health effects among swine CAFO neighbors (*18*). In consultation with our community partners and staff from the State Health Department, we designed a survey to compare health and quality of life of residents of three communities, one in the neighborhood of a hog CAFO, one in the neighborhood of a dairy operation that used a liquid waste management system, and a third with no intensive livestock production.

Design and Conduct of the Health Survey

Designing the study presented a number of challenges. Our environmental justice analyses were, by then, confirming the observations of community members that hog CAFOs are disproportionately located in low-income and African-American communities. We would need to ask for the participation of people whose past experiences led them to distrust health departments, medical providers, universities, or researchers. The relationships with community-based organizations that we had established in our environmental justice project would be essential for collecting reliable data and establishing a high response rate in defined populations in the three areas. At the same time, we knew that to avoid potential biases that could be introduced by community participation in areas divided between those with negative feelings about the hog industry and those whose livelihood depends on the industry, we would need to insulate the data collection process from peer pressure or leading questioning. Quantification of individuals' exposures to hog CAFO emissions, a key component in establishing dose–response relationships, would be extremely expensive; furthermore, even if we could afford to make environmental measurements, it was not clear which of the many hazardous agents present in odorous plumes are most relevant to health effects. Clinical confirmation of symptoms would also be desirable; however, severe responses to air pollution episodes are too uncommon to evaluate statistically in small populations, and poor access to medical care could lead to underestimation of problems. We debated carefully whether it would be ethical to conduct a study if we could not measure exposures and outcomes sufficiently well to detect a health effect if one existed, recognizing that our design would be constrained by funding that could be provided by the State Health Department. Our decision to proceed was influenced by evidence from previous studies and by community members and state officials who felt an urgent need for respiratory health data from North Carolina.

We developed a structured symptom questionnaire based on previous studies and input from eastern North Carolina residents who helped us use culturally appropriate language. We used the same questions in each of the three communities, and included no questions about odor, hogs, or livestock because one community had no livestock. We chose three communities with similar demographic characteristics according to census data. In each community, we conducted a household census, noting each occupied dwelling on a map and assigning a code to the residence (*20*).

We collaborated with a community-based organization in each area. Community members helped us locate roads and houses, and they served as community consultants during the data collection. Trained interviewers from UNC visited households in each area, accompanied by a community consultant who made the initial introduction of the researcher. Interviews were conducted without the presence of the community consultant unless the participant requested that the consultant remain. The interviewer read aloud, and provided the study participant with a copy of, an "Agreement to Participate" that explained that the study was about environmental exposures and health of rural residents. Participants were assured that their responses would be kept confidential and that their name would not be written on the questionnaire, although a link would be maintained between their address and responses. UNC's IRB gave us permission to obtain oral consent because we used no interventions or sensitive questions, and because a signed consent form would have been the only record of a person's name.

In the two livestock communities, interviewing teams visited households nearest the CAFOs first and then visited households in order, moving away from the CAFO, until they reached our target sample size of 50, with one adult in each household interviewed. Data collection took place in January and February 1999. We completed 155 interviews, with a refusal rate of 14%. Respondents were 92% African American and 65% female, and 27% were 65 years old or older (*20*).

In mid-April 1999, before submitting our report to the State Health Department, we invited members of the three community-based organizations to a meeting to discuss our initial findings. We obtained input from community members and responded to questions and concerns about excesses of respiratory and digestive symptoms that had been reported by hog CAFO neighbors compared with residents of the other communities. Community members decided at this meeting that they did not want the names of their communities to be included in our report. We therefore removed from our report any data on numbers of households, population size, race, and income characteristics of the census block groups in the study. These characteristics had been used to match communities in the study, but the figures could have been used by others to deduce the identities of the communities. We also removed from the report any exact information about the size of the hog and cattle CAFOs, which had been derived from Department of Water Quality permit data, and replaced the numbers with approximate figures.

At the end of April, we submitted a draft report to the State Health Department. Our analyses showed that the frequency of miscellaneous symptoms such as muscle aches and vision and hearing problems was similar in the three communities. In contrast, residents near the hog CAFO reported increased numbers of headaches, runny noses, sore throats, excessive coughing, diarrhea, and burning eyes. They also reported many more occasions when they could not open windows or go outside even in nice weather. The report was reviewed by State Health Department staff, the chief statistician for the State Center for Health Statistics, the chair of the UNC Department of Epidemiology, and others. Our final report incorporated their comments.

The Pork Industry Response

The State Health Department issued a press statement releasing our report to the public on 7 May 1999. Later that day, attorneys for the North Carolina Pork Council wrote to my coauthor, Susanne Wolf, and me requesting that we

> make available for copying by this office any and all documentation in your possession (or that you are aware of in the possession of other State agencies or State personnel) that contain, represent, record, document, discuss, or otherwise

> reflect or memorialize the results of the Study or any conclusions or recommendations that you or any local, state or federal agency might draw from the Study or any other matter discussed in the Report, including, without limitation, the studies of the three communities referred to in the Release; any notes or other records from any site visits or interviews made during the course or as a part of the Study; any sampling, testing or other analysis that was performed as a part of the Study; any calculations, research, or other work papers that reflect any analysis that you or others made from or using the data collected as a part of the Study; any contracts or other similar documents that define the Study or any having to do with payment for the study; the identities of all persons who worked on or contributed to the Study (including persons interviewed); and any other documentation that were generated as a part of or in the course of the Study.

This request was made under the North Carolina Public Records Statute, which defines a public record as all

> documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions.

The North Carolina Public Records Statute does not protect documents collected in the course of research involving human subjects and requires public officials, defined to include university faculty, staff, and graduate assistants who work for pay, to turn over records in a timely manner. The letter also stated that attorneys for the Pork Council would evaluate whether any of our statements were defamatory. Finally, the letter stated:

> it is imperative that we be given access to those documents no later than Wednesday, May 12. If we are not granted access to those documents in a timely manner, we have been directed to prepare an action for filing in the appropriate division of the General Court of Justice, pursuant to N.C. Gen. Stat. §132-9, for an order compelling disclosure or copying of those records and to seek such other remedies as are available for those statutes.

The Pork Council request raised a number of concerns. First, I was obligated to protect the confidentiality of participants. My name and contact information appeared on the Agreement to Participate that had been given to each participant. Although we did not record participants' names, we did have maps of the locations of their homes linked to their responses by a randomly assigned study number. Even without the maps, information about participants, including age, race, sex, occupation, industry, number in household, water source, and responses to questions about health status, was certainly sufficient to deduce which individuals from a particular area were in the study in these sparsely populated rural communities.

Breach of confidentiality was a concern not only from a legal and ethical standpoint. The community trust upon which our research depended would be seriously compromised as well, potentially destroying valued professional and personal relationships and threatening the continuation of research into exposures and health of neighbors of swine CAFOs. Given my professional and institutional position, I could not expect a second chance. Furthermore, if I violated my agreement with participants I could be branded, across the state and in other regions where there is a growing network of communities affected by corporate swine production, as untrustworthy.

The pork industry responded not only to the university but also to our federal funders. Shortly after receiving the letter from the Pork Council attorney, I received a message from the official at NIEHS in charge of the environmental justice grant program: "I've had a request to put together a summary of your project. Do you have any relevant health effects data available? I have been asked to do this ASAP so any help you can provide will be greatly appreciated." He further explained that "this request has to do with a congressional inquiry" and that "we may have to provide records under the Freedom of Information Act." I interpreted this as an effort of the industry to challenge federal support for our research, and responded by sharing with NIEHS the letter from the Pork Council attorney and suggesting that material from our annual report be used to respond to the request. There were no further requests from NIEHS.

Although the primary purpose of the Pork Council's request appeared to be harassment and intimidation, the request related to an important and legitimate part of scientific inquiry: the ability to replicate findings and evaluate evidence independently. In fact, I had recently conducted an independent reevaluation of environmental health effects using data from a study that had been designed and conducted with funding from industry (*21–23*). Just as some community members in that case were concerned about conclusions from an industry-funded study, now an industry group was concerned about findings from a study that was conducted with community participation. To evaluate the quality, internal consistency, and analytical methods in our rural health survey, the industry would need to be able to conduct an independent reanalysis. The need to protect confidentiality would have to be considered in relation to a scientific culture in which reanalysis is essential and in relation to power inequalities between industry and the exposed communities.

The university attorney, who had been copied on the Pork Council attorney's letter, explained to me that North Carolina law required us to turn over all documents related to the study as quickly as possible. Because this would have violated our agreement with study participants, I consulted with the chair of our IRB and other university officials. One administrator told me that if I refused to turn over documents as directed by the university attorney, the university "would call the SBI [State Bureau of Investigation] and have me arrested for stealing state property." We discussed withholding documents on the grounds that their release would have a chilling effect on future research, and on grounds that we would be violating the confidentiality promised in the Agreement to Participate. The administrators were not hopeful that these arguments would be accepted, and in any case deferred to the university attorney on making a final decision.

In June, the university attorney agreed to release records to the Pork Council, including computerized files of individual responses, interviewer training instructions, draft copies of our report, other statistical tabulations, and study related correspondence, including electronic mail messages of all project staff. To protect confidentiality of the participants and the communities, the university attorney agreed that we should withhold any information that could lead to disclosure of where the study was done, including maps, driving instructions, and any references in our communications or study materials to locations or names of persons that would identify locations in the study. We reasoned that no individuals could be identified, even with information in the survey, unless the locations of the survey were known. Staff members and I spent considerable time in assembling and redacting documents. In the presence of the rural health survey project director and other staff, an attorney for the Pork Council reviewed the documents and copied many of them. They continued until August to request information that we had withheld and then ceased to express interest.

In July 1999, I was invited by the State Health Department to present findings of our study at a conference on the public health impacts of intensive livestock operations. The conference was held at North Carolina State University in Raleigh, which has the Animal and Poultry Waste Management Center, a veterinary school, and other programs related to industrial agriculture. A number of pork producers attended the conference and posed hostile questions after my presentation. Later, I was approached by an assistant professor

from another UNC-system institution, who told me, "I have been conducting research on neighbors of hog operations, but I'm afraid that if I have to deal with legal problems like yours, I'll never get tenure. So I've decided to drop my research for now."

The Sustainable Hog Farming Summit

In the fall of 2000, I accepted an invitation to speak about our environmental justice and public health research at a conference being organized by a coalition of independent farmers, environmentalists, and grassroots organizations billed as the "Sustainable Hog Farming Summit." The conference was scheduled for January 2001 in New Bern, North Carolina. On 8 December, I was copied, along with the Dean of the School of Public Health and the UNC Chancellor, on e-mail correspondence from the UNC Associate Vice Chancellor for Government Relations. Staff in the UNC system president's office had written to the Associate Vice Chancellor:

> We have received several questions and complaints from legislators and others—received through different offices in the University—about the Sustainable Hog Farming Summit announced for Thursday, January 11, 2001 at New Bern.… Five faculty members at three different UNC institutions show on the Summit agenda as program participants (moderators or panelists). I've been asked whether those faculty members are representing themselves or the universities where they are employed, are attending on university time or their own, and whether they are paying their own expenses or is someone else (presumably meaning the university or the conference sponsors).

During 15 years on the UNC faculty I had presented research at scores of meetings but had never before been asked to account for myself in this way. The associate vice chancellor described a senior member of the North Carolina Senate who "had concerns about Carolina's [UNC's] 'involvement' with the program." She also described a conversation with two Pork Council lobbyists "whom I consider to be friends" and reported that "they are fully cognizant of the fact that we cannot and will not censure our faculty." I responded to the administrators by explaining that I was appearing as a university employee to present my research, and that I would be funded by our environmental justice research and education grant.

Social and Ethical Responsibilities of Researchers

Environmental health research can influence conflicts between communities of low income or people of color and the institutions that derive benefits (profits, federal and state funding or services, avoidance of wastes) from the activities and policies that burden these communities. Researchers, most of whom work in relatively privileged institutions, are placed in situations of conflicting loyalties if they conduct research in collaboration with, or on behalf of, communities burdened by environmental injustices. These conflicts can threaten the self-interest of researchers and may raise social and ethical issues that do not typically arise in research projects that respond to the agendas of institutions.

Principles of Research Design

Before addressing some of these conflicts as they apply to our case, it is important to be clear that researchers performing community-driven environmental health research should not encounter conflicts over the logic used to design research. Our scientific culture values expert opinion and standardized, replicable techniques over lay opinion and observation. Because observations of community members do not "count" in the scientific literature used by policy makers and courts, researchers can maximize their service to communities by devising standardized procedures, including data collection and measurement techniques, that comport with professional standards, even as we may need to change those standards to improve science. First among our considerations should be to conduct studies that have the sensitivity to detect an effect if one exists. The ability to detect no effect when one does not exist is also important, although in the case of community-driven environmental health, researchers must carefully distinguish "no effect" for a specific biologic end point from "no effect" in an ecologic context that encompasses social, psychologic, and economic impacts.

The challenge for researchers is to work with community members to frame questions, and design procedures to produce answers, that respect community concerns by investigating them with the best technical approaches possible, including newly devised methods to enhance community input and analyze data. Results of these investigations will be useful to communities burdened by environmental problems because such research can address topics that could not be investigated without the technical resources of institutions, and because the findings can be used in situations where community observations are not valued. Rather than facing a conflict between standard procedures and alternatives that are acceptable to the community but viewed as "unscientific" by scientists, both researchers and community members benefit from negotiating the use of rigorous methods.

Responding to Government, Industry, and the Media

In responding to concerns and inquiries from the state legislature, university administration, and federal granting agency, I might have distanced myself from the communities living with hog CAFOs and their allies. Instead, I kept them informed. This strategy had two effects. First, I maintained the trust of the communities who had been instrumental in identifying research questions, conducting fieldwork, and educating the public about our findings. This trust would continue to be essential if we were to address additional research questions. Second, the communities responded by appearing at the legislative hearing, giving advice on acceptable means of responding to the public records request, helping to identify external legal support, and providing strong encouragement and support. If I had backed away from the community under institutional pressure, not only would I have compromised relationships essential to conducting high-quality research, our research partnership would have lost support of an outside constituency at the very time when it was most needed.

Some academics are reluctant to interact with the media. They feel that their findings are misrepresented and misunderstood and that interviews take considerable time and have little potential to influence scientific publications or grant funding, the criteria that matter most for career advancement. However, community-driven researchers have responsibilities regarding publication of scientific findings, making those findings public in appropriate ways, and participating in processes involving the media and policy makers (*24,25*). Environmental health findings can help exposed community members protect themselves, can motivate participation in democratic processes, and can influence public opinion and policy makers. Researchers have an obligation to be involved in targeted efforts to inform affected communities about research results as well as to participate in activities that have a wider audience (*24*). These activities must be conducted in partnership with affected communities.

Researchers have a responsibility to report findings of studies even when they can be expected to produce negative reactions from industry, government, or universities. Publications are a key goal of researchers seeking to compete for positions and grant funding in an entrepreneurial environment. However, when research sheds light on institutional discrimination, environmental contamination, or health effects that could create legal problems for institutions that provide jobs and funding to researchers, researchers

may be motivated to withhold or delay publication, or to provide benign interpretations even when there is evidence of harm. Such actions fail to meet responsibilities to research participants, exposed communities in the study area and elsewhere, policy makers, and researchers working on the same or related problems.

Respecting Interests of Individuals and Communities

Our experiences with the public records act request have similarities with cases of other researchers whose records have been subpoenaed in law suits involving large corporations (*26–30*). Tobacco, oil, and pharmaceutical industries have sought and obtained research records that university investigators had assumed would be protected by confidentiality requirements. Furthermore, it cannot be presumed that university administrators will take a strong advocacy role in protecting research records or faculty members (*26,27*). Our compromise, revealing responses but not locations of the respondents, was based on the assumption that both pieces of information would be required for deductive disclosure of the identity of participants through age, sex, race, occupation, and household characteristics. This compromise was accepted by the university attorney despite the concern that the university might have to go to court to protect the identity of communities. However, given the complexities of deductive disclosure from a statistical as well as an ethical standpoint, it is inappropriate for a researcher and an attorney, especially under threat of litigation, to make the final decision about release of data. Researchers and institutions faced with similar decisions should consult a panel, possibly an IRB or a committee of an IRB, that includes a statistician, community members, and others experienced in protection of human subjects.

A more fundamental problem is that IRBs are concerned only with protecting individual research participants. In our research, we were also concerned with protecting the communities where the research was conducted. The presence of industrial hog operations has split communities between those who depend on the industry for income and those whose quality of life and health have been adversely affected (*31*). In some areas, community members have been fearful of participating in research because of the influence of the hog industry in local affairs. One resident told us, "If you want to do a survey in this community, you'd better finish on the first day, because you won't be able to come back." We were also advised not to call the sheriff's department if we had trouble on the road. Several community members who have publicly opposed the industry told me that they have been followed and threatened, and that they carry weapons for their own protection.

In 1998, attorneys for a hog grower wrote to Elsie Herring, a North Carolina woman who had requested help from local and state public health officials regarding spraying of hog waste that drifted onto her and her mother's homes and cars (*32*). The attorneys threatened to sue Herring and impose a restraining order if she persisted in her requests for assistance. "If you violate any such restraining order," the letter stated, "we will ask the court to put you in prison for contempt." At the Sustainable Hog Farming Summit, Herring reported that the grower blocked passage of her car on the road to her mother's house, and that he entered her mother's home without invitation, shouted at her mother, and shook her as she sat in her chair. Herring's mother was in her 90s.

On 11 September 1995, Dana Webber reported in the *Wilmington Star* (*33*) that two residents of Duplin County, North Carolina, who had publicly opposed industrial hog production became concerned for their jobs after their supervisors were contacted by representatives of Murphy Farms, then the largest hog producer in the world. Although both left their jobs, "not solely because of Murphy's intimidation tactics," one of the workers said, "It's a mind game. This pork industry has got people scared thinking that they're so big and strong and that we can't do without them." According to Webber, "Duplin County officials contend that people in the county have complained to them about the kind of intimidation tactics [the workers] describe."

In this adversarial climate, the very choice of research topics almost invariably involves taking sides, whether it is research on environmental health or waste management technology. Human subjects are not the only ones at risk in public health research; community organizations that cooperate with researchers, community consultants who facilitate contacts between researchers and human subjects, family members, and others may reasonably fear intimidation and threat. Furthermore, communities that host facilities widely known for repellent odors may fear stigmatization if their identities are known. Researchers working on environmental health issues in the area of environmental injustice need to consider not only their obligation to individual human subjects but also their social responsibilities to entire communities (*5,34*).

Conclusions

Most researchers are accustomed to full-time employment with health insurance, pension benefits, and wages that afford housing in neighborhoods with access to clean water, sewerage, adequate schools, and medical facilities and that are free from major sources of environmental contamination. For us, antagonism from an industry that is threatened by environmental health research, or the question of support from our own institutions, can be very disturbing. However, these problems pale in comparison with the situations of people who live every day in a contaminated environment, unable to enjoy their homes and neighborhoods, unable to sell their property (if they are owners), fearful for their own health and the health of their family members. Although I have focused on the perspectives of an epidemiologist working on community-driven research, it is important to emphasize that researchers may choose to walk away from pollution and conflict; most community members who live with discrimination, pollution, and conflict have no choice but to accept or to fight injustice.

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Exhibit 11

To: Lombardo, Smithfield_Keira[klombardo@smithfield.com]
Cc: gary[gary@garypearcenc.com]; Kirkham, Kathleen[kkirkham@smithfield.com]; Butler, Don[dpbutler2@smithfield.com]; joyce[joyce@fitzpatrickcomm.com]; JBritt[jbritt@mwcllc.com]
From: Butler, Don
Sent: Tue 8/25/2015 1:08:27 AM
Subject: Re: communications call agenda

I will be with Senator Tillis tomorrow morning doing farm/plant tours and will not be available for the call. Deborah Johnson will be with us on the tour.

Don

Sent from my iPhone

On Aug 24, 2015, at 8:58 PM, Lombardo, Smithfield_Keira <klombardo@smithfield.com> wrote:

Need to add draft responses to recent media coverage.

Keira Lombardo
Senior Vice President of Corporate Affairs

(757) 365-3050 tel
(757) 323-5025 cell
klombardo@smithfield.com

Smithfield
Good food. Responsibly.

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Smithfield, VA 23430
www.smithfieldfoods.com

From: Gary Pearce
Date: Monday, August 24, 2015 at 2:58 PM
To: "Lombardo, Smithfield_Keira", "Kirkham, Kathleen", "Butler, Don", Joyce Fitzpatrick, Jeffrey Britt
Subject: communications call agenda

Reminder of 10:30 call. NCPC and NCFF will join at 11. Our call agenda:

- Media coverage – Dennis T concern
- Branch/Herring info and strategy
- Renewables update
- Ad agency update

- Keira: response to employee question
- Other items

800-747-5150 3653050

Gary Pearce

Cell: (919) 349-7779

www.talkingaboutpolitics.com

Exhibit 12

Prestage Farms, Inc.

May 18, 2016

RE: *North Carolina Farm Families* Request for support

Please find the enclosed letter from *North Carolina Farm Families* (NCFF) regarding their campaign to defend our industry. By now, many of you will have seen the *North Carolina Farm Families'* commercials on TV, heard the accompanying radio advertisements, or engaged with the group on social media. As stated in their letter, we, along with other area integrators and the North Carolina Pork Council, have pledged half of the money needed to run this comprehensive media campaign, but more funding is needed. NCFF is reaching out to everyone who works in the pork industry from the integrators and producers to those in allied industries that supply us with goods and services. We will all be negatively affected if the Waterkeepers are successful in their efforts to stop our way of life.

NCFF has asked that we share their information with you and encourage you to give at whatever level you are comfortable with to support this worthy cause. Attached is a contribution form with a suggested contribution based on your farm(s)' estimated cumulative steady-state-live-weight (SSLW). If an owner has multiple sites, then the suggested amount is based on the cumulative total SSLW for all sites. However, if a site has multiple owners, the amount is for that site and should be divided among the owners. If you choose to give, you may choose to remit a one-time contribution by check made payable to North Carolina Farm Families OR you may sign the attached remittance form authorizing us to deduct your contribution from your upcoming grower payments. Please attach this commitment form when sending your remittance, regardless of which payment option you choose and mail the signed commitment form/check back to the Prestage office using the enclosed self-addressed stamped envelope. If paying by check, please feel free to remit your payment directly to NCFF: P.O. Box 61, Kenansville, NC 28349.

Thank you for your time, consideration, and ultimately your support. If you have any questions, please do not hesitate to contact either Summer Lanier (910) 596-5832 or Lynn Kersey (910) 596-5775 for assistance.

Sincerely,

Zack McCullen III

To view Ads and Learn More, Visit:
www.ncfarmfamilies.org
www.waterkeeper.org

Zack McCullen, III
Vice President – Swine Division

Contribution Form

Farm Name(s): [redacted]
Estimated Steady State Live Weight (cumulative total of all sites)*: [redacted]
Suggested Contribution (based on SSLW)**: $ 500.00

*If an owner has multiple sites, then the suggested amount is based on the cumulative total SSLW for all sites. However, if a site has multiple owners, the amount is for that site and should be divided among the owners.

**SSLW suggested contribution ranges: 0-499,999lbs - $250, 500,000-999,999lbs - $500, 1,000,000lbs+ - $1000

Pledged Contribution:

_____

When making a commitment, please use this form and select one of the two options below:

_____**Option 1**: Remit your contribution by check payable to *North Carolina Farm Families*

If you send the check to Prestage in the enclosed envelope, we will send it on directly to NCFF. If you prefer, please feel free to remit your payment directly: NCFF, P.O. Box 61, Kenansville, NC 28349.

_____**Option 2**: Sign below authorizing us to deduct your contribution from your upcoming grower payments.

If you opt to have Prestage deduct your contribution from your grower payments, please **choose one** of the following:

☐ Deduct a **single, one-time,** payment for the full amount.

☐ Divide contribution into **equal installment payments**.

- If you are a sow grower, commitment installment payments will be deducted from grower payments over 6 months.
- If you are a nursery/finishing grower, commitment installment payments will be deducted over 2 turns.

I, _____, wish to contribute $_____ to *North Carolina Farm Families*. By signing below, I authorize Prestage Farms to deduct equal installments from each of my grower payments until such time that the full amount is collected as stated above.

_____ _____

Authorized Signature Date

Please attach this commitment form when sending our remittance regardless of option chosen. Mail signed commitment form/check back to us using the enclosed self-addressed, stamped envelope.

Thank you in advance for your contribution!

Please remember, N.C. Farm Families is a 501(c)(6) organization so contributions from businesses may be tax-deductible. Contact your tax advisor to be sure your contribution qualifies.

HIGHWAY 421 SOUTH • P.O. BOX 438 • CLINTON, NC 28329-0438 • PHONE (910) 592-5771

NORTH CAROLINA
FARM FAMILIES

NC Farm Families
P.O. Box 61
Kenansville, NC 28349

www.NCFarmFamilies.com

May 18, 2016

Hog farming is under attack – by a coalition of powerful groups led by Robert Kennedy, Jr.'s Waterkeeper Alliance. To be blunt, these groups have one goal: To shut down every hog farm in North Carolina.

Last summer, we organized North Carolina Farm Families to fight back. I am honored to help lead this effort. The entire pork industry has united behind North Carolina Farm Families. And we need you to stand with us.

To answer the Waterkeeper attacks:

- Farm Families has already spent $2 million to run ads all across North Carolina – on television, radio, newspapers and the Internet – giving people the facts about hog farming. (You can see our ads here: www.ncfarmfamilies.com)
- Held rallies in Kenansville – and on the State Capitol grounds in Raleigh – that were attended by thousands of farmers and their friends and families.
- Collected more than 11,000 signatures on petitions supporting hog farmers and presented the petitions to the Governor.

Our internal polling shows that the ads are changing public opinion in hog farmers' favor. After our first TV ads, polling found that 67 percent of North Carolinians say hog farms have a positive impact on the state.

You may have seen the Waterkeeper Alliance billboards in eastern North Carolina claiming – falsely – that hog farms are polluting our waterways and killing our fish. Groups affiliated with the Waterkeeper Alliance, which is based in New York City, are repeating those claims daily in private conversations, public meetings and posts on social media. And our opponents are taking their attacks to the news media:

- Last month, NPR in Virginia broadcast a five-part series filled with attacks on hog farming.
- The Wilmington, NC NPR affiliate is planning its own series about the industry.
- National publications have even run stories linking hog farming to the water pollution crisis in Flint, Michigan – and accusing our industry of racism.

The total cost of our statewide media campaign – over eight months – is $4 million. Already, several companies and the N.C. Pork Council have contributed a total of $2.25 million. Here's the bottom line: We need the help of you – and other supporters of the industry – to raise the remaining $1.75 million. We will follow up with you personally to brief you in detail about our plans. And we will ask you to support North Carolina Farm Families with a financial contribution.

Our opponents have a simple but blunt message: Hog farming is destroying North Carolina's rivers. And, according to our polling, their attacks will do a lot of harm – unless they are answered by facts. Last summer, our industry came together to do just that. And, in February, we began our statewide media campaign.

If our opponents succeed in their goal, the damage to our industry and to our economy will be devastating. Hog farmers are in the fight of our lives. And we need your support – and especially your financial support.

Join our fight. Thank you for your consideration and your support.

Ed Emory

Ed Emory
President, NC Farm Families

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

OFFICE OF
CIVIL RIGHTS

August 2, 2016

Return Receipt Requested
Certified Mail #: 7015 1520 0002 0019 2984

In Reply Refer To:
EPA File No. 11R-14-R4

Marianne Engleman Lado
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005

Re: Acceptance of Administrative Complaint (11R-14-R4) (Formerly 37R-16-R4)

Dear Ms. Engleman Lado:

This letter is to notify you that the Environmental Protection Agency (EPA), Office of Civil Rights (OCR) is accepting for investigation your claim that the North Carolina Department of Environmental Quality (NCDEQ) retaliated, intimidated or harassed individuals or groups, including the Complainants (the North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help, and Waterkeeper Alliance, Inc.), through its conduct, including its actions and inactions associated with the North Carolina Pork Council and National Pork Producers Council ("Pork Councils") and the January 2016 mediation session. The investigation of this claim will be conducted under EPA File No. 11R-14-R4. The case number that had been assigned to this new complaint, EPA File No. 37R-16-R4, has been closed.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1). Generally, OCR accepts for investigation complaints that meet the four jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(1). Third, the complaint must be filed within 180 calendar days of the alleged act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

As of the date of this letter, OCR has determined that the subject complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the

complaint. And finally, the complaint was filed against NCDEQ, which is an applicant for, or recipient of EPA financial assistance.

After careful consideration, OCR will investigate the following:

> Whether NCDEQ's actions or inactions, including those associated with the presence and activities of the Pork Councils related to the January 2016 mediation session, violated 40 C.F.R. § 7.100 which prohibits intimidating, threatening, coercing, or engaging in other discriminatory conduct against any individual or group because of actions taken and/or participation in an action to secure rights protected by the non-discrimination statutes OCR enforces.

The initiation of an investigation of the issue above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the recipient, as appropriate, and determine next steps utilizing our internal procedures. In the intervening time, OCR will provide the Recipients with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the subject complaint and may contact representatives of the NCDEQ to discuss the Recipient's interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf

Finally, as you know, no applicant, recipient nor other person may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the non-discrimination statutes OCR enforces. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have any questions about this letter, please feel free to contact me at (202) 564-9649, or Case Manager Ericka Farrell at (202) 564-0717. You can also contact us by e-mail at dorka.lilian@epa.gov or farrell.ericka@epa.gov, or by U.S. mail at U.S. EPA Office of Civil Rights (Mail Code 1201), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Lilian S. Dorka
Acting Director
Office of Civil Rights

cc Elise Packard
Associate General Counsel
EPA Civil Rights & Finance Law Office

Ken Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region IV

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

OFFICE OF
CIVIL RIGHTS

August 2, 2016

Return Receipt Requested
Certified Mail #: 7015 1520 0002 0019 2939

In Reply Refer To:
EPA File No. 11R-14-R4

Donald R. van der Vaart
Secretary
North Carolina Department of Environmental Quality
1611 Mail Service Center
Raleigh, NC 27699-1611

Re: Acceptance of Administrative Complaint (11R-14-R4) (Formerly 37R-16-R4)

Dear Mr. van der Vaart:

This letter is to notify you that the Environmental Protection Agency (EPA), Office of Civil Rights (OCR) is accepting for investigation a claim that the North Carolina Department of Environmental Quality (NCDEQ) retaliated, intimidated or harassed individuals or groups, including the Complainants (the North Carolina Environmental Justice Network, Rural Empowerment Association for Community Help, and Waterkeeper Alliance, Inc.), through its conduct, including its actions and inactions associated with the North Carolina Pork Council and National Pork Producers Council ("Pork Councils") and the January 2016 mediation session. The investigation of this claim will be conducted under EPA File No. 11R-14-R4. The case number that had been assigned to this new complaint, EPA File No. 37R-16-R4, has been closed.

Pursuant to the EPA's nondiscrimination regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. *See* 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1). Generally, OCR accepts for investigation complaints that meet the four jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*e.g.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(1). Third, the complaint must be filed within 180 calendar days of the alleged act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

As of the date of this letter, OCR has determined that the subject complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Third, the alleged discriminatory act occurred within 180 days of the filing of the

complaint. And finally, the complaint was filed against NCDEQ, which is an applicant for, or recipient of EPA financial assistance.

After careful consideration, OCR will investigate the following:

> Whether NCDEQ's actions or inactions, including those associated with the presence and activities of the Pork Councils related to the January 2016 mediation session, violated 40 C.F.R. § 7.100 which prohibits intimidating, threatening, coercing, or engaging in other discriminatory conduct against any individual or group because of actions taken and/or participation in an action to secure rights protected by the non-discrimination statutes OCR enforces.

The initiation of an investigation of the issue above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the complainants, as appropriate, and determine next steps utilizing our internal procedures. In the intervening time, OCR will provide you with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving a copy of this letter. *See* 40 C.F.R. § 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the subject complaint and may contact your representatives to discuss the Recipient's interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf

Finally, we would like to remind you that no applicant, recipient nor other person may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the non-discrimination statutes OCR enforces. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have any questions about this letter, please feel free to contact me at (202) 564-9649, or Case Manager Ericka Farrell at (202) 564-0717. You can also contact us by e-mail at dorka.lilian@epa.gov or farrell.ericka@epa.gov, or by U.S. mail at U.S. EPA Office of Civil Rights (Mail Code 1201), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Lilian S. Dorka
Acting Director
Office of Civil Rights

cc Elise Packard
Associate General Counsel
EPA Civil Rights & Finance Law Office

Ken Lapierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region IV

Create Control - Data Entry

Control Number: OCR-14-001-4827 Alternate Number:

Citizen Information

Citizen/Originator: 1). Jang, Deeana - 950 Pennsylvania Ave., N.W., Washington, DC 20530 Search Citizen

Constituent: Search Constituent

Committee:

Sub-Committee:

Control Information

Status: Pending *

Letter Date: Sep 25, 2014 * Received Date: Sep 9, 2014

Contact Type: LTR (Letter) * Priority Code: Normal *

Addressee: US/EPA Office of Civil Rights (+) Addressee Org: 1200 Penn Avenue, NW WD

File Code: 108-025-08_497_a Discrimination Complaints - External Record Copy *

Signature: (+)

CC: Search CC

Signature Date: Date

Primary Subject: Discrimination Complain (+) *

Secondary Subject: (+)

Instructions: NRN-No Response Necessary (+) *

Instruction Notes: Mail received open 9/9/2014, Process on 9/10/2014

General Notes: This control is assigned to tiltle 6 for appropriate action

*: Required field
(+): Lookup field, press space bar for complete list

Save Continue and Assign Cancel

U.S. Department of Justice
Civil Rights Division

Federal Coordination and Compliance Section-NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

Doc #426412

Ms. Vicki Simons
Director
Office of Civil Rights
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Stop 1201A
Washington, D.C. 20004

AUG 25 2014

Dear Ms. Simons:

Enclosed for your review is a letter received by the Federal Coordination and Compliance Section of the Civil Rights Division of the U.S. Department of Justice. The matter does not appear to be within the jurisdiction of our office.

However, the issues raised may fall within the jurisdiction of your agency and, therefore, we are referring it to you for appropriate disposition. The writer has been notified of the referral.

fdd
ap 3/15

Thank you for your assistance in this matter.

Sincerely,

Deeana Jang
Chief
Federal Coordination and Compliance Section
Civil Rights Division

Enclosure

RECEIVED
SEP - 9 2014

U.S. Department of Justice
Civil Rights Division
Federal Coordination and Compliance Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530

COMPLAINT FORM

The purpose of this form is to assist you in filing a complaint with the Federal Coordination and Compliance Section. You are not required to use this form; a letter with the same information is sufficient. However, the information requested in the items marked with a star (*) must be provided, whether or not this form is used.

1.* State your name and address.

[redacted]

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

[redacted]

Work or Cell: N/A

Please explain your relationship to this person(s).Sister address in the U.S.A

3.* Agency and department or program that discriminated:
Name:Lyondell Chemical Company (Mark Waite Legal department)
Address: 1221 Mc Kinney Suite 700
Houston Texas 77010 P.O Box 3646 (77253-3646) U.S.A Zip(77253-3646) U.S.A
Telephone: Home: (____)_____ Work or Cell: (____)_____

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:** _____
__±__**National origin:** _____
____ **Sex:** _____
____ **Religion:** _____
____ **Age:** _____
__±__***Disability:*** _____

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.

____ Race/Ethnicity: _____
____ National origin: _____
____ Sex: _____
____ Religion: _____
____ Age: _____
____ Disability: _____

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

[redacted]

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:
Name: _____
Telephone: Home:(____)_____ Work or Cell: (____)_____

7. If you have an attorney representing you concerning the matters raised in this complaint, please provide the following:
Name: _____
Address: _____
_____ Zip_____
Telephone: Home: (____)_____Work or Cell: (____)_____

8.* To your best recollection, on what date(s) did the alleged discrimination take place?
Earliest date of discrimination:
Most recent date of discrimination: June 7 2013 Letter from Mr Waite Lyondell Legal Dept.
Under common law an employee is a person who works under the contract of employment and so has a contract of service with the employer. Therefore all the rights an obligation under common law should apply to him. This means the so-called contract and casual worker supplied by the agency to the user company remains an employee of the agency and must enjoy a normal employee/employer relationship with employer with all the associated rights.

Documentation can be accomplished by recording information pertinent to field activities,sample analysis and site conditions when propylene oxide spill in 2002 site condition including decontamination in one or several ways including logging on computers.

Logbooks
Field Data Records
Graph
Photograph of Pipeline (Propylene Oxide)
Chain of custody forms
Analytical Records

These documents should be controlled to ensure that they are all accounted for when a project is complete or a accidental spill occurs in the Lyondell Channelview Plant for Corporate use and for legal department on employee or sub.contractor injuries.The task of documents control at Lyondell are to be assigned to one individual on site the South Plant or the closed Propylene Plants in specific.Mark Waite does not investigate any accident at the plant or does not account for the responsibility of the accident.

Collecting all document on the closed propylene plant was a task and involves special attention the Legal Attorney at Lyondell has (1) "improperly," (2) "withheld," (3) "plant records." allege any improper withholding of plant records fails upon which relief could be granted to victims.

[T]he fact that responsive documents once existed does not mean that they remain in the [Lyondell] custody today or that the [Legal Departments] duty for third party to retain the records."); (declaring that the Lyondell Basell independently impose a retention obligation on the Propylene Plants" and that "[e]ven if the Lyondell Channelview failed to keep documents that it should have kept, that failure would create neither responsibility or to reconstruct those documents nor liability for the lapse since 2002 Todd Johnson explained"),

Lyondell Channelview
Field personnel have information on the propylene spill in 2002 I investigated with Mr Todd Johnson onsite activities that Mr Johnson was aware of from employee at Lyondell in 2002.

Employee Education and product use feedback educate and train employee based on job function when Lyondell Channelview told me to talk to the Legal Department which job function is different from proper handling of recycling,use of disposal of products and known product spills.

Lyondell Legal Department needs to implement a system that encourages employee feedback on accident reported and sicklist and exactly what happened at the propylene oxide spill in 2002 where are the documents for new uses,identify the misuse of documents or adverse effects of propylene oxide to health problems the stewardship was not public till 2007 the toxicology is not accurate like the National Cancer Institute.

Lyondell to disseminate such information on propylene oxide plants

Clean Air Act

The Clean Air Act required the EPA to set national ambient air quality standards for pollutants determined to be injurious to health or welfare. Propylene oxide is listed as a potential human health hazard under Section 111. Specific control technologies are
defined for such hazardous chemicals (40 CFR 60.489). Amendments to the Clean Air Act enacted in 1990 required EPA to establish technology standards applicable to the
sources of listed pollutants. Listing under Title III, Section 112 requires automatic spill reporting under CERCLA (see below), 42 U.S.C. 9601(14)). Propylene oxide is one of the listed pollutants. Hazardous Organic NESHAP (HON) Synthetic Organic Chemicals (40 CFR 63.100-106) Under a final rule effective 4/22/94, propylene oxide is listed as a "Group I" chemical (Table 1). Existing sources of chemicals in Group I must be in compliance with equipment leak rules (40 CFR 63.160-183) as of 4/24/95. Propylene oxide also is listed as an organic hazardous air pollutant (Table 2) emitted from synthetic organic chemical manufacturing industry (SOCMI) processes. Emissions are regulated by 40 CFR 63.100-.182 (subparts F, G, and H). Clean Air Act Section 112(r) Risk Management Program for Accidental Release Prevention (40 CFR 68.130). Propylene oxide is one of the chemicals regulated under this program with a threshold quantity of 10,000 lbs. Propylene oxide also is on the EHS list if the vapor pressure is 10 mmHg or greater.

National Fire Protection Association (NFPA) Hazard Rating

The NFPA ratings assign a numeric value to specific aspects of each hazard. For propylene oxide, these ratings are as follows: Health: 2. Material hazardous to health, but areas may be entered freely with full-faced mask self-contained breathing apparatus which provides eye protection. Flammability: 4. Very flammable gases or very volatile liquids. Shut off flow and keep cooling water streams on exposed tanks or containers. Reactivity: 2. Materials which (in themselves) are normally unstable and readily undergo violent chemical change but do not detonate. Includes materials which can undergo chemical change with rapid release of energy at normal temperatures and pressures or which can undergo violent chemical change at elevated temperatures and pressures. Also includes those materials which may react violently with water or which may form potentially explosive mixtures with water. In advanced or massive fires, fire fighting should be done from a safe distance or from a protected location.
Additional information on the NFPA hazard rating system can be obtained from the National Fire Protection Association, Batterymarch Park, Quincy, MA. 02269; phone 800/344-3555.

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.

Submitted by: [redacted]
Victim: The author

Subject : Request for remedies due diligence on examination of the petition if possible the contract with Century Asphalt at the Propylene Oxide Plants in 2002.Mr Waite will not explain what happened in Channelview Lyondell Plant has written a plain piece of paper saying no more that Lyondell is not providing any remedies and denies any propylene oxide accident or explosion in bad faith of the legal department of Lyondell.Mr Waite has changed all remedies that in good faith I started with Todd Johnson in 2010 he explained that Channelview Plants are part of Lyondell Basell and is not responsible for any accident.If I needed FOIA documents is only for government to release where the propylene oxide is buried in the 2002 EPA request due process of accident I have written to EPA need specific informtion and if the **DHS FOIA Request** would have any characterization of the earth quake **underground explosion** the biological and chemical release he told I could only file for FOIA to obtain government document then he told me not to call his office no more **denies talking about the propylene plants** and he would send me a MSDS on Propylene Oxide which under the right to know act from a Multinational Company.I intend to pursue with sending him the location of the bridge all the material used at the bridge on construction recarpeting of the entrance and engineer used on the project the specification of Cemex Portland Concrete, and Asphalt. Mandating the information or report made from Lyondell Plant (Century Asphalt Plant Closed Hwy 146) Lyondell Entrance South (Propylene Plants) Century Asphalt Baytown- Lyondell Basell 25O2 Sheldon Road Chamelview,Texas 77530 I also spoke to the Safety at Angel Brothers Enterprise Ltd P.O Box 570 Baytown Tx 77522 and Mr Johnson at Lyondell who was cooperative an told me that my report that I sent was over 100 pages explaining my job duties , the plant design , the reactive accident he explained I was exposed to Propylene Oxide an find the MSDS which is known carcinogen.

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. (Please use additional sheets if necessary and attach a copy of written materials pertaining to your case.)

One case report of chronic exposure was reported in (Lyondell et al. 2002). A 23-year-old male worker was accidentally exposed to propylene oxide vapor for 45 duration of incident min while trapped in a dump truck thru a spill. The exposure was from pipeline concentration was exceedingly high, , from 30,000 tank of the measurement. Shortly after exposure, he developed eye and lung irritation, hemmorages,, burning behind the sternum, and restlessness. Headache, general weakness, and diarrhea followed 1.5 h later, and within 2 h he was cyanotic and had collapsed. His pulse and blood pressure returned to normal 2 years later, and he was at Neurophychiatric and General hospitas never recovered his health condition after 6 years experienced blindness,diabetes,heart attacks and lung hemmorages,.

The contractor exposure of 45 people a strong two hour exposure to worker.I was in the truck I was trapped the Air conditioning and injectors were on fire and the oil pan of the Brown Kenworth coated with V.O.C intense heat from Asphalt the tires,engine, engine oil pan were cooled with large quantities of water to prevent vapor pressure build up which could result in a engine spark that caught fire while trapped inside the truck to failure and/or weakening the injectors on coated engine structure with V.O.C that led to air conditioning that several gallons measurement on the V.O.C in the truck, filled the truck with V.O.C entered my lungs that enabled me from escape and had to be pulled out from the truck after I was pulled from the Dyke were the pipeline was located.

The facility Lyondell Chemical Plant and the contractor involved in the construction of the bridge is similar to traditional concrete bridge building .i.e, build the support towers (colums).build the temporary falsework,build the deck,perform finish work around the bridge.The deck is often build in both directions away from the structure serves as the (launching point where I was being obstructed by the flag man which led to transmission problems on gears and led to the major

industrial accident) the point of the flag man being on the colums when the truck is on the bridge with a guard rail that is not visble to the driver that led the truck to the dyke to a large pipeline or feedline to plant (I was loaded and the asphalt and chemical reacted into a fire that was put out by a water truck.

Component to major Accident (Bridge)
Loaded there were concrete workers finishing on bridge maintence and the bridge had galvanizing rods that flatten my tire and nails on board for concrete pours.

Truck Drivers Haul Trucks
Drives a Dump truck to delivery points usually with tractor engine double axel or triple axel hauls rap,asphalt hot-mix.Follows safety rules and operates truck carefully to prevent damage to truck and other uses strenuous physical efforts in operating hand,wheel,clutch or hydraulic lift and tailgate upon unloading asphalt.Operates Dump Truck in all types of whether and is exposed to the possibility of serious accidents.

I was trapped in the feedline and the pressure inclosed inside the truck the Propylene Oxide I was pulled out then physically taken out from the truck and large quantity of water was poured on me to clear my hair,clothes,boots,eyes,ears and arns from the V.O.C the reactive accident with construction workers pulling out the dyke caused uncontrolled chemical reactions and health consequences that should have been documented on the injury list and names of worker upon release of the accident that was over 5 hours long until the pipeline was closed with construction tools.Petrochemical poisoning causes health effects and/or known carcinogen Propylene Oxide.

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 or 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.

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.
Name Address Area Code/Telephone

[redacted]
Safety[redacted]
Century Asphalt Parent Company Angel Brother's Enterprise Ltd P.O Box 520 Baytown Texas 77522

13. Do you have any other information that you think is relevant to our investigation of your allegations?
Contractor Carlos Garza Trucking 4506 Sterlingwoodway Houston,Texas 77059

Plaintiff

[redacted]

The case as a toxic tort case involving the gross contamination on ruptured pipe
Plaintiff is now suffering multitude of health complaint including cancers,neurological disorders,tumor s as a result of occupational exposure.
Pressure to settle case regardless of the underlying merits an other illnesses.
Lyondell Basell plaintiff sueing the owners for personal injury allegedly due to exposure around bridge maintence.
As a plaintiff provided the information to Lyondell (refused to provide any fabricate information in the discovery of injuries or the pipelines that caused the injuries.
There has not been trial court (Lyondell) that their special council selected for trial.The defendents (Lyondell Basell) basic information on internet,bankruptcy court in U.S will not provide in multinational companies financial information) the plaintiff has provided information to the Channelview Office some medical basic information about plaintiff.

I have provided Lawyers,FGR of El Salvador, interrogatory information that identifies medical injuries,forensics linking the injuries to exposure to a defendant products, which is bankruptcy the case had been pending at Lyondell the defendant motion to compel production of information.Mature Toxic Tort I have each and every doctor,physician,psychiatrist,psychologist,counselor, or other medical practitioner who has attributed to plaintiff injuries an merit of case on the defendants product.**Mark Waite Legal Department of Lyondell an misconduct from discretion an claiming there was no explosion or reported accidents at the Propylene Oxide Plants.** Propylene Oxide is the name and identity of Lyondell product to which alledged injury is attributed.In Harris County jurisdiction an El Salvador Jurisdiction on the basis of evidence with scientific contortion an will provide merits in the case.I provided the exposure of Multinational & Century Asphalt that I was exposed on contracts probative evidence of a causal connections between propylene oxide products and plaintiff's injuries .

[redacted]
Safety [redacted]
Century Asphalt Parent Company Angel Brother's Enterprise Ltd P.O Box 520 Baytown Texas 77522

Under common law an employee is a person who works under the contract of employment and so has a contract of service with the employer. Therefore all the rights an obligation under common law should apply to him. This means the so-called contract and casual worker supplied by the agency to the user company remains an employee of the agency and must enjoy a normal employee/employer relationship with employer with all the associated rights.

JMT Enterprise Inc contractor to Angel Brothers
15238 Mincing Lane
Channelview, Texas 77530 281-457-5127
[redacted]
Workers in Lyondell plant accident with Cardenas Trucking
[redacted] other Truck Drivers

Concerning freedom of association the National Labor Relations Act (NLRA)
provides that employees have the right to form or join unions of their own choice and bargain collectively with their employers.42 The National Labour Relations Board (NLRB) is the body that determines the appropriate unit for collective bargaining

Contract and part-time work is increasingly becoming the norm of a global economy as companies undergo restructuring, privatisation, concentration on core activities and modifications in work organisation and technology. These factors certainly affect traditional employment relations and the exercise of freedom of association and collective bargaining rights inherent in them.

Flexible work patterns are now becoming dominant in advanced countries and this makes it more difficult to organise workers for collective representation. Sub-contracting arrangements are causing the employment relationship increasingly

. to resemble a commercial relationship, making it difficult to identify the real employer for the purposes of collective bargaining.

Industry are at the receiving end of employers and therefore lack adequate protection by labour and employment laws that protect full-time employees.29 According to Emsellem and Ruckelshaus,30 "they do not receive minimum wage and overtime as required by the Fair Labor Standards Act (FLSA), and they are denied the right to organise and bargain collectively under the National Labour Relations Act

14. What remedy are you seeking for the alleged discrimination?
United States, the Texas Supreme Court look to the provisions of the ICCPR, on which the plaintiffs relied, to determine whether it conferred equal treaty rights between El Salvador and the United States. The court interpreted article 14(1) of the ICCPR as "requir[ing] all signatory countries to confer the right of equality before the courts to citizens of all other signatories."226 The court quoted from a comment by the Human Rights Committee, explaining that the ICCPR "not only guarantees foreign citizens equal treatment in the signatories' courts,

Employer Lyondell Chemical Company Contractor
Address One Houston Center Suite 700
1221 Mc Kinney St Houston Texas 77252

Supervisor Carlos Garza
Date of Injury November 24-30 2002

Reactive Accident Site (Bridge Maintence)

Job Site Of injury Lyondell Channelview Texas Address 2502 Sheldon State Tx
Company Contractor Century Asphalt/Cardenas Trucking Address Hwy 146 State Tx

Texas Workforce Commision Labor Laws 101 east 15th Street Austin, Texas 78779

Angel Brothers Enterprises LTD 5210 West Road / P.O Box 570 Baytown,Texas 77522

Carlos Garza Trucking 4506 Sterlingwoodway Houston, Texas 77059

Work Yard 14045 Muskateen Houston Texas

Duties

Construction New Construction of Propylene Plant
Job duties Repaving entrance to Propylene Plant hauling Rap to dump sites

Job duties/job titles and products/chemicals used at this job site .Transportation of hot Mix from Century Asphalt Plant on Hwy 146 to Lyondell Channelview,unloading asphalt,hauling Rap off the site (Lyondell).

Pipeline Rupture of Propylene Oxide that is 91% benzene a carcinogen

Summary of Product/Chemicals Used at Job site

Product Chemicals	Product Chemicals	Product Chemicals
TBA,Tertiary Butyl alcohol,	Benzene	Propylene
Liquefied Petroleum Gases	P.O Plants	Propylene Oxide
Methyl-Ethylene Oxide	Light Olefins	Polypropylene
Propylene	Propylene Glycol	Propylene Glycol ether

Lyondell does not brief the incident that happened on November 23 2002 the issue however and contentions not briefed on multiple chemical sensitivity to propylene oxide (iron metals) exposure and vinylbenzene.
Evaluated differention from Angel Brothers an agency that Lyondell contracted to pave around the entrance of it's Propylene Oxide victim was told.
PROPYLENE OXIDE
Propylene oxide [75-56-9] (methyloxirane, 1,2-epoxypropane) is a significant organic chemical product used primarily as a reaction intermediate for production of polyether polyols, propylene glycol, alkanolamines (qv), glycol ethers, and many other useful products (see GLYCOLS). Propylene oxide was first prepared in 1861 by Oser and first polymerized by Levene and Walti in 1927 (1). Propylene oxide is manufactured by two basic processes: the traditional chlorohydrin process (see CHLOROHYDRINS) and the hydroperoxide process with either *ter-t*butanol (see BUTYL ALCOHOLS) or styrene (qv) as a co-product.

