Beaumont
1R-00-R6

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Lone Star Chapter

April 13, 2000

BY FEDERAL EXPRESS

Ms. Ann E. Goode, Director
Office of Civil Rights
U.S. Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

Dear Ms. Goode:

This is a complaint under Title VI of the Civil Rights Act of 1964 by People Against Contaminated Environments (PACE), a grassroots community group representing residents of the City of Beaumont, Texas and the Lone Star Chapter of the Sierra Club. PACE and Sierra Club ("complainants") allege that the Texas Natural Resources Conservation Commission (TNRCC), by issuing a permit amendment to Mobil Oil and by failing to enforce environmental laws pertaining to Mobil Oil's operation, has discriminated against nearby residents on the basis of race, color, and national origin, and therefore, has violated Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency's implementing regulation, 40 C.F.R. § 7.35. TNRCC is a recipient of EPA assistance pursuant to 40 C.F.R. § 7.25.

I. INTRODUCTION

This complaint comes as a result of several instances of discriminatory behavior by the TNRCC. The first set of discriminatory actions by the TNRCC involves the issuance by the agency of a permit amendment to Mobil Oil for their refinery operations in Beaumont, Texas. This permit amendment allowed for increases in several categories of emissions, including hydrogen sulfide emissions, a chemical for which Mobil has exceeded the standard in the last year. Further, the agency approved the permit amendment without allowing the public the opportunity to participate in a contested case hearing. The agency claimed that the proposed amendment was a minor amendment because Mobil was off-setting emissions increases with emissions reductions from other facilities. Complainants argue that TNRCC should not have allowed Mobil to use emission reductions associated with their responsibilities under federal laws for the purpose of justifying emission increases associated with their refinery expansion.

The second set of discriminatory actions pertain to the failure of the TNRCC to take any formal enforcement actions against Mobil Oil for exceedences of the sulfur dioxide (SO2) and hydrogen sulfide (H2S) standards at their Beaumont refinery. Sulfur dioxide problems were most recently documented in a health effects evaluation report dated August 25, 1999 and a Monthly Program Monitoring Report submitted by Mobil to TNRCC with a cover letter dated August 27, 1999. Hydrogen sulfide problems were most recently documented in July 1999.

By issuing the permit amendment and failing to take enforcement action, the TNRCC violated Title VI and EPA's implementing regulations due to the fact that the community most affected by action is predominantly African-American (95% as demonstrated below). This decision, however, is not an aberration. TNRCC's method of administering its policies and procedures has created and perpetuated a system of discriminatory facility siting and expansion throughout the State of Texas. Repeatedly, poorer communities of color, like those in Beaumont, are hosts to polluting facilities such as oil refineries and chemical plants thus bearing a disproportionate share of the state's environmental dangers. This clear pattern of discriminatory impact cannot be ignored by the TNRCC or U.S. EPA, and cannot be allowed to continue.

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II. RIPENESS

This complaint is timely filed under 40 C.F.R. § 7.120(b)(2).

The permit amendment was issued to Mobil Oil on December 2, 1999, which is within the 180 day limit. Exhibit 1 contains a letter documenting the authorization by TNRCC. It also contains a copy of a letter from the Sierra Club protesting the authorization.

The latest documentation of SO2 exceedences was provided in August 25 and August 27, 1999. See Exhibit 2 for copies of these documents. Although these violations were not documented within the 180 day limit set out in EPA's implementing regulations, complainants allege that this is a continuing violation that TNRC has not acted upon and thus not subject to the 180 day limit. For this reason, complainants request that this rule be waived.

The latest documentation of an H2S exceedence was provided in July 1999. See Exhibit 3 for records documenting this exceedence. Although these violations were not documented within the 180 day limit set out in EPA's implementing regulations, complainants allege that this is a continuing violation that TNRCC has not acted upon and thus not subject to the 180 day limit. For this reason, complainants request that this rule be waived.

