

BEFORE THE
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

Mr. Art Palomares
Program Director
EPA Region 8 Environmental Justice Program
999 18th St., Ste. 300
Denver, CO 80202

July 21, 2008

RE: Environmental Justice Administrative Complaint

Mr. Palomares:

The Yankton Sioux Tribe and its individual members hereby submit this Complaint of Environmental Injustice pursuant to Executive Order 12898 of February 11, 1994 and Title VI of the Civil Rights Act of 1964, against the South Dakota Department of Environment and Natural Resources (DENR) issuance of Conditional Approvals of the General Water Pollution Control Permit for Concentrated Animal Feeding Operations (general permit) on September 10, 2007 and April 29, 2008 to Long View Farm, LLP. *Attachment 1.*

The conditional approvals permit the construction of a Concentrated Animal Feeding Operation (CAFO) housing 7,620 head of production swine and their offspring producing an estimated 351,642 cubic feet of manure and 431,120 cubic feet of wash water per year which is planned to be spread over 2,888.5 acres of land surrounding the town of Marty, South Dakota - the headquarters of the Yankton Sioux Tribe. *Attachment 2 - Excerpts from Longview Farms Permit application.* Specifically, the Tribe complains that it has been denied "an opportunity for meaningful involvement, as provided by law, in governmental decision making relating to distribution of environmental benefits or burdens"; and that the Yankton Sioux Tribe and its individual members will "suffer disproportionately adverse health [and] environmental effects from pollution or other environmental hazards" as a result of the siting of Long View Farms at its present location. The problems created by the siting of this CAFO at its current location and the process utilized by the SD DENR are especially egregious given the uniquely vulnerable health status of Native Americans residing within the affected and potentially affected areas of this CAFO, and the shallowness of the water table used for human consumption wells adjacent to or surrounding the proposed hog farm.

The South Dakota Department of Environment and Natural Resources (SD DENR), in issuing this conditional approval, has made no analysis of the environmental, health, social, economic, or cultural impacts upon the Yankton Sioux Tribe, which is directly affected by this CAFO, and did not seek input from the Tribe or the affected community. The input received from individuals was promptly ignored by SD DENR. We believe this is part of a longstanding

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disregard for the Yankton Sioux Tribe and its individual members that is rooted in the racial and cultural animosity, and/or disregard by the South Dakota State government toward the Yankton Sioux Tribe and its members over the years, and an equally longstanding disregard for the views of the tribe and its members.

The Yankton Sioux Tribe provides the following information pertinent to EPA's assessment of this Complaint to aid the Agency in making a determination in this matter.

1. Lack of Notice and Opportunity for Meaningful Participation.

The SD DENR made no effort to comply with the EPA's responsibilities to notify the Tribe of the permitting process. The SD DENR notified Charles Mix County only, which is dominated racially by whites. Further, despite the area's clear low-income and minority population character, SD DENR only published notice of the proposed permit for one day in one local paper serving Wagner, South Dakota. This is not the newspaper read by American Indians and tribal members, but rather primarily by non-Indian residents. SD DENR made no effort at any other notification that was directed to the Tribe, or its members, and provided no guidance to those residents who did call the SD DENR as directed by the published advertisement, to complain about the siting of the facility. *Attachment 3, copy of Wagner Post Notice Published on August 8, 2007.* SD DENR failed to notify those verbally reporting complaints of the requirements for filing a written complaint in order to obtain a public hearing on the CAFO permit. *Attachment 4, Affidavit of Gary Deurmier.*

2. Environmental Indicators

A. Sources of Stress and Potential Exposure.

Attached hereto as **Attachment 5** are Maps listing the location of Yankton Sioux Tribal landholdings, and the schools in relation to Longview Farms CAFO and the fields where manure will be dumped. The maps demonstrates that the Yankton Sioux Tribe and its members are disproportionately impacted by the siting of this CAFO. Long View Farms has not asked to site this facility within four miles of any other residential area or town dominated demographically by whites. SD DENR has approved the siting of the CAFO within miles of, and manure dumping areas within hundreds of feet of, the Tribal headquarters, Tribal Head Start Program (serving three and four year old Native American children), and other Tribal Buildings housing Elderly Nutrition, Women Infants and Children Services, the Boys and Girls Club and the Marty Indian School serving Native American children. In addition, there is a tribal day care serving young Native American children of whom one in four is asthmatic located within 1 ½ miles of the CAFO location. All school buses serving Native American children in the area must drive within 500 feet of the CAFO on the only public road between homes and the schools every day twice a day exposing all children to the noxious fumes and odor from the facility.

