



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

MAR 11 2009

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7004-1160-0002-3622-6604

In Reply Refer To:

EPA File No. 05R-08-R8

Rebecca Kidder
Abourezk & Zephier, PC
2020 W. Omaha St.
P.O. Box 9460
Rapid City, SD 57702

Re: Partial Acceptance and Partial Rejection of Administrative Complaint

Dear Ms. Kidder:

This letter is in response to your client's administrative complaint received by the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR). The complaint was received by EPA's Region 8 office on July 24, 2008. It was forwarded to OCR on August 11, 2008, and supplemented on January 28, 2009. The complaint was filed by Charles Abourezk on behalf of the Yankton Sioux Tribe and its individual members. The complaint alleges that the South Dakota Department of Environment and Natural Resources (SD DENR) violated Title VI of the Civil Rights Act of 1964 (Title VI), and EPA's nondiscrimination regulations implementing Title VI, found at 40 C.F.R. Part 7. This is to notify you that after careful consideration, OCR is partially accepting and partially rejecting your administrative complaint for investigation.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of complaints to determine 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 regulations. First, it must be in writing. Second, it must describe alleged discriminatory acts that violate EPA's nondiscrimination regulations (*i.e.*, an alleged discriminatory act based on race, color, national origin, disability, or gender). 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 assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15. (A copy of EPA's nondiscrimination regulations is enclosed for your convenience.)

Allegation I

The citizens of the Yankton Sioux Tribe were not given an opportunity for meaningful involvement in the decision making process related to the development of Long View Farm's Concentrated Animal Feeding Operation (CAFO).

The first allegation in your complaint states that the SD DENR published the permit notice in a newspaper which mainly serves non-Indian residents, rather than one popularly read by the citizens of the Yankton Sioux Tribe.¹ The complaint alleges that the Yankton Sioux Tribe was not given "an opportunity for meaningful involvement, as provided by law, in governmental decision making relating to distribution of environmental benefits or burdens."² The complaint also states that the Tribe will "suffer disproportionately adverse health [and] environmental effects from pollution or other environmental hazards" due to the present location of the CAFO.³

OCR will not accept this allegation for investigation because it does not meet all four of EPA's jurisdictional requirements. The complaint states that the permit notice was published on August 8, 2007. EPA received your complaint on July 24, 2008. This exceeds the 180 calendar day filing requirement established in EPA's nondiscrimination regulations. Therefore, OCR is rejecting this allegation.

Allegation II

SD DENR's approval of Long View Farm's CAFO to operate near Yankton Sioux Tribal land has caused a disparate impact on the citizens of the Tribe.

The second allegation in your complaint concerns the approval to allow the CAFO to operate near Tribal land. This allegation meets all four of EPA's jurisdictional requirements. The complaint is in writing and describes an alleged discriminatory act that may violate EPA's Title VI regulations. The alleged discriminatory act (the decision to allow the CAFO to operate in its current location) occurred within 180 days of the filing of this complaint. (The complaint letter was originally received by EPA on July 24, 2008, which included the conditional permit approval dates of September 10, 2007 and April 29, 2008. On January 28, 2009 OCR received additional information which stated that the final permit was approved in September 2008.) Finally, the complaint was filed against a recipient of EPA assistance. Since all of the jurisdictional requirements are met, OCR will accept this allegation for investigation.

EPA's nondiscrimination regulations provide that OCR must attempt to resolve complaints informally whenever possible. 40 C.F.R. § 7.120(d)(2). Accordingly, OCR may discuss offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

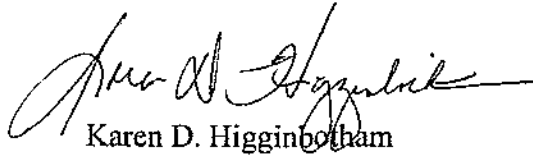
¹ Administrative Complaint (05R-08-R8) at 2. (July 21, 2008).

² *Id.* at 1.

³ *Id.*

If you have any questions, please contact Brittany Martinez of the OCR External Compliance Program, by telephone at (202) 343-9678, by e-mail at martinez.brittany@epa.gov, or by mail at U.S. EPA, Office of Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460.

Sincerely,



Karen D. Higginbotham
Director

Enclosure

cc: Stephen G. Pressman, Associate General Counsel
Civil Rights & Finance Law Office (MC 2311)

Sandra Fusco
EPA Region 8

Steven M. Pirner
Secretary
South Dakota Department of Environment & Natural Resources
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523 East Capitol Avenue
Pierre, South Dakota 57501