III. BACKGROUND INFORMATION

OVERVIEW OF MOBIL'S OPERATIONS IN BEAUMONT

Mobil has a very large industrial operation adjacent to a residential area in the City of Beaumont. The operation consists of a large refinery (SIC 2911), several chemical plants (SIC 2869, 2821) and a few smaller facilities (SIC 5171). The following is a list of Mobil's criteria air emissions in Jefferson County in 1997. Complainants assume that most if not all of these facilities will be located at the Beaumont site.

FACILITY NAME (SIC)	TOTAL PLANT EMISSIONS
Mobil Oil Corporation Beaumont Refinery (2911)	35,908 tons
Mobil Chemical Company Olefins/Aromatics Plant (2869)	1,949 tons
Mobil Chemical Company Polyethylene (2821)	551 tons
Mobil Chemical Company BCSP (2869)	150 tons
Mobil Pipeline Company (5171)	56 tons
Mobil Oil Corporation (5171)	42 tons
Mobil Oil Corporation Magpetco (5171)	12 tons
Total	38,668 tons

MOBIL OIL BEAUMONT REFINERY CRITERIA EMISSIONS BY POLLUTANT

Sulfur Dioxide	13,155 tons
Volatile Organic Compounds	6,043 tons
Carbon Monoxide	8,418 tons
Nitrogen Oxide	8,290 tons
Particulate Matter (PM10)	2 tons
TOTAL	35,908 tons

EMISSIONS DATA AND RANKINGS FOR MOBIL OIL, JEFFERSON COUNTY AND THE STATE

COMPARISON OF TEXAS REFINERIES TO REFINERIES NATIONWIDE

A state-by-state ranking of the performance of oil refineries by the Environmental Defense Fund shows that among states with four or more refineries, Texas, Oklahoma, Montana and Wyoming refineries emit the greatest pollution per barrel of crude oil processed. Texas' 23 refineries emit the greatest quantities of toxic pollution per barrel of crude oil processed. The seven Texas refineries in the bottom 20% overall of the 144 rankable refineries in the U.S. were Shell Odessa Refining Company (formerly known as Shell Oil Products Company) in Odessa, Lyondell Citgo Refining Company in Houston, Phillips 66 Company in Borger, Specified Fuels & Chemicals LLC (formerly known as Howell HC & Chemicals Incorporated) in Channelview, Coastal Refining & Marketing Incorporated in Corpus Christi, Mobil Oil Corporation in Beaumont, and Shell Deer Park Refining Company (formerly known as Shell Oil Products Company in Deer Park.

CATEGORIES IN WHICH JEFFERSON COUNTY RANKS IN THE TOP 10% FOR MAJOR CHEMICAL RELEASES WHEN COMPARED TO OTHER COUNTIES IN THE U.S. (FROM EDF SCORECARD)

Total Environmental Releases
Air Releases
Total Off-Site Transfers
Total Production-Related Waste
Ozone Depleting Potential
Cancer Risk Score
Non-Cancer Risk Score
Recognized Carcinogens
Recognized Developmental Toxicants
Recognized Reproductive Toxicants
16 Categories of Toxicants with Suspected Health Effects

CATEGORIES IN WHICH JEFFERSON COUNTY RANKS IN THE TOP 10% FOR MAJOR CHEMICAL RELEASES WHEN COMPARED TO OTHER COUNTIES IN TEXAS (FROM EDF SCORECARD)

Total Environmental Releases
Air Releases
Water Releases
Total Production-Related Waste
Ozone Depleting Potential
Cancer Risk Score
Non-Cancer Risk Score
Recognized Carcinogens
Recognized Developmental Toxicants
Recognized Reproductive Toxicants
16 Categories of Toxicants with Suspected Health Effects

CATEGORIES IN WHICH THE MOBIL OIL REFINERY RANKS IN THE TOP 10% FOR MAJOR CHEMICAL RELEASES WHEN COMPARED TO OTHER FACILITIES IN THE U.S. (FROM EDF SCORECARD)

Total Environmental Releases
Air Releases
Total Production-Related Waste
Cancer Risk Score
Recognized Developmental Toxicants
9 Categories of Toxicants with Suspected Health Effects

