

TIME LINE

October 17, 2008

U.S. Department of Justice  
Office for Civil Rights  
Ms. Cee Cee Allaway, Director,  
Complaint Intake & Adjudication  
900 Pennsylvania Ave., NW  
Washington, DC 20530

Dear Ms. Allaway,

As you can see by the date I signed my complaint forms, I had originally intended to fax this to you on October 15, 2008.

However, after reading an article in the local newspaper this morning about a snafu caused by the "new" city attorney Jason Green and his (stated) lack of knowledge regarding policies and laws, I decided to let Mr. Green (hopefully) ponder his comments to me yesterday afternoon and waited to see if either Ms. Elkin or someone from his office would call me today to amicably work this situation out. That didn't happen. It seems from the article that his ego overrides his commonsense.

Therefore, I must once again request your assistance with the following matter:

October 8, 2008 11:15AM

Spoke with Marsha Elkin at the Air Quality office regarding a complaint that [REDACTED] filed (on my behalf) in their office on 1-24-08 about the smoke from my neighbor's house [REDACTED] and how it was adversely affecting my health.

I stated that the reason I hadn't made contact earlier in the year was "because I was waiting through the summer months to see if the stack was going to be lengthened or if possibly a catalytic converter had been installed on the inside of the home, since I didn't see one attached to the existing smoke stack."

I told her that I was a person with "significant" disabilities under the ADA Title II laws, with one of those disabilities being [REDACTED]

I told her that not only does the smoke sit under the eave of my front porch, making it a health hazard for me to enter my home every day through the winter months, but that the smoke is dispersed throughout my entire house every time my heater comes on. I had to explain to her that a gas furnace works by drawing in outside air in order to function properly.

I told her that I understand my neighbors need to conserve money by using alternative heat sources, but that it is a matter of life and death for me. Especially since I already went into [REDACTED] in May of this year and that I can't even go out into my yard without being effected by the smoke.

She said "I understand it is an inconvenience for you, but we don't have any ordinance regarding wood burning stoves and the smoke they emit."

Then I told her that I spoke with a woman in the Engineering office regarding this problem, and the woman stated that because my house sits lower than the neighbor's (due to the developer's oversight) the stack would either need to be raised – to put it into another air current, and/or a catalytic converter installed. Marsha just kept saying that there hasn't been a woman in that office for a long time."

To which I said "it was a while back that I called that office, but I did speak with a woman in the City Engineering office, and that is what she told me needed to be done."

She kept telling me that I had to do whatever was necessary regarding the remodeling or repairing of my home to deal with this matter! I told her "I have done lots of modifications to my home (which I have) but I can't afford to make anymore modifications. Besides, the city must also be responsible in protecting me from harm!"

I also told her that [REDACTED], who is an ex-fireman, stated at the time he was filling out the report in January that it didn't appear that the neighbor was strictly burning wood because of the way the smoke smells and that it rolls out of the stack black several times a week. I even went so far as to tell her that I believe he (the neighbor) is burning coal – which is much more toxic. And though she couldn't seem to find [REDACTED]'s comments in the report filed in January, she had no problem reading the rest of the complaint to me!

Then I cited the 1998 Supreme Court ruling which determined that for a government agency to be held liable, it must be shown that officials had "actual knowledge" of improper conduct and reacted with "deliberate indifference." To which she responded "we aren't liable because there is no wording in the Nuisance ordinance that pertains to this situation or any air quality issues for that matter!"

I also read to her the **DEFINITION OF NUISANCE** from the South Dakota codified law SDCL21-10-1 which clearly states: "Annoys, injures, or endangers the comfort, repose, health, or safety of others." (Please see Atch 1)

To which she responded "I will call the city attorney's office and speak with Jason Green (the city attorney) but he is out of the office until Monday." I told her that, "that was fine because the store was closed on Mondays anyway and to have him call me on Tuesday."

October 14, 2008

I received a telephone call from the city attorney Jason Green at 3:30 p.m. asking me to explain my problem, which I did.

He then proceeded to tell me that there is no specific wording in the Nuisance ordinance for this type of problem and that I would have to hire a private attorney to take care of this matter. I told him I didn't have the money to hire an attorney and that under Federal law the city is required to uphold Title II laws **II-3.6000 Reasonable modifications: A public entity must reasonably modify its policies, practices, or procedures to avoid discrimination.** (emphasis mine) by amending (in this case) ordinances already on the books to ensure the safety and wellbeing of its citizens. He told me that "they aren't going to amend ordinances which would apply to only 1-2 people!" (Please see Atch 2 -3)

I told him that "not only is it a matter of life and death for me, but that there are a lot of people in Rapid City who suffer from MCS and that if the city of Rapid City was going to act with "deliberate indifference" and not uphold the Title II laws then I was going to have to contact the DOJ and file a disability discrimination



complaint -- however, I was hoping to solve this without taking that step." He said "well I guess you'll have to file a complaint!" (Atch 4)

Please note: *I have* done everything I know how to do to modify my home to ensure my safety and it still hasn't been enough!

Therefore, Ms. Allaway, I am requesting an accelerated investigation of disability discrimination under the Rehabilitation Act of 1973 as amended and Title II laws, as it really is a matter of life and death for me.

Sincerely,



Atch 1: South Dakota Municipal League Guide to Public Nuisance Enforcement and Abatement

Atch 2: Letter to Editor dated 8-20-08 from Marletta Pacheco of the South Dakota Peace and Justice Center

Atch 3: Presentation Notice dated 9-20-08

Atch 4: Discrimination Complaint form.

**U.S. Department of Justice**  
**Civil Rights Division**  
*Disability Rights Section*

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OMB No. 1190-0009

**Title II of the Americans with Disabilities Act**  
**Section 504 of the Rehabilitation Act of 1973**  
**Discrimination Complaint Form**

Instructions: Please fill out this form completely, in black ink or type. Sign and return to the address on page 3.

Complainant:

Address:

City, State and Zip Code:

Telephone: Home:

Business:

Person Discriminated Against:  
(if other than the complainant)

Self

Address:

City, State, and Zip Code:

Telephone: Home:

Business:

Government, or organization, or institution which you believe has discriminated:

Name: City of Rapid City .. Marsha Elkin Air Quality & Jason Green  
City Attorney

Address:

County:

Pennington

City: Rapid CityState and Zip Code: SD 57701Telephone Number: 605-394-4140When did the discrimination occur? Date: January 2008... ongoing

Describe the acts of discrimination providing the name(s) where possible of the individuals who discriminated (use space on page 3 if necessary):

Please see attached document(s)

Have efforts been made to resolve this complaint through the internal grievance procedure of the government, organization, or institution?

Yes X No       If yes: what is the status of the grievance? I was told to file this complaint!

**Has the complaint been filed with another bureau of the Department of Justice or any other Federal, State, or local civil rights agency or court?**

Yes \_\_\_\_\_ No X

**If yes:**

**Agency or Court:**

**Contact Person:**

**Address:**

**City, State, and Zip Code:**

**Telephone Number:**



Date Filed:

Do you intend to file with another agency or court?

Yes \_\_\_\_\_ No ☒

Agency or Court:

Address:

City, State and Zip Code:

Telephone Number:

Additional space for answers:



Signature: \_\_\_\_\_

[Redacted Signature]

Date: \_\_\_\_\_

10 - 14 - 08

Return to:

U.S. Department of Justice  
Civil Rights Division  
950 Pennsylvania Avenue, NW  
Disability Rights - NYAV  
Washington, D.C. 20530

last updated October 3, 2007