Reactivity and Incompatibilities

Propylene reacts vigorously with oxidizing materials. It reacts violently with oxides of nitrogen (nitrogen dioxide, N02; nitrous oxide, N20; and dinitrogen tetoxide, N204). Propylene is also incompatible or reacts violently with a number of other substances and conditions. A partial list of examples is provided below:

• Propylene at 955 bar and 327° C was being subjected to further rapid compression. At 4.86 Kbar, an explosive decomposition occurred, causing a pressure surge to 10 Kbar or above. (Bretherick's 5th)

• Propylene explodes on contact with trifluoromethyl hypoflourite. (Hazardous Chemicals Desk Reference, R. J. Lewis, 3rd)

• Propylene reacts violently with NO2, N2O4, and N2O and can form explosive products. (Sax,10th ed., 2000; B.B.Brandt, et al, Khim. Prom. SSSR 3:204-210 (1961))

• Explosions have been reported when liquid propylene contacts water at 315-348° K. (W. M. Perteous and R. C. Reid, Chem. Eng. Prog. 72, 93 (1976))

• Explosive polymerization of propylene is initiated by the combination of lithium nitrate and sulfur dioxide. (Bretherick's 5th)

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.)?
Yes ____ No _±_
If so, do you remember the Complaint Number?
_____
Against what agency and department or program was it filed?
_____
Address: _____
_____ Zip _____
Telephone No: (____)_____
Date of Filing: _____ DOJ Agency:_____

Briefly, what was the complaint about?
_____
_____
_____
What was the result?
_____

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

17. If you have already filed a charge or complaint with an agency indicated in #16, above, please provide the following information (attach additional pages if necessary):

El Salvador vs Lyondell Ref 60-UMA-08
Edificio Primavera Final Cuarta Calle Poniente y Diecinueve Avenida Sur Entreda Principal de Residencial Primavera Santa Tecla

Exhaustion
United States, the Texas Supreme Court look to the provisions of the ICCPR, on which the plaintiffs relied, to determine whether it conferred equal treaty rights between El Salvador and the United States. The court interpreted article 14(1) of the ICCPR as "requir[ing] all signatory countries to confer the right of equality before the courts to citizens of all other signatories."The court quoted from a comment by the Human Rights Committee, explaining that the ICCPR "not only guarantees foreign citizens equal treatment in the signatories' courts,

---

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.

_____
_____
_____

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

[redacted] - _____ July 25, 2013
(Signature) **(Date)**

Please feel free to add additional sheets to explain the present situation to us.
We will need your consent to disclose your name, if necessary, in the course of any investigation. Therefore, we will need a signed Consent Form from you. (If you are filing this complaint for a person whom you allege has been discriminated against, we will in most instances need a signed Consent Form from that person.) See the "Notice about Investigatory
Uses of Personal Information" for information about the Consent Form. Please mail the completed, signed Discrimination Complaint Form and the signed Consent Form (please make one copy of each for your records) to:

United States Department of Justice
Civil Rights Division
Federal Coordination and Compliance Section - NWB
950 Pennsylvania Avenue, NW

Washington, D.C. 20530
Toll-free Voice and TDD: (888) 848-5306
Voice: (202) 307-2222
TDD: (202) 307-2678

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

FBI Contact Houston 1 Justice Park Drive
Houston, TX 77092 Phone: (713) 693-5000 Fax: (713) 936-8900E-mail: Houston.Texas@ic.fbi.gov

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

_____

Note: If a currently valid OMB control number is not displayed on the first page, you are not required to fill out this complaint form unless the Department of Justice has begun an administrative investigation into this complaint.
U.S. Department of Justice
Civil Rights Division

NOTICE ABOUT INVESTIGATORY USES OF PERSONAL INFORMATION

NOTICE OF COMPLAINANT AND INTERVIEWEE RIGHTS AND PRiViLEGES

Complainants and individuals who cooperate in an investigation, proceeding or hearing conducted by DOJ are afforded certain rights and protections. This brief description will provide you with an overview of these rights and protections.

- A recipient may not force its employees to be represented by the recipient's counsel nor may it intimidate, threaten, coerce or discriminate against any employee who refuses to reveal to the recipient the content of an interview. An employee does, however, have the right to representation during an interview with DOJ. The representative may be the recipient's counsel, the employee's private counsel, or anyone else the interviewee authorizes to be present.

The laws and regulations which govern DOJ's compliance and enforcement authority :provide that no recipient or other person shall intimidate, threaten, coerce or discriminate against any individual because he/she has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing conducted under DOJ's jurisdiction, or has asserted rights protected by statutes DOJ enforces.

- Information obtained from the complainant or other individual which is maintained in DOJ's investigative files may be exempt from disclosure under the Privacy Act or under the Freedom of Information Act if release of such information would constitute an unwarranted invasion of personal privacy •

There are two laws governing personal information submitted to any Federal agency, including the Department of Justice (DOJ): The Privacy Act of 1974 (5 U.S.C. § 552a), and the Freedom of Information Act (5 U. S. C. § 552).

THE PRIVACY ACT protects individuals from misuse of personal information held by the Federal Government. The law applies (, records that are kept and that can be located by the individual's name or social security number or other personal identification system. Persons who submit information to the government should know that:

- DOJ is required to investigate complaints of discrimination on the basis of race, color, national origin, sex, disability, age, and, in some instances, religion against recipients of Federal financial assistance. DOJ also is authorized to conduct reviews of federally funded recipients to assess their compliance with civil rights laws.

- Information that DOJ collects is analyzed by authorized personnel within the agency. This information may include personnel records or other personal information. DOJ staff may need to reveal certain information to persons outside the agency in the course of verifying facts or gathering new facts to develop a basis for making a civil rights compliance determination. Such details could include the physical condition or age of a complainant. DOJ also may be required to reveal certain information to any individual who requests it under the provisions of the Freedom of Information Act. (See below)
- Personal information will be used only for the specific purpose for which it was submitted, that is, for authorized civil rights compliance and enforcement activities. Except in the instances defined in DOJ's regulation at 28 C.F.R. Part 16, DOJ will not release the information to any other agency or individual unless the person who supplied the information submits a written consent. One of these exceptions is when release is required under the Freedom of Information Act. (See below)
- No law requires a complainant to give personal information to DOJ, and no sanctions will be imposed on complainants or other· individuals who deny DOJ's request. However, if DOJ fails to obtain information needed to investigate allegations of discrimination, it may be necessary to close the investigation.
- The Privacy Act permits certain types of systems of records to be exempt from some of its requirements, including the access provisions. It is the policy of DOJ to exercise authority to exempt systems of records only in compelling cases. DOJ may deny a complainant access to the files compiled during the agency investigation of his or her civil rights complaint against a recipient of Federal financial assistance. Complaint files are exempt in order to aid negotiations between recipients and DOJ in resolving civil rights issues and to encourage recipients to furnish information essential to the investigation.
- DOJ does not reveal the names or other identifying information about an individual unless it is necessary for the completion of an investigation or for enforcement activities against a recipient that violates the laws, or unless such information is required to be disclosed under FOIA or the Privacy Act. DOJ will keep the identity of complainants confidential except to the extent necessary to carry out the purposes of the civil rights laws, or unless disclosure is required under FOIA, the Privacy Act, or otherwise required by law.

THE FREEDOM OF INFORMATION ACT gives the public access to certain files and records of the Federal Government. Individuals can obtain items from many categories of records of the Government -not just materials that apply to them personally. DOJ must honor requests under the Freedom of Information Act, with some exceptions. DOJ generally is not required to release documents during an investigation or enforcement proceedings if the release could have an adverse effect on the ability of the agency to do its job. Also, any Federal agency may refuse a request for records compiled for law enforcement purposes if their release could be an "unwarranted invasion of privacy" of an individual. Requests for other records, such as personnel and medical files, may be denied where the disclosure would be a "clearly unwarranted invasion of privacy." U.S. Department of Justice
Civil Rights Division
Coordi1U1lion and Review Section

COMPLAINANT CONSENT/RELEASE FORM

Your Name: [redacted]
Address: [redacted]
Complaint number(s): (if known) _____

Please read the information be/ow, check the appropriate box, and sign this form.

I have read the Notice of Investigatory Uses of Personal Information by the Department of Justice. (DOJ). As a complainant, I understand that in the course of an investigation it may become necessary for DOJ to reveal my identity to persons at the organization or institution under investigation. I am also aware of the obligations of DOJ to honor requests under the freedom of Information Act. I understand that it may be necessary for DOJ to disclose . information, including personally identifying details, which it has gathered as a part of its -investigation of my complaint. In addition, I understand that as a complainant I am protected by DOJ's regulations from intimidation or retaliation for having taken action or participated in action to secure rights protected by nondiscrimination statutes enforced by DOJ.

CONSENT/RELEASE

D'·CONSENT - I have read and understand the above information and authorize DOJ to reveal my identity to persons at the organization or institution under investigation. I hereby authorize the Department of Justice (DOJ) to receive material and information about me pertinent to the investigation of my complaint. This release includes, but is not limited to, personal records and medical records. I understand that the material and information will be used for authorized civil rights compliance and enforcement activities. I further understand that I am not required to authorize this release, and do so voluntarily.

D CONSENT DENIED - I have read and understand the above information and do not want DOJ to reveal my identity to the organization or institution under investigation, or to review, receive copies of, or discuss material and information about me, pertinent to the Investigation of my complaint. I understand this is likely to impede the investigation of my complaint and may result in the closure of the investigation.

[redacted]

July 25, 2013
(Date)

BenQ
CD-R 52X
recordable 700MB / 80min
Data / Video

[redacted]

San Salvador, El Salvador Centro America

DUI #03763888-4

X-RAYED

INSPECTED 1 AUG 12 2013

DOJ MAILROOM

STA. ROSA DE LIMA
CORREOS DE
30 JUL. 2013

United States Department of Justice
Civil Rights Division
Federal Coordination and Compliance Section - N
950 Pennsylvania Avenue, NW
Washington D.C 20530

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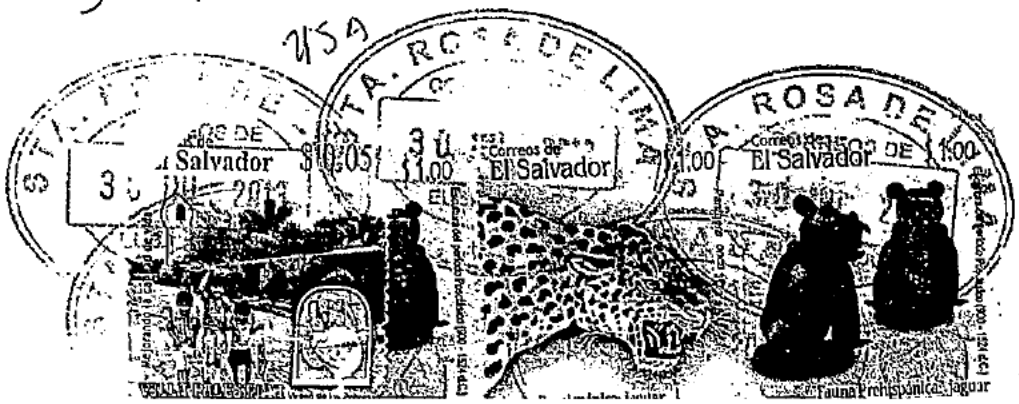

Washington, D.C. 20530

Official Business
Penalty for Private Use $300

US OFFICIAL MAIL
$300 Penalty

Ms. Vicki Simons
Director
Office of Civil Rights
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Stop 1201A
Washington, D.C. 20004

RECD SEP 09 2014

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

FEB 11 2016

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail #: 7009 2820 0002 1764 0662

In Reply Refer to:
EPA File No. 12NOD-14-R6

(b) (6) - Privacy
Houston, Texas. 77072

Re: Rejection of Correspondence

Dear (b) (6) - Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR) has reviewed your correspondence dated August 25, 2013, referred to the OCR by the Department of Justice. After careful consideration, the OCR has concluded that it cannot accept the correspondence for investigation as a complaint because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. 40 Code of Federal Regulations (C.F.R.), Part 7 §120(b).

The OCR conducts a preliminary review of administrative correspondence for acceptance for investigation as a complaint, rejection, or referral to another agency. The OCR accepts for investigation complaints that meet all four of the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, it must be in writing. Second, it must allege discriminatory act(s) that if true, may violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age, or disability. Third, it must be received within 180 calendar days of the alleged discriminatory act. Finally, it must be filed against an applicant for, or a recipient of, the EPA financial assistance that committed the alleged discriminatory act.

Your correspondence does not describe an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Although you checked "national origin and disability on the complaint form, your correspondence does not provide any information to support that you were subjected to discrimination under any of the bases set forth in the civil rights laws that the OCR enforces. That is, discrimination based on race, color, national origin, sex, disability or age. Additionally, information in the form does not attribute any wrongdoing to a recipient of, or applicant for, the EPA financial assistance. Information available to the OCR does not indicate that Lyondell Chemical has received EPA financial assistance or is a current applicant for such assistance. Finally, it does not appear that the alleged act(s) occurred within the 180-day

timeframe. Accordingly, the OCR must reject the correspondence as a complaint for investigation.

If you have any questions about this communication, please contact the OCR at 202-564-7272, or by mail to U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. You may ask to speak with Jonathan Stein.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights and Finance Law Office

Samuel Coleman
Acting Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 6

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

OFFICE OF
CIVIL RIGHTS

FEB 11 2016

Return Receipt Requested
Certified Mail #: 7009 2820 0002 1764 0594

In Reply Refer to:
EPA File No. 12NOD-14-R6

Mr. Mark Waite, Legal Department
Lyondell Chemical Company
1221 McKinney St, Suite 700
Houston, Texas. 77010

Re: Rejection of Administrative Complaint

Dear Mr. Waite:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), has reviewed correspondence from a former employee referred by the Department of Justice. After careful consideration, the OCR has concluded that it cannot accept the correspondence for investigation as a complaint because it does not meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. 40 Code of Federal Regulations (C.F.R.), Part 7 §120(b).

OCR conducts a preliminary review of administrative correspondence for acceptance for investigation as a complaint, rejection, or referral to another agency. OCR accepts for investigation complaints that meet all four of the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must allege discriminatory act(s) that if true, may violate the EPA's nondiscrimination regulations, such as an intentionally discriminatory act or a policy with discriminatory effects based on race, color, national origin, sex, age, or disability. Third, it must be received within 180 calendar days of the alleged discriminatory act. Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that committed the alleged discriminatory act.

The former employee's correspondence does not describe an alleged discriminatory act that may violate the EPA's nondiscrimination regulations. Although the complainant checked "national origin and disability on the complaint form, the correspondence does not provide any information to support that the complainant was subjected to discrimination under any of the bases set forth in civil rights laws that the OCR enforces. That is, laws prohibiting discrimination based on race, color, national origin, sex, disability or age. Additionally, it does not attribute any wrongdoing to a recipient of, or applicant for, EPA financial assistance. Information available to the OCR does not indicate that Lyondell Chemical has received EPA financial assistance or is a current applicant for such assistance. Finally, it does not appear that

the alleged act(s) occurred within the 180 calendar day timeframe. Accordingly, the OCR must reject the subject correspondence as a complaint for investigation.

If you have any questions, please contact the OCR at (202) 564-7272, or by mail directed to U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, D.C., 20460. You may ask to speak with Jonathan Stein.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights and Finance Law Office

Samuel Coleman
Acting Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 6

Exhibit G

FINAL REPORT

Submitted to:
Albuquerque-Bernalillo County
Air Quality Control Board

By:
Environmental Justice Task Force

March 12, 2008

Executive Summary

Why the Environmental Justice (EJ) Task Force was formed: The purpose of EJ Task Force is to provide recommendations to the Air Quality Control Board (AQCB) to address environmental justice concerns in Albuquerque and Bernalillo County. The EJ Task Force recommendations relate primarily to ***air quality.***

Scope of the EJ Task Force:

- Develop recommendations to implement the EJ objectives of the Task Force (i.e., immediate, short-term, and long-term recommendations)
- Identify barriers to implementing recommendations (e.g., data access and availability, training needs)
- Identify/develop a check list or other qualitative analysis for EJ regarding air quality
- Identify existing models (quantitative and qualitative analyses) for analyzing cumulative effects

Challenges of the EJ Task Force:

- Timeframe
- Varying stages of knowledge by different Task Force members on the various issues
- Diversity of Task Force members created a heightened potential for conflict
- Directives from the AQCB were broad in scope
- The Task Force was unable to set time frames for the recommendations

Key Task Force Recommendations - By Priority:

1. Support the adoption of environmental assessment provisions in regulations, statutes and ordinances at the state and local level.
2. Monitor sources to ensure that modeled emissions are reflective of actual emissions.
3. Explicitly consider EJ and cumulative impact in the permitting process and regulation.
4. Strengthen enforcement of regulations and permits.
5. Collaborate with the AQCB and the Environmental Improvement Board (EIB) to create new regulations or modify existing regulations.
6. Improve the monitoring network so that air quality at the neighborhood level can be assessed more effectively.
7. Ensure that human health and environmental monitoring data are collected, available, and analyzed appropriately through a collaborative center.
8. Create an EJ ombudsman position.
9. Ensure that membership on appointed boards and commissions accurately reflect composition of the community.

EJ Task Force Members

Jens Deichmann, AQCB
Maria Dominguez, AQCB Attorney
John Dufay, Albuquerque Public Schools
Doug Heatherly, Industry Representative
Lora Lucero, Land Use Planner and Attorney
Margaret Ménache, UNM, Family and Community Medicine Program
Amy Miller, Public Service Company of New Mexico
Felicia Orth, State Hearing Officer
Marla Painter, Affected Community Member
Debby Potter, AQCB
Kitty Richards, Bernalillo County, Office of Environmental Health
Tom Scharmen, New Mexico Department of Health, Public Health Division
Isreal Tavarez, City of Albuquerque, Air Quality Division
Joe Valles, West Side Coalition of Neighborhood Associations

Richard Moore, Affected Community Member, could not attend due to other obligations

Rosemary Romero, Facilitator

Recommendations

Environmental Justice (EJ) Objectives of the EJ Task Force

The purpose of these objectives is to provide recommendations to the Air Quality Control Board (AQCB) to address EJ concerns in Albuquerque and Bernalillo County. The following objectives relate to ***guidelines for air quality.***

Information included in this document was partially adapted from the following documents:

California EPA Policies: http://www.arb.ca.gov/ch/programs/programs.htm
EPA Region 6: http://www.epa.gov/earth1r6/6dra/oejta/ej/index.html

The EJ Task Force was provided with a list of seven objectives that were adopted by the AQCB at their Board meeting on 11 July 2007. After some discussion on the most effective way to develop and summarize its recommendations, the EJ Task Force decided to use the objectives, as adopted by the AQCB. To capture an alternative way of grouping the issues or problems and their recommended solutions, the tables of this report include a column labeled 'key concepts'. The key concepts represent the general overlying themes for specific problems, issues, and solutions. Key concepts include recommendations such as revising the permitting process, creating new policies, conducting assessments, and developing partnerships, to name a few.

The report is structured as a series of seven tables corresponding to each of the seven objectives. The objective is briefly stated and is followed by a vision statement of how things would look in an ideal world. The table itself has four columns corresponding to: key concepts, the statement of the issues/problems, strategies for recommended actions, and a suggested recommendation for a likely responsible party to implement the recommended action.

The report is the result of a collaborative process and presents a variety of stakeholder concerns and recommendations. Overall, members of the EJ Taskforce support the recommendations as presented with some concerns about the future implementation of the recommendations which will require policies that may be developed without the opportunity for review or comment.

ective 1: To identify opportunities for *integrating EJ* in .ir quality programs, policies, and regulations of the City d County.

Vision: Albuquerque and Bernalillo County will consider EJ issues as they set priorities, identify program gaps, and assess the benefits and adverse impacts of their programs, policies, and regulations. Every person will be equally protected from environmental hazards. The programs will be comprehensive and include:

- adopting regulations
- identifying disproportionately affected communities
- funding clean air projects through incentive programs
- assessing current processes for air monitoring and emissions assessments
- improving enforcement
- facilitating employee training
- collaborating on research
- conducting public outreach and education

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Policies	1. The AQCB policies, procedures and bylaws do not fully address EJ issues.	1. Incorporate EJ principles in AQCB policies and procedures.	1. AQCB
Policies	2. The current regulations have limited mechanisms to address EJ and cumulative impacts.	2.A. Adopt AQCB Title 20 Environmental Protection, Chapter 11, Part 72, Cumulative Impacts and EJ (Attachment 1). 2.B. Finalize the public involvement plan (PIP) required under the EPA implementation regulations of Title VI. 2.C. Adopt environmental assessment provisions at the local government level. 2.D. Advocate for environmental assessment provisions at the state level.	2.A. AQCB 2.B. AQD 2.C. AQCB 2.D. NM State Legislature
Permitting process, Policies, Community involvement	3. Communities do not feel that their input is considered in decisions that directly affect them.	3.A. Require participation of all stakeholders, including industry, agencies, and community members, early in the permitting process. The public should know about a potential interest in a permit application as soon as the agency does. 3.B. Develop regulatory language that explicitly states how public comment will be considered in permitting decisions. 3.C. Create an ombuds position to act on behalf of the	3.A. AQD 3.B. AQD and AQCB 3.C. City Council and

ective 1: To identify opportunities for *integrating EJ* in ir quality programs, policies, and regulations of the City J County.

		community and as a liaison between County and City staff.	County Commission
Legal authority and responsibility	4. Differing interpretations exist on the AQCB's authority to consider EJ, cumulative impacts, public health, and public comment as part of their decision making process.	4.A. Review the Attorney General's (AG) Opinion on the AQCB's authority to consider EJ, cumulative impacts and public comment when it becomes available. 4.B. After the Vulcan decision by the Court of Appeals, the AQCB is urged to have a public workshop with counsel to review the ruling and the AG's opinion to hear different perspectives on their discretion.	4.A. AQCB 4.B. AQCB
Assessment	5. Disproportionately burdened, minority and low-income communities have not been systematically identified and mapped.	5. Use a variety of tools, including GIS, to identify overburdened communities, based on minority and low-income status, and provide equal protection for these communities (Appendix A).	5. NMDOH, BCEH, AQD

'ective 2: To identify opportunities to *strengthen outreac 'd education efforts* in all communities, especially disproportionately affected communities, so that all residents can fully participate in public processes and share in the air quality benefits of Albuquerque and Bernalillo County programs.

Vision: Albuquerque and Bernalillo County will enhance public participation in local decision-making processes. They will:

- solicit input from communities
- develop additional information on air quality in communities
- make this information more accessible early in the decision making process
- educate communities and industries on the public process used to make local decisions

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Permitting process, Community involvement, Assessment, Training	1. Education and outreach are needed to familiarize: a) communities with decision making processes; b) staff with community concerns; and c) staff and communities with environmental health and health data for specific locations.	1.A. Provide outreach and education via neighborhood associations. 1.B. Create a resource center at community centers for community access to health, environmental health and permitting information. 1.C. Require EJ training programs for all agency staff and Board members to learn about the effect of environmental injustice on various cultures and communities. References are found at: http://www.cjhu.org/justice_training.html http://www.fedcenter.gov/training/	1.A. Offices of Neighborhood Coordination (ONC) from city and county (Attachment 2) 1.B. City Council and County Commission, AQD 1.C. AQD and AQCB
Community involvement, Assessment	2. Boards and Commissions may not reflect the diversity of communities they are representing.	2.A. Recruit members who are representative of the community. 2.B. Routinely assess, by survey or other tools, the composition of Boards. 2.C. Assess whether there are barriers to representative Board membership, such as non-paid board position, that can be mitigated.	2.A. City Council and County Commission 2.B. City Council and County Commission 2.C. City Council and County Commission

ective 3: To identify opportunities to work with the City Albuquerque and the County of Bernalillo to reduce hea. risks from toxic air pollutants in all communities, especially disproportionately affected communities, through the *adoption of control measures and the promotion of pollution prevention programs.*

Vision: Albuquerque and Bernalillo County will reduce health risks from toxic air pollutants at neighborhood levels by:

- identifying sources of pollution at neighborhood and regional (air shed) levels
- implementing pollution prevention measures
- implementing pollution control measures

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Policies	1. Industries have no incentive to reduce pollution below Federal or State standards in disproportionately affected communities.	1. Provide incentives to industries for pollution prevention activities.	1. NMED at State level; AQD at local level; City Council and County Commission.
Assessment	2. Air toxics are difficult to identify, measure, and mitigate.	2A. Improve monitoring capabilities. 2B. Provide community residents with equipment and training.	2.A. AQD 2.B. AQD and BCEH

ective 4: To identify opportunities to work with the City Albuquerque and the County of Bernalillo to *strengthen enforcement activities at the community level.*

Vision: Albuquerque and Bernalillo County will:

- improve compliance with air quality regulations
- assure that all complaints are promptly investigated and that feedback is provided to the public
- improve enforcement response

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Enforcement, Policies, Training	1. There is inadequate enforcement of industrial emissions.	1.A. Increase inspection staff. 1.B. Explore the possibility of training residents in assessing stack emissions. 1.C. Increase penalties and enhance supplemental environmental projects (SEP). 1.D. Strengthen the regulations on excess emissions.	1.A. AQD 1.B. AQD 1.C. AQD 1.D. AQCB
Enforcement, Training	2. Assure that all complaints are properly addressed and responded to in a timely manner.	2. Train 311 staff on appropriate response to public complaints on air quality.	2. AQD

ective 5: To identify opportunities to assess, consider, a educe *cumulative emissions, exposures, interactive effects alth risks* when developing and implementing air quality programs.

Vision: Albuquerque and Bernalillo County will:

- consider both cumulative emissions and cumulative burdens of disease and death when developing and implementing air quality programs
- ensure compliance with permits conditions.

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Permitting process, Enforcement, Policies, Assessment	1. Currently, there are limited mechanisms within the planning, permitting, and enforcement process that address the potential cumulative impact of air emissions. This is especially true of hazardous air pollutants, particulate matter and other fugitive emissions, and mobile sources.	1.A. Routinely monitor industries' emissions. 1.B. Increase the number of monitoring stations and assure that both point and mobile sources are included. 1.C. Adopt regulations to reduce idling of diesel vehicles. 1.D. Adopt local regulations that require environmental assessment provisions as part of the permit process. 1.E. Advocate for state-wide environmental assessment provision.. 1.F. Work with NMED on rule making to prevent excess emissions. 1.G. Require adoption and implementation of the Consistency Doctrine.	1.A. AQD 1.B. AQD and AQCB 1.C. AQCB 1.D. AQCB 1.E. NM State Legislature 1.F. AQCB 1.G. City Council, County Commission, NM State Legislature, AQCB
Permitting process, Policies	2. The permitting process does not address cumulative emissions at a neighborhood level.	2. Adopt regulations and implement procedures to consider cumulative emissions at a neighborhood level in the air quality permitting process, such procedures can follow those listed below: - EJ checklist - Environmental assessment policy (Attachment 3) - Albuquerque model (Appendix A)	2. AQCB and AQD, with assistance from BCEH
Assessment, Permitting process	3. Data from the air quality monitoring network is averaged and may not be reflective of actual air quality in the affected community at a given time.	3.A. In the permitting process, use actual and recent monitoring data from stations in close proximity to the applicant's proposed location, if available. Data from mobile monitoring units should be considered if there are no suitable or representative stationary monitoring units. 3.B. Purchase mobile monitoring equipment to obtain air quality data for the affected communities. 3.C. Increase the number of monitoring stations to assure that	3.A. AQD 3.B. AQD, BCEH 3.C. AQD

,ective 5: To identify opportunities to assess, consider, ai. educe *cumulative emissions, exposures, interactive effects ...d health risks* when developing and implementing air quality programs.

		off-site and on-site emissions within the affected community are considered in the permitting process.	
Assessment	4. The AQCB is unsure of the impact of prior permitting decisions on the affected communities and should validate applicants' model predictions.	4. Perform a statistical analysis of existing information to determine whether prior air quality permits: 1) were protective of disproportionately impacted communities, and 2) were accurate in their assessment of modeled emissions. It is recommended that this study use a random sample of permits issued in the past 10 years.	4. AQCB requests study; AQD provides data for study
Policies, Permitting process, Assessment	5. Communities that are disproportionately burdened by air pollutant emissions are not identified in such a way that they can be protected from future and current emissions.	5.A. Use GIS to map reported emissions and community demographics. 5.B. Develop and adopt statutory and regulatory language for environmental assessment provisions such as the 2007 amendments to 20.9.1 NMAC, the Solid Waste Management Regulations at: (http://www.nmcpr.state.nm.us/nmac/_title20/T20C009.htm).	5.A. AQD, BCEH, NMDOH 5.B. AQCB, NM State Legislature, NMED
Health assessment, Permitting process	1. Data on the health status of communities, including the cumulative burdens of disease and death, are not included in planning, permitting and enforcement processes. Communities that are disproportionately burdened by disease are not identified.	1.A. Access existing health data (including information on morbidity and mortality) to identify burdened communities and consider this data as part of the planning and permitting processes. 1.B. Change the permit process to include available health and welfare considerations from cumulative exposures. 1.C. Identify data gaps and implement data collection to improve the health data used in the permit process.	1.A. NMDOH 1.B. NM State Legislature, AQCB 1.C. NMDOH, BCEH, AQD
Assessment	2. Existing health burdens may create populations that are more vulnerable to risk from air pollution.	2. Collect community specific health data that will be accessible to communities and to staff.	2. NMDOH, BCEH

:ctive 6: To identify opportunities to *work with local lan e agencies, transportation agencies*, the City of Albuquer and the County of Bernalillo to develop ways to assess, consider, and reduce cumulative emissions, exposures, interactive effects, and health risks from air pollution through general plans, permitting, and other local actions in the City and County.

Vision: Albuquerque and Bernalillo County will:

- Promote partnerships and work as partners with other state, regional, and local agencies and stakeholders to ensure that we are all equally committed to eradicating environmental injustices in our communities.

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Policies, Assessment	1. The AQCB addresses air quality and doesn't have the authority to address land-use issues.	1.A. Formalize collaboration with land-use agencies and assure that relevant agency input on potential negative or positive community impacts has occurred prior to issuing land-use or air quality permits. 1.B. Propose and implement local EJ Executive Order, modeled after state EJ Order. 1.C. Develop an Air Shed Plan that addresses cumulative impacts. 1.D. Develop collaborative grants and planning.	1.A. BCEH, AQD, AQCB and City and County Planning Commissions 1.B. City Council, County Commission 1.C. City Council, County Commission, including Sandoval, Torrance, Cibola, Santa Fe, Valencia, and Bernalillo. 1.D. UNM, NMDOH, BCEH, AQD
Policies	2. Single media and land-use zoning regulations result in the inability to address EJ issues in a holistic way.	2.A. In collaboration with the Planning Commission, review land use plans and regulations to incorporate air quality concerns to address EJ and cumulative impact issues explicitly. 2.B. Revive EPC liaison on the AQCB.	2.A. County/City Planning Commission, County/City Commission, County/City Planning Departments 2.B. AQCB, City Council
Policies	3. Comprehensive plans are not implemented and enforced.	3. Require implementation of Consistency Doctrine in order to address cumulative impacts and ensure that regulations and rules are implemented in accordance with long term land-use plans.	3. NM State Legislature, City Council, County Commission, County/City Planning Commission
Permitting process	4. Consideration of cumulative impacts adds complexity to the permitting process.	4. Criteria for permit approval or denial must be explicitly stated in the permit application guidelines.	4. AQD
Partnership	5. There is a lack of	5. Create incentives for collaborative planning, joint grant	5. UNM, City Council,

(:ctive 6: To identify opportunities to *work with local lan 2 agencies, transportation agencies*, the City of Albuquer and the County of Bernalillo to develop ways to assess, consider, and reduce cumulative emissions, exposures, interactive effects, and health risks from air pollution through general plans, permitting, and other local actions in the City and County.

	incentives for potential partners to work together.	writing, and centers.	County Commission
Partnership	6. Partnerships often have less influence than a single agency.	6. Revise regulations to require collaboration as part of the planning and permitting processes.	6. AQCB

Objective 7: To identify opportunities to support *research and data collection* needed to reduce cumulative emissions, exposure, interactive effects and health risks, as appropriate, ... all communities, especially disproportionately affected communities.

Vision: Albuquerque and Bernalillo County will:

- Cooperatively fund and spearhead implementation of a model program for research and data collection which will be followed by other communities in the country in the future.
- Contribute to a collaborative data clearinghouse that will acquire, develop and analyze databases to provide cumulative impact and health status information.

Key Concept	Issues/Problems	Strategies/Actions	Recommended Responsible Party
Assessment	1. The AQCB doesn't have the necessary resources to conduct research and data collection.	1.A. Assess existing data sets used by the City and County to develop cumulative emissions models. 1.B. Identify data needed to establish a community-specific baseline of emissions and health burdens. 1.C. Compile an expert resources list and invite these people to become part of the on-going work.	1.A. AQD, BCEH 1.B. NMDOH, AQD, BCEH 1C. UNM, NMDOH, AQD, community, BCEH
Assessment, Partnership	2. Assessments of cumulative emissions and cumulative health burdens are not conducted.	2.A. Develop and use methodology to conduct qualitative and quantitative assessments of cumulative emissions as part of permitting process. 2.B. Support the creation of a permanent, locally-based joint center for comprehensive health and environmental assessment that commits key partners and resources to the assessment process.	2.A. BCEH, AQCB, AQD 2.B. City Council, County Commission
Assessment	3. The assessment process is more time consuming than the current permitting process.	3. Support assessment processes that create multipurpose comprehensive data tools that can rapidly respond to data needs.	3. AQCB
Partnership	4. Access to multiple datasets to build comprehensive assessment tools that will be located in one place is obstructed by factors such as issues of confidentiality.	4. Use strength of partnerships to establish community rights to data and write cooperative agreements with data collectors and keepers to facilitate data consolidation in one local center.	4. UNM, NMDOH, AQD, BCEH
Assessment	5. The assessment process must include an objective	5. Support assessment processes that include community-based participatory elements and that openly involve all	5. AQCB

ective 7: To identify opportunities to support *research* *data collection* needed to reduce cumulative emissions, exposure, interactive effects and health risks, as appropriate, in all communities, especially disproportionately affected communities.

	and interactive facilitation component to assist partners in asking and answering the pertinent questions about cumulative impacts and health burdens.	partners in exploring data on cumulative impacts and health burdens.	
Assessment	6. Literature is just beginning to address the synergy between chemicals and their effects on health and welfare.	6. Review existing literature on chemical synergy, as well as the precautionary principle and provide recommendations on possible planning and permitting methodologies that incorporate this knowledge and provide this information to community residents through a resource library at community centers.	6. AQD, BCEH, DOH, UNM, community

Glossary

AQCB. Air Quality Control Board: The New Mexico State Legislature granted this Board the authority and responsibility to prevent or abate air pollution in Bernalillo County. The Board consists of seven voting members who volunteer to serve. Four members are appointed by the Albuquerque City Council and three members are appointed by the Bernalillo County Commission. On March 17, 1994, the County Commission adopted Bernalillo County Code, Section 30-32, creating the joint city-county board, establishing board membership, procedural requirements and responsibilities. See http://www.cabq.gov/airquality/aboutaqcb.html

Air shed: A geographic area that, because of topography, meteorology or climate, is frequently affected by the same air mass. See http://199.128.173.141/Flag2000.pdf

Air toxic (also known as hazardous air pollutants): Any air pollutant (for which a national ambient air quality standard does not exist) that may reasonably be anticipated to cause cancer; respiratory, cardiovascular or developmental effects, reproductive dysfunctions, neurological disorders, heritable gene mutations, or other serious or irreversible chronic or acute health effects in humans. See http://www.epa.gov/glossary/aterms.html. EPA is working with to reduce 188 toxic air pollutants pollutants. See http://www.epa.gov/ttn/atw/allabout.html

Consistency doctrine: Definitions are given from three sources.
Rhode Island Statutes: All regulations that are used to implement the local comprehensive plans must be consistent with the recommendations and policies of the plan, and state and local funding decisions must be consistent with the local plan.
California Planning Roundtable: Consistency means free from variation or contradiction. Programs in the comprehensive plan are to be consistent, not contradictory or preferential. State law requires consistency between the plan and implementation measures such as zoning ordinance.
Moorpark California: Consistency means compatibility and agreement with the comprehensive plan of the municipality and/or county. Consistency exists when the standards and criteria of the comprehensive plan are met or exceeded.

Cumulative emissions: The public health and environmental effects in a geographic area or population group from all hazardous air pollutants, particulate matter, other fugitive dusts, and mobile sources from existing facilities, known planned facilities, and the proposed facility's emissions.

Cumulative exposures: The public health and environmental effects in a geographic area or population group from all exposures, including pollution from all emissions and discharges, whether single or multi-media, routinely, accidentally from existing facilities, known planned facilities and the proposed facility.

Cumulative impacts: The public health and environmental effects in a geographic area or population group from all pollution sources and from social determinants, such as income and ethnicity status.

EJ. Environmental justice: The fair treatment of all residents (in the City of Albuquerque and Bernalillo County), including communities of color and low income communities, and their meaningful involvement in the development, implementation and enforcement of environmental laws, regulations and policies regardless of race, color, ethnicity, religion, income or education level. (Adapted from NM Executive Order 2005-056).

Morally unacceptable harm: This definition is taken from COMEST 2005: 14. Harm to humans or the environment that is:

- Threatening to human life or health, or
- Serious and effectively irreversible, or
- Inequitable to present or future generations, or
- Imposed without adequate consideration of the human rights of those affected.

Precautionary principle: When human activities may lead to morally unacceptable harm that is scientifically plausible but uncertain, actions shall be taken to avoid or diminish that harm. The precautionary principle calls for a shifting of the burden of proof.
Where the precautionary principle has not been adopted:

- people exposed to risky actions must bear the risks of such actions until it can be demonstrated that they cause harm to health or the environment.
- the people exposed to risk bear the responsibility for demonstrating that actions caused harm.

Where the precautionary principle is applied:

- people exposed to risk can ask for precautionary actions to be taken before risky actions can be proven to cause harm.
- once some preliminary basis for taking precautionary action exists, risk creators bear the responsibility of showing that actions are safe, or at least acceptably risky.

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Hospitalization and Mortality in Albuquerque Zip Codes; A Preliminary Descriptive Analysis of Hospitalization and Deaths at the Sub-County Level. Scharmen, T.N. http://www.health.state.nm.us/pdf/ABQ-Health-and-Social-Indicator-Map-Book-v6a-e.pdf .

Website for new EJ organization: www.simplechange.org/pages.about

Local website/blog about land use issues: http://eocoposts.typepad.com/

Website for City of Albuquerque Goal 5: Environmental Protection and Enhancement: http://www.cabq.gov/progress/goal5.html

California policies: http://www.arb.ca.gov/ch/programs/programs.htm

EPA Region 6: http://www.epa.gov/earth1r6/6dra/oejta/ej/index.html

E-news letter: Petitions Urge EPA to Regulate Aircraft Emissions environmental@1105newsletters.com

Asthma study information from Tom Scharmen presentation: http://www.personal.psu.edu/users/a/u/aup162/geog586/SemesterProject/SemesterProject.html.

Other materials reviewed by EJ Task Force members

City of Albuquerque air quality ordinance

Environmental Health Report Card for the City of Albuquerque and Bernalillo County

"Rhino Case" information

Albuquerque Journal – Westside edition, Thursday, October 25, 2007. *Mountain View Battles Another Cement Permit*, Juan-Carlos Rodriguez

Article – Clovis Plant Poses Health Risks, by Wayne Roth-Nelson, Ph.D.

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Kitty Richards presentation to EJ Task Force, November 20, 2000. Other State Models for Considering EJ and Cumulative Impacts.

Color-blind, Color-mute and Color-deaf: Race and Expertise in Environmental Justice Rule Making, Sofia Martínez. Submitted to the Task Force via e-mail 12/10/07.

Cumulative Impacts -- State of California information. Submitted to the Task Force via e-mail 12/10/07.

Article – Environmental Justice: Healthy Children, Healthy Communities, and a Healthy Mother Earth. Submitted to the Task Force via e-mail 12/10/07

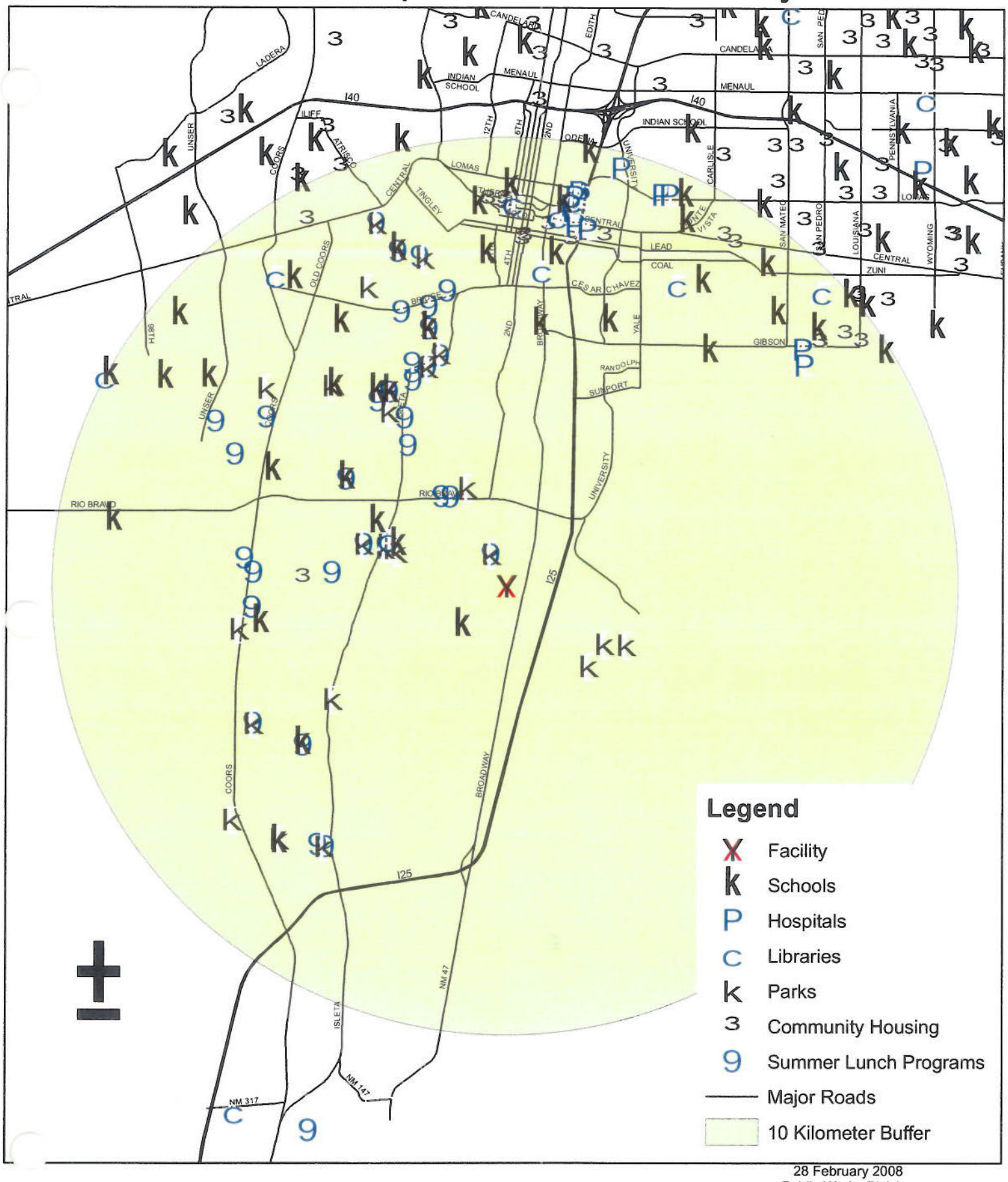
Article – Sector Plan Delayed for Businesses' Input. Submitted to the Task Force via e-mail 1/10/08.

Appendix A: Implementing Air Emissions Risk Analysis Using Qualitative Information – A Local Example: South Valley, Bernalillo County

This Appendix provides a pictorial representation of quantitative information through the use of maps. Each map depicts a hypothetical permit applicant's facility, here located in the South Valley and a 10 kilometer buffer zone (this zone can increase or decrease based on an agency's need). Overlain on this base map are: 1) locations of other permitted air emissions, 2) zoning classes, 3) land-uses, 4) sensitive populations, and 5) population density by land parcel.

These maps enable agency personnel and the Board to visually assess whether a proposed facility's emissions will adversely impact sites housing sensitive populations (shown on this map are school lunch programs, hospitals and clinics, parks, etc.), and communities having a high population density, and whether the impacted community bears a great environmental burden due to the proposed facility's emissions and other nearby existing facilities' permitted emissions. Information was easily obtained through the Bernalillo County, Public Works Division.

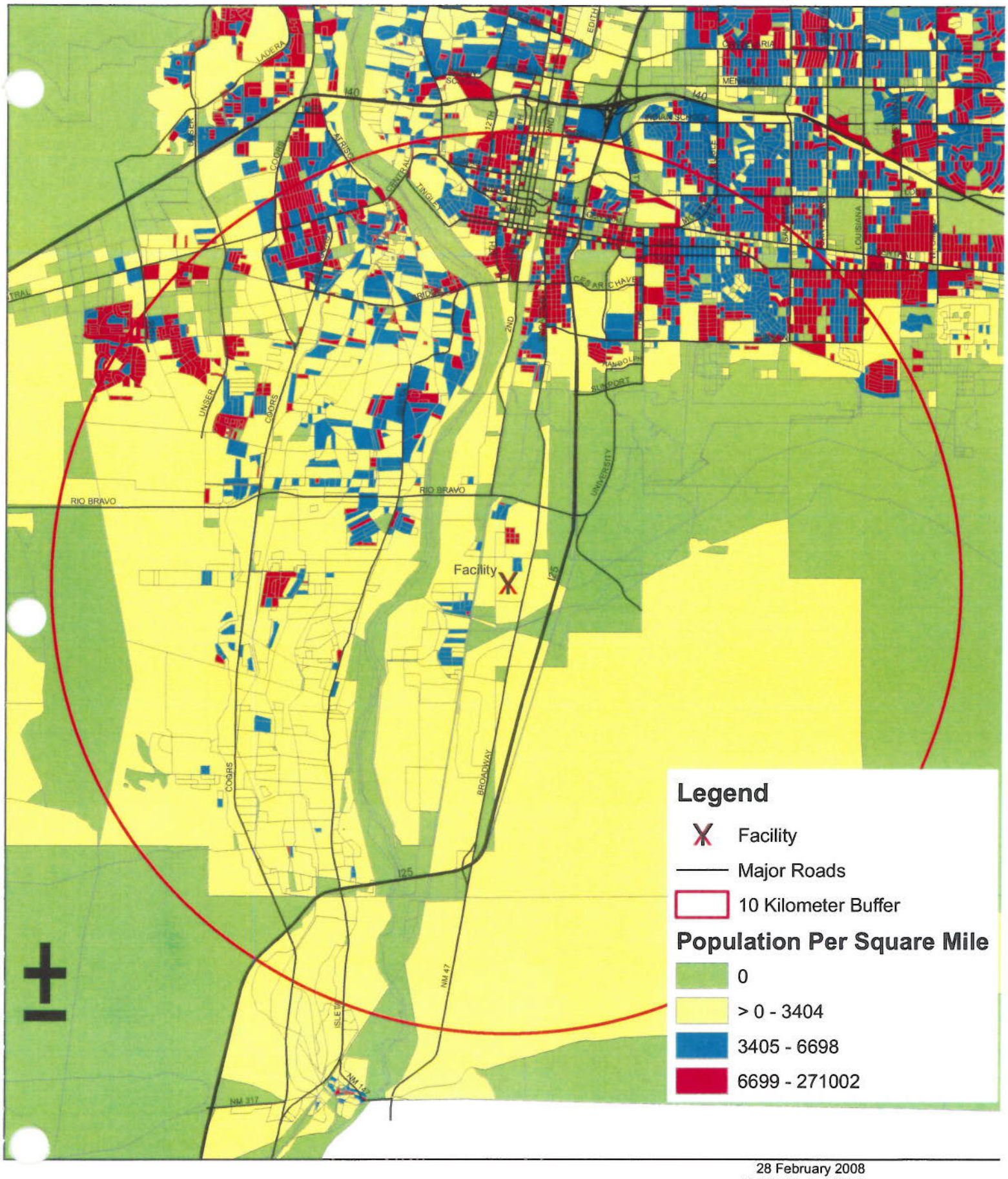
Sensitive Population - South Valley



28 February 2008
Public Works Division
GIS Program

This information is for reference only.
Bernalillo County assumes no liability for errors associated with the use of these data.

Population Density - South Valley

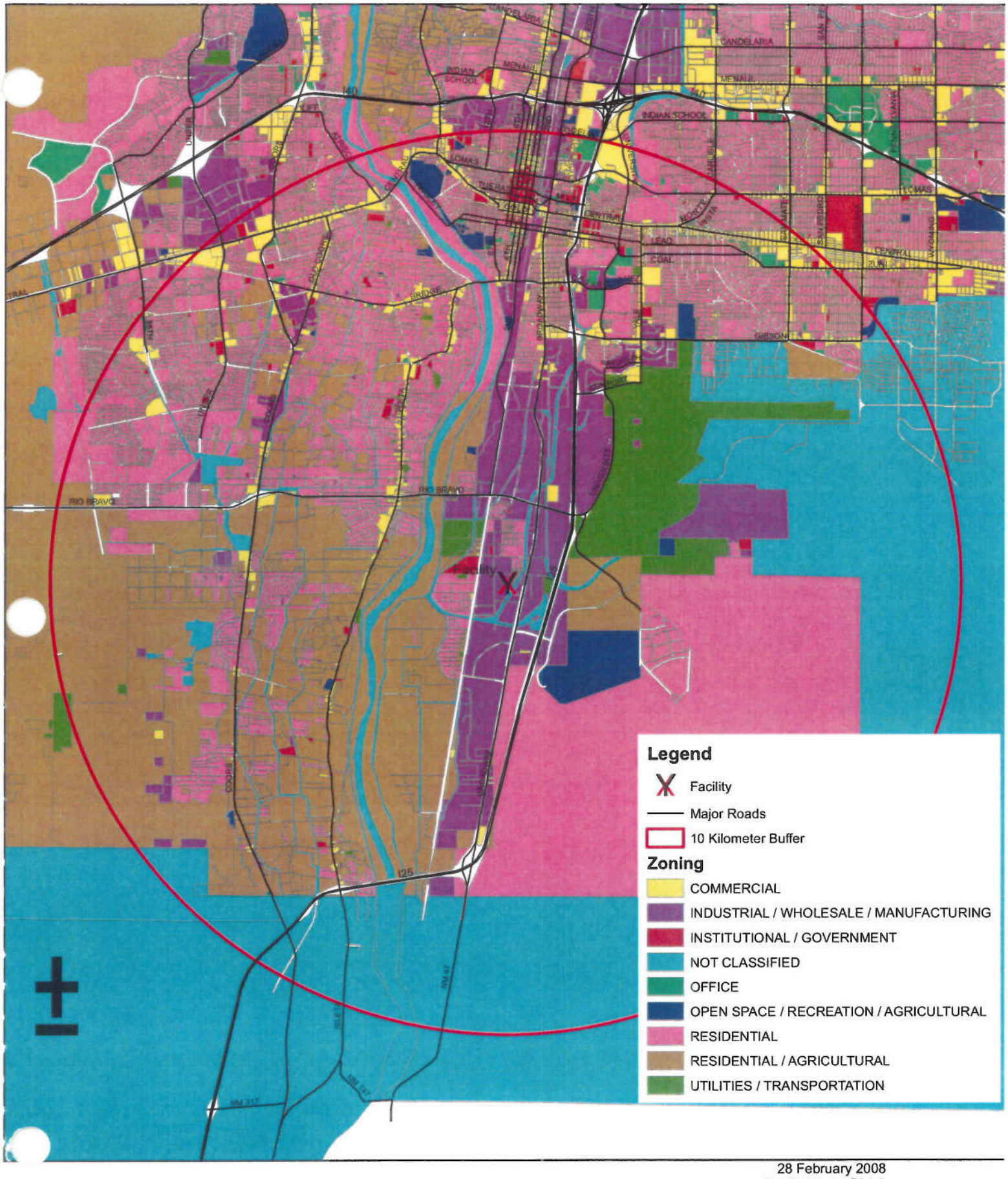


28 February 2008
Public Works Division
GIS Program

0 2.5 5 10 Kilometers

This information is for reference only.
Bernalillo County assumes no liability for errors associated with the use of these data.

Zoning - South Valley



28 February 2008
Public Works Division
GIS Program

0 2.5 5 10 Kilometers

This information is for reference only.
Bernalillo County assumes no liability for errors associated with the use of these data.

Location of Air Emissions - South Valley

28 February 2008
Public Works Division
GIS Program

0 2.5 5 10 Kilometers

This information is for reference only.
Bernalillo County assumes no liability for errors
associated with the use of these data.

Appendix B: Environmental Justice Scorecard
Bernalillo County

This Appendix provides rankings of potential exposure to toxic chemicals by ethnicity, income, education, job classification and home ownership for Bernalillo County.