CATEGORIES IN WHICH THE MOBIL OIL REFINERY RANKS IN THE TOP [illegible]% FOR MAJOR CHEMICAL RELEASES WHEN COMPARED TO OTHER FACILITIES IN TEXAS (FROM EDF SCORECARD)

Total Environmental Releases
Air Releases
Cancer Risk Score
Recognized Developmental Toxicants
9 Categories of Toxicants with Suspected Health Effects

MOBIL OIL BEAUMONT REFINERY CRITERIA POLLUTION RANKINGS IN 1997 AS COMPARED TO 30 TEXAS REFINERIES

The Mobil Refinery ranked #1 in plant-wide criteria air emissions (35,908 tpy). Mobil's emissions are 385% above the Texas refinery average.

The Mobil Refinery ranked #1 in sulfur dioxide emissions (13,155 tpy). Mobil's emissions are 521% above the Texas refinery average.

The Mobil Refinery ranked #3 in volatile organic compound emissions (6043 tpy). Mobil's emissions are 326% above the Texas refinery average.

The Mobil Refinery ranked #1 in carbon monoxide emissions (8418 tpy). Mobil's emissions are 636% above the Texas refinery average.

The Mobil Refinery ranked #5 in nitrogen oxide emissions (8290 tpy). Mobil's emissions are 227% above the Texas refinery average.

Exhibit 4 contains additional information about the rankings of the Mobil Refinery in the these catergories.

MOBIL OIL TOTAL TOXIC RELEASE AND TOXIC AIR RELEASE RANKINGS IN JEFFERSON COUNTY IN 1997

Mobil Oil Beaumont Refinery ranks #2 and the three Mobil chemical plants rank #11, #13 and #23 in total environmental releases.

Mobil Oil Beaumont Refinery ranks #1 and the three Mobil chemical plants rank #9, #11 and #22 in total air releases.

Exhibit 5 contains the rankings lists for facilities in Jefferson County on total environmental releases and total air releases.

MOBIL OIL AIR EMISSION RANKINGS IN JEFFERSON COUNTY IN 1997

The Mobil Refinery is the largest source of criteria air emissions in Jefferson County (35,980 tpy). Mobil Chemical Plants rank #9, #16 and #32 in criteria air emissions in Jefferson County.

The Mobil Refinery is the second largest source of hydrogen sulfide emissions in Jefferson County (9.1392 tpy). The largest source of hydrogen sulfide emissions, Clark Refining, is located in Port Arthur.

See Exhibit 6 for a listing of all sources of criteria air emissions and top ten hydrogen sulfide emissions sources in Jefferson County.

COMPLAINTS REGISTERED BY THE COMMUNITY

Residents of the affected area have been adversely affected by Mobil's operations in Beaumont. These residents have registered several complaints that may be associated with Mobil's operations, including:

(a) flaring;
(b) odors (causing headaches, nausea, nose/eye irritation, unconsciousness, etc);
(c) fires;
(d) smoke; and
(e) soot on residents' property.

According to TNRCC records, at least nineteen complaints were filed from April 1996 to September 1997 against the Mobil Oil Beaumont Refinery and Mobil Chemical Company. Only one complaint (October 1, 1996) led to the issuance of a notice of violation for nuisance level odors. No formal enforcement action was taken on any of these complaints. The following are some complaints worth noting.

On April 4, 1996, four complaints about soot all over complainants' property were registered. Although black particulate on residents' property was confirmed, no violation was documented since the source could not be identified.

On July 19, 1996, a complaint was registered about a fire at Mobil that was caused a student at bible school to experience a headache. Although the complaint was confirmed, no violation was documented because Mobil complied with protocol for reporting upset conditions.

On June 4, 1997, a complaint was registered about odors that caused nausea and dizziness. An upset condition was reported by Mobil, therefore a nuisance condition was not confirmed and no violation was issued.

TNRCC's failure to take any formal enforcement actions on any of these issues has clearly discouraged residents from filing any additional complaints as their concerns will obviously be ignored by the agency.

