



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

MAR 26 2010

OFFICE OF
CIVIL RIGHTS

Return Receipt Requested

Certified Mail #7009-2820-0002-1759-3067

In Reply Refer To:

EPA File No. 12D-09-R8

[REDACTED]

Re: Acceptance of Administrative Complaint

Dear [REDACTED]:

This letter is in response to your administrative complaint received by the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR). The complaint was referred to EPA by the US Department of Justice (DOJ) on August 26, 2009. DOJ received your complaint on March 5, 2009. The complaint alleges that the City of Rapid City, South Dakota violated Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities under federally assisted programs or activities, and EPA's nondiscrimination regulations found at 40 C.F.R. Part 7. This is to notify you that after careful consideration, OCR is accepting 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.)

Your complaint states that you suffer from [REDACTED] which means you are [REDACTED].

¹ On January 24, 2008, you filed a complaint directly with Rapid City pertaining to the smoke coming from your next door neighbor's smoke stack, which was causing you ongoing adverse health impacts. Further, on October 8, 2008, you spoke to an individual in Rapid City's Air Quality office about this issue and then, on October 14, 2008, you received a telephone call from the City Attorney, Jason Green. In your complaint, you state that Mr. Green explained that, "there is no specific wording in the nuisance ordinance for this type of problem and you would have to hire a private attorney to take care of the matter,"² and that the City Council is not "going to amend ordinances which would apply to only 1-2 people."³

OCR is accepting the following allegation for investigation:

Rapid City intentionally discriminated against you based on your disability [REDACTED] by failing to modify its nuisance ordinance to include smoke emitted from private homes.

This allegation is accepted for investigation because it meets all four of EPA's jurisdictional requirements. First, the complaint is in writing. Second, the complaint describes an alleged discriminatory act that may violate Section 504 of the Rehabilitation Act of 1973. Third, the complaint was filed within 180 days of the date of the alleged discriminatory act (October 14, 2008). Finally, Rapid City is a recipient of EPA financial assistance.

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.

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, by fax at (202) 501-1836, or by mail at U.S. EPA, Office of

¹ Administrative Complaint submitted by [REDACTED] to Ms. Cee Cee Allaway, Director, Complaint Intake & Adjudication, Office of Civil Rights, U.S. Department of Justice (October 17, 2008).

² *Id.*

³ *Id.*

Civil Rights, (Mail Code 1201A), 1200 Pennsylvania Ave., N.W., Washington, D.C.
20460.

Sincerely,



Karen D. Higginbotham
Director

Enclosure

cc: Alan Hanks
Mayor
City of Rapid City
300 Sixth Street
Rapid City, SD 57701

Sandra Fusco
EPA Region 8

Katherin E. Hall, Assistant General Counsel
Civil Rights & Finance Law Office (MC 2399A)