DISTRIBUTION OF BURDENS BY RACE/ETHNICITY

	(indicator of chemical releases)	Ratio
Releases of Toxic Chemicals		
People of Color	3800	1.81
Whites	2100	

	(added risk per 1,000,000)	Ratio
Cancer Risks from Hazardous Air Pollutants		
People of Color	220	0.96
Whites	230	

	(sites per square mile)	Ratio
Superfund Sites		
People of Color	.3	2.31
Whites	.13	

	(facilities per square mile)	Ratio
Facilities Emitting Criteria Air Pollutants		
People of Color	.19	2.64
Whites	.072	

DISTRIBUTION OF BURDENS BY INCOME

	(indicator of chemical releases)	Ratio
Releases of Toxic Chemicals		
Low Income Families	3500	1.30
High Income Families	2700	

	(added risk per 1,000,000)	Ratio
Cancer Risks from Hazardous Air Pollutants		
Low Income Families	220	1.00
High Income Families	220	

	(sites per square mile)	Ratio
Superfund Sites		
Low Income Families	.34	2.62
High Income Families	.13	

	(facilities per square mile)	Ratio
Facilities Emitting Criteria Air Pollutants		
Low Income Families	.21	2.88
High Income Families	.073	

DISTRIBUTION OF BURDENS BY POVERTY

Releases of Toxic Chemicals (indicator of chemical releases)

		Ratio
Families Below Poverty	3600	1.29
Families Above Poverty	2800	

Cancer Risks from Hazardous Air Pollutants (added risk per 1,000,000)

		Ratio
Families Below Poverty	220	1.00
Families Above Poverty	220	

Superfund Sites (sites per square mile)

		Ratio
Families Below Poverty	.39	2.79
Families Above Poverty	.14	

Facilities Emitting Criteria Air Pollutants (facilities per square mile)

		Ratio
Families Below Poverty	.24	2.96
Families Above Poverty	.081	

DISTRIBUTION OF BURDENS BY CHILDHOOD POVERTY

Releases of Toxic Chemicals (indicator of chemical releases)

		Ratio
Kids Below Poverty	3700	1.32
Kids Above Poverty	2800	

Cancer Risks from Hazardous Air Pollutants (added risk per 1,000,000)

		Ratio
Kids Below Poverty	220	1.00
Kids Above Poverty	220	

Superfund Sites (sites per square mile)

		Ratio
Kids Below Poverty	.38	2.71
Kids Above Poverty	.14	

Facilities Emitting Criteria Air Pollutants (facilities per square mile)

		Ratio
Kids Below Poverty	.23	3.03
Kids Above Poverty	.076	

DISTRIBUTION OF BURDENS BY EDUCATION

Releases of Toxic Chemicals (indicator of chemical releases)

		Ratio
Non-Highschool Graduates	3900	1.56
Highschool Graduates	2500	

Cancer Risks from Hazardous Air Pollutants (added risk per 1,000,000)

		Ratio
Non-Highschool Graduates	220	0.96
Highschool Graduates	230	

Superfund Sites (sites per square mile)

		Ratio
Non-Highschool Graduates	.38	2.38
Highschool Graduates	.16	

Facilities Emitting Criteria Air Pollutants (facilities per square mile)

		Ratio
Non-Highschool Graduates	.25	2.72
Highschool Graduates	.092	

DISTRIBUTION OF BURDENS BY JOB CLASSIFICATION

Releases of Toxic Chemicals (indicator of chemical releases)

		Ratio
Working Class People	3100	1.41
Non-Working Class People	2200	

Cancer Risks from Hazardous Air Pollutants (added risk per 1,000,000)

		Ratio
Working Class People	230	1.00
Non-Working Class People	230	

Superfund Sites (sites per square mile)

		Ratio
Working Class People	.19	1.12
Non-Working Class People	.17	

Facilities Emitting Criteria Air Pollutants (facilities per square mile)

		Ratio
Working Class People	.12	1.33
Non-Working Class People	.09	

Scorecard's environmental justice reports integrate information about different kinds of pollution problems with census data to identify geographic areas or demographic groups that may be disparately affected by pollution. Summary environmental justice report examine the distribution of four environmental burdens: releases of toxic chemicals, cancer risks from hazardous air pollutants, Superfund sites, and facilities emitting criteria air pollutants. Detail pages illustrate the distribution of cancer risks by race and income, and provide geographic comparisons of environmental hazards and demographic characteristics.

See limits of the data and how to interpret the data.

ENVIRONMENTAL JUSTICE LOCATOR

Scorecard provides maps at the national, state, county, and census tract levels that illustrate estimated cancer risks from outdoor hazardous air pollution and the location of three types of pollution-generating facilities: manufacturing firms reporting to the Toxics Release Inventory, facilities emitting Criteria Air Pollutant and Superfund sites. You can see whether your home, workplace, or school is located in an area where estimated cancer risks are higher, comparable, or lower than in other communities. You can also see how many polluting facilities are located in your area of interest. Charts associated with the maps provide demographic information about an area, including the percent people of color, percent families living in poverty, and percent homeownership. You can also use Scorecard's mapper to access environmental data at the most local level (i.e., for each individual census tract in the U.S.).

DISTRIBUTION OF ENVIRONMENTAL BURDENS

Scorecard uses easy-to-understand bar charts to illustrate which demographic group bears the burden of different pollution problems. Four problems are evaluated: releases of toxic chemicals, cancer risks from hazardous air pollutants, Superfund sites, and facilities emitting criteria air pollutants. Scorecard analyses the distribution of these problems using seven demographic categories: Race/Ethnicity, Income, Poverty, Childhood Poverty, Education, Home Ownership, and Job Classification. For example, Scorecard calculates whether whites or people of color live in areas with greater toxic chemical releases, and then graphically portrays the extent of the disparity, indicating which group is worse off. Further information about any environmental problems in an area can be found in Scorecard reports listed in the Links section.

LOCATOR FOR UNEQUAL IMPACTS

For any burden or combination of burdens that you select, or any group you select, this Locator will show you every county where that group of people experiences a higher impact than the rest of the population in the same county.

COMPARATIVE ANALYSES OF ENVIRONMENTAL JUSTICE

Links are provided to several more detailed analyses of environmental justice issues in an area.

DISTRIBUTION OF RISKS BY RACE, ETHNICITY AND INCOME

Is race or income the driving factor accounting for disparate environmental burdens in your state? Scorecard examines the distribution of estimated cancer risks

associated with outdoor hazardous air pollution to illustrate patterns of inequity by race/ethnicity and income. Scorecard calculates a population-weighted estimate of the average lifetime cancer risks imposed on each racial/income group by hazardous air pollutants. The Y-axis shows the estimated cancer risk per million persons, and the X-axis displays nine annual household income categories ranging from less than $5000 to over $100,000. Each line in the graph represents one of five racial/ethnic groups: Whites, African Americans, Native Americans, Asian/Pacific Islanders and Latinos. Gaps between the lines indicate potential racial/ethnic disparities in cancer risk burdens. Slopes in the lines indicate potential differences in cancer risk across income categories. NOTE: Due to data limitations, these distribution calculations are only available at the state level.

ENVIRONMENTAL HAZARDS

Scorecard provides several measures of environmental hazards which can be used to compare counties within a state, including average cancer risks from hazardous air pollutants, the number of Criteria Air Pollutant facilities per square mile, the number of Superfund sites per square mile, and the number of Toxic Release Inventory facilities per square mile. State comparisons can be made on the basis of estimated cancer risks from outdoor hazardous air pollutants, and the percentage of total Toxic Release Inventory facilities, Criteria Air Pollutant facilities and Superfund sites hosted by a particular state. Environmental hazard indicators for counties and states can be compared to demographic profiles in order to assess which communities bear the largest burden of pollution sources.

DEMOGRAPHIC PROFILES

Scorecard uses bar charts to illustrate the racial make-up of counties and states, and provide information about income, wealth, class, educational attainment, and citizenship. The demographic and socioeconomic information used for Scorecard's environmental justice analyses are all derived from the 1990 Census. The demographic profile of a county is compared to its state average, and states are compared to the US as a whole.

Downloaded from:
http://www.scorecard.org/env-releases/def/ej_report_descriptions.html#dist
on 27 February 2008.

Attachments

Attachment 1. AQCB Title 20 Environmental Protection, Chapter 11, Part 72, Cumulative Impacts and EJ - Draft Regulation

Attachment 2. Neighborhood association recognition ordinance.

Attachment 3. Environmental Assessment Policy

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TITLE 20 ENVIRONMENTAL PROTECTION

CHAPTER 11 ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

PART 72 CUMULATIVE EFFECTS AND ENVIRONMENTAL JUSTICE

20.11.72.1 ISSUING AGENCY: Albuquerque/ Bernalillo County Air Quality Control Board. P.O. Box 1293, Albuquerque, New Mexico 87103. Telephone: (505) 768-2600.

20.11.72.2 SCOPE: This Part applies to all evaluations of the effects or potential effects of Air Pollution on human health and/or the environment performed in connection with any and all actions the Board or the Department consider, propose or take under New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

20.11.72.3 STATUTORY AUTHORITY: 20.11.72 NMAC is adopted pursuant to the authority provided in the New Mexico Air Quality Control Act, NMSA 1978 Sections 74-2-4, 74-2-5.C; the Joint Air Quality Control Board Ordinance, Bernalillo County Ordinance 94-5 Section 4; and the Joint Air Quality Control Board Ordinance, Revised Ordinances of Albuquerque 1994 Section 9-5-1-4.

20.11.72.4 DURATION: Permanent.

20.11.72.5 EFFECTIVE DATE: The effective date of 20.11.72 NMAC shall be [ ].

20.11.72.6 OBJECTIVE: This regulation ensures that the Board and the Department take into account the cumulative effects of air pollution and ensure environmental justice, when they consider, propose or take any action pursuant to the New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

20.11.72.7 DEFINITIONS: In addition to the definitions in this section, 20.11.72.7 NMAC, the definitions in 20.11.1 NMAC shall apply unless there is a conflict between definitions, in which case the definition in 20.11.72 NMAC shall govern.

A. "Cumulative Effects" means the public health and environmental effects in a geographic area or population group from all pollution sources, including pollution from all emissions and discharges, whether single or multi-media, routinely, accidentally or otherwise released.

B. "Environmental Justice" means the fair treatment of the people of New Mexico of all races, cultures, and incomes with respect to all actions considered, proposed or taken pursuant to the New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances, including the development, adoption, implementation, and enforcement of all laws, regulations, standards, and policies.

20.11.72.8 VARIANCES: In accordance with the Joint Air Quality Control Board Ordinances pursuant to the New Mexico Air Quality Control Act Section 74-2-8 NMSA 1978, any person may seek a variance from the non-federally enforceable provisions of this Part.

20.11.72.9 SAVINGS CLAUSE: Any amendment to 20.11.72 NMAC, which is filed, with the State Records Center shall not affect actions pending for violation of a City or County ordinance, or Board Regulation 41, or 20.11.72 NMAC. Prosecution for a violation under prior regulation wording shall be governed and prosecuted under the statute, ordinance, Part or regulation section in effect at the time the violation was committed.

20.11.72.10 SEVERABILITY: If any section, paragraph, sentence, clause, or word of this Part is for any reason held to be unconstitutional or otherwise invalid by any court, the decision shall not affect the validity of remaining provisions of this Part.

20.11.72.11 DOCUMENTS: Documents incorporated and cited in this Part may be viewed at the Albuquerque Environmental Health Department, 400 Marquette NW, Albuquerque, NM.

20.11.72.12 CUMULATIVE EFFECTS: Evaluation of the cumulative effects of air pollution is intended to enable the Board and the Department to do the following: 1) develop a full understanding of the current and future effects of their actions on the ecosystems and human communities in Bernalillo County and the City of Albuquerque, 2) evaluate and recognize the differences, needs, requirements and conditions within the county and parts thereof, and 3) implement the principles and goals outlined in Governor Bill Richardson's Executive Order No. 2005-056, entitled "Environmental Justice Executive Order" and President Bill Clinton's Executive Order No. 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

A. Whenever the Board and/or the Department evaluates the effects of air pollution on human health and the environment, the Board and Department must take into account the cumulative effects of air pollution in connection with any action the Board or the Department considers, proposes or takes under New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

B. Evaluation of the cumulative effects of a particular source of air pollution, along with other existing sources of air pollution, on the public's health and environment shall comprise evaluation, quantitatively to the extent possible and also qualitatively, by incorporating the following principles:

(1) Cumulative effects are caused by the aggregate of past, present, and reasonably foreseeable future actions; therefore the effects of the proposed action on a given ecosystem and human community must include its present and future effects added to the effects (past, present and future) of all other actions that affect the same ecosystem and human community;

(2) Cumulative effects are the total effect, including both direct and indirect, on a given ecosystem and human community of all actions taken, no matter who (federal, nonfederal, or

private) took them; therefore the additional effects contributed by actions unrelated to the proposed action must be included in the analysis;

(3) Cumulative effects may result from the accumulation of similar effects and from the synergistic interaction of different effects; therefore both additive and synergistic effects must be considered;

(4) Cumulative effects must be analyzed in terms of the specific relevant ecosystem and human community, and by developing an understanding of how they are susceptible to effects;

(5) Cumulative effects analysis on natural systems must to the extent possible use natural ecological boundaries and analysis of human communities must use actual socio-cultural boundaries to ensure proper scoping of the full extent of all effects;

(6) Since many actions can have adverse effects for many years, cumulative effects analysis must apply the best science and forecasting techniques to assess potential catastrophic consequences in the future;

(7) Each affected ecosystem and human community must be analyzed in terms of its capacity to accommodate additional effects, based on its own time and space parameters. Cumulative effects analysis must focus on what is needed to ensure long-term productivity or sustainability of the affected ecosystem or human community;

(8) In an area affected by pollution or environmental degradation, there are often certain subpopulations or environmental areas that are highly sensitive or highly exposed (such as children or workers); therefore cumulative effects on such populations or environmental areas must be evaluated;

(9) Cumulative effects analysis may encounter significant data gaps and uncertainties; therefore a cumulative effects analysis must identify and evaluate, quantitatively to the extent possible but also qualitatively, of any and all significant data gaps that may prevent complete evaluation of cumulative effects of the air pollution; and

(10) The Board and Department shall consider alternative courses of action to those considered or proposed whenever possible, and evaluate the cumulative effects of each such alternative.

C. All public participation provisions pursuant to the New Mexico Air Quality Control Act, the Joint Air Quality Control Board Ordinances and the regulations of the Board shall include providing for public participation as a critical input into all evaluations of cumulative effects of air pollution. This participation shall extend to the opportunity to provide information and raise issues of concern as an input into such evaluations as well as the opportunity to comment on draft evaluations and to seek review of final evaluations in the context of appropriate proceedings. The Board and Department will respond in writing to the information, issues raised and comments made by the public.

D. In order to continually improve its evaluation of cumulative effects, the Department shall, with public participation, prepare guidance for the evaluation of the cumulative effects of air pollution within one year and update such guidance every three years thereafter. The Department shall examine methodologies for evaluation of cumulative effects being developed by other governmental entities, including the U.S. Environmental Protection Agency, the New Mexico Environmental Justice Task Force, and the California Environmental Protection Agency.

20.11.72.13 ENVIRONMENTAL JUSTICE: Evaluation of environmental justice is intended to enable the Board and the Department to do the following: 1) develop a full understanding of the current and future effects of their actions on the ecosystems and human communities in Bernalillo County and the City of Albuquerque, 2) evaluate and recognize the differences, needs, requirements and conditions within the county and parts thereof, and 3) implement the principles and goals outlined in Governor Bill Richardson's Executive Order No. 2005-056, entitled "Environmental Justice Executive Order" and President Bill Clinton's Executive Order No. 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

A. Whenever the Board and/or the Department evaluates the effects or potential effects of air pollution on human health and/or the environment, the Board and Department must ensure the fair treatment of the people of New Mexico of all races, cultures, and incomes in connection with any action the Board or the Department considers, proposes or takes under New Mexico Air Quality Control Act and the Joint Air Quality Control Board Ordinances.

B. In connection with evaluating the effects on the environment or public health of any action the Board or Department considers, proposes or takes, the Board and the Department shall evaluate, quantitatively to the extent possible and also qualitatively, whether the cumulative effects of air pollution is consistent with the fair treatment of the people of New Mexico of all races, cultures and incomes. This Environmental Justice evaluation shall:

(1) Identify populations and communities suffering from disproportionate exposure to the cumulative effects of environmental threats that may be affected by the action being considered, proposed or taken;

(2) Identify populations and communities that may suffer disproportionate impacts from the cumulative effects of the action being considered, proposed or taken;

(3) Evaluate the environmental justice impact of the cumulative effects of alternatives to the action being considered, proposed or taken; and

(4) Give high priority to actions that will address environmental justice problems, including adequate deployment of enforcement resources.

C. All public participation provisions pursuant to the New Mexico Air Quality Control Act, the Joint Air Quality Control Board Ordinances and the regulations of the Board shall include providing for public participation as a critical input into all evaluations of

environmental justice. This participation shall extend to the opportunity to provide information and raise issues of concern as an input into such evaluations as well as the opportunity to comment on draft evaluations and to seek review of final evaluations in the context of appropriate proceedings. The Board and Department shall respond in writing to the information, issues raised and comments made by the public.

D. In order to continually improve its evaluation of environmental justice, the Department shall, with public participation, prepare guidance for the evaluation of environmental justice within one year and update such guidance every three years thereafter. The Department shall examine methodologies for evaluation of environmental justice being developed by other governmental entities, including the U.S. Environmental Protection Agency, the New Mexico Environmental Justice Task Force, and the California Environmental Protection Agency.

HISTORY OF 20.11.72 NMAC:

Attachment 2

NEIGHBORHOOD ASSOCIATION RECOGNITION

§ 14-8-2-1 SHORT TITLE.
Sections 14-8-2-1 et seq. may be cited as the "Neighborhood Association Recognition Ordinance."
('74 Code, § 7-11-1) (Ord. 14-1987)

§ 14-8-2-2 LEGISLATIVE FINDINGS AND PURPOSE.
(A) Early identification and resolution of potential conflicts involving neighborhoods and the private sector can be of utmost value to all concerned.

(B) A standardized recognition policy for Albuquerque neighborhood associations would promote improved communications between neighborhood associations and city government.

(C) Due to the potential impact of new development and redevelopment upon neighborhoods, it can be useful if developers coordinate major proposals and plans with neighborhood associations.

(D) The purpose of §§ 14-8-2-1 et seq. is to meet the needs specified by the above legislative findings, while not limiting the rights of any other person, including nonrecognized neighborhood groups, to input directly into the city's decision-making processes.

('74 Code, § 7-11-2) (Ord. 14-1987)

§ 14-8-2-3 DEFINITIONS.
(A) For the purpose of §§ 14-8-2-1 et seq., the following definition shall apply unless the context clearly indicates or requires a different meaning.

NEIGHBORHOOD ASSOCIATION. An organized group of people or other legal entities who own or occupy real property within a specified subarea of the city.

(B) Words not defined herein, but defined in the Zoning Code, are to be construed as defined therein.
('74 Code, § 7-11-3) (Ord. 14-1987)

§ 14-8-2-4 CRITERIA FOR RECOGNITION OF NEIGHBORHOOD ASSOCIATIONS.
A neighborhood association shall be designated a recognized neighborhood association by the Mayor when and so long as all the following criteria are found to be met:

(A) The association shall file with the City Office of Neighborhood Coordination a current copy of their bylaws. The bylaws shall include the following provisions:

(1) The geographic boundaries of the neighborhood association shall be reasonable; boundaries are recommended to include an area of the city not more than one square mile and not less than 15 acres or 4 blocks. The boundaries of any neighborhood association in existence on the effective date of §§ 14-8-2-1 et seq. shall be deemed reasonable.

(2) The association shall make full membership open to all persons residing within its boundaries and to all persons and legal entities owning property or having a place of business within its boundaries.

(3) The association shall hold at least one meeting per year for which it makes a reasonable attempt to give written notice to every household and place of business within the association's boundaries; mail, delivered handbills, or a number of prominent signs are examples of adequate notice. No election shall be held at a meeting of an association unless the meeting is so advertised.

(B) Officers of recognized associations shall annually submit a letter to the Office of Neighborhood Coordination attesting to the number of dues-paying members their records indicate for the previous year. If an association has no dues-paying members, or if dues-paying membership does not adequately reflect an association's size, its officers shall annually submit other evidence of the size of its active membership.

(C) No new neighborhood association shall be recognized which has within its boundaries a geographic area already defined within the boundaries of an existing, previously recognized neighborhood association unless the new association demonstrates to the satisfaction of the Mayor that it has more membership in the overlapping area than the first association.

(D) The appropriate district City Councillor and the City Office of Neighborhood Coordination shall be furnished with names, addresses and available phone numbers of current neighborhood association officers and/or board members.

(E) Evidence of an annual general membership meeting advertised as specified in division (A)(3) above shall be sent to the City Office of Neighborhood Coordination within 60 days of the meeting.

(F) Failure to comply with any of the preceding criteria shall result in notification of noncompliance being sent to the recognized neighborhood association officers and/or board members from the City Office of Neighborhood Coordination. Upon receipt of this notice, a recognized neighborhood association must offer evidence of compliance within 60 days; if it does not comply, the association shall be removed from the list of recognized neighborhood associations.

('74 Code, § 7-11-4) (Ord. 14-1987)

§ 14-8-2-5 RESPONSIBILITIES OF RECOGNIZED NEIGHBORHOOD ASSOCIATIONS.

Recognized neighborhood associations shall:

(A) By interaction with their members, residents, and the city, strive to uphold good planning, protect the environment, and promote the community welfare. Communication should be fostered between the recognized neighborhood association and city government on plans, proposals, and activities affecting their area.

(B) Attempt to inform members and other eligible participants in their neighborhood of issues for discussion.

(C) Establish an orderly and democratic means for making representative decisions.

(D) Establish and follow a clear method for reporting to the city actions which accurately reflect the neighborhood's position. When a neighborhood association presents its official position on an issue to the city, it shall be prepared to identify whether the decision was reached by the board, a poll of the general membership, or by a vote at a general membership meeting, and the vote for and against the position.

(E) Comply with its bylaw provisions as specified in § 14-8-2-4 above.

(F) Notify the City Office of Neighborhood Coordination and the district City Councillor(s) of general membership meetings at least two weeks in advance, when possible.

(G) Notify the City Office of Neighborhood Coordination of two persons' addresses where it wishes notice to be sent pursuant to §§ 14-8-2-1 et seq.; such designation shall be changed by the neighborhood association when appropriate.

('74 Code, § 7-11-5) (Ord. 14-1987)

§ 14-8-2-6 RESPONSIBILITIES OF THE CITY.

(A) The Mayor shall make reasonable attempts to give mailed notice to recognized neighborhood associations of rank one, two, and three plan applications, which plans would cover areas within or contiguous to the recognized neighborhood association's boundaries; notification shall be when the application is filed. Recognized neighborhood associations shall be notified of new plans and plan amendments upon initiation of such a project by city departments and within five days of application filing by others. The Mayor shall make reasonable attempts to mail such associations notice concerning all subsequent public hearings of city boards, commissions, and task forces concerning such plan proposals, except hearings which have been deferred to a specific time announced at the prior hearing.

(B) The Mayor shall give directly affected recognized neighborhood associations prior mailed notification of pending major city development and redevelopment projects and changes in services by the city which will have a direct, significant impact on that neighborhood; permanent and temporary street construction and major repair, total closing of streets, changes in size or type of city parks, building of new city facilities, relocation or reconstruction of privately owned utilities which require a permit, or rerouting of bus service are examples. With regard to permanent and temporary street construction and major repair, the Mayor shall give mailed prior notification to the recognized neighborhood associations within one mile of the street construction and/or major repair. When new traffic calming devices are being planned or scheduled for installation, the Mayor shall by mail notify the affected residents directly. Only those persons residing on the street where the devices are to be placed shall be included in any survey or petition process. Affected residents are defined as those who meet either or both of the following criteria:

(1) Residents who cannot avoid traffic calming devices while traveling to or from their homes within the boundaries of the recognized neighborhood association where the devices will be installed.

(2) Residents whose homes are located within 500 feet of the proposed traffic calming devices.

(C) The Mayor shall require written affirmation of prior notice to recognized neighborhood associations at the time of filing applications, as specified in § 14-8-2-7. Not less than 15 days prior to the first public hearing on applications specified in § 14-8-2-7, the Mayor shall mail notices of the hearing to such recognized neighborhood

associations.

(D) For the purpose of divisions (A), (B), and (C) of this section, first class letters mailed to two contact addresses submitted by a neighborhood association shall constitute reasonable attempt to notify.

(E) The city shall mail initial response within seven days of receipt of any correspondence received from any recognized neighborhood association that requests an answer, definition, or status of any city project within their boundaries.

(F) The City Office of Neighborhood Coordination shall:
(1) Notify all known neighborhood associations and prospective associations of the requirements for recognition, and advise such groups on how to meet the requirements;

(2) Review its files on neighborhood associations to verify if each association has met the requirements for recognition with current information;

(3) At least annually notify each known neighborhood association of its current recognition status; city agencies shall also be advised of associations' status;

(4) Encourage individuals to cooperate with their existing neighborhood association;
(5) Work with City officials and recognized neighborhood associations to develop appropriate processes for neighborhood review and comment on city plans and policies;

(6) Supply to all recognized neighborhood associations a current list of all city government agencies, their department heads, and corresponding phone numbers;

(7) Advise recognized neighborhood associations of self-help projects which could enhance the quality of life within their neighborhoods;

(8) Along with the district Councillor, serve when appropriate as a liaison between a recognized neighborhood association and city agencies;

(9) Provide for the sharing of information with recognized neighborhood associations by furnishing, upon request, available pertinent information;

(10) Provide to recognized neighborhood associations a city newsletter to inform them about happenings in city government and to increase communications between such neighborhood associations;

(11) Provide to neighborhood associations workshops on appropriate topics concerning city procedures and actions as well as the effective operation of neighborhood associations; such workshops shall be free for two representatives of each recognized neighborhood association, while a fee may be charged to others; fees may be charged for materials;

(12) Upon request, assist the district Councillor and/or neighborhood associations in the formation of alliances of neighborhood associations; and

(13) Supply to the public and to city officials the names and addresses of the two designated recipients of notices, as most recently specified by each recognized neighborhood association.

(G) Neighborhood groups which are not recognized neighborhood associations will upon request be placed on the mailing list of the City Office of Neighborhood Coordination to receive its newsletter and notices of neighborhood association workshops.

(H) With the advice and consent of the Council, the Mayor may promulgate rules and guidelines necessary to implement §§ 14-8-2-1 et seq.

(I) The Mayor shall make reasonable attempts to give directly affected recognized neighborhood associations prior mailed notification of pending major city development and redevelopment projects and changes in services by the city which will have a direct, significant impact on neighborhoods within one mile of, for example, the permanent and temporary street construction and major repair, total closing of streets, changes in size or type in city parks, building of new city facilities, relocation or reconstruction of privately owned utilities which require a permit, or rerouting of bus service.

('74 Code, § 7-11-6) (Ord. 14-1987; Am. Ord. 23-2003; Am. Ord. 28-2005)

§ 14-8-2-7 RESPONSIBILITIES OF APPLICANTS AND DEVELOPERS.
Applicants for approval of amendments of the zone map, zoning site development plans (except houses and

accessory buildings), major subdivisions, vacations of public right-of-way, mapping historic districts, landmarking sites, and issuance or transfer of liquor licenses shall, prior to filing the application, make a reasonable attempt to give written notification of their proposal to any recognized neighborhood association which covers, abuts, or is across public right of way from the site of their plans. Certified letters, return receipt requested, mailed to the two designated neighborhood association representatives on file at the City Office of Neighborhood Coordination constitutes a reasonable attempt to notify an association. Failure by an applicant to show proof of either notification in person or a reasonable attempt to give written notification of its proposal to such designated association representatives shall be grounds for a neighborhood association to request deferral of a hearing. The application for such hearing shall include a signed statement that such notification has been sent.

('74 Code, § 7-11-7) (Ord. 14-1987)

Attachment 3

Chapter 1: Statement of Policy and Intent.

The Legislature finds and declares that it is the policy of the State of New Mexico to do the following:

(A) Develop and maintain a high quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the State;

(B) Take all action necessary to provide the people of this State with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise, light pollution, and threats to human health;

(C) Prevent the elimination of fish or wildlife species due to human activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities of this state;

(D) Ensure that the long-term protection of the environment, consistent with the provision of a suitable living environment for every State citizen, shall be the guiding criterion in public decisions;

(E) Create and maintain conditions under which humans and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations;

(F) Require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality;

(G) Require governmental agencies at all levels to consider qualitative and technical factors, as well as economic factors; to consider long-term as well as short-term benefits and costs; and to consider alternatives to proposed actions affecting the environment;

(H) Regulate activities of public agencies which are found to affect the quality of the environment, so that major consideration is given to preventing environmental damage in this State; and

(I) Deny projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. The procedures required by this Act are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social or other conditions make infeasible such

project alternatives or such mitigation measures, individual projects may be improved in spite of one or more significant effects thereof.

Chapter 2: Definitions.

(A) "Environment" means the physical conditions which exist within the area which will be affected by a proposed project, including land, air, water, minerals, flora, fauna, noise, and objects of historic or aesthetic significance.

(B) "Environment Assessment" or "EA" means an informational document which every public agency shall prepare for its proposed projects. The purpose of an Environmental Assessment is to either issue a "Finding of No Significant Impact" or to determine that further assessment of the project is necessary through preparation of an Environmental Impact Statement.

(C) "Environmental Impact Statement" or "EIS" means an informational, detailed document setting forth the matters specified in this Act, which, when its preparation is required by this Act, shall be considered by every public agency prior to its approval or disapproval of a project. The purpose of an Environmental Impact Statement is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.

(D) "Finding of No Significant Impact" means a written statement, which may be included in an Environmental Assessment, briefly describing the reasons that a proposed project will not have a significant effect on the environment and therefore does not require the preparation of an Environmental Impact Statement.

(E) "Lead agency" means the public agency which has the principal responsibility for carrying out or approving a project.

(F) "Person" means any human, organization, agency, corporation, or other entity.

(G) "Project" means any activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment, and which is any of the following:

a. An activity directly undertaken by any public agency;
b. An activity undertaken by a person which is supported, in whole or in part, through contracts, grants, subsidies, loans, or other forms of assistance from one or more public agencies; or
c. An activity that involves the issuance to a person of a lease, permit, license, certificate, or other entitlement for use by one or more public agencies.

(H) "Public agency" means any state or local agency, board, or commission; any county, city, city and county, or regional agency; or an agency of any other political subdivision.

(I) "Significant effect on the environment" means a substantial, or potentially substantial, change in the environment.

(J) "Substantial evidence" means evidence including facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts. Argument, speculation, unsubstantiated opinion or narrative, or evidence which is clearly inaccurate or erroneous is not substantial evidence.

Chapter 3: Assessment of Environmental Impacts.

Section 3.1: Environmental Assessments on proposed projects; significant effects; Findings of No Significant Impact.

(A) All lead agencies shall require the applicant to prepare, or cause to be prepared by contract, and certify the completion of, an Environmental Assessment on any proposed project. On the basis of substantial evidence in light of the whole record, the Environmental Assessment either shall conclude that the project may have significant effect on the environment or shall enter a finding of No Significant Impact.

(B) If there is substantial evidence, in light of the whole record before the lead agency, that a project may have a significant effect on the environment, an Environmental Impact Statement shall be prepared by the applicant.

Section 3.2: Environmental Impact Statements on proposed projects.

(A) All lead agencies shall require the applicant to prepare, or cause to be prepared by contract, and certify the completion of, an Environmental Impact Statement on any project which they propose to carry out or approve that may have a significant effect on the environment.

(B) The Environmental Impact Statement shall include a detailed statement setting forth all of the following:

a. All significant effects on the environment of the proposed project;
b. In a separate section:
    i. Any significant effect on the environment that cannot be avoided if the project is implemented.
    ii. Any significant effect on the environment that would be irreversible if the project is implemented.
    iii. The cumulative environmental impact of this project when connected with the environmental impacts of past, current and proposed projects.
c. Mitigation measures proposed to minimize significant effects on the environment, and a description of how those measures would be implemented;
d. Alternatives to the proposed project, including a no-action alternative;

i. The discussion of each alternative to the proposed project shall include a description of the significant effects to the environment that would result from each alternative.
ii. The agency's preferred alternative and proposed course of action shall be identified.

e. The impacts on cultural and historic resources of the State.

(C) The Environmental Impact Statement shall also contain a brief statement indicating the reasons for determining which, if any, various effects on the environment of a project are not significant and consequently have not been discussed in detail in the Statement.

Section 3.3: Best available alternative; mitigation.

(A) Each lead agency shall choose the best available alternative to action which, to the maximum extent practicable, minimizes or avoids adverse environmental effects.

Section 3.4: New Mexico Environment Department; preparation and development of guidelines.

The New Mexico Environment Department shall prepare and develop proposed guidelines for the implementation of this Act by public agencies. The guidelines shall include objectives and criteria for the orderly evaluation of projects and the preparation of documents in a manner consistent with this Act.

(A) The guidelines shall specifically include criteria for public agencies to follow in determining whether or not a proposed project may have a significant effect on the environment. The criteria shall require a finding that a project may have a significant effect on the environment if any of the following conditions exist:

a. A proposed project has the potential to degrade the quality of the environment, to curtail the range of the environment, or to interfere with proper ecosystem functioning in the environment;
b. The possible effects of a project are individually limited but cumulatively considerable. As used in this subsection, "cumulatively considerable" means that the incremental environmental impacts of an individual project are considerable when viewed in connection with the environmental impacts caused by past projects, the environmental impacts caused by other current projects, and the environmental impacts caused by probable future projects;
c. The environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.

(B) The guidelines shall also include criteria for public agencies to use in determining when a proposed project is of sufficient statewide, regional, or area-wide environmental significance that it should be submitted to appropriate state agencies for review and comment prior to completion of an Environmental Assessment of Environmental Impact Statement.

(C) The New Mexico Environment Department shall develop and prepare the proposed guidelines as soon as practicable.

Section 3.5: Establishment of time limits for Environmental Assessments and Environmental Impact Statements.

(A) For its projects, each public agency shall establish, by resolution or order, time limits that do not exceed the following:

a. Six months for completing Environmental Assessments and, where appropriate, adopting Findings of No Significant Impact.
b. One year for completing and certifying Environmental Impact Statements.
    i. The time limits specified in this section shall apply only to those circumstances in which the public agency is the lead agency for a project. The resolutions or orders may establish different time limits for different types or classes of projects, but all limits shall be measured from the date on which an application requesting approval of the project is received and accepted as complete by the public agency.
    ii. The resolutions or orders required by this section may provide for a reasonable extension of the time period in the event that compelling circumstances justify additional time and the project applicant consents thereto.

(B) If an Environmental Assessment or Environmental Impact Statement is prepared under a contract to a public agency, the contract shall be executed within 45 days from the date on which the public agency sends a notice of preparation. The public agency may take longer to execute the contract if the project applicant and the public agency mutually agree to an extension of the time limit provided by this subsection.

Section 3.6: Notice; opportunity to comment; availability to legislature and general public.

(A) Whenever a public agency, board, or commission approves or determines to carry out a project, it shall file notice of that approval or that determination with the New Mexico **(insert State's Office of Planning and Research)**.

a. The notice shall indicate the determination of the agency, board, or commission on whether the project will, or will not, have a significant effect on the environment and shall indicate whether an Environmental Impact Statement has been prepared pursuant to this Act.
b. All notices filed pursuant to this section shall be available for public inspection.

(B) Lead agencies shall solicit and consider comments from the public and public agencies on environmental documents, including, but not limited to, Environmental Assessments and draft Environmental Impact Statements, in order to help the lead agencies identify

potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

(C) The lead agency shall make available each Environmental Assessment and Environmental Impact Statement to the following:

a. The State Legislature. It shall include the Environmental Assessment and Environmental Impact Statement as a part of the regular project statement used in the existing review and budgetary process.
b. The general public. Any member of the general public may secure a copy thereof by requesting a copy from the lead agency.
c. The appropriate local planning agency or agencies of any city, county, or city and county which will be affected by the project.

Chapter 4: Proceedings.

Section 4.1: Enforcement; commencement of actions or proceedings.

(A) Any person may enforce the provisions of this Act.

(B) Any action or proceeding to challenge, review, set aside, void, or annul the following acts or decisions of a public agency on the grounds of noncompliance with this Act shall be commenced as follows:

a. An action or proceeding alleging that a public agency is carrying out or has approved a project which may have a significant effect on the environment without having determined whether the project may have a significant effect on the environment shall be commenced within 180 days from the date of the public agency's decision to carry out or approve the project, or, if a project is undertaken without a formal decision by the public agency, within 180 days from the date of commencement of the project.
b. Any action or proceeding alleging that a public agency has improperly determined whether a project may have a significant effect on the environment shall be commenced within 60 days from the date of the filing of the notice required by this Act.
c. Any action or proceeding alleging that an Environmental Impact Statement does not comply with this Act shall be commenced within 60 days from the date of the filing of the notice required by this Act.

Section 4.2: Settlement meetings; settlement conference.

(A) Not later than 20 days from the date of service upon a public agency of a petition or complaint, the public agency shall file with the court a notice setting forth the time and place at which all parties shall meet and attempt to settle the litigation. The meeting shall be scheduled and held not later than 45 days from the date of service of the petition or complaint upon the public agency. The notice of the settlement meeting shall be served by mail upon the counsel for each party. If the public agency does not know the identity

of counsel for any party, the notice shall be served by mail upon the party for whom counsel is not known.

(B) At the time and place specified in the notice filed with the court, the parties shall meet and confer regarding anticipated issues to be raised in the litigation and shall attempt in good faith to settle the litigation and the dispute which forms the basis of the litigation. The settlement meeting discussions shall be comprehensive in nature and shall focus on the legal issues raised by the parties concerning the project that is the subject of the litigation.

(C) The settlement meeting may be continued from time to time without postponing or otherwise delaying other applicable time limits in the litigation. The settlement meeting is intended to be conducted concurrently with any judicial proceedings.

(D) If the litigation is not settled, the court, in its discretion, may, or at the request of any party, shall, schedule a further settlement conference before a judge of the superior court. If the petition or complaint is later heard on its merits, the judge hearing the matter shall not be the same judge conducting the settlement conference, except in counties that have only one judge of the superior court.

Section 4.3: Noncompliance with Act; court orders.

If a court finds, as a result of a trial, hearing, or remand from an appellate court, that any determination, finding, or decision of a public agency has been made without compliance with this Act, the court shall enter an order that includes one or more of the following:

(A) A mandate that the determination, finding, or decision be voided by the public agency, in whole or in part.

(B) If the court finds that a specific project activity or activities will prejudice the consideration or implementation of particular mitigation measures or alternatives to the project, a mandate that the public agency and any real parties in interest suspend any or all specific project activity or activities, pursuant to the determination, finding, or decision, that could result in an adverse change or alteration to the physical environment, until the public agency has taken any actions that may be necessary to bring the determination, finding, or decision, into compliance with this Act.

(C) A mandate that the public agency take specific action as may be necessary to bring the determination, finding, or decision into compliance with this Act.

(D) A mandate that the public agency pay attorneys' fees to plaintiff.

Chapter 5: Effective Date.

Unless otherwise specified, this Act shall become effective six months from enactment.

Chapter 6: Funding.

All expenses born from implementing this Act shall be that undertaken by each agency.

Chapter 7: Severability.

If any provision of this Act or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Act which can be given effect without regard to the invalid provision or application, and to this end the provision of this Act are severable.

Create Control - Data Entry

Control Number: OCR-14-001-5132 Alternate Number:

Citizen Information

Citizen/Originator: 1[redacted]Jantz, Eric - 1405 Louisa Street, Santa Fe, NM 87505 Search Citizen

Constituent: Search Constituent

Committee:

Sub-Committee:

Control Information

Status: Pending *

Letter Date: Sep 15, 2014 * Received Date: Sep 16, 2014

Contact Type: LTR (Letter) * Priority Code: Normal *

Addressee: US/EPA Office Of Civil Rights (+) Addressee Org: 1200 Penn Avenue, N.W. Wi

File Code: 108-025-08_497_a Discrimination Complaints - External Record Copy

Signature: (+)

CC: Search CC

Signature Date: Date

Primary Subject: Discrimination Complaint (+) *

Secondary Subject: (+)

Instructions: NRN-No Response Necessary (+) *

Instruction Notes:

General Notes: This control is assigned to title 6 for apprpriate action

*: Required field
(+): Lookup field, press space bar for complete list

Save Continue and Assign Cancel

New Mexico
Environmental Law Center
TM

September 15, 2014

By email and Federal Express

Gina McCarthy
Administrator
Environmental Protection Agency
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Velveta Golightly-Howell
Director, Office of Civil Rights
Environmental Protection Agency
Mail Code 1210A
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Title_VI_Complaints@epa.gov

Re: Complaint Under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, 40 C.F.R. Part 7

Dear Ms. McCarthy and Ms. Golightly-Howell:

Please find attached the SouthWest Organizing Project's complaint under Title VI of the 1964 Civil Rights Act and its implementing regulations, against the Albuquerque Air Quality Division and Albuquerque/Bernalillo County Air Quality Control Board. I look forward to your response and please do not hesitate to contact me if you have any questions or need additional information.

Sincerely,

Eric Jantz
Staff Attorney
ejantz@nmelc.org

RECEIVED
SEP 16 2014

1405 Luisa Street, Suite 5 Santa Fe, NM 87505
Phone (505) 989-9022 Fax (505) 989-3769 nmelc@nmelc.org

BEFORE THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SouthWest Organizing Project	)	
	)	
Complainants,	)	
	)	
v.	)	COMPLAINT UNDER TITLE VI
	)	OF THE CIVIL RIGHTS ACT OF 1964,
Albuquerque Air Quality Division	)	42 U.S.C. §2000d and 40 C.F.R. PART 7
	)	
and	)	
	)	
Albuquerque/Bernalillo County Air Quality Control Board	)	
	)	
Respondents.	)	
	)	
	)	

Eric Jantz
Douglas Mieklejohn
R. Bruce Frederick
Jonathan Block
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Attorneys for Complainants

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I. INTRODUCTION

Communities of color and low-income communities in Albuquerque and Bernalillo County, New Mexico, have suffered disproportionate impacts of air pollution since the Clean Air Act , 42 U.S.C., §§ 7401 *et. seq.* was enacted in 1970. As a result, these communities suffer a higher risk and rate of disease and death than non-minority communities. The disparate impacts on minority and low-income communities are not accidental. They are the result of years of discriminatory policy choices by local government. The Albuquerque/Bernalillo County Air Quality Board ("Board") and Air Quality Division ("Division") have a demonstrated record of marginalizing minority communities so that they are exposed to an unequal burden of air pollution and the concomitant adverse health effects.

In order to demonstrate racial discrimination from disparate impacts under Title VI of the Civil Rights Act of 1964, 42. U.S.C. §§ 2000d *et. seq.* ("Civil Rights Act") and the United States Environmental Protection Agency's ("EPA") implementing regulations, a complainant must satisfy four factors: 1) a state or local agency's action has an adverse impact; 2) that the action is discriminatory on the basis of race, color or national origin, 3) the action is caused by a recipient of federal money and 4) the complaint is filed within the statute of limitations period.[1] The Complainants' petition meets all these criteria, and the EPA should therefore grant their petition and the relief requested.

[1] The Board's and Division's conduct also violates the anti-discrimination provisions of the International Covenant on the Elimination of All Forms of Racial Discrimination ("CERD"), which the United States has ratified and by whose provisions all levels of government in the U.S. are bound. The United Nations committee overseeing implementation of the CERD recently expressed concern at the disproportionate impacts of pollution on minority communities in the U.S. Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Combined Seventh to Ninth Periodic Reports of the United States of America*, CERD/C/USA/CO/7-9 at ¶ 10 (2014), attached as Exhibit A. Moreover, the Committee called upon the U.S. to ensure that environmental laws were being enforced and implemented equally on state and local levels and that the U.S. undertake independent investigations of allegations of disparate impacts of pollution. Id. at ¶ 10(a), (b).

II. THE COMPLAINANTS

The SouthWest Organizing Project ("SWOP") is a non-profit environmental and social justice organization based in Albuquerque, New Mexico. SWOP works primarily with low-income and minority communities toward community empowerment and equal treatment under existing laws. SWOP's guiding principle is that every community has the right to a healthy and sustainable environment in which to live, work, and play.

SWOP and its members work hand in hand with communities disproportionately impacted by pollution to address both the physical and systemic sources of the pollution. Confronting environmental racism in this context includes organizing for political and social change, litigation, building relevant knowledge and skills within communities, and conducting citizen science.

III. FACTUAL AND PROCEDURAL BACKGROUND

Since 2010, SWOP, its members, and its community allies have been attempting to ensure that the Division equitably implements and enforces the New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1*et. seq.*, which is the state statute implementing the requirements of the Clean Air Act. Community attempts to address disparate air pollution impacts include challenging individual pollution permits and petitioning for regulatory changes.

A. Permit Challenges

It was over 30 years from the time the Clean Air Act was enacted before any community in Albuquerque or Bernalillo County challenged a permit issued under state laws implementing the Clean Air Act.[2] Once affected communities began challenging air permits, the difference in results has been stark, depending on the affected community's demographics.

[2] It is unclear why the first community challenge to an air permit occurred over 30 years after the Clean Air Act was enacted. Given the Division's and the Board's lack of candor about Albuquerque's and Bernalillo County's air

1. *Vulcan Cement Plant*

The first ever community challenge to a permit that the Division issued pursuant to the New Mexico Air Quality Control Act was the Mountain View community. That challenge occurred in 2006. The Mountain View Neighborhood is located in Albuquerque's South Valley and is predominantly minority. According to Census 2010 data, the 87105 ZIP code, where the Mountain View Neighborhood is located, has a population that is 79.3% Latino, [3] compared to 46.7 % for the whole of Albuquerque[4] and 48.4% for Bernalillo County. [5]

The Mountain View Neighborhood Association, among other organizations and individuals, challenged the construction permit the Division issued to Vulcan Materials, Inc. for a concrete batch plant. The plant was to be located across the street from Mountain View Neighborhood's new community center. In issuing the permit, the Division found that Vulcan's operations would meet all the Clean Air Act's and New Mexico Air Quality Control Act's requirements.[6]

The Mountain View community challenged Vulcan's permit on several grounds; however, most significantly, the community challenged the Division's failure to use any air pollution data from the Mountain View neighborhood as the basis for background air quality conditions and the attendant failure to adequately assess cumulative air impacts. As a result of the Division's failure to take these critical factors into account, the Division significantly

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quality, low-income and minority communities may not have felt like they had the resources to challenge that position. The Division's and Board's lack of outreach to low-income and minority communities could also have been a contributing factor. Other institutional obstacles, such as exorbitant filing fees to challenge an air permit, could have also contributed to such a long history of excluding minority community involvement in the state air pollution permitting process.

[3] A copy of the U.S. Census 2010 data for ZIP Code 87105 is attached as Exhibit B.

[4] A copy of the U.S. Census 2010 data for Albuquerque is attached as Exhibit C.

[5] http://quickfacts.census.gov/qfd/states/35/35001.html

[6] For reasons unrelated to its construction permit, the Vulcan plant never began operations.

underestimated the amount of pollution the Vulcan plant would produce. Despite the Mountain View community's challenge, the Board ultimately approved Vulcan's construction permit.

2. *American Cement Company*

After the Vulcan permit challenge, other predominantly minority neighborhoods in Albuquerque began to challenge permit applications. In 2009, the Greater Gardner Neighborhood Association and the North Valley Coalition of Neighborhood Associations challenged a construction permit modification to a cement plant located in the Greater Gardner neighborhood. The 87107 ZIP code where the Greater Gardener neighborhood is located is 56.6% Latino.[7] The area also has five aggregate processing plants, three asphalt production facilities, six concrete production operations, and two cement distribution terminals, among other pollution sources. In Bernalillo County there are 939 permitted stationary sources of pollution which are permitted a total of 2388.62 tons per year of all suspended particulates.[8] ZIP code 87107 (with 5% of the county population) contains 11% of the stationary sources of pollution and 17% of the permitted yearly tonnage of total suspended particulates.[9] The American Cement transfer facility is located less than 2000 feet from La Luz Elementary School and less than 3000 feet from Mountain Mahogany Community School.[10] The Division granted American Cement's permit modification application, but American Cement voluntarily agreed to certain operational conditions after negotiations with community members.

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[7] A copy of the U.S. Census 2010 data for ZIP code 87107 is attached as Exhibit D.

[8] Petition for Review, *Greater Gardner Neighborhood Ass'n, et. al. v. City of Albuquerque Air Quality Division*, Permit Modification No. 0902 M3 at 2-3 (Nov. 2, 2009).

[9] Id.

[10] Id.

3. *Smith's Food and Drug*

In stark contrast to the Board's decisions to approve the Vulcan and American Cement construction permits, the Board reached a very different conclusion with respect to a permit modification to a gas station in the Summit Park neighborhood. The Summit Park neighborhood is located near the University of New Mexico. The 87106 ZIP code, where the Summit Park neighborhood is located, is 34.7% Latino and 50.7% non-Hispanic White.[11]

In that case, Smith's Food & Drug sought a modification to an existing permit, which the Division granted, to increase the number of cars that could be served by its gas station. The Summit Park Neighborhood Association, among others, appealed the Division's decision to the Board. The Board decided, in keeping with its mandate to prevent and abate air pollution, to overturn the Divisions decision, and deny Smith's permit modification.[12] The Board based its decision on the rationale that increased traffic at the Smith's gas station would have cumulative impacts on the nearby neighborhood, adversely affecting its residents' quality of life.[13]

B. Community Policy Efforts

Because the Board and Division have repeatedly ignored predominantly minority community concerns in the context of pollution permit applications, minority and low-income communities and their allies, including SWOP, have undertaken several policy initiatives to address disparate pollution impacts in Albuquerque and Bernalillo County. There have been two primary efforts.

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[11] A copy of the U.S. Census 2010 data for ZIP code 87106 is attached as Exhibit E.

[12] A copy of the Board's decision is attached as Exhibit F.

[13] Id.

1. *Environmental Justice Task Force*

First, communities persuaded the Board to create an Environmental Justice Task Force ("Task Force") that convened to identify environmental justice issues related to the Board and Division's work and make recommendations for change to the Board.[14] Unfortunately, from the very beginning of the Task Force process, legal counsel for the Board and Task Force members who were Division employees obstructed Task Force progress and none of the Task Force's recommendations were ever implemented.

2. *Cumulative Impacts Ordinance*

Most recently, SWOP and its community partners asked the Board to consider a regulation that would have required permit applicants to disclose and analyze the environmental and public health impacts of their proposed operation when combined with emissions from existing and reasonably foreseeable operations in the area.[15] This proposed regulation amendment would have also implemented a single Task Force recommendation.[16] Despite significant community support, the Board refused to even hear SWOP's petition.[17]

SWOP's asked the Board to consider and pass its proposed ordinance because minority communities continue to suffer an unequal pollution burden from industrial activities. In addition to the individual permit challenges, described above, SWOP based its rulemaking petition on the fact that polluting activities are concentrated in a few minority communities.

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[14] A copy of the Task Force's findings and recommendations is attached as Exhibit G.

[15] *See*, http://www.cabq.gov/airquality/air-quality-control-board/documents/PetitiontoAmend20_11_72_NMACPortfolio.pdf (last reviewed 9/11/14).

[16] Exhibit G at 5.

[17] The order denying SWOP's petition is attached as Exhibit H.

a. San Jose Neighborhood

For example, the San Jose neighborhood is within the 87105 ZIP code that is 79.3% Latino.[18] San Jose is also host to a large concentration of industrial operations that create a disproportionate amount of pollution. Some of the polluting operations in San Jose as of 2012[19] are: 1) Van, Waters & Rogers, Inc., a chemical distributor, which is permitted to emit 24 tons per year ("TPY") of Hazardous Air Pollutants ("HAPs) and 6 TPY of VOCs; Albuquerque Products Terminal, a petroleum bulk terminal, permitted to emit 51 TPY of VOCs and 12 TPY of HAPs; a General Electric Co. manufacturing plant, permitted to emit 25 TPY of VOCs, 7 TPY of HAPs, 20 TPY of PM_{10}, and 23.14 TPY of $PM_{2.5}$; Vecenergy Albuquerque Bulk Petroleum Terminal, permitted to emit 36 TPY of VOCs and 1 TPY of HAPs; CEI Enterprises, a manufacturing operation, permitted to emit 19 TPY of VOCs and 13 TPY of HAPs, and the Karsten Company, a wood manufacturing operation that is permitted to emit 21 TPY of VOCs.

b. Mountain View Neighborhood

As described above, Mountain View is a predominantly Latino neighborhood. Like San Jose, to which it is adjacent, it hosts many polluting industrial operations. Some of the polluting operations in Mountain View are: Duke Redi-Mix Concrete, which is permitted to emit 18 TPY of carbon, 2 TPY of VOCs, 37 TPY of PM_{10}, and 12.15 TPY of $PM_{2.5}$; Albuquerque Refined Products terminal, which is permitted to emit 97 TPY of VOCs and 13 TPY of HAPs; Albuquerque Redi-Mix Concrete, permitted to emit 1 TPY of VOCs, 2 TPY of PM_{10}, and 1.22 TPY of $PM_{2.5}$; and Conoco Phillips Pipeline Co., permitted to emit 21 TPY of Carbon, 10 TPY of Nitrogen Oxides ("NOx"), 94 TPY of VOCs, and 20 TPY of HAPs.