The letter from the Sierra Club (dated 11/24/99) included in Exhibit 1 contains as an attachment a summary of complaints and compliance history for the facility since about 1996.

A class action lawsuit has been filed against Mobil Oil on behalf of over 1000 residents alleging negligence, gross negligence, nuisance, trespass, unjust enrichment, strict liability, intentional infliction of emotional distress, and toxic assault and battery. A copy of the text of this lawsuit is included in Exhibit 7.

IV. SPECIFIC ALLEGATIONS OF DISCRIMINATION

(1) TNRCC approved a permit amendment to Mobil's Beaumont Refinery on December 2, 1999, thus allowing Mobil to expand its refining operations. The permit amendment allows increases in several categories of emissions, including increased emissions of hydrogen sulfide. A newspaper article included in Exhibit 1 discusses the adverse health effects of hydrogen sulfide on the human brain and the levels that are deemed to be safe for adults and children. The facility has already been experiencing problems with the emission of hydrogen sulfide (see Allegation #5). Increases in hydrogen sulfide and other emissions allowed under the amendment will have a disparate adverse impact on the affected community that is predominantly African-American.

(2) TNRCC issued the permit amendment without allowing the public an opportunity to participate in a contested case hearing on the matter. TNRCC justified the approval of the permit amendment without an opportunity for a contested case hearing by allowing Mobil to off-set the emission increases proposed by Mobil with emissions decreases from other emission sources in the refinery. Complainants challenge the issuance of reductions credits to Mobil because TNRCC allowed the agency to use emissions reductions associated with their responsibilities under federal laws for the purpose of justifying emission increases associated with their refinery expansion.

Of particular concern are increases pertaining to Volatile Organic Compounds (VOCs). An emissions table (dated 11/18/99) included in Exhibit 1 specifies that VOC increases in the permit amendment totaled 229.9 tpy and that VOC decreases in the permit amendment totaled 68.2 tpy. On 11/19/00, Mobil Oil submitted a letter specifying emissions reduction projects that it offered for the purpose of off-setting the net VOC increases in the permit amendment. The following is a summary of the reductions.

	Crude Oil Reductions	Gas Oil Reductions	Gasoline Reductions	Total
Slotted Guide Poles	38.46	7.44	440.93	486.83
Marine Vapor Recovery			730.64	730.64
Other	127.85	16.20	29.61	173.66
Total	166.31	23.64	1201.18	1391.13

Our research indicates that reductions related to "slotted guide poles" and "marine vapor recovery" are reductions required by the federal government. Last year, EPA created a voluntary compliance program to reduce the leakage of smog-causing vapors from large above-ground petroleum product refinery storage tanks through the installation of emission controls on slotted guide poles. EPA created the program because of observable emissions from uncontrolled guidepoles in violation of a prohibition in the air quality New

Source Performance Standards (NSPS). As a condition of program participation, EPA agreed to refrain from enforcement action on any facility not presently subject to enforcement action for uncontrolled guidepoles.

Reductions achieved through "marine vapor recovery" are required under 40 CFR 63, Subpart Y. The corresponding reference in the Texas Administrative Code is 30 TAC § 113.300.

These facts demonstrate that the vast majority if not all of reductions claimed by Mobil Oil through emission reduction projects should not have been credited. As previously stated, only a 68.2 tpy reduction in VOCs is actually included in the permit amendment. Complainants maintain that all emissions reductions should have been in the permit amendment because otherwise the reported reductions may have no relevance to the action taken as illustrated in the case of the "slotted guide poles" and "marine vapor recovery" reductions. TNRCC should not have allowed the use of such emission reductions for the purpose of evaluating the permit amendment.

TNRCC's acceptance of questionable emissions reductions allowed for the denial of the rights of members of the affected community to receive notice of the expansion and to participate in the permitting process in violation of their civil rights.

(3) As described in Section III, Mobil Oil's Beaumont Refinery ranks #1 in sulfur dioxide emissions compared to 30 Texas refineries. In Jefferson County, Mobil's Beaumont Refinery ranks #1 in sulfur dioxide emissions. Not surprisingly, this facility has experienced problems complying with sulfur dioxide emission standards.

