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April 18, 2011

Anthony Napoli
Daniel Isales
Mail Code 1201A
OCR External Compliance Program
Office of Civil Rights
US EPA
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460-1000

Re: Rogers Eubanks Neighborhood Association (RENA) Title VI Complaint

Dear Mr. Napoli and Mr. Isales:

This letter on behalf of the Rogers Eubanks Neighborhood Association and the residents and property owners of the community responds to your letter received by Minister Campbell on March 28, 2011. In addition to responding to your questions relating to OWASA's race and age discrimination in the provision of water and sewer service, we ask that you consider this letter a formal supplement and amendment to our complaint against Orange County, NC, in light of the EPA funding awarded to the county on December 16, 2010 to extend sewer lines to the Buckhorn and Efland areas.

In addition, RENA requests that this letter serve as a supplement and amendment to our complaint against the Towns of Chapel Hill and Carrboro in light of the recent EPA grant under §319 of the Clean Water Act that the towns received to rehabilitate the Bolin Creek watershed. This funding was applied for and received during the period in which the Rogers Eubanks community continued to request and the towns continued to deny their request for water and sewer service. The Rogers Eubanks community is part of the Bolin Creek watershed but not the beneficiaries of the grant. Rather than cleaning up the head waters of Bolin Creek in and around Rogers Road where the landfill lies, the towns have only applied for funding only to beautify the creek and watershed where it flows through the wealthier, white downstream parts of the towns, not the portion of the Rogers Eubanks community that lies in Carrboro or the Chapel Hill extraterritorial jurisdiction. (Attachments 1-3)

Regarding our complaint against OWASA, your letter asks us to confirm whether our claim is that "OWASA has denied a request for services for the Rogers Eubanks community which complied with the OWASA Service Extension Policy [Assessment Policy]," or that "OWASA has not agreed to

undertake such an action either at a reduced cost to the community or for free." The narrow phrasing of these questions does not reflect the reality of how OWASA provides sewer and water service; however, they have both failed to provide the service at free or reduced cost and denied specific requests under the policy. Community members and their advocates have met repeatedly with OWASA, Orange County, and the Towns of Chapel Hill and Carrboro since 1972 to request water and sewer service. In that entire period, never has OWASA informed the community that they must apply under the Assessment Policy to be considered; on the contrary, they have prepared engineering plans, cost estimates, and even recently connected scattered homes without ever receiving a specific application under the policy. The limited focus of these questions also fails to consider the discriminatory impact of the Assessment Policy itself.

OWASA's policy should properly be titled the "Assessment Policy" rather than the "Service Extension Policy," because it is only one procedure through which properties are connected and is used primarily where sewer lines already exist in close proximity to the property. (Attachment 4) The policy is not however, the general or only procedure for extending new sewer mains into previously unserved areas. The policy itself specifies that it only applies "when such facilities [water or sewer lines] are extended through the assessment process," which correctly implies that this process is not the only procedure by which water and sewer mains are extended.

This policy does not require a petition for service, as it provides for assessments either where property owners have petitioned or "to serve properties without a petition from property owners that OWASA has determined are benefited by the extensions." Specifically, the project "may be initiated by petition . . . public health agencies, by a County or municipality, *or by OWASA at its discretion.*" To our knowledge, no petitions were ever completed or received to expand the sewer and water service to the Buckhorn or Efland areas, much of which is a vacant economic development district. Additionally, an extension without a petition would not necessarily be free or at a reduced cost, as suggested by your letter, but could be done by "prior funding of the improvements," such as a EPA funding or grants like those received by OWASA, or through "other financial arrangements."

One recent example shows that the Assessment Policy Recently is not the only mechanism to request service. Service is in the process of being extended by OWASA to eleven homes in the Rogers Eubanks community, at no cost to the community or residents, through a CDBG grant received by Orange County. On September 17, 2010, representatives of RENA, their counsel and other advocates met with representatives from OWASA, Orange County, and the Town of Carrboro to discuss the ongoing water and sewer needs of the community. A representative of the county proposed applying for a $75,000 grant to cover hook-up fees for homes that were in close proximity to water and sewer lines installed as part of the Habitat for Humanity development. The county received the grant, and OWASA has now begun the work to connect these homes. At no time did any of the property owners affected file a petition under the Assessment Policy. While the homeowners are going to receive bills for the cost, they have been told to ignore them as the county would pay with grant funds.