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[18] Exhibit B at 3.

[19] All individual operation pollution information is from http://www.arcgis.com/home/webmap/viewer.html?webmap=0a83a5e7e57c4a7f8fe1f091b52acdc7 (last reviewed 9/8/14).

c. Greater Gardner Neighborhood

Like San Jose and Mountain View, the Greater Gardner neighborhood is predominantly Latino. Like San Jose and Mountain View, it is also host to a disproportionate number of polluting activities. Some of the polluting operations in the Greater Gardner Neighborhood are: Holly Asphalt Company, permitted to emit 10 TPY of carbon, 12 TPY of NOx, 12 TPY of VOCs, 1 TPY of HAPs, and 3 TPY of PM_{10}; J & B Manufacturing, permitted to emit 2 TPY of NOx and 2 TPY of VOCs; and Earthgrains Baking Company, permitted to emit 6 TPY of carbon, 7 TPY of NOx, 248 TPY of VOCs, and 2 TPY of HAPs.

d. Summit Park Neighborhood

The concentration of polluting sources and amount of pollution emitted in the above minority neighborhoods stands in dramatic contrast to the concentration of sources and emissions in the Summit Park neighborhood, also described above. In Summit Park, the polluting sources are a series of gas stations, with the Smith's gas station being the largest emitter at 22 TPY of VOCs. The Carl Mart emits 2TPY of VOCs and the Texaco gas station emits 9 TPY of VOCs. The concentration of polluting sources shown in the ARC map cited in this Complaint is consistent with the Division's analysis of source concentrations.[20]

IV. SWOP'S COMPLAINT MEETS EPA'S JURISDICTIONAL REQUIREMENTS

A complaint under Title VI of the Civil Rights Act and the EPA's implementing regulations must show the following: 1) a state or local agency's action has an adverse impact; 2) that the action disproportionately impacts communities protected by Title VI on the basis of race, color or national origin, 3) the complaint meets EPA's jurisdictional criteria.

Based on EPA's Draft Revised Guidance for Investigating Title VI Administrative Complaints Challenging Permits ("Draft Revised Investigation Guidance"), the EPA will accept

[20] A copy of that analysis is attached as Exhibit I.

and investigate a complaint if it meets the following jurisdictional criteria: 1) the complaint is written; 2) it identifies the entity that allegedly performed the discriminatory act and describes the alleged discriminatory acts that violate EPA's Title VI regulations (*i.e.*, an act of intentional discrimination or one that has the effect of discriminating on the basis of race, color, or national origin); 3) it is filed within 180 days of the discriminatory act; and 4) it is filed by a person who was allegedly discriminated against, or by party that is authorized to represent a person or specific class of people who were allegedly discriminated against in violation of EPA's Title VI regulations. Id., 65 Fed. Reg. 39,650, 39, 672 (June 27, 2000).

In this case, the Complainants have met all the jurisdictional requirements. This Complaint is written, it identifies the entities responsible for the discriminatory acts and describes the discriminatory acts, and SWOP is authorized to represent individuals in communities where the Board's and Division's discriminatory acts occurred.

Further, pursuant to 40 C.F.R. § 7.120(b)(2), a complaint is timely if it is filed within 180 days of the discriminatory act. In this case, the Albuquerque Air Quality Division's disparate enforcement of New Mexico Air Quality Control Act provisions, the state implementation plan ("SIP") and the Clean Air Act is ongoing. *See, e.g.*, Stanley v. Darlington Co. School Dist., 879 F. Supp. 1341, 1364 (D. S.C., 1995) (school district properly sued under Title VI for ongoing discrimination). Therefore, SWOP's Complaint is timely.

Additionally, the Albuquerque/Bernalillo County Air Quality Control Board rejected SWOP's most recent effort to eliminate disparate implementation and enforcement by refusing to hear SWOP's petition to require the Division to take into account cumulative air impacts. The Board's order refusing to hear SWOP's petition was issued on March 21, 2014. September 17, 2014 is 180 days from March 21, 2014. This Complaint is therefore timely.

V. THE BOARD AND DIVISION ARE FEDERALLY FUNDED ENTITIES THAT HAVE IMPLEMENTED AND ENFORCED THE STATE STATUTE IMPLEMENTING THE CLEAN AIR ACT IN A DISCRIMANATORY MANNER.

The EPA's regulations implementing the 1964 Civil Rights Act prohibit any program or activity receiving EPA assistance from discriminating on the basis of race, color, national origin or gender. 40 C.F.R. § 7.35(a)(1)-(3), (7)(b). In particular, Part 7 prohibits any recipient from using any:

> criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin or sex.

Id. at § 7.35(7)(b). Additionally, recipient of Federal funds is prohibited from choosing a site or location of a facility that has the effect of discriminating against individuals based on race, color, national origin or gender. Id. at § 7.35(c).

In this case, both the Board and Division have received and continue to receive Federal assistance. Further, the Division's and Board's decisions and ongoing policy have the effect of discriminating against communities of individuals based on their race, color, or national origin. The Complainants have therefore established that the Board and Division have violated Title VI of the 1964 Civil Rights Act and their requests for relief should be granted.

A. The Albuquerque/Bernalillo County Air Quality Board and Albuquerque Air Quality Division Receive Federal Funds.

The Division and Board must comply with EPA's Title VI implementing regulations because both entities receive substantial financial assistance through EPA grants. 40 C.F.R. § 7.15. In fiscal year 2011, the Division and Board, through the City of Albuquerque, received

$892,622 in EPA assistance.[21] In fiscal year 2012, the last year for which data are available, the Division and Board received $1,569,440 in EPA assistance.[22] The Division's and Board's obligation to comply with Title VI's requirements is not limited to programs that are funded by EPA, although all the Division's and Board's activities implementing and enforcing the Clean Air Act are funded by EPA. "Program or activity" is defined as "all of the operations of" a department, agency, special purpose district or other instrumentality of a State or local government. 42 U.S.C. § 2000d-4a. Thus, by any measure, both the Division and the Board receive federal funds and are required to comply with Title VI's requirements.

B. The Division's and Board's Failure to Consider Cumulative Impacts in Permitting Decisions Under the Clean Air Act and Air Quality Control Act have Resulted in Adverse Health and Environmental Impacts on Communities of Color.

The EPA has determined that "exceedance of a concentration threshold ... have been identified as a significant concern, and expects to generally recognize such exceedances as adverse under Title VI." U.S. Environmental Protection Agency, Investigative Report, Case File No. 16R-99-R9 at 26 (Aug. 25, 2011) ("Investigative Report"). Moreover, EPA has also concluded that a complainant does not need to demonstrate actual harm to establish adverse impacts. Id. at 26-27. Instead, a complainant need only demonstrate a "reasonable cause for concern for the public health." Id.

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[21] *See*, http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A[%22g%22%2C%22c%22]%2C%22dept%22%3A[%226800%22]%2C%22recipient_duns%22%3A[%2200711891%22]%2C%22fyear%22%3A[%222011%22]}&sort_by=dollars&per_page=25 (last reviewed 9/11/14).

[22] *See*. http://usaspending.gov/search?form_fields={%22search_term%22%3A%22Albuquerque%22%2C%22spending_cat%22%3A[%22g%22%2C%22c%22]%2C%22dept%22%3A[%226800%22]%2C%22recipient_duns%22%3A[%2200711891%22]%2C%22fyear%22%3A[%222012%22]}&sort_by=dollars&per_page=25 (last reviewed 9/11/14).

1. *The Division's and Board's Failure to Consider Cumulative Impacts has Resulted in Pollution Concentrations Above Regulatory Standards.*

The Division's and Board's failure to consider the cumulative impacts of their permitting decisions has resulted in increased risk of disease in minority communities as well as resulting in actual increases in mortality and morbidity. In the San Jose neighborhood, recent community air quality monitoring data show levels of the hazardous air pollutant chlorobenze, with a mean concentration over a year of 23.6 micrograms per cubic meter ("μ/m^3"), exceeding the EPA's provisional Reference Concentration ("RfC") of 20 μ/m^3.[23,24] Further, long-term mean concentrations of particulate matter less than 2.5 microns in diameter ("$PM_{2.5}$"), which measured 18.9 μ/m^3, exceeded EPA's annual standard of 12 μ/m^3.[25]

A 2005 study conducted by the South Valley Partners for Environmental Justice showed that several volatile organic compounds ("VOCs") in several minority neighborhoods, including Mountain View, exceeded EPA's cumulative risk levels. For instance, benzene concentrations in Mountain View were orders of magnitude greater than EPA's acceptable risk level.[26] Similar results were found for carbon tetrachloride, chloroform, and tetrachloroethylene.[27] Hence, based solely on the exceedances of regulated pollutants in San Jose and Mountain View, Complainants have demonstrated adverse impact. However, adverse impact can also be demonstrated because of the health risks posed by concentrated air pollution in minority neighborhoods.

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[23] A copy of the report with those data is attached as Exhibit J.

[24] Id. at 5.

[25] Id. at 6.

[26] Attached as Exhibit K at 15.

[27] Id. at 16-18.

2. *The Division's and Board's Failure to Consider Cumulative Impacts has Resulted in Elevated Incidence of Disease and Mortality in Minority Communities.*

Communities of color in Albuquerque and Bernalillo County have higher than expected rates of disease associated with elevated air pollution concentrations. For example, in the 87017 ZIP code, where the Greater Gardner neighborhood is located, the death rate from asthma between 1990-2005 was nearly double that of Bernalillo County.[28] Further, between 1998 and 2002, the number of children under five hospitalized for acute asthma symptoms in the 87107 ZIP code was nearly 50% higher than for the rest of Bernalillo County.[29] Finally, life expectancy in the area of the Greater Gardner neighborhood is nearly 5 years less than the rest of Bernalillo County.[30]

The Mountain View neighborhood is burdened by similar circumstances. As explained in Section III, above, Mountain View has elevated concentrations of VOCs. Not surprisingly, Mountain View also has higher than expected numbers of lung, bladder, brain and thyroid cancers, as well as higher than expected numbers of leukemia compared with the rest of Bernalillo County.[31] All of these cancers are associated with exposure to VOCs. Thus, the Division's and Board's actions have resulted in a reasonable concern for public health and SWOP has established a showing of adverse impacts.

C. The Division's and the Board's Failure to Consider Cumulative Impacts Results in Disproportionate Adverse Impacts on Communities of Color.

As a result of the Board's and Division's failure to implement the Clean Air Act and Air Quality Control Act equally, minority and low income communities in Albuquerque bear a

[28] Attached as Exhibit L at 14.

[29] Id.

[30] Id. at 17.

[31] Attached as Exhibit K at 24.

disproportionate burden of air pollution. The result is those communities suffer higher rates of disease and lower life expectancy.

Disparate impact is evaluated by comparing the adversely impacted community to a comparison population. Investigative Report at 30. The comparison population is chosen in order to evaluate whether there is a significant difference between them with respect to demographic characteristics or degree of impact. Id. Disparity between groups is evaluated on a case by case basis, but typically ranges from 20% to 100%. Id. at 31; Smith v. Xerox Corp., 196 F.3d 358, 365-366 (2nd Cir. 1999). In other words, if an adversely impacted community has 20% to 100% greater minority population than the comparison community, the disparity is significant.

In this case, the affected communities are predominantly minority communities including, but not limited to, the Mountain View community and the Greater Gardner community, where the Division and Board approved permits for operations that would increase air pollution in already burdened neighborhoods. The Comparison communities include, but are not limited to, primarily non-minority communities, such as the Summit Park neighborhood, where the Board denied an application for pollution permit modification under the Air Quality Control Act.

In the case of Mountain View, the Latino population for the ZIP code (87105) where that neighborhood is located is 79.3%. In the 87106 ZIP code, where the Summit Park neighborhood is located, the Latino population is 34.6%. Thus, the Mountain View neighborhood has a 44.7% larger Latino population, well within the range that would indicate significantly disparate treatment.

Likewise, the Greater Gardner neighborhood is located in the 87107 ZIP code, where the population is 58% Latino. Thus, the Greater Gardner neighborhood has a 23.4% larger Latino population than Summit Park. Again, the disparity between the two neighborhoods is significant.

These significant disparities are a pattern throughout Albuquerque. In a report entitled *Place Matters for Health in Bernalillo County*, the Joint Center for Political and Economic Studies determined that communities with higher percentages of Latinos and recent immigrants were much more likely to host industrial and other operations that increased adverse health impacts.[32] There are significant data on pollution and demographics in Albuquerque and Bernalillo County indicating that minority communities bear a disproportionate burden of polluting industry.

VI. RELIEF REQUESTED

SWOP respectfully requests that the EPA grant the following relief:

1) Conduct an investigation into the Board's and Division's discriminatory implementation of the Clean Air Act by way of the provisions of the New Mexico Air Quality Control Act;

2) Require that the Board and Division use monitoring data from the neighborhood or neighborhoods that will be impacted by a proposed operation in determining background air quality for every permit the Board or Division considers;

3) Require that any air quality modeling the Board or Division uses to evaluate a permit application under the New Mexico Air Quality Control Act be calibrated against air quality monitoring data described in 2), above;

[32] Attached as Exhibit M at 16-19.

4) Require that the Board adopt a regulation prohibiting Board members from being employed by any business that may seek a permit from the Division or Board;

5) Require the Board and Division to conduct extensive and regular outreach to minority and low-income neighborhoods regarding its permitting and policy initiatives;

6) Require that the Board adopt a regulation requiring disclosure and analysis of cumulative impacts of permit application operations;

7) If warranted, reduce or eliminate federal funding for the Board and Division.

Dated: September 15, 2014.

NEW MEXICO ENVIRONMENTAL LAW CENTER
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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September 2014, I have delivered a copy of the foregoing pleading via electronic mail and/or Federal Express to the following:

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1200 Pennsylvania Avenue, NW
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mccarthy.gina@epa.gov

Velveta Golightly-Howell
Director, Office of Civil Rights
Environmental Protection Agency
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By: _____

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WASHINGTON, D.C. 20460

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July 19, 2016

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Mr. Eric Jantz
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Ms. Monica Cordova
Co-Director
Southwest Organizing Project
211 Tenth Street, S.W.
Albuquerque, New Mexico 87102

Re: Acceptance of Administrative Complaint

Dear Mr. Jantz and Ms. Cordova:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is accepting your administrative complaint filed against the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board, received by EPA on September 16, 2014. The complaint alleges that the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board have violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, by not considering cumulative impacts when permitting air polluting facilities and by denying a request for a hearing to adopt a requirement for consideration of cumulative impacts in the permitting process.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must allege a discriminatory act that, if true, may violate EPA's nondiscrimination regulations (*e.g.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(1). Third,

the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, OCR has determined that the subject complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint alleges that discrimination occurred, in violation of EPA's nondiscrimination regulations. Third, the alleged discriminatory acts occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board, both recipients of EPA financial assistance at the time of the alleged discrimination.

Accordingly, OCR will investigate the following:

1. Whether the Albuquerque-Bernalillo County Air Quality Control Board's and/or the Albuquerque Air Quality Division's permitting process discriminates against minority residents on the basis of race and/or national origin, in violation of Title VI of the Civil Rights Act and EPA's implementing regulations; and

2. Whether the Albuquerque-Bernalillo County Air Quality Control Board and/or the Albuquerque Air Quality Division discriminated against minority residents on the basis of race and/or national origin in violation of Title VI of the Civil Rights Act and EPA's implementing regulations by refusing to conduct a hearing on an ordinance to consider cumulative impacts in the permitting process.

The initiation of an investigation of the issues above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the recipients, as appropriate, and determine next steps utilizing our internal procedures. In the intervening time, OCR will provide the Recipients with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the subject complaint. OCR may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi. OCR may also contact representatives of the Albuquerque-Bernalillo County Air Quality Board and the Albuquerque Air Quality Division to discuss the Recipients' interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf

Finally, we would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or

participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have questions regarding this letter, please contact Katsumi Keeler, Case Manager, at 202-564-2347, by electronic mail at keeler.katsumi@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,

Lilian S. Dorka
Acting Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Samuel Coleman
Deputy Regional Administrator
Deputy Civil Rights Official
EPA Region 6

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Committee on the Elimination of Racial Discrimination

Concluding observations on the combined seventh to ninth periodic reports of United States of America*

1. The Committee considered the seventh to ninth periodic reports of the United States of America, submitted in one document (CERD/C/USA/7-9), at its 2299th and 2300th meetings (CERD/C/SR.2299 and SR.2300), held on 13 and 14 August 2014. At its 2317th meeting, held on 26 August 2014, it adopted the following concluding observations.

A. Introduction

2. The Committee welcomes the combined seventh to ninth periodic reports submitted by the State party, which provides detailed information on the implementation of the previous recommendations of the Committee (CERD/C/USA/CO/6).

3. The Committee also welcomes the supplementary information provided orally by the large and diverse State party delegation to the issues raised by the Committee during the frank and constructive dialogue between the Committee and the delegation.

B. Positive aspects

4. The Committee notes with appreciation the legislative and policy developments in the State party to combat racial discrimination since its last report, including:

(a) The termination of the National Security Entry-Exit Registration System in April 2011, as recommended by the Committee in its previous concluding observations (CERD/C/USA/CO/6, para.14);

(b) The issuance of Executive Order 13583 to require agencies to develop strategies to identify and remove existing barriers to equal employment opportunity in Government recruitment, hiring, promotion, retention, professional development and training, as well as Executive Order 13515 in October 2009 to improve the participation of Asian Americans and Pacific Islanders in federal programmes and employment;

(c) The increased use of the "Systemic Initiative" by the Equal Employment Opportunity Commission to target "class-based recruitment and hiring practices that

* Adopted by the Committee at its eighty-fifth session (11-29 August 2014)

Exhibit A

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discriminate against racial and ethnic groups", resulting in an increased number of systemic lawsuits and financial settlements;

(d) The adoption of the Fair Sentencing Act in August 2010, which has reduced, although not eliminated, the disparity between more lenient sentences for powder cocaine charges and more severe sentences for crack cocaine charges, which are more frequently brought against members of racial and ethnic minorities;

(e) The adoption of the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act in October 2009, which inter alia creates a new federal prohibition on hate crimes and simplifies the jurisdictional predicate for prosecuting violent acts undertaken because of actual or perceived race, colour, or national origin; and

(f) The enactment of the Lilly Ledbetter Fair Pay Act in January 2009, which overrides the Supreme Court decision in *Ledbetter v. Goodyear Tire & Rubber Co.* and enables the 180-day statute of limitations for bringing a wage discrimination claim to be reset with each payment of wages, benefits, or other compensation.

C. Concerns and recommendations

Applicability of the Convention at the national level

5. While noting the applicability of the disparate impact doctrine in certain fields of life, the Committee remains concerned at its limited scope and applicability. It thus reiterates its previous concern that the definition of racial discrimination used in federal and state legislation, as well as in court practice, is not in line with article 1, paragraph 1 of the Convention, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but are discriminatory in effect (CERD/C/USA/CO/6, para.10). The Committee expresses further concern at the lack of progress achieved in withdrawing or narrowing the scope of the reservation to article 2 of the Convention and in prohibiting all forms of discriminatory acts perpetrated by private individuals, groups or organizations (CERD/C/USA/CO/6, para.11) (arts.1(1), 2 and 6).

The Committee underlines the responsibility of the federal state for the implementation of the Convention, and calls upon the State party to take concrete steps to:

(a) Prohibit racial discrimination in all its forms in federal and state legislation, including indirect discrimination, covering all fields of law and public life, in accordance with article 1, paragraph 1 of the Convention; and

(b) Consider withdrawing or narrowing its reservation to article 2 of the Convention, and broaden the protection afforded by law against all discriminatory acts perpetrated by private individuals, groups or organizations; and

(c) Improve the system of monitoring and response by federal bodies to prevent and challenge situations of racial discrimination.

National human rights institution

6. While taking note of the creation of the Equality Working Group, the Committee reiterates its concern at the lack of an institutionalized coordinating mechanism with capacities to ensure the effective implementation of the Convention at the federal, state and local levels (CERD/C/USA/CO/6, para.13). Noting the role that an independent national human rights institution can play in this regard, the Committee expresses regret at the lack

of progress in establishing a national human rights institution as recommended in its previous concluding observations (CERD/C/USA/CO/6, para.12) (art. 2).

The Committee recommends that the State party create a permanent and effective coordinating mechanism, such as a national human rights institution established in accordance with the principles relating to the status of national institutions (the "Paris Principles", General Assembly resolution 48/134, Annex), to ensure the effective implementation of the Convention throughout the State party and territories under its effective control; monitor compliance of domestic laws and policies with the provisions of the Convention; and systematically carry out anti-discrimination training and awareness-raising activities at the federal, state and local levels.

Special measures

7. Taking note of the Supreme Court decision of April 2014 in *Schuette v. Coalition to Defend Affirmative Action* and the measures adopted by several states against the use of affirmative action in school admissions, the Committee expresses concern at the increasing restrictions on the use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin (art. 2(2)).

The Committee reiterates its previous recommendation to adopt and strengthen the use of special measures, which is an obligation arising from article 2, paragraph 2 of the Convention, when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms based on race or ethnic origin. In this regard, it recommends that the State party take into account the Committee's general recommendation No.32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination.

Racial profiling and illegal surveillance

8. While welcoming the acknowledgement made by the State party that racial or ethnic profiling is not effective law enforcement practice and is inconsistent with its commitment to fairness in the justice system, the Committee remains concerned at the practice of racial profiling of racial or ethnic minorities by law enforcement officials, including the Federal Bureau of Investigation (FBI), Transportation Security Administration, border enforcement officials, and local police (arts.2, 4(c) and 5(b)).

Recalling its general recommendation No. 31 (2001) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to intensify efforts to effectively combat and end the practice of racial profiling by federal, state and local law enforcement officials, including by:

(a) Adopting and implementing legislation which specifically prohibits law enforcement officials from engaging in racial profiling, such as the End Racial Profiling Act;

(b) Swiftly revising policies insofar as they permit racial profiling, illegal surveillance, monitoring and intelligence gathering, including the 2003 Guidance Regarding the Use of Race by Federal Law Enforcement Agencies;

(c) Ending immigration enforcement programmes and policies, which indirectly promote racial profiling, such as the Secure Communities programme and the 287(g) programme; and

(d) Undertaking prompt, thorough and impartial investigations into all allegations of racial profiling, surveillance, monitoring and illegal intelligence-gathering; holding those responsible accountable; and providing effective remedies, including guarantees of non-repetition.

Racist hate speech and hate crimes

9. The Committee reiterates its concern at the lack of prohibition of racist hate speech except for instances amounting to incitement to imminent violence or "true threats" of violence, as well as the wide scope of the reservations to article 4 of the Convention (CERD/C/USA/CO/6, para.18). It is also concerned at the underreporting of instances of hate crimes by the victims to the police, as well as by law enforcement officials to the FBI given the voluntary nature to comply with the FBI's request for hate crime statistics (arts. 2 and 4).

The Committee recommends that the State party:

(a) Consider withdrawing or narrowing its reservation to article 4 of the Convention, taking into account the Committee's general recommendation No. 35 (2013) on combating racist hate speech, which outlines diverse measures to effectively combat racist hate speech while protecting the legitimate right to freedom of expression;

(b) Improve its data collection system for statistics on complaints of hate crimes, including by officially requiring all law enforcement agencies to record and transmit all such instances to the FBI, disaggregated by factors such as race, ethnicity, age and religion, and regularly publicize such information;

(c) Ensure that all law enforcement officials and all new recruits are provided with initial and ongoing in-service training on the investigation and reporting of complaints of hate crimes; and

(d) Provide statistical information concerning trends in instances of racist hate speech in its next periodic report so as to assess the impact of measures adopted by the State party in combating racist hate speech.

Disparate impact of environmental pollution

10. While welcoming the acknowledgment by the State party that low income and minority communities are exposed to an unacceptable amount of pollution, as well as the initiatives taken to address the issue, the Committee is concerned that individuals belonging to racial and ethnic minorities as well as indigenous peoples continue to be disproportionately affected by the negative health impact of pollution caused by the extractive and manufacturing industries. It also reiterates its previous concern regarding the adverse effects of economic activities related to the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the rights to land, health, environment and the way of life of indigenous peoples and minority groups living in these regions (CERD/C/USA/CO/6, para.30) (arts. 2 and 5(e)).

The Committee calls upon the State party to:

(a) Ensure that federal legislation prohibiting environmental pollution is effectively enforced at state and local levels;

(b) Undertake an independent and effective investigation into all cases of environmentally polluting activities and their impact on the rights of affected

communities, bring those responsible to account, and ensure that victims have access to appropriate remedies;

(c) Clean up any remaining radioactive and toxic waste throughout the State party as a matter of urgency, paying particular attention to areas inhabited by racial and ethnic minorities and indigenous peoples that have been neglected to date; and

(d) Take appropriate measures to prevent the activities of transnational corporations registered in the State party which could have adverse effects on the enjoyment of human rights by local populations in other countries, especially by indigenous peoples and minorities.

Right to vote

11. The Committee is concerned at the obstacles faced by individuals belonging to racial and ethnic minorities and indigenous peoples to effectively exercise their right to vote, due inter alia to restrictive voter identification laws, district gerrymandering, and state-level felon disenfranchisement laws. It is also concerned at the Supreme Court decision in *Shelby County v. Holder*, which struck down Section 4(b) of the Voting Rights Act and made Section 5 inoperable, thus invalidating the procedural safeguards to prevent the implementation of voting regulations that may have discriminatory effect. It expresses further concern at the continued denial of the right of residents of the District of Colombia (D.C.), half of whom are African Americans, to vote for and elect representatives to the United States Senate and voting-members to the House of Representatives (arts. 2 and 5(c)).

The Committee recommends that the State party take effective measures to:

(a) Enforce federal voting rights law throughout the State party in ways that encourage voter participation, and adopt federal legislation to prevent the implementation of voting regulations which have discriminatory impact in light of the *Shelby County v. Holder* decision;

(b) Ensure that indigenous peoples can effectively exercise their right to vote and address their specific concerns;

(c) Ensure that all states reinstate voting rights to persons convicted of felony who have completed their sentences, provide inmates with information about their voting restoration options, and review automatic denial of the right to vote to imprisoned felons regardless of the nature of the offence; and

(d) Provide for the full voting rights of residents of Washington, D.C.

Criminalization of homelessness

12. While appreciating the measures taken by federal and some state and local authorities to address homelessness, the Committee is concerned at the high number of homeless persons, who are disproportionately from racial and ethnic minorities, particularly African Americans, Hispanic/Latino Americans and Native Americans, and at the criminalization of homelessness through laws that prohibit activities such as loitering, camping, begging, and lying in public spaces (arts.2 and 5(e)).

The Committee calls upon the State party to:

(a) Abolish laws and policies making homelessness a crime;

(b) Ensure close cooperation among all relevant stakeholders, including social, health, law enforcement and justice professionals at all levels to intensify efforts to find solutions for the homeless in accordance with human rights standards; and

(c) Offer incentives to decriminalize homelessness, including by providing financial support to local authorities that implement alternatives to criminalization, and withdrawing funding from local authorities that criminalize homelessness.

Discrimination and segregation in housing

13. While acknowledging the positive steps taken by the State party to address discrimination in access to housing and to reverse historical patterns of segregation, the Committee remains concerned at: (a) the persistence of discrimination in access to housing on the basis of race, colour, ethnicity or national origin; (b) the high degree of racial segregation and concentrated poverty in neighbourhoods characterized by sub-standard conditions and services, including poor housing conditions, limited employment opportunities, inadequate access to health-care facilities, under-resourced schools and high exposure to crime and violence; and (c) discriminatory mortgage lending practices and the foreclosure crisis which disproportionately affected and continues to affect racial and ethnic minorities (arts. 3 and 5(e)).

The Committee urges the State party to intensify its efforts to eliminate discrimination in access to housing and residential segregation based on race, colour ethnicity or national origin, including by:

(a) Ensuring the availability of affordable and adequate housing for all, including by effectively implementing the Affirmatively Furthering Fair Housing requirement by the Department of Housing and Urban Development and across all agencies administering housing programmes;

(b) Strengthening the implementation of legislation to combat discrimination in housing, such as the Fair Housing Act and Title VIII of the Civil Rights Act of 1968, including through the provision of adequate resources and increasing the capacity of the Department of Housing and Urban Development; and

(c) Undertaking prompt, independent and thorough investigation into all cases of discriminatory practices by private actors, including in relation to discriminatory mortgage lending practices, steering, and redlining; holding those responsible to account; and providing effective remedies, including appropriate compensation, guarantees of non-repetition and changes in relevant laws and practices.

Education

14. While welcoming measures taken by the State party to address de facto racial segregation in education, such as the formation of the Equity and Excellence Commission in 2011, the Committee remains concerned that students from racial and ethnic minorities disproportionately continue to attend segregated schools with segregated or unequal facilities, and that even those who are enrolled in racially diverse schools are frequently assigned to "single-race" classes, denied equal access to advanced courses, and disciplined unfairly and disproportionately due to their race, including through referral to the criminal justice system. It also expresses concern at racial disparities in academic achievement, which contribute to unequal access to employment opportunities (arts.3 and 5(e)).

The Committee recommends that the State party intensify its efforts to ensure equal access to education, including by:

(a) Developing and adopting a comprehensive plan to address racial segregation in schools and neighbourhoods with concrete goals, timelines and impact assessment mechanisms;

(b) Increasing federal funding for programmes and policies that promote racially integrated learning environments for students;

(c) Effectively implementing the recommendations contained in the report of the Equity and Excellence Commission published in February 2013;

(d) Reauthorizing the Elementary and Secondary Education Act with provisions that support and encourage solutions to address school segregation; and

(e) Continuing to work closely with state and local education authorities as well as civil society groups to strengthen measures to address the factors that contribute to the educational achievement gap.

Right to health and access to health care

15. While commending the adoption of the Patient Protection and Affordable Care Act (ACA) in March 2010, the Committee is concerned that many states with substantial numbers of racial and ethnic minorities have opted out of the Medicaid expansion programme following the Supreme Court decision of June 2012 in the *National Federation of Independent Business v. Sebelius*, thus failing to fully address racial disparities in access to affordable and quality health care. It is also concerned at the exclusion of undocumented immigrants and their children from coverage under the Affordable Care Act, as well as the limited coverage of undocumented immigrants and immigrants residing lawfully in the United States for less than five years by Medicaid and Children's Health Insurance Programme, resulting in difficulties for immigrants in accessing adequate health care. It also reiterates its previous concern at the persistence of racial disparities in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among African American communities (CERD/C/USA/CO/6, para.33) (art. 5(e)).

The Committee recommends that the State party:

(a) Take concrete measures to ensure that all individuals, and in particular racial and ethnic minorities who reside in states that have opted out of the ACA, undocumented immigrants, and immigrants and their families who have been residing lawfully in the United States for less than five years, have effective access to affordable and adequate health-care services;

(b) Eliminate racial disparities in the field of sexual and reproductive health and standardize the data collection system on maternal and infant deaths in all states to effectively identify and address the causes of disparities in maternal and infant mortality rates; and

(c) Improve monitoring and accountability mechanisms for preventable maternal mortality, including by ensuring that state maternal mortality review boards have sufficient resources and capacity.

Gun violence

16. The Committee is concerned at the high number of gun-related deaths and injuries which disproportionately affect members of racial and ethnic minorities, particularly African Americans. It is also concerned at the proliferation of "Stand Your Ground" laws, which are used to circumvent the limits of legitimate self-defence in violation of the State

party's duty to protect life, and has a disproportionate and discriminatory impact on members of racial and ethnic minorities (arts. 2, 5(b) and 6).

The Committee urges the State party to take effective legislative and policy measures to fulfil its obligation to protect the right to life and to reduce gun violence, including by adopting legislation expanding background checks for all private firearm transfers and prohibiting the practice of carrying concealed handguns in public venues; increasing transparency concerning gun use in crime and illegal gun sales, including by repealing the Tiahrt Amendments; and reviewing the Stand Your Ground Laws to remove far-reaching immunity and ensure strict adherence to the principles of necessity and proportionality when deadly force is used for self-defence.

Excessive use of force by law enforcement officials

17. While recognizing the efforts made by the State party to intensify the enforcement of relevant laws, the Committee reiterates its previous concern at the brutality and excessive use of force by law enforcement officials against members of racial and ethnic minorities, including against unarmed individuals, which has a disparate impact on African Americans and on undocumented migrants crossing the United States-Mexico border (CERD/C/USA/CO/6, para.25). It also remains concerned that despite the measures taken by the State party to prosecute law enforcement officials for criminal misconduct, impunity for abuses, in particular those committed by the Customs and Border Protection (CBP) against Hispanic/Latino Americans and undocumented migrants, remains a widespread problem (arts. 5(b) and 6).

The Committee urges the State party to:

(a) Ensure that each allegation of excessive use of force by law enforcement officials is promptly and effectively investigated; that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions; that investigations are re-opened when new evidence becomes available; and that victims or their families are provided with adequate compensation;

(b) Intensify its efforts to prevent the excessive use of force by law enforcement officials by ensuring compliance with the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and ensure that the new CBP directive on the use of force is applied and enforced in practice;

(c) Improve the reporting of cases involving the excessive use of force, and strengthen oversight of and accountability for inappropriate use of force; and

(d) Provide, in its next periodic report, detailed information concerning investigations undertaken into allegations of excessive use of force by law enforcement officials, including the CBP, as well as their outcomes, including disciplinary or prosecutorial action taken against the perpetrator and remedies provided to victims or their families.

Immigrants

18. The Committee is concerned at the increasingly militarized approach to immigration law enforcement, leading to the excessive and lethal use of force by the CBP personnel; increased use of racial profiling by local law enforcement agencies to determine immigration status and to enforce immigration laws; increased criminal prosecution for breaches of immigration law; mandatory detention of immigrants for prolonged periods of time; and deportation of undocumented immigrants without adequate access to justice. It is also concerned that workers entering the State party under the H-2B work visa programme are at high risk of becoming victims of trafficking and/or forced labour, and that some

children from racial and ethnic minorities, particularly Hispanic/Latino children, are employed in the agriculture industry and may harsh and dangerous conditions (arts. 2, 5 and 6).

The Committee calls upon the State party to ensure that the rights of non-citizens are fully guaranteed in law and in practice, including inter alia by:

(a) Abolishing "Operation Streamline" and dealing with any breaches of immigration law through civil, rather than criminal immigration system;

(b) Undertaking thorough and individualized assessment for decisions concerning detention and deportation and guaranteeing access to legal representation in all immigration-related matters;

(c) Reviewing its laws and regulations in order to protect all migrant workers from exploitative and abusive working conditions, including by raising the minimum age for harvesting and hazardous work in agriculture under the Fair Labor Standards Act in line with international labour standards, and ensuring effective oversight of labour conditions; and

(d) Ratifying ILO Convention No.29 concerning Forced or Compulsory Labour and ILO Convention No.138 concerning Minimum Age for Admission to Employment.

Violence against women

19. While acknowledging the measures taken by the State party to reduce the prevalence of violence against women, the Committee remains concerned at the disproportionate number of women from racial and ethnic minorities, particularly African American women, immigrant women, and American Indian and Alaska Native women, who continue to be subjected to violence, including rape and sexual violence. Additionally, it notes that while the Tribal Law and Order Act of 2010 increased the length of sentences tribal courts can issue in criminal cases, and that the Violence Against Women Reauthorization Act of 2013 expanded the jurisdiction of tribes over domestic violence and violence of protective orders committed on their lands, the jurisdiction is limited to those who live or work on the reservation, or to those who are married or are in partnership with a tribal member. The Committee thus reiterates its previous concern at the denial of indigenous women to access justice and to obtain adequate reparation or satisfaction for damages suffered (CERD/C/USA/CO/6, para.26) (arts. 5 and 6).

The Committee calls upon the State party to intensify its efforts to prevent and combat violence against women, particularly against American Indian and Alaska Native women, and ensure that all cases of violence against women are effectively investigated, perpetrators prosecuted and sanctioned, and victims provided with appropriate remedies. It also urges the State party to take effective measures to guarantee, in law and in practice, the right to access justice and effective remedies for all indigenous women who are victims of violence. It also reiterates its previous recommendation that the State party provide sufficient resources for violence prevention and service programmes; provide specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors, judges and medical personnel; and undertake awareness raising campaigns on the mechanisms and procedures available to seek remedies for violence against women.

Criminal justice system

20. While welcoming the measures taken by the State party to address racial disparities in the criminal justice system, such as the launch of the "Smart on Crime" initiative in

August 2013, the Committee remains concerned that members of racial and ethnic minorities, particularly African Americans, continue to be disproportionately arrested, incarcerated and subjected to harsher sentences, including life imprisonment without parole and the death penalty. It expresses concern that the overrepresentation of racial and ethnic minorities in the criminal justice system is exacerbated by the use of prosecutorial discretion, the application of mandatory minimum drug-offence sentencing policies, and the implementation of repeat offender laws. The Committee is also concerned at the negative impact of parental incarceration on children from racial and ethnic minorities (arts. 2, 5 and 6).

The Committee calls upon the State party to take concrete and effective steps to eliminate racial disparities at all stages of the criminal justice system, taking into account the Committee's general recommendation No.31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, including by:

(a) Amending laws and policies leading to racially disparate impact in the criminal justice system at the federal, state and local levels, and implementing effective national strategies or plans of action aimed at eliminating structural discrimination;

(b) Imposing, at the federal level, a moratorium on the death penalty with a view to abolishing the death penalty; and

(c) Ensuring that the impact of incarceration on children and/or other dependents is taken into account when sentencing an individual convicted of a non-violent offence and promoting the use of alternatives to imprisonment.

Juvenile justice

21. The Committee is concerned at racial disparities at all levels of the juvenile justice system, including the disproportionate rate at which youth from racial and ethnic minorities are arrested in schools and are referred to the criminal justice system, prosecuted as adults, incarcerated in adult prisons, and sentenced to life imprisonment without parole. It also remains concerned that despite the recent Supreme Court decisions which held that mandatory sentencing of juvenile offenders to life imprisonment without parole is unconstitutional, 15 states have yet to change their laws, and that discretionary life without parole sentences are still permitted for juveniles convicted of homicide (arts. 2, 5 and 6).

The Committee calls upon the State party to intensify its efforts to address racial disparities in the application of disciplinary measures, as well as the resulting "school-to-prison pipeline", throughout the State party, and ensure that juveniles are not transferred to adult courts and are separated from adults during pretrial detention and after sentencing. It also reiterates its previous recommendation to prohibit and abolish life imprisonment without parole for those under 18 at the time of the crime, irrespective of the nature and circumstances of the crime committed, and to commute the sentences for those currently serving such sentences.

Guantanamo Bay

22. While welcoming the commitment made by the President of the United States to close the detention facilities at Guantanamo Bay in January 2009, the Committee remains concerned that non-citizens continue to be arbitrarily detained without effective and equal access to the ordinary criminal justice system and at the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment (arts. 2, 5 and 6).

The Committee urges the State party to end the system of administrative detention without charge or trial and ensure the closure of the Guantanamo Bay facility without further delay. Recalling its general recommendation No.30 (2004) on non-citizens and general recommendation No.31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, it also calls upon the State party to guarantee the right of detainees to a fair trial in compliance with international human rights standards, and to ensure that any detainee who is not charged and tried is released immediately.

Access to legal aid

23. While welcoming the steps taken by the State party to improve access to justice by indigent persons, such as the Access to Justice Initiative launched in March 2010, the Committee remains concerned at the ongoing challenges faced by indigent persons belonging to racial and ethnic minorities to effectively access legal counsel in criminal proceedings in practice. It also reiterates its concern at the lack of a generally recognized right to counsel in civil proceedings (CERD/C/USA/CO/6, para.22), which disproportionately affects indigent persons belonging to racial and ethnic minorities to seek an effective remedy in matters such as evictions, foreclosures, domestic violence, discrimination in employment, termination of subsistence income or medical assistance, loss of child custody, and deportation (art. 6).

The Committee reiterates its previous recommendation that the State party adopt all necessary measures to eliminate the disproportionate impact of systemic inadequacies in criminal defence programmes on indigent defendants belonging to racial and ethnic minorities, including by improving the quality of legal representation provided to indigent defendants and ensuring that public legal aid systems are adequately funded and supervised. It also recommends that the State party allocate sufficient resources to ensure effective access to legal representation for indigent persons belonging to racial and ethnic minorities in civil proceedings, particularly with regard to proceedings that have serious consequences for their security and stability, such as evictions, foreclosures, domestic violence, discrimination in employment, termination of subsistence income or medical assistance, loss of child custody, and deportation proceedings.

Rights of indigenous peoples

24. While acknowledging the steps taken by the State party to recognize the culture and traditions of indigenous peoples, including the support for the United Nations Declaration on the Rights of Indigenous Peoples announced by President Obama on 16 December 2010, the issuance of Executive Orders 13007 and 13175 and the high-level conferences organized by President Obama with tribal leaders, the Committee remains concerned at:

(a) Lack of concrete progress achieved to guarantee, in law and in practice, the free, prior and informed consent of indigenous peoples in policy-making and decisions that affect them;

(b) The ongoing obstacles to the recognition of tribes, including high costs and lengthy and burdensome procedural requirements;

(c) Insufficient measures taken to protect the sacred sites of indigenous peoples that are essential for the preservation of their religious, cultural and spiritual practices against polluting and disruptive activities, resulting inter alia from resource extraction, industrial development, construction of border fences and walls, tourism, and urbanization;

(d) The continued and previous removal of indigenous children from their families and communities through the United States child welfare system; and

(e) The lack of sufficient and adequate information provided by the State party on the measures taken to implement the recommendations of the Committee in its Decision 1(68) regarding the Western Shoshone peoples (CERD/C/USA/DEC/1) adopted under the Early Warning and Urgent Action Procedure in 2006, as well as the ongoing infringement of the rights of the Western Shoshone peoples (arts.5 and 6).

Recalling its general recommendation No. 23 (1997) on indigenous peoples, the Committee calls upon the State party to:

(a) Guarantee, in law and in practice, the right of indigenous peoples to effective participation in public life and in decisions that affect them based on their free, prior and informed consent;

(b) Take effective measures to eliminate undue obstacles to the recognition of tribes;

(c) Adopt concrete measures to effectively protect the sacred sites of indigenous peoples as a result of the State party's development or national security projects and exploitation of natural resources, and ensure that those responsible for any damages caused are held accountable;

(d) Effectively implement and enforce the Indian Child Welfare Act of 1978 to halt the removal of indigenous children from their families and communities; and

(e) Take immediate action to implement the recommendations contained in Decision 1(68) and provide comprehensive information to the Committee on concrete measures taken in this regard.

National Action Plan to combat racial discrimination

25. While noting various measures taken by the State party to combat prejudice and promote understanding and tolerance, the Committee expresses concern at the absence of a National Action Plan to combat racial discrimination and to implement the recommendations of the Committee, as well as the lack of inclusion of human rights in the school curricula (art. 7).

The Committee recommends that the State party adopt a National Action Plan to combat structural racial discrimination, and to ensure that school curricula, textbooks and teaching materials be informed by and address human rights themes and seek to promote understanding among racial and ethnic minority groups.

D. Other recommendations

Request for further information

26. The Committee requests the State party to provide, in its next periodic report, detailed information on: (a) the implementation of the provisions of the Convention in non-autonomous territories administered by the United States; (b) the rate at which African American children in foster care are prescribed psychotropic drugs; (c) the use of non-consensual psychiatric treatment and other restrictive and coercive practices on racial and ethnic minorities in mental health services; and (d) the current status of political activists from the Civil Rights era who reportedly continue to be incarcerated.

Declaration under article 14

27. The committee recommends that the state party consider making a declaration in accordance with article 14 of the convention, recognizing the competence of the committee to receive and consider individual complaints.

Amendment to article 8 of the Convention

28. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243, 65/200 and 67/156, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

Ratification of other treaties

29. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination, such as the International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), Convention on the Rights of Persons with Disabilities (2006), and International Convention for the Protection of All Persons from Enforced Disappearance (2006).

Follow-up to the Durban Declaration and Programme of Action

30. While noting the position of State party concerning the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban in September 2001, the Committee, in light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference held in Geneva in April 2009, invites the State party to take into account the elements considered pertinent in the Durban Declaration and Programme of Action as well as in the outcome document of the Durban Review Conference when implementing the Convention in its domestic legal order. The Committee requests the State party to include in its next periodic report specific information on action plans and other measures taken in this regard.

Consultations with organizations of civil society

31. The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to these concluding observations.

Dissemination

32. The Committee recommends that the State party increase its efforts to raise public awareness and knowledge of the Convention throughout its territory, make the State party reports readily available and accessible to the public at the time of their submission, and widely publicize the concluding observations of the Committee in the official and other commonly used languages, as appropriate.

Follow-up to concluding observations

33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information.

within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 17(a) and (b), 18 and 22 above.

Paragraphs of particular importance

34. The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 8, 12, 16 and 24, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

35. The Committee recommends that the State party submit its tenth, eleventh and twelfth periodic reports in a single document by 20 November 2017, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).

AMERICAN FactFinder

DP-1 | Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see http://www.census.gov/prod/cen2010/doc/dpsf.pdf.

Geography: Albuquerque city, New Mexico

Subject	Number	Percent
SEX AND AGE		
Total population	545,852 (r46987)	100.0
Under 5 years	38,000	7.0
5 to 9 years	36,883	6.8
10 to 14 years	34,878	6.4
15 to 19 years	37,104	6.8
20 to 24 years	42,276	7.7
25 to 29 years	43,986	8.1
30 to 34 years	38,875	7.1
35 to 39 years	35,392	6.5
40 to 44 years	34,664	6.4
45 to 49 years	37,817	6.9
50 to 54 years	37,269	6.8
55 to 59 years	33,790	6.2
60 to 64 years	29,019	5.3
65 to 69 years	20,110	3.7
70 to 74 years	14,741	2.7
75 to 79 years	12,025	2.2
80 to 84 years	9,463	1.7
85 years and over	9,560	1.8
Median age (years)	35.1	(X)
16 years and over	429,090	78.6
18 years and over	414,959	76.0
21 years and over	390,583	71.6
62 years and over	82,565	15.1
65 years and over	65,899	12.1
Male population	265,106	48.6
Under 5 years	19,523	3.6
5 to 9 years	18,621	3.4
10 to 14 years	17,699	3.2
15 to 19 years	18,597	3.4
20 to 24 years	20,938	3.8
25 to 29 years	21,934	4.0
30 to 34 years	19,528	3.6
35 to 39 years	17,666	3.2
40 to 44 years	17,113	3.1
45 to 49 years	18,526	3.4
50 to 54 years	17,741	3.3
55 to 59 years	15,652	2.9
60 to 64 years	13,743	2.5
65 to 69 years	9,263	1.7
70 to 74 years	6,473	1.2

Exhibit C

Subject	Number	Percent
75 to 79 years	5,141	0.9
80 to 84 years	3,748	0.7
85 years and over	3,200	0.6
Median age (years)	33.8	(X)
16 years and over	205,694	37.7
18 years and over	198,538	36.4
21 years and over	186,535	34.2
62 years and over	35,685	6.5
65 years and over	27,825	5.1
Female population	280,746	51.4
Under 5 years	18,477	3.4
5 to 9 years	18,262	3.3
10 to 14 years	17,179	3.1
15 to 19 years	18,507	3.4
20 to 24 years	21,338	3.9
25 to 29 years	22,052	4.0
30 to 34 years	19,347	3.5
35 to 39 years	17,726	3.2
40 to 44 years	17,551	3.2
45 to 49 years	19,291	3.5
50 to 54 years	19,528	3.6
55 to 59 years	18,138	3.3
60 to 64 years	15,276	2.8
65 to 69 years	10,847	2.0
70 to 74 years	8,268	1.5
75 to 79 years	6,884	1.3
80 to 84 years	5,715	1.0
85 years and over	6,360	1.2
Median age (years)	36.5	(X)
16 years and over	223,396	40.9
18 years and over	216,421	39.6
21 years and over	204,048	37.4
62 years and over	46,880	8.6
65 years and over	38,074	7.0
RACE		
Total population	545,852 (r46697)	100.0
One Race	520,693	95.4
White	380,552	69.7
Black or African American	17,933	3.3
American Indian and Alaska Native	25,087	4.6
Asian	14,450	2.6
Asian Indian	2,143	0.4
Chinese	2,877	0.5
Filipino	1,799	0.3
Japanese	921	0.2
Korean	1,143	0.2
Vietnamese	3,649	0.7
Other Asian [1]	1,918	0.4
Native Hawaiian and Other Pacific Islander	613	0.1
Native Hawaiian	249	0.0
Guamanian or Chamorro	142	0.0
Samoan	71	0.0
Other Pacific Islander [2]	151	0.0
Some Other Race	82,058	15.0

AMERICAN FactFinder

DP-1 | Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see http://www.census.gov/prod/cen2010/doc/dpsf.pdf.

Geography: ZCTA5 87107

Subject	Number	Percent
SEX AND AGE		
Total population	31,183	100.0
Under 5 years	1,877	6.0
5 to 9 years	1,888	6.1
10 to 14 years	1,833	5.9
15 to 19 years	2,096	6.7
20 to 24 years	1,945	6.2
25 to 29 years	2,014	6.5
30 to 34 years	1,812	5.8
35 to 39 years	1,788	5.7
40 to 44 years	1,872	6.0
45 to 49 years	2,293	7.4
50 to 54 years	2,494	8.0
55 to 59 years	2,504	8.0
60 to 64 years	2,109	6.8
65 to 69 years	1,465	4.7
70 to 74 years	1,125	3.6
75 to 79 years	805	2.6
80 to 84 years	653	2.1
85 years and over	610	2.0
Median age (years)	40.8	(X)
16 years and over	25,162	80.7
18 years and over	24,289	77.9
21 years and over	23,076	74.0
62 years and over	5,861	18.8
65 years and over	4,658	14.9
Male population	15,257	48.9
Under 5 years	991	3.2
5 to 9 years	939	3.0
10 to 14 years	969	3.1
15 to 19 years	1,186	3.8
20 to 24 years	935	3.0
25 to 29 years	1,024	3.3
30 to 34 years	897	2.9
35 to 39 years	916	2.9
40 to 44 years	911	2.9
45 to 49 years	1,128	3.6
50 to 54 years	1,210	3.9
55 to 59 years	1,173	3.8
60 to 64 years	990	3.2
65 to 69 years	666	2.1
70 to 74 years	495	1.6

Exhibit D

Subject	Number	Percent
75 to 79 years	358	1.1
80 to 84 years	254	0.8
85 years and over	215	0.7
Median age (years)	38.8	(X)
16 years and over	12,138	38.9
18 years and over	11,644	37.3
21 years and over	10,985	35.2
62 years and over	2,545	8.2
65 years and over	1,988	6.4
Female population	15,926	51.1
Under 5 years	886	2.8
5 to 9 years	949	3.0
10 to 14 years	864	2.8
15 to 19 years	910	2.9
20 to 24 years	1,010	3.2
25 to 29 years	990	3.2
30 to 34 years	915	2.9
35 to 39 years	872	2.8
40 to 44 years	961	3.1
45 to 49 years	1,165	3.7
50 to 54 years	1,284	4.1
55 to 59 years	1,331	4.3
60 to 64 years	1,119	3.6
65 to 69 years	799	2.6
70 to 74 years	630	2.0
75 to 79 years	447	1.4
80 to 84 years	399	1.3
85 years and over	395	1.3
Median age (years)	42.9	(X)
16 years and over	13,024	41.8
18 years and over	12,645	40.6
21 years and over	12,091	38.8
62 years and over	3,316	10.6
65 years and over	2,670	8.6
RACE		
Total population	31,183	100.0
One Race	29,830	95.7
White	21,980	70.5
Black or African American	418	1.3
American Indian and Alaska Native	1,208	3.9
Asian	225	0.7
Asian Indian	27	0.1
Chinese	44	0.1
Filipino	38	0.1
Japanese	28	0.1
Korean	21	0.1
Vietnamese	35	0.1
Other Asian [1]	32	0.1
Native Hawaiian and Other Pacific Islander	29	0.1
Native Hawaiian	16	0.1
Guamanian or Chamorro	3	0.0
Samoan	3	0.0
Other Pacific Islander [2]	7	0.0
Some Other Race	5,970	19.1

Subject	Number	Percent
Two or More Races	1,353	4.3
White; American Indian and Alaska Native [3]	237	0.8
White; Asian [3]	126	0.4
White; Black or African American [3]	106	0.3
White; Some Other Race [3]	614	2.0
Race alone or in combination with one or more other races: [4]		
White	23,160	74.3
Black or African American	644	2.1
American Indian and Alaska Native	1,577	5.1
Asian	427	1.4
Native Hawaiian and Other Pacific Islander	76	0.2
Some Other Race	6,752	21.7
HISPANIC OR LATINO		
Total population	31,183	100.0
Hispanic or Latino (of any race)	17,650	56.6
Mexican	9,911	31.8
Puerto Rican	102	0.3
Cuban	49	0.2
Other Hispanic or Latino [5]	7,588	24.3
Not Hispanic or Latino	13,533	43.4
HISPANIC OR LATINO AND RACE		
Total population	31,183	100.0
Hispanic or Latino	17,650	56.6
White alone	10,319	33.1
Black or African American alone	104	0.3
American Indian and Alaska Native alone	290	0.9
Asian alone	39	0.1
Native Hawaiian and Other Pacific Islander alone	9	0.0
Some Other Race alone	5,911	19.0
Two or More Races	978	3.1
Not Hispanic or Latino	13,533	43.4
White alone	11,661	37.4
Black or African American alone	314	1.0
American Indian and Alaska Native alone	918	2.9
Asian alone	186	0.6
Native Hawaiian and Other Pacific Islander alone	20	0.1
Some Other Race alone	59	0.2
Two or More Races	375	1.2
RELATIONSHIP		
Total population	31,183	100.0
In households	30,736	98.6
Householder	13,093	42.0
Spouse [6]	5,024	16.1
Child	8,126	26.1
Own child under 18 years	5,644	18.1
Other relatives	2,249	7.2
Under 18 years	894	2.9
65 years and over	312	1.0
Nonrelatives	2,244	7.2
Under 18 years	145	0.5
65 years and over	107	0.3
Unmarried partner	1,267	4.1
In group quarters	447	1.4
Institutionalized population	354	1.1
Male	296	0.9

Subject	Number	Percent
Female	58	0.2
Noninstitutionalized population	93	0.3
Male	77	0.2
Female	16	0.1
HOUSEHOLDS BY TYPE		
Total households	13,093	100.0
Family households (families) [7]	7,822	59.7
With own children under 18 years	3,149	24.1
Husband-wife family	5,024	38.4
With own children under 18 years	1,735	13.3
Male householder, no wife present	883	6.7
With own children under 18 years	456	3.5
Female householder, no husband present	1,915	14.6
With own children under 18 years	958	7.3
Nonfamily households [7]	5,271	40.3
Householder living alone	4,187	32.0
Male	1,905	14.5
65 years and over	407	3.1
Female	2,282	17.4
65 years and over	900	6.9
Households with individuals under 18 years	3,703	28.3
Households with individuals 65 years and over	3,528	26.9
Average household size	2.35	(X)
Average family size [7]	2.97	(X)
HOUSING OCCUPANCY		
Total housing units	14,074	100.0
Occupied housing units	13,093	93.0
Vacant housing units	981	7.0
For rent	372	2.6
Rented, not occupied	18	0.1
For sale only	132	0.9
Sold, not occupied	37	0.3
For seasonal, recreational, or occasional use	98	0.7
All other vacants	324	2.3
Homeowner vacancy rate (percent) [8]	1.5	(X)
Rental vacancy rate (percent) [9]	7.4	(X)
HOUSING TENURE		
Occupied housing units	13,093	100.0
Owner-occupied housing units	8,463	64.6
Population in owner-occupied housing units	20,085	(X)
Average household size of owner-occupied units	2.37	(X)
Renter-occupied housing units	4,630	35.4
Population in renter-occupied housing units	10,651	(X)
Average household size of renter-occupied units	2.30	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories.