The latest documentation of SO2 exceedences was provided on August 25 and August 27, 1999. The exceedences documented on August 25 came as a result of mobile ambient air monitoring that was conducted in Beaumont. One thirty minute average SO2 concentration of 372 ppb was recorded greater than the net TNRCC Regulation II standard of 320 ppb. It should be noted that the 30-minute concentration was biased low as the incident included an automatic zero function in the sampling monitor for 10 minutes. Indeed, two 5-minute average concentrations of SO2 over 600 ppb occurred, including a maximum peak concentration of 967 ppb. During an earlier sampling period of this monitoring trip, a maximum peak concentration of 1163 ppb was recorded although the 30-minute average concentration of SO2 was below the standard. See Exhibit 2 for a copy of this document.

The exceedences documented on August 27 were identified in an SO2 Monitoring Program Monthly Report. Three of the ten highest 30-minute rolling averages for SO2 measured during July 1999 exceeded the standard. See Exhibit 2 for a copy of this document.

Previous exceedences of the SO2 standard occurred in October 1996. An enforcement order was issued for these violations. No notices of violation were issued or enforcement actions taken in response to either set of exceedences. Complainants allege that in failing to take enforcement action, TNRCC has placed residents of the affected community at disproportionate risk of toxic exposure in direct violation of their civil rights.

(4) As described in Section III, Mobil Oil's Beaumont Refinery is the largest source of hydrogen sulfide emissions in the City of Beaumont, the second largest in the county and the eighth largest compared to 30 Texas refineries. As in the case of SO2, this facility has also experienced problems complying with hydrogen sulfide emission standards.

The latest documentation of H2S exceedences was provided in a July 15, 1999 TNRCC report. The problem relates to the H2S fuel gas concentration and was first documented in a violation letter dated December 22, 1998. A follow-up investigation showed that additional problems had been experienced from January to April 1999. January exceedences were resolved by cleaning the HP Vapor Absorber. February and March exceedences were resolved by changing the regeneration frequency for the No. 2 Dethanizer Overhead Dryer Treater from 18 hours to 12 hours. There was no indication that April exceedences had been resolved, however TNRCC appears to have accepted the above actions as adequate to resolve any 1999 exceedences as well as the original exceedences documented in December 1998. In order to resolve the original exceedences documented on December 22, 1998, Mobil had originally proposed to "initiate a permit revision/amendment ... to have the permit reflect SO2 as a limit and not an H2S fuel gas limit" (Mobil Oil letter dated 1/7/99). Complainants do not feel that the "resolution" of these exceedences is adequate, particularly if H2S is not being monitored. Furthermore, complainants allege that in failing to take enforcement action, TNRCC has placed residents of the affected community at disproportionate risk of toxic exposure in direct violation of their civil rights. Relevant documents are included in Exhibit 3.

V. TITLE VI RELATED ISSUES

A. TITLE VI AND TNRCC

Title VI of the Civil Rights Act of 1964 provides:

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. 42 U.S.C. § 2000d.

TNRCC, a recipient of federal financial assistance from EPA, has violated Title VI as implemented through EPA's regulations by allowing the siting and frequent expansion of polluting facilities in low-income communities of color as well as by failing to equitably enforce environmental regulations in these same communities. TNRCC continues to administer its permitting authority in a way that results in discriminatory outcomes.

EPA must ensure that recipients of EPA financial assistance are not subjecting people to discrimination. In particular, EPA's Title VI regulations provide that an EPA aid recipient "shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex." 40 C.F.R. § 7.35(b).

TNRCC is subject to the nondiscrimination requirements of Title VI because it receives federal funds from EPA for RCRA, CERCLA, Underground Injection Program, Clean Air Act and Clean Water Act programs. TNRCC has primary authority under the federal Clean Air Act, and thus has approval authority over all air facility permitting and enforcement activities. As a recipient of EPA financial assistance, TNRCC has violated and is violating Title VI as implemented by EPA's Title VI regulations.

