



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

JUN 06 2011

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail# 7004-2510-0004-2241-5865

In Reply Refer to:

EPA File No. 11R-09-R9

Mr. Bradley Angel
Executive Director
Greenaction for Health and Environmental Justice
703 Market Street
Suite 501
San Francisco, California 94103-2102

Re: Amendment of Administrative Complaint

Dear Mr. Angel:

This letter is in response to your February 22, 2011, letter requesting the amendment of the administrative complaint you filed with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on October 15, 2009, on behalf of the Avenal and Kettleman City residents of color. You asked OCR to amend Greenaction's complaint to include additional allegations that the San Joaquin Valley Air Pollution Control District (APCD) violated Title VI of the Civil Rights Act of 1964, as amended (Title VI), 42 U.S.C. §§ 2000d *et seq.*, and EPA's nondiscrimination regulations implementing Title VI, found at 40 C.F.R. Part 7. Specifically, by issuing an additional Notice of Final Determination for the proposed Avenal power plant and by making retaliatory statements.

Pursuant to EPA's nondiscrimination regulations, OCR conducts a preliminary review of discrimination 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 an alleged discriminatory act that, if true, may violate EPA's nondiscrimination regulations (i.e., an alleged discriminatory act based on race, color, national origin, sex, age, or disability). Third, it must be filed within 180 calendar days of the alleged discriminatory act. Finally, the complaint must be filed against an applicant for, or a recipient of, EPA financial assistance that allegedly committed the discriminatory act. 40 C.F.R. § 7.15.

On August 6, 2010, OCR partially accepted your administrative complaint for investigation. On February 4, 2011, OCR sent a request for information to you seeking

additional information. OCR received your response on February 22, 2011. In your response, you stated that you would like OCR to amend your original complaint letter dated October 15, 2009. This letter is to inform you that OCR will now investigate the following allegations against APCD:

- 1. APCD intentionally discriminated against Avenal, Kettleman City, and Huron residents of color and Spanish-speakers by failing to notify or involve residents (e.g., failing to publish information in Spanish, failing to hold public hearings) during the decision-making process leading up to and including APCD issuing the November 4, 2008, and December 17, 2010, Notices of Final Determination of Compliance (FDOC) for the proposed Avenal power plant.**

Your amended complaint letter stated that on December 17, 2010, APCD failed and refused to provide equal public participation opportunities and proper notice, for a FDOC, to Spanish-speaking residents during a proposed change in permit conditions of the Avenal power plant project.

The additional allegation is accepted for investigation because it meets EPA's jurisdictional requirements. The amended complaint is in writing and states an alleged discriminatory act that, if true, would violate EPA's nondiscrimination regulations (*i.e.*, discrimination from lack of public participation during the decision-making process). Additionally, APCD is a recipient of EPA financial assistance and the alleged discriminatory act occurred within 180 days of the filing of the amended complaint letter.

- 2. APCD officials retaliated against Avenal and Kettleman City residents of color and Spanish-speakers during a meeting on August 30, 2010, by stating that APCD would only discuss the possibility of a public hearing if Greenaction withdrew its civil rights complaint.**

You alleged that during an APCD meeting held on August 30, 2010, APCD officials stated that they would only discuss the possibility of a public hearing if the Title VI complaint filed by Greenaction was withdrawn.

This allegation is accepted for investigation because it meets EPA's jurisdictional requirements. The amended complaint is in writing, and states an alleged discriminatory act that would violate EPA's nondiscrimination regulations. Additionally the amended complaint was timely filed. EPA's nondiscrimination regulations prohibit any applicant, recipient, or other person from intimidating, threatening, coercing, or discriminating against any individual or group. 40 C.F.R. § 7.100.

The investigation of your allegation that the operation of the proposed Avenal power plant will result in adverse health impacts on the residents of color of Avenal and Kettleman City, will continue to be held in abeyance. This allegation is not yet ripe.

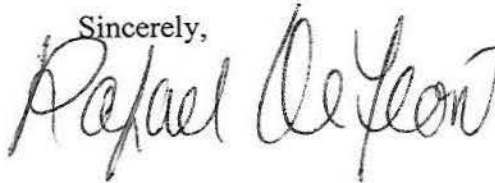
Environmental Justice and Income

Finally, your letter raises allegations related to violations of environmental laws including discrimination on the basis of income. As stated in our August 6, 2010, Partial Acceptance Letter, OCR does not have the authority over these matters, but EPA's Office of Environmental Justice and Region 9 are currently engaged in these issues in Kettleman City and Avenal.

Pursuant to EPA's nondiscrimination regulations, APCD is being notified of the status of this complaint. APCD may respond to the notice of the status of this complaint within 30 calendar days of receiving it. 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, at any point during the process, offers to informally resolve the complaint, and may, to the extent appropriate, facilitate an informal resolution process with the involvement of affected stakeholders.

If you have any questions or need clarification regarding this letter, please contact Anthony Napoli of the OCR External Compliance and Complaints Program via Federal Relay Service 866-377-8642, and provide the relay operator his telephone number 202-564-0728. He may also be reached via electronic mail at Napoli.Anthony@epa.gov, or by mail at: U.S. EPA, Office of Civil Rights (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460-1000.

Sincerely,



Rafael DeLeon
Director

cc: Stephen G. Pressman, Associate General Counsel
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