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000.

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages may add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South

American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.

AMERICAN FactFinder

DP-1 | Profile of General Population and Housing Characteristics: 2010

2010 Demographic Profile Data

NOTE: For more information on confidentiality protection, nonsampling error, and definitions, see http://www.census.gov/prod/cen2010/doc/dpsf.pd

Geography: ZCTA5 87106

Subject	Number	Percent
SEX AND AGE		
Total population	27,013	100.0
Under 5 years	1,414	5.2
5 to 9 years	1,178	4.4
10 to 14 years	1,052	3.9
15 to 19 years	2,915	10.8
20 to 24 years	4,620	17.1
25 to 29 years	3,101	11.5
30 to 34 years	2,065	7.6
35 to 39 years	1,526	5.6
40 to 44 years	1,309	4.8
45 to 49 years	1,381	5.1
50 to 54 years	1,466	5.4
55 to 59 years	1,517	5.6
60 to 64 years	1,161	4.3
65 to 69 years	747	2.8
70 to 74 years	487	1.8
75 to 79 years	399	1.5
80 to 84 years	315	1.2
85 years and over	360	1.3
Median age (years)	28.6	(X)
16 years and over	23,175	85.8
18 years and over	22,765	84.3
21 years and over	19,264	71.3
62 years and over	2,957	10.9
65 years and over	2,308	8.5
Male population	13,561	50.2
Under 5 years	710	2.6
5 to 9 years	627	2.3
10 to 14 years	529	2.0
15 to 19 years	1,349	5.0
20 to 24 years	2,378	8.8
25 to 29 years	1,649	6.1
30 to 34 years	1,103	4.1
35 to 39 years	800	3.0
40 to 44 years	696	2.6
45 to 49 years	701	2.6
50 to 54 years	744	2.8
55 to 59 years	724	2.7
60 to 64 years	566	2.1
65 to 69 years	353	1.3
70 to 74 years	213	0.8

Exhibit E

Subject	Number	Percent
75 to 79 years	170	0.6
80 to 84 years	131	0.5
85 years and over	118	0.4
Median age (years)	28.4	(X)
16 years and over	11,603	43.0
18 years and over	11,383	42.1
21 years and over	9,744	36.1
62 years and over	1,304	4.8
65 years and over	985	3.6
Female population	13,452	49.8
Under 5 years	704	2.6
5 to 9 years	551	2.0
10 to 14 years	523	1.9
15 to 19 years	1,566	5.8
20 to 24 years	2,242	8.3
25 to 29 years	1,452	5.4
30 to 34 years	962	3.6
35 to 39 years	726	2.7
40 to 44 years	613	2.3
45 to 49 years	680	2.5
50 to 54 years	722	2.7
55 to 59 years	793	2.9
60 to 64 years	595	2.2
65 to 69 years	394	1.5
70 to 74 years	274	1.0
75 to 79 years	229	0.8
80 to 84 years	184	0.7
85 years and over	242	0.9
Median age (years)	28.8	(X)
16 years and over	11,572	42.8
18 years and over	11,382	42.1
21 years and over	9,520	35.2
62 years and over	1,653	6.1
65 years and over	1,323	4.9
RACE		
Total population	27,013	100.0
One Race	25,691	95.1
White	18,826	69.7
Black or African American	1,112	4.1
American Indian and Alaska Native	1,423	5.3
Asian	1,082	4.0
Asian Indian	222	0.8
Chinese	354	1.3
Filipino	53	0.2
Japanese	83	0.3
Korean	91	0.3
Vietnamese	119	0.4
Other Asian [1]	160	0.6
Native Hawaiian and Other Pacific Islander	22	0.1
Native Hawaiian	7	0.0
Guamanian or Chamorro	3	0.0
Samoan	3	0.0
Other Pacific Islander [2]	9	0.0
Some Other Race	3,226	11.9

Subject	Number	Percent
Two or More Races	1,322	4.9
White; American Indian and Alaska Native [3]	248	0.9
White; Asian [3]	219	0.8
White; Black or African American [3]	153	0.6
White; Some Other Race [3]	410	1.5
Race alone or in combination with one or more other races: [4]		
White	19,952	73.9
Black or African American	1,431	5.3
American Indian and Alaska Native	1,806	6.7
Asian	1,390	5.1
Native Hawaiian and Other Pacific Islander	77	0.3
Some Other Race	3,780	14.0
HISPANIC OR LATINO		
Total population	27,013	100.0
Hispanic or Latino (of any race)	9,387	34.7
Mexican	5,852	21.7
Puerto Rican	133	0.5
Cuban	165	0.6
Other Hispanic or Latino [5]	3,237	12.0
Not Hispanic or Latino	17,626	65.3
HISPANIC OR LATINO AND RACE		
Total population	27,013	100.0
Hispanic or Latino	9,387	34.7
White alone	5,131	19.0
Black or African American alone	156	0.6
American Indian and Alaska Native alone	206	0.8
Asian alone	38	0.1
Native Hawaiian and Other Pacific Islander alone	9	0.0
Some Other Race alone	3,150	11.7
Two or More Races	697	2.6
Not Hispanic or Latino	17,626	65.3
White alone	13,695	50.7
Black or African American alone	956	3.5
American Indian and Alaska Native alone	1,217	4.5
Asian alone	1,044	3.9
Native Hawaiian and Other Pacific Islander alone	13	0.0
Some Other Race alone	76	0.3
Two or More Races	625	2.3
RELATIONSHIP		
Total population	27,013	100.0
In households	24,356	90.2
Householder	12,022	44.5
Spouse [6]	2,897	10.7
Child	4,795	17.8
Own child under 18 years	3,706	13.7
Other relatives	1,261	4.7
Under 18 years	408	1.5
65 years and over	105	0.4
Nonrelatives	3,381	12.5
Under 18 years	73	0.3
65 years and over	54	0.2
Unmarried partner	1,237	4.6
In group quarters	2,657	9.8
Institutionalized population	41	0.2
Male	16	0.1

Subject	Number	Percent
Female	25	0.1
Noninstitutionalized population	2,616	9.7
Male	1,238	4.6
Female	1,378	5.1
HOUSEHOLDS BY TYPE		
Total households	12,022	100.0
Family households (families) [7]	4,851	40.4
With own children under 18 years	2,176	18.1
Husband-wife family	2,897	24.1
With own children under 18 years	1,140	9.5
Male householder, no wife present	604	5.0
With own children under 18 years	275	2.3
Female householder, no husband present	1,350	11.2
With own children under 18 years	761	6.3
Nonfamily households [7]	7,171	59.6
Householder living alone	5,056	42.1
Male	2,694	22.4
65 years and over	292	2.4
Female	2,362	19.6
65 years and over	579	4.8
Households with individuals under 18 years	2,421	20.1
Households with individuals 65 years and over	1,831	15.2
Average household size	2.03	(X)
Average family size [7]	2.85	(X)
HOUSING OCCUPANCY		
Total housing units	13,078	100.0
Occupied housing units	12,022	91.9
Vacant housing units	1,056	8.1
For rent	558	4.3
Rented, not occupied	27	0.2
For sale only	93	0.7
Sold, not occupied	30	0.2
For seasonal, recreational, or occasional use	107	0.8
All other vacants	241	1.8
Homeowner vacancy rate (percent) [8]	2.1	(X)
Rental vacancy rate (percent) [9]	6.8	(X)
HOUSING TENURE		
Occupied housing units	12,022	100.0
Owner-occupied housing units	4,408	36.7
Population in owner-occupied housing units	9,655	(X)
Average household size of owner-occupied units	2.19	(X)
Renter-occupied housing units	7,614	63.3
Population in renter-occupied housing units	14,701	(X)
Average household size of renter-occupied units	1.93	(X)

X Not applicable.

[1] Other Asian alone, or two or more Asian categories.

[2] Other Pacific Islander alone, or two or more Native Hawaiian and Other Pacific Islander categories

[3] One of the four most commonly reported multiple-race combinations nationwide in Census 2000

[4] In combination with one or more of the other races listed. The six numbers may add to more than the total population, and the six percentages add to more than 100 percent because individuals may report more than one race.

[5] This category is composed of people whose origins are from the Dominican Republic, Spain, and Spanish-speaking Central or South

American countries. It also includes general origin responses such as "Latino" or "Hispanic."

[6] "Spouse" represents spouse of the householder. It does not reflect all spouses in a household. Responses of "same-sex spouse" were edited during processing to "unmarried partner."

[7] "Family households" consist of a householder and one or more other people related to the householder by birth, marriage, or adoption. They do not include same-sex married couples even if the marriage was performed in a state issuing marriage certificates for same-sex couples. Same-sex couple households are included in the family households category if there is at least one additional person related to the householder by birth or adoption. Same-sex couple households with no relatives of the householder present are tabulated in nonfamily households. "Nonfamily households" consist of people living alone and households which do not have any members related to the householder.

[8] The homeowner vacancy rate is the proportion of the homeowner inventory that is vacant "for sale." It is computed by dividing the total number of vacant units "for sale only" by the sum of owner-occupied units, vacant units that are "for sale only," and vacant units that have been sold but not yet occupied; and then multiplying by 100.

[9] The rental vacancy rate is the proportion of the rental inventory that is vacant "for rent." It is computed by dividing the total number of vacant units "for rent" by the sum of the renter-occupied units, vacant units that are "for rent," and vacant units that have been rented but not yet occupied; and then multiplying by 100.

Source: U.S. Census Bureau, 2010 Census.

STATE OF NEW MEXICO ALBUQUERQUE/BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE TWO PETITIONS FOR A HEARING ON THE MERITS REGARDING AIR QUALITY PERMIT NO. 2037-M1 ISSUED TO SMITH'S FOOD & DRUG CENTERS, INC.

Georgianna E. Peña-Kues, Petitioner, — No. AQCB 2012-1 and

Andy Carrasco, James A. Nelson and Summit Park Neighborhood Association, Petitioners. — No. AQCB 2012-2

FINAL ORDER AND STATEMENT OF REASONS

Pursuant to 20.11.81.18.D (2) NMAC, the Albuquerque/Bernalillo County Air Quality Control Board issues this Final Order in this matter, setting aside the Hearing Officer's recommended decision and reversing the action of the Air Quality Division of the City of Albuquerque Environmental Health Department. As reasons for doing so the Board States the following:

1 The hearing on the merits regarding Petition AQCB 2012-1 and Petition AQCB 2012-2 was held On August 21, 22, and 23, 2012 by the Air Board's Hearing Officer, with members of the Board in attendance.

2. Subsequent to post-hearing procedures conducted in accordance with 20.11.81 NMAC, the Hearing Officer on December 7, 2012 filed with the Board her Hearing Officer's Report, Recommended Findings of Fact and Conclusions of Law, and a proposed Final Order.

3 At the regularly scheduled monthly meeting of the Board held on January 9, 2013, the Board deliberated on the merits of this appeal, in accordance with 20.11.81.18 NMAC. Each Board member verified that he or she had either attended the entire three day hearing or had read

Exhibit F

the transcript for any portion of the hearing which he or she did not attend. Deliberation, including a possible decision on the merits, was listed as an item on the meeting agenda, which was publicly available more than 24 hours before the meeting. The deliberation and decision were conducted in a meeting open to the public, and were transcribed by a court reporter.

4. At the January 9, 2013 meeting, by a majority vote the Board adopted a resolution reversing the Division's April 17th, 2012 issuance of minor source air quality Authority-to-Construct Permit Modification No. 2037-M1 (Resolution 2013-01). In support of the reversal, the resolution stated that "The Air Quality Control Board is required to protect public health and welfare. Increases in throughput increase risks to publish health. The quality-of-life concerns raised by the community could be indirectly related to air quality."

5. The resolution reversing the decision indicated that the Board rejected the Hearing Officer's proposed Findings of Fact, Conclusions of Law, and Recommended Decision. After adopting the resolution, the Board indicated that it did not dispute any of the proposed Findings of Fact. The Hearing Officer's proposed Findings of Fact are hereby adopted in their entirety and incorporated herein by reference, notwithstanding anything in Resolution 2013-01.

6. In further support of the reversal of the permit modification, the Board took exception to the following proposed Conclusions of Law submitted by the Hearing Officer, and directed counsel to amend them as indicated in the Board's deliberations.

a. Conclusion 7 is amended as follows: "The scope of the Board's review is to determine whether the Station "will or will not meet applicable local, state and federal air pollution standards and regulations[.]" Section 74-2-7(L) and to ensure that air pollution is prevented or abated. NMSA, §§ 74-2-5.A"

b. Conclusion 23 is amended as follows: "The Department and the Air Board have no authority over traffic patterns, construction of streets and highways, traffic violations or fire violations within the City municipal boundaries. See NMSA, §§ 74-2-5.1, 74-2-5, & 74-2-7. The Board has an interest in minimizing air pollution caused by vehicles, to the extent allowed by the Air Act and the federal Clean Air Act. See NMSA, § 74-2-5.D."

c. Conclusion 27 is amended as follows: "20.11.41.18(B)(4) NMAC, which allows air quality permit conditions to impose "reasonable restrictions and limitations other than those relating specifically to emission limits or emission rates[,]" ~~does not broaden the scope of the Board's authority to include traffic planning, zoning, or any other matter beyond that which has been delegated to the Board by the NM Act.~~ authorizes permit conditions designed to effectuate the general purpose of the Board's regulations – to prevent or abate air pollution. See NMSA, § 74-2-5.A."

e. Conclusion 28 is amended as follows: "AQD gave ~~proper and~~ legally sufficient public notice regarding the proposed issuance of the original Permit No. 2037. NMSA 1978, § 74-2-7(B)(5); 20.11.41.14 NMAC."

f. Conclusion 31 is amended as follows: "AQD gave ~~proper and~~ legally sufficient public notice regarding the proposed issuance of Permit No. 2037-M1. NMSA 1978, § 74-2-7(B)(5); 20.11.41.14 NMAC."

g. Conclusion 37 is amended as follows: "Any person seeking to construct a new stationary source or modify an existing stationary source must obtain ~~an~~ valid authority-to-construct permit pursuant to 20.11.41NMAC."

h. Conclusion 48 is amended as follows: "Notwithstanding a written statement by Division staff apparently to the contrary, Smith's did not commence a "modification" to the

Station prior to AQD's issuance of Permit No. 2037-M1 as that term is used in the NM Act and in 20.11.41 NMAC. NMSA 1978, § 74-2-2(M); 20.11.41.2(B)(3)(c) and .7(H) NMAC.

i. Conclusion 52 is amended as follows: "Petitioners ~~failed to carry~~ carried their burden of proving that the modification sought by Smith's ~~will~~ would violate any other provision of the NM Act or the Federal Act. NMSA 1978, § 74-2-7(C)(1)(c). Specifically, petitioners demonstrated by a preponderance of the evidence that the increase in throughput allowed by the modification would contribute indirectly to increased air pollution, in violation of the Air Act's mandate to the Board to prevent or abate air pollution. See NMSA 1978, § 74-2-5.A

j. Conclusion 56 is amended as follows: "The operation of the Smith's GDF facility in accordance with Permit #2037 M1 ~~will~~ would not violate ~~any provision of the Air Act, the City Joint Ordinance,~~ 20.11.41 NMAC, Authority to Construct, 20.11.42 NMAC, Operating Permits, 20.11.65 NMAC, Volatile Organic Compounds, 20.11.64 NMAC, Emission Standards for Hazardous Air Pollutants for Stationary Sources, or 40 CFR 63, Subpart CCCCCC, but would increase air pollution and increase risks to public health, in violation of the Air Act's mandate to the Board to prevent or abate air pollution. See NMSA 1978, § 74-2-5.A.

k. Conclusion 57 is deleted.

l. Conclusion 58 is renumbered as 57 and amended as follows: "The Division's decision to issue Permit #2037 M1 was not arbitrary or capricious. ~~was supported by substantial evidence in the record, and was in accordance with the law. Accordingly, Petitioners' requested relief must be denied.~~"

m. A new Conclusion 58 is inserted to read: "The Board's authorization to prevent or abate air pollution permits the Board to consider quality of life concerns that are directly or indirectly related to air quality. See NMSA 1978, § 74-2-2.B (defining air pollution in terms of

injury to human health or animal and plant life or interference with public welfare or reasonable use of property), See also NMSA 1978, § 74-2-5 E (requiring consideration of injury to health, welfare, visibility and property, and the public interest, including the social and economic value of the sources and subjects of air contaminants, when making regulations)."

n. A new Conclusion 59 is inserted to read: "Even if the Division's actions in considering and approving the requested permit modification complied with all regulatory provisions applicable at the time, including but not limited to Part 41 of 20.11 NMAC, the isolation of this decision process from that of other governmental entities resulted in a failure to consider all related factors, and thereby failed to achieve the purposes of the Air Act of protecting public health and welfare."

7. The Hearing Officer's proposed Conclusions of Law are incorporated herein by reference, with the modifications noted in paragraph 6 above.

IT IS THEREFORE ORDERED:

The Hearing Officer's recommended decision is set aside. The City's April 17, 2012 issuance of minor stationary source air quality Authority-to-Construct Permit Modification #2037-M1 to Smith's Food & Drug Center, Inc., is REVERSED.

Dr. Dona Upson, M.D., Chair
Albuquerque-Bernalillo County
Air Quality Control Board

NOTICE OF RIGHT TO REVIEW

Pursuant to Section 74-2-9, NMSA 1978, any person adversely affected by an administrative action of the Board may appeal to the court of appeals. All appeals shall be upon the record made at the hearing and shall be taken to the court of appeals within thirty days following the date notice is given of this action.

ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD

IN THE MATTER OF THE PETITION TO AMEND AIR QUALITY REGULATION 20.11 NMAC TO REQUIRE REVIEW AND CONSIDERATION OF CUMULATIVE IMPACTS

AQCB Petition No. 2014-1

ORDER DENYING HEARING

This matter comes before the Board on a petition filed January 27, 2014 by the Southwest Organizing Project to amend 20.11 NMAC by adopting a proposed Part 72, "Cumulative Effects." Under 20.11.82.18.C NMAC, the Board is required to determine at a public hearing occurring no later than 60 days after receipt of the petition whether or not to hold a public hearing on the proposed regulatory change.

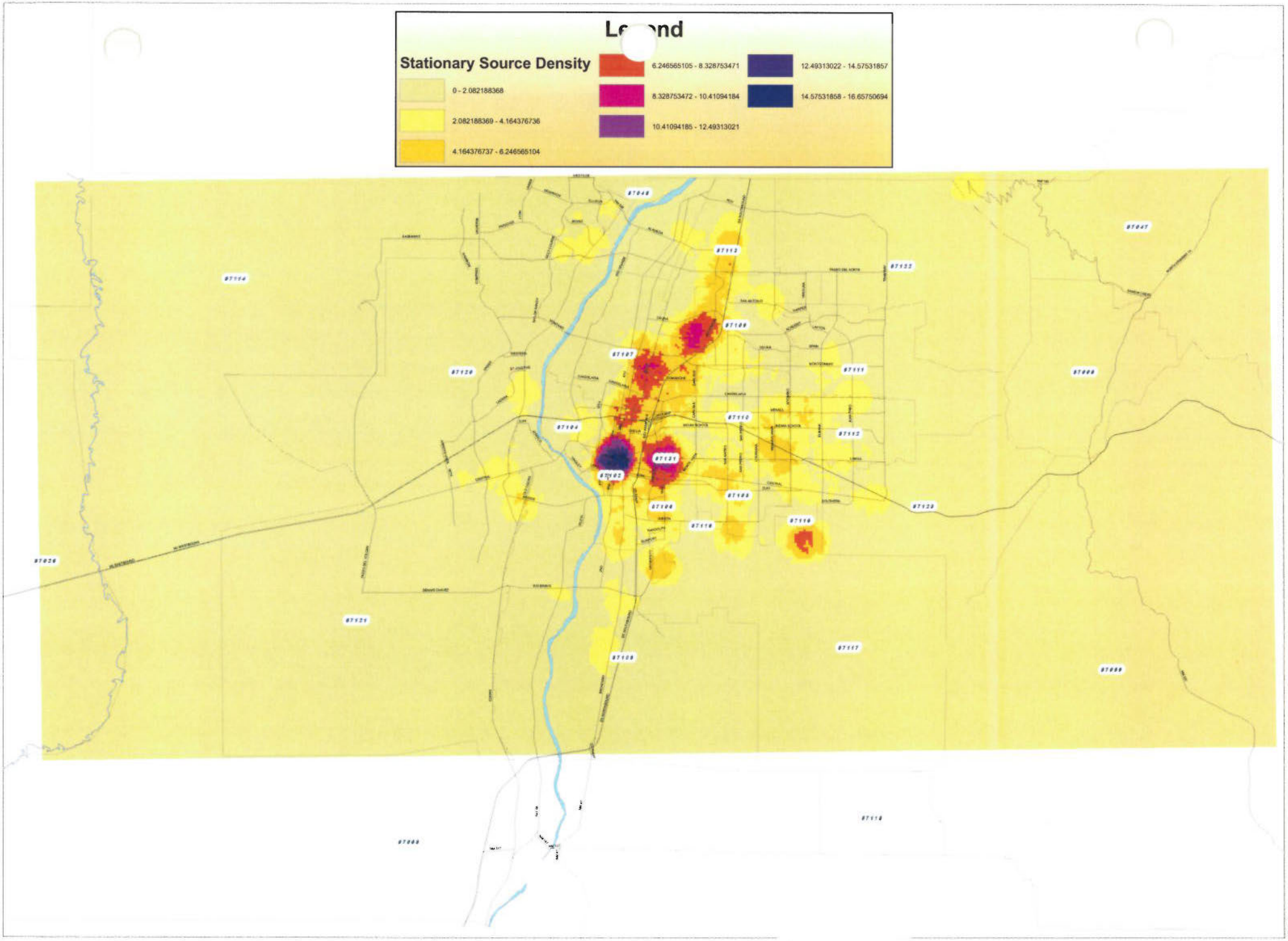
Accordingly, the Board considered the petition at its regular meeting of March 12, 2014. The Board considered written and oral arguments in support of the petition from counsel for Southwest Organizing Project, written and oral arguments in opposition to the petition from counsel from the City of Albuquerque Environmental Health Department and the Association of Commerce and Industry, and written and oral comments in support and opposition from members of the public. After deliberation, the Board decided by a vote of 6-1 to not hold a public hearing on the proposed regulatory changes.

The request for a public hearing in this matter is therefore DENIED.

Dr. Dona Upson
Chair

3/21/14

Exhibit H



This map was produced by the City of Albuquerque Environmental Health Department Air Quality Division using data from the City of Albuquerque and Bernalillo County. The AQD takes no responsibility for the accuracy of these data

Exhibit I

SEPTEMBER 2012

JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES
Health Policy Institute

PLACE MATTERS FOR HEALTH IN BERNALILLO COUNTY:

Ensuring Opportunities for Good Health for All

A Report on Health Inequities in Bernalillo County, New Mexico

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PLACE MATTERS FOR HEALTH IN BERNALILLO COUNTY:

Ensuring Opportunities for Good Health for All

A Report on Health Inequities in Bernalillo County, New Mexico

Prepared by the
Joint Center for Political and Economic Studies

In Conjunction With
the Center on Human Needs, Virginia Commonwealth University
and The Virginia Network for Geospatial Health Research

JOINT CENTER FOR POLITICAL AND ECONOMIC STUDIES
SEPTEMBER 2012

The contents of this report reflect the views of the authors and do not necessarily reflect the views of the Joint Center for Political and Economic Studies or its Board of Governors, the Center on Human Needs at the Virginia Commonwealth University, and the Virginia Network for Geospatial Health Research.

Opinions expressed in Joint Center publications are those of the authors and do not necessarily reflect the views of the staff, officers or governors of the Joint Center for Political and Economic Studies or the organizations that support the Joint Center and its research.

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Joint Center for Political and Economic Studies, Washington, DC 20005

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FOREWORD

Place matters for health in important ways, according to a growing body of research. Differences in neighborhood conditions powerfully predict who is healthy, who is sick, and who lives longer. And because of patterns of residential segregation, these differences are the fundamental causes of health inequities among different racial, ethnic, and socioeconomic groups.

The Joint Center for Political and Economic Studies is pleased to add to the existing knowledge base with this report, "*Place Matters* for Health in Bernalillo County: Ensuring Opportunities for Good Health for All, A Report on Health Inequities in Bernalillo County, New Mexico." The report, supported by a grant from the National Institute on Minority Health and Health Disparities (NIMHD) of the National Institutes of Health, provides a comprehensive analysis of the range of social, economic, and environmental conditions in Bernalillo County and documents their relationship to the health status of the county's residents.

The study finds that social, economic, and environmental conditions in low-income and non-white neighborhoods make it more difficult for people in these neighborhoods to live healthy lives.

The overall pattern in this report – and those of others that the Joint Center has conducted with other Place Matters communities – suggests that we need to tackle the structures and systems that create and perpetuate inequality to fully close racial and ethnic health gaps. Accordingly, because the Joint Center seeks not only to document these inequities, we are committed to helping remedy them.

Through our Place Matters initiative, which is generously supported by the W.K. Kellogg Foundation, we are working with leaders in 24 communities around the country to identify and address social, economic, and environmental conditions that shape health. We look forward to continuing to work with leaders in Bernalillo County and other communities to ensure that every child, regardless of their race, ethnicity, or place of residence, can enjoy the opportunity to live a healthy, safe, and productive life.

Ralph B. Everett
President and CEO
Joint Center for Political and Economic Studies

EXECUTIVE SUMMARY

Place matters for health in important ways. Differences in neighborhood conditions powerfully predict who is healthy, who is sick, and who lives longer. And because of patterns of residential segregation, these differences in neighborhood conditions are the fundamental causes of health inequities found among different racial, ethnic, and socioeconomic groups.

This study examined the relationships between place, ethnicity, and health in Bernalillo County, N.M., and found that:

- Life expectancy in the county varies by more than 22 years across census tracts.
- The percentage of low-birth-weight infants varies by a factor of 12 across census tracts.
- Community-level health risks, which are measured by factors such as educational attainment, violent crime rates, foreclosure rates, unemployment rates, and the percentage of overcrowded households, vary widely across census tracts.
- A clear relationship exists between community risk index scores and health outcomes; when a neighborhood's community risk index is low, life expectancy is high.
- Nonwhite and low-income census tracts, such as those in the downtown area, face a higher concentration of environmental health hazards such as air pollution and toxic industrial wastes than do whiter and higher-income census tracts;
- Life expectancy is an average of 5.2 years shorter in census tracts with the greatest concentration of environmental hazards.

Although researchers cannot say with certainty that these neighborhood conditions *cause* poor health, the overall pattern suggests that the clustering of social, economic, and environmental health risks in low-income and nonwhite neighborhoods makes it more difficult for people in these communities to live healthy lives.

These patterns need not and should not continue as they are. Policy makers should consider steps to reduce the concentration of health risks in vulnerable communities and support health-enhancing resources. For example, the use of Health Impact Assessments as well as the environmental assessments required under the Consolidated Environmental Review Act can help to ensure that low-income and Hispanic communities are not disproportionately hurt by environmental degradation and policies or practices that cluster health risks.

There is a strong moral imperative to enact policies designed to improve health for all. But there is also a powerful economic incentive. A study released by the Joint Center for Political and Economic Studies in 2009 found that the direct medical costs associated with health inequities among African Americans, Hispanics, and Asian Americans approached $230 billion between 2003 and 2006. When the indirect costs of health inequities, such as lowered productivity and lost tax revenue resulting from illness and premature death, are added to the equation, the total cost of health inequities between 2003 and 2006 exceeded $1.24 trillion.[1] For both moral and economic reasons, now is the time for action to address neighborhood conditions that shape health outcomes.

INTRODUCTION

Place matters for health, and it may be even more important than access to health care or health-related behaviors. This is the startling conclusion of a large and growing body of public health research, including this report. This research demonstrates that neighborhood conditions have powerful direct and indirect influences on health, often operating in ways over which individuals have little control. The research further indicates that unhealthy neighborhood conditions tend to cluster adjacent to one another, and most often in minority and low-income neighborhoods. According to many leading scholars, place is a root cause of health inequities between racial, ethnic, and socioeconomic groups.

In Bernalillo County, N.M., people living in neighborhoods characterized by poor housing, inadequate schools, polluted environments, insufficient transportation, and lack of safety typically have significantly poorer health than people living in neighborhoods that don't suffer from these conditions. They also have higher rates of poverty and lower life expectancy.

Data on a national scale indicate that neighborhoods shape the health of individuals in many ways;

- Neighborhood conditions such as the level of crime and violence not only increase the risk of injury and death, but they also increase the stress levels of those who are not directly victimized, which in turn can lead to premature aging and other stress-related illnesses.
- Neighborhoods can also directly influence health through environmental degradation and exposure to air, water, and soil hazards—hazards such as lead paint in homes, which can lead to permanent cognitive and behavioral impairment in young children, or molds, rodents, and insects, which are associated with asthma and other health problems. Children are also at greater risk for asthma if they live in communities with high levels of air pollution.
- Neighborhood characteristics shape health indirectly. For example, research has shown that when fresh produce and healthy foods are readily available, people are more likely to report eating a healthy diet. On the other hand, when low-cost but nutritionally poor fast food is one of the few options close at hand, neighborhoods experience higher rates of obesity and related illnesses.
- The likelihood that neighborhood residents will be able to exercise or enjoy an active lifestyle is powerfully shaped by community characteristics. In neighborhoods that aren't safe or where residents are fearful and distrustful, people find it harder to bike, jog, or play outdoor sports.

Other factors that we don't typically think of as affecting people's health, such as the quality of schools, also play a role. The best predictor of a person's health is his or her educational level. In other words, the better educated people are, the more likely they are to be healthy. But too many children in the United States live in poor neighborhoods and are stuck in schools that have high dropout rates, outdated textbooks, crumbling facilities, inadequately trained teachers, and a woeful lack of resources. As a result, these children are more likely to receive an inadequate education, are less prepared for many of life's challenges, and are at greater risk of poor health.

The quality of transportation also affects a community's health. Good public transportation can minimize environmental health threats while at the same time encouraging economic growth by linking people with jobs, goods, and services.

Taken together, these neighborhood factors—housing, schools, transportation, environmental quality, public safety—often are referred to as social determinants of health.

Despite these problems, the communities most disadvantaged from a health standpoint are also the same communities where the greatest gains can be made to improve the community's health. In doing so, we can also improve the health of surrounding communities. This report finds that by working together to reduce the concentration of health risks and increasing health-enhancing resources, we can give all residents of Bernalillo County a better chance to live healthy lives.

Part I of this report provides background information about Bernalillo County, including population data, health outcomes, socioeconomic conditions, community characteristics, and a community risk index. Part II examines the geographic relationship between the community risk index and life expectancy. Part III examines the environmental hazards in the county and the geographic relationship between environmental hazards, health outcomes, and life expectancy. Part IV presents conclusions about the role of community risk factors and environmental hazards in understanding disparities in health outcomes in Bernalillo County. For a full explanation of data sources and analytic methods, please access the Virginia Commonwealth University Center on Human Needs website, at http://www.humanneeds.vcu.edu/.

Table 1. Demographic Characteristics of Bernalillo County, State of New Mexico, and United States

	Bernalillo	New Mexico	United States
Population (2009)[(a)]	642, 527	2,009,671	307,006,556
Population Density (2000)[(b)]	477.4	15.0	79.6
Race/Ethnicity (2009)[(a)]			
Hispanic	46.7%	45.6%	15.8%
White	42.0%	41.0%	64.9%
Black	2.7%	1.9%	12.1%
Other	4.3%	2.9%	6.6%
American Indian and Alaska Native Alone	4.2%	8.6%	0.6%
Foreign Born	10.4%	9.8%	12.5%

(a) Source: U.S. Census Bureau, 2009 American Community Survey
(b) Source: 2009 Geolytics Projection

I. Bernalillo County: Where People Live

Bernalillo County Population

Bernalillo County, located in central New Mexico, had a population of 642,527 in 2009,[2] almost one third of the state's population. It is the most densely populated county in New Mexico, with 477 people per square mile. The city of Albuquerque, with a population of 529,219, accounts for more than 80% of the county's population. The city has an average density of 1,237 people per square mile, with a high of over 12,000.

As detailed in Table 1, Hispanics are the largest ethnic group in the county and make up a significantly larger percentage of the population than the national average (46.7% compared to 15.8% nationally). The majority of the Hispanic population in Bernalillo County is U.S.-born. According to the U.S. Census Bureau, the foreign-born population in the county is similar to that of the nation (10.4% compared to 12.5% nationally).

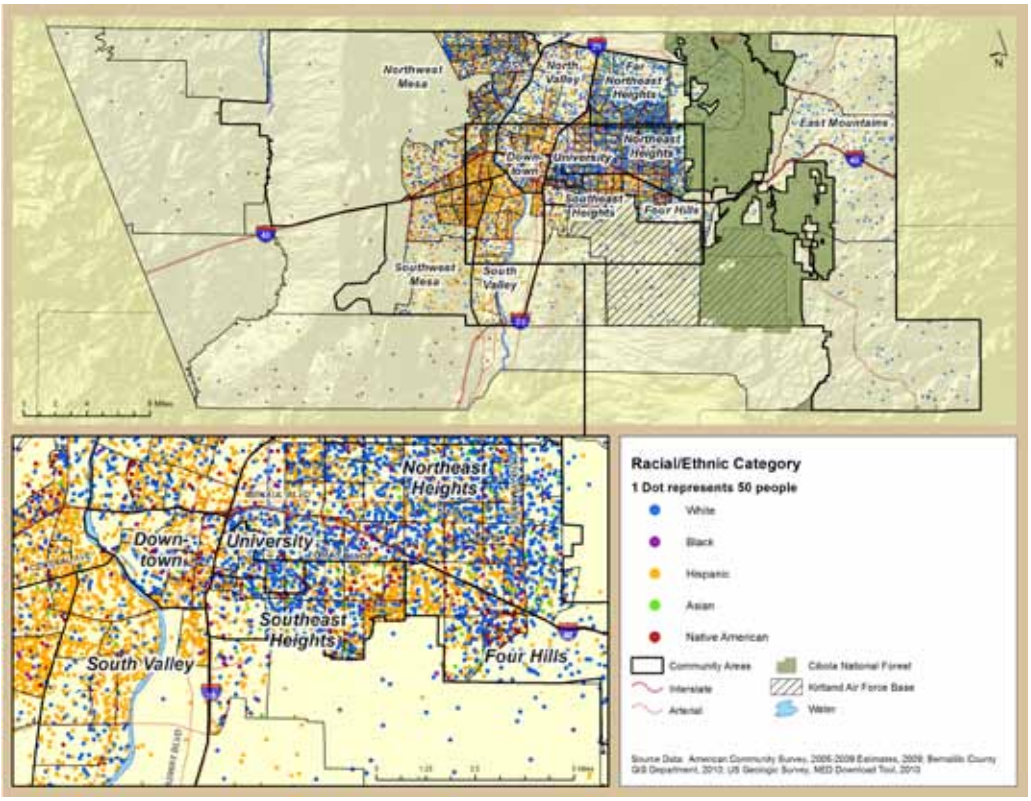
As in many areas of the United States, where residential patterns reflect historical racial and ethnic segregation and restrictions in the housing market,[3,4,5] there are notable differences in the ethnic and racial composition of neighborhoods across Bernalillo County. Map 1 shows the racial and ethnic composition of the census tracts in central Bernalillo County. Census tracts with the highest concentrations of Hispanic residents are in South Valley and Southwest Mesa; there, the majority of census tracts are 75% to over 90% Hispanic. Downtown also has a high percentage of Hispanic residents. A number of census tracts in the Far Northeast Heights/Foothills areas are over 75% white. One way to assess the racial/ethnic mix of an area is to use the Diversity Index, a measure of the likelihood that two people randomly chosen from an area will be of a different race or ethnicity. The higher the value, the less segregated the area. While the index for Bernalillo as a whole is 61.7%, the value ranges from 13.7% (low diversity) to 80.6% (high diversity). Based on the Diversity Index, the Northwest Mesa, North Valley, Southeast Heights, Northeast Heights, and University are the most diverse areas.

Map 2 highlights census tracts within Bernalillo County in which the percentage of foreign-born residents has been higher than the county average over several decades. As indicated by dark brown shading on Map 2, foreign-born residents have been more concentrated in Southeast Heights and Downtown since the 1970s.

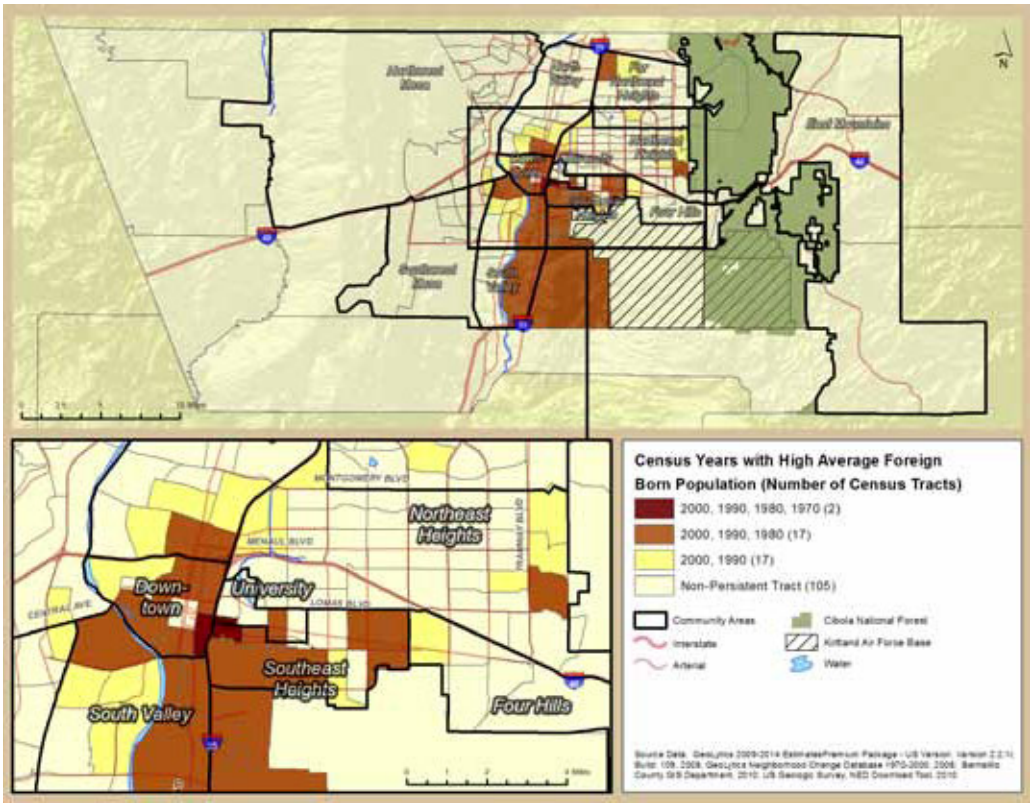
Socioeconomic Conditions

Like other communities, socioeconomic conditions in Bernalillo County have an important and often unrecognized influence on health status. Education, for example, is a pathway to higher income and net worth, which in turn have strong influences on health status and access to health care. National statistics indicate that adults (age 25 and older) who lack a high school education or equivalent are three times more likely to die before age 65 than those with a college education.[6] They are also more likely to engage in unhealthy behaviors such as cigarette smoking.[7]

Map 1: Racial/Ethnic Distribution by Census Tract, Bernalillo County, N.M. (2005-2009)



Map 2: Persistent Foreign Born by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: The category of "persistent foreign born" includes census tracts that, for two or more decennial census periods, had a percentage of foreign-born population equal to or greater than the overall Bernalillo County average (5%) for the time period from 1970 to 2000.

Table 2. Socioeconomic Characteristics of Bernalillo County, State of New Mexico and United States

	Bernalillo	New Mexico	United States
Educational Attainment			
Less than High School (K-12)	13.5%	17.2%	14.7%
High School Only	24.3%	26.4%	28.5%
Some College	30.7%	31.1%	28.9%
Bachelor's Degree or Higher	31.5%	25.3%	27.9%
Poverty Rate			
Below 0.50 of Poverty Rate	7.3%	7.5%	6.3%
.50-.99 of Poverty Rate	8.6%	10.5%	8.1%
1.00-1.99 of Poverty Rate	19.5%	22.3%	18.4%
2.00 and Above of Poverty Rate	64.6%	59.7%	67.3%

Source: U.S. Census Bureau, 2009 American Community Survey

Educational attainment in Bernalillo County, where 86.5% of adults age 25 and over have completed high school, compares favorably with that of New Mexico (82.8%) and the U.S. (85.3%) (Table 2). However, educational attainment varies greatly by race and ethnicity (Figure 1). According to 2009 data from the American Community Survey, over 25% of the county's Hispanic adults have not completed high school, and almost 60% have no education beyond high school. Of the foreign-born residents, 32.3% do not have a high school degree and 54.5% do not have an education beyond high school. While educational outcomes are slightly better for Native American residents, nearly 40% have no education past high school.

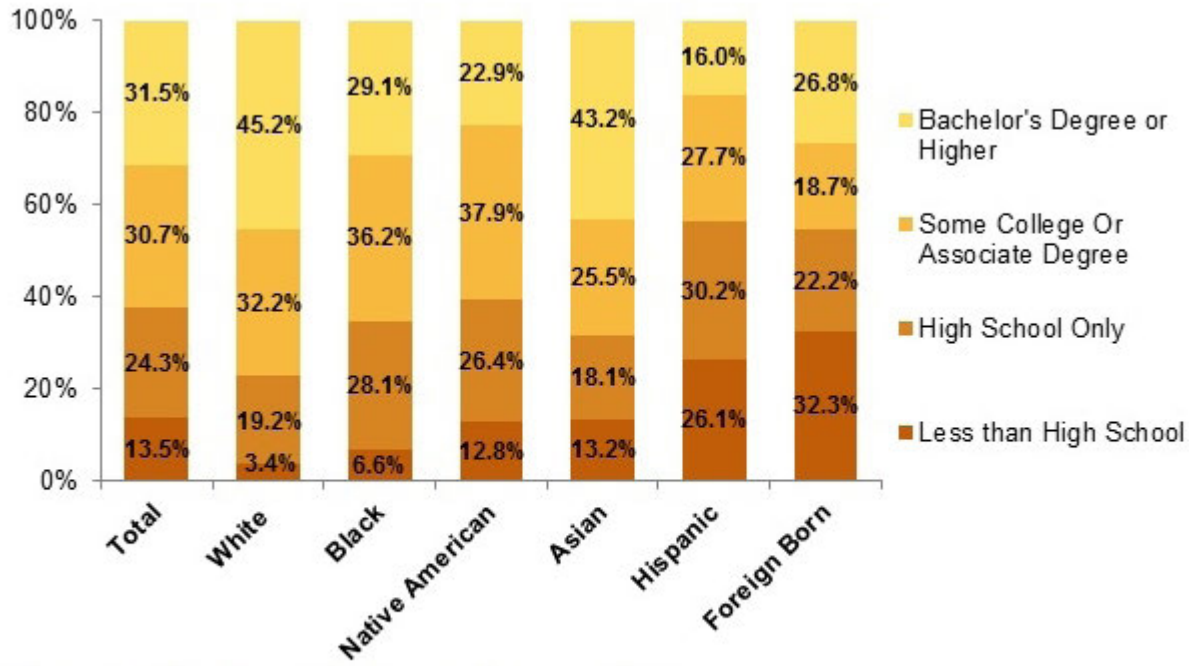
The percentage of adults in Bernalillo County who have graduated from high school varies even more by neighborhood. Census tracts in which 40% or more of the adult population have not completed high school are in Downtown, South Valley, Southeast Heights, North Valley, and Native American lands in the northwest and south (Map 3).

Poverty also has a strong influence on health: nationally, families living below the federal poverty level are 3.6 times more likely to report fair or poor health than those with incomes at least twice the poverty level.[8] Experiencing poverty during childhood influences a child's cognitive, emotional, behavioral, and physical development. For example, poor children have a higher rate of lead poisoning than non-poor children, have a higher prevalence of developmental delay, and are more likely to be reported as having long-term emotional or behavioral problems. Childhood poverty also decreases a child's likelihood of high school graduation.[9,10] Poverty rates are highest in Native American lands bordering the western and southern portions of Bernalillo County (Map 4). In 2009 in these areas, as well as in a few census tracts in the Southeast Heights and South Valley, over 55% of the population had incomes below 150% of the poverty level.

Persistent poverty, defined as having at least 20% of the population with incomes under 100% of the federal poverty level for at least two consecutive census periods, is shown in Map 5. Areas of persistent poverty since the 1970s are shown in dark brown. These include six census tracts in South Valley, Southeast Heights, Downtown, and North Valley. Areas of persistent poverty since the 1980s are shown in lighter brown. These include eight census tracts in Downtown, North Valley, South Valley, and Southeast Heights.

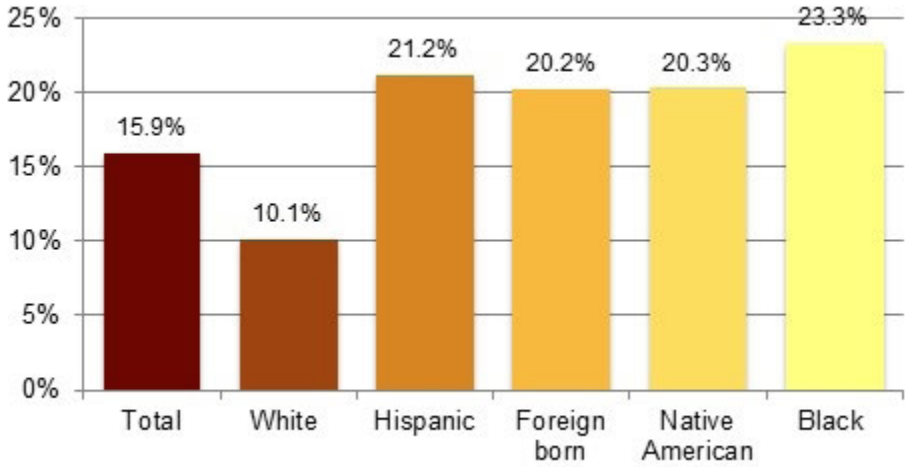
Poverty rates in Bernalillo County are somewhat higher than national rates. In 2009, about 16% of households in Bernalillo County had incomes below 100% of the federal poverty level ($22,000 or less for a family of four), compared to 14% nationwide. Like educational attainment, poverty rates vary with race and ethnicity. According to American Community Survey data for 2009, white residents are least likely to live in poverty (10.1%) compared to black, Native American, Hispanic, and foreign-born residents (23.3%, 20.3%, 21.2%, and 20.2% respectively; see Figure 2).

Figure 1: Educational Attainment in Bernalillo County, N.M.



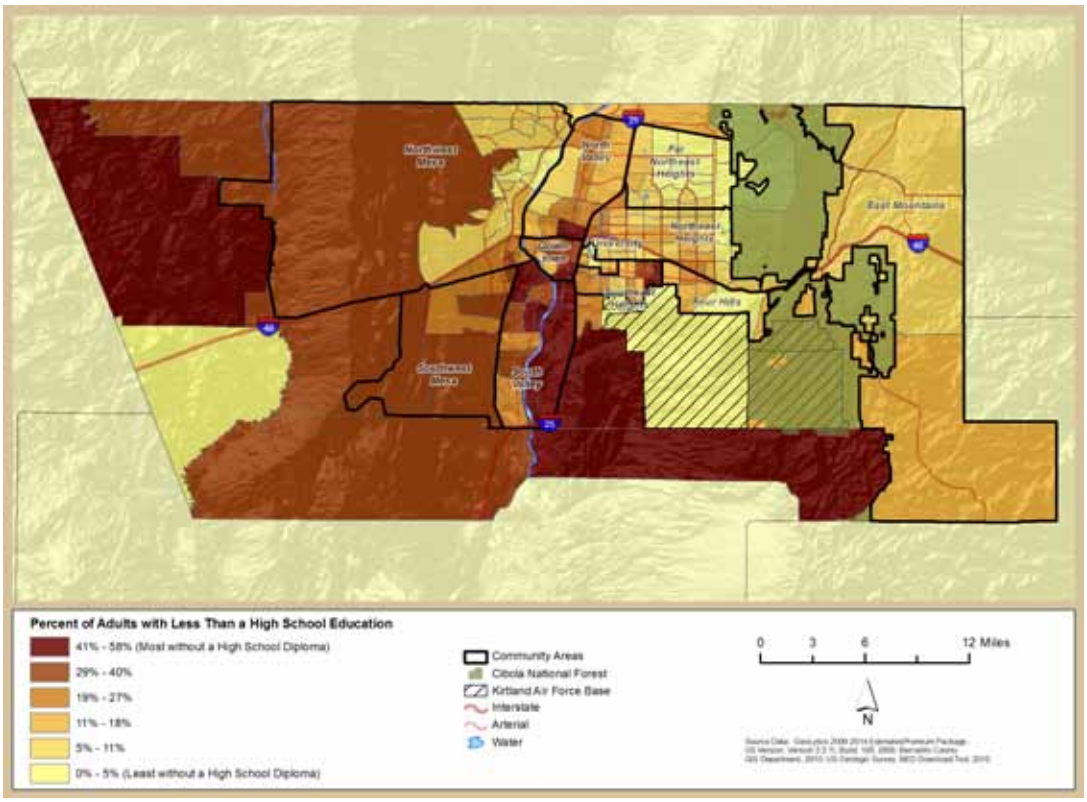
Source: U.S. Census Bureau 2009 American Community Survey
Notes: : White includes Non-Hispanic population only; all other racial categories include Hispanic and Non-Hispanic population.