B. TNRCC'S ACTIONS HAVE A DISPROPORTIONATE IMPACT

TNRCC's action as described above have a disproportionate impact on people of color. Mobil has two major operations, an oil refinery and a chemical plant, in the vicinity of the affected area. The attached map obtained from EPA's on-line mapping service ("Query Mapper") identifies the general location of the chemical plant and refinery (see Exhibit 8). The demographic analysis produced with the map indicates that African-Americans comprise 95% of the population living within a one mile radius of the location marked on the map.

Because refinery operations are actually closer to the existing neighborhoods than the mark on the map indicates, we have expanded the affected area to include several block groups. The affected area is outlined in the map included in Exhibit X. Although there are other tracts that feel the effect of Mobil's industrial operations, the area we have identified is the area of maximum impact. It is this area that will experience the maximum ground level concentrations of pollutants when doing ambient air quality monitoring or modeling runs. The following table lists the demographic data for the census tracts and block groups that make up the area of maximum impact. The data is from the 1990 Census of Population and Housing and was obtained from EPA's Landview II Database.

Census Block Group	Total Population	African-Amer. Population	Percentage African-Amer.	Persons in Poverty	Percentage in Poverty
182450017	2171	2055	94.7	1107	49.4
182450018-1	467	459	98.3	396	78.1
182450018-2	529	483	91.3	209	40.2
Total	3167	2997	94.6%	1712	54.1%
City of Beaumont			41.3%		21.1%
Jefferson County			31.1%		19.5%
State of Texas			11.9%		18.1%

As the information in the table shows, African-Americans and persons living in poverty are disproportionately represented in the affected area. The percentage of African-Americans in the affected area is more than two times that of the City of Beaumont, more than three times that of the county and about eight times that of the state. The percentage of persons living in poverty in the affected area is more than 2.5 time that of the city and county and about three times that of the state. This demonstrably discriminatory impact is clearly illegal under Title VI and its implementing regulations.

C. TNRCC'S ACTIONS ARE PART OF A STATEWIDE PATTERN OF DISCRIMINATION

Several studies have shown that environmental justice is a significant issue in the siting of different types of polluting facilities, such as landfills, incinerators and abandoned toxic waste dumps. Low-income communities and communities of color have often been targeted for this type of development because these communities often lack the political power and financial resources to protect

themselves. Environmental justice has proven to be a problem in Texas with regard to both permitting of industrial facilities and the enforcement of environmental regulations.

As of January 2000, more civil rights complaints had been filed in the State of Texas than in any other state in the country. In Texas, 12 complaints have been filed. Of these 12 complaints, six have been accepted for investigation, three have been rejected and three are under consideration for investigation. A summary of several pending complaints is included in Exhibit 9. If EPA finds discrimination with regard to any of these cases, EPA may initiate procedures to terminate funding to the state for environmental protection.

A review of the active civil rights complaints indicates that air quality is a prevalent problem. All nine active complaints involve facilities that have or will potentially have negative impacts on the air quality of surrounding communities.[1] Seven of these complaints involve facilities that emit an array of toxic chemicals (e.g., chemical plants, refineries, a high-tech company, a power plant, etc.). Two of these complaints involve cement operations.

Two pending complaints relate to petro-chemical operations in Corpus Christi and Houston. The Corpus Christi complaint was filed in 1994 by PACE and other community organizations because TNRCC does not inform residents of environmental hazards, does not adequately document and follow-up on citizen complaints and does not adequately enforce environmental laws. The Houston complaint was filed by Texans United and the Sierra Club Lone Star Chapter in 1998 because of TNRCC's lax enforcement regarding repeated violations by Crown Central Petroleum. Protestants cite a TNRCC enforcement order requiring payment of a $1 million penalty for an illegal activity that provided a $14 million profit to Crown Central Petroleum. The complaint pertaining to the Mobil Oil Beaumont Refinery further illustrates the fact that TNRCC's current permitting and enforcement procedures do not ensure the equitable application of environmental regulations.

