EARTHJUSTICE

ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

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.

NORTHEAST 48 WALL STREET, 19TH FLOOR NEW YORK, NY 10005
T: 212.845.7376 F: 212.918.1556 NEOFFICE@EARTHJUSTICE.ORG WWW.EARTHJUSTICE.ORG

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
Michael Lewis, 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