Figure 2: Individuals in Poverty in Bernalillo County, N.M., by Race, Ethnicity, and Nativity



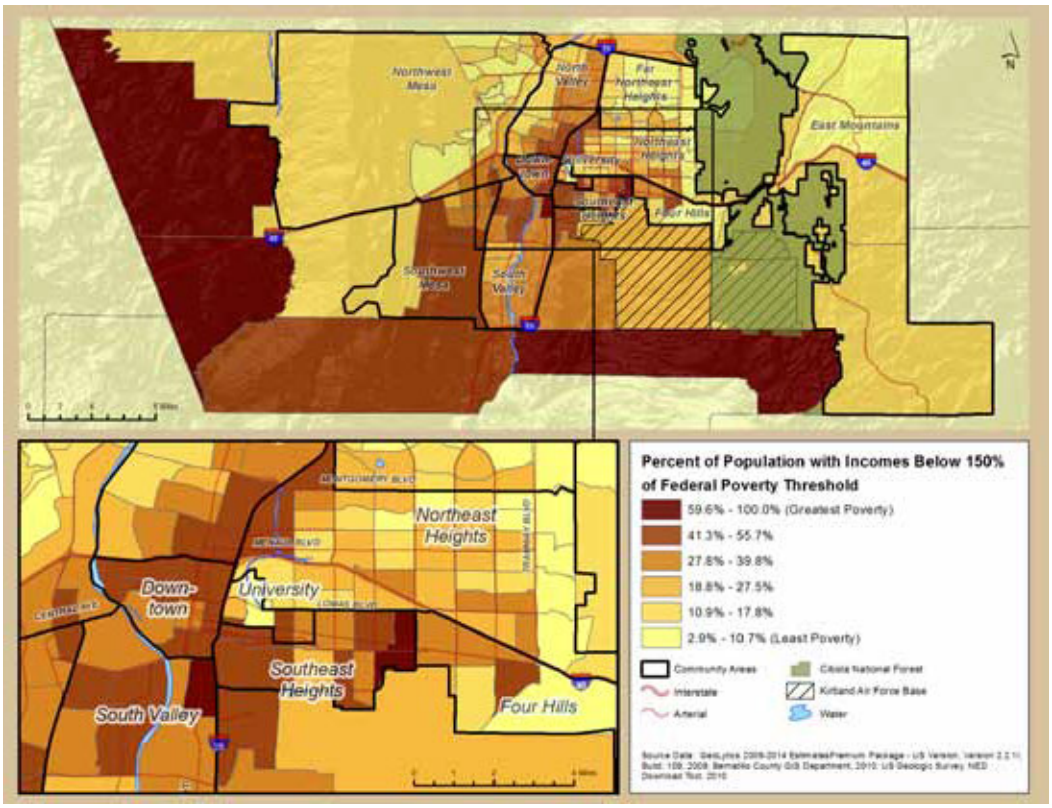
Source: U.S. Census Bureau, 2009 American Community Survey

Map 3: Adults With Less Than High School Education by Census Tract, Bernalillo County, N.M. (2009)

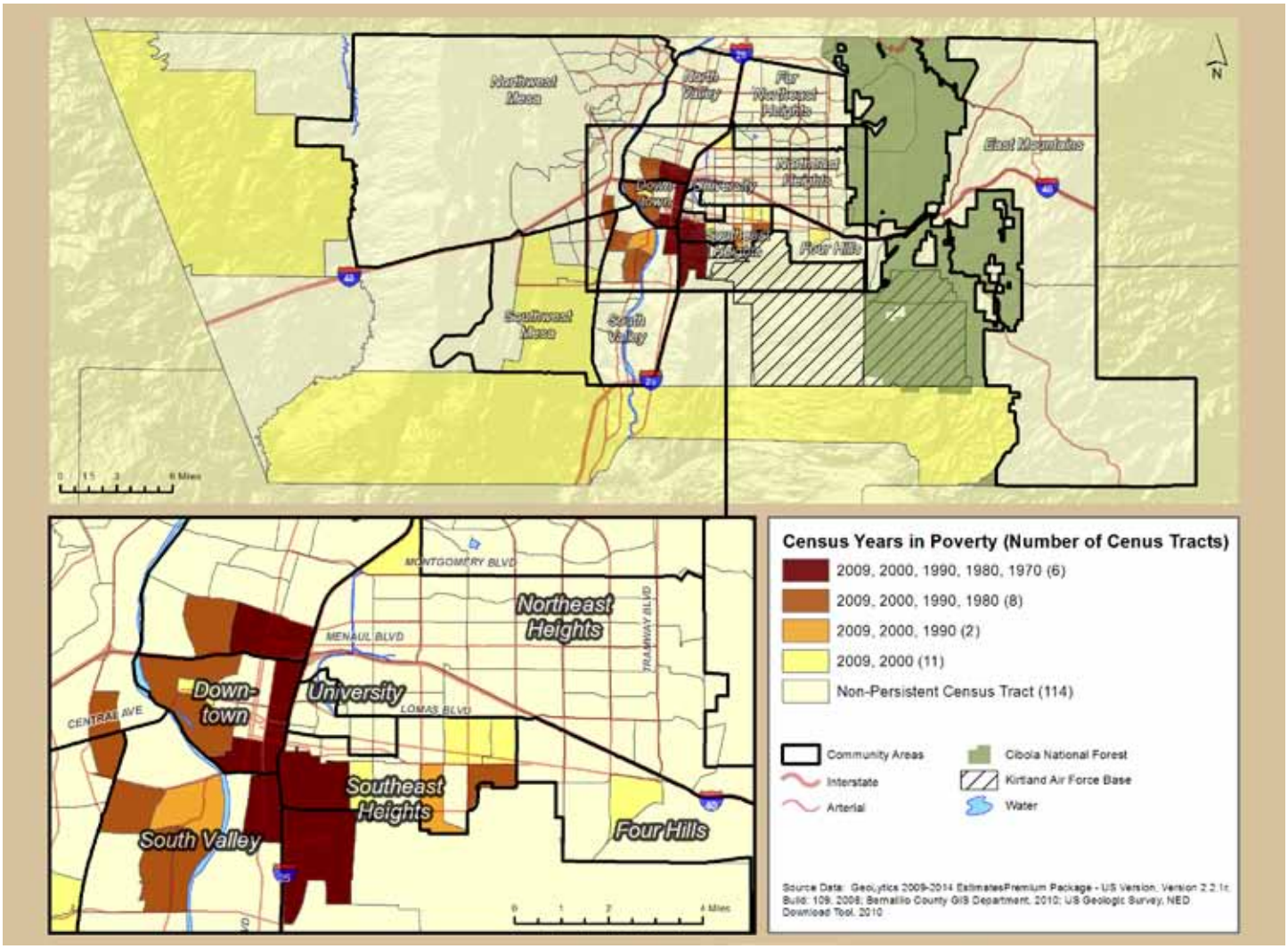


Note: Adults age 25 or older without a high school diploma or equivalent.

Map 4: Poverty by Census Tract, Bernalillo County, N.M. (2009)



Map 5: Persistent Poverty by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: The category of "persistent poverty" includes census tracts with a poverty rate of at least 20% for at least two consecutive census periods, looking retrospectively from 2009. This concept is based on the U.S. Department of Agriculture's research on persistent poverty counties.

II. The Health and Life Expectancy of the People of Bernalillo County

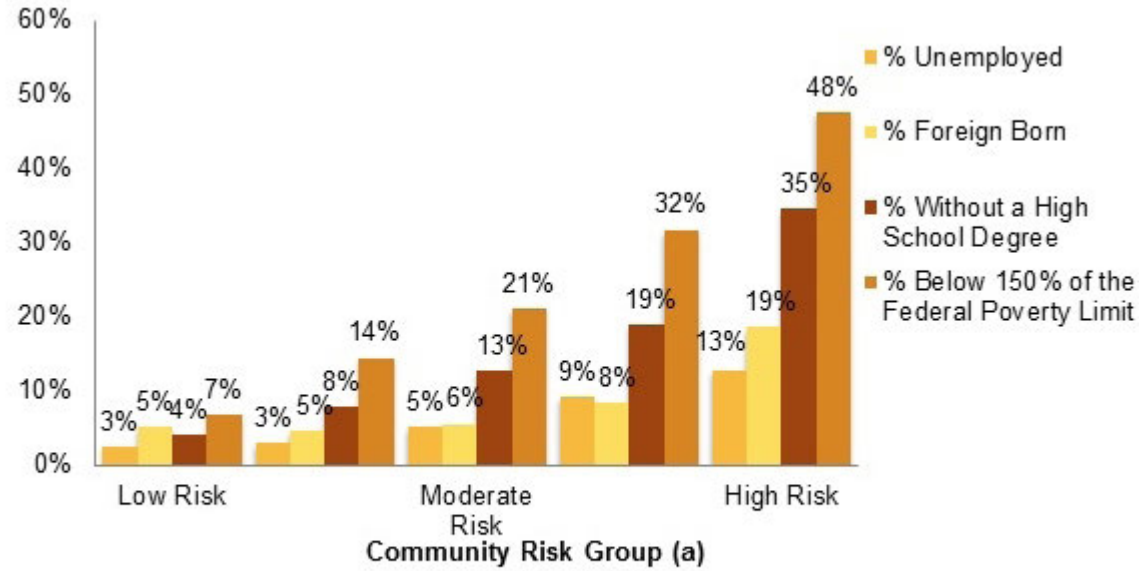
Housing Conditions

Neighborhood housing conditions have a significant impact on the community environment. Foreclosure rates in 2010 were lower in Albuquerque (one in 475 housing units) than in the nation (one in 381 units), but higher than the New Mexico rates (one in 753 units). Foreclosure rates during 2006-2008 were highest in the Downtown area, Northeast Heights, and Southwest Mesa.

The percent of vacant housing units for Bernalillo County is lower than both the state and national average, but varies greatly within the county. Census tracts with the highest rates of vacant housing, above 15%, include the Southeast Heights and the Downtown and University areas.

According to American Community Survey data for 2009, overcrowding in Albuquerque, generally defined by the survey as more than one person per room, is lower than the rate in New Mexico (2.4% and 3.6% respectively), and lower than the national rate (3.0%). Overcrowding varies by neighborhood in Bernalillo County, from census tracts with no significant overcrowding to census tracts with a rate of over 15%. Census tracts that have higher-than-average overcrowding rates include Northeast Heights, South Valley, and the Downtown and University areas.

Figure 3: Community Risk Index Groups, Bernalillo County, N.M.



(a) Community Risk Index quintiles; Source: Geolytic 2009 Projections, Albuquerque Public Schools; Research, Development and Accountability Department 2004-2006, RealtyTrac via the Federal Reserve, U.S. Census Bureau, Census 2000, Institute for Social Research 2004-2006

Community Risk Index

To sum up socioeconomic and neighborhood risks, we developed an index for comparing Bernalillo County neighborhoods. We statistically combined a set of measures into a single "community risk" index (CRI) for each census tract (see the Center on Human Needs website at http://www.humanneeds.vcu.edu/ for details). The CRI was calculated based on variables of interest to the Bernalillo County Place Matters Team and has a basis in social determinants of health literature. These variables include: average educational attainment, average standardized test scores, the violent crime rate, the foreclosure rate, the unemployment rate, vacant houses, households with no automobile, and overcrowded households. The higher the CRI score, the higher the risk associated with socioeconomic and community conditions. Use of this index enables us to examine the relationship between multiple community socioeconomic risks and health outcomes simultaneously.

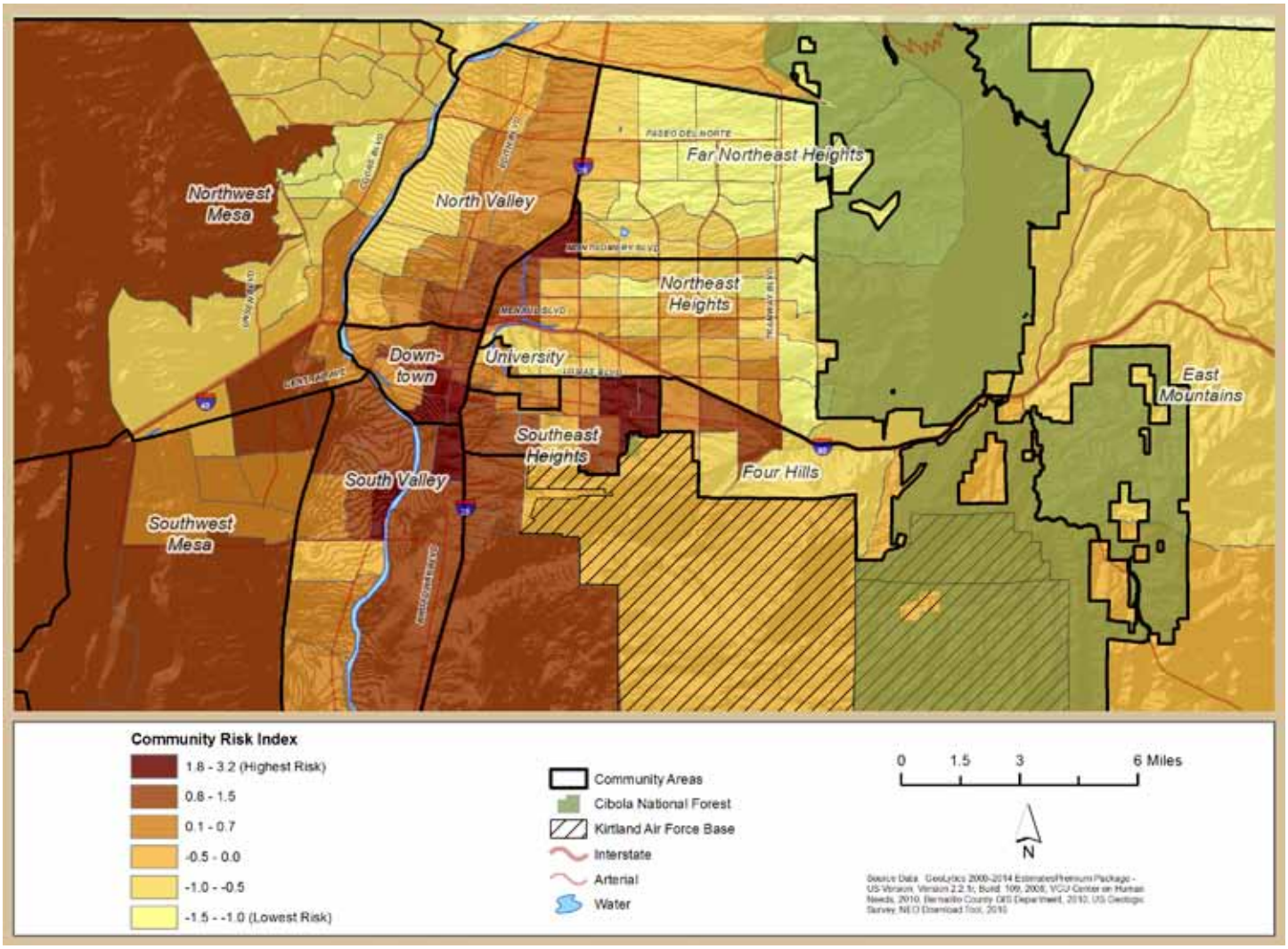
Figure 3 illustrates the relationship between the CRI and selected socioeconomic conditions. Census-tract-level scores on the CRI were divided into quintiles (five equal-size groups), which are displayed from lowest to highest. In the quintile with the lowest CRI values (lowest risk), the unemployment rate is 3%, 7% have an income below 150% of the federal poverty level, and 4% of adults lack a high school diploma. In the quintile with the highest CRI values (highest risk) 13% are unemployed, 48% have an income below 150% of the federal poverty level, and 35% of adults lack a high school diploma.

Map 6 examines geographic variation in the CRI, with high-risk areas shaded in dark brown, including Southeast Heights, Downtown, South Valley, and Northeast Heights. These are neighborhoods in which residents may be most vulnerable to poor health outcomes that are influenced by unfavorable socioeconomic conditions and community characteristics, such as high rates of poverty, crime, unemployment, low educational attainment, and poor housing conditions.

Health Status of Community Residents

Overall indicators of the health status of Bernalillo County are mixed. According to the County Health Rankings released in 2010 by the Robert Wood Johnson Foundation, Bernalillo County ranked the seventh highest in health status among the 33 counties in New Mexico; however, it should be noted that New Mexico ranked very low in morbidity, 10th lowest in the U.S.[11] Based on health outcome data from the New Mexico Department of Health for years 2001–2005, the average life expectancy in Bernalillo County (80.3 years) is slightly higher than for the state of New Mexico (77.3) or the United States (77.9). Similarly, the death rate in Bernalillo (783.6/100,000 population) is somewhat higher than the rate in the state of New Mexico (761.2) and lower than in the United States (803.6). On the other hand, rates of infant mortality and low birth weight in Bernalillo County are similar to those for New Mexico and the United States (Table 3).

Map 6: Community Risk Index by Census Tract, Bernalillo County, N.M. (2004-2009)



Note: The CRI is a composite index that is based on the following indicators: percentage of population with less than a high school education, average standardized test scores, the violent crime rate, the foreclosure rate, the unemployment rate, percentage of houses that were vacant, and percentage of households with no automobile or with overcrowding. Higher scores represent the highest levels of risk.

Given the significant differences by neighborhood in community risk factors that may affect health in Bernalillo County, it follows that health outcomes, including life expectancy, mortality, and rate of low-birth-weight births, vary sharply by neighborhood as well.

Life expectancy—how long a person born today can expect to live—varies by several decades across Bernalillo County neighborhoods. Based on vital statistics data from the New Mexico Department of Health for years 2001 to 2005, the average life expectancy for the county as a whole is 80.3 years. However, in some census tracts in the Downtown area and the Southeast Heights, a person born today can expect to live to only about 70 years or less. In other places in Bernalillo County, a person born today might expect to live into his/her nineties.

Map 7 illustrates this variation, with census tracts with the lowest life expectancies denoted in dark brown and census tracts with the highest life expectancies denoted by light yellow.

Low birth weight (defined as a weight of less than 5.5 pounds at birth) also varies sharply by neighborhood. Based on data from the New Mexico Department of Health for years 2001 to 2005, the average percent of low-birth-weight births for Bernalillo County is 8.5%. Geographic patterns for low birth weight are shown in Map 8. Darker brown areas on the map represent areas of high rates of low birth weight. Census tracts with the highest low-birth-weight rates are located in the Northeast Heights and University areas.

Map 7: Life Expectancy by Census Tract, Bernalillo County, N.M. (2001-2005)

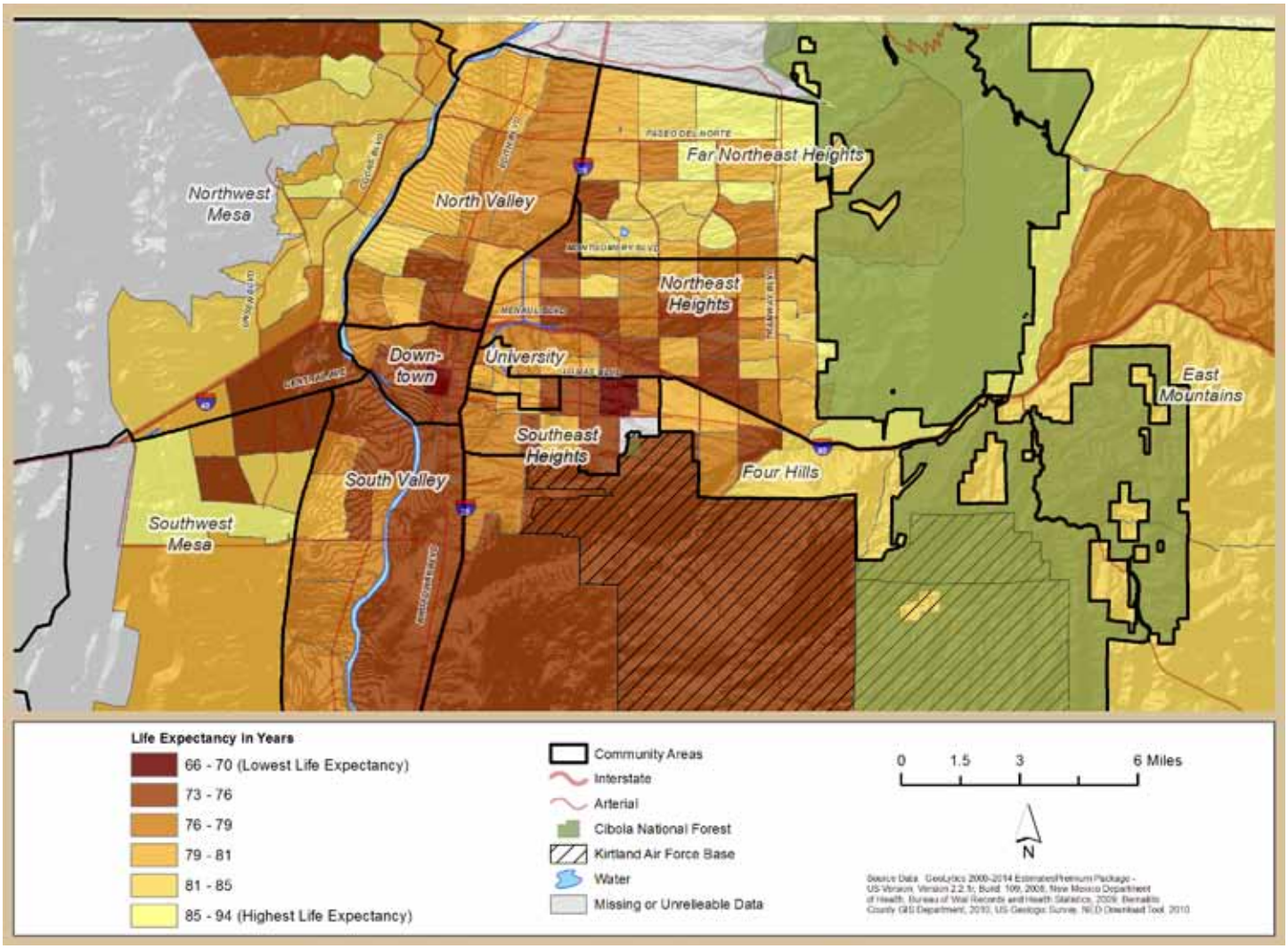
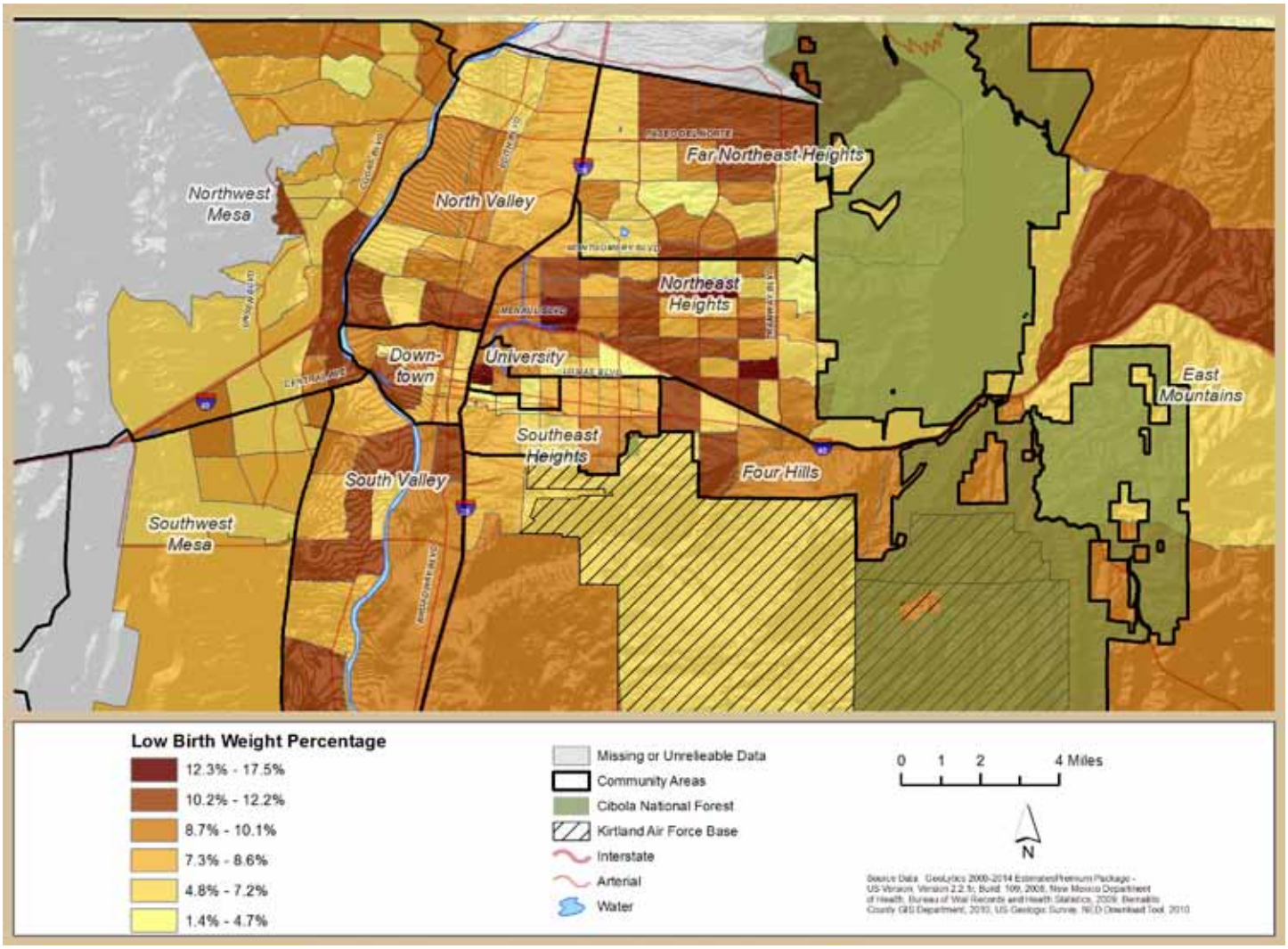


Table 3. Health Outcomes in Bernalillo County, State of New Mexico, and United States

	Bernalillo	New Mexico	United States
Deaths			
Life Expectancy in Years	80.3 (a)	77.3 (b)	77.9 (b)
Death Rate/100,000 Population	783.6 (a)	761.2 (b)	803.6 (b)
Births			
Low Birth Weight	8.4% (a)	8.5% (b)	8.2% (b)
Infant Mortality/1,000 Births	6.3 (a)	6.1 (c)	6.8 (c)

(a) New Mexico Department of Health, Bureau of Vital Records and Health Statistics, 2001-2005.
(b) Centers for Disease Control and Prevention, National Center for Health Statistics, 2005.
(c) National Vital Statistics Report, Vol 58, No. 17, April 30, 2010.
Available at http://www.cdc.gov/nchs/data/nvsr58/nvsr58_17.pdf.

Map 8: Low Birth Weight by Census Tract, Bernalillo County, N.M. (2001-2005)



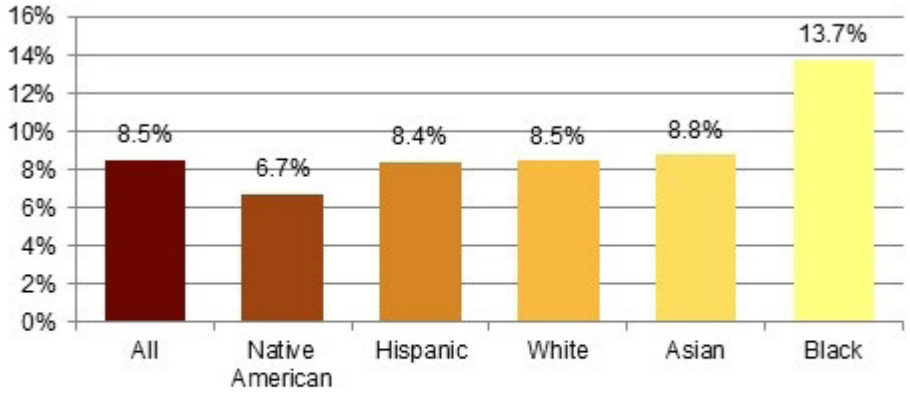
Note: Low birth weight is defined as a weight of less than 2500 grams, or about 5.5 pounds at birth. Rates in the Cibola National Forest may be unreliable due to small population size.

Figure 4 shows that the average low-birth-weight rate is nearly identical for Hispanics and whites, the two largest racial/ethnic groups in Bernalillo County. Thus, variability in low-birth-weight rates in Bernalillo County is likely to have less to do with racial/ethnic composition of neighborhoods and more to do with other community and individual risks. However, it should be noted that the percentage of low-birth-weight African American babies in the county is significantly higher than that for other population groups. This may be due to the relatively small African American population in the county, or it may be related to the stress of racism, an outcome that has been suggested by other research in other locations.

Community Risk and Health Outcomes

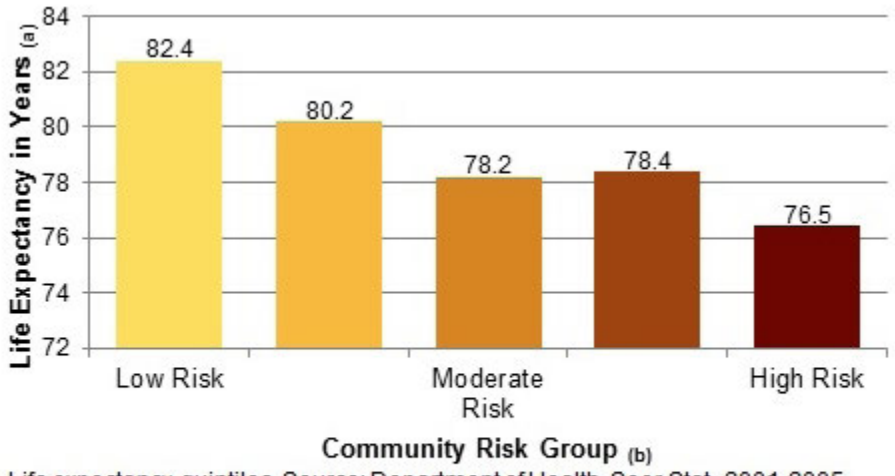
Although low-birth-weight rates often vary with socioeconomic characteristics, in Bernalillo County there does not appear to be any significant relationship between low-birth-weight rates and community or household-level characteristics measured at the census tract level. We may have insufficient data to uncover this relationship in Bernalillo County. However, census tracts in Bernalillo County with the highest level of community risk have lower average life expectancy (Figure 5). A variety of factors may affect life expectancy, including social, environmental and behavioral factors—some of which are themselves associated with the indicators measured by the community risk index. To some degree, the observed association between our index and life expectancy may represent the

Figure 4: Percent Low-Birth-Weight Births by Race/Ethnicity in Bernalillo County, N.M.



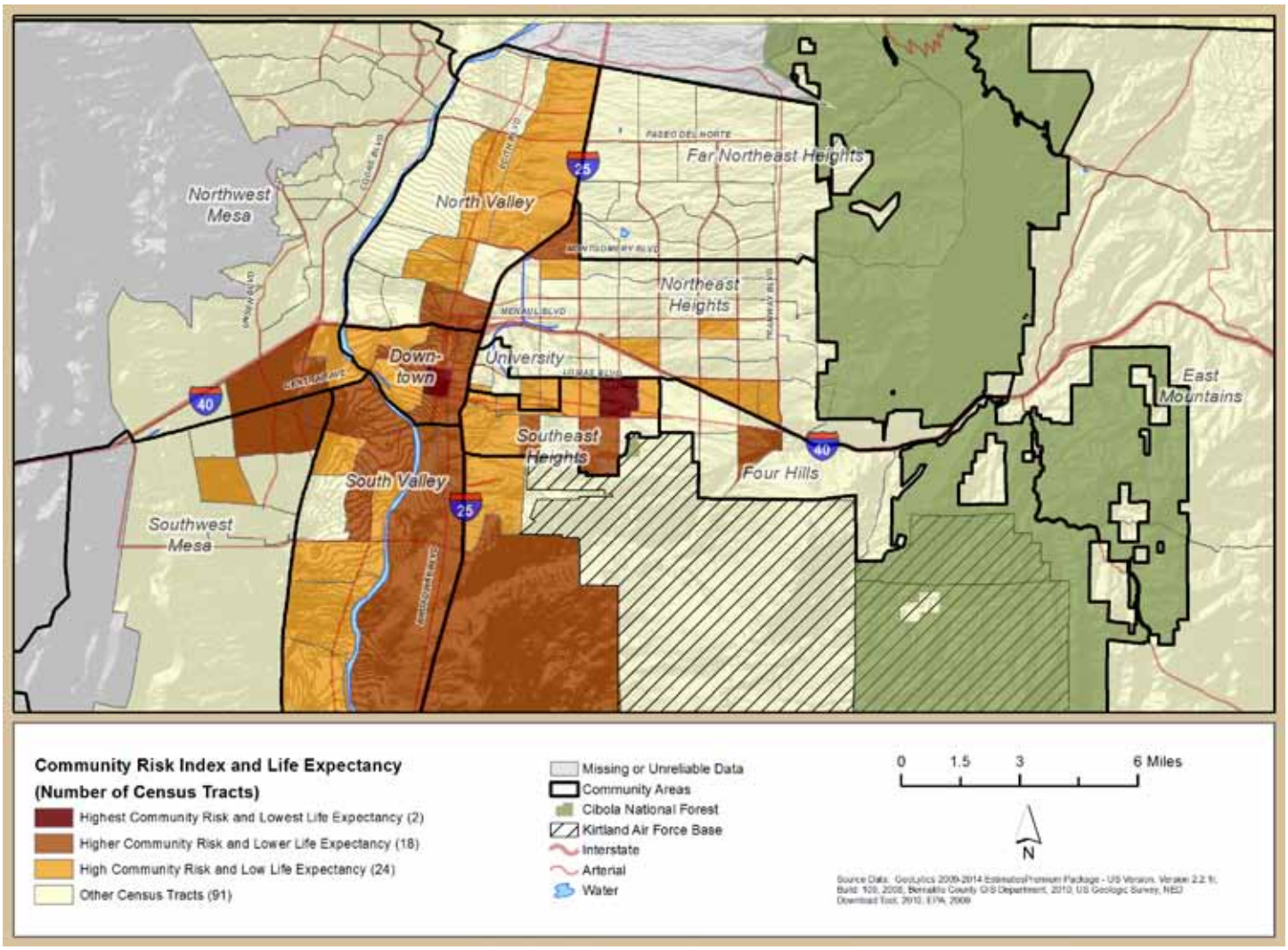
Source: Bernalillo County Department of Health, Seer Stat 2001-2005.
Note: Racial groups include Non-Hispanic population only. Hispanic can include any racial group.

Figure 5: Life Expectancy in Bernalillo County, N.M., by Community Risk Groups



(a) Life expectancy quintiles; Source: Department of Health, Seer Stat, 2001-2005
(b) Community Risk Index quintiles; Source: Geolytic 2009 Projections, Albuquerque Public Schools; Research, Development and Accountability Department 2004-2006, RealtyTrac via the Federal Reserve, U.S. Census Bureau, Census 2000, Institute for Social Research 2004-2006

Map 9: Regions of Elevated Community Risk Index and Low Life Expectancy by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: Values for CRI: highest = 1.79 - 3.21; higher = 0.71 - 1.47; high = 0.01 - 0.61.
Values for life expectancy (LE): lowest = 66 – 70; lower = 71 – 76; low = 77 – 79.

influence of these confounding variables and not a causal role of the measured indicators themselves.

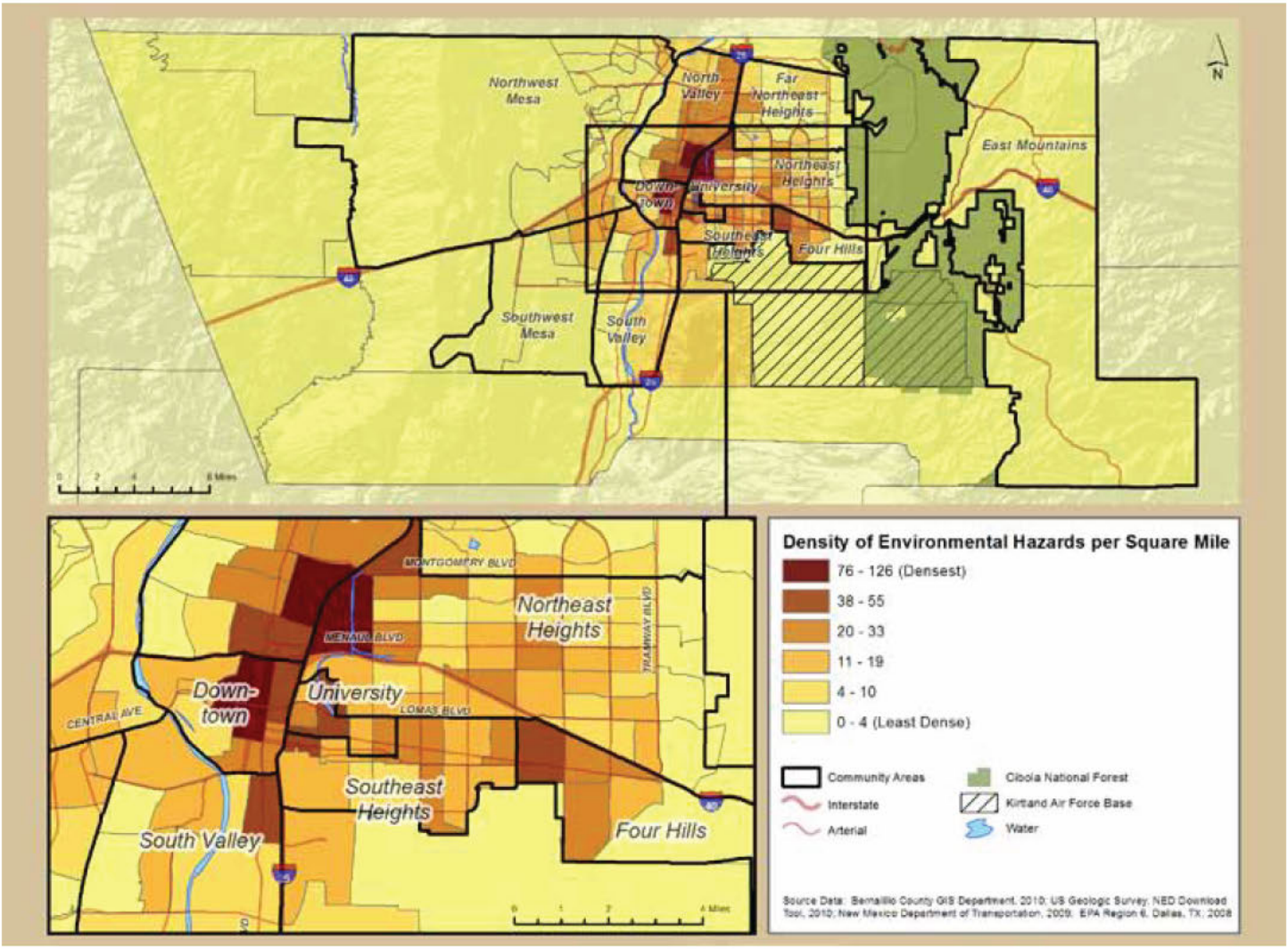
Map 9 shows the geographic relationship between socioeconomic and community risk factors (as measured by the CRI) and life expectancy in Bernalillo. Neighborhoods where the CRI is high and there are poor health outcomes are shown in darker colors. The map, which focuses on the urban areas of Bernalillo County, illustrates that census tracts in Southeast Heights, Downtown, Four Hills, South Valley, and portions of Northwest Mesa, Southwest Mesa, and Northeast Heights have a co-occurrence of high community risk index and low life expectancy.

III. Environmental Hazards and Life Expectancy in Bernalillo County

Environmental Hazards

As noted above, factors that determine one's health are not restricted to the characteristics of individuals and families. Other factors, often referred to as social determinants of health, such as communities where people are exposed to environmental hazards, contribute to greater health risks. Environmental hazards may induce disease and injuries by exposing the population to contaminated air, water, and food or to hazards associated with workplace conditions, transportation, pests, noise, toxic spills, and climate change.

Map 10: Environmental Risk by Census Tract, Bernalillo County, N.M. (2002)



Note: The density of environmental hazards was generated from an aggregation of the following types of hazards per square mile:

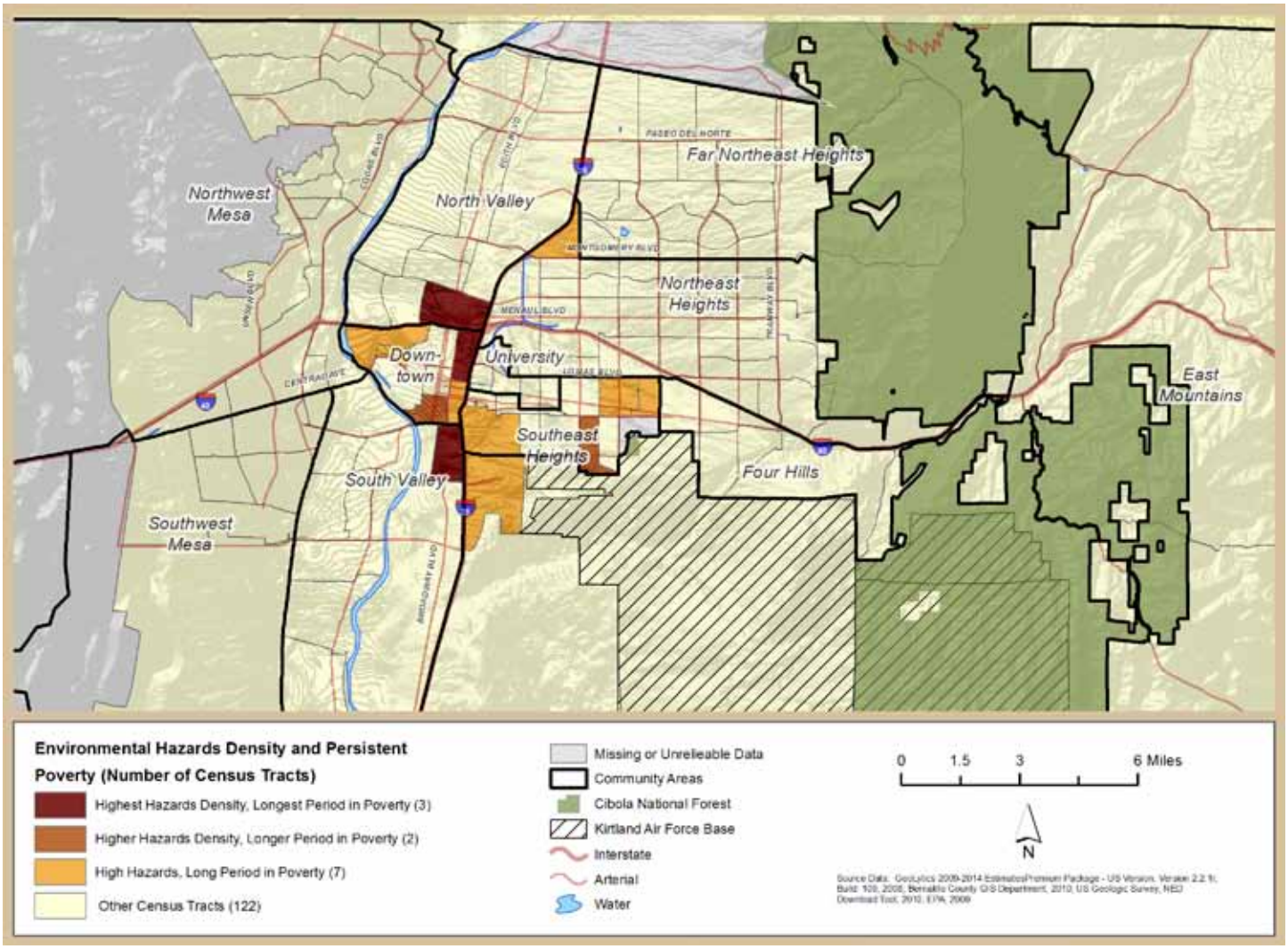
- Tier II reporting facilities
- Discharge permit points
- Dumping locations
- Hazmat locations
- Hospitals
- Railroad depots
- NMED discharge permit locations
- NPDES permit locations
- NMED petroleum storage tank bureau leak sites
- Stationary air [pollution] sources
- Superfund sites
- Industrial/manufacturing land use

While a broad array of environmental risks are considered to have health effects, the 2003 Albuquerque/Bernalillo County Comprehensive Plan identified primary sources of air pollutants as vehicular emissions, residential wood burning, dust from unpaved roads and construction sites, and, to a lesser degree, industrial operations. Primary sources of water pollutants include septic tanks, agricultural activities, gas stations, landfills, illegal dumping, and hazardous materials. In addition, there are three Superfund sites in Bernalillo County.[12] (According to the Environmental Protection Agency, "a Superfund site is an uncontrolled or abandoned place where hazardous waste is located, possibly affecting local ecosystems or people."[13,12])

Environmental Hazards in Bernalillo County

- Traffic corridors
- Railroads
- Industrial zones
- Brownfield sites
- Superfund sites
- Resource Conservation and Recovery Act (RCRA) sites
- Hazardous air pollutants

Map 11: Regions of Elevated Environmental Risk and Persistent Poverty by Census Tract, Bernalillo County, N.M. (1970-2009)



Note: Values for hazards density: highest = 38.95 - 54.65; higher = 26.00 - 33.01; high = 13.89 - 20.17.
Values for period in poverty: longest = 5 decades; longer = 3 – 4 decades; long = 2 decades.

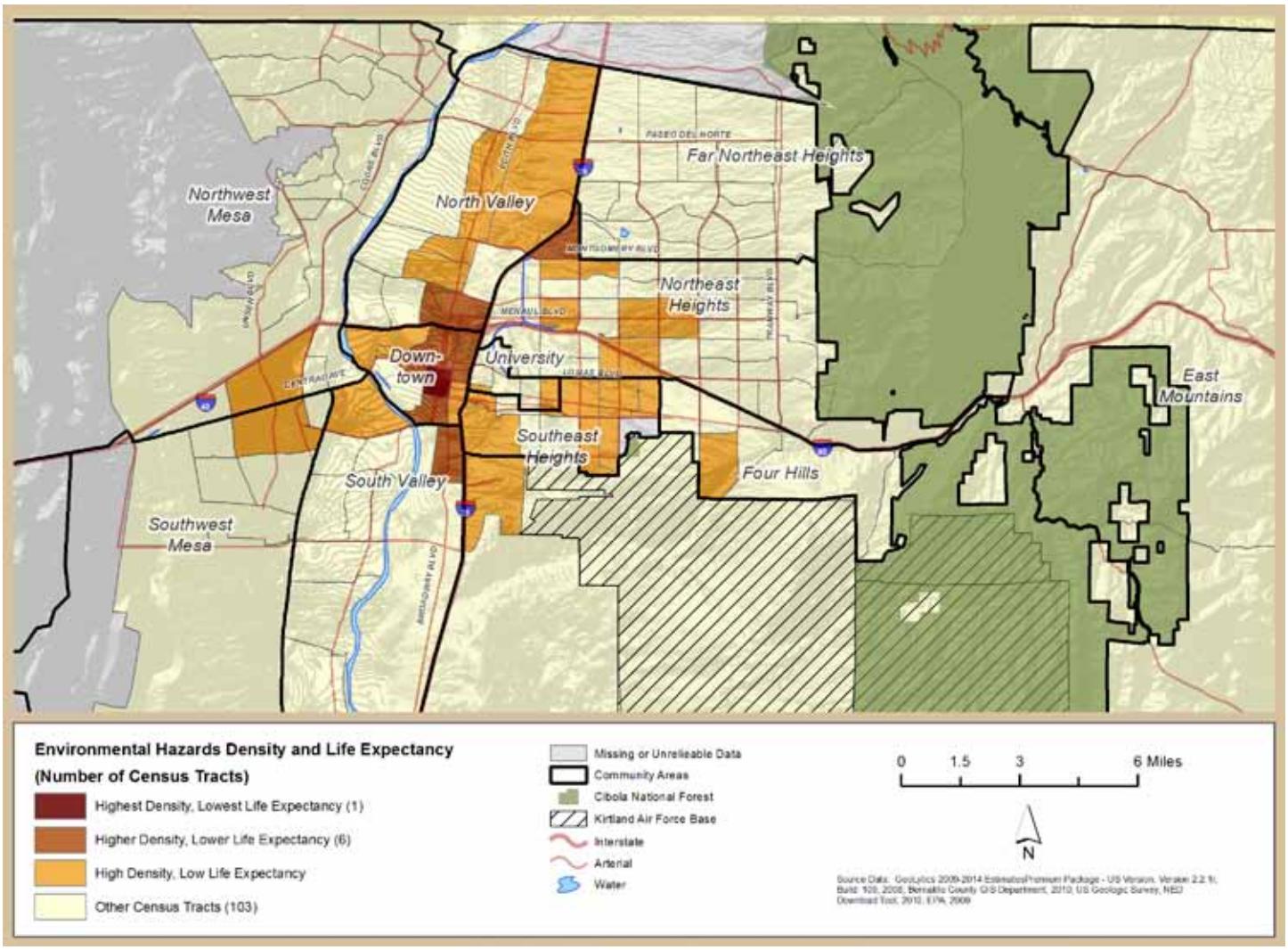
Exposure to environmental hazards is rarely uniform across geographic areas. Studies document proximity to hazardous sites and heightened exposure to pollution in neighborhoods with larger populations of people of color and the poor.[14,15,16,17] Studies in various locations also document that more environmental hazards occur in communities with large minority populations.[18] Some longitudinal studies suggest that toxic facilities are deliberately sited in minority communities,[19] possibly because such neighborhoods are socially isolated and hold limited political power to resist undesirable land use decisions by governments and corporations.[20]

As Map 10 shows, environmental hazards are most prevalent in downtown Albuquerque, near North Valley, and Northeast Heights close to Interstate 25. This measure does not reflect the number of pollutant sources but rather the number of pollutant sources divided by the square miles. While one census tract in Four Hills has elevated risk as measured by this index, the high risk score is primarily a result of land that is zoned for industrial or commercial use. Land use in this zoning classification does not necessarily result in exposure to environmental hazards.

Community Characteristics and Environmental Exposure

In Bernalillo County, particular community characteristics are common in areas having a greater number of toxic facilities. Areas with high levels of potential pollution are significantly more likely to contain low-income, Hispanic, and recent immigrant populations (Figure 6). In the quintile with the highest levels of environmental risk, 32% of households have

Map 12: Regions of Elevated Environmental Risk and Low Life Expectancy by Census Tract, Bernalillo County, N.M. (1970-2009)



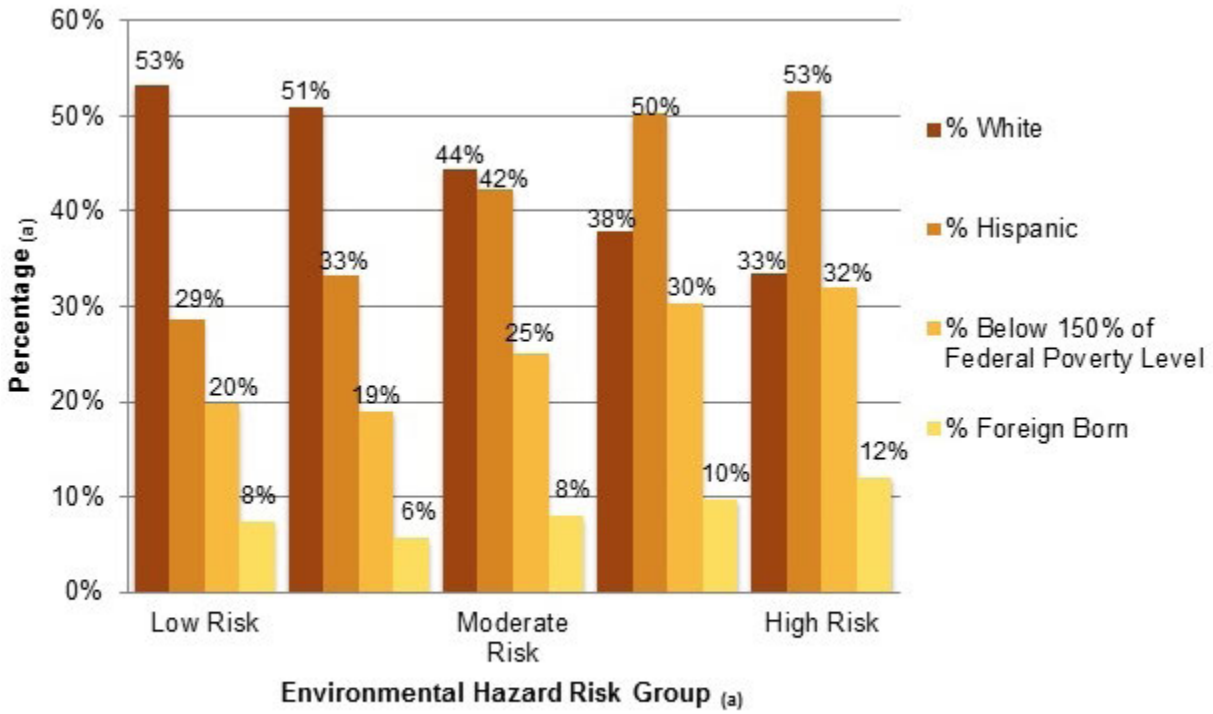
Note: Values for hazards density: highest = 54.65 - 126.15; higher = 27.43 - 54.64; high = 13.52 - 27.42.
Values for life expectancy: lowest = 66 - 70; lower = 71 - 76; low = 77 - 79.

incomes below 150% of the federal poverty level—or $33,525 for a family of four as of 2011—and 53% of these households are Hispanic. In addition, areas with the highest exposure to environmental hazards like landfills have on average 50% more foreign-born residents than the areas with the lowest exposure. Communities with the lowest levels of exposure to potentially toxic facilities tend to report higher incomes (20% below 150% of the federal poverty level) and to have a majority white population (53%).