The consideration of cumulative effects when evaluating permit applications has also proven to be a problem at the TNRCC. Cumulative impacts refers to the effect of multiple sources, chemicals and routes of exposure on populations affected by pollution. Although impacts may be from different media, cumulative impacts assessments usually relate to air emissions. Although the issue of cumulative impacts is not strictly an environmental justice issue, minority communities often suffer the effects of high concentrations of industries. Civil rights complaints filed by PACE (Corpus Christi), PODER/MANIC (Austin) and Texans United (Houston) raise concerns about the cumulative effect of air emissions from multiple facilities. The complaint pertaining to the Mobil Oil Beaumont Refinery does involve the consideration of cumulative effects because there are multiple plants (e.g., the oil refinery and various chemical plants) and multiple facilities within each plant.

The case of Mitsui San Antonio Components is a case where the community that would have been affected by the proposed aluminum die-cast facility raised concerns about the fact that this community was already negatively affected by a hazardous waste processing plant, a rendering plant, a landfill, a superfund site and several fuel storage tanks. In this case, TNRCC referred the case to the State Office of Administrative Hearings for the purposes of determining if a community organization had standing. The order that made the referral stated the following:

> SOAH shall limit its consideration to issues specific to the Mitsui application, including, for example, air emissions, and shall not consider matters unrelated to the application, for example, other facilities, pre-existing conditions, or cumulative effects.

There is nothing that prohibits TNRCC from considering cumulative effects, just as there is nothing that prohibits TNRCC from considering issues pertaining to environmental justice. The agency has simply chosen to ignore such issues. TNRCC commissioners discussed the possibility of conducting a cumulative risk pilot project as recently as a November 1998 Work Session but the agency never moved forward with the project.

VI. REMEDY

Complainants request that U.S. EPA immediately suspend TNRCC's Clean Air Act permitting authority unless and until TNRCC devises a method of administering its Clean Air Act responsibilities that does not result in the violation of Title VI and EPA's implementing regulations. Complainants further requests that U.S. EPA immediately suspend all grants to TNRCC unless and until TNRCC (1) revokes the permit amendment issued to Mobil Oil, (2) changes its policy relating to the types of emissions reductions that a company can claim credit for in order to offset emissions increases associated with a permit amendment, and (3) establishes more effective policies for following-up on citizen complaints, undertaking formal enforcement actions for violations of environmental regulations and determining penalty amounts associated with formal enforcement actions. Complainants also request that they be sent all correspondence between U.S. EPA and TNRCC concerning this administrative complaint.

[1] The complaints that were rejected deal with issues pertaining to (1) a low-level radioactive waste disposal facility, (2) a confined animal feeding operation, and (3) illegal NPDES dumping.

VII. CONCLUSION

As this complaint makes clear, the African-American communities living near the Mobil Oil Beaumont refinery typify the communities of color burdened in this state by disproportionate environmental impacts because of TNRCC's permitting and enforcement processes. The discriminatory impact created and sanctioned by TNRCC's actions is a clear violation of Title VI as implemented by EPA regulations. Because TNRCC receives federal funding from EPA it is subject to Title VI as per EPA's implementing regulations. This complaint is timely filed as the Mobil permit amendment became final on December 2, 1999, less than 180 days ago. We look forward to an active investigation by EPA. Please notify us promptly of the schedule for your investigation.

Respectfully submitted,

Roy Malveaux by RA

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xc (without attachments):

Ms. Carol Browner, Administrator, U.S. EPA
Mr. Barry Hill, Office of Environmental Justice, U.S. EPA
Mr. Greg Cooke, Regional Administrator, U.S. EPA Region VI
Mr. Haywood Turrentine, Chair, National Environmental Justice Advisory Council
Mr. George T. Frampton, Jr., Council on Environmental Quality
Mr. Robert Huston, Chair, Texas Natural Resource Conservation Commission
Mr. Luke Cole, Center on Race, Poverty and the Environment
Mr. Joey Longley, Texas Sunset Advisory Commission