The September 17, 2010 meeting was typical of numerous meetings since 1972 where residents have met with OWASA and representatives of all three local governments to request water and sewer service; for OWASA to claim they have never received a request because it was not through the Assessment Policy is duplicitous at best. In 1972 when the Town of Chapel Hill decided to place the landfill in the Rogers Eubanks community, Mayor Howard Lee promised that when the

landfill closed, basic service, including water and sewer, would be provided to the community. By 1995, when the landfill reached capacity and the town not only failed to realize the promise of water and sewer or to close the landfill, but instead extended the use of the landfill, residents began organizing to request these services. In June 1997 the community, organized and requested service from OWASA and other defendants, now operating the landfill collectively as the Landfill Owners' Group. The following month Orange County explored using community development funds for sewer for Rogers Road. In October of that year, OWASA commissioned an engineering report from the firm of Hazen and Sawyer for extending water and sewer to the community. In early 1998, the Orange County Public Works department recommended various funding scenarios to provide water service, where the county and the towns would cover the bulk of the cost and pay "at least 75% of the cost of water and sewer hookups" for low-income residents. In February of 1998, Orange County requested that OWASA "waive its facility fees for connections to any water lines extended." Despite the recommendation and comprehensive report, nothing was implemented.

In May of 2001, Minister Campbell again requested that the Town of Chapel Hill allocate money for water and sewer. The town requested that the town manager contact the county on the status of the water system for the community. The next year, Orange County acknowledged the risk of well water contamination from the landfill, and OWASA ran some water mains through the community but did not reach many homes. Many residents could not afford the steep connection fees, for which they were provided no assistance. In May 2005, again in response to the community's request, the local governments commissioned the Rogers Road Small Area Plan Task Force, made up of representatives from all defendants. In March 2007, as part of the task force discussions, OWASA again prepared plans and a cost estimate for sewer service, but again took no action to implement it. Another request was mailed to defendants by Minister Campbell in December of 2008. In November of 2009, OWASA prepared a limited plan for sewer extension to 11 lots in the community, but again sought no funding. The 2007 full plans and cost estimates were revised by OWASA in 2009 – and a full engineering report was developed to provide sewer to the entire community.

Despite 20 years of continual requests to all named defendants, resolutions and requests by Orange County, the Town of Carrboro, and the Town of Chapel Hill, , (none of which contemplated imposing significant costs on the community), and the preparation by OWASA of numerous cost estimates and engineering plans, OWASA now claims that the community never requested water and sewer service because they did not use the Assessment Policy, a policy that does not apply in this case and that OWASA itself has not required for the limited service extensions it has provided in the community.

OWASA has never sought funding for sewer extensions to the Rogers Eubanks community, despite the obvious fact that service was requested and the neighborhood would be "benefitted by the extensions." That during this same time period, OWASA sought funding for other projects, without petitions, is evidence of discrimination. Furthermore, the policy itself contemplates that the local governments named in the complaint, which appoint all the members of OWASA's board, typically fund larger OWASA projects. As the history of the community's struggle demonstrates, all of the named defendants regularly cooperate in the provision of service. They must cooperate because they have different functions; OWASA does all of the construction and engineering, while the county and municipalities plan for growth. Therefore all named parties are responsible for the discriminatory failure to serve the Rogers Eubanks community.

OWASA provides scattered service to isolated parts of the Rogers Eubanks community. A few homes have been able to connect to sewer lines constructed for the new Habitat for Humanity development, others have sewer lines in close proximity to their home but cannot afford the staggering "hook-up" fees required by OWASA, and still others have lines a short distance away but have been told they cannot connect until lines are installed in the front of their property. Particularly troubling is the fact that when OWASA drew up the plans and installed the lines for the Habitat development, they avoided the main roads and lay the lines in such a way that only a minimal number of community members were able to connect. Ironically, two property owners, Minister Robert Campbell, and (b) (6) Privacy (both of whom are listed in the original complaint) who granted easements to OWASA, would not have been permitted to connect to the sewer but for the fact that OWASA inadvertently destroyed their septic systems during the construction. For the majority of the community however, sewer service requires more than simply being permitted by OWASA to connect; OWASA must construct sewer mains.