Map 11 illustrates census tracts with a co-occurrence of persistent poverty and exposure to environmental hazards. Census tracts in the Downtown, South Valley, Southeast Heights, and North Valley have experienced high rates of poverty over several decades and have a high density of environmental hazards. There are, however, census tracts in the South Valley that have experienced persistent poverty but relatively few environmental hazards. The environmental hazards density (hazards per square mile) is meant to represent a general measure of pollution and hazards to the environment. The measure is based on the available hazardous and pollutant data from Bernalillo County at point level. Because the data set includes several types of hazards and pollutants, and excludes others, over differing time periods, the ground perception of hazard density may differ from the measure derived here.

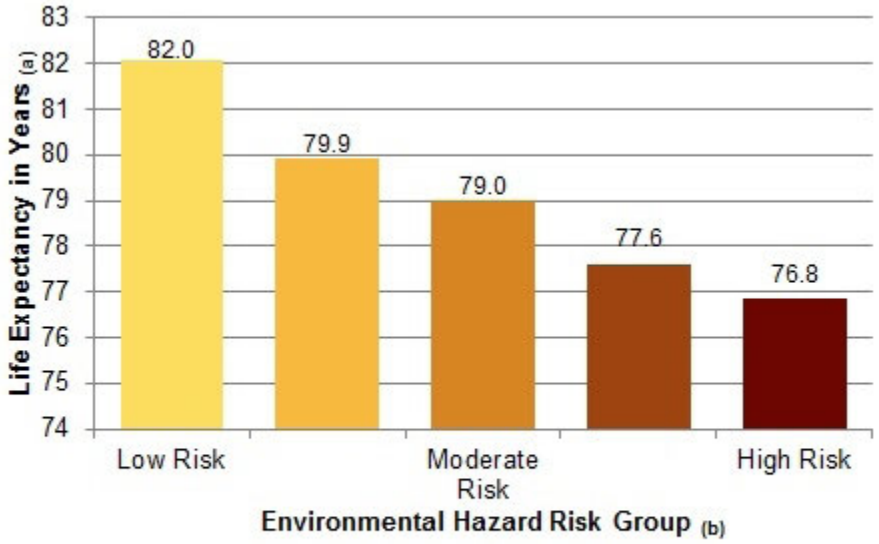
In sum, our findings indicate that exposure to environmental hazards—traffic corridors, railroads, industrial zones, brownfield sites, Superfund sites, Resource Conservation and Recovery Act sites, and hazardous air

Figure 6: Environmental Exposure by Race/Ethnicity and Poverty in Bernalillo County, N.M.



(a) Geolytic 2009 Projections
(b) Evnivronmental hazard risk quintiles; Calculated by Virginina Network for Geospatial Health Research.

Figure 7: Life Expectancy in Bernalillo County, N.M., by Environmental Risk Groups



(a) Life expectancy quintiles; Source: Department of Health, Seer Stat, 2001-2005
(b) Evnivronmental hazard risk quintiles; Source: Bernalillo GIS Department

pollutants—is more likely to occur in communities where a higher percentage of the population is poor and/or Hispanic, and less likely in communities that have lower concentrations of poverty and a larger white population. Furthermore, in the Downtown area, South Valley, North Valley, and Northeast Heights, which had high environmental hazard exposure, life expectancy was low (see Map 12).

Figure 7 illustrates the relationship between the density of environmental hazards and life expectancy for census tracts in Bernalillo County. Census tracts were divided into quintiles according to the number of environmental hazards they contain. Life expectancy in the tracts in the highest quintile (with the most environmental hazards) was an average of 5.2 years shorter than for census tracts with the fewest environmental hazards (lowest quintile).

IV. Conclusion and Recommendations

Where people live within Bernalillo County powerfully predicts whether they are healthy, whether they are sick, and how long they live. Communities facing the greatest array of health risks have a larger percentage of low-income, immigrant, and Hispanic families than communities facing the least health risks. Specifically, the data show:

- Life expectancy in the county varies by more than 22 years across census tracts.
- The percentage of low-birth-weight infants varies by a factor of 12 across census tracts.
- Community-level health risks, which are measured by factors such as educational attainment, violent crime rates, foreclosure rates, unemployment rates, and the percentage of overcrowded households, vary widely across census tracts.
- A clear relationship exists between community risk index scores and health outcomes; when a neighborhood's community risk index is low, life expectancy is high.
- Nonwhite and low-income census tracts, such as those in the downtown area, face a higher concentration of environmental health hazards such as air pollution and toxic industrial wastes than do whiter and higher-income census tracts;
- Life expectancy is an average of 5.2 years shorter in census tracts with the greatest concentration of environmental hazards.

Although researchers cannot say with certainty that these neighborhood conditions *cause* poor health, the overall pattern suggests that the clustering of social, economic, and environmental health risks in low-income and nonwhite neighborhoods makes it more difficult for people in these communities to live healthy lives.

These patterns need not—and should not—continue as they are. Policy makers should consider steps to reduce the concentration of health risks in vulnerable communities and support health-enhancing resources. For example, the use of Health Impact Assessments as well as the environmental assessments required under the Consolidated Environmental Review Act can help to ensure that low-income and Hispanic communities are not disproportionately hurt by environmental degradation and policies or practices that cluster health risks.

Consolidated Environmental Review Act (CERA) Assessments

Currently, New Mexico regulations set limits for individual pollutants in air, water, and soil. However, regulations do not account for exposure to multiple pollutants from a single facility or multiple facilities and do not require an assessment of a project's overall impact on the environment or the public's health. This approach therefore underestimates a project's total impact on the community's health and the environment. To address this, CERA requires a 1-2 page environmental assessment for all projects that require permits under the federal Clean Air Act, Clean Water Act, or Hazardous Waste Act in order to identify, early on, impacts to the environment or the community's health. Environmental assessments include descriptions of: (1) the affected environment, (2) possible alternatives to the proposed actions, and (3) mitigating measures to reduce the project's impact to the environment and the community's health.

CERA requires the use of evidence-based science for the permit decision-making process that considers pollution sources, population exposures, environmental effects, and public health effects. It is expected to result in a consistent and predictable permitting process because projects will be vetted by the lead agency during the early project planning stages, potentially saving resources that would otherwise be needed later for environmental cleanup and health care costs.

Health Impact Assessments (HIAs)

HIAs allow researchers and policy makers to systematically judge the potential, sometimes unintended, effects of a proposed policy, plan, program, or project on the health of a population and the distribution of those effects within the population.

HIAs attempt to ensure that all government programs and initiatives in and outside of the health care delivery sector—such as transportation, housing, land use policies, and environmental protection—are assessed to determine their potential impact on the health status of affected communities.[21] HIAs are used extensively as a policy and planning tool in

Europe and other countries, and they are used increasingly in the United States. Bernalillo County is currently conducting HIAs for proposed land use changes in the Mountain View, San Jose, and Southeast Heights neighborhoods. King County in Washington State is developing a process to utilize an impact assessment tool that focuses on health equity and social justice in the adoption and implementation of county policies and decisions.

Other policies can also be effective in helping to reduce the concentration of health risks in vulnerable communities; CERA and HIAs are but two examples. The point is that community-based health promotion and disease prevention strategies are the most cost-effective ways to improve health, because they address the underlying causes of illness.

There is a strong moral imperative to enact policies designed to improve health for all. But there is a powerful economic reason as well. A study released by the Joint Center for Political and Economic Studies in 2009 found that the direct medical costs associated with health inequities among African Americans, Hispanics, and Asian Americans approached $230 billion between 2003 and 2006. When the indirect costs of health inequities—such as lowered productivity and lost tax revenue resulting from illness and premature death—are added to the equation, the total cost of health inequities between 2003 and 2006 exceeded $1.24 trillion. For both moral and economic reasons, now is the time for action to address neighborhood conditions that shape health outcomes.

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ABOUT THE JOINT CENTER, ITS HEALTH POLICY INSTITUTE AND THE *PLACE MATTERS* PROJECT

The Joint Center for Political and Economic Studies is a national, nonprofit research and public policy institution that is sometimes referred to as "America's black think tank." Founded in 1970 by black intellectuals and professionals to provide training and technical assistance to newly elected black public officials, it has evolved into an invaluable source of information and policy analysis for policy makers and policy influentials on issues of particular concern to African Americans and other communities of color. It currently focuses its work on critical public policy issues such as political participation, economic advancement, health policy, and climate change.

The Joint Center's Health Policy Institute (HPI) is a pioneering program of the Joint Center that seeks to ignite a health equity movement that gives people of color the right to equal opportunity for healthy lives. Its research, publications, activities, and projects are designed to accelerate progress through collective strategies that will produce real and lasting change in health outcomes. Place Matters is a major HPI initiative that is designed to build the capacity of community leaders to address the social, economic, and environmental conditions in their communities that shape health and health outcomes. The program assists participating local Place Matters teams in developing and implementing community-based strategies to address social factors that determine health.

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July 19, 2016

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested
Certified Mail#: 7015 1520 0002 0019 2946

In Reply Refer to:
EPA File No. 13R-14-R6

Kelsey Curran, Chairperson
Albuquerque-Bernalillo County Air Quality Control Board
P.O. Box 1293
One Civic Plaza, N.W.
Albuquerque, New Mexico 87103

Certified Mail#: 7015 1520 0002 0019 2953
Ms. Mary Lou Leonard
Environmental Health Director
Albuquerque Air Quality Division
1 Civic Plaza, N.W.
Post Office Box 1293
Albuquerque, New Mexico 87103

Re: Acceptance of Administrative Complaint

Dear Ms. Curran and Ms. Leonard:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) is accepting an administrative complaint filed against the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board, received by EPA on September 16, 2014. The complaint alleges that the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board have violated Title VI of the Civil Rights Act of 1964, as amended, 42 United States Code 2000d *et seq.*, by not considering cumulative impacts when permitting air polluting facilities and by denying a request for a hearing to adopt a requirement for consideration of cumulative impacts in the permitting process.

Pursuant to EPA's nondiscrimination administrative regulations, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Federal agency. *See* 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. *See* 40 C.F.R. § 7.120(b)(1). Second, it must allege a discriminatory act that, if true, may violate EPA's nondiscrimination regulations (*e.g.,* an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(1). Third,

the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15.

After careful consideration, OCR has determined that the subject complaint meets the four jurisdictional requirements as stated above. First, the complaint is in writing. Second, the complaint alleges that discrimination occurred, in violation of EPA's nondiscrimination regulations. Third, the alleged discriminatory acts occurred within 180 days of the filing of the complaint. And finally, the complaint was filed against the Albuquerque Air Quality Division and the Albuquerque-Bernalillo County Air Quality Control Board, both recipients of EPA financial assistance at the time of the alleged discrimination.

Accordingly, OCR will investigate the following:

- Whether the Albuquerque-Bernalillo County Air Quality Control Board's and/or the Albuquerque Air Quality Division's permitting process discriminates against minority residents on the basis of race and/or national origin, in violation of Title VI of the Civil Rights Act and EPA's implementing regulations; and

- Whether the Albuquerque-Bernalillo County Air Quality Control Board and/or the Albuquerque Air Quality Division discriminated against minority residents on the basis of race and/or national origin in violation of Title VI of the Civil Rights Act and EPA's implementing regulations by refusing to conduct a hearing on an ordinance to consider cumulative impacts in the permitting process.

The initiation of an investigation of the issues above is not a decision on the merits. OCR is a neutral fact finder and will begin its process to gather the relevant information, discuss the matter further with you and the complainant, as appropriate, and determine next steps utilizing our internal procedures. In the intervening time, OCR will provide you with an opportunity to make a written submission responding to, rebutting, or denying the issues that have been accepted for investigation within thirty (30) calendar days of receiving their copy of the letter. *See* 40 C.F.R. 7.120(d)(1)(ii-iii).

The EPA's nondiscrimination regulation provides that OCR will attempt to resolve complaints informally whenever possible. *See* 40 C.F.R § 7.120(d)(2). Accordingly, OCR is willing to discuss, at any point during the process, offers to informally resolve the subject complaint. OCR may, to the extent appropriate, offer alternative dispute resolution (ADR) as described at http://www.epa.gov/ocr/frequently-asked-questions-about-use-alternative-dispute-resolution-resolving-title-vi. OCR may also contact representatives of the Albuquerque-Bernalillo County Air Quality Board and the Albuquerque Air Quality Division to discuss your interest in entering into informal resolution discussions. We invite you to review OCR's Interim Case Resolution Manual for a more detailed explanation of the complaint resolution process at http://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf

Finally, we would like to remind you that no one may intimidate, threaten, coerce, or engage in other discriminatory conduct against anyone because he or she has either taken action or participated in an action to secure rights protected by the civil rights requirements that we enforce. *See* 40 C.F.R. § 7.100. Any individual alleging such harassment or intimidation may file a complaint with OCR. OCR would investigate such a complaint if the situation warranted.

If you have questions regarding this letter, please contact Katsumi Keeler, Case Manager, at 202-564-2347, by electronic mail at keeler.katsumi@epa.gov, or by mail at U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460-1000.

Sincerely,

Lilian S. Dorka
Acting Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Samuel Coleman
Deputy Regional Administrator
Deputy Civil Rights Official
U.S. EPA Region 6

West End Revitalization Association (WERA)
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Web Links: www.wera-nc.org

"**Are You Getting the Basic Amenities Your Taxes Paid For?**"
http://blog.epa.gov/ej/2012/12/1005/

September 17, 2014

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Washington, DC 20590

Eric Holder, Attorney General
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The West End Revitalization Association (WERA) is requesting written responses from USDOT, DOJ and EPA regarding URGENT matters presented here.

URGENT! Hazardous Waste Site that should be placed on the Superfund's National Priorities List (NPL) Southeast. Cleaning up hazardous waste sites protects human health, raises property value, and facilitates the economic restoration of communities. EPA's Emergency Response and Removal Branch (ERRB) is needed, per Superfund's Comprehensive Environmental Response Compensation and Liability Act (CERCLA), at Craftique Furniture Company site before 119-bypass and overpass or any construction takes place. NOTE: EPA is current supervising clean-up in Pritchard, Alabama, years after interstate I-165 was construction through areas of industrial soil and water pollution, thus spreading arsenic and lead contaminants throughout an 85% low-income African American community. We want some preventive measures that have not be taken by the North Carolina Department of Transportation (NCDOT), North Carolina Department of Environment and Natural Resources (DENR), or USDOT. All have

been aware of this massive acreage of identified (benzenes, naphthalene, and xylenes) and unidentified industrial furniture chemical contaminants for at least 15 years without action to clean-up this now closed site with several brownfields buildings and untold above and below ground toxins. (See Attachment 1, 2, 3, and 4).

Complaint RE: Goods Movement Corridor Construction Must Protection Water, Soil, Wetlands, Ecosystems and Human Health, and Low-Income Minority Populations under Title VI of the Civil Right Act of 1964 (Oversight Requirements for: NCDOT 119-Bypass/Overpass STIP Number: **U-3109) in Mebane, NC – Alamance County**

This complaint is filed against the North Carolina Department of Transportation (NCDOT) for mis-representing mapping dimensions and related narratives in the Record of Decision (ROD) for the NC 119 Relocation I-85/40 to South of SR 1918 (Mrs. White Lane) Mebane, Alamance County (Federal Aid Project No. STP-119(1) State Project No. 8.1470901- WBS Element 34900.1.1 - TIP Project No. U-3109 December 2009). This misrepresentation amounts to distribution of deceptive and misleading hardcopy information provided to the general public, including the impact on African American residents, and on the NCDOT's website at http://www.ncdot.gov/projects/nc119relocation/ . This results in the underestimation of the adverse impacts to the quality of life for low-income and minority residents and the environment in which they have lived for over 150 years, the end of slavery. The misleading and misrepresentations in the 2009 ROD should be addressed and corrected under the following federal laws and statutes:

1. Title VI of the Civil Rights Act of 1964.
2. Eminent domain and right-of-away acquisition statutes.
3. North Carolina's Sunshine Laws and the federal Freedom of Information Act.
4. Relocation Assistance Act.
5. Public health and environmental protection statues: Clean Air Act; Clean Water Act; Safe Drinking Water Act; Toxic Substance Control Act; Solid Waste Disposal Act / Resource Conservation and Recovery Act (RCRA); Wetlands Protection Act; Watershed Protection Act; and Storm Water Management Act.
6. Environmental Justice Executive Order 12898 of 1994.
7. President Barack Obama's Memorandum of Understanding on Environmental Justice and Executive Order 12898 of August 2011. Focus Areas: (1) implementation of the National Environmental Policy Act; (2) implementation of Title VI of the Civil Rights Act of 1964, as amended; (3) impacts from climate change; and (4) impacts from commercial transportation and supporting infrastructure ("goods movement"). These efforts will include interagency collaboration.

The West End Revitalization Association (WERA) was founded in 1994 and incorporated as 501-(c)(3) non-profit in Mebane, NC. WERA's mission includes supporting access to "basic public health amenities" (clean air, safe drinking water,

sewer lines, housing, streets, sidewalks, and storm-water management) for people of color in marginalized communities.

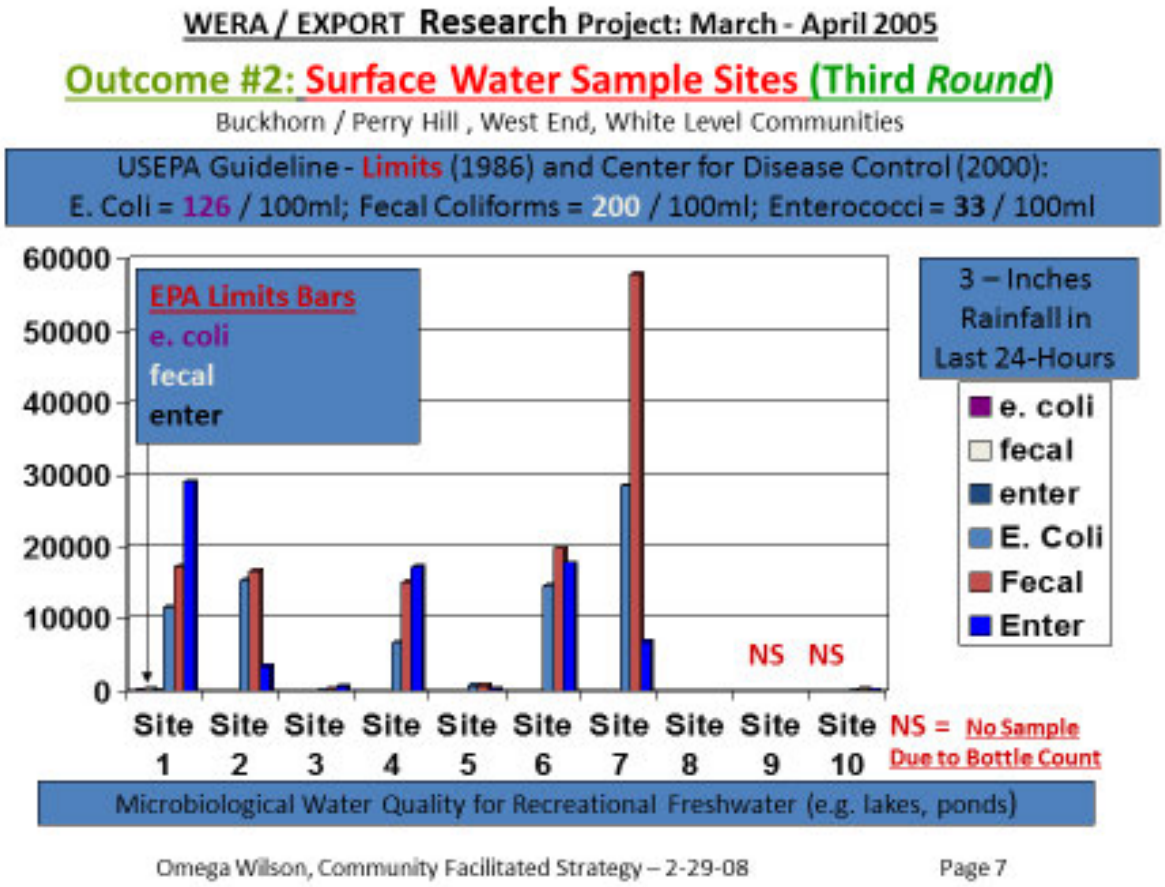
February 10, 1999: WERA filed interagency complaints at U.S. Department of Justice under Title VI of the Civil Rights Act of 1964 and Environmental Justice Executive Order 12898 – 1994. Complaints were filed to support first-time infrastructure installation under the Clean Air Act, Safe Drinking Water Act, Clean Water Act, Resource Conservation and Recovery Act, etc.

WERA challenged the planned 119-Bypass 8-lane interstate corridor (27-miles at one billion dollars) that would destroy two historic African and Native American communities, without input or fair compensation for homes and churches. Highway construction would exacerbate public health issues related to hundreds of homes and churches adjacent to landfills and sewage treatment without access since 1921. WERA translated this “common knowledge” into a list of public health disparities and drafted administrative complaints at DOJ under Title VI of the Civil Rights Act of 1964 and referenced the environmental justice Executive Order 12898 of 1994. DOJ asked six branches of the federal government to investigate the oversight of civil rights and public health guidelines during the highway planning process that had been going on for 16 years, without opportunities for public input.

As a result, there has been a moratorium on construction of the highway since 1999, in order to ensure that actions to mitigate the potential impacts of the construction are put in place. Additionally, more than 100 African American homeowners have had sewer lines installed for the first time, even though homes have been within two to three blocks from the municipal sewer treatment plant since it was constructed in 1921. Property owners were required to dig up underground storage tanks and dispose of them. In addition, federal matching block grants were distributed to rehabilitate houses and repair sidewalks and streets.

In 2014, Basic Public Health Amenities Issues Still Addressed by WERA in West End and White Level Communities:

1. Eight lane 27 mile 119-bypass/overpass and interstate corridor through and adjacent to communities.
2. Benzenes, naphthalene, and xylenes that leaked from underground storage tanks that threatens well water and groundwater supply in the overpass construction site.
3. Failing on-site septic systems near private unregulated drinking water wells.
4. Surface water contamination up to 300 times the USEPA Maximum Contaminant Limit (MCL) for fecal coliforms, *E. coli*, and Enterococci.



The West End Revitalization Association in collaboration with research and legal partners, including operational funding from the Z. Smith Reynolds Foundation (Winston Salem, NC), documented surface water contamination as indicated in the above graph. The following three research projects supported these findings. How much will the highway construction exacerbate and spread the microbial contaminants without the oversight of the Environmental Protection Agency under the Safe Drinking Water Act and the Clean Water Act?

2001-02 - Project Manager – *"Failing Septic On-Site Systems and Contaminated Well Waters: African American Communities in Mebane, North Carolina"* - Environmental Justice Small Grant ($15,000) Office of Environmental Justice EPA, Region-4 Atlanta, GA (with an Internal Review Board (IRB) Certification at School of Public health, University of North Carolina, Chapel Hill).

2004-05 - Co-Manager with Chris Heaney of "*Community-Based Participatory Monitoring and Training: Public Health and Environmental Risks in Low-Income Minority Communities in Mebane, North Carolina";* $10,000 EXPORT Pilot Project by Ethnic, Cultural, and Health Outreach (ECHO) collaboration with Cecile G. Shepp Research Center at UNC-Chapel Hill.

2004-07 - Project Manager of “Right to Basic Amenities” Model Development with an U.S. EPA Approval Quality Assurance Plan (QAP) in collaboration with the Virology Laboratory at the School of Public Health, University of North Carolina- Chapel Hill. Only North Carolina Awardee ($100,000) of 30 national “Collaborative Problem-Solving Agreement” - Office of Environmental Justice, EPA, Washington, D.C.

In 1999, the North Carolina Department of Environment and Natural Resources drilled several test wells on the Craftique Furniture site and identified a petroleum plume with benzene, naphthalene, and xylenes over forty feet below ground level from leaking underground storage tanks. On June 17, 2002, Darren R. Lockhart, PMII/Environmental Geologist dlockhart@ei1.com stated that, “The direction of groundwater flow is towards the north/northwest”, which the direction of Graham-Mebane Lake (See ATTACHMENT 3). This site is adjacent to the watershed of the Graham-Mebane Lake that supplies drinking water to over 50,000 people in Alamance County, NC.

Where are the assurances that the dynamiting and earth moving actions of the bypass and overpass construction will not exacerbate and spread petroleum contaminates and other undisclosed chemicals, solvents, stains, and paints products that were dumped on site for decades? Again, it is the legal obligation of the Environmental Protection Agency to provide on-site oversight of this hazardous furniture site clean-up of pollutants under the Toxic Substance Control Act and disposals of building materials and brownfield structures under the Solid Waste Disposal Act / Resource Conservation and Recovery Act (RCRA). The site clean-up should be completed before the construction of the bypass and overpass at the Craftique Furniture site.

WERA - Community Facilitated Strategy

Outcome #7: Reduction Cancer and Disease Causing Hazards

Removal of 20,000 gallon Underground Storage Tanks Leaking Cancer Causing Petroleum (1/15/08)

Repair of City of Mebane Sewer and Water lines leaking into Stream at City Park (Feb. 2007)

Omega Wilson, Community Facilitated Strategy – 2-29-08 Page 12

Mitigations of Actual 119-Bypass/Overpass Construction: NCDOT maps do not truly represent impacts to residential property, streams and wetlands, hazard sites, watershed of Graham-Mebane Lake.

1. NCDOT notice letters of property acquisition under eminent domain were not mailed to all impacted residents during fall 2013 which is regulated under the Freedom of Information Act.

2. NCDOT maps do not represent impacts to houses impacted in African American community of West End and White Level regulated under Title VI of the Civil Rights Act of 1964 and the Relocation Assistance Act. The houses and apartments in the predominately white Fieldstone community are accurately highlighted with correct street geo-locations. In the predominately African American West End and White Level communities, the maps compressed and distorted street locations and connections without full highlight of houses and churches.

3. Maps and ROD do not indicate procedures to protect groundwater, air quality, and human exposures per 119-bypass/overpass. NCDOT engineers had stated that dynamiting granite would be required at the old Craftique Furniture Company in order to install five-story overpass concrete pillars that will be in the

underground plume of petroleum that leaked from underground storage tanks for decades, per NC DENR files. This would further spread the cancer causing benzenes and xylenes in soil and ground water regulated under the Clean Water Act, Safe Drinking Water Act, and Toxic Substance Control Act.

4. Hazardous Materials Sites at planned 119-overpass construction corridor should include Craftique Furniture Company on 70-Highway and an AmeriGas propane gas tank distribution site on West Holt Street. The support structures for the overpass would anchored at the Craftique property and the propane gas site would be virtually underneath the overpass.

5. Adverse impacts to 16 streams and wetlands crossed and interrupted by eight lane construction corridor over just 5.6 miles from current I-85 to current 119-Highway North at Mrs. White Lane in White Level Community should be protected under the Clean Water Act, Storm Water Management Act, and Wetlands Protection Act.

6. Putting the remaining homes and properties in a new flood plain the highway construction is regulated under Storm Water Management Act.

7. Damage to remaining residential properties (driveways, streets, access, and outlets) regulated under Right-of-Way Requirements and the Uniform Act.

8. Boxing West End and White Level residents in by closing West Holt Street at Latham Lake Road, railroad crossing at Moore Road, and rail-spur to accommodate industrial rail distribution, etc.

9. Future widening of railroad corridor and 70-Highway to accommodate massive automobile and diesel truck traffic from the existing and expanding industrial park (1000+acres) and distribution park (2600+acres). Industrial park properties on the east and west sides of the planned 119-bypass/overpass corridor adjoins residential properties in West End Communities are at risk from air, noise, traffic pollution, and diesel engine particles (PM 2.5 and 10).

10. “Emission Shock” to workers in the highway construction corridor for years exposed air borne contaminants exceeding EPA Clean Air Act guidelines. The “emission shock” during construction is very important because significant impacts are to construction workers with minimum protective measures in place under the Occupational Safety and Health Act. At least 80-percent of the NCDOT employees pouring and finishing asphalt streets in Mebane, NC, as recent as August 2014, were African American and Hispanic men and women, exposed toxins without respiratory protection or any kind.

Relief from the North Carolina Department of Transportation is sought by the West End Revitalization Association, impacted residents, and collaborative partners include:

1. Re-produce maps with proportions that are geographically accurate and true for access, residential streets, and properties in West End and White Level Communities. This includes a true representation of improvements, widening,

curb/gutter, and turning lanes to handle increased traffic flow on and off the planned 119-bypass on residential streets. Residential property damaged for improvements should be clearly highlighted and owners informed in writing.

2. Rewrite narrative and charts/graphs/figures in ROD for full public disclosure.

3. Conduct public hearings in Mebane, NC to present full disclosure and answer questions regarding the corrected NCDOT ROD, including full maps displays with supporting narrative and charts/graphs/figures. Maps should include each of the 16 streams and wetlands crossed and otherwise impacted with planned mitigation measures of piping, storm water management, and altered flood plains.

4. Mailing notice letters to all impacted property owners in West End and White Level Communities as well as other property owners along the planned highway construction corridor.

5. Address the issue of NCDOT's relocation of St. Luke Christian Church from the 119-bypass/overpass and access ramp site into the path of the access lane and right-of-way where US 70-Highway will be widened to four lanes. This impact to St. Luke Christian Church property will be further exacerbated by NCDOT plans to widen 70-Highway again after completion of the 119-bypass/overpass. This amount to throwing this African American church, which was founded by former slaves and their descendants (c.1893), "*from the frying pan into the fire*!"

6. Address: *Truth: West End is an African American community still targeted by the119-Bypass with plans to 'dead-end' Holt Street (TIP-3109); White Level is an African American (*and Native American*) community to be gutted in half by the 119-Interstate to Danville (TIP-3105); West End's St. Luke Christian Church, founded in 1893 by former slaves, will be destroyed by widening U.S. 70-Highway (TIP-2546) to five lanes and a sixth turning lane onto the 119-Bypass, through the fifth row of pews in the church. Truth: At West Holt Street, Southern Railroad, and 70-Highway, NCDOT maps show that the one-mile long and 45-foot high overpass will be anchored 30-to-40 feet deep by concrete pillars in a toxic spill. In 1989, Craftique Furniture Company's underground petroleum storage tanks were documented as leaking 10,000 gallons of gasoline and diesel fuel that are still spreading underground.* (See ATTACHMENT 2)

7. In specific reference to **Cleaning up hazardous waste sites protects human health under Superfund's Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and National Priorities List (NPL), WERA is requesting long-term air, water, and soil quality monitoring at the Craftique Furniture site and along the 119-bypass/overpass corridor and adjoining properties at the expense of EPA, NCDENR, and USDOT, NCDOT, and Craftique Furniture Company's**

property owner (Pulaski Furniture Corporation, One Pulaski Square Pulaski, Virginia 24301). Public hearings should be held with written reports of findings presented to residents near the site as well as for all Mebane areas residents. Funds for tangible improvements in low-income minority communities are to be considered as well.

Find NCDOT Record of Decision and digital maps of the 119-bypass and overpass, in and near West End and White Level communities, and the watershed for Graham-Mebane Lake drinking water source for over 50,000 residents and businesses in the City of Graham and City of Mebane and central and eastern Alamance County, at NCDOT's website here http://www.ncdot.gov/projects/nc119relocation/ . This highlights continued patterns of impacts by the highway corridor and adjacent industrial and distribution parks already under construction.

WERA's board, staff, impacted residents, and partners have great concerns over whether NCDOT actual years of right-of-way acquisitions and construction will, in fact, comply with civil rights, environmental, and environmental justice laws and guidelines. After relocations of homes and businesses, and removal of 187 acres of forest and residential land, what will the sustainability of residential living of 150 years? What will be the sustainability of the bio and ecosystems of animals and wildlife in the watershed and 16 streams and wetlands cross by the highway corridor in first 5.6 miles from I-85 north to White Level at the current Highway-119 at Mrs. White Lane?

Remaining homes and properties may be left in a new flood plain caused by the highway construction. Officials in President Barack Obama's administration have often referenced "*shovel ready*" transportation corridor construction projects that will create jobs. WERA's board, staff, impacted residents, and partners are very concerned about what environmental hazards those shovels will not only dig up, but cover up in Mebane, NC. Taxpayers and voters deserve the accountability and transparency necessary for improving quality of life, especially where millions of taxpayers' dollars are allocated for the long term. Taxpayers and voters have the right to be assured that they are getting the basic public health amenities for which their taxes paid. http://blog.epa.gov/ej/2012/12/1005/

We expect a timely and complete responses from all agencies involved in the interagency process of clean-up at the Craftique Furniture Company site and NCDOT 119-bypass/overpass highway construction corridor.

Respectfully Submitted,

Omega R. Wilson

Omega R. Wilson, President / Project Manager - Founding Board Chair – 1994
West End Revitalization Association (WERA)

Background:
- ✓ President Barack Obama-Elect's Environmental Justice Forum – December 2008
- ✓ U.S. EPA's National Environmental Justice Advisory Council (NEJAC) 2007-2010
- ✓ U.S. EPA's Environmental Justice Achievement Award – 2008

- ✓ National Title VI Alliance for Accountability and Transparency 2011-Present
- ✓ North Carolina Environmental Justice Network 2000-Present
- ✓ Environmental Justice Advisor, Haw River Assembly Riverkeeper-NC 2010-Present

CC:

- President Barack Obama, The White House, Washington, DC
- Velveta Golightly-Howell, Director golightly-howell.velveta@epa.gov
  Office of Civil Right, Environmental Protection Agency
- Heather McTeer Toney, Regional Administrator, Region 4
  Environmental Protection Agency mcteertoney.heather@epa.gov

  Naima Halim-Chestnut, Civil Rights Contact, Region 4
  Environmental Protection Agency halim-chestnut.naima@epa.gov

  Cynthia Peurifoy, Office of Environmental Justice
  Peurifoy.Cynthia@epamail.epa.gov
  U.S. Environmental Protection Agency – Region 4
- Mustafa Ali, Senior Advisor ali.mustafa@epa.gov
  Environmental Protection Agency, Office of Environmental Justice
- Charles Lee, Deputy Associate Administrator Environmental Justice
  lee.charles@epa.gov Environmental Protection Agency
- Matthew Tejada, Director, Office of Environmental Justice
  Environmental Protection Agency tejada.matthew@epa.gov
- Lawyers' Committee for Civil Rights Under Law, Washington, DC
- Southern Environmental Law Center, Chapel Hill, NC
- Vandeventer Black Law Firm, Raleigh, NC
- EarthJustice, Inc., New York, N.Y.
- North Carolina Environmental Justice Network
- Haw River Assembly Riverkeeper, Bynum, NC
- Clean Water for North Carolina, Durham, NC
- North Carolina Conservation Network, Raleigh, NC

ATTACHMENT 1: "Racism, Officially"

Omega Wilson's Letter to the Editor was printed the in Psychology Today Magazine – July/August 2002 Issue. Entitled "Racism, Officially"

INSTITUTIONAL RACISM It is more than interesting that Dr. Montieth and Winters ("Why We Hate," Psychology Today Magazine - May/June 2002 article), grossly over looked "institutional racism" and "revisionism" as systematic and planned contributors to hatred and racism. Our nonprofit community development corporation has filed civil rights and environmental justice complaints with the U.S. Department of Justice (Feb 1999) in order to stop plans to construction a four-lane highway through two 100-year old African American communities, without their input or knowledge. The City of Mebane, N.C. Department of Transportation, and Federal Highway Administration sought approval for plans that are directly contrary to the Civil Rights Act of 1964. Government officials and highway engineers repeatedly mouthed, "I'm just doing my job!" or "I want to keep my job." Slavery has been abolished in the U.S.A., however, racism still creates an economic gain for those who choice to take advantage. By Omega R. Wilson, President West End Revitalization, Mebane, NC

NOTE: Letter to editor was quoted in article published by The Johns Hopkins University Press – "The West End Revitalization Association (WERA)'s Right to Basic Amenities Movement: Voice and Language of Ownership and Management of Public Health Solutions in Mebane, North Carolina"; Progress in Community Health Partnerships Journal: Research, Education, and Action Fall 2008 • vol 2.3

ATTACHMENT 2: "Mebane's 119-Bypass: Hidden Truth"

West End Revitalization Association – CDC

PO Box 661 - 206 Moore Street
Mebane, NC 27302-0661
(919) 563-6099 > FAX 919-563-8857
Email:wera**1**usa@netscape.net

Letter to Editor (local newspapers): September 30, 2002 (Not Published)

"Mebane's 119-Bypass: Hidden Truth"

The North Carolina Department of Transportation, Alamance County, and Mebane have renewed their campaign for the Mebane's "119-Bypass" with a so-called 'new' map. The new map leaves out the fact that plans are actually for a 119-Interstate to Danville, Virginia.

They simply added color to the map shown to West End community residents, in 1999, after they filed complaints at the U.S. Department of Justice under Title VI of the Civil Right Act of 1964 and the Environmental Justice Executive Order 12898 for "adverse and disproportionate impact to minority communities" by a federally funded project.

Truth: West End is an African American community still targeted by the119-Bypass with plans to 'dead-end' Holt Street (TIP-3109); White Level is an African American community to be gutted in half by the 119-Interstate to Danville (TIP-3105); West End's St. Luke Christian Church, founded in 1893 by former slaves, will be destroyed by widening U.S. 70-Highway (TIP-2546) to five lanes and a sixth turning lane onto the 119-Bypass, through the fifth row of pews in the church.

Truth: At West Holt Street, Southern Railroad, and 70-Highway, NCDOT maps show that the one-mile long and 45-foot high overpass will be anchored 30-to-40 feet deep by concrete pillars in a toxic spill. In 1989, Craftique Furniture Company's underground petroleum storage tanks were documented as leaking 10,000 gallons of gasoline and diesel fuel that are still spreading underground.

Truth: The N.C. Department of Environment and Natural Resources (DENR) has not fined Craftique or ordered a clean-up of this site in the watershed of Mebane's water supply. DENR records indicate that well water and ground water are affected by contaminates above EPA's legal limits (benzene, naphthalene, and xylenes) that can cause nerve damage, leukemia and cancer.

According to representatives of Wilbur Smith and Associates, of Columbia, S.C., the NCDOT hired them to conduct an "unbiased 119-Bypass community impact assessment." How unbiased can Wilbur Smith and Associates be when they are also being paid by Mebane to complete a "transportation study?" Somebody is pulling our 119-Bypass leg. Wilbur Smith appears to be campaigning for the 119-Bypass/Interstate by withholding the truth.

If you want the truth about the "119-Bypass/Interstate," you will never get it from Mebane, Alamance County, NCDOT, Federal Highway Administration, or their hired consultants. NCDOT engineers have credited the Department of Commerce with forcing the path of the 119-Bypass/Interstate through West End and White Level in order to service the Mebane's industrial park, Ford Motor Company's new warehouse site. Mebane officials are seeking high personal real estate profits from condemned minority owned property. Will we allow civil rights and environmental justice to be sacrificed by three old friends: racism, big money, and politics?

Omega R. Wilson, President
West End Revitalization Association

ATTACHMENT 3: Email Attached Message – June 17, 2003

From:	(b) (6) Personal Privacy [redacted]
To:	Omega Wilson (b) (6) Personal Privacy [redacted]
Subject:	FYI: Craftique release
Date:	Tue, 17 Jun 2003 10:45:24 -0400

Attention: Mr. Omega Wilson, President WERA
Or website manager

Dear Mr. Wilson,

I thought I would browse your website to learn more about your association's involvement with preserving your community's historical treasures. I enjoyed talking with you and Ms. Foust last Friday, June 16, 2003. It's nice to know that at the least likely time, we can meet someone that's somehow connected to our past.

While visiting your website, I noticed that the caption beneath the photo of the Craftique site states that there was a 10,000- gallon release of petroleum from USTs which threatens the groundwater in the West End Community. True, there was a release which was discovered in 1989 but the quantity which was released was not 10K gallons. This is most likely a gross over-estimation of quantity of petroleum introduced into the subsurface and an apparent assumption that the UST capacity would equal the amount of product lost to the environment (the UST capacity was 10K gallons, not the amount released). Note that no free product (No.2 Fuel Oil), or free phase petroleum hydrocarbons, were found in any of the onsite groundwater monitoring wells. Hypothetically speaking, a release of 10K gallons of petroleum into the subsurface would result in a significantly larger contaminant plume with significantly greater levels of contaminants; fortunately, this is not the case. Given that the contaminant plume has been mapped and its limits have been defined, we can estimate how much petroleum is in the subsurface as a result of the release using the chemical data collected from sampling the soil and groundwater.

By using a simple mass balance calculation, a more accurate estimate of the amount of petroleum hydrocarbons released to the subsurface would be ~300 gallons (+/-100 gallons). This was calculated using: the volume of impacted soil [which was accurately assessed and mapped during the CSA (1999)] and a conservative average concentration of petroleum hydrocarbons.

Furthermore, the "potential" for Ms. Foust's well to influence contaminant flow only exists because her well is situated in the vicinity (nearest) of the release area, not necessarily because impact to her well from the Craftique site is likely to occur. The direction of groundwater flow is towards the north/northwest and not towards the Ms. Foust's property, which is to the east. Therefore, the potential for Ms. Foust's well, a single family resident, is minimal.

We respectfully request that the caption in question be revised to reflect the information provided herein. Public awareness can be essential to the survival of communities everywhere as long as the information provided is true and accurate.

EI, Inc. and the owners of the Craftique site, Pulaski Furniture Corp., appreciate your assistance in this matter. If you have any questions regarding this request, please feel free to contact me at (b) (6) Personal Privacy (my direct office line), or email at (b) (6) Personal Privacy Thank you.

Sincerely,

Darren R. Lockhart, PMII/Environmental Geologist

<u>NOTE: Below are photos taken, by Omega Wilson, of well water testing at Annie Mae Foust's residence on Walker Road adjoining Craftique Furniture Company property.</u>

Challenger

Attachment 4 - Photos: Sept 15, 2014	**by Omega R. Wilson**
Craftique Furniture Company entrance at 1257 West Center St, Mebane, NC 27302	Craftique Furniture Company buildings at 1257 W Center St, Mebane, NC 27302
St. Luke Christian Church at 1167 West Center St, Mebane, NC 27302 (first cornerstone struck in 1893 by Freedmen).	St. Luke Christian Church's property adjoins Craftique property to the west at Walker Road) (View of Craftique Site)
Industrial park construction currently underway at West Holt Street and Latham Lake Road (adjoining 119-bypass /overpass corridor just west of West End Community)	AmeriGas Propane tank distribution site on West Holt Street across the street from industrial site construction and across the railroad from Craftique Furniture Company site at water tank tower in background.

President Barack Obama
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Joe Rich, Attorney jrich@lawyerscommittee.org
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, NW, Suite 400
Washington, D.C. 20005

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Southern Environmental Law Center
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Chapel Hill, NC 27516-2356

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North Carolina Environmental Justice Network
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Rocky Mount, North Carolina 27802

Elaine Chiosso, Executive Director chiosso@hawriver.org
Haw River Assembly Riverkeeper
P.O. Box 187
Bynum, NC 27228

Hope Taylor, Executive Director hope@cwfnc.org
North Carolina Conservation Network
1318 Broad Street
Durham, NC 27705

Brian Buzby, Executive Director brian@ncconservationnetwork.org
North Carolina Conservation Network
19 E. Martin Street, Suite 300
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Heather McTeer Toney, Administrator Region 4 mcteertoney.heather@epa.gov
Environmental Protection Agency
61 Forsyth Street
Atlanta, GA 30303

Cynthia Peurifoy, Office of Environmental Justice Peurifoy.Cynthia@epamail.epa.gov
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61 Forsyth Street, S.W.
Atlanta, GA 30303-8960

Mustafa Ali, Senior Advisor ali.mustafa@epa.gov
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U.S. Environmental Protection Agency
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Washington, DC 20460

Charles Lee, Deputy Associate Administrator Environmental Justice lee.charles@epa.gov
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Matthew Tejada, Director tejada.matthew@epa.gov
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Velveta Golightly-Howell, Director golightly-howell.velveta@epa.gov
Office of Civil Right
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 3, 2017

Return Receipt Requested
Certified Mail No.: 7015 0640 0006 0305 7145

In Reply Refer to:
EPA File No: 14R-14-R4

Mr. Omega Wilson
West End Revitalization Association
Post Office Box 661
Mebane, North Carolina 27302

Re: Rejection and Referral of Administrative Complaint

Dear Mr. Wilson:

On September 18, 2014, the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO), formerly known as the Office of Civil Rights (OCR), received your administrative complaint, on behalf of the West End Revitalization Association (WERA), alleging that the North Carolina Department of Transportation (NCDOT) has not taken preventive measures regarding the spread of "arsenic and lead contaminants throughout an 85% low-income African American community," and that this violates Title VI of the Civil Rights Act of 1964 (as amended, 42 U.S.C. 2000d et seq., and the EPA's nondiscrimination regulation found at 40 C.F.R. Part 7.) ECRCO cannot accept your complaint for investigation as it does not meet the jurisdictional requirements set forth in EPA's nondiscrimination regulation. Accordingly, this case is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulation. First, it must be in writing. 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

After careful review, ECRCO is rejecting your complaint for investigation because it was filed against NCDOT, which is not a recipient of EPA assistance. Also, the alleged acts by NCDOT

that you have identified in your complaint – misrepresentations in the 2009 Record of Decision – are ultimately untimely because they did not occur within 180 days of filing your complaint. Although your complaint makes reference to an EPA recipient, the North Carolina Department of Environment and Natural Resources (NCDENR), now North Carolina Department of Environmental Quality (NCDEQ), it makes no specific or timely allegation of discrimination by NCDENR (now NCDEQ.)

On April 6, 2016, Samuel Peterson, ECRCO Case Manager, contacted you to clarify the complaint and obtain updated information about the issues raised in your complaint. However, ECRCO did not obtain any additional information that would impact the decision to close this complaint for lack of jurisdiction. As a result, ECRCO does not have jurisdiction to investigate this matter and is closing this case as of the date of this letter.

It is ECRCO's understanding that the U.S. Department of Transportation, Federal Highway Administration (FHWA) may have jurisdiction over the matters alleged in the complaint. Accordingly, the complaint is being referred to FHWA for appropriate action. A copy of the letter of referral to FHWA is enclosed. The contact person at the FHWA is Ms. Nichole McWhorter, Federal Highway Administration, U.S. Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, S.E., 8th Floor E81-105, Washington, D.C. 200590.

Finally, per your request to Mr. Peterson, we have included a copy of the Pre-CERCLA Screening Assessment Report, dated May 22, 2015, and May 26, 2015 cover letter, that was done by NC DENR (now NC DEQ) for the former Craftique plant in Mebane, North Carolina. If you have any questions regarding this letter, please contact Samuel Peterson at (202) 564-5393, peterson.samuel@epa.gov, or by mail at the U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

Enclosures

cc: Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office

Vickie Tellis
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 3, 2017

RETURN RECEIPT REQUESTED
Certificate No.: 7015 0640 0006 0305 7138
Nichole McWhorter
Coordination & Compliance Program Manager
Federal Highway Administration
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Eighth Floor E81-105
Washington, D.C. 20590

In Reply Refer To:
EPA File No: 14R-14-R4

Re: Referral of Administrative Correspondence

Dear Ms. McWhorter:

On September 18, 2014, the U.S. Environmental Protection Agency (EPA), External Civil Rights Compliance Office (ECRCO), formerly known as the Office of Civil Rights (OCR), received a complaint from Mr. Omega Wilson, on behalf of West End Revitalization Association (WERA). The complaint, which also was addressed to the U.S. Department of Transportation, alleges that the North Carolina Department of Transportation (NCDOT) has not taken preventive measures regarding the spread of "arsenic and lead contaminants throughout an 85% low-income African American community," and that this violates Title VI of the Civil Rights Act of 1964 (as amended, 42 U.S.C. 2000d et seq., and the EPA's nondiscrimination regulation found at 40 C.F.R. Part 7.) As NCDOT is not a recipient of, or applicant for, EPA financial assistance, ECRCO lacks jurisdiction over this matter and has closed this complaint as of the date of this letter.

Based on telephone conversations between Samuel Peterson, ECRCO Case Manager, and Kevin Ressler, National Title VI Coordinator for the U.S. Department of Transportation Federal Highway Administration (FHWA), it is ECRCO's understanding that FHWA may have jurisdiction over the matters alleged in the complaint. Accordingly, we are referring this matter to your office for appropriate action. A copy of ECRCO's Closure Letter to Mr. Wilson and a copy of his original complaint are enclosed. We have notified Mr. Wilson that his complaint has been forwarded to FHWA for appropriate action and have provided him your contact information.

If you have any questions regarding this letter, please contact Samuel Peterson at (202) 564-5393, peterson.samuel@EPA.gov, or by mail at the U.S. EPA External Civil Rights Compliance Office (MC 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
EPA Office of General Counsel

Enclosures

cc: Kenneth Redden
Acting Associated General Counsel
Civil Rights & Finance Law Office

Vickie Tellis
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
EPA Region 4

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE
OFFICE OF GENERAL COUNSEL

April 3, 2017

Return Receipt Requested
Certified Mail #: 7015 1520 0002 0019 3004

In Reply Refer to:
EPA File No: 14R-14-R4

Sarah Mitchell
Process Agent
North Carolina Department of Transportation
Transportation Building
1 S. Wilmington Street
Raleigh, NC 27601

Re: Rejection and Referral of Administrative Complaint

Dear Ms. Mitchell:

On September 18, 2014, the U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO), formerly known as the Office of Civil Rights (OCR), received an administrative complaint alleging that North Carolina Department of Transportation (NCDOT) has not taken preventive measures regarding the spread of "arsenic and lead contaminants throughout an 85% low-income African American community," and that this violates Title VI of the Civil Rights Act of 1964 (as amended, 42 U.S.C. 2000d et seq., and the EPA's nondiscrimination regulation found at 40 C.F.R. Part 7.) ECRCO cannot accept this complaint for investigation as it does not meet the jurisdictional requirements set forth in EPA's nondiscrimination regulation. Accordingly, this case is closed as of the date of this letter.

Pursuant to EPA's nondiscrimination regulation, ECRCO conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulation. First, it must be in writing. 40 C.F.R. § 7.120(b)(1). Second, it must describe an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulation (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, it must be filed within 180 calendar days of the alleged discriminatory act. 40 C.F.R. § 7.120(b)(2). Finally, it must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

After careful review, ECRCO is rejecting the complaint for investigation because it was filed against NCDOT, which is not a recipient of EPA assistance. Also, the alleged acts by NCDOT that are identified in the complaint – misrepresentations in the 2009 Record of Decision – are ultimately untimely because they did not occur within 180 days of filing the complaint. Although the complaint makes reference to an EPA recipient, the North Carolina Department of Environment and Natural Resources (NCDENR), now North Carolina Department of Environmental Quality (NCDEQ), it makes no specific or timely allegation of discrimination by NCDENR (now NCDEQ.)

On April 6, 2016, Samuel Peterson, ECRCO Case Manager, contacted the complainant to clarify the complaint and obtain updated information about the issues raised in the complaint. However, ECRCO did not obtain any additional information that would impact the decision to close this complaint for lack of jurisdiction. As a result, ECRCO does not have jurisdiction to investigate this matter and is closing this case as of the date of this letter. It is ECRCO's understanding that the U.S. Department of Transportation, Federal Highway Administration (FHWA) may have jurisdiction over the matters alleged in the complaint. Accordingly, the complaint is being referred to FHWA for appropriate action.