Furthermore, the CAFO is situated next to the only highway leading from the tribal headquarters to other areas of the Yankton Sioux Reservation, dependent Indian communities, and other tribal facilities, including the Tribe's Casino, Travel Plaza, alcohol program, Justice Center, BIA offices, other Headstart facilities and schools attended by American Indians. No white-dominated community of this size is similarly impacted.

B. Government Response Action.

Neither the SD DENR nor the Charles Mix County Board of Commissioners notified the Yankton Sioux Tribe directly of this proposed siting. The SD DENR notified only Charles Mix County. Charles Mix County issued both a Building permit and a road approach permit onto a road operated and maintained by the Yankton Sioux Tribe for fifteen years without ever notifying the Tribe of the proposed construction of this CAFO. *Attachment 7 - Affidavit of John Stone, Vice-Chairman Yankton Sioux Tribe.* To date, neither SD DENR nor Charles Mix County have ever offered to meet with the Tribe directly to consult on this CAFO. To be consistent with the EPA government -to - government consultation policy, as further required by Executive Order No. 13185, such meeting would had to have occurred prior to the decision to grant approval of a General CAFO permit.

C. Community Participation.

Community Participation has not been encouraged, it has been actively stifled by Charles Mix County officials and SD DENR. First, SD DENR did not notify complainants that they had to file a written complaint before a public hearing would be held by SD DENR. The one day public notice published in the Wagner Post did not even inform community members they had a right to complain about the approval. In fact, the tiny type-faced notice did not solicit any input at all by the public, let alone tribal members. *Attachment 4.* Second, both the Charles Mix County Law Enforcement Department and the South Dakota Highway Patrol engaged in a week of suppression of public protests, The show of force exerted on the local community was incommensurate with public safety, and was an active effort to intimidate, stifle and control opposition to the CAFO. More than 52 South Dakota Highway Patrol vehicles were called to the site and more than 30 tribal members were arrested for such misdemeanors as vagrancy and public nuisance and public disturbance, mimicking civil rights arrests in the deep South in the 1960's. Efforts by the Yankton Sioux Tribe to reduce the overwhelming law enforcement presence to reduce escalating tensions were ignored - with repeated telephone calls not returned or returned with the reply that nothing would be done. Requests to the Governor's Office to de-escalate the situation were met with no response. *Attachment 7.*

D. Cultural impacts on the Community

The CAFO has been sited along with manure dumping fields in close proximity to the locations for necessary and required culturally and spiritually significant locations. The CAFO and its associated manure fields will have a significant negative impact on the cultural and spiritual practices of the affected communities of Native Americans. Information on this problem will be filed with EPA as a supplement.

4. Economic Indicators

The BIA Labor Force reports indicates that of the population of 2800 Native Americans in the area, 1,100 are under age 16, 200 are over 64 years old, 981 are not eligible to work, and of the 1, 819 available for work, only 641 are employed, leaving an unemployment rate of 65%. Of those working, 89% live below the poverty level. *Attachment 10.* Longview Farms proposes to create

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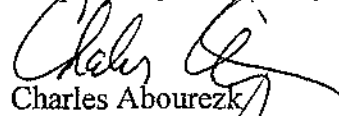
only 13 new jobs. The largest employer in this area is the Yankton Sioux Tribe which employs over 600 individuals at the Fort Randall Casino located within five miles of this proposed CAFO, and over one hundred additional employees in its other programs and services. Tourism accounts for the bulk of the local economy. The location of this CAFO in close proximity to the Missouri River (the primary tourist attraction in this area) and in close proximity to Tribal land holdings will have a net negative economic impact on the Yankton Sioux Tribe and its communities irrespective of any regional or statewide economic benefits derived from its operation.

Attachment 7.

United States Census Bureau data from 2000 indicates that the population in the vicinity of the CAFO site is 50.3% Native American, as compared to a Native American population in the extended vicinity of .8%. ***Attachment 11, 2000 Census Bureau Map.***

For the foregoing reasons, the Yankton Sioux Tribe respectfully requests that EPA Region 8 take action on this Complaint immediately and forthwith. The Yankton Sioux Tribe, and its individual American Indian members are a political, racial, and cultural minority within Charles Mix County and the State of South Dakota. When the Charles Mix County and South Dakota Governments combine forces to support an out-of-state CAFO over the health and environmental interests of its own American Indian citizens of Charles Mix County, who also happen to be members of the Yankton Sioux Tribe, there is no better case for federal intervention in the interests of environmental justice and equal protection of the law than this matter now before you. Your urgent and immediate attention to the matter is hereby respectfully requested - our tribal members need your immediate assistance to intervene on their behalf.

Respectfully Submitted,



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cc: Mr. Robbie Roberts, Regional Administrator
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Alice Harwood, Great Plains Regional Director
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