In June 2009 OWASA estimated the cost of installing sewer lines to serve the entire community at nearly three million dollars, clearly out of the range of not only the low income Rogers Eubanks community, but almost any community that would have to shoulder the entire burden by assessments. The large costs of sewer infrastructure further demonstrate that they are not generally paid for by assessments against individual property owners, but either through federal and state grants, local government funds or by a private developer. For OWASA to assert that complainants have not "requested sewer service" because they have not petitioned under the *assessment* procedure – is therefore misleading. (See Exhibits 4A, 4B, 5A, 5B, 7, 8, & 9 attached to our May 9, 2010 letter.) Complainants have repeatedly met with representatives from OWASA, as well as the county and neighboring municipalities, to request that they seek funding, like the EPA funding, for this community. Instead OWASA and the municipalities have historically and continually sought EPA funding to extend sewer to other areas and for other clean water projects, like the recent Bolin Creek § 319 funding, while neglecting the Rogers Eubanks community.

In 2003 and 2005, Orange County received EPA funding, appropriated by Congress, to extend sewer and water service to the Buckhorn area, an undeveloped area intended for prospective industry. A small portion of the funding includes connecting to and expanding existing service in the Efland area. These funds are variously described in minutes from the Orange County Board of Commissioners as a Special Appropriations (SPAP) or as a State and Trial Assistance Grant (STAG), and amounted to roughly $1.4 million. (Attachment 5) While the grant was awarded to Orange County, OWASA necessarily cooperated and completed the work, as is always the case with any water and sewer extensions in the county. The total cost of the project is estimated at over four million dollars, with remaining funds coming from the state and Orange County.

In addition to OWASA's failure to provide the large scale infrastructure to the Rogers Eubanks community, either in cooperation with the County and municipalities or by seeking EPA or other funding, OWASA has unlawfully discriminated on the basis of race and age in denying service through their Assessment Policy. The example of the Faith Tabernacle Oasis of Love International Church stands out. The church, represented in the complaint by Minister Campbell and Bishop Ila McMillan, serves an almost entirely African American congregation. When the church sought to expand, their existing septic system was inadequate. The church had numerous discussions with OWASA, *but OWASA never requested that they petition in writing under the assessment policy.*

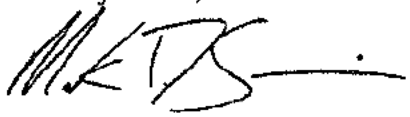
OWASA originally estimated the hook-up cost at $28,000, an estimate that increased to $48,000, an absurdly high and discriminatory fee that prevented the church from connecting to the sewer system.

To further answer your specific questions, Reverend Campbell did receive the January 27, 2010 OWASA letter. To our knowledge no member of the community has directly responded, other than continuing their twenty year repeated request for service, most recently at the April 5, 2011 Orange County Board of Commissioners meeting on the proposed expansion of the landfill. The letter incorrectly asserts that a statute requires a petition before service can be extended. No citation to a statute was given. As is clear both from OWASA's Assessment Policy, the limited extensions of services in the Rogers Eubanks community, and the extension of sewer infrastructure to Buckhorn, *a petition is not generally required under these circumstances*. Similarly, no statute has a "specific legal requirement that the costs of all line extensions shall be paid for be [sic] the benefitting parties." As the EPA is no doubt aware, and as described above, such line extensions are regularly paid by agencies like OWASA, as well as counties and municipalities, frequently through federal and state agencies and programs, for example, CDBG, EPA, USDA, and HOME.

In response to your request for specific information on individuals discriminated against on the basis of age and disability, complainants allege that OWASA has discriminated against these individuals on the basis of age, disability, and race, as members of the entire community, in the disparate impact of the policy as implemented. The entire Rogers Eubanks community is not only majority African American, but elderly, as will be evident in the 2010 census information just now becoming available and which we will provide as soon as possible. The census will also reaffirm the high correlation in Orange County between poverty and race, with noticeably lower wealth and income levels for older African Americans. Thus even if OWASA's policy does in fact require property owners to bear the entire share of the connection costs, which by its own terms it does not, that policy would be discriminatory in its impact.

Thank you for your time and consideration. Please feel free to contact us with any questions, or if we can provide any additional information.

Sincerely Yours,



Mark Dorosin,
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Copies:

Minister Robert Campbell, President, Rogers-Eubanks Neighborhood Association (RENA)
(b) (6) Privacy Program Director, Rogers-Eubanks Neighborhood Association (RENA)
(b) (6) Privacy [redacted]