If you have any questions regarding this letter, please contact Samuel Peterson at (202) 564-5393, peterson.samuel@epa.gov, or by mail at the U.S. EPA External Civil Rights Compliance Office (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Lilian S. Dorka, Director
External Civil Rights Compliance Office
Office of General Counsel

cc: Kenneth Redden
Acting Associate General Counsel
Civil Rights & Finance Law Office

Vickie Tellis
Acting Assistant Regional Administrator
Acting Deputy Civil Rights Official
U.S. EPA Region 4

Subject: (026150157) CivilRights Web Site: Other

01-Name
Christopher Anglin
02-E-Mail
chris@anglinlawfirm.com
03-Phone
I am an attorney in Raleigh and I have been contacted by several inmates from the North Carolina Correctional Institute for Women. They have claimed that they are being exposed to paint and paint thinner which has caused them serious illnesses and that one woman died earlier this year as a result of exposure. They work in what is known as the tag plant where they make license plates. My client has provided me a copy of her medical records and I have had them reviewed by a friend of mine who is a doctor and the injuries she has described are consistent with the chemicals they claim they have been exposed to. The chemicals which they identified as having been used are: ethyl 3-ethoxypropionate, diethylene glycol monobutyl ether acetate, ehtyl hexanol and oxalic acid. They will do work without being required to wear masks. Jane Gilcrest of the North Carolina Attorney General's Office claims that the OSHA act does not apply to prisoners who are doing work. Please let me know if yo u need any further information.
04-Fax
9198031517
05-Address
3824 Barrett Drive, Suite 301
06-City
Raleigh
07-State
NC
08-Zip
27609
COMMENTS
I am an attorney in Raleigh and I have been contacted by several inmates from the North Carolina Correctional Institute for Women. They have claimed that they are being exposed to paint and paint thinner which has caused them serious illnesses and that one woman died earlier this year as a result of exposure. They work in what is known as the tag plant where they make license plates. My client has provided me a copy of her medical records and I have had them reviewed by a friend of mine who is a doctor and the injuries she has described are consistent with the chemicals they claim they have been exposed to. The chemicals which they identified as having been used are: ethyl 3-ethoxypropionate, diethylene glycol monobutyl ether acetate, ehtylhexanol and oxalic acid. They will do work without being required to wear masks. Jane Gilcrest of the North Carolina Attorney General's Office claims that the OSHA act does not apply to prisoners who are doing work. Please let me know if yo u need any further information.
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rights

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rights

WARNING NOTICE
This electronic mail originated from a federal government computer system of the United States Environmental Protection Agency (EPA). Unauthorized access or use of this EPA system may subject violators to criminal, civil and/or administrative action. For official purposes, law enforcement and other authorized personnel may monitor, record, read, copy and disclose all information which an EPA system processes. Any person's access or use, authorized and unauthorized, of this EPA system to send electronic mail constitutes consent to these terms.

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Submitting script: /cgi-bin/mail.cgi
Submitting host: /cgi-bin/mail.cgi (174.109.104.177)
Browser: Mozilla/5.0 (Windows NT 6.1; WOW64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/37.0.2062.120 Safari/537.36
Referred: http://www.epa.gov/civilrights/comments.htm
TSSMS: ocrpage1
Mail to File: website2

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

February 12, 2016

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certify Mail #: 7015 0640 0006 0305 6872

In Reply Refer To:
EPA File No: 15U-14-R4

Mr. Christopher Anglin
3824 Barrett Drive, Suite 301
Raleigh, North Carolina 27609

Re: Rejection of Administrative Complaint and Referral

Dear Mr. Anglin:

This letter is in response to your administrative complaint filed with the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), on October 14, 2014. The complaint alleges that the inmates of North Carolina Correctional Institution for Women (NCCIW) are being exposed to paint and paint thinner which has caused them serious illness. After careful consideration, the OCR has concluded that it cannot accept the complaint for investigation because it does not meet the jurisdictional requirements described in EPA's nondiscrimination regulations at 40 Code of Federal Regulations Part 7. OCR is referring it to the North Carolina Department of Environmental Quality (NCDEQ) for any followup action(s) considered appropriate.

Initially, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations *(i.e.,* an alleged discriminatory act based on race, color, national origin, age, sex, or disability). *Id*. Third, it must be filed within 180 days of the alleged discriminatory act. Finally, it must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act.

Specifically, information available does not indicate that the NCCIW is a recipient of EPA assistance. In addition, on April 15, 2015, EPA sent you a letter requesting that you provide the bases of your complaint (i.e., discriminatory act based on race, color, national origin, sex disability age) and requested that you submit the information within fifteen (15) days of the letter's receipt. We have not received the clarifying information needed to process your complaint. Therefore, we are rejecting it as of the date of this letter.

A copy of the letter to the NCDEQ and a copy of the EPA's nondiscrimination regulations implementing Title VI are enclosed with this correspondence. For further assistance, please contact the NCDEQ via telephone at (919) 707-8200 or via mail at North Carolina Department of Environmental Quality, Waste Management, 217 West Jones Street, Raleigh, North Carolina 20603 Attention: Linda Culpepper, Director.

Sincerely,

Velveta Golightly-Howell,
Director
Office of Civil Rights

Enclosure

cc: Elise B. Packard,
Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA

Kenneth LaPierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region IV

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

February 12, 2016

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certify Mail #: 7015 1520 0002 0019 6889

In Reply Refer To:
EPA File No: 15U-14-R4

Ms. Linda Culpepper
Director, Waste Management
North Carolina Department of Environmental Quality
217 West Jones Street
Raleigh, North Carolina 27603

Re: Rejection of Administrative Complaint and Referral

Dear Ms. Culpepper:

This letter is in response to an administrative complaint filed with the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), on October 14, 2014. The complaint alleges that the inmates of North Carolina Correctional Institution for Women (NCCIW) are being exposed to paint and paint thinner which has caused them serious illness. After careful consideration, the OCR has concluded that the complaint cannot be accepted for investigation because the jurisdictional requirements described in EPA's nondiscrimination regulations at 40 Code of Federal Regulations Part 7 are not satisfied. OCR is referring the complaint to your office within the North Carolina Department of Environmental Quality (NCDEQ) for any followup action(s) considered appropriate.

Initially, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations *(i.e.,* an alleged discriminatory act based on race, color, national origin, age, sex, or disability). *Id*. Third, it must be filed within 180 days of the alleged discriminatory act. Finally, it must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act.

Information available does not indicate that the NCCIW is a recipient of EPA assistance. Therefore, we are rejecting the subject complaint as of the date of this letter. A copy of the complaint and EPA's nondiscrimination regulations implementing Title VI are enclosed with this correspondence.

If you have any questions, please contact Samuel Peterson by telephone at (202) 564-5393, via electronic mail at peterson.samuel@epa.gov, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Velveta Golightly-Howell,
Director
Office of Civil Rights

Enclosures

cc: Elise B. Packard,
Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA

Kenneth LaPierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region IV

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

OFFICE OF
CIVIL RIGHTS

February 12, 2016

RETURN RECEIPT REQUESTED
Certify Mail #: 7015 0640 0006 0305 6889

In Reply Refer To:
EPA File No: 15U-14-R4

Warden Carol Caldwell
North Carolina Correctional
Institution for Women (NCCIW)
1034 Bragg Street
4287 Mail Service Center
Raleigh, North Carolina 27699-4287

Re: Rejection of Administrative Complaint and Referral

Dear Ms. Caldwell:

This letter is in response to an administrative complaint filed with the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), on October 14, 2014. The complaint alleges that the inmates of North Carolina Correctional Institution for Women (NCCIW) are being exposed to paint and paint thinner which has caused them serious illness. After careful consideration, the OCR has concluded that it cannot accept the complaint for investigation because it does not meet the jurisdictional requirements described in EPA's nondiscrimination regulations at 40 Code of Federal Regulations Part 7. OCR is referring the complaint to the North Carolina Department of Environmental Quality (NCDEQ) for any followup action(s) considered appropriate.

Initially, OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral. To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations *(i.e.,* an alleged discriminatory act based on race, color, national origin, age, sex, or disability). *Id*. Third, it must be filed within 180 days of the alleged discriminatory act. Finally, it must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act.

Information available does not indicate that the NCCIW is a recipient of EPA assistance. Therefore, we are rejecting the complaint as of the date of this letter.

If you have any questions , please contact Samuel Peterson by telephone at (202) 564-5393, via electronic mail at peterson.samuel@epa.gov, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Sincerely,

Velveta Golightly-Howell,
Director
Office of Civil Rights

Enclosures

cc: Elise B. Packard,
Associate General Counsel
Civil Rights & Finance Law Office
U.S. EPA

Kenneth LaPierre
Assistant Regional Administrator
Deputy Civil Rights Official
U.S. EPA, Region IV

From: "Clark, Renee" <Clark.Renee@epa.gov>
Date: October 14, 2014 at 1:02:11 PM EDT
To: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>
Subject: FW: (014125121) CivilRights Web Site: External Complaints (Title VII)

Helena,
The following was received via the OCR website.

-----Original Message-----
From: idaemon@unixmail.rtpnc.epa.gov [mailto:idaemon@rtpnc.epa.gov]
Sent: Tuesday, October 14, 2014 12:51 PM
To: Clark, Renee
Subject: (014125121) CivilRights Web Site: External Complaints (Title VII)

01-Name
[redacted]
02-E-Mail
newdarkearth@gmail.com
03-Phone
[redacted]
04-Fax

05-Address
[redacted]
06-City
Oneida
07-State
WI
08-Zip
54155
COMMENTS
I am Native American living on the Oneida Indian Reservation in Wisconsin. We have a garbage disposal problem and I am hereby filing a formal complaint. Within the last two months I have avoided at least two accidents as a result of garbage truck traffic and traffic avoiding garbage containers on the roadway. What is the problem? The Oneida Tribe contracts for garbage pickup from one vendor and it Hobart contracts from another vendor so truck traffic to pick up garbage is twice what it should be. For example I have my garbage out on Friday and my neighbor has his out to the road on Wednesday. The garbage goes to the same place. Consider, "Cost-effectiveness requires that the least of amount of resources be used to achieve an objective" (Callan & Thomas, 2013, p. 19).

In summary, it is not only dangerous to have separate garbage disposal but also a resource waste.

Please keep me informed as you move through this complaint.

[redacted]

Reference:
Callan, S. (2013). Environmental Economics and Management: Theory, policy and management (6th ed.). Mason, OH: South-western college Publishing.
UserWord
rights
Word
rights

WARNING NOTICE
This electronic mail originated from a federal government computer system of the United States Environmental Protection Agency (EPA). Unauthorized access or use of this EPA system may subject violators to criminal, civil and/or administrative action. For official purposes, law enforcement and other authorized personnel may monitor, record, read, copy and disclose all information which an EPA system processes. Any person's access or use, authorized and unauthorized, of this EPA system to send electronic mail constitutes consent to these terms.

This information is for tracking purposes only.
Submitting script: /cgi-bin/mail.cgi
Submitting host: /cgi-bin/mail.cgi (74.213.208.126)
Browser: Mozilla/5.0 (Macintosh; Intel Mac OS X 10_9_4) AppleWebKit/537.77.4 (KHTML, like Gecko) Version/7.0.5 Safari/537.77.4
Referred: http://www.epa.gov/civilrights/comments.htm
TSSMS: ocrpage1
Mail to File: website2

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

OFFICE OF
CIVIL RIGHTS

APR 2 0 20

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 1018

In Reply Refer to:
EPA File No.: 16NO-14-R5

(b) (6) - Privacy
Oneida, Wisconsin 54155

Re: Rejection of Administrative Complaint

Dear (b) (6) - Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting your complaint received on October 14, 2014, and supplemented on December 5, 2014, in response to the OCR's request for clarification. Because the OCR is responsible for processing complaints containing allegations of discrimination by recipients of EPA financial assistance pursuant to Title VI of the Civil Rights Act and the EPA implementing regulations, we inferred that you intended to file a Title VI complaint and processed your complaint accordingly. You alleged the garbage pickup and disposal process in your community was both dangerous and a waste of resources. The complaint is dismissed, and the case closed as of the date of this letter.

The OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate Agency. (See 40 Code of Federal Regulations (C.F.R.) § 7.120(d)(1).) After careful review of the information you provided to the OCR in your complaint and in response to the OCR's request for clarification, the EPA is rejecting your complaint because it fails to assert a claim of discrimination in violation of EPA's nondiscrimination regulations (i.e., it does not include an allegation of a discriminatory act based on race, color, national origin, sex, age, or disability).

Although the OCR must reject your complaint for the above-stated reason, the OCR would like to provide you with the following point of contact who may be able to address your concerns:

Jeff Mears
Environmental Area Manager
(920) 869-4555
jmears@oneidanation.org

If you have questions regarding the OCR's decision, please contact Brittany Martinez of the OCR's External Compliance Program at (202) 564-0727, via electronic mail at martinez.brittany@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-1000.

Sincerely,

Velveta Golightly-Howell
Director

Enclosure

MEMORANDUM

SUBJECT: Atlanta Water Correspondence (17r-14-R5)

FROM: Katsumi Keeler, Case Manager KK 11-13-14
EPA Office of Civil Rights

TO: File

This is a record of the disposition of a correspondence as a non-complaint, for which no further action will be taken by OCR. The correspondence was received by the EPA Office of Civil Rights on October 22, 2014, and was assigned the control number 17r-14-R4.

On 11/13/14, at 1518 hours, I spoke by telephone with Lauren Fehlman, Regional Supervisory Investigator, 615-232-3803, of Federal OSHA, in reference to OSHA Case (b) (6) - Privacy City of Atlanta, Department of Watershed Management/V (b) (6) - Privacy. I inquired as to the reason she had sent a copy of a retaliation complaint (OCR Case 17r-14-R4) to the EPA. She stated that it is her agency's SOP to forward a copy of retaliation complaints that reference issues regulated by other agencies to the agencies of concern. In this case, the complaint was actually of retaliation against a whistleblower who complained about violations of the Safe Drinking Water Act. She stated that it was not her expectation that EPA would report back to her agency regarding and that the notification had been sent as a courtesy.

Ms. Fehlman further stated that, as stated in the referral cover letter, her Department is pursuing an investigation of the retaliation allegation and that the only reason she sent the referral letter to the EPA was because there were allegations of violations of the Safe Drinking Water Act, of which the EPA is the enforcement authority.

Note that, although Title VI does address retaliation, it is only with respect to discriminatory acts. Part § 7.100 states:

"Intimidation and retaliation prohibited. No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:
(a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this part, or
(b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this part, or has opposed any practice made unlawful by this regulation."

Because the correspondence was a courtesy copy of a complaint that OSHA was investigating, was not a complaint referral, and did not address any civil rights issues, OCR will take no further action.

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX

RECEIVED
OCT 16 2014
RA's Office

October 2, 2014

Regional Administrator
U.S. Environmental Protection Agency
61 Forsyth Street, SW, 13th Floor
Atlanta, GA 30303

RE: City of Atlanta, Department of Watershed Management/Wood/
Case#4-5580-14-147

Dear Regional Administrator:

Enclosed for your information please find a copy of a complaint of retaliation filed under the Safe Drinking Water Act, 42 U.S.C 300j-9; an investigation of the retaliation allegation is currently being conducted by this office

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,

For Lauren Fehlman
Regional Supervisory Investigator

Enclosures

RCd OSHA OCT07-'14-PM03:17

EC

STEPHEN M. KATZ
Email: smkatz@smk-law.com

Suite 200 • 4799 Olde Towne Parkway
Marietta, Georgia 30068-4350
Telephone: 770.988.8181
Facsimile: 770.988.8182
Internet: www.smk-law.com

12 September 2014

BY FAX: 678.237.0447
AND FIRST CLASS MAIL

Mr. Antione Robinson
Acting Assistant Regional Director
Office of Whistleblower Protection Programs
United States Department of Labor
Room 6T50
61 Forsyth Street, SW
Atlanta, Georgia 30303

Re: Safe Drinking Water Act
Complainant: [redacted]
Employer: City of Atlanta
Statute: Safe Drinking Water Act

Dear Mr. Robinson:

I represent and write on behalf of [redacted] a long term employee of the City of Atlanta, Department of Watershed Management. The purpose of this letter is to make a formal complaint of retaliation under the Safe Drinking Water Act, 42 U.S.C. 300j-9(i).

Within the preceding thirty (30) days, [redacted] has complained to his employer of numerous acts that render Atlanta's drinking water unsafe and which violate the Safe Drinking Water Act. These complaints include, without limitation, the release of unsafe chemicals into the drinking water and the City of Atlanta's failure to comply with federal laws designed to ensure safe drinking water.

Mr. Antione Robinson
Acting Assistant Regional Director
Office of Whistleblower Protection Programs
United States Department of Labor
12 September 2014
Page 2 of 2

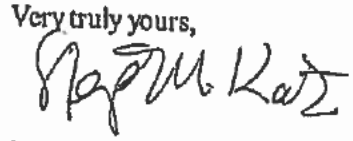
As a direct result of his complaints, City of Atlanta has taken adverse action against [redacted] that materially affects the terms and conditions of his employment and, importantly, his pay. For example, City of Atlanta has denied [redacted] overtime compensation and attempted to reclassify him as a non-exempt employee. On September 5, 2014, the City of Atlanta removed [redacted] from his union and destroyed the protection offered by the union. [redacted] was compelled to sign a document that removed union protection. Thereafter, the City of Atlanta forced [redacted] to work the night shift knowing that it would cause him extreme hardship. Finally, City of Atlanta has substantially reduced [redacted] pension benefits and persistently refuses to restore money unlawfully taken from his pension account.

[redacted] requests that OSHA accept this complaint of retaliation, assign him a case number, and conduct and investigation to remediate the retaliation he has suffered. [redacted] seeks back pay, restoration of pension benefits, and return to union status.

I would appreciate it if you would acknowledge receipt of this complaint by letter or email due to the short statute of limitations. If you have any questions, please contact me.

Thank you for your courtesy, and I remain

Very truly yours,



Stephen M. Katz

smk/
cc: [redacted]

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX

October 8, 2014

RECEIVED
OCT 2
RA's Office

Regional Administrator
U.S. Environmental Protection Agency
61 Forsyth Street, SW, 13th Floor
Atlanta, GA 30303-3104

RE: City of Flovilla / Norris / Case No. 4-5070-14-149

Dear Regional Administrator:

The above referenced matter is a complaint of retaliation under Section 1450(I)(1)(A-C) of the Safe Drinking Water Act, 42 U.S.C. §300j-9(i). Enclosed for your information is a copy of the Secretary's Findings.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,

Christine Schultz

For Lauren Fehlman
Regional Supervisory Investigator

Enclosures:
Secretary's Findings

U.S. Department of Labor

Occupational Safety and Health Administration
Atlanta Regional Office
Sam Nunn Federal Center
61 Forsyth Street, SW Room 6T50
Atlanta, Georgia 30303
(678) 237-0400
(678) 237-0447 FAX

October 8, 2015

[redacted]
Flovilla, GA 30216

RE: City of Flovilla / [redacted] / Case No. 4-5070-14-149

Dear [redacted]

This is to acknowledge receipt of your complaint of discrimination under Section 1450(I)(1)(A-C) of the Safe Drinking Water Act, 42 U.S.C. §300j-9(i); which you filed on August 29, 2014, and to also advise you that we have completed our investigation of the above-referenced complaint filed by you (Complainant) against the City of Flovilla (Respondent). In brief, you alleged that Respondent terminated your employment in retaliation for you raising concerns about poor/questionable quality of the drinking water, employees receiving pay or being compensated for time off when they had no accrued leave, and employees not receiving proper training or adequate supplies to ensure the safety in performing duties.

Following an investigation by a duly-authorized investigator, the Secretary of Labor, acting through his agent, the Regional Administrator for the Occupational Safety and Health Administration (OSHA), Region IV, issues the following findings:

Secretary's Findings

Complainant was terminated on or about June 10, 2014. On August 29, 2014, Complainant filed a complaint with the Secretary of Labor alleging that Respondent retaliated against him in violation of Section 1450(I)(1)(A-C) of the Safe Drinking Water Act, 42 U.S.C. §300j-9(i). As this complaint was not filed within 30 days of the alleged adverse action, it is deemed not timely. Consequently, this complaint is dismissed.

Respondent is an employer within the meaning of 42 U.S.C. §300j-9(i). Complainant is an employee within the meaning of 42 U.S.C. §300j-9(i).

The time lapse between the termination of Complainant's employment and the filing of the complaint is beyond the SDWA's statutory time frame and is considered untimely filed. There were no extenuating circumstances presented which would allow OSHA to consider tolling the filing deadline Thus, based on the available information, the Complainant filed an untimely complaint with OSHA.

Respondent and Complainant have 30 days from the receipt of these Findings to file objections and to request a hearing before an Administrative Law Judge (ALJ). If no objections are filed, these Findings will become final and not subject to court review.
Objections must be filed in writing with:

Chief Administrative Law Judge Office of Administrative Law Judges
U.S. Department of Labor
800 K Street NW,
Suite 400 North Washington, D.C.
20001-8002 Telephone: (202) 693-7300
Fax: (202) 693-7365

With copies to:

The City of Flovilla
308 Heard Street
Flovilla, GA 30216

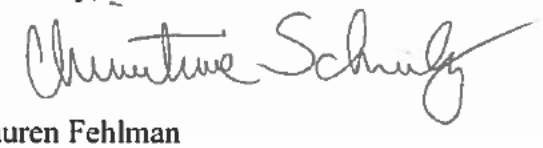
And

Kurt Petermeyer, Regional Administrator
U.S. Department of Labor – OSHA
Sam Nunn Atlanta Federal Center
61 Forsyth Street, SW, Room 6T50
Atlanta, GA 30303

In addition, please be advised that the U.S. Department of Labor does not represent any party in the hearing; rather, each party presents his or her own case. The hearing is an adversarial proceeding before an Administrative Law Judge (ALJ) in which the parties are allowed an opportunity to present their evidence for the record. The ALJ who conducts the hearing will issue a decision based on the evidence and arguments, presented by the parties. Review of the ALJ's decision may be sought from the Administrative Review Board, to which the Secretary of Labor has delegated responsibility for issuing final agency decisions under [Section 322(a) of the Clean Air Act, 42 U.S.C. §7622; Section 110(a) of the Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. §9610; Section 507(a) of the Federal Water Pollution Control Act, 33 U.S.C. §1367; Section 1450(I)(1)(A-C) of the Safe Drinking Water Act, 42 U.S.C. §300j-9(i); Section 7001(a) of the Solid Waste Disposal Act, 42 U.S.C. §6971; and Section 23(a) of the Toxic Substances Control Act, 15 U.S.C. §2622.]. A copy of this letter has been sent to the Chief Administrative Law Judge along with a copy of your complaint. The rules and procedures for handling of [Section 322(a) of the Clean Air Act, 42 U.S.C. §7622; Section 110(a) of the Comprehensive Environmental Response, Compensation, and Liability Act 42 U.S.C. §9610; Section 507(a) of the Federal Water Pollution Control Act, 33 U.S.C. §1367; Section 1450(I)(1)(A-C) of the Safe Drinking Water Act, 42 U.S.C. §300j-9(i); Section 7001(a) of the Solid Waste Disposal Act, 42 U.S.C. §6971; and Section 23(a) of the Toxic Substances

Control Act, 15 U.S.C. §2622,] cases can be found in Title 29, code of Federal Regulations Part 24, and may be obtained at www.whistleblowers.gov.

Sincerely,



For Lauren Fehlman
Regional Supervisory Investigator

cc: Respondent/Respondent's attorney
Regional Administrator, U.S. Environmental Protection Agency
Chief Administrative Law Judge, USDOL

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

OFFICE OF
CIVIL RIGHTS

AUG 28 2015

RETURN RECEIPT REQUESTED
Certified Mail #.: 7015 0640 0006 0305 6834

In Reply Refer To:
EPA File No.: 18r-14-R4

(b) (6) - Privacy
[redacted]
Flovilla, Georgia 30216

Re: Rejection of Administrative Complaint

Dear Mr. Norris:

The U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), reviewed your complaint dated October 23, 2014, alleging that that the City Flovilla retaliated against you for "raising concerns about poor and questionable quality of drinking water, employees receiving pay or being compensated for time off when they had no accrued leave, and employees not receiving proper training or adequate supplies to ensure the (sic) safety in performing duties." Because OCR is responsible for processing administrative complaints which allege discrimination by EPA recipients of financial assistance that are filed under EPA's implementing regulations at 40 Code of Federal Regulations (C.F.R.) Part 7, we infer that your intent was to file such a complaint. After careful review, OCR is rejecting your complaint for investigation, and OCR is closing your case as of the date of this letter.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to an appropriate agency. *See* 40 C.F.R. § 7.120(d) (1). For a complaint to be accepted for investigation, it must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b) (l). Second, the complaint must describe an alleged discriminatory act that, if true, would violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(l). Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. As part of this review, the OCR sent you a request for clarification, asking for a response within fifteen (15) days of its receipt. You failed to respond, and there is insufficient information in the record to establish jurisdiction.

After careful review, the OCR is rejecting your complaint. Notably, the complaint does not allege discrimination on the basis of race, color, national origin, sex, age, or disability by a recipient of EPA financial assistance. And, to the extent that it alleges retaliation, the complaint does not allege that you were subjected to retaliation for opposing an act of discrimination or for participating in a discrimination complaint grievance process of a recipient of EPA financial assistance. Furthermore, on November 12, 2014, the OCR sent you a letter requesting clarification of the complaint. We requested that you provide the OCR with specific information within fifteen (15) calendar days of receiving it. To date the OCR has not received a reply.

Your complaint is rejected, and OCR is closing the case as of the date of this letter. If you have any questions about this letter, please contact, Samuel Peterson, Case Manager, by telephone at (202) 564-5393 or via email at peterson.samuel@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

cc:

Elise Packard,
Associate General Counsel
Civil Rights & Finance Law Office
(MC 2399A)

Vickie Tellis
Acting Assistant Regional Administrator
Deputy Civil Rights Official
Region IV
(MC 9T25)

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

AUG 28 2015

OFFICE OF
CIVIL RIGHTS

RETURN RECEIPT REQUESTED
Certified Mail #: 7015 0640 0006 0305 6827

In Reply Refer To:
EPA File No: 18r-14-R4

The Honorable Beth Ogletree, Mayor
City of Flovilla
308 Heard Street
Flovilla, Georgia 30216

Re: Rejection of Administrative Complaint

Dear: Ms. Ogletree:

The U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), reviewed the referenced complaint dated October 23, 2014. It alleges that that the City Flovilla retaliated against (b) (6) - Privacy the Complainant, for "raising concerns about poor and questionable quality of drinking water, employees receiving pay or being compensated for time off when they had no accrued leave, and employees not receiving proper training or adequate supplies to ensure the (sic) safety in performing duties." OCR is responsible for processing administrative complaints alleging discrimination by EPA recipients of financial assistance that are filed under EPA's implementing regulations codified at 40 Code of Federal Regulations (C.F.R.) Part 7.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to an appropriate agency. *See* 40 C.F.R. § 7.120(d) (1). For a complaint to be accepted for investigation, it must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b) (l). Second, the complaint must describe an alleged discriminatory act that, if true, would violate the EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(l). Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. As part of its review, the OCR sent a request for clarification to the Complainant, requesting a response within fifteen days of its receipt. He failed to respond, and there is insufficient information in the record to establish OCR's jurisdiction.

Thus, after careful review, the OCR is rejecting the subject complaint. Among other things, it did not allege discrimination on the basis of race, color, national origin, sex, age, or

disability by a recipient of EPA financial assistance. And, to the extent that the complaint alleged retaliation, the Complainant did not allege that he was retaliated against for opposing an act of discrimination by, or for participating in a discrimination complaint grievance process of a recipient of EPA financial assistance. Accordingly, OCR must reject his complaint. If you have any questions about this letter, please contact, Samuel Peterson, Case Manager, by telephone at (202) 564-5393 or via email at peterson.samuel@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office
(MC 2399A)

Vicki Tellis
Acting Assistant Regional Administrator, Deputy Civil Rights Official
Region IV
(MC 9T25)

EPA File No: 19R-14-R1 (Mass. DEP)

Re: <u>Administrative Closure of Complaint</u>

To Files:

This letter to files is in response to an administrative complaint filed on October 29, 2014, alleging that the Massachusetts Department of Environmental Protection is not operating in a manner that improves access to person with Limited English Proficiency. After a careful review of the complaint, the OCR is rejecting the complaint for investigation because it does not meet all the jurisdictional requirements of EPA's nondiscrimination regulations.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of complaints to determine acceptance, rejection, or referral. To be accepted for investigation, a complaint must meet the jurisdictional requirements described in EPA's nondiscrimination regulations. First, it must be in writing. Second, it must describe an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations *(i.e.,* an alleged discriminatory act based on race, color, national origin, age, sex, or disability). Third, it must be filed within 180 days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or recipient of, EPA assistance that allegedly committed the discriminatory act.

The Complaint was received by email and did not contain a valid email return address, nor postal address, nor telephone contact number. OCR attempted to contact the Complainant including by internet search on several occasions, (October 30, 2014, November 5, 2014, March 3, 2015 and May 10, 2016), to discover return information to pursue the jurisdictional review without success**.** The allegation lacks sufficient detail (i.e., who, what, where, when, how) for OCR to infer that the alleged discriminatory act, attributed to this EPA recipient, may have occurred or is occurring. OCR has not been able to contact the Complainant to ascertain that the complaint was filed within 180 days of the date of the alleged discriminatory act as required by OCR's Title VI implementing regulations.

The complaint is administratively closed as of the writing of this letter to files.

If there are any questions regarding this letter, please contact Samuel Peterson at (202) 564-5393 or by mail at the U.S. EPA Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460-1000.

Complaint. Lets move on this!

Helena Wooden-Aguilar
Assistant Director
External Civil Rights - US EPA
202-564-0792 (office)
202-302-6846 (mobile)
wooden-aguilar.helena@epa.gov

Begin forwarded message:

From: "Clark, Renee" <Clark.Renee@epa.gov>
Date: October 29, 2014 at 3:34:05 PM EDT
To: "Wooden-Aguilar, Helena" <Wooden-Aguilar.Helena@epa.gov>
Subject: Fwd: Region 1 Title VI Staff Person

Renee Clark
Team Lead
Office of Civil Rights
Environmental Protection Agency

Begin forwarded message:

From: [redacted]
Date: October 29, 2014 at 1:25:31 PM EDT
To: "clark.renee@epa.gov" <clark.renee@epa.gov>
Subject: Fw: Region 1 Title VI Staff Person
Reply-To: [redacted]

I would appreciate it if you can forward to the office of civil rights as it appears that the email address they use only receives attention during an official comment period.

On Thursday, October 23, 2014 12:02 PM, [redacted] wrote:

It has been a week since my message was first sent to Region 1.
I am requesting the forms to make an official complaint.
Please respond and provide forms. I also ask the that a letter of reprimand be placed in the personnel file of the staff person who has failed to respond back to the initial inquiry.
Thank you.

On Thursday, October 16, 2014 4:03 PM, [redacted] wrote:

I am looking to communicate with the person responsible for Title VI matters as they relate to MassDEP EEA. More specifically, I am inquiring about what oversight may have occurred by EPA Region 1 as it relates to the EPAs Office of Civil Rights policy entitled: *Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons*. I do not believe that MassDEP EEA is operating in an manner that improves access to person with Limited English Proficiency. I would appreciate you providing contact information for the EPA staff person who holds this responsibility, including their email address, so that I can discuss this matter further.
Thank you.
[redacted]

U.S. Department of Justice
Civil Rights Division

Federal Coordination and Compliance Section-NWB
950 Pennsylvania Avenue, NW
Washington, DC 20530

Doc #404670

OCT 14 2014

Ms. Vicki Simons
Director
Office of Civil Rights
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Mail Stop 1201A
Washington, D.C. 20004

Dear Ms. Simons:

Enclosed for your review is a letter received by the Federal Coordination and Compliance Section of the Civil Rights Division of the U.S. Department of Justice. The matter does not appear to be within the jurisdiction of our office.

However, the issues raised may fall within the jurisdiction of your agency and, therefore, we are referring it to you for appropriate disposition. The writer has been notified of the referral.

Thank you for your assistance in this matter.

Sincerely,

Deeana Jang
Chief
Federal Coordination and Compliance Section
Civil Rights Division

Enclosure

RECEIVED
NOV 06 2014

FEDERAL COORDINATION
AND
COMPLIANCE SECTION

2014 JUL -7 AM 11:03

[redacted]
Chattanooga, TN 37415
[redacted]

July 3, 2014

Mr. Brian Smith
Federal Coordination and Compliance Section - NWB
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

RE: Report of Civil Rights Violations and Request for Investigation

Dear Mr. Smith:

Per our conversation yesterday I have attached the documents that were sent to your office on September 20,2012 (via FedEx) and June 11, 2014 (via US Postal Service).

[redacted]

UNITED STATES POSTAL SERVICE 1000

ETE THIS SECTION

, 2, and 3. Also complete
d Delivery is desired.
your name and address on the reverse
so that we can return the card to you.
■ Attach this card to the back of the mailpiece,
or on the front if space permits.

1. Article Addressed to:

Federal Coordination and
Compliance Section - NWB
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

2. Article Number
(Transfer from s 7013 2630 0000 5783 2373

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X ☐ Agent ☐ Addressee

B. Received by (Printed Name) Cely Jose
C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No
JUN 11 2014

3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

UNITED STATES POSTAL SERVICE

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

* Sender: Please print your name, address, and ZIP+4 in this box *

[redacted]

Chattanooga, IN 37415

Received 10/14/14

To: Brian Smith Page 3 of 10 2014-07-03 17:56:55 (GMT) 14232676660 From: Steve Riggs

MEMORANDUM OF COMPLAINT

Federal Coordination and Compliance Section - NWB
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Report of Civil Rights Violations and Request for Investigation

Issues:
Conspiracy to violate Title VI of the 1964 Civil Rights Act 42 USC Sec. 2000d et. seq.
Violation of the Civil Rights Act of 1871 42 USC Sec. 1983
Malicious Prosecution
Falsification of Government Documents
Perjury
Environmental Racism

RE: Update

Please provide an update on the enclosed letter I sent to your office requesting a formal investigation.

[redacted] *Date:* June 6, 2014

NOTE: Delivered Sept. 20, 2012 @ 9:02 A.M.
Signed by: A. OWENS

FedEx Express NEW Package US Airbill

FedEx Tracking Number 8015 3773 5893

Form 0200

Sender's Copy

1 From *Please print and press hard.*

Date [redacted]

Sender Name [redacted] Phone (423) 704-8232

Company [redacted]

Address [redacted]

City Chattanooga State TN ZIP 37415

2 Your Internal Billing Reference

First 24 characters will appear on invoice.

3 To

Recipient's Name FEDERAL COORDINATION AND COMPLIANCE SECTION-NWB Phone

Company CIVIL RIGHTS DIVISION U.S. DEPARTMENT OF JUSTICE

Address 950 PENNSYLVANIA AV, N.W.

Dept./Floor/Suite/Room

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Use this line for the HOLD location address or for continuation of your shipping address.

City WASHINGTON State DC ZIP 20530

☐ HOLD Weekday — FedEx location address REQUIRED. Not available for FedEx First Overnight.

☐ HOLD Saturday — FedEx location address REQUIRED. Available only for FedEx Priority Overnight and FedEx 2Day to select locations.

Easy new Peel-and-Stick airbill. No pouch needed.
Apply airbill directly to your package. See directions on back.

4 Express Package Service *To most locations.

NOTE: Service order have changed. Please select carefully.

Packages up to 150 lbs. For packages over 150 lbs., use the new FedEx Express Freight US Airbill.

First Business Day	2 or 3 Business Days
☐ FedEx First Overnight — Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.	☐ FedEx 2Day A.M. — Second business morning.* Saturday Delivery NOT available.
☑ FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.	☐ FedEx 2Day — Second business afternoon.* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.
☐ FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.	☐ FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

5 Packaging *Declared value limit $500.

☑ FedEx Envelope* ☐ FedEx Pak* ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options

☐ SATURDAY Delivery — NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver

☐ No Signature Required — Package may be left without obtaining a signature for delivery.

☐ Direct Signature — Someone at recipient's address may sign for delivery. *Fee applies.*

☐ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. *Fee applies.*

Does this shipment contain dangerous goods?

One box must be checked.

☑ No ☐ Yes As per attached Shipper's Declaration ☐ Yes Shipper's Declaration not required ☐ Dry Ice Dry Ice, 9, UN 1845 kg

Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.

☐ Cargo Aircraft Only

7 Payment *Bill to:*

Enter FedEx Acct. No. or Credit Card No. below.

☐ Sender Acct. No. in Section 1 will be billed ☐ Recipient ☐ Third Party ☐ Credit Card ☑ Cash/Check

FedEx Acct. No.
Credit Card No.
Exp.

Total Packages Total Weight Total Declared Value*

1 lbs. $ .00

*Our liability is limited to US$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

644

Rev. Date 1/12 • Part #167322 • ©2010 FedEx • PRINTED IN U.S.A. SRF

[redacted]
[redacted] Chattanooga, TN 37415
[redacted]

MEMORANDUM OF COMPLAINT

Federal Coordination and Compliance Section - NWB
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Report of Civil Rights Violations and Request for Investigation

Issues:
Conspiracy to violate Title VI of the 1964 Civil Rights Act 42 USC Sec. 2000d et. seq.
Violation of the Civil Rights Act of 1871 42 USC Sec. 1983
Malicious Prosecution
Falsification of Government Documents
Perjury
Environmental Racism

RE:

UNITED STATES DISTRICT COURT
EASTERN DIVISION OF TENNESSEE
AT CHATTANOOGA

UNITED STATES OF AMERICA

V.

No. 1:09-CR-144
JUDGES COLLIER/CARTER

[redacted], and
WATKINS STREET PROJECT, LLC
Defendants

[redacted]*s is an African American engaged in the construction/demolition industry in Chattanooga, Hamilton County, Tennessee who is being prosecuted in the United States District Court for the Eastern District of Tennessee (No. 1:09-CR-144)*

To: Brian Smith Page 6 of 10 2014-07-03 17:56:55 (GMT) 14232676660 From Steve Riggs

based on false allegations of EPA regulatory violations by agents and employees of the Chattanooga-Hamilton County Air Pollution Control Bureau.

This is a formal request for your office to investigate multiple violations of federal statutes, regulations and Executive Orders relevant to Title VI of the 1964 Civil Rights Act, 42 USC 2000d et. seq. and the United States Environmental Protection Act rules under Title 40 CFR. At issue, among other things, is the misuse of federal funds in a fashion that encourages, entrenches, subsidizes or results in racial discrimination by the City of Chattanooga, a municipal corporation, and the Hamilton County General Government, a division of the State of Tennessee, through the Chattanooga-Hamilton County Air Pollution Control Bureau, a regulatory body jointly funded by federal, state and local governments. This agency and its employees have engaged in the intentional falsification of government documents, perjury, racial discrimination and Environmental Racism.

After years of advocating for the opportunity to participate in construction contracts receiving federal monies in the Chattanooga, Hamilton County area, [redacted] has been falsely accused of violating EPA regulations with regards to the alleged removal of toxic materials (asbestos) while completing a construction demolition contract.

The circumstances of the case before the Court reveal that:

1. The Government witnesses from the Chattanooga-Hamilton County Air Pollution Control Bureau introduced *perjured testimony*, including *falsified government documents* during the trial of [redacted] in the United States District Court. The Bureau alleges that [redacted] engaged in the removal of toxic waste from a construction site without proper certification to handle and dispose of toxic materials. Relevant to this issue is the Chattanooga Hamilton County Air Pollution Control Bureau Incident Report # 05-298. This document contains a statement where agents of the Control Bureau, including Kathy Jones, Air

To: Brian Smith Page 7 of 10 2014-07-03 17:56:55 (GMT) 14232676660 From: Steve Riggs

Monitoring Manager, allege that [redacted] submitted an application to obtain an asbestos removal permit. She states that she filled out the application on behalf of [redacted]s due to his alleged "inability to read and write." The application is a falsified government document; and

2. The Court appointed attorney for [redacted] [redacted] refused to utilize the testimony of key expert witnesses for the Defense, a former US EPA grant recipient, Mr. Milton Jackson, President of STOP (Stop Toxic Pollution an environmental safety activist organization) and member of Board of Scientific Counselors ASTDR, The key role of the members of the Board of Scientific Counselors ("Board"), NCEH/ATSDR is to provide advice and guidance to the Secretary, HHS, the Director, CDC and the Director, NCEH/ATSDR and member of the Tennessee Department of Environment and Conservation Environmenatal Justice Steering Committee. Mr. Jackson resides in the Chattanooga community (see attached article) and has first hand knowledge of the *selective enforcement of EPA regulations concerning toxic waste removal in the African American community* (Environmental Racism) by the Chattanooga-Hamilton County Air Pollution Control Bureau that [redacted] was alleged to have violated during the relevant periods in question; and

3. During the course of the trial the appointed attorney was severely injured in an automobile accident, which affected her memory and cognitive skills. The Court allowed this ill prepared attorney to continue to attempt to defend [redacted] amounting to *ineffective assistance of counsel*; and

4. The investigation by the United States Environmental Protection Agency (USEPA) Criminal Investigation Division relied upon to support the Government's case is ill prepared, faulty and factually inaccurate misstating relevant information by months and years.

To: Brian Smith Page 8 of 10 2014-07-03 17:56:55 (GMT) 14232676660 From: Steve Riggs

The totality of the facts and circumstances of this case would lead an objective observer to conclude that the Chattanooga-Hamilton County Air Pollution Control Bureau, a state/county/municipal regulatory agency, acted under color of state or local law, to deprive [redacted] of rights guaranteed by the U.S. Constitution, or federal law, in violation of the Civil Rights Act of 1871 codified at 42 USC Sec. 1983, and that this agency, together with other government witnesses engaged in the construction/waste removal industry, conspired to violate the federal equal protection rights of J[redacted] under the 6th and 14th Amendments to the United States Constitution, as well as the United States Environmental Protection Act and Title VI of the 1964 Civil Rights Act pursuant to 42 USC Sec. 2000d.

For the reasons stated herein, I hereby: (1) formally request a meeting with your office to more fully discuss our concerns and to present the necessary documentation that will enable the Civil Rights Division of the United States Department of Justice to (2) authorize an immediate investigation into these concerns, and (3) intervene in the wrongful prosecution of [redacted]s in the United States District Court for the Eastern District of Tennessee.

Signed:
[redacted] *(Electronic Signature)*

Date:
September 18, 2012

Copy:

John Evans, President
DeKalb County Branch NAACP
3011 Rainbow Drive, Suite 180 A
Decatur, GA 30034

Vizion Jones, Vice President
National Action Network
632 Peeples Street Southwest,
Atlanta, GA 30310

Charles Steele, Jr., CEO
Southern Christian Leadership Conference (SCLC)
P.O. Box 89128
Atlanta, GA 30312

To: Brian Smith Page 9 of 10 2014-07-03 17:56:55 (GMT) 14232676660 From: Steve Riggs

Janice Mathis, National Vice Pres.
Operation PUSH
320 Auburn Avenue NE
Atlanta, GA 30303

Chief Ernest Marshall, PC, EC
Citizen Ombudsman
4200 Wesley Club Drive
Decatur, GA 30034

To: Brian Smith Page 10 of 10 2014-07-03 17:56:55 (GMT) 14232676660 From: Steve Riggs

FAX COVER SHEET

TO	Brian Smith
COMPANY	Dept of Justice
FAX NUMBER	12023070595
FROM	Steve Riggs
DATE	2014-07-03 17:56:16 GMT
RE	[redacted]

COVER MESSAGE

Attached are the documents that were misplaced by your office

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

OFFICE OF
CIVIL RIGHTS

February 11, 2016

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 1735

In Reply Refer to:
EPA File No.: 20R-14-R4

Robert H. Colby, Director
City of Chattanooga-Hamilton County
Air Pollution Control Bureau
6125 Preservation Drive South
Chattanooga, Tennessee 37416-3438

Re: Rejection of Administrative Complaint

Dear Mr. Colby:

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), is rejecting a complaint referred by the U.S. Department of Justice on November 6, 2014, alleging that the City of Chattanooga and the Chattanooga-Hamilton County Air Pollution Control Bureau (APC) misused federal funds that resulted in racial discrimination. The OCR is responsible for processing complaints that allege discrimination by recipients of EPA financial assistance in violation of Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 United States Code (U.S.C.) §§ 2000d, *et seq.*, and EPA's nondiscrimination regulations found at 40 Code of Federal Regulations (C.F.R.) Part 7.

The subject complaint alleged that "while completing a construction demotion contract" APC employees made false accusations against the complainant, resulting in racial discrimination. Further, the complaint alleged that there was a "misuse of federal funds in a fashion that encourages, entrenches, subsidizes, or results in racial discrimination." The complaint is rejected for investigation and the case closed as of the date of this letter.

Pursuant to the EPA's nondiscrimination administrative regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to the appropriate agency. (*See* 40 (C.F.R.) § 7.120(d)(1)). For a complaint to be accepted for investigation, it must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. (*See* 40 C.F.R. §7.120(b)(1)). Second, the complaint must describe an alleged discriminatory act that, if true, may violate the EPA's nondiscrimination regulations (*i.e.*, an alleged

discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (*See* 40 C.F.R. §7.120(b)(2)). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (*See* 40 C.F.R. §7.15). For your reference, a copy of the EPA's nondiscrimination regulations is enclosed.

After careful review of the information provided to the OCR in the subject complaint, the EPA is rejecting it because the allegations described therein do not meet the EPA's jurisdictional requirements. The complaint does not clearly explain the alleged discriminatory acts and does not state when those alleged discriminatory acts occurred. Specifically, the complaint does not identify any alleged discriminatory act that occurred within 180 days of its filing. The alleged falsified Demolition Permit was issued on September 24, 2004. The trial in which the complainant alleges false testimony was provided occurred in January 2012. Neither of the events occurred within 180 days of September 18, 2012, when the complaint was submitted to the U.S. Department of Justice. Accordingly, the EPA lacks jurisdiction over the complaint.

If you have questions regarding the OCR's decision, please contact Helena Wooden-Aguilar of the OCR's External Compliance Program, at (202) 564-0792, via electronic mail at wooden-aguilar.helena@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-1000.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Ken Lapierre
Deputy Civil Rights Official
Assistant Deputy Regional Administrator
Region IV

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

OFFICE OF
CIVIL RIGHTS

February 11, 2016

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 1735

In Reply Refer to:
EPA File No.: 20R-14-R4

Robert H. Colby, Director
City of Chattanooga-Hamilton County
Air Pollution Control Bureau
6125 Preservation Drive South
Chattanooga, Tennessee 37416-3438

Re: Rejection of Administrative Complaint

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The subject complaint alleged that "while completing a construction demotion contract" APC employees made false accusations against the complainant, resulting in racial discrimination. Further, the complaint alleged that there was a "misuse of federal funds in a fashion that encourages, entrenches, subsidizes, or results in racial discrimination." The complaint is rejected for investigation and the case closed as of the date of this letter.

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discriminatory act based on race, color, national origin, sex, age, or disability). *Id.* Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. (*See* 40 C.F.R. §7.120(b)(2)). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. (*See* 40 C.F.R. §7.15). For your reference, a copy of the EPA's nondiscrimination regulations is enclosed.

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If you have questions regarding the OCR's decision, please contact Helena Wooden-Aguilar of the OCR's External Compliance Program, at (202) 564-0792, via electronic mail at wooden-aguilar.helena@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460-1000.

Sincerely,

Velveta Golightly-Howell
Director
Office of Civil Rights

cc: Elise Packard
Associate General Counsel
Civil Rights & Finance Law Office

Ken Lapierre
Deputy Civil Rights Official
Assistant Deputy Regional Administrator
Region IV

December 8, 2014

Director of the Office of Civil Rights
U.S. Environmental Protection Agency
Mail Code 1201A
1200 Pennsylvania Ave NW
Washington, D.C. 20460

Re: Title VI Complaint - Guam Environmental Protection Agency, Hazardous Waste Management Program

Dear Sir:

This complaint is filed pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000-7, and 40 C.F.R. Part 7.

Complainant

[redacted]
Barrigada, Guam 96921
[redacted]

Violator

The alleged violators are Mr. Michael Mann, Guam Program Manager, Pacific Islands Office, United States Environmental Protection Agency (USEPA), Region IX and USEPA Region IX. The alleged violators are grantors of financial assistance from the USEPA to Guam Environmental Protection Agency (Guam EPA) RCRA I (Underground Storage Tank) Program at the time of the alleged discriminatory act.

Discriminatory Act

The alleged discriminatory is the issuance of a Programmatic Condition included in the USEPA Cooperative Agreement, Grant Number (FAIN) 00906314, Section P5. Program Income.

Whereas, no states or tribes who responded to the Association of State and Territorial Solid Waste Management Official (ASTSWMO) survey are required by their EPA RCRA I Grant Program Officer to obtain approval from him/her on all expenditures from

RECEIVED DEC 30 2014

State's from locally generated fund to include but not limited to off-island travel for training and conferences.

Whereas, no states or tribes specifically under USEPA Region IX have a programmatic conditions that requires them to obtain approval to use their locally generated funds from their RCRA I Grant Program Officer.

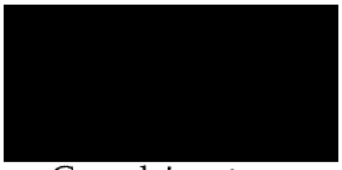
Disparate Impact

The adverse impacts described above and as indicated on the ASTSWMO survey falls disparately upon members of the Pacific Islanders more specifically Guam. The ASTSWMO survey included Hawaii, California, Georgia, Nebraska, Connecticut, Montana, Ohio, South Carolina, Kentucky, Florida, Arkansas, USEPA Region VIII, and USEPA Region II that includes the Virgin Islands and Puerto Rico.

Request

Based upon the foregoing complaint requests that the Office of Civil Rights conduct an investigation to determine whether the Programmatic Conditions included in the USEPA Cooperative Agreement, Grant Number (FAIN) 00906314, Section P5. Program Income violated Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d to 2000d-7, and 40 C.F.R. Part 7 requiring Guam EPA to obtain approval from Mr. Michael Mann to use locally generated fund.

Kindest Regards,



Complainant

Enclosures: USEPA Cooperative Agreement FY 2013 – FY 2018
Statute – Chapter 76, Underground Storage of Regulated Substances Act
Emails Response – ASTSWMO Survey

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

OFFICE OF
CIVIL RIGHTS

MAY 13 2015

Return Receipt Requested
Certified Mail#: 7009 2820 0002 1759 1674

In Reply Refer to:
EPA File No.: 21R-14-R9

(b) (6) - Privacy

Barrigada, Guam 96921

Re: Rejection of Administrative Complaint

Dear (b) (6) - Privacy

This letter is to notify you that the U.S. Environmental Protection Agency (EPA), Office of Civil Rights (OCR), has reviewed your complaint dated December 8, 2014, alleging that (1) the Guam Program Manager, Pacific Islands Office, United States Environmental Protection Agency (USEPA), Region IX and (2) USEPA Region IX violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d, *et. seq*., and its implementing regulations, 40 Code of Federal Regulation (CFR) Part 7. After careful review, the complaint is rejected and the case closed as of the date of this letter.

Pursuant to the EPA's nondiscrimination regulations, the OCR conducts a preliminary review of administrative complaints for acceptance, rejection, or referral to an appropriate agency. *See* 40 C.F.R. § 7.120(d) (1). For a complaint to be accepted for investigation, it must meet the jurisdictional requirements described in the EPA's nondiscrimination regulations. First, the complaint must be in writing. *See* 40 C.F.R. § 7.120(b) (l). Second, the complaint must describe an alleged discriminatory act that, if true, would violate the EPA's nondiscrimination regulations (*i.e*., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). *See* 40 C.F.R. § 7.120(b)(l). Third, the complaint must be filed within 180 calendar days of the alleged discriminatory act. *See* 40 C.F.R. § 7.120(b)(2). Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. *See* 40 C.F.R. § 7.15. For your reference, we have enclosed a copy of the EPA's nondiscrimination regulations.

After careful review, the OCR is rejecting your complaint because the allegations described do not meet the EPA's jurisdictional requirements. The EPA's jurisdictional requirements state that to be accepted for investigation, the complaint must be filed against a recipient of the EPA's financial assistance that allegedly committed the discriminatory act(s). Your complaint is against the EPA, rather than a recipient of EPA financial assistance. Title VI

does not apply to the Federal government. A Federal agency cannot be considered a "recipient" within the meaning of Title VI.

In addition, EPA's nondiscrimination regulations require that a complaint be filed within 180 calendar days of the alleged discriminatory act. Your complaint, however, fails to identify a date of the alleged discriminatory act, making a timeliness determination impossible.

For the above reasons, your complaint is rejected and the case closed as of the date of this letter. If you have questions about this letter, please contact Samuel Peterson at 202-564-5393 or via electronic mail at peterson.samuel@epa.gov.

Sincerely,

Velveta Golightly-Howell
Director

Enclosure

cc: Elise Packard
Associate General Counsel
Civil Rights and Finance Law Office (MC 2399A)

Alexis Strauss
Deputy Civil Rights Official
U.S. EPA Region IX
(MC ORA-1)